Implementation of OPCAT in Australia

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JUSTICE ACTION

Executive Summary

The Australian Government ratified the *Optional Protocol for the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (OPCAT)* in 2017, after the Don Dale Youth Detention Centre torture of children was exposed in the media. But little has been done to implement *OPCAT* in domestic legislation or to bring structural changes into places of detention. Without such mechanisms, the *OPCAT*'s preventative mandate cannot effectively operate.

Empowerment of detainee voices and openness to continual inspection through those affected is essential and easy. It would be a fundamental contradiction of the Treaty to not acknowledge detainees' right to be informed of OPCAT's existence, right to be engaged, right for their ideas to be heard, and ensure that the custodians see the respect that is offered to the citizens they hold.

The need for accountability and transparency in Australia's present inspection system was highlit by the human rights violations that occurred in the Don Dale Youth Detention Centre. The media's widespread circulation of the abuse in Don Dale resulted in the 2016 *Royal Commission into the Detention and Protection of Children in the Northern Territory.*[1] According to the *Royal Commission,* the individual Official Visitors[2], former Minister for Correctional Services John Elferink, Northern Territory Correctional Services Commissioner Ken Middlebrook, and Don Dale Superintendent Victor Williams, were all complicit in failing to address the atrocities occurring in Don Dale.

The Royal Commission reported on the ineffectiveness of the system, where the "superintendents and general managers at the former Don Dale Youth Detention Centre did not adequately maintain a complaints register" and the Official Visitors program "failed to identify serious instances of mistreatment of children and young people, and poor living conditions in youth detention."[3] The Royal Commission also determined that the Northern

[1] Northern Australian Aboriginal Youth Agency, Submissions on Youth Detention, *Report* (2017) 145.
[2] Created under s 169 of *Youth Justice Act* 2005 (NT)
[3] Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (2016), 16.

Territory Ombudsman failed to oversee youth detention "in any meaningful way."[4] Minister Elferink was subsequently sacked. The mistreatment and causation of unnecessary distress inflicted on the detainees of Don Dale was only recognised and acknowledged by responsible officials once the media uncovered the extent of the abuse. The Federal Government then ratified *OPCAT* in 2017 and recognised the ineffectiveness of the inspection power as a system for detainee protection. Now is the time to present a clear direction for the implementation of *OPCAT* to ensure that the NPM becomes an effective inspection regime that addresses operational deficiencies as exposed in Don Dale.

Australia subscribes to definitions of 'torture' and 'cruel, inhuman or degrading treatment' as expressed in the *CAT,*[5] ratified in 1989. As a party to the *CAT*, Australia expressed a commitment to protect detainees from treatment "causing unnecessary distress". The decisions made by NPMs of other countries describe the notion of "causing unnecessary distress" as part of the obligation of *OPCAT*. However, establishing national definitions of the standards of treatment is essential to ensure the consistent protection of detainees across various Australian jurisdictions. In particular, identifying practices that must cease, will greatly assist in the protection of detainee rights and is central to the function of the NPMs.

As NPMs are nominated throughout Australia, dialogue with detainee representatives, and independent NGOs will be essential in ensuring that detainee interests are effectively represented. Good communication with these parties is paramount. Utilising existing technologies such as phones, computers, and video cameras as mediums for detainees to voice concerns about preventing torture is essential to ensure the *OPCAT* obligations are achieved, allowing individual detainees to become involved in the process. Additionally, educating individuals in detention of their rights under *OPCAT* is essential for their protection and will strengthen detainee engagement.

The implementation of OPCAT in countries such as the UK, New Zealand, and Norway provide Australia with useful precedents. Norway's NPM has the power to take issues

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[4] Commonwealth, Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Final Report* (2016) vol 4, 16.

[5] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, 26 June 1987.

regarding treatment and punishment to higher levels of authority, who are obliged to consider the recommendations and initiate dialogue for possible implementation measures. For example, the Kvammen child welfare institution incorporated new procedure manuals and staff training after the NPMs visit to prevent the causation of unnecessary distress. Meanwhile, both the UK and New Zealand provide useful examples of engaging with the broader community, as each NPM aims to ensure that their NPM systems reflect both supervision and public opinion.

The UK's NPM structure incorporates civil society through gaining their perspectives and guidance to allow for a direct voice in the NPM process. This has been achieved through involving civil society groups as designated bodies or official partners.[6] Similarly, New Zealand allowed members of the public to get involved and ensure that places of detention operate humanely in 2013, through regular roundtable meetings between civil society and the Human Rights Commission.[7] Increasing the interaction between NPM and civil society successfully raised the credibility of NPM, and empowered the effectiveness of NPM. Australia must take note of these successes as it moves forward with implementing the *OPCAT*.

As the AHRC highlighted, the core provisions of the *OPCAT* must be legislated in a dedicated federal statute with corresponding state and territory legislation to ensure its consistent application across all Australian jurisdictions. The implementation of formal and enforceable legislation of inspections, will ensure a consistent standard of treatment, but also effectively guarantee that corrective services system officials will uphold Australia's obligations to *OPCAT*.

[6] Steve Caruana, *Enhancing best practice inspection methodologies for oversight bodies with an Optional Protocol to the Convention Against Torture focus*,(Report to the Winston Churchill Memorial Trust of Australia – Showcasing learning from Greece, Switzerland, Norway, Denmark, UK, Malta and New Zealand, 9 July 2018), 55.
[7] Human Rights Commission, *OPCAT in New Zealand 2007-2012* (Report, July 2013), 9.

1. Defining the Standards of Treatment

Through implementation of *OPCAT*, Australia is bound under international law to protect people against “torture and cruel, inhuman or degrading treatment”. However, this standard of treatment must be broadened to include protection against treatment “causing unnecessary distress”, which will encompass *OPCAT*’s obligations to address all forms of mistreatment. What constitutes “causing unnecessary distress” will need to be understood within the context of the incident, such as the facility’s environment and the detainee’s mental health. In practice, the standards of treatment enforced within an institutional context should clearly specify what standards are encouraged and how institutions and authorities should operate as rehabilitative entities.[8]

1.1 *OPCAT* context

Australia signed *CAT* in 1985 and ratified it in 1989. Australia follows the definition of “torture and cruel, inhuman or degrading” treatment provided in the *CAT* and, to combat such treatment, has imposed regulations in relation to treatment, protection systems, material conditions, activities and contact with others, medical services and care and personnel restrictions in detention.[9]

According to Article 1 of *CAT*, “Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” is defined as:

> ‘Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed

[8] Richard Harding, ‘Australia’s circuitous path towards the ratification of OPCAT, 2002–2017: the challenges of implementation’ (2019) 25(1) *Australian Journal of Human Rights* 4, 22.
[9] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, 26 June 1987.

> or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'[10]

CAT applies to ill treatment and protects people in detention from being subjected to treatment that causes unnecessary distress. In line with the recommendations in the AHRC report, there must be a more nuanced interpretation of the aforementioned definition that recognises the suffering of people in detention as an institutionalised form of inhumane treatment. A judicious and effective approach to implementing *OPCAT* in Australia will recognise and tackle the severity of human rights abuse and violence that occurs and persists as a consequence of poorly designed administrative structures in places of detention. An especially cogent example is found in Australia's existing system of immigration detention. The Australian *OPCAT* Network in their January 2020 publication argued:

> "While immigration detention has been defined by the Australian Government as being 'administrative' rather than punitive, the design, staffing and procedures of many places where non-citizens are deprived of their liberty follow a 'correctional services' [prison] model. Detainees persistently describe the experience of detention as akin to being punished."[11]

Justice Action (JA) submitted a response to Australia's ratification of *OPCAT* in 2017 (Appendix B), representing the voices of those with lived experiences of detention. Central to this submission was the need to respect and uphold the human rights of all Australian detainees. JA noted that the success of the NPM structure was contingent on increased communication between prisoners and the corrective services system, and greater accountability and transparency for prison authorities.

Australia has its own set of guidelines regarding the minimum standards of treatment of

[10] Ibid art 1.
[11] The Australia OPCAT Network, Submission to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or degrading treatment or punishment (SPT) and The United Nations Working Group on Arbitrary Detention (WGAD),'The Implementation of OPCAT in Australia' (January 2020) 34.

prisoners, as outlined in *Guiding Principles for Corrections in Australia.*[12] These guidelines have been shaped by a series of international frameworks, including the United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules'), the United Nations Rules for the Treatment of Women Prisoners and Noncustodial Measures for Women Offenders ('the Bangkok Rules'), and the United Nations Standard Minimum Rules for Noncustodial Measures ('the Tokyo Rules'). These guidelines have been revised to support the development of policies and procedures that fulfil the *OPCAT* obligations and facilitate NPM inspections.

These international frameworks have failed to increase protections or make any demonstrable changes for detainees. Despite ratifying *OPCAT* in December 2017, Australia's compliance with international standards of treatment has remained relatively unchecked, especially concerning detention and correctional service protocols. However, there are some jurisdictions that have prohibited forms of inhumane punishment, such as solitary confinement of juveniles.[13] The UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Juan Mendez, asserted that solitary confinement in certain instances may suffice as torture or causing unnecessary distress,

> "...when used as a punishment, during pretrial detention, for prolonged periods or indefinitely and on juveniles. Solitary confinement of any duration must never be imposed on juveniles, or persons with mental or physical disabilities."[14]

Furthermore, the legislation of *OPCAT* in Australia must involve serious consideration of the overrepresentation of Aboriginal and Torres Strait Islander people in Australian prisons and youth justice facilities. Concerns have been raised by the UN Committee Against Torture on this matter, with observations concluding that in some circumstances, "cruel, inhuman or degrading treatment or punishment can take on a dimension of ethnic persecution."[15]

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[12] Corrective Services Administrators' Council, 'Guiding Principles for Corrections in Australia'*, Corrections, Prisons and Parole* (Web Page, February 2018) < https://www.corrections.vic.gov.au/guiding-principles-for-corrections-in-australia>.

[13] *Children (Detention Centres) Act 1987* (NSW) s 19(2).

[14] JE Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (Report, UN Doc A/HRC/31/57, 5 January 2016) 22.

[15] William Schabas and Helmut Sax, *A Commentary on the United Nations Convention on the Rights of the Child – Article 37 Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty* (Martinus Nijhoff Publishers, 2006) 19.

1.2 Standard Minimum Rules for the Treatment of Prisoners

The United Nations *Standard Minimum Rules for the Treatment of Prisoners ("Standard Minimum Rules")* sets an international precedent for the humane treatment of prisoners. This raises the question of whether these standards are being effectively met in Australian correctional facilities. Practices such as solitary confinement, disruptions to communication with support networks, forced medication, and strip searches can have severe impacts on the mental and physical health of detainees and therefore constitute breaches of the *Standard Minimum Rules*.

In the case of *Brough v Australia*, the *Standard Minimum Rules* helped bring justice to a young, disabled detainee who had been subject to inhuman treatment from prison guards. The AHRC found that his confinement to an isolated cell with no means of communication, prolonged exposure to artificial light, and the removal of his clothes and blanket were violations of the *Standard Minimum Rules* and significantly contributed to his self-harm and suicide attempts.[16] These standards are important as they set a guideline for the proper treatment of inmates, making it easier to identify where there has been a breach of standards of treatment.[17]

However, there are challenges to the implementation of the minimum standards, including the absence of parliamentary scrutiny, an overarching systemic issue of human rights abuses in detention, and the lack of financial and operational autonomy in inspection bodies. In light of this, NPMs are crucial in ensuring that the *Standard Minimum Rules* are not breached and human rights are being upheld and protected in institutions. Appendix A explores how NPMs have been applied in various international jurisdictions such as New Zealand, the United Kingdom, and Norway.

