Submission No 130

INQUIRY INTO HIGH LEVEL OF FIRST NATIONS PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF DEATHS IN CUSTODY

Organisation: Justice Action, Deaths In Custody Team

Date Received: 17 November 2020

The Hon. Adam Searle, MLC
Chair, Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

Dear Mr Chairman,

Justice Action is an NGO that is involved in representing inmates and defending their human rights whilst incarcerated. We have had close contact with various victims affected by deaths in custody including David Dungay's family therefore, we would like to engage with the *Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody*.

Our particular points of interest in the Terms of Reference are sections 1(c) and (d) regarding oversight functions to be undertaken by state bodies and how those functions should be undertaken, as well as what structures are appropriate. Justice Action has been working on two proposals that we feel should be brought before your Inquiry. The recommendations of both our National Deaths in Custody Database and Safe Restraint policy proposals (attached) will aid in preventing deaths in custody in the future.

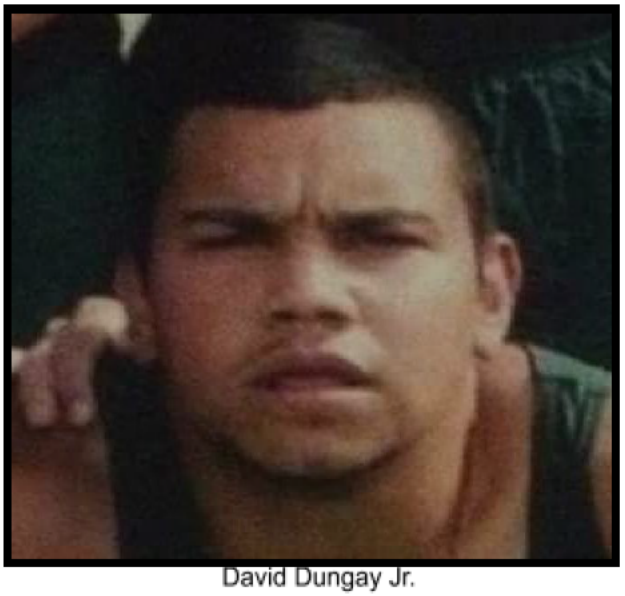
In response to 1(c) and (d), the oversight functions performed by state bodies, such as the NSW Coroner, are significantly undermined by their inability to monitor responses to and publicly report their recommendations. The onus is on government agencies to implement these recommendations, however, they have no obligation to do so. Furthermore, the NSW Coroner does not have the necessary power to monitor compliance. For instance, Recommendation 13 from the David Dungay Inquest proposed for greater emphasis on de-escalation, as opposed to physical restraint, in use-of-force training for Mental Health Unit staff. However, CSNSW did 'not [support]' this proposal on the basis that it is "not feasible to spend 50% of training on de-escalation techniques" (Jan 2019 - December 2019 Recommendations) given the breadth of topics to be covered in their 11-day use of force training course. Hence, the Coroner should be afforded the paramount power to prevail over objections from state bodies like CSNSW and ensure that policies of safe restraint and de-escalation are implemented.

Furthermore, the oversight bodies identified in the Terms of Reference are all state bodies notwithstanding how deaths in custody are an issue of national importance. We propose a national centralised database with coronial findings on deaths in custody and recommendations from all Australian jurisdictions with published responses by state and federal authorities. The data will allow the coroner to adopt policies of safe restraint and de-escalation, and to follow through on and distribute recommendations to other state and federal authorities. In order to ensure that consistent policies are implemented nationwide, a national oversight body should be established.

Please find our relevant proposals attached to this email as our submission of evidence for the inquiry.

Working Together

A Proposal for De-escalation and Safe Restraint for Authorities with Coercive Powers



David Dungay Jr.

David Dungay Jr's death at Long Bay Prison Hospital

JUSTICE ACTION

Draft 02/10/20

References for front page illustrations
ABC, David Dungay's final moments before death in custody shown at inquest (16 July 2018), ABC https://www.abc net.au/news/2018-07-16/david-dungay-inquest-begins-as-harrowing-video-played/9997930. SBS, David Dungay screamed for help, said he couldn't breathe minutes before death, inquest told, (16 July 2018), SBS https://www.smh.com.au/national/nsw/david-dungay-screamed-for-help-said-he-couldn-t-breathe-minutes-before-death-inquest-told-20180716-p4zrs3 html.

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Executive Summary

The recent high-profile death of George Floyd in Minneapolis has incited a global re-evaluation of the standards of restraint techniques employed by authorities in the exercise of their coercive powers. In Australia, the Black Lives Matter movement has drawn critical attention to the use of restraint in the tragic death of David Dungay Jr, among many other Indigenous deaths in custody. In circumstances that require the application of force, procedures of de-escalation and proper safe restraint techniques should be in place to prevent the growing number of deaths in custody.[1] Physical force must only be used as a last resort, in emergencies, where the risk of injury to officers or bystanders is imminent and de-escalation tactics have proven unsuccessful.

When authorities encounter high pressure situations, de-escalation should be utilised as the initial tactic before restraining techniques are d through the processes of listening and communicating with the target individual to ensure the situation is under control. It is a crucial element during the process to regain control considered. De-escalation is employed with the objective to diffuse tension that occurs in intense and adverse situations. This is generally achieve of the situation as when administered properly, it can resolve the conflict while minimising harm to all parties.

However, in Australia, there has been a gradual decline in the focus of de-escalation procedures, emphasised by the lack of resources devoted to establishing sufficient training. De-escalation programs across various states, which previously ran for several days, have been shortened to only one day of training.[2] When contrasted with other international de-escalation models around the world, it reveals the need for Australia to take a more proactive approach in ensuring authorities are adequately trained to be able to conduct de-escalation procedures effectively.

Apart from our findings on the various de-escalation procedures, this paper also discusses the current use of force regarding safe restraint techniques. This is presented through a case study as well as analysing different forms of safe restraint practices in both international and Australian jurisdictions.

Standards of training and thresholds of force differ between Australian state and territory jurisdictions. Despite these variations across jurisdictions, a common theme when examining legislation is the high level of discretion granted to those with coercive power when confronted with situations that may require force. A need to clearly define the terms ‘safe restraint’ and ‘reasonable force’ is critical to combat the increase in deaths due to excessive force.

Considering restraint practices in different contexts demonstrates that restraint procedures can be conducted effectively without excessive force to achieve the desired objective. In contact sports such as the National Rugby League (NRL), there are specific rules for players outlining safe restraint techniques in order to avoid long-term injuries. These guidelines provide clear evidence that control can be manifested without excessive force and restraint techniques targeting critical areas of a person such as their head and neck.

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[1] Allam, L., Wahlquist, C. Evershed, N. (2020) ‘*Aboriginal Deaths in Custody: 434 Have Died Since 1991’, New Data Shows*’ <https://www.theguardian.com/australia-news/2020/jun/06/aboriginal-deaths-in-custody-434-have-died-since-1991-new-data-shows>.

[2] New South Wales Police Force, Mental Health Background (Web Page) <https://www.police.nsw.gov.au/safety_and_prevention/your_community/mental_health/mental_health/background>.

Furthermore, through an analysis of domestic and international practices, we have been able to observe what constitutes reasonable force by authorities with coercive powers. In response to the Office of the United Nations High Commissioner of Human Rights, several different countries' approached the issue of necessary force. In addition to preventing potential damage to the facility or injury to bystanders; more information can be found in the international practices subsections on page 22. Our analysis highlights these responses, in an attempt to identify the force used by authorities in both international and domestic contexts. The proposed model of 'safe restraint', thus reiterates the importance of defining these terms and modifying surrounding procedures to prevent further unnecessary deaths in custody.

This proposal will discuss the recommendations that apply to all authorities with coercive power, this includes numerous institutions and individuals, such as officers within the police forces, correctional officers within correctional facilities and hospital employees within state health services. Our aim is to secure better outcomes for inmates by facilitating a collaborative process amongst key stakeholders, ensuring that inmate safety is emphasised. By working together to implement clear and effective policies which mandate the use of safe restraint and de-escalation processes, we can ensure that further deaths in custody are prevented. The analysis and recommendations within this proposal will focus on the standards required for the use of force, as well as policies for safe restraint techniques. The recommendations follow a general principle that force should be avoided at all costs, and if necessary, restraint is conducted in a manner where the individual and authorities are at no risk of injury or death.

Recommendations

To prevent the ongoing and unnecessary deaths in custody, the following recommendations should be implemented across all institutions where authorities with coercive power are present. Legislative changes must be made to ensure breaches of this protocol will be punishable in a court of law.

Recommendations for De-escalation :

1. Ongoing mandatory training programs on de-escalation, and effective use of open communication to negotiate the reason(s) for intervention
2. Effective communication strategies should require officers to calm the individual first before attempting to solve any problems. Communication should never involve making threats or providing ultimatums, but rather consist of asking questions without arguing. Officers should ensure they speak slowly and in a low voice.[3]
3. During a confrontational situation, officers should maintain space between themselves and the subject of negotiation. Officers should be trained to assume a well-balanced, natural stance, which involves keeping their hands in a suitable position for self-defence for protective measures and having the palms facing upwards in an open, calming gesture.[4]
4. Comprehensive mental health awareness training for all officers as well as the increased employment of Indigenous cultural and support workers.
5. De-escalation training should make up at least 50% of the emphasis in use of force training.[5]

[3] HM Prison Service, Ministry of Justice, *Use of Force Training Manual* (Manual, July 2006) s D ss 1.1.5.
[4] Ibid s D ss 2.6.1.
[5] Coroner's Court of New South Wales (2019), *Inquest into the death of David Dungay Jr* (File No 2015/281722), Recommendations Appendix A, 92

De-escalation should be at least 50% of the emphasis in resolving a confrontation.[6]

6. Attempts to contact and involve peer support and or family support during de-escalation process
7. Indigenous support must be present and should be the first to engage with an Indigenous inmate.
8. De-escalation should be a primary consideration in police guidelines and procedures
9. The onus must be placed on the corrections officers to justify why de-escalation attempts and strategies were not used
10. If an officer deviates from the de-escalation or safe use of force procedures, a fair and transparent complaints process should be in place to assess the situation

Recommendations for Safe Restraint:

1. Training in safe restraint tactics (following unsuccessful attempts to de-escalate the situation) must be mandatory and ongoing.
2. Training must be inclusive of how to change one's conduct to ensure routine restraint becomes aligned with individual risk. For example, consideration must be granted when restraining those who are unconscious, terminally ill, elderly or have significant mobility issues.
3. There should be clarification of terms such as 'gaining control' and 'reasonable force'.
4. Body Worn Video (BWV) cameras should be worn by all staff involved in the use of force.
5. If de-escalation attempts fail, the IAT (Immediate Action Team), consisting of a three-member team, should advance towards the detainee behind a shield calmly while giving the detainee all opportunities to accept direction. The event should be video recorded at all times.
6. In line with the established protocol in the UK, the IAT should be reduced from six members to three,[7] making sure that the team is controlled and coordinated. Each member should be trained to assume a specific controlled position (for instance, the Number 1 occupies the front and monitors the detainee's health and condition).
7. The IAT should move to secure the detainees' arms and legs. The arms should be handcuffed behind their back and the legs should be secured by separate team members.[8]
8. While gaining control, no contact should be made with the head, thorax, or abdomen, and the detainee should be kept in an upright position at all times.
9. The detainee should then be moved to a secure space where they are provided with immediate access to make a complaint as well as access to support from friends or family.
10. Legislative changes should be made to ensure that breaches of this protocol by officers will be criminally punishable and no special protection should exist against civil proceedings.

Case Studies of Deaths in Custody

The following cases reveal the inhumane actions behind institutionalised violence and the abuse of authoritative power on incarcerated people. There are numerous cases of deaths in custody due to the coercive use of force by officers whilst restraining inmates. This is due to a lack of training, appropriate procedures, safe restraint and de-escalation tactics for both correctional officers and medical staff within prisons. The following cases on David Dungay Jr and Wayne Morrison provide an insight on the severity of the use of force to restrain, and the

[6] Coroner's Court of New South Wales (2019), *Inquest into the death of David Dungay Jr* (File No 2015/281722), Recommendations Appendix A, 92 <https://coroners.nsw.gov.au/documents/findings/2019/DUNGAY%20David%20-%20Findings%20-%20v2.pdf>.
[7] Above n 2, s E s 1.3-1.4.
[8] *Crimes (Administration of Sentences) Regulation 2014* (NSW) cl 131(3).

overarching importance of proposing a policy to prevent further deaths and inhumane responses on prisoners in custody.

David Dungay Jr

David Dungay Jr was a 26-year-old Dungatti man, who died on 29th December 2015 in Sydney's Long Bay Prison Hospital. In an attempted cell transfer, Dungay had refused to stop eating a packet of biscuits. As a result, six guards held him down in a prone position for seven and a half minutes, whilst administering a sedative while nursing staff and four other guards looked on. He called out twelve times that he could not breathe before losing consciousness. By the time guards realised the severity of the situation, Dungay had gone into asystole arrest.[9] Only two CPR compressions were done in an attempt to resuscitate him.[10]

Since Dungay's death, the Coroner has recommended that the NSW Commissioner of Corrective Services should implement a full-time Aboriginal Welfare Officer at Long Bay Prison, as there was no one working on the day of Mr Dungay's death.[11] Furthermore, Deputy State Coroner, Mr Lee has recommended that Corrective Services review policy matters regarding the Immediate Action Team (IAT) and the manner of restraining inmates, as well as giving power to Justice Health medical personnel to give directions to correctional officers regarding the positioning of a patient for the administration of injections.

Wayne "Fella" Morrison

Wayne "Fella" Morrison was a 29-year-old Wiradjuri, Kookatha, and Wirangu man who died in hospital at 3:50 am on 26th September 2016. Mr Morrison was involved in an altercation three days before his death, wherein, according to CCTV footage, he was wrestled to the ground in the corridor, with up to twelve guards restraining his hands and legs. A group of eight prison guards proceeded to place Mr Morrison in the back of the prisoner transportation van in a 'prone position'(chest down, face down). A spit hood was placed over his head, despite an officer's statement that he appeared to be only trying to clear his throat of blood and saliva. There was no CCTV footage to document what occurred during the drive and the four guards present in the back of the van refused to give statements about the incident. Upon their arrival, it was discovered that the guards failed to realise that Mr Morrison was unconscious, and only commenced CPR two and a half minutes later.[12]

The deaths of Dungay and Morrison reflect a failure in the actions of authorities and emphasise their reliance on coercive force rather than de-escalation tactics. In particular, the deliberate use of the prone restraint position exposes the need for significant policy changes which will include ongoing training for authorities with coercive power on safe restraint and de-escalation tactics to be used on inmates instead of force. In the case of David Dungay Jr, five of the six IAT members had not undertaken any training in respect of positional asphyxia risk and had no effective knowledge of it; the one staff member who had training chose not to use it. The continued inaction and failure to efficiently respond by the correctional officers and medical staff shows the need for further training and proper procedure during a situation when restraint is necessary to prevent further deaths in custody.

