



# **Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**

**BASELINE ASSESSMENT OF AUSTRALIA'S OPCAT READINESS**

September 2019

REPORT BY THE COMMONWEALTH OMBUDSMAN,  
MICHAEL MANTHORPE, UNDER THE *OMBUDSMAN ACT 1976*

REPORT NO. **03 | 2019**

# CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>GLOSSARY .....</b>	<b>4</b>
<b>PART 1: OPCAT, THE NPM AND CONSIDERATION OF INTERNATIONAL BEST PRACTICE.....</b>	<b>6</b>
<i>The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) .....</i>	6
<i>United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).....</i>	6
<i>National Preventive Mechanism Coordinator (NPM Coordinator) .....</i>	7
<i>National Preventive Mechanism for Commonwealth places of detention.....</i>	8
<i>Primary places of detention.....</i>	8
<i>Consideration of international best practice .....</i>	9
United Kingdom.....	9
New Zealand.....	10
Legislative mandate for NPM bodies .....	10
Use of surveys.....	11
Multi-disciplinary teams.....	11
Shared experience.....	12
Announced or unannounced visits .....	13
Thematic focus .....	14
<b>PART 2: THE OPCAT FRAMEWORK AND BASELINE MAPPING OF EXISTING MONITORING ARRANGEMENTS .....</b>	<b>16</b>
The OPCAT framework.....	16
<i>Preventive visiting mandate .....</i>	16
<i>Independence.....</i>	16
<i>Composition.....</i>	17
<i>Access to places.....</i>	17
<i>Access to information.....</i>	18
<i>Access to persons .....</i>	18
<i>Ability to publish reports and make recommendations .....</i>	18
<i>Privileges, immunities and protections from reprisals.....</i>	18
<i>Ability to contact the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).....</i>	19
Jurisdictional assessments of OPCAT readiness .....	19

<i>Methodology</i> .....	19
<i>Commonwealth</i> .....	20
<i>Australian Capital Territory</i> .....	21
<i>New South Wales</i> .....	22
<i>Northern Territory</i> .....	23
<i>Queensland</i> .....	24
<i>South Australia</i> .....	25
<i>Tasmania</i> .....	27
<i>Victoria</i> .....	27
<i>Western Australia</i> .....	29
Mapping places of detention - existing arrangements in Australia.....	30
<i>OPCAT implementation in Australia – utilising existing bodies</i> .....	30
Table 1 – Estimated total number of facilities falling within the definition of primary places of detention within states and territories.....	31
Table 2 – Total number of facilities able to be inspected across places of detention within the Commonwealth.....	32
Current oversight coverage .....	33
Table 3 – Oversight of police lock-ups and police station cells .....	33
Table 4 – Current oversight for Commonwealth places of detention.....	34
Table 5 – Current oversight for places of detention within the Australian Capital Territory.....	35
Table 6 – Current oversight for places of detention within New South Wales	35
Table 7 – Current oversight for places of detention within the Northern Territory .....	36
Table 8 – Current oversight for places of detention within Queensland .....	37
Table 9 – Current oversight for places of detention within South Australia .....	38
Table 10 – Current oversight for places of detention within Tasmania .....	38
Table 11 – Current oversight for places of detention within Victoria .....	39
Table 12 – Current oversight for places of detention within Western Australia .....	40
<b>PART 3: NEXT STEPS .....</b>	<b>41</b>
Where to from here? .....	41
<i>Designation</i> .....	41
<i>Legislation</i> .....	41
<i>Resourcing</i> .....	41
<i>Cooperation</i> .....	42
<i>Widening of scope</i> .....	43

<i>Principles and standards</i> .....	43
<i>The role of civil society</i> .....	43
Conclusion.....	43
<b>APPENDIX 1 – OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT .....</b>	<b>45</b>
Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment .....	46
<i>Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006</i> .....	46
<b>APPENDIX 2 – SAMPLE BASELINE STUDY TOOL REQUEST .....</b>	<b>58</b>
<b>APPENDIX 3 – SNAPSHOTS OF OVERSIGHT AND INSPECTION BODIES IN THE COMMONWEALTH, STATES AND TERRITORIES .....</b>	<b>62</b>
<i>Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth</i> .....	63
<i>Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory</i> .....	67
<i>Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales</i> .....	74
<i>Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory</i> .....	84
<i>Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland</i> ..	89
<i>Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia</i> .....	100
<i>Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania</i> ....	113
<i>Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria</i> .....	117
<i>Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia</i> .....	132

## EXECUTIVE SUMMARY

In December 2017 the Australian Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In announcing Australia's intention to ratify OPCAT, the former Minister for Foreign Affairs described ratification as a significant human rights achievement for the government.<sup>1</sup>

OPCAT is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse. The key obligations arising from ratification include establishing a system of regular preventive visits by independent bodies, known as National Preventive Mechanisms (NPMs), and accepting visits from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT).

OPCAT does not create new rights for people who are detained, but it seeks to reduce the likelihood of mistreatment. It makes clear that the rights of people deprived of their liberty should be respected and upheld. This is important, both as a matter of principle and of good public policy. It recognises that almost all people deprived of their liberty will, at some stage, be released and require successful reintegration into the community. The mechanisms to be established in accordance with OPCAT are designed to ensure that conditions and treatment within places of detention are respectful, safe and humane. This is one lever to promote rehabilitation and reduce the rate of recidivism.

At the time of ratification, the Australian Government made a declaration under Article 24 (Part IV) of OPCAT postponing the implementation of its obligations to establish its NPM for three years.<sup>2</sup> The mandate allowing for in-country visits by the SPT has not been delayed and could take place at any time. In fact, the United Nations Subcommittee on Prevention of Torture (SPT) has announced it intends to visit Australia in the coming months, and has a particular interest in the establishment of its NPM.

In Australia's federated system there is the potential for both gaps and areas of overlap in arrangements that exist across jurisdictions. This is neither unexpected nor insurmountable. The steps towards successful implementation are not unknown, nor are they impossible to achieve. We can look to effective monitoring regimes in comparable international jurisdictions and consider internationally accepted guidance material. We can also learn from domestic arrangements where inspection bodies are close to being ready to be able to conduct OPCAT inspections. It is likely that some changes to practices or structures will be required for most, if not all, existing bodies — including the Office of the Commonwealth Ombudsman — in the journey towards OPCAT implementation.

The Australian Government announced the Office of the Commonwealth Ombudsman as the NPM for Commonwealth places of detention, with effect from 1 July 2018. It also announced the Office as the NPM Coordinator. In our role as the NPM Coordinator we do not have authority over other inspectorates and do not intend to engage in secondary inspections. The Office's intention is that its coordination role will be undertaken in a collaborative and cooperative manner, with a focus on

---

<sup>1</sup> J Bishop (former Minister for Foreign Affairs), Improving oversight and conditions in detention, media release, Parliament House, Canberra, 9 February 2017.

<sup>2</sup> United Nations, *United Nations Treaty Collection: 9. b Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, United Nations, New York, 2019, viewed 17 September 2019, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=_en#EndDec)>.

research, sharing expertise and developing communities of practice focused on areas of vulnerability or concern.

The purpose of this report is to provide a comprehensive and contemporary overview of Australia's readiness to implement OPCAT. The work of 55 existing Commonwealth, state and territory inspection and oversight bodies was examined as part of our baseline assessment of OPCAT readiness.

In undertaking this review of existing oversight bodies we focused on:

- how they operate.
- how they inspect or monitor.
- which places they can access.
- inspection methodologies and principles.

We also mapped the types and numbers of places of detention within Australia, at least those that fit within the concept of 'primary places of detention'.

This report complements the work being done by the Australian Human Rights Commission (AHRC), led by Human Rights Commissioner Edward Santow. While the AHRC's work has focused on engagement with civil society, this report is based on engagement with and self-assessment by the entities that currently do have, or may have, a role in oversight and inspection of places of detention. These complementary roles for the AHRC and the Office demonstrate how agencies and bodies can leverage each other's existing expertise and work together to ensure that all perspectives are considered in OPCAT implementation.

Part 1 of this report describes OPCAT and also the Office's dual role as the NPM Coordinator and the NPM inspector of Commonwealth places of detention. It outlines the Australian Government's decision to focus OPCAT implementation on places described as 'primary places of detention'.

Part 1 also considers how OPCAT has been adopted internationally with an emphasis on the approaches taken in other Commonwealth countries, specifically the United Kingdom and New Zealand. This part uses the experience of those countries to reflect on what could be best practice for OPCAT implementation in Australia. It acknowledges the specific challenges for Australia in terms of its geographical size and the distances between places of detention and the bodies responsible for their oversight.

Part 2 of this report summarises Australia's readiness for OPCAT implementation by jurisdiction, and discusses areas of overlap or gaps in current arrangements. The report provides a jurisdiction-by-jurisdiction assessment of OPCAT readiness, including with respect to the inspection of Commonwealth places of detention.

This part of the report reviews what international good practice suggests should be embodied by NPMs to ensure a preventive focus of:

- independence.
- composition and a multi-disciplinary approach.
- unfettered access to places, information and persons in detention.
- public reporting and ability to make recommendations.
- privileges, immunities and protections from reprisals.

The purpose of this report is not to criticise any current body or jurisdiction. Rather, the material serves as a baseline against which to assess progress over time, and to highlight particular areas where it is suggested that improvements in capability will need to be made to achieve effective OPCAT implementation. The appendices provide snapshot summaries of the self-assessments by

existing bodies and the extent to which they already meet the requirements set out in OPCAT. Snapshots in this report capture the number and type of facilities able to be accessed by different bodies within each jurisdiction.

Finally, Part 3 of the report highlights further areas for consideration, such as resourcing, scope, the important role of civil society and legislative or structural amendments that may be required. This part of the report also considers potential future activities of the NPM Coordinator and how those activities can enhance the work of the NPMs across the Commonwealth, states and territories.

Beyond the mid-way point of the three year implementation period, it is important to move demonstrably forward. 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. The publication of this report coincides with Western Australia's recent nomination of its NPMs. The Western Australian Ombudsman and the Office of the Inspector of Custodial Services have been nominated as Western Australia's NPMs for mental health and other secure facilities, and justice-related facilities (including police lock-ups), respectively.

Victoria has also advised it is working towards nominating its NPM, including considering the suitability of new bodies or the adaptation of existing bodies with a new legislative mandate to give effect to its OPCAT obligations. South Australia has also advised it is close to reaching agreement on a proposed model for implementing its obligations under OPCAT to establish a NPM. We understand that, following the publication of this report and the AHRC's report, the ACT intends to engage with its stakeholders on a final NPM model. Tasmania has advised that an inter-agency working group is continuing to meet in that jurisdiction to resolve its NPM nomination.

Implementation of OPCAT will require respectful and collaborative engagement. We hope this report will contribute positively to those discussions.

## GLOSSARY

APT	The Association for the Prevention of Torture is an independent non-governmental organisation based in Geneva, working globally since 1977 to prevent torture and other forms of ill treatment. It advocates for the ratification of OPCAT and the adoption of legal and policy frameworks to ensure the effective prevention of abuse.
CAT	The Committee Against Torture, which monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its State Parties.
Cruel or inhuman treatment or punishment	In accordance with Article 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: <i>‘Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.’</i>
Deprivation of liberty	As defined in Article 4(2) of OPCAT: <i>‘...any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’</i>
DFCE	Defence Force Corrective Establishment — the tri-service military correctional facility for service personnel under arrest, or service personnel serving a sentence of imprisonment for more than 14 days.
NPM	National Preventive Mechanism. Article 3 of OPCAT states: <i>‘Each State Party shall 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 (hereinafter referred to as the national preventive mechanism).’</i>
NPM Network	National Preventive Mechanism Network — the network of NPM bodies likely to be established to implement Australia’s obligations under OPCAT.
OPCAT	The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations in December 2002 and entered into force in June 2006. OPCAT was ratified by the Australian Government on 21 December 2017 and entered into force on 20 January 2018.
SPT	The United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which comprises of 25 independent international experts. SPT undertake visits to State Parties that have ratified OPCAT and visit any place where persons may be deprived of their liberty, and also advise State Parties on the establishment of NPMs. <sup>3</sup>
The Office	The Office of the Commonwealth Ombudsman.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, *Optional Protocol to the Convention against Torture (OPCAT) Subcommittee on Prevention of Torture*, United Nations, Geneva, 2019, viewed 16 June 2019, <<https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>>.



Places of detention	As defined in Article 4(1) of OPCAT: <i>'Any place under [the 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 (hereinafter referred to as places of detention).'</i>
Primary places of detention	The Commonwealth has suggested that, in the first instance, arrangements be put in place to ensure OPCAT compliance at the following places of detention: <ul style="list-style-type: none"> <li>• adult prisons</li> <li>• juvenile detention facilities (excluding residential secure facilities)</li> <li>• police lock-up or police station cells (where people are held for equal to, or greater than, 24hrs)</li> <li>• 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 such as a locked ward at a residential institution<sup>4</sup>)</li> <li>• 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), such as a Disability Forensic Assessment and Treatment Service<sup>5</sup></li> <li>• immigration detention centres</li> <li>• military detention facilities.</li> </ul>
Torture	In accordance with Article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: <i>'...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.'</i>
UNCAT	The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

---

<sup>4</sup> For the avoidance of doubt, where a specific place of detention (such as a closed area or unit) is situated within a larger facility (such as a hospital), only those specific places of detention will be considered within the scope of primary places of detention.

<sup>5</sup> Ibid.

# PART 1: OPCAT, THE NPM AND CONSIDERATION OF INTERNATIONAL BEST PRACTICE

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

1.1. OPCAT was adopted by the United Nations General Assembly in December 2002 and entered into force on 22 June 2006. As of 25 June 2019 there are 90 State Parties and 13 Signatories to the treaty, with 71 State Parties having designated their NPM.<sup>6</sup> The full text of OPCAT is at [Appendix 1](#).

1.2. The Australian Government ratified OPCAT on 21 December 2017. Upon ratification, Australia made a declaration under Article 24 of OPCAT to postpone NPM obligations for three years.

1.3. The Australian Government ratified the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) in 1989. OPCAT builds upon the protections in UNCAT by requiring the establishment of a system of independent monitoring for places of detention through domestic bodies known as NPMs.

1.4. Independent monitoring includes consideration of conditions, practices and treatment that could amount to cruel, inhuman, or degrading treatment or punishment. Specific examples of ill-treatment include conditions of detention such as prolonged solitary confinement, lack of access to toilet facilities and denial of privacy.<sup>7</sup> Other examples include the use of excessive force such as using restraints when they are not required, or degrading punishment that has a degree of humiliation involved.<sup>8</sup> International guidance also references holding a detained or imprisoned person in conditions which deprive them temporarily or permanently of the use of any of their natural senses such as sight or hearing, or awareness of place and the passing of time.<sup>9</sup>

## ***United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)***

1.5. In addition to domestic NPMs, OPCAT establishes a mechanism to facilitate international expert visits to places of detention as a further safeguard of protections for people in places of detention. These visits take place under the mandate of the SPT.

1.6. The SPT consists of 25 independent and impartial experts who have a threefold mandate to:

- visit places of detention.
- advise and assist respective governments and NPMs regarding NPM establishment and function.

---

<sup>6</sup> Association for the Prevention of Torture, *OPCAT Database*, Association for the Prevention of Torture, Geneva, 2019, viewed 03 July 2019, <<https://apt.ch/en/opcat-database>>.

<sup>7</sup> Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc HR/P/PT/8/Rev.1 (2004), p. 29.

<sup>8</sup> Attorney General's Department, *Prohibition on torture and cruel, inhuman or degrading treatment or punishment*, Attorney General's Department, Canberra, 2019, viewed 27 June 2019, <<https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Prohibitionontortureandcruelinhumanordegradingtreatmentorpunishment.aspx#4what>>.

<sup>9</sup> United Nations General Assembly, *Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment*, GA Res 43/173, UN Doc A/RES/43/173 (9 December 1988).

- co-operate with other international, regional and national like-minded organisations.

1.7. OPCAT gives a wide mandate to the SPT and requires that the SPT be given access to all places of detention, and unrestricted access to information about the number of people in detention and their conditions of treatment. The SPT is required to have the opportunity to interview people of its choosing. The SPT is able to make recommendations and report to authorities on its findings. Authorities and facilities subject to a visit from the SPT are not required to publish the SPT reports or their responses to recommendations made, but are encouraged to do so.

### ***National Preventive Mechanism Coordinator (NPM Coordinator)***

1.8. At the time the Australian Government announced its intention to ratify OPCAT, it also announced the Office of the Commonwealth Ombudsman as both the NPM for Commonwealth places of detention and the NPM Coordinator for Australia.<sup>10</sup>

1.9. It is intended that a network of NPM bodies from each jurisdiction will be facilitated by the NPM Coordinator. The states and territories can set up, designate or maintain one or multiple entities as an NPM and to form part of the NPM network.

1.10. It is envisaged that the NPM Coordinator will have a policy and research role to promote improvements and share experiences between bodies in strengthening oversight in places of detention. This is likely to also include developing ways to respond to issues that are common across places of detention and jurisdictions.

1.11. The Australian Government made regulations that came into effect on 10 April 2019, which establish the functions of the Office in relation to both the NPM coordination function and the NPM for Commonwealth places of detention.

1.12. The function of the NPM Coordinator<sup>11</sup> includes the ability to:

- consult on and undertake research on the development of standards and principles.
- collect information on oversight arrangements.
- propose options and develop resources to facilitate improvements in oversight arrangements, including identifying gaps and levels of duplication.
- communicate with the SPT on behalf of the NPM network.
- convene meetings and facilitate collaboration between all levels of government and the NPM network.
- publicly report on findings.
- make recommendations.

1.13. The NPM Coordinator cannot compel or direct a person or body that is part of the NPM network, nor do the regulations provide for the NPM Coordinator to conduct secondary inspections of places of detention that fall within the remit of another NPM.

1.14. Our function as the NPM Coordinator took effect from 1 July 2018. Until recently no other jurisdiction had nominated an NPM. In the absence of other NPMs being nominated we focused on outreach and research.

---

<sup>10</sup> J Bishop, Ratification of OPCAT caps year of significant human rights achievements for Turnbull Government, media release, Parliament House, Canberra, 15 December 2017.

<sup>11</sup> *Ombudsman Amendment (National Preventive Mechanism) Regulations 2019 (Cth)*.

1.15. In the course of our preliminary discussions with a range of stakeholders, it became apparent that the complex and diverse range of oversight arrangements within jurisdictions and across the country made it difficult to assess how OPCAT-ready Australia is at this point in time.

1.16. To assist in furthering this discussion we have compiled this baseline assessment of the current state of OPCAT readiness in Australia by mapping the inspection and oversight regimes already operating across places of detention. We instigated outreach with bodies and office holders in each jurisdiction that may have a role in the future NPM network. In the 2018—19 financial year, senior members of the Office met with 62 bodies which have an inspection or oversight function, or have a wider interest in the progress of OPCAT implementation in Australia. We have worked collaboratively with the AHRC and were regular participants at the civil society consultation roundtables hosted by the AHRC.

### ***National Preventive Mechanism for Commonwealth places of detention***

1.17. In addition to our function as the NPM Coordinator, this Office has been designated as the NPM for Commonwealth places of detention. The Commonwealth NPM functions<sup>12</sup> include the following:

- undertaking regular inspections of places of detention under the control of the Commonwealth.
- giving information to the SPT to facilitate the inspection of places of detention by the SPT
- incidental functions.

1.18. Since 2004—05 this Office has visited immigration detention facilities in our role as the Immigration Ombudsman.<sup>13</sup> As the NPM responsible for Commonwealth places of detention, we will continue to oversee immigration detention facilities including Immigration Transit Accommodation and Alternative Places of Detention in Australia and the external territories, such as Christmas Island (as required).

1.19. Our jurisdiction as the NPM for Commonwealth places of detention has been extended to include Australian Federal Police (AFP) cells and Australian Defence Force (ADF) military detention facilities. ADF facilities include the Defence Force Correctional Establishment (DFCE), area and unit detention facilities and any other places of internment over which the ADF exercise command and control. The AFP cells include the Canberra city watch house, and police cells on Christmas and Cocos (Keeling) Islands, Norfolk Island and the Jervis Bay Territory.

### ***Primary places of detention***

1.20. OPCAT adopts an expansive definition of places in which people are deprived of their liberty.<sup>14</sup> In ratifying OPCAT the Australian Government indicated that the initial focus for NPMs would be narrower, and focus on primary places of detention.<sup>15</sup> The definition of primary places of detention suggested by the Commonwealth includes:

- 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).

---

<sup>12</sup> *Ombudsman Amendment (National Preventive Mechanism) Regulations 2019* (Cth).

<sup>13</sup> Office of the Commonwealth Ombudsman, *Annual report 2004–2005*, Canberra, 2005, p. 46.

<sup>14</sup> Articles 4(1) and 4(2).

<sup>15</sup> G Brandis, 2017 DFAT-NGO Forum on Human Rights, Canberra, 9 February 2017.

- 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.

1.21. For the purposes of this report, we have considered oversight and inspectorate bodies in the context of primary places of detention. We have not included other places where people can be detained, such as some aged care facilities.

1.22. During our outreach, a significant number of stakeholders expressed concern about the proposition that oversight and inspection will be limited to primary places of detention. Concern was most acute in relation to the detention of young people, wherever that detention may take place.

1.23. International experience indicates that implementation of OPCAT occurs over time. Countries tend to gradually expand the scope of inspections of places where people are deprived of their liberty. For example, the mandate of the New Zealand Ombudsman was recently extended to include privately run aged care facilities and court cells.<sup>16</sup> Given that OPCAT is not restricted to primary places of detention it will be necessary over time to consider all places where people are deprived of their liberty in Australia.

### ***Consideration of international best practice***

1.24. The three year postponement of NPM obligations provides the opportunity to identify and consider best practice from relevant international NPMs, and implement pragmatic options that suit Australian conditions. Our Office has particularly focused on the United Kingdom (UK) and New Zealand.

#### **United Kingdom**

1.25. There are 21 existing statutory bodies<sup>17</sup> that make up the UK NPM with Her Majesty's Chief Inspector of Prisons (HMIP) providing support to an independent coordinating chair. These bodies inspect along functional or jurisdictional lines. HMIP inspects adult prisons, young offender institutions, and immigration removal centres. It works with other inspectorates such as Ofsted, which is responsible for inspecting services providing education, skills and children's services, and also the Dental Practice Board and the Royal Pharmaceutical Society.

1.26. The UK NPM bodies also use each other's resources and in many cases facilitate joint inspections of places of detention. For example, the Care Inspectorate (CI) accompanied Her Majesty's Inspectorate of Prisons for Scotland (HMIPS) on four prison inspections in 2017–18. The CI also contributed to the development of methodology for joint inspections focusing on the detention of children and young people, with regard to their experiences and outcomes.<sup>18</sup>

---

<sup>16</sup> Office of the Ombudsman (New Zealand), *Fact sheet: Monitoring the treatment of people detained in private aged care facilities*, Office of the Ombudsman (New Zealand), Wellington, 2018, viewed 27 June 2019, <[http://www.ombudsman.parliament.nz/ckeditor\\_assets/attachments/659/Fact\\_sheet\\_-\\_dementia\\_care\\_monitoring\\_-\\_Jul18\\_-\\_web.pdf](http://www.ombudsman.parliament.nz/ckeditor_assets/attachments/659/Fact_sheet_-_dementia_care_monitoring_-_Jul18_-_web.pdf)>.

<sup>17</sup> More information about these 21 bodies can be found at: <<https://www.nationalpreventivemechanism.org.uk/members/>>.

<sup>18</sup> National Preventive Mechanism (United Kingdom), *Monitoring places of detention: ninth annual report of the United Kingdom's National Preventive Mechanism*, London, 2019, viewed 27 June 2019, <[https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163\\_NPM\\_AR\\_2017-18\\_WEB.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163_NPM_AR_2017-18_WEB.pdf)>.

## New Zealand

1.27. In New Zealand there are four NPMs, coordinated by the New Zealand Human Rights Commission.<sup>19</sup> The coordinating body is responsible for reporting, coordinating systemic issues, and liaising with the SPT. Each NPM has specific thematic mandates to cover different types of places of detention. These include prisons, immigration detention facilities, health and disability places of detention, care and protection residences and youth residences, police and court cells, and New Zealand Defence Force penal establishments.

### Legislative mandate for NPM bodies

1.28. New Zealand's *Crimes of Torture Act 1989* (COTA) establishes the legislative framework that supports the operation of the NPM function in New Zealand. COTA provides for the establishment of NPMs, permits their access to places of detention, their functions including the examination of conditions and treatment of detainees, the ability to make recommendations, and the preparation and provision of an annual report. COTA provides that NPMs have protections, privileges and immunities, provided they have these under existing Acts.<sup>20</sup> For example, the New Zealand Ombudsman has legislated immunities and privileges against disclosure.<sup>21</sup> The legislation allows for visits by the SPT including access to all places of, and people in, detention.

1.29. In the UK, each NPM operates under its own statutory provisions. With the exception of two Scottish bodies that were designated after OPCAT ratification, the balance of the UK NPM bodies does not have specific provisions that detail their responsibilities under OPCAT. Most of the bodies are designated by ministerial statement as NPMs. The absence of overarching legislation led to criticisms by the SPT about a lack of guaranteed independence, lack of protections from interference, lack of accountability and the undermining of the UK NPM's legitimacy and importance.<sup>22</sup> For example, the UK HMIP has legislative powers under various statutes to inspect prisons, young offender institutions, immigration detention facilities, escorts, and court custody. However, its ability to inspect military detention facilities is by invitation only.<sup>23</sup>

1.30. The UK's Ministry of Justice advised the Chair of the UK NPM in 2017 that it considers that the NPM complies with the international law requirements of OPCAT.<sup>24</sup> In its most recent annual report, the UK NPM noted that meetings with the Ministry of Justice 'resulted in a commitment from the Ministry of Justice to develop a protocol between the NPM and the Ministry of Justice, setting out guarantees of independence for the NPM and its powers under OPCAT. The NPM has made it clear that legislation would be the preferable outcome.'<sup>25</sup>

1.31. The Australian Government has, at this time, opted not to enact primary legislation at the national level to implement OPCAT, though changes have been made to the *Ombudsman Regulations 2017* to give effect to the roles of NPM Coordinator and NPM for Commonwealth places of detention. Some jurisdictions have enacted legislation following OPCAT ratification. For example, the Australian Capital Territory<sup>26</sup> and the Northern Territory<sup>27</sup> have enacted legislation to enable

---

<sup>19</sup> More information about these four bodies can be found at: <<http://www.ombudsman.parliament.nz/what-we-do/protecting-your-rights/monitoring-places-of-detention>>.

<sup>20</sup> Section 35 *Crimes of Torture Act 1989* (NZ).

<sup>21</sup> *Ombudsmen Act 1975* (NZ), ss 26(1)(a) and 26(3).

<sup>22</sup> National Preventive Mechanism (United Kingdom), op. cit., p. 5.

<sup>23</sup> Her Majesty's Inspectorate of Prisons for England and Wales, *Inspection framework*, London, 2019, pp. 6-7, viewed 27 June 2019, <<https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/03/INSPECTION-FRAMEWORK-2019.pdf>>.

<sup>24</sup> S McPherson, letter, 13 June 2017, viewed 27 June 2019, <<https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2018/02/Response-from-Scott-McPherson-to-JW-re-NPM-independence-1306170.pdf>>.

<sup>25</sup> National Preventive Mechanism (United Kingdom), op. cit., p. 38.

<sup>26</sup> *Monitoring of Places of Detention Act 2018* (ACT).

<sup>27</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018* (NT).

visits by the SPT. Legislation establishing the Office of the Inspector of Correctional Services (ACT) was also enacted with the aim of being consistent with Australia's obligations under OPCAT.<sup>28</sup>

### Use of surveys

1.32. Surveys of people who are detained are a common feature among many OPCAT inspection regimes. A well-constructed and accessible survey can assist in better understanding the perspectives that those within places of detention have regarding their treatment and conditions. Surveys can also be used to assess the views of staff and contractors about the operation and management of places of detention, in order to provide oversight and inspection teams with a holistic view of a facility.

1.33. The use and analysis of surveys can track trends over time in detainee and staff experience of places of detention, highlight systemic issues, and provide opportunities to target service delivery.

1.34. For those bodies that intend on inspecting facilities, the development and use of surveys can be a useful tool as part of an inspection process into the treatment and conditions of detention. For surveys to be effective and complement other methods of obtaining information about detention conditions, it is important to obtain a representative sample of the detainee and staff population with a meaningful response rate. Surveys should be accessible, they should be able to be completed confidentially without fear of reprisals, and translated into the user's first language.

1.35. UK HMIP surveys prisoners and detainees as part of their assessment of conditions and treatment for those in prisons, young offender institutions, military detention, and immigration detention facilities. Other evidence considered as part of its inspection processes, includes:

- Observations.
- verbal discussions with prisoners, detainees, staff and relevant third parties.
- documentation held by the detaining institution.

1.36. Observation, discussions and the review of documentation are already common features of existing inspecting and oversight bodies in Australia. A number of jurisdictions with a custodial inspectorate (Western Australia, New South Wales, Tasmania and the Australian Capital Territory) also use detainee surveys as part of their inspection processes. The Office of the Commonwealth Ombudsman is in the process of trialling surveys for use in OPCAT style inspections. The Victorian Ombudsman used surveys to canvas the views of both staff and prisoners<sup>29</sup> during its 2017 OPCAT-style inspection into a women's prison.

### Multi-disciplinary teams

1.37. The use of multi-disciplinary teams is a feature of many OPCAT inspection regimes and brings with it the ability to assess detention from a variety of perspectives. The New Zealand Ombudsman uses multi-disciplinary teams and engages external professionals to supplement the core inspection team's expertise. External experts are authorised to examine detainees' treatment and conditions, and to exercise the Ombudsman's powers when undertaking that activity on their behalf. In the context of mental health facilities, the New Zealand Ombudsman includes 'experts by experience' (those with lived experience of detention) to help give alternative perspectives on detainee conditions within mental health facilities, and to engage with people who are detained.

---

<sup>28</sup> *Explanatory Statement to the Inspector of Custodial Services Bill 2017 (ACT)*, viewed 1 July 2019, <[https://www.legislation.act.gov.au/View/es/db\\_57037/20171026-67426/PDF/db\\_57037.PDF](https://www.legislation.act.gov.au/View/es/db_57037/20171026-67426/PDF/db_57037.PDF)>.

<sup>29</sup> Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, Melbourne, 2017, app. 1 and 2, viewed 27 June 2019, <<https://www.ombudsman.vic.gov.au/getattachment/432871e4-5653-4830-99be-8bb96c09b348>>.

1.38. The UK HMIP has six inspection teams which focus on their particular specialisation in places of detention. The teams consist of healthcare and drugs inspectors, a head of thematic inspections, researchers, and editorial and administrative staff. HMIP works jointly with other inspectorates specialising in education and skills, dentistry and pharmacy to ensure expert knowledge is used and to avoid multiple inspection visits.<sup>30</sup>

1.39. The Victorian Ombudsman engaged a multi-disciplinary team in its 2019 OPCAT-style thematic inspection considering solitary confinement in juvenile detention. It also established a multi-agency advisory group of commissioners and civil society organisations to give assistance and expertise to its inspection team.<sup>31</sup> In its 2017 OPCAT-style inspection into a women's prison, the Victorian Ombudsman's inspection team included a contracted clinical psychologist and the New Zealand Ombudsman's OPCAT Chief Inspector. The internal team included officers with backgrounds in nursing, law, criminal justice and human rights.<sup>32</sup>

1.40. The ACT Inspector of Correctional Services will bring together experts from the Australian Capital Territory, Victoria, New South Wales and Western Australia in its inaugural Healthy Prison Review of the ACT's adult prison. The team consists of a forensic psychologist (who is also a barrister), prison and custodial services managers, custodial services inspectors, prison health and prison industry experts, and a research officer.<sup>33</sup>

1.41. The Office's existing inspection team includes staff with expertise in the management and investigation of immigration and military detention facilities. External expertise in medical care (particularly mental health) and policing will be drawn upon as the Office moves toward OPCAT-style inspections of Commonwealth places of detention.

#### Shared experience

1.42. The development of an NPM network provides opportunities for NPMs to work collaboratively, share best practice and leverage expertise from other jurisdictions within Australia and internationally.

1.43. The UK NPM Coordinator has facilitated working groups and subcommittees from the wider UK NPM, to draw upon expertise and insights in order to develop good practice along geographic or thematic lines. These subgroups include a focus on children and police custody.

1.44. In 2016 the New Zealand NPM Coordinator commissioned an independent review by an international academic expert on the use of restraints and seclusion practices in facilities monitored by NPMs. The report considered examples of good practice and areas requiring improvement to inform future NPM activities.<sup>34</sup>

1.45. Across Australia and New Zealand, a range of formal and informal forums to exchange information and best practice already exist. For example, the Custodial Inspectors in Western Australia, New South Wales, Queensland and Tasmania have regular telephone forums to share their

---

<sup>30</sup> Ministry of Justice (United Kingdom), *Frequently asked questions*, Ministry of Justice (United Kingdom), London, 2017, viewed 27 June 2019, <<https://www.justice.gov.uk/about/hmi-prisons/faqs>>.

<sup>31</sup> D Glass (Victorian Ombudsman), Victorian facilities that will be inspected regarding the use of 'solitary confinement' and young people, media release, Melbourne, 4 March 2019.

<sup>32</sup> Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, Melbourne, 2017, p. 5, viewed 27 June 2019, <<https://www.ombudsman.vic.gov.au/getattachment/432871e4-5653-4830-99be-8bb96c09b348>>.

<sup>33</sup> ACT Inspector of Correctional Services, *Inspector announces team for the Healthy Prison Review of the AMC*, Act Inspector of Correctional Services, Canberra, 2019, viewed 27 June 2019, <<https://www.ics.act.gov.au/latest-news/articles/inspector-announces-team-for-the-healthy-prison-review-of-the-amc>>.

<sup>34</sup> New Zealand Human Rights Commission, report prepared by S Shalev, *Thinking outside the box? A review of seclusion and restraint practices in New Zealand*, Auckland, 2017, viewed 27 June 2019, <<https://www.seclusionandrestraint.co.nz/>>.



wisdom, experiences and challenges.<sup>35</sup> This has been of benefit in informing the work of the newer inspectorates. Similarly, Children and Young People Commissioners and Guardians across Australia and New Zealand hold biannual meetings and publish communiques to highlight issues that cut across jurisdictions. In the past, these issues have included the over-representation of Indigenous youth in detention, young people detained for prolonged periods in police watch-houses and police cells, and the view that specialist expertise should be incorporated when inspecting juvenile facilities under OPCAT.<sup>36</sup> Representatives responsible for administering Community Visitor Programs in each jurisdiction around Australia also share information about commonalities, such as monitoring conditions for those receiving mental health treatment in closed facilities.

1.46. In our role as NPM Coordinator we intend to facilitate the sharing of expertise and institutional practices in collaboration with other NPMs. This may include:

- organising annual workshops along thematic lines.
- drawing from the lessons of relevant international bodies who are further along their OPCAT journeys.
- encouraging and coordinating the use of working groups and subcommittees within the NPM network.

#### **Announced or unannounced visits**

1.47. OPCAT itself does not specify that visits to places of detention should be unannounced. However, the SPT guidance for NPMs states that NPMs should have the right to carry out unannounced visits to all places where people are deprived of their liberty.<sup>37</sup>

1.48. Announced visits by NPMs can benefit both the inspection mechanism and the facilities being inspected. For example, if an inspecting body seeks to view large quantities of records before or during an inspection, sufficient notice is required for the information to be gathered. Before conducting an announced inspection, the UK HMIP will hold a pre-inspection visit to plan the inspection, request preliminary information, and conduct a confidential survey of a sample of the prison population.<sup>38</sup>

1.49. Receiving information in a timely manner is an efficient use of a limited inspectorate resource. Similarly, prior notice of a visit may ensure that the inspection team is able to inspect a full range of activities, such as transfer, escort and removal. From a logistical and resourcing perspective it may not be practical to undertake unannounced visits in remote locations, or of facilities that are only used on an ad hoc basis.