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[16] Human Rights Committee, *Brough v Australia,* UN GAOR, 61st sess, Supp No 40, UN Doc A/61/40 (17 March 2006) annex V, 294.

[17] Waleed Aly, 'UN Human Rights Committee Rules that Australian Prison Conditions Violate Human Rights of Indigenous Prisoner', *Human Rights Law Centre* (Web Page, 18 March 2006), <https://www.hrlc.org.au/human-rights-case-summaries/brough-v-australia-un-human-rights-committee-communication-no-11842003>.

2. Detainee Voices

The success of *OPCAT* is dependent on detainee engagement in a continuous way, not upon inspectors' occasional visits. The failure to recognise the importance of detainee voices has been a fundamental weakness of OPCAT since its creation. By acknowledging detainees, OPCAT protects and empowers them as is the intention of the Treaty. Acknowledgement is also their right as it affects them; they have inside knowledge and ideas about how torture can be prevented; acknowledgement is an act of respect for their humanity; and it tells the custodians that the inspection is continuous and starts from the level of those affected.

In order for OPCAT to be successful and fulfil its obligations, the NPM structure needs to increase accountability and transparency between detainees and custodial systems, and effectively draw on the knowledge of detainees with lived experiences.[18] These experiences can demonstrate deficiencies and areas for growth in the current system. Moreover, it is important to protect those who share their experiences. This should be done by establishing internal channels of accountability within places of detention to protect detainees who share their experiences.

The Commonwealth Ombudsman currently does not recognise the right of detainees to a collective voice in the OPCAT Advisory Group.[19] By refusing to acknowledge detainees' central role in improving conditions of treatment, this confirms their subservience and disrespects their humanity. Formally recognising a community committee group such as The Australian Prisoners Union (APU) is an opportunity for positive change for people in detention. Involving detainees in OPCAT forums would allow their concerns to be heard and would also be vital to keeping NPMs transparent and accountable.

[18] Australian Human Rights Commission, 'Implementing OPCAT in Australia', *Australian Human Rights Commission* (Web Page, June 2020) 52.
[19] Ibid 58.

Acknowledging the APU would help foster a positive prisoner community expression with the capacity to generate better outcomes for prisoners, correctional staff, and the wider Australian society. Prisoners share an experience unique amongst themselves. Acknowledging prisoners as a community enhances self-esteem, creates shared respect and tolerance, and provides prisoners with greater agency and responsibility in dealing with their common concerns.[20] These benefits can also reduce recidivism and tackle the cyclical nature of crime for prisoners reentering society after their sentence.

Prisoners are entitled to representation as a community and the APU would function as a formal structure to facilitate this. The fundamental purpose of a union is to build solidarity amongst members and work collectively for fairer conditions. As individuals, prisoners are discredited vulnerable people not in a position to defend themselves or have their voices heard.[21] Only through a responsive organisation such as the APU can prisoners collectively negotiate and be heard.

In addition to engaging detainees in the implementation of OPCAT, members of the community who are concerned about the treatment of detainees should also be included in the process. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punisment ('SPT'), which was established to carry out of the functions of *OPCAT,* suggests that the best practice of *OPCAT* relies on engagement of society with the operation of NPMs. This involves including members of society by having public, inclusive and transparent processes of establishing NPMs, and encouraging dialogue between NPMs and society. The SPT have identified Hungary's NPMs as a successful example of cooperation between NPMs and civil society organisations. Increasing involvement of civil society will inevitably increase transparency throughout the *OPCAT* process.

There is a need to strengthen the independence of NGOs and ex-prisoner communities to allow

[20] Justice Action, 'Prisoner Community Acknowledgement', Justice Action (2021) <https://justiceaction.org.au/prisoner-community-acknowledgement/>.
[21] Australian Prisoner Union, 'Process of legitimation' Australian Prisoner Union (2021) <https://australianprisonersunion.org.au/wp-content/uploads/Background-on-APU-2021.pdf>

for the non-partisan communication regarding the operation of NPMs. The AHRC's 2020 publication stated that the NPM structure is part of an inspection system aimed at "identify[ing] practices that can cause mistreatment of people in detention." NPMs need to be able to connect with organisations who represent detainee interests.[22] This includes regular opportunities for civil society representatives to communicate with NPMs regarding any issues about the management of the detention system. It is recommended that this practice would be best achieved through regular consultations between NGOs and NPMs, preferably in an open forum. This broader support of detainee interests is also important for building transparency by recognising the sensitivity of the lived experiences of detainees, as well as communicating investment in and receptivity to the experiences of whole detainee communities.

2.1 Detainee Awareness

The success of *OPCAT* also depends on the communication of *OPCAT* information to detainees, NPMs, detention authorities and staff. The AHRC's publication highlights the importance of education about *OPCAT*. Humans in places of detention are entitled to be aware of the rights afforded to them by *OPCAT* which involes an understanding of the purposes of the convention which protects them from torture and ill-treatment. To ensure this obligation is addressed, detainees need to be provided with multiple resources that are easily accessible. Statements outlining the rights of detainees must be clearly displayed, which will enable increased education and awareness. This is a fundamental aspect of empowering people in detention as it is an opportunity to reclaim their agency, and re-acknowledge the rights entitled to them by their human status. Overall, ensuring awareness of detainees serves a multitude of purposes supporting OPCAT and its implementation.

[22] Ibid 5.

2.2 Technology

The introduction of technology into places of detention introduces avenues for detainees to directly communicate with NPM bodies. Inmates will be provided consistent communication with the NPM body and ultimately a voice on policy reform proposals. Additionally, inmates can identify areas within the detention facility that require inspection by NPM bodies.

However, such strategies, or similar strategies, are not referenced in the AHRC's publication. Recommendation 13 of the AHRC's publication suggests National Conditions Principles be established to facilitate complaint processes and consequences for unlawful conduct.[23] This recommendation could be implemented in conjunction with strategies that directly involve detainees, such as those outlined above.

The positive impact of technology and its potential incorporation within correctional facilities has been seen through the recent success of Justice Action's campaign to allow computers in cells. Due to restricted visits to correctional facilities during the COVID-19 pandemic, 430 tablets were distributed across correctional facilities in NSW for video visits.[24] This has allowed for over 70,204 family visits by audio-visual link, ensuring detainees maintain contact with their loved ones.[25] This has led to the implementation of infrastructure to support the introduction of tablets to all detainees in Dillwynia Women's Correctional centre and John Morony Correctional Complex.

Additionally, the implementation of computers in cells may provide detainees with access to health and education services which falls under OPCAT's responsibility to provide essential services. It has been found that access to education carries enormous potential in improving

[23] Australian Human Rights Commission (n 12) 152.
[24] Justice Action, 'Victory for Computers in Cells NSW August 2020', *Justice Action* (Press Release, August 2020) <https://justiceaction.org.au/victory-for-computers-in-cells-nsw-august-2020/>.
[25] Community Justice Coalition, 'Covid Connected: Computers in Prison Cells', *Community Justice Coalition* (Web Page, August 2020) <https://www.communityjusticecoalition.org/events/pre-election-justice-forum>.

prisoner well being.[26] Computers in cells have the capacity to provide a positive outlet for detainees to shape their own identity and look to the future while reducing self-destructive behaviours engaged purely to 'pass the time'.[27] Australia, as a signatory of UNICESCR, which recognises that access to education is a basic human right, and as a signatory of CAT, which recognises the need to prevent unnecessary distress by allowing access to activity and personal care, can fulfil these responsibilities by introducing computers in cells.

The implementation of computers in cells also has the potential to increase detainee access and communication with healthcare providers. Allowing access to online counselling, personal GPs and online de-radicalisation programs will improve and meet international minimum standards in prison.

These examples demonstrate the importance and potential success of opening technological pathways of communication in correctional facilities, providing an important impetus for incorporating technologies in the NPM's strategy and structures.

2.3 COVID-19 and *OPCAT*

At the height of COVID-19, correctional facilities failed to meet the minimum standards required to safeguard the human rights of detainees. Long-term issues of overcrowding and unhygienic conditions in prison worsened the spread of COVID-19 in prison. Correctional facilities used solitary confinement that often extended well past two weeks to combat COVID-19 at the expense of detainees' mental health.[28] During this time, all social visits were suspended, there were fewer independent eyes on the facilities, and inmates had limited access to the outside community.

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[26] Justice Action, 'Benefits of Education', *Justice Action* (Post 2021) <https://justiceaction.org.au/benefits-of-education/>.
[27] Justice Action, 'Benefits of Education', *Justice Action* (Post 2021) <https://justiceaction.org.au/benefits-of-education/>.
[28] Steven Caruana, 'COVID-19: Civil liberties and the role of the state - Prisons and human rights in the time of COVID-19', *University of Western Australia*, (Web Page, 14 May 2020), <https://www.news.uwa.edu.au/archive/2020051412082/uwa-public-policy-institute/covid-19-prisons-and-human-rights-time-covid-19/>.

Although NSW had enacted an emergency amendment legislation that permitted the Commissioner of Corrective Services to grant parole to low-risk inmates, and the states and territories continued to adhere to the Communicable Diseases Network Australia interim guidance in their management plans, prisons still failed to meet the minimum standards required to safeguard the human rights of those in detention. Therefore, COVID-19 has rendered the implementation of OPCAT increasingly pressing, and Australia has been urged by the broader community, including Aboriginal and Torres Strait Islander organisations and senior academics, to implement *OPCAT* to ensure that transparency and detainee voices in detention can be assured. It is also extremely necessary for NPMs to ensure that clear communication with prisoners is achieved even during difficult times.[29]

[29]Human Rights Law Centre, 'Greater oversight needed in places of detention: Senate COVID-19 Committee told', *Human Rights Law Centre*, (Web Page, 28 May 2020), <https://www.hrlc.org.au/news/2020/5/27/greater-oversight-needed-in-places-of-detention-senate-covid-19-committee-told >.

3. OPCAT and Solitary Confinement in Australia

Solitary confinement is torture which violates Australia's commitments under the *CAT.* 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. See specific paper on solitary confinement here.

With the advent of COVID-19 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 peoples incarcerated and it must be noted that solitary confinement practices have a disproportionate effect on First Nations 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. These strategies are beneficial in fulfilling OPCAT's obligations in protecting detainees from the adverse physical and psychological implications of solitary confinement.

3.1 State Laws on Solitary Confinement[30]

State	Standard
Victoria (under the *Corrections Regulations* 2009 (Vic) s 27(2))	The Secretary determines when isolation is "no longer necessary"
South Australia & Tasmania (under *Correctional Services Act 1982* (SA) s 36(4); *Corrections Regulations 2008* (Tas) s 7(1)(a))	Unregulated

[30] Kelsey Montgomery, 'The legality of solitary confinement and the direction Australian policy should take', Human Rights Law Centre (Web Page, 18 March 2016) <https://www.hrlc.org.au/current-news/the-legality-of-solitary-confinement-and-the-direction-australian-policy-should-take >.