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[9] Matthew R. Jordan, Richard A. Lopez and Daphne Morrisonponce, *Asystole* (StatPearls Publishing, 2020).
[10] Justice Action, (2020) '*Death of David Dungay Jr.'* <https://www.justiceaction.org.au/prisons/prison-issues/221-deaths-in-custody/1063-death-of-david-dungay-jr-2>.
[11] Smith, D. (SBS August 2020), *David Dungay Jr Inquest: Coroner Finds Inadequate Medical Attention the Main Factor of Death* <https://www.sbs.com.au/nitv/article/2019/11/21/david-dungay-inquest-coroner-finds-inadequate-medical-attention-main-factor-death1>.
[12] Justice Action, (2020) '*Death of Wayne Fella Morrison*' <http://https://www.justiceaction.org.au/prisons/prison-issues/deaths-in-custody/death-of-wayne-fella-morrison>.

De-escalation

Reasons for Negotiation and the Application of De-escalation

De-escalation can be defined as a 'reduction of the level of intensity' of stress and tension in adverse circumstances, particularly in scenarios involving authorities with coercive power.[13] It can be achieved through the employment of tactics that aim to reduce tension between individuals, as opposed to physical control over one another. Authorities have many legitimate reasons to direct individuals into compliance. However, should there be any issues regarding the compliance of an individual, de-escalation should be the initial point of call with our authorities. If the person refuses a request and becomes upset, it is in the interest of authorities carrying out a public purpose that all efforts are made to avoid violence. Should the person become physically agitated, intermediate social bridges like family members or others whom the individual trusts should be used to encourage compliance. Furthermore, this provides an opportunity for the authority to consider whether the objective is necessary, as well as whether there are other methods of achieving the original purpose, with the emphasis on ensuring effective and safe compliance.

Overall, officers tasked with administering force should be adequately trained in de-escalation techniques to avoid the use of force wherever possible and subsequently, reduce the unnecessary numbers of deaths in custody worldwide. The varying forms of de-escalation are underpinned by the notion that officers should be genuinely committed to minimising harm and avoiding violence where it is not necessary to use force.[14]

Forms of De-escalation

Whilst this is not an exhaustive list, forms of de-escalation include the increasing distance between individuals to allow for greater reaction time, using natural barriers to shield oneself, limiting engagement from non-involved community members, and clear verbal communication.[15] Communication includes the application of both verbal and non-verbal communication skills. Officers should, in aiming to de-escalate any conflict situation, use calm voices, and even communicate with a goal of negotiation rather than the employment of force. Effective communication involves engagement and trying to establish a connection with another person. Examples of effective communication skills in this context can include: (i) calling the person by their name; (ii) asking open-ended and clarifying questions; (iii) taking steps to put the person at ease; (iv) trying different approaches to making a connection; and (v) explaining what you are doing when taking steps to de-escalate the situation.[16]

Although de-escalation techniques are thought to be widely employed in health and mental health care settings, its use in law enforcement is poorly defined. In the context of detaining civilians and prisoners, de-escalation techniques aim to minimise the harm inflicted upon individuals by encouraging police officers to utilise time,

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[13] John Monahan et al., *Coercive Treatment in Psychiatry: Clinical, Legal and Ethical Aspects*, pp. 57-79 in *How To De-escalate a Risk Situation to Avoid the Use of Coercion* (Web Page, March 2011) <https://www researchgate net/publication/230218830_How_to_De-Escalate_a_Risk_Situation_to_Avoid_the_Use_of_Coercion>.

[14] Victoria Police. (Melbourne, 2003) '*Victoria Police Manual*', <https://www.police.vic.gov.au/policies-procedures-and-legislation#code-of-conduct>

[15] Stacey McKenna, 'Police Violence Calls for Measures Beyond De-escalation Training', *Scientific American* (online), 17 June 2020 <https://www.scientificamerican.com/article/police-violence-calls-for-measures-beyond-de-escalation-training1/>.

[16] HM Prison Service, Ministry of Justice, 'Use of Force Training Manual' (July 2006) s E ss 1.2-1.5.

space, and communication to diffuse the intensity of a situation, thus providing an ideal alternative to the use of force.

International and national progress are required to fully utilise de-escalatory tactics, as there are obvious inefficiencies in the provision and monitoring of de-escalation training regimes. Existing Australian training programs have adopted a particularly lax approach to de-escalation thus far, as officers receive some mental health training but this is often limited to short-term training courses. Moreover, these programs are highly variable and few have been carefully tested to determine their efficacy in achieving their training aims. By successfully using tactics of de-escalation, situations can be stabilised without the need to use physical confrontation. To such an extent, Albert Samaha reported that previously the Dallas police force 'received 147 excessive force complaints and made 74,000 arrests'.[17] Due to great emphasis upon de-escalation techniques, Samaha highlights that 'within three years, arrests were down to 61,000, and within five years excessive force complaints were down to 53', and even the city's murder rate 'reached its lowest point in more than 80 years in 2014'.[18]

Australian Practices

New South Wales

In order to gain further clarity on how recent amendments to the use of force guidelines translate into officer training, Justice Action contacted the Commissioner of Corrective Services NSW ('CCS'). In their response, the CCS stated that, prior to being posted to a work location, correctional officers are required to perform an 11-day training program for de-escalation and communication techniques.[19] Furthermore, all correctional officers are required to perform a training course on positional asphyxia every two years, which consists of identifying risk factors, signs and symptoms, and undergoing practical scenario assignments.[20] In addition to their primary training, the Security Operations Group provides courses for staff in Immediate Action Teams, the Medical Escort Unit and Mental Health Units, which includes use of force and positional asphyxia revision training.

Regarding Aboriginal Inmate Development Committees, the CCS clarified that the responsibility lies with Regional Aboriginal Project officers to ensure that Aboriginal Inmate Development Committees are taking place within correctional centres, with the aim of providing representation for Aboriginal inmates' cultural needs.[21]

Currently, the de-escalation training in place for NSW police stipulates that they must engage with individuals experiencing poor mental health. The program requires officers to learn to identify behaviours that indicate mental illness and are equipped with tools including communication strategies, risk assessment, de-escalation and crisis intervention techniques that enable them to deal effectively with members of the community with mental illness.[22] The NSW Mental Health Intervention Team (MHIT) was established in 2007 with the aim of providing this training in mental health and de-escalation techniques. The MHIT program was originally run over a four-day

[17] Samaha, A. (8 July 2020), 'Dallas Officer-Involved Shootings Have Rapidly Declined In Recent Years', *Buzzfeed*, <https://www.buzzfeednews.com/article/albertsamaha/dallas-police-numbers>.
[18] Ibid.
[19] Corrective Services NSW, *Custodial Operations Policy and Procedures,* Report 13.7 Use of Force (16 December 2017) <https://www.correctiveservices.justice nsw.gov.au/Documents/copp/use-of-force-redacted.pdf>.
[20] Ibid.
[21] Ibid.
[22] Legislative Assembly, Parliament of NSW, *Questions and Answers,* (Paper No 4, 16 September 2014) 78.

course; however, this was shortened to a one day program in 2014,[23] despite clear evidence that de-escalation techniques should be further emphasised in police training and the success of these techniques overseas.

The proactive response by NSW can be compared to the de-escalation models employed by the Memphis Police Force in Memphis, USA. Widely regarded as a pioneer in de-escalation in cases involving mental health crises is the Memphis Police Crisis Intervention Team (CIT) program, which will be discussed in more depth in the 'International Practices for De-Escalation' section.[24]A similar approach to de-escalation is that of the 'Birmingham model' in the UK, which, like the Memphis Police Crisis Intervention Team (CIT) program, will be discussed further in the 'International Practices for De-Escalation' section.

Further emphasis on the necessity of de-escalation techniques was present in the *NSW Coroner Recommendations from the David Dungay Jr Inquest.* [25] The recommendations included but were not limited to:

> 6. I recommend that all necessary steps be taken to make an Aboriginal Welfare Officer or Aboriginal Inmate Delegate available within Long Bay Hospital to assist where required, in interactions with Aboriginal or Torres Strait Islander inmates in Mental Health Unit and that Corrective Services New South Wales inform and train officers working in the Mental Health Unit to utilise this process where appropriate.
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> 13. I recommend that CSNSW, through the Special Operations Group, create and implement a revised use of force training package for Mental Health Unit staff which places greater emphasis (50% weighting) on de-escalation techniques versus physical control and restraint techniques.

Queensland

The Queensland Police Service provides Operational Skills and Tactics (OST) training which is based on the 'Situational Use of Force Model'.[26] However, it is not a restrictive guide to the use of force. Officers may select other use of force options or de-escalation, as necessary. It states that when applying any use of force option, officers should communicate effectively with all involved people, to de-escalate the incident and/or resolving the incident with the minimum amount of force necessary used. De-escalation means decreasing the magnitude, identified risks, and intensity of a situation, to avoid or minimise the use of physical force. This approach is heavily reliant on the discretion of the individual officer, encouraging officers to 'use the minimum amount of force to safely resolve an incident', rather than prioritising de-escalation.

South Australia

The Challenging Behaviour Toolkit outlines the training and education framework for health workers. This includes early intervention strategies to identify risk and de-escalate the situation. Strategies listed include

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[23] New South Wales Police Force, *Mental Health Background* (Web Page) <https://www.police.nsw.gov.au/safety_and_prevention/your_community/mental_health/mental_health/background>.
[24] Dupont, R. (University of Memphis, 2008), '*Memphis Crisis Intervention Team'* <http://cit memphis.edu/information_files/CIT_Brief_Overview_Presentation_Slides.pdf>.
[25] Coroner's Court of New South Wales, *Inquest into the Death of David Dungay* (File No 2015/281722), 22 November 2019, Recommendations Appendix A, 92.
[26] Queensland OPS, s 14 (3)-(2) Chapter 14 – Operational Skills and Practices (26 July 2019).

calming and reassurance, positive behaviour, limit-setting, distraction, or diversionary strategies.[27] If the detained person requests the presence of those notified, officers must make all reasonable attempts to allow the request to be fulfilled.[28] However, no de-escalation strategies for the police force in South Australia could be found.

Tasmania

In the 'Tasmania Police Manual' of December 2018, it states that in the event an Aboriginal or Torres Strait Islander Person is detained and/or interviewed, the Tasmanian Aboriginal Community Legal Service (TACLS) must be notified and in addition, a relative or friend must be notified.[29] Following this, in the case of significant matters, the district Aboriginal Liaison Officer or Tasmania Police Aboriginal Liaison must be informed.[30] However, aside from these mandates in the case of an Aboriginal and/or Torres Strait Islander being detained, Tasmania does not have explicit de-escalatory techniques utilised by authorities with coercive power which are available for viewing by the general public.

Victoria

In Victoria, all police officers are made to participate in a one-day training exercise which includes simulation of situations involving a person with a mental illness. Whilst the mandatory nature of the program requires all officers to have some exposure to de-escalation techniques, this measure does not go far enough to ensure that de-escalation is prioritised.[31] Similar to the use of force permitted in the NT, the state of Victoria has little clarity on tactics for de-escalation and instead focuses on the broad notion of 'reasonable grounds'.

Western Australia

According to the Corruption and Crime Commission's report on The Use of Taser Weapons by Western Australia Police, further de-escalation techniques are required to limit both injury on civilians and police personnel.[32] The adoption of tasers to general duty officers to be used to prevent injury, was expected to reduce the number of injuries and situations involving physical altercations. However, this additional use of force afforded to police personnel was not successful in accomplishing this. Between 2007 and 2009, the number of hospitalisations of WA police officers remained under 2% of incidents while injuries increased from 9% in 2007 to 11% in 2009.[33]

Similar to the use of force permitted in the NT, the state of Western Australia offers little transparency on tactics for de-escalation used.

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[27] Government of South Australia, (May 2015). '*Changing Behaviour Toolkit',* Report No 5.
[28] Tasmania Police Manual, Tasmania Police, '*Tasmania Police Manual'* (Manual December 2018) s 7.3 ss 7.6.2(1)-(2).
[29] Ibid.
[30] Ibid.
[31] Ogloff, J. and Thomas, S. (4 March 2014), 'Training Police to Better Respond to People with Mental Illness', *The Conversation*, <https://theconversation.com/training-police-to-better-respond-to-people-with-mental-illness-23651>.
[32] Corruption and Crime Commission (October 2010). '*The Use of Taser Weapons by Western Australia Police'.*
[33] Ibid.

Australian Capital Territory

The *Australian Federal Police Act 1979* (Cth) sets out the use of force permitted by the Australian federal police ('AFP').[34] S 14A sets out the powers of arrest allowed to an AFP officer. These include arresting an individual who either has committed or is committing an offence, ensuring the person appears in court, preventing the repetition or continuation of the offence, preventing the concealment or destruction of evidence, and preserving the welfare of the individual and proceedings in which a summons would not be effective.[35]

The AFP Commissioner's Order on Use Force governs the use of force and stipulates that the AFP should operate to de-escalate potential conflict situations and apply the minimum amount of force when necessary.[36] The *Australian Federal Police Act 1979* (Cth) s 14B sets out that the use of force must be reasonable and necessary to make the arrest or prevent the escape of an incarcerated individual.[37] This means not using restraints likely to cause death or GBH unless the officer is in fear of their life or they risk sustaining serious injuries.

Northern Territory

As of this year, the Northern Territory has the highest crime rate in Australia, and to combat this has 'more than 2.5 times the national average for police per 1000 citizens'.[38] The guidelines which govern 'how and when officers use their weapons' were removed from public access in 2018.[39]

The *Correctional Services Act 2014* identifies the circumstances in which the use of force is necessary. Specifically, Part 3.4 refers to 'maintaining good order- the use of force'.[40] Part 3.4 states in s 137(1)-(3), that a correctional officer may use force that is 'reasonably necessary' to maintain the security and good order of the facility, for example in response to, (a) compelling a prisoner to complete an action required by the correctional officer, (b) to prevent a prisoner engaging in misconduct, (c) to prevent a person at the facility from i. Harming themselves or others, ii. Damaging property, (d) in self-defence or to defend someone else, (e) to restrain persons causing a disturbance at the facility, or (f) to prevent the escape of a prisoner.[41] The limitations of the use of force for correctional officers in the NT are outlined in s 138 and focuses on whether the force is 'reasonably necessary' or not. The inability to succinctly define 'reasonable force' is a major problem preventing the NT from formulating and employing more effective de-escalation tactics.

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[34] *Australian Federal Police Act 1979* (Cth).
[35] Ibid s 14A.
[36] Andrew Colvin, 'The AFP Commissioner's Order on Use of Force (CO3)' (Internal Communication Paper, Australian Federal Police, 29 November 2017) <https://www.afp.gov.au/sites/default/files/PDF/IPS/18122019-CommissionersOrderonOperationalSafetyCO3.pdf>.
[37] *Australian Federal Police Act 1979* (Cth) s 14B.
[38] Danks, T. (April 2020), 'Northern Territory Police Association Attacks Government for 'Ad Hoc' Recruitment', *Katherine Times* <https://www katherinetimes.com.au/story/6728058/northern-territory-police-association-attacks-government-for-ad-hoc-recruitment-process/#:~:text=The%20NT%20police%20force%20has,of%20police%20leaving%20the%20force>.
[39] Zillman, S. and Vanovac, N. (ABC 2018) '*Northern Territory Police Conceal 'Use-of-Force' Rules from Public*' <https://www.abc net.au/news/2018-07-03/nt-police-conceal-use-force-rules-governing-weapons-from-public/9935832>.
[40] *Correctional Services Act 2014* (NT) Pt 3.4.
[41] *Correctional Services Act 2014* (NT) Pt 3.4 s 137(1)-(3).

