

Australian
National
Preventive
Mechanism



Monitoring places of detention under the Optional Protocol to the Convention against Torture

Annual Report of the Australian
National Preventive Mechanism



1 July 2022

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30 June 2023

Foreword

United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Dr Alice Jill Edwards



The obligation to prevent and prohibit torture is absolute. It does not bend to legislative or political sluggishness. It does not sway under practical difficulties. It does not fragment or transform depending on jurisdiction. The *jus cogens* nature of the torture prohibition demands unwavering adherence. Transparency and accountability are values of human rights and democracies, so any lapse in lifting that veil will invite suspicion, and at its worst, continue to perpetuate the conditions that allow torture and other forms of cruel, inhuman or degrading treatment or punishment (hereinafter ‘other ill-treatment’) to flourish.

On Australia’s journey towards preventing all forms of torture and other ill-treatment, this inaugural Annual Report of Australia’s National Preventive Mechanism is a pivotal step forward. The consolidation of information presented herein demonstrates a much-welcomed commitment to transparency and accountability.

Australia has been a party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) since 1989, and in 2017, took the decision to ratify the Optional Protocol to the Convention against Torture (OPCAT). As part of the latter, Australia committed to establish or designate a National Preventive Mechanism, or Mechanisms (NPMs), crucial visiting bodies that are independent of government and the establishments they monitor, and which are tasked with visiting places where individuals are deprived of their liberty and therefore *ipso facto* at heightened risk of mistreatment. Their main function is to work constructively with detention authorities and make recommendations for the overall improvement of conditions and standards. At their heart is the goal of preventing torture and other ill-treatment, which is an overarching obligation underpinned by Articles 2 and 16 of UNCAT. Allowing independent bodies to visit places of custody or detention has long been recognized as one of the most effective ways to do so.

Although the nation ratified OPCAT in December 2017, the obligation to establish a fully functional and independent NPM was deferred until January 2022, with an extension granted until January 2023.



Being a federal system, Australia has opted for a multi-NPM network combining federal and state bodies. The advantage of having multiple NPMs lies in each body's ability to operate and understand the specific circumstances in each state or territory and in specific institutions, and to be able to map progress over time. A network can also positively allow NPMs to share expertise and strategies, while tailoring them to specific settings. Coordination mechanisms are needed to help ensure consistency in the implementation on the absolute prohibition of torture and other ill-treatment, and collective reporting, such as this Annual Report, is very welcome.

I heartily congratulate the majority of state and territory governments – namely Australian Capital Territory, Northern Territory, South Australia, Tasmania and Western Australia, and the Commonwealth – for having designated NPM bodies. In doing so, they have recognized the important role that such bodies can play in preventing and eradicating torture and other ill-treatment in places where persons are deprived of their liberty. Being open to arm's length scrutiny takes courage and vision and is based on a philosophy that while one may not always get things right, one is willing to try, to be open to reflection and recommendations, and not to hide from challenges. That is how a mature democracy is supposed to operate, in a public and human rights-facing way.

It is with regret that as I write this foreword the network is still incomplete. I strongly urge the states that have not yet nominated and capacitated their NPMs to do so. The message this gap sends to prisoners and other persons deprived of their liberty, who are by their nature of being detained are in vulnerable situations, is worrying. What message does it send to their families and to the wider community?

I expect that the scrutiny provided by NPMs, working consistently and over time, will help avert the number of regrettable individual and systematized incidents of abuse, mistreatment and negligence seen in some of Australia's facilities in recent years. The continuing disproportionate representation of Aboriginal and Torres Strait Islander people in detention, and the shocking number of deaths that occur each year in State custody, continues to demand action. Incidents of maltreatment and abuse in youth detention centres like Don Dale, Ashley, and Banksia Hill are inexcusable and underscore the critical need for reforms which should be guided by recommendations of relevant NPMs. They also are clear evidence for why a constant external eye over standards of treatment for such vulnerable groups is so needed.

The age of criminal responsibility remains far too young at age ten in almost all Australian states and territories, despite repeated calls to raise it. Stepped up efforts on alternatives to detention, reducing the use of pre-trial detention, responding to the needs of people with different situations of vulnerability, meeting the standard of equivalence of health care, and improving conditions of detention and staffing, should be explored. These serious challenges further emphasize the imperative for enhanced monitoring and accountability, tasks that the NPM network is geared to address.

The Subcommittee on Prevention of Torture and other Cruel, Inhuman Degrading Treatment or Punishment's official termination of its visit to Australia in February 2023 due to lack of cooperation highlighted challenges of the multi-body NPM configuration that Australia has



opted for. Addressing these challenges requires governments to clarify and legislate mandates and powers of NPMs and also the SPT's access in Australia, as well as facilitate cooperation and consistency between these multiple bodies to guarantee unannounced access to all places of detention throughout Australia.

There have been a number of recent positive developments in Australia, which I want to highlight here. The move to ban the use of spit hoods in a number of jurisdictions, especially on juveniles, is a welcomed development and is consistent with my report to the United Nations General Assembly where I placed spit hoods on a list of prohibited items because they are inherently cruel, inhuman or degrading (UN Doc. A/78/324). The transfer of most of the asylum-seekers in Nauru in June 2023 was a step in the right direction albeit I am concerned by reports that the detention centre remains open and that a group of asylum-seekers were sent there in September 2023. The High Court's breakthrough judgment in the case of *NZYQ*, which held that Australia's law allowing indefinite detention of asylum-seekers and stateless persons with no prospects of removal to be constitutionally invalid, finally brought Australia in line with international human rights standards. I have long made it clear that indefinite or uncertain detention of asylum-seekers and stateless persons can be a form of inhuman treatment. I am also watching the decision of some states to transfer privately run prisons to public authorities with a commitment to improving conditions for detainees and gaining oversight and accountability on human rights obligations.

Unlike some other human rights bodies that respond to human rights violations after they have occurred, the great contribution of OPCAT – and the NPMs – is on preventing torture and ill-treatment before they occur. I strongly believe there is reason for hope and optimism in Australia's commitment to prohibit and prevent torture and other ill-treatment and encourage the country to continue efforts to make the NPM network a robust safeguard and monitor, ultimately enhancing the dignity and rights of those in detention.

I send my encouragement and support to all those working on establishing and advancing Australia's NPM network and I look forward to taking note of further progress.

Dr Alice Jill Edwards

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

25 March 2024



Content warning

Readers should be aware that this report includes information related to the treatment and conditions of people in places of detention, including deaths in custody. This may be confronting and distressing to some readers.

Notes on language

Unless part of a quote or name of existing documents, we use ‘person-first’ language in discussing those we encounter and support in our work. This means terms such as ‘person/people in detention’, ‘person/people detained’ and ‘person/people deprived of their liberty’.

We recognise and acknowledge there are different terminology preferences among Australian Aboriginal and Torres Strait Islander people across Australia. For consistency, this report uses the term ‘Aboriginal and Torres Strait Islander people’, unless forming part of a quote or name of existing documents.

Much of the terminology around OPCAT, and how it is being implemented in Australia, is complex. Terminology also varies in different parts of Australia, including based on how OPCAT has been or may be implemented within legislation and policy. While terms may vary, we have strived for consistency as much as possible.

Who we are

We are the Australian NPM. We are, collectively, all the bodies and people nominated or appointed by Australian governments as NPMs across Australia, with responsibility to consider the treatment of persons deprived of liberty in places controlled by those governments. We are each independent entities with individual responsibilities within our individual jurisdictions. We describe ourselves as members of the Australian NPM and as the Australian NPM when we are communicating as one entity.



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Acknowledgment of Country

The Australian National Preventive Mechanism (NPM) acknowledges the Aboriginal and Torres Strait Islander peoples throughout Australia and the Traditional Custodians of the lands across which we conduct our business.

We pay our respects to the custodians of the lands on which we work as well as their ancestors and Elders, past and present.

The Australian NPM is committed to honouring Australian Aboriginal and Torres Strait Islander peoples’ unique cultural and spiritual relationships to the land, waters, seas and their rich contribution to society.



Executive Summary

Overview

This is the first Annual Report of the Australian National Preventive Mechanism (NPM) and covers the period 1 July 2022 to 30 June 2023.

It provides a snapshot of how OPCAT has been implemented in Australia, a summary of the Australian NPM and profiles of its 12 members, and selected challenges and forward priorities for the Australian NPM.

It includes discussion of the following common themes of collective concern that have been identified by members of the Australian NPM:

- youth detention, including use of isolation
- access to the National Disability Insurance Scheme while in detention
- healthcare – access to Medicare and the Pharmaceutical Benefits Scheme in detention
- staffing shortages in places of detention
- the numbers of people held on remand in prisons and youth detention.

Resourcing constraints and unresolved funding disputes between the federal, state and territory governments remain outstanding and have significantly hindered Australia's OPCAT implementation. No members are adequately resourced to carry out their NPM role.

Beyond resourcing, in the absence of appropriate legislation we have further concerns around both Australian NPM members and the Subcommittee on Prevention of Torture (SPT) being able to fulfil their OPCAT mandates.

There also remain significant gaps in the oversight of Australia's places of detention, with Australia's three most populous jurisdictions yet to appoint NPMs.

OPCAT presents an enormous opportunity for Australia to improve the treatment of people held in detention settings.

The Australian NPM will continue to advocate for full OPCAT implementation in Australia, and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment, despite our fundamental challenges.



Examples of places we visit



Collective activities of the Australian NPM 2022-23



Recommendations

In this report we make four recommendations:



Recommendation 1:

Within 12 months, all Australian governments provide appropriate and ongoing funding to enable all NPMs to undertake their OPCAT mandate.



Recommendation 2:

Within 12 months, where they have not already done so, Australian governments should legislate to provide a clear, legislative basis for all NPMs' functions, powers, protections and independence.



Recommendation 3:

Within 12 months, where they have not already done so, Australian governments should legislate to enable the SPT to:

- visit all places of deprivation of liberty within Article 4 of OPCAT, and
- benefit from all powers and protections necessary to fulfil their own mandate under OPCAT with regards to places of detention under Australia's jurisdiction and control.



Recommendation 4:

Within 12 months, to ensure coverage across the country of all places falling under Article 4 of OPCAT:

- the New South Wales, Queensland and Victorian governments must appoint NPMs for all places of detention under their control, and
- all other Australian governments, where they have not done so, must ensure they have one or more NPMs in place for all places of detention under their control.



The status of the Australian NPM

Australian, state and territory governments are each responsible for nominating respective NPM bodies in respect of places under their control where people are deprived of their liberty.

Despite the significant time since Australia signed and ratified OPCAT, and despite Australia’s NPM obligations commencing on 20 January 2023, as of 30 June 2023 the Australian NPM is incomplete.

To date, the Commonwealth, Western Australia (WA), Northern Territory (NT), South Australia (SA), Tasmania, and the Australian Capital Territory (ACT) have nominated NPMs.

The Queensland, New South Wales (NSW) and Victorian governments are still yet to nominate NPMs for their respective jurisdictions. Each jurisdiction has existing bodies possessing many of the powers, immunities and protections required of NPMs, though some further work would still be needed to ensure all OPCAT obligations would be met in those jurisdictions.

Victoria and Queensland have both introduced legislation supporting visits by the United Nations (UN) SPT to support their functions under OPCAT. NSW has yet to introduce such legislation.

The status of Australian NPM members around the country as of 30 June 2023 is as follows:

NPM	Date named	Status
Commonwealth		
Office of the Commonwealth Ombudsman (<i>as both NPM Coordinator and Commonwealth NPM</i>)	1 July 2018	Commenced both functions in 2018
Australian Capital Territory		
ACT Human Rights Commission	20 January 2022	Three bodies form the multi-body ACT NPM
ACT Office of the Inspector of Correctional Services (ACT OICS)		Pilot visits commenced late in the 2022–23 financial



NPM	Date named	Status
ACT Ombudsman		year, however no dedicated legislation or funding
New South Wales		
<i>No NPM(s) named</i>		
Northern Territory		
Ombudsman NT (<i>as interim NPM</i>)	20 April 2021	Named as 'interim NPM' in 2021, but yet to commence as an NPM Some OPCAT-specific preparatory work undertaken, but NPM legislation yet to commence and no ongoing OPCAT funding in place
NT Children's Commissioner (<i>expected to be appointed for places where persons under 18 are detained</i>)	N/A	Anticipated NPMs only
Principal Community Visitor (<i>expected to be appointed for disability care facilities and mental health treatment facilities</i>)		
Queensland		
<i>No NPM(s) named</i>		
South Australia		



NPM	Date named	Status
Official visitors (<i>for adult prisons, and police lock-ups or police cells where people are detained for 24 hours or more</i>)	17 January 2022	'Nominated' only and yet to commence functions specifically as an NPM, pending funding and specific legislation
Training Centre Visitor (<i>for training centres (youth detention facilities)</i>)		
Tasmania		
Mr Richard Connock (<i>as Tasmanian NPM</i>)	7 February 2022	Yet to commence visits Working through and finalising the Tasmanian NPM's OPCAT implementation project
Victoria		
<i>No NPM(s) named</i>		
Western Australia		
WA Office of the Inspector of Custodial Services (WA OICS) (<i>for justice-related facilities, including police lock-ups</i>)	17 July 2019	'Nominated' only Continuing to function within existing non-OPCAT mandate in the absence of funding and legislative amendments
WA Ombudsman (<i>for mental health and other secure facilities</i>)		'Nominated' and yet to commence functions specifically as an NPM. No specific OPCAT legislation in place.



The governments of SA and WA have named NPMs by reference to specific places of detention rather than by reference to the scope of NPM activity under Article 4 of OPCAT.

Even if the status of NPMs is clarified in those jurisdictions, there may currently be, or may emerge, further places of detention within the jurisdiction and control of those states' governments which are outside of the scope of already nominated NPMs, but which fall within scope of Article 4 and thus Australia's OPCAT obligations.

