



Mental Health Commission
of New South Wales

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

***Submission to the Australian Human Rights Commission by
the Mental Health Commission of New South Wales***

July 2017



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Submission to the Australian Human Rights Commission on the consultation paper *OPCAT in Australia* available
http://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_OPCAT_Implementation_Consultation_Paper_2017.pdf

The Mental Health Commission of NSW

The Mental Health Commission of New South Wales (NSW) is an independent statutory agency responsible for monitoring, reviewing and improving the mental health system and the mental health and wellbeing of the people of NSW. The Commission works with government and the community to achieve this goal.

In all its work the Commission is guided by the lived experience of people with mental illness, and their families and carers. The Commission promotes policies and practices that recognise the autonomy of people who experience mental illness and support their recovery, emphasising their personal and social needs and preferences.

A consensus statement by the mental health commissions of Australia

The mental health commissions of Australia¹ have provided a joint submission in response to the consultation paper on the Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). That submission sets out the consensus position of all the mental health commissions on the issues that are shared across jurisdictions.

The Mental Health Commission of NSW is providing a separate submission in relation to discussion question one only:

“What is your experience of the inspection framework for places of detention in the state or territory where you are based, or in relation to places of detention the Australian Government is responsible for?”

The inspection framework for mental health units in NSW

Official Visitors are appointed by the NSW Minister for Mental Health to visit people in mental health inpatient facilities. Their functions are prescribed under the *Mental Health Act 2007 (NSW)*, and include:

- to refer matters raising any significant public mental health issues or patient safety or care or treatment issues to the Principal Official Visitor or any other appropriate person or body²
- to act as an advocate for patients to promote the proper resolution of issues arising in the mental health system, including issues raised by the carer of a person detained under the Mental Health Act³
- to inspect mental health facilities as directed by the Principal Official Visitor⁴.

Official Visitors make regular visits to all inpatient psychiatric facilities across NSW, with or without notice, they talk to patients, inspect records and registers, and report on the standard of facilities and services. They liaise with staff about any issues or concerns and report any problems to the Principal Official Visitor and/or the Minister.

Patients, carers, family, friends, staff and other people with an interest in the care of treatment of people with a mental illness can contact the Official Visitors directly.

¹ The Australian Mental Health Commission, the Queensland Mental Health Commission, the South Australian Mental Health Commission, the Western Australia Mental Health Commission and the Mental Health Commission of NSW

² S 129 (3)(a) *Mental Health Act 2007 (NSW)*

³ S 129 (3)(b) *Mental Health Act 2007 (NSW)*

⁴ S 129 (3)(c) *Mental Health Act 2007 (NSW)*

Strengthening the functions and powers of the official visitors

For Official Visitors to operate consistently with the functions of a National Preventative Mechanism (NPM) the provisions relating to their functions and powers would need to be strengthened in some important ways to ensure transparency and independence:

- Currently, Official Visitors report directly to the Minister for Mental Health, they do not make public reports or annual reports.
- There needs to be a clear power to make recommendations, and to track any response/implementation of the recommendations.
- There would need to be a mechanism for the work of the Official Visitors to feed into the broader OPCAT inspection framework to ensure that systemic issues are adequately identified and responded to and to ensure a coordinated response to those issues.
- As noted in the consultation paper, appropriate training will need to be provided, and a separate NPM unit may need to be established within the existing Official Visitors framework to ensure functional independence from other activities.