International Practices

New York, USA

As a part of the New York Police Department's (NYPD) Specialised Training, the Crisis Intervention Team Program (CIT) educates officers to de-escalate conflict through active listening, empathy, and influencing the person in crisis. By doing so, CIT training is intended to reduce the risk of injury for not only police officers, but for civilians as well. This four day training program relies heavily upon scenario-based training, where the stimulation of crisis situations trains officers to safely approach and communicate with those in crisis.

Participants are also provided with mental health identification training, where clinicians teach officers to identify and learn how to respond best to particular mental health conditions. As 15 people have died due to poor de-escalation strategies, the CIT has placed greater emphasis upon communicating effectively to those who are "emotionally disturbed".[42] Even further, the NYPD's partnership with the New York Peace institute enables officers to be trained in "mediation, de-escalation and conflict resolution skills".[43] By learning skills similar to those in hostage situations, officers can build meaningful relations with civilians to avoid future conflict.

As a result, it is intended that the NYPD's de-escalation programs "will reduce the frequency and severity of police use of force" and prevent the deaths of those in custody.[44] However, there is no consensus regarding the effectiveness of the NYPD's de-escalation programs, especially when considering the NYPD's harsh treatment towards protestors.[45] To such an extent, the lack of the wide-scale implementation of CIT training has prevented progress. According to the New York City Public Advocate, "approximately 11,970 of NYPD's 36,753 uniformed officers have completed CIT training...with close to 200,000 911 calls concerning individuals in mental health crisis each year".[46] Due to this lack of widespread training, Dwayne Juene was falsely accused of a crime he didn't commit and was shot after four officers tried to arrest him. If the four officers were provided with CIT training, the situation could have been de-escalated and his death easily prevented.

This case reveals the difficulties in institutionalising de-escalation strategies without the proper legal foundations in place, such as mandatory CIT training and laws to hold perpetrators responsible. For the CIT's training program to be successful, further reforms are needed.

Memphis, USA

Introduced in 1988, the Memphis Police Crisis Intervention Team (CIT) program works to shift the focus from the use of force to treatment and de-escalation. The centrality of this focus can be seen in its two goals:

1. Improve officer and consumer safety.

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[42]Jumaane D Williams (September 2019), 'Improving New York City's Responses to Individual in Mental Health Crises', *New York City Public Advocate* <https://www.pubadvocate nyc.gov/reports/improving-new-york-citys-responses-to-individuals-in-mental-health-crisis/)>.
[43] New York Peace Institute, (New York Peace Institute 2018) *Police Mediation Partnership* <https://nypeace.org/police-training-partnership/>.
[44] City Journal, (Summer 2017) '*CIT and its Limits*' <https://www.city-journal.org/html/cit-and-its-limits-15329 html>.
[45]New York State Office of the Attorney General, (July 2020) '*New York City Police Department's Response to Demonstrations Following the Death of George Floyd'* <https://ag ny.gov/sites/default/files/2020-nypd-report.pdf> .
[46] Above n 41.

2. Redirect consumers from the judicial system to the health care system.

Constructed through extensive consultation with the Memphis community and mental health experts, the program instituted policies for dealing with consumers with mental health issues, a training manual, and a 5 day mental health training program for all officers.[47] Crucially, this training involved not only theoretical tuition on the signs and symptoms of mental health issues, and roleplaying of such situations, but also engagement and conversations with people with mental health issues. The implementation of this system saw a decrease in the use of force in situations of consumer mental health crises, as well as a lower percentage of ER referrals from such situations.[48]

Birmingham, UK

The 'Birmingham Model' in the UK, is a system of mental health integrated policing used by the Birmingham Police Department that builds on the Memphis CIT system.[49] Community Service Officers are employed by the police force to assist police in responding to mental health crises, as well as provide crisis intervention and follow up assistance. These CSOs are civilian police employees with qualifications or professional training in social work or related fields and as such play a vital role in de-escalating situations involving complex mental health crises. The effectiveness of this approach stems from the utilisation of highly trained mental health professionals whose sole goal in crisis situations is to de-escalate and prevent harm.

Seattle, USA

The Seattle Police employ an approach to de-escalation based on four components: Communication, Time, Distance, and Shielding.[50] When engagements occur, responding units attempt to maximise each of these components, using combinations of scene management, team tactics, and/or individual enforcement to wind down the volatility of the situation. Importantly, it is a process that analyses the *intentions* behind a lack of compliance if it arises. It considers the possibility that mental impairment, a language barrier, fear/anxiety, or a range of other factors may be the reason(s) for the lack of compliance, and therefore tailors the approach to assuage these issues, instead of relying on outright use of force.

Safe Restraint

Definition of Safe Restraint

The concept of safe restraint refers to limiting individuals' movement in an appropriate manner that does not pose an unnecessary risk of harm to those involved. The aim is to develop effective cooperation and communication

[47] Dupont, R. Cochran, S. & Pillsbury, S. (University of Memphis 2007) '*Crisis Intervention Team Core Elements*' <https://www.citinternational.org/resources/Pictures/CoreElements.pdf>.
[48] *Corrective Services Act 2014* (NT).
[49] Victorian Government, (November 2012), *Policing People Who Appear to be Mentally Ill,* Policy Paper 190.
[50] Seattle Government, (September 2019) 'Seattle Police Department Manual', s 8.100: De-Escalation <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation> .

between authorities and inmates to create a safe environment for all, ultimately decreasing the likelihood of scenarios requiring the use of restraint. Each state has implemented procedures and regulations that govern officers' coercive power. Despite the minor variations between different states' requirements, each state generally mandates that the nature and extent of the force used when applying restraint should be proportionate to, and reasonably necessary for, the circumstances in question. External variables such as the environment and the individuals' physical condition should be considered while determining the amount of force reasonably required. To effectively perform the restraining procedure, the officer must not exceed the use of minimal force. This should only be done for the sole purpose of maintaining the person in the restrained position.

Restraint Techniques in Contact Sports: A NRL Study

The use of restraint techniques in contact sports such as the National Rugby League (NRL) highlights how professionals can execute their objectives using rule-bound safe techniques without excessive force.

Considering the physical nature of NRL, there are extensive rules outlined in the National Safeplay Code,[51] which detail tackle and restraint rules for players to get possession of the ball. This effectively demonstrates the possibility of safe control in a high-stress environment, without the use of restraining techniques involving force on the neck or head.

Section 15 ss 1(b) of the code states that a player is guilty of misconduct if, when effecting or attempting to effect a tackle, they make contact with the head or neck of an opponent intentionally, recklessly, or carelessly[52]. This rule aims to prevent injury or the risk of injury while completing the objective of the game. It also keeps NRL players accountable for their actions and gives them the necessary incentive to abide by established guidelines.

While contact sports such as the NRL do not fall under the same context as a hospital or prison setting, this analysis provides supporting evidence that maximum restraint techniques involving contact on the head and neck are not necessary to physically restrain someone, reinforcing the notion that rules should be established to hold people accountable for their actions.

Australian Practices of Safe Restraint

New South Wales

Those with coercive power continue to use force, often with insufficient provocation, or in a pre-emptive manner which undermines the recommendation that correctional officers focus primarily on de-escalation techniques. Terminology in state legislation such as 'imminent harm', or the circumstances of 'maintaining discipline' or 'fail[ure] to cooperate or comply' is similarly pre-emptive and is not properly defined. The vague definitions provided allow the use of force and acceptable contexts in which one can use force, to be dangerously broad. Overall, these guidelines undermine the rationale that force should be used as a last resort.

[51] National Rugby League, (National Rugby League 2018) '*National Safe Play Code'*, <https://www.playrugbyleague.com/media/2625/national-safeplay-code-2018.pdf>.
[52] Ibid.

Currently, the Custodial Operations Policy and Procedures ('*COPP*') document for Corrective Services New South Wales (CSNSW) posits that the use of force to restrain prisoners is permissible by a correctional officer to maintain good order, discipline and security of the correctional centre.[53] The *COPP* and CSNSW detail a number of situations in which the use of force towards inmates is supported by corrective service institutions in NSW, such as circumstances involving a risk of serious harm to the inmate or others.[54]

According to s 13.7: Use of Force in the *COPP*, every use of force is to be reported and reviewed,[55] and once restraint has been established, force may only be used upon an inmate in order to maintain it.[56] Unfortunately, such reporting does not always occur.[57] Furthermore, ss 1.3-4 lacks sufficient clarity when setting out the circumstances warranting the use of force and fails to appropriately define the extent of force permitted. Consequently, Amnesty Indigenous Rights advisor Rodney Dillon has called for independent bodies to examine the reporting process of the use of force in NSW.

Section 9 of the *COPP*,[58] stipulates guidelines for the identification and handling of asphyxiation under restraint throughout corrective service institutions in NSW. The document indicates that a greater emphasis placed on de-escalation procedures by CSNSW for correctional centres in NSW exists. For example, s 9(3) states that "a person should not be restrained in the prone position for any longer than is necessary to gain control",[59] and that moving the affected person out of a prone position must be done, "as soon as control has been achieved", with care taken not to further constrict airways by placing pressure on their neck, throat or carotid sinus.[60]

The inquest of David Dungay Jr forced changes in the training procedures for correctional officers based on the Deputy State Coroner's recommendations. These recommendations included a review of the policy regarding the Immediate Action Teams' (IATs) manner of restraining inmates. In NSW, the role of IATs is to respond to security and emergency situations, and they are often the first responders to critical incidents.[61] In February 2020, it was decided that all IAT members would be required to wear body-worn video (BWV) cameras to improve transparency and operational safety in high-pressure environments.[62] However, it must be ensured that, following such an event, the inmate is placed in a safe cell and is granted the opportunity to contact friends and family, with all events being recorded.

On the 26th of November 2019, Justice Action corresponded with the Acting Director Corrections Strategy & Executive Services of CSNSW, Kelly-Anne Stewart, submitting proposals for de-escalation tactics and raising questions about how safe restraint can be achieved. We received a response on the 6th of December 2019 stating that CSNSW had updated its operational policies governing the use of force, including a greater emphasis on

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[53] Corrective Services NSW, *Custodial Operations Policy and Procedures,* Report 13.7 Use of Force (16 December 2017) s 1.129(1) <https://www.correctiveservices.justice nsw.gov.au/Documents/copp/use-of-force-redacted.pdf >.
[54] Ibid s 1.131 (1)-(2).
[55] Ibid s 7.131 (1)-(2).
[56] Ibid.
[57] Allam, L., Wahlquist, C. Evershed, N. (2020) '*Aboriginal Deaths in Custody: 434 Have Died Since 1991, New Data Shows*' <https://www.theguardian.com/australia-news/2020/jun/06/aboriginal-deaths-in-custody-434-have-died-since-1991-new-data-shows>
[58] Corrective Services NSW, *Custodial Operations Policy and Procedures,* Report 13.7 Use of Force (16 December 2017) s 9 (2) <https://www.correctiveservices.justice nsw.gov.au/Documents/copp/use-of-force-redacted.pdf> .
[59] Ibid s 9(3).
[60] Ibid.
[61] Justin Hendry, 'NSW Prison Officers to Get Body-worn Cameras', *IT News* (online), (18 February 2020) <https://www.itnews.com.au/news/nsw-prison-officers-to-get-body-worn-cameras-538160>.
[62] Ibid.

de-escalation procedures and identifying asphyxiation. Further emails were sent to CSNSW on the 9th of July 2020 proposing changes to the use of force and requesting clarification of changes in protocol following the inquest of David Dungay Jr.

In their reply dated 12 August 2020 Ms Stewart stated that, in line with the recent changes, "CSNSW had implemented safe restraint training procedures for all officers, following Deputy State Coroner's recommendations and subsequent policy amendments to s 13.7 of the '*COPP*'".[63] The email identified that "use of force training is provided as part of the primary training mandatory for all correctional officers to undertake before being posted to a work location. Additionally, the Security Operations Group currently provides supplementary courses for members of IATs and special units".[64] According to Ms Stewart, "the training occurs over 11 days and includes training on de-escalation and communication techniques. All correction officers must undertake this training prior to being posted to a work location".[65] The letter also stated that "an online Positional Asphyxia Awareness course is compulsory and part of mandatory training for all correctional officers every two years".[66] However, the comprehensive implementations of the specific policy changes have not been clarified by CSNSW, and the process is currently still ongoing.

Following this correspondence with Ms Stewart, Justice Action prepared a structured protocol for restraint and sent another email on the 3rd of September 2020, which has been acknowledged but has not yet received a response. In the letter, we made requests for further clarification of how the use of force would be applied. We also submitted the proposed protocol to CSNSW and indicated that, to avoid the likelihood of physical confrontation, CSNSW should consider adopting the following recommendations for approaching an individual, which involves relying on de-escalation techniques first and foremost.

Justice Action further proposed to CSNSW that IATs should be reduced to three members. The use of six staff members for one inmate is excessive and can escalate already tense situations, as well as creating confusion through the lack of awareness of other members' actions. A three-person team with specific roles would be more controlled and effective. Each member should be trained to assume a specific controlled position, similar to the UK's prison protocol as set out in E. Control & Restraint Basic Techniques - s 1.3 Formation of a Three Officer Team in the HM Prison Service's *Use of Force Training Manual*.[67]. The following steps should be undertaken:

1. The IAT, consisting of preferably a three member team, should advance behind a shield quietly towards the detainee who is given all opportunities to accept direction. A camera should record the event for accountability.
2. The IAT should move to secure the detainees' arms and legs. The arms should be handcuffed behind their back and the legs should be secured by separate team members. This constitutes satisfactory restraint under Clause 131 Section 3 of the *Crimes (Administration of Sentences) Regulation 2014* (NSW).[68]
3. While gaining control, no contact should be made with the head, thorax, or abdomen, and the detainee should be kept in an upright position at all times. This section in our proposal addresses Clause 131 Section 1 of the *Crimes (Administration of Sentences) Regulation 2014* (NSW).

[63] Corrective Services NSW, (16 December 2017), *Custodial Operations Policy and Procedures,* Report 13.7 Use of Force <https://www.correctiveservices.justice nsw.gov.au/Documents/copp/use-of-force-redacted.pdf>.
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Above n 2.
[68] *Crimes (Administration of Sentences) Regulation 2014* (NSW) cl 131(3).

4. The detainee should then be moved to a secure space where they are provided with the immediate opportunity to make a complaint as well as access to support from friends or family.

