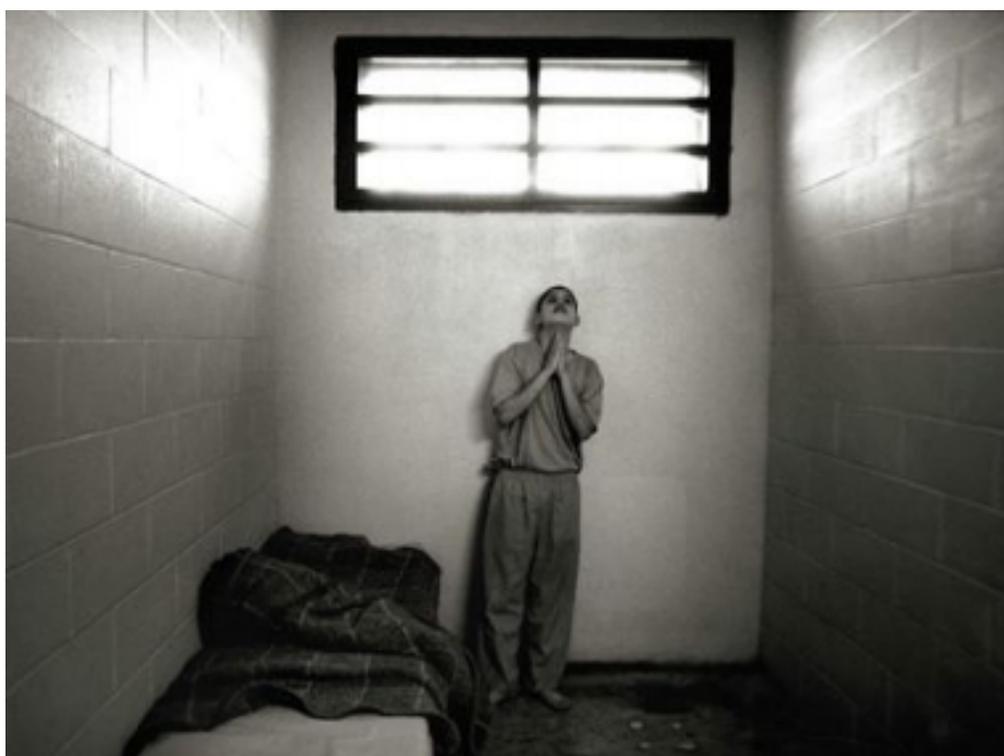


# UN OPCAT SPT Inspection

## Australia 2022

Preliminary Submission

31/07/2022



Justice Action is part of the community of people in Australian prisons and locked hospitals, tracking our history to the beginning of the penal colony. Our mission is to ensure the voices of those inside are heard in a continuous and coherent way, forcing accountability on those entrusted by the state to detain us. We work for a safer inclusive society. We are [here](#).

Justice Action represented all Australians held against their will at the original consultation for the UN OPCAT Treaty in [2009](#). In 2013, Justice Action was invited to participate in a nation-wide Roundtable of NGOs discussing OPCAT and the effects of its ratification on detainees. Since that time, we have continued to engage in this area with Australia's OPCAT Network and through discussions with members of Australia's OPCAT Advisory Group. Our OPCAT [index page is here](#).

We wish to engage with the SPT on its visit to Australia reserving the position for a structural detainee voice.

Contents

<b>Contents</b>	<b>2</b>
<b>Detainee representation and participation in OPCAT</b>	<b>3</b>
<b>Solitary confinement</b>	<b>4</b>
Areas of concern	7
<b>Forced Medication</b>	<b>9</b>
Areas of concern	10
<b>Strip Searching</b>	<b>10</b>
Areas of Concern	12

This submission raises four key issues that should be considered when the SPT visits Australia. Each section has been informed by our recent prisoner community consultation in preparation for this visit. We have not named the detainees and contacts who have provided responses, however should the SPT wish to meet them, we will assist.

## **Detainee representation and participation in OPCAT**

Justice Action advises that detainees themselves must be involved in the monitoring of their conditions and the development of policies implementing OPCAT. Listening to detainee voices shows respect for their humanity. It is essential to acknowledge the prisoner community and consider its views and experiences of detention. We refer you to pages 11-15 of our paper [Implementation of OPCAT in Aust](#) for further explanation, and a specific analysis of [acknowledging prisoner communities](#), which indicates potential benefits and their current standing.

OPCAT is an opportunity for positive change. Involving detainees in OPCAT forums would allow their concerns to be heard and would also be vital to keeping National Preventive Mechanisms (NPMs) transparent and accountable. Although there are many benefits to considering the views of detainees in the implementation of OPCAT, the Commonwealth Ombudsman currently does not recognise the right of detainees to a collective voice in the OPCAT Advisory Group.

