



Victorian  
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Legal Service



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Limited

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31 October 2022

The Hon Jaclyn Symes  
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Dear Attorney-General,

**Re: The Optional Protocol on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**

We are writing in relation to the recent visit of the United Nations Subcommittee on the Prevention of Torture (SPT) and the Victorian Government's obligations to establish independent detention oversight in Victoria.

**Visit of the SPT**

Between 16-24 October 2022, the SPT was due to visit Australia. The SPT commenced its visit, including a meeting with Corrections Victoria on 17 October 2022. However, the SPT suspended their visit on 23 October following repeated obstructions and refusal to provide all relevant information and documentation in several jurisdictions. According to the Committee, "this [was] a clear breach by Australia of its obligations under OPCAT."<sup>1</sup>

We note the Joint Statement of Concern regarding the suspended visit, which has over 50 signatories including human rights and community legal organisations.<sup>2</sup>

Since 2007, the SPT has carried out 81 visits across the world and has only suspended its visit on

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<sup>1</sup> United Nations Subcommittee on Prevention of Torture (SPT), "[UN torture prevention body suspends visit to Australia citing lack of co-operation](#)," 23 October 2022.

<sup>2</sup> "Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland," (24 October 2022): [ALHR – Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland](#)

four occasions,<sup>3</sup> including most recently in Australia. In two of these countries, the SPT visit has resumed once the country provided the necessary assurances.

Resuming the SPT visit in Australia is critical for effective and timely implementation of OPCAT. We strongly recommend that the Victorian Government advocate with other Australian governments, to ensure that the visit is resumed and completed successfully.

### **Aboriginal deaths in custody in Victoria**

In the last 12 months, three Aboriginal and/or Torres Strait Islander people have died in Victoria's prisons, and a 16-year-old Aboriginal boy is being held in an adult prison and subjected to extended periods of solitary confinement.<sup>4</sup>

Recent reports by the Independent Broad-based Anti-corruption Commission (IBAC),<sup>5</sup> and the Victorian Ombudsman<sup>6</sup> have highlighted significant issues in Victorian prisons, including that prison staff do not understand their duty of care to respect the human rights of people in prison.<sup>7</sup>

Independent and culturally appropriate oversight of prisons and police cells is a critical way to improve conditions in these facilities and prevent Aboriginal deaths in custody.

Victoria has made limited progress to establish independent detention oversight in accordance with OPCAT and is on track to miss the January 2023 deadline for OPCAT implementation. While the Victorian Government continues to delay, there is a significant risk that more Aboriginal people will die in custody.

The Victorian Government has argued that it needs funding from the federal government to meet its commitment to prevent torture, but the Victorian Government has spent billions of dollars on prison and police in recent years. A small fraction of that spending could be used to establish independent detention oversight that meets Victoria's obligations under OPCAT. It is unlikely that the Commonwealth will agree funding for states to implement OPCAT while several states, as shown by the suspension of the SPT's visit, are effectively opposed to independent detention oversight. Victoria's compliance with OPCAT is urgent, and it must not be made to wait on decisions from other states or the Commonwealth.

Victoria's commitment to preventing torture should not be compromised by the behaviour of other jurisdictions.

We strongly recommend that the Victorian government take urgent action to establish/designate an independent and culturally appropriate National Preventive Mechanism (NPM). Aboriginal organisations and

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<sup>3</sup> SPT, [SPT Visits](#) (website); The Law Report, Interview with Judge Aisha Shujune Muhammad, Head of the SPT Team leading the visit in Australia (25 October 2022).

<sup>4</sup> N. Bucci, "[Dying is normal in this jail': teenager held in Port Phillip prison for four months](#)," 9 October 2022.

<sup>5</sup> IBAC, [Special report on corrections: IBAC Operations Rous, Caparra, Nisidia and Molara](#), June 2021.

<sup>6</sup> Victorian Ombudsman, [Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison](#), June 2022.

<sup>7</sup> IBAC, Special Report on Corrections, p. 9.

communities must be involved in the process to establish/designate the NPM, and be given opportunities to provide ongoing input into its functioning.

We welcome the opportunity to meet with you to discuss the following two recommendations:

1. The Victorian Government should advocate with other Australian governments, to ensure that the SPT's visit to Australia is resumed and completed successfully.
2. The Victorian Government must take urgent action to establish/designate independent and culturally appropriate detention oversight in Victoria, in compliance with OPCAT. Aboriginal organisations and communities must be involved in the process to establish/designate the oversight mechanism, and be given opportunities to provide ongoing input into its functioning.

Kind regards,

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*Co-Chair, Aboriginal Executive Council*



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