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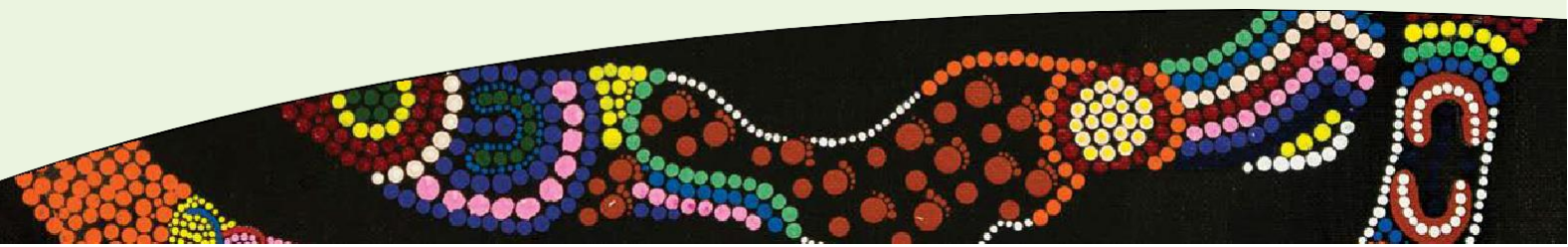
CHILDREN AND YOUNG PEOPLE DETENTION EXPECTATIONS

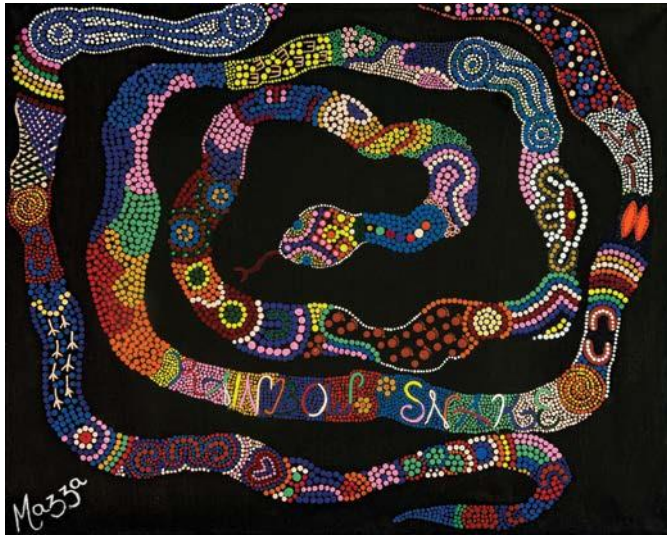
by the

**ACT INSPECTOR OF
CUSTODIAL SERVICES**

Isolation

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Rainbow Serpent (above and cover detail)
Marilyn Kelly-Parkinson of the Yuin Tribe (2018)

'There are no bystanders – the standard you walk past is the standard you accept'

– Lieutenant General David Morrison, AO
Chief of Army (2014)

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We acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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INTRODUCTION

What is isolation?

In the ACT, segregation, isolation, separation, seclusion, solitary confinement, time out, reset and lack of meaningful contact are various terms that are used to describe the general practice of isolating a detained child or young person. For the purposes of these Expectations, the term isolation is used in a general sense to describe all forms of this practice.

In the ACT, under sections 11 and 12 of the *Children and Young People Act 2008*, a child is a person who is under 12 years old, and a young person is a person who is 12 years old or older, but not yet an adult.

Why develop these Expectations?

Isolation in any detention setting, particularly when it is prolonged, has the potential to cause significant harm to physical and mental health. This may be especially so for children and young people in detention. Children and young people experience isolation differently to adults, given their stage of development,ⁱ and the fact that they experience the passage of time differently to adults. Many of the children and young people in detention have histories of trauma, and isolation has the potential to retraumatise or further traumatise them.ⁱⁱ This document draws on international human rights law and other authoritative sources to provide detailed Expectations in respect of limiting the use of isolation for children and young people in detention, and safeguards that should be in place when isolation is used. It is intended that this document be used as a guide to better practices in upholding the rights of children and young people in detention. It can be used by detaining authorities, monitoring bodies and other stakeholders to guide improvements in this area.

The ACT Office of the Inspector of Custodial Services (OICS) has developed a more general document *ACT Standards for Youth Detention* that cover all aspects of conditions and treatment of children and young people in detention. The Isolation Expectations complement those Standards by providing further detail in relation to isolation as a specific area of youth detention that can be high risk.

What do these Expectations cover?

These Expectations address:

1. Necessary procedures and safeguards regarding the use of isolation (including human rights protections; legal justification for isolation; the process of isolating and ending isolation; the use of force and restraints in the process of or during isolation; notification, reviews and appeals; complaints processes; record keeping; broad protections regarding treatment and conditions; staff training; and focusing on continuous improvement);
2. Health-specific expectations (including the decision to isolate; and provision of healthcare to children and young people whilst in isolation);
3. Meaningful contact with others in places of detention and the outside world;
4. Access to education, programs and services & cultural and religious personnel whilst isolated;
5. Appropriate staff & staff responsibilities (having staff with appropriate experience and training; observations and assessments; case management & classification; reintegration; support for staff); and
6. Material conditions of isolation.

How were these Expectations prepared?

In preparing these Expectations, extensive desk-based research on isolation and solitary confinement was conducted.

With much available guidance focusing on solitary confinement (confinement for 22 hours or more a day without meaningful human contactⁱⁱⁱ) rather than isolation, this document adopts a number of solitary confinement standards and best practice recommendations to inform our Expectations in respect of any form of isolation. While we appreciate the need to have a legal definition of when isolation amounts to solitary confinement, many of the protections against harm and ill-treatment are relevant for both practices, and both may have a significant harmful impact on a child or young person. Additionally, it may not always be possible to anticipate (for both monitoring bodies and detaining authorities) when an act of isolation will ultimately progress to solitary confinement.

