



Australian  
Human Rights  
Commission

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# Road Map to OPCAT Compliance

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17 October 2022

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## 1 Introduction

On 21 December 2017, the Commonwealth Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)<sup>1</sup>, a significant step towards establishing enhanced oversight of Australian places of detention, and improvement in conditions. Upon ratification, Australia immediately made a declaration under Article 24 of OPCAT delaying its obligation to establish a National Preventive Mechanism (NPM) for three years. This extension was scheduled to formally end on 20 January 2022.

On 20 December 2021, the Commonwealth Government formally requested a postponement for an additional year. The main reasons cited for the request were the COVID-19 pandemic and considerations relating to Australia's federated system of government. The formal request was granted by the UN Committee against Torture (UN Committee), and 20 January 2023 was set as the new date for compliance.<sup>2</sup>

On accepting Australia's request for an extension, the UN Committee identified two conditions:

1. ...the State party should ensure the operational autonomy of the national preventive mechanism and guarantee that the mechanism's coordinator and member bodies are independent and receive sufficient resources to discharge their prevention mandate independently and effectively, in accordance with the Optional Protocol and the guidelines on national preventive mechanisms.<sup>3</sup>
2. ...the Committee invites the State party to present as soon as possible a plan of action for the establishment of the national preventive mechanism, and an oral progress report on the measures taken to establish the mechanism, including at the level of states and territories, during the consideration of its sixth periodic report, scheduled for consideration by the Committee at its seventy-fifth session, which will be held at the United Nations Office at Geneva, from 31 October to 25 November 2022.<sup>4</sup>

The Commonwealth Government has elected to adopt a multiple-body monitoring system with the Commonwealth, States and Territories asked to designate their own NPM(s) within their relevant jurisdictions. The Office of the Commonwealth Ombudsman has been nominated by the Australian Government as the NPM Coordinator, being tasked with coordinating the Australian NPM Network.

At the time of writing, only four jurisdictions, in addition to the Commonwealth Government, have nominated their NPMS. Others have proposed but not yet established their NPMS. New South Wales, Queensland, and Victoria have yet to designate their NPMS.

Despite ratifying OPCAT nearly half a decade ago, the subsequent delays to implementation in Australia – at the federal, state and territory levels – have been disappointing. The Commission considers progress has been too slow and

that immediate action is needed to fast-track implementation to ensure that Australia complies with the 20 January 2023 deadline.

## 2 Recommendations

1. **Recommendation 1: Governments ensure full OPCAT compliance no later than the 20 January 2023 extended deadline by designating NPMs and ensuring the mandates of NPMs are sufficient to allow them to effectively fulfil their OPCAT functions.**
2. **Recommendation 2: Governments give particular attention to ensuring NPMs are designed and operate in a way that reflects the particular needs, and are inclusive of, vulnerable cohorts who are disproportionately represented in places of detention, including (but not limited to) First Nations people, children and young people, and people with disability.**
3. **Recommendation 3: The Australian Government introduces dedicated primary legislation to ensure full effect is given to the key provisions of OPCAT around Australia, and the national coordination of Australia's OPCAT response. Legislation should provide powers of unfettered access to all places of detention by NPMs and the UN SPT; provide a clear foundation for these visits; ensure access to facilities and information; and secure the continued, long-term, and effective operation of OPCAT.**
4. **Recommendation 4: Governments adopt an inclusive approach to the interpretation of 'places of detention', ensuring that both 'primary' and 'secondary' places of detention are included within the scope of all NPMs.**
5. **Recommendation 5: Governments resource NPMs sufficiently to allow them to effectively fulfil their OPCAT functions, including the outward-facing functions contained in the 'preventive package.'**

## 3 The Commission's work on OPCAT

The Commission has had a long history of advocating for the ratification and implementation of OPCAT in Australia. In 2009, the Commission hosted a seminar with the Asia Pacific Forum of National Human Rights Institutions on OPCAT implementation which built on the 2008 report by Professors Neil Morgan and Richard Harding, *Implementing the Optional Protocol to the Convention Against Torture: Options for Australia*.<sup>5</sup>

On 29 March 2012, the Commission made a submission to the Joint Standing Committee on Treaties, noting that 'OPCAT is an important human rights treaty. Becoming a party to this treaty will lead to enhanced human rights protections for some of the most vulnerable people in Australia.'<sup>6</sup> In 2016, the then Children's Commissioner examined OPCAT in the context of children and young people detained in youth justice centres or adult facilities in her *Children's Rights Report 2016*.<sup>7</sup>

In February 2017, the then Commonwealth Attorney-General invited the Commission to lead a consultation on how Australia should implement OPCAT. On 29 June 2020, the Commission published *Implementing OPCAT in Australia*.<sup>8</sup> This was the final step for the Commission's OPCAT project, and followed extensive consultations conducted by the Commission in 2017 and 2018. The final report contained 17 recommendations as to how Australia should implement OPCAT.

On 4 February 2022, the Commission made a submission to the Northern Territory Department of the Attorney-General and Justice with respect to its consultation on the draft *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 (Bill)*.<sup>9</sup>

On 23 September 2022, the Commission made a submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability entitled *National Preventive Mechanisms: a formal safeguard for people with disability*.<sup>10</sup>

Building on this extensive body of work, the Commission is in a strong position to play an active and constructive role in supporting the implementation of OPCAT at the Commonwealth, State and Territory levels. While the Commission is not a designated NPM or NPM-coordinator (and therefore has no formal implementation responsibilities), continuing to promote OPCAT compliance and providing an independent perspective on the actions Australia needs to take to ensure compliance with our international human rights obligations under OPCAT falls within our broader statutory mandate. The Commission has long advocated for full compliance with OPCAT noting that 'merely adjusting the current processes for detention inspections cannot be an end in itself. Instead, the changes required by OPCAT should be pursued in a way that promotes stronger and more consistent human rights protections for people who are detained across all jurisdictions.'<sup>11</sup>

## 4 The National OPCAT Symposium

On 9 September 2022, the Commission partnered with the RMIT University College of Business and Law to hold a National OPCAT Symposium in Melbourne. The aim of the Symposium was to bring together relevant stakeholders from the Commonwealth, State and Territory governments, oversight and statutory bodies, and civil society; to take stock of what has been achieved to date; identify any existing barriers to progress; and suggest what still remains to be done to reach full OPCAT compliance in Australia by the extended deadline of 20 January 2023.