Queensland (under *Corrective Services Act 2006* (Qld) s 121(2))	Maximum duration of 7 days + compulsory medical checks after confinement period Other minimum requirements (e.g. 2 hours of daylight exercise) The Custodial Operations Practice Directives (COPD) also provides guidance to officers
Western Australia (under the *Prisons Act 1981* (WA))	Solitary confinement of up to 23 hours a day for up to 30 days consecutively
Western Australia (under the WA Corrective Service's 'disruptive prisoner' policy)	Inmates deemed to negatively influence other prisoners could be held in isolation for 23 hours a day, for up to 2 months.
New South Wales	For inmates aged below 16 years of age, confinement to their rooms to no longer than 12 hours

3.2 Position in Australian Case Law

In *R v Davies*, the court recognised the "intense severity" of solitary confinement and determined that 12 months of solitary confinement could equate to 2 years of regular imprisonment.[31] In *Binse v Williams*, the court noted that solitary confinement, "consequences of an erroneous decision… may be disastrous in terms of security relevant policy concerns."[32]

3.3 International Position

The European Court of Human Rights has stated that solitary confinement "can destroy personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason."[33] The United Nations Committee Against Torture held that that isolation for the full day (22-24 hours) is unacceptable.[34] The United Nations also

[31] *R v Davies* (1978) 68 Cr App R 319, 322.
[32] *Binse v Williams* [1998] 1 VR 381, 394.
[33] *Ilaşcu and others v. Moldova and Russia* (2004), Application No. 48787/99, Eur Court HR, [432].
[34] Committee Against Torture, '*Concluding observations on the third to fifth periodic reports of United States of America*' (Observations)

adopted the Mandela Rules which have banned solitary confinement that goes for longer than 15 days, although the practical implications of this remains limited.[35]

4. OPCAT and 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 to 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 continues 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

< https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_COC_USA_18893_E.p df>.

[35] Skibba, Ramin, 'The hidden damage of solitary confinement' Knowable Magazine (Web Page, 22 June 2018) <https://www.knowablemagazine.org/article/society/2018/hidden-damage-solitary-confinement >.

and employing workers that can create individualised treatment plans. For a more detailed review of these alternatives, please see suggested 'Alternatives to Forced Medication'.

Justice Action has found areas of concern, through the receipt of submissions detailing forced medication practices across Australia. These responses indicated that the following correctional centres should be visited.

- Thomas embling hospital, Fairfield Victoria
- Casuarina Prison Special Handling Unit, Casuarina WA
- Long Bay Forensic Hospital, Matraville NSW- a survey has found that 134 of the 135 patients receive medication. 15% felt their medication was of use, while 85% said they were forced.

5. OPCAT and 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 Australias 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.

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. This has occurred in the following facilities:

Victoria

- Dame Phyllis Frost Centre.

New South Wales

- Dillwynia Correctional Centre. This is a womens prison where complaints are regularly and continually received by Justice Action
- Silverwater Women's Correctional centre- in particular their mental health and their multi purpose units.

6. Australia's Legislative Implementation of *OPCAT*

OPCAT changes need to be codified in legislation or regulations that will bind corrective services system officials. This will allow *OPCAT* to be an effective mechanism for ensuring greater accountability in government management prisons. Codifying *OPCAT* within legislation will demonstrate commitment to ensuring the successful and effective implementation of *OPCAT*. The AHRC discusses stakeholder concerns regarding the fact that the NPM model remains unlegislated and proposes that the Government incorporate the core provisions of *OPCAT* in federal and state legislation to give them a binding effect across all jurisdictions.[36] If the Australian Government does not establish the NPM model in legislation, the Commission suggests that an intergovernmental agreement could guide the establishment and operation of

[36] Ibid 56.

NPMs.[37] Currently, OPCAT legislation has been introduced in four jurisdictions: the Commonwealth, Tasmania, Northern Territory and Australian Capital Territory.

6.1 Australia's position and obligations under *CAT*

Australia became a signatory of *OPCAT* in 2009, but did not ratify the document until 2017. Under the United Nations *CAT*, all State Parties must define "torture," as expressed in the Convention, as an offence under domestic law.[38] States must establish their jurisdiction over any persons in its territory who have allegedly committed torture, regardless of where the act was committed, the nationality, or residence of the person.[39] Where extradition of the accused is not possible, states are required to prosecute the accused individual.[40] If a State Party has requested the extradition of an accused individual from another State Party, the Convention may provide the legal basis for extradition.[41]

6.2 OPCAT Implementation to date

Jurisdiction	**NPM in effect?**	**Reports to**	**Funding**	**Legislation**	**Extra details**
Commonwealth	Yes	Minister	Government	Yes	NPM coordinator
Western Australia	Yes	Parliament	Tribunal	No	2x bodies
Northern Territory	Yes	Minister for Justice	Parliamentary Appropriations	Yes	
South Australia	No	N/A	N/A	Yes	3x proposed bodies
Queensland	No	N/A	N/A	Yes	N/A
New South Wales	No	N/A	N/A	No	N/A
Australian Capital	Yes	Depends on	Federal & State	Yes	3x bodies

[37] Ibid
[38] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85, 26 June 1987.
[39] Ibid art 4.
[40] Ibid art 5.
[41] Ibid art 7 OR Ibid art 8.

Territory		body	Budget		
Victoria	No	N/A	N/A	No	N/A
Tasmania	Yes	Minister & Parliament	State budget	Yes	2 bodies with shared leader

6.3 Concerns regarding the National Preventive Mechanism

What is the structure of NPM bodies currently in Australia?

Currently, NPM bodies take an preventative approach towards preventing mistreatment of people in detention, by carrying out investigations.[42] This is hence independent from a response/complaints mechanism.

During the 2022 OPCAT Symposium, the Commonwealth Ombudsman has confirmed that the complaints office and the NPM team are separate but both part of the same department. He believes that there is communication from the complaints team to the NPM team identifying areas to focus attention on during their inspection. This separation is concerning as it weakens the detainee's ability to engage with the NPMs because they will instead work with a different body.

Preventative vs Complaints-based/reactive Approach

Neither a purely complaints-based/reactive approach nor purely preventative approaches is desirable for NPM bodies. The failure of superintendents and general managers at the former Don Dale Youth Detention Centre to maintain a consistent complaints register as required by Regulation 67 of the *Youth Justice Regulations* (NT) is just one example of the inadequacy of a complaints-based/reactive approach in identifying and thus preventing mistreatment.[43]

[42] Australian Human Rights Commission (n 12).
[43] *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, 17 November 2017) 16.

The AHRC in their report *Implement OPCAT in Australia* suggested that NPMs should instead implement a preventive and proactive approach,[44] in line with the intention of Article 1 of OPCAT to establish an oversight mechanism to prevent mistreatment.[45] This will aso ensure accountability in all NPM inspectorate and authoritative bodies of detention. The powers provided under Article 20 of *OPCAT* support this preventive approach set out by AHRC by ensuring access of information regarding the treatment, conditions, facilities and liberties of all persons held in detention. Full access to information will increase transparency on the NPMs functions and operations.[46] However, stakeholders have expressed concern that inspectorate bodies that produce vague reports and recommendations limit *OPCAT's* objective of being a preventive oversight mechanism.

Our recommended approach: NPMs must go beyond a purely preventative approach in order to be able to effectively meet their obligation of responding to existing issues.

6.4 Independence of NPMs

Given the NPMs' roles as a supervisory body, efforts should be made to ensure the independence of the NPMs from political interference. To achieve independence, the NPMs must have two features:

1) Independent report: There are concerns that if the watchdog presented their findings only to the relevant minister, and the finding is unfavourable, the minister will repress the findings of the paper. The design in Western Australia is considered to be fairly independent where the NPMs report directly to the parliament and release yearly

44 Australian Human Rights Commission, *Implementing OPCAT in Australia* (2020).

45 *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,* United Nations General Assembly, opened for signature 18 December 2002, GA Res 57 (entered into force 22 June 2006), art 1.

46 *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,* United Nations General Assembly, opened for signature 18 December 2002, GA Res 57 (entered into force 22 June 2006) art 20.

reports to the public.

2) Secure funding: In the UK in 2017, the contract of the Chief Inspector of Prisons (one of the 21 NPMs) was ended following a report that was critical of the Department of Justice.[47] A similar situation in Australia occured in 2021 with the Commonwealth Ombudsman budget being severely reduced. Brazil also experienced a similar issue in 2019 with independence and funding where the Administration unilaterally decided to severely diminish the professional and secretariat support for NPMs, making the positions honorary with no funding or payment until 2022 when the decision was deemed unconstitutional and overturned. Therefore, although NPMs will be funded by the government, funding should be handed by parliamentary committees or by auditors independent of the ministry directly under scrutiny.

6.5 Impacts of International OPCAT Implementations

In the Commonwealth Ombudsman's recent assessment of Australia's readiness for *OPCAT*, published in September 2019, it was acknowledged that "the development of an NPM network provides opportunities for NPMs to work collaboratively, share best practice and leverage expertise from other jurisdictions within Australia and internationally."[48] Indeed, much can be learnt from the experiences of other states that have ratified and implemented *OPCAT* such as the UK, New Zealand, Norway, Brazil, Italy and Poland (see Appendix A). This section will reflect upon what other nation states have done right and where there still needs to be improvement.

The UK NPM has 21 bodies as part of the oversight structure, which has a separate system.

[47] HM Chief Inspector of Prisons for England and Wales Annual Report 2016–17, 11.
[48] Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): BASELINE ASSESSMENT OF AUSTRALIA'S OPCAT READINESS,* (September 2019) 11.

Although the UK's NPM lacks legislative power which impedes its independence, it still conducts inspections and makes recommendations. For instance, during the period of 2010 to 2013, the UK NPM reported the long-time segregation and supervision caused by the continued rise of mental health illness cases, and claimed the Independent Monitoring Board (IMB) paid zero effort on supervision. The findings of the NPM's report were sent to the responsible authority and media to raise public awareness and the need to improve the detention policy. As a result, the council passed the protocol recommended by NPMs. On the other hand, the lack of independence and funding inhibits UK's NPMs in making decisions, as seen in 2017 where the Department of Justice ended the Chief Inspector of Prisons after they published a critical report on the Department.[49]

New Zealand's *Crimes of Torture Act 1989* ('*COTA*') establishes the legislative framework that provides for the establishment of NPMs, permits their access to places of detention, and establishes NPMs' functions and their ability to make recommendations. *COTA* is significant in that it provides special protections, privileges and immunities to NPMs; for example, immunities against disclosure. The NPMs' multi-bodied structure means that the committee supervised mutually, exerted pressure on the mechanism, increased the effectiveness of *OPCAT* and improved the treatment of the detainees. However, New Zealand has garnered criticism from its cautious approach in its reporting and its failure to publish any reports regarding NPM visits to places of detention.[50] The NPM reporting process is less effective if transparency isn't mandated. Dixon presents that New Zealand has yet to achieve a level of transparency in line with international reporting trends.[51]

In Norway, the *Parliamentary Ombudsman Act* and the Instructions for the Parliamentary Ombudsman for Public Administration were revised by parliament and adapted to the introduction of the NPM structures. A dedicated NPM department was also established within the office of the Parliamentary Ombudsman. The presence of national legal frameworks that

[49] HM Chief Inspector of Prisons for England and Wales Annual Report 2016–17, 11.
[50] Amy Dixon, 'The case for publishing OPCAT visit reports in New Zealand,' *New Zealand Journal of Public and International Law,* 11(3), 2013, 553–85. McGregor, 358.
[51] Amy Dixon, 'The Case For Publishing OPCAT Visit Reports in New Zealand', *NZ Journal of Public and International Law* (2013) 553, 579.

support OPCAT provisions in Norway considerably strengthens the autonomy and influence of Norwegian NPM bodies. For example, under article 22 of *OPCAT* and section 10 of the *Parliamentary Ombudsman Act*, authorities are required to examine recommendations and are given deadlines for submitting reports on follow-up steps taken in response to NPM recommendations.[52] However the UN Committee against Torture and the European Commitee for the Prevention of Torture who have visited facilities in Norway have been critical of Norway's continued use of solitary confinement, arguing that isolation is a major cause for concern for people with preexisting mental health issues.[53] Although Norway still has room for improvement, Norway's focus on speaking directly with people deprived of their liberty is an extremely important source of first-hand information which gives prisoners a voice to speak on the conditions at their institutions.