Queensland

As per s 143 of the *Corrective Services Act* 2006, a corrective services officer may use non-lethal force if reasonably necessary to compel compliance with an order, restrain a prisoner either for an offense, disciplinary breach, or self-harm and compel any person lawfully ordered to leave who refuses to do so.[69] The prerequisites include reasonable belief in the necessity of the use of force, a clear warning, sufficient time to observe the warning, and that the use is unlikely to cause death or grievous bodily harm ('GBH').[70] However, a warning and sufficient time can be omitted if they would create a risk of injury.[71] As per s 146, reasonably necessary lethal force may be used, if an officer believes that a prisoner doing any of the following is likely to cause death or GBH to another person and that the officer is warranted to stop a prisoner from doing so.[72] Lethal force is permitted under legislation in circumstances of participating or facilitating a prison break or when attempting an assault. Officers may also respond in situations of an escaped prisoner from secure custody.[73] However, if there is a foreseeable risk that the use of such lethal force will endanger another person, the force must not be used.[74]

In s 14.3.3 ch 14 of the *Operational Skills and Practices of the Queensland Police Operational Procedures Manual*, respiratory neck restraint hold (chokehold) involving direct pressure to the trachea (windpipe), and lateral vascular neck restraint hold (carotid neck restraint) when pressure is applied to the sides of the neck are listed as open hand tactics.[75] For a police officer to use the latter, high risk and an immediate operational necessity or self-defence have to be in place, and vulnerable individuals cannot be subjects.[76] Once a subject loses consciousness, an officer is to "immediately cease maximum compression".[77] And if the subject does not regain consciousness after around 30 seconds or complains of significant pain or discomfort to the neck area, the officer should seek medical assistance for the subject.[78] Pressure point control tactics are also usable under similar circumstances.[79]

South Australia

Only after exhausting all other diffusing means, and in response to self-defence, preventing an escape or damage to property, or countering resistance to lawful instruction, can force be used.[80] The level of force used depends on

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[69] *Corrective Services Act 2006* (Qld) s 143(1).
[70] Ibid ss 143(2), 144.
[71] Ibid s 144(3).
[72] Ibid s 146(1).
[73] Ibid.
[74] Ibid s 146(2).
[75] *Operational Procedures Manual* (Qld), (Manual / Issue 77, 31 July 2020) ch. 14 s 14.3.3(i)-(vii).
[76] Ibid s 14.3.3: policy(i)-(v).
[77] Ibid s 14.3.3: procedure(iv.c).
[78] Ibid s 14.3.3 (vi).
[79] Ibid s 14.3.3: policy(i)-(ii).
[80] Government of South Australia; Department for Corrections Services, *Protection, Safety and Security*, (Web Page) <https://www.corrections.sa.gov.au/prison/prison-life/prisoner-management/protection,-security-and-safety>.

the situation, and chemical sprays can often be the least harmful.[81] After the use of force, the prisoner will be isolated, monitored, examined, and interviewed.[82]

The *Correctional Services Act 1982* only mentions the use of force against prisoners briefly. As per s 86, officers may use reasonable force to exercise powers or discharge duties, for example during a search of prisoners.[83]

Spit Hoods will be banned in South Australia, after September 2020 following a report for the SA ombudsman condemning the use of the practice in South Australia's Youth Detention System.[84] All other states in Australia had already banned the use of spit hoods before 2020. The investigation "ultimately concluded that the application of spit hoods to children and young people detained in the Adelaide Youth Training Centre was not consistent with the objects and guiding principles of the youth justice system and appeared contrary to the Charter of Rights for Youths Detained in Training Centres"[85] Ombudsman Wayne Lines noted that the use and application of spit hoods were a breach of international laws and increased the risk of potentially fatal asphyxiation because multiple adults were needed to force the spit hood over the child's head. In the 12 cases reviewed, every case but one showed that the child was forced to the floor during the interaction.[86]

Tasmania

In Tasmania, guidelines regarding the use of force are codified under Part 4A *Corrections Act 1997* (Tas). The use of force is heavily regulated in Tasmania and must be only used as a last resort and only in circumstances prescribed by regulations. Unless an urgent situation arises within a prison, a correctional officer may only use force if they provide a clear warning and sufficient time for this warning to be observed.

Furthermore, the Act mandates that if force is used, the Director must ensure that the prisoner/detainee is examined and appropriate care is made available.[87] The use of force must be recorded and contain details of the incident and reason behind the use of force.[88]

The 2017-2020 Disability Justice Plan provides training for police officers to recognise different disabilities, understand how an individual's disability may influence their interaction with authorities, as well as become aware of the relevant support services available to them.[89] By doing so, it is believed that this will reduce the need

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[81] Ibid.
[82] Ibid.
[83] *Correctional Service Act 1982* (SA) s 86.
[84] South Australia Metropolitan Operation Service Policy, (September 2016), '*Use of Spit Masks'*, <https://www.police.sa.gov.au/__data/assets/pdf_file/0012/847767/SAPOL-FOI-Determination-Ref-20-0733.pdf>.
[85] Ombudsman SA, (September 2019), '*Investigation Concerning the Use of Spit Hoods in the Adelaide Youth Training Centre'* <https://www.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Human-Services-Use-of-spit-hoods-in-the-Adelaide-Youth-Training-Centre.pdf>.
[86] Calla Wahlquist, (25 September 2019) , '*Children Pinned to Floor and Forced to Wear Spit Hoods at South Australian Detention Centre'* <https://www.theguardian.com/australia-news/2019/sep/25/children-pinned-to-floor-and-forced-to-wear-spit-hoods-at-south-australian-detention-centre>.
[87] *Corrections Act 1997* (Tas) s 34E.
[88] Ibid s 34F.
[89] Department of Justice Tasmania, (May 2018) *Disability Justice Plan for Tasmania 2017-2020*, 31-32. <https://www.justice.tas.gov.au/__data/assets/word_doc/0007/456244/Disability-Justice-Plan-for-Tasmania-2017-2020-initial-annual-report.DOCX>.

for restraint methods and prevent conflict. Although, the ABC recently commented that the police still do not have the 'training, the skillset, and the support to do those tasks', which can cause further distress for those with mental health illnesses.[90]

Victoria

In Victoria, the use of force by a corrections officer is found in the Corrections Act 1958 (Vic). The relevant sections include; s 462A and 463B. The use of force in Victoria, as stated in s 462A, should never be disproportionate, reasonable grounds are evident, it is necessary to avoid continuation or completion of an indictable offence, or, it is necessary to effect or assist in affecting the lawful arrest of a person committing or suspected of committing an offence. The use of reasonable force by any person is permitted under s 463B, if such action is reasonably necessary to prevent suicide, or any act which he/she believes on reasonable grounds, would result in suicide.[91]

Western Australia

The guidelines for the use of force in Western Australia is outlined in the *Prisons Act 1981* (WA). As per s 48, where a serious breach of the good order or security has occurred or appears imminent, and no other reasonable means of control are available, practicable steps such as orders and warnings need to be taken before force can be used. Per s 42, a superintendent may authorise the restraint of a prisoner to prevent injuries, on medical grounds or to prevent an escape. Restraint by medication shall be used only on medical grounds and with a medical practitioner's approval.[92] When a continuous restraint exceeds 24 hours, the relevant information shall be reported.[93]

Despite the lack of uniform policy guidance, routine restraints are used on all prisoners. The approach assumes the escape risk despite the inmate's age, illness and immobility. A review of the Office of the Inspector of Custodial Services points to an imbalance between restraint use and the risk for pregnant women. Several case studies have emphasized that routine restraint use is disproportionate with individual risk. The review recommends changing the routine practice so that it is more closely aligned with individual risk and does not apply to pregnant women unless necessary.

A recent report by Western Australia's Independent Inspector of Custodial Services revealed the routine use of restraints including handcuffs and leg shackles on individuals in custody even when they pose no risk. For instance, pregnant women and inmates who are frail, unconscious, or have severely restricted mobility are routinely restrained during medical treatments and other external appointments, despite the clear risk of harm to a woman and her unborn baby.[94]

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[90] Baker, E. (26 June 2020) '*Push to stop Tasmania Police Being First Responders to Mental Health Incidents'* <https://www.abc net.au/news/2020-06-26/police-acting-as-de-facto-mental-health-workers/12392260>.
[91] *Crimes Act 1958* (Vic) s 462A, 463B.
[92] *Prison Act 1981* (WA) s 42(2).
[93] Ibid s 42(3).
[94] Human Rights Law Centre, (23 June 2020), '*Pregnant Woman Routinely Restrained in Western Australia',* <https://www hrlc.org.au/news/2020/6/23/pregnant-women-routinely-restrained-in-western-australian-prisons>.

Australian Capital Territory

The *Australian Federal Police Act 1979* (Cth) sets out the use of force permitted by the AFP and their powers of arrest.[95]This includes the arrest of an individual who has committed/is committing an offence, ensuring the person appears in court, preventing the repetition/continuation of the offence, preventing the concealment or destruction of evidence, preserving the welfare of the individual and proceedings in which a summons would not be effective.

The use of force must be reasonable and necessary to arrest or prevent the escape of an incarcerated individual.[96] This means not using restraints likely to cause death or GBH unless the officer is in fear of their life or they risk sustaining serious injuries.[97]

Northern Territory

The *Correctional Services Act 2014* identifies the circumstances in which the use of force is necessary. Specifically, part 3.4 refers to 'maintaining good order - the use of force'. Part 3.4 states in s 137(1)-(3), that a correctional officer may use force that is 'reasonably necessary' to maintain the security and good order of the facility. For example, in response to (a) compelling a prisoner to complete an action required by the correctional officer; (b) to prevent a prisoner engaging in misconduct; (c) to prevent a person at the facility from i. Harming themselves or others, himself or herself or another person, ii. Damaging property; (d) in self-defence or to defend someone else; (e) to restrain persons causing a disturbance at the facility, or (f) to prevent the escape of a prisoner. [98] The limitations of the use of force for correctional officers in the NT are outlined in s 138 and focuses on whether the force is 'reasonably necessary' or not. The inability to succinctly define 'reasonable force' is a major problem preventing the NT from formulating and employing more effective de-escalation tactics. The guidelines which govern 'how and when officers use their weapons' were removed from public access in 2018.[99]

International Practices for Safe Restraint

As stated by the Office of the United Nations High Commissioner for Human Rights, restraining should not be utilised as a punishment tool but rather as a necessary force to prevent any potential damage to the facility or injury to bystanders[100]. Therefore, the chokehold technique should not be performed for extended periods due to potential health risks associated with restricted oxygen flow. Discussions on how many countries addressed the issue of chokeholds by undertaking different approaches to applying the necessary use of force can be found below.

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[95] *Australian Federal Police Act 1979* (Cth) s 14A.
[96] Ibid s 14B.
[97] Ibid s 14B(2).
[98] *Correctional Services Act 2014* (NT) s 138.
[99] Zillman, S. and Vanovac, N. 3 July 2018) *Northern Territory Police Conceal 'Use-of-Force' Rules from Public* <https://www.abc net.au/news/2018-07-03/nt-police-conceal-use-force-rules-governing-weapons-from-public/9935832>.
[100] United Nations New York and Geneva, (2004) '*Human Rights Standards and Practice for the Police'* <https://www.ohchr.org/documents/publications/training5add3en.pdf>.

New York, USA

According to the Force Guidelines under the New York City Police Department ('NYPD') Patrol Guide,[101] Members of Officers ('MOs') are bound by the primary duty to protect human life, including individuals placed in custody.[102] MOS can only use force that is reasonably necessary to gain control over a subject in situations where de-escalation techniques fail or would be inappropriate.[103] Any application of force, including that used to restrain a subject, must be reasonable in all circumstances.[104] MOS must take into consideration various factors while exercising their discretionary power of employing force.[105] These include, but are not limited to, the nature and severity of the crime and circumstances, the subject's actions, and whether the subject is resisting custody.[106] An objective standard is used to ascertain the reasonability of the force used by MOS.[107] This is determined from the perspective of a reasonable officer with similar training and experience in the same circumstances of the incident under investigation.[108] The guidelines specifically state that MOS should avoid actions such as sitting, kneeling or standing on the subject's chest or back to prevent chest compression and, subsequently, the subject's reduced ability to breathe.[109] Amongst other prohibitions listed in the Force Guidelines, MOS is theoretically forbidden from using a chokehold under any circumstances.[110]

The NYPD also has specific guidelines in place to prevent deaths in custody arising from restraint practices.[111] In summary, the subject should be manoeuvred from a facedown position either onto their side or into a seated position. If the subject continues to struggle, the law enforcement officer should not sit on the subject's back. Instead, the officer should hold their legs down or wrap the legs with a strap. At no stage should the officer tie the handcuffs to a leg or ankle restraint. If required, the officer should immediately call for medical attention. When the subject is being transported to a station house or hospital, they should not be in a facedown position. Instead, the suspect should be placed in a seated position. The officer should sit next to the subject in the rear seat of the transport vehicle for observation and control.

Recently, in June 2020, the New York City Council passed six bills targeting police misconduct and enacting reform of the NYPD.[112] The bills aimed to ban chokeholds and restraint methods which involved kneeling on the person's neck during an arrest. Any officer found guilty of this act would be charged with a Class A misdemeanour regardless of their intention or injury to the subject. The penalty includes the officer facing either a $1,000 fine, up to one-year imprisonment, or three years of probation.[113] If the officer were found to have used a

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[101] New York City Police Department, (1 June 2016)'*Force Guidelines',* Patrol Guide 221-01.
[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Ibid.
[106] Ibid.
[107] Ibid.
[108] *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).
[109] New York City Police Department, (1 June 2016)'*Force Guidelines',* Patrol Guide 221-01.
[110] Ibid.
[111] U.S. Department of Justice, (June 1995), '*Positional Asphyxia–Sudden Death'*, National Law Enforcement Technology Center Bulletin.
[112] New York City Council, (2020), *Council Votes on Six Bills to Reform NYPD* <https://council.nyc.gov/press/2020/06/18/1990/>.
[113] New York State, (n.d), *Criminal Justice System for Adults in NYS* <https://omh ny.gov/omhweb/forensic/manual/html/chapter1.htm>.

chokehold and caused serious physical injury or death, they would be guilty of a Class C felony, which entails the officer being imprisoned for up to 15 years.[114]

Furthermore, one of the other new bills, 'Proposed Introduction No. 721-B', declares the right for the public to film police activities, establishing a cause of action for individuals to sue the police if their rights were being violated. Proposed Introduction No. 536-B criminalises the restraint of a person during an arrest in a manner that restricts airflow or blood circulation by applying compression on their windpipe or arteries in the neck, or by putting pressure on the chest or back. Such breaches will also expose the offender to civil liability. While attempting to gain control of a resisting subject, the ideal position would be to place the person in a prone position to handcuff them, using arm or leg holds to mobilise the subject. As such, the lack of pressure on parts of the body such as the stomach, back, and neck will greatly reduce the risk of Positional Asphyxia or serious injuries arising from the restraint. Additionally, if an officer witnesses their partner restraining subjects in an improper manner, they have been instructed to physically move them from such a position. Both of these bills seek to enhance accountability and thus decrease the excessive force and other harmful police practices.

United Kingdom

The United Kingdom has prison training and development protocol for the use of safe restraint and handling of confrontation with prisoners.[115] The guidelines focus on open communication and diffusion of the situation. It also emphasises the responsibility and accountability of staff but also outlines methods of safe restraint. This includes limiting IAT's to a "three officer team" each with specific roles.[116] The leader of the group, who is also a supervisor, is in charge of securing and protecting the head of the prisoner to ensure no pressure is applied. The other two team members remain closely behind and each takes control of the prisoner's arm on their respective sides.

