



Mr Edward Santow
Human Rights Commissioner
Australian Human Rights Commission
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Sydney
NSW 2000

By email only: humanrights.commissioner@humanrights.gov.au

28 July 2017

Dear Commissioner Santow,

Thank you for the opportunity to make a submission regarding the implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

This letter has been prepared by UNICEF Australia and National Aboriginal and Torres Strait Islander Legal Services (NATSILS) on behalf of the Steering Committee of the Australian Child Rights Taskforce (CRTF Steering Committee). The Australian Child Rights Taskforce is Australia's peak child rights network, made up of more than 100 organisations advocating for the protection, promotion and fulfilment of the rights of children in Australia. The CRTF Steering Committee is comprised of UNICEF Australia, the National Children's and Youth Law Centre (NCYLC), SNAICC – National Voice for our Children, the Human Rights Law Centre, NATSILS, King & Wood Mallesons and consultant, Mr James McDougall.

We have had the benefit of reviewing the submission prepared by the Australia OPCAT Network to the consultation which outlines in detail many of the technical recommendations regarding current shortcomings in monitoring and suggested good practice. We **endorse** that submission. Our comments below are intended to highlight our major concerns, and several additional considerations regarding children and young people specifically.

Introductory comments

We again commend the Australian Government for committing to ratify OPCAT by December 2017. We also acknowledge the important role that State and Territory Governments have played and will continue to play, to effectively implement OPCAT in Australia. We anticipate that the effective implementation of OPCAT will bring about improved human rights protections for people who are deprived of their liberty.

However, we have the following overarching concerns that we wish to highlight at the outset:

- 1) **Process of selecting the National Preventative body/bodies** - The Australian Government has indicated that the Commonwealth Ombudsman will be funded to operate as a national coordinating function, and that multiple bodies from states and territories will conduct inspection responsibilities. The Subcommittee on Prevention of Torture (SPT) has stated that the National Preventative Mechanism (NPM) "...should be identified by an open, transparent

and inclusive process which involves a wide range of stakeholders, including civil society.”ⁱ We are therefore concerned that the NPM body/bodies have been determined without due consultation with civil society and others as recommended by the SPT. We recommend further consultation on this issues, and specifically recommend that Aboriginal and Torres Strait Islander representation should be required in all oversight bodies.

- 2) **Access to all places of detention:** We reiterate the need for NPM bodies to have access to all places where people are deprived of their liberty. The Committee Against Torture has stated that this includes “...all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.”ⁱⁱ It is therefore incumbent on the Australian Government, and State and Territory Governments, to ensure that the NPM bodies collectively ensure oversight over all such places, including:
- youth detention centres, youth residential centres and alternative detention centres including rehabilitation facilities;
 - police and court detention facilities and modes of transport (i.e. vehicles);
 - other places where children are held (including adult correctional facilities);
 - care and institutional facilities, particularly for children with disabilities;
 - hospitals and mental health facilities;
 - places of military detention; and
 - immigration detention and processing facilities (onshore and offshore).ⁱⁱⁱ
- 3) **The introduction of legislation to implement OPCAT:** We note that the Consultation Paper states that “...the Australian Government has indicated that it does not intend to create new legislation to implement OPCAT into federal law”.^{iv} In contrast to this approach, the SPT has stated: “[t]he mandate and powers of the NPM should be clearly and specifically established in national legislation as constitutional or legislative text. The broad definition of places of deprivation of liberty as per OPCAT shall be reflected in that text.”^v The SPT also considers the establishment of legislation as one of the factors to be considered in its NPM Assessment Matrix.^{vi} The Federal Parliament has power under the Constitution to legislate with regard to treaty obligations using the external affairs power (section 51(xxix)).^{vii} We therefore encourage the Australian Government, in dialogue and cooperation with State and Territory Governments, to legislate where appropriate to ensure the full and effective implementation of OPCAT under Australian law. We suggest that failure to legislate would not be aligned with good practice as outlined by the SPT.
- 4) **The absence of legislative human rights protections:** We remain concerned about the lack of a federal human rights act, and corresponding human rights protections in every state and territory. Legislated human rights protections would help Australia to build a culture of respect for the human rights of all people in all contexts; regardless of institution and regardless of their role within the institution (i.e. detainee or corrections personnel, patient or medical professional, student or teacher). Legislative requirements also have the positive affect of requiring capacity and competence-building across levels of government. For example, in the ACT and Victoria where human rights acts do exist, these laws have been observed to provide numerous benefits, including improved law making and government

policy, improving public service delivery; contributing to the development of a human rights culture and protecting marginalised people by addressing disadvantage.^{viii} We believe that legislation to protect the human rights of all people, including children and young people, would help further the aims of OPCAT through sensitizing decision makers to a human rights-based approach, and would help inform the conditions, cultures and practices across all systems that provide for the deprivation of liberty, including, for example, criminal justice, secure care and immigration.