Brazil ratified OPCAT in 2007 and established their national system of prevention of torture, the 'National System to Prevent and Combat Torture' (Mecanismo Nacional de Prevenção e Combate à Tortura – MNPCT) in 2013. However, only four of their 26 states have set up a preventive body.[54] NPMs have no legislative protection in funding or independence and in March 2019, President Jair Bolsonaro issued a decree dismissing all experts serving on the MNPCT (National Mechanism to Combat and Prevent Torture) and abolished the positions. NPM members were stripped of funding and were required to function on a purely volunteer basis. However, in April 2022, the Supreme Federal Court of Brazil ruled that the presidential decree adopted in 2019 was unconstitutional. Suzanne Jabbour, Chair of the SPT, congratulated Brazil on their unanimous overturn. Brazil has also encountered difficulties in reporting. NPMs are most effective if they act as extended eyes of SPT within the territories of the states. If the NPMs are closely aligned with their respective national governments, the system is less effective, because there is no incentive to expose behaviour that will present the government in a negative light.

From this brief overview of the various legal frameworks in place to enforce *OPCAT* provisions, it can be observed that the presence of supporting legal controls is crucial to maximising the effectiveness of OPCAT and strengthening the mandate of NPM inspection agencies.

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[52] The Parliamentary Ombudsman Norway, *Annual Report 2014: Establishment of the Parliamentary Ombudsman's National Preventive Mechanism* (2014)

[53] Ibid 20.

[54] https://www.ohchr.org/en/press-releases/2022/02/brazil-must-abide-international-obligations-and-strengthen-its-torture

7. Concluding Remarks

> "*Torture is banned, but in two-thirds of the world's countries it is still being committed in secret. Too many governments still allow [torture] to be carried out by their officials with impunity.*"
>
> **Peter Benenson**
>
> British lawyer, human rights activist and founder of Amnesty International

Peter Benenson's words at Amnesty International's 40th Anniversary in 2001 still resonate today, speaking to the persistent inhumane treatment of detainees in state institutions. Most, if not all, governments rally against torture if asked publically, but why is it that *OPCAT* lies merely as a record of consensus resulting from international discourse rather than structurally implemented into Australian law? While Australia has legislation to address the rights and treatment of detainees, this legislation does not comply with *OPCAT's* provisions - the same guidelines the international community has set as the standard in dealing with the treatment of those in detention.

Many incarcerated individuals throughout Australia are still subjected to unnecessary physical and psychological distress. At present, the Australian Government has not legislated *OPCAT* and each jurisdiction holds and implements different policies and standards for those in detention. To successfully implement *OPCAT*, the Commonwealth must implement the core principles of *OPCAT* into federal legislation and corresponding state legislation to ensure compliance across Australia.

At present, the interpretations of 'torture' and 'cruel, inhuman or degrading treatment,' in Australia derive from various UN treaties and protocols. Australia must develop a more nuanced interpretation of these terms across all Australian jurisdictions. The term 'causing unnecessary

distress' will broaden *OPCAT's* scope in the Australian context and allow for better preventative measures. Interpretations of this critical term must account for the lived experiences of detainees who have and are suffering in detention. In the Australian context, it is imperative to acknowledge and remedy the disproportionate representation of Aboriginal and Torres Strait Islander communities in detention.

Appendix A examines the legal implementation of *OPCAT* on an international level. Case studies of countries such as New Zealand, the UK, and Norway comparatively exemplify Australia's lack of engagement with *OPCAT*. The strengths and weaknesses in these case studies can serve as a guide for Australia's legal implementation of *OPCAT*. Australia has failed to comply with international standards by preventing international assessments by groups such as the UN Special Rapporteur on Torture. Rather than allowing the Special Rapporteur to inspect the situation in Australia, the Australian Government has addressed this issue by threatening UN inspectors with prosecution via immigration laws. This hostile behaviour is unacceptable and there must be further compliance and cooperation with the UN to introduce legislation to protect vulnerable citizens. Australia invited Special Rapporteurs in 2008, who wrote extensive reports with criticism of the lack of protection of human rights.[55] The Special Rapporteurs also planned to visit asylum seeker detention centres on Nauru and Manus Island in 2015.[56] However, the Australian government would not provide them with immunity from the *Australian Border Force Act 2015* (Cth), causing them to cancel their visit.

To fulfil *OPCAT's* objectives, we must work to educate detainees on their rights under *OPCAT* and empower them to protect their rights. Ensuring and strengthening the independence of NGOs and ex-prisoner communities is vital to ensure that detainee interests are adequately represented. These independent organisations contribute to and ensure the accountability and transparency of the NPMs. Organisations such as Justice Action also represent community and civil society engagement.

The NPMs' success relies on an increased transparency and accountability amongst prisoners, the corrective services system, and detention authorities. It is important to strengthen the

[55] Donald Rothwell and Emily Crawford, *International Law in Australia*, (Thomson Reuters, 3rd ed, 2016).
[56] Ibid.

independence of NGOs and ex-prisoner communities from the government as NPMs need to be able to communicate with organisations that represent detainee interests.

As famously quoted by absurdist philosopher Albert Camus, "*Perhaps we cannot prevent this world from being a world in which children are tortured. But we can reduce the number of tortured children.*" Our current system continues to encourage this inevitability, but the system is not inevitable; it only appears inevitable because we have chosen to close our eyes on the issues that are right in front of us.

Appendix A - International OPCAT Implementation

New Zealand

OPCAT has had relative success in New Zealand through the implementation of NPM's that have had a profound impact on the conditions of detention and the way in which detainees are treated. NPMs have continued to identify a number of issues that would otherwise have remained invisible. By working constructively with agencies, responses to these issues have been developed and implemented.[57] This can be illustrated through the progress made by the Human Rights Commission in 2020 to 2021. For example, the Commission undertook numerous reviews focusing on women in prisons.[58] These reviews brought attention to critical issues such as segregation and restraint, which come in direct contact with the contents of OPCAT.

Background of NPM Structure

New Zealand ratified OPCAT in 2007 through amendment of the Crimes of Torture Act 1989,[59] becoming one of the earliest adopters of the preventative detention monitoring frameworks under OPCAT obligations.[60] There are five core NPMs: the Human Rights Commission (which has the role of coordinator and is the central National Preventive Mechanism), the Office of the Ombudsman, the Independent Police Conduct Authority, the Children's Commission, and the Inspector of Service Penal Establishment.[61]

The NPMs have unrestricted access to information and any place of detention.[62] While each NPM operates and is funded separately, the NPMs meet regularly to discuss common matters. The NPM will share its main findings orally with the facility at the end of the visit, after which they complete a full report and present this back to the places of detention within three months

[57] https://www.tandfonline.com/doi/full/10.1080/1323238X.2019.1588055.
[58] Time for a Paradigm Shift (2020) Sharon Shalev; First, Do No Harm (2021) Sharon Shalev.
[59] Human Rights Commission, 'OPCAT in New Zealand' (Report, July 2013).
[60] Office of the Ombudsman, *OPCAT Reports on inspections under the Crimes of Torture Act 1989* (Report, August 2020) 4.
[61] Ibid 5.
[62] Office of the Ombudsman, *OPCAT Report, Report on an unannounced inspection of the Kensington Centre Mental Health Inpatient Unit, Timaru, under the Crimes of Torture Act 1989* (Report, August 2020), 24.

of the inspection.[63] The NPM will release annual reports that include their findings and recommendations from each inspection; however, information relating to individual visits is not made public. This has become a point of discussion between New Zealand's NPMs who are working to resolve whether this information should be public or remain private.[64]

Effectiveness

Recommendations made by NPMs have an average acceptance rate of 75%.[65] This has resulted in improved detention conditions and treatment of detainees, such as greater efforts to prevent deaths in custody, timely access to parole hearings, and identification of unlawful detentions and inappropriate seclusion and restraint. Further examples include the upgrade of a facility to meet minimum health and safety standing, an end to substandard cells, the expansion of a prison exercise area to allow greater access to the outdoors, and providing children and young people in detention with feedback boxes to address issues that need improvement.[66]

The New Zealand NPM commented on their progress from 2007 to 2012, stating:

> *"NPMs have identified issues that may not otherwise have come to light. Because detaining agencies have been so receptive and responsive to OPCAT, there have been many improvements in both the conditions of detention and the way detainees are treated*."[67]

Additionally, a 2013 report by New Zealand's Human Rights Commission noted that regular roundtable meetings were held between the Commission and members of the community, allowing the community to play a larger role in the implementation of OPCAT.[68] However, a 2018

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[63] Amy Dixon, 'The Case For Publishing OPCAT Visit Reports in New Zealand', *NZ Journal of Public and International Law* (2013) 553, 560.
[64] Human Rights Commission, *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT)* (Report, February 2012), 4.
[65] Human Rights Commission, *Monitoring Places of Detenetion: Annual report of activities under the Optional Protocol to the COnvention against Torture (OPCAT)* (Report, February 2012), 13.
[66] Human Rights Commission, *OPCAT in New Zealand 2007-2012* (Report, July 2013), 18.
[67] Ibid 15.
[68] Ibid 9.

report revealed that only informal arrangements have been made, and other attempts at community involvement remain at its infancy stage.[69]

Reporting is a critical method by which public attention and scrutiny can be achieved. However, such a process remains ineffective unless complete transparency is mandated, whilst also maintaining respect for the victim's consent to disclosure. Dixon has argued that despite its commendable efforts, New Zealand has taken a "cautious approach" in its reporting, thus failing to achieve a level of transparency in line with international reporting trends.[70] Nonetheless, New Zealand remains proactive in improving public debate and accountability, acknowledging that the limited effectiveness in procedures and oversight mechanisms is a consequence of inadequate funding and resourcing.

Additionally, McGregor has identified further criticisms of NPMs in relation to the following areas:

1) Lack of transparency towards detention visit reports
2) Engagement with civil society
3) NPM independence and mandates
4) Resources for independence
5) Levels of expertise within the NPM
6) Lack of Parliament engagement
7) Detection of systemic human rights issues[71] [72]

Overall, the operation and financial independence of NPMs in New Zealand has allowed for better implementation of OPCAT. The New Zealand government has also done well in implementing recommendations made by NPMs. However, community involvement should be increased.

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[69] Steve Caruana, *Enhancing best practice inspection methodologies for oversight bodies with an Optional Protocol to the Convention Against Torture focus*,(Report to the Winston Churchill Memorial Trust of Australia – Showcasing learning from Greece, Switzerland, Norway, Denmark, UK, Malta and New Zealand, 9 July 2018).
[70] Amy Dixon, 'The Case For Publishing OPCAT Visit Reports in New Zealand', *NZ Journal of Public and International Law* (2013) 553, 579.
[71] Judy McGregor, ' The challenges and limitations of OPCAT national preventive mechanisms: lessons from New Zealand' (2017) 23(3) *Australian Journal of Human Rights* 351.
[72] McGregor, 364.

United Kingdom

There has been limited success in implementing *OPCAT* in the United Kingdom (UK) in several areas such as mental health, children's rights in detention, solitary confinement, and voting rights.

Background of NPM Structure

The UK ratified OPCAT in December 2003 and established an independent National Preventive Mechanism (NPM) in 2009. As of 2017, it includes 21 bodies as part of an NPM oversight structure throughout the United Kingdom. The NPM prepares and presents annual reports to Parliament and holds meetings twice a year to share and discuss findings from inspections in various facilities.

