

11 August 2016

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cc: Hon William Byrne, Minister for Corrective Services

Dear Attorney-General

RE: INCIDENTS OF MISTREATMENT IN YOUTH DETENTION

I write to raise Amnesty International's serious concerns regarding the treatment of children in Queensland's youth detention centres.

Amnesty International has recently obtained information under Freedom of Information laws, including quarterly reports from inspections made by the Department of Justice and Attorney-General (DJAG) Ethical Standards Unit (the 'Inspectorate') of Cleveland Youth Detention Centre (CYDC) in Townsville and Brisbane Youth Detention Centre (BYDC), from 2010-2015. These reports raise a number of human rights concerns, which are outlined below.

Additionally, Amnesty International is also concerned at the lack of transparency and accountability that persists at youth detention centres in Queensland. We note that these facilities are visited by the Inspectorate, the Office of the Public Guardian, the Ombudsman and the Queensland Child and Family Commission regularly. However when allegations of abuse have arisen there does not appear to have been proper investigations conducted that result in criminal sanctions or disciplinary outcomes, as appropriate, for those involved or in reparations for victims.

Amnesty International would be grateful for information on:

- What measures are in place to ensure that children particularly Indigenous children are made aware of their rights while in detention.
- What complaints procedures are available to children in youth detention, and what
 protections are in place to ensure that they are not at risk during or after making a complaint.

USE OF FORCE

Concerns, outlined below, have been repeatedly raised by the Inspectorate about unnecessary or excessive use of force against children in both CYDC and BYDC. The Inspectorate reports do not always detail the full contents of allegations or the results of complaints or outcomes of investigations.

In 2009 in CYDC, 344 distinct use of force incidents were recorded.¹ The Inspectorate has raised concerns about the adequacy of reporting and monitoring of instances of use of force.² Use of force continued to be an issue in 2010, with high numbers of incidents recorded by the Inspectorate, including five referrals for misconduct, and staff using force without employing de-escalation techniques.³ There were four separate incidents where young people suffered fractured wrists as a result of control and restraint techniques.⁴

One concerning incident in CYDC in 2012 involved use of force where a child resisted transfer. Other children and staff were involved in the incident, described as a 'riot', and as a result 11 children and 13 staff were treated for pain or injuries.⁵ In June 2012, there were 251 applications of use of force, but only four instances generated complaints.⁶

In BYDC in 2009, there were four alleged assaults on children and other incidents involving injuries sustained by children during the use of restraints.⁷ There was a large increase in use of force from 2011 to 2013 (from 159 to 277 incidents).⁸ From June 2012 - March 2013, 7 challenges of use of force against children were 'substantiated'.⁹

In accordance with the Standard Minimum Rules for the Treatment of Prisoners (now the 'Mandela Rules'), use of force is permitted in cases of self-defence, attempted escape, or passive physical resistance. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director. Without further details about the nature of these acts, Amnesty International is unable to determine whether use of force has been excessive.

Amnesty International requests the following information from the Government regarding each of the incidents outlined:

- Whether these incidents were further investigated and the outcomes of those investigations
- Whether use of force in these incidents was used as a last resort, and was necessary and proportionate
- Where use of force was found to be excessive or unlawful, whether children were provided with reparations
- The reasons for the low number of complaints received on use of force.

¹ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2010, p 7. Nb. Reports are submitted by the Department of Justice and Attorney General, Ethical Standards Unit, Youth Detention Inspectorate every three months: January-March, April - June, July - September, October - December.

² Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2010, pp 7, 12.

³ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2010, pp 7, 12; Youth Detention Inspectorate, Cleveland Youth Detention Centre Interim Inspection Report, March Quarter 2011, pp 4, 6; Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2010, p 21.

⁴ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, December Quarter 2010, p 19.

⁵ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2012, pp 13-14.

⁶ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2012, pp 13-14.

⁷ Youth Detention Inspectorate, Brisbane Youth Detention Centre Inspection Report, June Quarter 2010, p 9.