The medical advice stipulates that the prone position increases the risk of asphyxia and should be avoided, and that "undue pressure should not be applied to the head, chest and back".[117]The manual also dictates that pressure should not be placed on the neck, particularly around the windpipe or the angle of the jaw, as the pressure applied to the carotid sinus (the region below the angle of the jaw) can disturb the nervous controls to the heart, causing the heart to abruptly slow or even stop. It further states that at no time should pressure be applied to the neck and that staff should watch out for warning signs of physical illness indicative of medical events or breathing difficulties; including but not limited to suffocation. Staff must also heed advice or instructions from medical staff.[118] The paper also highlights the increased dangers of restraining physically larger prisoners or pregnant women. The document stresses the responsibility of staff members being conscious of the impacts their actions can have, stating that following incidents where force is used they must record the circumstances leading up to the event, the reasons for the level of force used and any other relevant information relating to the circumstances. Furthermore, all staff members participating must be Control and Restraint trained and currently qualified (at least

[114] Gjelten E.A, (n.d), '*New York Felony Crimes by Class and Sentences'* <https://www.criminaldefenselawyer.com/resources/criminal-defense/felony-offense/new-york-felony-class.htm>.
[115]Above n 2.
[116] Ministry of Justice and HM Prison Service Training & Development Group, (2016), '*Use of Force Training Manual*', 52 <https://www.statewatch.org/media/documents/news/2012/jan/uk-prisons-use-of-force-manual.pdf>.
[117] Ibid 61.
[118] Ibid 54.

refreshed in the previous 24 months).[119] The necessity to justify actions, the requirement for all staff to be specifically trained on C & R, and the emphasis on personal responsibility overall increase accountability.

Norway

Physical restraint is also referred to as "mechanical restraint," which is a technique whereby a patient is physically restrained so that their range of movement is restricted.[120] Typically, the patient is restrained to a bed, with a belt over the chest area and four belts restraining each limb. This is generally referred to as five-point fixation. Other types of physical restraints, such as walking restraints and special clothing, are rarely used in Norway. The staff that physically hold a patient against their will might also be considered to be carrying out a type of physical restraint ("holding").

In Norway, physical restraint (including holding) may be used as an emergency intervention, to increase the safety of the patient in question or fellow patients and staff. Emergency intervention may also be used to avoid significant damage to buildings and objects. Such intervention is typically only used when patients are violent or self-harming. It is not permitted in Norway to use physical restraint for therapeutic purposes (i.e., "behavioural treatment") or as punishment, and the use of physical restraint within psychiatric hospitals is strictly regulated and monitored.

Sweden

In Swedish medical centres, there are four primary steps, listed below, which are used as alternatives to the physical restraint of patients.[121] This may be used in situations regarding police intervention.

1. Intervene immediately when an individual is unable to behave appropriately and the behaviour is disturbing or dangerous to themself or others in the environment to provide safety and contain inappropriate behaviour. Examples of these behaviours requiring immediate intervention include:[122]
    - Self-harm attempts
    - Disrobing outside of the privacy of the individual's room
    - Breaking or throwing objects
    - Verbal threats or yelling
    - Unsolicited or inappropriate touching of another person
2. Use the least restrictive alternative to restraint and/or seclusion. Interventions include:[123]
    - Use of a person's name and maintaining eye contact
    - Use of age-appropriate explanations of treatment
    - Engaged listening

[119]Ministry of Justice and HM Prison Service Training & Development Group, (2016), '*Use of Force Training Manual*', 54. https://www.statewatch.org/media/documents/news/2012/jan/uk-prisons-use-of-force-manual.pdf

[120] Wynn, R. (2015), 'The Use of Physical Restraint in Norwegian Adult Psychiatric Hospitals', *Psychiatry Journal*, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.790.7956&rep=rep1&type=pdf>.

[121] Wierman, B. (2016)'Alternatives to Restraint' *Swedish Medical Center,* <https://www.swedish.org/~/media/Images/Swedish/CME1/OnlineCourses/Restraint/AlternativestoRestraintClinicalJobAid.pdf>.

[122] Ibid.

[123] Ibid.

- Development of therapeutic rapport (includes tone, facial expressions, soothing conversation
- Use of de-escalation techniques
- Involvement of a person's support systems
- Use of PRN medications
- Use of a personal safety attendant (PSA)

3. Document, as appropriate to staff licensure and role, a person's behaviour, interventions applied, and the person's response to each intervention.[124]
4. Review behavioural management interventions with a multidisciplinary treatment team and inform the person's plan of care to include target behaviours, adaptive or replacement behaviours, interventions, criteria for discontinuation of behaviour management procedures, and behaviour management techniques used. The plan of care is developed collaboratively with the person and/or their family (when appropriate).[125]

Finland

While the use of coercive measures such as seclusion, restraint and involuntary medication in psychiatric care has declined over the years, a new Finnish study, *The Use of Restraint and Seclusion in Finnish Psychiatric Care,* reveals that these measures are still frequently used, and periods of both seclusion and mechanical restraint can be prolonged.[126] There were a total of 140 psychiatric wards in 21 different organisations reported having used some sort of coercive measures in 2017.[127] Of these, 127 were psychiatric wards offering specialised healthcare within hospital districts. The most frequently used method of coercion was seclusion, which was used by 109 wards a total of 4006 times. The duration of seclusion was, on average, close to three days. The use of mechanical restraint was reported by 106 wards however the frequency was considerably lower, and its use amounted to a total of 2113 times. The average duration of its use was far lower, with episodes of mechanical restraint being 17 hours on average. In addition, involuntary medication was administered to patients 2178 times by a total of 95 wards and the use of physical restraint was reported by 83 wards, amounting to a total of 1064 times with the average duration of use being less than an hour.

In Finland, the *Coercive Measures Act 2014* vests the police with the powers to apprehend, arrest, and remand suspects.[128] The Act outlines three principles relevant to the proper administration of coercive measures within corrections.

1. Principle of Proportionality (s 2): coercive measures may be used only when deemed justifiable with consideration to:[129]
    - The seriousness of the offence being investigated;
    - Importance of clarifying the offence;
    - The degree to which the use of coercive measures infringes on the rights of suspects and other stakeholders; and

[124] Wierman, B. (2016)'Alternatives to Restraint' *Swedish Medical Center,* <https://www.swedish.org/~/media/Images/Swedish/CME1/OnlineCourses/Restraint/AlternativestoRestraintClinicalJobAid.pdf>.
[125] Ibid.
[126] Ibid.
[127] Ibid.
[128] *Coercive Measures Act 2014* (Finland).
[129] Ibid s 2.

- Other relevant circumstances

2. Principle of Minimum Intervention (s 3): the use of coercive measures:[130]
   - may not infringe on the rights of anyone beyond what is necessary in order to achieve the purpose for which it is used; and
   - that the use of a coercive measure may not cause anyone undue loss or impediment
3. The Principle of Sensitivity (s 4)*:* in the use of coercive measures, the arousing of undue attention shall be avoided or otherwise should be conducted in a discrete manner.[131]

[130] Ibid s 3.
[131] Ibid s 4.

Forms of Un-safe Restraint

The case studies referred to at the beginning of the proposal highlight a significant systemic issue of restraint techniques utilised by authorities with coercive power that have resulted in the prevalence of unnecessary deaths in custody. Excessive use of force and the use of unsafe restraint techniques have significantly contributed to the percentage of deaths occurring in custody. Such models of un-safe restraint include the use of the prone position and excessive and prolonged physical contact with the head, face, thorax, or abdomen, which increase the restriction of airways. In the United States, there were reportedly 16 deaths in police custody wherein restraint was a 'direct or contributory factor to the death' over an 11 year period.[132] In the following sections, eight forms of unsafe restraint will be explored.

Chemical Restraint

On the 8th June 2020, prison guards used tear gas to break up a disturbance at Sydney's Long Bay Jail.[133] In *Binsaris*, the High Court of Australia overturned a decision of the Northern Territory Supreme Court, finding that the use of tear gas on youth detainees in fact constituted unlawful battery.[134] Chemical irritants are typically used by corrective services for crowd disbursement as they are expected to cause temporary effects such as tears, eye twitching, superficial pain and disorientation, without any permanent injury or death.[135] However, the effects of tear gas are only temporary at low concentrations, and exposure to higher concentrations may risk permanent respiratory damage or death.[136]

Other forms of chemical restraint include mace and pepper sprays.[137] In the United Kingdom, for example, there have been a number of deaths of victims in custody that have occurred after being exposed to pepper spray.[138] After investigation of 32 cases, only in one case was pepper spray directly causative of the death of an asthmatic victim who was pepper sprayed 10 to 15 times.[139] The postmortem examination revealed severe epithelial lung damage, and the cause of death was determined to be severe acute bronchospasm, which most likely precipitated by the use of pepper spray.[140] While pepper spray appears to be relatively safe in light of this anomaly,[141] there might still be a lack of physiologic data to conclusively state that pepper spray is incapable of causing death.[142]

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[132] Bell. D, (31 January 2012), *Police Guidelines Permit Techniques That Can Kill* <https://web.archive.org/web/20130127021943/http://www.thebureauinvestigates.com/2012/01/31/police-guidelines-fail-to-ban-restraint-techniques-that-can-kill/>.
[133] McGowan, M. (8 June 2020) '*Long Bay Prisoners Spell Out BLM After Guards Use Tear Gas to Break Up Fight'* <https://www.theguardian.com/australia-news/2020/jun/08/long-bay-prisoners-spell-out-blm-after-guards-used-tear-gas-to-break-up-fight>.
[134] Binsaris & Ors v Northern Territory [2020] HCA 22
[135] Rohini J Haar et al, *Health Impacts of Chemical Irritants Used for Crowd Control: A Systematic Review of the Injuries and Deaths Caused by Tear Gas and Pepper Spray* (2017) *BMC Public Health* 1, 2.
[136] Ibid.
[137] Dot Goulding, 'Violence and Brutality in Prisons: A West Australian Context' (2007) 18(3) *Current Issues in Criminal Justice* 399, 410.
[138] Jason Smith, 'The Use of Chemical Incapacitant Sprays: An Overview' (2002) 52(3) *The Journal of Trauma Injury, Infection and Critical Care* 595, 597.
[139] Ibid.
[140] Ibid.
[141] Ibid.
[142] Ibid.

Chokeholds

A chokehold involves the application of pressure to an individual's neck, throat, trachea, windpipe or airway which prevents or hinders breathing or reduces the intake of air.[143]

Carotid Neck Restraint

The carotid neck restraint involves the application of direct pressure to an individual's neck to restrict or slow the blood flow within the carotid arteries. The use of this technique is often qualified with directives that the officer should immediately cease applying their body weight to the individual's back, head, or abdomen once the individual is restrained,[144] but this does not go far enough to mitigate the danger and likelihood of death. The recent death of George Floyd has highlighted that such restraints are unacceptable and should not be employed.

Spit Hoods

A spit hood is an implement applied primarily during incidents which are intended to allow staff to safely respond and intervene in a situation whilst avoiding contact with bodily fluids.[145] However, the incorrect application or movement of the hood restricts breathing and increases the likelihood of positional asphyxia.

Child Restraints

The *Youth Justice Administration Act 2016* (SA) requires:

(i) the administration and day-to-day operation of youth training centres to be informed by the need to 'promote the rehabilitation of youths by providing them with the [necessary] care, correction, and guidance'[146]; and

(ii) the management of youths detained in training centres to 'be designed to achieve their rehabilitation and development into responsible members of the community and the proper realisation of their potential.'[147]

Section 29(f) of the Act generally prohibits the use of mechanical restraints to restrict a child or young person's free movement in a training centre. The prohibition is qualified by the Youth Justice Administration Regulations. Under the Regulations, the free movement of a child or young person in a training centre may be restricted by the use of mechanical restraints in circumstances where: the mechanical restraint is of a kind approved by the Chief Executive; the staff believes on reasonable grounds that the child or young person is about to harm themselves or

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[143] Denver Police Department, (January, 2018) *Denver Police Department Operations Manual* <https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf>, 6.
[144] Ibid.
[145] Ombudsman SA, (September 2019) *Investigation Concerning the Use of Spit Hoods in the Adelaide Youth Training Centre* <https://www.ombudsman.sa.gov.au/wp-content/uploads/Department-for-Human-Services-Use-of-spit-hoods-in-the-Adelaide-Youth-Training-Centre.pdf>.
[146] *Youth Justice Administration Act 2016* (SA) s 3(1)(e).
[147] Ibid s 3(2)(c).

others; or in circumstances where it is necessary to restrain the child or young person to preserve the security of the centre, to prevent the resident from escaping from custody or to preserve community safety.

The Chief Executive of the department has approved 'resident worn spit protection' as a kind of mechanical restraint for use on children and young people in the AYTC. Under the Regulations, mechanical restraints, including spit hoods, may only be used as a last resort following an assessment of the risks associated with using, or not using, a mechanical restraint to restrain the child or young person's free movement. The Regulations prohibit the use of mechanical restraints, with the inclusion of spit hoods, to either punish a child or young person or in circumstances that would contravene the child or young person's rights under the Charter of Rights for Youths Detained in Training Centres.[148] The Regulations make the use of mechanical restraints, including spit hoods, subject to several safeguards:

a. the use of the restraint must be reasonable, justified and proportionate in the circumstances.
b. the restraint may only be used by an employee of the centre who has been trained in the use of the restraint.
c. the manager of the centre must be notified of the use of the restraint as soon as reasonably practicable.
d. the restraint may only be used for as long as is necessary in the circumstances
e. the child or young person must not be left unsupervised and the child or young person and restraint are to be checked at regular intervals of not more than 15 minutes.
f. the manager of the centre must ensure that a record is made containing information including the name and age of the child or young person, the date and time of the incident, the reason for the use of the restraint and the name of the person who ordered the use of the restraint.

However, contrary to these guidelines and regulations, the use of spit hoods and the force used to apply them is often disproportionately related to the offence. In one incident a 13-year-old girl was pinned to the floor by five staff members who put a spit hood on her head and handcuffed her hands behind her back, after she refused to go to bed.[149]

Positional Asphyxia

Positional asphyxia occurs when the positioning of the torso 'causes obstruction of the airways and interferes with ventilation to the point of causing fatal hypoxic injury'.[150]

When a person's total body movement is constricted in a very limited space and the person's head is positioned downwards against their chest, it causally interferes with adequate airway resulting in hypoxia. Alternate forms of prone positioning causing asphyxia include: [151]

1. Being placed on one's stomach, especially when obese.

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[148] Ibid.
[149] Campbell, (24 September 2019), *SA Government to Ban Use of Spit Hoods After Damning Report by the State's Ombudsman* <https://www.abc net.au/news/2019-09-24/spit-hoods-to-be-banned-in-sa-following-ombudsman-report/11543706>.
[150] G.D. Dukes, et al., (2016) *Encyclopedia of Forensic and Legal Medicine* (Second Edition).
[151] Mohr, Petti, Paterson et al. and Mohr, (2003) '*Adverse effects associated with physical restraint'*. <https://www researchgate net/publication/10658179_Adverse_effects_associated_with_physical_restraint>.

