

POLICY FUTURES

A Reform Agenda



Shining a Light in Dark Places: A once-in-a-generation opportunity to safeguard people in detention and care settings.

In 2017, Australia ratified the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), fulfilling a pledge made during its Human Rights Council election campaign. OPCAT requires the establishment of a National Preventive Mechanism (NPM) – an independent monitoring mechanism empowered to conduct regular, preventive, and human rights focused visits to all places where the State does or may deprive people of liberty.

Australia has committed to establishing a multi-body NPM with responsibility shared among jurisdictions. An effective NPM must adopt the UN definition of ‘deprivation of liberty’, be underpinned by legislation, and be properly funded and resourced. Failure to do this places Australia at risk of potential human rights abuses, compensation claims, rehabilitation costs, and reputational damage.

Steven Caruana
2017 Churchill Fellow (NSW)

Key Policy Recommendations

It is recommended that the Australian Government, in meeting its ambitions to establish an effective NPM to meet its OPCAT obligations, should:

1

Accept the interpretation of ‘deprivation of liberty’ adopted by the United Nations Subcommittee on Prevention of Torture (SPT)

Australia is the only country to have a limiting scope on the places of detention its NPM will operate in. Australian NPM’s mandate should not be inhibited in this way, and it should be free to determine its own priorities.

2

Develop primary legislation in consultation with all relevant stakeholders, and enact it to give practical effect to the OPCAT in Australia

The Australian Government has consistently expressed the view that primary legislation is unnecessary despite the Australian Human Rights Commission noting that primary legislation would safeguard the NPM network, guarantee appropriate resourcing and enshrine its independence. Legislation should be drafted through an open, transparent, and consultative process and enacted.

3

Ensure the NPM is properly funded and resourced

Funding has emerged as the most significant stumbling block to the establishment of the Australian NPM. However, the relatively minor costs of Australia’s NPM needs to be weighed against the human, financial and reputational costs of not taking OPCAT seriously.

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Cost of Inaction

Royal Commission into Aged Care Quality and Safety **\$104.3 million**

of Federal Government funding spent over four years for the royal commissionⁱ

‘Australians must be able to trust that their loved ones will be cared for appropriately and the community should have confidence in the system.’

– Former Prime Minister Scott Morrison on announcing the Royal Commission into Aged Care Quality and Safety

‘... the Royal Commission was based after learning what had happened in the Oakden aged care facility.’

– Former Prime Minister Scott Morrisonⁱⁱ

‘Oakden would not have happened, had we had an NPM [National Preventive Mechanism] in place ...’

– Former South Australian Chief Psychiatrist, Dr Aaron Groves

Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory

Abuse suffered by six teenage boys at the Don Dale Detention Centre in 2014 thrust the treatment of detainees in the top end into the national spotlight, eventually culminating in the royal commission which cost approximately

\$70 millionⁱⁱⁱ

‘We’re determined to examine the extent to which there has been a culture of abuse and indeed whether there has been a culture of cover up, because there have been inquiries into this centre before ... So why was this abuse, this mistreatment, unrevealed for so long?’

– Former Prime Minister Malcolm Turnbull on announcing the royal commission^{iv}

‘Had the OPCAT been operational at the time the events of the Don Dale Youth Detention Centre in Northern Territory emerged, then it may well be that ... they wouldn’t have happened at all...’

– Former Commonwealth Attorney General, George Brandis



Rebuilding Trust in Government

‘Given that OPCAT applies to all federal states without limitations or exceptions, it is concerning that four years after it ratified the Optional Protocol, Australia appears to have done little to ensure consistent implementation of OPCAT obligations across the country, including but not limited to passing overarching legislation to translate its international obligations into domestic law.’

– Shujune Muhammad, head of UN SPT delegation after suspension of its visit to Australia citing lack of co-operation (OHCHR)^v

‘After a decade of disappointment, we are rebuilding trust in government and ensuring Australians have greater access to legal services, are kept safe, and have greater confidence in the integrity of our institutions.’

– Commonwealth Attorney General Mark Dreyfus^{vi}



Closing the Gap

Recommendations support the following target:

Target 10

Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system.

By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

ⁱ <https://www.abc.net.au/news/2019-02-11/aged-care-royal-commission-explained/10759398> ⁱⁱ <https://pmtranscripts.pmc.gov.au/release/transcript-43004>

ⁱⁱⁱ <https://www.sbs.com.au/news/article/former-nt-youth-detainee-slams-70m-royal-commission-after-no-charges-laid/473g4c6pl>

^{iv} <https://pmtranscripts.pmc.gov.au/release/transcript-40366> ^v <https://ministers.ag.gov.au/media-centre/investing-integrity-human-rights-and-safety-25-10-2022>

^{vi} <https://www.ohchr.org/en/press-releases/2022/10/un-torture-prevention-body-suspends-visit-australia-citing-lack-co-operation>