

Prevention of Torture in Youth Justice Settings



Guide to a disability aware approach

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How to use this booklet

This publication is for general information only. The information provided is not legal advice and should not be treated as such.

These resources are designed to create awareness of rights under the Convention Against Torture. The Convention Against Torture is an international human rights convention that the Australian Government has committed to upholding. Local laws, such as State and Territory laws, are not the same as international human rights conventions. This means that some of the protections under the Convention Against Torture are not found in local laws.

This resource cannot be used to decide whether particular conditions of detention in Australia are lawful. Rather, this resource is designed to educate people with disability in detention, their family members, and supporters about international human rights in the Convention Against Torture. If you think you are being treated unlawfully, seek the advice of a lawyer.

Australia is in the process of setting up a framework to implement the Optional Protocol to the Convention Against Torture. This means governments will appoint bodies to monitor places of detention for breaches of the Convention Against Torture.

The monitoring bodies for each State and Territory are listed on the website of the Commonwealth Ombudsman: www.ombudsman.gov.au/industry-and-agency-oversight/monitoring-places-of-detention-opcat.

This website also has a complaint form to provide information and make enquiries.

The examples contained in these resources are fictional but draw from cases and the experiences of people with disability in Australia and around the world.

Introduction

Everyone has the right to be safe from torture and cruel treatment. Everyone has the right to be treated fairly, and with dignity and respect.

If you live in a disability or aged care residence, you have these rights like everyone else.

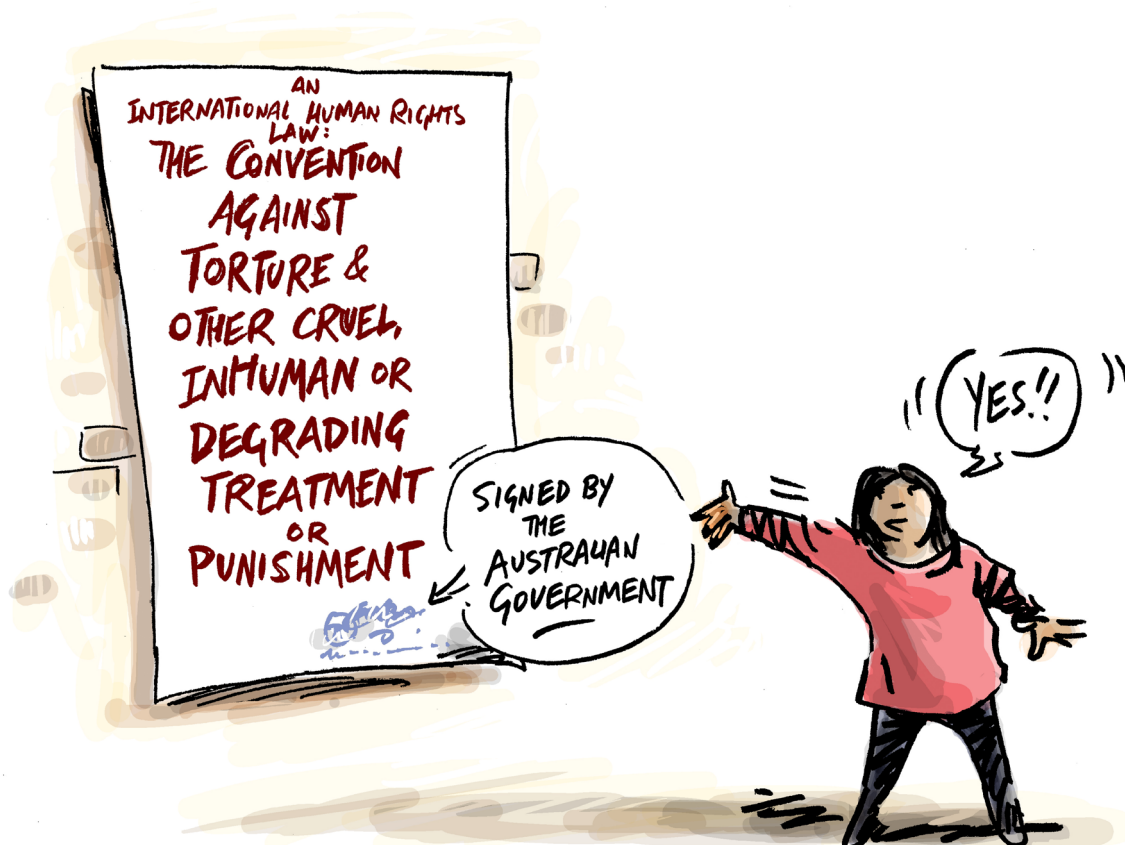
The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is one of the international human rights laws that the Australian Government has agreed to.

By signing this Convention, the Australian Government has committed to uphold the rights of young people when they are in detention.

All Government employees, including police, youth detention staff, medical and support staff, youth workers and prison transport are required to uphold these rights. This includes staff working for private companies doing government work, such as private service providers in detention.