Given the *preventive* mandate of OICS as one of the bodies comprising the ACT National Preventive Mechanism under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*, we have adopted an expansive approach to preventing or minimising the harms of isolation of children and young people. These Expectations surpass minimum international standards.

Sources utilised include:

- ‘Hard’ and ‘soft’ international human rights instruments, such as the United Nations *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, the *Standard Minimum Rules for the Treatment of Prisoners* (**‘Mandela Rules’**), and the *Rules for the Protection of Juveniles Deprived of their Liberty* (**‘Havana Rules’**);
- Concluding Observations, Individual Communications, General Comments, and Views from relevant United Nations bodies, such as the United Nations Committee against Torture; Human Rights Committee and Committee on the Rights of the Child;
- Reports of the UN Special Rapporteur on Torture;
- International Committee of the Red Cross guidance;
- Council of Europe’s European Prison Rules, and the European Committee on Prevention of Torture’s reports;
- African Commission of Human Rights and Peoples’ Rights and Inter-American Commission on Human Rights Guidelines and Principles;
- Guidance, standards and reports of National Preventive Mechanisms in other countries, including the United Kingdom and New Zealand;
- Inspection standards of monitoring and inspecting bodies across Australia, including Western Australia and New South Wales;
- Statements and other guidance from international medical bodies such as the International Council of Prison Medical Services, World Medical Association, and World Health Organisation;
- Guidance from national bodies from other countries, such as the American Public Health Association;
- International Non-Government Organisations such as Dignity and Penal Reform International; and
- Academic articles and books.

We would like to acknowledge the feedback that we received on these standards from Dr Sharon Shalev, Barbara Causon (ACT Aboriginal and Torres Strait Islander Children and Young People Advocate), Jodie Griffiths-Cook (ACT Public Advocate and Children and Young People Commissioner).

These standards are intended to be a living document, informed by research and best practice as it continually develops. With this in mind, we welcome questions or feedback from stakeholders in the ACT, across Australia, and internationally. If you would like to provide feedback, you can email us on ics@act.gov.au.

PROHIBITION OF TORTURE AND ILL-TREATMENT

1. Solitary confinement of children and young people is prohibited.^{iv}
 - o While this prohibition applies to all children and young people, particular attention is paid to children and young people with intellectual or physical disabilities and/or mental health conditions,^v noting that inadequate healthcare provision is not a justification to subject children and young people to solitary confinement.^{vi}
 - o While solitary confinement of children and young people for any period of time is prohibited, the prohibition on prolonged^{vii} and indefinite solitary confinement^{viii} is particularly noted.
2. Any use of isolation does not amount to torture or cruel, inhuman or degrading treatment or punishment.^{ix}
3. Children and young people are treated with humanity and with respect for their inherent dignity during isolation.^x
 - o In determining appropriate treatment, the following is taken into account (this is not intended to be an exhaustive list): the sex, gender, age, state of health or other status of the child,^{xi} including Aboriginality.^{xii}

Solitary confinement: the confinement of children and young people for 22 hours or more a day, away from their peers in a separate cell or room, without meaningful human contact.^{xiii}

Prolonged solitary confinement: solitary confinement for a time period in excess of 15 consecutive days.^{xiv}

Torture: Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.^{xv}

DOMAIN 1: PROCEDURES AND SAFEGUARDS

1.1 Human rights protections

1. Children and young people's human rights are protected while they are in custody, in accordance with the *Human Rights Act 2004*. Notably that:
 - o children and young people are treated 'with humanity and with respect for their inherent dignity,'
 - o children and young people have the right to additional protections by virtue of them being a child or young person;
 - o remanded children and young people are kept separate from sentenced children and young people and adults, except in exceptional circumstances (noting the challenge in a small jurisdiction such as the ACT, where there is a risk that a child or young person may be isolated as a result of separating those who are sentenced and remanded);
 - o remanded children and young people are treated in a manner appropriate for their age, and accused children and young people are treated in a way that is appropriate for a person of the child/young person's age who has not been convicted.
2. Children and young people are treated in accordance with international human rights standards.
3. The best interests of the child are a primary consideration in all decisions concerning them; this includes considerations of well-being, health and safety.^{xvi}
4. The cultural and religious rights of children and young people are protected when in isolation, with particular attention paid to Aboriginal and/or Torres Strait Islander children and young people.
 - o This takes into account individual circumstances, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the child or young person.^{xvii} This includes Aboriginality of a child or young person.^{xviii}
 - o Particular emphasis is placed on ensuring that, Aboriginal children held off-country are not isolated.^{xix}

1.2 Legal basis of isolation

1. Segregation/isolation is only used in accordance with an authorisation by law.^{xx}
2. The decision to isolate a child or young person, or group of children and young people is non-discriminatory.^{xxi}
3. The decision to isolate a child or young person is only be permitted when necessary to prevent an imminent and serious threat of injury to the child or young people or others.^{xxii} Isolation is not used
 - o for punishment^{xxiii} or disciplinary purposes,^{xxiv}
 - o as a behaviour management tool/to obtain compliance with staff directions,^{xxv}
 - o for rehabilitative purposes,
 - o for reasons of administrative convenience (e.g. inadequate staffing^{xxvi}),
 - o to protect property or to maintain good order,^{xxvii}
 - o on the basis of legal status and/or the crime the child or young person has been accused/convicted of,^{xxviii}
 - o a standard or default response to particular episodes or practices (e.g. restraint),^{xxix}
 - o as an administrative measure to 'protect' lesbian, gay, bisexual and transgender children (protective measures should not lead to more restrictive measures than those imposed on the general population).^{xxx}