2. Being placed into a chokehold resulting in neck compression.
3. Placing excessive pressure against an individual's back.
4. Placing a towel or sheet over someone's head.
5. Positioning an individual's arms or pulling them across the neck or chest area.

Any position that causes partial or complete airway obstruction could lead to respiratory distress and or arrest, with serious implications or even resulting in death.[152] There have been a series of reports implicating certain restraint maneuvers with the decedent "hog tied" in the prone position as causing death in suspects under arrest.[153]

In David Dungay's case, the risk of positional asphyxia was amplified due to the use of the 'knee ride technique', which involved placement of a knee and application of downward pressure onto his back. The inquest revealed that inadequate training was provided to the IAT officers involved, as their training policies made no mention of the risk of positional asphyxia and officers stated that they were specifically instructed to use the dangerous knee ride technique when an inmate was in a prone position.[154] The Long Bay Jail Hospital staff were not trained in respect to the NSW Policy Directive on Seclusion and Restraint,[155] which indicates that in scenarios which require the use of restraint, the maximum time an inmate should be held in a face down restraint is the time needed to administer medication (approximately 2-3 minutes).[156] An updated NSW Policy Directive has since been issued which states that staff are to avoid restraining in a way which interferes with the person's airways, breathing or circulation, including by applying pressure to the rib cage, neck, abdomen or by obstructing the mouth or nose.[157]

The Dungay inquest also referenced policies distributed by the HM Prison Service in the UK whose use of force training manual for correctional officers is not only publicly accessible, but contains a detailed section on positional asphyxia.[158] According to the HM Prison Service's published guidelines, training should require officers to immediately release or modify the restraint to a practical extent in order to reduce body wall restriction, and summon medical attention upon identifying warning signs related to positional asphyxia. Prisoners should never be restrained face down (or on their side, in the case of a pregnant prisoner) for longer than is necessary to gain control. Until the prisoner is no longer lying face down (or on their side), there must be a continuous observation of the prisoner after being relocated in the prone position. Furthermore, the manual warns officers to note that an individual dying from positional asphyxia may be able to speak prior to collapse, and thus that an individual's ability to talk does not indicate an ability to breathe. Similarly, the United Kingdom's Metropolitan Police Service published an officer safety manual (as at March 2013) similar to the HM Prison service manual.[159] In particular, the manual stated that officers should avoid applying pressure across a person's back and shoulders, and the subject must be repositioned from the face-down position at the earliest opportunity.

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[152]Mohr, Petti, Paterson et al. and Mohr, (2003) '*Adverse effects associated with physical restraint'*.330-7. https://www researchgate.net/publication/10658179_Adverse_effects_associated_with_physical_restraint

[153] O'Halloran R.L. and Frank J.G,(March 2000)'*Asphyxial Death During Prone Restraint Revisited: A Report of 21 Cases'*, 39-52.

[154] Counsel Assisting, 'Closing Submission of Counsel Assisting', Submission in *Inquest into the Death of David Dungay* (File No 2015/281722), 22 November 2019, [183-7].

[155] Leetona Dungay, 'Closing Submissions on Behalf of Leetona Dungay', Submission in *Inquest into the Death of David Dungay* (File No 2015/281722), 22 November 2019, [258].

[156] NSW Health, *Aggression, Seclusion & Restraint in Mental Health Facilities in NSW* (Policy Directive PD2012_035, 26 June 2012) s 4.1.1.

[157] NSW Health, *Seclusion and Restraint in NSW Health Settings* (Policy Directive PD2020_004, 6 March 2020) 3.2.2.

[158] Leetona Dungay, (22 November 2019), 'Closing Submissions on Behalf of Leetona Dungay', Submission in *Inquest into the Death of David Dungay* (File No 2015/281722), 184-91.

[159] Ibid 196.

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Hobble Restraint

The Hobble Restraint is a restraint technique that uses a belt bound to the ankles, knees, and elbows to transport prisoners in seated positions. This is intended to prevent prisoners from attacking others or damaging property. The application of the Hobble Restraint involves subduing, handcuffing, then applying the restraint on a prisoner's legs while they are rolled onto their side for them to be transported.

<u>There are three levels of restraint which can be applied with the Hobble Restraint:</u>

- Minimum restraint: a hobble cord is placed around the waist and attached to handcuffs to prevent the arrestee from slipping the handcuffs to the front of his body.
- Moderate restraint: the hobble restraint placed around the thighs of the arrestee to reduce levels of violence and the arrestee's ability to flee.
- Maximum restraint: the hobble restraint is placed around the ankles of the arrestee as well as both their hands and feet. This is done for a combative arrestee and should be done as a last resort.

Conditions

- The single and double strap technique is authorised for all levels of restraint.
- In cases where the maximum restraint is applied the officer must monitor the arrestee until the restraint is removed, to ensure they are not harmed during transportation.
- If the arrestee cannot be transported in a seated upright position, the arrestee should be transported by ambulance with an accompanying officer.

The Los Angeles Police Department has authorised the hobble restraint in limited circumstances, only to be used for the binding of ankles.[161] The Birmingham Alabama Police Department implements the hobble restraint using handcuffs, flex cuffs and maximal restraining devices.[162] Maximal restraining devices are only to be used where a

[160] Ibid.
[161] Garden Grove California Police Department, (5 March 1997), '*Use of the "Hobble" Restraint Order* 1 CA' .
[162] Alabama Police Department, (Birmingham, 18 April 2001), '*Temporary Restraining Devices Procedure 120-1'*,

prisoner violently resists arrest or has a manifestation of a threatening mental disorder. The method employed to restraint the offender is the Use of Total Restraint Procedure which involves the offenders' feet being secured with a hobble restraint which is attached to the chain of their handcuffs. The positioner is then restrained on their side with the hobble being secured above the knees in order to prevent the arrestee from running. Importantly, the arrestee should not be left on the ground with pressure on their back, a position known as 'positional asphyxia'. This position restricts the arrestee's ability to breathe, which could potentially lead to suffocation. Police officers should observe the arrestee during transportation to ensure positional asphyxia does not occur. If the prisoner is displaying or reporting any symptoms of illness, paramedics should be called to the scene.

The Lincoln California Police Department permits the use of a leg restraining device to bind the arrestee's legs/appendages together in order to protect the police, the arrestee and the wider community.[163] While using the restraint, officers should notify the supervisor before using a hobble restraint, otherwise, a report should be made to the supervisor after. The suspect should be watched to ensure they do not roll onto their stomach as this increases the risk of positional asphyxia. In order to minimise this risk, the officer should actively watch for signs of laboured breathing. In regards to the individual being transported, they should be seated in an upright position and secured by a seatbelt. A long lead of the restraint should be placed outside the rear door and wrapped around the door pillar bringing it through the passenger seat in order to prevent the arrestee from dragging on the ground. When the restraint is used, the officer should report the time of the restraint, the method used for transportation, observations regarding the arrestee and any medical and drug issues observed.

[163] California Police Department (31 August 2020), '*Leg Restraint Device Policy 306'*.

National Deaths in Custody Database Proposal

13/02/20

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Executive Summary

David Dungay's repetition of "I can't breathe" in the lead up to his death defines the callous approach taken by some correctional staff towards the lives of incarcerated individuals. The disregard for the cries of a dying, vulnerable man provides insight into the practices in some of the darkest corners of the country: correctional facilities.

Following the 2009 death of Robert Plasto-Lehner in the Northern Territory, the 'prone position' restraining technique was identified as fatally dangerous. Regardless, the same technique was used on David Dungay six years later. Given existing knowledge, this obvious gap should have been easily identified and he need not have died.

Coroners' Inquests into Robert Plasto Lehner's death (Northern Territory 2009), and those of Carl Antony Grillo (Queensland 2011), Bradley Karl Coolwell (Queensland 2017), and Pasquale Giorgio (Queensland 2018) reveal that in each of these cases, the causes of death were the result of being restrained in the prone position. This led to eventual suffocation from positional asphyxia. Further deaths in similar circumstances could have been avoided had the information, and possible strategies for reform, been implemented across jurisdictions.

The current coronial systems across all Australian jurisdictions present significant gaps in the collation, accessibility, dissemination and response by affected authorities of coronial reports. The Dungay family, and the wider community, stress the urgency of using the available information to prevent death.

In discharging their duties, the Coroner bears the obligation to prevent further deaths from occurring. At present, the Coroner makes recommendations for reform which are distributed to the affected authorities in their state. These reports are made available on separate coronial databases. The inclusion of government responses vary, with Queensland being the only state that specifies whether a response was required.[1]

This data from the inquests is examined by two organisations; the *National Coronial Information System* ('NCIS') and the *Australian Institute of Criminology* ('AIC').[2] The NCIS is intended to serve as a centralised databases of deaths in custody, which includes some Coroners' findings and recommendations. However, it is not updated regularly and has restricted access. The compartmentalisation of information leads to each Coroner existing within their own silo. This is contrary to the Coroners' purpose of preventing further death.

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[1] The State of Queensland, 'Findings – Coroners Court', *Queensland Courts* (Web Page, 31 July 2018) <https://www.courts.qld.gov.au/courts/coroners-court/findings>.
[2] See section 1.

In response to this issue, a new database system is proposed to include coronial findings on deaths in custody and recommendations from all Australian jurisdictions, distributed nationwide as well as published responses from state and federal authorities who are affected by the reccommendations.

The database should utilise a clearinghouse model to create one central agency for information collection, classification, and distribution.[3] The data would be collated and automatically distributed to all relevant government authorities, while also allowing for public access. It is crucial for it to be regularly updated, and require government responses to inquests, which will be searchable by catchword and report content.

It is proposed that the implementation of such a national database and follow up functions be facilitated by the NCIS and/or the AIC. The implementation of the proposed database would promote accountability among government authorities to address recurring issues that endanger the lives of incarcerated individuals. It is clear that by inducing collective learning, accessible solutions can be developed to prevent needless deaths across Australia.

[3] *Merriam Webster* (online at 11 February 2020) 'Clearinghouse' (def 2).

Current Use of Findings and Recommendations of Inquests

Currently findings and recommendations of coronial inquests are largely made available and utilised on a state-by-state basis, with very little collation of jurisdictions undertaken. Previous measures have been taken to address deaths in custody on a national level, yet these have not sustained in recent years. Similarly, current measures are inaccessible to the wider public and do not display the transparency needed to address the public interest of this issue. Each state government retains the ownership and maintenance of either a state coronial website or webpage that belongs to a larger government department.

AustLII

The Australasian Legal Information Institute (AustLII) currently provides the most comprehensive assembly of coronial reports, publishing coronial findings and recommendations from four Australian jurisdictions and New Zealand.[4] The jurisdictions under which these reports are made available are:

- the Coroners Court of Victoria from 2002 onwards,
- the Coroners Court of Australian Capital Territory from 2013 onwards,
- the Magistrates Court of Tasmania from 2002 onwards,
- the Magistrates Court of the Northern Territory from 2002 onwards, and
- the New Zealand Coroners Court from 2007 onwards.

The following Australian jurisdictions of which produce coronial reports, are not provided on AustLII:

- the Coroners Court of New South Wales,
- the Coroners Court of South Australia,
- the Coroners Court of Queensland, and
- the Coroners Court of Western Australia.

Inquiry has been put to AustLII as to why this inconsistency exists regarding the available jurisdictions.

AustLII also provides a search tool, in which allows the user to input free text and yield coronial reports as results from either a specific database (jurisdiction) or all databases (jurisdictions). For example, the term 'positional asphyxia' when searched, yields coronial reports as results when using either the all or selected database options (depending on the selected database). Similarly, specific coronial inquests can be searched and found using their catchwords. However, the accuracy to which this is achieved varies depending on the generality of the catchword used and whether one or all selected databases are searched. Catchwords used to search all databases generally will not result in desired/relevant documents.

[4] AustLII, 'All Databases', *AustLII* (Web Page) <http://www.austlii.edu.au/database-all.html>.

Australian Institute of Criminology

The Australian Institute of Criminology (AIC) has historically provided the 'National Deaths in Custody Program: Death in Custody in Australia Report'. This report is produced on an annual basis and records the nature and extent of deaths occurring in prison, police custody and youth detention in Australia.[5] The most recent of these reports covers the 2015-2016 year, however reports have yet to be published that address years 2016 through 2019.

The most recent of AIC's publications relating to this topic is the 'Indigenous Deaths in Custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody'[6] statistical bulletin that was produced in February of 2019.

The AIC also proclaims to compile a National Deaths in Custody Program database, which is composed of data collected by the National Deaths in Custody Program (overseen by the AIC) and coronial reports and information collected by the National Coronial Information System (NCIS).[7]

National Coronial Information System

The National Coronial Information System (NCIS) is a database that was established in 2002 and is currently managed by the Victorian Department of Justice and Community Safety.[8] The database contains a variety of coronial information from findings to legal, medical and scientific reports.[9]

Whilst the NCIS allows the user to input free text to search the database, the effectiveness of the search in yielding results depends upon the generality of the text used. For example, the term 'positional asphyxia' does not yield any results, however, the term 'death' yields ample results. As the database is user restricted, only those who have been approved may have full access, thus the volume of results provided in response to a searched term also depends upon whether the NCIS has provided public material related to the term. The application process required to receive full access to the NCIS can only be described as extensive.

Alternatively, the NCIS provides access to a 'Coronial Recommendations: Fatal Facts' search engine. This search engine allows the user to filter their search according to pre-given criteria, whereby there is no option for the free input of text to guide the search. Unfortunately, it appears

[5] https://aic.gov.au/publications/sr/sr13.
[6] https://aic.gov.au/publications/sb/sb17
[7] https://www.crimestats.aic.gov.au/NDICP/ndicp/.
[8] https://www.ncis.org.au/about-us/.
[9] https://www.ncis.org.au/about-the-data/data-sources/.

that either the database is not updated regularly or not all coronial recommendations are made available for public access, as the most recent coronial report provided using the criteria of 'Indigenous' and 'Law Enforcement' is from 2015. Given the findings of the David Dungay's 2019 Coronial Inquest, this is concerning.

Similarly, the NCIS provides Coronial Recommendations: Fatal Facts editions, in which contain summaries of coronial reports and recommendations from all jurisdictions that have taken place within a three-month span. The most recent Fatal Facts edition provided covers January through March 2017. Newer editions are yet to be published.

State Coronial Websites

As stated above, each Australian State and Territory maintains its own coronial website or webpage, most providing information and coronial reports and recommendations to the public. Each website or webpage is unique to the state and provides different levels of functionality. The effectiveness of each State's online offering will be analysed below.

South Australia

The South Australian Coroners Court webpage[10] is situated within the official South Australian Courts website.[11] Both the general Courts website and coronial findings webpage allow the input of free text in order to search, however both yield no results when the term 'positional asphyxia' is used. The findings of coronial reports are searchable via their content when using the general search bar, the coronial findings search bar on the other hand only allows the searching of names and the dates that coronial findings were handed down.

On the coronial findings webpage, reports are segmented by the year the findings were handed down and reports are identifiable by name only, with an absence of catchwords.