1.50. The view of the SPT is that visits should primarily be unannounced and occur at various times of day and night, to verify the true circumstances of conditions of detention.<sup>39</sup> The Association for the Prevention of Torture (APT) guidance is that regular visits conducted without prior notice act

---

<sup>35</sup> Custodial Inspector Tasmania, *Annual report 2016–17*, Hobart, 2017, p. 5, viewed 27 June 2019, <[https://www.custodialinspector.tas.gov.au/\\_\\_data/assets/pdf\\_file/0007/396205/Custodial-Inspector-Annual-Report-2016-17-FINAL-PDF.PDF](https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0007/396205/Custodial-Inspector-Annual-Report-2016-17-FINAL-PDF.PDF)>.

<sup>36</sup> Commissioner for Children and Young People (South Australia), *Communique of the Australian and New Zealand Children's Commissioners and Guardians meeting 12 and 13 November 2018*, Adelaide, 2018, viewed 27 June 2019, <<https://www.ccp.com.au/wp-content/uploads/2018/11/Communique-ANZCCG.pdf>>.

<sup>37</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, UN Doc CAT/OP/12/5 (2010), p. 5.

<sup>38</sup> Ministry of Justice (United Kingdom), *Frequently asked questions*, Ministry of Justice (United Kingdom), London, 2017, viewed 27 June 2019, <<https://www.justice.gov.uk/about/hmi-prisons/faqs>>.

<sup>39</sup> Office of the United Nations High Commissioner for Human Rights, *Preventing torture: the role of National Preventive Mechanisms*, UN Doc HR/P/PT/21 (2018), p. 21.

as a deterrent to torture and ill-treatment, due to the increased likelihood of such conduct being detected.<sup>40</sup>

1.51. The UK HMIP conducts a mix of announced and unannounced visits. Follow-up visits are unannounced and undertaken to assess the progress of implementation of earlier recommendations. No more than 30 minutes' notice is given to facilities ahead of unannounced visits. Unannounced inspections can occur if it is an operational necessity, or if it may help the facility to address concerns and make improvements.<sup>41</sup> Announced prison inspections occur every five years, or more frequently for higher-risk facilities. Announced young offender institution inspections occur every three years. Police inspections are carried out every five to six years. Immigration removal centres are inspected once every three years, non-residential short-term immigration holding facilities are inspected on a six year cycle, and residential short-term immigration holding facilities are inspected on a four year cycle.<sup>42</sup>

1.52. In 2017–18, 87 per cent of NPM visits to places of detention conducted by the New Zealand Ombudsman were unannounced. In their annual report, the New Zealand Ombudsman noted that the internationally accepted standard is for at least one third of inspections to be unannounced. The report also said that increasing the proportion of unannounced visits enables the Ombudsman to gain a good perspective of day-to-day practices within the visited facilities.<sup>43</sup>

1.53. The Western Australian Office of the Inspector of Custodial Services uses a mix of announced and unannounced visits. Formal visits are usually announced, with three to four months' notice given to a facility. Ahead of an inspection the Office conducts staff and detainee surveys, analyses data, and records and holds meetings with senior staff and external service providers. In addition to announced inspections, the Office also regularly conducts unannounced or short notice liaison or monitoring visits.<sup>44</sup> Unannounced visits may occur if there has been a critical event, or when the Inspector receives information suggesting that prison performance has deteriorated, causing significant compromise to prison conditions and the treatment of prisoners.

1.54. The Office of the Commonwealth Ombudsman has the power to conduct unannounced visits. However, the Office generally conducts announced visits to immigration detention facilities, with a minimum of six weeks' notice provided to facilities. Unannounced visits are being considered in the context of our OPCAT role for immigration, AFP and military detention facilities.

### Thematic focus

1.55. A number of international NPMs and domestic inspection and oversight bodies use thematic inspections, in which a particular aspect or feature of detention is examined in a range of settings. Thematic reports are generally published and can cover several places of detention, provide in-depth analysis of structural causes and address priority problems.<sup>45</sup> The APT publishes all NPM annual reports and advises when thematic reports have been published. In 2016 the Norwegian NPM

---

<sup>40</sup> Association for the Prevention of Torture, *Guide: establishment and designation of National Preventive Mechanisms*, Geneva, 2006, viewed 27 June 2019, <[https://www.apt.ch/content/files\\_res/NPM.Guide.pdf](https://www.apt.ch/content/files_res/NPM.Guide.pdf)>.

<sup>41</sup> Her Majesty's Inspectorate of Prisons for England and Wales, *Inspection framework*, London, 2019, p. 14, viewed 27 June 2019, <<https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2019/03/INSPECTION-FRAMEWORK-2019.pdf>>.

<sup>42</sup> Ministry of Justice (United Kingdom), *Frequently asked questions*, Ministry of Justice (United Kingdom), London, 2017, viewed 27 June 2019, <<https://www.justice.gov.uk/about/hmi-prisons/faqs>>.

<sup>43</sup> Office of the Ombudsman (New Zealand), *Annual report 2017/18*, Wellington, 2018, pp. 30 and 58, viewed 27 June 2019, <[http://www.ombudsman.parliament.nz/system/paperclip/document\\_files/document\\_files/2927/original/annual\\_report\\_2017-18\\_-\\_final\\_no\\_signature.pdf?1539738320](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/2927/original/annual_report_2017-18_-_final_no_signature.pdf?1539738320)>.

<sup>44</sup> Office of the Inspector of Custodial Services (Western Australia), *What we do*, Office of the Inspector of Custodial Services (Western Australia), Perth, 2018, viewed 27 June 2019, <<https://www.oics.wa.gov.au/about-oics/what-we-do/>>.

<sup>45</sup> Association for the Prevention of Torture. 'Session 5: Reports, Recommendations and Indicators', 4<sup>th</sup> IOI Workshop for NPMs – 'Strengthening the follow-up on NPM recommendations', Copenhagen, Denmark, 7–9 November 2018.

published its first thematic report on female inmates in different levels of prisons over a two year period.<sup>46</sup> In the UK, NPM members publish thematic reports on an individual basis. The UK HMIP has published thematic reports since 2012, on topics such as daily life in prisons (with focuses on food and living conditions), resettlement services for short-term prisoners, and the operation of incentives and behaviour management systems.

1.56. Thematic focuses for inspections may include topics such as:

- the use of restrictive practices and solitary confinement.<sup>47</sup>
- the treatment of people from culturally and linguistically diverse backgrounds.
- the treatment of people with disability.
- the treatment of people who identify as LGBTIQ+.

1.57. The use of a thematic focus that cuts across different places of detention can clarify issues, identify commonalities across different places of detention and effectively concentrate the limited resources of inspectorates. For example, the New Zealand NPM published a thematic report considering seclusion and restraint practices across a number of different types of detention facilities.<sup>48</sup> The report identified that seclusions and restraints were not always used as an option of last resort, that there was a small yet significant number of cases of prolonged use of restraints and there were systemic gaps, especially in relation to caring for those with mental health conditions. The report provided a catalyst for further discussions with a focus on improving the situation.

1.58. In 2015 the UK NPM members explored elements of the detention system that traditionally fell outside of their individual scope and monitoring methodologies, such as pathways between mental health settings, police custody and prisons. This thematic focus helped in its preventive approach to identify risk factors in different settings.<sup>49</sup>

1.59. In 2019 the Victorian Ombudsman undertook a thematic examination of the use of solitary confinement and young people, noting: “a thematic inspection across multiple facilities presents a unique opportunity to examine practices across different closed environments, allowing the investigation to identify both examples of good practice and areas for improvement.”<sup>50</sup>

1.60. Within a three year cycle, the Custodial Inspector Tasmania undertakes themed inspections of custodial settings, focusing on particular inspection standards such as rehabilitation and reintegration across women’s prisons, minimum security facilities and youth detention centres.<sup>51</sup>

---

<sup>46</sup> Parliamentary Ombudsman (Norway), *Women in prison: a thematic report about the conditions for female prisoners in Norway*, Oslo, 2016, viewed 27 June 2019, <[https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM\\_temarapport\\_ENG\\_WEB\\_FINAL.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM_temarapport_ENG_WEB_FINAL.pdf)>.

<sup>47</sup> Penal Reform International and Association for the Prevention of Torture, *Balancing security and dignity in prisons: a framework for preventive monitoring*, 2<sup>nd</sup> edn, London, 2015, viewed 27 June 2019, <<https://cdn.penalreform.org/wp-content/uploads/2016/01/security-dignity-2nd-ed-v6.pdf>>.

<sup>48</sup> New Zealand Human Rights Commission, report prepared by S Shalev, *Thinking outside the box? A review of seclusion and restraint practices in New Zealand*, Auckland, 2017, viewed 27 June 2019, <<https://www.seclusionandrestraint.co.nz/>>.

<sup>49</sup> National Preventive Mechanism (United Kingdom), op. cit., p. 29.

<sup>50</sup> D Glass (Victorian Ombudsman), Victorian facilities that will be inspected regarding the use of ‘solitary confinement’ and young people, media release, Melbourne, 4 March 2019, viewed 27 June 2019, <<https://www.ombudsman.vic.gov.au/solitary-confinement-and-young-people>>.

<sup>51</sup> Custodial Inspector (Tasmania), op. cit., p. 8.

## PART 2: THE OPCAT FRAMEWORK AND BASELINE MAPPING OF EXISTING MONITORING ARRANGEMENTS

### The OPCAT framework

2.1. The OPCAT Articles relevant to NPM functions include:

- a preventive visiting mandate.
- independence—financial and functional, including no perceived conflicts of interest.
- composition—gender-balanced and representative.
- unrestricted access to places of detention.
- unfettered access to information.
- unrestricted access to persons, including staff.
- the ability to make public reports and recommendations.
- privileges, immunities and protections from reprisals.
- the ability to communicate with the SPT.

#### ***Preventive visiting mandate***

2.2. The APT comprehensive NPM checklist<sup>52</sup> is a tool designed to assist in evaluating bodies against OPCAT requirements. One of the key aspects the APT considers is the extent to which an NPM is specifically mandated by law to conduct preventive visits, on a regular basis and without prior notice.

2.3. The preventive visiting mandate is the defining difference between what many inspection and oversight bodies do now and what will take place under OPCAT. The focus under OPCAT is the prevention of harm rather than the ability to respond when harm occurs. OPCAT is concerned with examining the systems and lived experiences of people who are deprived of their liberty.

2.4. The power to conduct regular visits is a requirement under OPCAT.<sup>53</sup> The SPT has advised that it is the government's responsibility to ensure that NPM bodies are able to conduct these visits in the manner that they see fit, with no restrictions on frequency.<sup>54</sup>

#### ***Independence***

2.5. Independence is a core aspect of an OPCAT NPM. Functional and financial independence ensures that NPMs are able to undertake their roles without interference or fear of reprisal.<sup>55</sup>

2.6. Guidance from the SPT suggests that desirable characteristics of functional independence for an NPM include a statutory basis, defined terms of office for office holders, and clear grounds of dismissal. People should not be appointed to an NPM if they hold positions which could lead to perceptions of conflicts of interest.<sup>56</sup>

---

<sup>52</sup> Association for the Prevention of Torture, *Comprehensive NPM assessment checklist*, Association for the Prevention of Torture, Geneva, 2006, viewed 28 June 2019, <[https://www.ap.torture.ch/content/files\\_res/NPM.checklong.pdf](https://www.ap.torture.ch/content/files_res/NPM.checklong.pdf)>.

<sup>53</sup> Article 19(a) of OPCAT.

<sup>54</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, UN Doc CAT/OP/12/5 (9 December 2010).

<sup>55</sup> Article 18 of OPCAT.

<sup>56</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms*, UN Doc CAT/OP/12/5 (9 December 2010), s 30. See also: United Nations Subcommittee of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Analytical assessment tool for national preventive mechanisms*, UN Doc CAT/OP/1/Rev.1 (25 January 2016), s 11.

2.7. The SPT has previously been critical of inspectorates housed within their respective ministries, or connected financially, logistically or in a supervisory capacity within their ministries. The SPT has also expressed concern about the practice of post-visit reports being sent to ministers for review prior to publication.<sup>57</sup>

2.8. Financial independence and the ability to make budgetary allocations according to priorities is another key requirement for NPMs. If the NPM performs functions apart from an OPCAT mandate, guidance suggests the NPM functions should be located within a separate unit or department with its own staff and budget. The relationship between the NPM function and the rest of the organisation, the working methods, and the safeguards applicable to preserve the independence of that function should be clearly set out in the relevant internal regulations.<sup>58</sup>

### **Composition**

2.9. It is important that inspection teams are representative in terms of professional expertise, gender balance and include people from culturally and linguistically diverse backgrounds. This is in order to ensure that NPMs are able to effectively assess places of detention and take into account all relevant perspectives.

2.10. OPCAT requires that an NPM ensures its experts have “the required capabilities and professional knowledge”.<sup>59</sup> The APT has advised that preventive monitoring of places of detention depends upon inspecting teams being able to draw from knowledge in a wide range of fields, including justice and healthcare.<sup>60</sup> In practice, many NPMs supplement their core inspecting teams with external experts in order to adequately assess the treatment and conditions of those in detention. Such an approach offers NPMs flexibility in terms of bringing in expertise when and as required and minimises unnecessary ongoing cost.

### **Access to places**

2.11. OPCAT requires an NPM to have unfettered access to all places where people are deprived of their liberty as well as access to all facilities and installations within all the places it can visit.<sup>61</sup> The SPT has advised that the State should allow NPM bodies to visit all places, parts of places, and suspected places where deprivation of liberty occurs.

2.12. Full and free access is necessary in order for inspectors to accurately construct an impression of the conditions and treatment of detainees.<sup>62</sup> Access to all areas within a place of detention also prevents detainees from being kept away from the inspecting team in an inaccessible part of the facility.

---

<sup>57</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to the Netherlands for the purpose of providing advisory assistance to the national preventive mechanism: recommendations and observations addressed to the State party*, UN Doc CAT/OP/NLD/1 (3 November 2016).

<sup>58</sup> United Nations Subcommittee of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Analytical assessment tool for national preventive mechanisms*, UN Doc CAT/OP/1/Rev.1 (25 January 2016).

<sup>59</sup> United Nations General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, GA Res 57/199, UN Doc A/RES/57/199 (9 January 2003), p. 8.

<sup>60</sup> Association for the Prevention of Torture, *Membership of National Preventive Mechanisms: standards and experiences*, Geneva, 2013, viewed 28 June 2019, <[https://apt.ch/content/files\\_res/opcat-briefing-on-npm-designation-en.pdf](https://apt.ch/content/files_res/opcat-briefing-on-npm-designation-en.pdf)>.

<sup>61</sup> Article 20c of OPCAT.

<sup>62</sup> Association for the Prevention of Torture, *Guide: establishment and designation of National Preventive Mechanisms*, Geneva, 2006, viewed 28 June 2019, <[https://www.apt.ch/content/files\\_res/NPM.Guide.pdf](https://www.apt.ch/content/files_res/NPM.Guide.pdf)>.

## ***Access to information***

2.13. When visiting places of detention an NPM inspection team requires access to all information regarding:<sup>63</sup>

- the number of detainees.
- the places of detention.
- the treatment of detainees.
- their conditions of detention.

2.14. This includes medical records, registers, schedules, files and other data pertaining to the administration of places of detention and the treatment of detainees.

2.15. The APT's guidelines advise that authorities must ensure the legislation governing NPM bodies allows for their access to all such information and includes the ability to disclose or publish detainees' personal information, provided the individual consents to it being shared.

## ***Access to persons***

2.16. It is essential for NPM inspecting teams to be able to conduct private interviews with detainees at the time and in the location of their choice. In particular, the ability to speak privately ensures that people are able to speak openly about their conditions of detention or their concerns, without fear of reprisal.

2.17. OPCAT also envisages that NPMs may want to speak privately with members of staff at inspected facilities to gain their views and insights as to conditions of detention.

## ***Ability to publish reports and make recommendations***

2.18. The ability to publish reports and make recommendations is central to the work of an effective OPCAT NPM. Article 19 requires that NPM bodies have the power to make recommendations to the relevant authorities about improving the conditions and treatment of people in detention. NPMs should also have the ability to review and comment on proposed policy changes and legislative reforms that impact upon torture prevention.<sup>64</sup>

2.19. In accordance with Article 22 of OPCAT, authorities shall examine the recommendations of the NPM and enter into dialogue with the NPM on possible implementation measures.

2.20. Under OPCAT, annual reports are required to be published and disseminated.<sup>65</sup> The APT acknowledges that it is up to the NPM to decide whether the annual report should be general in its discussion of its monitoring activities, or if its post-visit reports and recommendations should also be included.<sup>66</sup>

## ***Privileges, immunities and protections from reprisals***

2.21. OPCAT specifies that any person or organisation that communicates with the NPM must not be prejudiced in any way and must be protected from any possible sanctions, whether the information communicated is true or false. The APT guidelines state that detainees, staff at places of

---

<sup>63</sup> Article 20a and 20b of OPCAT.

<sup>64</sup> Office of the United Nations High Commissioner for Human Rights, *Preventing torture: the role of National Preventive Mechanisms*, UN Doc HR/P/PT/21 (2018).

<sup>65</sup> Article 23 of OPCAT.

<sup>66</sup> Association for the Prevention of Torture, *Monitoring places of detention: a practical guide*, Geneva, 2004, p. 91, viewed 28 June 2019, <[https://www.ap.t.ch/content/files\\_res/monitoring-guide-en.pdf](https://www.ap.t.ch/content/files_res/monitoring-guide-en.pdf)>.

detention, and members of civil society must feel comfortable in communicating with NPMs and that immunities from sanctions encourage more open communication.

2.22. In particular, the APT advises that detainees are the most vulnerable to retaliation when communicating information about their treatment and conditions. The SPT outlines that authorities are responsible for ensuring that no sanctions or reprisals are suffered by any person who has communicated with an NPM, in any way.<sup>67</sup> In practice, clear guidelines for maintaining the confidentiality of detainees and other sources should be established by NPMs. The issue of reprisals has been extended to focusing on ensuring that individuals who cooperate with United Nations treaty bodies are not the subject of reprisal, as set out in the *Guidelines against Intimidation or Reprisal* (the San José Guidelines).<sup>68</sup> International non-government organisations specialising in this work have developed a handbook on addressing reprisals by authorities, which recommends directly contacting the Secretariat of the SPT to notify it of any concerns.<sup>69</sup>

### ***Ability to contact the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)***

2.23. OPCAT requires that NPMs be given the right to communicate directly with the SPT.<sup>70</sup> Article 11(b) directs the SPT to strengthen the capacities of NPMs through training and technical assistance.<sup>71</sup> The APT advises that these articles of the treaty enable exchanges on strategies to prevent torture at an international level.<sup>72</sup>

## **Jurisdictional assessments of OPCAT readiness**

### ***Methodology***

2.24. As a first step in assessing the level of OPCAT readiness in Australia, we undertook an exercise in mapping existing oversight and inspection bodies. This task was both larger and more complex than initially anticipated and highlighted the broad range of current oversight practices. The existing bodies we canvassed across the Commonwealth and the eight states and territories have developed different approaches to monitoring places of detention. These have been shaped by their respective legislation, traditions and conventions.

2.25. We initially contacted 55 bodies that we identified had a level of involvement in monitoring or inspecting places of detention. These bodies were asked to complete a baseline study tool based on the APT guidelines for NPMs.<sup>73</sup> See [Appendix 2](#) for a copy of the template baseline study tool. The purpose of the baseline study tool was for bodies to provide a self-assessment of the extent to which they may or may not already meet the key components of NPM functions under OPCAT.

2.26. In recognition of the diversity of arrangements that exist within Australia, we have compiled these self-assessments on a jurisdictional basis. When each jurisdictional review is read together, the information provides an insight into Australia's current state of OPCAT readiness.

---

<sup>67</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Policy of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on reprisals in relation to its visiting mandate*, UN Doc CAT/OP/6/Rev.1 (31 May 2016).

<sup>68</sup> Meeting of Chairpersons of Human Rights Treaty Bodies, *Guidelines against Intimidation or Reprisals* (San José Guidelines), HRI/MC/2015/6, Geneva, 2015.

<sup>69</sup> M Sinclair and T McEvoy, *Reprisals Handbook*, International Service for Human Rights (ISHR), Geneva, 2018, pp. 11-12.

<sup>70</sup> Article 20(f) of OPCAT.

<sup>71</sup> Article 11(b) of OPCAT.

<sup>72</sup> Association for the Prevention of Torture, *Guide: establishment and designation of National Preventive Mechanisms*, Geneva, 2006, viewed 28 June 2019, <[https://www.apr.ch/content/files\\_res/NPM.Guide.pdf](https://www.apr.ch/content/files_res/NPM.Guide.pdf)>.

<sup>73</sup> Association for the Prevention of Torture, *Guide: establishment and designation of National Preventive Mechanisms*, Geneva, 2006, viewed 28 June 2019, <[https://www.apr.ch/content/files\\_res/NPM.Guide.pdf](https://www.apr.ch/content/files_res/NPM.Guide.pdf)>.

2.27. The following high level observations can be made:

- each jurisdiction has at least one body with a high level of functional independence and the ability to publically report.
- many bodies do not have a regular inspection regime, either because they lack the mandate to inspect other than in relation to a complaint, or have insufficient resources to enable regular inspection.
- there are issues for some bodies in relation to codifying structures that would support functional or financial independence, even where independence is achieved on an operational basis and entities consider themselves independent.

### **Commonwealth**

2.28. We engaged with the following entities within this jurisdiction:

Australian Defence Force (ADF)

Australian Human Rights Commission (AHRC)

National Children's Commission

Office of the Commonwealth Ombudsman

2.29. The existing bodies within the Commonwealth that currently have an oversight or inspection mandate are the Commonwealth Ombudsman, the Australian Human Rights Commission (incorporating the National Children's Commissioner) and the Australian Defence Force.

2.30. Until recently, the Commonwealth was the only jurisdiction to have nominated its NPM — that is, this Office. For our part we intend to work closely with the AHRC in meeting the NPM mandate, acknowledging their expertise in human rights law and policy.

2.31. The Officer in Charge at the Defence Force Corrective Establishment (DFCE) has an inspections team which conducts annual inspections of area and unit command detention facilities across Australia, in accordance with the *Defence Force Discipline Act 1982* (Cth) and the *Defence Force Discipline Regulations 1985* (Cth).

2.32. As the recently announced NPM for Commonwealth places of detention, this Office does not currently inspect military detention facilities and Australian Federal Police places of detention. However, the Office will develop OPCAT compliant methodology for these places. Baseline assessments of facilities and risks assessments will also take place leading up to full OPCAT inspections from January 2021.

2.33. The Office has been visiting immigration detention facilities since 2004–05 and has been regularly inspecting these facilities since 2010–11. The current inspection regime is consistent with a number of OPCAT requirements. Inspections are conducted regularly and can be undertaken without notice, although notice is generally given. In the course of those inspections, Office staff have full, unescorted access to people, places and records within immigration detention facilities. The AHRC conducts announced visits to immigration detention facilities. In its response to the baseline assessment, the AHRC advised that during recent visits it had been unable to access personal information, including records, unless compelled under statute. However, it can receive personal information when conducting an inquiry under its legislation. The AHRC has inspection teams that are diverse in composition with a range of professional experience, and where relevant may include pro bono independent medical experts. Inspections do not occur on a set schedule and in recent years have been every 12–18 months.



2.34. The Office is now working on its methodology for the inspection of Commonwealth places of detention, such as building multi-disciplinary teams to ensure a more comprehensive and preventive approach.

2.35. The Office and the AHRC have statutory office holders who meet the OPCAT requirement for independence. Each agency has a budget appropriation and operates independently from the agencies they oversee and inspect. They also have the ability to publish reports on their activities. The Office does not currently publish post-visit reports on its inspections of immigration detention facilities, but identifies and publishes thematic issues in its annual reports. The AHRC publishes its findings after each visit and publishes annual reports.

2.36. This Office and the AHRC have the ability to make submissions on legislation, have legislated privileges, immunities and protections, and the ability to have direct and confidential contact with the SPT.

2.37. The snapshot of the level of OPCAT readiness by bodies within the Commonwealth, as provided by each body is at [Appendix 3.1](#).

### ***Australian Capital Territory***

2.38. We engaged with the following entities within this jurisdiction:

ACT Human Rights Commission

ACT Inspector of Correctional Services

ACT Official Visitor Scheme (Public Trustee and Guardian)

ACT Ombudsman<sup>74</sup>

Children and Young People Commissioner and Public Advocate

2.39. The ACT Ombudsman, ACT Inspector of Correctional Services, the Official Visitor Scheme (administered by the Public Trustee and Guardian), the ACT Human Rights Commission, and the Children and Young People Commissioner and Public Advocate all meet the OPCAT requirements for functional independence, in that they are independent statutory authorities. With the exception of the ACT Ombudsman all other bodies have an inspections role. They vary in composition and expertise. The ACT Children and Young People Commissioner and Public Advocate has the widest variety of professional expertise, with backgrounds in mental health and forensic services, complex disability, child protection and youth justice.

2.40. The ACT bodies meet OPCAT requirements in respect of the ability to make recommendations to an agency and make submissions, proposals and observations on relevant legislation. If recommendations are made, an agency is required to engage with them. They also all have a legislative right to full access to staff and detainees, and other relevant people, places and records of detention. They also have protections from reprisals and the right to hold information confidentially. While the ability to contact the SPT is yet to be tested, the Australian Capital Territory has enacted legislation for the SPT to access information, people and places of detention in accordance with OPCAT.<sup>75</sup>

2.41. The ACT Official Visitor Scheme publishes an annual report and makes post-visit reports to its minister and relevant directorates. The Inspector of Correctional Services publishes a standalone

---

<sup>74</sup> The ACT Ombudsman function is delivered by the Office of the Commonwealth Ombudsman under a longstanding service agreement between the ACT Government and the Commonwealth Ombudsman.

<sup>75</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018 (ACT)*.

annual report The Office of the ACT Inspector of Correctional Services was established in December 2017 and was designed to reflect OPCAT requirements.<sup>76</sup> Its legislation requires that draft copies of reports must be provided to the relevant minister with an opportunity to comment at least six weeks before giving them to the ACT Legislative Assembly.<sup>77</sup>

2.42. The ACT Ombudsman has an oversight and complaint investigation role. It does not have a regular inspections mandate and is required by legislation to consult with the Inspector of Correctional Services regarding investigations involving a detainee or correctional facility. It can visit the Alexander Maconochie Centre (the adult prison in the Australian Capital Territory) for the purpose of viewing policies and operating procedures.

2.43. While an NPM has not yet been nominated, all the bodies mentioned above work closely together to seek to provide coherent oversight of the Alexander Maconochie Centre. All Australian Capital Territory bodies have the ability to access Bimberi Youth Justice Centre, but the ACT Inspector of Correctional Services and the ACT Ombudsman cannot access Dhulwa Mental Health Unit.

2.44. The snapshot of the level of OPCAT readiness by bodies within the Australian Capital Territory, as provided by each body is at [Appendix 3.2](#).

### **New South Wales**

2.45. We engaged with the following entities within this jurisdiction:

Law Enforcement Conduct Commission

NSW Ombudsman

Office of the Advocate for Children and Young People

Office of the Children's Guardian

Inspector of Custodial Services NSW

Official Visitor Program

2.46. The Inspector of Custodial Services and the Official Visitors Program (Mental Health) both have an existing inspection role in places of detention. The NSW Ombudsman does not have a specific inspection role but can visit places of detention. The NSW Ombudsman and the Inspector of Custodial Services<sup>78</sup> both meet the requirements for independence and public reporting, as these are provided for in their enabling legislation. The Official Visitors Program (Mental Health) has a level of independence — however, Official Visitors may be removed from office at any time by the Minister for Health.

2.47. In terms of the composition of visiting teams, the NSW Ombudsman and the Inspector of Custodial Services have staff who identify as Indigenous. At the time of completing the baseline assessment, both bodies reported having a majority of female officers on their visiting teams, as did the Official Visitors Program (Mental Health).

2.48. The Inspector of Custodial Services, the Official Visitors Program (Mental Health) and the Ombudsman have all reported that they are able to conduct unannounced visits to places of detention and that they are able to access all areas and installations within the facilities. Visiting

---

<sup>76</sup> Explanatory Statement, *Inspector of Custodial Services Bill 2017* (ACT).

<sup>77</sup> *Inspector of Correctional Services Act 2017* (ACT), s 29.

<sup>78</sup> The *Custodial Services Act 2012* (NSW) provides that the Inspector of Custodial Service is an independent statutory body, however its staff and business support services are provided through the Department of Justice.

teams from these bodies are able to speak with detainees and staff in any location of their choosing. These bodies have also reported having the ability to access all information and records within the places of detention that they can visit.

2.49. The NSW Ombudsman and the Inspector of Custodial Services have protections against the disclosure of information to government, with the latter advising that information must not be disclosed in a report to Parliament if there is an overriding public interest against its disclosure.<sup>79</sup> It is also an offence to obstruct officers from the two entities in the exercise of their functions and both bodies have legislative protections against interference of communication with detainees. The Official Visitors Program (Mental Health) has fewer legislated protections, with no offences for obstructing an official visitor and no defined protections from interference with communication.

2.50. The Inspector of Custodial Services, the Official Visitors Program (Mental Health) and the Ombudsman indicated a level of uncertainty about their ability to have direct and confidential contact with the SPT.

2.51. The Official Visitors Program (Corrections and Juvenile Justice), the Advocate for Children and Young People, the Law Enforcement Conduct Commission and the Children's Guardian all advised they do not have an inspection mandate. Official Visitors (Corrections and Juvenile Justice) are appointed by the Minister for Corrections or the Minister for Families, Communities and Disability Services and overseen by the Inspector of Custodial Services. The Advocate for Children and Young People advised it is an independent statutory officer appointed by the Governor and has the ability to consult with juveniles in detention.

2.52. The snapshot of the level of OPCAT readiness by bodies within New South Wales, as provided by each body is at [Appendix 3.3](#).

### **Northern Territory**

2.53. We engaged with the following entities in this jurisdiction:

Attorney General and Minister for Justice (Official Visitor and Youth Justice Advisory Committee)

Community Visitor Program

Northern Territory Ombudsman

Office of the Children's Commission

2.54. There is a range of entities in the Northern Territory that fulfil various inspection, oversight, visiting and complaint-handling roles in places of detention. However, there is not a fully independent, regular preventive prison inspection system.

2.55. The Northern Territory Ombudsman, Children's Commissioner and the Community Visitor Program:

- are functionally independent.
- have autonomy in relation to resource expenditure.
- have the right to access information and people in detention.
- are able to make post-visit reports.
- are able to make recommendations.
- are able to publish annual reports.
- are able to make submissions on relevant legislation.

---

<sup>79</sup> *Inspector of Custodial Services Act 2012* (NSW), ss 15 and 25. Schedules 1 and 2 of the *Government Information (Public Access) Act 2009* (NSW).

- have legislative bases for privileges, immunities and protections.
- are able to contact the SPT.

2.56. The Community Visitor Program focuses on specialised disability residential facilities and is required under its legislation to have a multi-expert professional team. It has a recruitment strategy to expand the cultural diversity of its composition. The reports by Community Visitors go to the Principal Community Visitor and are then provided to the manager of a facility or agency.

2.57. The Children’s Commissioner visits and monitors conditions in youth detention centres in the Northern Territory, but has no statutory power to inspect facilities. Inspections can take place with the consent of the relevant government agency. Draft reports are provided to relevant government agencies for comment before the final report goes to the minister for tabling in the Legislative Assembly. The Ombudsman has an oversight role and its inspections and visits of places of detention occur on an ad hoc basis, using its preliminary enquiry or formal investigation powers.

2.58. The Official Visitor and Youth Justice Advisory Committee within the Department of Justice and Attorney-General has an inspection mandate and its Official Visitors are personally independent of the facilities they inspect. It is the only regular inspector of Northern Territory prisons, but it is not financially independent and cannot access prisoner files or medical records. Official Visitors engage with prisoners who request to speak to them. They cannot speak with staff (apart from obtaining general information) and cannot make public reports on their inspections.

2.59. The snapshot of the level of OPCAT readiness by bodies within the Northern Territory, as provided by each body is at [Appendix 3.4](#).

## **Queensland**

2.60. We engaged with the following entities in this jurisdiction:

Crime and Corruption Commission

Department of Youth Justice / Youth Detention Inspectorate

Director of Forensic Disability

Office of the Chief Inspector of Correctional Services

Office of the Chief Psychiatrist

Office of the Health Ombudsman

Office of the Public Guardian (Community Visitor Program)

Queensland Family and Child Commission

Queensland Ombudsman

2.61. Of the eight bodies that are involved in places of detention in Queensland, the Office of the Chief Inspector and the Youth Detention Inspectorate are inspectorates within their government departments. They are not functionally independent and their post-visit reports and recommendations are made to the Commissioner for Corrective Services and the Chief Executive of the Department of Youth Justice, respectively. They may contribute to their wider agencies’ annual reports.

2.62. The lack of independence and public reporting for these bodies has been the subject of broader reviews.<sup>80</sup> The Queensland Government is progressing an options paper prepared by the

---

<sup>80</sup> K McMillan (chairperson), *Independent review of youth detention*, report, Queensland, December 2016.

Queensland Family and Child Commission on this topic. The Queensland Crime and Corruption Commission has acknowledged there is a need to withhold certain information about the correctional facilities so as not to jeopardise the security of the facilities. However, it recommended in its 2018 corruption enquiry into corrective services facilities that for the Office of the Chief Inspector’s inspection function to be truly effective, reports should be publically available.<sup>81</sup> The Queensland Government has advised that it supports the establishment of an independent inspectorate, which will inspect both adult and juvenile facilities.<sup>82</sup>

2.63. The Ombudsman, the Community Visitor Program administered by the Office of the Public Guardian, the Director of Forensic Disability, the Crime and Corruption Commission, the Queensland Family and Child Commission, and the Office of the Chief Psychiatrist are all independent statutory authorities which meet the functional independence requirements of OPCAT. The Health Ombudsman has a degree of independence but comes under the oversight of the minister.

2.64. The Ombudsman and the Health Ombudsman have oversight roles and visit facilities in relation to complaints. The Ombudsman also inspects all adult prisons and youth detention centres, public hospitals and health services and other facilities annually and conducts investigations in accordance with its legislation. The Crime and Corruption Commission can access facilities only in relation to the investigation of a complaint — in the Commission’s case, if it is in relation to a corruption or crime investigation. The Office of the Chief Psychiatrist is also limited to accessing closed facilities in relation to an investigation, in line with its core functions under the *Mental Health Act 2016* (QLD). The Director of Forensic Disability does not have an explicit legislative inspection function, but has statutory obligations to oversee the Forensic Disability Service through monitoring and auditing legislative compliance. The Office of the Public Guardian’s Community Visitor Program has an oversight function.

2.65. The role of the Office of the Public Guardian’s Community Visitor Program is restricted to visiting only minors in the Brisbane watch house, and 17 year olds located in adult correctional facilities. However, following the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) and the Youth Justice (Transitional) Regulation 2018, there are no longer any such minors staying in adult correctional facilities. These legislative amendments came into effect on 12 February 2018, and the Office of the Public Guardian reports that its last visit with a young person in an adult facility occurred in November 2018 and that young person was then released in December 2018.

2.66. The snapshot of the level of OPCAT readiness by bodies within Queensland, as provided by each body is at [Appendix 3.5](#).

## **South Australia**

2.67. We engaged with the following entities in this jurisdiction:

Community Visitor Scheme

Department for Correctional Services - Visiting Inspectors

Office for Public Integrity and Independent Commissioner Against Corruption

Office of the Chief Psychiatrist

---

<sup>81</sup> A MacSporran (chairperson), *Taskforce Flaxton – an examination of corruption risks in corrective services facilities*, report, Crime and Corruption Commission (Queensland), Brisbane, 2018.

<sup>82</sup> Department of Child Safety, Youth and Women (Queensland), *Oversight recommendations*, Department of Child Safety, Youth and Women (Queensland), Brisbane, 2019, viewed 28 June 2019, <<https://www.csyw.qld.gov.au/youth-justice/youth-detention-review-implementation/implementing-review-recommendations/oversight-recommendations>>.

2.68. There is a range of entities in South Australia that fulfil various inspection, oversight, visiting and complaint-handling roles in places of detention. However, all are limited in one or more respects — so there is not currently a regular, preventive prison inspection system with independent institutional capability.

