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# “I Needed Help, Instead I Was Punished”

Abuse and Neglect of Prisoners with Disabilities in Australia



## **“I Needed Help, Instead I Was Punished”**

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# “I Needed Help, Instead I Was Punished”

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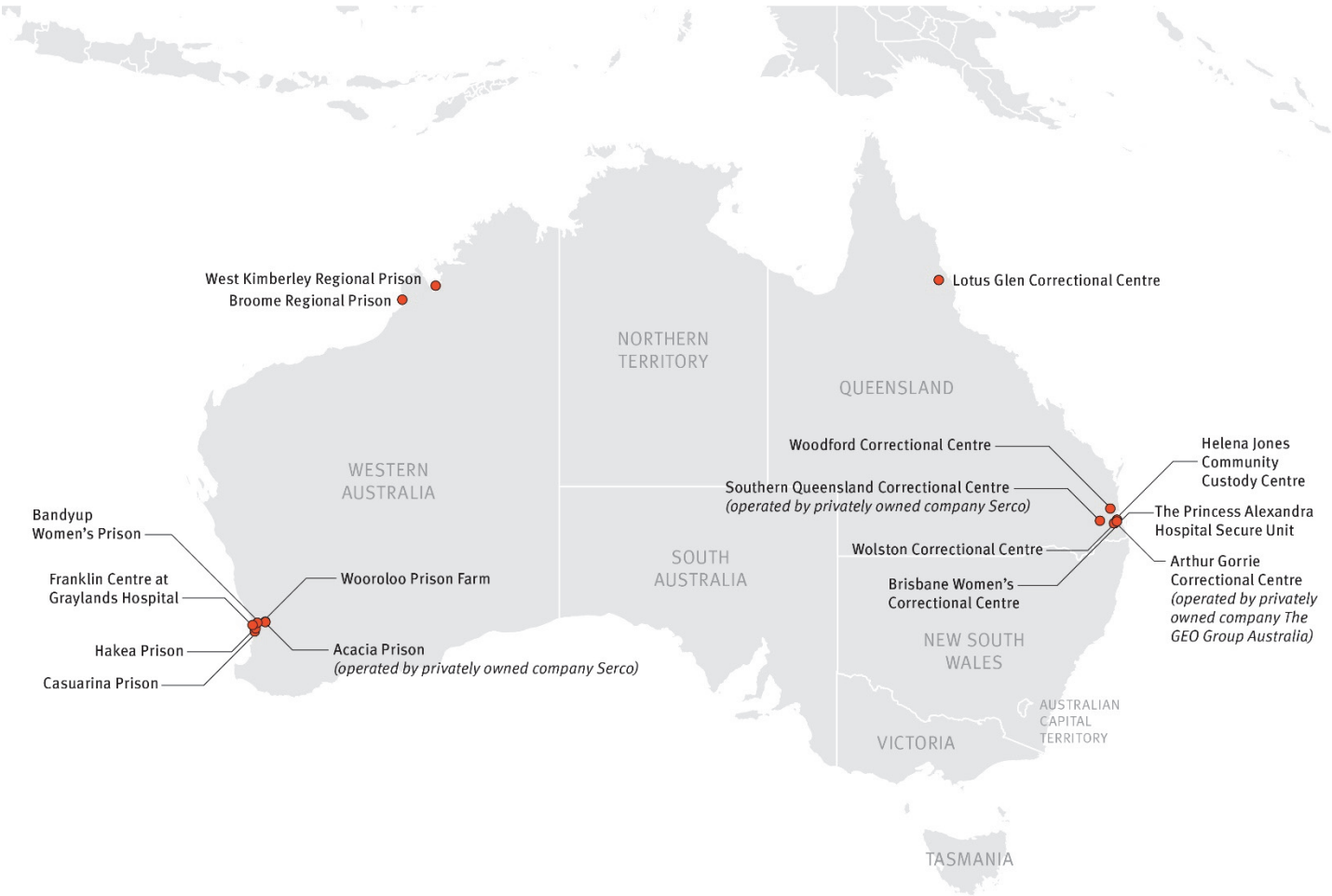
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Map





## Terms

**Aboriginal and Torres Strait Islander peoples:** The first inhabitants of Australia. The Australia government defines an Aboriginal person as “someone who: is of Aboriginal descent; identifies as an Aboriginal person; and is accepted as an Aboriginal person by the community in which he or she lives. Aboriginal people comprise diverse Aboriginal nations, each with their own language and traditions and have historically lived on mainland Australia, Tasmania or on many of the continent's offshore islands. Torres Strait Islander peoples come from the islands of the Torres Strait and are of Melanesian origin with their own distinct identity, history, and cultural traditions. ‘Aboriginal people’ is a collective name for the original people of Australia and their descendants, and does not emphasize the diversity of languages, cultural practices, and spiritual beliefs. This diversity is acknowledged by adding an ‘s’ to ‘people’ (“Aboriginal peoples”). ‘Aboriginal people’ can also be used to refer to more than one Aboriginal person.”<sup>1</sup>

**Acquired Brain Injury:** An injury to the brain acquired after birth due to an accident, stroke, lack of oxygen, tumor, infection, or other causes. Can result in multiple disabilities, including a physical and/or cognitive disability.<sup>2</sup>

**Child:** Refers in this report (together with the words “boy” or “girl”) to anyone under the age of 18. The Convention on the Rights of the Child states that under the convention, “A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>3</sup> In Australia, the age of majority is 18 years, with the exception of Queensland, where 17 year olds were treated as adults and incarcerated in adult prisons until new legislation came into force in November 2017 requiring that 17 year olds be tried under the youth justice system.<sup>4</sup>

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<sup>1</sup> Australian Human Rights Commission, “Questions and Answers about Aboriginal & Torres Strait Islander Peoples: Face The Facts 2005,” 2005, <http://www.humanrights.gov.au/publications/questions-and-answers-about-aboriginal-torres-strait-islander-peoples> (accessed December 3, 2017).

<sup>2</sup> Brain Injury Australia, “Brain Injury,” 2016, <https://www.braininjuryaustralia.org.au/brain-injury-2/> (accessed September 3, 2017).

<sup>3</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Indonesia September 5, 1990, art. 1.

<sup>4</sup> Department of Justice and Attorney-General, “Inclusion of 17-year-olds in the youth justice system,” May 16, 2017, <http://www.justice.qld.gov.au/corporate/business-areas/youth-justice/inclusion-of-17-year-old-persons> (accessed November 7, 2017).

**Cognitive disability:** Characterized by significant limitations in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior, which cover a range of everyday social and practical skills. Cognitive disability is a subset within the larger world of developmental disability, but the boundaries often blur as many individuals fall into both categories to differing degrees and for different reasons.<sup>5</sup> Examples of cognitive disabilities include Down Syndrome and some forms of cerebral palsy. In this report, the term “cognitive disabilities” includes cognitive disabilities resulting from an acquired brain injury and fetal alcohol spectrum disorder.

**Disabled Persons’ Organizations (DPOs):** Organizations in which people with disabilities constitute most members and the governing body, and which work to promote self-representation, participation, equality, and integration of people with disabilities.<sup>6</sup>

**Fetal Alcohol Spectrum Disorder (FASD):** A range of physical or cognitive disabilities due to exposure to alcohol in utero. Behaviors associated with FASD can increase the likelihood of coming into contact with the criminal justice system because people with FASD are more susceptible to suggestion and to confess to crimes they have not committed without being aware of the consequences.<sup>7</sup> FASD is not easy to identify and is often undiagnosed.

**Forensic hospital, facility, or unit:** A facility that provides specialist mental health services for people in contact with the criminal justice system in Australia. Forensic hospitals can house people with psychosocial or cognitive disabilities found “not guilty by reason of mental illness,” “unfit to plead,” or “unfit to stand trial.” Forensic hospitals can cater to children, as well as male and female adults.

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<sup>5</sup> Human Rights Watch, *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*, August 2011, <http://www.hrw.org/sites/default/files/reports/nepalo811ForWebUpload.pdf>, pp. 12-13.

<sup>6</sup> Disabled People’s International, “Constitution of Disabled People’s International,” 1993, <http://www.disabledpeoplesinternational.org/Constitution> (accessed January 15, 2016), art. 2.

<sup>7</sup> Australian Medical Association, “AMA submission to Inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia,” Submission 12, April 6, 2016, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/~link.aspx?id=E88B9FB743E442FoA749542EA42D3960&z=z](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/~link.aspx?id=E88B9FB743E442FoA749542EA42D3960&z=z) (accessed August 15, 2017), p. 5. Amnesty International Australia, “Amnesty International Australia submission to Inquiry into indefinite detention of people with cognitive and psychiatric impairment in Australia,” Submission 38, April 8, 2016, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/~link.aspx?id=E88B9FB743E442FoA749542EA42D3960&z=z](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/~link.aspx?id=E88B9FB743E442FoA749542EA42D3960&z=z) (accessed August 15, 2017), p. 3.

**Legal capacity:** The right of an individual to make their own choices about their life.<sup>8</sup> The concept of legal capacity encompasses the right to personhood, being recognized as a person before the law, and legal agency, i.e. the capacity to act and exercise those rights.<sup>9</sup>

**Observation, crisis, or safe cell:** Prison authorities, in consultation with health staff, can place a prisoner in an “observation cell,” “crisis cell,” or “safe cell” to monitor their medical or psychological condition, or if they are at high risk of self-harm.<sup>10</sup> The cells can be specially designed with CCTV cameras; no ligatures, hooks, or sharp edges; and have furnishings bolted to the ground or flush to the wall to minimize risk of self-harm and suicide. If the risk of self-harm is high, prison staff provide a tear-proof gown and bedding and finger food. Observation, crisis, or safe cells are located away from mainstream units, sometimes in detention or medical units (for medical supervision), and have a higher staff-to-prisoner ratio. Lack of appropriate cells and overcrowding means prison staff often use punishment cells located in detention units for observation.

**Psychosocial disability:** The preferred term to describe people with mental health conditions such as depression, bipolar, schizophrenia, and catatonia. The term “psychosocial disability” describes conditions commonly referred to—particularly by mental health professionals, courts, lawyers, corrections officials, and media—as “mental illness” or “mental disorders.” The Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept and that it results from the interaction between people with impairments and social, cultural, attitudinal, and environmental barriers that prevent their full and effective participation in society on an equal basis with others. The term “psychosocial disability” is preferred as it expresses the interaction between psychological differences and social or cultural limits for behavior, as well as the stigma that society attaches to people with mental impairments.<sup>11</sup>

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<sup>8</sup> United Nations Committee on the Rights of Persons with Disabilities, General comment No. 1, Article 12: Equal recognition before the law, U.N. Doc. CRPD/C/GC/1 (2014), pp. 1-3.

<sup>9</sup> International Disability Alliance, “Legal Opinion on Article 12 of CRPD,” undated, <http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/LegalOpinionLetterArt12FINAL.doc> (accessed June 1, 2015).

<sup>10</sup> Legal Aid Western Australia, “Prisoner Handbook: Your Rights, the law, and other information,” May 2016, <https://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/Documents/Legal%20Aid%20WA%20Prisoner%20Handbook.pdf> (accessed September 2, 2017), pp. 38-39.

<sup>11</sup> World Network of Users and Survivors of Psychiatry, “Implementation Manual for the United Nations Convention on the Rights of Persons with Disabilities,” February 2008, [http://www.wnusp.net/documents/WNUSP\\_CRPD\\_Manual.pdf](http://www.wnusp.net/documents/WNUSP_CRPD_Manual.pdf) (accessed December 20, 2015), p. 9.

**Punishment cell:** A cell where prison authorities send a prisoner who has committed a prison offense.<sup>12</sup> Depending on the state legislation and the severity of the offense, the superintendent or a visiting justice can impose a period of separate confinement in a punishment cell ranging from seven days or less for a minor offense—such as disobeying a prison rule or an officer—to 21 days for multiple offenses. For aggravated offenses, such as assaulting a prisoner or an officer, a magistrate or two Justices of the Peace may impose up to 28 days of separate confinement (with 48 hours out of the punishment cell after each seven days in separate confinement).<sup>13</sup> Located in a detention unit, a punishment cell has a bed, table, shelf, and toilet. Prisoners in such cells loses privileges, such as access to work or leisure activities, and are let into an exercise yard for two hours a day at most.

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<sup>12</sup>Separate confinement is merely one of the penalties that prison authorities, a visiting justice, or a magistrate may impose on a prisoner. Other penalties can include a caution, a reprimand, cancellation of gratuities, confinement in sleeping quarters for 72 hours or less etc. Legal Aid Western Australia, “Prison Offenses Information Kit,” July 1, 2015, <https://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/Documents/Prison%20offenses%20information%20kit.PDF> (accessed September 2, 2017), pp. 2-3.

<sup>13</sup> Ibid.

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## Summary

Four officers tackled me. I had played up the day before so they were trying to teach me a lesson. The senior officer stood on my jaw while the other hit my head in and restrained me. They said, ‘You don’t run this prison little cunt, we do,’ and they cut my clothes off. They left me naked on the floor of the exercise yard for a couple of hours before giving me fresh clothes. They probably did it to humiliate me. Officers call me ‘black cunt’ heaps of times, it’s normal.

— Aboriginal and Torres Strait Islander male prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Queensland, 2017

I was sexually assaulted [by other prisoners].... I know at least one of them raped me, but I kind of blacked out. I was bleeding, I still bleed sometimes. I reported it the same day to two of the supers [superintendents], I filled out the medical request form. They told me if I report it, I would go to the DU [detention unit] for six months. So I ripped up the form in front of them. Then when I went back to the unit, I got bashed up by some of the guys, not the ones who assaulted me.... They beat me up, stomped on me. Called me a dog [traitor].

—Male prisoner with a cognitive disability (name and details withheld by Human Rights Watch), Queensland, 2017

People with disabilities, particularly a cognitive or psychosocial disability, are overrepresented in the criminal justice system in Australia—comprising around 18 percent of the country’s population, but almost 50 percent of people entering prison.

Aboriginal and Torres Strait Islander people are especially overrepresented in the prison community. While they comprise just 2 percent of the national population, as of June 2017, they made up 28 percent of Australia’s full-time adult prison population. By 2020, the proportion of Aboriginal and Torres Strait Islanders in custody is expected to reach 50 percent of the prison population.

Within this group, Aboriginal and Torres Strait Islander people with disabilities are even more likely to end up behind bars. Multiple forms of disadvantage mean that Aboriginal and Torres Strait Islander people are more likely to end up in jail than non-indigenous peers, including greater likelihood as youth and adults of living in out-of-home-care, being homeless, or having earlier and more frequent contact with the criminal justice system.

Those Aboriginal and Torres Strait Islander people who have disabilities experience added challenges: the disability is often undetected in childhood, and even when it is, support services are difficult to access, putting them on a path where they are more likely to be incarcerated than get a university degree. Research shows that most offenses by Aboriginal and Torres Strait Islander people with disabilities are relatively less serious and pertain to theft, public order, traffic, and vehicle regulations.

While research has focused on the barriers to justice for people with disabilities, including their placement in indefinite detention, there is little information across different Australian states on their experiences once in prison.

This report aims to contribute to filling this void. Based on research between September 2016 and January 2018 in Western Australia, Queensland, New South Wales, and Victoria—including interviews with people with disabilities, prison-related and government professionals, mental health experts, academics, lawyers and civil society representatives—Human Rights Watch finds that Australia is restricting and violating the rights of prisoners with disabilities, including Aboriginal and Torres Strait Islander people with disabilities.

The government's failure to fulfil its international obligations, particularly under the Convention on the Rights of Persons with Disabilities, compromises a range of rights for people with disabilities in its prison system, including equality and non-discrimination; liberty and security of the person; freedom from violence, exploitation, and abuse; reasonable accommodation; health; and an accessible environment.

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Problems exist for people with disabilities throughout detention and prison, beginning with lack of proper assessment and identification of a disability. Without such information,

prisons fail to provide appropriate and adequate services and accommodations for the particular needs of prisoners with disabilities, or to track them within the prison system.

Disability identification relies heavily on self-reporting, which is inadequate since many prisoners are not aware of their disability; do not identify as having one including many Aboriginal and Torres Strait Islander interviewees (there is no equivalent word in traditional languages); have never been diagnosed prior to entering prison; or hesitate to disclose a disability for fear of stigma.

Life behind bars is challenging for everyone. But prisoners with disabilities often struggle more than others to adjust to the extraordinary stresses of incarceration and may be at a higher risk of violence and abuse.

Due to the lack of support and reasonable accommodation, prisoners with psychosocial or cognitive disabilities, in particular, can find it extremely challenging to understand prison rules and follow instructions. As a result, they are at higher risk of violating the rules and of facing violence from other prisoners and staff. Difficult conditions of confinement—such as sharing cells due to overcrowding, a lack of accessible toilets or showers, and negative staff attitudes—can present additional physical and psychological challenges for people with disabilities.

## **At-Risk of Abuse**

In all 14 prisons visited, Human Rights Watch found that prisoners with disabilities are viewed as easy targets and as a result are at serious risk of violence and abuse, including bullying and harassment, and verbal, physical, and sexual violence.

### *Sexual Violence*

Sexual violence is hidden, but ever-present in both male and female prisons. Due to the stigma and fear of reprisals, it is extremely difficult to document sexual violence in prison. Human Rights Watch documented 32 cases of sexual violence that interviewees said were perpetrated by fellow prisoners or staff.

One man with a cognitive disability described being attacked by three male prisoners in a shower, with two holding him down and forcing him to kiss the penis of the third. “I tried to



run away to try to get help and shout out to the prison guards, but they were too far,” he said. “I could not do anything because I would be labeled a dog [traitor].”

Some prisoners with disabilities with high support needs have “prison-carers”—other prisoners whom prison authorities pay to look them. However, these relationships can put them at risk of sexual and other abuse. One senior nurse in Queensland described the case of a carer who was found to have repeatedly raped his ward after bloodied and soiled sheets were found in a cell search.

Some staff also abuse prisoners with a disability. A woman with a psychosocial disability said that she “got hit on sexually by officers quite regularly.... They catch you when you’re working by yourself and touch your boobs, bum, or put a hand around your waist. Or they make stupid comments like, ‘You’ve been here a while, you must be horny.’”

Many people with disabilities that we interviewed, particularly Aboriginal and Torres Strait Islander women with disabilities, had experienced family and sexual violence multiple times in their lives. Facing sexual, physical, and verbal violence in prison, particularly from staff, perpetuates this cycle of violence and creates distrust between staff and prisoners. One woman with a disability told Human Rights Watch: “The officers [use] intimidation tactics. Especially for us girls, that just reminds us of our domestic violence back home, it scares us. If you want to get through to us, they should be nice to us.”

### *Physical Violence*

Human Rights Watch documented 41 cases of physical violence reported by prisoners as perpetrated by fellow prisoners or staff.

A man with a psychosocial disability told Human Rights Watch that five officers came into his cell, and put him in the shower. According to him: “They said ‘Beat your head up the wall, or we’ll do it for you.’ I became dazed, didn’t recognize or remember their faces. I thought I would die and become another death in custody. I’ve never reported it.”

Prisoners with disabilities who suffer abuse often do not report it due to fear of reprisal and lack of faith they will be believed. Human Rights Watch found that prison staff may dismiss the accounts of abuse of a person with a disability as not credible. “I’m an easy

target because of mental illness,” an Aboriginal woman with psychosocial disability said. “If we get caught fighting, they will tell the officer, ‘She hit first because the voices told her.’”

### *Bullying and Harassment*

Human Rights Watch found that other prisoners and staff repeatedly picked on, bully, and harass people with disabilities. One man with a psychosocial disability said fellow prisoners constantly harassed him for his mental health medication: “It can happen in the laundry or toilets, you can get three to four blokes on you at once and in just a couple of minutes, they’ve bashed you. By the time the officers come, it’s too late.”

### *Solitary Confinement*

Prisoners with a psychosocial or cognitive disability can spend weeks or months locked in solitary confinement in detention, or crisis or safety units, for 22 hours or more a day. Human Rights Watch found that prisoners can spend years in prolonged solitary confinement in Maximum Security Units (MSU); one man with a psychosocial disability has spent more than 19 years in the MSU.

In one case, Mary, a prisoner with a psychosocial disability, was put in solitary confinement for 28 days. After a week, when she was granted access to daily exercise, she was placed in handcuffs connected to a body belt, that restricted her movement. During exercise time, correctional officers mocked her, whistled at her like a dog, and told her to crawl on her hands and knees. During her time in solitary confinement, Mary did not have access to a toilet and was forced to use cardboard urine test containers.