View of the SPT on the status of the Australian NPM

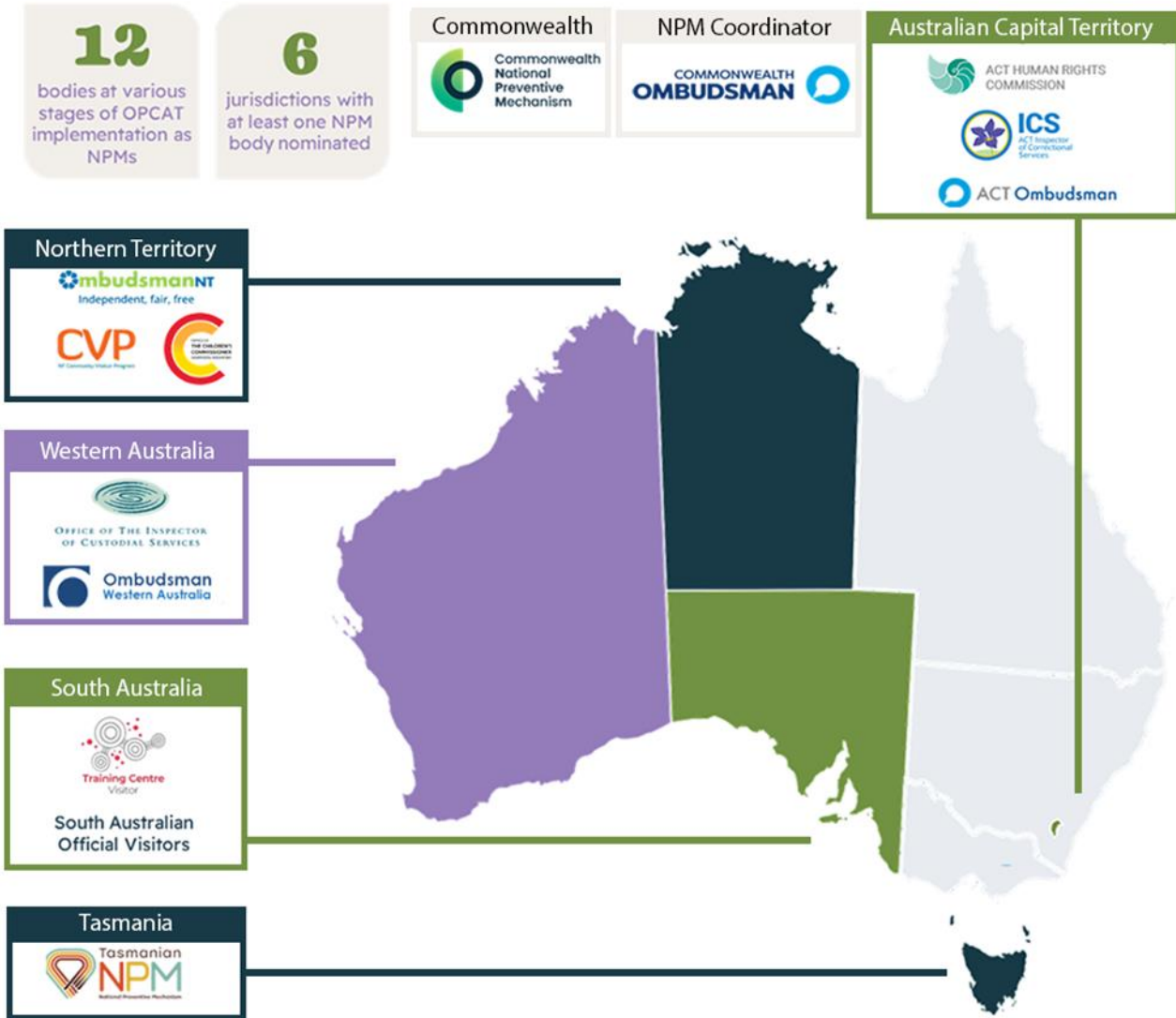
As they have indicated in the report of their 2022 visit to Australia, the SPT does not consider Australia to have designated its NPM or NPMs.

We recognise that Australia's NPM is incomplete. We also recognise that activity implementing OPCAT is at different stages among each of the Australian NPM's members, and for many has not commenced.

Nonetheless, the Australian NPM's current members are committed to implementing OPCAT and recognise the importance of the NPM mandate. Challenges in meeting the mandate are discussed more below, in [Challenges and Priorities](#).



Geographical coverage



Detention in Australia

Common themes

While the work of the Australian NPM is in its early stages, we identified several key common issues in places of detention across the country during 2022–23. **Youth detention, access to NDIS in detention, access to Medicare and the Pharmaceutical Benefits Scheme (PBS) in detention, staffing shortages, and people being held on remand in prisons** have all been raised by multiple members as areas of concern. The Australian NPM will be further considering how individual members, and the Australian NPM collectively, can explore these issues further.

We acknowledge that issues in places of detention in Australia are extensive, and many are common to the various jurisdictions of our member bodies. The themes that we have identified in this year's report do not reflect the full extent of issues in places of detention, but instead represent just some of the discussions we have had as a collective. Many other thematic concerns, including the overrepresentation of Aboriginal and Torres Strait Islander peoples, issues facing women in places of detention, and the minimum age of criminal responsibility, continue to be of concern to the Australian NPM. We will continue to monitor and if necessary, make comment on, these and other matters as we pursue our mandate in the coming year.

Youth detention

In 2022–23 the administration of youth justice in Australia continued to be of concern for members. There are multiple, intersecting challenges – and solutions – beyond those relating specifically to the built youth detention environment. All governments should address deeper issues within the broader system urgently. They should include adopting an evidence-based approach to prevention, early intervention, and diversion of children and young people from the justice system.

Treatment and conditions in youth detention are a significant part of the much broader issue. Addressing concerns with youth detention is a necessary, but not sufficient, part of finding a way forward with addressing failings in the broader system.

While we focus on core concerns of isolation practices here, much of the other thematic discussion further below is also relevant to the youth justice system.

Use of isolation

There are various terms used to describe the general practice of isolating a young person in detention from others with little to no contact with the outside world (e.g. segregation,



isolation, separation, seclusion, solitary confinement, time out, lockdown, reset or lack of meaningful contact). In this report we use the term 'isolation', to refer to what commonly occurs when young people are locked in their cells alone. Isolation has multiple causes, but is often linked to a lack of proper resourcing in both places of youth detention and in the broader system. Isolation can occur in multiple environments including youth detention centres and adult watch houses. Given they are not designed for children and young people, prolonged isolation in adult facilities is of particular concern, something on which members have [previously commented](#).

Isolation should be avoided wherever possible. Where used it should be solely as a last resort, and for the shortest time possible. Under international standards, isolation through solitary confinement must never be used as a disciplinary measure,¹ and prolonged solitary confinement – confinement for 22 hours or more a day without meaningful human contact for more than 15 consecutive days – must be prohibited.² Then UN Special Rapporteur on Torture Juan E. Méndez *stated* ‘...the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture...’³ in line with international standards and norms in criminal justice.⁴ And while isolation must not be used in a punitive manner, the NT OCC has observed ‘...[r]egardless of its form, classification or intended use, isolation as a practice is punitive and can reinforce a child’s trauma experience...’.

Despite the need to ensure isolation is a measure of last resort, the Tasmanian NPM, as Tasmanian Custodial Inspector, has described a ‘disturbing precedent’ of lockdowns on a systemic level in youth detention. He further noted that while young people should have at least 10 hours out of their bedroom per day under his inspection standards, this was rarely achieved.⁵

Further, at the time of WA OICS’s February 2023 inspection of Unit 18 at Casuarina Prison (a prescribed youth detention centre within a maximum security adult prison), young people were only spending an average of 2–3 hours out of cell per day. In SA, the SA TCV observed that while they had been unable to determine the precise time that children were spending outside of their rooms; information from children detained, staff and other service providers indicated that children were spending excessive time in their rooms. This contributed to SA TCV’s conclusion that they were spending extended periods in isolation and at times solitary confinement – that is, 22 hours or more without meaningful human contact.

It is apparent from member observations through 2022–23 that children are spending far too much time – per day and over extended periods – isolated to their own cells or rooms.

¹ [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#) (Havana Rules), r 67.

² [United Nations Standard Minimum Rules for the Treatment of Prisoners](#) (Nelson Mandela Rules), rr 43-4.

³ Juan E Méndez, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#), UN Doc A/HRC/28/68 (5 March 2015) [33], [44].

⁴ Havana Rules, r 67; Nelson Mandela Rules, r 45.

⁵ See Tasmanian Custodial Inspector, Annual Report 2022–23, p 25–6. Note that Custodial Inspector is an appointment held concurrently by Mr Richard Connock, the Tasmanian NPM, under which Mr Connock conducts inspections of Tasmanian custodial institutions.



However, time out of cell should not be solely about maximising the amount of time, but also ensuring the quality of this time. Under international human rights standards, “[e]very juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, [...] and] should have additional time for daily leisure activities [...]”⁶ Young people detained must also be guaranteed meaningful programs and activities which support the development of their potential as part of broader society.⁷ Isolation practices undermine both of these goals.

Impacts of inadequate time out of cell

Impacts of isolation practices are extensive, varied, and often long-term. Children in detention frequently have backgrounds of trauma, and isolation can compound this existing trauma, with many children entering isolation having complex combinations of pre-existing mental health conditions, cognitive impairment, and history of trauma. The NT OCC observes that isolation is harmful and is also not a culturally safe practice.

WA OICS has reported extensively on the deep problems at Banksia Hill youth detention centre and Unit 18 of Casuarina Prison, noting that among other things, ongoing lockdowns and reduced time out of cell in both facilities had led to regular critical incidents.

SA TCV has noted that a lack of time out of rooms has particularly harmful effects for young people, due to their stage of development. It impacts access to and participation in education activity, their access to appropriate healthcare, and their access to legal support. It can also contribute to or exacerbate medical or psychological symptoms, and adversely affect developing capacity for social interactions. Where young people are at risk of self-harm, isolation may increase that risk through exacerbating psychological distress and symptoms such as rumination. The SA TCV also noted in stark terms that “*less time ‘out of rooms’ means less time engaged in programs aimed at reducing offending behaviour*”.

Lack of data

Prisons lack data about the time children spend out of their cells, have inconsistent or inaccurate recordkeeping, and lack external oversight of isolation practices. Each of these is necessary to ensure children’s safety and wellbeing.

During inspection activity in 2023 to Banksia Hill and Unit 18, WA OICS observed significant inaccuracies in data recording time spent out of cell. In 2019, the ACT HRC recommended Bimberi management record lockdown information in a lockdown register subject to external oversight. When reporting on their June 2023 Bimberi visit, ACT OICS considered this had not been satisfactorily implemented. However, during the same visit, ACT OICS found mandatory health isolation of 5–7 days introduced at the height of the COVID-19

⁶ Havana Rules, r 47.

⁷ Havana Rules, r 12.



pandemic were still in place, despite all public health restrictions being lifted in the community.

ACT OICS and the Tasmanian Custodial Inspector have also noted the lack of measurement through the Productivity Commission's Report on Government Services' (RoGS) performance indicator framework for time spent out of cells in youth detention, in contrast to adult corrections. SA TCV has echoed concerns on data gaps and the contrast with available data for adult corrections in SA, observing that young people should benefit from the same accountability provided by recordkeeping for adult corrections.

Data shortcomings impact not only members' capacity to conduct oversight activity, but also to make suitable observations and findings. They also limit transparency of behaviour by detaining authorities, and through this the community's understanding of lockdown and other practices in youth detention.

Models of care

Members have long called for a trauma-informed model of care in youth detention settings, rather than a model which adopts a primarily security focus. The NT OCC has noted the introduction in 2022 of a therapeutic and trauma-informed model of care for young people in NT youth detention, which it continues to monitor. The SA TCV has noted work by government to embed trauma-informed practice into service delivery, while observing that it will take time to see results of such work. WA OICS has also acknowledged the development of a trauma-informed operational model of care in WA, however, this process has been slow and ongoing implementation is uncertain.

Effective rehabilitation and reintegration into the community outside of detention should be at the core of youth detention. For this to succeed, as the SA TCV notes, "*the foundational principle of a rehabilitative environment needs to be supported through adequate resourcing and appropriate models of care*". According to WA OICS, rehabilitative interventions must be delivered consistently and in the appropriate environment. There remain significant shortcomings in meeting rehabilitative goals, but therapeutic and trauma-informed approaches are essential.

The National Disability Insurance Scheme in detention

People with disability in detention environments

People with disability are disproportionately represented in detention environments. These settings can present unique challenges and risks for people with disability, who may face systems which are unwilling, unable or under-resourced to appropriately accommodate disability-related needs.



Data from 2023 indicates that 2 in 5 or 39 percent of people aged over 18 entering prison have one or more disabilities or long-term health conditions that affected their participation in education, employment, or everyday activities. Females are almost twice as likely than males to report a disability. This compares with 18 percent of the Australian population of all ages having a disability.⁸ While the figure in corrections is high, it relies on self-reporting, which likely underestimates the extent of people with disability in corrections.

For youth detention, likely populations of people with disability are also high. The SA TCV identified that in SA, among the average daily youth detention population 59.5 percent had a known diagnosed disability. However, they note that this figure is likely to be underestimated. In 2019, the SA Department of Human Services completed a disability screening assessment project at Kurlana Tapa Youth Justice Centre, which found that 9 out of 10 participants had a disability-related need, and a previously unknown disability need was identified for more than half of the participants. WA OICS has also noted 2018 research indicating 36 percent of young people sampled who were held in youth detention in WA at the time had Foetal Alcohol Spectrum Disorder (FASD), and 89 percent of them had at least one domain of severe neurodevelopmental impairment,⁹ many of whom would be people with disability.

Despite the overrepresentation, Australian NPM members have noted the under-assessment of disability in screening processes for people on arrival in detention. Indicators to assist with identifying disability-related needs may be missed during admissions processes, and the number of people with disability is likely much higher than records indicate.

The National Disability Insurance Scheme

Noting the significant number of people with disability in prisons and youth detention, members have identified concerns regarding systemic barriers to accessing individualised disability supports in these environments – including those funded under the National Disability Insurance Scheme (NDIS).

Not all people with disability are eligible to participate in the NDIS. However, for those who are existing participants, whether they already have a NDIS plan in place is often not identified on admission to detention.

Where existing NDIS participants are identified, they commonly have reduced access to NDIS-funded disability supports on entering detention. In theory this reflects the NDIS's *Applied Principles and Tables of Support* (APTOS) document, agreed by all Australian governments, which provides that various facets of disability support in prisons be provided instead by other parties and systems, including the criminal justice system. Members have noted however that for NDIS recipients entering detention, the level of support received is

⁸ Australian Institute of Health and Welfare, [The health of people in Australia's prisons 2022](#) (2023), p 37.

⁹ See Bower et al, [Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia](#) (2018), p 1.



often significantly reduced compared to what they received outside of detention. Service provider access and funding in detention environments can be practically difficult, while for existing NDIS participants the move into detention can also disrupt established routines and connections between the NDIS participant and their caseworkers.

Current settings intend for a sharing of disability support between the NDIS and other sources – by or through detaining authorities. However divisions of responsibility between the National Disability Insurance Agency (NDIA), and state and territory governments, to fund and provide supports in detention are unclear. The NDIS’s APTOS document, which is meant to set out these divisions, does not adequately assist. This lack of clear responsibilities can mean that necessary supports for people with disability are not available.

Further, there remain issues in many cases for people detained in prisons and youth detention centres to access the NDIS for the first time, and roles and processes for supporting people to make initial applications to the NDIS are often unclear.

Planning to support an NDIS participant when they are released from detention often does not commence until a released date has been set. This does not enable sufficient planning to occur. Further, parole boards wish to see evidence of disability supports prior to granting parole, which presents problems when NDIS planning has not yet occurred.

Detaining authorities, the NDIA and those providing or coordinating support under the NDIS must improve communication with each other, ensure a better understanding of roles, and ensure support for both identifying disability needs and navigating the complex processes of the NDIS and disability support.

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), in handing down its final report in 2023, made important findings and recommendations on the interface between corrections and the NDIS.

Among other things the report found that there are unclear divisions of responsibility between the NDIS, and states and territories including the criminal justice system itself. The *National Disability Insurance Scheme Act 2013*, *National Disability Insurance Scheme (Supports for Participants) Rules 2013*, and the APTOS, collectively intended to guide these divisions, are insufficiently clear and leave them open to interpretation.¹⁰ The Disability Royal Commission recommended governments review these documents and clarify settings, and resolve issues with the NDIS–criminal justice system interface.¹¹ They also recommended

¹⁰ See Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report](#) (2023) (DRC Final Report), ch 8, s 6.2.