The Symposium successfully brought together just under 200 people from government departments, civil society, and academia, including representatives from 43 statutory oversight agencies and commissions of enquiry from across Australia and New Zealand:

<b>Commonwealth</b>	Commonwealth Ombudsman	Aged Care Quality and Safety Commission
	NDIS Quality & Safeguards Commission	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
<b>Western Australia</b>	WA Inspector of Custodial Services	WA Commissioner for Children and Young People
	WA Office of the Chief Psychiatrist	
<b>South Australia</b>	SA Guardian for Children and Young People	SA Office of the Public Advocate
	SA Official Visitors for Correctional Facilities	SA Office for the Commissioner for Aboriginal Children and Young People
	SA Ombudsman	
<b>Tasmania</b>	TAS Office of the Custodial Inspector	TAS Office of the Chief Psychiatrist
	TAS Ombudsman	Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

<b>Northern Territory</b>	NT Ombudsman	NT Office of the Children's Commissioner
	NT Community Visitor Program	
<b>Australian Capital Territory</b>	ACT Human Rights Commission	ACT Office of the Inspector of Correctional Services
	ACT Ombudsman	ACT Public Advocate
<b>Queensland</b>	QLD Human Rights Commission	QLD Office of the Public Advocate
	QLD Family and Child Commission	QLD Ombudsman
<b>New South Wales</b>	NSW Inspector of Custodial Services	NSW Ombudsman
	NSW Office of the Advocate for Children and Young People	NSW Official Visitors Program (Mental Health)
<b>Victoria</b>	VIC Commission for Children and Young People	VIC Ombudsman
	VIC Equal Opportunity and Human Rights Commission	VIC Disability Worker Commission
	VIC Office of the Public Advocate	Yoorrook Justice Commission
<b>New Zealand</b>	NZ Office of the Ombudsman	NZ Children's Commissioner
	NZ Independent Police Conduct Authority	NZ Inspector of Service Penal Institutions
	NZ Human Rights Commission	NZ Office of the Inspector

The Symposium played host to several prominent speakers, including:

- Dr Alice Edwards, UN Special Rapporteur on Torture
- Aisha Shujune Muhammed, Vice Chairperson for NPMs, UN Subcommittee on the Prevention on Torture (UN SPT)
- Wendy Sinclair-Gieben, Chairperson of the UK NPM and HM Chief Inspector of Prisons for Scotland

- Iain Anderson, Australia’s Commonwealth Ombudsman – and who in that capacity is Australia’s NPM Coordinator, and NPM for Commonwealth places of detention; and
- Dr John Chesterman, Queensland Public Advocate.

Dr Alice Edwards highlighted in her keynote address that the world is watching, and Australia must demonstrate its commitment to the abolition of torture in places where people are deprived of their liberty. To become a global leader on OPCAT, Australia must ensure that NPMs visit both primary places of detention (e.g., prisons, detention facilities) and secondary places of detention (e.g., mental health facilities, aged care, disability group homes).

Dr John Chesterman correctly emphasised during his speech that while the distinction between primary and secondary places of detention is a practical distinction that has been adopted by government, we must not forget that for people confined without consent there is no substantial difference whether they are classified as being in a primary or secondary place of detention. All people – regardless of whether they are in primary or secondary places of detention – deserve to be treated with dignity and respect and must be afforded the same protections under OPCAT.

The Symposium also included several themed workshops examining specific aspects of OPCAT implementation, including disability, children's rights, and Aboriginal and Torres Strait Islander inclusion.

The overwhelming conclusion from those attending the Symposium was that simply ensuring minimal compliance by the deadline would not be enough. Instead, Australia should aim to develop best practice in our approach to OPCAT and demonstrate leadership in the implementation of our OPCAT obligations.

## **5 Immediate Steps Required**

### **Designating NPMs**

The Commission is of the view that establishing and maintaining oversight mechanisms to perform the role of NPMs in each jurisdiction in Australia requires modest changes to existing legislation, resourcing, and oversight mechanisms. The longstanding delays in implementing OPCAT are concerning.

The Commission recommends that all national, state and territory governments in Australia finalise the process of designating oversight mechanisms as the NPMs for their respective jurisdictions, including any changes necessary to broaden their mandates and meet the requirements of OPCAT.

The OPCAT refers to the 'Paris Principles', calling on States Parties to give due consideration to them when setting up their NPMs.<sup>12</sup> The Paris Principles are a set of international principles adopted by the UN General Assembly that frame and guide the work of National Human Rights Institutions, providing for their independence, broad human rights mandate, adequate funding, and inclusive and transparent selection and appointment process.<sup>13</sup> These Principles reinforce the OPCAT criteria and, in the case of any ambiguities that may emerge, serve to clarify the underlying intent.<sup>14</sup>

The Commission further recommends that all national, state and territory governments and NPMs in Australia take due consideration of the 'Principles for Best Practice', set out below at Section 6, espoused at the National OPCAT Symposium workshops.

**Recommendation 1: Governments ensure full OPCAT compliance no later than the 20 January 2023 extended deadline by designating NPMs and ensuring the mandates of NPMs are sufficient to allow them to effectively fulfil their OPCAT functions.**

**Recommendation 2: Governments give particular attention to ensuring NPMs are designed and operate in a way that reflects the particular needs, and are inclusive of, vulnerable cohorts who are disproportionately represented in places of detention, including (but not limited to) First Nations people, children and young people, and people with disability.**

## Primary legislation

The UN SPT has provided clear guidance regarding the need for legislation to incorporate the key OPCAT provisions on NPMs:

While the institutional format of the NPM is left to the State Party's discretion, it is imperative that the State Party enact NPM legislation which guarantees an NPM be in full compliance with OPCAT and the NPM Guidelines. Indeed, the SPT deems the adoption of a separate NPM law as a crucial step to guaranteeing this compliance.<sup>15</sup>

The UN SPT has also shared its experience where NPMs are not underpinned by legislation:

The experience of the SPT is that the situation of an NPM remains precarious without its being underpinned by a clear legislative basis. We have seen, unfortunately, too many examples of cases in which states have put pressure on NPMs, directly or indirectly, which they have not been able to challenge for the want of a clear basis on which to do so. Practical effectiveness is dependent on functional independence, and the independence is threatened when the NPM is vulnerable to political pressure or political exigencies.<sup>16</sup>

The Commission accordingly recommends that the key provisions from OPCAT dealing with the operation, structure, independence, and other central elements of the NPM and UN SPT visits should be incorporated into primary legislation. Legislation should be drafted and considered by Parliament alongside the ongoing work being undertaken to establish the network of NPMs in each jurisdiction.<sup>17</sup>

The Australian Government's position on primary legislation as not being required has remained consistent over the past five years.<sup>18</sup> Discussion about the necessity of an Intergovernmental Agreement has fluctuated over time<sup>19</sup> and the current position of the Australian Government is that governments have 'agreed to continue working together on implementation of OPCAT'.<sup>20</sup>

While an Intergovernmental Agreement is a possible alternative to primary legislation, the Commission notes this does 'not present an equivalent, or adequate, alternative to legislation that gives full effect to the key provisions of OPCAT itself'.<sup>21</sup>