Human Rights Watch documented several cases of people with psychosocial or cognitive disabilities whose psychological condition deteriorated after spending time in the sterile and isolating environment of detention units (DUs), including one male prisoner who was taunted and threatened by multiple officers, after which he attempted suicide. A male prisoner with a psychosocial disability said: “The staff terrorize people in the DU. ‘Heel, dog, heel,’ they said to me. ....They opened up the grate [in the cell door] and laughed at me. I swallowed batteries in front of them. [One officer] spat in my face. He said, ‘I will punch your teeth all over the cell.’ Seven other officers were there. They said I was being disruptive. I cut my wrists open. They did nothing, just sat on the bed. [Later] they took me to hospital.”

## **Lack of Adequate and Appropriate Services and Trained Staff**

Human Rights Watch found that several factors underlie the negative experience of people with disabilities, including Aboriginal and Torres Strait Islander peoples. These include inadequate staff training—including culturally sensitive training regarding how to engage with Aboriginal and Torres Strait Islander peoples with disabilities in particular; and a strain on staff and resources due to overcrowding.

Prison staff acknowledge that people with disabilities can be overrepresented in detention units and expressed their concerns that as staff they were not adequately trained on disability and mental health to distinguish between behavior resulting from lack of support and accommodation of a person's disability and disobedience. They also reported that they do not receive adequate training on techniques to interact with someone with a disability, especially in moments of crisis.

As a result, staff responses to prisoners with disabilities are often experienced as punitive rather than supportive.

A psychiatrist who has worked for multiple years in prison told Human Rights Watch:

I haven't seen anyone with an intellectual disability who hasn't gotten worse in prison. They are often punished [by staff] when struggling to communicate or seeking help. The staff don't get that people with intellectual disabilities don't understand what's happening. Staff take things personally and then act out in anger against the prisoner.

Human Rights Watch documented several situations in which detention units had become the default response. Without social contact and meaningful mental health services, the stress of a closed and heavily monitored environment is particularly damaging for prisoners with a disability.

## **Problematic Conditions of Confinement**

Human Rights Watch research found that many prisons were not adequately accessible for people with disabilities. In at least nine out of fourteen prisons, Human Rights Watch

interviewed prisoners who had difficulty accessing basic services such as toilets, showers, bathrooms, or the kitchen because of lack of physical infrastructure. An Aboriginal man with a physical disability who uses a wheelchair told Human Rights Watch: “Toilets are not accessible, I can’t get my chair in. I have to pee in a bottle.”

Of the 14 prisons Human Rights Watch visited, most were overcrowded resulting in people “doubling-up” in a cell originally built for one person. Staff shortages mean that people are let out of their cells for fewer hours. A prisoner with a disability who is already at risk of being manipulated or abused, is placed at even greater risk when doubled up.

Persistent institutional racism and discrimination further marginalizes Aboriginal and Torres Strait Islanders with a disability in prison. In some cases, Human Rights Watch found they did not feel comfortable seeking services because they faced racist stereotypes. One Aboriginal man with a disability told Human Rights Watch, “[They call us] ‘black cunt,’ ‘sheep,’ ‘mother fucker,’ or ‘pricks.’”

A cultural liaison officer told Human Rights Watch: “They’d rather sit back and be sick rather than go see a nurse because the nurse would say ‘Go away, you’re exaggerating....’ Racism is alive and well, don’t think it’ll go away.... A lot of the nurses are very harsh with their comments, swearing, belittling them.”

## Looking Ahead

The Australian government should look for solutions to the plight of prisoners with disabilities not only within the four walls of the prisons, but also within a justice system that should make better decisions about who really belongs in prison.

To address the restriction and violations of the rights of people with disabilities in Australian prisons, the Australian and State and Territory governments should ensure that people with disabilities are systematically screened upon entry into prison and receive appropriate support and recommendations to ensure humane conditions of confinement. State departments of corrective services should train staff to identify and support people with disabilities in prison.

Human Rights Watch calls on state and territory governments to reduce the number of people with disabilities confined in prisons by increasing the availability of community-based disability and mental health resources and providing access to criminal justice diversion programs. State and territory governments should ensure prisons are monitored independently and regularly, with particular attention paid to the concerns of prisoners with a disability.

## **Key Recommendations**

### **State and Territory Governments Should:**

- End the use of solitary confinement for prisoners with disabilities.
- Ensure the Office of the Inspector of Custodial Services in all states and territory is independent, reports directly to parliament, and has adequate resources to carry out in-depth and regular monitoring and investigations of prisons in their state or territory. In particular, the independent inspector should investigate neglect and abuse experienced by prisoners with disabilities, including Aboriginal and Torres Strait Islander prisoners with disabilities.
- Systematically screen prisoners for all types of disabilities upon entry into prison and provide reasonable accommodations. Ensure prisoners with disabilities have adequate access to support and mental health services.
- Ensure that all prison officers receive regular, gender and culturally sensitive, training on how to interact with people with disabilities, in particular those with psychosocial or cognitive disabilities.

### **The Federal Government Should:**

- Conduct a national inquiry into the use of solitary confinement of prisoners with disabilities.
- Commission an independent study on the conditions of people with disabilities, particularly Aboriginal and Torres Strait Islander people with disabilities, in Australian prisons with details on the number of prisoners, disaggregated by age, gender, ethnicity, and the type of disability, as well as their support needs.

## Methodology

Research was conducted between September 2016 and January 2018, based on 10 weeks of fieldwork across Western Australia and Queensland, with additional research in New South Wales and Victoria.

Our field research focuses in prisons in Western Australia and Queensland because they are geographically and ethnically diverse and are representative of the issues people with disabilities, particularly Aboriginal or Torres Strait Islander people with disabilities, face in the criminal justice system across Australia.

Human Rights Watch interviewed a total of 275 people for the report including 136 current or recently released prisoners with disabilities across Western Australia, Queensland, and New South Wales between the ages of 17 and 78, of whom 63 were Aboriginal and Torres Strait Islander men and women. Of the 136 people with disabilities interviewed, 104 were men and 32 were women.

In addition to speaking directly to people with disabilities in prison, Human Rights Watch interviewed 139 people across Western Australia, Queensland, New South Wales, and Victoria of whom 44 were prison staff, 31 health or mental health professionals, 27 advocates (disability rights advocates, advocates for the rights of Aboriginal and Torres Strait Islander peoples, human rights and prisoners' rights advocates), 14 lawyers, 5 academics, 5 family members or guardians, 6 service providers, and 7 government officials.

Western Australia and Queensland also embody two different models of service delivery in corrections—for example, in Queensland, health services are delivered by the health department and all other services are delivered by corrective services. In Western Australia, at time of research, there was no separation; the department of corrective services delivered all services in prison. Western Australia was reviewing its model of service delivery at the time of writing.

The commissioners of corrective services in both Western Australia and Queensland cooperated fully with Human Rights Watch's research and gave us unfettered access to

their prisons, subject to escort. Human Rights Watch shared the report's preliminary findings with the commissioners of corrective services in both Western Australia and Queensland ahead of publication, and sought additional information from both. Responses were received from both the commissioners which are available on Human Rights Watch's website at [www.hrw.org](http://www.hrw.org).<sup>14</sup> We are grateful to the departments of corrective services in Western Australia and Queensland for facilitating our research and for their openness in engaging with Human Rights Watch.

We had initially also wanted to document the situation of people with disabilities in New South Wales prisons because it is the single largest contributor to Australia's prison population with over 13,000 adult prisoners. However, the New South Wales commissioner of corrective services did not meet with Human Rights Watch despite repeated attempts, and the department of corrective services did not facilitate access for Human Rights Watch to New South Wales prisons. As a result, we documented the situation in New South Wales by interviewing former prisoners, their families, disabled persons' organizations, nongovernmental organizations, service providers, lawyers, and government officials.

We selected prisons across Western Australia and Queensland in a way that would ensure a representative sample of the prison population. The prisons chosen were a combination of government and private prisons, male and female prisons, metropolitan and regional prisons, prisons of different sizes, prisons with remand and sentenced prisoners, prisons with varied security ratings (maximum, medium, and minimum or low security, including prison farms); geographically, culturally, or ethnically diverse prison populations; and prisons that had specialized units or services for people with disabilities. We also tried to visit prisons renowned for good practices that could be shared across states.

We visited 14 prisons, including three women's prisons, and two forensic or secure units across Western Australia and Queensland that housed in total around 7,200 prisoners.

- In Western Australia, we visited Casuarina Prison, Hakea Prison, Wooroloo Prison Farm, Acacia Prison (operated by privately owned company Serco), Bandyup

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<sup>14</sup> Letters from the Corrective Services of Queensland and of Western Australia to Human Rights Watch, dated January 15 and January 19 respectively, available at [www.hrw.org](http://www.hrw.org).



Women's Prison, Broome Regional Prison, West Kimberley Regional Prison, and the Franklin Centre at Graylands Hospital.

- In Queensland, we visited Arthur Gorrie Correctional Centre (operated by privately owned company The GEO Group Australia), Wolston Correctional Centre, Brisbane Women's Correctional Centre, Lotus Glen Correctional Centre, Woodford Correctional Centre, Southern Queensland Correctional Centre (operated by privately owned company Serco), Helena Jones Community Custody Centre, and the Princess Alexandra Hospital Secure Unit.

Prisons do not operate transparently; in particular Maximum Security Units (MSU) are shrouded in secrecy. Corrective services did not permit Human Rights Watch to visit the MSUs in either Western Australia or Queensland citing security reasons. All information on MSUs was collated through interviews with prisoners who were formerly accommodated in the unit, their lawyers, or prison staff with experience working in MSU units.

Despite evidence of abuses against children with disabilities, due to time and resource constraints, we decided to limit the scope of the report to adult prisoners with disabilities. As a result, we did not visit any juvenile detention centers. However, in Queensland, we interviewed two 17-year-olds serving time in adult prisons as under state law they were treated as adults, at time of research.

Human Rights Watch researchers were given a tour of each facility by prison staff and were not allowed to move around the prison unescorted.

A key challenge was to identify interviewees with disabilities as prisons do not systematically collect data on the number of prisoners with disabilities and the types of disabilities they have. Therefore, Human Rights Watch researchers identified interviewees with visible disabilities during the tour of the prison, relied on prison and medical staff to identify prisoners with less apparent or invisible disabilities (such as cognitive or psychosocial disabilities), and used information on prisoners receiving disability benefits to identify interviewees. Once approached, prisoners also recommended other interviewees. In some cases, prisoners self-identified as having a disability and expressed a desire to be interviewed.

Human Rights Watch informed interviewees of the purpose of the interview and the manner in which the information would be used. No remuneration or incentives were promised or provided to people interviewed.

The interviews were conducted in person and on the phone, in English or through a sign language interpreter chosen by the interviewee. Although English was not always the first language for Aboriginal and Torres Strait Islander prisoners, all spoke fluent English. All researchers were women and interpreters were of the same sex as the interviewee.

Although Human Rights Watch worked closely with and regularly consulted Aboriginal and Torres Strait Islander organizations, all research interviews were conducted solely by Human Rights Watch researchers.

One limitation of the research is that none of the researchers who conducted the interviews were from Aboriginal or Torres Strait Islander communities. Due to the limitations of a closed prison setting, cultural interpreters were not used during interviews with Aboriginal and Torres Strait Islander prisoners. On a few rare occasions, with the consent of the Aboriginal or Torres Strait Islander prisoner, a prison cultural liaison officer was present to facilitate the interview.

People with disabilities were asked to consent before and during the interview, and told they could decline to answer questions and end the interview at any time. Interviews were conducted on a voluntary basis, individually (except when the person felt more comfortable being interviewed in a group), and lasted 30 minutes to 2 hours.

Given the particularity of a prison environment, Human Rights Watch took extra precautions to ensure the strictest level confidentiality between our researchers and the interviewee. Interviews with people with disabilities were conducted without staff present and beyond their hearing range, often in private rooms used for legal or medical purposes.

People with disabilities have been assigned pseudonyms in a few cases. Identifying information, such as location, interview date, or distinctive disabilities, has been withheld to respect confidentiality and protect from possible reprisals by family, prisoners, or prison staff. Names of prison and medical staff members have been withheld to protect their

identity. Footnotes for Human Rights Watch interviews have minimal information. These have been evaluated on a case by case basis to avoid corrective services identifying the person.

Human Rights Watch shared its preliminary findings with the correctional services of Western Australia and Queensland in mid-December and invited both agencies to provide further information and responses in relation to its findings. Both agencies responded in mid-January 2018 and efforts have been made to fairly reflect their responses where relevant in the report before publication. Both responses are also available in full on the Human Rights Watch website.

Human Rights Watch made every effort to corroborate claims via media reports; direct observation; medical or psychiatric records; and interviews with family members, mental health professionals or staff, and disabled persons' organizations, where relevant.

We also consulted a number of international disability experts at different stages of research and writing. Human Rights Watch reviewed relevant domestic and international media reports, official government documents and reports by government-run mental health facilities or institutions, United Nations documents, World Health Organization publications, nongovernmental organization reports, and academic articles. Lawyers acting on a pro bono basis helped to review all pertinent domestic and international legislation.

## I. Context

### Overview of Prisons in Australia

In Australia, national guidelines provide guiding principles for prisons, but each state or territory operates its own prisons and develops its own legislation and policies.<sup>15</sup> As a result, prison systems vary significantly from state to state.

State and territory government are responsible for sentencing prisoners who are convicted under state law. A person can become a federal prisoner if they are sentenced under a Commonwealth statute or extradited from another country.<sup>16</sup> However, there are no federal prisons, only state-level correctional facilities.

In Australia, an alternative to custodial sentences are community-based orders that may involve a restriction in movement, payment of a fine or community service, and being placed under supervision orders.

Custodial sentences can be served in two ways:

- 1) Secure custody where a prisoner stays in a medium or maximum security custodial facility that requires a secure physical barrier; or
- 2) Open custody where a prisoner stays in a minimum security custodial facility where no parameter is necessary.

Prisoners in medium or maximum security facilities have less freedom of movement and are locked in their units for more time than prisoners in minimum security facilities who have more time outside their units and, as a result, tend to have more access to employment and activities.<sup>17</sup>

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<sup>15</sup> The Standard Guidelines for Corrections in Australia, last revised in 2012, are an expression of national intent that set forth guiding principles, but it is the prerogative of individual states to develop legislation and policy. At time of writing, the guidelines are under revision. Corrective Services Ministers' Conference, "Standard Guidelines for Corrections in Australia," 2012, <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/standard+guidelines+for+corrections+in+australia> (accessed November 10, 2017), p. 3.

<sup>16</sup> Australian Government, Attorney-General's Department, "Federal Offenders," <https://www.ag.gov.au/CrimeAndCorruption/FederalOffenders/Pages/default.aspx> (accessed January 18, 2018).

<sup>17</sup> Based on Human Rights Watch's visits to 14 prisons.

Prisoners with disabilities face challenges, neglect, and abuse across prisons irrespective of the security classification but the type of difficulties may vary.<sup>18</sup>

## Overview of Prisons in Western Australia and Queensland

In 2017, the Australian prison population reached an all-time high of 41,204, a 40 percent increase over the last five years in the number of people in custody.<sup>19</sup> The states with the highest number of prisoners are New South Wales, followed by Queensland, Victoria, and Western Australia.<sup>20</sup>

Occupying a third of the country, Western Australia is the largest state but is home to only 10 percent of the population, leaving much of the state uninhabited. About 13 percent of Australia's Aboriginal and Torres Strait Islander population live in Western Australia and the state is home to some of the most remote Aboriginal communities.

While Western Australia has over 6,500 adult prisoners in custody i.e., 16 percent of the country's prison population, it has one of the highest imprisonment rates, including Aboriginal and Torres Strait Islander incarceration rates, across states, with 324 people incarcerated per 100,000 adults (compared to a national average of 215 prisoners per 100,000 adults).<sup>21</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> The Australian Bureau of Statistics (ABS) figure of 41,204 prisoners represents the average daily prisoner numbers but fails to capture the total number of people who enter and exit the prison system each year, for example those on remand or on short sentences. There is no data on the total population flow, but experts estimate that it is close to double the ABS number. Australian Bureau of Statistics, "4512.0 - Corrective Services, Australia, June quarter 2017," September 7, 2017, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4512.0June%20Quarter%202017?OpenDocument> (accessed November 3, 2017); Ross Fitzgerald, "Our overcrowded prisons and recidivist governments," *The Sydney Morning Herald*, December 19, 2016, <http://www.smh.com.au/comment/our-overcrowded-prisons-and-recidivist-governments-20161216-gtckdz.html> (accessed May 25, 2017); Eileen Baldry and Sophie Russell, "Three charts on: Australia's booming prison population," *The Conversation*, June 13, 2017, <https://theconversation.com/three-charts-on-australias-booming-prison-population-76940> (accessed September 3, 2017).

<sup>20</sup> Australian Bureau of Statistics, "4512.0 - Corrective Services, Australia, June quarter 2017," September 7, 2017, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4512.0June%20Quarter%202017?OpenDocument> (accessed November 13, 2017).

<sup>21</sup> Ibid.



Staff escort prisoners, including Aboriginal and Torres Strait Islander prisoners, through Lotus Glen Correctional Centre. Located in northern Queensland, the center is a male prison with a capacity to detain roughly 730 prisoners, over half of whom are Aboriginal and Torres Strait Islander prisoners.

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Bordering the Northern Territory and the Torres Strait Islands, Queensland is home to roughly 30 percent of Australia's Aboriginal and Torres Strait Islander population.<sup>22</sup> Queensland has the second largest prison population in the country with about 8,300 adult prisoners. Together, Western Australia and Queensland account for nearly 50 percent of the country's total Aboriginal and Torres Strait Islander prisoner population.

## Over-Imprisonment of At-Risk Populations

People with disabilities, especially Aboriginal and Torres Strait Islander peoples with disabilities, are dramatically overrepresented in Australia's prison population.<sup>23</sup>

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<sup>22</sup> Australian Bureau of Statistics, "2016 Census: Queensland," June 27, 2017, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mediareleasesbyReleaseDate/ED6AC1443949FE77CA258148000C1A01?OpenDocument> (accessed December 18, 2017).

<sup>23</sup> Australian Medical Association, "Position Statement on Health and the Criminal Justice System," 2012, <http://www.aph.gov.au/DocumentStore.ashx?id=f7d2f313-c1e9-45ee-b184-d0635ea3f134&subld=411779> (accessed May 25, 2017), p. 12; Senate References Committee on Legal and Constitutional Affairs, Parliament of Australia, "Inquiry into Value of a justice reinvestment approach to criminal justice in Australia," 20 June 2013, Chapter 4; Senate Select Committee on

An estimated 18 percent of the Australian population has a disability, but almost half of all people entering prison have a psychosocial disability, with more than one in four reporting that they are currently taking medication for a psychosocial condition. Three out of ten have long-term health conditions or disabilities.<sup>24</sup>

The statistics on how overrepresented people with disabilities are in prison—and especially how overrepresented certain groups of people with disabilities are—call into question the fairness and effectiveness of Australia’s justice system.

Once in prison, they are unlikely to get the support and services they need, and are too often harassed, abused, assaulted, and raped by both fellow prisoners and prison staff.

The lack of comprehensive mental health and social services has created a pathway to prison for various at-risk populations in Australia. Many people with disabilities encounter the criminal justice system because of the difficulty of identifying and recognizing a

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Regional and Remote Indigenous Communities, Parliament of Australia, “Indigenous Australians, Incarceration and the Criminal Justice System,” March 2010, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/indig/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/indig/index) (accessed December 15, 2017); Eileen Baldry, “How the justice system fails people with disability – and how to fix it,” *Australian Broadcasting Corporation (ABC)*, April 18, 2016, <http://www.abc.net.au/radionational/programs/ockhamsrazor/australian-justice-system-disability-indigenous/7326240> (accessed July 3, 2017); Eileen Baldry, Leanne Dowse and Melissa Clarence, “People with mental and cognitive disabilities: pathways into prison” (background paper for the Outlaws to Inclusion Conference, The University of New South Wales, School of Social Sciences and International Studies, February 2012), <https://www.mhdc.unsw.edu.au/sites/www.mhdc.unsw.edu.au/files/u18/pdf/MHDCDbackgroundOutlaws%20Conf1.pdf> (accessed December 14, 2017), p. 2-5; Sara Hudson, “Panacea to Prison? Justice Reinvestment in Indigenous Communities,” *Policy Monographs*, the Centre for Independent Studies, no. 134, 2013, p. 5; Australian Institute of Health and Welfare, “Mental health of prison entrants,” *The Health of Australia’s Prisoners 2015* (Report, AIHW, 2015) <http://www.aihw.gov.au/prisoner-health/mental-health/> (accessed May 24, 2017).