Responses to consultation questions

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?***

We consider the following to be crucial gaps in the current systems of oversight of places of detention:

- a) **The absence of clear national standards to ensure children are safe in youth detention –**
We believe that there is urgent need for, and recommend the establishment of, national standards applying to youth justice that:
- i. Are legally binding;
 - ii. Are uniform across all jurisdictions;
 - iii. Protect the rights of children (including through specifying the differentiated treatment and special protection necessary); and
 - iv. Are developed through an open, transparent and consultative process (including specifically with Aboriginal and Torres Strait Islander communities).

Numerous recent official inquiries (including those listed below)^{ix} and other reports^x have revealed that youth justice detention systems across Australia are failing to protect the rights of children, with serious consequences. Concerning practices and conditions have seemingly occurred despite numerous non-binding standards and guidance materials, including, for example, the *Juvenile Justice Standards* (2009),^{xi} *Principles of Youth Justice in Australia* (2014)^{xii} both published by the Australasian Juvenile Justice Administrators and, more recently, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (2016)^{xiii} published by the Australian Children’s Commissioners and Guardians. The reported practices in youth detention centres in Australia suggests that unenforceable guidance has been insufficient to ensure appropriate practices and protections for children and young people.

We consider there is an urgent need for legislated standards applying nationally (including specifically to places of youth detention), potentially through uniform law and inter-governmental agreement. Such law, which should exist across every jurisdiction, should require systems to ensure humane behaviour management systems, data collection, public reporting, accessible complaints mechanisms and consequences for improper conduct. There is also a need for greater specificity in law and policy regarding developmentally appropriate and rights-respecting behaviour management techniques for children, including, for example, de-escalation techniques, and strict safeguards (including absolute prohibitions where necessary) regarding the use of force, the use of restraints, seclusion and isolation.

We also see a need to ensure that the practice of transferring young people to adult facilities does not occur without due oversight and scrutiny.

Such laws and policies must outline the specific and differentiated approach and safeguards necessary when considering vulnerable and marginalised groups, including children and young people, and be consistent with all applicable international standards, including:

- The *Convention on the Rights of the Child* 1989;
- The *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* 1985 (The Beijing Rules);
- The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* 1990 (The Havana Rules);
- The *United Nations Guidelines for the Prevention of Juvenile Delinquency* 1990 (Riyadh Guidelines); and
- The *Standard Minimum Rules for the Treatment of Prisoners (Section I) (the Nelson Mandela Rules)* 2015.

The development of legislated standards must be informed by public consultation, including with civil society organisations and, where appropriate, those with lived experience of places of detention.

- b) **The lack of a statutory office with functional independence in each state and territory jurisdiction** - Only several states have an independent inspectorate with functional independence. For example, the Office of the Inspector of Custodial Services (OICS) model established in Western Australia and NSW have been acknowledged as leading practices in Australia.^{xiv} However, we are concerned that many jurisdictions do not have such an office with a statutory mandate; guaranteed independence in access to resources; powers of access to information and places of detention and protection from removal, for example.
- c) **Gaps in places of detention inspected** - Even where OICS do exist (Western Australia and NSW), their mandates do not cover all places of detention. For example, police cells, modes of transportation and places of secure care are not included in the mandate holders' rights of access. All places of detention, including modes of transport, police detention and care facilities, should be within the mandate of an inspector of custodial services or similar mandate holder so as to ensure all places involving the deprivation of liberty are subject to oversight.
- d) **Lack of response to recommendations issued by oversight bodies** - An essential aspect of accountability is ensuring that the relevant decision-makers, including ministers, departments, agencies and NGO providers, respond to the recommendations and issues raised by an NPM body. We therefore recommend that the legislation establishing NPM bodies require responses from relevant decision-makers, and, where appropriate, for these to be made public.

