

Culturally appropriate, human rights compliant police custody monitoring expectations for detained Aboriginal and/or Torres Strait Islander people

Andreea Lachsz¹

1 Churchill Trust Impact Funding recipient

The Australian context

Australia is proudly home to the world's oldest continuous living cultures, with Aboriginal people having occupied the mainland for more than 60,000 years (NMA, 2026). According to the Australian Institute of Aboriginal and Torres Strait Islander Studies, there are more than 250 Indigenous languages and 800 dialects (AIATSIS, 2026). The diversity of culture, language and law/lore can be mapped across the country, from the Yolŋu people in the north-east of Australia, to the Noongar people in the south-west. The 2021 census found that 167 Indigenous languages are used at home by 76,978 Aboriginal and Torres Strait Islander people¹ (ABS, 2021).

However, much bleaker statistics accompany this story of survival, resilience and resistance during the colonisation of this vast land, and Indigenous people's ongoing struggles in the face of colonisation's legacy. According to the 2021 census, only 3.2% of Australia's population was Aboriginal (ABS, 2021). Yet, in 2024-2025, the daily average number of people in Australian prisons was 45,525, of whom 16,553 were Aboriginal (36%). In some states and territories, the figures are even starker: in the Northern Territory (NT), 2,337 of the 2,640 imprisoned people were Aboriginal (89%) (ROGS, Part C, 2026). The overrepresentation among incarcerated children is greater still. In 2024-2025, the daily average number of children in Australian prisons was 734, of whom 453 were Aboriginal (62%). In the NT, 40 of the 42 imprisoned children on any given day were Aboriginal (95%) (ROGS, Part F, 2026).

Both the diversity of cultures and the overrepresentation of Aboriginal people in the criminal legal system require that civil society organisations and detention monitoring bodies tailor their approaches to ensure that Aboriginal people are

not left behind in efforts to prevent torture and ill-treatment, pursue accountability of perpetrators, and secure redress for victim-survivors.

The need for a set of culturally appropriate, human rights-compliant police custody expectations focused on detained Indigenous people

Australia is one of the 96 States that have ratified the United Nations (UN) *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) (UNTC, 2026), a UN human rights treaty whose objective is "to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment" (OPCAT, Article 1). Those national bodies are known as National Preventive Mechanisms (NPMs).

The Australian NPM (a multi-body entity) has been tasked with exercising the OPCAT mandate domestically. With the overrepresentation of Aboriginal people in Australia's criminal legal system, realising OPCAT's torture prevention potential requires a tailored approach that accounts for Indigenous culture and law/lore, the enduring legacy of colonisation and entrenched racism in the criminal legal system. Tailoring one's approach to preventing torture and ill-treatment is a multi-pronged exercise. One aspect is developing an appropriate set of detention standards (or expectations) to guide the NPM in its risk appraisal in places of deprivation of liberty, including police custody. Police custody not only falls within all NPMs' mandates; it demands particular attention, with an international study commissioned by the Association for the Prevention of Torture (APT) concluding that the highest risk of torture is in police custody, not prisons (Carver, 2016, p. 630).

1 'Aboriginal people' is used throughout this brief to refer to 'Aboriginal and/or Torres Strait Islander people'.

In the Australian context, culturally appropriate, human rights-compliant police custody expectations (the ‘Expectations’) have recently been developed in consultation with Aboriginal Community Controlled Organisations, Aboriginal people with lived experience of police custody, and other individuals and organisations with relevant expertise (in Australia and internationally).

The utility of the Expectations for NPMs, statutory bodies and civil society internationally

While these Expectations are intended to support the Australian NPM to effectively exercise its mandate with respect to detained Aboriginal people, they can also be used in relation to Indigenous people incarcerated in other countries. Consultation feedback received during development of the Expectations indicated that their relevance would also extend beyond Indigenous people, to detained people belonging to other minority/racialised groups (e.g. policing of Roma people across Europe (Fair Trials, 2020)). Broader yet, consultations identified that much of the content of the Expectations would be relevant to all people deprived of their liberty by police, not solely Indigenous and racialised people.

Although the Expectations are targeted at NPMs, there are myriad statutory bodies and civil society actors which could also benefit from them, in their own work to strengthen protections against torture and ill-treatment of people detained in police custody, and bring an end to these human rights abuses, including through civil litigation and prosecution.

The police/law enforcement ‘places of deprivation of liberty’ that are addressed by the Expectations

In recognition of the importance of properly characterising deprivation of liberty (and thus what would fall within an NPM’s mandate), the UN Subcommittee on Prevention of Torture (SPT) (the international counterpart of the domestic NPM) focused its first-ever *General Comment* on what constitutes a ‘place of deprivation of liberty’ (UN SPT, 2024). In its non-exhaustive list of deprivation of liberty by police/law enforcement, it explicitly included police stops and searches (UN SPT, 2024, para.21) and “any gatherings where police practices such as kettling are or may be carried out” (UN SPT, 2024, para.53). Reflecting this guidance, the Expectations address deprivation of liberty during stops and searches and kettling/containment at public assemblies, as well as arrest/apprehension/detention, transport and transfer, detention at police stations and release from police custody.