4. Children and young people at risk of self-harm are not isolated, other than in exceptional circumstances, where assessment indicates that isolation would reduce that risk.^{xxxvi}
 - o The needs of children and young people with mental health diagnoses or suspected mental health diagnoses are anticipated and plans put in place proactively, in collaboration with mental health professionals.^{xxxvii}
5. If a child or young person requests to self-isolate or be placed in 'protection', this does not automatically lead to them being placed in isolation. Options are discussed with the child or young person,^{xxxviii} and root causes are addressed.
6. Only sufficiently senior management (a competent authority) has the authority to isolate a child or young person, and only staff who have authority to make these directions make them in practice.^{xxxix}
 - o Where there is an emergency requiring a decision to be made by other staff to isolate a child or young person, this is reported to the most senior staff on duty immediately, and to senior management as soon as possible.^{xl}

1.3 Process of isolating and ending isolation

1. Any form of isolation is used in exceptional cases, as a last resort, for as short a time as possible,^{xli} with an absolute prohibition against this being for more than 15 days.
 - o The law must be reasonable, and it prescribes circumstances in which isolation can be used, who makes the decision, the relevant procedures, and the child or young person's rights (including their right to be given reasons, the right to make representations, and the rights and procedures for review and appeal).^{xlii}
 - o The regimes of the different types of isolation are also prescribed by law.^{xliii}
 - o Legislation specifies the maximum duration of isolation, and prohibits the use of isolation for children and young people who are at risk of suicide or self-harm. This is not circumvented by renewing isolation orders.^{xliiii}
 - o In determining an appropriate length of time of isolation, decision-makers consider the broader context (e.g. considering cumulative isolation where children and young people are transferred between different types of detention, considering whether there have been a number of episodes of isolation already over a period of time, the particular characteristics of children and young people and how this contributes to the impact of isolation).^{xliiii}
 - o As soon as the reason for the isolation has been addressed, the child or young person is released into the general population.^{xliiii}
2. Less restrictive strategies have been considered and/or implemented before resorting to an isolation direction.
 - o All other alternatives (such as mediation^{xliiii}) have been exhausted,^{xliiii} and this is evidenced.^{xliiii}
 - o Staff are suitably skilled and trained to anticipate crisis situations and de-escalate them without the need to resort to isolation.^{xliiii}
3. Decisions to isolate (and decisions regarding the type of isolation, with reference to the regime) are based on an individualised and proportionate risk-needs based approach.^{xliiii}
4. Individual needs of the children and young people are taken into account in making the decision regarding whether to isolate them (particularly the impact isolation will have on them).
5. The privacy of restrained children and young people/use of force on children and young people is respected/protected in public areas of the detention facility.

1.4 Use of force and restraints

1. Use of force/restraints is exceptional, and only applied as a last resort, when all other control methods (including de-escalation techniques) have been exhausted and failed.
2. Use of force/restraints are applied for no longer than is strictly necessary.
3. Use of force/restraints never involve deliberate infliction of pain and do not cause humiliation or degradation.
4. Use of force/restraints are only permissible when necessary to prevent an imminent and serious threat of injury to the child or young person or others, and only as explicitly authorised and specified by law and regulation.
5. Use of force/restraints are not used for punishment, discipline, or to facilitate compliance with an order or direction, or to force participation in an activity the children and young people does not want to engage in.
6. Planned use of physical restraints is authorised by senior management.
7. A minimum level of restraint/degree of force is used.
8. Restraint instruments are used appropriately/restraint techniques properly executed.
9. The safety of the children and young people is a prime consideration.
10. There is an explicit prohibition on the use of chemical (medical and pharmacological) restraints.

(Please note the below section on record-keeping of use of force and restraints)

1.5 Notification, reviews and appeals

1. Whenever children and young people are isolated or self-isolate for more than one hour, relevant professionals and families are notified of the segregation direction or decision to isolate, including the duration, reasons, and their rights.^{xlvii}
2. The decision to isolate is regularly (at the absolute minimum daily) reviewed by the detaining authority, so isolation can be ended as soon as it is no longer necessary.^{xlviii}
 - o This review may need to occur more frequently if the child or young person's needs or risks are particularly acute, or where they have been subjected to a number of episodes of isolation or lengthy periods of isolation (including across different types of detention, in a consecutive manner e.g. police watch house, youth detention facility, court cells).^{xlix}
3. The longer a child or young person remains in isolation, the more thorough the review is and the more resources, including resources external to the facility (if necessary and relevant), made available to attempt to (re)integrate the child or young person into the general detention community.ⁱ
4. Reviews include consultations with the affected children and young people.ⁱⁱ
5. The best interests of the children and young people are a primary consideration in any internal and external processes relating to review or appeals of isolation.ⁱⁱⁱ
6. Children and young people are able to challenge expeditiously, including via judicial/independent review, the lawfulness of decisions to restrict their freedom of movement by placing them in isolation.ⁱⁱⁱ Children and young people are entitled to require a review at any time and to obtain independent reports for such a review.^{liv}
7. Natural justice is afforded for both the initial decision to isolate and subsequent reviews of the isolation, in that:
 - o Children and young people know why they have been isolated.^{lv}
 - o Children and young people know what they need to do in order to be released from isolation. This is important not only for adherence to the principles of natural justice, but also for mitigating the adverse effects of isolation and for ensuring that the child or young person and