Justice Action proposes that the [Australian Prisoners Union](#) (APU) could promote formal detainee representation and participation in the implementation of OPCAT. Justice Action is currently negotiating with the Fair Work Commission to recognise the APU in order to allow it to more actively organise safety and communications as well as ensure Australia's fulfilment of its international obligations. Prisoners are entitled to acknowledgement as a community and the APU could function as a formal structure to facilitate this. Here is a [Report for more information](#).

Justice Action requests that during its visit to Australia, the SPT asks the general manager of each facility to allow them to speak with the **Detainee Delegate Committee** and the **Indigenous Committee** before performing an inspection of the facility. A notice of the visit and its purpose should be given to the Committees a week prior. It is of course essential that any discussion with Delegates takes place *in the absence of guards*. Justice Action is prepared to assist the SPT in its investigations, if we have prior notice of which facilities it is visiting.

## **Solitary confinement**

Solitary confinement is torture which violates Australia's commitments under the Convention Against Torture. A full analysis can be found on our [website](#) and [paper on solitary confinement](#).

There is a large body of evidence that shows solitary confinement can cause physical, neurological and psychological damage. These effects are in many cases permanent, and even fatal. Research has demonstrated that isolation can have effects as severe as physical torture. For detainees with pre-existing psychological symptoms, these symptoms are exacerbated by solitary confinement. Detainees without existing psychological symptoms or history of mental illness are also greatly psychologically affected. Additionally, there are also negative physical effects of being in solitary confinement, such as the exacerbation of musculoskeletal disorders, due to limited space for movement and limited natural light.

With the advent of COVID in 2020 solitary confinement has been utilised as a common response by prison management to control the spread from incoming prisoners. It has become a standard of correctional facilities to leave prisoners for weeks in isolation without access to rehabilitation services, family visits or prisoner socialisation. Prisons attempt to justify this solitary confinement as a preventative infection measure, however, this isolation does not align with outside community standards and creates an increased risk of mental health issues particularly for vulnerable prisoners.

The detrimental effects of solitary confinement are especially significant for already vulnerable individuals. These include inmates who have a disability, are Indigenous, LGBTQIA+, and women and children. In Australia, there are a disproportionate number of Aboriginal and Torres Strait Islander (ATSI) peoples incarcerated and it must be noted that solitary confinement practices have a disproportionate effect on ATSI

peoples. The Victorian ombudsman also highlights the issue of youth being placed in solitary confinement in Australia; this inspection was carried out against the standards of OPCAT, and so directly highlights how Australia is in direct breach of its obligations to OPCAT.

There are many effective ways to avoid using solitary confinement, and the damage it causes. Preventative measures such as using peer mentoring, access to family and community, staff training on humane de-escalation methods and voluntary de-escalation rooms provide opportunities for prisoners to re-group and provide space with a calm atmosphere. Prisons must also recognise detainees' freedom of association rights in allowing detainees to select their friends. There should be open accountability for anti-social behaviour through meetings with delegates, where both correctional staff and the prisoners involved come up with appropriate responses. Behavioural plans that are guided by family, personal support and peer mentoring are valuable. Therapeutic housing options which allow prisoners to live within small communities with the intention to learn new behaviours can be implemented as an alternative to solitary confinement. For further information a link to the full report is supplied [here](#).

### Areas of concern

Justice Action has received submissions detailing solitary confinement practices across Australia. Responses indicate that the following correctional centres should be visited:

- **New South Wales**

- Metropolitan Remand and Reception Centre, Silverwater – ‘Darcy’ Pod
  - Reports of detainees being regularly sent to MRRC to be isolated for up to six weeks with COVID justifications.
  - Little to no attempt is made to prevent self harm whilst in confinement and medical treatment is inconsistent or withheld.
- Silverwater Women’s Correctional Centre
  - Mental Health Unit
  - Multi-purpose Unit
- Goulburn HRMCC
  - Detainees held in solitary confinement with unnecessary distress from the prison’s use of Behavioural Modification Therapy and its resulting arbitrary control prison guards enforce on inmates. See [NSWCCL Shadow Report](#) where the Clinical Director of the HRMU disagrees against medical advice that long term incarceration in restricted conditions negatively affects the mental health status of inmates.

- **Western Australia**

- Casuarina Prison
  - Reports received of inmates being placed in segregation for 7 days followed by a 2 day break and then being re-placed in segregation.
  - A detainee in the Crisis Care Unit reported on how they were only allowed once a fortnight visits from another randomly chosen

detainee for an hour and were not given their hour of outside time for over two years.

- Hakea Prison
  - A detainee in isolation reported being given no clothing or bedding, no mattress and could not keep toiletries or a towel in their room.
- **Northern Territory**
  - Darwin Correctional Centre
    - In the Women's Sector - H Block, detainees reported how they were isolated for months over a minor infraction. They also reported how women with particular sentences under the commit program are segregated and kept isolated for their entire sentence.
    - In Sector 5 Men's Unit - High Security there are reports of detainees being stripped naked and handcuffed to their doors with no air circulation units.
  - Don Dale Youth Detention Centre: Darwin

## **Forced Medication**

Forced medication inflicts unnecessary mental and physical suffering on individuals and disproportionately impacts persons with a disability or mental illness. Common antipsychotic medications lead to the development of serious illnesses including Myocarditis and Type 2 Diabetes. Beyond the direct physical harms caused by the medication, forced medication can cause patients lose trust in the medical system, preventing them from voluntarily seeking professional help for future health issues. A

more comprehensive breakdown of the harms caused by forced medication, and how it [violates Australia's obligations to OPCAT can be found here](#).