¹¹ DRC Final Report, recommendation 8.17.



guidelines be issued to state that a release date is not a precondition to approve funding for supports for NDIS participants in custody for their transition to outside the corrections environment.¹²

NDIS Review

In October 2022 the Australian Government established the independent NDIS Review to consider its design, operations, and sustainability. The NDIS Review's final report, titled *Working together to deliver the NDIS*, was released on 7 December 2023 and is available [here](#).

The report stated the NDIS Review heard of '*contested responsibilities when delivering supports to participants who interact with the justice system*'.¹³ The report recommended changes to APTOS to clarify responsibilities and improve connection between the NDIS and other services.¹⁴

We look forward to the government response to the final reports of both the Disability Royal Commission and the NDIS Review.

Healthcare – access to Medicare and the Pharmaceutical Benefits Scheme

While not specifically arising in visit activity in 2022–23, we wish to note the present circumstances around access to Medicare and to the Pharmaceutical Benefits Scheme (PBS) for those in detention, particularly in prison and youth detention.

Legislation which governs Medicare and the PBS effectively excludes access to the scheme by people in prison and youth detention,¹⁵ based on the rationale that it is the responsibility of the relevant state or territory to provide healthcare through their own arrangements in corrections environments.

This approach has numerous practical consequences for healthcare in corrections settings. The lack of access to Medicare can lead to an inability to access some services, including culturally safe healthcare delivered by Aboriginal Community Controlled Health Services. It can also mean people in prison cannot access subsidised medications under the PBS, which may restrict their access to high-cost medications.

¹² DRC Final Report, recommendation 8.18.

¹³ [Working together to deliver the NDIS: Independent Review into the National Disability Insurance Scheme. Final Report](#) (2023) (NDIS Review Final Report), p 68.

¹⁴ NDIS Review Final Report, recommendation 2 / action 2.6.

¹⁵ [Health Insurance Act 1973](#) (Cth) s 19(2).



This is despite international standards providing that people in detention should have the equivalent standards of healthcare as those in the rest of the community, and should have access to care without discrimination on the basis of their legal status.¹⁶

Current settings can also complicate continuity of care between and outside of detention. The Australian Medical Association (AMA) has noted that needing to reapply for Medicare on release can act as a barrier to healthcare for an already disadvantaged cohort.¹⁷ In contrast, retaining Medicare and PBS access in custodial settings *‘presents significant opportunity to enhance health outcomes by allowing continuity of access to [Medicare] at all stages of a custodial journey, including through transition back to the community’*.¹⁸

Australian NPM members consider that laws, policies and practices which can lead to a significantly lesser standard of healthcare and/or other supports for those in detention should be addressed.

Staffing shortages

Through 2022–23, staffing shortages have continued to have a significant impact across both adult and youth detention environments.

WA OICS identified the impact of staffing shortages as likely the most common issue across all facilities visited. The Tasmanian Custodial Inspector found that *‘[s]taffing shortages seem to be a major reason for the majority of lockdowns in both adult and youth custodial centres’*. ACT OICS has reported that cell lock-ins at the Alexander Maconochie Centre (AMC), often caused by staffing shortages, were seen by both staff and by people detained as contributing to tensions between the two.

In youth detention in South Australia, while there had been some improvements in staffing numbers late in the year, the SA TCV nonetheless found the proportion of days where there was an understaffed shift in Kurlana Tapa ranged from 88 to 97 percent throughout the 2022–23 year. They found that 14.9 percent of daytime shifts were understaffed by 10 or more operational staff – a third of the full complement required to safely operate the detention centre – placing significant pressure on the operation of the centre.

Flow on effects

Staffing shortages have significant flow-on impacts on the broader detention environment:

- Shortages can lead to reduced safety on site, and increased tension among people detained.

¹⁶ Nelson Mandela Rules, r 24(1).

¹⁷ Australian Medical Association (AMA), [Position Statement – Health Care in Custodial Settings](#) (2023), pp 4-5.

¹⁸ AMA, [Position Statement](#), pp 4-5.



- Shortages are a major reason for lockdowns and decreased time out of cell for people detained.
- Shortages lead to reduced access to recreation, education, employment, visits, and clinical programs.
- Shortages can lead to delays in accessing health and mental health services.
- Shortages can lead to poor record-keeping and compliance with operational procedures, resulting in health and safety risks for people detained.
- Shortages lead to poor staff wellbeing: chronic understaffing and a high staff attrition rate leads to increased workloads and work backlogs for staff, and can result in fatigue and burnout.

Staffing shortages can undermine the rehabilitative potential of detention, and so can lead to broader, systemic-level effects by reducing opportunities for reducing recidivism. Such consequences have a significant impact not only on those in detention, but also on the rest of the community.

People held on remand

Members have identified concerns with the treatment of people detained on remand. The proportion of adults detained in prisons who are on remand,¹⁹ rather than serving a sentence, has increased Australia-wide. In 2012, this figure was 23.4 percent of the total prison population, and by 2022 it was 36.6 percent. This shift comes as corrections facilities struggle to afford those held on remand the treatment and conditions they are entitled to under international human rights law and human rights standards.

The high rate of people held on remand is not only present in adult corrections. The SA TCV notes that at Kurlana Tapa in SA, only 9.6 percent of young people on an average day in 2022–23 were held on sentenced detention.

Where people are held on remand it is important they are afforded differential treatment from people who have been convicted, in line with the *International Covenant on Civil and Political Rights*, and the *Standard Minimum Rules on the Treatment of Prisoners* (Nelson Mandela Rules).²⁰ As WA OICS note, people who are unconvicted and held on remand enjoy a presumption of innocence unless and until convicted, and their treatment and conditions in detention should reflect this distinction from those serving a sentence of imprisonment.

WA OICS have found there is often little difference in conditions between sentenced and unsentenced people held in WA prisons. Despite being requirements of the Nelson Mandela Rules,²¹ those held on remand in WA do not wear their own clothes or have a right to their

¹⁹ There are often variations in the use of ‘remand’ terminology. Most people held on remand have not been convicted, however some people held on remand have been convicted of a crime and are awaiting sentencing.

²⁰ See [International Covenant on Civil and Political Rights](#), Article 10(2)(a); Nelson Mandela Rules, Part II – Rules applicable to special categories, Section C – prisoners under arrest or awaiting trial.

²¹ Nelson Mandela Rules, rr 113, 115.



own single-bed accommodation. Sentenced and unsentenced people live, work, and participate in recreation activities together. Unsented persons are only allowed slightly more frequent social visits than sentenced persons. ACT OICS note that in the ACT those on remand do not receive additional visit opportunities or longer phone calls, and their need for access to legal representation – given outstanding legal proceedings – is not given particular priority.

The separation of convicted and unconvicted persons is also a requirement of the Nelson Mandela Rules.²² In the ACT the Alexander Maconochie Centre does not provide separate accommodation for people held on remand. In Tasmania, there is no dedicated separate accommodation for women on remand. ACT OICS has also noted reports of women in detention feeling unsafe due to the mix of women sentenced and on remand, as well as a mix of different classification levels of women detained.

WA OICS has previously recommended establishing more, smaller facilities across the state to accommodate different cohorts within youth detention, including facilities for those on remand.

The SA TCV also notes the interactions between being held on remand and other factors. This includes reports of young people being held on remand due to a lack of suitable alternative placements outside of detention, and young people being held on remand due to mental health conditions presenting in a manner involving alleged offending behaviour.

We recognise the various operational challenges in managing separate cohorts of people in detention. Nonetheless, as the proportion of the corrections population held on remand has increased, detaining authorities must be particularly mindful of the various critical distinctions in treatment necessary for this cohort, and reflect this accordingly in the management and opportunities for such people.

²² Nelson Mandela Rules, r 112(1).



Challenges and Priorities

Resourcing

The most significant challenge to OPCAT implementation in Australia remains adequate and ongoing resourcing for NPMs to carry out their functions. Despite the 14 years since Australia signed OPCAT in 2009, and 6 years since ratification in 2017, resourcing disputes between Australian governments continue with different levels of government each considering it is for another to provide adequate, ongoing funding for NPMs. Under Article 18(3) of OPCAT countries undertake to make necessary resources for NPMs available, but this has not occurred.

Many members do not have the funding to commence OPCAT visit activity, or conduct it to the extent and frequency expected of their mandate. Where existing organisations have been designated as an NPM, additional resourcing should be supplied, but this has not occurred. Other meaningful work within NPMs' advisory, educative and cooperative functions, important to improve 'OPCAT literacy' in Australia, largely remains unfulfilled.

In August 2021, the Australian Government offered one-off, time limited OPCAT-related funding to all states and territories to support its *Closing the Gap Implementation Plan*. This funding offer was to assist with initial costs involved in implementing OPCAT, and was intended to help improve rehabilitation outcomes for Aboriginal and Torres Strait Islander people detained. Only the ACT took up this offer, and that funding has been exhausted.

OPCAT requires adequate and *ongoing* resourcing so that Australia can meet its international obligations. In the most recent federal Budget, there was no additional funding provided for OPCAT implementation, and in May 2023 we released a [joint statement](#) expressing our disappointment with this.

➤ Whatever the source, all Australian NPM members must be adequately funded not only for short-term implementation and establishment needs, but to discharge all functions within their OPCAT mandate, now and into the future. Without such funding, Australia will not be able to meet its OPCAT obligations.

Nil or inadequate resourcing of NPMs means they cannot carry out their functions, which in turn means that institutions are not being assisted to improve the conditions of people held in detention as intended by the OPCAT.

➤ Recommendation 1:

Within 12 months, all Australian governments provide appropriate and ongoing funding to enable all NPMs to undertake their OPCAT mandate.



Legislation

Legislation to enable NPMs to carry out their mandate effectively

OPCAT requires countries to, at a minimum, grant specific powers and provide certain protections to enable NPMs to fulfil their mandate.

This should be done through legislation so there is clarity and confidence that governments will enable the Australian NPM to carry out its functions. Clear and unambiguous legislative authority also has a significant educative function, to help explain the NPM role and what must be done to facilitate NPMs' preventive activity.

Legislative authority for NPMs should have a clear declaration of functional independence, to enshrine the common thread of NPMs' independent status reflected in various parts of OPCAT.²³ Legislation should also address the minimum necessary requirements for NPMs set out in Articles 19–21 and 35 of OPCAT.

Legislation should also ensure there are protections in place to protect those who provide information to or otherwise assist NPMs, or are believed to have done so. This means protection from reprisal activity:

- committed against people in detention by other people in detention
- committed by authorities against people in detention
- committed by authorities against others (e.g. disciplinary action against facility staff for raising issues)
- taken against anyone through the legal framework.

Significant steps have been taken in certain jurisdictions to achieve a robust, comprehensive legislative basis. However, legislative authority to ensure all NPM bodies can independently and effectively undertake their full role remains a patchwork across the country. We remind all governments not only of the importance of NPM-enabling legislation, but the importance that it reflects at a minimum all the requirements of OPCAT and with regards to all places of detention which fall within scope of Article 4.

Recommendation 2:



Within 12 months, where they have not already done so, Australian governments should legislate to provide a clear, legislative basis for all NPMs' functions, powers, protections and independence.

²³ See e.g. [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT) Articles 1, 17, 18(1), 35.



Core Requirements for NPMs

OPCAT contains minimum necessary requirements which parties to OPCAT must enable for NPMs, namely to:

- regularly examine the treatment of persons in places of detention
- make recommendations to the relevant authorities with the aim of improving the treatment and conditions of people detained
- submit proposals and observations on existing or draft laws
- access all information on the number of places of detention and their locations
- access all information on the number of people detained
- access all information relating to the treatment and conditions of people detained
- access all places of detention and their installations and facilities
- have private interviews with people detained and anyone else they consider may be relevant
- choose the places they want to visit and the persons they want to interview
- have contact with the SPT and the ability to share information with it
- have the necessary privileges and immunities for the independent exercise of their functions.



Legislation to enable SPT visits

NPMs are one part of a system of prevention under OPCAT. The system also relies on the SPT's capacity to exercise its own mandate during its own visits. The SPT's experiences during their terminated 2022 visit show that legislation enabling the full exercise of their mandate is necessary. Legislation should allow the SPT to perform all necessary functions, and across all places of detention within the scope of Article 4 of OPCAT.

As of 30 June 2023, five jurisdictions have legislation to enable visits from the SPT, though only three of these enable the SPT to visit all places of detention within the scope of Article 4:

Jurisdiction	SPT visit scope in legislation
ACT ²⁴	All places within scope of Article 4 of OPCAT
NT ²⁵	All places within scope of Article 4 of OPCAT
Queensland ²⁶	Exhaustive list of places of detention, allowing expansion by regulation, with no reference to OPCAT Article 4
Tasmania ²⁷	All places within scope of Article 4 of OPCAT
Victoria ²⁸	Exhaustive list of places of detention, allowing expansion by regulation, with no reference to OPCAT Article 4

There is no legislation ensuring the SPT can exercise its full mandate for places of detention under the control of the Commonwealth, WA, SA, and NSW.

During their 2022 visit, the SPT was denied access to:

- all places of detention in NSW other than immigration detention facilities
- closed psychiatric facilities and closed forensic facilities in Queensland.

Neither NSW nor Queensland had SPT visit legislation in place at that time.

²⁴ [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Act 2018](#) (ACT), commenced 30 April 2018.

²⁵ [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Act 2018](#) (NT), commenced 1 November 2018.

²⁶ [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Act 2023](#) (Qld), commenced 2 June 2023 (enacted after 2022 SPT visit). Note that this legislation allows for detaining authorities to restrict the SPT's access to a place of detention on grounds beyond those permitted under OPCAT (see s 10).

²⁷ [OPCAT Implementation Act 2021](#) (Tas), commenced 20 January 2022.

²⁸ [Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture \(OPCAT\) Act 2022](#) (Vic), commenced 11 October 2022. Note that this legislation allows for detaining authorities to restrict the SPT's access to a place of detention on grounds beyond those permitted under OPCAT (see s 8).



The SPT also advised it was given incomplete and incorrect information relating to other places of detention. Along with better education among authorities on the SPT's powers and functions under OPCAT, we consider clear legislation across all jurisdictions will ensure the SPT is able to access all places of detention and receive all information requested, in line with its OPCAT mandate.

Recommendation 3:

Within 12 months, where they have not already done so, Australian governments should legislate to enable the SPT to:



- visit all places of deprivation of liberty within Article 4 of OPCAT, and
- benefit from all powers and protections necessary to fulfil their own mandate under OPCAT with regards to places of detention under Australia's jurisdiction and control.



Other challenges

Education

An additional NPM function, beyond its primary visit function, is to educate and raise awareness about the prevention of torture and other ill treatment. Better education, including among detaining authorities and the broader Australian community, is critical to improving understanding of what OPCAT is, what NPMs do, and the substance of human rights protection in places where people are deprived of their liberty.