- detaining authorities are clear on when and under which circumstances children and young people will be released from isolation, and what they need to do to achieve this.
- Children and young people are included in the relevant processes – both the initial decision to isolate and internal and external review processes – by
 - knowing the reasons for their isolation and the facts being relied upon,
 - having the opportunity to present their views in person (or otherwise, including remotely or through an intermediary/representative) to the panel,^{lvi} and
 - being able to suggest alternative solutions.^{lvii}
 - In relevant circumstances, children and young people are entitled to have legal representation (including through legal aid) and to submit or oral written representations. Detaining authorities have clear procedures and practices to ensure children and young people receive the support they need to enjoy these rights.^{lviii} Children and young people are able to obtain independent reports for such a review.^{lix}
 - Children and young people are entitled to require a review at any time.^{lx}
 - Children and young people are given opportunities to take clear steps to address any matters (within their control) that would end their isolation.^{lxi}

1.6 Complaints

1. There is a robust, confidential and accessible internal complaints mechanism in locations where children and young people are isolated.
 - Children and young people have unlimited and unmonitored access to written complaint forms in accessible formats and the means to submit these in a confidential manner, ideally using a secure complaints box that can only be accessed by a nominated member of staff. The nominated person is not part of the treatment or custody team.^{lxii}
 - Children and young people with disability, or who may have difficulties in accessing the complaints system (e.g. children who have lower literacy skills etc), are provided with assistance to enable them to do so.^{lxiii} This may include facilitating their access to an independent party to assist them in making a complaint.

1.7 Record keeping

1. Rigorous data collection and analysis is mandatory. The following data is collected and recorded with regards to segregation, “time out” and any other form of isolation (including isolation arising from classification decisions):
 - Procedures
 - the type of segregation/isolation,
 - reasons for isolation, and all the factors that have been taken into account in decision-making,^{lxiv}
 - whether the views of the child or young person were taken into account in decision-making, and how (and whether they refused to provide input),^{lxv}
 - duration of isolation,^{lxvi}
 - efforts made to use less restrictive practices,^{lxvii}
 - staff who authorised the segregation/isolation, and their position,
 - whether the person who provided the authorisation was at the appropriate level to do so.
 - Use of force and restraints
 - staff who physically segregated the child or young person,

- any restraints or force used,^{lxviii} including reasons, type of restraint or force, and length of application,
 - any injuries sustained by the child or young person or staff in the process, and nature of the injuries,^{lxix}
 - whether the child or young person who sustained the injuries was seen by a medical practitioner following any use of force / restraint, and whether a medical report was produced,
 - whether any statements were taken from the child or young person and how the statements were used,
 - whether any criminal charges were pursued.
 - Safeguards
 - whether the child or young person's family/nominated person/Public Advocate/lawyer were notified of segregation,
 - whether the child or young person was provided notification, in a manner understandable to them, of the reasons for and conditions of isolation, plan to end isolation, and their rights (including rights to complain and seek a review),
 - whether the child or young person saw a health practitioner and psychologist as soon as possible after their isolation, ideally within 60 minutes of being isolated (and if later, the reasons for a delay should be recorded),
 - existence, nature and location of video footage and/or audio recording.
 - Daily routine while isolated
 - The child or young person's routine while they were isolated (including details of engagements with staff and other children and young people, programs and education, time out of cell and in fresh air, services made available and used (e.g. healthcare, including medication prescribed, family contact and visits),
 - observations of the child or young person while in isolation.^{lxx}
 - Mental health
 - any incidents, such as attempts at self-harm or suicidal ideation,
 - the support provided to the child or young people during and after isolation.
- 2. When a lockdown occurs, the following is recorded:
 - the reason,^{lxxi}
 - the duration,^{lxxii}
 - the number of children and young people impacted,
 - the regime during lockdown (see above),
 - the support provided to children and young people during and after the lockdown.
- 3. The following characteristics of and information relating to the child or young person are recorded:
 - Age, gender identity, sexuality, medical and mental health conditions, disabilities, race, religion, Aboriginality, immigration status, pregnancy, whether breast-feeding, whether in out-of-home care,^{lxxiii}
 - whether sentenced or remanded,
 - classification.
- 4. The following is also recorded:
 - legal basis for isolation,
 - evidence relied upon and factors taken into account,^{lxxiv}
 - internal reviews conducted (and outcomes and reasons),
 - internal reviews requested (whether conducted review, and reasons if refused to conduct),
 - external reviews and outcomes,
 - existence, nature and location of video footage and/or audio recording.

5. Before finishing their shift, management and staff to complete a full written report detailing the reasons for the decision to isolate and the precise time the measure was adopted as well as the views of the child or young person as far as these can be ascertained.^{lxxv}
6. Accurate data is recorded, aggregated and stored in a manner that is easily accessible and can be effectively analysed.
7. There is reliable and publicly available data on the extent of isolation.
 - o Isolation is publicly reported to an independent oversight mechanism.^{lxxvi}
 - o When a lockdown occurs, the duration of the lockdown and the reason it was imposed is properly recorded and reported for independent review.^{lxxvii}
8. The practice of isolating a child or young person is recorded on video.
 - o The value and benefit of camera footage for staff's own safety and integrity is highlighted in staff training, and emphasis placed on its correct and lawful use.^{lxxviii}

1.8 Broad protections regarding treatment and conditions

1. Isolated children and young people are provided information, in a language and manner understandable to them, about^{lxxix}
 - a. their rights (including complaints, and internal and external reviews/appeal processes);
 - b. the reason for, and duration of, their isolation; and
 - c. clear, specific, measurable and time-bound objectives for exiting the restrictive regime.
 - o The responsibility lies with detention staff to ensure the child or young person understands the decision to isolate them and the procedural safeguards attached to it.^{lxxx}
 - o The information is provided both orally and in writing, and provision of both should be recorded.
2. There is a robust, confidential and accessible complaints process available to children and young people while being kept in isolation (both internal and external).