⁸ Youth Detention Inspectorate, Brisbane Youth Detention Centre Inspection Report, December Quarter 2013, p 18.

⁹ Youth Detention Inspectorate, Brisbane Youth Detention Centre Inspection Report, March Quarter 2013, p 16.

¹⁰ Commission on Crime Prevention and Criminal Justice, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, 24th sess, UN Doc E/CN.15/2015/L.6/Rev.1 (21 May 2015), Rule 82(1).

SELF-HARM

From January to December 2014, Inspectors reported 30 incidents of self-harming or attempted self-harm at CYDC (compared with 4 instances at BYDC).¹¹ This included 20 instances of children tying ligatures around their neck.¹² This increased significantly in 2015 to 31 instances of children tying ligatures around their neck.¹³ (compared with 8 instances in BYDC).¹⁴

These high rates of self-harm raise serious human rights concerns for children, and particularly Aboriginal and Torres Strait Islander children. While the Inspectorate reports do not indicate the proportion of self-harming incidents by Indigenous children, the rates are particularly high at CYDC and on an average day in 2015, CYDC's population comprised 89 per cent Aboriginal and Torres Strait Islander children. This is significant because nationally, Indigenous children are disproportionately at risk of mental illness - the suicide rate of 10-19-year-olds is five times higher than non-Indigenous young people.

Amnesty International is also concerned at policies relating to the response to self-harm incidents that include, where a child refuses to comply, forced stripping of their clothes to put on suicide prevention clothing, which restricts any movement. On numerous occasions, the Inspectorate has made recommendations against these practices, yet the practices continued in both BYDC and CYDC.¹⁷ In BYDC in June 2010, a young girl was forced to strip and get into suicide prevention clothing, ¹⁸ as well as two other children in reported incidents in 2011.¹⁹

One particular incident of concern from CYDC occurred in January 2013. A 17-year-old boy was identified as being at a high suicide risk. When he refused to comply with staff directions, 14 staff responded to the situation. Several staff members used physical force to remove him from a bench and stabilise him on the floor. Handcuffs and leg cuffs were used. The child was then taken to a separation room where his clothing was cut off him using a rescue knife. The boy was left naked in the room, with a pair of tear resistant shorts, but they did not appear to fit the child. He was left naked in the room for over one hour, before a gown was provided for him to wear. The Inspectorate noted concern that the incident was not classified as a 'level-three reportable incident', and no staff members reported the matter as an 'incident of concern'. The Inspectorate reported that there was no internal review of the incident as the child did not make a complaint.²⁰ An internal review was recommended, but no further follow up is noted.

There has not been any indication in the Inspectorate reports that these children were offered an apology, compensation or other forms of reparation for any violations of their human rights.

These issues raise concerns under the Convention Against Torture (CAT). Under international standards, the use of restraints against juveniles must be limited to "exceptional cases, where all

¹¹ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p.11.

¹² Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p 11.

¹³ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, December Quarter 2015, p 15.

¹⁴ In eight incidents in 2014 and at least 5 incidents in 2015, the primary reason provided by children for their self-harm was their loss of rewards or consequences in accordance with the centre's behaviour development model.

¹⁵ Department of Youth Justice's Response to Amnesty International Questionnaire, 3 August 2016,

¹⁶ AIHW, *The health and welfare of Australia's Aboriginal and Torres Strait Islander people*, (2015), Table S5.5 (37.5 per 100,000 for Indigenous children compared with 7 per 100,000 for non-Indigenous children).

¹⁷ See for instance, Cleveland Youth Detention Centre Inspection Report, March Quarter 2013, Brisbane Youth Detention Centre Inspection Report, June Quarter 2010, Brisbane Youth Detention Centre Inspection Report, December Quarter 2011.

¹⁸ Youth Detention Inspectorate, Brisbane Youth Detention Centre Inspection Report, June Quarter 2010, p 11.

¹⁹ Youth Detention Inspectorate, Brisbane Youth Detention Centre Inspection Report, December Quarter 2011, p 29.