There is still plenty for Australia – and indeed for us as the Australian NPM – to learn about the issues which OPCAT seeks to address. Governments, detaining authorities, people in detention, and other members of the public are entitled to have a greater understanding about how to improve the treatment of people detained and minimise the risk of ill treatment. Creating a greater awareness of OPCAT and human rights issues would not only assist NPMs to do their job, but would also lead to improved treatment of people detained. However, NPMs are currently not resourced, or are under resourced, to do this.

Remaining jurisdictions

Australia cannot adequately implement its OPCAT obligations until there are NPMs appointed to cover the full scope of places of detention, captured by Article 4, across all of Australia.

Recommendation 4:

Within 12 months, to ensure coverage across the country of all places falling under Article 4 of OPCAT:



- the New South Wales, Queensland and Victorian governments must appoint NPMs for all places of detention under their control, and
- all other Australian governments, where they have not done so, must ensure they have one or more NPMs in place for all places of detention under their control.



Forward priorities

Our initial forward priorities relate to our establishment and operations as a collective NPM, noting that full membership of the NPM is not yet complete.

In accordance with the structure in place through Australia's model of OPCAT implementation, each member remains a discrete body free to determine its own individual forward priorities. Members have their own priorities, including some highlighted in their profiles below in [Appendix 2](#).

As both individual bodies and as the Australian NPM we want to be responsive to changing needs and circumstances that arise. In the future, we expect to have further discussions as the Australian NPM about common focus issues with the view to achieving enduring positive outcomes for people in detention in priority areas. However, our forward work program will be dependent on receiving adequate resourcing.

Governance

The Australian NPM continues to develop our governance procedures as a priority, to ensure there is agreement on matters such as:

- members' relationships with each other as parts of the Australian NPM
- how we reach agreement on matters concerning the Australian NPM
- the role of the NPM Coordinator to manage and support the collective (noting that the NPM Coordinator is expressly prohibited from directing individual members as to how they carry out their individual functions).

These discussions have been useful ways of exploring our own understanding of the common entity.

Develop expertise and enhance information sharing

We want to build or further develop expertise for NPM members to visit places of detention and examine the treatment and conditions of people in detention.

The NPM Coordinator facilitates the sharing of members' expertise with the rest of the Australian NPM, including through practical means such as shadowing the visits of NPMs. Where expertise is unavailable within the Australian NPM we also hope to build links with external experts and civil society who can support members, particularly in their visit activity.





We want to develop further and leverage new and existing relationships with other NPMs and bodies with intersecting interests internationally, as well as with domestic stakeholders with experience – including lived experience – of both detention and other relevant matters.

Training is already an important means of supporting skills development for members and is an area that we will continue to focus on. In particular, we will consider how to support each other in developing methodologies and tools for planning and undertaking visits.

In 2022-23 the Australian NPM participated in formal training sessions about:

- NGO-run youth detention facilities in Spain (presented by the CEO of the Diagrama Foundation)
- An Exchange of Practices on Prevention (presented by the Norwegian NPM and Association for the Prevention of Torture)
- Coronial Inquests (presented by the ACT NPM)
- Neurodisability in the WA youth justice system (presented by the ACT NPM)

The NPM Coordinator also shares information with the rest of the Australian NPM through regular update emails and an online resource sharing platform. NPMs are able to contribute relevant resources to the platform including public reports, recent developments, best practices and guidance in the OPCAT and detention monitoring space.

Joint written activity

Joint written activity among members has, to date, involved:

- joint statements on matters of importance, including on legislation and policy
- joint submissions to parliamentary committees and UN bodies.

This work has harnessed important opportunities for public messaging on matters relevant to our OPCAT mandate. It is also starting to help develop our public visibility as a collective entity.

This joint work has also been useful for building familiarity among members, understanding each's views on detention matters and the exercise of NPM functions, and working through differences of opinion that can come with a multi-body structure.

The Australian NPM recognises the positive impact of joint work and remains committed to maintaining joint activity as a key focus for the future.



We will continue to explore further joint written activity opportunities. We hope such work will establish the Australian NPM as a key authority on issues of concern in detention, as well as increase public awareness of detention issues and OPCAT itself.

For links to the Australian NPM's joint written activity see page 68 [below](#).



Appendix 1: OPCAT and NPMs

OPCAT: Key Concepts

What is OPCAT?



OPCAT is an **international human rights treaty** to improve treatment and conditions for **people in detention**, and strengthen protections against their **torture and other ill treatment**. OPCAT aims to do this through a system of monitoring by domestic and international bodies.

OPCAT is focused on **prevention**: seeking to identify risks of mistreatment before they materialise.

What is an NPM and what is its role?



National Preventive Mechanisms (NPMs) are the **independent domestic monitoring bodies** established under OPCAT.

The key part of NPMs' monitoring is through **regular visits they make to places of detention**, what they observe and find out from people they speak to while there, and recommendations they make after the visits to improve treatment and conditions.

What is a place of detention?



Article 4(1) of OPCAT defines a place of detention as “any place under a state party’s jurisdiction and control where persons are or may be 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”.

This definition is **broad**, and a country’s NPM must be able to visit all these places.

What are conditions in detention?



NPMs may look at a **wide range of things** which relate to the conditions in a place of detention. This can cover things such as living conditions, programs and activities on offer, contact with the outside world, access to health care, staff training, and relationships between staff and the people in the place of detention.

What is the SPT and what is its role?



The Subcommittee on Prevention of Torture (SPT) is the **international monitoring body** working in parallel with NPMs. Like NPMs, it can visit all places of detention in countries that have ratified OPCAT.

The SPT’s role also includes giving **advice and guidance** to NPMs.



An introduction to OPCAT

OPCAT is an international human rights treaty, which entered into force in 2006. Unlike other human rights treaties, OPCAT does not create additional substantive rights. Instead, it creates new mechanisms to better ensure *existing* rights are protected.

Australia is a party to various international human rights treaties. This includes the *International Covenant on Civil and Political Rights* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). From these, Australia has international obligations to prohibit and criminalise torture and other ill treatment.

Australia also has specific obligations under the CAT to *prevent* torture and other ill treatment from happening in the first place. It was a desire to further strengthen this existing preventive objective within the CAT that led to the development of OPCAT.



OPCAT does not address risks of torture and other ill treatment in all situations. Instead, it focuses specifically on places where people are deprived of their liberty, or places of detention for short. OPCAT recognises that these are places where risks of torture and other ill treatment can be greatest.

OPCAT creates a cooperative ‘system’ to work towards the prevention of torture and other ill treatment in places of detention. There are two parts to OPCAT’s visit system: One domestic and one international.

At a domestic level, countries are required to create one or more independent bodies, known as National Preventive Mechanisms (NPMs), to conduct regular visits to places of detention. NPMs are to examine the treatment of the people detained, and make recommendations to relevant authorities towards improving treatment and conditions and preventing torture and ill treatment.

At an international level, countries are also required to enable visits to places of detention by the Subcommittee on Prevention of Torture (SPT). The SPT is a body of experts who visit all countries that are a party to OPCAT, make recommendations to governments, and assist NPMs in carrying out their own role.

Collectively, the work of both NPMs and the SPT support OPCAT’s purpose to protect and prevent people in detention from torture and other ill treatment.

Prevention versus response

OPCAT is focused on prevention of torture and other ill treatment. This is different from other mechanisms, such as complaints processes and legal proceedings, which focus on *responding* to torture and other ill treatment after it happens.



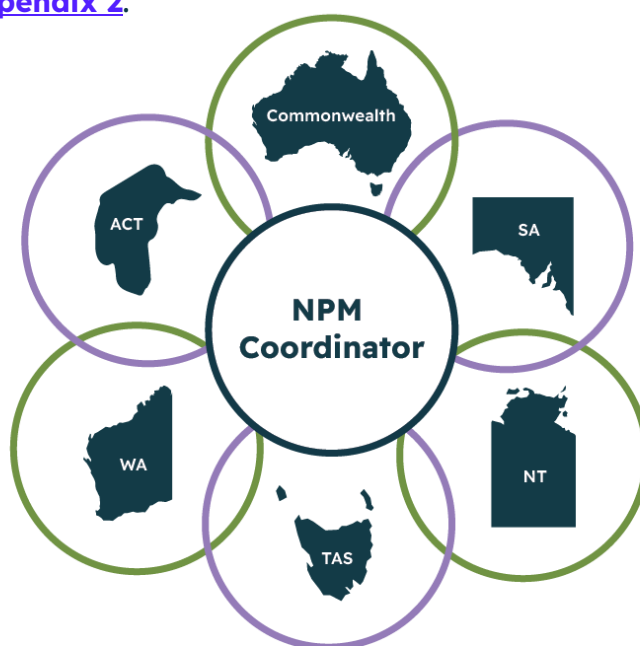
This means OPCAT intends to allow oversight of places of detention to reduce risks of mistreatment before they are realised. Through this, OPCAT also supports the broader improvement of treatment and conditions of people who are detained, as improved treatment is a key part of prevention.

Implementation in Australia: The multi-body Australian NPM

Australia is a federation, involving division of powers between Commonwealth, state and territory governments. This division impacts responsibility over both places of detention, and their oversight. Commonwealth, state, and territory governments each have control over places of detention within OPCAT’s scope.

OPCAT requires countries to maintain, designate, or establish one or several independent NPMs.²⁹ Reflecting Australia’s federal status, the Government’s intention has been for the Australian NPM to be established as a cooperative network of Commonwealth, state, and territory oversight bodies, coordinated by an NPM Coordinator.³⁰

The preventive visiting mandate in Australia is to be fulfilled by multiple bodies, which together make up the Australian NPM. More information on these bodies and their work in 2022–23 is below in [Appendix 2](#).

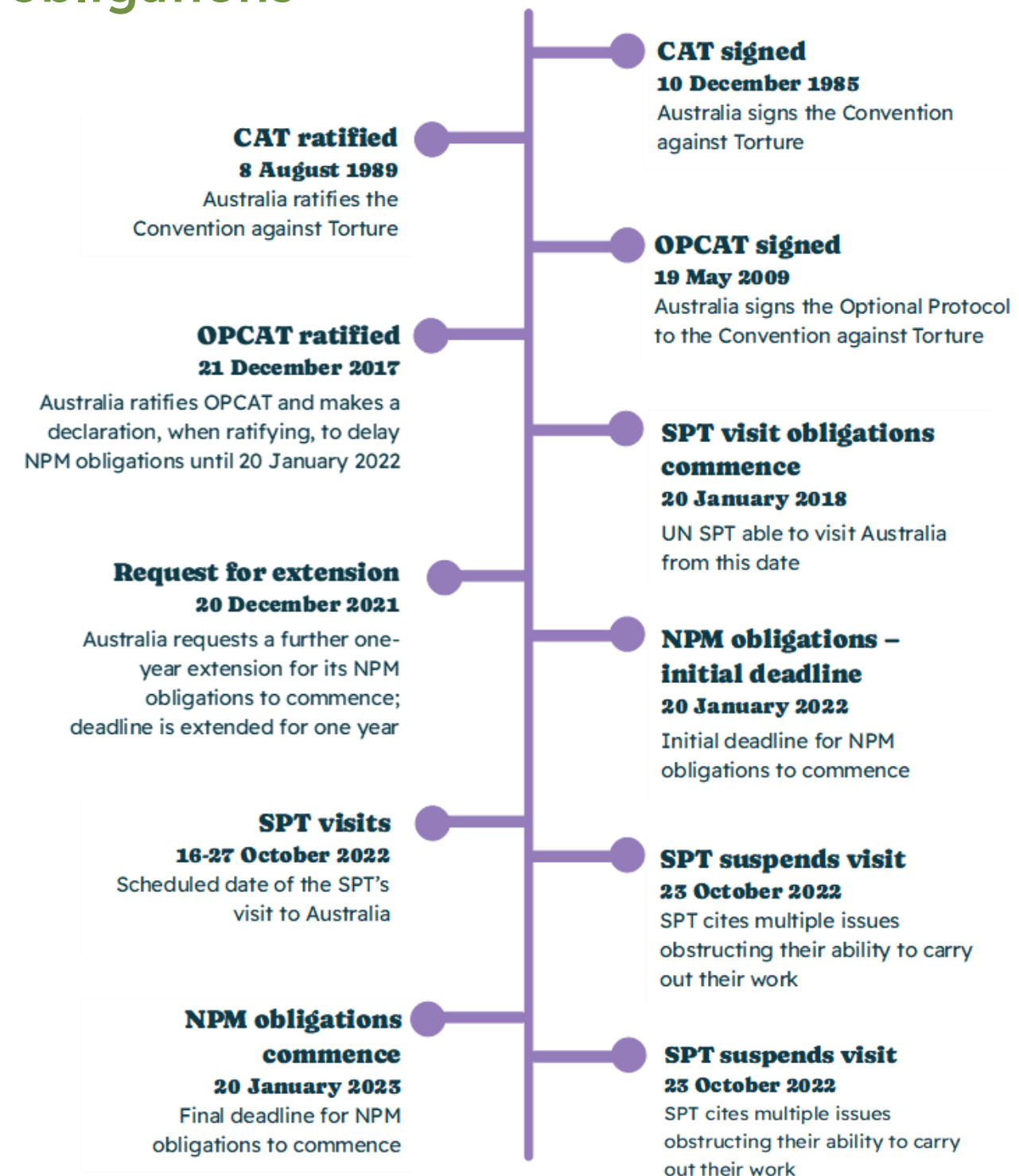


²⁹ OPCAT Article 17.

³⁰ Senate Standing Committee on Legal and Constitutional Affairs, Attorney-General’s Portfolio, 2021–22 Budget Estimates, [Portfolio Question Number: LCC-BE21-134](#).



Timeline: Australia's CAT and OPCAT obligations³¹



³¹ By signing a treaty, a state indicates its intention to be bound by the treaty in the future. It demonstrates the state's support for the principles and goals of the treaty, and its willingness to consider ratifying it in future. Ratification is the formal act by which a state confirms its acceptance of a treaty. By ratifying a treaty, a state consents to be bound by the treaty's terms and becomes a party to the treaty under international law. Between signing and ratifying a treaty, the state is given time to seek approval for the treaty on a domestic level and to enact the necessary legislation to give domestic effect to the treaty.



Four functions of an NPM

Visit

An NPM's key function is the **visiting function**, which involves carrying out visits to places of detention. An NPM must be able to access all places where people are or may be deprived of their liberty, access all relevant information about these places, and speak in private with all relevant people including those who are detained. The purpose of visits is to consider the conditions in these places and the treatment of the people in them, towards the prevention of torture and other ill treatment.

Advise

NPMs also have an **advisory function** that includes:

- making recommendations to governments and other authorities responsible for detention
- commenting on current or draft laws
- reviewing rules and procedures relating to detention and the people involved in the custody and treatment of people deprived of their liberty
- submitting reports, or contributing to government reports, to human rights mechanisms and following up on their recommendations.

Educate

The **educational function** of an NPM includes:

- participating in training and supporting awareness-raising programs in schools, universities and professional circles
- participating in and reviewing training of the various people involved in detention including law enforcement, medical personnel and public officials.

This ensures awareness of the prohibition and prevention of torture and other ill treatment, and broader human rights expectations.

Cooperate

The **cooperation function** focuses on engagement through:

- meaningful dialogue on prevention of torture and other ill treatment with governments, other authorities responsible for detention and other relevant stakeholders
- building relationships and exchanging information with other NPMs and with the Subcommittee on Prevention of Torture, to share experiences and increase effectiveness of torture prevention efforts.