Case study: Western Australian Office of the Inspector of Custodial Services

Overall, the WA Office of the Inspector of Custodial Services (WA OICS) has been effective but its effectiveness is limited because there is no mandatory requirement for the WA government to respond to the recommendations in the WA OICS reports. For example, prior to the death of Mr Ward in 2008 (who died from heatstroke while being transported from Laverton to Kalgoorlie by Department of Corrective Services' contractors), WA OICS had warned that the use of the vehicle used to transport Mr Ward would be inhumane for anything other than a short trip. Likewise, an OICS report concerning Banksia Hill Detention Centre in 2012 referred to the excessive lock downs for detainees and after the 2013 riot at Banksia Hill, OICS stated that excessive lockdowns was a casual factor in the riot.^{xv}

Further, WA OICS is not currently empowered to inspect police lock-ups and therefore any enabling legislation will need to ensure that the state-based National Preventative Mechanism (NPM) has power to inspect police lock ups in order to give effect to OPCAT. Similarly, OICS does not have power to inspect the Kath French Centre which is a secure care facility under the *Children and Community Services Act 2004* (WA).

- e) **The need for specialist expertise to properly inspect places where children and young people are deprived of their liberty** - It is essential that personnel responsible for inspecting places where children are deprived of their liberty have the expertise and skills necessary to understand the developmental needs of children, their rights at international law, applicable domestic law, and how to meaningfully and safely communicate with children. In addition, we suggest that NPM bodies should be resourced with suitably qualified personnel to ensure inspections are informed by multi-disciplinary expertise, including, for example, mental health, developmental science, cross cultural expertise, law and human rights.
- f) **The need for complementary access to child-sensitive complaints mechanisms** - In addition to the need for a mandate-holder to focus on pro-active, preventative measures, there is also a need to ensure that corresponding, reactive complaints mechanisms exist and are accessible and responsive to children and young people. We are concerned that this is not currently available for all young people who are deprived of their liberty. For example, in the Northern Territory, s 163 of the *Youth Justice Act 2005 (NT)* states that a detainee or their responsible adult may complain about a matter that affects the youth. The procedure set out in the regulations is that a complaint is to be made in writing (and a youth assisted by staff if unable to do so personally) and must go directly to the Superintendent. The requirement for a complaint to be in writing is a significant barrier for many youth who experience language or literacy barriers. Whilst a young person may be able to access legal assistance for the purpose of making a written complaint, young people serving a sentence of detention following the finalisation of their legal matters may not have ongoing contact with a lawyer. In the absence of assistance from an adult who is separate to the Corrections system, this complaints mechanism is inaccessible to many young people. Aside from possible language and literacy barriers, Aboriginal and Torres Strait Islander young people in particular also face significant cultural barriers to utilising the complaints system, and will be affected by the power imbalance that exists between them as individuals and the Corrections system. Additionally, there might be circumstances where it would be inappropriate and potentially unsafe to make a complaint internally. It is therefore critical

that a rigorous external complaints process exists and that there is an independent mechanism to identify and address systemic issues. There must be systems in place so that young people have the knowledge of how to safely access these mechanisms. In addition to ensuring access to complaints mechanisms domestically, access to complaints mechanisms internationally is also important. We recommend that the Australian Government sign and ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3) to help improve children's access to important mechanisms for accountability.

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

Establishing a system to ensure appropriate monitoring of places of detention is fundamentally about transparency and accountability. This is essential because conditions and practices within such facilities are removed from the ordinary view of society. Establishing formal, written agreement/s to specify the responsibilities of different governments and agencies (for example, through a national partnership agreement between the Federal and State and Territory Governments) is a necessary part of accountability and should help ensure that the nature of the obligations of relevant parties is clear, understood and publicly known. We recommend that OPCAT implementation, and specifically, the mandate, powers, personnel and responsibilities of NPM bodies, alongside national standards applying to specific locations of detention, be specified by legislation.