**Recommendation 3: The Australian Government introduces dedicated primary legislation to ensure full effect is given to the key provisions of OPCAT around Australia, and the national coordination of Australia's OPCAT response. Legislation should provide powers of unfettered access to all places of detention by NPMs and the UN SPT; provide a clear foundation for these visits; ensure access to facilities and information; and secure the continued, long-term, and effective operation of OPCAT.**

### **An inclusive approach to defining 'deprivation of liberty'**

The Australian Government has opted for a 'progressive realisation' of OPCAT, whereby NPMs will prioritise activities in 'primary' places of detention, as opposed to all places where people may be deprived of their liberties. 'Primary places of detention' is defined by the Australian Government as including:

- adult prisons
- juvenile detention facilities (excluding residential secure facilities)
- police lock-up or police station cells (where people are held for equal to, or greater than, 24hrs)
- closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment (where people are held for equal to, or greater than, 24hrs)
- closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24hrs)
- immigration detention centres
- military detention facilities.<sup>22</sup>

In explaining the rationale behind this decision, the Australian Government noted:

The initial focus on these primary places of detention reflects the position that the challenges posed by the deprivation of peoples' liberty are at their most significant in these places of detention.

The Government considers the implementation of OPCAT to be an iterative process and is mindful of the principle of proportionality when determining prioritisation and focus, consistent with advice from the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>23</sup>

Choosing to take an incremental approach in the early establishment of an NPM is not of itself contentious. The UN SPT has stated that, 'in all situations, the national preventive mechanism should also be mindful of the principle of proportionality when determining its priorities and the focus of its work'.<sup>24</sup> The important distinction here is that it is the NPM itself which should decide – based on its own strategy, resources and analysis of the situation – and not the State.

Article 4 of OPCAT imposes obligations on Australia to allow NPMs to visit any place under its jurisdiction and control where persons are, or may be, deprived of their liberty. The UN SPT considers that the preventive nature of OPCAT requires a broad interpretation of Article 4 to maximise the preventive impact of the work of NPMs in places of detention.<sup>25</sup>

The Commission considers that Australia should adopt an inclusive approach, consistent with articles 1 and 4 of OPCAT, that includes both 'primary' and 'secondary' places of detention within the ambit of the functions of all NPMs. This will uphold OPCAT's aim to strengthen protections for all persons deprived of their liberty.

**Recommendation 4: Governments adopt an inclusive approach to the interpretation of ‘places of detention’, ensuring that both ‘primary’ and ‘secondary’ places of detention are included within the scope of all NPMs.**

## Funding

Funding has emerged as a significant issue delaying the establishment of the Australian NPM Network.<sup>26</sup> In July 2021, the Australian Government pledged ‘funding over two years from 2021–22 to support states and territories’,<sup>27</sup> however ‘jurisdictions are responsible for funding their own oversight and detention arrangements on an ongoing basis’.<sup>28</sup> Resourcing should be provided in a way that enables NPM bodies to fulfil OPCAT’s core functions; respects the functional, structural and personal independence of NPM bodies; and ensures effective liaison with, and involvement of, civil society representatives and people with lived experience of detention in the OPCAT inspection process.<sup>29</sup>

The UN SPT has also emphasised that:

a national preventive mechanism should also be empowered and able to deliver the whole ‘preventive package’, including examining patterns of practices from which risks of torture may arise; advocacy, such as commenting on draft and implementing legislation; providing public education; undertaking capacity building; and actively engaging with State authorities. The Subcommittee emphasizes that this requires sufficient resourcing; appropriate privileges and immunities; and access to the Subcommittee for advice and assistance.<sup>30</sup>

Resourcing should therefore also enable the NPM to undertake the ‘outward-facing functions of the NPM, such as submitting proposals and observations on existing and draft legislation, advocacy, awareness raising and capacity building’.<sup>31</sup>

**Recommendation 5: Governments resource NPMs sufficiently to allow them to effectively fulfil their OPCAT functions, including outward-facing functions contained in the ‘preventive package’.**

## 6 Principles for Best Practice

The National OPCAT symposium featured four workshops which ran concurrently. Each workshop had a specific theme and offered the opportunity to expand discussion beyond the immediate priority of ensuring bare compliance by the deadline, to also consider what Australia might do in the longer term to embed OPCAT best practice.

Participants attended one of the following workshops:

- **A nationally consistent NPM** – Facilitated by Ms Lorraine Finlay, Australia’s Human Rights Commissioner
- **A disability informed and inclusive NPM** – Facilitated by Dr Ben Gauntlett, Australia’s Disability Discrimination Commissioner
- **A child rights centred and expert NPM** – Facilitated by Ms Anne Hollonds, Australia’s National Children’s Commissioner and Ms Liana Buchanan, Principal Commissioner for Children and Young People Victoria
- **A culturally safe and inclusive NPM** – Facilitated by Ms Shona Reid, Guardian for Children and Young People South Australia

The Commission has distilled the following principles from the discussion in each of the workshops.

## A nationally consistent NPM

- NPMs must enjoy functional independence and be sufficiently resourced. Funding must not take away resources from existing functions and obligations.
- The NPM network must set up effective information sharing between NPMs. This might include sharing methodologies, discussing weaknesses and challenges.
- NPMs and the NPM network must work collaboratively to consider cross-cutting and cross-state border issues.
- NPMs and the NPM network must work to raise greater public understanding and support for OPCAT compliance. This includes efforts to raise awareness to people in detention.
- NPMs, the NPM network and civil society need to work together to find ways to support the implementation of recommendations made by NPMs and must also engage with other existing oversight mechanisms.

## A disability informed and inclusive NPM

- NPMs must monitor all places where people are or may be deprived of their liberty. The demarcation between ‘primary’ and ‘secondary’ places of detention is arbitrary and perpetuates inequity.
- NPMs must be co-designed with people with lived experience of disability. Co-design should be a feature of its everyday operations and lived

experience should be taken to be wide-ranging, to truly represent the diversity of the disability community.

- NPMs and the NPM network must formalise a structured consultation mechanism whereby people with lived experience have an ongoing co-working relationship with the NPM, rather than ad-hoc consultations where people with disability are periodically invited to provide input.
- NPM staff require appropriate professional qualifications and expertise – or access as required to experts with these qualifications and expertise – with lived experience being preferred.
- NPMs must provide supports to remove barriers for people with disability to participate in NPM visits; these include reasonable accommodations, communication, and decision-making supports.
- The NPM networks annual reports should publish data and information relevant to drive law reform activities. For example, the NPM could publish the number of individuals on ‘unfit to plead’ orders.

