

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

An opportunity to prevent the ill-treatment, torture and death of Aboriginal and Torres Strait Islander people in custody.

What is OPCAT?

In 2017, Australia made a commitment to implement the United Nations *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* by January 2022. The Australian Government then sought a further one year extension, until January 2023. The objective of OPCAT is ‘to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.’

OPCAT, ratified by Australia, requires States to ‘set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.’ These bodies are called National Preventive Mechanisms (**NPMs**). NPMs can mitigate the risks of torture and ill-treatment of people who are detained in police vehicles and cells, prisons and youth detention facilities and other places where people may be deprived of their liberty.

Accountability and prevention are two sides of the same coin, but the only jurisdictions that have designated NPMs at this stage are the Commonwealth and Western Australia.

Australia’s obligations also extend to facilitating visits by the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**SPT**), which has announced that it will be visiting Australia in the second half of 2022, inspecting places of deprivation of liberty and torture prevention measures in Australia.



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Does OPCAT need to be culturally appropriate for Aboriginal and Torres Strait Islander People?

Yes. Effective prevention of the torture and ill-treatment of Aboriginal people in custody requires culturally appropriate OPCAT implementation.

Aboriginal and Torres Strait Islander people are grossly overrepresented in the criminal legal system. OPCAT is an opportunity to prevent torture and ill-treatment, but it will only achieve real outcomes for Aboriginal people if the operations, policies, frameworks and governance of the designated detention oversight bodies are always culturally appropriate and safe for our people.

Should the Government be consulting with Aboriginal communities and organisations about OPCAT implementation?

Culturally appropriate implementation of OPCAT simply cannot be realised without our participation, respecting the existing governance structures under the Aboriginal Justice Agreement and the expertise of Aboriginal Community Controlled Organisations such as VALS. VALS has been advocating for the Government to urgently undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community, its representatives and Aboriginal Community Controlled Organisations (such as VALS) on the implementation of OPCAT in a culturally appropriate way.

What are some key features of a culturally appropriate NPM (OPCAT detention oversight body)?

The Victorian NPM must be culturally competent for Aboriginal and/or Torres Strait Islander people.

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The NPM should appreciate

- the legacy and ongoing impacts of colonisation;
- that Aboriginal perspectives of what constitutes torture, or cruel, inhuman or degrading treatment or punishment may diverge from that of non-Aboriginal people; and
- that the long-term impact of torture and ill-treatment can be shaped by the survivors' culture and the historic-political context of the ill-treatment (including the history of colonisation).

It should also take into account systemic racism in its work.

You can find further information on culturally appropriate OPCAT implementation in the Churchill Fellowship report of our Head of Policy, Communications and Strategy, Andreea Lachs, [here](#).

How can the Victorian and Commonwealth Governments properly implement OPCAT in Victoria?

VALS has made a number of recommendations for proper implementation of OPCAT in Victoria, in accordance with an accurate interpretation of OPCAT and established best practice:

- The Victorian NPM's mandate should (in compliance with Article 4 of OPCAT and Recommendation 10 of the [Australian Human Rights Commission's report](#)), include any place under the Government'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.
- Places of detention should include both public and private custodial settings, which that person is not permitted to leave at will, by order of any judicial, administrative or other authority.
- The NPM's mandate should include (but not be limited to) forensic mental health hospitals, closed forensic disability facilities or units, correctional facilities, youth detention facilities, police custody, court custody, and residential secure facilities for children. It should also include circumstances such as the Victorian public housing towers that were subjected to hard lockdown during the pandemic.

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- The Australian Human Rights Commission's expansive understanding of 'place of detention', including that temporal limits should not be erroneously imposed, is an accurate interpretation of OPCAT that should be adopted by the Victorian Government. The Commonwealth Government has suggested excluding from an NPMs' mandate places of detention where people are held for less than 24 hours. This is not only an inaccurate legal interpretation, it also fails to acknowledge research that has shown that the risk of torture is higher in police custody than in correctional facilities.
- The Victorian Government should legislate for the NPM's mandate, structure, staffing, powers, privileges and immunities.
- The Victorian Government must ensure that the NPM is sufficiently funded to carry out its mandate effectively and independently (recognising that this may include funding from the Commonwealth Government).

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Where can I learn more about OPCAT?

You can watch the recording of our first webinar from our **Unlocking Victorian Justice series**: OPCAT - An opportunity to prevent the ill-treatment, torture and death of Aboriginal and Torres Strait Islander people in custody [here](#).

Senator Lidia Thorpe gave the opening address for the OPCAT panel.

The panellists were:

- Dr Elina Steinerte, Vice-Chair United Nations Working Group on Arbitrary Detention
- Professor Sir Malcolm D Evans, Former Chair of the UN Subcommittee for Prevention of Torture
- Dr Matthew Pringle, Founder of the Canada OPCAT Project
- Ben Buckland, Senior Advisor at Association for the Prevention of Torture

You can find out more about the panellists [here](#).

You can read more about OPCAT, and the prevention of and accountability for Aboriginal deaths in custody in the below VALS documents:

- [Building Back Better – VALS COVID-19 Recovery Plan](#)
- [Submission to the Public Accounts and Estimates Committee – Inquiry into the Victorian Government’s Response to COVID-19](#)
- [Supplementary submission to the Royal Commission into Victoria’s Mental Health System](#)
- [Submission to the Inquiry into Victoria’s Criminal Justice System](#)
- [Submission to the Cultural Review of the Adult Custodial Corrections System](#)
- [Submission to the Consultation on RACGP Standards for Health Services in Australian Prisons \(2nd edition\)](#)