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

We consider that the most important or urgent issues that should be taken into account by the NPM body or bodies are as follows:

- a) **Children and young people** – The Royal Commission into the Protection and Detention of Children in the Northern Territory^{xvi} and the Royal Commission into Institutional Responses into Child Sexual Abuse,^{xvii} along with numerous other official inquiries and reports (including those listed below), detail varied and widespread mistreatment of children. The cumulative lesson from these is that governments and institutions are often failing to act in the best interests of children in the provision of care, support and services. The current failings reflect a lack of understanding of the specific needs and vulnerability of children and a lack of structural protections to ensure that their rights are respected in practice. They reveal often systemic problems that exist across many institutions that deal with children. We therefore recommend that protecting the rights of children and young people should be prioritised in the work of NPM bodies (considering all places where children can potentially be deprived of their liberty, including youth detention, institutional health and mental health facilities, care, immigration and education settings).
- b) **Youth detention** – The numerous recent official inquiries have revealed that youth justice detention systems across Australia are failing to protect the rights of children. As identified by the Victorian Commissioner for Children and Young People,^{xviii} and subsequently increased by the release of several subsequent reports, current or recently completed review of youth justice include:

- 1) The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system (Vic);^{xix}
- 2) Department of Health and Human Services review of youth support, youth diversion and youth justice services (Vic);^{xx}
- 3) Review of Parkville Youth Justice Precinct (Vic);^{xxi}
- 4) Parliamentary inquiry into youth justice centres in Victoria (Vic);^{xxii}
- 5) Independent review of youth detention (Qld);^{xxiii}
- 6) Own initiative investigation Report: services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre (NT);^{xxiv}
- 7) Royal Commission into the protection and detention of children in the Northern Territory (NT);^{xxv}
- 8) Inquiry into behaviour management in youth detention centres (NSW);^{xxvi}
- 9) How use of force against detainees in juvenile justice centres in NSW is managed (NSW);^{xxvii}
- 10) Go to your room! The use of seclusion in youth detention (SA);^{xxviii}
- 11) Young people in the justice system: A review of the Young Offenders Act 1994 (WA);^{xxix} and
- 12) Behaviour management practices at Banksia Hill Detention Centre (WA) (discussed below).^{xxx}

Charges relating to historical child sexual abuse have also recently been laid on former staff of the Reiby Juvenile Justice Centre in NSW after allegations were raised during the Royal Commission into Institutional Responses to Child Sexual Abuse.^{xxxi}

These reports suggest the existence of widespread, systemic and similar problems across youth justice systems in Australia. They also highlight likely duplication, inefficiency and the proliferation of resource-intensive inquiries after the fact. We suggest that they present a compelling case for the NPM bodies to prioritise improving conditions in youth detention across Australia, including through the development of legally binding, nationally consistent and high standards of youth detention that are consistent with international human rights law.

Case study: Banksia Hill Detention Centre (Western Australia)

Of immediate concern is the treatment of young people in detention in Banksia Hill Detention Centre. In a 2012 report of the WA OICS, concerns were expressed about the use of management or regression regimes where juvenile detainees were placed in solitary confinement for 22-23 hours per day and isolated from the general population for extended periods. In one instance between late 2011 and early 2012 a juvenile detainee was isolated under various management regimes for 95 consecutive days. The President of the Children's Court described his treatment as amounting to 'psychological punishment' and 'psychological subjugation'. Aboriginal Legal Service WA continues to

receive instructions from young people in Banksia Hill that demonstrate that the practice of solitary confinement continues.

As recently as 17 July 2017 the WA OICS published its report on 'Behaviour Management Practices at Banksia Hill Detention Centre' and made a number of findings/observations that support the need for greater independent oversight. The reports states that:^{xxxii}

- Behaviour management in juvenile detention 'is a longstanding concern for us';
- Banksia Hill (as the sole juvenile detention centre for entire state) does not have sufficient dispersal options and the Harding unit is used for multiple purposes;
- In 2016 there were a number of incidents of serious damage and self-harm 'reached unprecedented levels';
- on a number of occasions, resort was had to distraction devices ('flash bombs' or 'flash bangs'), shotgun laser sights, and chemical agent, the use of which was described as '...the most tangible and telling sign of a facility that was failing the basics',^{xxxiii}
- Responses to 'critical incidents have conflicted with a rehabilitative, trauma-informed model' – some detainees have been denied their legislatively mandated time out of cell for exercise every day;
- There have been increases in 'restraint use and high level tactical response, and the centre continues to increase physical security, making the environment more punitive';
- The report makes a number of recommendations including that the use of lockdowns for staff training and staff shortages should be minimised. While ALSWA has grave concerns about the use of solitary confinement as a behaviour management tool, it is unacceptable that children are confined to their cells because of a lack of resources to ensure sufficient staff are available onsite at all times. There are various recommendations concerning transparency and accountability (e.g., improve record keeping practices, record reasons restraints are used) as well as a recommendation to 'evaluate the safest and most humane way to deal with young people who spit and implement any required changes'. There are a total of 17 recommendations and all demonstrate the need for improved accountability and transparency and that the management practices in Banksia Hill fall far short of acceptable standards.