## **A child rights centred and expert NPM**

- NPMs must be responsive to the different developmental needs of children and young people and monitor conditions of detention in light of their age and stage of development.
- NPMs must hold or have access as and when required to technical expertise about child development, children’s rights, trauma and how detention can affect children and young people. NPMs should draw on the expertise of Australia and New Zealand’s network of Children’s Guardians and Commissioners in its work.
- NPMs must be able to visit all places where children are held and be responsive to rural and remote concerns.
- The work of NPMs must be informed by the lived experience of children and young people.
- NPMs must develop mechanisms to hear directly from children and young people.
- NPMs must ensure all rights are monitored including those enshrined in the Convention on the Rights of the Child.<sup>32</sup> For example, education and health are critical to the development of children and young people.
- NPMs and the NPM Network must work in accordance with the National Principles for Child Safe Organisations.<sup>33</sup>

## **A culturally safe and inclusive NPM**

- NPMs require a cultural lens at every stage including designation, implementation, and operationalisation. NPMs should ensure inspections are informed by Aboriginal and Torres Strait Islander approaches, which may include developing separate inspection standards and drawing on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- The NPM network should undertake research on specific Aboriginal and Torres Strait islander issues such as Aboriginal deaths in custody.
- NPMs must make special efforts to recruit Aboriginal and Torres Strait Islander staff, ensuring an appropriate gender balance is met and being cognisant of the community expectations placed on Aboriginal and Torres Strait Islander staff. Tailored and flexible support structures must be developed to support those staff.
- NPMs must ensure Aboriginal and Torres Strait Islander representation on any advisory boards and should ensure community consultations include Aboriginal and Torres Strait Islander people who have been deprived of liberty or were family members of people deprived of liberty.
- NPMs should develop resources that can be translated into appropriate languages, ensure all inspection reports are published in accessible formats and ensure communities are aware of the reports. NPMs must also make efforts to ensure appropriate interpreters (including Aboriginal sign language interpreters) are available when interviewing Aboriginal and Torres Strait islander people.
- NPMs need to engage in significant community education with Aboriginal and Torres Strait Islander people about the role of the NPM. NPMs need to be very clear about managing expectations to avoid losing trust. The education process is continual obligation to build trust over time.

## 7 Current OPCAT Status by Jurisdiction

### Commonwealth

<b>Designated NPM:</b>	<a href="#">Office of the Commonwealth Ombudsman</a>
<b>OPCAT Legislation:</b>	<a href="#">Ombudsman Amendment (National Preventive Mechanism) Regulations 2019 (Cth)</a>

On 1 July 2018, the Australian Government nominated the Office of the Commonwealth Ombudsman as both the NPM Coordinator and the NPM for places of detention under the control of the Commonwealth (the Commonwealth NPM). In terms of ‘primary’ places, this includes places of immigration detention, Australian Federal Police custody and Australian Defence

Force places of detention. The Commonwealth NPM is not limited under the Ombudsman Regulations to these primary places.

The Commission notes with concern that this designation did not extend to Australia's third country processing arrangements with Papua New Guinea and Nauru. In relation to cross-border detention arrangements, the UN SPT has advised that the 'sending State should ensure that such an agreement provides for its national preventive mechanism to have the legal and practical capacity to visit those detainees in accordance with the provisions of the Optional Protocol and the Subcommittee guidelines on national preventive mechanisms.'<sup>34</sup>

Regulations establishing the NPM functions, the *Ombudsman Amendment (National Preventive Mechanism) Regulations 2019* (Cth), came into effect on 10 April 2019. Of these regulations, the Victorian Ombudsman noted:

Although the Ombudsman Amendment (National Preventive Mechanism) Regulations, together with section 4(2)(a) of the *Ombudsman Act 1976* (Cth), articulate the functions of the Commonwealth Ombudsman, no new powers have been provided, and therefore the NPM mandate would have to be performed under existing powers. It is likely that this could mean that an inspection carried out by the Commonwealth Ombudsman in the performance of its NPM function would, at law, be an investigation within the meaning of the Ombudsman Act (Cth).<sup>35</sup>

In the 2018–19 Budget,<sup>36</sup> the Commonwealth Ombudsman was provided ongoing funding of approximately \$300,000 per year for its new functions under OPCAT.

In September 2019, the Commonwealth Ombudsman published a report about Australia's readiness to implement OPCAT and the need to nominate Commonwealth, state and territory NPMs. In it, the Commonwealth Ombudsman noted:

There is a level of urgency associated with the successful implementation of OPCAT. Not only have we as a nation signed up to OPCAT, but recent high-profile examples of poor practices in places of detention nationally have shown that a systematic, well-resourced and preventive inspection regime is required. Implementing OPCAT should not merely involve re-badging existing bodies, without also having regard to the resourcing, legislative and operational implications. However, the next critical step is for jurisdictions to nominate NPMs and ensure they are placed on an appropriate footing to undertake the functions required under OPCAT.<sup>37</sup>

In early 2020, the Commonwealth Ombudsman established a civil society advisory group<sup>38</sup> to provide expert advice and guidance concerning the

Ombudsman’s functions and responsibilities as an NPM. To date, eight meetings have been held and current membership includes Mr Paris Aristotle AO – CEO, Foundation House; Emeritus Professor Neil Morgan – Former Inspector of Custodial Services (Western Australia); Professor Bronwyn Naylor OAM – RMIT University, co-founder of the Australian OPCAT Network, Ms Anne Hollonds – National Children’s Commissioner and Ms Lorraine Finlay – Human Rights Commissioner.

## Western Australia

<b>Designated NPM(s):</b>	<a href="#"><u>Office of the Inspector of Custodial Services</u></a>  <a href="#"><u>Ombudsman Western Australia</u></a>
<b>OPCAT Legislation:</b>	

On 19 July 2019, Western Australia (WA) became the first jurisdiction outside of the Commonwealth to nominate its NPMs. As noted by the Commonwealth Ombudsman in February 2019,

In addition to my Office, there have been two other bodies nominated as NPMs, both in Western Australia: the Office of the Inspector of Custodial Services, who will have oversight of justice related facilities including police lock-ups, and the Western Australian Ombudsman, who will have oversight of mental health and other secure facilities.<sup>39</sup>

No public consultation occurred on the designation of either the Inspector of Custodial Services or the Western Australian Ombudsman. This is contrary to the UN SPT’s guidelines on NPMs, which state the designation process should be ‘an open, transparent and inclusive process’.<sup>40</sup> However, it is noted that there is evidence of widespread support for the Inspector of Custodial Services.<sup>41</sup>

Despite their early designation, no legislative amendments to the *Inspector of Custodial Services Act 2003* or the *Parliamentary Commissioner Act 1971* (WA) have taken place, nor have additional resources been allocated to either body to undertake their NPM roles.

The Inspector of Custodial Services has suggested that the lack of agreement between the WA Government and the Commonwealth has delayed meaningful progression of the OPCAT in WA and nationally.