The UK NPM structure is coordinated by a body appointed to a Secretariat position, which is currently held by Her Majesty's Inspectorate of Prisons (HMIP), an independent inspectorate established in its modern form in 1982. In 2012, a steering group was established as a means of managing the overall strategy and activities of the NPM, with five members from across all four nations of the UK working collaboratively to facilitate NPM-related decision-making, set strategic direction, assist in planning future joint activities, advise HMIP and the NPM Coordinator, monitor and assess the value of NPM joint activities, promote member engagement, act on the NPM's behalf, and represent all members to the best of their abilities.[73] The UK NPM also encompasses several subgroups with a variety of different focus areas. Scotland provides support to NPM members and improves liaison with the Scottish government; the mental health subgroup, which aims at uniting various NPM members under the purpose of monitoring mental health detention in the UK; and the children and juvenile [74] subgroup, which serves as a mechanism for NPM members to exchange information and intelligence, and to consider joint

[73] NPM Steering Group, 'NPM Steering Group', *National Preventive Mechanism* (Webpage, January 2012) <https://www.nationalpreventivemechanism.org.uk/about/governance-and-structure/npm-steering-group/>.
[74] Lord Chancellor and Secretary of State, *Tenth Annual Report of the United Kingdom's National Preventive Mechanism* (1 April 2018-31 March 2019) (Report, March 2020) 13.

work on issues affecting detained children. [75]

Effectiveness

The UK NPM finds strength in its continual efforts to incorporate civil society perspectives and guidance in preventive systems of monitoring and inspection. Research has identified the UK as one of the few states that have directly involved civil society groups in monitoring work, either as designated bodies or official partners.[76] These efforts ensure that civil society groups have a direct voice in NPM processes in addition to opportunities to engage with government stakeholders while allowing them to take on what [77] Rebecca Minty describes it as a "crucial role within closed environments" through the provision of "services and support, and advocating for the rights of persons deprived of their liberty." [78] Minty's analysis also identifies ways in which the UK NPM has prioritised the inclusion of civil society and perspective of people with lived experience of detention.

In a similar manner to the New Zealand Ombudsman, the UK Care Quality Commission - one of the 21 statutory bodies making up the UK NPM - uses self-described 'experts by experience', explaining this role as "people with the experience of using care services that take part in our inspections or our visits to monitor the use of the Mental Health Act."[79] This practice is also common to the inspection process of Her Majesty's Inspectorate of Prisons (HMIP). As an example, their recent appointment of a former asylum seeker as a consultant in HMIP's immigration detention inspection has drawn attention to malaria risks when returning asylum seekers to Sub-Saharan Africa, a previously unaddressed issue that is now described below in the words of the aforementioned consultant:

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[75] Ibid.
[76] Steve Caruana, *Enhancing best practice inspection methodologies for oversight bodies with an Optional Protocol to the Convention Against Torture focus*,(Report to the Winston Churchill Memorial Trust of Australia – Showcasing learning from Greece, Switzerland, Norway, Denmark, UK, Malta and New Zealand, 9 July 2018), 55.
[77] Australia OPCAT Network, Submission to Australian Human Rights Commission, *Joint submission to the Australian Human rights Commission Consultation: OPCAT and Civil Society* (21 July 2017) 37.
[78] Rebecca Minty, 'Involving Civil Society in Preventing Ill Treatment in Detention: Maximising OPCAT's opportunity for Australia' (2019) 25(1), *Australian Journal of Human Right*s 91, 107.
[79] Care Quality Commission (CQC), 'How we involve you' (Web Page,11 February 2020) <https://www.cqc.org.uk/get-involved/how-we-involve-you/how-we-involve-you>.

> While I was a resident in one of the immigration centres, stories circulated of people with lowered immunity to malaria, subsequently succumbing to the disease. This caused a great amount of distress amongst asylum seekers. One of the inspections I was involved with...revealed that there was no provision of antimalarial drugs for detainees being removed to countries with a known risk. A follow up unannounced inspection was carried out to the same centre in September 2011. The report revealed that only immune-compromised detainees were provided with anti-malarial medication. HMIP repeated the recommendation, and a third inspection, conducted between May and June 2013, revealed that the centre had partially achieved the supply of antimalarial drugs.[80]

Criticisms

However, the effectiveness of NPM bodies in practice has been admittedly [81] constrained by the complexity of the UK's constitutional structure and the challenge of forging and strengthening independent inspection bodies in the face of weak constitutional and statutory controls and a lack of legislative safeguards.[82]

As acknowledged in the UK NPM's 2018-19 annual report to parliament, a primary concern regarding the effective implementation and management of *OPCAT* in the UK has been the absence of a newly established, supporting legislature for the NPM. A 2017 letter from the UK [83] NPM Chair to the Director of Judicial Rights and International Policy at the Ministry of Justice details this issue further:

> "The NPM itself should be accountable to parliament. Parliament should set out in statute what is required of the NPM, so that it is able to hold the NPM to account for the mandate it has set out as well as its performance and finance. The absence of

[80] Association for the Prevention of Torture (APT), *Putting prevention into praactice - 10 years on: The optional protocol to the UN convention against torture.* (Report, 2016) 52.
[81] Frank Ledwidge, 'The Optional Protocol to the Convention Against Torture (OPCAT): A major step forward in the global prevention of torture.' (2006) 17(1) *Helsinki Monitor* 69, 76.
[82] Ibid 58.
[83] William Schabas and Helmut Sax, *A Commentary on the United Nations Convention on the Rights of the Child – Article 37 Prohibition of Torture, Death Penalty, Life Imprisonment and Deprivation of Liberty* (Martinus Nijhoff Publishers, 2006), 19.

> legislation also means the NPM is unable to lay its annual report in Parliament directly. It also hinders the ability of the NPM's stakeholders to hold them to account for their NPM work."[84]

Alongside such legislative ambiguity, the lack of a separate budget for the UK NPM and its coordination functions has undermined its financial and operational autonomy to the effect of inhibiting conduct of affairs and the functional effectiveness of the NPM structure.[85] Ben Buckland and Audrey Olivier-Muralt argue that this failure to legally enshrine the independence of NPM in the UK works against its multi-body structure and, importantly, point out that similar challenges over the independence of the NPM in Australia will be faced if the large number of existing institutions to be designated as NPM are appointed in the absence of new state and federal legislation.[86]

Recent NPM Findings

In March 2019, the English male prison population was 82,643, the Scottish at 8,122 and the Northern Irish at 1,448, rates which are comparable to the 2018 rates.[87] The NPM's findings on UK prison conditions from 2018-2019 found poor living conditions for inmates and inadequate provision of services.[88] The NPM concluded that the prisoners' time-out of cells used for education and work purposes were insufficient, with a lack of purposeful activity, especially in light of the COVID-19 pandemic. Also, the NPM recorded a 24% increase in self-harm incidents and an 11% increase in reported assaults compared to the previous year.[89] Most importantly, the NPM flagged the reported rise in deaths in custody by 18 to 317 deaths in UK prisons from

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[84] UK NPM, *Monitoring places of detention: Eighth annual report of the United Kingdom's national preventive mechanism 1 April 2016 - 31 March 2017* (Report, No. Cm9563, February 2018).
[85] Ben Buckland and Audrey Olivier-Muralt 'OPCAT in federal states: towards a better understanding of NPM models and challenge' (2019) 25(1), *Australian Journal of Human Rights* 23.
[86] Ibid 28.
[87] Lord Chancellor and Secretary of State, *Tenth Annual Report of the United Kingdom's National Preventive Mechanism* (1 April 2018-31 March 2019) (Report, March 2020).
[88] Ibid.
[89] Ibid.

2018-2019; of these deaths in custody, 87 were suicides.[90]

In contrast, while staffing increases have been implemented in prisons, members of the NPM point out the lack of training and experienced staff available. Furthermore, specialist mental health services face a shortage resulting in the inability to transfer prisoners with mental health issues, often resorting to solitary confinement of these prisoners.[91] The NPM found an overall decline in safety, prisoner engagement, and a reduction in domestic violence resolutions. Crucially, levels of violence in men's prisons had increased, while 22 of the 28 local and training prisons were judged to have poor safety conditions. While two-thirds of men contended that prison staff treated them respectfully, this figure declined to only 56% of men from ethnic minority backgrounds.[92]

UK women's prisons generally exhibited lower levels of violence, but incidents of self-harm were elevated compared to men's prisons and had increased by 24% in 2018. Prisoner communication and contact with family and friends were found to be problematic due to lacking support available to women.[93] The prisoner-staff relations were generally reported to be positive and respectful, while overcrowded facilities strained this positive relationship.[94] Female prisoners with mental health conditions were delayed access to treatment due to a lack of specialised professionals and thus were held in solitary confinement for lengthy periods.[95]

Mental health

The reported reasons for the declining mental health rates in UK prisons were violence and long

[90] Ibid.
[91] Ibid.
[92] Lord Chancellor and Secretary of State, *Tenth Annual Report of the United Kingdom's National Preventive Mechanism* (1 April 2018-31 March 2019) (Report, March 2020) 13, 26.
[93] Ibid.
[94] Ibid.
[95] Ibid.

periods of segregation and supervision. During the period from 2010 to 2013, 350 adults with mental health conditions died of non-natural causes while detained in psychiatric wards in the UK.[96] The reasons for detainment in psychiatric wards included anxiety, depression, anger, difficulty concentrating, insomnia, and an increased risk of self-harm.[97] It was claimed that the Independent Monitoring Board (IMB) proved to be inefficient in dealing with the complaint.

Children in detention

Although the number of children detained in UK prisons has fallen, children of minority ethnic backgrounds are overrepresented in prisons on remand.[98] The NPM members found that 28% of the youth prison population from 2018 to 2019 were on remand and 66% of those held were not handed a prison conviction. Research also concluded that England and Wales still see [99] high levels of violence and the use of forceful restraint in youth facilities while children were not awarded sufficient time outside their cells.

Solitary confinement

The cases of forced segregation pose a great risk to mental health in UK prisons as solitary confinement encourages inactivity and social isolation. In 2015, there were in total 1,586 segregation cells in England and Wales. A 2015 report described the confinement conditions as “impoverished,” with confined detainees given little access to exercise, a phone call, meals, and a shower.[100] Over half of the 50 interviewed detainees in this investigation reported three or

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[96] Equality and Human Rights Commission, Submission to the UN Committee Against Torture, *Equality and Human Rights Commission Submission to the UN Committee Against Torture 57th session on the sixth periodic report of the UK on compliance with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Feburary 2016).

[97] Sharon Shalev, *A Sourcebook on Solitary Confinement* (Mannhein Centre for Criminology, London School of Economics, 2008)

[98] Lord Chancellor and Secretary of State, *Tenth Annual Report of the United Kingdom’s National Preventive Mechanism* (1 April 2018-31 March 2019) (Report, March 2020) 13, 27.

[99] Ibid 29.

[100] Sharon Shalev and KImmett Edgar, ‘DEEP CUSTODY: Segregation Units and Close Supervision Centres in England and Wales’ (Research Paper, Prison Reform Trust, October 2015) v.

more mental health problems.[101] The mental wellbeing of these detainees has been degraded by a lack of safeguards for detainees, specific health care, and training of officers, all of which have resulted in an increased risk of death.[102]

Proposal of NPM

Accordingly, Article 19(c) of *OPCAT* requires NPMs to be granted the power to regularly examine places of detention, make recommendations based on findings, and submit legislative proposals.[103] The UK NPM submitted a range of proposals on issues being dealt with by the prison population.