<sup>24</sup> Australian Institute of Health and Welfare, “Mental health of prison entrants” in “The Health of Australia’s prisoners 2015,” <https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-bodf-9067fd71e33a/18878.pdf.aspx?inline=true> (accessed May 24, 2017), pp. 12, 44, 146; Australian Institute of Health and Welfare, ‘Mental health of prison entrants’ (Factsheet, AIHW, 2015); National Mental Health Consumer & Carer Forum, “Mental Health Facts and Figures,” advocacy brief, June 2014, 2; Senate Select Committee on Mental Health, ‘A national approach to mental health – from crisis to community,’ 30 March 2006, chapter 13; NGO coalition (#ausUPR), “Australia’s UPR, 2015: NGO Coalition Factsheet,” p. 1; Toby Hall, ‘This is why you should care about the health of prisoners,’ *ABC*, November 27, 2015, <http://www.abc.net.au/news/2015-11-27/hall-this-is-why-you-should-care-about-the-health-of-prisoners/6981364> (accessed July 3, 2017). Australian Institute of Health and Family Welfare, “The Health of Australia’s Prisoners 2015,” <https://www.aihw.gov.au/getmedia/9c42d6f3-2631-4452-bodf-9067fd71e33a/18878.pdf.aspx?inline=true>, (accessed May 27, 2017), p. 80. These included conditions that could restrict a person’s everyday activities such as “severe asthma, epilepsy, mental health conditions, hearing loss, arthritis, depression, autism, kidney disease, chronic pain, speech impairment or stroke” and was based on self-reporting.



disability, of understanding the necessary related support, and of providing adequate community-based health and social services.<sup>25</sup>

Inadequate disability service recognition and support increases the chances that someone with an undetected disability will enter the criminal justice system.<sup>26</sup>

Another widely cited reason for increased and disproportionate rates of people with disabilities in prisons in Australia is the fact that deinstitutionalization of people with psychosocial disabilities was not accompanied by a scaling-up of adequate capacity within community-based mental health services.<sup>27</sup>

Upon release, people with disabilities often have even less capacity to access support and navigate complex discriminatory structures and are quickly returned to prison, leading to a dangerous cycle and high rates of recidivism.<sup>28</sup> While some jurisdictions have transition and aftercare programs, people who are released often lose contact with them and their mental health deteriorates further, leading to a higher likelihood of re-arrest.

### *Over-Imprisonment of Aboriginal and Torres Strait Islander Peoples*

The attorney general of Australia has called the over-imprisonment of Aboriginal and Torres Strait Islander peoples a “national tragedy.”<sup>29</sup>

Aboriginal and Torres Strait Islander people are grossly overrepresented in the prison population—a situation widely attributed to what the United Nations special rapporteur on

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<sup>25</sup> Australian Medical Association, “Position Statement on Health and the Criminal Justice System,” <https://ama.com.au/system/tmf/documents/Health%20%26%20the%20Criminal%20Justice%20System%20%28final%29.pdf?file=1&type=node&id=40617>, (accessed May 15, 2017), p. 3.

<sup>26</sup> Eileen Baldry, Leanne Dowse and Melissa Clarence, “People with mental and cognitive disabilities: pathways into prison” (Background Paper for Outlaws to Inclusion Conference February 2012, The University of New South Wales, School of Social Sciences and International Studies), <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/MHDCDbackgroundOutlaws%20Conf1.pdf>, (accessed May 24, 2017), p. 16.

<sup>27</sup> Ibid.

<sup>28</sup> Eileen Baldry and Sophie Russell, “The Booming Industry continued: Australian Prisons A 2017 update,” discussion paper, School of Social Sciences UNSW, 2017, <http://www.disabilityjustice.edu.au/wp-content/uploads/2015/10/The-Booming-Industry-continued-Australian-Prisons-2017-.pdf> (accessed May 24, 2017), p. 15.

<sup>29</sup> Australian Law Reform Commission, “Incarceration Rates of Aboriginal and Torres Strait Islander Peoples,” July 2017, [https://www.alrc.gov.au/sites/default/files/pdfs/publications/discussion\\_paper\\_84\\_compressed\\_cover2.pdf](https://www.alrc.gov.au/sites/default/files/pdfs/publications/discussion_paper_84_compressed_cover2.pdf) (accessed December 10, 2017), p. 20.



the rights of indigenous peoples has called “the end result of years of dispossession, discrimination and intergenerational trauma faced by Aboriginal and Torres Strait Islanders,” as well as “lack of political will to address the situation.”<sup>30</sup>

The over-imprisonment of Aboriginal and Torres Strait Islander peoples, particularly women, is integrally linked to the social and economic disadvantages that result from years of structural discrimination.<sup>31</sup>

In June 2017, Aboriginal and Torres Strait Islander people comprised 28 percent of Australia’s full-time adult prison population, but just 2 percent of the national population.<sup>32</sup> According to the special rapporteur on the rights of indigenous peoples, the proportion of Aboriginal and Torres Strait Islanders in custody is expected to reach 50 percent of the country’s prison population by 2020.<sup>33</sup>

The national imprisonment rate is 13 times higher for Aboriginal and Torres Strait Islander adults than for non-Aboriginal and Torres Strait Islander adults.<sup>34</sup>

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<sup>30</sup> Victoria Tauli-Corpuz, “End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz on her visit to Australia,” April 2017, <http://www.natsils.org.au/portals/natsils/Final%20statement%20SR%20IP%20Mon%203%20April.pdf?ver=2017-04-04-115415-617> (accessed May 20, 2017), p. 8.

<sup>31</sup> Human Rights Law Centre, “Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-imprisonment,” May, 2017, [https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented\\_online.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf) (accessed January 18, 2018).

<sup>32</sup> Australian Bureau of Statistics, “4512.0 - Corrective Services, Australia, June quarter 2017,” Australian Bureau of Statistics, “3101.0 - Australian Demographic Statistics, Jun 2017,” December 14, 2017, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0> (accessed July 3, 2017); Australian Medical Association, “Position Statement on Health and the Criminal Justice System,” <https://ama.com.au/system/tdf/documents/Health%20%26%20the%20Criminal%20Justice%20System%20%28final%29.pdf?file=1&type=node&id=40617> (accessed January 5, 2018), p. 12.

<sup>33</sup> Victoria Tauli-Corpuz, “End of Mission Statement,” p. 8.

<sup>34</sup> Change the Record Coalition, *Blueprint for Change*, 2015, <https://drive.google.com/file/d/oB3OI0caEOuaFU3BNc3ZrblgwaoU/view> (accessed January 17, 2017), p. 4. Australian Bureau of Statistics, “4517.0 - Prisoners in Australia, 2014,” Canberra, December 11, 2014, [http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Media%20Release~Australian%20prisoner%20numbers%20climb%20to%20ten%20year%20high%20\(Media%20Release\)~10023](http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2014~Media%20Release~Australian%20prisoner%20numbers%20climb%20to%20ten%20year%20high%20(Media%20Release)~10023) (accessed December 2, 2017); Australian Bureau of Statistics, “4512.0 - Corrective Services Australia, December Quarter 2014,” Canberra, March 26, 2015, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/2BF1EB127BoC84A3CA257E600011B7FA?opendocument> (accessed December 2, 2017).

The number of Aboriginal and Torres Strait Islander prisoners has grown by 88 percent since 2004, compared to 28 percent growth for other prisoners<sup>35</sup>—a leap that reflects over-policing of Aboriginal and Torres Strait Islander people, the introduction of more punitive laws, and changes in the way the criminal justice system treats offenders—for example, a rise in the number of prisoners on remand, more punitive sentencing laws and practices, and limited availability of non-custodial sentencing options.<sup>36</sup>

Data on Aboriginal and Torres Strait Islander people indicates that they have a higher incidence of disability than other Australians. For example, the National Aboriginal and Torres Strait Islander Social Survey 2014-2015, conducted by the Australian Bureau of Statistics in conjunction with the First Peoples Disability Network (Australia), found that almost half of all Aboriginal and Torres Strait Islander people over 15 years of age were living with a disability.<sup>37</sup>

In non-remote areas, Aboriginal and Torres Strait Islander people were 1.5 times more likely than other adults to have a disability or a long-term health condition.<sup>38</sup> Children in Aboriginal and Torres Strait Islander communities are at heightened risk that they will have

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<sup>35</sup> Change the Record Coalition, *Blueprint for Change*, p. 4. Australian Red Cross, “Rethinking Justice: Vulnerability Report 2016,” <http://youthlaw.asn.au/wp-content/uploads/2016/07/Rethinking-Justice-VulnerabilityReport2016-Red-Cross.pdf> (accessed December 7, 2017), p. 16

<sup>36</sup> Australian Bureau of Statistics, “4512.o - Corrective Services, Australia, March quarter 2017,” June 8, 2017, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.o> (accessed July 3, 2017); Australian Medical Association, “Position Statement on Health and the Criminal Justice System,” <https://ama.com.au/system/tdf/documents/Health%20%26%20the%20Criminal%20Justice%20System%20%28final%29.pdf?file=1&type=node&id=40617>, (accessed July 4, 2017), p. 3; David Brown, “State of imprisonment: prisoners of NSW politics and perceptions,” *The Conversation*, April 20, 2015, <https://theconversation.com/state-of-imprisonment-prisoners-of-nsw-politics-and-perceptions-38985> (accessed December 4, 2017); Author Unlisted, “Is Australia’s sentencing too harsh?” (News Report, Deakin Law School, 2015); Stephen Monterosso, “Punitive Criminal Justice and Policy in Contemporary Society,” *Queensland University Technology Law and Justice Journal* 13 (2009) 9(1), <http://www.austlii.edu.au/au/journals/QUTLawJl/2009/2.html> (accessed December 4, 2017).

<sup>37</sup> Australian Bureau of Statistics, “4714.o - National Aboriginal and Torres Strait Islander Social Survey, 2014-2015,” April 28, 2016, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4714.o> (accessed November 3, 2017).

<sup>38</sup> Aboriginal and Torres Strait Islanders experience higher rates of psychosocial disabilities, especially women in custody who have experienced previous trauma. Government data also shows that Aboriginal and Torres Strait Islander communities have a higher incidence of intellectual disability, eight percent versus 2.9 percent in the general population. Eileen Baldry et al., “A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System,” [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf), (accessed May 24, 2017), pp. 10, 12. Australian Bureau of Statistics, “4704.o-The Health and Welfare of Australia’s Aboriginal and Torres Strait Islander Peoples,

October 2010,” February 17, 2011, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.oChapter26oOct+2010> (accessed May 10, 2017).

an undetected and unsupported disability.<sup>39</sup> Thus, by the time Aboriginal and Torres Strait Islander people encounter the criminal justice system, it is very likely that they have had a disability their entire lives with no real support or accommodation.

Aboriginal and Torres Strait Islander people with disabilities are overrepresented within this prison population.<sup>40</sup> About 73 percent of Aboriginal and Torres Strait Islander men and 86 percent of Aboriginal and Torres Strait Islander women in prison have a diagnosed mental health condition.<sup>41</sup>

And yet, expert organizations such as First Peoples Disability Network (FPDN) have found that they rarely identify as having a disability.<sup>42</sup> First, there is no concept of disability or equivalent word in traditional languages. Second, if they have already faced discrimination based on their Aboriginality, they may be hesitant to take on an additional and potentially stigmatizing label. Since disability is only one factor among many that contribute to disadvantage in Aboriginal and Torres Strait Islander communities, members rarely speak about their own disability as a “front of mind” [priority] issue.<sup>43</sup>

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<sup>39</sup> Scott Avery, “The life trajectory for an Aboriginal and Torres Strait Islander person with disability,” in *Aboriginal and Torres Strait Islander Perspectives on the Recurrent and Indefinite Detention of People with Cognitive and Psychiatric Impairment*, First Peoples Disability Justice Consortium, April 2016, [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf) (accessed May 23, 2017), pp. 16-19.

<sup>40</sup> Senate References Committee on Legal and Constitutional Affairs, “Inquiry into Value of a justice reinvestment approach to criminal justice in Australia,” 20 June 2013, [https://www.aph.gov.au/parliamentary\\_business/committees/senate/legal\\_and\\_constitutional\\_affairs/completed\\_inquiries/2010-13/justicereinvestment/report/index](https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2010-13/justicereinvestment/report/index) (accessed December 5, 2017), chapter 4; Steering Committee for the Review of Government Service Provision, “Report on Government Services 2013: Indigenous Compendium”, <https://www.pc.gov.au/research/ongoing/report-on-government-services/indigenous-compendium-2013/indigenous-compendium-2013.pdf> (accessed December 6, 2017), pp 8.3–8.4; Eileen Baldry, Leanne Dowse and Melissa Clarence, “People with mental and cognitive disabilities: pathways into prison” (background paper for the National Legal Aid Conference Darwin, 2011); Australian Medical Association, “Position Statement on Health and the Criminal Justice System,” <https://ama.com.au/system/tdf/documents/Health%20%26%20the%20Criminal%20Justice%20System%20%28final%29.pdf?file=1&type=node&id=40617>, (accessed December 12, 2017), p. 3.

<sup>41</sup> PwC’s Indigenous Consulting, “Indigenous incarcerations: Unlock the facts,” May 2017, <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf> (accessed December 4, 2017), p. 23.

<sup>42</sup> Damian Griffis, “Disability in Indigenous communities; addressing the disadvantage,” *ABC*, April 20, 2012, <http://www.abc.net.au/rampup/articles/2012/04/20/3481394.htm> (accessed October 5, 2017).

<sup>43</sup> First Peoples Disability Network (Australia), “Response to the Productivity Commission Position Paper on National Disability Insurance Scheme (NDIS) Costs,” July 2017, [https://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0019/220492/subppo355-ndis-costs.pdf](https://www.pc.gov.au/__data/assets/pdf_file/0019/220492/subppo355-ndis-costs.pdf) (accessed September 5, 2017), p. 14.

Aboriginal and Torres Strait Islander people with disabilities who have experienced social disadvantage and face barriers accessing services are more likely to have contact with the justice system.<sup>44</sup> Research shows that Aboriginal and Torres Strait Islander people with cognitive disability experience custody and get their first conviction earlier than other Australians.<sup>45</sup>

The FPDN Australia and other advocacy and monitoring organizations have denounced Australia's use of prisons to manage Aboriginal and Torres Strait Islander people with disabilities.<sup>46</sup> Research in New South Wales and the Northern Territory suggests that the police and court system end up "managing" Aboriginal and Torres Strait Islander people with psychosocial or cognitive disabilities in the absence of "coherent frameworks for holistic disability, education and human services support" but are ill-equipped to do so.<sup>47</sup>

### *Over-Imprisonment of Aboriginal and Torres Strait Islander Women with Disabilities*

Aboriginal and Torres Strait Islander women in prison are the fastest growing prison population,<sup>48</sup> and 21 times more likely to be incarcerated than non-indigenous peers.<sup>49</sup>

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<sup>44</sup> New South Wales Law Reform Commission, "Report 133. Bail," April 2012, <http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-133.pdf> (accessed December 20, 2017), p. 181.

<sup>45</sup> Baldry, E, Dowse, L, and Clarence, M, "People with intellectual and other cognitive disability in the criminal justice system," Report for NSW Family and Community Services: Ageing, Disability and Home Care, University of NSW, [https://www.adhc.nsw.gov.au/\\_\\_data/assets/file/0003/264054/Intellectual\\_and\\_cognitive\\_disability\\_in\\_criminal\\_justice\\_system.pdf](https://www.adhc.nsw.gov.au/__data/assets/file/0003/264054/Intellectual_and_cognitive_disability_in_criminal_justice_system.pdf) (accessed December 14, 2017).

<sup>46</sup> First Peoples Disability Network (Australia), "Aboriginal and Torres Strait Islander perspectives on the recurrent and Indefinite Detention of people with cognitive and psychiatric impairment," [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf) (accessed December 15, 2017), p 6.

<sup>47</sup> Eileen Baldry et al., "A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System," in *Aboriginal and Torres Strait Islander Perspectives on the Recurrent and Indefinite Detention of People with Cognitive and Psychiatric Impairment*, First Peoples Disability Justice Consortium, [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf) (accessed December 14, 2017), p. 11, 148.

<sup>48</sup> Ibid.

<sup>49</sup> Human Rights Law Centre, "Over-represented and overlooked," p. 10.

Aboriginal women with psychosocial or cognitive disabilities also have contact with police at a younger age and have a considerably more encounters with them throughout their lives than non-Aboriginal women, according to a University of New South Wales study.<sup>50</sup>

Aboriginal and Torres Strait Islander women with disabilities are similarly overrepresented in prisons: among Aboriginal and Torres Strait Islanders in Queensland prisons, 73 percent of male and 86 percent of female Aboriginal and Torres Strait Islander prisoners had a diagnosed psychosocial disability.<sup>51</sup>

Women with disabilities, particularly Aboriginal and Torres Strait Islander women, face multiple and compounding forms of disadvantage, discrimination, and abuse due to their gender, disability, and ethnicity.

Research in Australia shows that women with disabilities, particularly Aboriginal and Torres Strait Islander women with disabilities, experience higher rates of poverty, homelessness, domestic and sexual violence, and abuse than non-indigenous peers and peers without disabilities.<sup>52</sup>

Being put in custody often only heightens psychosocial disabilities associated with this trauma.<sup>53</sup> An estimated 70 to 90 percent of women in prison in Australia have experienced

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<sup>50</sup> Elizabeth McEntyre, “How Aboriginal women with disabilities are set on a path into the criminal justice system,” *The Conversation*, November 13, 2015, <https://theconversation.com/how-aboriginal-women-with-disabilities-are-set-on-a-path-into-the-criminal-justice-system-48167> (accessed January 15, 2017).

<sup>51</sup> Psychosocial disabilities are more prevalent among women entering the prison system (62 percent) than men (47 percent). According to a 2015 report, women in prison are 1.7 times more likely than men to have a psychosocial disability: fourteen percent of female prisoners have psychosocial disabilities, compared to 8 percent of male prisoners. Australian Institute of Health and Welfare, “Mental health of prison entrants,” in “The health of Australia's prisoners 2015,” November 27, 2015, <http://www.aihw.gov.au/prisoner-health/mental-health/> (accessed May 24, 2017) 45; see also Victorian Council of Social Service (VCOSS), “Request for a Systematic Review of Discrimination Against Women in Victorian Prisons,” December 1, 2005, <http://vcoss.org.au/document/request-for-a-systemic-review-of-discrimination-against-women-in-victorian-prisons/> (accessed January 22, 2017). Heffernan, Andersen KC, Dev A, Kinner S, “Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons,” *Medical Journal of Australia* (2012) 197(1), doi: 10.5694/mja11.11352 (accessed May 24, 2017), pp. 37-41.

<sup>52</sup> Eileen Baldry et al., “A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System,” [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf), (accessed May 24, 2017), pp. 10, 12.

<sup>53</sup> *Ibid*, p. 10.

sexual or family violence.<sup>54</sup> Prison systems often provide women prisoners with less access to intensive mental health care than their male counterparts.<sup>55</sup>

## Barriers to Justice

Aboriginal and Torres Strait Islander people with cognitive disabilities who find themselves in conflict with the law are more likely to be investigated, charged, and remanded in custody, than Aboriginal and Torres Strait Islander people without cognitive disabilities.<sup>56</sup>

Police, who make the primary decision whether someone should be arrested or taken to a mental health facility, lack training to identify mental health conditions and thus fail to interact appropriately with people with diverse disabilities.<sup>57</sup> Due to a failure to identify disabilities, as well as a lack of community-based alternatives in Australia, police often arrest people with disabilities instead of finding appropriate support services.

Police are also less likely to caution and divert Aboriginal and Torres Strait Islander offenders than offenders not from this population. Once police make this decision, it becomes very difficult for cycles of discrimination, offending, and incarceration of people with disabilities to be broken.<sup>58</sup>

In 2014, the Australian Human Rights Commission released a report that identified five barriers limiting or preventing access to justice for people with disabilities:

- 1) Lack of community support programs and assistance to prevent violence and disadvantage and address a range of health and social risk factors.

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<sup>54</sup> Ibid., p. 16. Human Rights Law Centre and Change the Record Coalition, "Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment," May 2017, [https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented\\_online.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59378aa91e5b6cbaaa281d22/1496812234196/OverRepresented_online.pdf) (accessed May 25, 2017), p. 13.

<sup>55</sup> VCOSS, "Request for a Systematic Review of Discrimination Against Women in Victorian Prisons," <http://vcoss.org.au/document/request-for-a-systemic-review-of-discrimination-against-women-in-victorian-prisons/> (accessed April 12, 2017).

<sup>56</sup> "Aust – the Indefinite detention of Australian first peoples with cognitive impairment," [www.clcnsw.org.au/public\\_resource\\_details.php?resource\\_id=523](http://www.clcnsw.org.au/public_resource_details.php?resource_id=523) (accessed May 25, 2017).

<sup>57</sup> Deborah Glass (Victorian Ombudsman), Submission to the Senate Standing Committee on Community Affairs Inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia, April 7, 2016.

<sup>58</sup> Australian Law Reform Commission, "Recognition of Aboriginal Customary Laws," ALRC Report 31, June 12, 1986, <https://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC31.pdf> (accessed January 18, 2018), p. 493.