In 2020, the Inspector noted:

At the moment we have done as much as we can because there needs to be agreement between the commonwealth and the state. The Commonwealth has signed up to the convention, but it is a state jurisdiction under the Constitution, so there needs to be some agreement between the commonwealth and the state about how that might happen.<sup>42</sup>

Even stronger criticism was made by the Inspector in 2021:

The delay in achieving national consensus and agreement has stalled further meaningful steps towards implementing the protocol ... Without national agreement around implementation, it has not been possible for us to commit resources to developing important processes and structures around how we will undertake this new work. This includes: the development of legislation to expand our jurisdiction to cover inspection of police lockups; the development of appropriate inspection standards and protocols; preparing reporting frameworks and templates; identification of resource needs; and the development of consultation networks with civil society groups that should have input into OPCAT activities.<sup>43</sup>

The WA Government has also articulated its concerns publicly:

We are very keen to see OPCAT implemented, but it has to be implemented in a proper and sensible way. We are not criticising the commonwealth government; we are just making it clear that we do not understand what its intentions are.<sup>44</sup>

**South Australia**

<p><b>Proposed NPMs:</b></p>	<p><b>Official Visitors of Correctional Institutions</b></p> <p><a href="#"><u>The Training Centre Visitor</u></a></p> <p><a href="#"><u>Community Visitor Scheme</u></a></p>
<p><b>OPCAT Legislation:</b></p>	<p><a href="#"><u>Correctional Services (Accountability and Other Measures) Amendment Act 2021 (SA)</u></a></p> <p><a href="#"><u>OPCAT Implementation Bill 2021 (SA)</u></a> (did not pass before election)</p>

On 13 May 2020, the *Correctional Services (Accountability and Other Measures) Amendment Bill 2020 (SA)* was introduced into the South Australian (SA) House of Assembly. In the First Reading Speech for the Bill it was noted:

... the Bill will ensure that South Australia complies with the inspection requirements of places of detention under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the associated Optional Protocol to the Convention against Torture (OPCAT), which the commonwealth government ratified on 21 December 2017... The bill proposes to introduce an 'official visitors' scheme, establishing a group of independent, appropriately skilled visitors that meet OPCAT while also meeting the contemporary needs of a prisoner population, including specialists in mental health and wellbeing and Aboriginal representatives. The bill provides detail on the role, function and reporting obligations of the new official visitors scheme.<sup>45</sup>

The Bill received criticism for not being entirely OPCAT compliant.<sup>46</sup> For example, the Bill proposed the Official Visitors Scheme be responsible for handling individual prisoner complaints, a role separate from the responsibilities of an NPM. On this point it was noted by an opposition MP:

Unless amended, the new scheme will burden official visitors with too many functions, particularly those already covered by existing bodies, such as the Ombudsman, and it will dilute the role of the official officer and impede their ability to monitor effectively our correctional institutions. These are not my views, these are the views of very eminent experts in this space, who work in the OPCAT space and who have provided this feedback to us and indicated that one of the major faults they see in the bill that has been presented to us is this effectively muddying the waters between two roles. It is abundantly clear from those eminent experts that the proactive and preventative mechanism should be completely separate to the reactive role, which is that currently fulfilled by the Ombudsman.<sup>47</sup>

Several amendments were proposed by the crossbench in both Houses of Parliament, some of which were accepted. Following these amendments, the Bill passed both Houses of Parliament and on 8 April 2021, the *Correctional Services (Accountability and Other Measures) Amendment Act 2021 (SA)* received Royal assent.

On the 24 August 2021, the SA Government introduced an additional Bill, the *OPCAT Implementation Bill 2021 (SA)*.

This Bill establishes schemes for the monitoring of other places of detention (outside of corrections), designating the Training Centre Visitor and the Principal

Community Visitor as the NPM entities responsible for monitoring youth detention (excluding residential secure facilities) and closed mental health settings, and also adding the monitoring of custodial police stations to the newly established Official Visitor Scheme.

Before introducing the Bill, the SA Government consulted with selected stakeholders and took on board some of their recommendations. The Bill however drew strong criticism, for example from the Office of the Guardian of Children and Young People, which was one of the proposed NPMs.<sup>48</sup>

The Bill passed in the House of Assembly and was to be debated in the Legislative Council however this did not occur before the SA state election in March 2022.

To date this Bill has not been re-introduced to Parliament.

**Tasmania**

<b>Designated NPM:</b>	<b><a href="#">Mr Richard Connock (Ombudsman Tasmania/Inspector of Custodial Services)</a></b>
<b>OPCAT Legislation:</b>	<a href="#">Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)</a> (did not proceed following stakeholder consultation phase)  <a href="#">OPCAT Implementation Act 2021 (Tas)</a>

On 13 November 2020, The Tasmanian Government sought public feedback on a proposed *Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)* which sought to amend the *Custodial Inspector Act 2016 (Tas)*, nominating the Inspector of Custodial Services, Mr Richard Connock, to fulfil the role of the Tasmanian NPM.

Following two rounds of public consultation,<sup>49</sup> which included a submission from the Commission;<sup>50</sup> a separate stand-alone Bill, the *OPCAT Implementation Bill 2021 (Tas)*, was introduced to Parliament. Of the decision to introduce stand-alone legislation as opposed to the earlier amendments, it was said:

... a standalone act for OPCAT is one of the important outcomes of the extensive consultation. It was first proposed to include OPCAT provisions in a separate part of the *Custodial Inspector Act 2016* because the framework of that act was designed in 2016 in consideration of future OPCAT requirements. In response to feedback on the draft bill, however, the decision was made to further strengthen our framework for OPCAT in a standalone act.<sup>51</sup>

The OPCAT Bill passed both the House of Assembly and Legislative Council without amendment.

On 19 November 2021, the *OPCAT Implementation Act 2021* (Tas), received Royal assent. The Governor of Tasmania made a proclamation on 13 December 2021, fixing 20 January 2022 as the commencement date for the Act.

On 7 February 2022, The Tasmanian Government appointed Mr Richard Connock the NPM for Tasmania, with the appointment period of two years coinciding with his existing appointment as the Tasmanian Ombudsman.<sup>52</sup>

Part 2, Division 1, Section 8 of the Act enables the Governor to appoint ‘a person, or more than one person’ as a Tasmanian NPM. This provision was included to ‘future proof’ the OPCAT legislation:

A significant concern that emerged from community consultation is the proposal that we will have a single NPM as opposed to an integrated multibody. This is perhaps evidence of how we expect the NPM to change allowing the appointment of multiple NPMs in the future to create better expertise across all sectors.<sup>53</sup>

In the 2022–23 Tasmanian Budget, \$344,000 was allocated for the purpose of additional resourcing and consultancy services to scope the requirements for Tasmania’s compliance with OPCAT.<sup>54</sup>

## Northern Territory

<b>Designated NPMs:</b>	<a href="#"><u>Ombudsman Northern Territory</u></a> <a href="#"><u>Office of the Children’s Commissioner</u></a> <a href="#"><u>Community Visitor Program</u></a>
<b>OPCAT Legislation:</b>	<a href="#"><u>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</u></a> <a href="#"><u>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 (NT)</u></a> (Passed on 11 October 2022)