New South Wales

New South Wales offers an entire website dedicated to the Coroners Court,[12] with coronial findings located on a single webpage within the site.[13] All coronial findings from 2012 through 2020 are listed on the findings page, with only 'major' findings being available pre-2012. Each report is titled by the name of the deceased and accompanied by the name of the relevant coroner, the date the report was handed down and the catchwords of the case. The general Coroners Court website allows the input of free text in order to search, whereby the term 'positional asphyxia' yields relevant results, thus coronial reports are searchable via their catchwords.

[10] http://www.courts.sa.gov.au/OurCourts/CoronersCourt/Pages/default.aspx.
[11] http://www.courts.sa.gov.au/Pages/default.aspx.
[12] http://www.coroners.justice.nsw.gov.au/.
[13] http://www.coroners.justice.nsw.gov.au/Pages/findings.aspx.

Queensland

Similar to South Australia, Queensland offers a Coroners Court webpage[14] situated within the official Queensland Courts website.[15] Both the general Courts website and the coronial findings webpage allows free text input to search. Both yield relevant search results when the term 'positional asphyxia' is used. All coronial reports from 2004 through 2020 are listed chronologically on the coronial findings webpage, each report is titled by name of the deceased and accompanied by the date the findings were delivered and the catchwords of the case. Interestingly, next to each report it is indicated whether a response from the Queensland Government is required and if a response has been submitted. After careful measure of all jurisdictions, Queensland currently offers the most accessible and efficient method of searching and sorting coronial findings.

Western Australia

Similar to NSW, Western Australia offers an entire website dedicated to the Coroners Court of Western Australia.[16] Coronial findings are segmented by year from 2012 through 2020, with each year having its own separate webpage dedicated to the findings delivered that year. Reports prior to 2012 are not available. Findings are listed via a drop down bar alphabetically and provide no further information beyond the name of the deceased. The website's search bar allows the free input of text, whereby the term 'positional asphyxia' yields one relevant result. It does not appear that Western Australian coronial reports use catchwords, thus catchwords are not searchable, similarly coronial reports are not searchable via their content.

Victoria

As above, the Coroners Court of Victoria is provided with its own website.[17] All reports are stored on the findings webpage[18] and can be accessed via an interactive grid, which spans over severall pages. Findings are titled by the name of the deceased, and although initially listed by date that the report was delivered in descending order, reports are also filterable by name, case ID, case type, date, coroner, related rulings and orders and responses to reports. Both the general Court's website and the findings webpage allows the input of free text to search, however, both searches yield no results in response to the term 'positional asphyxia'. Similarly, it does not appear that content of coronial reports is searchable via the general search bar, but searches of content may yield accurate results when using the findings webpage search bar in some cases.

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[14] https://www.courts.qld.gov.au/courts/coroners-court.
[15] www.courts.qld.gov.au.
[16] https://www.coronerscourt.wa.gov.au/
[17] www.coronerscourt.vic.gov.au.
[18] https://www.coronerscourt.vic.gov.au/inquests-findings/findings?combine=&order=field_date_of_finding&sort=desc.

Tasmania

Tasmania offers a webpage dedicated to the Coroners Court of Tasmania[19] situated within the Tasmanian Magistrates Court's website.[20] Coronial reports are segmented according to time periods: Pre-2015, 2015 through 2018 and 2019 onwards. Each time period is given its own webpage, with corresponding reports listed in a table on the relevent webpage. Reports are listed according to date the report was delivered in descending order and titled by the name of the deceased. Accompanying the report is also the name of the relevant coroner and the relevant 'keywords' or catchwords of the case. Both the general Magistrates Court website and the findings webpages allow for the free input of text to search, with both searches yielding relevant results in response to the term 'positional asphyxia'.

Northern Territory

The Northern Territory's coronial findings are held on a webpage[21] within the Department of the Attorney-General and Justice's website.[22] Reports are all listed on the findings webpage but segmented by the year the findings were handed down and in chronologically descending order. The general Attorney-General and Justice website all allow free input of text to search, however the term 'positional asphyxia' yields no relevant results. Similarly, the content of reports do not yield relevant results.

Australian Capital Territory

The Australian Capital territory offers a webpage[23] dedicated to the Coroners Court within the ACT Court's website.[24] Coronial findings are not made available on the website or the webpage. Instead it is advised that copies of coronial reports can be requested from the coroner if you are a member of the immediate family of a deceased for whom an inquest (other than an inquest into a death in custody) has been held or if you were the owner of the property damaged or destroyed by the fire the subject of an inquiry.[25] Curiously, coronial reports under the jurisdiction of the Australian Capital Territory Coroners Court are available on AustLII.[26] There is no explanation available on this website as to the existence of this discrepancy.

Analysis and recommendations for inquests

The nationally coordinated mechanisms to collate coronial inquests are lacking the necessary support to perform as required. National database mechanisms are inconsistent and demand reform in order to improve centrality and the ease to which users can search causes of death from

[19] https://www.magistratescourt.tas.gov.au/about_us/coroners.
[20] www.magistratescourt.tas.gov.au.
[21] https://justice.nt.gov.au/attorney-general-and-justice/courts/coroners-findings.
[22] https://justice.nt.gov.au.
[23] https://www.courts.act.gov.au/magistrates/o/courts/coroners_court.
[24] www.courts.act.gov.au.
[25] https://www.courts.act.gov.au/magistrates/o/courts/coroners_court
[26] https://www.austlii.edu.au/cgi-bin/viewdb/au/cases/act/ACTCD/.

jurisdiction to jurisdiction.

Inconsistencies in the functionality and features of government databases at both a national and state level restrict user accessibility to public information and raise concerns about the capacity for cross-jurisdiction communication related to deaths in custody.

Purpose of the Coroners Act

Despite each Australian State and Territory having its own unique Coroners Act, a consistent thread runs through these legislations. More than this, a consistent thread runs throughout Australian society and throughout time. The prevention of needless deaths has been sought long-before the commencement of current coronial legislation, yet within these current acts, this purpose is clear. On some occasions this purpose is express. Such is the case with the *Coroners Acts 2003* (Qld) in which expresses an object of the Act to be to 'help prevent deaths from similar causes happening in the future'.[27] Alternatively, this purpose may be implied from the texts and the powers and functions these Acts imbue within the Coroner. For instance, each jurisdiction allows the Coroner to make recommendations in responses to deaths.[28]

Objects of *Coroners Acts 2009* (NSW)

S 3 Objects of the Act

(c) to enable coroners to investigate certain kinds of deaths or suspected deaths in order to determine the identities of the deceased persons, the times and dates of their deaths and the manner and cause of their deaths,
(d) to enable coroners to investigate fires and explosions that destroy or damage property within the State in order to determine the causes and origins of (and in some cases, the general circumstances concerning) such fires and explosions,
(e) to enable coroners to make recommendations in relation to matters in connection with an inquest or inquiry (including recommendations concerning public health and safety and the investigation or review of matters by persons or bodies),

Objects of *Coroners Acts 1997* (ACT)

S 3BA Objects of Act

(i) to hold inquests into particular kinds of deaths or suspected deaths, and to make findings about the deaths, including the identities of deceased people and causes of death;

[27] *Coroners Acts 2003* (Qld), s 3.
[28] NSW s 82, Tas s 28(2), Vic s 72(2), NT s 35(2), Qld s 46, ACT s 57(3)(c), WA s 27(3), SA s 25(2).

(ii) to hold inquiries into, and make findings about, the cause and origin of—

(A) fires that have destroyed or damaged property; and

(B) disasters; and

(d) allow a coroner, based on the coroner's findings in an inquest or inquiry, to make recommendations about the following:

(i) the prevention of deaths;

(ii) the promotion of general public health and safety including occupational health and safety;

(iii) the administration of justice;

(iv) the need for a matter to be investigated or reviewed by an entity.

(2) As far as practicable, the objects of this Act must be carried out in a way that—

(a) for an inquest into a person's death—recognises the interests of the person's immediate family—

(i) to have all reasonable questions about the circumstances of the person's death answered; and

(ii) to be kept informed of important developments throughout the inquest; and

(b) maintains the inquisitorial, non-adversarial nature of the Coroner's Court, and its function to inquire into and publicly examine the causes of death, fire and disaster; and

(c) promotes the development of a systematic and comprehensive public record of findings made by a coroner and any associated recommendations made by the coroner; and

(d) increases public awareness of a coroner's findings about—

(i) violent or unusual deaths; and

(ii) serious risks to public health and safety; and

(iii) ways to protect public health and safety by reducing the risk of death, fire or disaster

Objects of Coroners Acts 2003 (Qld)

S 3 Object of the Act

The object of this Act is to

(d) help to prevent deaths from similar causes happening in the future by allowing coroners at inquests to comment on matters connected with deaths, including matters related to

(i) public health or safety; or

(ii) the administration of justice; and

States guidelines on use of force

- NSW
    - Incident reporting is available but redacted
    - Use of force is available but redacted
- Qld
    - Held 'in confidence'[29]
    - Death in custody is available – "public version"
    - incident management report is available
- WA
    - Use of force manual is restricted – policy directive 5
    - "The rules below form the majority of the overall system of prisons and prisoner management derived from the *Prisons Act 1981*."
    - 48. Use of force on serious breach of security
        - (1) Where the chief executive officer is of the opinion that —
            - (a) a serious breach of the good order or security of a prison has occurred or appears to the chief executive officer to be imminent; and
            - (b) no other reasonable means of control are available at the prison, the chief executive officer may order the use of force against a prisoner or prisoners, including force which may cause death or serious injury.
        - (2) Before force is used under this section, steps shall be taken, where it is practicable in the circumstances to do so, to issue the orders necessary to restore or ensure good order and security within the prison and to give warning of the consequences of failure to comply with those orders.
    - Death of a prisoner is available
    - Reporting of incidents is available
- Vic
    - Use of force is either not made available or restricted

[29] https://corrections.qld.gov.au/documents/procedures/custodial-operations-practice-directives/

- Incident reporting is available
- Reporting and review of the death of a prisoner is available
- Corrections Act 1986
    - 9CB Use of reasonable force by staff—police gaols
        - (1) A person authorised under section 9A(1A) or 9A(1B) to exercise a function or power may, where necessary, use reasonable force to compel a person who is deemed under Part 1A or section 9CAA to be in the custody of the Chief Commissioner of Police to obey an order given by the first-mentioned person in the exercise of that function or power.
        - (2) Where a person uses force under the powers in subsection (1), the person must report the fact to the Chief Commissioner of Police without delay.
        - (3) A person who uses force in accordance with this section is not liable for injury or damage caused by that use of force.
    - 23 Control of prisoners
        - (1) An officer may give any order to a prisoner which the officer believes to be necessary for the security or good order of the prison or the safety or welfare of the prisoner or other persons.
        - (2) A prison officer may where necessary use reasonable force to compel a prisoner to obey an order given by the prison officer or by an officer under this section.
        - (3) Where a prison officer uses force to compel a prisoner to obey an order the prison officer must report the fact forthwith to the Governor.
        - (4) Where a Governor uses or orders the use of force to compel a prisoner to obey an order the Governor must report the fact to the Secretary.
        - (5) A prison officer is not liable for injury or damage caused by the use of force in accordance with this section.
    - 90 Powers and duties of officers
        - (7) A Regional Manager or a community corrections officer may use reasonable force to compel an offender to obey a direction, if

he or she believes on reasonable grounds that the use of force is necessary—

- (a) to prevent the offender or another person being killed or seriously injured; or
- (b) to prevent serious damage to property.

- Tas
  - Use of force is confidential
  - Incident reporting is confidential
  - Corrections Act 1997 - PART 4A - Use of Force
    - **34A. Managing use of force**
      - (1) The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always –
        - (a) a last resort; and
        - (b) in accordance with this Part.
      - (2) The Director must make standing orders or an operating procedure in relation to the use of force, including provision in relation to the following:
        - (a) the circumstances in which, and by whom, force may be used;
        - (b) the kinds of force that may be used.
      - (3) The power to make a standing order or an operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.
    - **34B. Authorised use of force**
      - (1) A correctional officer may use force that is necessary and reasonable for this Act, including for any of the following:
        - (a) to compel compliance with a direction given in relation to a prisoner or detainee by the Director;
        - (ab) to carry out, in relation to a prisoner or detainee, a search or examination, or search and examination, pursuant to an order of the Director given under section 22 ;

- (b) to act under section 28 ;
- (c) to prevent or stop the commission of an offence or disciplinary breach;
- (d) to prevent the escape of a prisoner or detainee;
- (e) to prevent unlawful damage, destruction or interference with property;
- (f) to defend the correctional officer or someone else;
- (g) to prevent a prisoner or detainee from inflicting self-harm;
- (h) any other thing prescribed by the regulations.

- (2) However, a correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

- **34C. Application of force**
  - (1) A correctional officer may use force under this Part only if the correctional officer –
    - (a) gives a clear warning of the intended use of force; and
    - (b) allows enough time for the warning to be observed; and
    - (c) uses no more force than is necessary and reasonable in the circumstances; and
    - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
  - (2) However, a correctional officer need not comply with subsection or (b) if, in urgent circumstances, the correctional officer believes, on reasonable grounds, that doing so would create a risk of injury to the correctional officer, the prisoner or detainee or any other person.
- **34D. Use of restraints or weapons**
  - (1) The use of force under this Part includes the use of restraints and weapons.
  - (2) The Director must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that –
    - (a) the circumstances are sufficiently serious to justify the use; and

        - (b) the kind of restraint or weapon is appropriate in the circumstances; and
        - (c) the restraint or weapon is used appropriately in the circumstances.
    - (3) The Director must also ensure that restraints and weapons are only used under this Part –
        - (a) by correctional officers trained to use them; and
        - (b) in accordance with standing orders or an operating procedure that applies to their use.
    - (4) The Director must take all steps to ensure that potentially lethal force is not used under this Part unless the actions of a prisoner or detainee or other person are likely to cause death or serious injury.
    - (5) In applying force under this Part, a correctional officer may use a restraint or weapon, including any of the following:
        - (a) body contact, impact and restraint;
        - (b) a mechanical restraining device;
        - (c) a baton;
        - (d) riot control equipment;
        - (e) a chemical agent;
        - (f) an electro-muscular disruption device or a conducted electrical weapon;
        - (g) a distraction device;
        - (h) a firearm;
        - (i) any other thing prescribed by the regulations.
- **34E. Medical examination after use of force**
    - If force has been used under this Part, the Director must ensure that a prisoner or detainee affected by the use of force is examined as soon as practicable and that appropriate medical health care is available to the prisoner or detainee.
- **34F. Reporting use of force**
    - (1) The Director must keep a record of any incident involving the use of force under this Part that causes injury or death to anyone.
    - (2) The record must contain details of the incident, including the circumstances, the reason for the decision to use force and the force used.
    - (3) The Director must give a copy of the record to the Coordinator of the Official Visitors Scheme for the purpose of

informing the official visitors as soon as practicable after the incident.