c) Specific inspection standards for Aboriginal and Torres Strait Islander children and adults –

We consider there to be an urgent need for specific inspection standards for Aboriginal and Torres Strait Islander children and adults, to be developed in partnership with Aboriginal and Torres Strait Islander people and community controlled organisations. These standards should include, for example:

- i. Ensuring access to culturally appropriate medical care in detention - This is a particularly relevant issue for Aboriginal and Torres Strait Islander children in detention. The provision of culturally appropriate medical care ensures effective communication of medical concerns and effective treatment. Further, we submit that there should exist a requirement for non-Indigenous medical practitioners to receive cultural training to ensure proper care of Aboriginal and Torres Strait Islander detainees.
- ii. Training for corrections officers on culturally sensitive child care for Aboriginal and Torres Strait Islander children – There should be accountability of correction services to ensure corrective staff are meeting requirements for cultural training. All staff working within detention centres staff must be trauma informed so as to understand, and be able to attend to, the specific and complex needs of Aboriginal

and Torres Strait Islander children in contact with the justice system. Trauma informed care and practice is essential to providing Aboriginal and Torres Strait Islander children a chance of rehabilitation and reintegration into community post release.

- iii. Access to culturally sensitive and safe rehabilitation programs in detention - Many detention facilities do not provide Aboriginal and Torres Strait Islander peoples in custody with access to culturally appropriate healing and/or rehabilitation programs. Culture is a well-known protective factor for Aboriginal and Torres Strait Islander people. Ensuring access to culturally appropriate healing and rehabilitative programs acknowledges the unique and complex position and experiences of Aboriginal and Torres Strait Islander people in the justice.
- d) **Data regarding places of detention** - It is essential to the work of the NPM bodies that detailed, accurate and current data is available that includes the numbers of people deprived of their liberty, the characteristics of those people and their previous contact with relevant authorities. It is also essential that such data be made publicly available for the purposes of transparency, and to enable evidence-based research, analysis and informed policy responses. With regard to youth detention for example, the National Children's Commissioner has highlighted the necessity for improved data collection, observing:^{.xxxiv}

It is essential for us to know the numbers of children and young people who are detained in youth justice facilities, their sex, age, Indigenous status, why they are detained and for how long they are detained.

It would also be highly desirable to broaden the collection of this data to include, for example, information about children and young people with disability, those from culturally and linguistically diverse backgrounds, and children and young people who are lesbian, gay, bisexual, transgender and intersex.

We therefore recommend that the NPM bodies prioritise the identification of data needs and gaps, and to work cooperatively with relevant departments and agencies (including the Australian Institute of Health and Welfare and the Productivity Commission) to implement improved and standardised collection methods across jurisdictions.

- e) **Chronic lack of investment to provide facilities and staffing that are conducive to safe and humane conditions for children and staff alike, and a rehabilitative environment for children** – The reviews into youth justice outlined above also point to the chronic lack of investment to provide facilities and staffing that are conducive to safe and humane conditions for children and staff alike, and facilities that are more conducive to rehabilitation in the long term. We see a need for political leadership to ensure that sufficient resources are dedicated to provide and/or transition to child sensitive facilities as soon as possible where these are not in existence. As outlined by the Human Rights Law Centre:^{.xxxv}

For children in detention, the aim should be to create a rehabilitative environment that reflects a specialized approach to the needs of a young person. What is needed is a model that encapsulates the essentials required for healthy adolescent development – engaged adults focused on their development, a peer group that models positive behaviour, opportunities for academic success, activities that

contribute to developing decision-making and critical thinking skills, and pathways to success.