1.9 Staff training

1. Staff have an understanding of the impact of isolation on children and young people, and are skilled in the use of forms of behaviour management that reduce the need for isolation.^{lxxxi}
2. Staff are trained on all relevant aspects of the appropriate use of isolation, with regular refresher courses.^{lxxxii}
 - o This training includes both theoretical and practical training, where appropriate (e.g. use of force).
 - o Training includes human rights training, training in relevant legislation/policies/procedures, cultural awareness training, disability-inclusive training, and anti-racism training.

1.10 Continuous improvement

1. Reviews are conducted to ascertain whether the use of isolation is inappropriate, and particularly, whether it is discriminatory.^{lxxxiii}
 - o Use of isolation is not used disproportionately, without an objective and reasonable justification, or against a particular child/young person or groups of children/young people.^{lxxxiv} Protected characteristics, such as age, gender, Aboriginality,^{lxxxv} and disability are considered.
 - o Detaining authorities regularly collect and analyse data related to the use of isolation to monitor the number of children and young people kept in such conditions, measure the length

of time and reasons for the use of isolation. The purpose of this is to identify root causes and to develop strategies to reduce the use of isolation.^{lxxxvi}

2. User experience is utilised in evaluation and continuous improvement.^{lxxxvii}
3. Data collected and analysed in ACT youth detention is shared with central Commonwealth authorities to obtain a national overview of the situation.^{lxxxviii}

DOMAIN 2: HEALTH-SPECIFIC EXPECTATIONS

2.1 Decision to isolate

1. Healthcare staff are not involved in the decision to isolate a child or young person (unless it is medical isolation, e.g. with regards to a contagious disease^{lxxxix}), as participating in the imposition of restrictive measures is at odds with their professional and ethical obligations.^{xc}
 - o Healthcare staff prioritise their patients' needs when making medical judgements.^{xcii}
 - o The use of isolation can amount to torture or other forms of cruel, inhuman or degrading treatment, and healthcare staff do not
 - countenance, condone, facilitate or participate in these sorts of practices,^{xciii}
 - provide premises, instruments, substances or knowledge to facilitate these practices or to diminish the ability of children and young people to resist such treatment,^{xciii}
 - be present during the use or threatened use of such practices.^{xciv}

2.2 Provision of healthcare

1. Healthcare provided to children and young people in isolation is equivalent to that provided in the community.
 - o This includes practising medicine fairly and justly and providing care based on the patient's health needs without bias or engaging in discriminatory conduct on the basis of Aboriginality, age, disease or disability, ethnic origin, gender, nationality, political affiliation, race, culture, sexual orientation, social standing, or any other factor.^{xcv}
2. Qualified medical personnel regularly monitor the physical and mental condition of every child or young person once they have been isolated.^{xcvi}
 - o Daily visits to children and young people held in isolation are conducted, on the understanding that such visits are in the interests of the child or young person's health,^{xcvii} and in recognition of the detrimental impacts of isolation.^{xcviii}
 - o More frequent access is granted if healthcare workers deem this to be necessary.^{xcix}
3. Healthcare workers provide children and young people in isolation with prompt medical assistance and treatment at the request of children or young people, or detention staff.^c
4. Healthcare is not provided with the view to prolong isolation.
 - o Physicians only provide drugs or treatment that are medically necessary and never prescribe drugs or treatment with the intention of enabling a longer period of isolation.^{ci}
5. Healthcare workers report any concerns about the impact isolation is having on the health and wellbeing of an individual child or young person to those responsible for reviewing isolation decisions. If necessary, they should make a clear recommendation that the child or young person be removed from isolation, and if the recommendation is not actioned, use pathways for escalation to an independent entity.
 - o It is a healthcare worker's duty, and therefore expected, to tend to the health of someone in isolation, to report any resulting adverse effect on a child or young person's physical or mental

- health to the detention director, and to recommend changes to the regime (including its termination) to prevent or address them.^{cii}
6. All medical examinations of an isolated child or young person are undertaken in full confidentiality (examinations are out of sight and immediate ear shot of detaining authority staff or any other professional or other visitors), and they should be referred to appropriate physical and mental health services.^{ciii}
 - o Healthcare is always provided in a setting that respects the privacy and dignity of children and young people. Healthcare workers working in the youth detention setting are bound by the same codes and principles of medical ethics as they would be in any other setting.^{civ}
 7. Healthcare workers are independent of detention authorities and manage conflicts of interest.
 - o They are able to practice with complete clinical independence from the detaining authority. In order to maintain that independence, they are employed and managed by a body separate from the detention centre or criminal legal system.^{cv}
 - o They do not allow their individual professional judgement to be influenced by the possibility of benefit to themselves or their institution. They recognise and avoid real or potential conflicts of interest. Where such conflicts are unavoidable, they are declared in advance and properly managed.^{cvi}
 - o If they are acting on behalf of or reporting to any third parties with respect to the care of a child or young person, they inform the patient accordingly at the outset and, where appropriate, during the course of any interactions. They disclose to the patient the nature and extent of those commitments and obtain consent for the interaction,^{cvii} except in circumstances where required by law.
 - o They have complete clinical independence in deciding the care of a child or young person for whom they are medically responsible. Their fundamental role is to alleviate distress of their patient, and no motive, whether personal, collective or political, prevails against this higher purpose.^{cviii}
 8. Healthcare workers document and report instances of torture and ill-treatment, and provide documentation to children and young people's legal representatives when sought, with the consent of the child or young person.^{cix}
 - o Healthcare workers have a duty to consider the conditions in isolation and to raise concerns with the authorities if they believe that they are unacceptable or might amount to inhumane or degrading treatment. There are clear mechanisms in place in each system to allow healthcare workers to report such concerns.^{cx}
 - o Healthcare workers report any concerns about the impact isolation is having on the health and wellbeing of an individual child or young person to those responsible for reviewing isolation decisions. If necessary, they make a clear recommendation that the child or young person be removed from isolation, and this recommendation is respected and acted upon by the detention authorities.^{cxii}
 9. Healthcare workers are able to document and report instances of torture and ill-treatment without reprisals.
 - o It is the responsibility of the organised medical profession to encourage physicians to honour their commitment as physicians to serve humanity and to resist any pressure to act contrary to the ethical principles governing their dedication to this task;^{cxiii} to support physicians experiencing difficulties as a result of their resistance to any such pressure or as a result of their attempts to speak out or to act against such inhuman procedures;^{cxiii} and to encourage physicians to report and document any acts of torture and other cruel, inhuman or degrading treatment or punishment they are aware of.^{cxiv}