- 2) Lack of support, adjustments, or aids to access protections, to begin or defend criminal matters, or to participate in the criminal justice system.
- 3) Inability to access effective support mechanisms once in the criminal justice system.<sup>59</sup>
- 4) Styles of communication and questioning techniques by police and judicial officers that do not accommodate the needs of people with psychosocial or cognitive disabilities, which can make people with disabilities confused and make it harder for justice mechanisms to be effective.
- 5) Lack of appropriate support for the bail processes, meaning that people with disabilities may not understand bail conditions. They may also have more limited capacity to meet the financial burden of bail since they often come from lower socio-economic backgrounds.<sup>60</sup>

Barriers to justice are significant for individuals with mild cognitive disabilities, as they often experience particular difficulties accessing disability specific services because they are not recognized as “experiencing sufficient disability to qualify for government-based financial support.”<sup>61</sup> As a result, many are left without access to the few support services that may be available to people with identified disabilities.

Negative attitudes and assumptions about people with disabilities often result in law enforcement or the judiciary viewing them as unreliable, not credible, or incapable of giving evidence, making legal decisions, or participating in legal proceedings.

Specialist support, accommodation, and programs may not be provided to people with disabilities when they are deemed by the courts to be unable to understand or respond to criminal charges made against them (“unfit to plead”).<sup>62</sup>

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<sup>59</sup> Australian Human Rights Commission, “Equal Before the law: Towards Disability Justice Strategies,” February 2014, [https://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf) (accessed January 18, 2018).

<sup>60</sup> People With Disability Australia (PWDA), Submission to the Productivity Commission Paper: Access to Justice Arrangements Inquiry, November 2013.

<sup>61</sup> Eileen Baldry, Leanne Dowse and Melissa Clarence, “People with mental and cognitive disabilities: pathways into prison” (background paper for the Outlaws to Inclusion Conference, The University of New South Wales, School of Social Sciences and International Studies, February 2012), <https://www.mhdc.unsw.edu.au/sites/www.mhdc.unsw.edu.au/files/u18/pdf/MHDCDbackgroundOutlaws%20Conf1.pdf> (accessed January 19, 2017).

<sup>62</sup> People with psychosocial or cognitive disabilities may be subjected to a test to assess their “fitness to stand trial,” which determines whether an “accused has sufficient mental or intellectual capacity to understand the proceedings and to make

## Unfair Laws

Some legislative policies mean that people with disabilities are occasionally detained indefinitely in prisons without being convicted of a crime.<sup>63</sup>

All Australian jurisdictions have “justice diversion provisions” that involve a test for people with cognitive or psychosocial disabilities to determine their fitness to stand trial. While there is a presumption of fitness, a test to assess fitness may be applied before or at any point during the trial if it appears that the person is unfit to plead. This test determines the accused’s capacity to understand the nature of the charges; court proceedings; ability to challenge jurors; decide what defense to offer; and explain their version of the facts to the counsel and the court.<sup>64</sup> If the accused fails to pass this test, they are considered “unfit to stand trial” and cannot be tried.

People with cognitive or psychosocial disabilities are occasionally considered “unfit” to stand trial, creating conditions in which authorities may detain them indefinitely in prisons or wards without standing trial.<sup>65</sup> The laws and regulations that determine when people with cognitive disabilities can be detained without trial are inconsistent across state and territory jurisdictions.<sup>66</sup>

A 2015 report by a coalition of nongovernmental organizations (NGOs) to Australia’s Universal Periodic Review identified “anecdotally” what it said were “at least 100 people detained across Australia without conviction in prisons and psychiatric units under mental

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an adequate defence.” See further below. Australian Law Reform Commission, “Equality, Capacity and Disability in Commonwealth Laws,” May 22, 2014, <https://www.alrc.gov.au/publications/disability-dp81> (accessed August 6, 2017), pp. 157-9.

<sup>63</sup> People with psychosocial or cognitive disabilities charged with a criminal offense and found “unfit to stand trial,” “unfit to plead,” or “not guilty by reason of mental illness or mental incapacity/impairment” can be indefinitely detained in prison, in a secure or forensic hospital, or forensic disability unit. The detention has no stated end date.

<sup>64</sup> Australian Law Reform Commission, “Fitness to Plead,” *Recognition of Aboriginal Customary Laws*, ALRC Report 31, June 12, 1986, <https://www.alrc.gov.au/publications/23.%20General%20Issues%20of%20Evidence%20and%20Procedure/fitness-plead>

<sup>65</sup> UPR NGO Coalition, ‘Australia’s Universal Periodic Review 2015: Over representation and the indefinite detention of persons with a disability within the criminal justice system,’ factsheet, 2015, <https://www.pwd.org.au/documents/Word/AusUPRFactSheetIndefiniteDetentionFN.docx> (accessed May 24, 2017).

<sup>66</sup> National Aboriginal And Torres Strait Islander Legal Services, “Towards National Standards for Laws and Regulations Affecting Individuals Who Have Been Declared Mentally-Impaired or Unfit to Plead (Part A),” in *Aboriginal and Torres Strait Islander Perspectives on the Recurrent and Indefinite Detention of People with Cognitive and Psychiatric Impairment*, First Peoples Disability Justice Consortium, [http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission\\_Final.pdf](http://fpdn.org.au/wp-content/uploads/2016/10/FPDN-Senate-Inquiry-Indefinite-Detention-Submission_Final.pdf) (accessed May 24, 2017).



impairment legislation” of whom; “at least 50” were Aboriginal and Torres Strait Islanders.<sup>67</sup> Conditions of indefinite detention can have a devastating effect on the mental health of people with psychosocial disabilities.

The current approach fails to address the reason why people with disabilities, particularly Aboriginal and Torres Strait Islander people, come into contact with the justice system in the first instance. The only diversionary mechanism available to people with psychosocial or cognitive disabilities are forensic hospitals or facilities. A full analysis of these alternatives remains outside the scope of this report, however, based on its visits to forensic hospitals and facilities in Western Australia and information collected through interviews in Queensland, Human Rights Watch considers that they are not run in-line with the Convention on the Rights of Persons with Disabilities. In collaboration with disabled persons’ organizations (DPOs) and organizations of Aboriginal and Torres Strait Islander peoples, the government needs to invest in early intervention and prevention, and create access to community-based diversion mechanisms away from the criminal justice system.

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<sup>67</sup> UPR NGO Coalition, ‘Australia’s Universal Periodic Review 2015: Over representation and the indefinite detention of persons with disability within the criminal justice system’ (Factsheet, UPRNGOC, 2015), <https://www.pwd.org.au/documents/Word/AusUPRFactSheetIndefiniteDetentionFN.docx> (accessed May 25, 2017).

## **II. Life Behind Bars for People with Disabilities**

Prison is challenging for everyone, but prisoners with disabilities may face unique challenges or disproportionate barriers in accessing support and services; adjusting to the extraordinary stresses of incarceration; and following rules governing every aspect of life.

For example, in the absence of support and accommodations, a person with a psychosocial or cognitive disability may not understand or immediately follow orders to come out of a cell or raise their hands above their heads. Custodial staff receive limited training on disability and mental health and can mistake their behavior as a prisoner “acting up” or being disobedient.

Prisoners with disabilities are also often seen as “easy targets” or “weak,” exposing them to a range of abuse including bullying; harassment; and verbal, physical, and sexual violence at the hand of other prisoners and staff.

A code of silence prevails in prison and victims regularly do not report abuse due to fear of reprisals.

### **Sexual, Physical, and Verbal Violence**

[A staff member will say] ‘If you don’t give me a hand job or whatever, I’ll put you down for a loss of privileges [a prison charge resulting in loss of access to privileges], or will stop your visits.’

—A social worker [details withheld by Human Rights Watch]

Out of the interviews with prisoners, former prisoners, and staff that Human Rights Watch conducted, we documented 32 cases of sexual and 41 cases of physical violence against prisoners with disabilities that prisoners said were perpetrated by fellow prisoners or prison staff.

### *Sexual Violence*

Sexual violence is present in both male and female prisons. Human Rights Watch's own research documented at least 32 cases of sexual violence perpetrated by fellow prisoners or staff. A nurse working in prisons told Human Rights Watch:

Newcomers get used to being bullied or [subjected to] sexual abuse (...). It is presented as if it is consensual, but I have my doubts. The showers function as a perpetrator's filter. People with disabilities are so vulnerable.<sup>68</sup>

One man with a cognitive disability told Human Rights Watch:

I was going in to take a shower, and I saw three male prisoners. I sensed trouble and I started backing out. But one of them ran towards me.... The other two held me down and they made me kiss his penis. I tried to run away. [Tried] to get help and shout out to the prison guards. But they were too far. I could not do anything because I would be labeled a 'dog' [traitor].

When I finally managed to find someone to tell and the guards found out, they put me in the punishment unit. I was told it was for my safety. And there was nowhere else they could put me. And then the guards on call taunted me.... All night I could not sleep.... I could just hear the guards giggling outside. I had to wait for a couple of days before I was transferred to another prison. I am suffering from depression.... I get no support.<sup>69</sup>

Some women with disabilities in prison reported experiencing sexual violence perpetrated by other prisoners or prison officers, with little or no accountability. A woman with a psychosocial disability told Human Rights Watch:

I got hit on sexually by officers quite regularly, even though I'm old. Male predators work in that jail [a women's prison] next to young vulnerable

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<sup>68</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>69</sup> Human Rights Watch interview with a man with a cognitive disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

girls. They catch you when you're working by yourself and touch your boobs, bum, or put a hand around your waist. Or they make stupid comments like, 'You've been here a while, you must be horny.'<sup>70</sup>

Another prisoner with a cognitive disability recounted to Human Rights Watch how he “was sexually assaulted.... It happened in my room. He [the perpetrator] was my cellie. Afterwards, he told me to kill myself. So I cut myself.”<sup>71</sup>

Yet another prisoner with a cognitive disability said:

It was a few guys.... I know at least one of them raped me, but I kind of blacked out. I was bleeding, I still bleed sometimes. I reported it the same day to two of the superintendents, I filled out the medical request form. They told me if I report it, I would go to the DU [detention unit] for six months. So I ripped up the form in front of them.... Then when I went back to the unit, I got bashed up by some of the guys. Not the ones who assaulted me.... Someone came up behind me and stabbed me in the eye with a pen. They beat me up, stomped on me. Called me a dog [traitor].<sup>72</sup>

Out of the 32 cases of sexual violence Human Rights Watch documented, 15 were against women and 17 against men with disabilities but only a handful were reported. Most said that they had not reported the sexual violence due to shame or the fear of retaliation. Human Rights Watch believes that it is very likely that the majority instances of sexual violence go unreported for the same or similar reasons.

### **Prisoner-Carers**

Human Rights Watch documented cases where officers appointed other prisoners as carers of people with disabilities with high support needs to assist them in their daily chores such

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<sup>70</sup> Human Rights Watch interview with a woman with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>71</sup> Human Rights Watch interview with a prisoner with a cognitive disability (name and details withheld by Human Rights Watch).

<sup>72</sup> Human Rights Watch interview with prisoner with a cognitive disability (name and details withheld by Human Rights Watch), Queensland, 2017.

as cleaning their cell or escorting them to a medical appointment. It is one of the highest paid jobs in prison, and thus highly coveted.

Prison staff said they make every effort to choose prisoner-carers carefully to ensure they will genuinely care for the prisoner with the disability. However, the prisoner-carer model is highly problematic as it places a person with a disability, who may already be at-risk, in a situation of vulnerability, vis-à-vis the carer. Human Rights Watch documented several cases where prisoner-carers were clearly ill-qualified for the job because they had been convicted of sex crimes, accused of sexual violence in prison, and had previously manipulated or harassed other prisoners.

A senior nurse in Queensland said that six of the eight current carers were convicted sex offenders:

We had a case here where a prisoner with a disability was recently raped in custody by his carer [who had been previously convicted of a sex offense]. During a random cell search, officers found blood and feces on his bedsheets. Only then he [prisoner with a disability] disclosed he was raped on numerous occasions, before that he was too scared.<sup>73</sup>

She said she thought such abuse was happening “quite frequently,” but that it was often not clear because men often do not tend to disclose such information freely. “At the end of the day at six o’clock,” she said, “the prisoners are locked in here [all night] with their carers.”<sup>74</sup>

Many people with disabilities that we interviewed, particularly Aboriginal and Torres Strait Islander women with disabilities, had experienced family and sexual violence multiple times. Verbal, physical, or sexual violence in prison, particularly from staff, perpetuates a cycle of violence and distrust between staff and prisoners. One woman with a disability said: “The officers give us the middle finger. [They use] intimidation tactics. Especially for us girls, that just reminds us of our domestic violence back home, it scares us.”<sup>75</sup>

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<sup>73</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch).

<sup>74</sup> Ibid.

<sup>75</sup> Human Rights Watch interview with an Aboriginal woman with a disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

A psychiatrist working in prisons said that patients can become more traumatized in prison:

For example, if a woman is banging her head or smearing feces on the wall, five or six male staff will come in, hold her down to restrain her, strip her naked, and deprive her from using any bathing facilities. They do this even with women with [a] well-documented history of sexual assault. They justify it as a safety measure but there are times where it happens when it's not about safety. Officers get frustrated or annoyed with the person. But I don't think we should be retraumatizing people and a lot of the time we do.<sup>76</sup>

### *Physical Violence*

Human Rights Watch documented 41 cases of physical violence perpetrated by fellow prisoners or staff.

A male prisoner with a psychosocial disability described his ordeal:

I got beaten up in the detention unit. I had played up the day before so they were trying to teach me a lesson. Four officers tackled me. The senior officer stood on my jaw while the other hit my head in and restrained me. They said, 'You don't run this prison little cunt, we do,' and they cut my clothes off. They left me naked on the floor of the exercise yard for a couple of hours before giving me fresh clothes.<sup>77</sup>

One woman with a cognitive disability told Human Right Watch, "Two to three years ago, I got bashed by the officers but they got away with it."<sup>78</sup>

Human Rights Watch interviewed prison staff and mental health professionals who said that due to a lack of training, custodial staff can fail to recognize behavior associated with a disability and can misinterpret a person's behavior as defiance or disobedience.

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<sup>76</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>77</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>78</sup> Human Rights Watch interview with a prisoner with a cognitive disability (name and details withheld by Human Rights Watch).

A social worker working in a women's prison told Human Rights Watch:

If one of the girls is going through a psychotic episode, guards hold onto [a grudge] and as a result they are brutal. They would use fists, cuffs. They will lock her down for hours and hours and it can be 42 degrees Celsius (107 degrees Fahrenheit). No fan, no air conditioning, no water. They'll [officers] bruise them [the prisoner]. They will strike them. Some are just on a power trip. They need to dominate.<sup>79</sup>

A man with a psychosocial disability told Human Rights Watch:

Five officers came into my cell. They put me in the shower. They said 'Beat your head up the wall, or we'll do it for you.' I became dazed, didn't recognize or remember their faces. They took me to a medical room at night, with no medical staff. One said, 'I'm going to hit you, be ready to block.' They blocked my face in the chest, [I] got hit in the ribs. [...] He took me down the back [punishment unit]. I thought I would die and become another death in custody. I've never reported it.<sup>80</sup>

### *Verbal Abuse*

Verbal abuse is an everyday occurrence in prison. Prisoners often insult each other and at times staff disparage prisoners as well. However, prisoners with disabilities face additional violence, and may be especially at risk from this environment.

Verbal abuse and insults can provoke anxiety and isolation, and affect a person's mental health. One man with a psychosocial disability told Human Rights Watch: "[An officer told me]: 'Why are you still living? It's time you die.' Officers are supposed to help us, not treat us like rubbish and run us down."<sup>81</sup>

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<sup>79</sup> Human Rights Watch interview with a social worker, Western Australia, December 2016.

<sup>80</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>81</sup> Human Rights Watch interview with an Aboriginal prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

A man with a disability in Western Australia told Human Rights Watch how he was verbally abused because of his disability: “Officers make jokes about me [and my disability]:” ‘You’re a lazy so-and-so.’ Officers tell me, ‘You’re an asshole.’ It makes me feel bad.”<sup>82</sup>

### *Racism Against Aboriginal and Torres Strait Islander Prisoners*

In 11 out of 14 prisons, Human Rights Watch found evidence of staff and prisoners expressing racism in language and behavior towards Aboriginal and Torres Strait Islander prisoners. Racism in prison can manifest itself in many forms, such as name-calling, racial slurs, verbal abuse, harassment, biased treatment, and at times violence.

One Aboriginal prisoner said: “If you say something back to them [officers], they charge you with swearing. (...). Some officers are racist: [they call us] ‘black cunt,’ ‘sheep,’ ‘mother fucker’ or ‘pricks.’”<sup>83</sup>

Another Aboriginal prisoner with a psychosocial disability said: “Officers try to bully us. They will ask us to clean the unit, even though it would have already been cleaned but they will make us do it again and again. Aboriginal prisoners get bullied more than others.”<sup>84</sup>

One prison staff member said: “If you put in a form to get a job or transfer to a different unit, they’ll take the white girl before the aboriginal girl. Not all [staff] but some are rough with the [Aboriginal] girls.”<sup>85</sup>

In some cases, Human Rights Watch found that Aboriginal and Torres Strait Islander prisoners with disabilities did not feel comfortable seeking services because they were confronted with racist stereotypes or negative staff attitudes.

An Aboriginal cultural liaison officer, in charge of facilitating communication and engagement between Aboriginal and Torres Strait Islander prisoners and prison staff, said:

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<sup>82</sup> Human Rights Watch interview with a disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>83</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>84</sup> Human Rights Watch interview with an Aboriginal prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>85</sup> Human Rights watch interview with a social worker (name and details withheld by Human Rights Watch).



They'd rather sit back and be sick rather than go see a nurse because the nurse would say 'Go away, you're exaggerating.' That happens quite a bit. They think they're drug seekers.... We need more aboriginal staff [so prisoners feel comfortable seeking services]. [...] Racism is alive and well... It manifests itself in stereotyping: aboriginal prisoners are all drug addicts, all involved in domestic violence, all are drug-seeking or untruthful. [...] If they question the nurse saying they had an allergic reaction, she will say: 'You fucking black cunt, you don't know what you're talking about. I'm the nurse here. Sit down, shut up, and take your meds.' A lot of the nurses are very harsh with their comments, swearing, belittling them.<sup>86</sup>

An Aboriginal prisoner who has acted as a mentor in multiple prisons told us: "[There are some] old school officers.... They'd do things like "mark the doors" – the guys who were smart-asses or talked back. They would do dehumanizing things like strip them naked and leave them outside standing up."

In responses to Human Rights Watch in mid-January 2018, both the Western Australia and Queensland Departments of Corrective Services noted a number of recent initiatives to address awareness of the concerns of Aboriginal and Torres Strait Islander prisoners and their responsiveness to them.<sup>87</sup> In addition both said they employed more Aboriginal and Torres Strait Islander people on staff than was required by the public service target. In Western Australia, currently 13 percent of prison and health staff identify as being Aboriginal or Torres Strait Islander. In Queensland, over 5 percent of all custodial staff are Aboriginal or Torres Strait Islander.

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<sup>86</sup> Human Rights Watch interview with a cultural liaison officer (name and details withheld by Human Rights Watch).

<sup>87</sup> See letters from the Corrective Services of Queensland and of Western Australia to Human Rights Watch, dated January 15 and January 19 respectively, available at [www.hrw.org](http://www.hrw.org). In the correspondence, Queensland Corrective Services noted that in 2017 three Aboriginal and Torres Strait Islander staff members became accredited trainers in a mental health program to assist custodial operations staff in identifying warning signs for prisoners at risk. In addition, Queensland established the Murridhagun Cultural Centre which aims to improve cultural understanding and responsiveness in training and partnerships on Aboriginal and Torres Strait Islander issues. Queensland Corrective Services noted that they were working on recommendations from their Parole System Review report on the need to significantly increase the number of Cultural Liaison Officers and develop additional culturally sensitive rehabilitative programs. Western Australia Corrective Services noted that the Department is preparing Reconciliation Action Plans that aim to develop and deliver targeted initiatives to produce "better outcomes for Aboriginal employees and those in the care of the Department."

However, given the overrepresentation of Aboriginal and Torres Strait Islander prisoners and based on Human Rights Watch's observation and interaction with prisoners it is questionable if the level of Aboriginal and Torres Strait Islander staff meets the needs of the prisoner population. The departments of corrective services should consider further increasing their employment of Aboriginal and Torres Strait Islander staff as a tool to help tackle racism and enable better engagement with prisoners, alongside better training and other initiatives they themselves have identified as underway.

## **Bullying and Harassment**

'Look at this idiot, look at this looper,' they [fellow prisoners] would say. It's quite demeaning to someone's mental health..... like wolves attacking an injured lamb.

—Prisoner with a psychosocial disability, Western Australia, December 2016

In all the prisons visited across Western Australia and Queensland, Human Rights Watch found that people with disabilities are repeatedly picked on, bullied, and harassed by other prisoners or prison staff due to their disability.