Identifying the root causes of ill-treatment

The Expectations are divided into separate documents, with the two main sections being *Practical detention monitoring guidance* and *Identifying the root causes of ill-treatment*.² The *Identifying the root causes of ill-treatment* section of the Expectations is intended to assist NPM bodies in their analysis of potential root causes or underlying factors contributing to the risk of (or instances of) torture and ill-treatment in police custody. It is intended to assist not only with detention monitoring, but also with NPM bodies discharging their other functions, including “submit[ting] proposals and observations concerning existing or draft legislation” (OPCAT Article 19(c)).

The UN SPT has explained that “the prevalence of torture and ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, [and] discrimination” (SPT, 2011, para.107). APT guidance has provided that the preventive mandate under OPCAT entails NPMs making recommendations that “address the causes of problems, rather than the symptoms” (APT, 2013, p.85).

Expectations in *Identifying the root causes of ill-treatment* consider the broader context, including the prohibition of torture and ill-treatment in the NPM’s jurisdiction (e.g. whether torture has been criminalised, and whether there are robust mechanisms for complaints, investigations, prosecution and redress). Also considered are the local police service’s culture, integrity, and competency; the extent and nature of oversight; the degree of transparency of the police service; and actions supporting its continuous improvement. In recognition of priorities of Aboriginal communities, there are also expectations that focus on deaths in custody and rights under the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) (including cultural rights related to Country, ceremonial objects, sacred sites, human remains, healthcare and Indigenous Data Sovereignty).

The Expectations address how the purpose of the police service in the community should be understood – the role of police is to protect and respect human rights, and not to be the “default response to public health and social care issues” that should be addressed by specialised government services and supports (Lachsz, 2026, p.12-13). The Expectations also consider the importance of governments taking a “human rights, evidence-based and strengths-based approach to community safety, rather than a politically motivated, ‘tough on crime’ or

2 The sections of the Expectations are Executive Summary; Introduction; Practical Detention Monitoring Guidance; Identifying the Root Causes of Ill-Treatment; Aide Memoire.

‘law and order’ approach,” and the government’s responsibility to support and fund “Aboriginal community-led alternatives to policing and support programs and services to prevent contact with the criminal legal system” (p.12-13). Additionally, the Expectations address issues relating to systemic racism, including the need for effective leadership within police (p.20) and to tackle racial profiling (p. 21). Broader cultural issues, such as the ‘blue wall of silence’, are discussed (p.24), as is the need for investigations into torture and ill-treatment to be culturally appropriate (p.7).

Practical detention monitoring guidance

The *Practical detention monitoring guidance* section is intended to assist the NPM during its monitoring of places of deprivation of liberty. This section addresses all aspects of deprivation of liberty, including the actual arrest/apprehension/detention, whether there was proper consideration of alternatives to detention, and use of force (including restraints/holds, searches of people and objects, weapons/other equipment, use of force on vulnerable groups, processes following use of force, and accountability for inappropriate/excessive use of force). The Expectations address key protections upon arrest and apprehension, such as the use of recognised places of detention, notification of detention, access to information on rights and to a lawyer, an initial medical examination, and internal and external reviews of detention. An area of high risk of ill-treatment, police interviews, is discussed in detail, as is the healthcare provided in detention (e.g. equivalency of healthcare, culturally appropriate healthcare, healthcare professionals as a safeguard from torture, healthcare professionals navigating potentially conflicting responsibilities, staffing and protocols with community healthcare providers, treatment rooms, medication and equipment, and the role of police officers in facilitating healthcare provision). This section also addresses treatment and conditions in police cells generally, including where people are placed, contact with family and the outside world, and material conditions (e.g., cell architecture, natural and artificial light, hygiene, food, clothing and bedding, personal belongings). Finally, this section covers transport and transfer, as well as release from police custody.

Some specific examples of content include providing that interpreters are used (Lachsz, 2026, p. 54), that cultural considerations inform placement of people in cells (e.g. whether cultural norms would be transgressed if certain people are detained in the same cell) (p. 55), and that “views of the local Aboriginal community and [Aboriginal Community Controlled Organisations] are taken into account in the design of accommodation at police stations” (p. 60). The Expectations also suggest that police “work with Aboriginal and Torres Strait

Islander communities to develop protocols regarding obtaining, storing, retaining, using and disposing of forensic samples from Aboriginal... people” (p.45). The Expectations require that culturally safe healthcare be provided and suggest that local Aboriginal Community Controlled Health Organisations be “consulted on whether they wish to provide primary healthcare at police stations” (p.45).

Conclusion

The Expectations are envisaged as a guide for the torture prevention work of NPMs and civil society actors. Any civil society organisations using the Expectations are strongly encouraged to take a tailored, place-based approach that centres impacted communities and those with lived experience of detention in police custody. In the Australian context, this requires consultation with local Aboriginal and Torres Strait Islander communities. In other countries, this would require consultations with local Indigenous communities or other racialised groups. NPMs (even individual members of the Australian NPM) will be working in vastly different contexts, in terms of geography, demographics, political landscapes and police cultures.

Crucially, Indigenous Peoples have a diversity of cultures and experiences of colonisation; flattening this diversity risks not only missing an opportunity to prevent human rights abuses, but it also risks perpetuating harmful biases and practices. In contrast, a solid foundation that includes locally tailored, culturally appropriate monitoring expectations can assist NPMs and civil society actors in effectively exercising their mandate and, ultimately, in meeting their torture-prevention objectives.

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