2.69. Of those bodies, the Ombudsman, the Office for Public Integrity and Independent Commissioner against Corruption, and the Commissioner for Children and Young People do not have a regular inspection function. The Ombudsman has the power to enter and inspect agency premises for the purpose of investigating a complaint or an investigation on the Ombudsman's own initiative. The facilities that the Ombudsman may inspect, if relevant to an investigation, include juvenile detention, adult prisons, police lock-ups (where the Ombudsman is investigating treatment of prisoners within those lock-ups), forensic disability facilities and mental health facilities. The Office for Public Integrity and Independent Commissioner against Corruption can inspect police premises for the purpose of an investigation. The Office of the Public Advocate has a visiting role in adult prisons, closed psychiatric facilities, the Forensic Mental Health Service and all closed wards in aged care residential facilities and secure dementia units. It can conduct investigations into these facilities as directed by the South Australian Civil and Administrative Tribunal.

2.70. The Training Centre Visitor and the Community Visitor Scheme, both have an inspection role and are functionally independent, have diverse team composition, and the ability to make post visit reports and publish annual reports. The Training Centre Visitor inspects the Adelaide Youth Training Centre. The Community Visitor Scheme inspects closed psychiatric facilities and closed forensic disability facilities.

2.71. Visiting Inspectors are appointed and administered by the Department for Correctional Services. They can access people, places and records (except medical records) in relation to adult prisons, but are not functionally independent. Visiting Inspectors make post-visit reports which are provided to the relevant minister. Visiting Inspectors do not publish annual reports of their inspections and do not have legislative protections and immunities. They are bound by legislative confidentiality provisions. They do not have a legislative mandate to contact the SPT, but are not prevented from doing so.

2.72. The Office of the Chief Psychiatrist (OCP) has statutory monitoring and inspection functions, such as the ability to inspect premises and to require the production of documents. It falls within the management of the Department for Health and Wellbeing and does not have complete discretion in its allocation of resourcing. The OCP's post-visit reports and recommendations are provided to the chief executive officer and mental health executive teams, and if necessary to the Chief Executive of the Department for Health and Wellbeing. The OCP does publish an annual report. The OCP does not have formal legal protections from arrest or interference with communications, but is able to hold confidential information. The OCP has no legislative basis for contact with the SPT but is not prevented from doing so. The OCP may not be able to share information arising from its inspections with the SPT.

2.73. The snapshot of the level of OPCAT readiness by bodies within South Australia, as provided by each body is at [Appendix 3.6](#).

## **Tasmania**

2.74. We engaged with the following entities in this jurisdiction:

Commission for Children and Young People

The Mental Health Official Visitor and Prison Official Visitor, administered by Ombudsman Tasmania

Office of the Custodial Inspector (who is also the Ombudsman)

2.75. The Custodial Inspector, Mental Health Official Visitor and Prison Official Visitor have an inspection function, are functionally independent, have the ability to make post-visit reports and are mandated to publish annual reports. In some cases other reports are also mandated, for example the Principal Official Visitor is required to report on some matters under the *Mental Health Act 2013*. These bodies have the ability to access information, people and records. The Official Visitor schemes do not have legislative bases to make post-visit recommendations, or to require a relevant authority to engage with those recommendations or make submissions on relevant legislation. However, under section 165 of the *Mental Health Act 2013* and section 10 of the *Corrections Act 1997* Official Visitors can report to the relevant Minister on various matters. The Official Visitor schemes have limited protections against reprisals and do not have a clear ability to engage with the SPT.

2.76. The Commissioner for Children and Young People has an oversight function, rather than an inspection function. The Commissioner can access detention centres, take copies of records, hold private interviews with detainees of their choosing, and speak with staff. The legislation establishing the Commissioner's role requires it to provide draft reports to the minister. It is mandated to publish an annual report.

2.77. The snapshot of the level of OPCAT readiness by bodies within Tasmania, as provided by each body is at [Appendix 3.7](#).

## **Victoria**

2.78. We engaged with the following entities in this jurisdiction:

Commission for Children and Young People (CCYP)

Independent Broad-based Anti-corruption Commission (IBAC)

Justice Assurance and Review Office

Mental Health Complaints Commissioner

Office of the Chief Psychiatrist

Office of the Public Advocate (OPA)

Victorian Ombudsman

2.79. In Victoria, there is a patchwork of entities that fulfil various inspection, oversight, visiting and complaint-handling roles in places of detention. Several of them possess legislative and organisational characteristics that are consistent with OPCAT articles. The Victorian Ombudsman has taken a lead role in trialling an OPCAT-style inspection on two recent occasions. However, there is not currently any one entity that fulfils a regular, preventive, independent prison inspection mandate.

2.80. The Independent Broad-based Anti-corruption Commission (IBAC) has jurisdiction to enter, search and inspect police personnel premises, including a police gaol, where relevant to an investigation. IBAC possesses legislative and organisational characteristics that are consistent with

OPCAT Articles. It is a statutory office holder with functional independence and autonomy over resources. In particular IBAC has:

- both an inspection and oversight role for police cells and gaols.
- the power to conduct own motion investigations in relation to police cells.
- statutory powers of entry and inspection of police cells.
- the right to access information in relation to police cells.
- the power to make recommendations in relation to an investigation.

2.81. The Commission for Children and Young People:

- has an investigation and oversight role with respect to a wide range of facilities that accommodate children.
- is a statutory office holder with functional independence and autonomy over resources
- has the right to access information, people and places of detention.
- has the ability to make post-visit reports, publish reports and publish an annual report.
- has the ability to make post-visit recommendations and have relevant authorities engage with those recommendations.
- has the ability to engage with the SPT.

2.82. The Independent Visitor Program administered by the CCYP, and the Community Visitors Program (Disability) and Community Visitors Program (Mental Health), administered by the OPA:

- have both an inspection and oversight (or visiting) role.
- are functionally independent.
- have the ability to privately speak to their choice of interviewee, make post-visit reports, make recommendations and publish an annual report.

2.83. The degree of access to places of detention and to records varies between bodies. None of these bodies have formal legislative protections against reprisals.

2.84. The Victorian Ombudsman:

- has an investigation and oversight role with respect to a wide range of facilities.
- has statutory powers of entry and inspection.
- is a statutory office holder with functional independence and autonomy over resources.
- has the right to access information, people and places of detention.
- has the ability to make post-visit reports, publish reports and publish an annual report.
- has the ability to make post-visit recommendations and have relevant authorities engage with those recommendations.
- has legislative protections from reprisals and interference with communications.
- has the ability to engage with the SPT.

2.85. The Victorian Ombudsman conducted an OPCAT-style inspection of a women's prison in 2017. In 2019 the Ombudsman also conducted an OPCAT-style multi-disciplinary, multi-agency thematic inspection of three facilities, considering practices relating to solitary confinement of children and young people.

2.86. The following bodies have an oversight but not inspection role:

- Mental Health Complaints Commissioner.
- Office of the Chief Psychiatrist (which also has an investigation role. The Office also has statutory powers of entry and inspection and rights to access information, people and places of detention.)
- Justice Assurance and Review Office (JARO).



2.87. In Victoria there are four different types of Visitors, each with their own mandates and functions:

- a) Community Visitors Program (Disability), administered by OPA.
- b) Community Visitors Program (Mental Health), administered by OPA.
- c) Independent Prison Visitors' Scheme, administered by JARO.
- d) Independent Visitor Program, administered by the CCYP.

2.88. The snapshot of the level of OPCAT readiness by bodies within Victoria, as provided by each body is at [Appendix 3.8](#).

### **Western Australia**

2.89. We engaged with the following entities in this jurisdiction:

Commission for Children and Young People

Department of Justice WA, Aboriginal Visitor Scheme

The Health and Disability Services Complaints Office

Mental Health Advocacy Service

Office of the Chief Psychiatrist

Office of the Inspector of Custodial Services

Parliamentary Commissioner for Administrative Investigations (Western Australia Ombudsman)

2.90. The Ombudsman, the Office of the Inspector of Custodial Services<sup>83</sup> (including the administration of the Independent Visitor Service), the Office of the Chief Psychiatrist, the Chief Advocate for the Bennett Brook Disability Justice Centre, and the Mental Health Advocacy Service:

- are all independent statutory authorities with inspection mandates for places of detention.
- have varied team composition and professional expertise.
- have the ability to make unannounced visits, access information, and privately interview detainees and staff.
- have the ability to make post-visit reports and recommendations, including engagement with authorities on those recommendations.
- make submissions on relevant legislation, publish an annual report, and have legislative protections from interference.

2.91. Of all of the bodies in Australia with an inspection or oversight function, the Office of the Inspector of Custodial Services appears to be the most advanced in terms of OPCAT compliant inspections. It has been considered by other jurisdictions as a regime that could be modelled.<sup>84</sup>

2.92. The Mental Health Advocacy Service and the Chief Advocate for the Disability Justice Centre do not report to Parliament, but have other reporting mechanisms. The Office of the Chief Psychiatrist reports to Parliament, however it is not required to lay each report before Parliament.

---

<sup>83</sup> Sections 17 and 18 of the *Inspector of Custodial Services Act 2003* (WA) relate to directions the minister may give to the inspector and ministerial access to information held by the inspector. However, the independence of both the Inspector of Custodial Services and the Western Australian Ombudsman are protected through reporting to Parliament, rather than to a minister. They are not accountable to the Executive arm of government.

<sup>84</sup> Department of Child Safety, Youth and Women (Queensland), *Oversight recommendations*, Department of Child Safety, Youth and Women (Queensland), Brisbane, 2019, viewed 28 June 2019, <<https://www.csyw.qld.gov.au/youth-justice/youth-detention-review-implementation/implementing-review-recommendations/oversight-recommendations>>.

2.93. The Health and Disability Services Complaints Office reports to the Minister for Health and has a visiting role, but has no specific powers to conduct inspections. The Commissioner for Children and Young People is an independent statutory office and has a monitoring and advocacy role, rather than a specific inspections role. We were advised by the Western Australian Attorney-General that the Aboriginal Visitor Scheme does not have an inspectorate role.

2.94. The snapshot of the level of OPCAT readiness by bodies within Western Australia, as provided by each body is at [Appendix 3.9](#).

2.95. Importantly, on 17 July 2019, the Western Australian Government advised that the Western Australian Ombudsman and the Office of the Inspector of Custodial Services had been appointed as the NPMs for Western Australia's mental health and other secure facilities, and justice-related facilities including police holding cells, respectively.

## **Mapping places of detention - existing arrangements in Australia**

### ***OPCAT implementation in Australia – utilising existing bodies***

2.96. The Australian Government has made it clear that it is a matter for each state and territory to identify NPMs for their jurisdiction. It is open to jurisdictions to create a new entity to fulfil the role, or to adapt the existing role of an entity or entities to fulfil the NPM function.

2.97. The NPM bodies will be responsible for inspecting places of detention within their jurisdiction and making recommendations about detainees' treatment and conditions.

2.98. The actual number and physical location of facilities within each of the primary places of detention and within each jurisdiction are yet to be comprehensively mapped. For an overview of the facilities that are estimated to fall within each primary place of detention in the Commonwealth, states and territories, see Table 1 and Table 2.

2.99. The requirement to regularly visit places of detention will require examination of the number and types of facilities across Australia that meet the definition of primary places of detention. This will also require consideration as to the level of resourcing needed to monitor the conditions and treatment of detainees in each of those facilities, in a regular preventive manner.

**Table 1 – Estimated total number of facilities falling within the definition of primary places of detention within states and territories**

Jurisdiction	Adult prisons (including correctional centres and work camps)	Juvenile detention facilities (including Youth Training Centres, Youth Detention Centres and Youth Justice Centres)	Closed facilities or units where people may be involuntarily detained for mental health assessment or treatment (where people are held for equal to, or greater than, 24 hours)	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, 24 hours)	Police lock-ups or police station cells (where people are held for equal to, or greater than, 24 hours)	TOTAL
ACT	1	1	7	1	1	11
NSW	40	6	362 <sup>85</sup>	1	112 <sup>86</sup>	521
NT	4	2	3	1	58 <sup>87</sup>	68
QLD	14 <sup>88</sup>	2	32	1	59 <sup>89</sup>	108
SA	9	1	42 <sup>90</sup>	3	9 <sup>91</sup>	64
TAS	5 <sup>92</sup>	1	6 <sup>93</sup>	1	0 <sup>94</sup>	13
VIC	15	2	23 <sup>95</sup>	2	101 <sup>96</sup>	143
WA	21	1	24	1	26 <sup>97</sup>	73
<b>TOTAL</b>	<b>109</b>	<b>16</b>	<b>499</b>	<b>11</b>	<b>366</b>	<b>1001</b>

<sup>85</sup> Based on information provided by the NSW Principal Official Visitor, who conducts regular visits to a total of 362 declared mental health facilities, including 107 Community Mental Health Services and hospitals/mental health facilities that have multiple units in one location.

<sup>86</sup> Number of NSW Police stations open 24 hours a day. Total number including non-24 hour stations is 419. NSW Police, *Regions, Commands and Districts*, Government of New South Wales, Sydney, 2019, viewed 28 June 2019, <[https://www.police.nsw.gov.au/about\\_us/regions\\_commands\\_districts](https://www.police.nsw.gov.au/about_us/regions_commands_districts)>.

<sup>87</sup> Number of NT Police stations. Northern Territory Police, *When should I call 000?* Northern Territory Government, Darwin, 2019, viewed 02 August 2019, <<https://www.pfes.nt.gov.au/Contact-us.aspx>>.

<sup>88</sup> Queensland has 14 designated 'prisons' as per the *Corrective Services Regulation 2017* (Qld).

<sup>89</sup> Number of commissioned watch houses that are designed and capable of holding prisoners in excess of 24 hours, as advised by the Queensland Department of Justice and Attorney-General.

<sup>90</sup> Based on information provided by the SA Chief Psychiatrist, who visits all approved treatment centres, limited treatment centres and authorised community mental health services.

<sup>91</sup> Number of SA Police stations open 24 hours a day. Total number including non-24 hour stations is 127. SA Police, *Find your local police station*, Government of South Australia, Adelaide, 2019, viewed 28 June 2019, <<https://www.police.sa.gov.au/contact-us/find-your-local-police-station>>.

<sup>92</sup> Department of Justice (Tasmania), *Facility contact details*, Department of Justice (Tasmania), Hobart, 2017, viewed 28 June 2019, <[https://www.justice.tas.gov.au/prisonservice/about\\_us/contact\\_us/prisons](https://www.justice.tas.gov.au/prisonservice/about_us/contact_us/prisons)>

<sup>93</sup> Based on information provided by the Mental Health Official Visitor (Tasmania), who is able to visit all approved hospitals, including closed psychiatric facilities and emergency departments in hospitals where patients can be detained.

<sup>94</sup> Tasmania Police has advised that there are no police lock-ups or cells where people are detained for 24 hours or more. Total number of Tasmania Police stations is 67. Tasmania Police, *Find a police station*, Tasmanian Government, Hobart, 2014, viewed 28 June 2019, <<https://www.police.tas.gov.au/find-station/>>.

<sup>95</sup> Based on information provided by the Mental Health Complaints Commissioner (Victoria) and the Office of the Public Advocate (Victoria), who are able to visit designated mental health services.

<sup>96</sup> Number of Victoria Police stations open 24 hours a day, total number including non-24 hour stations is 398. Victoria Police, *Find my local police station*, Government of Victoria, Melbourne, 2019, viewed 28 June 2019, <<https://www.police.vic.gov.au/location>>.

<sup>97</sup> As advised by WA Police to the Department of Justice. Number of WA Police stations open 24 hours a day, total number including non-24 hour facilities is 158. Western Australia Police Force, *Your local police*, Government of Western Australia, Perth, 2019, viewed 28 June 2019, <<https://www.police.wa.gov.au/Contact-Us/Police>>.

**Table 2 – Total number of facilities able to be inspected across places of detention within the Commonwealth**

State/Territory	Immigration detention facilities including Alternative Places of Detention	Military detention facilities	Australian Federal Police lock-ups or police station cells	TOTAL
<b>ACT (including Jervis Bay)</b>	0	0	2	2
<b>NSW</b>	1	3	0	4
<b>NT</b>	1	1	0	2
<b>QLD</b>	3	4	0	7
<b>SA</b>	1	1	0	2
<b>TAS</b>	0	0	0	0
<b>VIC</b>	1	2	0	3
<b>WA</b>	2	1	0	3
<b>EXTERNAL TERRITORIES</b>	3	0	3	6
<b>TOTAL</b>	12	12	5	<b>29</b>

## Current oversight coverage

2.100. Our mapping of places of detention has also identified gaps in coverage by highlighting places where there is currently no independent monitoring of places of detention.

2.101. An example of a gap in oversight is police lock-ups and station cells across Australia. Table 3 shows the level of oversight nationally.

**Table 3 – Oversight of police lock-ups and police station cells**

Jurisdiction	Inspection Bodies
Australian Federal Police cells in the Australian Capital Territory, the External Territories and Norfolk Island.	Commonwealth Ombudsman (yet to commence inspections as part of NPM inspectorate role).
Police cells in New South Wales.	Nil.
Police cells in Victoria.	Victorian Independent Broad-based Anti-corruption Commission (IBAC) can enter search and inspect police personnel premises including a police gaol, where relevant to an investigation.  Victorian Ombudsman (Melbourne Custody Centre, Moorabbin Justice Centre, Ringwood Court Cells).
Police cells in the Northern Territory.	Northern Territory Ombudsman (on an ad hoc basis).
Police cells in Queensland.	Queensland Crime and Corruption Commission (only if relevant to a crime or corruption investigation).  Community Visitor Program (for minors in Brisbane Watch house only).
Police cells in South Australia.	Nil.
Police cells in Tasmania.	Ombudsman Tasmania (if relevant to an investigation into administrative action taken by a police authority).
Police cells in Western Australia.	Western Australian Ombudsman (has jurisdiction, but does not currently undertake regular inspections).  Inspector of Custodial Services (will be responsible for the oversight of all justice-related facilities, including police lock-ups).

2.102. These gaps in the oversight of police lock-ups and station cells will require careful consideration when determining the designation and scope of NPMs. Once NPMs have been designated and inspection regimes established, jurisdictions should further consider how to address any gaps to ensure the progressive implementation of OPCAT.

2.103. There is some overlap where a number of different bodies within a jurisdiction may access a particular place or type of detention, each under their own mandate. Some bodies that already have a legislated ability to access facilities are only able to do so for the purpose of investigating complaints, allegations of corruption, or responding to systemic issues. Such bodies may require a change in scope, objective and inspection methodology if designated as an NPM with a regular, preventive focus.

2.104. A factor for jurisdictions to consider as part of the NPM designation is the extent to which current areas of overlap can be minimised, particularly in a resource constrained environment. While at first glance it may appear that a number of bodies overlap in their ability to access a place of detention, this does not necessarily result in a duplication of effort. Inspection and oversight bodies have different priorities and will need to appropriately manage their access to a place of detention in order to achieve consistency.

2.105. The following tables provide a snapshot of the overlap between entities which have the ability to access or have qualified access to places of detention within each jurisdiction.

**Table 4 – Current oversight for Commonwealth places of detention**

	Commonwealth Ombudsman	Australian Human Rights Commission (incorporating the National Children's Commissioner)	Australian Defence Force
Immigration detention facilities	✓	✓	X
Military detention facilities	✓ <sup>98</sup>	X	✓ <sup>99</sup>
Australian Federal Police cells	✓	X	X
Other (including transfers between immigration detention facilities)	✓	✓	X

<sup>98</sup> Currently, Corrective Services NSW is invited to undertake an annual technical inspection of the Defence Force Corrective Establishment.

<sup>99</sup> Currently, inspections of ADF area and unit cells are undertaken as 'technical inspections' by staff of the Defence Force Corrective Establishment.

Table 5 – Current oversight for places of detention within the Australian Capital Territory

	ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman <sup>100</sup>	ACT Human Rights Commission (incorporating the ACT Children and Young Peoples Commissioner)	ACT Public Advocate
Adult prisons	✓	✓	✓	✓	✓
Juvenile detention facilities	✓ <sup>101</sup>	✓	✓	✓	✓
Closed psychiatric facilities	X	✓	X	✓	✓
Closed forensic disability facilities	X	✓	X	✓	✓
Police lock-ups or police station cells	X	X	X	X	X
Other (including court cells and transport vehicles)	✓	X	✓	✓	✓

Table 6 – Current oversight for places of detention within New South Wales

	NSW Ombudsman <sup>102</sup>	Inspector of Custodial Services	Official Visitor Program (Corrections and Juvenile Justice) – overseen by ICS	NSW Official Visitors Program (Mental Health)	Advocate for Children and Young People <sup>103</sup>
Adult prisons	✓	✓	✓	X	X
Juvenile detention facilities	✓	✓	✓	X	✓
Closed psychiatric facilities	✓	X	X	✓	X
Closed forensic disability facilities	✓	✓	✓	✓	X
Police lock-ups or police station cells	X	X	X	X	X
Other (including court cells, transitional centres and involuntary drug and alcohol units)	X	✓	✓	✓	X

<sup>100</sup> Oversight and complaints role, currently no preventive inspection mandate.

<sup>101</sup> By 8 December 2019, the inspector’s mandate will expand to cover a place declared to be a detention place under s 142 of the *Children and Young People Act 2008* (ACT).

<sup>102</sup> No specific inspection role, limited to visits to facilities to assist a person detained to make a confidential complaint to the Ombudsman.

<sup>103</sup> The *Advocate for Children and Young People Act 2014* (NSW) allows it to conduct consultations with the residents rather than inspections of the facilities.

**Table 7 – Current oversight for places of detention within the Northern Territory**

	NT Attorney Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman <sup>104</sup>	Office of the Children Commissioner <sup>105</sup>	Community Visitor Program
Adult prisons	✓	✓	X	X
Juvenile detention facilities	X	X	✓	X
Closed psychiatric facilities	X	✓	X	✓
Closed forensic disability facilities	X	✓	X	✓
Police lock-ups or police station cells	X	✓	X	X
Other (including approved treatment agencies)	X	X	X	✓

<sup>104</sup> No current systemic inspection function. All visits are considered ad hoc inspections.

<sup>105</sup> No statutory power to inspect. Monitoring visits commence in February 2019 and physical inspections will be completed with consent of the government agency.



**Table 8 – Current oversight for places of detention within Queensland**

	QLD Ombudsman <sup>106</sup>	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Public Guardian	Crime and Corruption Commission <sup>107</sup>	Health Ombudsman <sup>108</sup>	Director of Forensic Disability
Adult prisons	✓	✓	X	✓ <sup>109</sup>	✓	✓	X
Juvenile detention facilities	✓	X	✓	✓	✓	✓	X
Closed psychiatric facilities	✓	X	X	✓	✓ <sup>110</sup>	✓	X
Closed forensic disability facilities	✓	X	X	✓	X	X	✓
Police lock-ups or police station cells	X	X	X	✓	✓	X	X
Other	✓	✓	X	✓ <sup>111</sup>	✓ <sup>112</sup>	X	X

<sup>106</sup> Limited to access in relation to undertaking administrative reviews (testing compliance with legislation, regulations and contracts) and investigating complaints (including human rights complaints) or systemic issues on own initiative.

<sup>107</sup> Limited to access to all facilities in Queensland if relevant to the performance of a corruption or crime investigation.

<sup>108</sup> No inspection role as such, only for a complaint in line with core functions.

<sup>109</sup> The Office of the Public Guardian Community Visitor Program in adult correctional facilities is limited to 17 year olds only. However, there are no longer any such minors staying in adult correctional facilities, following the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) and the Youth Justice (Transitional) Regulation 2018. The legislative amendments commenced on 12 February 2018, and OPG report that their last visit with a young person in an adult facility occurred in November 2018 and the young person was then released in December 2018.

<sup>110</sup> If the Crime and Corruption Commission has grounds to suspect corrupt conduct by way of the unlawful treatment of a person.

<sup>111</sup> The Community Visitor Program in Brisbane watch house relates to minors only.

<sup>112</sup> The Crime and Corruption Commission is able to access the official premises of a unit of public administration, as defined under s 73 of the *Crime and Corruption Act 2001* (Qld).

**Table 9 – Current oversight for places of detention within South Australia**

	SA Ombudsman <sup>113</sup>	SA Public Advocate <sup>114</sup>	Community Visitor Scheme	Training Centre Visitor	SA Chief Psychiatrist	Visiting Inspectors – Department of Correctional Services
Adult prisons	✓	✓	X	X	✓ <sup>115</sup>	✓
Juvenile detention facilities	✓	X	X	✓	X	X
Closed psychiatric facilities	✓	✓	✓	X	✓	X
Closed forensic disability facilities	✓	✓	✓	X	✓	X
Police lock-ups or police station cells	✓	X	X	X	X	X
Other (including closed wards in aged care residential facilities and secure dementia units)	X	✓	X	X	X	X

**Table 10 – Current oversight for places of detention within Tasmania**

	Office of the Custodial Inspector (administered by Ombudsman Tasmania)	Mental Health Official Visitor (administered by Ombudsman Tasmania)	Commissioner for Children and Young People (CCYP) <sup>116</sup>
Adult prisons	✓	X	X
Juvenile detention facilities	✓	X	✓
Closed psychiatric facilities	X	✓	X
Closed forensic disability facilities	X	✓	X
Police lock-ups or police station cells	X	X	X
Other (including places of detention established under s 123 of Tasmania’s <i>Youth Justice Act 1997</i> )	✓	X	✓

<sup>113</sup> The Ombudsman is able to access any facility if relevant to an Ombudsman investigation.

<sup>114</sup> Staff of the Public Advocate do not carry out inspections, but do visit clients and conduct investigations as directed by the South Australian Civil and Administrative Tribunal (SACAT).

<sup>115</sup> May visit a forensic patient who is in a prison as a consequence of being placed on a ministerial direction. Approval from the Department for Correctional Services must be obtained for a visit to proceed. Can include any prison in South Australia.

<sup>116</sup> The Commissioner for Children and Young People is an independent statutory office that advocates for the rights and wellbeing of all children and young people in Tasmania. The CCYP does not have the function or power to inspect places of detention as contemplated by OPCAT.

**Table 11 – Current oversight for places of detention within Victoria**

	Victorian Ombudsman <sup>117</sup>	Mental Health Complaints Commissioner <sup>118</sup>	Commissioner for Children and Young People (CCYP)	Independent Visitor Program (administered by the CCYP)	Community Visitors Program (Disability)	Community Visitors Program (Mental Health)	Office of the Chief Psychiatrist <sup>119</sup>	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme (administered by JARO) <sup>120</sup>	Independent Broad-based Anti-corruption Commission (IBAC)
Adult prisons	✓	X	✓	X	X	X	X	✓ <sup>121</sup>	✓	X
Juvenile detention facilities	✓	X	✓	✓	X	X	X	✓	X	X
Closed psychiatric facilities	✓	✓	X	X	X <sup>122</sup>	✓	✓ <sup>123</sup>	X	X	X
Closed forensic disability facilities	✓	✓ <sup>124</sup>	X	X	✓	X	X	X	X	X
Police lock-ups or police station cells	✓ <sup>125</sup>	X	✓	X	X	X	X	X	X	✓
Other (including disability residential services, mental health service providers and secure welfare units)	✓	✓	✓	X	✓	✓	✓ <sup>126</sup>	X	X	X

<sup>117</sup> The principal role of the Ombudsman is to enquire into or investigate any administrative action taken by or in an authority. The Ombudsman’s jurisdiction covers most places where people are or may be deprived of their liberty, either by an order given by a state public authority or at its instigation or with its consent or acquiescence. Inspections may be conducted during an investigation.

<sup>118</sup> No inspection role, only for a complaint in line with core functions.

<sup>119</sup> The Office of the Chief Psychiatrist does not have a general inspection function. It has broad powers of entry to mental health service providers to conduct investigations, clinical practice orders and clinical reviews for the purpose of improving quality and safety.

<sup>120</sup> Visitors are nominated by the Minister for Corrections on the recommendation of JARO, outlined in s 35 of Victoria’s *Corrections Act 1986*.

<sup>121</sup> JARO does not have a legislated power to inspect. Visits are arranged directly with prisons and youth justice facilities as required when conducting reviews in response to reports of significant incidents.

<sup>122</sup> The Office of the Public Advocate advised that the Community Visitors Program (Disability) visits a range of disability services across the state (including closed forensic disability facilities), but does not visit closed psychiatric disability facilities.

<sup>123</sup> The Office of the Chief Psychiatrist does not have a general inspection function. It has broad powers of entry to mental health service providers for the purpose of improving quality and safety.

<sup>124</sup> The MHCC advised it can enter Thomas Embling Hospital as it is part of Forensicare, a designated mental health service, but is unable to enter other ‘closed forensic disability facilities’ such as the Disability Forensic Assessment and Treatment Service in Fairfield.

<sup>125</sup> The Ombudsman does not have jurisdiction over Victoria Police. However, it does have jurisdiction over the Melbourne Custody Centre, as Victoria Police has contracted out its operation and the contractor falls within the scope of the *Ombudsman Act 1973* (VIC).

<sup>126</sup> The Victorian Office of the Chief Psychiatrist advised it has oversight of both closed psychiatric facilities as well as other (including disability residential services, mental health service providers and secure welfare units).

Table 12 – Current oversight for places of detention within Western Australia

	Western Australian Ombudsman <sup>127</sup>	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Bennett Brook Disability Justice Centre	Health and Disability Services Complaints Office <sup>128</sup>	Commissioner for Children and Young People <sup>129</sup>
Adult prisons	✓	X	✓	X	X	✓	X
Juvenile detention facilities	✓	X	✓	X	X	✓	✓
Closed psychiatric facilities	✓	✓	X	✓	X	X	✓
Closed forensic disability facilities	✓	✓ <sup>130</sup>	X	✓	✓	✓	✓
Police lock-ups or police station cells	✓	X	✓ <sup>131</sup>	X	X	X	✓
Other (including prisoner transport, court custody centres and hospitals)	✓	✓ <sup>132</sup>	✓	X	X	✓	✓

<sup>127</sup> For the purposes of conducting an investigation, under s 21 of the *Parliamentary Commissioner Act 1971* (WA) the Ombudsman is able to enter and inspect any premises occupied or used by any department or authority to which the Act applies.

<sup>128</sup> *Health and Disability Services (Complaints) Act 1995* (WA) provides the HaDSCO Director with powers to obtain information and entry to premises for the purpose of an investigation.

<sup>129</sup> Under ss 37 and 38 of the *Commissioner for Children and Young People Act 2006* (WA), the Commissioner is able to enter any premises where children and young people are held, by consent or warrant of a children’s court magistrate for the purposes of a special inquiry.

<sup>130</sup> The Office of the Chief Psychiatrist has oversight of closed psychiatric disability facilities.

<sup>131</sup> Police lock-ups (in regional courts) that have been prescribed to be used as court custody centres, in accordance with ss 19 and 20 of the *Western Australian Inspector of Custodial Services Act 2003* and the *Court Security and Custodial Services Regulations 1999*. Going forward, it is intended that this expand to include any Western Australian police lock-up.

<sup>132</sup> The Office of the Chief Psychiatrist has oversight of mental health services within hospitals for both voluntary admissions of people with a mental illness, and people with a mental illness and a co-morbid physical illness.

## PART 3: NEXT STEPS

### Where to from here?

3.1. This report demonstrates that Australia begins OPCAT implementation with a range of existing entities that meet many of the OPCAT NPM requirements. There are numerous oversight and inspection regimes that have the capacity to either become an NPM or play a role in an NPM network.

#### **Designation**

3.2. Although a basis exists for OPCAT implementation, decisive action is needed in the designation of NPMs across Australia. With only 16 months remaining in the commencement period there is a sense of urgency as there are limits to what can be done in the absence of a known NPM network.

#### **Legislation**

3.3. Governments should consider the extent (if any) to which legislation is required to be introduced to support the visiting and unfettered access functions of the SPT. The Australian Capital Territory and the Northern Territory are examples of jurisdictions that have passed such legislation.<sup>133</sup> More generally, informed by the contents of this report, each jurisdiction should consider the extent to which legislative change is needed to meet the tests imposed by OPCAT.

#### **Resourcing**

3.4. Regardless of whether existing bodies are provided with an NPM mandate or new bodies are established, consideration must be given to the provision of adequate resourcing in order to achieve OPCAT objectives. International experience suggests that it is an ongoing issue for NPMs to ensure they have the resources to continue with their existing mandates, as well as establishing an effective regular inspection regime with a sufficient level of staff, preparing reports and recommendations, and making submissions on relevant legislation. The reality is that, over time, each jurisdiction will require additional funding to provide regular preventive oversight to all places where people are deprived of their liberty required by OPCAT.

3.5. When considering resourcing, in the 2017–18 financial year the Office of the Inspector of Custodial Services (Western Australia) employed 20 staff at a cost of \$3.659 million to oversee 17 prisons, five prison work camps, one juvenile detention centre and all court custody centres and police lock-ups that are prescribed court custody centres.<sup>134</sup> The New South Wales Office of the Inspector of Custodial Services has a budget of \$2.824 million, with 13 staff to oversee 40 correctional centres, six transitional centres and residential facilities, six juvenile justice centres, 12 24-hour court cell complexes, 64 court cell locations, 113 escort vehicles and 25 detainee transport vehicles.<sup>135</sup>

3.6. The SPT recommends that dedicated funding be prescribed for the specific purpose of the NPM, in those bodies with wider institutional mandates. Where the SPT has made recommendations during country visits, there is also scope to seek funding to implement those recommendations

---

<sup>133</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018 (ACT) and Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act 2018 (NT)*.

<sup>134</sup> Office of the Inspector of Custodial Services (Western Australia), *Annual report 17–18*, Perth, 2018, visited 28 June 2019, <<https://www.oics.wa.gov.au/wp-content/uploads/2018/10/OICS-17-18-Annual-Report.pdf>>.

<sup>135</sup> Inspector of Custodial Services (New South Wales), *Annual report 2017–18*, Sydney, 2018, viewed 28 June 2019, <<http://www.custodialinspector.justice.nsw.gov.au/Documents/Annual%20Report%202017-18.pdf>>.

through the UN SPT Special Fund.<sup>136</sup> For example, funding was provided by the UN SPT Special Fund for the 2017 New Zealand NPM independently-commissioned report on seclusions and restraints. This occurred after the SPT visited New Zealand in 2013 and made specific recommendations to immediately stop holding people in restrictive detention based on their perceived security risk.<sup>137</sup>

3.7. A regular preventive inspection regime of places of detention, especially in places where there has previously been little or no oversight, will require additional resources to be effective. The journey towards effective OPCAT implementation is not merely a matter of conferring further functions on existing oversight bodies, or renaming existing practices as being in accordance with OPCAT and assuming that these bodies can continue to operate in a business as usual model. In order to have an effective and regular preventive inspection regime, bodies will require new or expanded methods of operation. These will need commensurate increases in resourcing over time in most, if not all, jurisdictions.

### **Cooperation**

3.8. Article 22 of OPCAT requires authorities to examine the recommendations of the NPMs and enter into a dialogue about implementing those recommendations.

Once NPMs have been identified, the Office will consider:<sup>138</sup>

- developing standard practices to ensure that draft legislation relevant to torture and ill-treatment prevention is routinely sent to NPMs for comment.
- developing a Memorandum of Understanding to facilitate cooperation within and across jurisdictions and set out clear guidelines on how they will interact.
- facilitating workshops and training along thematic lines and consider particular practices that cut across places of detention, such as disability, and the use of restraints.
- developing protocols on sharing and protecting information between entities across jurisdictions.

3.9. In conjunction with the NPM Coordinator, each jurisdiction may wish to consider establishing:<sup>139</sup>

- mechanisms for engaging and cooperating with relevant authorities across jurisdictions on responding to and implementing recommendations, including establishing procedures where urgent action is required.
- means for addressing and resolving operational difficulties that may occur during the course of an NPM exercising its duties, such as during visits.
- policies for publicising reports, or parts of reports such as main findings and recommendations.
- policies regarding the production and publication of thematic reports.

---

<sup>136</sup> Office of the United Nations Commissioner for Human Rights, *The special fund – a focus on torture prevention*, United Nations, Geneva, 2019, viewed 28 June 2019, <<https://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/SpecialFund.aspx>>.

<sup>137</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to New Zealand undertaken from 29 April to 8 May 2013: observations and recommendations addressed to the State party*, UN Doc CAT/OP/NZL/1 (10 February 2017), p. 17.