Adapted from Office of the UN High Commissioner for Human Rights, *Preventing Torture: The Role of National Preventive Mechanisms – a practical guide* (2018), page 6.



Appendix 2: NPM Profiles

Australian Capital Territory



Governance and Administrative Arrangements

The ACT Office of the Inspector of Correctional Services (ACT OICS), the ACT Human Rights Commission (ACT HRC) and ACT Ombudsman were nominated by the ACT Attorney-General to form the multi-body ACT NPM in January 2022. Places of detention subject to ACT NPM oversight at the time of writing include the ACT adult prison and youth justice centre, court cells and transport vehicles, and closed mental health facilities. The ACT Ombudsman, one body within the ACT NPM, has cooperative oversight of ACT police stations with the Commonwealth NPM.

The nomination did not specify which entity was responsible for each place of detention or situation of deprivation of liberty.

In May 2022, the ACT Government accepted funding from the Commonwealth Government of \$143,000 over 2 years, under the Closing the Gap Implementation Plan. The ACT NPM agreed to use this to fund a temporary position of 'NPM Coordination Director' as a full-time position filled from 4 October 2022 to 21 July 2023. Although this one-off funding was provided to assist with the establishment of the ACT NPM, no additional funding has been provided to the ACT NPM to perform OPCAT functions. Funding is the subject of ongoing discussions between the ACT NPM and ACT Government, though without further funding the ACT NPM will be unable to fully discharge its preventive monitoring functions.

The ACT NPM has identified, as a strategic priority, the need for urgent legislative reforms to ensure it has power to access all places of detention, information and people deprived of their liberty, as required under OPCAT. In January 2023, the ACT NPM met with the ACT Attorney-General to recommend and discuss amending the ACT's existing OPCAT legislation providing for SPT visits, to extend its relevant powers and protections to the ACT NPM. Until such time as amendments to relevant legislation are made, each ACT NPM body exercises their powers under their existing legislation.



ACT Office of the Inspector of Correctional Services

ACT OICS was established through the passage of the *Inspector of Correctional Services Act 2017* (ACT) (ICS Act) and commenced operation in 2018. Throughout the reporting period, ACT OICS had a staffing level of approximately 2.8 FTE for all existing functions under the ICS Act. Staff have expertise in detention oversight, human rights, women's health, and community engagement.

The Explanatory Statement to the ICS Act draws on OPCAT principles including in relation to independence from government, and requisite monitoring powers and guarantees. These include the ability to access places of detention, to access information, and to talk in private to detained people and others. While many OPCAT requirements for an NPM are reflected in the ICS Act, amendments to the ICS Act have been identified that would further support ACT OICS to fulfil its NPM mandate.

ACT Human Rights Commission

ACT HRC is an independent statutory agency established under the *Human Rights Commission Act 2005* (ACT). Its main object is to promote the human rights and welfare of people in the ACT. ACT HRC is constituted by 4 independent statutory officeholders that perform a broad range of statutory functions, including investigation and conciliation of complaints, oversight of lawful frameworks that limit human rights, and individual and systemic advocacy in respect of human rights.

The President and Human Rights Commissioner; Public Advocate and Children and Young People Commissioner; and Discrimination, Health Services, Disability and Community Services Commissioner are together responsible for implementing ACT HRC's new responsibilities under OPCAT. To ensure a degree of functional separation from ACT HRC's other functions (e.g. complaints, and individual advocacy), Commissioners have convened an internal working group of staff across various teams to coordinate OPCAT work, engage with other ACT NPM bodies, and conduct preventive visits for the ACT NPM.

For the purposes of the ACT NPM, during the reporting period there were 4 staff operating on a part-time basis, including 3 Commissioners and one legal adviser. Two to 5 other staff participated in ACT NPM activities (including a familiarisation visit) on an ad hoc basis.

ACT Ombudsman

Under ACT legislation, and by arrangement between the Australian and ACT Governments, the Commonwealth Ombudsman is also the Ombudsman for the ACT. The ACT Ombudsman is given powers under the *Ombudsman Act 1989* (ACT), *Public Interest Disclosure Act 2012* (ACT), *Freedom of Information Act 2016* (ACT), *Integrity Commission Act 2018* (ACT) and *Children and Young People Act 2008* (ACT).



The ACT Ombudsman considers complaints about the actions of ACT Government agencies and ACT Policing, and provides assurance that ACT Government entities act with integrity and treat people fairly. In this role, the ACT Ombudsman receives complaints about correctional and policing detention facilities, and may inform ACT OICS about potential issues or refer certain complaints to ACT HRC.

In the Office's capacity as the ACT Ombudsman, it also provides oversight of law enforcement agencies, including assessing compliance with certain covert and intrusive powers under the *Crimes (Controlled Operations) Act 2008* (ACT), *Crimes (Surveillance Devices) Act 2010* (ACT), *Crimes (Assumed Identities) Act 2009* (ACT), and Part 3.11 and Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT).

For the purposes of the ACT NPM, during the reporting period there were 4 staff operating on a part time basis including the ACT Ombudsman, Senior Assistant Ombudsman, Director, and Assistant Director.

Inspections/OPCAT visits

ACT Policing Watch House (May 2023)

The Commonwealth NPM and ACT Ombudsman conducted a joint NPM visit to the ACT Policing Watch House, with staff from ACT OICS and ACT HRC attending as observers. This was a familiarisation visit for the ACT NPM to understand the facilities, overall environment and operational framework, and to hear from staff (there were no interviews conducted with people in detention as part of the visit). The visit identified areas where protections against ill treatment for people in detention can be strengthened. As a result of the visit, several suggestions to improve conditions or treatment and strengthen the protection of persons deprived of their liberty were considered. The Commonwealth NPM and ACT Ombudsman were due to present their findings to the Australian Federal Police later in 2023.

Bimberi Youth Justice Centre NPM Pilot visit (June 2023)

In June 2023, ACT OICS conducted an unannounced NPM pilot visit to Bimberi Youth Justice Centre on the theme of segregation and isolation. This was also a thematic review under the ICS Act. This visit was conducted with ACT OICS staff, a public health physician, and the ACT NPM Coordination Director to advise on OPCAT methodology. This review has been an opportunity to develop draft methodologies to inform OPCAT visits in the future, as well as assess good practices and lessons learned, and provide an idea of costing for bids for funding. Documents developed to support the methodology included a draft Youth Engagement Strategy outlining important considerations for detention monitors when engaging with children and young people in custody, centring around the 'do no harm' principle, and embedding a trauma informed approach that seeks to limit risks of reprisals.



Templates and memory-prompts were developed including for entry and exit meetings with detaining authorities, and for engaging with stakeholders including civil society organisations. ACT OICS further developed new specific standards on separation and isolation in youth justice. At the close of the reporting period, ACT OICS is continuing to finalise its findings and recommendations from the visit.

Inpatient adult mental healthcare facility (June 2023)

ACT HRC piloted a preventive visit to a small inpatient adult mental health care facility as a familiarisation exercise for staff, and to inform ongoing ACT NPM discussions about potential approaches to preventive visits in the absence of dedicated resourcing. The visit accordingly adopted a thematic focus on potential areas of risk, including:

- the arrival and admission process for patients
- access to leave, including on-campus and off-campus leave
- awareness and frequency of visits by oversight agencies
- access to after-hours psychiatric care and assessment.

The pilot visit was led by 3 experienced senior staff members with human rights, legal, and clinical health expertise. The visiting team was satisfied that, despite staff having not been notified of the visit, responding staff promptly facilitated access to all parts of the unit and all requested information in accordance with Australia's OPCAT obligations. At the close of the reporting period, ACT HRC is continuing to finalise its findings and recommendations.

Systemic issues

Key systemic issues identified during ACT NPM visits, as well as visits for the ACT OICS 2022 Healthy Prison Review:

- lack of purposeful activity for people detained at Alexander Maconochie Centre
- accommodation arrangements at Alexander Maconochie Centre did not allow for separation of different cohorts of women
- underuse of and lack of access to reintegration and release preparation programs.

Advisory, Education and Cooperation Function

In August 2022, ACT NPM staff attended the first National OPCAT Symposium, hosted by the Australian Human Rights Commission, to discuss best practice approaches to implementation. Over the year, ACT NPM staff participated in information and training sessions with experts from the Association for the Prevention of Torture, Norwegian NPM, the United Kingdom NPM and Diagrama Foundation, among others. Following suspension of the SPT's visit on 23 October 2022, ACT NPM staff participated in in-person training from the



SPT visit delegation on the key principles and methodology of preventive visits under OPCAT.

The ACT NPM undertook a number of engagement activities during the reporting period, including liaison with the ACT Justice and Community Safety Directorate and ACT Attorney-General to discuss key funding and legislative challenges, a letter to the Attorney-General regarding the UN SPT report, and meetings with the Australian NPM and New Zealand NPM.

In addition to the ACT Coordination Director's specific advisory, education, and cooperation functions carried out on behalf of the ACT NPM, ACT OICS conducted activities relevant to NPM advisory, education and cooperation functions. This includes engagement with ACT civil society in relation to the 2022 Healthy Prison Review (conducting an information and feedback forum in partnership with the ACT Council of Social Services), and bilateral meetings with several non-government organisations and an Aboriginal Community Controlled Health Organisation. There was also targeted engagement with stakeholders for the pilot ACT NPM review of Bimberi Youth Justice Centre.

Further information

More information on the ACT NPM and its activity can be found here:

- [ACT NPM website](#)

More information on ACT OICS and its activity can be found here:

- [ACT OICS website](#)
- [ACT OICS Annual Reports](#)
- [ACT OICS thematic review/NPM pilot visit: Isolation of children and young people at Bimberi Youth Justice Centre](#)
- [ACT OICS Healthy Prison Review of the Alexander Maconochie Centre 2022](#)

More information on the ACT HRC and its activity can be found here:

- [ACT HRC website](#)
- [ACT HRC 2022-23 Annual Report](#)
- [ACT HRC resources](#)

More information on the ACT Ombudsman and its activity can be found here:

- [ACT Ombudsman](#)
- [ACT Ombudsman publications](#)



Commonwealth



Governance and Administrative Arrangements

In July 2018, the Australian Government appointed the Commonwealth Ombudsman as the National Preventive Mechanism (NPM) for places of detention under Commonwealth control (Commonwealth NPM). Amendments to the *Ombudsman Regulations 2017* (Cth) (Ombudsman Regulations) in 2019 conferred the Commonwealth NPM function on the Commonwealth Ombudsman in law, enabling the Commonwealth Ombudsman to draw on powers contained in the *Ombudsman Act 1976* (Cth) to perform this function.

OPCAT Visits

The Commonwealth NPM regularly undertakes the following activities:

- Remote monitoring: examination of reporting on incidents and population data.
- Regular visits: we maintain a schedule of visits to places of detention, which may be announced, semi-announced or unannounced.
- Regular engagement: regular contact is kept with facility management, detained persons, civil society and other monitoring bodies in order to build a more proactive and responsive relationship between our organisations.
- Post-visit feedback and recommendations: we identify areas that we perceive as posing a risk to potential ill treatment, and make recommendations with the aim of influencing systemic improvement.

Subject to available resourcing, and based on risk assessment, the Commonwealth NPM determines which places of detention to prioritise, and the frequency and length of each visit.

The on and offshore places of detention the Commonwealth NPM currently visits are:

- immigration detention facilities managed by the Department of Home Affairs (Department) and, in particular, the Australian Border Force (ABF)
- custodial detention facilities managed by the Australian Federal Police (AFP)
- military detention facilities controlled by the Australian Defence Force (ADF).

However, the Ombudsman Regulations enable the Commonwealth NPM to visit all places of detention under the control of the Commonwealth (noting the Commonwealth does not



control prisons in Australia). The Commonwealth NPM will consider visiting other places of detention in the future.

During 2022–23 the Commonwealth NPM visited 9 immigration detention facilities (under the control of the Department of Home Affairs and the Australian Border Force), 6 Australian Federal Police facilities (police stations and watch houses) and 4 Australian Defence Force facilities.

The Commonwealth NPM publishes its own annual report each year. To increase the transparency and accessibility of its work, in the 2023–24 financial year the Commonwealth NPM will start publishing an individual report following each of its visits to a place of detention. These Post Visit Summaries will be published on its website, and will include the key observations, recommendations, suggestions, and comments arising from each visit.

Advisory, education and cooperation functions

As part of the Commonwealth NPM's visits, it shares information about OPCAT, the concept of preventing torture and other ill treatment, and its mandate with the staff and people that it engages with in detention environments.

In 2022–23, the Commonwealth NPM also took part in education and awareness activities including presentations at the National OPCAT Symposium, the Queensland OPCAT Forum and the Future Justice and Corrections Summit.

The Commonwealth NPM is an active member of the Australian NPM. In 2022–23 it regularly attended meetings and participated in joint work and training opportunities. The Commonwealth NPM also co-signed multiple Australian NPM joint statements and joint submissions to domestic and international bodies.

The Commonwealth NPM engages regularly with the Attorney General's Department and other agencies, and when required, the Commonwealth Ombudsman will engage directly with the Attorney General on OPCAT related matters. In 2022–23, the Commonwealth NPM also engaged with the Australian Human Rights Commission, Australian Red Cross, the UN High Commissioner for Refugees, the Association for the Prevention of Torture, other domestic and international NPMs, and civil society organisations to support its work.

In September 2022, the Commonwealth Ombudsman, as both Commonwealth NPM and NPM Coordinator, made a submission to the Committee Against Torture as part of the Committee's consideration of Australia's sixth periodic report under the Convention Against Torture. In November 2022, the Ombudsman attended a private hearing with the Committee alongside the Australian Human Rights Commission. The Ombudsman also attended, as an observer, the Government's appearance before the Committee.



In early 2020, the Commonwealth Ombudsman established an OPCAT Advisory Group (OAG), comprised of civil society members to provide expert advice and guidance to the Office about its functions and responsibilities as both Commonwealth NPM and as the NPM Coordinator. In 2022–23 the Commonwealth Ombudsman convened 2 OAG meetings, the communiqués for which are available on the Commonwealth NPM’s website.

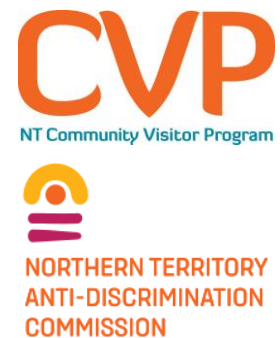
Further information

More information on the Commonwealth NPM and its activity can be found here:

- [‘Monitoring places of detention – OPCAT’](#) (Commonwealth Ombudsman website)
- Commonwealth NPM 2022–23 Annual Report: ‘Access All Areas: Monitoring Places of Detention 2022–23’



Northern Territory



Governance and administrative arrangements

In April 2021 the Northern Territory (NT) Ombudsman was nominated as the NT's interim NPM.

In October 2022, the NT Legislative Assembly passed amendments to the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (the NT OPCAT Act). The amendments provide for appointment of NPM monitors to carry out functions in accordance with the legislation, but have not yet commenced.