Large institutional adult-like facilities including the present Don Dale facility that reflect the physical infrastructure, systems and culture of prisons are the opposite of what is needed for children. Such facilities should be decommissioned and funds redirected into smaller alternatives that are more home-like and closer to family and community so as to promote connection with family, culture and community. The programs on offer within such facilities should be intensive, developmentally appropriate, emphasise positive youth-staff relationships, nurture family engagement and build community connections.

The mission and overarching philosophy of youth justice facilities should move from a correctional approach to one based on the tenets of positive youth development, building on each young person's strengths. The focus must always be on helping children get back on track through treatment and developmental programming that is trauma-informed; delivered by qualified and supported staff; and focused on prosocial skill development, academic or vocational instruction, work readiness, and work experience (references omitted).

- f) **Vulnerable groups in police custody** - We also note that the UK NPM has recently conducted research into *The welfare of vulnerable people in police custody*^{xxxvi} and consider that similar research in Australia would be welcomed. Specifically, such a study could shed further light on this gateway to youth detention, including highlighting data gaps and provide further information on the use of diversion.

4. How should Australian NPM bodies engage with civil society representatives and existing inspection mechanisms (e.g., NGOs, people who visit places of detention etc.)?

We recommend that NPM bodies be resourced so as to ensure meaningful and regular engagement with civil society. Consideration should be given to the establishment of both standing mechanism for regular communication between the NPM bodies (including, for example, an independent advisory group of relevant experts and regular roundtable meetings) as well as a mechanism through which members of civil society and the public can lodge urgent concerns. Additionally, NPM bodies should seek to engage with people with lived experiences of places of detention, where safe and appropriate to do so. We consider transparency and public reporting to be a key aspect of meaningful engagement with stakeholders, unless there are special circumstances warranting that information not be made public (for example, if disclosing the information would threaten the safety and wellbeing of children or adults).

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

With the OPCAT being part of the body of international human rights law, it is essential that NPM bodies and the standards they adopt are duly informed by a human rights-based approach. If the NPM body is not a human rights body, we recommend that NPM bodies be required to liaise closely with human rights bodies. Regarding children and young people for example, the National Children's Commissioner, as well as Children's Commissioners, Guardians and Advocates in each state and territory, should be key stakeholders. We also recommend that a Commissioner for Aboriginal and Torres Strait Islander Children and

Young People be appointed in each jurisdiction and that this role should also be a key stakeholder particularly in relation to specific inspection standards required for Aboriginal and Torres Strait Islander children. It is essential, however, that these mandate holders and agencies be given additional resources to enable them to properly and meaningfully engage with and advise NPM bodies.

Additionally, NPM bodies should be a key stakeholder when and if the legislature is considering the impact of new or existing legislation affecting places of detention. The OPCAT states that NPMs should have the power to submit proposals and observations concerning existing or draft legislation. Consideration should be given to policy, legislative, as well as practical supports to ensure that NPM bodies are consulted regarding proposed reforms impacting upon places of detention, and reviews of existing legislation.

Finally, we also consider it desirable for NPM bodies to liaise with and observe the recommendations made by relevant royal commissions, parliamentary inquires and other reviews to inform the development of standards and working methods.

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

We encourage Australian Governments, and NPM bodies, to engage in a collaborative and transparent manner with the SPT. We recommend that Australian Governments and NPM bodies should be responsive to recommendations, and further encourage full transparency regarding recommendations and follow up. We further recommend that the Australian Government commit to making SPT visit reports public, unless there are special circumstances warranting otherwise (for example, if disclosing the information would threaten the safety and wellbeing of children or adults).

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

We recommend on-going consultation with civil society, particularly in relation to the development of standards and the designation of NPM bodies. We also recommend that NPM bodies be responsive to relevant recommendations made by United Nations Treaty Bodies and special rapporteurs.

Thank you for the opportunity to comment on these important issues.

If you have any questions or if we can be of further assistance, please contact Alison Elliott, Senior Policy Adviser, at UNICEF Australia, on (02) 8917 3247 or aelliott@unicef.org.au.