DOMAIN 3: MEANINGFUL CONTACT

3.1 General

1. Children and young people have meaningful human contact if kept in isolation.^{cxv}
 - o There is no internationally agreed definition of 'meaningful human contact', and what constitutes meaningful human contact depends on the context and individual characteristics of each children or young person.^{cxvi}

Meaningful human contact:

- Penal Reform International has provided some helpful guidance - "the amount and quality of social interaction and psychological stimulation which human beings require for their mental health and wellbeing. Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity."^{cxvii}
- The International Committee of the Red Cross describes "meaningful human contact" to mean social interaction that is, as far as possible, similar to what a person might expect in the community – an opportunity to experience the psychological and social stimulation that human beings need for their mental well-being. Enabling meaningful human contact is, therefore, about striking the right balance between privacy, security and well-being.^{cxviii}
- Her Majesty's Inspectorate of Prisons' guidance includes the following questions:
 - o Is the contact monotonous and repetitive (i.e. the same thing day in day out)? Will it become monotonous and repetitive as time moves on?
 - o Does the child or young person have any degree in choice of type of contact and who they speak to?
 - o Are a variety of people, including staff, involved in the contact?
 - o Is the contact what we would consider meaningful ourselves? Does it contribute to well-being? Does it contribute to building relationships? Is there a genuine dialogue happening?
 - ... empathetic contact that is more than fleeting or incidental.
 - Contact must not be limited to those interactions determined by prison routines, the course of criminal investigations or medical necessity... requirements to carry out observations on children, without real engagement.
 - o Is the contact face-to-face?
 - ... contact should be face-to-face and direct (without physical barriers).
 - In these circumstances, video link and phone calls with families, friends and significant others may fall within what can be considered as meaningful contact if in-person visits are not possible... However, such facilities alone won't mitigate for being locked up for long-periods without other meaningful in-person contact.^{cxix}

3.2 Contact with family and detained children or young people

1. Restriction on contact with family is prohibited for any purpose.^{cxx}
 - o Children and young people have regular phone calls and family visits – unrestricted, wherever possible, and in conditions resembling those in the community. Detaining authorities utilise modern technologies as an additional communication channel outside family visits.^{cxxi}
 - o If a child or young person has no family members, detaining authorities could consider facilitating volunteer visitors to help maintain the important connection with the outside world.^{cxxii}
2. Contact with other detained children and young people is maximised.^{cxxiii}
 - o Children and young people subjected to isolation are not automatically prohibited from associating with other children or young people. Instead, their individual circumstances should be considered on their merits. Allowing isolated children and young people to partake in as many communal activities, with as many different people as possible, is a priority.^{cxxiv}
 - o There is strong encouragement from staff for children and young people to partake in activities and contact with the outside world is facilitated. Throughout the period of isolation, the overall objective is to persuade the child or young person to re-engage with the normal regime.^{cxxv}
 - o This contact is meaningful and normalised, and includes contact in communal areas (subject to risk assessment).^{cxxvi}
 - o If a child or young person is not able to interact with others, other measures are put in place to mitigate their isolation and the associated harms and to ensure meaningful engagement.^{cxxvii}
3. Contact is not dependent on a child or young person's cooperativeness,^{cxxviii} nor is it restricted as a disciplinary sanction.^{cxxix}

DOMAIN 4: EDUCATION, PROGRAMS AND SERVICES & CULTURAL AND RELIGIOUS PERSONNEL

4.1 General

1. Any restrictions to which a child or young person is subject during isolation are necessary and proportionate.
 - o Rather than subjecting children and young people to blanket restrictions under different types of isolation, every type of restriction of the regime is necessary for the individual child or young person^{cxxx} (e.g. ongoing access to resources normally available to children and young people, such as reading materials^{cxxxi}).
 - o Isolating children and young people does not result in other sanctions, such as the removal of privileges.^{cxxxii}
 - o Children and young people isolated for health reasons have all the rights and privileges that children and young people in the general population have, where this does not jeopardise the health of others.^{cxxxiii}
 - o All children and young people subjected to isolation are provided with access to vocational, educational, recreational and, as relevant, employment activities.^{cxxxiv}

- When all avenues have been explored and a child or young person seeking protection cannot safely be kept within the general population, authorities create an environment where the needs of the child or young person can be met, in line with the general population in terms of movement, safety, interaction with others and access to activities.^{cxxxv}
- 2. Special efforts are made to enhance the regime of those kept in longer isolation (e.g. additional items that can be kept in the cell or unit, and greater access to visits, phone calls or video calls), who need particular attention to mitigate the harm of isolation.^{cxxxvi}

4.2 Education

1. Isolation practices never interfere with children and young people continuing education in youth justice detention.^{cxxxvii} Where a child or young person's isolation impacts on their ability to attend education with other detained children and young people, arrangements are made to ensure that they have access to alternate, equivalent educational programs.

