

AUSTRALIA'S RATIFICATION OF OPCAT:

Preliminary Submission Regarding
Implementation of Protocol in Areas of Concern

Submission by Justice Action



Justice Action is a non-for-profit organisation that seeks to defend human rights in the hardest places. We believe that, in order to effect positive change in Australia's criminal justice and mental health systems, the voices of incarcerated individuals need to be heard.

1. Current Situation

Although Justice Action welcomes the Australian Government's ratification of the Optional Protocol to the Convention Against Torture, we believe that without the implementation of the following proposed solutions, it will only be guaranteed to fail.

Justice Action is the voice of people with the lived experience of detention.

At the OPCAT seminar of November 25, 2009, Justice Action presented the article 'Business as usual or the chance for civil respect globally?' Then, we raised concerns about the failure of our prison system to maximize the potential of the proposed OPCAT NPM structure, due to prisoners' lack of trust in the corrective services system and the prison culture that they are not entitled to human rights. However, no changes were made.

Unfortunately, and unsurprisingly, these issues are only too alive today.

The Don Dale exposure, by Four Corners in April this year, has served to highlight that all existing mechanisms, including the internal inquiries, had failed to create the necessary 'accountability and transparency' for prison authorities. This defeats the intention of OPCAT, as per paragraph 14 of the Consultation Paper published by the Australian Human Rights Commission. It was only when Australia suffered international embarrassment, with Australia's darkest secrets regarding our treatment of prisoners revealed to the public, that some semblance of accountability was forced.

Our community expects change. Without change and accountability at all levels of the corrective services system, OPCAT is of no value. We will be going back to 'business as usual', with ostensible changes made which do nothing to address the desperation and cynicism of our prisoners.

Following extensive international and local consultation, Justice Action proposes:

- Using the prisoner representative structure of the Inmate Development Committees (IDCs) which allows cost free continual monitoring, gives community training, presents collective concerns and avoids victimization
- Using existing technology including video monitoring in cells as a communication device back to the NPM. Prisoners should be able to complain directly into the camera. Families, communities, and the media should have

access to this. The SPT and NPM should be able to publicly talk about the complaints received.

- Strengthening the NGOs and ex-prisoner community to be independent of government and coordinating information to assist the NPM

This paper contains Justice Action's response to the questions proposed in Part 5.1 of the Australian Human Rights Commission's OPCAT in Australia Consultation Paper of May 2017.

We believe that, only through the following proposals, detainees will have the necessary access to the requisite tools and information to defend their rights.

2. Questions for Discussion

Justice Action will address all the questions outlined in the Consultation paper, where our responses will draw attention to:

- 1) Key issues which will need to be considered, and
- 2) Proposed changes, to ensure compliancy with OPCAT at a state and territory level.

These reflect the views of individuals who are currently in a place of detention, where they are 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': Article 4.1. of the Protocol.

2.1. 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?

Our experience has shown that the inspection framework for places of detention all over Australia is ineffectual. The official basis for complaints, consisting of (1) the Ombudsman, (2) the custodial services for each state and territory, and (3) the official visitors, is failing to adequately respond to prisoner concerns.

Justice Action has continually received complaints from prisoners and their families which have attempted to use these services. These complaints detail their experiences, where authorities have undertaken no action to resolve their original concerns. Altogether, the belief among prisoners is that there is plainly no mechanism that they can trust, and therefore that they are not entitled to human rights while incarcerated.

One of the most common, and symbolic statements made by the prisoners to express their desperation and cynicism towards the way they have been treated is that: 'They can fuck you, but the only right you have is not to love the baby, ha ha'.

Many prisoners are unaware of Justice Action. However, the general consensus across places of detention in Australia is that prisoners are treated as if they are scarcely human – that is, continually deprived of their basic human rights. The National Preventative Mechanism (NPM) and UN Sub-committee on the Prevention of Torture (SPT) need to ensure that prisoners are able to talk to:

- 1) The media, to increase the accountability and transparency of operations within prisons,
- 2) Ministers and commissioners, who can undertake appropriate legal and political action, and
- 3) Official complaints bodies, who can effectively resolve their concerns.

2.2. How should the key elements of OPCAT implementation in Australia be documented?

Justice Action proposes two points of consideration.