People with disabilities are seen as easy targets. Fellow prisoners mock and insult them, calling them a "spastic" or "a waste of air." They are intimidated and blackmailed or cheated out of their cigarettes, food, or other belongings.

A man with a physical disability told Human Rights Watch:

Ever since I lost my leg, I [have] felt very vulnerable. They want your smokes [cigarettes], and harass you for money. [They tell you]: 'I know you've got smokes.' They watch you (...).<sup>88</sup>

In most cases that Human Rights Watch documented, people with disabilities were threatened with or experienced physical abuse if they resisted such taunts. Prisoners with disabilities described being "mobbed," "pounded," "slapped," "beaten up," or "bashed"

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<sup>88</sup> Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

if they refused to cooperate. “The officers don’t know half of what is going on in here.... I feel very vulnerable in here. I have had my [wheel]chair taken away from me by other prisoners [for not giving into their demands],” a male prisoner with a physical disability said.<sup>89</sup>

Fear of appearing weak, and of being bullied or further stigmatized prevents prisoners with disabilities from asking for medical and social service support.<sup>90</sup> People with psychosocial disabilities in particular can be harassed for their mental health medication. A nurse told Human Rights Watch that prison was undoubtedly a “very stressful and dark environment to live in if you are on [mental health] medication.”<sup>91</sup>

A man with a psychosocial disability described how he is constantly harassed for his mental health medication by fellow prisoners:

Four blokes were on me, trying to get my meds. It was pretty brutal. If you don’t spit the med out, they will say, ‘We know you can do it. Why aren’t you getting it out for us?’ And if you don’t get it out next time, you have got to fight them. It can happen in the laundry or toilets, you can get three to four blokes on you at once and in just a couple of minutes, they’ve bashed you. By the time the officers come, it’s too late.<sup>92</sup>

As a result, many prisoners with disabilities live in constant fear of others, in and out of cells, including during showers, meals, and recreation time. In overcrowded facilities, where people are forced to “double up” in single cells, people with disabilities are often the targets of bullying.

Prison staff who are aware of such practices often intervene. However, prisoners with disabilities are usually too scared to report the abuse due to fear of reprisals, perpetuating a cycle of violence. One male prisoner with a psychosocial disability said: “When you’ve

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<sup>89</sup> Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch).

<sup>90</sup> Human Rights Watch interview with the Centre for Innovative Justice.

<sup>91</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch), Queensland, April 2017.

<sup>92</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Queensland, August 2017.

got trouble, you don't go to officers [to] ask for help. That's the golden rule in jail. You get called a 'dog' [traitor]. You could get bashed.”<sup>93</sup>

Human Rights Watch was told that sometimes prison staff who are aware of harassment view the person's version of events as not credible due to their disability and fail to take it seriously. An Aboriginal woman with a psychosocial disability said:

I get bullied by some prisoners. They ask for smokes [cigarettes] but if I say, 'No,' they fight with me. I'm an easy target because of mental illness. If we get caught fighting, they will tell the officer, 'She hit first because the voices told her.'<sup>94</sup>

As confirmed by the corrections services of Queensland and Western Australia in correspondence with Human Rights Watch, there are a number of mechanisms to report abuse; for example prisoners can report a complaint to prison officers or the superintendent, an ombudsperson, an inspector of custodial services, official visitors, or even the attorney general.<sup>95</sup> However, prisoners told Human Rights Watch that they often choose not to report for fear of reprisals or being labeled a traitor.

## Solitary Confinement

Corrective Services in Queensland and Western Australia use euphemisms such as “segregation” or “separate confinement” to characterize prisoners placed in solitary confinement in maximum security, detention, crisis, observation, or safety units. They do not consider “segregation” or “separate confinement” to constitute solitary confinement.

However, in line with international standards, this report uses the term “solitary confinement” to describe the “confinement of prisoners for 22 hours or more a day without

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<sup>93</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>94</sup> Human Rights Watch interview with an Aboriginal prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>95</sup> Prisoners can call (free of charge) or send privileged (confidential) mail to a number of independent entities, including the Ombudsman, the Anti-discrimination Commission, the Chief Inspector, the Corruption and Crime Commission. See also letters from the Corrective Services of Queensland and of Western Australia to Human Rights Watch, dated January 15 and January 19 respectively, available at [www.hrw.org](http://www.hrw.org).



A prisoner lies in his solitary confinement cell in the safety unit at Lotus Glen Correctional Centre, northern Queensland. Prisoners in solitary confinement typically spend 22 hours or more a day locked in small cells, sealed with solid doors, without meaningful social interaction with other prisoners; most contact with prison and health staff is perfunctory and may be wordless. © 2017 Daniel Soekov for Human Rights Watch

meaningful human contact,” and “prolonged solitary confinement” refers to solitary confinement for a time period in excess of 15 consecutive days.<sup>96</sup>

Nearly all solitary confinement units Human Rights Watch visited were full and the most prisoners with disabilities interviewed had spent time in one. This indicates that placement of prisoners in solitary confinement is a regular occurrence in Australian prisons, although international standards call for solitary confinement to be used only in exceptional circumstances, for the shortest possible time, with appropriate safeguards.

According to Juan Mendez, the United Nations special rapporteur on torture, the imposition of solitary confinement “of any duration, on persons with mental disabilities is

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<sup>96</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), A/RES/70/175, January 8, 2016, <http://16889-presscdn-o-48.pagely.netdna-cdn.com/wp-content/uploads/1957/06/ENG.pdf> (accessed August 1, 2017).

cruel, inhuman or degrading treatment.” He has called on governments to abolish it for prisoners with psychosocial or cognitive disabilities.<sup>97</sup>

He has also said that “the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman or degrading treatment or punishment or even torture.”<sup>98</sup>

In a recent medical report, a psychiatrist described the condition of a prisoner with a psychosocial disability who has been in solitary confinement for over six years:

He is plagued with near pervasive feelings of anxiety, hopelessness and depression at his predicament.... He often contemplates suicide. There can be little doubt that psychological harm will continue to be experienced. He is likely to deteriorate further, the longer he remains.<sup>99</sup>

The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has said that “prolonged solitary confinement may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment and recommended that solitary confinement should not be used in the case of minors or the mentally disabled.”<sup>100</sup>

Specific conditions of solitary regimes vary across Australian prisons, but share a basic model. Prisoners in solitary confinement typically spend 22 hours or more a day locked in small cells, sealed with solid doors.<sup>101</sup> They lack opportunities for meaningful social interaction with other prisoners; most contact with prison and health staff is perfunctory and may be wordless (such as when meals are delivered through a slot in the cell door).

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<sup>97</sup> UN General Assembly, “Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment,” A/66/268, August 5, 2011, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> (accessed January 18, 2018).

<sup>98</sup> Ibid.

<sup>99</sup> Medical report on file (name and details withheld upon request).

<sup>100</sup> UN General Assembly, “Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment,” A/66/268, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>, para. 58.

<sup>101</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), A/RES/70/175, <http://16889-presscdn-o-48.pagely.netdna-cdn.com/wp-content/uploads/1957/06/ENG.pdf> (accessed May 23, 2017).

Prisoners are allowed to go to a small, often fully caged, concrete exercise yard for a maximum of two hours a day. However, high occupancy of the units means that many prisoners may not be able to leave their cell on a daily basis. They often have very limited or no access to educational and recreational activities or other mental stimulation, and are usually handcuffed and escorted by correctional officers when they leave their cells.

Prisons in Western Australia and Queensland use solitary confinement for different reasons: to punish, manage, protect, or ostensibly treat prisoners. Human Rights Watch found that prisoners with psychosocial or cognitive disabilities are disproportionately represented in all solitary confinement regimes (maximum security units, detention or punishment units, and crisis, observation, or safe units) across the 14 prisons visited.

A psychiatrist who works with prisoners with disabilities said: “Prisoners are segregated for lengthy periods of time. The staff resort too readily to solitary confinement and there’s a lack of investment in training and in alternative strategies. Even the Office of the Chief Psychiatrist recognizes it’s [solitary confinement] traumatic and psychologically harmful.”<sup>102</sup>

Women can be particularly affected. A nurse at a women’s prison said: “Women with disabilities are overrepresented in punishment [detention] units. Some of the girls with mental health problems get sent “down the back” [punishment units] because they’re seen as a management issue.”<sup>103</sup>

One Aboriginal woman with a psychosocial disability told Human Rights Watch:

It’s hard, you have to wait two to three weeks to see a doctor. In the meantime you suffer. You put on weight from the meds and are in turmoil. You end up ‘down the back’ [to the punitive segregation unit] because of your mental health because you can’t see a doctor. It’s a cry for help but you get punished and put down the back. It’s too long, you deteriorate.

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<sup>102</sup> Human Rights Watch phone interview with psychiatrist (name and details withheld by Human Rights Watch), January 19, 2018.

<sup>103</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch).



## *Types of Solitary Confinement*

### **1. Maximum Security Units**

Queensland has two Maximum Security Units (MSU) with a total of 38 beds located in Brisbane Correctional Centre (18) and Woodford Correctional Centre (20).<sup>104</sup> Queensland Corrective Services can issue a Maximum Security Order (MSO) to place a prisoner in a maximum security unit if there is a high risk the prisoner may escape, kill, or gravely injure someone or if they pose a significant threat to the “security and good order” of the facility.<sup>105</sup> Corrective Services can issue an MSO for three or six months with the option of consecutive orders making it prolonged and, at times, indefinite solitary confinement.

Based on interviews with prisoners who had been in MSUs, their lawyers, and prison staff, Human Rights Watch found that prisoners can spend months and at times years in prolonged solitary confinement in the MSU. One man with a psychosocial disability has spent about 19 years (with a 3-week interval) in the MSU.<sup>106</sup>

Human Rights Watch documented 22 cases of MSU prisoners, of whom 15 had psychosocial or cognitive disabilities that had been identified and at least 5 were Aboriginal or Torres Strait Islander people with disabilities.<sup>107</sup>

A psychologist working in Queensland prisons told Human Rights Watch: “A large proportion of prisoners in the MSU have mental health issues. Some people have been in there for years. In some cases, they are punished for behavior related to their disability. It’s a systemic issue, there should be an alternative.”<sup>108</sup>

Prisoners in the MSU have no contact with other prisoners, not even in corridors or in the exercise yard. MSU cells are double-doored so prisoners cannot see any human activity outside their cells. They are allowed to meet visitors but they are strictly “no contact”

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<sup>104</sup> In Western Australia, these units are known as Special Handling Units (SHU) and are located in Casuarina Prison. According to the Department of Corrective Services, the SHU has 30 cells in total; 17 of which were occupied in 2017. Letter from the Corrective Services of Western Australia to Human Rights Watch, dated January 19, available at [www.hrw.org](http://www.hrw.org).

<sup>105</sup> Queensland Corrective Services Act 2006, May 30, 2017, <https://www.legislation.qld.gov.au/view/pdf/2017-05-30/act-2006-029> (accessed November 1, 2017), pp. 67-9.

<sup>106</sup> Human Rights Watch interview (name and details withheld upon request).

<sup>107</sup> Human Rights Watch separate interviews with prison staff (name and details withheld by Human Rights Watch), Queensland, August 2017; and a lawyer (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>108</sup> Human Rights Watch interview with a psychologist (name and details withheld by Human Rights Watch), Queensland, August 2017.



which means they are separated by a glass window and cannot have any physical contact. Prisoners with disabilities who were recently released from the MSU told Human Rights Watch they had difficulty speaking and interacting with others after leaving because they had been deprived of any social contact during their time in the MSU.

A prisoner with a psychosocial disability who had been locked up in the MSU for several months told Human Rights Watch:

The MSU is very quiet, very isolating. There is no interaction in the MSU; you don't see or hear anyone. They don't give you stuff to do. I would only come out of my cell once a week. You feel like shit in the MSU; you just try to hold onto your sanity. It's a relief to be out. They should have a reintegration unit to help you to start talking to people again.<sup>109</sup>

An officer with experience working in the MSU for multiple years said: "It's such a complex issue. It's not that people with mental health conditions are more violent. They just haven't learned to cope or cope in different ways."<sup>110</sup>

Under Queensland's Corrective Services Regulation 2006, Corrective Services was required to obtain and consider a medical assessment prior to placing a prisoner with a psychosocial or cognitive disability on a maximum security order. Under the old regulation, a prisoner displaying "acutely suicidal or self-harm behavior" could not be classified as a maximum security prisoner, the first condition for placing them in an MSU. However, under the new regulation, this safeguard has been removed.<sup>111</sup>

The new regulation, which came into effect on September 1, 2017, only requires the prison to notify a health practitioner of the psychosocial or cognitive disability, but it is no longer a factor to be considered in the placement.

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<sup>109</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>110</sup> Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>111</sup> Queensland Corrective Services, "Classification and placement - Custodial Operations practice directive for Queensland Corrective Services," December 12, 2017, <https://publications.qld.gov.au/dataset/qcs-procedures/resource/a2278cc3-16fc-4171-8840-3aea8617e2da> (accessed January 19, 2018).

Lawyers who represent clients in the MSU said the requirement to consider a medical assessment acted as a safeguard, preventing corrective services from issuing or renewing a maximum security order that would be detrimental to the well-being of a person with a disability.

A lawyer with six years' experience working with clients in the MSU told Human Rights Watch:

When I visited the MSU regularly, I often witnessed a significant deterioration in the mental health of the prisoners I visited between those six-week periods. They would describe experiences such as talking to themselves, hallucinating, and extreme difficulties coping with minor changes to their routine. For those who had spent years in solitary, they expressed fear at leaving the environment to which they had become so accustomed. When I suggested prisoners in the MSU speak to counsellors or psychologists about these difficulties, they expressed mistrust of correctional staff and felt what they said would be used against them to justify their ongoing detention in the MSU.<sup>112</sup>

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<sup>112</sup> Prisoners cannot have confidential discussions with prison psychologists or counsellors and what they say to support staff can indeed be used against them to justify their placement in the maximum security unit (MSU). Even when Corrective Services hire external psychologists to work with prisoners with complex needs in the MSU, these staff are still employed by Corrective Services and write reports for them. For example, external staff will often write risk assessment reports, which are then relied on to keep the prisoner in the MSU.

Jack, a prisoner with a cognitive and psychosocial disability spent several months in an MSU in Queensland, prompting a severe deterioration of his mental well-being.<sup>113</sup> He started having panic attacks regularly, but instead of providing psychosocial support, the prison officers did not believe he had a disability. They thought it was an act and would bend back his fingers, stand on his feet with their boots, and twist his handcuffs. They told him, “You better get out of here soon because it is just going to get worse.”

When the officers continued to torment him, Jack said he tried to commit suicide. Four months into his MSO, corrective services organized a psychological assessment. The psychologist determined that Jack’s risk of violence was rooted in the “vulnerabilities associated with [his disability] and a history of trauma with the prison environment” and confining him to the MSU would only be damaging, stripping him of coping skills and “making his future integration more challenging.” Instead he recommended reintegrating Jack into a mainstream unit, which was done three months later.<sup>114</sup>

## 2. Detention or Punishment Units

A prisoner who commits a prison offense can be sent to the detention or punishment unit for a period of solitary confinement.<sup>115</sup> Depending on the state legislation and the severity of the offense, the superintendent or a visiting justice can impose a period of “separate confinement” in a punishment cell ranging from seven days or less for a minor offense, such as disobeying a prison rule or an officer, and up to 21 days for multiple offenses.

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<sup>113</sup> Human Rights Watch interview with Jack’s lawyer (name and details withheld upon request). Case on file.

<sup>114</sup> Ibid.

<sup>115</sup> Separate confinement is merely one of the penalties that prison authorities, a visiting justice, or a magistrate may impose on a prisoner. Other penalties can include a caution, a reprimand, cancellation of gratuities, confinement in sleeping quarters for 72 hours or less etc. Legal Aid Western Australia, “Prison Offenses: Information Kit,” 2015, <https://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/Documents/Prison%20offenses%20information%20kit.PDF> (accessed May 24, 2017), pp. 2-3.

For aggravated offenses such as assaulting a prisoner or an officer, a magistrate or two Justices of the Peace in court may impose up to 28 days of separate confinement (with 48 hours out of the punishment cell after each seven days in separate confinement).<sup>116</sup>

Located in a detention unit (DU), a punishment cell has only a bed, a table, a shelf, and a toilet. In a punishment cell, the prisoner loses privileges, such as access to work or leisure activities, and is only let out of the cell for a maximum of two hours in an exercise yard.

A prisoner with a psychosocial disability described the DU as “hell on earth.” “It’s humiliating,” he said. “Officers all play games down there. The DU feels like you’ve got nowhere to go. Got meal passed through a hole in the door.... There’s nothing to do. Makes your head go stupid.”<sup>117</sup>

Another male prisoner with a psychosocial disability recounted his experience:

The staff terrorize people in the DU. ‘Heel, dog, heel,’ they said to me.... I was sobbing, they didn’t respond. They opened up the grate [in the cell door] and laughed at me. I swallowed batteries in front of them. [One officer] spat in my face. He said I will punch your teeth all over the cell. Seven other officers were there. They said I was being disruptive. I cut my wrists open. They did nothing, just sat on the bed. [Later] they took me to hospital. I fought with them, I didn’t want it [to go]. I was handcuffed and my feet were shackled. I was in extraordinary pain. I started playing up.... I needed to talk to someone but they ignored me.<sup>118</sup>

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<sup>116</sup> Ibid. In South Australia and Tasmania, the duration of solitary confinement is not regulated. In Victoria, the duration of solitary confinement is left to the discretion of prison authorities. Correctional Services Act 1982 (SA) s 36(4). Corrections Regulations 2008 (Tas) s 7(1)(a); Correctional Services Act 2016 (NT) s 41. The Queensland Regulations also provide for an Aboriginal or Torres Strait Islander health worker; elder, respected person or indigenous spiritual or the person nominated by the prisoner as the prisoner’s contact person, to be notified when a “safety order” is made for an Aboriginal or Torres Strait Islander prisoner.

<sup>117</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>118</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (details withheld by Human Rights Watch), Western Australia, December 2016.

### 3. Crisis, Observation, or Safety Units

I have been in the SU two or three times for self-harm... I needed help, instead I was punished.

— Aboriginal and Torres Strait Islander male prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Queensland, 2017

Prison authorities, in consultation with health staff, can put a prisoner in an “observation cell,” “crisis cell,” or “safe cell” to monitor their medical condition, psychological state, or if they are at high risk of self-harm.<sup>119</sup> Human Rights Watch found that crisis, safe, or observation cells are sometimes no different in appearance from detention or punishment cells.

Crisis, safe, or observation cells are generally more sparsely furnished due to the risk of self-harm or suicide. The cells can be specially designed with CCTV cameras; no ligatures, hooks, or sharp edges, and are equipped with furnishings that are bolted to the ground or flush to the wall to minimize the risk of self-harm and suicide. If the risk of self-harm is high, prison staff provide a tear-proof gown and bedding and finger food. Observation, crisis, or safe cells are located away from mainstream units, sometimes in detention or medical units (for medical supervision), and have a higher staff-to-prisoner ratio.

Across prisons visited, crisis, safe, or observation cells were almost always full due to the alarmingly high number of prisoners who were self-harming or on suicide watch. In fact, due to a shortage of appropriate cells and overcrowding, prison staff often use punishment cells located in detention units for observation.

In the absence of robust mental health services and meaningful therapeutic interventions, crisis, safe, and observation cells are used to keep prisoners safe. Most prisoners whom Human Rights Watch interviewed found the environment highly debilitating.

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<sup>119</sup> Legal Aid Western Australia, “Prisoner Handbook: Your Rights, the law, and other information,” May 2016, <https://www.legalaid.wa.gov.au/InformationAboutTheLaw/crime/Documents/Legal%20Aid%20WA%20Prisoner%20Handbook.pdf> (accessed December 17, 2017), pp. 38-39.



A solitary confinement cell located in the safety unit of Brisbane Women's Correctional Centre in Queensland. The cells are designed with CCTV cameras; no ligatures, hooks, or sharp edges; furnishings are bolted to the ground or flush to the wall to minimize risk of self-harm.

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An Aboriginal prisoner with a psychosocial disability told us: “Those three days [in solitary confinement] were the longest of my life. It’s claustrophobic, lonely, boring. My depression went through the roof. I punched and head butted a wall. Makes you do stupid things.”<sup>120</sup>

A senior psychologist working in a women’s prison told Human Rights Watch:

The unit is designed to keep prisoners safe, especially from themselves, and it isn't therapeutic, it's confronting and it can be really traumatizing. And while we do our best, it's just not the right environment for people with mental health concerns, or cognitive impairments.<sup>121</sup>

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<sup>120</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>121</sup> Human Rights Watch interview with a senior psychologist (name and details withheld by Human Rights Watch).