Mental health

The NPM raised the issue of mental health patients being deprived of liberty when discharged from detention in hospital to care homes under the Mental Health Act.[104] In particular, the NPM proposed that a framework be established for patients to access less restrictive forms of treatment. In the case of *Secretary of State for Justice v MM*, the Supreme Court found that neither the First-tier Tribunal nor the Secretary of State can impose conditions that deprive the patient of their liberty, even if the patient consents.[105] However, there is a need for statutory reform so that patients are not burdened by legal procedures if they wish to pursue alternative care plans.

Furthermore, the NPM participated in reviews of mental health services for young people in

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[101] Ibid 53.
[102] Ibid vi.
103 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations General Assembly, opened for signature 18 December 2002, GA Res 57 (entered into force 22 June 2006) art 19(c).
104 Lord Chancellor and Secretary of State, Tenth Annual Report of the United Kingdom's National Preventive Mechanism (1 April 2018-31 March 2019) (Report, March 2020) 13, 50.
105 Secretary of State for Justice v MM [2018] UKSC 60.

custody.[106] Evidence was given in support of the development of a new system to reduce the detrimental impacts of the justice system on the youth's mental health.[107]

Children in detention

The NPM made proposals to the Scottish Government regarding incapacity law to seek codification of the *UN Convention on the Rights of Persons with Disabilities*.[108] The safety of children and staff in correctional facilities was also raised as a 'serious concern' given the rising levels of violence to detained children and youth, as well as violence against staff.[109]

Solitary confinement

The NPM also presented evidence to the Joint Committee on Human Rights due to concerns that children in the UK are being held in solitary confinement for extended periods. [110] The Children's Commissioner for England (CCE), as part of the NPM, is also cooperating with government bodies to develop Liberty Protection Safeguards to protect the rights of children in detention.[111]

While this brief case study by no means constitutes a comprehensive survey of the effectiveness of the UK NPM structure, it offers a helpful starting point for discussions surrounding the best approach to implementing *OPCAT* in Australia, especially in preliminary stages. The weaknesses and strengths of the UK's multi-body NPM structure are potentially applicable to the Australian NPM and an informed understanding of the nuances of the UK model will certainly guide Australia's process of implementation in an appropriate direction.

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106 Lord Chancellor and Secretary of State, Tenth Annual Report of the United Kingdom's National Preventive Mechanism (1 April 2018-31 March 2019) (Report, March 2020) 13, 47.

107 Ibid.

108 Ibid 48.

109 Ibid.

110 Ibid.

111 Ibid.

Voting

The NPM gave evidence to the Scottish Equality and Human Rights Committee inquiry to advocate for prisoner voting rights.[112] It was advised that a general ban on prisoner voting is inconsistent with international jurisprudence.[113]

Implications for Australia

Australia should take note of how the UK's NPM has a strong regard for civil society and lived experience perspectives in its work through mechanisms such as involving civil society in designated bodies and official partners. This ensures that the NPM can identify and address problematic issues that may not be reported by prison authorities, either because they do not have lived experience or because they deliberately cover up misconduct.

The UK NPM comprises multiple agencies and governmental bodies that are in charge of monitoring and inspection across different locales. This ensures that recommendations made by the NPM could be effectively scrutinised by agencies with different expertise, and also ensure that its recommendations are well communicated to all inspectorate bodies.

However, when implementing *OPCAT* in Australia, we must ensure that our NPMs are supported by designated legislation, unlike NPMs in the UK. Without legislative power, any recommendations made by the UK NPM are not legally enforceable. In addition, the UK NPM also lacks transparency and accountability due to a lack of legislative support, as it is unable to lay its annual report to parliament regarding its performance and finance, and the parliament and related stakeholders do not have legal powers to keep it accountable to its work. Finally, there is no separate budget for the UK NPM. This limits its financial and operational autonomy as it is funded by the very authority that it is responsible for scrutinising.

112 Ibid.

113 Ibid.

NPM members have identified that there is insufficient follow up of cases of torture or ill-treatment in places of detention and that penalisation has been prevented in some cases.[114] Academics present that without more evidence it is impossible to conclude whether or not the NPMs that are reviewed are effective and whether or not a stronger legislative framework would help them to be more 'effective'.[115]" Whilst it is clear that the UK NPM fulfils the UK's legal obligations under OPCAT, it is not clear to what extent it has contributed to the fairer treatment of prisoners. Thus there is a need for more research, particularly qualitative research, to understand the inter-relationship of the various external monitors and their impact on those who work and live in prisons.[116]

Norway

Background of NPM structure

Norway ratified *OPCAT* in May 2013 and by June, the Parliamentary Ombudsman for Public Administration was allocated the role of Norway's NPM.[117] There is a dedicated NPM department which has the responsibility for implementing *OPCAT*. The individuals in this department have legal, medical and sociological backgrounds and are funded through the Parliamentary Ombudsman.[118] The NPM has an advisory committee that is composed of stakeholders and human rights organisations, research networks, and experts.

Norway's NPM department must regularly examine the treatment of the persons deprived of their liberty in places of detention, such as prisons and psychiatric institutions. The NPM is authorised to conduct private conversations with persons deprived of their liberty, review and

[114] Ibid 32-33.
[115] Nicola Padfield, 2018 'Monitoring prisons in England and Wales: who ensures the fair treatment of prisoners?' *Crime Law Soc Change*, 70:57–76.
[116] Nicola Padfield, 2018 'Monitoring prisons in England and Wales: who ensures the fair treatment of prisoners?' *Crime Law Soc Change*, 70:57–76
[117] The Parlimentary Ombudsman Norway, *National Preventive Mechanism against Torture and Ill-Treatment Annual Report 2014* (Report December 2014), 11.
[118] Ibid.

analyse documents and interview staff, administration staff, health personnel and trade union representatives if necessary. During their visits, they are required to identify factors that may be a risk to *OPCAT*. The visits are conducted without prior notice. The NPM then has the responsibility of making recommendations to stop the risk from escalating. [119]

The Norwegian NPM focuses on speaking directly with people deprived of their liberty. The Ombudsman stated that "these interviews are a particularly important source of information because people deprived of their liberty have first-hand knowledge of the conditions at their institutions."[120] The NPM publishes a report after every visit, where the findings, risk factors identified, and recommendations are included and published on the Parliamentary Ombudsman's website for all to access. The report is also sent to the institution, who is asked to have the report available to everyone in that facility. Within three months, the detention facility must provide written feedback reporting on their efforts to implement the NPM's recommendations.[121]

It must be noted that if the institution does not comply with the recommendations, the NPM has the power to take this issue to a higher level of authority. These authorities are obliged to consider the recommendations and initiate dialogue for possible implementation measures. In recent years, the NPM has focused on outreach activities, which include meetings and lectures to continue a dialogue of spreading knowledge of the prevention of torture, inhuman treatment and causing unnecessary distress.[122] This dialogue includes conversations with national authorities, control and supervisory bodies in the public administration, other ombudsmen, civil society, NPMs in other countries and international human rights organisations.

Effectiveness

An example of a successful NPM recommendation is the improvement of Kvammen's child welfare institution. In January 2018, the NPM visited a child welfare institution in Kvammen, where they discovered that there was extensive unlawful and routine coercion in the institution's

[119] Norwegian Parliamentary Ombudsman, *National Preventive Mechanism Annual Report 2018* (Report March 2019), 14.
[120] Ibid 15.
[121] Ibid 15.
[122] Norwegian Parliamentary Ombudsman, *National Preventive Mechanism Annual Report 2018* (Report March 2019), 9.

treatment of the young people. The NPM expressed concern about the management of the institution and whether it operated within the child welfare legislation and rights. These concerns were raised with regional and central authorities, which resulted in a working group and a new head of the unit appointed. The institution was temporarily closed down so extensive changes could take place. These changes included new procedure manuals and staff training, as well as redecoration of the rooms to create an environment more suitable for children and to ensure that all detainees can control their lighting, water, temperature and blinds, following NPM recommendation.[123]

Other more general examples of the follow-up of NPM's recommendation include: [124]

- Documentation and correct logging of decisions relating to the use of coercive measures in emergency psychiatric departments. The NPM recommended that the institution ensure that all decisions were recorded accurately and allow patients to exercise their right to complain.
    - Follow Up: The department sought advice, and has changed the definition of short-term physical restraint to include recording the information and training has also been given to the department to create an assurance that staff are aware when certain administrative decisions must be made.
- Preventing the use of coercive measures in mental healthcare institutions and child welfare institutions. The NPM recommended better staff training, a focus on good treatment culture, well-designed premises with better and more available activities.
    - Follow Up: Some institutions have increased efforts to prevent coercive measures. The Kvammen institution started weekly staff meetings to discuss coercive measures, and Reinsvoll hospital has decided per the recommendation to remove all permanently attached mechanical restaurants from the bed in the segregation units.
- Ensuring the right for information to be easily accessible.
    - Follow Up: Ana Prison and Arendal Prison have changed their procedures for

[123] Ibid 50.
[124] Ibid 51.

distributing information to ensure everyone has access to the information pamphlet. Trandum police immigration detention centres have changed their administrative decision templates to include fields that must be filled out when the detainees have been informed of their rights to complain. Akershus University Hospital Psychosis department has developed a procedure to ensure that all patients will be given the administrative decision form and notes regarding the grounds for cohesive measures.

- Participation; the NPM noticed that people were not being allowed to influence significant matters that may affect their situation
    - Follow Up: Alesund Hospital added to their admission interviews that patients will be asked questions about their previous experience with the use of force. Reinsvoll psychiatric hospital has implemented follow-up interviews to be conducted and documented as a form of evaluation of all use of force decisions.
    - Kvammen child welfare institution has developed a separate routine to ensure residents can influence their treatments, and this will be discussed in daily and weekly meetings.
- Physical conditions; the NPM had expressed particular concern over the conditions in security cells, segregation units and isolation rooms.
    - Follow Up: Gaustad Hospital, Akershus University Hospital and Ålesund Hospital upgraded the physical conditions of some of their areas, such as new furnishings and painting.
    - Ana Prison improved their exercise yard for inmates in solitary confinement
    - Alesund Hospital established new outdoor areas.
- Discovering injuries; the NPM had shone light on the inadequate procedures of reporting injuries
    - Follow Up: The Trandum Immigration Detention Centre and Alta Youth Centre prepared internal guidelines to ensure any injuries and psychological strain caused are forwarded to the correct body to be followed upon.
- Solitary confinement, isolation and segregation; the NPM recommended the disuse of solitary confinement and segregation for persons with severe mental health challenges, and the immediate cease of unauthorised isolation at the Kvammen child welfare

institution.

- Follow Up: Ana Prison and Akershus University Hospital introduced new procedures to ensure inmates and patients in isolation or segregation are more constantly supervised.
- Kvammen child welfare institution temporarily closed to review the NPM's recommendations. Following the institution's reopening, all unauthorised use of isolation ceased.