²⁰ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2013, pp 11-15.

other control methods have been exhausted and failed."²¹ Further, children in detention who are suffering from mental illness should be treated in a specialised institution.²² The Committee against Torture in 2014 recommended that Australia bring the conditions of detention into line with international standards, including the Standard Minimum Rules for the Treatment of Prisoners (now the Mandela Rules) and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), including by ensuring adequate mental health care for detainees.²³

Amnesty International requests the following information from the Government regarding each detention centre:

- The causes of self-harm among children in youth detention.
- The preventative measures in place to minimise the risk of self-harm among youth detainees.
- The mental health assessments and services that are available to children, and whether these are culturally appropriate for Indigenous children.
- The care that is given to children who have self-harmed or attempted to self-harm.
- The reporting requirements in cases of self-harm or attempted self-harm, including reporting to the Directors-General of the Youth Detention Centres, and to the Government.
- Whether the incidents outlined above were further investigated and the outcomes of those investigations.
- The actions the Government has taken to address the high rates of self-harm in youth detention.

USE OF DOGS

Amnesty International is deeply alarmed about the use of dogs as a response to self-harm and as a security measure in CYDC.

In 2014, during an incident where a child on a roof threatened to self-harm or suicide by hanging, a security guard and his dog were deployed to the scene, which was found to increase the young person's anxiety.²⁴ In another incident in August 2015, a guard allowed an un-muzzled dog to approach an Indigenous girl in an "aggressive manner" while she was attempting to get out of a pool.²⁵ An Inspector witnessed another incident where a dog was used to "aggressively bark and strain its leash towards the young people for no apparent reason."²⁶

In March 2015, the Inspectorate recommended that the Department give consideration to ceasing this practice,²⁷ and these practices ended on 16 September 2015.²⁸ While Amnesty International welcomes this, the organisation is particularly concerned that the dogs continued to be used for seven months after it was recommended that the practice cease.

Amnesty International has documented the use of dogs to instil fear into prisoners as a torture method used around the world.³⁰ This is clearly an unacceptable practice, especially for children.

²¹ UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Doc A/RES/45/113, 14 December 1990, Rule 64.

²² UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Doc A/RES/45/113, 14 December 1990, Rule 53.

²³ Committee against Torture, Concluding Observations: Australia, UN Doc CAT/C/AUS/CO/4-5, 23 December 2014, para. 11.

²⁴ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p 15.

²⁵ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 12.

²⁶ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 14.

²⁷ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, pp 12-13.

²⁸ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 15.

²⁹ Amnesty International, *Torture in 2014: 30 Years of Broken Promises* (2014), p 25.

Amnesty would like information to clarify:

- Who was responsible for authorising the presence and /or use of dogs in youth detention centres?
- Why there was a significant delay by the Government in implementing recommendations from the Inspectorate to cease the use of dogs in youth detention facilities?

USE OF ISOLATION

Amnesty International is concerned about practices relating to the separation of children in isolation. Particularly in BYDC, there were continual concerns about a lack of clear rules around the admission of children into the separation unit, limited visits by caseworkers and psychologists, and insufficient details about why children were held there.

Similarly, concerns have been raised at CYDC, including that reasons given for separation were broad and strayed from statutory requirements.³¹ A disturbing incident in March 2012 involved eight Aboriginal children who were held for "near-continuous cell confinement" (approximately 22 hours per day) in isolation for ten days.³² For the first two days of isolation, they were not allowed to leave their rooms at all. These incidents were not authorised as they were not recorded as separation incidents. In total, the children were exposed to approximately 800 hours of daytime isolation.³³ A Children's Commission Report in 2014 raised these issues and made 24 recommendations including to establish an independent Youth Detention Inspector, conduct proactive monitoring to ensure compliance with legislation, improve their record keeping practice, develop better training around use of locked door separations, and that the Department contact the young people and their parents or guardian in a culturally appropriate way, to express regret and inform them that they could seek advice on legal remedies available to them.³⁴

Nevertheless, concerns were reported as recently as June 2015 in CYDC about the lack of proper documentation and recording of children being placed in isolation.³⁵

These incidents raise serious human rights concerns. The Mandela Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty strictly prohibit the use of solitary confinement for children in detention.³⁶

Amnesty International would be grateful for information relating to:

- Current policies and procedures regarding the separation of children in youth detention, including who is responsible for authorising the use of isolation.
- The documentation and recording requirements when children are placed into isolation.
- Whether isolation is used as a disciplinary measure in youth detention centres.