The anticipated NT NPM consists of 3 independent statutory bodies, each with significant experience in human rights monitoring and oversight of service delivery in accordance with legislation, evidence-backed research, and transparent and accountable reporting.

Section 4(1) of the NT OPCAT Act defines place of detention as any place that the SPT must be allowed under Article 4 of OPCAT to visit, noting that under Article 4 this means 'any place under the NT's jurisdiction and control where persons are or may be deprived of their liberty'. In accordance with section 4(2) of the NT OPCAT Act, this includes (but is not limited to):

- a correctional centre, prison, detention centre or other similar place (however described)
- a part of a facility at which health services are provided, and where a person may be held under restraint or in seclusion or isolation
- a police station or court cell complex
- a vehicle used or operated to convey people in detention.

The NT Government allocated to the NT Ombudsman \$160,000 per year in 2021–22 and 2022–23 for OPCAT establishment. None of the NT NPM offices received Commonwealth funding during the 2022–23 financial year to carry out OPCAT functions. Funding remains the primary challenge for OPCAT implementation across the NT NPM.



In addition to NPM functions, the NT Ombudsman and the NT Office of the Children’s Commissioner (OCC) expect to acquire responsibility for the Official Visitor Program for adults and children respectively. It is especially important the funding allocated to these programs is in addition to that required for OPCAT-related work. Conflating the functions and funding of the independent offices with official visitor programs and NPM implementation would detract from future success in the prevention of torture and other ill treatment for people deprived of their liberty.

NT Ombudsman

Until the NT OPCAT Act commences, the NT Ombudsman operates in accordance with the *Ombudsman Act 2009* (NT). It gives the Ombudsman broad powers to investigate matters on complaint or on the Ombudsman’s own initiative. Powers on an investigation include a power to enter premises. Most visits to detention facilities are currently conducted on the basis of agreement with the relevant agency. Full functions and powers of the Ombudsman’s remit is set out in Part 3, Division 2 of the *Ombudsman Act 2009* (NT). The Ombudsman is responsible for complaint-handling and investigations about administrative actions of public authorities and the conduct of police officers.

NT Office of the Children’s Commissioner

The NT OCC is a small independent office responsible for complaint-handling and investigations into matters concerning vulnerable children, and to promote improvements in policies, practices and services for children in the NT. The NT OPCAT Act nominates the NT OCC as the monitor for places where people under 18 are detained. The full functions of the Children’s Commissioner are set out in section 10 of the *Children’s Commissioner Act 2013* (NT).

NT Principal Community Visitor

The NT Principal Community Visitor (NT PCV) is responsible for overseeing the Community Visitor Program (NT CVP) and ensuring that it meets its obligations under the *Mental Health and Related Services Act 1998* (NT). The NT PCV ensures community visitors respond to visit requests, and inspect seclusion and restraint registers. The NT PCV also ensures Community Visitors Panels – consisting of a legal practitioner, medical practitioner and one other person – conduct visits of inpatient facilities every 6 months. The NT CVP accepts enquiries or complaints from people receiving treatment in any NT government run mental health facility, agency, or service community team (also known as Approved Treatment Facilities / Agencies).

Similarly, the NT PCV has regulatory oversight to protect the rights of persons receiving treatment and care under the *Disability Services Act 1993* (NT), Part IIA: for a person for whom a treatment order is in force.



In March 2022, the NT Government declared the Complex Behavioural Unit, which is on site at the Darwin Correctional Centre, to be an approved treatment facility. The CVP is a team of 2.5 FTE and have requested further funding support to deliver regulatory oversight of this facility, but have not yet received funding to do so.

Inspections/OPCAT visits

The 3 NT NPM bodies are primarily complaints-based offices. While some aspects may overlap, NPMs are not complaints-based offices. Their functions are separate and complementary to existing oversight bodies and should not be viewed as a replacement for the work currently undertaken.

In 2023–24, further development of the NT NPM framework and OPCAT compliant methodology will be a key priority for the NT NPM.

NT Ombudsman

During 2022–23, the NT Ombudsman undertook activities in its existing capacity which may inform future OPCAT work. It conducted ad hoc visits to adult correctional facilities to speak with people in prison about conditions, their experiences, and potential complaint resolutions. Staff also took the opportunity to speak with prison staff and leadership about management of people in prison, emerging or systemic issues of concern, and the role of the Ombudsman under OPCAT.

In an effort to address record numbers of people in custody, the NT Correctional Services (NTCS) operationalised the Darwin Police Watch House and the Peter McAulay Centre (a police facility) as temporary accommodation for people in prison. The Ombudsman's Office visited these centres to observe the conditions for people in prison and identified several issues relating to the treatment and conditions of people being held on 2 week rotations at these facilities. It made a number of recommendations and corresponded with NTCS directly to improve and generate dialogue about these issues.

In addition, the NT Ombudsman commenced an own initiative investigation into separate confinement practices in Darwin Correctional Centre in April 2023 under the *Ombudsman Act 2009*. The Ombudsman's Office has previously highlighted concerns about separate confinement practices in correctional facilities in various reports. The objective of the investigation is to introduce an NPM-style thematic report with a strong focus on prevention and dialogue. The findings from the investigation will be reported on in the 2023–24 financial year.

During 2022–23, the NT Ombudsman, in cooperation with the NT OCC, undertook a [thematic investigation into the use of Spit hoods and Emergency Restraint Chairs on children in the NT](#). The investigation looked into improper use of the devices, harmful impact on people subject to them, case studies and effective alternatives. The report was tabled in August 2023 and included a number of recommendations to government.



NT Office of the Children’s Commissioner

Until the NT OPCAT Act commences, the NT OCC is not an official NPM monitor for all places where children may be detained. Therefore, the capacity of this office to conduct NPM specific work in accordance with OPCAT is limited.

The pre-existing unlegislated monitoring functions of the NT OCC are distinct from the preventive visits required under OPCAT. Existing NT OCC visiting functions do not extend to all places where children may be held as defined in OPCAT, nor do they allow unrestricted physical access, or unhindered access to all information relating to children deprived of their liberty.

The NT OCC conducts formal, thematic, and ad hoc/informal inspections based on complaints and emerging children’s rights issues. The NT OCC also monitors the safety and wellbeing of children in places like bail support accommodation, youth detention centres and secure care facilities. The NT OCC publishes findings from monitoring activities in their annual report, standalone reports, and child-friendly reports online.

During 2022–23, the NT OCC conducted formal and informal visits and monitoring within its existing framework and capacity. Places of detention subject to NT OCC monitoring included adult and youth justice centres.

NT Principal Community Visitor

The NT PCV has not yet been formally appointed as an NPM monitor for the Northern Territory. Therefore, their capacity to conduct NPM specific work in accordance with OPCAT is limited.

The NT Community Visitor Program (CVP) is responsible for safeguarding the rights of people receiving treatment for mental illness or disability. They visit mental health inpatient facilities in Darwin and Alice Springs weekly, disability secure care facilities monthly, and 12 appropriate residential places quarterly, for people with disability and living in disability forensic settings under Part IIA of the *Criminal Code Act 1983*. The NT CVP conducts visits on the basis of individual enquiries or complaints, weekly visits, panel visits, and inspections of community based services.

The NT CVP visits and inspections differ from those required under OPCAT, as staff are restricted by the information they can access and how they inspect facilities. In addition, NT CVP capacity to conduct visits is significantly impacted by the availability of panel visitors, experts, and interpreters, reporting requirements, and locations of facilities and services.

During 2022–23, the NT CVP completed 151 visits and inspections within their existing framework and capacity of 2.5 FTE staff.

In 2023–24 the NT CVP intends to conduct further investigation around the management of the NT Approved Treatment Facility on site at Darwin Correctional Centre in the Complex



Behaviour Unit (CBU). The NT CVP expresses concerns that the CBU should in its essence be a therapeutic environment coordinated by health staff. Currently, this facility is coordinated by NT Correctional Services.

Advisory, education and cooperation function

The NT NPM engaged with government, civil society, and agency stakeholders on OPCAT related matters during 2022–23. The primary focus of engagement was the preparatory implementation of OPCAT in the NT, specifically funding and commencement of legislation. In addition, the NT NPM worked closely with government, particularly correctional and youth justice centres, to provide advice and recommendations about improvements to their services. The NT NPM regularly corresponded with these government agencies, as well as through briefings, internal reports, data exchange and parliamentary estimates processes.

During 2022–23, the NT NPM continued consultations with government on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022. The Bill passed in parliament in October 2022. However, the legislation has not yet commenced.

The NT NPMs are active participants in the Australian NPM and have contributed to joint statements, submissions and information sessions about OPCAT during 2022–23.

In 2023–24, a key priority for the NT NPM will be education with government, civil society and agency stakeholders about the preventive and dialogue focus of OPCAT.

Further information

More information on the NT Ombudsman and its activity can be found here:

- [NT Ombudsman website](#)
- [NT Ombudsman 2022–23 Annual Report](#)

More information on the NT OCC and its activity can be found here:

- [NT OCC website](#)
- [NT OCC 2022–23 Annual Report](#)

More information on the NT CVP and its activity can be found here:

- [NT CVP website](#)
- [NT CVP 2022–23 Annual Report](#)



South Australia



SA Official Visitor Scheme

Governance and Administrative Arrangements

In August 2021, the OPCAT Implementation Bill 2021 (SA) was introduced into the South Australian (SA) Parliament to create the legislative scheme for the SA National Preventive Mechanism (NPM). The Bill provided for the following to make up the SA NPM:

- the SA Training Centre Visitor (TCV), for training centres
- the SA Principal Community Visitor, for prescribed mental health facilities
- SA official visitors (OVs), for correctional institutions and prescribed custodial police stations.

However, in March 2022 a new government was elected in SA and the Bill lapsed before passing. Since that election, SA's NPM nomination has not been confirmed, budget allocations have not been made, and no OPCAT-specific legislation has yet been introduced.

In the meantime, the SA TCV and SA OVs consider themselves nominated only and are yet to commence functions specifically as an NPM, pending funding and specific legislation. Further, confirmation about the nominated NPM for mental health facilities in SA is subject to future advice.

SA Official Visitor Scheme

The Official Visitor Scheme (OVS) for SA is established under Part 3 Division 2 of the *Correctional Services Act 1982* (SA) (CS Act) and commenced on 22 January 2022 within SA correctional institutions. The OVs have a legislated role under s 20 of the CS Act, and are designed to be independent monitors of prison operations. Under section 20(1) of the CS Act, the SA Governor “*may appoint for each correctional institution such number of official visitors as the Governor thinks necessary or desirable*”. Section 20(2) of the CS Act provides that the Governor must ensure at least one OV for each correctional institution is: an Aboriginal or Torres Strait Islander person, a legal practitioner, and a woman. Under section 20G of the CS Act, OVs must provide reports to the Minister for Police, Emergency Services and Correctional Services, who must in turn table any reports received. The OVS was a commitment made by the previous SA Government (succeeded in March 2022) to meet the requirements of OPCAT.



Each OV is an independent statutory officer under the CS Act. As of 30 June 2023, there were 7 OVs with responsibility for the various institutions divided between them.

To the extent the OVS is a means of giving effect to OPCAT in SA, its structure pursuant to the CS Act is fundamentally flawed. SA OVs have received no funding to carry out the NPM mandate. OVs have no staff and no independent financial arrangements. Invoices for their work must be submitted to the SA Department for Correctional Services for their prison work, SA Police for their work in police complexes, and the Courts Administration Authority for their work in any court cell complexes. They also have no capacity to engage people from other disciplines to assist with inspections, such as medical or psychiatric professionals.

OVs have a complaint taking function and an inspection function. In order to achieve separation of these functions the 7 OVs have divided the SA correctional institutions between themselves so that one OV takes complaints at a particular institution and a different OV conducts inspections at that same institution.

SA Training Centre Visitor

The SA TCV is an independent statutory officer established under the *Youth Justice Administration Act 2016* (SA) (YJA Act). Shona Reid was appointed to the TCV role in August 2022, for a period of five years.

The TCV also holds three other statutory appointments, as the Guardian for Children and Young People, Child and Young Person's Visitor, and Youth Treatment Orders Visitor. Through these mandates, Ms Reid promotes and advocates for the rights and best interests of children and young people in care and youth detention, in addition to providing systemic oversight of these systems.

The TCV's statutory functions are to conduct visits and inspections to training centres; promote the best interests of young people detained in training centres and act as an advocate for them, particularly with respect to their care, treatment and control; advise the SA Minister for Human Services about systemic reform required to improve the care, treatment and control of young people detained or the management of the Centre; and inquire into and investigate matters referred by the Minister.

There is some overlap between the TCV's statutory functions under the YJA Act and an OPCAT NPM's responsibilities. However, as the YJA Act does not contain any reference to OPCAT or establish separate NPM functions, the TCV's nomination is fundamentally incompatible with OPCAT requirements.

In performing her functions, the TCV is supported by 3.0 FTE. A significant proportion of these resources are directed towards responding to individual advocacy matters, which leaves limited resourcing available for work with a preventive focus. The TCV continues to undertake statutory functions stipulated under the YJA Act, and in the absence of dedicated resourcing, is not undertaking any separate functions with an OPCAT focus.



It is important to highlight that the TCV’s mandate is limited to ‘training centres’, of which SA has one relevant facility (the Adelaide Youth Training Centre). The TCV’s mandate is restricted to young people who are physically within that facility – rather than based on their status as a young person detained, in the custody of the Minister for Human Services. This means that children and young people in SA who are deprived of their liberty in places such as police cells, police vehicles and hospitals do not have access to independent oversight from a child-focussed body. Since late 2017, the TCV has called for a review of the YJA Act to address this legislative barrier (among other matters), with no success.

Inspections/OPCAT Visits

The SA NPM has not commenced any OPCAT-specific visits, pending further discussions and clarity about scope, legislation, powers, mandate, and resourcing.

SA Official Visitor Scheme

SA OVs conduct inspections in their existing capacity, but have not conducted any OPCAT-specific visits.

Under section 20D of the CS Act, OVs’ functions include conducting inspections of all Department of Correctional Services, controlled correctional institutions and facilities. OVs must encourage people in prison to express their own views, must themselves give proper weight to those views, and “*must have regard to relevant legislation and other material, including international conventions and treaties, with a view to promoting the high-quality care, treatment and control of prisoners in the correctional institution*”.

Under the CS Act, “correctional institutions” also include a vehicle (including a police vehicle) on the grounds of a correctional institution or used to transport people to or from correctional institutions. “Correctional institutions” also include court cells being used to accommodate people who are detained. This means that within scope of the OVS in SA there are 9 prisons, 15 police prisons, and currently 5 court cell complexes (others are not currently in use).

SA Training Centre Visitor

The SA TCV conducts regular visits to the Adelaide Youth Training Centre. These visits focus on identifying complaints that children and young people require assistance with and acting as an advocate on their behalf. As such, it remains a fundamentally ‘responsive’ rather than preventive role.

In the absence of funding and legislation, the TCV is unable to conduct separate visits and/or inspections that meet OPCAT requirements.



Advisory, education and cooperation function

SA Official Visitor Scheme

Noting that SA OVs are not engaged on a full-time basis and do not receive specific funding for NPM work, they have had limited capacity to engage with the advisory, education and cooperation aspects of NPM work.