<sup>138</sup> Association for the Prevention of Torture, *Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Federal and other Decentralised States*, Geneva, 2011, pp. 29-31, viewed 28 June 2019, <[https://www.apt.ch/content/files\\_res/OPCAT%20and%20Federal%20States%20-%20Eng.pdf](https://www.apt.ch/content/files_res/OPCAT%20and%20Federal%20States%20-%20Eng.pdf)>.

<sup>139</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Analytical self-assessment tool for National Prevention Mechanisms (NPM)*, UN Doc CAT/OP/1 (6 February 2012).

- 3.10. Jurisdictions may also wish to consider the possibility of sharing expertise in order to:
- properly resource multi-disciplinary teams and supplement medical and inspectorate expertise between the Commonwealth, state and territory NPMs.
  - enable unannounced visits to remote facilities.

### ***Widening of scope***

3.11. International experience has shown that even where countries have started OPCAT inspections of a narrower range of places, it is likely to broaden over time to encompass more places of detention. For example, the New Zealand Ombudsman's NPM mandate expanded in 2018 to include monitoring dementia units in private aged care facilities — 11 years after the Ombudsman was first designated as an NPM. Gradual expansion is likely, to enable each jurisdiction time to prepare, implement training and develop cooperative arrangements with each other.

### ***Principles and standards***

3.12. While canvassing bodies that already have an inspectorate role, we asked for information about their principles, standards and inspection methodologies. The results varied — some bodies inspect strictly in accordance with their legislative requirements and others in a manner consistent with international guidance.

3.13. As the NPM Coordinator the Office will consult further with those bodies designated to form the NPM network, with a view to identifying commonalities where appropriate. We will also consider relevant international standards and how these can be incorporated into inspection regimes.

### ***The role of civil society***

3.14. International experience shows that civil society plays an important part in OPCAT implementation and that early engagement enhances the credibility and visibility of the NPM.<sup>140</sup> The work of the NPM network is likely to be informed by the views of civil society and by lived experience of detention. NPMs may seek to apply civil society's knowledge and expertise. Once NPMs are established, they may wish to consider whether relevant civil society representatives could inform their inspection regimes, such as through the establishment of formal advisory committees, or informal ad hoc advice or submissions. It may also be appropriate in some circumstances for civil society representatives to participate in inspections.

3.15. In our function as the NPM Coordinator, the Office is planning to form a civil society advisory group to help inform priorities in the years ahead.

## **Conclusion**

3.16. Currently, Australia is not fully OPCAT ready. We are now more than halfway through the three year OPCAT implementation period. Decisive action must be taken quickly, particularly by those jurisdictions that have not yet nominated NPMs, in order to ensure that Australia meets our international human rights obligations. The SPT will be looking to Australia to successfully demonstrate how an NPM network can work in a federated system and has recently announced it will visit Australia in the coming months.

3.17. NPMs, whether they are new bodies or modified from existing entities, will need time to develop methodologies and ensure they are ready for the start of OPCAT inspections.

---

<sup>140</sup> Association for the Prevention of Torture, *Civil society*, Association for the Prevention of Torture, Geneva, 2019, viewed 28 June 2019, <<https://apt.ch/en/civil-society/>>.

3.18. This report has identified that all jurisdictions have various entities in place which are empowered to undertake and report on inspections of places of detention. While there is some variation in terms of OPCAT readiness, one or more existing bodies in each jurisdiction are likely to be able to meet the NPM obligations — provided that amendments are made to ensure that gaps are covered where necessary.

3.19. International experience has shown that OPCAT implementation, especially involving a multiple body NPM, is likely to be an iterative process. There is no single approach to OPCAT implementation that has been adopted across countries, approaches vary in the manner and frequency of inspections. However, inability to achieve perfection from the start should not be an excuse for inaction.

3.20. We are pleased with the level of cooperation and collaboration from bodies we approached in the preparation of this report. A substantial body of expertise already exists in Australia regarding many of the aspects of OPCAT compliance.

3.21. It is in this spirit of cooperation that we look forward to working with all jurisdictions to advance OPCAT implementation in Australia.



APPENDIX 1 – OPTIONAL PROTOCOL TO THE CONVENTION  
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING  
TREATMENT OR PUNISHMENT

# **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

***Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006***

## **PREAMBLE**

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

## **PART I**

### **General principles**

#### *Article 1*

The objective of the present Protocol 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.

## *Article 2*

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

## *Article 3*

Each State Party shall 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 (hereinafter referred to as the national preventive mechanism).

## *Article 4*

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its 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 (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## **PART II**

### **Subcommittee on Prevention**

## *Article 5*

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### *Article 6*

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### *Article 7*

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

#### *Article 8*

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

#### *Article 9*

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

#### *Article 10*

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

## **PART III**

### **Mandate of the Subcommittee on Prevention**

#### *Article 11*

1. The Subcommittee on Prevention shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### *Article 12*

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

### *Article 13*

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

### *Article 14*

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

### *Article 15*

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

## *Article 16*

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.
4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## **PART IV**

### **National preventive mechanisms**

## *Article 17*

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

## *Article 18*

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.



### *Article 19*

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

### *Article 20*

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

### *Article 21*

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

### *Article 22*

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

## *Article 23*

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

## **PART V**

### **Declaration**

## *Article 24*

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

## **PART VI**

### **Financial provisions**

## *Article 25*

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

## *Article 26*

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

## **PART VII**

### **Final provisions**

## *Article 27*

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

#### *Article 28*

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

#### *Article 29*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

#### *Article 30*

No reservations shall be made to the present Protocol.

#### *Article 31*

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

#### *Article 32*

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

#### *Article 33*

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided

or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### *Article 34*

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

#### *Article 35*

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

#### *Article 36*

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

(a) Respect the laws and regulations of the visited State;

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

#### *Article 37*

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

## APPENDIX 2 – SAMPLE BASELINE STUDY TOOL REQUEST

### OPCAT BASELINE STUDY TOOL (with reference to relevant OPCAT Articles)

The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) ratified by the Australian government on 21 December 2017, establishes a system of regular visits to all places of detention in order to prevent torture and ill-treatment, which includes cruel, inhuman or degrading treatment or punishment.

Visits will be carried out at the international level by the *United National Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (SPT).

Visits at the domestic level will be carried out by one or several National Preventive Mechanisms (NPMs) that are to be designated by the State and Territory governments. The Office of the Commonwealth Ombudsman has been announced as the NPM Coordinator to facilitate the NPM Bodies. It has also been announced as the NPM Body for Commonwealth places of detention.

The Commonwealth Ombudsman as the NPM Coordinator is compiling a baseline report on the current status of detention inspection arrangements within Australia. This will inform governments and the public on the extent to which Australia’s existing arrangements are compliant with the OPCAT framework. We seek information about how existing bodies operate, including how and what facilities they inspect.

Name of inspecting body	
Date of creation	
<b>INDEPENDENCE</b> Articles 18(1), 18(3), 18(4) OPCAT	
1. What is your legislative basis to ensure you are institutionally independent?	
2. Do you have the autonomy to make decisions on how resources allocated to you are expended?	
3. Are you personally and institutionally independent from the facility(ies) you inspect?	<i>(e.g. Do you report to a Minister for Corrective Services if you are inspecting correctional facilities?)</i>
<b>COMPOSITION</b> Article 18(2)	
4. What is the ratio of males to females in staffing for those who carry out inspections? Do you have a gender balance and are ethnic and minority groups represented in your inspecting staff?	
5. What is the expertise and professional knowledge of your inspecting team?	

6. Does your team include experts from relevant fields? Do you supplement externally to complement your existing staff?	
<b>ACCESS TO PLACES</b>	
Article 4(1)	
7. Details of legislative basis for inspecting facilities / What legislation gives you the power to inspect?	(E.g. <i>Inspector of Custodial Services Act 2003 WA</i> )
8. Which primary places of detention are you empowered to inspect? (please identify all that apply, including the <b>names</b> of those facilities)	Adult prisons
	Juvenile detention facilities
	Police cells (detained more than 24 hours)
	Closed psychiatric facilities (involuntarily detained for more than 24 hours for assessment, treatment or care)
9. Which primary places of detention do you currently inspect? (please identify all that apply including the <b>names</b> of those facilities)	Adult prisons Juvenile detention facilities Police cells (detained more than 24 hours) Closed psychiatric facilities (involuntarily detained for more than 24 hours for assessment, treatment or care)
10. Are you able to access all installations and facilities within a primary place of detention? (Please specify which places you are unable to access)	
11. Do you have the power to conduct unannounced visits (even if your practice is to announce your visits)?	
12. How frequently do you visit the primary places of detention? What is the duration of each visit?	
<b>ACCESS TO INFORMATION</b>	
Article 20(a) and 20(b)	
13. Are you able to access all information regarding the information, treatment and conditions of people in detention? Including but not limited to files, registers, medical records, dietary provisions and other data?	

<b>ACCESS TO PERSONS</b> Article 20(d) and 20(e)	
14. Can you conduct interviews in private and in a location of your choosing?	
15. Can you choose who you interview?	
16. Can you interview staff as well as detainees and any other person you consider relevant?	
<b>REPORTS and RECOMMENDATIONS</b> Article 19(b), 19(c)	
17. Can you make post visit reports on your findings? Who do they go to?	
18. Can you make recommendations with proposed measures for improvements arising out of your inspection visits?	
19. Is there any requirement for the body you report to, to examine your recommendations and engage with you on possible implementation measures?	
20. Do you publish an Annual Report?	
21. Are you able to make submissions, proposals and observations on draft or existing legislation relevant to torture prevention?	
<b>PRIVILEGES, IMMUNITIES and PROTECTIONS from REPRISALS</b> Articles 21 and 35	
22. Is the information you receive in the course of your inspection role protected against disclosure to the government, the judiciary, or any other organisations or persons?	
23. Please provide the legislative basis for this?	
24. Are you and your staff protected from arrest or detention, seizure of personal baggage?	



<p>25. Are you and your staff protected from interference with your communications?</p> <p>26. Do you hold confidential information obtained in the course of your inspection role that cannot be disclosed without the express consent of the providers of that information?</p>	
<p><b>ABILITY TO CONTACT SPT</b> (Article 26)</p>	
<p>27. Do you have the ability if required, to have direct and if necessary, confidential contact with the United Nations Subcommittee on Prevention of Torture (SPT)?</p>	
<p>28. Does this ability include contact in the form of meetings, exchanges of information and/ or training sessions?</p>	
<p><b>INSPECTION METHODOLOGY, STANDARDS AND PRINCIPLES</b></p>	
<p>29. What is your inspection methodology? That is, do you inspect places of detention in a manner consistent with defined processes, standards or principles? If so, please attach a copy of the relevant documents.</p>	
<p>30. Are there defined standards or other descriptors against which you assess places of detention? For example, physical requirements, health services, security, privacy and availability of complaints mechanisms? If so, please attach a copy of the relevant documents.</p>	<p>For example, <i>Standard Guidelines and Accompanying Principles for Community and Custodial Corrections in Australia</i></p>

# APPENDIX 3 – SNAPSHOTS OF OVERSIGHT AND INSPECTION BODIES IN THE COMMONWEALTH, STATES AND TERRITORIES

Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth

**Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth**

		Commonwealth Ombudsman	Australian Defence Force	Australian Human Rights Commission (incorporating the National Children’s Commissioner)
1	Date of creation	Legislation to establish the Office of the Commonwealth Ombudsman (the Office) was enabled in 1976. The first Commonwealth Ombudsman commenced operation on 1 July 1977. Inspection role commenced in May 2005.	18 October 2018	10 December 1986
	Inspection or oversight role	Inspection and oversight role.	Inspection role.	Inspection and oversight role.
<b>OPCAT Framework</b>				
<b>Independence — Articles 18(1), 18(3) and 18(4)</b>				
2	Legislative basis	<i>Ombudsman Act 1976</i> (Cth)	<i>Defence Force Discipline Act 1982</i> (Cth)	<i>Australian Human Rights Commission Act 1986</i> (Cth) (AHRC Act)
3	Autonomous resource allocation and expenditure	Yes, in accordance with the <i>Financial Management Act 1994</i> (Cth) (FMA) and associated guidelines and directions.	Yes, in accordance with the FMA and associated departmental directions.	Yes. The Commission receives funds from parliament under s 44A. Section 44B requires those funds to be spent in the performance of Commission functions.
4	Personal and institutional independence from facilities inspected	As a statutory authority the Office is independent of those departments that operate Commonwealth places of detention.	The Officer in Charge (OIC) Defence Force Corrective Establishment (DFCE) is appointed by an instrument created under s 10 of the <i>Defence Force Discipline Regulations 2018</i> (DFDR).	The Commission is an independent statutory body.
<b>Composition — Article 18(2)</b>				
5	Gender ratio	Normally a 1:1 ratio. Will periodically be 2:1 depending on the location to be inspected and the composition of the detainee genders.	A ratio of 1:1 in terms of any inspections conducted by staff.	Teams include men and women, and occasionally women only (reflecting the higher proportion of women among staff).
6	Ethnic and minority representation	Minority groups are represented. However, ethnic diversity is not achieved.	Due to staff demographic, it is not possible to have ethnic and minority groups represented. Staff receive annual diversity and equity training to compensate.	Inspection teams routinely include diverse ethnic backgrounds (reflecting the diverse backgrounds among staff).
7	Expertise and professional knowledge	The team has more than 35 years’ experience in oversight, management and investigation of detention and detention-related matters, through both the Office and past employment history.	The team has completed a Detention Centre Supervisors Course which covers the governance and compliance aspects of detention in the ADF. They are also trained in current ADF detention procedures.	Inspection teams usually include the officer responsible for leading the refugees, asylum seekers and immigration detention policy section, investigation and conciliation officers, legal officers and officers experienced in handling immigration detention-related complaints.
8	Expertise and external supplementation	A panel of expert advisers is under development as part of the implementation of OPCAT.	The team comprises of Military Police senior staff who are subject matter experts in detention.	Inspection teams may include independent medical consultants (doctors, psychologists and other mental health professionals), whose services are provided on a pro bono basis.
<b>Access to places — Article 4(1)</b>				
9	Legislative basis to inspect	<i>Ombudsman Act 1976</i> (Cth)	Sections 10(3) and 18 of the DFDR.	<i>Australian Human Rights Commission Act 1986</i> (Cth). The Commission has a wide range of functions under s 11(1) that provide a legislative basis for inspecting immigration detention facilities, as well as conducting examinations and inquiries into matters relating more generally to immigration detention policy and practices.

### Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth

OPCAT Framework		Commonwealth Ombudsman	Australian Defence Force	Australian Human Rights Commission (incorporating National Children’s Commissioner)
10	Places currently inspected	All immigration detention facilities, including but not limited to: Christmas Island, Perth, Yongah Hill, Adelaide, Maribyrnong, Melbourne, Villawood and Brisbane, and sundry interim facilities as periodically established.	Adult long-term ADF detention centres in Sydney, Townsville, Darwin, Melbourne, Brisbane, Adelaide and Perth. Adult short-term facilities (for detention of less than seven days) in Ipswich, Albury-Wodonga, Wagga Wagga.  Note: Corrective Services NSW is currently responsible for an annual technical inspection of the Defence Force Corrective Establishment.	All purpose-built immigration detention facilities in Australian territory. This currently includes: <ul style="list-style-type: none"> <li>• Adelaide Immigration Transit Accommodation</li> <li>• Brisbane Immigration Transit Accommodation</li> <li>• Christmas Island Immigration Detention Centre</li> <li>• Maribyrnong Immigration Detention Centre</li> <li>• Melbourne Immigration Transit Accommodation</li> <li>• Perth Immigration Detention Centre</li> <li>• Villawood Immigration Detention Centre</li> <li>• Yongah Hill Immigration Detention Centre</li> </ul>
11	Unannounced visits	The Ombudsman has the ability to conduct unannounced visits, but generally does not do so.	Yes	The Commission does not currently conduct unannounced visits. It organises visits through the Department of Home Affairs.
12	Frequency of visits	Each facility is visited twice per year.	Once per year.	There is no set schedule. In recent years they have been every 12–18 months.
13	Duration of visits	Up to a week.	Approximately four hours.	The duration of a visit depends on the size of facility and population; usually between two and four days.
<b>Access to information — Articles 20(a) and 20(b)</b>				
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Yes. No restrictions are placed on our access to information that is relevant to a detainee.	Yes. No restrictions are placed on the inspecting team.	The Commission has not been able to access personal information (such as files and medical records) upon request during recent inspections, even when the person concerned has given written consent, unless production of the information was compelled under statute. The Commission regularly receives information (including files, medical records and other data) voluntarily when conducting an inquiry under the AHRC Act.
<b>Access to persons — Articles 20(d) and 20(e)</b>				
15	Private interviews in location of choice	Yes. All formal interviews are conducted in the facilities’ interview rooms and all informal interviews are conducted in a location of the team’s choosing.	No restrictions.	Yes. Detention facility staff provide access to private interview rooms.
16	Choice of interviewee	Yes. We also interview detainees subject to s 486N <i>Migration Act 1958</i> (Cth) reporting at the request of the internal assessment team.	No restrictions.	People in detention can request an interview with the team. All interviews are voluntary.
17	Ability to interview staff, detainees and other relevant persons	Yes. We do so as a regular part of the administrative and operational inspections currently undertaken.	No restrictions.	The Commission conducts an entry and an exit interview with senior staff at the facility. The Commission may also interview service providers at a facility. For example, interviewing medical staff to gather specific information about physical and mental health services.

Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth

OPCAT Framework		Commonwealth Ombudsman	Australian Defence Force	Australian Human Rights Commission (incorporating National Children’s Commissioner)
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>				
18	Ability to make post-visit reports	Yes	Yes	Yes. The Commission routinely publishes reports on its immigration detention inspections.
19	Report recipients	Reports are provided to each centre’s management at operational and executive levels, post-visit.	Reports are sent to the appropriate senior management with the ADF.	Reports are provided to the relevant government department and published on the Commission’s website.
20	Post visit recommendations and measures for improvements	Recommendations are formally made every six months.	Yes	The Commission makes recommendations in its public reports and recommendations tend to be made to the department, minister and facility staff.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	The Department of Home Affairs responds with outcomes being monitored through the inspection process.	Yes	No
22	Publication of an annual report	Annual report is tabled in parliament and published on the Office’s website.	No	The Commission is required to publish an annual report covering all its activities.
23	Ability to make submissions, proposals and observations on relevant legislation	Yes	Yes	The Commission regularly provides submissions on proposed or existing legislation and is empowered to do so under s 11.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>				
24	Protection from disclosure to government, judiciary, and other organisations or persons	All inspections are conducted in accordance with the Ombudsman’s own motion powers to investigate. All information is treated as confidential and only released if the Ombudsman believes it is in the public interest to do so.	Yes	Yes. Under s 49 of the AHRC Act, disclosure of materials obtained by the Commission cannot in general be compelled. Disclosure of information by Commission staff relating to the ‘affairs of another person’ is prohibited, except in the performance of Commission functions.
25	Legislative basis for protection	<i>Ombudsman Act 1976</i> (Cth)	<i>Privacy Act 1988</i> (Cth)	<i>Australian Human Rights Commission Act 1986</i> (Cth)
26	Protection from arrest, detention or seizure of personal baggage	Yes, provisions under s 35.	Yes	Section 48 protects staff (and others acting for or on behalf of the Commission) from civil actions relating to the performance in good faith of acts done under the Act.
27	Protected from interference with communications	Yes, provisions under s 35.	Yes	Yes, under s 20(6)(7). When conducting an ‘examination’ or ‘inquiry’, such as an inquiry pursuant to a complaint made under s 20(1)(b), the Commission can direct that identities and information not be disclosed or published (s 14).

Appendix 3.1 – Snapshot of oversight and inspection bodies within the Commonwealth

OPCAT Framework		Commonwealth Ombudsman	Australian Defence Force	Australian Human Rights Commission (incorporating National Children’s Commissioner)
28	Hold confidential information that is unable to be disclosed without the express consent of the providers of that information	Periodically we will hold information that is either provided by a detainee or staff member in confidence, on the basis of their anonymity being maintained and no further release without their consent.	Yes	Yes. The Commission asks for written permission to disclose the content of private interviews where the person would like a concern to be raised with facility staff.
<b>Ability to contact SPT — Article 26</b>				
29	Ability to have direct and confidential contact with the UN SPT	Yes. Currently managed by the Attorney-General’s Department, but will eventually rest with the Office as OPCAT is fully implemented.	Yes	Yes
30	Contact includes meetings, exchanges of information and/or training sessions	Yes	Yes, but as Officer in Charge I would have to inform my chain of command of the nature of such meeting.	Yes
<b>Inspection methodology, standards and principles</b>				
31	Inspection methodology	Guiding principles are in place and are currently being updated for compliance with OPCAT and current operational requirements.	Physical inspections and face-to-face interviews at each site.	The Commission conducts its inspection within an international human rights legal framework. The Commission considers the evidence gathered during its inspection and analyses that evidence using the human rights standards derived from international law that are relevant to immigration detention.
32	Defined standards to assess places of detention	Yes. Incorporates information from a variety of sources, such as <ul style="list-style-type: none"> <li>• Human rights standards for immigration detention.</li> <li>• Recommendations from various reports raised by AHRC.</li> <li>• ICRC reports and recommendations.</li> <li>• UNHCR reports.</li> <li>• Coronial inquiries on deaths in custody, especially those relating to immigration detention.</li> </ul>	ADF Detention Standards, a generic document generated internally.	The Commission assesses the conditions in immigration detention centres using the standards established in international human rights law. The Commission has developed human rights standards for the inspection of immigration detention centres.

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

**Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory**

		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission <sup>141</sup>	ACT Children and Young People Commissioner and Public Advocate
1	Date of creation	Enabling legislation effective 8 December 2017. Inaugural Inspector of Correctional Services appointed 14 March 2018.	The expanded ACT Official Visitor Scheme commenced on 1 September 2013 following amendments to the <i>Official Visitor Act 2012 (ACT)</i> .	11 May 1989	1 November 2006	
	Inspection role or oversight	Examine and review ('Inspection') role.	Inspection and visit role.	Oversight and complaints investigation role.	Inspection and visit role.	
<b>OPCAT Framework</b>						
<b>Independence — Articles 18(1), 18(3) and 18(4)</b>						
2	Legislative basis	<i>Inspector of Correctional Services Act 2017 (ACT)</i>	<i>Official Visitor Act 2012 (ACT)</i>	<i>Ombudsman Act 1989 (ACT)</i>	<i>Human Rights Commission Act 2005 (ACT)</i>	
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.				
4	Personal and institutional independence from facilities inspected	The Inspector is fully independent from ACT Corrective Services.	An independent statutory entity.	Is independent and impartial.	Section 16 of the Act establishes a statutory agency which is independent from government.	
<b>Composition — Article 18(2)</b>						
5	Gender ratio	Currently one male and two females.	Mental health facilities: one male and three female official visitors (mental health). Alexander Maconochie Centre: one male and two female official visitors (corrections). Bimberi Youth Justice Centre: two female official visitors (children and young people).	The current ACT Ombudsman is male. All other staff working on oversight of correctional services matters within the ACT Ombudsman are female.	All of the substantive Commissioner positions are filled by women. A majority of the staff performing inspection functions for the Commission are also women.	There are currently six staff members who undertake inspections on behalf of the Public Advocate. Five of these staff members are female.
6	Ethnic and minority representation	Section 18(2) of the Act requires consultation with, or suitability to the cultural background or vulnerability of any detainee involved in a matter being examined or reviewed.	There are two Indigenous official visitors, one under s 57 of the <i>Corrections Management Act 2007 (ACT)</i> , and one under the <i>Children and Young People Act 2008 (ACT)</i> . <sup>142</sup>	One of the staff members working on correctional services matters identifies as Aboriginal.  Several ethnic and minority groups are represented among ACT Ombudsman staff more broadly.	Several ethnic and minority groups are represented among substantive Commission staff.	No ethnic minority groups are currently represented.

<sup>141</sup> The ACT Human Rights Commission includes the Discrimination, Disability and Health Services Commissioner. It also encompasses the Victims of Crime Commissioner, who may provide therapeutic support or financial assistance to torture victims if the crime occurred in the Australian Capital Territory.

<sup>142</sup> There is no separate scheme for Indigenous official visitors. Indigenous official visitors are managed by the ACT Official Visitors Scheme.

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
7	Expertise and professional knowledge	The expertise and professional knowledge includes backgrounds in law, corrective services and human rights.	All official visitors are qualified under varying qualification requirements contained in the specific Acts establishing the three separate disciplines with the scheme.	The expertise and professional knowledge includes backgrounds in corrections, government administration and community services.	The expertise and professional knowledge includes backgrounds in law, human rights law, discrimination law, health services, and community services.	The expertise and professional knowledge includes backgrounds in mental health and forensic services, complex disability, child protection, and youth justice, and also professional backgrounds in social work and occupational therapy.
8	Expertise and external supplementation	Section 14 allows the Inspector to engage contractors to assist in the exercise of any function. Under s18(2) the Inspector must, if appropriate and practicable, use staff suitable to the cultural background or vulnerability of any detainees involved in a matter being examined or reviewed.	Ability to appoint qualified experts, if required.	Section 30 provides that the Ombudsman may engage contractors and consultants.	Not stated	Not stated
<b>Access to places</b> — Article 4(1)						
9	Legislative basis to inspect	<i>Inspector of Correctional Services Act 2017 (ACT) (ICS Act)</i>	<i>Official Visitor Act 2012 (ACT)</i> <i>Corrections Management Act 2007 (ACT)</i> <i>Children and Young People Act 2008 (ACT)</i> <i>Mental Health Act 2015 (ACT)</i> <i>Mental Health (Secure Facilities) Act 2016 (ACT)</i> <i>Disability Services Act 1991</i> <i>Housing Assistance Act 2007</i>	<i>Ombudsman Act 1989 (ACT)</i> <sup>143</sup> <i>Children and Young People Act 2008 (ACT)</i> s153 <i>Corrections Management Act 2007 (ACT)</i> s56A	<i>Human Rights Act 2004 (ACT)</i> s 41 <sup>144</sup> <i>Human Rights Commission Act 2005 (ACT)</i> s 48 <sup>145</sup> <i>Corrections Management Act 2007 (ACT)</i> <i>Children and Young People Act 2008 (ACT)</i> <i>Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT)</i> <i>Mental Health Act 2015 (ACT)</i> <i>Mental Health (Secure Facilities) Act 2016 (ACT)</i>	

<sup>143</sup> Section 5(1)(b) vests the ACT Ombudsman with the power to investigate action that relates to a matter of administration by their own motion. Note: the Ombudsman must consult with the Inspector of Correctional Services regarding any investigation under s 5(b) involving a detainee or correctional centre or service.

<sup>144</sup> Section 41 vests the Commission with a broad power to review the effect of Territory laws on human rights and to report in writing to the minister.

<sup>145</sup> Section 48 vests the Commission with the power to investigate and report on systemic issues in relation to matters related to its functions.



Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
10	Places currently inspected	Alexander Maconochie Centre. ACT court cells. ACT court transport vehicles.	Alexander Maconochie Centre. Bimberi Youth Justice Centre. Dhulwa Mental Health Unit. Adult Mental Health Unit. Extended Care Unit (Brian Hennessy Rehabilitation Centre). Ward 2N, Calvary Public Hospital. Older Persons Mental Health Inpatient Unit.	Alexander Maconochie Centre	Alexander Maconochie Centre. Bimberi Youth Justice Centre. Dhulwa Mental Health Unit. Adult Mental Health Unit. Adult Mental Health Rehabilitation Unit. Brian Hennessy Rehabilitation Centre. Ward 2N at Calvary Public Hospital. Mental Health Assessment Unit. Older Persons Mental Health Inpatient Unit.	Alexander Maconochie Centre. Bimberi Youth Justice Centre. Dhulwa Mental Health Unit. Adult Mental Health Unit. Extended Care Unit (Brian Hennessy Rehabilitation Centre). Ward 2N, Calvary Public Hospital. Mental Health Assessment Unit. Older Persons Mental Health Inpatient Unit.
11	Unannounced visits	Able to access a facility at any time under s 19.	Able to access a facility at any time under s 15(1).	Able to enter a correctional centre at any reasonable time under s56A of the <i>Corrections Management Act 2007</i> for the purposes of exercising the Ombudsman’s functions under the Act.	Yes	Yes
12	Frequency of visits	Frequency of visits varies depending on what is required for the examination or review being undertaken.	Up to weekly.	Monthly outreach visits plus attendance at two monthly detainee delegates’ meetings.  Ad hoc visits to individual complainants, as required.	Visits and inspections vary in frequency, depending on what is required by the review or consideration being undertaken.	Adult Mental Health Unit and Mental Health Assessment Unit—weekly. Bimberi Youth Justice Centre and Dhulwa Mental Health Unit—fortnightly. Older Persons Mental Health Inpatient Unit and Brian Hennessy Rehabilitation Centre—monthly. Alexander Maconochie Centre—fortnightly (on average).
13	Duration of visits	Visits and inspections vary in duration depending on what is required for the review or consideration being undertaken.	One to three hours.	Two to four hours.	Visits and inspections vary in duration depending on what is required by the review or consideration being undertaken.	

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
<b>Access to information — Articles 20(a) and 20(b)</b>						
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Section 22 of the <i>Inspector of Correctional Services Act 2017</i> provides the right to access any information, documents or other things related to an examination or review.	Able to access information on request under ss 15, 18 and 19 of the Act.	There is no blanket right to this information unless pertaining to the conduct of a notified investigation under s 9 of the <i>Ombudsman Act</i> . In this circumstance, the Ombudsman has the power to obtain information under s 11. The Ombudsman also has power to access specified information under the <i>Children and Young People Act 2008</i> including therapeutic protection register and register of searches and use of force (s 634(1)(d) and s 195(5)(e)).	Yes. The Commission has broad powers to access information regarding the treatment and conditions of people in detention in the ACT.  Section 73 of the <i>Human Rights Commission Act 2005</i> vests a broad power in the Commission to require a person to provide information or produce a document or other thing where it is relevant to a consideration in relation to a complaint.  The <i>Children and Young People Act 2008</i> , the <i>Mental Health Act 2015</i> and the <i>Mental Health (Secure Facilities) Act 2016</i> also contain a number of specific provisions vesting the Commission with powers to access and inspect specified information and registers within Bimberi and secure mental health facilities.  Sections 144(2) and 222(3) of the <i>Children and Young People Act 2008</i> , and ss 18(5), 27(5), 59(5), 64(2)(b) and 65(5) of the <i>Mental Health (Secure Facilities) Act 2016</i> apply.	
<b>Access to persons — Articles 20(d) and 20(e)</b>						
15	Private interviews in location of choice	Sections 19(3) and 21(1)(b) permit speaking to all persons in private.	Able to speak to whomever in private.	Able to speak to whomever in private.	Yes. There are various provisions in the legislation governing specific places of detention in the ACT which provide the Commission with access to people detained in those places.	
16	Choice of interviewee	Sections 19(3) and 21(1)(b) permit speaking to all persons in private.	Able to speak to whomever.	Able to speak to whomever.	Able to speak to whomever required.	
17	Ability to interview staff, detainees and other relevant persons	Sections 19(3) and 21(1)(b) permit speaking to all persons in private.	Able to speak to whomever required.	Section 9 allows to speak with whomever the Ombudsman sees fit.	Able to speak to whomever required.	
<b>Reports and recommendations — Articles 19(b), 19(c)</b>						
18	Ability to make post visit reports	Requirement under s 27 to produce a public report of an examination or review.	Yes	Sections 15(5) and 18 allow a report to be produced in relation to a complaint.	Yes	
19	Report recipients	Public reports to the ACT Legislative Assembly.	The relevant minister and directorate[s].	ACT Legislative Assembly or publically.	To anyone the Commission considers appropriate, s 84 relates.	
20	Post visit recommendations and measures for improvements	Has the ability to do so under s 27(2)(e).	Has the ability to make recommendations.	Sections 15 and 18 allow recommendations to be made in the outcome of an investigation.	Yes, the Commission may make recommendations in reports produced in relation to individual complaints and Commission-initiated Considerations, for example, s 85 of the <i>Human Rights Commission Act 2005</i> .	

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	The Agency must report on actions taken in response to recommendations in their annual report.	Any recommendations made are required to be acted upon.	If recommendations are made, under s 18(4) the agency can be required to provide particulars of any action taken in relation to the recommendations.	Under s 85 any recommendations made are required to be acted upon.	
22	Publication of an annual report	Yes	Yes	Annual reports are tabled before the ACT Legislative Assembly and published on its website.	Yes	
23	Ability to make submissions, proposals and observations on relevant legislation	Yes	Yes	Yes	Yes. The Commission reviews all draft Cabinet submissions for compatibility with the <i>Human Rights Act 2004</i> (ACT), including those containing proposals for legislative and policy changes, and is able to submit formal comments on cabinet submissions. The Commission is also regularly consulted directly by various ACT Government Directorates on new legislative and policy proposals raising human rights issues, and contributes policy submissions to inquiries or consultations relevant to our work.	
<b>Privileges, immunities and protections from Reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	Provisions under s 37, set up an offence of disclosing ‘protected information’ gathered in the course of work unless required by the Act or another Territory law or order of the Court.	Under ss 16 and 17, information received is protected from disclosure.	N/A	Information about a person that is disclosed to or obtained by Commission staff because of the exercise of a function under the <i>Human Rights Commission Act 2005</i> is referred to as ‘protected information’ for the purposes of that Act.  There are also relevant provisions under the <i>Information Privacy Act 2014</i> (ACT), the <i>Health Records (Privacy and Access) Act 1997</i> and the <i>Children and Young People Act 2008</i> .	
25	Legislative basis for protection	<i>Inspector of Correctional Services Act 2017</i> (ACT)	<i>Official Visitor Act 2012</i> (ACT)	<i>Ombudsman Act 1989</i>	<i>Human Rights Commission Act 2005</i> (ACT)	
26	Protection from arrest, detention or seizure of personal baggage	Provisions under s 38 protects liability for conduct engaged under the Act. There is no provision that specifically relates to protection from arrest or detention, seizure of personal baggage.	Section 24 relates.	Ombudsman staff are not personally liable for anything done or omitted to be done in good faith in exercise of or purported exercise of any power or authority conferred under the <i>Ombudsman Act 1989</i> .	Commission staff are not personally liable for anything done or omitted to be done honestly and without recklessness in the exercise of a function under s 100 of the <i>Human Rights Commission Act 2005</i> .	

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
27	Protected from interference with communications	Section 19(6) provides communications without the presence of persons or surveillance devices.	Section 24 relates.	<p>Section 51 of the <i>Corrections Management Act 2007</i> provides for protected communications that are not listened to or recorded.</p> <p>Section 179 of the <i>Children and Young People Act 2008</i> provides for protected communications between young detainees and the Ombudsman.</p>	The legislation governing the operation of both Bimberi Youth Justice Centre and the Alexander Maconochie Centre provides protections against interference with communications between the Commission and detainees.	
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes	An Official Visitor is entitled to disclose all matters in their report.	<p>Section 33(2) of the ACT Ombudsman Act 1989 (ACT): information holders must not make a record of, or divulge, or communicate to any person, any information acquired because of the person being an information holder, being information that was disclosed or obtained under the provisions of this Act. Maximum penalty: 50 penalty units, imprisonment for six months, or both.</p> <p>Section 33(3)(b): Subsection 2 does not prevent an information holder from divulging or communication information to a person if information was provided with consent of the provider of that information.</p>	Information about a person that is disclosed to, or obtained by, Commission staff because of the exercise of a function under s 99 of the <i>Human Rights Commission Act 2005</i> is referred to as 'protected information' for the purposes of that Act.	
<b>Ability to contact SPT — Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT	There is no reference in the ICS Act to be in contact with the SPT.	No material to state unable to contact.	Yes	There is no reference in the <i>Human Rights Commission Act 2005</i> about contact with the SPT. UN Committee visits are contemplated by the <i>Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT).	
30	Contact include meetings, exchanges of information and/ or training sessions	There is no reference in the ICS Act to be in contact with the SPT.	No material to state unable to contact	Yes	There is no reference in the <i>Human Rights Commission Act 2005</i> to contact with the SPT.	