³⁰ Youth Detention Inspectorate, *Brisbane Youth Detention Centre Inspection Report, March Quarter 2010, p* 16; Youth Detention Inspectorate, *Brisbane Youth Detention Centre Inspection Report, September Quarter 2011*, pp 8-38; Youth Detention Inspectorate, *Brisbane Youth Detention Centre Inspection Report, June Quarter 2011*, p 15.

³¹ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2013, p 18.

³² Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, June Quarter 2012, p 3.

³³ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, June Quarter 2012, pp 6-9.

³⁴ Queensland Commission for Children and Young People and Child Guardian, Child Guardian Summary Investigation Report: The use of separation at a Youth Detention Centre (2014) pp 28-32, http://pandora.nta.gov.au/pan/14014/20140117-1126/www.ccypcg.qld.gov.au/pdf/publications/reports/YDC summary report.pdf>.

³⁵ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, June Quarter 2015, p 18.

³⁶ UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by UN General Assembly resolution 70/175, 17 December 2015, Annex, Rule 45(2); UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Doc A/RES/45/113, 14 December 1990, Rule 67.

USE OF RESTRAINTS: HANDCUFFS

Amnesty International is also concerned by the use of mechanical restraints at CYDC.³⁷ Amnesty International is concerned about reported incidents of handcuffing children for family visits and during physical recreation. In December 2014, one young person was visited by his infant son. He complained to the community visitor that he "had tried to hold his son at the last visit and found this awkward wearing handcuffs".³⁸

In March 2015, one child was handcuffed while playing basketball, which resulted in the child falling over.³⁹ Leg-cuffs were applied to another child for participation in ball games. The Inspectorate found that this "suggests that the use of mechanical restraints at CYDC on young people during physical exercise is not a recent or one-off practice." Amnesty International understands that a policy was adopted in April 2015 to address this issue. ⁴¹ Amnesty International would be grateful for information on whether these incidents were investigated and if so, what the outcomes were.

Amnesty International would also welcome clarifications on the policy regarding the use mechanical restraints on juvenile detainees, and how it is applied to children participating in physical recreational activities.

The Queensland Ombudsman has indicated ongoing concerns about the use of restraints to Amnesty International.⁴² The UN Committee on the Rights of the Child has stated that restraints may only be used "when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted."⁴³ It is difficult to see how these practices could be justified or meet these requirements during visits or physical recreation. These uses of mechanical restraints at CYDC may violate the Convention on the Rights of the Child and should be investigated by DJAG. Regardless of whether new policies have been implemented since, children who have had their rights violated are entitled to a remedy under Australia's international obligations.

Amnesty International would be grateful for information about:

- What guidelines and/or procedures govern the use of mechanical restraints in youth detention centres.
- What training is given to youth detention centre staff to ensure that instructions regarding mechanical restraints are upheld in day-to-day operations as well as in exceptional circumstances, and what measures are taken against those who fail to comply with those instructions.

INVASIVE SEARCH PRACTICES

The Inspectorate noted practices of invasive searches occurring in CYDC. In September 2015, a young woman raised concern that during a partially unclothed search upon returning from court, she was required to squat.⁴⁴ The practice was authorised in the Youth Detention Operations Manual. This

³⁷ The approved mechanical restraints include: handcuffs, nylon body belt for self-harm incidents, lockable zip ties (when handcuffs are unavailable) and ankle cuffs (in extreme high risk or emergency situations), see Youth Detention Inspectorate, *Cleveland Youth Detention Centre Inspection Report, June Quarter 2015*, p 13.