James McDougall
Consultant

- ⁱ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *Guidelines on national preventative mechanisms*, 12th sess, UN Doc. CAT/OP/12/5, [16].
- ⁱⁱ Committee Against Torture, *General Comment No. 2 – Implementation of article 2 by States parties*, UN Doc CAT/C/GC/2 (2 January 2008), [15].
- ⁱⁱⁱ See UNICEF Australia, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Submission to the National Children’s Commissioner* (30 May 2016), <<https://www.unicef.org.au/Upload/UNICEF/Media/Documents/Submissions/UNICEF-Australia-submission-re-OPCAT.pdf>>, p. 15.
- ^{iv} Australian Human Rights Commission, *OPCAT in Australia – Consultation Paper* (May 2017), p. 16.
- ^v Committee Against Torture, *First Annual Report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 40th sess, UN Doc CAT/C/40/2 (14 May 2008) 10 [28].
- ^{vi} Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Office of the High Commissioner for Human Rights) *NPM Assessment matrix for States* accessible <<http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Documents.aspx>>
- ^{vii} *Commonwealth v Tasmania* (The *Tasmanian Dam* case) (1983) 158 CLR 1.
- ^{viii} Emily Howie, Human Rights Law Centre, *It’s time for a Queensland Human Rights Act – Submission to the Legal Affairs and Community Safety Committee’s Human Rights Inquiry* (24 March 2016), pp. 2-3.
- ^{ix} National Children’s Commissioner, Megan Mitchell, *Children’s Rights Report 2016*, Australian Human Rights Commission (2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>; Victorian Ombudsman *Investigation into conditions at the Melbourne Youth Justice Precinct* (October 2010) <<https://www.ombudsman.vic.gov.au/getattachment/47eb3c0d-36fb-4b5b-b7fb-d584c03ca46f>>; Office of the Children’s Commissioner, Northern Territory, *Own initiative investigation report – Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre* (2015) <<http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf>>; Victorian Commissioner for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Inquiry_Report_-_The_Same_Four_Walls_L1NNtqzB.pdf>; Queensland Government, *Independent Review of Youth Detention* <<http://www.youthdetentionreview.qld.gov.au/>> accessed 28 July 2017; Royal Commission into the Protection and Detention of Children in the Northern Territory, *Interim Report* (31 March 2017) <<https://childdetentionnt.royalcommission.gov.au/about-us/Documents/RCNT-Interim-report.pdf>>.
- ^x Author unknown, ‘Queensland youth detention: Independent review ordered by Attorney-General Yvette D’Ath’, *ABC News* (19 August 2016) <<http://www.abc.net.au/news/2016-08-19/queensland-youth-detention-centres-independent-review-ordered/7767580>> and Sarah Gerathy, ‘Juvenile Justice: NSW to review youth detention centres amid detainee isolation claims’, *ABC News* (27 October 2016) <<http://www.abc.net.au/news/2016-10-27/nsw-to-review-juvenile-detention-centres/7970194>>.
- ^{xi} Australasian Juvenile Justice Administrators, *Juvenile Justice Standards* (2009) <<http://svc201.wic007wss.server-web.com/Home/AJJA%20Standards/2012%20Updated%20October%202012%20-%20AJJA%20Juvenile%20Justice%20Standards%202009%20Part%201%20and%202.pdf>>.
- ^{xii} Australasian Juvenile Justice Administrators, *Principles of Youth Justice in Australia* (2014) <http://www.dcsi.sa.gov.au/data/assets/pdf_file/0019/40186/Australasian-Juvenile-Justice-Administrators-Principles-October-2014.pdf>.
- ^{xiii} Australian Children’s Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (2016) <<http://www.childcomm.tas.gov.au/wp-content/uploads/2016/10/report-accg-human-rights-the-use-of-restraint-disciplinary-regimes-and-other-specified-practices.pdf>>.
- ^{xiv} National Children’s Commissioner, Megan Mitchell, *Children’s Rights Report 2016*, Australian Human Rights Commission (2016) <https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>, p. 94.