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) prohibits forced medication of persons with disabilities, as they are particularly vulnerable to the distressing effects of torture and are more susceptible to distress from medical intervention. Despite this, states within Australia continue to have legislation which allow the forceful medication of persons with disabilities. This Report provides an analysis of [how compulsory treatment](#) is implemented in Australia, and how ineffective similar Community Treatment Orders have been internationally, whilst the limits of forceful medication [can be found here](#). Some states in Australia have begun to acknowledge and identify the harms caused by forced medication, such as [Victoria's royal commission into the mental health system](#).

Forced treatment is unnecessary considering the abundance of non-coercive measures available to treat mental illness. These alternatives include Cognitive Behaviour Therapy, psychoeducation, music therapy, aerobic exercise, the appointment of an enduring guardian, light therapy, therapeutic communities, social-network based therapies, assisted accommodation and employing workers that can create individualised treatment plans. For a more detailed review of these alternatives, please see suggested '[Alternatives to Forced Medication](#)'.

## Areas of concern

Justice Action has received submissions detailing forced medication practices across Australia. Responses indicate that the following correctional centres should be visited:

- Long Bay Forensic Hospital, Matraville NSW

- A survey found that 134 of the 135 patients receive medication. 15% felt their medication was of use, while 85% said they were forced.
- Thomas Embling Hospital, Fairfield Victoria
- Casuarina Prison Special Handling Unit, Casuarina WA

## Strip Searching

Being subjected to a strip search is degrading, humiliating, and violates the right to bodily integrity. However, strip searches are a routine practice in Australian prisons. Strip searching is torture that violates Australia's commitment to OPCAT. Detailed analysis can be found in our [paper on strip searching](#).

Strip searches are used excessively and have the potential to re-traumatise detainees. Most women in prison have been sexually and/or physically abused, so an intrusive and degrading strip search may trigger existing trauma. A [study](#) conducted in Victorian women's prisons found only seven items of contraband out of 6,200 searches. This highlights how strip searches are ineffective, degrading and cause unnecessary distress. Thus Australia is violating the commitment to OPCAT by continuing to use strip searching. Though there is less focus on how strip searches could be re-traumatising for men who have experienced abuse, this also must be considered.

Strip searching poses a significant challenge to a number of human rights. These include the right to humane treatment in detention, freedom from cruel, inhuman and degrading treatment or punishment, and non-interference with privacy, including bodily integrity. These rights are protected by the International Covenant on Civil and Political Rights ('ICCPR'), a Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The European Court of Human Rights recognises strip searching as inhumane and degrading, and states that strip searching should only be used as a last resort. The [Office of the Inspector of Custodial Services conducted a Review](#) which emphasised the need for change with Western Australia imposing strip

searching limits on some privately-operated facilities. However, it has not imposed limits in public prisons with persistent high rates of strip searching.

Currently in Australia, under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), officers are given authority to order a person to completely strip to allow for a thorough examination of their body. Common practices in strip searching require individuals to partake in demeaning conduct during strip searches, such as 'squat and cough' or 'bending over' for an invasive search. The [Implementing OPCAT in Victoria](#) report examined the Dame Phyllis Frost Centre and found that routine strip searching was used as a measure to find contraband drugs. However a review of records of contraband seized in 2016-17 found that of the 148 seizures recorded, only one of the four items seized involved a drug. Moreover, this emphasises the ineffectiveness of strip searching.

Strip searches should ultimately be eliminated in detention. As strip searches are degrading acts, it is not possible to conduct one whilst preserving someone's dignity and humanity. As it may be idealistic to immediately abolish all strip searching of detainees, there are steps which can be taken to reduce its degrading consequences.

Strip searches should be used infrequently and as a last resort. There should be a shift in focus to implementing alternative methods that allow detainees to be checked whilst upholding their right to humane treatment, such as the use of non-invasive technology such as body scanners. [The Nagle Royal Commission](#) report discusses that there are other surveillance methods and devices that are just as effective. This can significantly reduce the risk of harm to vulnerable detainees, whilst maintaining the level of protection for the broader community.



## Areas of Concern

Justice Action has been in contact with numerous prisoners who have spoken on strip searching in prisons. We have received accounts detailing forced internal searches as well as accounts of excessive physical force.

### New South Wales

- Dillwynia Correctional Centre
  - Dillwynia Women's Correctional Centre is a women's prison where complaints are continually received by JA.
- Silverwater Women's Correctional Centre
  - Mental Health Unit
  - Multi Purpose Unit

### Victoria

- Dame Phyllis Frost Centre