³⁸ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, pp 21-22.

³⁹ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p 23.

⁴⁰ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p 23.

⁴¹ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, March Quarter 2015, p 30.

⁴² Response from the Queensland Ombudsman to Amnesty International Australia (15 June 2016).

⁴³ Committee on the Rights of the Child, General Comment No 10: Children's Rights in Juvenile Justice, UN Doc CRC/C/GC/10, 25 April 2007, para. 89.

⁴⁴ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 19.

included, during partially clothed searches, children being asked to squat, young girls being asked to lift their breasts, and young boys being required to lift their genitals prior to squatting.⁴⁵

The Queensland Ombudsman investigated these practices in 2014⁴⁶ and highlighted how research suggests that, given the high rates of sexual abuse amongst female prisoners, "strip searches have the capacity to negatively impact (including re-traumatise) female prisoners more significantly than other parts of the population and may jeopardise attempts at rehabilitation."⁴⁷ It was noted that these practices of squatting and lifting were prohibited in the adult prisons.

The Inspectorate recommended that searches of children in detention involving the removal of clothes be made consistent with those for adult prisoners in correctional centres. The Inspectorate recorded that DJAG had done so on 4 December 2015.48

These squat and lift practices are invasive and threaten the dignity of a child. The Mandela Rules provide that intrusive searches, including strip and body cavity searches, should be undertaken only if "absolutely necessary".⁴⁹ Further, the Australian Law Reform Commission has previously raised concerns about these practices and recommended that searches only be conducted pursuant to a court order.⁵⁰

Amnesty International would be grateful for clarifications on:

- whether the incidents outlined above were investigated and the outcomes of those investigations.
- whether there have since been any incidents of partially clothed searches involving squatting and lifting
- the procedures and reporting requirements relating to strip and body cavity searches of children in Queensland including both those in police custody and in corrections facilities.

⁴⁵ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 19.

⁴⁶ Queensland Ombudsman, *The Strip Searching of Female Prisoners at the Townsville Correctional Facility* (2014), as cited in Youth Detention Inspectorate, *Cleveland Youth Detention Centre Inspection Report*, *September Quarter 2015*, p 19.

⁴⁷ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 20.

⁴⁸ Youth Detention Inspectorate, Cleveland Youth Detention Centre Inspection Report, September Quarter 2015, p 20.

⁴⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), 24th sess, UN Doc E/CN.15/2015/L.6/Rev.1 (21 May 2015), Rule 52(1).

⁵⁰ Australian Law Reform Commission, Seen and heard: priority for children in the legal process (1997), [18.130] - [18.136], Recs 220 and 221.

RECOMMENDATIONS

Amnesty International believes that no children should experience any kind of violent or humiliating treatment in detention centres. It is particularly concerning that high numbers of children on remand may be exposed to forms of treatment which at times constitute human rights violations.

The organization calls on the Queensland Government to take immediate action to:

- Launch an independent public investigation into all incidents which may amount to violations of the human rights of children deprived of liberty.
- Ensure that any staff member suspected of involvement in acts of torture or other ill-treatment against children in detention is immediately be suspended from duty pending a prompt, impartial, independent and efficient investigation, the results of which should be made public. Where sufficient, admissible evidence is sound, staff members suspected of responsibility for such acts should be brought to justice in fair proceedings.
- Appoint an independent Inspector of Custodial Services, separate from DJAG, to have access to youth detention centres and police lock ups for the purpose of regularly monitoring and publicly reporting on conditions of detention and investigating complaints.
- Publicly release the forthcoming Youth Justice Policy for consultation and outline how the Government is acting to reduce the numbers of children, particularly Aboriginal and Torres Strait Islander children, in juvenile detention.

Please be advised that Amnesty International has a responsibility to report its human rights concerns, and information or comments from you may be reflected in future Amnesty International communications to police, the Ombudsman, the Queensland Family and Child Commission, media and the public.

I would appreciate your response as a matter of urgency.

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Sincerely

Claire Mallinson National Director