DOMAIN 5: APPROPRIATE STAFF & STAFF RESPONSIBILITIES

5.1 Staff with appropriate experience and training

1. Staff working in environments where children and young people are isolated are specifically selected, being those
 - who have experience and interpersonal skills as key requirements for the role;^{cxxxviii}
 - who have the right motivation and skills to work with children and young people with multiple and complex needs;^{cxxxix}
 - who are appropriately trained to recognise mental health issues or distress, and to be vigilant in detecting signs of decline in mental health, mitigating the social isolation inherent in isolation, as well as appropriately escalating any concerns.^{cxl}
2. Staff working in segregated environments receive enhanced and ongoing training and guidance in
 - mental health and trauma informed practice;^{cxli}
 - dynamic security... how to engage meaningfully with children and young people, de-escalation skills, conflict management and resolution, and how to engage positively in challenging situations;^{cxlii}
 - use of force as a last resort;^{cxliii}
 - linguistic, cultural and religious diversity and sensitivities.^{cxliv}

5.2 Observations and assessments

1. Senior staff actively monitor the isolation, and isolation is done in the presence or under the close supervision of suitably qualified and trained staff members.^{cxlv}
 - Staff working in segregated environments are specifically selected for work there, with experience and interpersonal skills as key requirements for the job. They should receive enhanced training in mental health and trauma informed practice (including de-escalation techniques), and training on use of force as a last resort.^{cxlvi}
 - Staff are encouraged and given support to interact meaningfully with children and young people, and opportunities for interactions are clearly integrated into the daily routine.^{cxlvii}

2. Given the differential experience of children and young people of the passage of time, staff assess the well-being of isolated children and young people no later than one hour after placement in isolation.^{cxlviii}
 - o Assessments of a child or young person's wellbeing are distinct to observations, and are not done remotely or through a door. It is done in-person, face-to-face.
 - o Staff use of PPE during engagements with children and young people, including for those segregated for health reasons related to infectious diseases, is proportionate to the risk. This is particularly noting the impact using Personal Protective Equipment (PPE) can have on the quality of the experience (and level of trauma) communication, building trust and rapport, and the stigma for the child or young person.
3. The facility director or senior members of staff visit isolated children and young people daily and familiarise themselves with the individual plans.^{cxlix}

5.3 Case management & classification

1. An individualised care plan to support the child or young person in isolation is developed by a multidisciplinary team, including enhanced regime and supports for the child or young person while isolated.^{cl}
2. Plans^{cli}
 - o identify relevant physical and mental health information (and healthcare to be provided), as well as relevant history, triggers and strengths for the child or young person.
 - o are constantly reviewed and adjusted as needed.
3. There are cultural care plans for Aboriginal and/or Torres Strait Islander children and young people.

5.4 Reintegration

1. Efforts are made by detaining authorities to address the root causes for the reasons for isolation.^{clii}
 - o There are clear, specific, measurable and time-bound objectives for exiting isolation, recorded in easily understandable language.^{cliii} The targets are meaningful.^{cliv}
 - o Restorative processes that aim to resolve differences between children/young people, or between children or young people and staff are in place to prevent isolation and to facilitate an early return to normal regime.^{clv}
2. Children and young people are supported upon reintegration into the general detention population. A reintegration plan is in place for every child and young person in isolation. This plan contains meaningful targets that the child or young person understands.^{clvi}
3. While children or young people might need an adjustment period following their isolation, the supports provided never extend their period of incarceration.^{clvii} There is an appropriate, supportive transition plan for children and young people who have been isolated.^{clviii}

5.5 Support for staff

1. Appropriate care and support is provided to staff supervising isolation.
 - o This includes mentoring and/or peer-to-peer support and mental health services.^{clix}
 - o Management ensures that staff are properly supervised and, where necessary, rotated periodically to prevent burnout.^{clx}

DOMAIN 6: MATERIAL CONDITIONS

1. In the space used for isolation, there is:
 - natural light (both natural and artificial light must be sufficient for reading),^{clxi}
 - adequate heating and ventilation,^{clxii}
 - a means of communication with detention staff^{clxiii} (regularly checked to ensure that they are in good working order^{clxiv}),
 - furnishing and fixtures that meet the same minimum standards as general housing,^{clxv}
 - no ligature points,^{clxvi}
 - appropriate in-cell materials provided.
 - noting that in-cell materials must not be a substitute for meaningful contact. Children and young people are given books, magazines, educational materials and in-cell work opportunities to lessen the impact of isolation and provide a purposeful way to fill their time. However, even with improved in-cell conditions, children and young people still need to leave their cell regularly for meaningful human contact and an opportunity to experience different settings.^{clxvii}
2. The space used for isolation is:
 - of sufficient size,^{clxviii}
 - meets the needs of nature in a decent fashion at all times^{clxix} (cell cameras must exclude the toilet (and, where available, shower) area,^{clxx} there should be privacy screens^{clxxi}).
3. Children and young people
 - on a daily basis, have access to fresh air for at least 2 hours^{clxxii} for exercise (exercise area used by children and young people is sufficiently large to enable them to genuinely exert themselves and have some means of protection from the elements,^{clxxiii} internal rooms cannot be considered an appropriate substitute to an outdoor exercise yard^{clxxiv}),
 - are able to shower at least as often as children and young people in normal regime the community.
4. Wherever possible, decisions around in-cell materials, colours and fixtures are not be made on security grounds alone – instead, the aim is to communicate positive expectations and create a more personal environment for children and young people who cannot be housed with the general population.^{clxxv}
5. Mechanical restraints are never used on children and young people in isolation.^{clxxvi}