In the 2022–23 financial year, one of the SA OVs presented an information session to each Correctional Officer Training Course on the functions of OVs, including OPCAT requirements, and presented to 4 Correctional Officer Training Courses.

A key OPCAT-related priority for the 2023–24 financial year is developing confidence in, and a process for, visiting prisons. It is anticipated that methodologies developed by other members of the Australian NPM will be a valuable resource in this process.

SA Training Centre Visitor

To promote the best interests of young people detained at the Adelaide Youth Training Centre, the TCV works to increase stakeholder knowledge and awareness of young people rights in detention, their experiences and perspectives, and the TCV's role and functions. The TCV and her team provide presentations to new staff employed at the Adelaide Youth Training Centre as part of their induction team. She also presents to various government and nongovernment agencies, and tertiary students, throughout SA.

This education and engagement is focused on funded and legislated functions as TCV, and does not specifically extend to OPCAT functions.



Further information

More information on the SA OVS and its activity can be found here:

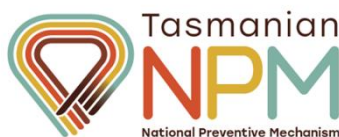
- [Official Visitors \(SA Department for Correctional Services website\)](#)

More information on the SA TCV and her activity can be found here:

- [SA TCV website](#)
- [SA TCV Annual Report 2022-23](#)



Tasmania



Governance and administrative arrangements

The Tasmanian NPM is an independent statutory body established in accordance with the *OPCAT Implementation Act 2021 (Tas)*, which commenced in January 2022. The current Tasmanian NPM, Mr Richard Connock, was appointed in February 2022, and has multiple concurrent appointments including as Tasmanian Ombudsman and Tasmanian Custodial Inspector. As a result, despite the Tasmanian NPM being standalone, in practice it is performed by a person and office with other functions.

The *OPCAT Implementation Act 2021 (Tas)* is largely OPCAT compliant, containing:

- a broad definition of ‘place of detention’, explicitly reflecting Article 4 of OPCAT
- an explicit independence provision
- broad powers to access places of detention, persons therein and relevant information
- ability to communicate with the SPT, NPM Coordinator and other NPMs
- protections from liability for NPM staff
- protections from reprisals.

The 2022–23 Tasmanian Government budget allocated \$344,000 for the purpose of additional resourcing and consultancy services to support the requirements for Tasmania’s compliance with OPCAT. In the 2023–24 Tasmanian Government budget, additional funding of \$705,000 has been allocated to the Tasmanian NPM for OPCAT implementation. OPCAT funding covered the engagement of a Project Manager (appointed in September 2022) and the engagement of a number of expert consultants.

Inspections/OPCAT visits

The Tasmanian NPM has not yet commenced official NPM visits. It intends to commence OPCAT visits in 2023–24. In 2022–23, it conducted a series of orientation visits to facilitate development of its draft expectations documents. The project team and accompanying experts viewed the physical environment, spoke to staff and people deprived of their liberty, and requested information such as policies and practices. Places visited included adult and youth correctional facilities, police stations, court cells and hospitals.



In his existing capacity as Custodial Inspector, Mr Richard Connock has jurisdiction over all custodial centres in Tasmania. The Tasmanian Custodial Inspector annual report contains further information about visits and inspections undertaken in 2022–23.

Through its preparatory work, the Tasmanian NPM has identified the core facilities it will visit as:

- custodial and youth justice facilities
- police and court cells (and transport)
- mental health facilities
- health and social care settings (including hospitals, aged and disability care)
- education facilities, particularly where restrictive practices are or may be used
- out-of-home care and related places which a child or young person may be unable to freely leave (such as care provided under a special care package).

Advisory, Education and Cooperation Function

The Tasmanian NPM has not yet commenced its education, advisory and cooperation functions. It intends to officially commence its education function in 2023–24, its advisory function in 2024–25 and its cooperation function in 2025–26.

The Tasmanian NPM is developing 5 thematically-focused expectations documents covering:

- children and young people
- adult custodial centres
- police and court custody
- mental health
- health and social care.

In 2022–23, the Tasmanian NPM completed 4 draft expectations documents, with the assistance of leading experts, to help people understand some of the matters that will be considered when exercising its functions. The 4 draft expectations documents are included in the appendix of the Tasmanian NPM’s 2022–23 Implementation Project and Annual Report.

The expectations documents are intended to be working documents that will be used to support the Tasmanian NPM and its staff by setting out the visit process and criteria against which the treatment of people deprived of their liberty will be examined during a visit.

In October 2022, the Tasmanian NPM attended a meeting with the SPT along with other members of the Australian NPM and interested parties to discuss OPCAT implementation in Australia.

In 2022–23, staff of the Tasmanian Custodial Inspector visited interstate and international detention facilities to improve their understanding of how other custodial centres operate. In September 2022, staff visited a maximum security prison and youth detention centre in



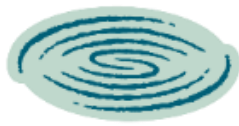
Western Australia (WA), facilitated by the WA Inspector of Custodial Services. In October 2022, the Principal Inspection Officer (for the Tasmanian Custodial Inspector) visited a prison in the Australian Capital Territory (ACT), facilitated by the ACT Deputy Inspector of Custodial Services. Towards the end of the year, staff assisted the New Zealand Ombudsman with a correctional facility visit.

Further information

- [Tasmanian NPM website](#)
- [Tasmanian NPM Implementation Project and Annual Report – November 2023](#)
(including 4 draft expectations documents)
- [Tasmanian Custodial Inspector Annual Report 2022–23](#)
- [Tasmanian Ombudsman Annual Report 2022–23](#)



Western Australia



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES



Ombudsman
Western Australia

Governance and administrative arrangements

In July 2019 the Western Australian (WA) Government nominated 2 bodies as its National Preventive Mechanism (NPM): the WA Office of the Inspector of Custodial Services (WA OICS) and the WA Ombudsman.

WA Office of the Inspector of Custodial Services

WA OICS was established in 2000 following amendments to the *Prisons Act 1981* (WA). This created an independent inspection regime for all WA prisons, court custody centres, transport for people in prison, and a small number of prescribed police lockups (when used as court custody centres). WA OICS tables all its reports in Parliament, ensuring a high level of transparency and accountability.

In 2003, Parliament enacted standalone enabling legislation, the [*Inspector of Custodial Services Act 2003*](#) (WA) (WA ICS Act). This also extended WA OICS' jurisdiction to juvenile detention centres, and the remit to manage the volunteer independent prison visitor service.

In 2011, the WA ICS Act was amended to give WA OICS additional powers to examine specific aspects of custodial services, including the experience of individuals or groups of individuals.

WA OICS' current jurisdiction includes adult and youth detention centres (including prison work camps), court custody centres, prescribed police lockups, and a hospital secure facility.

Under sections 19 and 20 of the WA ICS Act, WA OICS must inspect and report to Parliament at least once every 3 years on all of the sites within its jurisdiction. Its jurisdiction also covers transport arrangements for people in prison but does not require triennial reporting.

WA OICS' NPM nomination involved maintaining jurisdiction over places of detention currently covered by its existing legislation, but also widening this to police cells and places of detention. In February 2023 it identified 156 police lockups in WA that meet the OPCAT



definition of places of detention for inspection. However, the Australian Government has stated that only ‘primary’ places of detention will initially be included within scope. This restricts inspections only to places where people would be detained for longer than 24 hours. This would include 26 police lockups in WA.

No enabling legislation has been passed, or even drafted, to establish WA OICS’ NPM jurisdiction. Neither has any additional budget been allocated. As such, WA OICS is working with its restricted existing mandate.

WA OICS’ current staffing consists of a total of 19 FTE, including the Inspector, management staff, business and support staff, an Independent Visitor Coordinator, inspections and review staff and a community liaison officer.

WA Ombudsman

The office of the WA Ombudsman is established in accordance with the *Parliamentary Commissioner Act 1971* (WA) (Parliamentary Commissioner Act).

In July 2019, the WA Ombudsman was nominated as an NPM for the oversight in WA of mental health and other secure facilities. Funding has not yet commenced for its NPM mandate and no specific NPM activities have been undertaken. The WA Ombudsman nonetheless continues to undertake all of its functions under the Parliamentary Commissioner Act, with all of the powers of a standing Royal Commission under the *Royal Commissions Act 1968* (WA) (Royal Commissions Act), to advance the fundamental human rights of WA’s most vulnerable populations, including but not limited to Aboriginal and Torres Strait Islander Western Australians, children and young people, and women in places of detention.

Inspections/OPCAT Visits

WA Office of the Inspector of Custodial Services

Under the *Inspector of Custodial Services Act 2003* (WA ICS Act), WA OICS has pre-existing inspection functions. Without governing legislation, WA OICS have not conducted any specific OPCAT preventive visits during the 2022–23 financial year. However, it continued work under the WA ICS Act which has included 6 inspections, 78 liaison visits, 3 published reviews, and 163 Independent Visitor reports. WA OICS anticipates the 78 liaison visits would be similar to preventive visits envisaged by OPCAT.

WA OICS usually conducts full inspections involving between 1–2 weeks on site, depending on risk and complexity. It generally provides 3–4 months’ notice to relevant parties of the specific on-site dates. However, the Inspector has the power, if necessary, to conduct inspections that are unannounced or preceded by a short notice period. WA OICS rarely



conduct unannounced inspections but do regularly conduct unannounced or short notice monitoring/liaison visits.

WA OICS has a robust process of evidence gathering and inquiry. It conducts surveys of staff and people in custody, analyses data and documents, and holds meetings with senior staff and external service providers prior to the on-site phase. WA OICS may also invite external specialist consultants to join an inspection to supplement internal expertise.

During the on-site period, WA OICS staff examine the physical environment and infrastructure, and observes all key processes and interactions. They are issued keys and move freely around facilities without prison staff supervision. They meet prison or detention centre management, staff groups, groups of people in custody, and community representatives. They also talk to individuals, both staff and people imprisoned. Interviews with individuals are conducted in private without scrutiny. WA OICS' research, evidence gathering, and analysis is based on its [Revised Code of Inspection Standards for Adult Custodial Services](#).

In addition to full inspections, through its 'continuous inspection' methodology, WA OICS conducts several short monitoring liaison visits to each prison and detention centre annually. The number, duration and design of such visits are planned on a risk assessment and needs basis. However, WA OICS conducts at least 2 visits each year per facility. Records are kept of these visits, however, they are not public and are used for planning and monitoring purposes.

Independent Visitors also attend facilities monthly and provide written reports of issues and complaints from people in prison to WA OICS. Issues may be raised by Independent Visitors directly with prison management or WA OICS can do so through the established reporting process.

WA OICS intends to develop an operational methodology to support its OPCAT visits in the future, but without clear governing legislation the completion of this work has not been possible to date. However, WA OICS have done some preparatory work, including a research project with the Piddington Society (WA) related to its anticipated OPCAT jurisdiction. The final research report has provided valuable information and insights for WA OICS to use in developing an operational methodology and framework to undertake its OPCAT responsibilities.

WA OICS identified the following key systemic issues through work under its existing mandate:

- a youth detention crisis: internal resource pressures resulting in excessive time in cell
- staffing shortages and flow-on impacts on daily life
- high demand for mental health services
- a steady increase in people held on remand.

WA OICS has an established framework for undertaking visits and monitoring prisons and youth detention centres. This has proven over 20 years to be robust, independent, and transparent. Some adjustments may have to be made to this aspect of WA OICS' work to



fully meet OPCAT requirements, however once properly resourced these should be relatively straightforward to implement.

Extensive work is still required, however, to commence work in WA OICS' new jurisdiction of police places of custody. It can replicate some aspects of its established methodologies and frameworks, but police custodial facilities are a different environment and will require some unique methods of working. This will take time and resources to develop. Given the geographical size and isolation of many of the locations requiring visits, WA OICS also face logistical coordination challenges and the significant expense of accessing those places. Finally, to ensure rigour of the process and the work health and safety needs of staff, WA OICS will need to recruit additional specialist staff to undertake the NPM function work.

WA OICS' ongoing participation in the process of securing the necessary intergovernmental agreements and funding arrangements required to progress the establishment of the Australian NPM remains a priority.

WA Ombudsman

While the WA Ombudsman has not commenced its NPM functions, it undertakes proactive visiting programs to vulnerable children in the child protection system and juvenile detention centre, and to all WA prisons.

The WA Ombudsman ensures a mix of ethnic and minority group representation among staff on visits to places of detention. The WA Ombudsman has recently appointed an inaugural Assistant Ombudsman, Aboriginal Engagement and Collaboration as well as a Principal Aboriginal Liaison Officer and Aboriginal Liaison Officer who participate in visits to places of detention, providing culturally appropriate communication with support to people in detention. Further, the WA Ombudsman engages Aboriginal consultants when engaging with Aboriginal people in places of detention.

Functions of the WA Ombudsman relevant to the protection of human rights of vulnerable populations are by multidisciplinary teams including staff with expertise and experience in social work, psychology, law, audit and evaluation, inspection, and monitoring. When visiting places of detention, existing staff expertise is further supplemented by external consultants where necessary.

Under the Parliamentary Commissioner Act and the Royal Commissions Act, the WA Ombudsman has the right to access information including medical records, dietary provisions, and other data. The WA Ombudsman is able to interview staff, people in detention, and any other relevant persons and conduct private interviews where it likes and can choose whom to interview all with the powers of a standing Royal Commission.



Advisory, Education and Cooperation Function

WA Office of the Inspector of Custodial Services

As part of his existing jurisdiction, the Inspector meets regularly with the Minister for Corrective Services, the Director General of Justice, and the Commissioner of Corrective Services (separately) to provide his views and advice on current and topical issues and events within his jurisdiction.

As part of each inspection, WA OICS conducts a community consultation meeting with stakeholders who provide in-reach services at each facility. While this is part of its inspection methodology, and not OPCAT-related, it provides opportunity for wider feedback with stakeholders about the conditions of detention and services provided to those detained. Six such meetings were convened in this financial year.

During inspections, WA OICS attend Sunday social visits at prisons and spend time at family visits centres, providing an opportunity to gain feedback from visitors. This focuses on how they are treated, and this is an opportunity for them to raise issues of concern about treatment of people in prison.

WA OICS' Community Liaison Officer (CLO) is a proud Ballardong man and respected Elder. He provides highly valued cultural context for WA OICS' work and with people in the community. The CLO maintains a large community network and helps WA OICS to engage with culturally diverse people in custody, community organisations, and families. He provides important information, links, and referrals to appropriate services within the Department or other support organisations.

In 2022–23, WA OICS have made submissions to, commented on or appeared before:

- Select Committee into the Provision of and Access to Dental Services in Australia
- AHRC review examining Youth Justice and Child Wellbeing Reform across Australia
- International Corrections and Prisons Association newsletter on Juvenile Detention & Justice
- Third consultation draft of the Criminal Law (Mental Impairment) Bill 2022 (WA)
- Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

The Inspector also appeared before the WA Parliamentary Standing Committee on Public Administration and gave evidence in a coronial inquest. He also contributed to, or participated in, several other forums and panel discussions during the year, including:

- Social Reinvestment WA – Blueprint for a Better Future: Paving the Way for Youth Justice Reform in WA launch
- Mental Health Advisory Board meeting



- Youth Affairs Council WA – fair.ground. conference
- Youth Justice Round Table discussion.