This resource can help you learn about your rights under this international law, and to think about whether or not your rights are being respected. The rights under international law might be different to the rights under the law in your State or Territory.

If you think your rights are not being respected, you can get help. Ask to speak to an advocate or lawyer.



Definitions



What is torture?

Torture is when someone in an official position intentionally inflicts severe pain or suffering, whether physical or mental, on someone else.

Torture can never be justified, and can involve:

- Physical or sexual harm including beating or rape
- Psychological harm including prolonged solitary confinement or indefinite detention

What is cruel, inhuman, or degrading treatment or punishment?

Cruel and inhuman or degrading treatment or punishment causes physical and mental suffering. This may include serious assault or abuse.

This can also include treatment or punishment that is humiliating. If you are in detention, you should be protected from this treatment.

This can involve:

- Bullying and intimidation by staff or other detainees
- Denial of medical and psychological care or disability support
- Involuntary medical and psychological treatment without regular review
- Lack of privacy, overcrowding
- Prolonged isolation
- Inaccessible, poorly equipped, or unhygienic sanitary facilities



The following section tells you what your rights are in international human rights law. Local laws are sometimes different to international law. The questions here will help you to give relevant information to someone who can help. The examples are based on legal cases about torture and cruel and inhumane treatment around the world.



You have the right to be treated with dignity and respect

- This includes when you are being arrested, questioned, searched and detained.



Questions

When you were arrested and questioned, did you have support from an advocate or lawyer to understand what was happening and to support you through the process?

Were you handcuffed or restrained in other ways during arrest, questioning or being searched? How long for?

Have you been searched by police or youth detention staff?

Were you strip searched?

Did someone explain to you why you were being searched?

Who searched you, and who was present when you were searched?

Examples

Alex was entering a music festival where he was detained by police, who explained they were going to search him as the sniffer dog indicated he could be in possession of an illegal substance. After a frisk search, the police told Alex he had to be strip searched and if he chose not to comply, he would be arrested and taken to the watchhouse. Alex did not understand what was happening and despite many requests did not receive a response other than “we’re just doing our job”. Once the officers were satisfied that Alex was not in possession of any substances, they let him enter the festival. This ordeal left Alex feeling scared, humiliated, and isolated.

You have the right to not be separated from others for long periods of time

- This includes being separated based on disability.
- When someone is held in a separate cell for more than 22 hours, this is called solitary confinement.
- Solitary confinement must be a last resort and must be for the shortest amount of time possible.
- Nobody should be kept in solitary confinement for more than 15 consecutive days, or, repeatedly subject to solitary confinement in consecutive periods.
- While in detention you have the right to have visitors, and to see family and friends regularly.

Questions

Have you been held or locked in a room separate from others? How long were you there?

Did someone explain what was happening? Did you have support to help you understand what was happening?

Were you told when it would end, and did it end when you expected it to?

Did you see someone every day, and were you able to communicate with them face to face? Who were they?

While in solitary confinement, what were the conditions of your room? Was it clean? Were you able to regularly use an accessible bathroom? Did you have access to things to do? Did you have constant access to water and sanitation?

Were you allowed to meet with a lawyer, or advocate?

Where you able to see a medical professional when you needed to?

Were you able to go outside? If you were, for how long? Did you have the support you need to move around outside?



Examples

Josh has been sentenced to 1 year incarceration in a youth detention centre. Josh was held in solitary confinement for 18 days. The detention centre staff told him it was to protect him as he has a psychosocial disability. Josh also had to wear a smock as he had been deemed a suicide risk. He was restricted in all contact with other detainees, including during outdoor exercise times. Josh was not provided any guidance around when his solitary confinement might end. His mental health deteriorated over the time, but he was not provided access to mental health support.

Whilst Jane has been detained in the watchhouse, she has been subject to regular periods of solitary confinement as punishment. The most recent time she was in solitary confinement, she was mechanically restrained and placed in a spit hood as punishment for spitting out her food at breakfast, which was mouldy. When Jane asked if she could speak to an advocate, she was denied her request and told she could only access the advocate once she was moved to a detention centre.

Jas has a psychosocial disability. When she was stopped by police, she was frisk searched and handcuffed. Jas was then arrested and transported to the watchhouse. Jas explained several times that she did not understand why she had been arrested and asked to speak with an advocate / lawyer. The officers told Jas she could have a phone call when she calmed down. Jas was not able to access a lawyer or advocate for 24 hours.

You have the right to quality, accessible, medical care

- You have the right to make decisions about the medical care you receive.
- You have the right to privacy and confidentiality around your health care.
- If a doctor or psychiatrist has ordered that you need to have a medical treatment, you have the right to have that decision reviewed regularly.
- You should have access to all treatments, medication and therapy you need.



Questions

Examples

Have you seen a doctor or dentist since you arrived in detention?

Have you seen your medical records while in detention?

Was your consent sought or did you understand and agree before you received medical or psychiatric treatment?