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- ^{ciii} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{civ} World Medical Association, Statement on Solitary Confinement (2019) rec 14, which relates to solitary confinement.
- ^{cv} World Medical Association, Statement on Solitary Confinement (2019) rec 12, which relates to solitary confinement.
- ^{cvi} World Medical Association, International Code of Medical Ethics (2022), 5.
- ^{cvi} World Medical Association, International Code of Medical Ethics (2022), 23.
- ^{cvi} World Medical Association, Declaration of Tokyo (2022), 7.
- ^{cix} Adapted from Committee against Torture, Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners (2014) [34], which related to solitary confinement.
- ^{cx} World Medical Association, Statement on Solitary Confinement (2019) rec 16, which relates to solitary confinement.
- ^{cx} World Medical Association, Statement on Solitary Confinement (2019) rec 15, which relates to solitary confinement.
- ^{cxii} World Medical Association, Declaration of Hamburg (2017) [4.1].
- ^{cxiii} World Medical Association, Declaration of Hamburg (2017) [4.2].
- ^{cxiv} World Medical Association, Declaration of Hamburg (2017) [4.4].
- ^{cxv} Rule 44 United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules'). Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system [9.5] (g).
- ^{cxvi} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cxvii} Penal Reform International, Guidance Document on the Nelson Mandela Rules (2018).
- ^{cxviii} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cxix} HM Inspectorate of Prisons – Human Rights Scoping for Scrutiny Visits Methodology undertaken during COVID-19.
- ^{cxix} Rule 67 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules').
- ^{cxix} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cxix} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cxix} Committee against Torture, Individual Communication No. 1184/2003 (2006) Australia [9.3].
- ^{cxix} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cxix} Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [61], which relates to solitary confinement. See also Thematic report (solitary confinement) Norway (2019).
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{cxix} Report of the Special Rapporteur on torture (2013) A/68/295 [41].
- ^{cxix} Report of the Special Rapporteur on torture (2013) A/68/295 [41].
- ^{cxix} Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [55] and [59], which relates to solitary confinement; WA OICS, Revised Code of Inspection Standards for Adult Custodial Services (2020) Standard 24.
- ^{cxix} Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [55], which relates to solitary confinement.
- ^{cxix} UK NPM, Guidance - Isolation in Detention (2017)
- ^{cxix} Western Australia OICS, Revised Code of Inspection Standards for Adult Custodial Services (2020), standard 65.
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020); 24th General Report of the European Committee for the Prevention of Torture (2014) [128].
- ^{cxix} Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [59], which relates to solitary confinement.
- ^{cxix} Australian Children's Commissioners and Guardians, Statement on conditions and treatment in youth justice detention (2017) [10].
- ^{cxix} Shalev for NZ Human Rights Commission, First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand (2021).
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{cxix} Western Australia OICS, Revised Code of Inspection Standards for Adult Custodial Services (2020), standard 34.
- ^{cxix} Shalev for NZ Human Rights Commission, First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand (2021).
- ^{cxix} ICRC, Restrictive Regimes in Places of Detention (2020). See also Shalev for NZ Human Rights Commission, Seclusion and Restraint: Time for a Paradigm Shift. A Follow Up Review of Seclusion and Restraint Practices in New Zealand (2020).
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- ^{cxix} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
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- ^{cxix} UK NPM, Guidance - Isolation in Detention (2017)
- ^{cxix} Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [57], which relates to solitary confinement. Shalev for NZ Human Rights Commission, First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand (2021).
- ^{cl} ICRC, Restrictive Regimes in Places of Detention (2020). Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [55], which relates to solitary confinement. Kimmitt and Shalev, Deep Custody: Segregation Units and Close Supervision Centres in England and Wales (2015), p135-136.
- ^{cl} Shalev for NZ Human Rights Commission, First, Do No Harm: Segregation, restraint, and pepper spray use in women's prisons in New Zealand (2021); UK NPM, Guidance - Isolation in Detention (2017).
- ^{clii} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cliii} ICRC, Restrictive Regimes in Places of Detention (2020). Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [55], which relates to solitary confinement.
- ^{cliv} UK NPM, Guidance - Isolation in Detention (2017).
- ^{clv} UK NPM, Guidance - Isolation in Detention (2017).
- ^{clvi} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{clvii} Adapted from World Medical Association, Statement on Solitary Confinement (2019) rec 9, which relates to solitary confinement.
- ^{clviii} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{clix} ICRC, Restrictive Regimes in Places of Detention (2020).
- ^{clx} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{clxi} Committee against Torture, Individual Communication No. 1184/2003 (2006) Australia [9.4]. See also Human Rights Committee, *View in Espinoza de Polay v. Peru* (1997) [8.7]. See also Shalev for NZ Human Rights Commission, *Thinking outside the box - A review of seclusion and restraint practices in New Zealand* (2017). Adapted from Committee on Prevention of Torture, Solitary confinement of prisoners (2011) [58], which relates to solitary confinement. See also Shalev for NZ Human Rights Commission, *Thinking outside the box - A review of seclusion and restraint practices in New Zealand* (2017). Davidson v Director-General, Justice and Community Safety Directorate [2022] ACTSC 83.
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- ^{cbxxiv} Shalev for NZ Human Rights Commission, Thinking outside the box - A review of seclusion and restraint practices in New Zealand (2017).
- ^{cbxxv} ICRC, Dignity and Safety in Restrictive Detention Regimes (2018).
- ^{cbxxvi} Adapted from 24th General Report of the European Committee for the Prevention of Torture (2014) [128], which relates to solitary confinement, specifically in relation to agitated/violent children.