Firstly, the OPCAT needs to be documented in as simple a manner as possible. These notices should be presented as notices in places of detention, in every room, every wing and every pod. It should contain a clear statement of prisoners as to what their rights are, and what their rights to complaints are.

Secondly, the NPM must ensure that detainees have a full understanding of their rights. Drafts should be available to detainee representatives for examination and consultation on whether they would be effective in the culture of the particular place of detention. Prison officials should also have access to these drafts to ensure they are aware of the rights available to prisoners under OPCAT.

2.3. What are the most important or urgent issues that should be taken into account by the NPM?

The urgent sentiment in our prisons and detention centres is that the system should be radically different from the form it currently takes. Prisoners all over Australia are urging for a 'breath of fresh air' in the complaint and inspection mechanism. Justice Action strongly advocates for the methods of change introduced above.

For OPCAT to be an effective mechanism for increasing 'accountability and transparency' in government management of prisons, these changes need to be recorded as iron-clad statements in legislation or in regulations that bind corrective services system officials. This is necessary so that individuals in positions of power can understand, adopt and have these changes monitored.

Moreover, monitoring of these changes for effectiveness must be done by the detainees themselves, rather than being done by prison guards, managers, or other officials in the corrective services system. Should these officials retain the power to monitor and self-assess these changes, we will only see a continuation of the culture of distortion and secrecy that has plagued our prisoners and marginalized our prisoners.

2.4. How should Australian NPM bodies engage with civil society representatives and existing inspection mechanisms?

To adequately engage with civil society representatives, the NPM needs to be able to link up with organisations connected with detainee interests. These can include NGOs and people who visit places of detention. There needs to be regular opportunities for civil society representative to communicate with NPMs and voice any issues they have with the management of our detention system.

Justice Action proposes that this is best done through regular consultations between these bodies and the NPMs, preferably on a monthly basis. Furthermore, we suggest that there be regular open meetings, where individuals connected with the interests of detainees have the opportunity to raise any concerns they have and offer new perspectives from their own sources.

We believe that the management of prisons is an issue which affects the entire community, and the only way to increase accountability and transparency is through a public forum where all views are welcomed for discussions, rather than through correspondence via mail or online.

2.5. How should the Australian NPM bodies work with key government stakeholders?

NPM bodies must be in constant communication with key government stakeholders. However, the mechanism for feedback from NPMs to corrective service authorities must be one with a reporting mechanism, incorporating feedback not only directly from prisoner complaints but also from civil service representatives.

The relationship between NPMs and government stakeholders must veer away from one of confidential discussions, to avoid giving government stakeholders any belief that they can nullify the criticisms that NPMs would adopt.

Rather, the NPM must have the capacity to ensure that government actions are open and accountable, to scrutinize government decisions rather than compromising themselves to serve government interests.

2.6. How can Australia benefit most from the role of the SPT?

The SPT's role within the framework following the ratification of OPCAT will be that of an international visitor, coming to Australia every seven years. To achieve most benefit for Australia, the SPT must receive all reports from the NPMs and then target the areas of most concern. The information received must be open and accountable.

The SPT should publish their own responses to the reports received from the NPMs. They should then serve as exemplars for the standards that government authorities must be held to in their treatment of prisoners and other detainees.

In contrast to what is proposed in paragraph 31 of the Consultation Paper, there should be more transparency regarding the findings and recommendations. This is necessary to promote transparency, ensuring that individual rights are not wrongly infringed upon.

2.7. After the Government formally ratifies OPCAT, how should more detailed decisions be made on how to apply OPCAT in Australia?

In light of the Australian Government's proposed strategy of implementing OPCAT over 3 years following ratification in December 2017, Justice Action recognizes that more detailed decisions will be made over this period. Following the beginning of the formal ratification process, Australia's NPMs should therefore look towards successful international applications of OPCAT, with reports from these other countries openly circulated worldwide.

Ultimately, Justice Action's strategy for implementing OPCAT must not depend only on the local experience in Australia and the feedback we have already proposed, but also on possible new insights received from international experience. As the implementation process progresses, it is essential that we see the development of a system to involve detainee responses to the changes made through their representatives, in all facets of the OPCAT.