Appendix 3.2 – Snapshot of oversight and inspection bodies within the Australian Capital Territory

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor Scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
<b>Inspection methodology, standards and principles</b>						
31	Inspection methodology	Methodology varies depending on the type of review being conducted (whole of centre or thematic), or if it is an ad hoc visit, or a visit to gather information as part of a critical incident review. Methodology aligns with SPT / APT guidelines on good practice for preventive monitoring.	Provision of a document to Official Visitors setting out their powers.	Currently, no separate inspection methodology or standards — dependent on general investigations procedures.  Oversight strategy in development.	Inspection processes vary by place of detention, but generally involve inspection of relevant registers and documents and speaking confidentially with people detained in those places and hearing any concerns or issues they may wish to raise. The Public Advocate has a routine practice of viewing randomly selected CCTV footage of uses of force.	
32	Defined standards to assess places of detention	Developed ACT Office of the Inspector of Correctional Services (OICS) Standards that set out expected standards for ACT Adult correctional facilities and indicates.	Not particularly.		The standards against which the Commission assesses places of detention are primarily derived from the legislative requirements and protections in the <i>Human Rights Act 2004</i> , <i>Human Rights Commission Act 2005</i> and the various pieces of legislation governing the places of detention, including the <i>Children and Young People Act 2008</i> , the <i>Mental Health Act 2015</i> and the <i>Mental Health (Secure Facilities) Act 2016</i> . The Commission is also guided by the policies and procedures for various places of detention set out in notifiable instruments.	

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

**Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales**

Bodies with inspectorate function				
		NSW Ombudsman	Inspector of Custodial Services	Official Visitors Program – Mental Health
1	Date of creation	18 October 1974	30 August 2013	1843
	Inspection role or oversight	Oversight role.	Inspection and oversight role.	Inspection and visit role.
<b>OPCAT Framework</b>				
<b>Independence — Articles 18(1), 18(3) and 18(4)</b>				
2	Legislative basis	<i>Ombudsman Act 1974</i> (NSW)	<i>Inspector of Custodial Services Act 2012</i> (NSW)	<i>NSW Mental Health Act 2007</i> (NSW) <i>Drug and Alcohol Treatment Act 2007 No 7</i> (NSW)
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources under s 6(8)	Has autonomy to make decisions on how to expend resources.	Yes, with minimal collaboration with NSW Health.
4	Personal and institutional independence from facilities inspected	An independent statutory body.	The Act provides for the appointment of the independent Inspector by the Governor, s 4, principal functions, s 6 and powers, s 7, of the Inspector.	Yes. However, while official inspectors are independent from the facilities they inspect, official visitors may be removed from office at any time by the Minister for Health (see schedule 4, cl 4(2), <i>Mental Health Act 2007</i> (NSW) (MHA) and schedule 3, cl 4(2) <i>Drug and Alcohol Treatment Act 2007</i> (NSW) (DATA)).
<b>Composition — Article 18(2)</b>				
5	Gender ratio	Currently comprised of four females and three males.	Five men and ten women.	Twenty-one per cent of official visitors are male and 79 per cent are female.
6	Ethnic and minority representation	Several staff members are from ethnically diverse backgrounds. We include staff from our Aboriginal Unit and our Youth Liaison Officer. Other Ombudsman staff may also attend inspections, as necessary.	Three Aboriginal staff and Aboriginal Official Visitors form part of the inspection team for centres with high Indigenous populations.	Seven per cent have a cultural or linguistically diverse background. The program is actively recruiting people from ethnic, minority and younger groups into the role.
7	Expertise and professional knowledge	Staff have experience in relevant fields, such as a former governor in the United Kingdom prison system, welfare in the NSW correctional system, nursing and legal qualifications, and other backgrounds including courts, the Coroner's office and Legal Aid.	Teams include officers with correctional experience, legal experience, human rights experience, health experience, and child protection experience.	Staff experience includes clinical backgrounds (registered psychologists, medical officers, nurses and social workers) and community backgrounds, predominantly professional qualifications such as solicitors, teachers and academics.
8	Expertise and external supplementation	Professional expertise is sought during investigations. To date, the Ombudsman has not used external expertise on visits.	Consultants and interstate inspectors are used to complement existing staff.	Most of the expertise needed is in-house. If required, the Program supplements with additional skills such as legal advice, cultural advice, or human resources expertise.
<b>Access to places — Article 4(1)</b>				
9	Legislative basis to inspect	<i>Ombudsman Act 1974</i> (NSW) ss 20(a) and 20(b), <sup>146</sup> and 12(3). <sup>147</sup>	<i>Inspector of Custodial Services Act 2012</i> (NSW) s 6.	<i>Mental Health Act 2007</i> (NSW) (MHA), s 131. <i>Drug and Alcohol Treatment Act 2007 No 7</i> (NSW) (DATA), s 29.

<sup>146</sup> To exercise the inspection powers under s 20(a) and 20(b), the NSW Ombudsman must be conducting an investigation.

<sup>147</sup> Section 12(3) provisions allow a person who is detained by, or in the custody of a public authority, facilitated access to make a confidential complaint to the NSW Ombudsman.

### Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		NSW Ombudsman	Inspector of Custodial Services	Official Visitors Program – Mental Health
10	Places currently inspected	All NSW adult custodial facilities. All NSW juvenile detention centres. Forensic hospital at Long Bay Correctional Facility.	All custodial centres in NSW as per s 6(1). The ICS's jurisdiction includes 40 Correctional Centres, six transitional centres and residential facilities, six juvenile justice centres, 12 24-hour court cell complexes, 64 court cell locations, a fleet of 113 escort vehicles and a detainee transport fleet of 25 vehicles. <sup>148</sup> Forensic hospital at Long Bay Correctional Facility.	Prison and forensic hospitals, Long Bay Correctional Centre. The rural NSW step down forensic facilities. Declared NSW mental health facilities. Public and private hospitals.
11	Unannounced visits	Power to conduct unannounced visits under ss 16 and 20.	Yes, under s 7(b).	Yes, under s 131(5) of the MHA and s 29(5) of the DATA.
12	Frequency of visits	Adult prisons at least once per year. Juvenile justice centres at least twice per year.	Adult prisons once per year. Juvenile twice per year.	Usually monthly.
13	Duration of visits	Between one day to one week.	One day for visits, up to one week for inspections.	An average visit of four hours (spans one to eight hours).
<b>Access to information — Articles 20(a) and 20(b)</b>				
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Are able to access information using ss 13AA, 18, 19 and 20.	Yes, under s 7.	Under s 132 of the MHA, official visitors must be provided any records relating to the admission, care, treatment and control of the patient. Similarly, under s 30(d) of the DATA official visitors must be provided all records relating to the admission and treatment of the dependent person.
<b>Access to Persons — Article 20(d) and 20(e)</b>				
15	Private interviews in location of choice	We are able to access to all areas and speak with all classifications of inmates in private.	Yes, interviews may be conducted in private, s 7 relates.	We can talk with people in places that we choose or that is most comfortable for the person.
16	Choice of interviewee	Yes, we are able to speak with all classifications of inmate.	Section 7(f) of the Act provides that the Inspector of Custodial Services is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.	Yes.
17	Ability to interview staff, detainees and other relevant persons	Yes	Yes, under s 7(c) and 7(d).	Yes and do regularly.
<b>Reports and Recommendations — Articles 19(b) and 19(c)</b>				
18	Ability to make post-visit reports	Yes, under s 31.	Yes, under s 6.	Yes and always do. Reports made under s 133 of the MHA and s 31 of the DATA.
19	Report recipients	Feedback is provided to the centre/CSNSW/JJNSW following every visit. Reports and issues raised are held internally and are used to inform each annual report of work in the area and any investigations or special reports to Parliament, as necessary.	Reports to the Parliament of NSW.	Formally to the Principal Official Visitor, which forms the basis of reports to the Minister for Mental Health. Local reports also go to the unit and to senior managers.

<sup>148</sup> Details correct at the time of drafting the 2017-18 Inspector of Custodial Services annual report.

### Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		NSW Ombudsman	Inspector of Custodial Services	Official Visitors Program – Mental Health
20	Post-visit recommendations and measures for improvements	Currently do this by request. Can use powers under ss 16, 26, 31 and 31AC.	Yes, s 12(2)(c) relates.	Yes and do at every visit.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	<p>While the NSW Ombudsman can make special reports to Parliament under s 31 of the <i>Ombudsman Act 1974</i> (NSW), there is no statutory requirement for any recommendations in such reports to be examined.</p> <p>However, where the NSW Ombudsman has investigated the conduct of a public authority after receiving a complaint, a report on that investigation is to be provided to the head of the relevant public authority, who must, if requested to do so, notify the Ombudsman of any action taken or proposed in consequence of the report (s 26 of the Act).</p>	Yes, ss 12(2)(b), 14(1) and 14(2).	Not directly, but meetings occur regularly to discuss issues.
22	Publication of an annual report	Yes, report is tabled in Parliament and published on website.	Yes, s 12 outlines the process for publication of reports.	No. A report is provided to the Minister for Mental Health every six months.
23	Ability to make submissions, proposals and observations on relevant legislation	<p>The Ombudsman’s authority to initiate investigations lies in s 13(1) of the Act. A report by the NSW Ombudsman following an investigation into the conduct of a public authority may recommend that any law relating to the conduct be changed (s 26(2)(d) of the Act).</p> <p>The Ombudsman is currently consulted as stakeholders on NSW government legislation relevant to custodial facilities.</p>	Yes, we are usually consulted or can publish reports in the public interest.	Yes.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>				
24	Protection from disclosure to government, judiciary, other organisations or persons	The Ombudsman does not have a specific inspection role but s 15 of the Act makes specific provisions for both protections and necessary disclosures. Additionally, there is a general prohibition on the disclosure of information obtained in connection with the administration of the Act unless that disclosure is made for certain prescribed purposes (s 34).	Section 15 provides that the Inspector must not disclose information in a report to Parliament if there is an overriding public interest against disclosure of the information.	Official Visitors adhere to a code of conduct that ensures privacy and confidentiality are core values.
25	Legislative basis for protection	<i>Ombudsman Act 1974</i> (NSW) ss 6(5), 34 and 35A.	<i>Inspector of Custodial Services Act 2012</i> , <i>Government Information (Public Access) Act 2009</i> and <i>Ombudsman Act 1974</i> .	Section 189 <i>Mental Health Act 2007</i> (NSW) and s 47 the <i>Drug and Alcohol Treatment Act 2007 No 7</i> .
26	Protection from arrest, detention or seizure of personal baggage	Section 12(3) provides for confidential contact with the office by people who are detained by a public authority. Under s 37 of the Act, obstructing the Ombudsman or an officer of the Ombudsman in the exercise of their statutory powers is an offence.	Yes, s 22 provides protection from civil liability. Under s 19 it is an offence to obstruct the Inspector of Custodial Services or a member of staff in the exercise of their functions under the Act.	<i>Mental Health Act 2007</i> (NSW) s 135 and the <i>Drug and Alcohol Treatment Act 2007 No 7</i> s 33 provide protection from civil liability. While there is no offence of obstructing an official visitor, under s 132 of the MHA and s 30 of the DATA there are obligations on facility operators to facilitate the exercise of function by the official visitor.



Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		NSW Ombudsman	Inspector of Custodial Services	Official Visitors Program – Mental Health
27	Protected from interference with communications	The Ombudsman is defined as an exempt body in the <i>Crimes (Administration of Sentences) Regulation 2014</i> (NSW).	Regulations 112, 113, 115, 116, 117, 119 of the <i>Crimes (Administration of Sentences) Regulation 2014</i> provides protections in regard to the confidentiality of communications between inmates and the Inspector of Custodial Services.	Not overtly.
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes, s 34 of the Act limits the disclosures that can be made.	Yes, s 25 (part 5) outlines the circumstances in which the Inspectorate cannot disclose information obtained in connection with the administration or execution of the Act unless the disclosure was made under certain conditions as set out in the Act.	Information held can be subject to an application under the <i>Government Information (Public Access) Act 2009</i> (NSW). Individual information is only disclosed with the consent of the individual. The exception is that information may be discussed with a person defined as a carer under the <i>Mental Health Act 2007</i> (NSW). Section 189 of the MHA and s 47 of the DATA prescribe circumstances in which confidential information may be disclosed.
<b>Ability to contact SPT – Article 26</b>				
29	Ability to have direct and confidential contact with the UN SPT	No. This would require a specific statutory authorisation.	Requires clarification with the Commonwealth Ombudsman	Probably, would require further verification.
30	Contact include meetings, exchanges of information and/or training sessions	No. This would require a specific statutory authorisation.	Requires clarification with the Commonwealth Ombudsman.	Probably, would require further verification.
<b>Inspection methodology, standards and principles</b>				
31	Inspection methodology	The Ombudsman does not routinely conduct inspections of custodial facilities, so does not have routine inspection methodology.	Inspection manual outlines defined processes and principles for conducting inspections of custodial centres.	The <i>Mental Health Act 2007</i> (NSW) s 129(3) and the <i>Drug and Alcohol Treatment Act 2007 No 7</i> s 27(4) state functions. There is a practice framework for resolving issues at the facility level and staff are trained in the use of the methodology. Official Visitors are trained to interact with detained people using the 'CHIME framework'. This encompasses the concepts of connectedness, hope, identity, meaning and empowerment.
32	Defined standards to assess places of detention	Where appropriate and necessary, the Ombudsman refers to the <i>Adult Inspection Standards</i> and the <i>Juvenile Inspection Standards</i> published by the Inspector of Custodial Services (NSW).	Yes, the ICS has published inspection standards for adult custodial services and juvenile justice custodial services in NSW.	Functions are outlined in the <i>Mental Health Act 2007</i> (NSW) and the <i>Drug and Alcohol Treatment Act 2007 No 7</i> , NSW Health and Local Health District policies, procedures and guidelines, state and national documents (such as the national framework for recovery-orientated mental health services), recommendations from root cause analysis reports, and other Local Health District documentation.

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

Bodies without inspectorate function					
		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission <sup>149</sup>	Children's Guardian <sup>150</sup>
1	Date of creation		January 2015		
	Inspection role or oversight	Official Visitors are community representatives appointed by the Minister for Corrections to visit all corrections and juvenile justice facilities in NSW. Their role as independent observers of the custodial environment is to regularly visit facilities, report on conditions in custodial facilities and receive and deal with complaints. There are currently 92 Official Visitor appointments to CSNSW correctional and juvenile justice facilities.	No inspection role, rather a consultation role.	No inspection role as such, only for a complaint in line with core functions.	No inspection role
OPCAT Framework					
Independence — Articles 18(1), 18(3) and 18(4)					
2	Legislative basis	<i>Crimes Administration of Sentences Act 1999</i> (NSW), s 228. <i>Children (Detention Centres) Act 1987</i> , s 8A. <i>Inspector of Custodial Services Act 2012</i> (NSW), s 6 (1)(h) and (i).	<i>Advocate for Children and Young People Act 2014</i> (NSW) ss 4, 9, 10 and 32.		
3	Autonomous resource allocation and expenditure	Oversight and management of the Official Visitor Program (OVP) lies with the Inspector of Custodial Services (ICS). The ICS has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.		
4	Personal and institutional independence from facilities inspected	Yes. Official Visitors are independent community representatives appointed by the Minister for Corrections to visit custodial facilities.	Yes.		Responsibilities are accreditation and monitoring of statutory out of home care providers.
Composition — Article 18(2)					
5	Gender ratio	Forty-six per cent of Official Visitors are female and 54 per cent are male.	General policy is that a minimum of two staff should be present at each consultation, one female and one male.		

<sup>149</sup> On the basis that it does not have an inspection role, the LECC did not provide responses to questions 2–32.

<sup>150</sup> On the basis that it does not have an inspection role, the Children's Guardian did not provide responses to questions 2–3 and 5–32.

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission	Children’s Guardian
6	Ethnic and minority representation	There are currently 14 Aboriginal Official Visitor appointments to Corrective Services (CS) facilities and six Aboriginal Official Visitor appointments to juvenile justice facilities. There are also Official Visitors of Asian, Pacific Islander and Middle Eastern background.	We include an Aboriginal person as a member of staff.		
7	Expertise and professional knowledge	Official Visitors have varied professional backgrounds, such as law, health, education, policing, social welfare, academia and corrections.	Team includes experts in child rights, children’s and young people’s participation, and Aboriginal cultural competency.		
8	Expertise and external supplementation	Official Visitors hold degrees and professional qualifications from various backgrounds as set out above.  Experienced Official Visitors are sometimes required to mentor newly recruited Official Visitors. In particular experienced Aboriginal Official Visitors assist with cultural awareness.	Degrees in law, psychology and social work, and staff undertake routine child rights training. Expertise is generally not supplemented externally.		
<b>Access to places — Article 4(1)</b>					
9	Legislative basis to inspect	Corrective Services Official Visitors have an expressed mandate to examine correctional facilities (s 228(5)(a)(iii) of the <i>Crimes Administration of Sentences Act 1999</i> ). There is no legislative basis for them to inspect.  Section 8A (4)(a) of the <i>Children (Detention Centres) Act 1987</i> provides for juvenile justice Official Visitors to ‘enter and inspect the detention centre at any reasonable time’.  Juvenile justice Official Visitors must also inspect the Complaints Register; cl 55 <i>Children (Detention Centres) Regulation 2015</i> .	<i>Advocate for Children and Young People Act 2014</i> (NSW) s 15		

### Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission	Children’s Guardian
10	Places currently inspected	Official Visitors visit 52 corrective services facilities (40 correctional centres, 11 court cells and one transitional centre) and six juvenile justice centres located throughout NSW.	Acmena Juvenile Justice Centre Cobham Juvenile Justice Centre Frank Baxter Juvenile Justice Centre Orana Juvenile Justice Centre Reiby Juvenile Justice Centre Riverina Juvenile Justice Centre <sup>151</sup>		
11	Unannounced visits	Official Visitors generally make scheduled visits. However, they have the ability to, and do, make unannounced visits (under s 228 (5)(a) and (b) of the <i>Crimes Administration of Sentences Act 1999</i> ; and s 8A (4)(a) <i>Children (Detention Centres) Act 1987</i> ).  There is no legislative impediment to unannounced visits.	No		
12	Frequency of visits	Official visitors visit their appointed corrections and juvenile justice facility fortnightly. Visits to court cells are monthly.	Approximately twice per year.		
13	Duration of visits	Visit duration to corrections and juvenile justice facilities is generally over four hours. The duration of visits to a court cell is generally one to two hours, depending on the facility’s size.	Duration varies, but approximately two to six hours.		
<b>Access to information — Article 20(a) and 20(b)</b>					
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Official Visitors do not have access to information. They have the legislative ability to interview inmates and staff. Juvenile justice Official Visitors have access to the complaints register held at each juvenile detention centre. Management and staff are generally forthcoming in presenting relevant documentation to Official Visitors, in an effort to resolve complaints and issues from inmates and detainees.	For the purpose of a special inquiry, ACYP may require employees to provide specified information. <i>Advocate for Children and Young People Act 2014 (NSW) s 30.</i>		

<sup>151</sup> The Advocate for Children and Young People conducts regular consultations in these locations.

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission	Children’s Guardian
<b>Access to persons — Article 20(d) and 20(e)</b>					
15	Private interviews in location of choice	Official Visitors conduct confidential interviews with inmates, detainees and staff. For security and safety reasons interviews with inmates and detainees are held in line of sight of officers or staff.	Yes in practice, but it is not specified in the legislation.		
16	Choice of interviewee	Official Visitors can speak with all classes of inmate excluding Category AA, Category 5 female, EHRR and NSI inmates. Legislation is currently being drafted to remove those restrictions. Official Visitors will then have access to all classes of inmates. Official Visitors can speak with all juvenile justice detainees and all staff employed in a corrections and juvenile justice facility.	This is not specified in the legislation, in practice, yes.		
17	Ability to interview staff, detainees and other relevant persons	Official Visitors are able to interview all staff, detainees and inmates under s 228 (5) <i>Crimes (Administration of Sentences) Act 1999</i> and s 8A (4) <i>Children (Detention Centres) Act 1987</i> .	This is not specified in the legislation, in practice, yes. For purposes of a special inquiry, ACYP may require staff to attend a hearing to give evidence.		
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>					
18	Ability to make post visit reports	Yes	Yes		
19	Report recipients	Official Visitors are independent observers of the NSW custodial environment.  Official Visitors report regularly to the Inspector of Custodial Services (s228 (5)(d) <i>Crimes (Administration of Sentences) Act 1999</i> and s 8A (4)(c) <i>Children (Detention Centres) Act 1987</i> ), the Minister for Corrections (s228 (5)(d) <i>Crimes (Administration of Sentences) Act 1999</i> and s 8A (4)(c) <i>Children (Detention Centres) Act 1987</i> ), the Corrective Services Commissioner (Reg 166(1)(d) <i>Crimes (Administration of Sentences) Regulation 2015</i> ) and the Executive Director of Juvenile Justice.	The relevant minister and the Parliamentary Joint Committee.		

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission	Children’s Guardian
20	Post-visit recommendations and measures for improvements	Official Visitors can provide suggestions and comments in their reports.	Yes, one function is to make recommendations on legislation, reports, policies, practices, procedures and services affecting children and young people, s 15.		
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Official Visitors receive feedback from the relevant agency (and, where necessary, Justice Health) and, when necessary, from the minister and the Inspector of Custodial Services) regarding outstanding issues and complaints they have reported.	Annual report must include an evaluation of responses to the recommendations. The Parliamentary Joint Committee on Children and Young People examines each annual report and reports to both Houses of Parliament on any matter arising out of the annual report.		
22	Publication of an annual report	The Inspector of Custodial Services (ICS) oversees and manages the Official Visitor Program. The Official Visitor Program is reported in the annual report of the Inspector of Custodial Services.	Yes		
23	Ability to make submissions, proposals and observations on relevant legislation	The Inspector of Custodial Services (ICS) oversees and manages the Official Visitor Program. The ICS makes submissions, proposal and observations on relevant legislation.	Yes. ACYP has the opportunity to comment on Cabinet in confidence submissions, and also routinely makes submissions to public inquiries and internal government consultations.		
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>					
24	Protection from disclosure to government, judiciary, other organisations or persons	None.	The Advocate may direct that evidence or information given at a private hearing in relation to a special inquiry must not be published.		
25	Legislative basis for protection	None.	<i>Advocate for Children and Young People Act 2014 (NSW) s 29</i>		
26	Protection from arrest, detention or seizure of personal baggage	None.	None.		

Appendix 3.3 – Snapshot of oversight and inspection bodies within New South Wales

OPCAT Framework		Official Visitor Program - Overseen and managed by the Inspector of Custodial Services NSW	Advocate for Children and Young People	Law Enforcement Conduct Commission	Children’s Guardian
27	Protected from interference with communications	<p>Corrective services Official Visitors have no legislative protection for any communications between them and an inmate or staff.</p> <p>Juvenile justice Official Visitors have legislative protection for any correspondence between them and a detainee. Reg 41 <i>Crimes (Administration of Sentences) Regulations 2014</i>.</p>	No.		
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Official Visitors adhere to a code of conduct which outlines their responsibilities for protecting the privacy of personal information regarding inmates/detainees and to store any records in line with the <i>State Records Act (NSW) 1998</i> .	N/A		
<b>Ability to contact SPT — Article 26</b>					
29	Ability to have direct and confidential contact with the UN SPT	The OVP is overseen and managed by the ICS.	Yes.		
30	Contact include meetings, exchanges of information and/or training sessions	The OVP is overseen and managed by the ICS.	Yes.		
<b>Inspection methodology, standards and principles</b>					
31	Inspection methodology	Official Visitors do not perform an inspection role.	ACYP holds consultations rather than inspections.		
32	Defined standards to assess places of detention	Official Visitors do not perform an inspection role.			

Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory

**Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory**

		NT Attorney-General & Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman	Office of the Children’s Commissioner	Community Visitor Program
1	Date of creation	1981	1978	1 June 2008	1 February 2000 Mental Health and August 2012 – Disability
	Inspection or oversight role	Inspection and visit role.	Oversight role, no current systemic inspection function.	Monitoring visit role, inspection by consent of agency.	Inspection and visit role.
<b>OPCAT Framework</b>					
<b>Independence – Articles 18(1), 18(3), 18(4)</b>					
2	Legislative basis	<i>Correctional Services Act 2014</i> Part 2.3	<i>Ombudsman Act 2009</i> (NT)	<i>Children’s Commissioner Act 2013</i> (NT)	<i>Mental Health and Related Services Act 1998</i> (NT) – Part 14 <i>Disability Services Act 1993</i> (NT) – Part 2, Division 3
3	Autonomous resource allocation and expenditure	Does not have autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.
4	Personal and institutional independence from facilities inspected	Official Visitors are independent to the facility being inspected.	Is independent and impartial.	The Commissioner is not under the direction of any Minister.	The independence of the Community Visitor Program (CVP) is embedded in legislation and in practice.
<b>Composition – Article 18(2)</b>					
5	Gender ratio	Two males, five females.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions.	Currently 100 per cent female.	4:1 female to male ratio.
6	Ethnic and minority representation	One Aboriginal Official Visitor.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions.	Team is of varied ethnicity: Australian, Turkish and Irish.	The CVP has a recruitment strategy to expand cultural diversity with a focus on Aboriginal recruitment and lived/carer experience.
7	Expertise and professional knowledge	Official Visitors are from the general community and have knowledge from working in a variety of positions, such as the Red Cross, Parole Board, and working or have worked on different boards or committees. They are generally no longer in the workforce.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions.	Police, legal, corrections. Child protection. Investigation and compliance. Media and communications	CV panel is required by legislation to comprise a legal practitioner, medical practitioner, and community member with relevant skills and/ or experience. Community Visitors have professional skills including social work and mental health nursing.
8	Expertise and external supplementation	No.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions.	No external supplementation.	Panel members are experts in their field where a multidisciplinary approach of legal, medical-psychiatrist and community-consumer/carer expertise. External expertise is contracted on occasions with training and expert advice available.



Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory

OPCAT Framework		NT Attorney Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman	Office of the Children’s Commissioner	Community Visitor Program
<b>Access to places — Article 4(1)</b>					
9	Legislative basis to inspect	<i>Correctional Services Act</i> Part 2.3, Division 2.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions under ss 28-29 and Part 6, Division 4.	No statutory power to inspect, any inspections are completed with consent of relevant government agency	<i>Mental Health and Related Services Act 1998</i> (NT) (Part 14) <i>Disability Services Act 1993</i> (NT) (Part 6)
10	Places currently inspected	Adult prisons: Darwin Correctional Centre and Alice Springs Correctional Centre. Work Camps: Barkly Work Camp and Datjala Work Camp.	All NT correctional centres. All NT police cells.	Don Dale Youth Detention Centre Alice Springs Youth Detention Centre <sup>152</sup>	Mental health in-patient facilities. Mental health approved treatment agencies. Specialised disability residential facilities.
11	Unannounced visits	No.	Yes, under s 54.	No.	Yes, under <i>Mental Health and Related Services Act 1998</i> (NT) ss 106 and 108.
12	Frequency of visits	Section 29 requires the Commissioner to ensure that each custodial correctional facility is visited by an official visitor at least once every month.	Inspections and visits are ad hoc.	No scheduled program. Visits will commence in February 2019, after which a schedule will be developed.	Mental health in-patient facilities – weekly. Mental health approved treatment agencies – annually. Secure Care Facility (specialist disability) – monthly. Appropriate Places and Other Premises (specialist disability) – quarterly. The Panel visits the Mental Health Units (Top End and Central Australia) and Secure Care Facility – six monthly.
13	Duration of visits	From about 8.30am until 3.00pm.	As long as required.	As long as required.	Half to one day.
<b>Access to information — Articles 20(a) and 20(b)</b>					
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	No. Official Visitors cannot access prisoner files or medical records. They can request to see the NTCS Directives, dietary provisions and other similar data.	Yes, for purposes of preliminary enquiries or investigation.	Yes.	Yes, for review of records and registers for complaints, seclusion and mechanical restraint registers to be inspected and enable records regarding residents to be inspected as well as complaint registers. <i>Mental Health and Related Services Act 1998</i> (NT) ss 107(c)(d), 111, 61(14), 62(14) and 111(3)(d)(e). <i>Disability Services Act 1993</i> (NT) ss 49(2), 57(c), 63(3)(d)(e).

<sup>152</sup> Monitoring visits commenced in February 2019. Physical inspections will be done with agency consent.

Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory

OPCAT Framework		NT Attorney Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman	Office of the Children’s Commissioner	Community Visitor Program
<b>Access to persons — Articles 20(d) and 20(e)</b>					
15	Private interviews in location of choice	Interviews with prisoners are conducted in private in an allocated interview room.	In private, yes. Location, yes, subject to security and good governance considerations for prisoners.	Interviews conducted privately in allocated interview room within detention facility.	Yes, the CVP has a phone number to receive complaints and enquiries and interviews can occur in facilities or other premises, such as the CVP office or other agreed venue. Working arrangements are in place and detail in both the <i>Mental Health Approved Procedures 18 – Interactions with Community Visitors</i> and the <i>CVP and Office of Disability Protocol 2013</i> .
16	Choice of interviewee	No. The prisoner must place their name on a list to speak with the Official Visitor.	Yes.	Yes.	Yes, working arrangements are in place and detail in <i>CVP Policy and Procedure Manual</i> , the <i>Mental Health Approved Procedures 18 – Interactions with Community Visitors</i> and the <i>CVP and Office of Disability Protocol 2013</i> .
17	Ability to interview staff, detainees and other relevant persons	The staff can be spoken to by the Official Visitor for general information, however the staff cannot complaint to the Official Visitor as they are for the prisoners only.	Yes.	Yes.	Yes, both inquiry functions and statutory obligation give assistance and cooperation in exercising powers. <i>Mental Health and Related Services Act 2000</i> (NT) ss 104(1), 105 and 107(b), and <i>Disability Services Act 1993</i> (NT) ss 55, 56 and 57(b) relate.
<b>Reports and Recommendations — Articles 19(b), 19(c)</b>					
18	Ability to make post-visit reports	No.	Yes.	Yes.	Yes, <i>Mental Health and Related Services Act 1998</i> (NT) ss 109(1), 112 and 112A, 61(14) and 62 (14) and <i>Disability Services Act 1993</i> (NT) ss 59 and 64.
19	Report recipients	The report is provided to the relevant minister.	The Ombudsman decides on the form of reporting based on the nature of investigation and outcomes. The report is provided to one or more agency, the relevant Minister and Chief Minister for tabling in Legislative Assembly.	Draft provided to relevant government agency for comment about a finding or recommendation. Final report to relevant minister for tabling in Legislative Assembly.	All reports go to the Principal Community Visitor (PCV), and then is forwarded to the person-in-charge and/or manager of the facility or agency.
20	Post-visit recommendations and measures for improvements	Yes.	Yes.	Yes.	Yes, regular quarterly meetings discuss complaint and inquiry matters, reports and progress on recommendations and working relationships to support effective communication.

Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory

OPCAT Framework		NT Attorney Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman	Office of the Children’s Commissioner	Community Visitor Program
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	While there is no requirement to engage, the relevant minister will send the report to the Commissioner of Correctional Services to provide responses to matters raised in the report by the Official Visitor, including queries raised by the prisoners or if an issue is reported during an inspection.	Consultation with the agency is a routine part of investigations. Follow-up is routinely included as a recommendation and progress is monitored.	Yes.	There is provisions that a report to the CEO can occur if the PCV believes that adequate or reasonable action to implement a recommendation has not occurred. Further working arrangements requiring formal written responses to the reports are included in both Acts.
22	Publication of an annual report	No.	Yes.	Yes.	Yes, one CVP Annual Report inclusive of each piece of legislation activities are provided to the Minister of Health and must be tabled in the Legislative Assembly.
23	Ability to make submissions, proposals and observations on relevant legislation	Only if it were to come within the Official Visitor’s duty of inquiring into the treatment, behaviour and conditions of the prisoners at the facility. Making such recommendations is not something that is routinely considered by Official Visitors in performing their role.	Agency consultation undertaken on an ad hoc basis at the discretion of the agency. Invitations to comment on tabled bills are routinely received as part of the parliamentary process.	Yes.	The CVP has made submissions and outlines these in its annual report.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>					
24	Protection from disclosure to government, judiciary, other organisations or persons	The Official Visitor reports directly to the Attorney-General and Minister for Justice. Official Visitors do not operate outside of this area. This information is potentially able to be disclosed to the Ombudsman and the NT Independent Commissioner Against Corruption.	Secrecy and non-compellability provisions are contained in ss 119-120.	Yes.	There are some limited provisions regarding exceptions to confidentiality and protection from civil/criminal suits.
25	Legislative basis for protection	Section 189 of the <i>Correctional Services Act</i> (NT) makes it an offence to disclose confidential information obtained as an Official Visitor, but such information may be disclosed in legal proceedings.	<i>Ombudsman Act 2009</i> (NT), ss 119-120.	<i>Children’s Commissioner Act 2013</i> (NT).	<i>Mental Health and Related Services Act 1998</i> (NT) ss 91, 117, 116 and 164 relate. <i>Disability Services Act 1993</i> (NT) s 67 relates.
26	Protection from arrest, detention or seizure of personal baggage	No.	Staff are priority visitors and protected correspondents under the <i>Correctional Services Act 2014</i> (NT), visits and communications with Ombudsman staff are protected accordingly.	Yes.	<i>Mental Health and Related Services Act 1998</i> (NT) ss 91, 117, 116 and 164 relate. <i>Disability Services Act 1993</i> (NT) s 67 relates.
27	Protected from interference with communications	Official Visitors report directly to the Attorney-General and Minister of Justice and no other source.	Staff are priority visitors and protected correspondents under the <i>Correctional Services Act 2014</i> (NT), visits and communications with Ombudsman staff are protected accordingly.	Yes.	<i>Mental Health and Related Services Act 1998</i> (NT) ss 91, 117, 116 and 164 relate. <i>Disability Services Act 1993</i> (NT) s 67 relates.

Appendix 3.4 – Snapshot of oversight and inspection bodies within the Northern Territory

OPCAT Framework		NT Attorney Justice – Official Visitor and Youth Justice Advisory Committee	NT Ombudsman	Office of the Children’s Commissioner	Community Visitor Program
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Official Visitors cannot remove NTSC directives or security related information outside of the correctional centres. They are subject to the same rules as correctional centre staff.	An agency head can ask to consider non-disclosure of particular information but the final decision is for the Ombudsman, s 30 relates.	Information can be disclosed however information provider can remain anonymous.	<i>Mental Health and Related Services Act 1998</i> (NT) ss 91, 117, 116 and 164 relate. <i>Disability Services Act 1993</i> (NT) s 67 relates.
<b>Ability to contact SPT – Article 26</b>					
29	Ability to have direct and confidential contact with the UN SPT	No.	Yes.	Yes.	Yes.
30	Contact include meetings, exchanges of information and/ or training sessions	No.	Yes.	Yes.	Yes.
<b>Inspection methodology, standards and principles</b>					
31	Inspection methodology	Official Visitors are bound by an <i>Official Visitor Handbook</i> . They are from the general community and spend most of their time talking to the prisoners about general operational matters. They do not replace the staff working in the correctional centres and are required to direct the prisoners to use the internal mechanisms in the first instance.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation function.	A monitoring domain and measures framework has been developed for use in visits commencing February 2019.	Current Mental Health Approved Procedures 18 Interactions with Community Visitors. CVP and Office of Disability Protocol 2013.
32	Defined standards to assess places of detention	<i>Standard Guidelines and Accompanying Principles for Community and Custodial Corrections in Australia</i> .  Official Visitors do not generally inspect the facilities as they usually spend most of their time talking to prisoners.  Health issues sit with the Department of Health.	No current systemic inspection function. Inspections and visits are ad hoc, utilising preliminary enquiry or formal investigation functions. Relevant national and international standards are scanned and considered as part of investigation process.	A monitoring domain and measures framework has been developed for use in visits commencing February 2019.	Note: this is an area for CVP quality assurance, as templates and checklists are not routinely used at present and are being implemented progressively.

**Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland**

Bodies with inspectorate function						
		QLD Ombudsman	Office of the Chief Inspector <sup>153</sup>	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability
	Date of creation	1974	2005	2002	1 July 2014	1 July 2011
1	Inspection or oversight role	Oversight role.	<p>Inspection role.</p> <p>The OCI is also responsible for the Official Visitor Scheme which facilitates an important complaints process for prisoners that is independent of the Queensland Corrective Services (QCS) complaints management process. In addition, the OCI conducts investigations of incidents and reviews of operations and services in prisons and probation and parole offices.</p>	Inspection role.	Oversight role.	<p>Oversight, with the ability to also inspect.</p> <p>The <i>Forensic Disability Act 2011</i> (FDA) does not explicitly state that the Director of Forensic Disability has inspectorate or investigative powers. However, the FDA and explanatory notes state the Director has statutory oversight of the Forensic Disability Service, responsibility for proper and efficient administration of the FDA and will monitor protections of the rights of persons in the service. Additionally, the DFD’s statutory functions under the FDA are broad in nature and the ‘DFD has power to do all things necessary or convenient to be done in performing the director’s functions.’ (s 88).</p> <p>As such, the FDA does not provide a specific power or function to inspect, but may have the ability to inspect or investigate in order to undertake the statutory functions required of the role.</p>

<sup>153</sup> The Office of the Chief Inspector (OCI) notes that in conjunction with the recommendation from the Independent Review into Youth Detention, the Queensland Parole System Review also recommended the establishment of an Independent Inspectorate of Corrections, with the OCI to be retained (Recommendations 88, 89 and 90). *Taskforce Flaxton – An examination of corruption risks and corruption in Queensland prisons* recommended the establishment of a properly resourced Independent Inspectorate of Prisons, the development of nationally consistent inspection standards, cycles, methods and reporting templates, and that inspection reports be made publicly available (Recommendation 33).

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

	QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability	
<b>OPCAT Framework</b>						
<b>Independence</b> — Articles 18(1), 18(3) and 18(4)						
2	Legislative basis	<i>Ombudsman Act 2001</i> (Qld)	<i>Corrective Services Act 2006</i> (Qld)	There is no legislative basis for independence. The Youth Detention Inspectorate is an internal inspection program within the Department of Youth Justice ( <i>Youth Justice Act 1992</i> (Qld), s 263).	<i>Public Guardian Act 2014</i> (Qld)	<i>Forensic Disability Act 2011</i> (Qld)
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Resources are allocated and controlled by the Department of Communities, Disability Services and Seniors.
4	Personal and institutional independence from facilities inspected	An independent statutory authority.	Internal inspection function reports to the Deputy Commissioner, Organisational Capability.	Inspectors and their line managers are personally independent from the inspected facilities.	Yes. Not under the direction of any Minister responsible for the facilities inspected.	The Director is personally and institutionally independent from the Forensic Disability Service.
<b>Composition</b> <sup>154</sup> — Article 18(2)						
5	Gender ratio	Seventy per cent female, 30 per cent male	Fifty six per cent female, 45 per cent male.	Ratio: 1:1 One female and one male inspector currently appointed.	The majority of are female, with 18 per cent being male.	Generally a 1:1 ratio of male to female staff.
6	Ethnic and minority representation	Not stated.	Indigenous inspectors are engaged for investigations involving Indigenous persons; and for specific custodial facility inspections.	Current inspectors are not culturally diverse.	Aim to ensure Community Visitors represent the social and cultural diversity. Currently 2.7 per cent identify as Indigenous.	May not always include representation of ethnic and minority groups due to the small team of support staff.
7	Expertise and professional knowledge	Mostly professionally qualified, majority legally qualified.	It is a requirement for all inspectors to have an Advanced Diploma in Government Inspections and an Advanced Diploma in Government Investigations.	Backgrounds in corrections, child safety, performance monitoring and compliance, data analysis, and investigations.	There are no mandatory qualifications. However, a person is eligible for appointment only if the Public Guardian considers the person has knowledge, experience or skills needed to perform the functions of a community visitor.	A lawyer with forensic disability knowledge and principal advisors with forensic disability corporate knowledge.

<sup>154</sup> Queensland's *Public Service Act 2008* (PSA) applies to the recruitment and selection of public service employees. The recruitment and selection of public service employees must be in accordance with the merit principle and criteria prescribed in ss 27 and 28 of the PSA and directed towards attracting and retaining a diverse and skilled workforce, drawn from government and non-government sectors (ss 25 and 99).

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability
8	Expertise and external supplementation	Use current general Ombudsman officers.	The majority of staff have backgrounds in social sciences, including psychology and law. In addition, external inspectors are appointed for inspections and investigations and reviews, ranging from barristers to researchers/academics. Furthermore, OCI has partnered with other chief inspectorates to conduct inspections (including WA and the UK).	Experts from relevant fields have attended inspections and/or provided advice to inform inspection reports.	The majority have backgrounds in social work, psychology, teaching and law.	Additional experts are sourced such as forensic psychologists and pharmacists.
<b>Access to places — Article 4(1)</b>						
9	Legislative basis to inspect	<i>Ombudsman Act 2001</i> (Qld)	<i>Corrective Services Act 2006</i> (Qld) ss 303 to 305	<i>Youth Justice Act 1992</i> (Qld) s 263	<i>Public Guardian Act 2014</i> (Qld) (PG Act) ss 13 and 56 for child sites; ss 12 and 41 for adult sites.	<i>Forensic Disability Act 2011</i> (Qld) ss 87(1)(d), 88(2), 106, 124 and 125 relate.
10	Places currently inspected	All Queensland adult prisons. All Queensland youth detention Centres.  All public hospitals and health services (including closed psychiatric facilities) and the Forensic Disability Service.  Can also investigate work camps operated by Queensland Corrective Services and probation and parole services.	All correctional facilities including low security facilities and probation and parole offices.	Brisbane Youth Detention Centre. Cleveland Youth Detention Centre.	Youth detention centres. Closed psychiatric facilities. Forensic Disability Service. Brisbane watch house (minors only).  Seventeen-year-olds located in adult correctional facilities. <sup>155</sup>	Forensic Disability Service.
11	Unannounced visits	Yes.	Yes.	The framework provides for unannounced inspections but this has never been invoked.	The PG Act enables entry to the site during normal hours without notice. The Act also enables entry outside normal hours without notice, if authorised by the Public Guardian.	Yes.

<sup>155</sup> The Office of the Public Guardian Community Visitor Program in adult correctional facilities is limited to 17 year olds only. However, there are no longer any such minors staying in adult correctional facilities, following the commencement of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) and the Youth Justice (Transitional) Regulation 2018. The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld) and the Youth Justice (Transitional) Regulation 2018 commenced on 12 February 2018, and OPG report that their last visit with a young person in an adult facility occurred in November 2018, who was then released in December 2018.

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability
12	Frequency of visits	Yearly.	At least once every three to five years.	At least once every three months ( <i>Youth Justice Act 1992</i> (Qld), s 263).	The Public Guardian determines frequency but currently the visits range from twice a week, monthly or quarterly. <sup>156</sup>	Regularly.
13	Duration of visits	Two days on average.	Up to a week at a time.	One working week, may include night time hours.	Up to three and a half hours.	The duration of any visit may vary due to the nature and reason for the visit.
<b>Access to information — Articles 20(a) and 20(b)</b>						
14	Right to access all information – treatment and conditions: files, registers, medical records, dietary provisions and other data	Yes	The Office of the Chief Inspector has the right to access all information listed except for medical records. The Office of the Chief Inspector may request information about the medical records of a prisoner, but Queensland Health is not obligated to provide it unless the prisoner consents.	Inspectors are able to access all records, precluding medical records held by the health services provider in youth detention.	The PG Act provides that Community Visitors can do all things necessary or convenient to perform their functions, including inspecting and taking extracts from, or making copies of, any visitable site document (s 67 for child sites, s 44 for adult sites).	The Director has complete access to all information.
<b>Access to persons — Articles 20(d) and 20(e)</b>						
15	Private interviews in location of choice	Yes.	Yes.	Yes, however no express legislative provision.	Yes.	Yes.
16	Choice of interviewee	Yes.	Yes.	Yes, however no express legislative provision.	Yes.	Yes.
17	Ability to interview staff, detainees and other relevant persons	Yes.	The Office of the Chief Inspector has the ability to interview staff, detainees and other relevant persons, except health and medical staff working in correctional facilities – they may choose to participate but are not obligated to.	Yes, inspectors are able to speak with any person considered relevant.	Yes, relevant to the visitor’s functions - staff and detainees (PG Act s 67 for child sites; s 44 for adult sites).	Yes.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>						
18	Ability to make post-visit reports	Yes.	Yes.	Yes, a report is made after the inspection of each facility.	The PG Act states that a visit report must be made following a visit to either a child, young person or adult at a visitable site.	Yes.

<sup>156</sup> Full details of visit frequency can be provided at request.



Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability
19	Report recipients	Chief executives responsible, may be tabled in Parliament should Ombudsman choose.	Reports are provided to the Commissioner for distribution. Death in custody reports are provided to the State Coroner.	Each report is provided to the Chief Executive of the Department of Youth Justice for approval.	The reports are provided to the Public Guardian.	The Director may inform the Administrator of the service of her findings to ensure the proper and efficient administration of the <i>Forensic Disability Act 2011</i> (Qld). The Director may advise and report to the Minister on any matter in relation to the administration of the <i>Forensic Disability Act 2011</i> (Qld).
20	Post-visit recommendations and measures for improvements	Yes.	Yes.	Yes, the inspectorate makes recommendations for improvement arising from the findings of each inspection.	There are no express legislative provisions. The current practice recommends that Community Visitors enquire into whether the service has taken appropriate steps to ensure the proper care and protection of people in their care.	Yes.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Yes.	Not in legislation, however is standard practice through practices and partnerships within the agency.	No requirement. However, in practice the youth justice division of the Department of Youth Justice provides a response to the report outlining the actions it will take to implement the recommendations	Reports can result in services taking steps to improve, often including greater information provision between the service provider and the person residing in their site.	No requirement is statutorily placed on the Minister. However, the Administrator of the service must ensure the Policies and Procedures issued by the Director under s91 are given effect.
22	Publication of an annual report	Yes.	No but contribute to the QCS annual report.	No, however may contribute to Department of Youth Justice annual reports, which are publically available.	Yes.	Yes, pursuant to s 93.
23	Ability to make submissions, proposals and observations on relevant legislation	Yes.	Yes, if and when it is made available.	Not expressly. The inspectorate prepares a report with recommendations for improvement arising from the findings of each inspection. However, each report is provided to the Chief Executive of the Department of Youth Justice for approval.	Yes, the Public Guardian can make submissions, proposals and observations on draft or existing legislation, if relevant to their functions and powers in the Act.	Yes, the Director is able to make submissions on any legislation which may potentially impact on the Forensic Disability Service including clients at the service.

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework	QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability	
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	Yes	Generally no, but under the <i>Public Interest Disclosure Act 2010</i> there are provisions for protections against disclosure.	Yes, Part 9 of the <i>Youth Justice Act 1992</i> places limitations on the disclosure of confidential information relating to a child.	<i>Public Guardian Act 2014</i> (Qld) ss 140 and 141 place limitations on the disclosure of confidential information.	Section 122 of the <i>Forensic Disability Act</i> provides for the protection of confidential information. However, s 122(4) provides for certain circumstances where a person may disclose information to someone else, including (but not limited to): for administering, monitoring or enforcing compliance with this Act; to discharge a function under another law, and for a proceeding in a court or tribunal.
25	Legislative basis for protection	<i>Ombudsman Act 2001</i> (Qld) s 92	<i>Public Interest Disclosure Act 2010</i>	<i>Youth Justice Act 1992</i> (Qld)	<i>Public Guardian Act 2014</i> (Qld) Chapter 6, Part 4 ss 140-143	<i>Forensic Disability Act 2011</i> (Qld) s 122
26	Protection from arrest, detention or seizure of personal baggage	Yes	No. There are legislative provisions that all persons entering facilities must comply regarding prohibited items and personal searches.	No.	No. Protection from civil liability only as per s 145.	Section 128 provides protections from civil liability for an act done, or omission made, honestly and without negligence under the Act.
27	Protected from interference with communications	Yes.	Yes.	No express provision in the <i>Youth Justice Act 1992</i> .	No express legislative provision.	The Director and staff are protected from interference due to the independence of the Director.
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes, subject to operations of the <i>Right to Information Act 2009</i> (Qld) and the <i>Information Privacy Act 2009</i> (Qld).	Information can be disclosed under the <i>Right to Information Act 2009</i> as well as section 341 of the <i>Corrective Services Act 2006</i> .	Generally, confidential information obtained through the administration of the <i>Youth Justice Act 1992</i> must not be disclosed (see Part 9). However, confidential information may be disclosed without consent of a child in certain circumstances, for example for a purpose of the Act or to ensure a person’s safety. Confidential information may also be disclosed if expressly permitted or required under another Act, such as the <i>Information Privacy Act 2009</i> (Qld).	<i>Public Guardian Act 2014</i> (Qld) Chapter 6 Part 4 details circumstances under which confidential information held by CVP or the wider OPG can be lawfully disclosed	Confidential information may be disclosed under section 122(4) of the <i>Forensic Disability Act 2011</i> (Qld) without the express consent of the person to whom the information relates, where the disclosure is to discharge a function under another law, or for a proceeding in a court or tribunal, or if the disclosure is authorised under another law or a regulation made under the FDA.

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		QLD Ombudsman	Office of the Chief Inspector	Youth Detention Inspectorate	Community Visitor Program – Office of the Public Guardian	Director of Forensic Disability
<b>Ability to contact SPT – Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT	Yes.	If required but subject to government protocols.	No avenue currently available. The contact may not be able to be kept confidential as the inspectorate is not independent of Department of Youth Justice.	There is no legislative provision restricting the ability to contact the SPT.	Yes - due to the independence of the Director's office. However, the Director cannot disclose any confidential information (s 122 <i>Forensic Disability Act 2011</i> (Qld)).
30	Contact include meetings, exchanges of information and/ or training sessions	Yes.	Yes, would be welcomed and supported.	No avenue currently available.	There is no legislative provision restricting the Public Guardian's ability to engage with the SPT in this manner.	No.
<b>Inspection methodology, standards and principles</b>						
31	Inspection methodology	Local processes and procedures developed over last decade.	Yes, these are defined in the Healthy Prisons Manual which provides the framework and standards for inspections.	An inspection methodology is based on four guiding documents, a policy and a procedure.	The Community Visitor Program Practice Manual and Framework.	An inspection methodology has been developed for the conduct of audits of the Forensic Disability Service.
32	Defined standards to assess places of detention	Current inspections are undertaken as administrative reviews, testing compliance with legislation, regulations and contracts.	Yes, these are defined in the Healthy Prisons Manual which provides the framework and standards for inspections.	A code of Expectations has been developed, based on state legislation, UN rules and standards, and recommendations from previous relevant inquiries.	Assessments are made against the community visitor functions under the PG Act (s 41 for adult sites, s 56 for child sites). Sections 41 and 56 relate.	The standards assessed against are the provisions in the Act.

### Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

Bodies without inspectorate function					
		Crime and Corruption Commission	Queensland Family and Child Commission	Office of the Health Ombudsman	Office of the Chief Psychiatrist
1	Date of creation	1989		4 Sept 2018	
	Inspection or oversight role	No inspection role as such, only for an investigation in line with core functions	No role to inspect, legislative oversight only with objective to promote safety, wellbeing and best interests of children and young people	No inspection role as such, only for a complaint in line with core functions	No inspection role as such, only for an investigation in line with core functions (see section 301(3) and 308 <i>Mental Health Act 2016</i> ). Inspection of Authorised Mental Health Service (AMHS) facilities is not a function of the Chief Psychiatrist.
OPCAT Framework					
Independence Articles 18(1), 18(3), 18(4)					
2	Legislative basis	<i>Crime and Corruption Act 2001</i> (Qld)	<i>Family and Child Commission Act 2014</i> (Qld)	<i>Health Ombudsman Act 2013</i> (Qld)	<i>Mental Health Act 2016</i> (Qld)
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decision on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Resources are allocated and controlled by the Department of Health.
4	Personal and institutional independence from facilities inspected	Yes <i>Crime and Corruption Act 2001</i> (Qld) s 57	An independent statutory authority with a principal commissioner and commissioner. The commissioners are subject to the directions of the Minister in performing functions, and must comply with a direction given by the Minister (currently the Attorney-General).	To a degree, the Health Ombudsman comes under the oversight of the Minister.	The Chief Psychiatrist is institutionally independent from AMHS facilities providing treatment and care to patients under the Act.
Composition Article 18(2)					
5	Gender ratio	Commission's staff is comprised of 109 males and 180 females. <sup>157</sup>	As at 30 June 2018, 83 per cent female and 17 per cent male	There is a gender balance in within the division.	
6	Ethnic and minority representation	0.4 per cent identify as indigenous, 2.2 per cent have disclosed a disability, 9.4 per cent from a non-English speaking background. <sup>158</sup>	As at 30 June 2018, 10.9 per cent of staff identify as Aboriginal and/or Torres Strait Islander.	Officers most likely to visit are investigators from either our systemic, or our practitioner investigations teams.	
7	Expertise and professional knowledge	Police officers, civilian investigators, financial investigators, intelligence analysts, lawyers and researchers from various disciplines.	Staff have a variety of professional backgrounds.	Systemic and Practitioner investigation teams have backgrounds in investigations, law, health policy and regulation.	Criteria for appointment of an inspector relates to relevant qualifications and expertise in relation to the matter regardless of gender, ethnicity, etc.

<sup>157</sup> This gender ratio refers only to the Commission's civilian staff as published in the annual report 2017-18: <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/corporate/ccc-annual-report-2017-18/ccc-annual-report-2017-18>. This does not include police seconded to the CCC.

<sup>158</sup> This information refers only to the Commission's civilian staff as published in the annual report 2017-18: <http://www.ccc.qld.gov.au/research-and-publications/publications/ccc/corporate/ccc-annual-report-2017-18/ccc-annual-report-2017-18>. This does not include police seconded to the CCC.

**Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland**

OPCAT Framework		Crime and Corruption Commission	Queensland Family and Child Commission	Office of the Health Ombudsman	Office of the Chief Psychiatrist
8	Expertise and external supplementation	Staff experienced in criminal investigation and/or the prevention of crime and corruption. A secondment of additional expertise to supplement may occur.	N/A	May engage clinical advisers to provide advice on specific cases.	Criteria for appointment of an inspector relates to relevant qualifications and expertise in relation to the matter regardless of gender, ethnicity, etc.
<b>Access to places Article 4(1)</b>					
9	Legislative basis to inspect	<i>Crime and Corruption Act 2001</i> (Qld) Chapter 2 – 4.	The QFCC has no legislative function to conduct inspections.	<i>Health Ombudsman Act 2013</i> (Qld) ss 48, 54 and 228	<i>Mental Health Act 2016</i> (Qld) s 577
10	Places currently inspected	All Queensland prisons, all juvenile detention centres, all police premises. Premises for the purposes of a unit of public administration other than a state court, s 73 relates.	None	No routine inspection programs. Only attend facilities in response to a complaint driven systemic or practitioner investigation.	No routine inspection program, access to closed psychiatric facilities in Queensland is for the purpose of investigating a matter relating to the treatment and care of any patient.
11	Unannounced visits	Yes	None	In theory, yes if there are grounds for a search warrant, but in practise there would need to be engagement with the facility to co-ordinate access.	Unannounced visits may occur for the purpose of an Investigation if entering a place open to the public or under a warrant.
12	Frequency of visits	Do not have a general inspection function. May access places if relevant to a corruption or crime investigation, Chapter 3 CC Act.	The QFCC may visit youth detention centres to consult with children and staff, however this is not part of a formal inspection process.	No routine inspection programs. Only attend facilities in response to a complaint driven systemic or practitioner investigation.	The Chief Psychiatrist does not carry out inspections of facilities. Appointment of an inspector is only made for the purpose of an investigation under the Act.
13	Duration of visits	Depends on the circumstances of each case.	N/A	Not stated	An investigation must be completed as quickly as is reasonable in all the circumstances.
<b>Access to information Article 20(a) and 20(b)</b>					
14	Right to access all information – treatment and conditions: files, registers, medical records, dietary provisions and other data	Yes, if relevant to a corruption or crime investigation.	The QFCC can request confidential information in the event of a child death, subject to s 27 of the <i>Family and Child Commission Act 2014</i> .	Able to access any information referred to in a search warrant and or which is relevant to the scope of the investigation.	The Chief Psychiatrist may require the Administrator of an authorised mental health service to provide information (section 304). In undertaking an investigation, an inspector may inspect any document or record, or ask a person at the place to produce a document or give information (sections 577-579).
<b>Access to Persons Article 20(d) and 20(e)</b>					
15	Private interviews in location of choice	Yes	N/A	Can interview persons within the facility. Interviews can be conducted in private.	Section 577 provides powers to confer alone with a patient.
16	Choice of interviewee	Yes, power to compel public officials to produce witnesses to attend hearings, ss 82 and 83 relate.	N/A	Yes	Section 578(1) relates
17	Ability to interview staff, detainees and other relevant persons	Yes if persons do not wish to voluntarily participate in an interview, they may be compelled to provide a statement or attend a hearing, Chapter 3 CC Act.	N/A	Yes	Section 577 relates

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		Crime and Corruption Commission	Queensland Family and Child Commission	Office of the Health Ombudsman	Office of the Chief Psychiatrist
<b>Reports and Recommendations Article 19(b), 19(c)</b>					
18	Ability to make post visit reports	Yes	N/A	Yes.	Section 309 provides a report must be prepared on an investigation
19	Report recipients	Reports may go to the CEO of a unit of public administration, the Parliamentary Crime and Corruption Commission, the Parliament and to the public, ss 49, 64 to 69 relate.	N/A	A reporting relationship with the Minister for Health.	The investigation report is provided to the Chief Psychiatrist who may give the report to the subject of the investigation (section 309). The Chief Psychiatrist may provide the report to the Minister under broad functions of advising and reporting to the Minister on matters relating to the administration of Act (section 301).
20	Post visit recommendations and measures for improvements	Yes under ss 23, 24 and 64 relate.	N/A	Yes if it is a systemic investigation.	Under s 309, an investigation report may include recommendations relating to the improvement of the operation of an authorised mental health service.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Yes, s 59 relates.	N/A	No	No
22	Publication of an annual report	Yes	Yes	Yes	Yes
23	Ability to make submissions, proposals and observations on relevant legislation	Yes, if resources permit.	Yes	Yes if it relates to health.	Yes
<b>Privileges, Immunities and Protections from Reprisals Articles 21 and 35</b>					
24	Protection from disclosure to government, judiciary, other organisations or persons	Cannot be compelled to disclose, unless it is relevant to a proceeding to which it is a party; necessary to give effect to the Act; necessary for a prosecution started as a result of an investigation.	No	There are general confidentiality provisions but, for example, the Minister would likely be able to obtain the information and a court could obtain it under order.	The Chief Psychiatrist is subject to the confidentiality provisions of the <i>Hospital and Health Boards Act 2011</i> (Qld). The <i>Mental Health Act 2016</i> (Qld) confidentiality provisions enable the Chief Psychiatrist to disclose information for the purpose of performing a function under the Act.
25	Legislative basis for protection	<i>Crime and Corruption Act 2001</i> (Qld), s 213(4)	N/A	N/A	<i>Hospital and Health Boards Act 2011</i> (Qld), Part 7, <i>Mental Health Act 2016</i> (Qld), section 778.

Appendix 3.5 – Snapshot of oversight and inspection bodies within Queensland

OPCAT Framework		Crime and Corruption Commission	Queensland Family and Child Commission	Office of the Health Ombudsman	Office of the Chief Psychiatrist
26	Protection from arrest, detention or seizure of personal baggage	The CCC and its officers may not be obstructed in the performance of functions or exercise of powers, s 210. However, officers are otherwise subject to the general law.	No	No	Not under the <i>Mental Health Act 2016</i> (Qld)
27	Protected from interference with communications	Yes	No	No	Not under the <i>Mental Health Act 2016</i> (Qld)
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Generally speaking yes, subject to statutory right to disclose information in the performance of its functions having regard to the purposes of the Act and the public interest, ss 57, 60 and 62. Information obtained under compulsion is subject to additional constraints.	There are provisions for confidentiality and permitted disclosure in the <i>Family and Child Commission Act 2014</i> .	No	Yes, except for the permitted disclosure provisions under <i>Hospital and Health Boards Act 2011</i> (Qld) Part 7 Div 2 Subdivision 2.
<b>Ability to Contact SPT Article 26</b>					
29	Ability to have direct and confidential contact with the UN SPT	Yes, but only in the performance of core functions.	No	It may be possible to a degree under s 272 if in the performance of a function under the Act.	No
30	Contact include meetings, exchanges of information and/ or training sessions	Yes, but only for the purpose of performing core functions.	Yes, in accordance with the functions and powers outlines in the <i>Family and Child Commission Act 2014</i> .	No	Not applicable
<b>Inspection Methodology, Standards and Principles</b>					
31	Inspection Methodology	Methodology is determined depending on purpose, having regard to the particular functions being performed.	N/A	Does not undertake routine inspections of facilities therefore does not have an established methodology. Best practise adopts search warrant and investigation methods.	Inspection methodology is determined by the appointed investigators in scope of the terms of reference that are established for that particular investigation.
32	Defined standards to assess places of detention	The relevant statutory, policy and procedural frameworks for the management and administration of the place of detention.	N/A	Yes, professional health and quality standards and guidelines, internal frameworks and policies.	The AMHS declaration form.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

**Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia**

Bodies with inspectorate function					
		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
1	Date of creation	November 2017		June 2010	June 2011
	Inspection or oversight role	Inspection, advocacy and visit role.	Inspection role.	Inspection role, and rights, safety and quality oversight role.	Inspection and visit role.
<b>OPCAT Framework</b>					
<b>Independence — Articles 18(1), 18(3) and 18(4)</b>					
2	Legislative basis	<i>Youth Justice Administration Act 2016 (SA) s 11 to 20</i>	<i>Correctional Services Act 1982 (SA)</i>	<i>Mental Health Act 2009 (SA)</i>	<i>Mental Health Act 2009 (SA)</i>
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.	No autonomy on spending resources.	Limited autonomy to make decision on expending resources, some decisions made by Department for Health and Wellbeing. The Chief Psychiatrist can make recommendations and follow these up as required and needed, given the nature of the recommendations made.	Has autonomy to make decisions on how to expend resources.
4	Personal and institutional independence from facilities inspected	Independent from facilities visited.	In accordance with s 20 of the <i>Correctional Services Act 1982</i> , prisons must be inspected on a regular basis. The Governor, on the recommendation of the Minister for Correctional Services, appoints suitable people to be inspectors for this purpose.  Visiting Inspectors are independent from facilities visited.	There is adequate legislative, personal and institutional independence from the facilities that are inspected.	Independent from facilities visited.
<b>Composition — Article 18(2)</b>					
5	Gender ratio	Three staff members totalling 2.4 FTE; one woman at 0.6 FTE and two men at .08 and 1 FTE, respectively.	Currently 19 males and seven females.	Any team aims to include at least one male and one female at a minimum.	Ratio: 1:2 male to female.
6	Ethnic and minority representation	Our Advocate is a Yankunytjatjara man, but he is not employed specifically as an Aboriginal Advocate.	Group of independent inspectors include one Aboriginal inspector (female) and one Vietnamese inspector (female).	Currently one culturally and linguistically diverse (CALD) person available for inspections. Intending to train additional people from other CALD and minority groups.	There is representation from a wide range of ethnic groups and several are multilingual.
7	Expertise and professional knowledge	Youth justice and child and adolescent mental health services Social worker, case manager, mediator and counsellor, Policy, legal, project management and advocacy work in youth justice and other spheres.	Diverse backgrounds.	The team comprises mental health clinicians, health professionals from various disciplines and consumer and carer consultants.	Majority hold professional qualifications. However this is not a requirement to be a Community Visitor (CV).



Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
8	Expertise and external supplementation	Yes, for some critical fields, but not all necessary inspection areas. It is assumed that supplementary inspection staff will be required.	Not currently required for inspections.	Not currently required for inspections, supplementation of additional expertise can and does occur where particular concerns are raised, or if additional expertise is needed.	Many of our CVs are exceptionally qualified individuals with many years' professional experience.
<b>Access to places</b> – Article 4(1)					
9	Legislative basis to inspect	<i>Youth Justice Administration Act 2016</i> (SA) s 14.	<i>Correctional Services Act 1982</i> s 20.	<i>Mental Health Act 2009</i> (SA) s 90 and <i>Health Care Act 2008</i> (SA) ss 88 and 89J.	<i>Mental Health Act 2009</i> (SA) s 51. <i>Disability Services (Community Visitor Scheme) Regulations 2013</i> s 4.
10	Places currently inspected	Adelaide Youth Training Centre.	Adult prisons.	All psychiatric facilities, including closed psychiatric facilities and Forensic Mental Health Services. All authorised approved treatment centres, limited treatment centres, and authorised community mental health services as defined under the <i>Health Care Act 2008</i> (SA). Authorised community mental health services cover a range of community based and rehabilitation services which are not formally places of administrative detention, although they provide services to people who are on Mental Health Act Community Treatment Orders – an administrative order under the Act.	Closed psychiatric facilities. James Nash House. Emergency departments of hospitals.
11	Unannounced visits	Must give the manager reasonable notice under s 16(3)(a). Section 16(4), allows that if for reasons they consider to be exceptional, <sup>159</sup> they are not required to give notice.	Yes and legislatively enabled for the purposes of, or in the course of, carrying out an inspection, to enter and inspect any part of the correctional institution and speak to anyone in the facility	Section 90(5) allows the Chief Psychiatrist to enter the premises of an incorporated hospital at any reasonable time. The program of visits includes both announced and unannounced visits. Further unannounced visits may be made to a site where a matter of importance requires urgent resolution or close follow-up to ensure action.	Yes, ss 52 and 53 relate.

<sup>159</sup> The threshold for what may be deemed 'exceptional' is untested.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
12	Frequency of visits	A pilot Visiting Program and Review of Records concluded in October 2018 (report imminent). The Visiting Program for 2019 has commenced and will proceed through fortnightly visits to the two Adelaide Youth Training Centre campuses (Goldsborough and Jonal). A first formal inspection will occur in the last quarter of 2019.	South Australia has a group of more than 20 Visiting Inspectors who provide an independent regular inspection service to all South Australian prisons.	Frequency of visits is still being established across services. A program of both announced and unannounced visits is being established.	Required by legislation to visit at minimum every two months. Current strategy is to visit those sites that are more likely to have clients involuntary detained on a monthly basis.
13	Duration of visits	The 2019 visits mentioned above will be of three to six hours duration at each site. Separate attendances occur for other purposes, e.g. individual advocacy.	As required and necessary – approximately two hours on average.	The duration of a visit is dependent on the type of visit and scope of the inspection.	Visits can last between two and five hours, dependent on the size of the facility and the number of issues being presented.
<b>Access to information — Article 20(a) and 20(b)</b>					
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	<p>The pilot Review of Records was undertaken and has been analysed for longer term planning purposes (report imminent). Reviews of Records will be undertaken quarterly from now on (and feed into the formal inspection process).</p> <p>Section 15 of the <i>Youth Justice Administration Act 2016</i> (SA) provides the right to access all information necessary to perform its role.</p>	Visiting Inspectors currently have the necessary independence and legislative mandate to visit prisons and prisoners and gather information. Medical records would be an exception as to access.	Yes, <i>Mental Health Act 2009</i> (SA) ss 90 (4)(5)(6) and (7) apply. Section 90 (5) allows the Chief Psychiatrist to inspect the premises or any equipment or other things on the premises, to require any person to produce documents or records, or examine any document or records and take extracts from or make copies of any of them. A person cannot refuse or fail to comply with a requirement made under s 90(5) and there is a prohibition on hindering or obstructing the Chief Psychiatrist in the exercise of powers conferred under s 90(5).	Yes, s 57 relates.
<b>Access to Persons — Article 20(d) and 20(e)</b>					
15	Private interviews in location of choice	Yes, although location will be restricted by detention conditions.	Visiting Inspectors speak directly with prisoners to ensure that they are treated fairly and that their accommodation is clean and safe. Visiting Inspectors may be called upon to investigate any complaints that could affect the health and welfare of prisoners.	The Chief Psychiatrist can undertake interviews of patients privately and a choice of location can be offered. It is likely to be a meeting or interview room at a mental health service.	Yes, each unit makes a room available for private interviews.
16	Choice of interviewee	Yes.	Yes. Legislatively enabled to enter and inspect any part of the correctional institution and speak to anyone in the facility for the purposes of, or in the course of, carrying out an inspection.	Yes.	Yes, restrictions would only be applied if the patient was assessed as too ill and therefore potentially a risk to the visitors.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
17	Ability to interview staff, detainees and other relevant persons	Yes.	Yes.	Yes but only if the person consents to being interviewed. The Chief Psychiatrist cannot compel a person to be interviewed.	Yes, s 52 relates.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>					
18	Ability to make post-visit reports	Yes.	Yes.	Yes.	Yes under s 50(4).
19	Report recipients	The TCV makes annual (and other) reports to Parliament through the Minister for Human Services as outlined in ss 18 and 19 of the Act. Other reports are prepared and released at the TCV's discretion. It should be noted that there is a guarantee of independence in the Act, including in s 12(2): "The Minister cannot control how the Visitor is to exercise the Visitor's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Visitor."	The Minister. Visiting Inspectors make reports of their inspections to the general manager of the facility upon completion in a log. Reports are provided to the Minister.	A report can be made to: <ul style="list-style-type: none"> <li>- The Chief Executive Officer of the Local Health Network/Board.</li> <li>- The Local Health Network/Board Mental Health and Quality and Safety Executive.</li> <li>- The Chief Executive of the Department for Health and Wellbeing.</li> <li>- The Minister for Health and Wellbeing.</li> </ul>	These reports are provided to the service managers or directors of the service with requests for a response to any issues raised in the reports.
20	Post-visit recommendations and measures for improvements	Post-visit recommendations are made, but there is no onus or guarantee that they will be implemented.	Yes.	Yes. Post visit recommendations are made and it is up to the Local Health Network/Board CEO and Mental Health Executive team to determine implementation. If further concerns are serious and ongoing, there can be escalation to the Department and the Minister.	Yes, the PCV meets with senior service managers (general and clinical) to both raise issues and offer any restorative solutions.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	The TCV reports to Parliament which has complete discretion with respect to its treatment of reports. While there is an implicit responsibility, there is no explicit statutory requirement that the range of possible TCV reports must be examined, engaged with or recommendations implemented.	No formal requirement in legislation, but general managers take recommendations by the Inspectors seriously and will provide a status update in the log of actions taken in response.	There is no formal requirement in legislation, but there is an expectation that the recipient body will provide a response on the report's recommendations and possible implementation measures.	Yes. The above mentioned meetings place pressure on the service manager to resolve issues and/or implement recommendations.
22	Publication of an annual report	Yes.	No.	Yes.	Yes.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
23	Ability to make submissions, proposals and observations on relevant legislation	Generally speaking, yes. However since 2016, draft legislation has not always been made available to the TCV in a timely way (such as before it is introduced and passed in the Legislative Assembly) and there has not always been an invitation for formal submissions or responses.	Ability is not explicit but would not be prevented.	Yes, the Chief Psychiatrist has the ability to make submissions, proposals and observations on relevant legislation in their own right.	Yes. It would be normal for the PCV to be asked to comment on such policies.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>					
24	Protection from disclosure to government, judiciary, other organisations or persons	Section 20 guarantees confidentiality of information regarding individual cases disclosed and is not liable to disclosure under the <i>Freedom of Information Act 1991 (SA)</i> .	No.	If the information provided relates to an individual then there is significant protection under law. If it relates to an inspection it can be discoverable under the <i>Freedom of Information Act 1991 (SA)</i> .	Annual reports and special reports are protected by parliamentary privilege.
25	Legislative basis for protection	<i>Youth Justice Administration Act 2016 (SA) s 20</i>		<i>Mental Health Act 2009 (SA) s 106</i>	Have the same powers and functions as a Health Inspector under <i>Health Care Act 2008 (SA)</i> .
26	Protection from arrest, detention or seizure of personal baggage	Yes.	No.	Whilst no formal protections exist at law it is believed that there are also no powers that can be exercised except under the <i>Criminal Law Consolidation Act 1935 (CLCA)</i> and the <i>Independent Commissioner against Corruption Act 2012 (ICAC)</i> should there be reasonable suspicion that laws under either of those particular Acts have been breached.	Yes, in relation to conducting their role and assuming they have not committed a crime.
27	Protected from interference with communications	The TCV and staff must receive permission to bring laptops and other technology into the training centre. Mobile phones are not allowed in the centre and must be stored in lockers prior to entry.  Regulation 5 of the <i>Youth Justice Administration Regulations 2016 (SA)</i> outlines that letters from residents to the TCV cannot be opened. There are various mechanisms for Adelaide Youth Training Centre residents to raise concerns, including dedicated unrecorded telephone lines to the Ombudsman (SA) and the TCV.	No.	No formal protections at law, however it is believed that there are no powers that can be exercised to interfere with communications unless there have been breaches of the CLCA or ICAC Acts (a criminal or corruption offence under those two Acts, respectively).	Yes, in relation to conducting their role and assuming they have not committed a crime.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes.	Confidentiality provisions in the <i>Correctional Services Act 1982</i> protect and prevent disclosure of prisoner and offender information.	Yes, provisions under s 106 of the <i>Mental Health Act 2009 (SA)</i> prohibit disclosure of personal information relating to a person obtained in the course of administration of the Act.	Yes. Medical and legal information acquired through the scheme would remain confidential.
<b>Ability to contact SPT – Article 26</b>					
29	Ability to have direct and confidential contact with the UN SPT	Yes.	Not prevented, except individuals' information under confidentiality provisions.	Statutory powers are quite specific and limited. Not legally vested with the ability, if required, to have direct and if necessary, confidential contact with the UN SPT.	Yes.
30	Contact include meetings, exchanges of information and/ or training sessions	Yes.	Not prevented.	There is nothing preventing meetings for general communication about the operation of OPCAT, for training and for exchanges of information but it may not be legally possible for there to be exchanges of specific information related to persons or to particular inspections undertaken under the authority provided by the <i>Mental Health Act 2009 (SA)</i> .	Yes.
<b>Inspection methodology, standards and principles</b>					
31	Inspection methodology	Preparatory work has focused on planning for a pilot inspection in 2019. The intention is to reflect good practice in analogous jurisdictions, as well as incorporate learning from earlier stage activities.	Templates developed (and in use) guide and assist Inspectors through their visits and inspections.	An inspection standard has been prepared to guide inspections in mental health facilities.	A visit and inspection prompt sheet guides and assists Community Visitors through the process. The areas highlighted within this prompt are in line with the Australian Government's <i>National standards for mental health services (2010)</i> .