- ^{xv} See Office of the Inspector of Custodial Services, *Security Review Paper – Banksia Hill Directed Review* (August 2013) <[http://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/3910515a3089ddd4ad9f533748257bc000172d16/\\$file/515.pdf](http://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/3910515a3089ddd4ad9f533748257bc000172d16/$file/515.pdf)>.
- ^{xvi} Commonwealth of Australia, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2016) <<https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>>.
- ^{xvii} Australian Government, *Royal Commission into Institutional Responses to Child Sexual Abuse* <<http://childabuseroyalcommission.gov.au/>>, accessed 28 July 2017.
- ^{xviii} Victorian Commission for Children and Young People *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Inquiry_Report_-_The_Same_Four_Walls_L1NNtqzB.pdf>; pp. 24-25.
- ^{xix} Victorian Commission for Children and Young People *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Inquiry_Report_-_The_Same_Four_Walls_L1NNtqzB.pdf>.
- ^{xx} Department of Health and Human Services, *Review of youth support, youth diversion and youth justice services*, <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/projects-and-initiatives/children,-youth-and-family-services/youth-justice-review>>, accessed 28 July 2017.
- ^{xxi} Victorian Commission for Children and Young People *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017) <https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Inquiry_Report_-_The_Same_Four_Walls_L1NNtqzB.pdf>, p. 24 (footnote 8).
- ^{xxii} Parliament of Victoria, *Inquiry into Youth Justice centres in Victoria* (2016) <<http://www.parliament.vic.gov.au/lsic/inquiries/inquiry/447>>, accessed 28 July 2017.
- ^{xxiii} Queensland Government, *Independent Review of Youth Detention* <<http://www.youthdetentionreview.qld.gov.au/>> accessed 28 July 2017.
- ^{xxiv} Office of the Children’s Commissioner, Northern Territory, *Own initiative investigation report – Services provided by the Department of Correctional Services at the Don Dale Youth Detention Centre* (2015) <<http://www.childrenscommissioner.nt.gov.au/publications/Childrens%20Commissioner%20DDYDC%20-%20Report%20to%20Minister%20170915.pdf>>.
- ^{xxv} Commonwealth of Australia, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2016) <<https://childdetentionnt.royalcommission.gov.au/Pages/default.aspx>>.
- ^{xxvi} See Sarah Gerathy, ‘Juvenile Justice: NSW to review youth detention centres amid detainee isolation claims’, *ABC News* (27 October 2016) <<http://www.abc.net.au/news/2016-10-27/nsw-to-review-juvenile-detention-centres/7970194>>.
- ^{xxvii} Office of the Inspector of Custodial Services, NSW Government, *How use of force against detainees in Juvenile Justice Centres in NSW is managed* (4 November 2016) <<http://www.custodialinspector.justice.nsw.gov.au/Pages/current-inspections/how-use-force-against-detainees-juvenile-justice-centres-managed.aspx>>.
- ^{xxviii} Guardians for Children and Young People, *Go to your room! The use of seclusion in youth detention* (2016) <<http://www.gcyp.sa.gov.au/2016/04/go-to-your-room-the-use-of-seclusion-in-youth-detention/>>, accessed 28 July 2017.
- ^{xxix} Department of Corrective Services, Government of Western Australia, *Young people in the justice system: A review of the Young Offenders Act 1994* (2016), <<https://www.correctiveservices.wa.gov.au/youth-justice/young-offenders-act.aspx>>, accessed 28 July 2017.
- ^{xxx} Office of the Inspector of Custodial Services (Western Australia), *Behaviour management practices at Banksia Hill Detention Centre* (June 2017) <<http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>>.
- ^{xxxi} ‘Two women charged with historic sex offences at Airds detention centre’ *Campbelltown Macarthur Advertiser* (4 July 2017) <<http://www.macarthuradvertiser.com.au/story/4771064/two-women-charged-with-historic-sex-offences-at-airds-detention-centre/>>.

^{xxxii} See Office of the Inspector of Custodial Services (Western Australia), *Behaviour management practices at Banksia Hill Detention Centre* (June 2017) <<http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>>.

^{xxxiii} Office of the Inspector of Custodial Services (Western Australia), *Behaviour management practices at Banksia Hill Detention Centre* (June 2017) <<http://www.oics.wa.gov.au/wp-content/uploads/2017/07/Full-report.pdf>>, p. i.

^{xxxiv} National Children’s Commissioner, Megan Mitchell, *Children’s Rights Report 2016*, Australian Human Rights Commission (2016)

<https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>, p. 153.

^{xxxv} Human Rights Law Centre, *Reforming the Northern Territory’s youth justice system – Supplementary submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory* (10 July 2017).

^{xxxvi} Her Majesty’s Inspectorate of Constabulary (HMIC), *The welfare of vulnerable people in police custody*, (March 2015) <<http://www.justiceinspectrates.gov.uk/hmicfrs/wp-content/uploads/the-welfare-of-vulnerable-people-in-police-custody.pdf>>.