Has the decision for this treatment been reviewed? How often, and who was involved?

Do you have access to someone (disability support worker, advocate, lawyer, parent or guardian) who can help you understand the medical decisions being made?

Do you have access to the medication or treatment you need?

Have you ever been denied a treatment or medical appointment you have requested?

Did you see a medical professional when you needed to?

Lucas has a physical disability. Lucas was held in a regional watchhouse for a period of 3 days, whilst awaiting transfer to Brisbane. Despite having a physical disability, the corrections officers did not properly assess Lucas's medical needs when he arrived in detention and did not develop a plan for his care and support. For over 3 months, Lucas was not provided with the health care he required. This exacerbated Lucas's health issues and caused Lucas significant hardship and distress.

Jamie was experiencing an acute episode of schizophrenia and was struggling to follow the staffs' instructions. As a result, Jamie was placed in solitary confinement and denied access to a doctor for a week until the prison staff decided she could follow instructions well enough to leave solitary confinement.

You have the right to decent conditions while in this facility

- This includes having access to accessible facilities.



Questions

Do you have a window in your room that provides natural sunlight?

Can your window be opened for fresh air, or are there other forms of ventilation?

Can you use a bathroom that is accessible for you?

Do you have privacy when using the bathroom or toilet?

How many people do you share a room with?

What is the quality of your food and drink?

Have you ever been denied food or drink?

Examples

Sam was being held in the watchhouse and as punishment for swearing at the police officers, he was placed in solitary confinement. Sam was held in solitary confinement for 48 hours and during this time, was denied food and water, blankets and access to an advocate / lawyer.

Joanne struggles to eat some foods due to the texture and taste. The staff saw that she had consistently refused to eat her breakfast. As punishment for not eating breakfast, the staff denied Joanne food for 3 days until she agreed to eat everything and anything that she was given.

You have the right to be safe

- While you are being detained, you should be protected from violence, abuse or neglect from staff or other detainees.



Questions

Do you feel safe?

Are there particular places where you feel less safe, and if so, why?

Are there particular people you feel less safe with, and if so, why?

Have you been verbally bullied by staff or other detainees?

Have you ever been physically hurt by staff or other detainees?

If you have been hurt and you needed medical care, was it provided?

Has anything been done about the violence, abuse or neglect you experienced?

Examples

Tom was eating a packet of chips in his cell and did not hear staff tell him to stop eating and come out of his cell. As punishment for not following instructions, Tom was physically restrained and handcuffed. He was then placed in solitary confinement and stripped naked whilst still handcuffed. Tom was left in solitary confinement for 2 days, handcuffed and naked.

Jasmine received some distressing news during a phone call and when the call ended, she threw the phone, and it broke. As a result, Jasmine was forcibly moved to solitary confinement. Jasmine was mechanically restrained and placed in a spit hood for 6 hours. During this time the guards would come in and throw water on Jasmine. Jasmine was told by the guards this was punishment for breaking the unit's phone.

You have the right to access support you need to do everyday tasks, understand what is happening to you, and make decisions

- An individualised assessment of support requirements should be completed as soon as a person is detained.
- This support should never be denied, withheld, or stopped without your permission.

Questions

Do you need help understanding what is happening or to make decisions? Have you had access to a disability advocate to support you with this?

Do you need any support with everyday activities?

Has there been an assessment of the help that you need since you were arrested, questioned, and detained?

Is there a plan for this support to be provided? Have you seen that plan?

Have you been provided with the support you need? For example, if you use an interpreter, has one been provided for you?

Has your support ever been withheld or stopped as a punishment or to make you feel bad?

How long was your support withheld, or stopped?

What happened to you because your support was withheld or stopped? Were you at risk of harm or in danger? Were you unable to move around and do everyday tasks? Were you isolated from friends, family, your lawyer or advocate?



Examples

Ben is non-verbal and uses a communication book to communicate. Ben was in a fight with another inmate and as punishment, his communication book was taken from him for a week. Ben was told by the guards that if he told his lawyer, he would be placed in solitary confinement. Ben was unable to communicate with peers or staff and this left him feeling isolated and alone.

Jennifer takes medication every day to manage her psychosocial disability. As punishment for making a formal complaint about the doctor who had made several racist remarks towards her, Jennifer's daily medication was suspended for a period of 2 months without review. This left Jennifer unable to complete basic daily tasks, as well as communicate with her advocate / lawyer.

Acknowledgements

We acknowledge the following sources in the drafting of the examples used in this resource:

- Christmas Island Medical Officer’s Letter of Concerns – For review by International Health and Medical Services Management and Executive. November 2013
- Council of Europe/European Court of Human Rights Factsheet series (“Detention conditions and treatment of prisoners”, “Detention and Mental Health”, “Prisoners’ health rights” & “Covid-19 health crises”) 2022
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- WWDA Response to Restrictive Practices Issues Paper – to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Women With Disabilities Australia. July 2021

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