A male prisoner with a psychosocial disability told Human Rights Watch:

My son died a month-and-a-half ago, [so] they sent me to the safety unit. I didn't self-harm before going to the SU [Safe Unit], though I have in the past. The safe[ty] unit isn't good. The lights in there are on all the time—24 hours. It drives you crazy those lights.... They make you stew on your problems.<sup>122</sup>

Prisoners can spend several days and even months in safety units. In some cases, they can mingle with other prisoners or attend activities. In others, prisoners are confined to their cells at times for 22 or more hours a day, making it solitary confinement.

In some extreme cases, where prisoners may be at extremely high risk of self-harm, they can be kept in padded cells. Human Rights Watch documented at least three cases of female prisoners who were kept in windowless, perpetually lit, padded cells for several consecutive days, and in one case for over a month.

A man with a psychosocial disability who has spent considerable time in the safety unit said:

I have been in the padded cell so often, I can't even count how many times. They use the padded cell as punishment here. One guy rubs poo on himself so they put him in the padded cell. They put you in a body belt and cuffs but take them off when you calm down. The padded cell has no window. The light stays on which drives me insane. You don't know the time of day or direction: it's disorienting.<sup>123</sup>

### Psychological Harm

Isolation can be psychologically damaging to any prisoner causing anxiety, depression, anger, obsessive thoughts, paranoia, and psychosis. Its effects can be particularly detrimental for people with psychosocial or cognitive disabilities.

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<sup>122</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>123</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).



A padded cell in Brisbane Women's Correctional Centre, Queensland. Human Rights Watch documented at least three cases of female prisoners who were kept in windowless, perpetually lit, padded cells for several consecutive days, and in one case for over a month. ©2017 Daniel Soekov for Human Rights Watch

The stress of a closed and heavily monitored environment, absence of meaningful social contact, and lack of activity can exacerbate mental health conditions and have long-term adverse effects on the mental well-being of people with psychosocial or cognitive disabilities. All too frequently, people with psychosocial or cognitive disabilities can decompensate in solitary confinement, attempting suicide or requiring emergency psychosocial support or psychiatric hospitalization.

In most solitary confinement cases that Human Rights Watch documented, people with disabilities who said their psychological condition deteriorated after spending time in the sterile and isolating environment of solitary confinement units.

According to Sharon Shalev, a well-renowned expert on solitary confinement at the Oxford University Center for Criminology, “conditions of extreme social isolation and reduced environmental stimulation (in solitary confinement) inflict psychological trauma and in



some cases deprive inmates of sanity itself.”<sup>124</sup> Many people with psychosocial or cognitive disabilities have previously experienced trauma, violence, and abuse which can exacerbate the detrimental effects of solitary confinement.

A psychiatrist working in prisons told Human Rights Watch:

Time spent in the detention and safety units has a massive impact on mental health. I have had patients start getting psychotic symptoms and sensory deprivation simply because they have been in the detention unit for too long. They start getting depressed and paranoid. They are already traumatized and when you leave them there for weeks and months, they get worse. They end up on robust medicine regimes. The whole system is misunderstanding people’s needs. The attitude of corrective services staff is that the prisoners aren’t here to receive care but to be punished.<sup>125</sup>

A man with a psychosocial disability who was raped in prison and spent significant time in the safety unit told Human Rights Watch:

I am locked in a room with nothing but my thoughts, all I do is think and 90 percent of the time it isn’t good. I feel hopeless; life isn’t worth living and I’d be happier if I was dead. It has led me to self-harm; the physical pain doesn’t hurt as much as the emotional pain. My self-harm increased after the rape. I put razor blades and glass in my penis. I wouldn’t do this if I had activities and therapeutic interventions. I have seen the psych twice in four months and it wasn’t meaningful.<sup>126</sup>

The 1991 Royal Commission into Aboriginal Deaths in Custody found solitary confinement has a particularly detrimental impact on Aboriginal and Torres Strait Islander prisoners,

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<sup>124</sup> S. Shalev, “Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis,” *Journal of Forensic Psychology Practice* 11 (2011), March 23, 2011, doi.org/10.1080/15228932.2011.537582 (accessed December 14, 2017), pp. 151-183.

<sup>125</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>126</sup> Ibid.

many of whom are already separated from family, kin, and community. The report found that solitary confinement causes “extreme anxiety” and can induce self-harm.<sup>127</sup>

An aboriginal man with a psychosocial disability who had spent time in the MSU and detention unit told Human Rights Watch:

When I first went in there, I was scared. In the MSU, you feel down, stressed, bored. It gets lonely with no one to speak to. It’s distressing and claustrophobic.... My family is way up north. It’s too far for them to visit. It’s stressful to be far from home, hard to be out of country. I went to the oval [football field] yesterday after a year, I felt so happy.<sup>128</sup>

The Standard Guidelines for Corrections in Australia advise that any prisoner in segregation must be visited by prison management on a daily basis and by a medical officer preferably daily. They further suggest that a medical professional should advise prison officers “if they consider the termination or alteration of the segregation is necessary on grounds of physical or mental health.”<sup>129</sup>

Security concerns inform rules governing solitary confinement units which often prevents medical and mental health professional from providing any meaningful counseling or mental health services.

Human Rights Watch found that mental health services and support in solitary confinement units consist largely of distributing medication through a slot in the cell door. Human Rights Watch observed that interactions between staff and prisoners are perfunctory, often restricted to a single question such as, “How are you doing?” and

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<sup>127</sup> “Royal Commission into Aboriginal Deaths in Custody,” National Report, 1991, Volume 3, Chapter 25, [25.7.12] & 25.2.10. In Western Australia, Corrective Services has put in place the Aboriginal Visitors Scheme to better support Aboriginal and Torres Strait Islander prisoners at-risk of self-harm and suicide. In Queensland, before placing Aboriginal and Torres Strait Islander prisoners in solitary confinement, prison officers must alert the Cultural Liaison Officer, an Elder, or someone nominated by the prisoner as a contact person. The AVS is a support service that provides cultural contact and interventions to Aboriginal people in custody by facilitating regular and requested visits to prisons, juvenile detention centres and Western Australian Police (WAPOL) centres throughout WA. The aim of this service is to reduce the likelihood of Aboriginal deaths in custody, by AVS Visitors providing support to all Aboriginal persons in custody.

<sup>128</sup> Human Rights Watch interview with an Aboriginal prisoner with a psychosocial disability (name and details withheld by Human Rights Watch).

<sup>129</sup> Corrective Services Ministers’ Conference, “Standard Guidelines for Corrections in Australia,” 2004, [http://www.aic.gov.au/media\\_library/aic/research/corrections/standards/aust-stand\\_2004.pdf](http://www.aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2004.pdf) (accessed November 10, 2017), p. 18.



A view of the detention unit in Brisbane Women's Correctional Centre, Queensland. Prisoners in such cells lose privileges, such as access to work or leisure activities, and are let into an exercise yard for two hours a day at most. © 2017 Daniel Soekov for Human Rights Watch

conducted through closed cell doors, allowing for the response to be heard across the unit, including by prison guards.

One counselor told Human Rights Watch: “Out of the 15 times I have gone to the DU, only once has someone wanted to talk. I usually say ‘Hi, how are you doing? Do you want any puzzles? Any thoughts of suicide or self-harm?’”<sup>130</sup>

Many prisoners told Human Rights Watch that even when they felt like talking to a staff member or a medical professional, they held back due to the lack of privacy and disinterest exhibited by staff. Prisoners can request one-on-one private counseling but due to the long waitlists to see mental health professionals, it can take time to get an appointment. Opportunities for group therapy and structured activities are nonexistent in maximum security units and detention units and severely limited in crisis units.

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<sup>130</sup> Human Rights Watch interview with a counselor (name and details withheld by Human Rights Watch), Queensland, August 2017.

A man with a psychosocial disability who spent considerable time in a safety unit told Human Rights Watch: “I’ve tried to hang myself here and they couldn’t get a counselor to see me. It was over the weekend and their excuse was there were no psychs between Friday and Monday. They only come for risk assessments.”<sup>131</sup>

Human Rights Watch documented a marked difference in psychosocial services provided by the department of corrective services and the department of health.<sup>132</sup> For staff employed by the former, the client is first and foremost the prison and therefore the primary concern is security (i.e., staff and other prisoners’ safety). Interactions between prisoners and corrective services staff are not protected by doctor-patient confidentiality.

When she entered prison, Anna, a woman with a physical disability who uses a wheelchair, was placed in solitary confinement in the medical center because the residential unit was full. For seven days, Anna was confined to a single room without access to sunlight or the exercise yard, and had no contact with anyone but her carer. Anna could not raise herself without assistance, so she remained bed-ridden during this time. Anna’s carer only assisted her with meals and using the bathroom and shower when necessary.

The confinement had an extremely detrimental effect on Anna’s physical mobility and mental health. Before solitary confinement, Anna was able to use crutches and her wheel chair. But without daily exercises necessary to sustain her mobility, she lost her ability to use crutches. Traumatized by solitary confinement and the uncertainty of knowing how long she would stay there, Anna suffered from insomnia and nightmares.<sup>133</sup>

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<sup>131</sup> Human Rights Watch interview with a man with a psychosocial disability (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>132</sup> In Western Australia, all health and mental health interventions in prison are delivered by correctional staff. In Queensland, all health interventions are carried out by the department of health staff. However, corrective services provide some psychosocial support through counselors and psychologists under its offender development program.

<sup>133</sup> Human Rights Watch interview with Anna’s lawyer (name and details withheld upon request). Case on file.

A psychologist working in the offender development program in a Queensland prison said: “A client is having suicidal thoughts and you stick them in a box with nothing but their thoughts. It’s ethically very challenging as a psychologist. But you have to be a realist in here. In my position, my client is Queensland Corrective Services and it has competing interests [with the client’s interests].”<sup>134</sup>

According to Rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, “[t]he imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”<sup>135</sup>

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<sup>134</sup> Human Rights Watch interview with a psychologist (name and details withheld by Human Rights Watch), Queensland, August 2017.

<sup>135</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), A/RES/70/175, January 8, 2016, <http://16889-presscdn-o-48.pagely.netdna-cdn.com/wp-content/uploads/1957/06/ENG.pdf> (accessed August 1, 2017), Rule 45.

Mary, a prisoner with a psychosocial disability, was put in solitary confinement within the health center of a prison for 28 days, following a drug charge. Her cell had no power or running water. Despite legislative requirements that a prisoner have access to a minimum of two hours' exercise in the fresh air each day, Mary said she was not permitted to access the exercise yard for her first seven days in the health center. She was also denied access to phone calls and could not send or receive mail.<sup>136</sup>

After the first week in solitary confinement Mary was granted access to daily exercise. However, she was placed in handcuffs connected to a body belt, restricting her movement. Mary said that correctional officers mocked her during exercise time, whistling at her like a dog and telling her to crawl on her hands and knees. During her time in solitary confinement, Mary did not have access to a toilet and was forced to use cardboard urine test containers. Mary said occasionally correctional officers failed to empty the containers and she would have to leave them in the corner of her cell. She was not given any eating utensils when eating food and the lack of running water meant she struggled to stay clean. Mary describes the conditions as “putrid.”

Mary felt that she was “going crazy.” By the end of her time there, she said she was talking to herself in a constant “internal dialogue.” Mary did not have access to support or mental health services while in the health center.<sup>137</sup>

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<sup>136</sup> This information was substantiated by an investigation by the Office of the Chief Inspectorate.

<sup>137</sup> Human Rights Watch interview with Mary's lawyer (name and details withheld upon request).

### III. Problematic Confinement Conditions for People with Disabilities

#### Overcrowding

Prison overcrowding is an ongoing problem in Western Australia and Queensland. Attributable to a range of factors—including changes in laws on sentencing, bail, and parole; a tougher crime policy by state governments and courts; and a shortage of beds in specialized facilities—it strains prison infrastructure, staff, and prisoners.

Western Australia's prison system functions at 150 percent capacity and more than two-thirds of the state's prisoner population is kept in cells that are too small, according to Western Australia Inspector of Custodial Services, Professor Neil Morgan.<sup>138</sup> Queensland's high security facilities, designed to hold about 5,600 prisoners, held 8,477 in adult prisons on August 1, 2017.<sup>139</sup> New South Wales prisons, designed for roughly 11,000 prisoners, held 13,092 adult prisoners as of June 2017.<sup>140</sup>

Of the 14 prisons Human Rights Watch visited, the vast majority were overcrowded. In nine, people were often forced to “double-up,” with two and sometimes three people confined in a cell originally built for one person.

Overcrowding has various consequences, including overly long confinement in cells; lack of privacy (single unit cells often have toilets in the room, not separated from the rest of the cell); and unsanitary conditions.

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<sup>138</sup> Office of the Inspector of Custodial Services, “Fine defaulters in the Western Australian prison system,” April, 2016, [http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/\\$file/4182.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914182a267c7268541194a448257fd20032c2e4/$file/4182.pdf) (accessed January 18, 2018), p. 14. The construction of Melaleuca Remand and Reintegration Facility, a new privately-run women's prison in Western Australia has reduced overcrowding and alleviated the strain on staff and resources in women's prisons.

<sup>139</sup> Felicity Caldwell, “Data shows assaults in Queensland's prisons doubled in three years,” *Brisbane Times*, September 19, 2017, <https://www.brisbanetimes.com.au/politics/queensland/data-shows-assaults-in-queensland-s-prisons-doubled-in-three-years-20170919-p4yvzw.html> (accessed October 5, 2017).

<sup>140</sup> Bureau of Crime Statistics and Research, “NSW Custody Statistics: Quarterly Update June 2017,” July 31, 2017, [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2017/mr-NSW-Custody-Statistics-Quarterly-update-June-2017.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2017/mr-NSW-Custody-Statistics-Quarterly-update-June-2017.aspx) (accessed August 15, 2017).





Due to overcrowding, prisoners in Brisbane Women's Correctional Centre often have to "double-up," with two and sometimes three people confined in a cell originally built for one. Difficult conditions of confinement can be particularly problematic for people with disabilities.

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Overcrowding can be particularly difficult for people who have psychosocial or cognitive disabilities for several reasons.

Many have a higher need for personal space or quiet, which cell sharing, or "doubling-up," can impact. Sharing cells can also place prisoners with disabilities—already at risk of being manipulated or abused by others—at heightened danger of verbal, physical, or sexual violence. A man with a psychosocial disability, who was forced to share a cell with a prisoner who harassed him, told Human Rights Watch: "I started panicking [when the officer told me I was placed with him]. My anxiety went through the roof."<sup>141</sup>

In crowded conditions, fellow prisoners may find it especially difficult to tolerate another prisoner's disability or behavior.

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<sup>141</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.



An Aboriginal man with a psychosocial disability told Human Rights Watch:

I was not allowed to make poo in cell [after lockdown]. (...). Cell mates [asked me to] stop coughing in the morning. [One of them] got wild at me for making a noise (...). Nobody ever wants me in the unit. I get kicked out of my cell because I am unhygienic. We [people with disabilities] are picked on the most because we are the most vulnerable.<sup>142</sup>

It can also strain guards mentally. “Due to the overcrowding, there is often friction among inmates and officers. Officers are shocking. If you ask something, they just ask you to ‘fuck off,’” a female prisoner with a psychosocial disability said.<sup>143</sup>

Overcrowding is often accompanied by overstimulation—another common problem for people with psychosocial or cognitive disabilities, as well as a lack of adequate prison guard time and attention for individual prisoners, whose deterioration they may then overlook.<sup>144</sup> “Managing prisoners with disabilities is the biggest challenge we have,” a senior officer in a women’s prison said. “We are not equipped or trained for it.... Because of overcrowding, we can’t give prisoners one-on-one attention.”<sup>145</sup>

To manage overcrowding, prisoners in New South Wales are constantly moved from one prison to another around the state, enduring hours of transport, locked at the back of a moving truck with no access to a toilet. For people with disabilities who may not always be in control of their bowel movements, this is particularly distressing. Lawyers told Human Rights Watch about people with disabilities who urinated or defecated in the truck during transport because they had no other choice and were beaten by fellow prisoners who had to bear the smell of urine or feces for hours.<sup>146</sup>

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<sup>142</sup> Human Rights Watch interview with an Aboriginal prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>143</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>144</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch).

<sup>145</sup> Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch).

<sup>146</sup> Human Rights Watch group interview with ten lawyers (name withheld upon request), Sydney, September 2016. Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch). Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch).

Overcrowding also results in long delays to see a specialist or in accessing services where a staff member is required to accompany the prisoner. In many prisons, prisoners, including those with disabilities, can wait for several months to see a psychiatrist, a physiotherapist, or even a dentist, if their medical file has not been lost or their appointment missed because of being moved around prisons.<sup>147</sup>

## **Lack of Accessibility**

Human Rights Watch found that many prisons were not accessible, making it extremely difficult for people with physical or sensory disabilities to navigate.

### *Physical Barriers*

In 9 out of 14 prisons, Human Rights Watch interviewed prisoners who had difficulty accessing basic services such as toilets, showers, kitchen, or bathrooms because the physical infrastructure was not accessible. As a result, simple tasks, such as going to the toilet or getting into bed, become painful and humiliating for prisoners with physical or sensory disabilities.

“Prison is not good for people like me,” a man with a physical disability from Queensland said. “It is not built for people in a wheelchair. Beds are really low. It is a struggle to get into (...) bathrooms, and toilets are hard to use. Nothing is set up for a person in a wheelchair.”<sup>148</sup>

In one prison farm where the terrain is particularly uneven, a prisoner with a physical disability using a cane had to struggle uphill to the medical center twice daily to collect medication, a walk that took him 40 minutes due to his disability. A staff member told Human Rights Watch:

We have a hospital buggy but we couldn’t use it to pick him up because of staffing issues [the shortage in staff which left officers unable to escort him]. He had requested a transfer multiple times. After being here for a couple of months, out of desperation, he threw a chair and smashed two

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<sup>147</sup> Ibid.

<sup>148</sup> Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch), Queensland, April 2017.

windows just so his security rating would increase and he could immediately be transferred [from the low security prison farm to a medium or high security prison that would be accessible].<sup>149</sup>

Due to the inaccessibility of sanitation facilities, staff and prisoners with disabilities in 9 prisons told Human Rights Watch that they had to either wait, or else shower, urinate, or defecate in humiliating conditions.<sup>150</sup>

For example, in one prison there is only one accessible toilet and shower in the entire 1,000 bed facility.<sup>151</sup> Since both are located in the infirmary, people with physical disabilities who live in the regular cell blocks have to get permission from staff each time they need to go to the toilet because it requires them to exit their unit and wheel themselves, sometimes over 100 to 150 meters away. They then often have to wait in line.

Since prisoners are not allowed to move around during “lockdown” (when units are sealed to count prisoners or for security reasons at night), prisoners with physical disabilities are forced to wait—sometimes hours—for a toilet, or must wear nappies or urinate in bottles in their cells at night. An aboriginal man with a physical disability who uses a wheelchair said: “Toilets are not accessible, I can’t get my chair in. I have to pee in a bottle.”<sup>152</sup>

Another prisoner who also uses a wheelchair and cannot move on his own told Human Rights Watch: “I stayed in the medical unit because they didn’t really have anywhere for prisoners who are disabled. I had diarrhea and I [was] lying in my own shit, because they are like, ‘You have to wait.’ The staff weren’t interested [in helping me].”<sup>153</sup>

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<sup>149</sup> Human Rights Watch interview with a member of prison staff (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>150</sup> Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch). Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch), Western Australia, December 2016. Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch).

<sup>151</sup> Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch). Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch).

<sup>152</sup> Human Rights Watch interview with an Aboriginal prisoner with a physical disability (name and details withheld by Human Rights Watch).

<sup>153</sup> Human Rights Watch interview with a prisoner with a physical disability (names and details withheld by Human Rights Watch).



A wheelchair outside a room in Wolston Correctional Centre, Queensland. Many prisons are not fully accessible, making it extremely difficult for people with physical or sensory disabilities to navigate. @2017 Daniel Soekov for Human Rights Watch

Lack of shower chairs, designed to assist people with physical disabilities, also means that people have to wait hours to use one, must use their own wheelchair, or in some cases go without showers.

One of the other prisoners with a physical disability told Human Rights Watch:

I have to wear a nappy every day. I don't feel like a man; I feel like my dignity is taken away. I can't use the shower without a carer. Last Saturday, I needed a shower and it lead to an argument with the officer because he refused [to help me]. He mocked: 'Poor me, poor me, guy in wheelchair' and downgraded me wickedly.<sup>154</sup>

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<sup>154</sup> Human Rights Watch interview with a prisoner with a physical disability (names and details withheld by Human Rights Watch).



A prisoner with an assistive chair in Wolston Correctional Centre, Queensland. If the physical infrastructure is not accessible, simple tasks, such as going to the toilet or getting into bed, become painful and humiliating for prisoners with physical or sensory disabilities.