WA OICS' expanded NPM remit will require it to develop and expand its existing community outreach program to more fully engage civil society and undertake increased community consultation focusing specifically on OPCAT matters. Increasing community outreach and education is an OPCAT priority for 2023–24.

WA Ombudsman

In April 2022, the WA Ombudsman and the WA Inspector of Custodial Services convened their OPCAT Advisory Group to provide expert advice and guidance regarding their functions and responsibilities under OPCAT.

The OPCAT Advisory Group's key function is to provide considered advice to WA OICS and the office of the WA Ombudsman regarding their current or proposed approaches to visiting places of detention as WA's NPMs; research or practice that may inform their current or future approaches to fulfilling their OPCAT responsibilities; and issues arising from, or impacting the implementation of, OPCAT in WA. The OPCAT Advisory Group met 4 times in 2022–23.

In 2022–23, staff of the WA Ombudsman engaged in education activities including Australian NPM webinars, and the training workshop by the Subcommittee on Prevention of Torture.

Further information

More information on WA OICS and its activity can be found here:

- [WA OICS website](#)
- [WA OICS 2022–23 Annual Report](#)

More information on the WA Ombudsman and its activity can be found here:

- [WA Ombudsman website](#)
- [WA Ombudsman 2022–23 Annual Report](#)



NPM Coordinator



Overview of functions

While OPCAT allows for multi-body NPMs, international practice has shown the importance of coordinating the multiple bodies. This is for purposes such as information sharing, support, training and development, and – where appropriate – consistency of approach in fulfilling the shared NPM mandate.

In accordance with the Australian Government’s decision to implement OPCAT through a multi-body system, they created the function of the NPM Coordinator and gave this function to the Commonwealth Ombudsman from 1 July 2018. This function was then reflected in Regulation 17 of the [Ombudsman Regulations 2017 \(Cth\)](#) (Ombudsman Regulations).

The Ombudsman Regulations provide the following functions of the NPM Coordinator:

- in relation to persons in detention:
 - consult with governments and stakeholders on the development of standards and principles
 - collect information and undertake research and
 - propose options and develop resources to facilitate improvements in oversight arrangements
- communicate on behalf of the NPM Network with the SPT
- convene meetings and facilitate collaboration between NPMs, and state/territory and foreign governments
- give information to the SPT, NPMs, and state/territory and foreign governments
- report to the public and to federal, state and territory Ministers on OPCAT implementation and NPM activities and
- make recommendations to the federal government in relation to OPCAT implementation.

The Regulations also provide that, in performing the NPM Coordinator function, the Commonwealth Ombudsman must not compel or direct another NPM.



Work of the NPM Coordinator in 2022–23

The work of the NPM Coordinator in 2022–23 was focused on further developing relationships with both Australian NPM members and with international counterparts, as well as on how members can best operate as a collective. Much of the work of the NPM Coordinator in 2022–23 was achieved through close participation and support from Australian NPM members, despite their resourcing limitations.

Australian NPM meetings

The NPM Coordinator convenes meetings of Australian NPM members. Australian NPM meetings are an important opportunity to bring NPMs together to share information, discuss opportunities for collaboration and the practicalities of implementing OPCAT as separate NPM bodies in a multi-body system.

Three Australian NPM meetings were held in 2022–23. Key developments at these meetings were:

- discussion on the preventive mandate of NPMs, and the challenges and importance of functional separation for dual-role NPMs
- discussion on the SPT visit, both in preparation and, subsequently, on its suspension and termination
- updates from the Commonwealth Ombudsman on engagement with the Committee in their 2022 sixth periodic review of Australia under the CAT
- agreement to terms of reference for the Australian NPM, available [here](#)
- endorsement of the online information-sharing platform developed by the NPM Coordinator for member use
- discussions on the first Australian NPM Annual Report, for 2022–23
- thematic discussions on issues of concern in detention environments.

The communiqués for each of these meetings are available [here](#).

In March 2023, the NPM Coordinator also launched an online resource-sharing platform for members, to increase connectivity and sharing of information within the Australian NPM. The NPM Coordinator continues to update this regularly with member input.

Written Statements and Submissions

The NPM Coordinator worked with Australian NPM members to produce five joint statements in 2022–23. These relate to:

- [the role and functions of the NPM](#) – 26 October 2022
- [the treatment of children and young people in detention](#) – 21 November 2022



- [the commencement of Australia’s NPM obligations under OPCAT](#) – 20 January 2023
- [the termination of the SPT’s visit to Australia](#) – 20 February 2023
- [the lack of additional funding for OPCAT in the 2023–24 federal budget](#) – 10 May 2023.

The NPM Coordinator also prepared or facilitated the development of joint submissions on the following matters:

- [the Monitoring Places of Detention \(Optional Protocol to the Convention against Torture\) Bill 2022 \(Qld\)](#) – 11 January 2023
- [the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions’ call for input on practices for the investigation, documentation, and prevention of deaths in custody in the criminal justice context](#) – 14 March 2023
- [the UN SPT’s draft General Comment on Article 4 of OPCAT relating to the definition of ‘places of detention’](#) – 14 April 2023

OPCAT Advisory Group

In early 2020, the then Commonwealth Ombudsman established an OPCAT Advisory Group (OAG), with representatives from civil society and academia. The OAG’s purpose is to provide advice to the Commonwealth Ombudsman on OPCAT, and on the Commonwealth Ombudsman’s specific roles as NPM Coordinator and Commonwealth NPM.

The NPM Coordinator supported two OAG meetings in 2022–23. Key discussions centred around Australia’s OPCAT implementation deadline of 20 January 2023, immigration detention, and children and young people in detention.

In May 2023 the OAG also agreed to updated terms of reference, available [here](#).

Various OAG membership changes in 2022–23 have enabled new voices and the sharing of more diverse views among the group. As of 30 June 2023, OAG membership is as follows:

Name	Position	Date joined
Mr Paris Aristotle AO	Chief Executive Officer, Foundation House (Victoria)	December 2019
Dr Eddie Cubillo	Lawyer; academic; descendant of the Larrakia, Wadjigan and Central Arrernte peoples	December 2022
Ms Lorraine Finlay	Human Rights Commissioner	September 2022 (<i>observer since November 2021</i>)
Ms Carolyn Frohmader	Executive Director, Women with Disabilities Australia	September 2022



Name	Position	Date joined
Ms Anne Hollonds	National Children's Commissioner	September 2022
Ms Vicki Mau	Director of Australian Programs, Australian Red Cross	September 2022 (<i>observer since May 2022</i>)
Emeritus Professor Neil Morgan AM	Former Inspector of Custodial Services (WA)	December 2019
Emeritus Professor Bronwyn Naylor OAM	RMIT University; co-founder of the Australian OPCAT Network	November 2019

Liaison with international counterparts

As in prior years, the NPM Coordinator was able to continue meeting with various international NPM counterparts to learn more about OPCAT implementation and experiences from other countries, with a particular focus on multi-body NPMs.

This included discussions with:

- Te Kāhui Tika Tangata Human Rights Commission, the Central NPM for Aotearoa New Zealand
- Office of the Ombudsman, one of the NPMs for Aotearoa New Zealand
- His Majesty's Inspectorate of Prisons for Scotland, a member of the United Kingdom (UK) NPM
- The UK NPM Secretariat
- The Norwegian NPM, who were also able to deliver a training presentation to Australian NPM members
- Whilst in Geneva for the CAT's 75th Session:
 - the Association for the Prevention of Torture
 - Global Detention Project
 - World Organisation Against Torture
 - International Service For Human Rights
 - Office of the UN High Commissioner for Refugees
 - UN Working Group on Arbitrary Detention
 - Special Rapporteur on Torture Secretariat
 - UN SPT Secretariat and Justice Aisha Shujune Muhammad.

The NPM Coordinator also has a strong relationship with the Association for the Prevention of Torture (APT), the leading international non-government organisation on torture prevention. In 2022–23 we engaged with the APT ahead of the SPT's visit to Australia and the Commonwealth Ombudsman's appearance before the Committee against Torture. The APT



has been immensely cooperative in providing advice on OPCAT implementation, and were also able to facilitate the Australian NPM's training session with the Norwegian NPM in March 2023.

Presentations

Reflecting NPMs' educative function, the NPM Coordinator team supported the Office of the Commonwealth Ombudsman's participation in the *National OPCAT Symposium* in September 2022. This symposium was led by the Australian Human Rights Commission and the RMIT University College of Business and Law. The Commonwealth Ombudsman presented to the symposium, and his speech is available [here](#).

In December 2022, the Commonwealth Ombudsman presented at the *Queensland OPCAT Forum* to discuss perspectives on Australia's readiness to meet its OPCAT obligations.

In March 2023, the Office of the Commonwealth Ombudsman presented at the *Future Justice and Corrections Summit*, outlining progress on implementation of OPCAT.

Engagement with the United Nations

A key focus for the NPM Coordinator was engagement with the SPT leading up to and during its visit to Australia, facilitating Australian NPM members' own interactions with the SPT, and engagement with the Committee against Torture as part of their consideration of Australia's sixth periodic report under the CAT. More information on this engagement is [below](#).



Engagement with the United Nations

The Subcommittee on Prevention of Torture

The [Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture](#) (SPT) is a treaty body created under Article 2 of OPCAT. The SPT has 25 members and along with NPMs, is one part of OPCAT's 'system' of prevention of torture and other ill treatment. By ratifying OPCAT, countries must allow the SPT to visit their places of detention to examine treatment and conditions.

As well as visiting places of detention, the SPT also has a role to advise and assist with establishing an NPM, including making recommendations to strengthen NPMs. They also have a role advising and assisting countries to strengthen the protection of people who are detained from torture and other ill treatment.

2022 visit of the SPT to Australia

The SPT made its first visit to Australia between 16 and 27 October 2022. The SPT had earlier planned to visit Australia in March to April 2020, but postponed the visit at that time due to the COVID-19 pandemic.

The SPT formally suspended its visit to Australia on 23 October 2022, part way through completion. In its [press release](#), they gave the following reasons for the suspension:

- being prevented from accessing some places of detention
- difficulties carrying out a full visit in other places of detention
- not being provided all relevant information and documentation requested.

The SPT stated that this amounted to a breach of Australia's OPCAT obligations.

Despite the suspension, Australian NPM members were able to benefit from the SPT's expertise while in Australia, with two meetings with the SPT. The SPT secretariat was also able to arrange a separate training workshop for members.

On 10 February 2023, the SPT formally terminated its visit to Australia. In its [press release](#), it explained it had requested a number of assurances from Australia to be able to resume the visit, but some of these were not provided. They stated they had no alternative other than to



terminate the visit until the issue of unrestricted access to all places of detention was resolved.

Members of the Australian NPM issued a [joint statement on 20 February 2023](#) in response to the visit termination. The joint statement highlighted not only the constructive and practical engagement the Australian NPM had with the SPT while in Australia, but also the valuable collaborative opportunity lost as a result of the visit suspension and termination. Some members of the Australian NPM also participated in a [radio interview](#) with ABC Radio National's *AM* program on 24 February 2023, on the importance of Australia meeting its obligations under OPCAT. We continue to reiterate these critical points today.

The SPT's visit report

Despite the suspension and termination, the SPT's visit delegation was able to prepare a visit report. The SPT provided this to the Australian Government on 19 June 2023, requesting a response within six months.

The SPT's visit report raised a significant number of observations, concerns and recommendations in light of their visit. These related both to treatment and conditions in detention, as well as NPMs and OPCAT implementation itself.

The SPT subsequently released its visit report and a reply from the Australian Government. These can be found [here](#).

Draft General Comment on Article 4 of OPCAT

In early 2023, the SPT invited comment from interested stakeholders on the first public draft of its General Comment on Article 4 of OPCAT. Article 4 is a critical provision within OPCAT because it defines places of detention. General Comments, prepared by various human rights treaty bodies, are important tools for explaining and interpreting human rights treaties. The draft General Comment can be found [here](#).

In April 2023, members of the Australian NPM made a joint submission to the SPT on the draft General Comment. We were highly supportive of the draft General Comment and the guidance it will provide to various stakeholders once finalised, on the definition of places of detention. The joint submission from Australian NPM members can be found [here](#), and other submissions received by the SPT can also be found [here](#).

On 8 June 2023, the SPT held a day of general discussion on the draft General Comment. The Commonwealth Ombudsman, as the NPM Coordinator, appeared remotely at this discussion, to comment on key points from Australian NPM members' joint submission. A video of the discussion, including the Ombudsman's appearance, can be found [here](#).



The Committee Against Torture

The [Committee against Torture](#) (Committee) is a body of 10 independent experts, created under Article 17 of the CAT, which monitors implementation of the CAT.

All countries which are party to the CAT must submit periodic reports to the Committee on how the rights within the CAT are being implemented. These countries must report to the Committee every four years on the measures they have taken to meet their treaty obligations. The Committee considers these reports, meets with representatives of the country through hearings, and afterwards shares written comments, concerns and recommendations to them in a document known as their “concluding observations”.

For countries which agree to participate, the Committee also has a process known as an “individual communications procedure”. Through this the Committee can receive complaints from or on behalf of a person or people who claim to be victims of a country’s violation of the CAT. Australia has recognised this process, meaning complaints may be made against it to the Committee. More information on the process including requirements for making complaints can be found [here](#).

Just as the SPT can do for OPCAT, the Committee also releases General Comments to help with interpretation of the CAT. The Committee has adopted four General Comments so far, and these can be found [here](#).

Committee consideration of Australia’s sixth periodic report

The Committee most recently considered [Australia’s sixth periodic report under the CAT](#), holding hearings in November 2022 to discuss the report.

In his capacities as NPM Coordinator and Commonwealth NPM, the Commonwealth Ombudsman submitted [his own, separate report](#) to assist the Committee. To further assist, the Commonwealth Ombudsman along with Australia’s Human Rights Commissioner also met with the Committee prior to the Committee’s hearings with the Australian Government.

After the hearings, the Committee released its concluding observations on Australia’s report, and these can be found [here](#).

The Committee, as part of its follow-up procedure, asked Australia to respond within twelve months on particular issues of concern of the Committee, namely its recommendations on:

- mandatory immigration detention, including of children
- conditions of detention
- juvenile justice.



The Australian Government is responding with a follow-up submission, and members of the Australian NPM are preparing our own, shadow submission in 2023–24. This will be discussed in next year’s Annual Report.

Other UN engagement

The Australian NPM recognises the various engagement opportunities more broadly across the UN system, including particularly with other [human rights treaty bodies’](#) periodic reporting processes and with the [Human Rights Council’s Special Procedures](#).

In 2022–23, members of the Australian NPM made a joint submission to the call for input on deaths in custody from the UN *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*. The submission focused on matters including the role of OPCAT and NPMs in preventing deaths in custody, legislation prohibiting torture and other ill treatment, and the 1987–1991 Royal Commission into Aboriginal Deaths in Custody. The joint submission is available [here](#).

In future we will continue to explore further, as an NPM, appropriate engagement and interventions across the UN system where there are intersections with our OPCAT mandate, and where resourcing allows.



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