On 17 November 2017, the Final Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT) was tabled in the Australian Parliament. The report made several recommendations relevant to the oversight of youth detention and OPCAT. Notably:

Recommendation 40.4 The Commission for Children and Young People be provided with functions that are compatible with the requirements of a National Preventative Mechanism as set out in OPCAT.<sup>55</sup>

On 10 May 2018, the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018* (NT) was introduced into the Legislative Assembly to provide a statutory regime for the UN SPT to conduct inspections of places of detention within the Northern Territory. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and a report was presented in June 2018.<sup>56</sup> Of the importance of the Bill, it was said:

This bill is another step towards ensuring we never see a repeat of the tragic and unacceptable circumstances revealed by the Royal Commission into the Protection and Detention of Children in the Northern Territory. What happened at Don Dale was possible, in part, because of a lack of independent scrutiny. Had a process allowing that scrutiny, which is currently under consideration, been in existence, it is more likely we would never have seen children in detention being mistreated in the ways that came to light in that royal commission.<sup>57</sup>

The Bill passed and the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (NT) came into force on 1 November 2018.

In April 2021, the NT Government nominated the Ombudsman NT as its interim NPM. Of the Ombudsman NT's role as interim NPM, the Commonwealth Ombudsman noted:

As interim coordinating NPM, their focus will be on considering amendments to existing legislation and engaging with existing oversight bodies and relevant stakeholders to progress NPM implementation.<sup>58</sup>

On 29 December 2021, the NT Government published a draft *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022* (NT) for public consultation,<sup>59</sup> to which the Commission made a submission.<sup>60</sup>

For some places of detention (e.g., adult correctional centres) the Bill provides for a new independent inspection service whereas for others (e.g., mental health, disability, and youth places of detention) it augments current legislative provisions and practices. The consultation period closed in February 2022.

On 1 September 2022, the *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Amendment Bill 2022* (NT) was introduced into the Legislative Assembly and was passed on the 11 October 2022 with several minor amendments.

The Attorney General has noted:

it is expected the Ombudsman will monitor police watch houses, correctional facilities and court watch houses. The Children’s Commissioner will be responsible for all places where children (under 18 years) are detained; and the Principle Community Visitors will be responsible for hospitals, mental health, disability, and aged care facilities.<sup>61</sup>

## Australian Capital Territory

<b>Designated NPMs:</b>	<a href="#"><u>Inspector of Correctional Services</u></a>  <a href="#"><u>ACT Human Rights Commission</u></a>  <a href="#"><u>ACT Ombudsman</u></a>
<b>OPCAT Legislation:</b>	<a href="#"><u>The Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</u></a>

On 24 August 2017, the Australian Capital Territory (ACT) Government introduced the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2017* (ACT) to establish the necessary legislative arrangements for the UN SPT to inspect places of detention in the ACT. The Standing Committee on Justice and Community Safety reported on the Bill on 5 September 2017.<sup>62</sup>

*The Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT) came into force on the 30 April 2018.

In June 2021, the Commonwealth Ombudsman noted he had ‘participated in consultations with potential oversight agencies and civil society organisations, together with the ACT Department of Justice’.<sup>63</sup>

At this consultation, the ACT Government indicated an intention to designate three NPMs: the Inspector of Correctional Services, the ACT Human Rights

Commission, and the ACT Ombudsman. The ACT Government went on to designate these bodies on 20 January 2022.<sup>64</sup>

Of its own establishment, the Inspector of Correctional Services has noted that:

The model of prison oversight implemented through the establishment of my office aims to capture the requirements and expectations around the establishment of a national preventive mechanism (NPM) under the OPCAT in the ACT, and reflects stakeholder consultation within the ACT on the most appropriate preventive oversight mechanism.<sup>65</sup>

On 10 March 2022, the ACT Government entered into an agreement with the Commonwealth Government. The Commonwealth Government will provide the ACT Government with \$0.143 million over 2022/2023 to support the establishment of the ACT NPM.<sup>66</sup>

## Queensland

<b>Designated or Proposed NPM(s):</b>	
<b>OPCAT Legislation:</b>	<a href="#">Inspector of Detention Services Act 2021 (Qld)</a> (Assented to the 7 <sup>th</sup> of September 2022)

On 28 October 2021 the Queensland (Qld) Government introduced the *Inspector of Detention Services Bill 2021 (Qld)* into Parliament. The Bill was designed to provide independent oversight over places of detention namely: prisons, community corrections centres, work camps, youth detention centres and watch houses. Under the Bill, the Queensland Ombudsman is designated the Inspector of Detention Services, and staff from the Office of the Queensland Ombudsman will support the exercise of the inspector's functions.

The Bill was referred to the Legal Affairs and Safety Committee for public consultation. A written submission period and public hearing occurred in November 2021.<sup>67</sup>

While the Queensland Government did not specifically state that the Inspector of Detention Services would be an NPM, the Legal Affairs and Safety Committee probed this question at its public briefing on the Bill. In response, the representative from the Attorney-General's Department stated:

Whilst the government is yet to make a decision around OPCAT, and whilst there is more information to come about the expectations about a body or bodies that will do this national preventative mechanism work under OPCAT, the policy

intention is that the inspector has been set up with some of those key functions of what could be expected of a national preventative mechanism in mind such as the preventing visiting mandate and the function, operation and independence et cetera.<sup>68</sup>

The Legal Affairs and Safety Committee reported on the Bill on 21 January 2022. The Committee made no recommendations regarding OPCAT and stated that 'the department has advised that a decision about OPCAT implementation in Queensland is yet to be made'.<sup>69</sup>

During the second reading speech for the Bill on 26 May 2022, the Minister for Children and Youth Justice and Minister for Multicultural Affairs indicated that the Queensland Government would provide:

additional funding to the Ombudsman's office of \$9.38 million over four years and \$2.97 million per annum ongoing. Provision has also been made for the engagement of up to an additional 16 full-time equivalent staff for the office of the inspector. This additional funding and resourcing will ensure the inspector can effectively carry out its functions without compromising those performed by the Ombudsman. I acknowledge that adequate funding and resourcing will be the key to the inspector operating effectively.<sup>70</sup>

Further, the Minister went on to state:

Our government supports the principles of OPCAT, and the introduction of this bill demonstrates that. It is the Commonwealth government that made the decision to ratify OPCAT, which imposes broader obligations beyond just nominating a national preventive mechanism.