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Heavy doors and other inaccessible physical infrastructure can be problematic for people with disabilities. A prisoner who uses a wheelchair told Human Rights Watch:

Every muster time [when staff count prisoners] I have to get up and go out and stand at my door. [It is hard] getting in and out of your room because the big doors in the unit are heavy. It's really hard to push and open it [the door].<sup>155</sup>

As a result, people with physical disabilities are often forced to seek help from fellow prisoners, which can mean handing over food or other belongings in payment or as thanks. A man with a physical disability said: “I don’t like asking people to help me out.

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<sup>155</sup> Human Rights Watch interview with an Aboriginal prisoner with a physical disability (name and details withheld by Human Rights Watch).

You feel obliged to give them something in return. I have done that [a lot] of times: drinks, biscuits, chips.”<sup>156</sup>

### *Communication Barriers*

Lack of accessibility is also evident in the dearth of adequate reasonable accommodation for people with speech or hearing impairments. Out of 14 prisons visited, only 3 had proper provision for deaf prisoners to communicate with their families over video calls. The communication barriers between deaf or mute prisoners and staff results in misunderstandings, increase prisoners feeling isolated, and undermine their ability to maintain family ties that will help them reintegrate into the community after release from prison. A deaf prisoner said:

Officers can’t understand me. I can’t speak for myself. I always have to ask a brother to help. Sometimes I have problem with officers because I am deaf. Sometimes when I ask for help, they talk cheeky.<sup>157</sup>

Human Rights Watch also identified good practices in prisons. For example, in Arthur Gorrie Correctional Centre in Queensland, prison officers and staff are taught Auslan, Australian Sign Language. Similarly, a few staff members in Brisbane Women’s Correctional Centre have taken the personal initiative to learn sign language to communicate with deaf prisoners. Corrective services in Queensland have also developed an easy-to-understand version of the prison induction booklet to make it accessible for prisoners with cognitive disabilities.

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<sup>156</sup> Ibid.

<sup>157</sup> Human Rights Watch interview with a deaf Aboriginal prisoner (name and details withheld by Human Rights Watch).



## Inadequate or Delayed Access to Medical Services

It takes weeks and weeks to be seen [by medical staff] and you're not even seen by a doctor, but a nurse. Unless a guard likes you and pushes [the medical request] through the system, you don't get seen.<sup>158</sup>

—Prison staff, Western Australia, December 2016

All prisoners face delayed or inadequate access to health care due to overcrowding. Prisoners with disabilities, however, face particular barriers accessing specialized services due to lack of proper diagnoses, long waiting lists, negative staff attitudes, and lack of resources.

Prison staff often feel overwhelmed and powerless to assist people that would require more intense forms of support. Impossibly large caseloads often limit the ability of mental health professionals to provide appropriate, individually tailored services to prisoners who want them. Mental health staff often fail to discuss with prisoners the nature, purpose, risks, and benefits of different types of treatment so that the prisoner is not in a position to make informed decisions on whether or not to consent to the treatment. The effectiveness of their work is also often impeded by antagonistic relations between prisoners and prison staff.

### *Lack of Proper Disability Assessment*

Human Rights Watch found that upon entry into prison, staff do not have the time, training, or tools to effectively identify people with disabilities and their support needs. Both the Western Australia and Queensland Departments of Corrective Services said staff receive initial training on disability and mental health, but there is no specific refresher or on-going training required or provided. The departments noted that information booklets and other as needs basis resources were accessible.<sup>159</sup> However, throughout Human Rights Watch research, many prison staff said that they do not have adequate training or tools to identify prisoners with disabilities and support them. As a result, staff were unable to provide reasonable accommodation for people with disabilities, who often lacked

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<sup>158</sup> Human Rights Watch interview with prison staff (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>159</sup> Letters from the Corrective Services of Queensland and of Western Australia to Human Rights Watch, dated January 15 and January 19 respectively, available at [www.hrw.org](http://www.hrw.org).

appropriate support and can face inordinate delays accessing specialized services. This indicates that the training is inadequate and not preparing the staff effectively for the challenges of the job. This is particularly the case, when there is no specific training for those who work in maximum security units.

Human Rights Watch found that prisons in Western Australia and Queensland were not consistently assessing or collecting data on disability. A nurse working in a Western Australian prison said: “There is no disability assessment here. We don’t have time, we don’t have the facilities, and we don’t have the nursing staff. Prison is not set up for people with disabilities.”<sup>160</sup>

A psychiatric nurse in a Western Australian prison explained:

We pick up stuff [disability] here in remand but it’s not picked up further on. People with disabilities get lost in bigger prisons. If you’re not screaming or kicking, and if your disability isn’t visible, you’re under the radar. You don’t get the attention you need, you’re invisible. They keep coming back, [we have] seen them so many times over the years.<sup>161</sup>

Both the Western Australia and Queensland Departments of Corrective Services acknowledged data on prisoners with disabilities is not readily available.<sup>162</sup> In the absence of proper assessment and accurate data, prisons fail to provide appropriate and adequate services and accommodations for the particular needs of prisoners with disabilities.

### *Delays in Medical Care*

Although a person with a disability may be seen by a medical nurse or mental health nurse if they need urgent care, they experience significant delays in seeing specialists and can wait days, weeks, or even months to see a physiotherapist or a psychiatrist.

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<sup>160</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>161</sup> Human Rights Watch interview with a psychiatric nurse (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>162</sup> Letters from the Corrective Services of Queensland and of Western Australia to Human Rights Watch, dated January 15 and January 19 respectively, available at [www.hrw.org](http://www.hrw.org).





Female prisoners walking in the Brisbane Women's Correctional Centre, Queensland. The prison has capacity for about 250 prisoners but is routinely overcrowded.

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Human Rights Watch found that prisoners with psychosocial disabilities can wait weeks and sometimes months to see a psychiatrist in Western Australia and Queensland respectively. According to a 2015 report by J.R. Paget, the Inspector of Custodial Services, in New South Wales, the average waiting time to see a primary health nurse was 28 days across correctional centers and over a month to see a doctor.<sup>163</sup> However, the average waiting time to see a psychiatric nurse was 27 days and 42 days to see a psychiatrist. For a bed in a forensic hospital, a prisoner in New South Wales can wait up to 99 days on average.<sup>164</sup>

A prison officer in Western Australia told Human Rights Watch:

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<sup>163</sup> Inspector of Custodial Services, "Full House: The growth of the inmate population in NSW," April 2015, <http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf> (accessed December 10, 2017), p. 53.

<sup>164</sup> Ibid.

We desperately need a mental health unit and a proper level of care. Some of these people should not be here. They need proper care. They [are not going to] get help in jail. We have got 6,000 prisoners in the state. They're [going to] slip through the cracks easy, real easy.<sup>165</sup>

Human Rights Watch found in its research in most prisons that only urgent needs and “medical emergencies” are addressed by medical and prison staff. A woman with a psychosocial disability told Human Rights Watch:

When lights are turned down, I am not allowed to press the button for Panadol because it is not ‘a medical emergency.’ To them, a medical emergency is a matter of life or death.<sup>166</sup>

“Don’t just lock us up, throw away the key, and let us rot,” a prisoner with cognitive disability told Human Rights Watch. We need more counseling services. They need to ask prisoners what they want, not listen to what the guards say. The system doesn’t work.”<sup>167</sup>

### *Lack of Adequate Resources*

Correctional mental health services are often inadequately staffed and resourced. In Western Australia, fewer than three full-time psychiatrists rotate between the 17 adult prisons. In a September 2017 report, the chief psychiatrist of Western Australia expressed concern that prisoners “do not get equivalent mental health care as the rest of the community.”<sup>168</sup> In Queensland, the situation is comparatively better as the health department provides services in the community as well as in prisons thereby ensuring the same quality of care as in the community and continuity of care once prisoners are released.

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<sup>165</sup> Human Rights Watch interview with a prison officer (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>166</sup> Human Rights Watch interview with a prisoner with a psychosocial disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>167</sup> Human Rights Watch interview with a prisoner with a cognitive disability (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>168</sup> Chief Psychiatrist of Western Australia, “‘Ensuring Safe and High Quality Mental Health Care:’ Annual Report of the Chief Psychiatrist of Western Australia, 01 July 2016 – 30 June 2017,” September 2017, <https://www.chiefpsychiatrist.wa.gov.au/wp-content/uploads/2016/11/Chief-Psychiatrist-of-Western-Australia-Annual-Report-2016-2017-1.pdf> (accessed January 10, 2018), p. 5.

Human Rights Watch research found, however, that even with well-intentioned staff, the quality of health services suffers when it is delivered by corrections staff. Health staff across both states said the priority for corrective services is the safety of the prisoner, other prisoners, and the staff, which may override concerns over what is in the best interest of the prisoner from a health perspective.

People with disabilities may also be refused treatment because of the financial burden on prison administration. One man with a physical disability told Human Rights Watch:

The physiotherapist said, ‘There is nothing I can do for you. This is a budget issue. I can’t keep sending people to the hospital; the ambulance costs A\$1,000 [US\$785].’<sup>169</sup>

Staff also face challenges supporting prisoners who do not approach them for help. A psychiatrist working in prisons told Human Rights Watch:

No one can force treatment on him [a man with a psychosocial disability]. [Medical staff] would be able to follow up, but [he would be] further stigmatized by going to ask for treatment. If the prison says, ‘He is a schizo[phrenic],’ he would be marginalized, victimized.<sup>170</sup>

### **Lack of Beds at Appropriate Mental Health Facilities**

While the number of prisoners is constantly increasing, the number of beds in specialized facilities remains unchanged.<sup>171</sup> In Western Australia, there is just one 37-bed forensic facility for more than 6,500 prisoners across the state.

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<sup>169</sup> Human Rights Watch interview with a prisoner with a physical disability (name and details withheld by Human Rights Watch).

<sup>170</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch).

<sup>171</sup> Australian Bureau of Statistics, “4512.0 - Corrective Services, Australia, December quarter 2016,” March 16, 2017, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Main+Features1December%20quarter%202016> (accessed May 3, 2017).

Prison staff told Human Rights Watch that they find it difficult to manage people who require more intense forms of medical support as most prisons are not equipped for it. “They need more than we can give,” a prison medical staff told Human Rights Watch.<sup>172</sup>

This is especially true for mental health professionals, who are not available around the clock. Staff often encounter situations where they believe a prisoner needs to be moved to a specialized facility, but struggle to find an available bed. Even when a bed is free, the prisoner with a psychosocial disability may only be admitted for a few days and could be sent back to prison before clinically indicated because the waiting lists are long and a prisoner on a court order or in a more critical state will be prioritized.<sup>173</sup>

## Inadequate Training and Negative Staff Attitudes

Not all officers deal well with those who are different. A lot of times, they are pretty judgmental.

—Psychiatric nurse, Western Australia, December 2016

### *Punitive Responses to Disability*

Despite working in challenging conditions, Human Rights Watch found that some prison staff members responded professionally and with compassion and sensitivity to prisoners with disabilities.

However, Human Rights Watch also documented negative attitudes and some abusive behavior among some prison staff members toward people with disabilities.

Inadequate staff training and lack of data on prisoners with disabilities contribute to inappropriate conduct by staff. In a prison environment that is punitive and fails to accommodate a person’s disability, prisoners with disabilities often struggle to cope and their resulting behavior is misunderstood by staff. Prison staff acknowledge that people with disabilities can be overrepresented in detention units and that they are not

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<sup>172</sup> Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>173</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch). Human Rights Watch interview with a nurse (name and details withheld by Human Rights Watch), Western Australia, December 2016.

adequately trained on disability and mental health to distinguish between a conduct that stems from the disability or a mental health crisis and one of defiance.

Instead of providing psychosocial support and accommodations for a person's disability, prison staff can reprimand or punish the prisoner for behavior that is perceived as "disruptive," "disobedient," or "acting up." Human Rights Watch documented cases of people being sent to a punishment unit after experiencing anxiety or a crisis that medical staff did not manage on time.

A psychiatrist in Western Australia told Human Rights Watch how stigma and attitudes of custodial staff and others can play a major role in denial of services:

Dismissal of physical symptoms is a problem. They need to fight harder to get investigated. Custodial staff think they are making up stories. They may not believe them. They think they are imagining it.<sup>174</sup>

A psychiatrist who has worked for multiple years in prison told Human Rights Watch:

Custodial staff have little to no training in dealing with people with disabilities.... They are treated in a punitive manner for help-seeking behavior. For example, a prisoner with an intellectual disability will bang on the door because he is distressed or in pain and is seeking help. But it will be seen as bad behavior and they will be punished.<sup>175</sup>

Another psychiatrist working in prisons said:

I haven't seen anyone with an intellectual disability who hasn't gotten worse in prison. They are often punished [by staff] when struggling to communicate or seeking help. The staff don't get that people with

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<sup>174</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch), Western Australia, December 2016.

<sup>175</sup> Human Rights Watch interview with a psychiatrist (name and details withheld by Human Rights Watch).

intellectual disabilities don't understand what's happening. Staff take things personally and then act out in anger against the prisoner.<sup>176</sup>

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<sup>176</sup> Ibid.

## IV. Legal Framework

Australia has obligations under both national and international law to respect the rights of people with disabilities. In practice, successive governments have done little to ensure meaningful enforcement within the prison and corrections context.

### Key International Obligations

Australia is a party to all major international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR),<sup>177</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>178</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>179</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>180</sup> International Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>181</sup> and the Convention on the Rights of the Child (CRC).<sup>182</sup> In 2008 Australia ratified the Convention on the Rights of Persons with Disabilities (CRPD).<sup>183</sup> Australia acceded to the Optional

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<sup>177</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Australia on November 13, 1980.

<sup>178</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Australia on March 10, 1976.

<sup>179</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Australia on September 7, 1989.

<sup>180</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, ratified by Australia on August 27, 1983.

<sup>181</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by Australia on January 16, 1991.

<sup>182</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Australia on January 16, 1991.

<sup>183</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, annex I, U.N. GAOR, 61st Sess., (No. 49) at 65, U.N. Doc A/61/49 (2006), entered into force May 3, 2008, ratified by Australia on August 16, 2008.

Protocol to the Convention on the Rights of Persons with Disabilities in 2009.<sup>184</sup> Australia has also formally ‘endorsed’ the Declaration on the Rights of Indigenous Persons (DRIP).<sup>185</sup>

The CRPD states that “the provisions of the present Convention shall extend to all parts of federal states without any limitations and exceptions.”<sup>186</sup> This is significant because, under the Australian Constitution, competence to create and enforce law is shared by the Australian federal legislature, courts, and government, and the legislatures, courts, and governments of Australian states and territories.<sup>187</sup>

The CRPD makes explicit that the human rights enumerated in other major human rights documents apply with equal force and in particularly important ways to individuals with disabilities. The treaty shifts the paradigm from old stereotypes that a person’s impairment was the root cause of the “problem,” and focuses instead on the “disabling” barriers erected by society and the state’s responsibility to remove them and to meet the needs of persons with disabilities.

The CRPD’s guiding principles include inherent dignity, individual autonomy including the freedom to make one’s own choices, independence, full and effective participation, inclusion, non-discrimination, respect and acceptance, equality of opportunity and accessibility for persons with disabilities.

## Right to Equality and Non-Discrimination

The core international human rights treaties prohibit discrimination and require the parties to these conventions to take measures to eradicate discrimination against individuals, including persons with disabilities.<sup>188</sup> Under the ICCPR, governments have explicit

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<sup>184</sup> Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted December 13, 2006, G.A. Res. 61/106, Annex II, U.N. GAOR, 61st Sess., Supp. No. 49, at 80, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, acceded to by Australia on September 20, 2009.

<sup>185</sup> United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/HRC/1/L.10 at 58 (2006). Australia was one of four States to vote against the document’s adoption. The Labor ‘Rudd Government’ formally endorsed the document on April 3, 2009. However, this endorsement does not render the declaration legally binding in Australia.

<sup>186</sup> *Ibid.*, art. 4(5).

<sup>187</sup> Clause 9, *Commonwealth of Australia Constitution Act 1900* (UK).

<sup>188</sup> ICESCR, art. 2 (1); ICCPR, art. 2(1); CEDAW, art. 5; CRC, art. 2 (1). Neither covenant nor CEDAW explicitly refers to disability as a prohibited ground of discrimination, however the prohibition of discrimination in relation to “or other status” is deemed



obligations with respect to the rights to life, mental and physical integrity, and to not be subjected to torture or cruel, inhuman or degrading treatment.

The CRPD states that “all persons are equal before and under the law and are entitled without discrimination to the equal protection and equal benefit of the law.”<sup>189</sup> The CRPD obligates governments to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination and to take all appropriate steps to ensure that reasonable accommodation is provided.<sup>190</sup> This includes where persons with disabilities have been deprived of their liberty in a prison or other legally mandated detention facility.<sup>191</sup>

The CRPD Committee, which monitors implementation of the treaty, explained: “The committee is of the view that persons with disabilities who are sentenced to imprisonment for committing a crime should be entitled to reasonable accommodation in order not to aggravate incarceration conditions based on disability.”<sup>192</sup>

This infers “an obligation to make appropriate modifications in the procedures and physical facilities of detention centres ... to ensure that persons with disabilities enjoy the same rights and fundamental freedoms as others, when such adjustments do not impose a disproportionate or undue burden. The denial or lack of reasonable accommodations for persons with disabilities may create detention and living conditions that amount to ill-treatment and torture.”<sup>193</sup>

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to include discrimination on the grounds of disability. See for example UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22.

<sup>189</sup> CRPD, art. 5.

<sup>190</sup> Ibid.

<sup>191</sup> CRPD, art. 14(2): “States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.”

<sup>192</sup> OHCHR, “Statement on article 14 of the Convention on the Rights of Persons with Disabilities,” September 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E#sthash.LaofXcOB.dpuf> (accessed April 12, 2017).

<sup>193</sup> United Nations General Assembly, “Torture and other cruel, inhuman or degrading treatment or punishment, Note by the Secretary-General,” A/63/175, July 28, 2008, <http://www.refworld.org/docid/48db99e82.html> (accessed February 17, 2015), p.12.

As elaborated by the United Nations special rapporteur on torture, the CRPD affirms the right of persons with disabilities not to be subjected to torture or other cruel, inhuman or degrading treatment by corrections agencies.<sup>194</sup> If pain is inflicted unnecessarily or punitively on prisoners for conduct that reflects mental disability or, even more egregiously, in situations in which the prisoner cannot understand or comply with staff orders because of mental, developmental, or cognitive disability, it could constitute a violation of the CRPD and of universal prohibitions on ill-treatment contained in the ICCPR, CAT, and under international customary law.

The CERD requires states to prohibit and eliminate racial discrimination and to guarantee equality before the law. In 2010, the Committee on the Elimination of Racial Discrimination expressed concern at “the disproportionate incarceration rates and the persisting problems leading to deaths in custody of a considerable number of Indigenous Australians over the years.” It voiced particular concern about the growing imprisonment rates of Indigenous women, and the “substandard conditions in many prisons.”<sup>195</sup>

Articles 2, 7, and 22 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) ensure equal rights and protections for Aboriginal and Torres Strait Islander peoples.

## **Rights of Women with Disabilities**

Under article 6, the CRPD obligates Australia to take due cognizance of the multiple discrimination that women and girls with disabilities endure and to take the required measures to ensure the “full development, advancement and empowerment of women,” to guarantee them all human rights and fundamental freedoms.<sup>196</sup>

The CEDAW Committee, which monitors implementation of the CEDAW, calls on governments to introduce special measures to ensure equal access to health services and

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<sup>194</sup> Persons with disabilities are entitled to freedom from torture or cruel, inhuman, or degrading treatment or punishment. Officials must take effective measures to “prevent persons with disabilities, on an equal basis with others” from being subjected to such treatment or punishment. CRPD, art. 15(2).

<sup>195</sup> CERD, “Consideration of reports submitted by States parties under article 9 of the convention: Concluding observations of the Committee on the Elimination of Racial Discrimination,” August 27, 2010, [www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-AUS-CO-15\\_17.doc](http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-AUS-CO-15_17.doc) (accessed May 10, 2017), p. 5.

<sup>196</sup> CRPD, art 6.

social security for women with disabilities.<sup>197</sup> The committee also addresses the issue of gender-based violence and condemns it as “a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”<sup>198</sup> The committee has expressed its concern for “the situation of disabled women, who suffer from a double discrimination linked to their special ...conditions.”<sup>199</sup>

The CRPD also requires governments to effectively monitor all facilities and programs designed to serve persons with disabilities via independent authorities. States should also promote the physical, cognitive, and psychological recovery, rehabilitation, and social reintegration of persons with disabilities who become victims of any form of exploitation, violence, or abuse.<sup>200</sup> These rights are also recognized in the ICCPR, CRC, and CEDAW.