Criticisms

Despite the success of the NPM, there are still issues in Norway's detention system. International organisations such as the UN Committee against Torture and the European Commitee for the Prevention of Torture have visited facilities in Norway to provide their recommendations. Both organisations have been critical of Norway's use of solitary confinement, arguing that isolation is a major cause for concern for people with preexisting mental health issues.[125]

Areas of Improvement for OPCAT in Norway

The NPM has placed importance on dialogue with authorities. In 2018, the NPM had meetings with the Ministry of Justice and Public Security, the Norwegian Directorate for Children, Youth and Family Affairs, and the National Police Directorate.[126] NPM gave recommendations about suicide prevention measures in both police custody and prison settings:

1) *Body searches and use of force:* NPM found that detainees were always stripped naked, and had their clothes removed before being confined in a security cell. It should therefore be recommended that body searches should not be routine practice, and that detainees should never be confined naked in a security cell without an individual security assessment. It was recommended that inmates should be given their own clothes back after a body search, or be given suitable alternative clothes,

[125] Ibid 20.
[126] Ibid., 59.

so they don't have to be naked in the security cell. Following NPM recommendations, the Directorate of the Correctional Service sent letters to its regional officers clarifying the practice for clothing in security cells.

2) *Individuals with severe mental health issues put in solitary confinement* - it was stated that there is a particularly high rate of mental illnesses among inmates in Norwegian prisons, with a severe lack of beds in the mental healthcare service. This results in inmates being placed in isolation in prison rather than being offered healthcare.
3) *Avoid segregating individuals within mental healthcare institutions during conditions of isolation* - the NPM made worrying findings concerning the use of segregation. Many patients are subjected to segregation for a long time. Segregation often takes place in stripped rooms with little meaningful social contact, strict rules for behaviour, lack of available activities, and unclear treatment plans. In some hospitals, segregation is an integral part of the treatment regime. Segregation can be implemented against the patient's will, and takes place in either the patient's room, or in a dedicated segregation unit.
4) *Ensure that all use of unauthorised isolation within child welfare institutions should cease* - Being placed in an institution against one's will constitutes deprivation of liberty according to the International Covenant on Civil and Political Rights. Many children and young people who are placed in institutions are subjected to unnecessary and unjustified interventions in their personal integrity, and their due process protection is seriously violated.

Conclusion

Norway provides Australia with a sound example of implementing *OPCAT*. The dedicated NPM department is made up of a range of individuals whose differing perspectives will be able to shed light on different aspects of *OPCAT's* implementation in Norway. In addition, giving NPMs the power to take unresolved issues to a higher complaints department ensures that breaches of OPCAT are being properly resolved. The number of recommendations and changes being made to the Norway system proves that *OPCAT* is an effective tool for change in institutions

which are usually cut off from outside scrutiny.

Brazil

Background of NPM Structure

Brazil signed OPCAT in 2003 and ratified it in 2007, establishing their national system of prevention of torture, the 'National System to Prevent and Combat Torture' (Mecanismo Nacional de Prevenção e Combate à Tortura – MNPCT) in 2013. However, only four of their 26 states have set up a preventive body.[127]

Criticisms

Since its inception, MNPCT has inspected more than 200 places of detention in all but two of Brazil's 26 states. Their focus has been on issuing policy recommendations and fostering torture prevention on the local and federal levels. SPT visited Brazil in both 2011 and 2015, noting in their report the following:

> *The SPT recalls that many of the recommendations made in the present report are not being presented to the Government of Brazil for the first time, considering previous visits by United Nations human rights mechanisms. Unfortunately, the SPT noted many of the same problems identified by those preceding visits, despite progress in some specific areas. It is concerned that recurrent and consistent recommendations made over several years by different United Nations mechanisms have not been fully implemented. The SPT is hopeful that its visit and the resulting recommendations will be heeded and that they will provide a strong impulse for the current Government of Brazil to take resolute action to eradicate torture and ill-treatment for all persons deprived of their liberty.*[128]

For example, the SPT found that issues discovered in 2011, such as torture by forensic medical staff, persisted when they visited again in 2015. Additionally, from 2011 to 2015, no changes to prison policy or practice were made to address the SPT's finding of inadequate physical examinations of inmates by medical staff:[129]

> *"2011; A physical examination ("corpo de delito") was performed on detainees shortly upon their arrest and normally before their admission to the police station. All detainees interviewed by the SPT stated that this examination was superficial and conducted in a*

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[127] Office of High Commissioner, 'Brazil must abide by international obligations and strengthen its torture prevention system, say UN experts' (Press Release, 11 February 2022). https://www.ohchr.org/en/press-releases/2022/02/brazil-must-abide-international-obligations-and-strengthen-its-torture

[128] OMCT, 'Brazil: Supreme Court has a chance to protect key anti-torture body' (News Release, 18 March 2022) https://www.omct.org/en/resources/news-releases/brazil-supreme-court-has-a-chance-to-protect-key-anti-torture-body

[129] 2011 Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil*) p. 12

perfunctory manner[130] *(2011 Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil*).”*

“2015; Upon visiting forensic medical institutes in the States of Amazonas and Rio de Janeiro, the Subcommittee observed that examinations were performed in a perfunctory and ineffective manner, and detainees were not questioned about the cause of their injuries or the way in which they were treated by the police officers who had arrested them[131] *(2015 Visit to Brazil undertaken from 19 to 30 October 2015: observations and recommendations addressed to the State party Report of the Subcommittee**).”*

Therefore, OPCAT has been extremely ineffective in preventing ill-treatment in Brazil, as practices remain unchanged even if reported. Additionally, there is no independent investigatory mechanism, as police personnel are often responsible for investigating individual charges of torture and excessive force carried out by fellow officers.[132] Furthermore, delays in the special military police courts have caused many cases of alleged torture to fall outside the limitation period, thus preventing legal redress from being achieved.[133]

In March 2019, President Jair Bolsonaro issued a decree dismissing all experts serving on the MNPCT (National Mechanism to Combat and Prevent Torture) and abolished the positions. NPM members were stripped of funding and were required to function on a purely volunteer basis. By law, MNPCT is required to meet every two months to discuss policy issues and follow up on NPM findings. However, they were not summoned for 10 months in 2019. Their elected civil society members were also dismissed following an attempt by the government to bar representatives. This has left the Committee inactive since August 2021. In April 2022, the Supreme Federal Court of Brazil ruled that the presidential decree adopted in 2019 was unconstitutional. Suzanne Jabbour, Chair of the SPT congratulated Brazil on their unanimous overturn and stated:

> *We now call on the Brazilian authorities to implement this decision immediately so that the mechanism can resume and further strengthen its preventive work without delay.*[134]

Italy

Background of NPM Structure

Italy signed OPCAT in 2003 and ratified it by the end of 2012. Its NPM was established in 2014, known as The National Guarantor for the Rights of Individuals Detained or Deprived of their Liberty.

Criticisms

[130] 2011 Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil*) p. 8

[131] 2015 Visit to Brazil undertaken from 19 to 30 October 2015: observations and recommendations addressed to the State party Report of the Subcommittee**) p. 6

[132] https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/brazil/

[133] https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/brazil/

[134] https://www.ohchr.org/en/press-releases/2022/04/un-torture-prevention-body-applauds-brazil-supreme-courts-decision

The European Prison Observatory conducted a study on prison conditions in Italy, led by Susanna Marietti, the national coordinator of Antigone (an Italian NGO focused on human right protection in the penal and penitentiary system). The study can be accessed here: European Prison Observatory: Conditions in Italian Prisons

Regarding prison living conditions and whether they meet human dignity, privacy and health and hygiene requirements, Ms Marietti reported:

> *"Almost nowhere the life conditions in jail respect human dignity. On January 8th 2013, Italy was condemned in the Torreggiani case with a pilot sentence by the European Court of Human Rights for violating the third article of the 1950 European Convention of Human Rights. This condemnation does not concern only the jail that hosted the two pleading prisoners but many other Italian institutions, since almost nowhere the minimal space is guaranteed. The law imposes one person or two person cells, a separate bathroom with a shower in the cells, natural light, and a bidet for women. Almost nowhere we find that. In some prisons located in big cities there are dormitories. One-person cells may host up to three people. Very rarely we find a shower in the cell. In some prisons there is no running water in the cells during the summer. Hot water is not always available. In some prisons artificial light is always on because the meshes on the grating at the windows are very narrow in order to avoid objects been thrown out of the windows. Many jails are made of concrete and it is very cold during the winter and very hot during the summer. In some jails there are unheated sections. Air conditioning is nowhere."*

Ms Marietti also found that most prisons in Italy do not have alarm systems that enable prisoners to contact the staff in cases of emergency. She added that some prisons do not even have any staff available during the night to assist in emergencies.

Data collected by Prison Insider, an information platform on prisons in the world focused on informing, comparing and sharing conditions of detention with regards to fundamental rights, found that in 2022, there has been an increase in the amount of prison deaths in Italy by 16.26%. There is also an increase of 35.9% in suicides in prison.

In 2020, the CPT reported violence and ill-treatment towards prisoners in the facilities they had visited. The acts were usually committed out of sight of video surveillance, for example in the staircases.

In 2021, numerous allegations of violence, torture, abuse and ill-treatment have resulted in investigations, criminal proceedings and indictments against prison officers. The NGO Antigone joins 18 of these criminal proceedings. According to the NGO, some of the facts are related to alleged violent reactions during prison riots between March and April 2020, that took place as a response to the fear generated by the COVID-19 pandemic and the ban on family visits. In December 2021, the Public Prosecutor requested the indictment of 108 prison officers for the violence committed against the prisoners of the Santa Maria Capua Vetere prison. This violence had broken out on 6 April 2020, in the wake of a mutiny. The guards are being prosecuted for the crimes of torture, injury, abuse of authority, falsification of public documents and complicity in the manslaughter of a prisoner.

Additionally, Monica Aranda from the National Monitoring Bodies of Prison Conditions and the European Standards conducted research on ill treatment within prisons. Through visits to health

facilities inside prisons ad conversations with the staff by Antigone's Observatory, it was confirmed that this is a key critical matter. The feedback made by the ombudsmen is related to various aspects: delays and difficulties with access to external visits; difficulties with access to alternatives to prison for health reasons; complications visiting specialists (the dentist in particular) and the lack of computerised medical records and the need to implement telemedicine. It's interesting to take notice that aspects that rarely emerge from the Italian Ombudsmen's report are the issue of ill-treatments or medical confidentiality. The same situation happened in other countries such as Spain, for example. Here, the Report of the NPM says nothing about potential cases of ill-treatment but it's significant that the CPT's report from Spain in its visit detected more than 400 situations of possible ill-treatment in different places of deprivation of liberty.

Overall, despite Italy's ratification of OPCAT, there are still clear violations of the treaty.

Poland

Background of NPM Structure

Poland ratified OPCAT in 2005, with an NPM established in 2008 known as the Ombudsman (Commissioner for Human Rights).

Currently, 14 people are employed in the NPM department. During inspections, they are supported by employees of the Ombudsman Bureau agencies.

Overall, poor conditions in Polish prisons despite its implementation of OPCAT brings the effectiveness of OPCAT into question. Of particular concern is the insufficient budget allocated to the NPM for its required duties to be carried out.

Criticisms

The European Prison Observatory conducted research in 2013 regarding prison conditions in Polish prisons. It compared these conditions to the international norms and standards relevant for the protections of detainees' fundamental rights, and as required as part of Poland's obligation to OPCAT.

The full report can be accessed here: The European Prison Observatory: Conditions in Polish Prisons

The findings of this paper included insights into a wide range of conditions within Polish prisons, including living conditions, the use of force against prisoners, and access to activities and education. Prisoner complaints regarding ill treatment by prison staff and other prisoners were also explored.

Concerningly, complaint numbers increased from 2011 to 2012. In 2012, prisoners filed 54,197 complaints to prison authorities. 540 of these concerned the treatment of inmates by inmates (inter-prisoner violence), an increase from 421 in the previous years figures. In addition, in 2012 prisoners filed 8,415 complaints on treatment by Prison Service employees, an increase from 7682 in the previous year.