- NT
    - No policies or procedures provided online
    - Correctional Services Act 2014
        - 138 Limitations of use of force
            - (1) This section applies when a correctional officer is permitted under this Act to use force.
            - (2) The use of force by a correctional officer is reasonably necessary only if the correctional officer reasonably believes that:
                - (a) the purpose for which the force is used could not reasonably be achieved in another practicable way; and
                - (b) the nature and amount of force used is reasonable in the circumstances.
        - 140 Commissioner to manage use of force
            - (1) The Commissioner must ensure that:
                - (a) to the extent practicable, force is used under this Act only:
                    - (i) as a last resort; and
                    - (ii) when the use of force is reasonably necessary; and
                - (b) correctional officers who use force do so in accordance with this Act.
            - (2) The Commissioner must issue Commissioner's Directions in relation to the use of force, including as to:
                - (a) the circumstances in which, and by whom, force may be used; and
                - (b) the nature of the force that may be used in those circumstances.

- SA
    - No policies or procedures are available online
    - Only legislation
        - Correctional Services Act 1982
            - 86—Prison officers may use reasonable force in certain cases
            - 86—Prison officers may use reasonable force in certain cases
                - Subject to this Act, an officer or employee of the Department or a police officer employed in a correctional institution may, for the purposes of exercising powers or discharging duties under this Act,

use such force against any person as is reasonably necessary in the circumstances of the particular case.

- ACT
    - Corrections Management Act 2007
    - Part 9.7 Use of force
        - 137 Managing use of force
            - (1) The director-general must ensure, as far as practicable, that the use of force in relation to the management of detainees is always—
                - (a) a last resort; and
                - (b) in accordance with this part.
            - (2) Without limiting section 14 (Corrections policies and operating procedures), the director-general must make a corrections policy or operating procedure in relation to the use of force, including provision in relation to the following:
                - (a) the circumstances, and by whom, force may be used;
                - (b) the kinds of force that may be used.
                - Note- The power to make a corrections policy or operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors (see Legislation Act, s 48).
        - 138 Authorised use of force
            - (1) A corrections officer may use force that is necessary and reasonable for this Act, including for any of the following:
                - (a) to compel compliance with a direction given in relation to a detainee by the director-general;
                - (b) to act under section 126 (Searches—use of force);
                - (c) to prevent or stop the commission of an offence or disciplinary breach;
                - (d) to prevent the escape of a detainee;
                - (e) to prevent unlawful damage, destruction or interference with
                - property;
                - (f) to defend the officer or someone else;
                - (g) to prevent a detainee from inflicting self-harm;
                - (h) anything else prescribed by regulation.
            - (2) However, a corrections officer may use force only if the officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.
        - 139 Application of force
            - (1) A corrections officer may use force under this part only if the officer—

        - (a) gives a clear warning of the intended use of force; and
        - (b) allows enough time for the warning to be observed; and
        - (c) uses no more force than is necessary and reasonable in the circumstances; and
        - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
    - (2) However, the corrections officer need not comply with subsection (1) (a) or (b) if, in urgent circumstances, the officer believes, on reasonable grounds, that doing so would create a risk of injury to the officer, the detainee or anyone else.
    - Example of urgent circumstances - the detainee is assaulting someone or engaging in self-harm
- 140 Use of restraints or weapons
    - (1) The use of force under this part includes the use of restraints and weapons.
    - (2) The director-general must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that—
        - (a) the circumstances are sufficiently serious to justify the use; and
        - (b) the kind of restraint or weapon is appropriate in the circumstances; and
        - (c) the restraint or weapon is used appropriately in the circumstances.
    - (3) The director-general must also ensure that restraints and weapons are only used under this part—
        - (a) by corrections officers trained to use them; and
        - (b) in accordance with a corrections policy or operating procedure that applies to their use.
    - (4) A health practitioner appointed under section 22 (Health practitioners—non-therapeutic functions) may administer a drug as a restraint, or direct the use of another form of restraint, if the health practitioner believes, on reasonable grounds, that is necessary and reasonable—
        - (a) to treat a detainee, particularly where the detainee's behaviour cannot be controlled otherwise; or
        - (b) to prevent a detainee inflicting self-harm, or harming someone else, particularly where other forms of restraint are unlikely to be effective; or
        - (c) to prevent the escape of a detainee, particularly while being transferred to or from a correctional centre or other place.
    - (5) The director-general must ensure that firearms are not used under this part unless someone's life is under threat or a detainee or other person offers armed resistance to a

corrections officer or police officer exercising a function under this Act or another Act.

- (6) In applying force under this part, a corrections officer may use a restraint or weapon, including any of the following:
  - (a) body contact;
  - (b) handcuffs, restraint jackets and other restraining devices;
  - (c) riot control equipment;
  - (d) a chemical agent;
  - (e) a gas gun;
  - (f) a firearm;
  - (g) anything else prescribed by regulation.

- 141 Medical examination after use of force
  - The director-general must ensure that a doctor appointed under section 21 (Doctors — health service appointments) examines a detainee injured by the use of force under this part as soon as practicable and that appropriate health care is available to the detainee.
- 142 Reporting use of force
  - (1) The director-general must keep a record of any incident involving the use of force under this part that causes injury or death to anyone.
  - (2) The record must—
    - (a) include details of the incident, including the circumstances, the decision to use force and the force used; and
    - (b) be available for inspection under chapter 7 (Access to and inspection of correctional centres).
  - (3) The director-general must give a copy of the record to the inspector of correctional services.

Coronial Reports Acknowledgement and Response

- Is the coroner required to disseminate their reports and recommendations?
- Is acknowledgment of a report or its recommendations by a State official necessary?

State	Legislation and Section in Act	Acknowledgement of Coroner's Report/Recommendations
Queensland	*Coroners Act 2003 (Qld)* S 46A S 47	S 46A - findings by the coroner are published on the coroner's website. S 47(2) – if findings are made in relation to a death in care or a death in custody, the coroner must give a written copy of their coronial findings to: - the AG - the appropriate chief executive, and - the appropriate Minister
New South Wales	*Coroners Act 2009 (NSW)* S 82 S 37	S 82 requires the coroner to provide recommendations to: - the State Coroner - any person or body to which a recommendation is directed towards, and - the Minister, and - any other appropriate Minister S 37(1) requires the State Coroner to make a written report to the Minister containing a summary of the details of deaths that involved a person in custody. S 37(3) the Minister is to copy the given report to be tabled in each House of Parliament within 21 days after the report was made.
Australian Capital Territory	*Coroners Act 1997* (ACT) S 55 S 73 S 75 S 76	No acknowledgement of reports being addressed in the legislation. Only s 55 addresses the adverse comments and findings and what is allowed to be addressed. S 73 requires the registrar of the Magistrates Court to keep a record of the inquest into a death in custody for no less than 7 years after the completion of the inquest S 75 requires that once the coroner has completed an inquest into a death in custody, the coroner must report the findings, in

		writing to: - the AG, - the custodial agency in whose the custody the death happened, the minister for this agency, - the AIC, - an appropriate Aboriginal legal service (if deceased was ATSI), - any other appropriate person. S 76(1) requires the custodial agency given a report under section 75 must give a written response to the recommendations of the report, no later than 3 months after receipt, to the Minister responsible for the custodial agency. S 76(3) requires the Minister who received a report under s 75(1) to provide a copy of the response to the coroner as soon as practicable after receiving it
Victoria	*Coroners Act 2008* (Vic) S 72 S 73	Yes, a coroner may report to the AG on a death or fire, which the coroner has investigated. Coroner can make recommendations to any Minister, public statutory or entity on any matter. S 72(5) - specifically contends that the Coroner must publish the findings and comments on the internet and provide a copy of the written response to any person. S 72(4) - the written response is written to the coroner in response to their findings. S 73 requires that all coroner's findings and comments must be published on the internet unless stated otherwise by the coroner.
Tasmania	*Coroners Act 1995 (Tas)* S 28 S 29 S 30	No, there is optional acknowledgement of publication of the findings of the coroner by the AG. S 28 simply states what the coroner investigates deaths on and must make recommendations wherever required. S 29 notes only that all investigations and findings resulting from it must be recorded and kept by the coroner. S 30 - the Coroner may report to the AG on a death, which the coroner investigated. Recommendations can also be made, but acknowledgment and reporting to the AG is optional.

South Australia	*Coroners Act 2003* (SA) S 25	Yes, findings and recommendations of the coroners must be received by the AG and received and responded to by the appropriate Minister if relevant. S 25(4) requires Coroner's Court to forward findings and recommendations of an inquest to the AG, and in the case of a death in custody, forward findings and recommendations to a Minister or other agency if a recommendation is directed towards them S 25(5) requires the Minister or Minister responsible for the agency to create a report to be put before each House of Parliament within the next 8 sitting days after 6 months from the date of receiving the report. Report must detail any actions taken or proposed to be taken. Report must also be sent to the State Coroner.
Western Australia	*Coroners Act 1996* (WA) S 27	S 27(1) requires the State Coroner to report annually to the AG on the deaths, which have been investigated in each year, including a specific report on the death of each person held in care. S 27(2) requires the AG to create a report under s 72(1) to be laid before each House of Parliament within 12 sitting days after receipt of the report. S 27(3) the State Coroner may make recommendations to the AG regarding deaths in custody. S 27(4) where a recommendation made under s 72(3) is relevant to the operation of an agency, the State Coroner must inform that agency in writing of the recommendation.
Northern Territory	*Coroners Act 1993* (NT) S 26 and 27 S 35 S 46A S 46B	Yes, the coroner must send report to AG, where report regards a death in custody. Findings may acknowledge by AG and forwarded to the relevant minister. S 26 and 27 - The Coroner must hold an inquest and make a report to AG, where the inquest is into the death of a person held in custody S 35 - the coroner may report to AG on a death or disaster investigated. - S 35(2): A coroner may make recommendations to the AG on the matter

		- S 35(3): A coroner may report to the Commissioner of Police and the DPP if the coroner believes that an offence may have been committed. S 46A - S 46A(1): If the AG receives a report or recommendation from a coroner under ss 27 or 35 that contains a comment relating to an agency or the police force, AG must give the report to the CEO of the agency or the Commissioner of Police. - S 46A(2): AG must give a copy of the report or recommendation to the Commonwealth Minister responsible if the report contains comments in re to the commonwealth department or agency. S 46B - S 46B(1): If a CEO or Commissioner of Police receive a report or recommendation under s 46A(1), they must give to the GA within 3 months a written response to the findings of the report or recommendation - S 46B(3): On receiving this response, the AG must respond to the coroner's report or recommendation and the corresponding response

- Which states require mandatory publishing of a response on the Internet?
    - New South Wales
    - Queensland
    - Victoria
    - Northern Territory

Relevant authorities

- AIC
- NCIS
- NSW
    - Corrective Services NSW
    - Department of Justice
    - NSW Health
    - NSW Police Department
- Qld
    - Queensland Corrective Services
    - Queensland Health
    - Queensland Department of Justice
    - Queensland Police Service
- SA
    - Department for Correctional Services (SA)
    - SA Health
    - Attorney-General's Department
    - South Australia Police
- Vic
    - Corrections Victoria
    - VicHealth
    - Justice Vic
    - Victoria Police
- Tas
    - Corrective Services (Tas)

    - Department of Justice (Tas)
    - Department of Health
    - Tasmania Police
- WA
    - Corrective Services (WA)
    - Department of Justice (WA)
    - Department of Health (WA)
    - Western Australia Police Force
- NT
    - Correctional Services (NT)
    - Department of Health (NT)
    - Department of Attorney-General and Justice
    - Northern Territory Police Force
- ACT
    - ACT Corrective Services
    - ACT Justice
    - ACT Health
    - ACT Policing

Interstate Coronial Communication

There is assumed to be national communication between Coroners across Australia. Thereby this proposal and its findings should be directed to all those involved in this communication.

Interstate Corrective Services Communication

There is inter-jurisdictional communication between the Corrective Services agencies of all States and Territories at a ministerial and bureaucratic level, however little is shared with the public.

What is known is that the Commissioner or Chief Executive of Corrective Services from each and every Australian jurisdiction, as well as New Zealand's Department of Corrective Services collaborate to form the Corrective Services Administrators' Council (CSAC).[30] The CSAC meets twice per year and aims to promote best practice in the delivery of corrections services through the effective sharing of ideas and the addressing of key national issues.

This communication provides the opportunity for the proposal of a National Deaths in Custody Database proposal to be discussed and implementation to be considered.

[30] https://www.corrections.sa.gov.au/about/our-partners/interstate-corrections.

Allies

- National Coronial Information System
    - The National Coronial Information System (NCIS) is a secure database of information of deaths reported to a coroner in Australia and New Zealand.
    - The NCIS contains data on almost 400,000 cases investigated by a coroner including demographic information on the deceased, contextual details on the nature of the fatality and case reports consisting of coronial findings, autopsy and toxicology report and police notification of death.
- Australian Institute of Criminology (AIC)
    - The AIC is Australia's national research and knowledge centre on crime and justice. The AIC seeks to promote justice and reduce crime by undertaking and communicating evidence-based research to inform policy and practice.
- State Coroner
    - The State Coroner is responsible for the efficient administration and operation of the state's coronial system. The State Coroner is notified of all reportable deaths including those to be investigated by provincial coroners. Coronial investigations may include the conduct of a formal public hearing or inquest.
    - Coroners investigate sudden and unexpected deaths in order to determine the identity of the deceased and the date, place, circumstances and medical cause of death. The coroner also has power to make the recommendations following an inquest to improve public safety and prevent future deaths.
- Indigenous Social Justice Association (ISJA)
    - Indigenous Social Justice Association is an Aboriginal rights campaign group that focuses on sovereignty, social justice, deaths in custody and the right to live in relation to Indigenous Australians. Their work involves holding rallies and organising protests for a range of Aboriginal issues.
- National Justice Project
    - The National Justice Project is a not-for-profit legal service. The National Justice Project applies their expertise to advancing human rights by representing and giving voice to the vulnerable of whom would otherwise be unable to find legal representation.
- Common Ground
    - Common Ground is a website designed to build a foundational level of knowledge for all Australians, and be a go to resource for those wanting to learn more and connect with Australia's First Peoples. Common Grounds aims to help Australians see the value of Aboriginal and Torres Strait Islander cultures through

providing access to engaging and authentic content that will help bridge gaps in knowledge.

- Australians for Native Title and Reconciliation (ANTaR)
    - ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997. ANTaR is an independent, national network of organisations and individuals working in support of Justice, Rights and Respect for Aboriginal and Torres Strait Islander peoples in Australia.
    - ANTaR is an independent non-government organisation and is non-party-political.
- @IndigenousX
    - @IndigenousX is a multi-media platform designed to create a media landscape where Indigenous people can share their knowledge, opinions and experiences with a wide audience across the world
    - @IndigenousX is also a twitter account with more than 43,000 followers, and over 300 Indigenous hosts on the account have shared thousands of stories, facts, reports, pictures, and laughs with an ever increasing audience
- National Indigenous Times (NIT)
    - The NIT strives to be the most comprehensive Indigenous online news site in Australia by offering rigorous reporting on the issues that affect Aboriginal and Torres Strait Islander peoples.
- Human Rights Law Centre (HLRC)
    - The HRLC is an Australian human rights group that protects and promotes human rights in Australia and in Australian activities overseas. The HRLC does this using an integrated strategic combination of legal action, advocacy, research working in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.
- Families Affected by Deaths in Custody
    - Dungay Family
    - Other families through the contact of ISJA