## Right to an Accessible Environment

Under article 9 of the CRPD, Australia has the obligation to ensure prisons are accessible to all people with disabilities. According to the CRPD Committee, the “lack of accessibility and reasonable accommodation places persons with disabilities in sub-standard conditions of detention,” in contravention of article 17 of the Convention.<sup>201</sup> The committee has further stated that states parties must ensure that “as a consequence of a lack of accessibility or reasonable accommodation, the conditions of detention in which persons with disabilities are held do not become more onerous or cause greater physical and psychological suffering of an extent that would constitute cruel, inhuman or degrading treatment or that would undermine their physical and mental integrity.”<sup>202</sup>

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<sup>197</sup> CEDAW General Recommendation No. 18 (tenth session, 1991), General recommendations made by the Committee on the Elimination of Discrimination against Women, Division for the Advancement of Women, UN Department of Economic and Social Affairs, <http://www.un.org/womenwatch/daw/ce>

<sup>198</sup> CEDAW General Recommendation No. 19 (11th session, 1992), General recommendations made by the Committee on the Elimination of Discrimination against Women, Division for the Advancement of Women, UN Department of Economic and Social Affairs, <http://www.un.org/womenwatch/daw/ce>

<sup>199</sup> Ibid.

<sup>200</sup> Ibid.

<sup>201</sup> CRPD “Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities,” September 2015, [www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc](http://www.ohchr.org/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc) (accessed February 22, 2017), p. 5.

<sup>202</sup> CRPD, “Communication No. 8/2012: Views adopted by the Committee at its eleventh session (31 March–11 April 2014),” CRPD/C/11/D/8/2012, June 18, 2014, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/11/D/8/2012&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/11/D/8/2012&Lang=en) (accessed March 17, 2017), p. 17.

## Right to Freedom from Exploitation, Violence and Abuse

Protection against all forms of exploitation, violence, and abuse including their gender-based aspects is enshrined in article 16 of the CRPD, requiring States Parties to take all the appropriate legislative, administrative, social, educational, and other measures to this effect. These measures should include “the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse.”<sup>203</sup>

The CRPD also requires governments to effectively monitor all facilities and programs designed to serve persons with disabilities through independent authorities. States should promote the physical, cognitive, and psychological recovery, rehabilitation, and social reintegration of persons with disabilities who become victims of exploitation, violence, or abuse.<sup>204</sup> These rights are also recognized in the ICCPR, CRC, and CEDAW.

## Right to Health

The highest attainable standard of physical and mental health is a fundamental human right enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights, ICESCR, CRC, CEDAW, and CRPD.

The ICESCR specifies that everyone has a right “to the enjoyment of the highest attainable standard of physical and mental health.”<sup>205</sup> According to the UN Committee on Economic, Social and Cultural Rights, the international expert body charged with monitoring compliance with the ICESCR, access to health facilities, goods, and services should be non-discriminatory, especially for “the most vulnerable or marginalized sections of the population,” including individuals with disabilities.<sup>206</sup>

The committee further stated that it is the government’s responsibility to ensure that health services are available, accessible, acceptable, and of good quality.<sup>207</sup> Acceptability

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<sup>203</sup> CRPD, art. 16.

<sup>204</sup> Ibid.

<sup>205</sup> ICESCR, art. 12.

<sup>206</sup> UN Committee on Economic, Social and Cultural Rights, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” General Comment No. 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4, (August 11, 2000), <http://www.refworld.org/docid/4538838do.html> (accessed May 20, 2017), paras. 12 and 18.

<sup>207</sup> Ibid., para 12.

refers to the need to adhere to ethical standards, including the principle of confidentiality and informed consent.<sup>208</sup>

Under article 25 of the CRPD, Australia has an obligation to take all appropriate measures to ensure access for people with disabilities to health services, including rehabilitation, without discrimination.<sup>209</sup> The CRPD Committee has affirmed that states parties “have a special responsibility to uphold human rights when prison authorities exercise significant control or power over persons with disabilities who have been deprived of their liberty by a court of law.”<sup>210</sup>

Under the ICESCR, governments are to progressively realize the right to health to the maximum of their available resources.<sup>211</sup> As a party to the ICESCR, Australia has a duty to provide prisoners with the highest attainable standard of physical and mental health.<sup>212</sup> The UN Committee on Economic, Social and Cultural Rights has stated that “[s]tates have the obligation to respect the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, (...) to preventive, curative and palliative health services; abstain from enforcing discriminatory practices as a State policy; and abstaining from imposing discriminatory practices relating to women’s health status and needs.”<sup>213</sup>

The UN Standard Minimum Rules for the Treatment of Prisoners, while not binding, provide guidelines to governments on how to treat prisoners in accordance with international norms and principles. “The provision of health care for prisoners is a state responsibility. Prisoners should enjoy the same standards of health care that are available in the

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<sup>208</sup> Ibid.

<sup>209</sup> CRPD, art 25.

<sup>210</sup> CRPD, “Communication No. 8/2012: Views adopted by the Committee at its eleventh session (31 March–11 April 2014),” June 18, 2014, p. 16.

<sup>211</sup> Ibid., art. 2(1).

<sup>212</sup> ICESR, art. 12.

<sup>213</sup> CESCR, “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights,” August 11, 2000, para. 34.

community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.”<sup>214</sup>

## Right to Liberty and Security of the Person

Article 14 of the CPRD introduces strong safeguards against arbitrary detention and deprivation of liberty for persons with disabilities, providing them fuller protection than the provisions of article 9 of the ICCPR. Article 14 not only prohibits arbitrary detention but also categorically declares “the existence of a disability shall in no case justify a deprivation of liberty.”<sup>215</sup> In 2013, the CRPD Committee expressed concern about the overrepresentation of women, children, and Aboriginal and Torres Strait Islander people with disabilities in Australian prisons.<sup>216</sup>

When persons with disabilities are lawfully detained, the ICCPR provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>217</sup> Corrections officials must treat all prisoners with humanity and respect for their inherent dignity.<sup>218</sup>

<sup>214</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), A/RES/70/175, January 8, 2016, <http://16889-presscdn-o-48.pagely.netdna-cdn.com/wp-content/uploads/1957/06/ENG.pdf> (accessed August 1, 2017), Rule 24.1.

<sup>215</sup> OHCHR, “Statement on article 14 of the Convention on the Rights of Persons with Disabilities,” September 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15183&LangID=E#sthash.LaofXcOB.dpuf> (accessed April 12, 2017).

<sup>216</sup> CRPD, “Concluding observations on the initial report of Australia, adopted by the Committee at its tenth session (2-13 September 2013),” CRPD/C/AUS/CO/1, October 21, 2013, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsnzSGolKOaUX8SsM2PfxU7tjZ6g%2FxlBVYsYEv6iDyTXyNk%2BsAB%2FHgrVpAKHcEYTB%2B1t%2FH3HX1F%2F%2Bo%2Bk3O4KhxfhPoTQZ3LeS75n8PHidYHE3> (accessed February 2, 2017).

<sup>217</sup> ICCPR, art. 10.

<sup>218</sup> International Covenant on Civil and Political Rights (ICCPR) Article 10 (states that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Paragraph 3 of article 10 continues, “[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.” Ibid. The obligation to respect the dignity of prisoners is also contained in UN documents developed to provide more detailed guidance to officials on how to apply treaty provisions with regard to prisoners and other persons subject to the authority of law enforcement officials. See, e.g., Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (no. 49) at 298, U.N. Doc. A/43/49 (1988), prin. 1 (“All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person”); Basic Principles for the Treatment of Prisoners, adopted December 14, 1990, G.A. Res. 45/111, annex, 45 U.N. GAOR Supp. (No. 49A) at 200, U.N. Doc. A/45/49 (1990), prin. 1 (“All prisoners shall be treated with the respect due to their inherent dignity and value as human beings”); and Code of Conduct for Law Enforcement Officials, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979) (Code of Conduct for Law Enforcement Officials), art. 2 (“[i]n the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons”).

## Key Domestic Obligations

There is no legislation in Australia at Commonwealth, state, or territory level that has the protection or promotion of the rights of prisoners with disabilities as its main focus.

The Commonwealth Disability Discrimination Act 1992, aims to eliminate “where possible, discrimination against persons on the grounds of disability...,” and to ensure that persons with a disability are afforded the same rights to equality before the law, and to promote acceptance that disabled person has the same fundamental rights as the rest of the community. This law applies to all people in Australia, including those in correctional facilities.

### *Laws on the Rights of Persons with Disabilities*

The content of disability related laws varies significantly between different Australian States and Territory jurisdictions. Some have legislation which sets out specific and clearly enforceable requirements, processes and structures to protect the rights of people with disabilities. The legislation in other jurisdictions is less clear. Instead, these jurisdictions set out high level principles which contain little guidance or structure ensuring that the rights of people with disabilities are protected and that essential services are provided.

### *Corrective Services Legislation*

#### **Queensland**

The provision of corrective services in Queensland is governed by the Corrective Services Act 2006 and the Corrective Services Regulation 2006. The legislation contains some provisions that provide for the needs of prisoners with a disability. However, they largely provide for overarching principles rather than specific detailed requirements.

The act recognizes the need to respect the specific needs of offenders by taking into account an offender’s age, sex, or cultural background and disability. When establishing a new prison, the chief executive must ensure appropriate provision is made for prisoners experiencing psychological crises, and for the accommodation and access requirements of prisoners with disabilities. There is however no such requirement for existing prisons.

The act and regulations state that an Aboriginal or Torres Strait Islander prisoner should be accommodated in a corrective services facility as close as practical to family, unless the chief executive is satisfied the prisoner does not want to be accommodated near family. The regulations note that because of an Aboriginal or Torres Strait Islander prisoner's cultural background, the concept of family may be wider than is ordinarily understood. However, a maximum security prisoner would have no right to be accommodated in the corrective services facility closest to family if the facility lacked a maximum security unit.

### **Western Australia**

The Prisons Act 1981 does not refer to services with regard to a prisoner's specific physical or mental health needs. It contains only one provision specifically for prisoners of Aboriginal or Torres Strait Islander heritage. The prime focus is on security, which does not appear to be balanced against the rights of the individual. The legislation makes no specific reference to the physical or mental health of prisoners or making provisions for those with disabilities.

Solitary confinement provisions provide that every cell used for the separate confinement of a prisoner under this section should be "of a size, and ventilated and lit to allow a prisoner to be held there without injury to health."<sup>219</sup> Every prisoner in separate confinement should have the means of taking air and exercise for at least one hour each day. Solitary confinement is permitted for up to 30 days per order.

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<sup>219</sup> Prisons Act, 1981.



## Detailed Recommendations

### Recommendations for the Commonwealth

#### *To the Federal Government*

- Conduct a national inquiry into the use of solitary confinement of prisoners with disabilities.
- Commission an independent study on the condition of people with disabilities, particularly Aboriginal and Torres Strait Islander people with disabilities, in Australian prisons with details on the number of prisoners, disaggregated by age, gender, ethnicity, and the type of disability, as well as their support needs.

#### *To the Parliament of Australia*

- If the government fails to act, conduct a national enquiry into the use of solitary confinement of prisoners with a disability.
- Ensure domestic implementation of the Optional Protocol to the Convention against Torture (OPCAT), including the establishment of an independent National Preventive Mechanism to monitor places of detention, including prisons, forensic facilities, juvenile justice detention centers, disability justice centers and mental health facilities, in consultation with Disabled Person's Organizations (DPOs).

### Recommendations for State and Territory Governments

#### *To Ministers for Corrective Services*

- Introduce policies that ensure prisoners with disabilities cannot be held in solitary confinement.
- End the prolonged solitary confinement of any prisoner.
- Systematically screen prisoners for all types of disabilities upon entry into prison.
- Provide adequate resources to Corrective Services and prisons to adopt humane conditions of confinement, and provide reasonable accommodations and respond appropriately to the particular support needs of prisoners with disabilities. Ensure prisoners with a disability have adequate access to support and mental health services.

- In consultation with organizations of Aboriginal and Torres Strait Islander people and people with disabilities, develop a comprehensive range of culturally appropriate resources and training materials for Aboriginal and Torres Strait Islander peoples with disabilities that can be used by prison staff, service providers, police, and the judiciary to communicate more effectively with Aboriginal and Torres Strait Islander peoples with disabilities in prison.
- Provide resources to organizations led by Aboriginal and Torres Strait Islander people to provide specialized and culturally appropriate support to Aboriginal and Torres Strait Islander peoples with disabilities in prison.
- Work towards reducing the ratio between prison staff and prisoners for whom they are responsible.
- Ensure all renovations or new prison infrastructure complies with minimal international accessibility and universal design standards and is fully accessible to people with disabilities. Ensure prisoners' mental health is taken into account when new prisons are built, and that the architecture and organization of the prison allows for regular human interactions for prisoners. New prisons should also be in locations that are easily accessible to prisoners' visitors and medical professionals.

### *To Commissioners of Corrective Services*

- Introduce policies that ensure prisoners with disabilities cannot be held in solitary confinement. When such prisoners must be segregated from the general population as a disciplinary sanction or to protect institutional safety and security, they should receive at least 20 hours a week of out-of-cell time for structured and unstructured activities, including mental health programs.
- End the prolonged solitary confinement of any prisoner.
- Ensure appropriate staff are hired, trained, and retained:
  - Screen correctional officers before hiring to ensure they have the character and personality to work in a professional, respectful, gender, and culturally responsive manner with all prisoners, including those who may appear “disruptive” or “difficult” as a result of psychosocial or cognitive disabilities.
  - Ensure that all prison officers receive regular and effective training on how to interact with people with a range of disabilities, in particular on engaging with and responding to the needs of people with psychosocial or cognitive disabilities. Custody staff should receive training not only

during their initial formation but on an ongoing basis. Custody staff assigned to units designated for or with high proportions of prisoners with psychosocial or cognitive disabilities should receive additional mental health and disability training.

- Ensure performance reviews include consideration of whether staff interact with prisoners, including prisoners with disabilities, in a respectful manner, comply with prison policies; and provide truthful, complete responses during reviews and investigations. Hold individuals who violate prison policies accountable through appropriate sanctions.
- Give custody staff positive incentives, including recognition and merit awards, for avoiding unnecessary or excessive force or seclusion.
- Prohibit practices that can retraumatize individuals with lived experience of violence, including discontinuing routine strip searches (which include a “squat and cough” component).

### *To Ministers of Health*

- End solitary confinement for people with disabilities in prisons.
- Improve mental health services in prisons by ensuring there are sufficient numbers of qualified mental health professionals, treatment based on free and informed consent, adequate resources, and levels of care that meet standards of community health care.
- Train health staff working in prisons on how to engage with people with disabilities to provide support services suited to their needs.
- Consult with prison and medical staff working in prisons on how to improve their working conditions. Provide the necessary financial resources to hire and retain necessary staff.

### *To Inspectors of Custodial Services*

- Include a detailed section on the situation of prisoners with disabilities in all reports on prison visits that reflects the experiences of male and female prisoners with a range of disabilities, and that includes specific section on the situation of male and female Aboriginal and Torres Strait Islander prisoners with disabilities. In particular, the independent inspector should investigate neglect and abuse experienced by

prisoners with disabilities, including Aboriginal and Torres Strait Islander prisoners with disabilities.

- Conduct a study on the mental health of prisoners and their access to mental health care, and make specific recommendations to ensure respect for their right to access the highest attainable standard of health. Pay specific attention to Aboriginal and Torres Strait Islander prisoners and their capacity to access mental health on an equal basis compared to non-Aboriginal prisoners.

### *To State Parliaments*

- Ensure the Office of the Inspector of Custodial Services is independent, reports directly to parliament, and has adequate resources to carry out in-depth and regular monitoring and investigations of all places of detention in their state or territory.
- Amend corrective services legislation and regulations to ensure that people with disabilities receive support and accommodations during internal disciplinary hearings.

## Additional Recommendations

To prevent the overimprisonment of people with disabilities, particularly Aboriginal and Torres Strait Islander people, and facilitate their reintegration into the community, the federal, state, and territory governments should:

- Improve access to justice for people with disabilities by adopting the recommendations contained in reports by the Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Australian Human Rights Commission, *Equal Before the Law* and Productivity Commission, *Access to Justice Arrangements*, and the Senate Enquiry into the *Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia*, with regard to:
  - 1) Better intervention and support services;
  - 2) Creating an assessment protocol that assists police, courts, and correctional institutions in identifying people with disabilities;
  - 3) Transparent, effective, and culturally appropriate complaints handling procedures; and
  - 4) Training prison staff, police, and lawyers on how to engage with and support the needs of people with a range of disabilities.
- Pass a human rights act that enshrines rights for people with disabilities, in line with the CRPD.
- Allocate funding for programs and strategies to ensure and improve living conditions and appropriate support services (including rehabilitation) for people with disabilities at every stage of the criminal justice system.
- Review sentencing guidelines for low-level offenses, to minimize resort to custodial sentencing in favor of diversion schemes and community-based service orders. Expand access to such measures and ensure Aboriginal and Torres Strait Islander people have equal access to them.
- Increase the availability of community mental health resources, community-based disability supports, and access to criminal justice diversion programs with a view to reducing the number of people with psychosocial or cognitive disabilities who end up in prisons.
- As recommended by Disabled Persons' Organizations like DPO Australia, develop and implement a range of gender and culture-specific diversionary programs and

mechanisms that are integrated with individualized disability and social support programs to prevent people with disabilities coming into contact with the criminal justice system.

- Support culturally appropriate services, including interpreters, and diversion and rehabilitation programs tailored to the needs of Aboriginal and Torres Strait Islander people with disabilities.
- Conduct a study of the conditions in which prisoners are detained in forensic or secure hospitals or forensic disability units, and make specific recommendations to improve conditions and ensure they comply with patients' right to health (including on the basis of free and informed consent) and right to be free from inhuman or degrading treatment.
- Ensure that health services in the community provide for the needs of former prisoners with disabilities after their release, including release on suspended sentences. Ensure these services do not discriminate against people based on their criminal record, provide services on the basis of free and informed consent and are accessible.
- Develop a National Disability Justice Strategy, and State and Territory Governments should develop equivalent State and Territory Disability Justice Strategies. These strategies should respond to the human rights objectives that underpin the National Disability Strategy.
- Conduct an inquiry into the eligibility of and access to the National Disability Insurance Scheme (NDIS) for people with disabilities held in prisons and the criminal justice system more broadly, to ensure maximum coordinated support for prisoners with disabilities.
- Ensure the NDIS reaches marginalized groups, such as people with disabilities, particularly those with psychosocial or cognitive disabilities, at risk of having contact with the criminal justice system or experiencing repeated involuntary treatment orders. Conduct outreach to ensure the NDIS serves this cohort, and that their support plans recognize their heightened risk of deprivation of liberty. The NDIS and state and territory justice departments should work together to develop a strategy for correctional facilities to identify people with disabilities while they are in detention so that they can become NDIS participants (where eligible) and develop support plans before being released back to the community. If a person's NDIS plan is suspended while in prison, hospital, or psychiatric facility, it should

be reviewed and resumed immediately upon their release so that they receive the supports to which they are entitled.

- In line with the Convention on the Rights of Persons with Disabilities (CRPD), recognize full legal capacity of all people with disabilities, including people with psychosocial or cognitive disabilities, by repealing or amending Commonwealth, state, and territory laws that are discriminatory such as legislation on guardianship and indefinite mental health detention.

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Prisoners with disabilities are overrepresented in prisons across Australia; it is estimated that over half the prison population has a physical, sensory, psychosocial (mental health), or cognitive disability. Within this group, Aboriginal and Torres Strait Islander people with disabilities are even more likely to end up behind bars.

*“I Needed Help, Instead I Was Punished”* is based on visits to 14 prisons across Western Australia and Queensland and 275 interviews with prisoners with disabilities, as well as prison staff, health and mental health professionals, activists, lawyers, and government officials. The report examines how prisoners with disabilities, including Aboriginal and Torres Strait Islander prisoners, routinely experience physical, verbal, and sexual abuse from fellow prisoners or staff, and endure difficult conditions of confinement. Inadequate staff sensitivity and training contributes to frequent punishment of prisoners with disabilities for behaviour that is linked to a lack of support and accommodation of their disability not disobedience. Prisoners with disabilities are disproportionately represented in detention units and solitary confinement, where lack of social contact and meaningful mental health services can be particularly damaging for them.

Human Rights Watch calls on the federal government to end the use of solitary confinement for prisoners with disabilities. State and Territory governments should ensure regular and independent monitoring of all prisons and ensure that all prison staff receive effective, regular, gender and culturally sensitive training on how to interact with people with disabilities. It should further guarantee that prisons accommodate the needs of prisoners with disabilities and provide access to adequate support services.

*(above) A view of the Lotus Glen Correctional Centre. Located in northern Queensland, Lotus Glen Correctional Centre is a male prison with a capacity to detain roughly 730 prisoners, over half of whom are Aboriginal and Torres Strait Islander prisoners*

*(front cover) A prisoner lies in his bed in a solitary confinement cell in the safety unit at Lotus Glen Correctional Centre, northern Queensland. Prisoners with a psychosocial or cognitive disability can spend weeks or months locked in solitary confinement for 22 hours or more a day.*

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