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		Training Centre Visitor (TCV)	Visiting Inspectors – Department for Correctional Services	Office of the Chief Psychiatrist	Community Visitor Scheme
32	Defined standards to assess places of detention	Standards and descriptors are currently under development.	<i>Guiding principles for corrections in Australia 2018 (formerly the Standard guidelines for corrections in Australia).</i>	<p>There are a number of standards that apply, including:</p> <ul style="list-style-type: none"> <li>- <i>National safety and quality health service (NSQHS) standards</i>, second edition.</li> <li>- <i>National Standards for Mental Health Services (2010).</i></li> <li>- <i>Accreditation workbook for mental health services (March 2014).</i></li> <li>- <i>National Safety and Quality Health Service Standards - User guide for health services providing care for people with mental health issues</i></li> <li>- <i>National practice standards for the mental health workforce (2013).</i></li> </ul>	<p>Australian Government’s <i>National standards for mental health services, (2010).</i></p> <p>In addition to the opportunity to receive advocacy requests, visits have a focus on several key elements, including the physical state of the facility, the quality of service, the safety of detainees, detainees’ care plans, and detainees’ awareness of their rights to appeal against their treatment plans.</p>

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

Bodies without inspectorate function					
	SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
1	Date of creation	1972			1993
	Inspection or oversight role	Advised it does not have an 'inspection' function, although does have a power to enter and inspect premises of an agency to which the Act applies for the purpose of the investigation of a complaint.	No inspection role as such, does not have the power to inspect police premises for any reason apart from an investigation.	The Commission advised it was created to advocate and promote for the rights and interests of all children and young people in South Australia who are under 18 years of age. It does not have the powers to inspect sites, advocate for individual children or monitor certain bodies.	The Guardian's responsibilities cross over with those of the Training Centre Visitor due to s 26(a) of the <i>Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)</i> which requires that the Guardian promote "the best interests of children under the guardianship, or in the custody, of the Minister, and in particular those in alternative care." Alternative care specifically includes care provided in a detention facility. The implications of the overlapping responsibilities of the Guardian and Training Centre Visitor are still being explored.
OPCAT Framework					
Independence — Articles 18(1), 18(3) and 18(4)					
2	Legislative basis	<i>Ombudsman Act 1972 (SA)</i>			<i>Guardianship and Administration Act 1993 (SA)</i>
3	Autonomous resource allocation and expenditure	Autonomous resource expenditure (not budget allocation).			Yes, once budget allocated to the office by the Attorney-General's Department.
4	Personal and institutional independence from facilities inspected	In accordance with s 6 (1) of the <i>Ombudsman Act 1972 (SA)</i> , the Governor may, on a recommendation made by resolution of both Houses of Parliament, appoint a person to be the Ombudsman.  Section 10 provides that the Ombudsman may be removed by the Governor upon the presentation of an address from both Houses of Parliament.			The Public Advocate is an independent statutory officer appointed by the Governor to fulfil statutory responsibilities. Section 21(2) of the <i>Guardianship and Administration Act 1993</i> states that: 'in performing his or her functions the Public Advocate is not subject to the control or direction of the Minister'.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
<b>Composition — Article 18(2)</b>						
5	Gender ratio	80% female, 20% male.				Technically, staff do not carry out inspections, but do visit clients and conduct investigations as directed by the South Australian Civil and Administrative Tribunal.
6	Ethnic and minority representation	As above.				Not technically inspectors.
7	Expertise and professional knowledge	Expertise regarding prison standards (international) and operating procedures gained through investigating the treatment of prisoners. Similar in youth detention space.				Staff are a mixture of allied health professionals (mainly social workers) and professional officers and administration/customer service officers.
8	Expertise and external supplementation					No
<b>Access to places — Article 4(1)</b>						
9	Legislative basis to inspect	Section 23 of the <i>Ombudsman Act 1972 (SA)</i> provides for the entry and inspection of any premises or place occupied by an agency to which the Act applies.				<i>Guardianship and Administration Act 1993 (SA)</i> s 28
10	Places currently inspected	Visits are conducted to adult prisons on a regular basis. While the Ombudsman does not have a formal prison inspectorate function, the Department for Correctional Services is subject to the Ombudsman's oversight.				Yatala Labour Prison. Adelaide Women's Prison. Port Augusta Prison. Mobilong Prison. Port Lincoln Prison. Mt Gambier Prison. Closed psychiatric facilities. James Nash House.
11	Unannounced visits	The Ombudsman has the power to visit unannounced if investigating.				Yes, to visit a 'protected person'. However, due to security in prison, visits are often announced.



Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
12	Frequency of visits	In 2017–18 the Ombudsman completed eight formal investigations of the Department for Correctional Services, arising from prisoner complaints and in the exercise of own motion powers.				Generally visit all clients under guardianship a minimum of once per year, determined on a needs basis.
13	Duration of visits					One to two hours
<b>Access to information — Articles 20(a) and 20(b)</b>						
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	<p>During the course of an investigation, s 18 (3)(b) of the Act permits the Ombudsman to obtain information from such persons and in such manner as the Ombudsman thinks fit.</p> <p>Section 18 (6) allows the Ombudsman to adopt the procedure for conducting an investigation as they see fit.</p> <p>Under s 19, the Ombudsman is invested with all the powers of a Royal Commission, as defined in the <i>Royal Commissions Act 1917</i> (SA).</p> <p>Section 23 of the Act provides for the inspection of anything in or on the premises or place occupied by an agency to which the Act applies.</p>				Yes.
<b>Access to persons — Articles 20(d) and 20(e)</b>						
15	Private interviews in location of choice	Yes, the Ombudsman has the powers of a Royal Commission when investigating.				Yes.
16	Choice of interviewee	Yes, the Ombudsman has the powers of a Royal Commission when investigating.				Technically limited to ‘protected persons’ for whom an appointed guardian or person is advocating.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
17	Ability to interview staff, detainees and other relevant persons	Yes, the Ombudsman has the powers of a Royal Commission when investigating.				In practice, facilities have been cooperative in meeting staff and others if requested.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>						
18	Ability to make post-visit reports	Upon the completion of the investigation of a complaint, s 25(2)(3) of the Act allows the Ombudsman to provide a report and make recommendations to the principal officer of the relevant agency and the responsible minister.				Yes, under s 22.
19	Report recipients	Under the Ombudsman’s direction, reports may be published and tabled in parliament.				The minister to table in Parliament.
20	Post-visit recommendations and measures for improvements					Yes, noting it may be about improvements to services or legislation rather than specific inspection powers.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Over 95 per cent of recommendations are accepted by the agencies that are investigated.  Under s 25(5)(6), the Ombudsman may report to the Premier if appropriate steps have not been taken by the agency to give effect to a recommendation and may lay a copy of the report before each House of Parliament.				No.
22	Publication of an annual report	Section 29 of the Act requires that the Ombudsman provide a yearly report to Parliament and to the responsible minister.				Yes.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
23	Ability to make submissions, proposals and observations on relevant legislation	Yes, where administrative error is found, the Ombudsman may recommend legislative change.				Yes.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	Section 26 of the Act relates to confidentiality and disclosure of information obtained in the course of the Ombudsman's work.				Confidentiality provisions in s 80 deal with personal information that should be protected, unless the information is for any other body that has compulsive powers.
25	Legislative basis for protection	Section 30(2) of the Act provides for the protection of the Ombudsman and their staff from being called to give evidence before any court in any judicial proceedings on a matter coming to their notice in the course of their work.				<i>Guardianship and Administration Act 1993 (SA)</i>
26	Protection from arrest, detention or seizure of personal baggage					There are no specific legislative protections.
27	Protected from interference with communications					There are no specific legislative protections.
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Section 26 of the Act relates to confidentiality and disclosure of information obtained in the course of the Ombudsman's work.				There are no specific South Australian privacy legislation but there are Information Privacy Principles Instruction.
<b>Ability to contact SPT — Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT					No specific legislative mechanism.
30	Contact include meetings, exchanges of information and/or training sessions					No specific legislative mechanism.

Appendix 3.6 – Snapshot of oversight and inspection bodies within South Australia

OPCAT Framework		SA Ombudsman	Independent Commissioner against corruption, Office for Public Integrity	Commissioner for Children and Young People	Guardian for Children and Young People	Office of the Public Advocate
Inspection methodology, standards and principles						
31	Inspection Methodology					No.
32	Defined standards to assess places of detention					The Public Advocate is supported by the Office of the Public Advocate, to promote the rights and interests of people who may need assistance with decision making. OPA promotes rights through the delivery of services, such as giving advice, finding alternatives to guardianship, advocacy, investigations, resolution of certain disputes and acting as guardian of last resort. These are delivered by a team of professional and administrative staff. The general functions are set out in s 21(1).

Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania

**Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania**

		Custodial Inspector	Mental Health Official Visitor (administered by Ombudsman Tasmania)	Commissioner for Children and Young People
1	Date of creation	31 January 2016	14 February 2014	1 July 2016
	Inspection or oversight role	Inspection role.	Inspection and visit role.	Oversight role.
<b>OPCAT Framework</b>				
<b>Independence</b> — Articles 18(1), 18(3) and 18(4)				
2	Legislative basis	<i>Custodial Inspector Act 2016</i> (Tas)	<i>Mental Health Act 2013</i> (Tas)	<i>Commissioner for Children and Young People Act 2016</i> (Tas) (CCYP Act).
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	
4	Personal and institutional independence from facilities inspected	Yes, personally and institutionally independent and appointed to the role by the Tasmanian Governor under the <i>Custodial Inspector Act 2016</i> (Tas).	Yes, personally and institutionally independent and appointed to the position by the Tasmanian Governor under the <i>Mental Health Act 2013</i> (Tas). Section 155 precludes the Official Visitor from holding other appointments or interests which may conflict with the role. Section 162 relates to the independence of the Official Visitor.	Unless otherwise specified, the Commissioner must act independently, impartially and in the public interest when performing a function or exercising a power (s 8(3) of the CCYP Act).
<b>Composition</b> — Article 18(2)				
5	Gender ratio	The Custodial Inspector has a staffing establishment of two females, comprising 1.5 full time equivalent. The Custodial Inspector is a male.	Yes, five male and five female. Two males are permanent staff and the remainder are persons appointed as official visitors subject to provisions of the <i>Mental Health Act 2013</i> (Tas).	
6	Ethnic and minority representation	Both current staff members are Caucasian females.	All appointed are Caucasian.	
7	Expertise and professional knowledge	Legal qualifications, regulatory experience, investigation and compliance backgrounds.	Permanent staff: senior public sector management experience, regulatory, investigation experience and workplace counselling. Official Visitors are members of the community with legal, medical, teaching and social work and other professional or technical backgrounds.	
8	Expertise and external supplementation	Expert consultants are engaged as contractors to assist with inspections as required.	No.	

Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania

OPCAT Framework		Custodial Inspector	Mental Health Official Visitor (administered by Ombudsman Tasmania)	Commissioner for Children and Young People
<b>Access to places</b> — Article 4(1)				
9	Legislative basis to inspect	<i>Custodial Inspector Act 2016</i> (Tas) s 8.	Official Visitors ‘visit’ rather than inspect, functions are provided in s 157.	Pursuant to s 135A of the <i>Youth Justice Act 1997</i> (Tas) (YJ Act) and regulation 6(a) of the <i>Youth Justice Regulations 2009</i> , the Commissioner is allowed access, at any reasonable time, to any detention centre (as established under s 123 of the YJ Act) and any detainee at the centre, for the purpose of performing and exercising their functions and powers under the CCYP Act. <sup>160</sup>
10	Places currently inspected	All Tasmanian adult prisons. Ashley Youth Detention Centre.	All approved hospitals, which include closed psychiatric facilities.	Ashley Youth Detention Centre. <sup>161</sup> Any detention centre, as established under s 123 of the YJ Act for the detention of <ul style="list-style-type: none"> <li>a) Youths sentenced to a period of detention.</li> <li>b) Youths remanded in custody while awaiting the determination of proceedings for an offence.</li> <li>c) Persons in the process of being transferred to another State under the Act.</li> </ul>
11	Unannounced visits	Yes	Yes	
12	Frequency of visits	The centres located in the south of the state are visited monthly (on average). Those located in the north of the state are visited at least biannually.	At least once a month.	Once every three weeks.
13	Duration of visits	The duration of the visit varies according to the purpose of the visit and can be anywhere from one hour, to a day, or weeks. Mandatory inspections range from two to three weeks.	A visit averages from two to three hours.	Visits generally last the majority of the day.
<b>Access to information</b> — Articles 20(a) and 20(b)				
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Yes, refer to ss 8, 31 and 32.	Yes, unless the patient does not grant permission. If this is denied, Official Visitors can still access all documents and registers required to be kept under the <i>Mental Health Act 2013</i> (Tas), ss 159 and 163.	Section 10(2) of the CCYP Act provides that the Commissioner may, after taking account of the views and wishes of the young person, ask a staff member a question about the young person, or inspect or take copies of a document relating to a young person.
<b>Access to persons</b> — Articles 20(d) and 20(e)				
15	Private interviews in location of choice	Yes, within reason.	Yes, s 163 provides access to all patients.	Section 135A(3) of the YJ Act provides that a detention centre manager and each member of staff at a detention centre must allow the Commissioner, as a prescribed officer, to conduct an interview with a detainee out of the hearing of any other person.
16	Choice of interviewee	Yes.	Yes.	Yes.

<sup>160</sup> Noting the Commissioner does not have an inspection function as contemplated by OPCAT.

<sup>161</sup> Noting the Commissioner does not have an inspection function as contemplated by OPCAT.

Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania

OPCAT Framework		Custodial Inspector	Mental Health Official Visitor (administered by Ombudsman Tasmania)	Commissioner for Children and Young People
17	Ability to interview staff, detainees and other relevant persons	Yes, ss 8(e) and 17. Section 17 provides the ability to speak with prisoners and detainees.	To an extent, as s 163(e) allows Official Visitors to ask questions of staff discharging responsibilities under the <i>Mental Health Act 2013</i> (Tas) and receive answers in a full and frank manner.	Yes, s 135A of the YJ Act and s 10(2) of the CCYP Act provide for the Commissioner to speak with staff and detainees.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>				
18	Ability to make post-visit reports	Yes.	Yes.	Yes.
19	Report recipients	Reports are provided to the minister responsible for the custodial centre and tabled in both Houses of Parliament.	The Principal Official Visitor is able to report contraventions of the <i>Mental Health Act 2013</i> (Tas), standing orders and clinical guidelines to the Health Complaints Commission and the Ombudsman, s 165.	Where the Commissioner undertakes an investigation or review at the request of the relevant minister, s 9 of the CCYP Act sets out requirements around provision of draft reports by the Commissioner to the minister and actions the minister might take in relation to that draft prior to its finalisation by the Commissioner. Section 20 of the Act also provides for the preparation of other reports.
20	Post-visit recommendations and measures for improvements	Yes, s 21 relates.	There is no provision in the <i>Mental Health Act 2013</i> (Tas) to do this.	See above.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Yes, s 21 provides the ability to request the responsible Secretary to notify the Custodial Inspector of steps proposed to be (or which have been) taken to give effect to the recommendation, or to provide reasons why a recommendation has not been implemented. When it appears no appropriate steps have been taken in a reasonable timeframe, the Custodial Inspector may provide the Premier and responsible minister with the recommendation and the comments from the responsible Secretary.	There is no provision in the <i>Mental Health Act 2013</i> (Tas) to do this.	
22	Publication of an annual report	Yes, s 26 relates. Annual report is tabled in Parliament.	Yes.	Yes.
23	Ability to make submissions, proposals and observations on relevant legislation	Sections 21 and 26 comply.	No.	
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>				
24	Protection from disclosure to government, judiciary, other organisations or persons	Section 24 (disclosure of information), s 33 (protection from liability) and s 34 (protection for provision of information) relate.	Disclosure of confidential information about patients is only allowed for specific purposes such as disclosure authorised by a court or the Mental Health Tribunal.	The CCYP Act contains provisions dealing with information sharing (ss 16 and 17), obstruction (s 23) and protection from liability (s 24).

Appendix 3.7 – Snapshot of oversight and inspection bodies within Tasmania

OPCAT Framework		Custodial Inspector	Mental Health Official Visitor (administered by Ombudsman Tasmania)	Commissioner for Children and Young People
25	Legislative basis for protection	Sections 24, 33 and 34 relate.	Section 134 relates.	See above.
26	Protection from arrest, detention or seizure of personal baggage	Sections 24, 33 and 34 relate.	No.	
27	Protected from interference with communications	Sections 17 and 34 relate.	No.	
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Section 34 relates. Section 24 provides that the disclosure offence provision does not apply if the person who gave the information gives consent to disclose, if they are entitled or authorised to give the information. Section 22 provides that the Custodial Inspector must not disclose certain confidential information in a report to Parliament if public interest considerations against disclosure (for example, disclosure which might allow a person or relative to be identified) outweigh public interest considerations in favour of disclosure.	Yes, clinical information received in the course of a visit can only be released with the consent of the patient and the controlling authority.	Section 18 of the CCCYP Act contains provisions dealing with confidentiality. In acting as an advocate for a young person, s 10(2) also provides that the Commissioner must, as far as practicable in the circumstances, preserve the privacy of the young person.
<b>Ability to contact SPT — Article 26</b>				
29	Ability to have direct and confidential contact with the UN SPT	There is scope under s 24(b) for the responsible secretary, governing body or minister to approve disclosure of certain information to the SPT.	No.	
30	Contact include meetings, exchanges of information and/or training sessions	There is scope under s 24(b) for the responsible secretary, governing body or minister to approve disclosure of certain information to the SPT.	No.	
<b>Inspection methodology, standards and principles</b>				
31	Inspection methodology	The Custodial Inspector's published inspection standards specify criteria.	All visits to approved hospitals follow a consistent report template that reflects the provisions of the <i>Mental Health Act 2013</i> (Tas).	
32	Defined standards to assess places of detention	Yes. There are two sets of standards: <i>Inspection standards for adult custodial services in Tasmania</i> and <i>Inspection standards for young people in detention In Tasmania</i> .	There are no defined standards specified in the <i>Mental Health Act 2013</i> (Tas).	



Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

**Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria**

Bodies with inspectorate role						
		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
1	Date of creation	1973	1 March 2013	1 March 2013	28 November 1987	1 October 1987
	Inspection role or oversight	Investigation and oversight role with statutory powers of entry and inspection.	Inspection and oversight role.	Inspection and oversight role.	Inspection and visit role.	Inspection and visit role.
OPCAT Framework						
Independence — Articles 18(1), 18(3) and 18(4)						
2	Legislative basis	<i>Constitution Act 1975</i> (Vic) s 94E. <i>Ombudsman Act 1973</i> (Vic).	<i>Commission for Children and Young People Act 2012</i> (Vic)	None.	<i>Disability Act 2006</i> (Vic)	<i>Mental Health Act 1986</i> (Vic) and continued under the <i>Mental Health Act 2014</i> (Vic).
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources. The Ombudsman will have complete budgetary independence with a direct appropriation from Parliament from July 2020.	Has autonomy to make decisions on how to expend resources.	See CCYP.	The Public Advocate makes decisions on how resources are allocated.	The Public Advocate makes decisions on how resources are allocated.
4	Personal and institutional independence from facilities inspected	An independent officer of the Victorian Parliament, the Ombudsman is personally and institutionally independent.	Personally and institutionally independent and impartial.	See CCYP.	Community Visitors (CVs) are personally and institutionally independent from the facilities they inspect.	Community Visitors (CVs) are personally and institutionally independent from the facilities they inspect.
Composition — Article 18(2)						
5	Gender ratio	The Ombudsman’s 2017 pilot OPCAT–style inspection team was made up of ten women and two men. The Ombudsman’s 2019 OPCAT–style inspection team was made up of eight women and six men.	Ratio: 2:1 female to male.	Currently two male volunteers to 14 female volunteers.	Ratio of 1 male: 2 female (twenty- two males and 45 females).	Ration of 1 male: 2.4 female (55 females and 23 males).
6	Ethnic and minority representation	Ombudsman staff include a range of cultural backgrounds.	Commission staff involved include a range of cultural backgrounds.	Culturally diverse volunteers, including Aboriginal.	A range of culturally and linguistically diverse (CALD) backgrounds and include people with disabilities, but the program does not have current data concerning diversity.	A range of culturally and linguistically diverse (CALD) backgrounds and include people with disabilities, but the program does not have current data concerning diversity.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
7	Expertise and professional knowledge	<p>The 2017 OPCAT–style team consisted of the New Zealand Ombudsman’s Chief OPCAT Inspector, a clinical psychologist, and investigation officers with nursing qualifications, who speak relevant community languages, and have qualifications and knowledge in law, criminology, human rights and the criminal justice system.</p> <p>The 2019 OPCAT–style team consisted of the lead inspector for facilities detaining children and young people from Her Majesty’s Inspectorate of Prisons in the United Kingdom, a registered psychiatric nurse, three Aboriginal inspectors, and others with expertise in engaging with children and young people, mental health and disability, youth justice, human rights and conducting OPCAT compliant inspections.</p>	<p>Our teams have a range of tertiary qualifications including law, sociology, criminology, social work, science (Occupational Health and Safety), and training and assessment.</p>	<p>IVP volunteers bring a range of different professional and community experiences, such as training, youth work, youth justice, policy, education, health, corrections, legal, counselling, case management and cultural support.</p>	<p>Volunteers come from a range of backgrounds, mostly professional. They receive extensive training in relation to their roles as Community Visitors.</p>	<p>Volunteers come from a range of backgrounds, mostly professional. They receive extensive training in relation to their roles as Community Visitors.</p>
8	Expertise and external supplementation	<p>Use of investigation officers from the office with relevant experience. Able to supplement externally.</p>	<p>In addition to above, the Commission has not previously supplemented externally to complement existing staff, but it is possible to do so.</p>	<p>In addition to above, the Commission has not previously supplemented externally to complement existing volunteers, but it is possible to do so.</p>	<p>The staff supporting the Community Visitors have experience and skills in relation to disability, advocacy and the law pertaining to the Community Visitors’ role. OPA legal unit provides advice and assistance. Training includes external experts, such as the Office of the Senior Practitioner and restrictive interventions.</p>	<p>The staff supporting the Community Visitors have experience and skills in relation to disability, advocacy and the law pertaining to the Community Visitors’ role. OPA legal unit provides advice and assistance. Training includes external experts, such as the Office of the Chief Psychiatrist and the Mental Health Complaints Commissioner.</p>

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
<b>Access to places — Article 4(1)</b>						
<b>9</b>	<b>Legislative basis to inspect</b>	An authorised Ombudsman delegate may at any reasonable time enter any premises occupied or used by an authority and inspect those premises or anything for the time being therein or thereon. <i>Ombudsman Act 1973 (Vic)</i> , s 21. Also: ss 2 and 13.	<i>Commission for Children and Young People Act 2012 (Vic)</i> . <sup>162</sup>  <i>Child Wellbeing and Safety Act 2005 (Vic)</i> , Reportable Conduct Scheme and Child Safe Standards. <sup>163</sup> <sup>164</sup>  <i>Terrorism (Community Protection) Act 2003 (Vic)</i> . <sup>165</sup>	The Independent Visitor Program (IVP) was established at the request of the Department for Health and Human Services, which was responsible for administering youth justice, approximately six years ago.	<i>Disability Act 2006 (Vic)</i> s 30.	<i>Mental Health Act 2014 (Vic)</i> s 213 and 216.
<b>10</b>	<b>Places currently inspected</b>	The Victorian Ombudsman has undertaken four OPCAT-style inspections of: <ul style="list-style-type: none"> <li>- Victoria’s main women’s prison.</li> <li>- Port Phillip Prison.</li> <li>- Malmsbury Youth Justice Precinct.</li> <li>- Secure Welfare Services.</li> </ul> While the Ombudsman does not currently have a regular inspection program, it has been visiting closed environments including prisons and youth justice, in the context of enquiries and investigations since the 1970s.	Malmsbury Youth Justice Centre. Parkville Youth Justice Centre. <sup>166</sup>	Malmsbury Youth Justice Centre. Parkville Youth Justice Centre.	Disability Forensic Assessment and Treatment Service (DFATS). Locked ward at the residential institution, Colanda. Locked houses at Plenty Residential Services. Houses for people under Supervised Treatment Orders.	Albury Wodonga Health, Alfred Health, Austin Health, Ballarat Health Services, Barwon Health, Eastern Health, Forensicare, Goulburn Valley Health, Latrobe Regional Hospital, Lyndoch Living in Warrnambool, Melbourne Health, Mercy Health, Monash Health, NorthWestern Mental Health, Peninsula Health, Ramsay Health Care’, Royal Children’s Hospital, South West Health Care, St Vincent’s Hospital Melbourne, Stawell Regional Health, West Wimmera Health Service, Western District Health Service.

<sup>162</sup> General powers under s9 and s23 of the CCYP Act.

<sup>163</sup> Section 29 of the CSW Act provides for the power of the Commission to inspect premises, provided the Commission has given written notice of the inspection at least seven days before the date of the inspection.

<sup>164</sup> Section 16F of the CWS Act provides for the power of the Commission to visit and entity to inspect any document or conduct an interview when undertaking an own motion investigation into a reportable allegation or the handling of a reportable allegation.

<sup>165</sup> Clause 8 of the Explanatory Memorandum discusses the Commission’s powers under ss 4O, 4P, 4Q and 4R of the TCP Act to inspect facilities, access a child and access any document or information where a child is in preventative detention.

<sup>166</sup> Section 9 of the CCYP Act provides for the power of the Commission to also inspect secure welfare units and adult correctional facilities holding children and young people recently transferred, remanded or sentenced to adult corrections.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
11	Unannounced visits	The Ombudsman may exercise their powers of entry and inspection without prior notice. However, those formal powers can only be used in the context of a formal investigation and the Ombudsman must notify the principal officer of the authority (often the secretary) and the minister of their intention to conduct an investigation. This notice would not necessarily disclose whether or when an inspection would occur.	No express legislative provision to conduct unannounced visits. In practice, all inspections have been scheduled by prior arrangement. <sup>167</sup>	Currently, there is no express legislative provision. In practice, all visits have been scheduled by prior arrangement.	Yes.	Yes.
12	Frequency of visits	See Question 10, above.	The Commission conducts inspections on an as needs basis, usually in response to an issue that has come to our attention through the IVP, our incident monitoring role or a member of the public.	IVP visits each youth justice centre on a monthly basis.	Monthly visits to locked wards at Colanda. Others are visited quarterly.	Monthly.
13	Duration of visits	The 2017 OPCAT–style inspection was conducted over seven days.  The 2019 OPCAT–style inspection was conducted for 12 days across three weeks (this inspection involved three distinct facilities).	As needed. Two one day inspections, and one half-day inspection were undertaken in 2018.	One day per month.	As long as required.	Generally one and a half to two hours.

<sup>167</sup> Under s 29(2) of the CWS Act- Child Safety Standards - the Commission must not inspect premises unless the Commissioner has given at least 7 days written notice of the inspection and the entity consent to the inspection, unless otherwise agreed without notice.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
<b>Access to information</b> – Articles 20(a) and 20(b)						
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Yes.	Yes, under s 60A, s 9, and s 23 of the CCYP Act, s 4 of the TCP Act and s 16K, s 26, s 28 and s 30 of the CWS Act.	There is no express legislative basis or specific agreement which provides access to all relevant records and files. In practice, IVP requests some information held by authorities relevant to the conditions and treatment of people in detention from time to time.	There is a right to access information. This is subject to some limitations as Community Visitors can only see documents required to be kept under the <i>Disability Act</i> . Medical records can only be viewed with consent.	There is a right to access information. This includes any document relating to a person receiving treatment for mental health, but only the person's clinical record with their consent under s 217 of the <i>Mental Health Act 2014</i> .
<b>Access to persons</b> – Articles 20(d) and 20(e)						
15	Private interviews in location of choice	Yes.	By arrangement, staff are able to meet privately with young people and in a chosen location within the facility.  Under s 16R of the CWS Act, the Commission may interview a child in relation to an alleged instance of reportable conduct.  Under the TCP ACT the Commission is able to interview a child in a manner that is not monitored.	Able to meet privately in a chosen location within the facility by arrangement, subject to consent and a suitable area being available.	Under s 130, Community Visitors may see any resident.	Yes, but within the facility being visited.
16	Choice of interviewee	Yes.	Yes. In practice, when undertaking onsite inspections, the Commission can choose who to interview in a youth justice centre, subject to the consent of the person being interviewed.  Sections 16Q and s 16S of the CWS Act permit the Commission to interview any employee of an entity. Sections 16R of the CWS Act permit the Commission to interview a child.	Yes, in practice, by arrangement, independent visitors are able to approach or request to meet with any young person residing in a youth justice centre, subject to the consent of the person being interviewed.	Yes, unless the resident objects.	Yes, provisions under s 217, unless the person receiving treatment objects.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
17	Ability to interview staff, detainees and other relevant persons	Yes.	<p>Yes, in practice, when undertaking onsite inspections, the analysis and strategy team can choose to interview staff and detainees in a youth justice centre, subject to the consent of the person being interviewed.</p> <p>Sections 16Q and 16S of the CWS Act permits the Commission to interview any employee of an entity. Section 16R of the CWS Act permits the Commission to interview a child.</p>	<p>Yes, in practice and by agreement, independent visitors can engage with staff of the youth justice facility, subject to the consent of the person being interviewed.</p>	Yes provisions under s 130.	Yes, provisions under s 220.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>						
18	Ability to make post-visit reports	Yes.	<p>Yes, under s 8 of the CCYP Act the Commission may make post visit reports pursuant to its functions and powers.</p> <p>Under s 16O(4) of the CWS Act the Commission must make recommendations with respect to investigations into reportable allegations.</p> <p>Under the TCP Act the Commission is able to provide advice about a child’s treatment while in detention.</p>	<p>Yes. A post-visit verbal report is provided to the youth justice centre general manager or their nominee after each visit, about significant and/or immediate issues. A written report is provided to the general manager and the director of youth justice of all issues raised within two weeks of the visit.</p>	Yes.	Yes.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
19	Report recipients	<p>Reports are tabled directly to Parliament and published on website.</p> <p>As an independent officer of the Victorian Parliament, the Ombudsman does not report to ministers or departmental secretaries.</p>	<p>Issues are raised through DOJR for youth justice issues or other relevant department.</p> <p>Reports are generally made at a senior operational level with Youth Justice or DHHS. Under s 50 of the CCYP Act the Commission may table systemic reports in Parliament.</p> <p>Under the TCP Act the Commission is able to provide advice to the Attorney-General, the minister administering the CCYP Act, or the Chief Commissioner of Police about a child’s treatment while in detention.</p>	<p>The manager of the facility and the Director of Youth Justice.</p>	<p>Community Visitors report to the local service about the issues found during their visits.</p>	<p>Community Visitors report to the local service about the issues found during their visits.</p>
20	Post-visit recommendations and measures for improvements	<p>Yes.</p>	<p>Yes, issues are raised through correspondence with DOJR for youth justice issues or other relevant department.</p> <p>Under s 16O(4) of the CWS Act the Commission must make recommendations with respect to investigations into reportable allegations.</p> <p>Under the TCP Act the Commission is able to provide advice about a child’s treatment while in detention.</p>	<p>Yes, can make recommendations for improvements.</p>	<p>Yes.</p>	<p>Yes.</p>
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	<p>The Ombudsman monitors the acceptance and implementation of her recommendations. If recommendations are not implemented, the Ombudsman can report to the Governor in Council and to Parliament.</p>	<p>There is no legislative obligation. However, the government has accepted a high proportion of recommendations. The Commission undertakes ongoing monitoring of the extent to which its recommendations are implemented.</p>	<p>There is no legislative obligation, but by agreement youth justice authorities have undertaken to resolve issues raised within 30 days.</p>	<p>Yes. There is a protocol that requires service providers to respond to reports and to follow up on issues that are documented.</p>	<p>Yes. There is a protocol that requires service providers to respond to reports and to follow up on issues that are documented.</p>

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
22	Publication of an annual report	Yes.	Yes.	Yes.	Yes.	Yes.
23	Ability to make submissions, proposals and observations on relevant legislation	Regularly makes submissions to the government and Parliament about key legislation.	Yes, the Commission makes submissions on draft or existing legislation if it is relevant to the safety and wellbeing of children and young people.	The IVP is not resourced or expected to undertake this work.	Submissions would be made through the Community Visitors Program and the Office of the Public Advocate.	Submissions would be made through the Community Visitors Program and the Office of the Public Advocate.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	Confidentiality provisions protect information related to exercise of functions, ss 17(2), 20, 26A, 29, 29A and 29B.	Section 55 of the CCYP Act states that the Commissioner or delegate must not disclose any protected information. Disclosure is prohibited by virtue of the provisions in the CCYP Act and the TCP Act.  Sections 16ZB, s 16ZE, and s 41B-41H of the CWS Act include disclosure requirements relating to the Commission’s role in managing the reportable conduct scheme and the Child Safe Standards.	Confidentiality provisions apply.	In practice, the program is under no obligation to disclose information about individuals to government.	In practice, the program is under no obligation to disclose information about individuals to government.
25	Legislative basis for protection	<i>Ombudsman Act 1973 (Vic)</i>	<i>Commission for Children and Young People Act 2012 (Vic)</i>  <i>Child Wellbeing and Safety Act 2005 (Vic)</i> , Reportable Conduct Scheme and Child Safe Standards  <i>Terrorism (Community Protection) Act 2003 (Vic)</i>	There are no formal protections in the legislation.	There are no formal protections in the legislation.	There are no formal protections in the legislation.
26	Protection from arrest, detention or seizure of personal baggage	Section 29 provides for the protection from liability in any civil or criminal proceedings.	There are no express legislative protections.	There are no express legislative protections.	No.	No.
27	Protected from interference with communications	There are a number of confidentiality provisions related to the exercise of functions, ss 17(2), 20, 26A, 29, 29A and 29B.	There are no express legislative protections.	There are no express legislative protections. However, in practice volunteers are able to communicate with children in youth justice in private during visits.	No.	No.



Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Section 26A deals with confidentiality requirements for Ombudsman officers.	The Commission cannot disclose confidential information without the express consent of the providers of that information.	The Commission cannot disclose confidential information without the express consent of the providers of that information.	Community Visitors and the Public Advocate hold confidential information and its disclosure is not subject to the fiat of the providers of that information.	Community Visitors and the Public Advocate hold confidential information and its disclosure is not subject to the fiat of the providers of that information.
<b>Ability to contact SPT – Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT	Able to provide or disclose information received or obtained in the course of the performance of duties and functions or the exercise of powers under this Act to a person or body, such as the SPT.	May contact any organisation in the course of carrying out its functions or exercising its powers under the Act.	The Commission may contact any organisation in the course of carrying out its functions or exercising its powers under the Act.	The Public Advocate does. The Community Visitors Board, probably not. It is beyond the authority of individual Community Visitors.	The Public Advocate does. The Community Visitors Board, probably not. It is beyond the authority of individual Community Visitors.
30	Contact include meetings, exchanges of information and/ or training sessions	Yes.	Yes.	Yes.	The Public Advocate would have this ability.	The Public Advocate would have this ability.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework	Victorian Ombudsman	Commission for Children and Young People (CCYP) incorporating the Commission for Aboriginal Children and Young People	Independent Visitor Program (IVP) – administered by the CCYP	Community Visitors Program – Disability - managed by the Office of the Public Advocate	Community Visitors Program - Mental Health - managed by the Office of the Public Advocate	
<b>Inspection methodology, standards and principles</b>						
31	<b>Inspection methodology</b>	The Ombudsman has (in consultation with NPMs in New Zealand, the United Kingdom, Norway, Denmark, and Georgia, and the Association for the Prevention of Torture) developed a methodology for OPCAT inspections, including a series of tools for inspectors and surveys for detainees and staff.	A formal inspection methodology is in development.	IVP has a defined protocol which sets out the process for conducting a monitoring visit.	The document <i>Good group homes</i> sets out what is looked for during visits.	Provisions under s 216 of the <i>Mental Health Act 2014 (Vic)</i> .
32	<b>Defined standards to assess places of detention</b>	The methodology and tools developed for each inspection will consider the relevant standards applicable to that specific context, based on local policies and procedures, relevant state laws and existing international standards (such as the Mandela Rules).	Our monitoring inspections assess conditions in places of detention against relevant policies.	IVP are aware of the juvenile justice standards and also assesses youth justice facilities against relevant policies, legislation and aspects of the Charter of Human Rights.	Community Visitors have a visits policy.	Provisions under the <i>Mental Health Act 2014 (Vic)</i> . Community Visitors look to see that the requirements in the legislation are met.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

Bodies without inspectorate role						Has inspection role
		Mental Health Complaints Commissioner	Office of the Chief Psychiatrist	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme – administered by JARO	Independent Broad-based Anti-corruption Commission (IBAC)
1	Date of creation	1 July 2014		2007 (as the Office of Correctional Services Review)	1986 (as Official Visitors Scheme)	
	Inspection role or oversight	Oversight role. No inspection role as such, only for a complaint in line with core functions.	Oversight role.	Oversight role.	Visit role.	Inspection and oversight role
<b>OPCAT Framework</b>						
<b>Independence — Articles 18(1), 18(3) and 18(4)</b>						
2	Legislative basis	<i>Mental Health Act 2014 (Vic).</i>	<i>Mental Health Act 2014 (Vic).</i>	Does not have any specific legislative powers under statute.	Section 35 of the <i>Corrections Act 1986 (Vic).</i>	
3	Autonomous resource allocation and expenditure	There are limitations on autonomy, budget is monitored by Department of Health and Human Services.		The Director of JARO has full responsibility for resourcing allocation decisions.	No.	IBAC has functional independence and autonomy over resources.
4	Personal and institutional independence from facilities inspected	Personally and institutionally independent from public mental health services.	Does not meet the OPCAT independence requirement. Appointed by the Secretary to the Victorian Department of Health and Human Services and subject to the general direction and control of the Secretary under s 119.	JARO is an internal business unit within the Department of Corrections and Youth Justice. It is separate, and functionally independent from the department’s Youth Justice, Corrections and Justice Health divisions.	Independent Prison Visitors are personally and institutionally independent from the facilities they inspect.	IBAC has functional independence.
<b>Composition — Article 18(2)</b>						
5	Gender ratio	The Commissioner considers issues raised in a complaint in deciding who to appoint to an investigation panel, such as gender where issues are raised.		Approximately 3:1 female to male.	Approximately 1:1.	
6	Ethnic and minority representation	The Commissioner considers the issues raised in a complaint in deciding who to appoint to an investigation panel.		JARO staff involved include a range of cultural backgrounds.	Culturally diverse volunteers, including Aboriginal backgrounds.	
7	Expertise and professional knowledge	Staff have a range of professional backgrounds and expertise, including social work, health, allied health, and law. Staff have expertise in relation to mental health issues and many staff have expertise through lived experience.		A combination of expertise in corrections and youth justice operations, legal/regulation, policy, investigative, international human rights, policing and conducting reviews.	Volunteers bring a range of different professional and community experiences. They receive extensive training in relation to their roles as IPVs.	

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Mental Health Complaints Commissioner	Office of the Chief Psychiatrist	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme – administered by JARO	Independent Broad-based Anti-corruption Commission (IBAC)
8	Expertise and external supplementation	The Commissioner may appoint people with particular expertise to investigation panels on a case-by-case basis.		In addition to above, occasionally has complemented with external expertise, particularly in the conduct of thematic or proactive reviews. JARO also uses external expertise regarding subject matter expert panels.	No.	
<b>Access to places</b> — Article 4(1)						
9	Legislative basis to inspect	<i>Mental Health Act 2014 (Vic)</i> s 254.	Broad powers of entry to mental health service providers (including closed units) and powers relating to obtaining information, in its function to monitor and improve the quality and safety of mental health services (s 123).	Does not have a legislated power to inspect.	Volunteers do not do inspections.	
10	Places currently inspected	The Commissioner does not undertake inspections but can enter the premises of public mental health service providers to investigate complaints.	Closed mental health services for the broader purpose of improving quality and safety.	Has conducted formal reviews at Victorian adult prisons and juvenile justice facilities.	Adult prisons.	IBAC has statutory powers of entry and inspection of police cells, and is able to conduct own motion investigations in relation to police cells, police lock-ups and police gaols.
11	Unannounced visits	Within limitations, the Commissioner would be able to make an unannounced visit.		Does not conduct unannounced visits.	Does not conduct unannounced visits.	
12	Frequency of visits	As a complaint is received.		Usually several times a year. However, if a facility did not report a significant incident or a death requiring a formal review, then it is unlikely to be visited.	Each volunteer is engaged to visit once a month.	
13	Duration of visits	As long as required.		Usually a day or half a day per visit.	Usually a day or half a day per visit.	
<b>Access to information</b> — Articles 20(a) and 20(b)						
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Yes. The Commissioner can access all of this information if they are investigating a complaint.		Yes.	There is no express legislative basis or specific agreement which provides access to all relevant records and files.	IBAC has the right to access information in relation to police cells.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Mental Health Complaints Commissioner	Office of the Chief Psychiatrist	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme – administered by JARO	Independent Broad-based Anti-corruption Commission (IBAC)
<b>Access to persons — Article s20(d) and 20(e)</b>						
15	Private interviews in location of choice	The legislative regime does not expressly provide for interviews in private or in a location of the Commissioner’s choosing, but the provisions are interpreted as providing for this right.		Yes.	Able to meet privately in a chosen location within the facility by arrangement, subject to consent and a suitable area being available.	
16	Choice of interviewee	Yes.		Yes, but it is cleared prior to attendance to ensure availability, noting that all interviews and discussions are entirely voluntary.	Yes, in practice volunteers have unrestricted access to any person at the prison.	
17	Ability to interview staff, detainees and other relevant persons	Yes, pursuant to s 254.		Yes.	Yes, in practice volunteers have unrestricted access to any person at the prison.	
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>						
18	Ability to make post-visit reports	The Commissioner is required to prepare a report of an investigation which must specify the findings and actions to resolve the complaint.		Yes.	Yes. Volunteers submit written reports on their observations to JARO after each visit.	
19	Report recipients	The report must be given to the person who made the complaint (unless this would unreasonably breach privacy) and the relevant mental health service provider.		JARO reports can be disseminated to various audiences depending on the need, such as the Commissioner of Corrections, Secretary of the Department of Justice and Community Safety and the Minister for Corrections and Youth Justice in special circumstances.	JARO, relevant Prison General Manager, and where required, Minister for Corrections.	
20	Post-visit recommendations and measures for improvements	An investigation report must specify the action determined to resolve the complaint, s 257(1). This includes recommendations for improving the provision of mental health services consistent with s 228(j).		Yes, where opportunities for improvement are identified, formal recommendations for change can be made.	Yes, where they feel opportunities for improvements exist.	IBAC has the power to make recommendations in relation to an investigation.

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Mental Health Complaints Commissioner	Office of the Chief Psychiatrist	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme – administered by JARO	Independent Broad-based Anti-corruption Commission (IBAC)
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Mental health service providers must respond in writing within 30 business days of receiving a report, providing details of the actions that have or will be taken, s 258.		Yes, regular action plans outlining actions taken are usually provided on a quarterly basis until completed.	No.	
22	Publication of an annual report	Yes, a legislative requirement pursuant to s 268.		Has input into the Department’s annual report.	No.	
23	Ability to make submissions, proposals and observations on relevant legislation	Regularly makes submissions in relation to legislative and law reform proposals relating to mental health and human rights.		May provide advice to the relevant policy area to assist in that process, if required.	The volunteers are not expected to undertake this work.	
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	The Commissioner and staff are subject to a secrecy provision in s 265. Stricter provisions in s 249.		Yes, provisions under the <i>Corrections Act 1986</i> (Vic) and the <i>Freedom of Information Act 1982</i> (Cth).	Yes.	
25	Legislative basis for protection	<i>Mental Health Act 2014</i> (Vic).		<i>Corrections Act 1986</i> (Vic) and the <i>Freedom of Information Act 1982</i> (Cth).	<i>Corrections Act 1986</i> (Vic) and the <i>Freedom of Information Act 1982</i> (Cth).	
26	Protection from arrest, detention or seizure of personal baggage	Section 231(1) provides that the Commissioner is not personally liable for actions done in good faith in the exercise of powers.		No.	No.	
27	Protected from interference with communications	The Commissioner is not aware of any protection that would apply to interference with communications.		Reports do not attribute comments made in interviews and do not identify individuals.	Volunteers have no interference legislative protections. However in practice, volunteers are able to communicate with prisoners, staff and visitors in private.	
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	The Commissioner is sometimes provided with information in confidence and which may be protected by common law or statutory privilege.		Reports do not attribute comments made in interviews and do not identify individuals.	Volunteers hold confidential information, and its disclosure is not subject to the permission of the provider of that information.	

Appendix 3.8 – Snapshot of oversight and inspection bodies within Victoria

OPCAT Framework		Mental Health Complaints Commissioner	Office of the Chief Psychiatrist	Justice Assurance and Review Office (JARO)	Independent Prison Visitor Scheme – administered by JARO	Independent Broad-based Anti-corruption Commission (IBAC)
<b>Ability to contact SPT – Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT	The Commissioner is not aware of any restrictions on their ability to have direct and, if necessary, confidential contact with the SPT. The Commissioner would need to make enquiries before providing a definitive answer.		Could have direct contact. The basis and means for maintaining confidentiality would require clarification.	No.	
30	Contact include meetings, exchanges of information and/ or training sessions			Yes	N/A	
<b>Inspection methodology, standards and principles</b>						
31	Inspection methodology	Given the Commissioner’s functions, there is no inspection methodology. An investigation plan is developed on a case-by-case basis, having regard to the terms of reference developed in each investigation.		As JARO does not have an inspectorate function, it does not require an inspection methodology. In the context of conducting reviews, JARO staff generally attend at the relevant location with specific questions to be discussed at interview, or general topics for discussion.	Volunteers do not perform inspections.	
32	Defined standards to assess places of detention	The Commissioner assesses mental health services against a range relevant standards and guidelines applicable to the particular investigation.		A JARO review will as a matter of course assess actions taken by a location in response to an incident against the existing controls and frameworks of Corrections Victoria or Youth Justice.	Volunteers have a Visits Guide and training prior to visiting a prison.	

**Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia**

Bodies with inspectorate role						
		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
1	Date of creation	12 May 1972.	30 November 2015.	June 2000.	30 November 2015 — formerly Council of Official Visitors (established 1996).	August 2015.
	Inspection or oversight role	Oversight, inspection and visit role.	Oversight, inspection and visit role.	Inspections leading to reports to Parliament, monitoring visits, reviews of thematic and specific issues, and administration of the Independent Visitor Service.	Inspection and visit role.	Inspection and visit role.
OPCAT Framework						
Independence — Articles 18(1), 18(3) and 18(4)						
2	Legislative basis	<i>The Parliamentary Commissioner Act 1971 (WA).</i>	<i>Western Australian Mental Health Act 2014 (WA) Part 23 Division 2.</i>	<i>The Inspector of Custodial Services Act 2003 (WA) Part 3.</i>	<i>Mental Health Act 2014 (WA) Part 20.</i>	<i>Declared Places (Mentally Impaired Accused) Act 2015 (WA) and the Declared Places (Mentally Impaired Accused) Regulations 2015.</i>
3	Autonomous resource allocation and expenditure	Has autonomy to seek allocation of resources and to make decisions on how to expend resources.	Has autonomy to seek and make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	Has autonomy to make decisions on how to expend resources.	The Dept. of Communities is invoiced for the work, but essentially yes.
4	Personal and institutional independence from facilities inspected	Yes. An independent and statutory authority.	Statutorily independent. The Health Minister may issue written directions about general policy (s 516(1)), but must not make directions about a specific person, practitioner, service or other body (s 516(3)).	An independent statutory authority, with full autonomy from the facilities. Stand-alone budget, finance and human resource functions. Legislation governs the relationship with the Minister for Corrective Services but the Inspector is not subject to direction from the minister in the performance of its functions (s 17).	Yes.	Yes.
Composition — Article 18(2)						
5	Gender ratio	Ratio: 2:1 female to male (corporate executive).	The ratios are marginally higher for females than males.	A gender ratio of 50:50.	The ratio fluctuates, currently 31 Advocates and two Senior Advocates including eight males.	Two Advocates are currently allocated, one male and one female.



Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
6	Ethnic and minority representation	The Office ensures a mix of ethnic and minority group representation among staff on visits to places of detention. The Office has a Principal Aboriginal Liaison Officer who participates in visits to places of detention, providing culturally appropriate communication with and support to detainees. Further, the office engages Aboriginal consultants when engaging with Aboriginal people in places of detention.	A mix of ethnic and minority groups on staff. When conducting service reviews – review teams include consumers and carers.	A diverse group of staff. The Community Liaison Officer (who is Aboriginal) plays a key role in engaging with culturally diverse prisoners, community organisations and families.	One Aboriginal Advocate. Two specialist Youth Advocates. A range of ethnically diverse Advocates, including of Japanese, Croatian and Indian background.	Not stated.
7	Expertise and professional knowledge	Visits and inspections are undertaken by multidisciplinary teams including expertise and experience in social work, psychology, law, audit and evaluation, inspection and monitoring.	The team has a variety of clinical backgrounds: consultant psychiatrist, registered mental health nurse, social worker, clinical psychologist and occupational therapist. We also include people with lived experience of mental illness (consumers) and carers and family members.	Staff have a variety of experience, including law, corrections, other government or accountability agencies, and work in the not-for-profit sector. No specific expertise or knowledge is required. Multi-disciplinary teams are the norm.	Advocates are selected on the basis of their knowledge and experience in advocacy and investigation. Their current professional backgrounds include social workers, lawyers, teachers, journalists, psychologists and people who have worked in similar organisations.	Both appointed on the basis of their background experience relevant to working with people with cognitive impairment disability. Both are mental health advocates working under the <i>Mental Health Act 2014</i> (WA) but have received specialist training.
8	Expertise and external supplementation	Visit and inspection teams include experts from relevant fields (see above) and are supplemented by external consultants where necessary.	Each team is constructed bearing in mind the unique needs and trends identified for a service. Where there is a need, teams are supplemented externally to complement.	Yes, regularly engage consultants with particular expertise (such as health, education, security, custodial operations, costs and contract management).	Not currently, apart from the Youth Advocates and the Aboriginal Advocate. However, the Act would allow this.	Other mental health advocates can be used if necessary.
<b>Access to places</b> – Article 4(1)						
9	Legislative basis to inspect	<i>Parliamentary Commissioner Act 1971</i> (WA) Part 3, Division 3. <i>Royal Commissions Act 1968</i> (WA).	<i>Mental Health Act 2014</i> (WA) s 521.	<i>Inspector of Custodial Services Act 2003</i> (WA) Part 4, Division 2.	<i>Mental Health Act 2014</i> (WA) Part 20 and ss 352, 353, 357, 358 and 359.	<i>Declared Places (Mentally Impaired Accused) Act 2015</i> (WA), s 54.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
10	Places currently inspected	All WA adult prisons. All WA adult work camps. All juvenile detention facilities. All WA police lock-ups or police station cells. Court custody centres. Adult prisoner transport. Juvenile detention transport. All WA closed psychiatric facilities established under legislation. Closed forensic disability facilities. Bennett Brook Disability Justice Centre.	Closed and open psychiatric facilities, hospitals and publicly contracted private providers of mental health services.	Adult prisons and work camps. Banksia Hill Juvenile Detention Centre. Court custody centres. Transport of adult prisoners. Transport of juveniles.	All authorised psychiatric facilities including locked and closed wards. Various emergency departments. Bennett Brook Disability Justice Centre.	Bennett Brook Disability Justice Centre.
11	Unannounced visits	The Ombudsman may, at any time, enter and inspect premises, s 21.	The Chief Psychiatrist may visit and inspect a mental health service at any time without notice, s 521(2).	Yes, for prisons and detention centres. Statutory notification requirements for custody centres that are part of court premises and to review any aspect affecting the court.	Yes.	Yes.
12	Frequency of visits	In 2017–18, eight visits were made to prisons in WA and the juvenile detention centre.	Clinical audit reviews are a three year cycle and in between times the Office is in frequent contact with the mental health services and authorised hospitals. It is not uncommon to visit an authorised hospital at any time.	Three elements: 1. The Inspector must report to Parliament on every prison, detention centre and court custody centre at least once every three years. 2. Liaison and monitoring visits by staff to prisons (at least once every three months) and the juvenile detention centre (at least once every two months). 3. Office oversees the Independent Visitor Service which aims to visit facilities every four to six weeks.	Visit frequency of facilities vary from several times a week to at least monthly but there is no regular schedule. <sup>168</sup>	An Advocate must visit within seven days of a new resident arriving, after a request, and at least four times a year, s 52. <sup>169</sup>

<sup>168</sup> Full details of the visit frequency of each type of facility can be provided on request.

<sup>169</sup> Visits are currently infrequent as there are only two residents and have not been any residents in the past year.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
13	Duration of visits	The duration of visits depend upon the specific purpose of the visit.	Duration can vary depending on the issues presented. For clinical audit reviews approximately one week, other ad hoc visits can be one to three hours.	Varies according to purpose and scope.	The length varies according to how many consumers the Advocates have to contact and what issues are being raised.	The duration varies according to the issues being dealt with.
<b>Access to information — Articles 20(a) and 20(b)</b>						
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	Yes.	The Chief Psychiatrist has statutory authority to access all relevant information in respect of a person with a mental illness for whom they have responsibility for under section 515 of the <i>Mental Health Act 2014</i> (WA).	Free and unfettered access to all sites and also to all documents in relation to a prison or custodial service about a person who is, or has been a detainee or prisoner.	Advocates can access any information, but there are limits on medical files in that the power only arises if the person does not object. There are no constraints in relation to asking staff for information.	Advocates can access any information related to any residents, s 54(5).
<b>Access to persons — Articles 20(d) and 20(e)</b>						
15	Private interviews in location of choice	Yes.	Yes. Ability to interview in private and in a location of choosing.	Yes, subject to ensuring safety, security and good order.	Yes, though subject to safety issues.	Yes.
16	Choice of interviewee	Yes.	Sections 521(3)(b) and (c) provides for the Chief Psychiatrist to interview any person for whom they oversee treatment and care.	Yes, but maintain a person's right not to talk to us.	Yes, but the Act provides that the person has the right to choose not to talk to the Advocate.	Yes, but the Act provides that the person has the right to choose not to talk to the Advocate.
17	Ability to interview staff, detainees and other relevant persons	Yes.	Section 521(3)(c) gives authority to interview any staff member or any other person considered relevant.	Yes, but maintain both staff and prisoners' rights not to talk.	Yes.	Yes.
<b>Reports and recommendations — Articles 19(b) and 19(c)</b>						
18	Ability to make post-visit reports	Yes.	Ability to produce a report and make recommendations in respect of a person, including a review of treatment or in respect of a facility/ties.	Yes. Detailed interim findings presented to the facility, head office managers and minister.	Yes.	Yes.
19	Report recipients	Parliament.	The CEO of Health, the chief executive and chair of the board of the mental health service being reviewed.	Parliament.	Reports go to anyone they choose, such as the management team of the hospital, the chief executive of the health service provider, the relevant minister, the Director-General of Health, the Commissioner for Mental Health or the Chief Psychiatrist.	Reports go to anyone they choose, such as the director of the facility, the Assistant Director-General of Disability Services, the Director-General of the Department of Communities, or the relevant minister.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
20	Post-visit recommendations and measures for improvements	Yes.	Routinely make recommendations with proposed measures for improvements arising out of inspection visits and clinical audit reviews.	All reports contain recommendations for improvement. Suggestions are also made after liaison and monitoring visits.	Yes.	Yes.
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Yes. The Ombudsman does so extensively, and reports this to Parliament. Following an investigation, the Ombudsman may make recommendations to the principal officer of an agency and a copy is provided to the relevant minister. The Ombudsman can then request that the agency notify the Ombudsman of the steps that have been taken (or which are proposed) to give effect to the recommendations. The Ombudsman may report to Parliament on steps taken to give effect to recommendations.	Clinical audit review reports and recommendations in respect of the authorisation of hospitals must be complied with and such compliance is routinely monitored by the Chief Psychiatrist.	Recommendations are considered by the Department of Justice, which decides if it will accept or reject them.	Yes, s 363 relates.	Yes.
22	Publication of an annual report	Yes.	Yes, required to report on the performance of functions conferred by the <i>Mental Health Act 2014</i> (WA) or another written law.	Yes.	Yes.	Yes.
23	Ability to make submissions, proposals and observations on relevant legislation	Yes.	The Chief Psychiatrist is routinely requested to make submissions, observations and provide expert opinion on a range of existing and draft legislation.	It would be expected that, in the ordinary course of events, the Inspector would be invited to make submissions.	Yes, as they relate to mental health services.	Yes.
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>						
24	Protection from disclosure to government, judiciary, other organisations or persons	Yes	Yes. Information the Chief Psychiatrist is privy to in the discharge of their functions is protected but may be accessed under the <i>Freedom of Information Act 1992</i> (WA).	Much of the work produced is made public. The Inspector is exempt from the <i>Freedom of Information Act 1992</i> (WA) Schedule 2.	No, while there are confidentiality protections, the information obtained by an Advocate is subject to disclosure under order of a court. <i>Freedom of Information Act 1992</i> (WA) also applies.	No, while there are confidentiality protections, the information obtained by an Advocate is subject to disclosure under order of a court.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
25	Legislative basis for protection	<i>Parliamentary Commissioner Act 1971</i> (WA).	Yes. <i>Mental Health Act 2014</i> (WA) Division 2 – Miscellaneous matters s 576 Confidentiality and subsections	<i>Inspector of Custodial Services Act 2003</i> (WA)	<i>Mental Health Act 2014</i> (WA) Division 2, Miscellaneous matters s 576 Confidentiality and subsections	Section 59 relates regarding confidentiality, but s 59(2) has a number of exceptions including under the order of a court or person acting judicially.
26	Protection from arrest, detention or seizure of personal baggage	Yes.	Yes. <i>Mental Health Act 2014</i> (WA) ss 522, 523 and 531 provide protection.	Staff are protected under the Act, providing they are exercising powers in a lawful manner. It is a criminal offence to hinder, resist or threaten the Inspector or staff (ss 32 and 49). It is a criminal offence to victimise anyone for communicating with the Office (s 50).	There are offence provisions in Part 20 for interference with the exercise of Advocate’s powers.	There are offences in Part 10 s 55 for interference with the exercise of an Advocate's powers.
27	Protected from interference with communications	Yes.	Yes. <i>Mental Health Act 2014</i> (WA) ss 522, 523 and 531 provide protection.	No additional protections beyond those that exist for the public sector generally.	Yes, there are offence provisions in Part 20 for interference with the exercise of Advocate powers.	Yes, there are offence provisions in Part 10 for interference with the exercise of Advocate powers.
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes. Information obtained is subject to the secrecy provisions of the <i>Parliamentary Commissioner Act 1971</i> (WA) and cannot be disclosed unless otherwise determined in accordance with the Act.  The Parliamentary Commissioner, Deputy Parliamentary Commissioner and staff are required under the <i>Parliamentary Commissioner Act 1971</i> to take an oath or affirmation they will not divulge any information received under the Act.	Yes. Will always seek the consent of the providers of information prior to any disclosure of information.	Sections 44–48 of the Act. There are strict requirements under the Act and the Office also applies other safeguards	Sections 576–577 apply regarding confidentiality	Section 59 relates regarding confidentiality, but s 59(2) has exceptions including under the order of a court or person acting judicially.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
<b>Ability to contact SPT – Article 26</b>						
29	Ability to have direct and confidential contact with the UN SPT	Yes.	Yes. Section 519 powers allow the Chief Psychiatrist to do anything necessary or convenient for the performance of their functions	Yes. The Inspector has the power to do anything ‘necessary or convenient’ to the performance of their functions (s 27), and discretion about who they hold discussion with.	There is nothing in the current legislation prohibiting this, but all work carried out by the Chief Advocate or Advocate needs to fall within the functions stated in the Act.	There is nothing in the current legislation prohibiting this, but all work carried out by the Chief Advocate or Advocate needs to fall within the functions stated in the Act.
30	Contact include meetings, exchanges of information and/ or training sessions	Yes.	Yes. Conferred functions under the <i>Mental Health Act 2014</i> or another written law and would include meetings, exchanges of information and training sessions.	Yes.	There is nothing in the current legislation prohibiting this but all work carried out by the Chief Advocate or Advocate needs to fall within the functions stated in the Act. There could be a funding issue as well.	There is nothing in the current legislation prohibiting this but all work carried out by the Chief Advocate or Advocate needs to fall within the functions stated in the Act. There could be a funding issue as well.
<b>Inspection methodology, standards and principles</b>						
31	Inspection methodology	The Ombudsman undertakes all inspections of premises in accordance with the <i>Parliamentary Commissioner Act 1971</i> , the <i>Royal Commissions Act 1968</i> , other defined methodologies contained in legislation and the methodologies applied by the Office for inspections.	Chief Psychiatrist clinical audit review methodology and methodology for authorisations of hospitals.	Pages 4 –8 of the 2017-2018 annual report.	MHAS Protocols to be followed by Advocates every time they visit a facility. There are also other protocols relating to serious issues and notifiable incidents.	Because there are only two residents, the facility is very new and in good condition, and there are other Advocate functions in relation to the residents, there is currently no specific inspection methodology. Methodologies, practices and processes applied in mental health facilities would be adapted and used when needed.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		WA Ombudsman	Office of the Chief Psychiatrist	Inspector of Custodial Services	Mental Health Advocacy Service	Chief Advocate for the Disability Justice Centre
32	Defined standards to assess places of detention	The Ombudsman assesses places of detention against defined standards contained in legislation and other standards developed by the Office.	Under ss 547 and 548 of the Act, the Chief Psychiatrist is responsible for publishing standards for the treatment and care to be provided by mental health services to all patients who the Chief Psychiatrist has statutory oversight of. In addition to endorsing various national documents in respect to standards, the Chief Psychiatrist has also developed specific standards of clinical care and standards for the authorisation of hospitals where people with a mental illness can be involuntarily detained.	The Office has standards it applies when doing inspections. These standards are based upon international and national codes and conventions, adapted to the particular circumstances of WA.	There are no defined single set of standards used but the requirements of the Act, regulations and associated guidelines, and the <i>National standards for mental health services</i> (NSMHS) are used.	No.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

Bodies without inspectorate role				
		Commissioner for Children and Young People	WA Department of Justice – Aboriginal Visitor Scheme	The Health and Disability Services Complaints Office
1	Date of creation	7 December 2007		1996
	Inspection or oversight role	Monitoring and advocacy role. <sup>170</sup>	The WA Attorney-General advised this entity does not have an inspectorate role.	Visiting role. <sup>171</sup>
OPCAT Framework				
Independence — Articles 18(1), 18(3) and 18(4)				
2	Legislative basis	<i>Commissioner for Children and Young People Act 2006</i> (WA)		Established under the <i>Health and Disability Services (Complaints) Act 1995</i> (WA) and also with responsibilities under Part 6 of the <i>Disability Services Act 1993</i> (WA) and Part 19 of the <i>Mental Health Act 2014</i> (WA).
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.		Yes.
4	Personal and institutional independence from facilities inspected	An independent statutory office. The Commissioner has broad powers to monitor and advocate on behalf of children and young people in WA (under 18 years of age). How this is to be done is not specified, but the Act does provide broad powers to visit sites and require information to be provided in certain circumstances.		Yes, HaDSCO is independent of the organisations it oversees. The Director of HaDSCO reports to the Minister for Health. The minister can give directions to the director — however, the minister cannot give directions regarding a particular person or complaint.
Composition — Article 18(2)				
5	Gender ratio	Not stated.		Not stated.
6	Ethnic and minority representation	Does not have a specific inspecting team, but staff are drawn from a variety of backgrounds relevant to children and young people and specific vulnerable groups.		Not stated.
7	Expertise and professional knowledge	Engages contract staff specific to particular requirements to supplement employees to operate in specific environments, or with particular groups of children and young people.		HaDSCO staff have a range of expertise, including investigation, conciliation, policing and health.
8	Expertise and external supplementation	Yes. Engages contract staff specific to particular requirements to supplement.		Advice from external expert medical practitioners can be obtained where necessary.

<sup>170</sup> The WA Attorney-General advised that the CCYP does not have an inspectorate role.

<sup>171</sup> The WA Attorney-General advised that HaDSCO does not have an inspectorate role.



Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework	Commissioner for Children and Young People	WA Department of Justice – Aboriginal Visitor Scheme	The Health and Disability Services Complaints Office
Access to places — Article 4(1)			
9	Legislative basis to inspect	The Commissioner has specific power of entry provisions under the Part 5 Special Inquiries provisions.	<p>No specific powers to conduct inspections. However, visits are undertaken under the <i>Health and Disability Services (Complaints) Act 1995</i>, Part 6 of the <i>Disability Services Act 1993</i> and Part 19 of the <i>Mental Health Act 2014</i>. These are undertaken with the consent of the organisation and may relate to a complaint, for the education and training of staff in complaints management, or with the approval of the ministers for Health or Disability or Mental Health for the inquiry into broader issues arising from complaints.</p> <p>Where a matter is under investigation, Part 4 of the <i>Health and Disability Services (Complaints) Act 1995</i> provides the Director of HaDSCO with powers to obtain information and entry to premises. This is facilitated by applying for a warrant. There is also a power to summons.</p>
10	Places currently inspected	The Commissioner does not regularly inspect any premises. Does visit (by consent) a range of services and facilities relating to the children and young people.	<p>Visits to adult prisons and juvenile detention facilities. Visits to health centres (hospitals).</p> <p>Where a matter is under investigation, Part 4 of the <i>Health and Disability Services (Complaints) Act 1995</i> provides the Director of HaDSCO with powers to obtain information and entry to premises. This is facilitated by applying to a Magistrate for a warrant. There is also a power to summons. This could include to a 'declared place' under the <i>Declared Places (Mentally Impaired Accused) Act 2015</i>, such as the Bennett Brook Disability Justice Centre.</p>
11	Unannounced visits	The Commissioner must give notice of the holding of a Special Inquiry.	No.
12	Frequency of visits	Nil on a regular basis. Infrequently as determined by the Commissioner.	Five prisons visited in 2018, covering metropolitan and regional prisons.
13	Duration of visits	Not stated.	Visits are usually half day visits.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework	Commissioner for Children and Young People	WA Department of Justice – Aboriginal Visitor Scheme	The Health and Disability Services Complaints Office
<b>Access to information — Articles 20(a) and 20(b)</b>			
14	Right to access all information (files, registers, medical records, dietary provisions and other data)	The Commissioner can request any information and such information must be disclosed unless disclosure contravenes a prescribed written enactment relating to secrecy or confidentiality, s 22.	<p>Access to information, principally medical records, occurs through a complaints process and with the consent of the complainant.</p> <p>Where a matter is under investigation, Part 4 of the <i>Health and Disability Services (Complaints) Act 1995</i> provides the Director of HaDSCO with powers to obtain information and entry to premises. This is facilitated by applying to a Magistrate for a warrant. There is also a power to summons.</p>
<b>Access to persons — Articles 20(d) and 20(e)</b>			
15	Private interviews in location of choice	Yes.	Arranged in consultation with staff of the organisation being visited, unless the powers of Part 4 of the <i>Health and Disability Services (Complaints) Act 1995</i> are utilised to obtain information and enter premises.
16	Choice of interviewee	Yes.	Yes.
17	Ability to interview staff, detainees and other relevant persons	Yes.	Yes.
<b>Reports and recommendations — Articles 19(b), 19(c)</b>			
18	Ability to make post-visit reports	Yes.	Yes.
19	Report recipients	Parliament	Determined based on the outcome of the visit.
20	Post-visit recommendations and measures for improvements	No.	Yes, if arising from a complaint or as a result of the inquiry into broader issues arising from complaints (the approval of the Minister for Health or Disability or Mental Health (the relevant Minister) is required for such inquiries).
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	Yes.	Yes, if arising from a complaint or as a result of an inquiry into broader issues arising from complaints (the approval of the Minister for Health or Disability or Mental Health (the relevant Minister) is required for such inquiries).
22	Publication of an annual report	Yes.	Yes.
23	Ability to make submissions, proposals and observations on relevant legislation	Yes	There is nothing in the guiding legislation that prevents this.

Appendix 3.9 – Snapshot of oversight and inspection bodies within Western Australia

OPCAT Framework		Commissioner for Children and Young People	WA Department of Justice – Aboriginal Visitor Scheme	The Health and Disability Services Complaints Office
<b>Privileges, immunities and protections from reprisals — Articles 21 and 35</b>				
24	Protection from disclosure to government, judiciary, other organisations or persons	Specific provisions under Part 5 Special Inquiries provides protection for information subject to legal professional privilege (s 36) and provisions relating to the disruption of a special inquiry (s 39).		The confidentiality provisions of s 71 of the <i>Health and Disability Services (Complaints) Act 1995</i> and similar provisions in the <i>Disability Services Act 1993</i> and <i>Mental Health Act 2014</i> apply. However, HaDSCO is subject to the provisions of the <i>Freedom of Information Act 1992</i> (WA).
25	Legislative basis for protection	Sections 36 and 39. Further provisions relating to obstruction or hindering of a person performing or attempting to perform a function are set out in s 58.		
26	Protection from arrest, detention or seizure of personal baggage	Not stated.		
27	Protected from interference with communications	Not stated.		
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Not stated.		
<b>Ability to contact SPT — Article 26</b>				
29	Ability to have direct and confidential contact with the UN SPT	As an independent statutory office, the Commissioner is free to engage, consult and collaborate with any party.		There is nothing in the guiding legislation that prevents this.
30	Contact include meetings, exchanges of information and/ or training sessions	As an independent statutory office, the Commissioner is free to engage, consult and collaborate with any party.		
<b>Inspection methodology, standards and principles</b>				
31	Inspection Methodology	The Commissioner does not conduct routine or specific inspections of facilities.		HaDSCO undertakes visits to take complaints, visit health centres, meet with health staff and raise awareness of its role and to educate and train staff in complaints management, where requested. HaDSCO does not specifically conduct inspections.
32	Defined standards to assess places of detention	The Commissioner does not conduct routine or specific inspections of facilities.		HaDSCO undertakes visits to take complaints, visit health centres, meet with health staff and raise awareness of its role and to educate and train staff in complaints management, where requested. HaDSCO does not specifically conduct inspections.