The standards and conditions of accommodation were also explored, with them varying depending upon the prison. Older prisons were found to feature about a dozen large cells with very small

windows, high humidity and fungus on the walls. Plastic curtains on the windows significantly reduce the amount of sunlight.

According to the Executive Penal Code, prisoners should be provided with work, education, social-cultural, and family bonding activities. The study found that, in practice, prisoners rarely have the possibility to participate in such activities, which is a result of overcrowding, lack of activities, and lack of space to conduct activities. Due to each prison being able to determine the amount of time allowed for cultural and sport activities under Polish Law, prisoners also very rarely have access to these activities at all.
Furthermore, cells lack adequate space for recreation. Common overcrowding aggravates the situation, which has been recognised by the European Court of Human Rights in the judgements *Orchowski and Sikorski v. Poland* [135] as a systematic problem. Due to the lack of activities available in most prisons, as well as overcrowding, prisoners in Polish prisons typically leave their cells for a maximum of 1 hour of walking per day.

Research was also explored regarding disciplinary procedures. It found that there is no rule that obligates the Prison Service to apply disciplinary measures as a mechanism of 'last resort'. Hence, these measures could occur before attempting to resolve an issue or concern any other way.

Further to the findings of the European Prison Observatory paper, a report conducted by The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) for the Polish government (May 2017), shows areas of concerns within Polish prisons and findings that have not been addressed by Poland regarding the treatment of prisoners.

One area of concern is the excessive use of force while in custody. Fundamental safeguards against ill treatment as advocated by the CPT (including the right to notify one's detention to a third party, right to a lawyer and doctor and right to be informed of the above mentioned rights) remain rare in practice.

Additionally, body and strip searches are being conducted without enough justification and without allowing prisoners to contest the practice. Prisoners in high security prisons are currently strip searched every time they leave their cell and every time they return to their cell. The Human Rights Commission emphasised the need to "guarantee an effective legal control mechanism for the legitimacy, legality and regularity of strip searches".

The CPT also noted that after its sixth visit to Poland, little or no action had been taken to implement several of its long-standing recommendations such as the practical operation of fundamental legal safeguards for persons in police custody, the regime for remand prisoners and restrictions on their contact with the outside world, the inadequate screening for injuries on arrival to remand prisons (including the recording and reporting mechanisms), and the lack of a 24-hour presence of health-care staff in prisons.

Furthermore, the CPT has noted with serious concern that the Polish legal norm of living space per prisoner has still not been brought into conformity with the CPT's standards (as per the obligations outlined in OPCAT).

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[135] *Orchowski and Sikorski v. Poland* (2009) *(Judgement)* (European Court of Human Rights, Case No 17558/04, 22 October 2009).

The Ombudsman's Office and the NPM noted in [YEAR] that the NPMs budget was insufficient to cover its operational needs. Moreover, the budget had been diminishing in recent years, which had obliged the Ombudsman to reduce the NPM's activities. As a result, there had been only 85 visits to places of deprivation of liberty in 2016 as compared with 121 visits in 2015, and the Ombudsman had announced that the NPM would not be able to visit any privately run institutions for the time being.

Staff-wise, the available finances were only sufficient to pay salaries to 12 NPM employees and it was not possible to enlarge the pool of experts for the NPM Expert Committee set up in 2016 (the purpose of which was to provide the NPM with the professional expertise it needed). As already stressed by the CPT in the report on the 2013 visit, a further increase in resources (both human and financial) would be required for the Polish NPM to be capable of carrying out regular and unannounced visits to all types of such places throughout the country.

Appendix B - 2017 Justice Action's Submission

1. Current Situation

Although Justice Action welcomes the Australian Government's ratification of the *Optional Protocol to the Convention Against Torture*, we believe that without the implementation of the following proposed solutions, it will only be guaranteed to fail.

Justice Action is the voice of people with the lived experience of detention.

At the *OPCAT* seminar of November 25, 2009, Justice Action presented the article 'Business as usual or the chance for civil respect globally?' Then, we raised concerns about the failure of our prison system to maximise the potential of the proposed *OPCAT* NPM structure, due to prisoners' lack of trust in the corrective services system and the prison culture that they are not entitled to human rights. However, no changes were made.

Unfortunately, and unsurprisingly, these issues are only too alive today.

The Don Dale exposure, by Four Corners in April this year, has highlighted that all existing mechanisms, including the internal inquiries, had failed to create the necessary 'accountability and transparency' for prison authorities. This defeats the intention of *OPCAT*, as per paragraph 14 of the Consultation Paper published by the Australian Human Rights Commission. It was only when Australia suffered international embarrassment, with Australia's darkest secrets regarding our treatment of prisoners revealed to the public, that some semblance of accountability was forced.

Our community expects change. Without change and accountability at all levels of the corrective services system, *OPCAT* is of no value. We will be going back to 'business as usual', with ostensible changes made which do nothing to address the desperation and cynicism of our prisoners.

Following extensive international and local consultation, Justice Action proposes:

- Using the prisoner representative structure of the Inmate Development Committees (IDCs) which allows cost free continual monitoring, gives community training, presents collective concerns and avoids victimisation
- Using existing technology including video monitoring in cells as a communication device back to the NPM. Prisoners should be able to complain directly into the camera. Families, communities, and the media should have access to this. The SPT and NPM should be able to publicly talk about the complaints received.
- Strengthening the NGOs and ex-prisoner community to be independent of government and coordinating information to assist the NPM

This paper contains Justice Action's response to the questions proposed in Part 5.1 of the Australian Human Rights Commission's *OPCAT* in Australia Consultation Paper of May 2017.

We believe that, only through the following proposals, detainees will have the necessary access to the requisite tools and information to defend their rights.

2. Questions for Discussion

Justice Action will address all the questions outlined in the Consultation paper, where our responses will draw attention to:

1) Key issues which will need to be considered, and
2) Proposed changes, to ensure compliance with *OPCAT* at a state and territory level.

These reflect the views of individuals who are currently in a place of detention, where they are deprived of their liberty 'either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence': Article 4.1. of the Protocol.

2.1. What is your experience of the inspection framework for places of detention in the state or territory where you are based, or in relation to places of detention the Australian Government is responsible for?

Our experience has shown that the inspection framework for places of detention all over Australia is ineffectual. The official basis for complaints, consisting of (1) the Ombudsman, (2) the custodial services for each state and territory, and (3) the official visitors, is failing to adequately respond to prisoner concerns.

Justice Action has continually received complaints from prisoners and their families which have attempted to use these services. These complaints detail their experiences, where authorities have undertaken no action to resolve their original concerns. Altogether, the belief among prisoners is that there is plainly no mechanism that they can trust, and therefore that they are not entitled to human rights while incarcerated.

One of the most common, and symbolic statements made by the prisoners to express their desperation and cynicism towards the way they have been treated is that: ‘They can fuck you, but the only right you have is not to love the baby, ha ha’.

Many prisoners are unaware of Justice Action. However, the general consensus across places of detention in Australia is that prisoners are treated as if they are scarcely human – that is, continually deprived of their basic human rights. The National Preventative Mechanism (NPM) and UN Sub-committee on the Prevention of Torture (SPT) need to ensure that prisoners are able to talk to:

1) The media, to increase the accountability and transparency of operations within prisons, 2) Ministers and commissioners, who can undertake appropriate legal and political action, and 3) Official complaints bodies, who can effectively resolve their concerns.

2.2 How should the key elements of OPCAT implementation in Australia

be documented?

Justice Action proposes two points of consideration.

Firstly, the *OPCAT* needs to be documented in as simple a manner as possible. These notices should be presented as notices in places of detention, in every room, every wing and every pod. It should contain a clear statement of prisoners as to what their rights are, and what their rights to complaints are.

Secondly, the NPM must ensure that detainees have a full understanding of their rights. Drafts should be available to detainee representatives for examination and consultation on whether they would be effective in the culture of the particular place of detention. Prison officials should also have access to these drafts to ensure they are aware of the rights available to prisoners under *OPCAT*.

2.3. What are the most important or urgent issues that should be taken into account by the NPM?

The urgent sentiment in our prisons and detention centres is that the system should be radically different from the form it currently takes. Prisoners all over Australia are urging for a 'breath of fresh air' in the complaint and inspection mechanism. Justice Action strongly advocates for the methods of change introduced above.

For *OPCAT* to be an effective mechanism for increasing 'accountability and transparency' in government management of prisons, these changes need to be recorded as iron-clad statements in legislation or in regulations that bind corrective services system officials. This is necessary so that individuals in positions of power can understand, adopt and have these changes monitored.

Moreover, monitoring of these changes for effectiveness must be done by the detainees themselves, rather than being done by prison guards, managers, or other officials in the corrective services system. Should these officials retain the power to monitor and self-assess these changes, we will only see a continuation of the culture of distortion and secrecy that has plagued our prisoners and marginalised our prisoners.

2.4. How should Australian NPM bodies engage with civil society representatives and existing inspection mechanisms?

To adequately engage with civil society representatives, the NPM needs to be able to link up with organisations connected with detainee interests. These can include NGOs and people who visit places of detention. There needs to be regular opportunities for civil society representatives to communicate with NPMs and voice any issues they have with the management of our detention system.

Justice Action proposes that this is best done through regular consultations between these bodies and the NPMs, preferably on a monthly basis. Furthermore, we suggest that there be regular open meetings, where individuals connected with the interests of detainees have the opportunity to raise any concerns they have and offer new perspectives from their own sources.

We believe that the management of prisons is an issue which affects the entire community, and the only way to increase accountability and transparency is through a public forum where all views are welcomed for discussions, rather than through correspondence via mail or online.

2.5. How should the Australian NPM bodies work with key government stakeholders?

NPM bodies must be in constant communication with key government stakeholders. However, the mechanism for feedback from NPMs to corrective service authorities must be one with a reporting mechanism, incorporating feedback not only directly from prisoner complaints but also from civil service representatives.

The relationship between NPMs and government stakeholders must veer away from one of confidential discussions, to avoid giving government stakeholders any belief that they can nullify the criticisms that NPMs would adopt.

Rather, the NPM must have the capacity to ensure that government actions are open and accountable, to scrutinise government decisions rather than compromising themselves to serve government interests.

2.6. How can Australia benefit most from the role of the SPT?

The SPT's role within the framework following the ratification of *OPCAT* will be that of an international visitor, coming to Australia every seven years. To achieve the most benefits for

Australia, the SPT must receive all reports from the NPMs and then target the areas of most concern. The information received must be open and accountable.

The SPT should publish their own responses to the reports received from the NPMs. They should then serve as exemplars for the standards that government authorities must be held to in their treatment of prisoners and other detainees.

In contrast to what is proposed in paragraph 31 of the Consultation Paper, there should be more transparency regarding the findings and recommendations. This is necessary to promote transparency, ensuring that individual rights are not wrongly infringed upon.

2.7. After the Government formally ratified OPCAT, how should more detailed decisions be made on how to apply OPCAT in Australia?

In light of the Australian Government's proposed strategy of implementing *OPCAT* over 3 years following ratification in December 2017, Justice Action recognizes that more detailed decisions will be made over this period. Following the beginning of the formal ratification process, Australia's NPMs should therefore look towards successful international applications of *OPCAT*, with reports from other countries openly circulated worldwide.

Ultimately, Justice Action's strategy for implementing *OPCAT* must not depend only on Australia's local experience and the feedback we have already proposed, but also on possible new insights received from international experience. As we progress forward with the implementation of *OPCAT*, it is essential that we see the development of a system to involve detainee responses to the changes made through their representatives, in all facets of the *OPCAT*.