There are significant cost implications in properly giving effect to OPCAT. Until ongoing funding for OPCAT is resolved with the Commonwealth, Queensland will not make a formal commitment to implement OPCAT. We will, however, continue to work with the Commonwealth and other jurisdictions to determine how best to implement OPCAT in Australia.<sup>71</sup>

At a subsequent debate on 30 August 2022, the Attorney-General reiterated that:

The Queensland government supports the principles of OPCAT. However, Queensland will make no formal commitment to implement OPCAT until ongoing funding for NPMs is resolved with the Commonwealth government—an issue that may be resolved a lot more easily now that we have a new federal government—and this is consistent with every other jurisdiction. Although the purpose of the inspector bill is not to give effect to OPCAT, the inspector has been designed to encompass key features of an NPM as outlined in OPCAT... The Queensland government will work with the Commonwealth and other states and

territories to determine how best to implement OPCAT in Australia. We understand that Commonwealth funding for OPCAT remains an outstanding issue with all other jurisdictions.<sup>72</sup>

Following the passage of the Bill, the Queensland Ombudsman noted:

On 30 August 2022, the Inspector of Detention Services Bill 2021 was passed by the Legislative Assembly. The 2022–23 Queensland Budget allocated additional funding for the Office of \$9.4 million over four years and \$3 million per annum ongoing to establish the new function. I look forward to working with stakeholders to undertake this important role.<sup>73</sup>

## New South Wales

<b>Designated or Proposed NPM(s):</b>	
<b>OPCAT Legislation:</b>	

On 21 December 2018, the New South Wales (NSW) Legislative Council, Portfolio Committee No. 4 – Legal Affairs, reporting on Parklea Correctional Centre and other operational issues; recommended:

That the NSW Government resource the Inspector of Custodial Services to implement the state's obligations under the Optional Protocol to the Convention Against Torture via its inspections regime.<sup>74</sup>

Subsequently, on 15 April 2021, the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody recommended:

That the NSW Government consider merging the functions of the Inspector of Custodial Services into the NSW Ombudsman's office.<sup>75</sup>

The NSW Ombudsman, Paul Miller, was quoted in the report and noted that,

in our view, the inspectorate, in its current form, lacks essential qualities that would be essential if it is to lead the OPCAT inspection functions', and that by merging the Inspector of Custodial Services into the NSW Ombudsman's office the NSW Government could potentially have one National Preventative Mechanism covering all aspects of custodial oversight.<sup>76</sup>

Despite these recommendations, the NSW Government has not provided any public comment on its NPM designation intentions to date. In March 2021, the following public answers were produced in response to a Question on Notice arising from Budget Estimates 2021:

The implementation of the Optional Protocol to the Convention against Torture (OPCAT) is an initiative of the Commonwealth Government. NSW did not support the ratification of OPCAT before resourcing concerns were addressed and does not support implementation until those concerns are addressed.

NSW already has one of the strongest custodial oversight mechanisms in the country. However, NSW oversight bodies will not be able to perform the additional functions required by OPCAT within existing resources without compromising their ability to fulfil existing functions.

The NSW Government does not intend to consult on OPCAT implementation until those resourcing concerns are addressed.<sup>77</sup>

On 12 April 2022, the NSW Attorney General reiterated this position, stating:

Discussions between the Commonwealth and jurisdictions about operational issues relating to OPCAT, including any formal arrangements under an inter-governmental agreement, are ongoing.<sup>78</sup>

## Victoria

<b>Designated or Proposed NPM(s):</b>	
<b>OPCAT Legislation:</b>	<a href="#">Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</a> (Passed on 20 September 2022)

The Victorian Government has not provided any public comment on its NPM designation intentions to date.

The Victorian Ombudsman undertook two OPCAT style inspections in 2017 and 2019<sup>79</sup> and investigated what effective implementation should look like. The Victorian Ombudsman recommended a single independent body be designated NPM for Victoria, to operate with a legislatively mandated Advisory Group to complement the roles of existing oversight bodies and civil society.

The investigation found the Victorian Ombudsman was best placed to be designated NPM as described in Article 3 of OPCAT.

Similarly, the Commission for Children and Young People has publicly expressed its interest in fulfilling the role in light of its existing responsibilities to monitor youth justice and secure care facilities, and its expertise in the needs, safety and wellbeing of children and young people.<sup>80</sup>

In her 2022 report on the implementation of recommendations, the Victorian Ombudsman noted:

Some things, sadly, have not changed for the better, and Victoria's apparent inability to make progress implementing the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('OPCAT') is one of them. I have tabled two reports exploring both the policy and operational needs to implement this important international treaty to improve our treatment of people in detention.

Some states and territories have now designated the body or bodies who will perform the inspection role, but despite the years we have had to prepare, Victoria has not yet done so. The Department of Justice and Community Safety says it is waiting on a funding agreement with the Commonwealth. Yet the cost of establishing an independent inspection function – which we calculated in our 2019 report – represents a fraction of 1 per cent of the current prison budget.<sup>81</sup>

In the 2021–22 State Budget, \$500,000 was allocated towards the implementation of OPCAT.<sup>82</sup>

On 24 March 2022, the Victorian Legislative Council Legal and Social Issues Committee reported on an inquiry into Victoria's Criminal Justice System. It recommended:

That the Victorian Government provide a comprehensive update on the implementation of obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in its jurisdiction to date, as well as a timeframe for full implementation including the appointment of National Preventative Mechanisms. It should further seek to realise full implementation of these obligations as a matter of priority.<sup>83</sup>

Within the report, the Victorian Government stated:

Victoria has been consistent in its position that a sufficient and ongoing funding commitment from the Commonwealth is essential to implement and deliver on these obligations into the future. The absence of this has significantly hampered our ability to progress the necessary preparatory work and consultation.

On 18 October 2021, the Victorian and NSW Attorneys-General wrote jointly to the Commonwealth, explaining that Victoria and NSW would be unable to take steps to implement OPCAT, in the absence of an accompanying sufficient and ongoing funding commitment from the Commonwealth.<sup>84</sup>

On 2 August 2022, the Victorian Government introduced the *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Bill 2022* (Vic). The Bill is designed to facilitate visits to places of detention and access to information by the UN SPT.

During parliamentary debate on 1 September 2022, Ms Katie Hall, Parliamentary Secretary for Creative Industries, reiterated:

It is important to note that the bill does not fulfil all requirements of OPCAT, and in particular there is no single agency that undertakes the preventative monitoring function of an NPM. The commonwealth's ratification imposes the additional obligation on states and territories to create one. Victoria has been consistent in its position that a sufficient and ongoing funding commitment from the commonwealth is essential to establish and maintain this. The absence of proper funding to date has significantly hampered Victoria's ability to progress the necessary preparations and consultation required to designate an NPM. Victoria is working constructively with the new commonwealth government to facilitate the full implementation of OPCAT in Australia in a way that is effective and sustainable.<sup>85</sup>

On 20 September 2022, the Bill passed both Houses of Parliament. The Act was assented to on 27 September 2022, but at the time of writing had not yet been proclaimed. Section 2(2) of the Act provides that the latest date for the Act to come into operation will be 2 August 2023.

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<sup>1</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-crue>

<sup>2</sup> United Nations Committee Against Torture. Decision adopted by the Committee on the request submitted by Australia under article 24 (2) of the Optional Protocol to the Convention (CAT/C/73/3) (3 June 2022)

<sup>3</sup> United Nations Committee Against Torture. Decision adopted by the Committee on the request submitted by Australia under article 24 (2) of the Optional Protocol to the Convention (CAT/C/73/3) (3 June 2022) [8]

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- <sup>4</sup> United Nations Committee Against Torture. Decision adopted by the Committee on the request submitted by Australia under article 24 (2) of the Optional Protocol to the Convention (CAT/C/73/3). (3 June 2022) [9]
- <sup>5</sup> Richard Harding and Neil Morgan. Implementing the Optional Protocol to the Convention against Torture: Options for Australia A report to the Australian Human Rights Commission by Professors Richard Harding and Neil Morgan, Centre for Law and Public Policy, The University of Western Australia. (1 October 2008) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-optional-protocol-convention-against-torture>>
- <sup>6</sup> Australian Human Rights Commission. Consideration of Australia's ratification of the Optional Protocol to the Convention against Torture Australian Human Rights Commission Submission to the Joint Standing Committee on Treaties. (29 March 2012) <<https://humanrights.gov.au/our-work/legal/consideration-australias-ratification-optional-protocol-convention-against-torture#Heading188>>
- <sup>7</sup> Australian Human Rights Commission. Children's Rights Report 2016. <[https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2016?\\_ga=2.44076772.1127347356.1655853694-235133782.1655853694](https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2016?_ga=2.44076772.1127347356.1655853694-235133782.1655853694)>
- <sup>8</sup> Australian Human Rights Commission. Implementing OPCAT in Australia. (29 June 2020) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>>
- <sup>9</sup> Australian Human Rights Commission. Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 Submission to the Northern Territory Department of the Attorney General and Justice. (4 February 2022) <<https://humanrights.gov.au/our-work/legal/submission/monitoring-places-detention-optional-protocol-convention-against-torture>>
- <sup>10</sup> Australian Human Rights Commission. National Preventive Mechanisms: a formal safeguard for people with disability Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (23 September 2022) <<https://humanrights.gov.au/our-work/legal/submission/national-preventive-mechanisms-formal-safeguard-people-disability>>
- <sup>11</sup> Australian Human Rights Commission. Implementing OPCAT in Australia. (29 June 2020), 21 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>>
- <sup>12</sup> OPCAT Article 18 (4)s
- <sup>13</sup> The Paris Principles were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7 - 9 October 1991), adopted by Human Rights Commission Resolution 1992/54 in 1992 and General Assembly Resolution 48/134 in 1993 ; OHCHR, Paris Principles: 20 years guiding the work of National Human Rights Institutions (30 May 2013) <<http://www.ohchr.org/EN/NewsEvents/Pages/ParisPrinciples20yearsguidingtheworkofNHRI.aspx>>
- <sup>14</sup> Richard Harding and Neil Morgan. Implementing the Optional Protocol to the Convention against Torture: A report to the Australian Human Rights Commission by Professors Richard Harding and Neil Morgan, Centre for Law and Public Policy, The University of Western Australia. (1 October 2008), 17 <<https://humanrights.gov.au/sites/default/files/document/publication/opcat.pdf>>
- <sup>15</sup> United Nations Subcommittee for the Prevention of Torture, Visit to the Netherlands for the purpose of providing advisory assistance to the national preventive mechanism: recommendations and observations addressed to the State party, CAT/OP/NLD/1, (2016) [26]
- <sup>16</sup> Office of the High Commissioner for Human Rights, Letter: [Advice from the SPT](#) (January 29 2018), 1 para 3

- <sup>17</sup> Australian Human Rights Commission, *Implementing OPCAT in Australia*, (29 June 2020), 60 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>>
- <sup>18</sup> Senate Standing Committee on Legal and Constitutional Affairs. Budget Estimates 2020-21, Attorney General's Department LCC-BE20-90 – OPCAT <<https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=c4eb1dde-f6cf-4ed7-8763-72480290ab69>> ; Senate Standing Committee on Legal and Constitutional Affairs. Budget Estimates 2021-22, Attorney-General's Department LCC-SBE21-057 – OPCAT <<https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=c9edd8b6-4bf0-42e6-a805-8de2026feec8>>
- <sup>19</sup> Senate Standing Committee on Legal and Constitutional Affairs. Estimates (Wednesday 23 May 2018), 122 <[https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/3cae4e3c-b6d4-4b18-b464-b5e055c40682/toc\\_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee%2018\\_05\\_23\\_6149\\_Official.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/3cae4e3c-b6d4-4b18-b464-b5e055c40682/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee%2018_05_23_6149_Official.pdf;fileType=application%2Fpdf)> ; Senate Standing Committee on Legal and Constitutional Affairs. Budget Estimates 2021-22, Attorney-General's Department LCC-SBE21-057 – OPCAT <<https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=c9edd8b6-4bf0-42e6-a805-8de2026feec8>> ; Response to Question on Notice – no. 4267 – asked 6 October 2021 <<https://www.aph.gov.au/api/qon/downloadquestions/Question-ParliamentNumber46-QuestionNumber4267>>
- <sup>20</sup> The Hon Mark Dreyfus KC MP. Meeting of Attorneys-General communiqué (12 August 2022) <<https://ministers.ag.gov.au/media-centre/meeting-attorneys-general-communiqué-12-08-2022>>
- <sup>21</sup> Australian Human Rights Commission, *Implementing OPCAT in Australia*, (29 June 2020), 55 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>>
- <sup>22</sup> Commonwealth Ombudsman, 'Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)' (Report, September 2019), 8.
- <sup>23</sup> Response to Question on Notice - LCC-AE20-50 – asked 03 March 2020 <<https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=f458fc2e-bbf2-4ccc-8da8-49b246b437b6>>
- <sup>24</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Annex Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms (UN Doc CAT/C/57/4 March 22 2016), 19 para 1-3
- <sup>25</sup> United Nations Subcommittee on the Prevention of Torture, Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment UN Doc CAT/C/57/4 (22 March 2016) 19 [1]-[3].
- <sup>26</sup> The Hon. Mark Speakman. Budget Estimates 2021 Questions Taken on Notice Portfolio Committee No. 5 – Legal Affairs (26 March 2021), Question 14, 35 <<https://www.parliament.nsw.gov.au/lcdocs/other/15381/AQON%20-%20Attorney%20General%20and%20Prevention%20of%20Domestic%20Violence%20-%20Minister%20Speakman.pdf>>; The Hon. Elise Archer. House of Assembly Estimates Committee B. (8 September 2021), 25 <<https://www.parliament.tas.gov.au/ParliamentSearch/isysquery/646e1e1a-aef8-4738-9d7a-87774dd880e2/5/doc/>> ; Jack Latimore. "Deaths in custody oversight missing as government

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