



Legal Affairs and Safety Committee

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**Re- Monitoring of Places of Detention (Optional Protocol to the Convention  
against Torture) Bill 2022**

11 January 2023

**About TASC National Limited**

TASC Legal and Social Justice Services is a not-for-profit organisation that serves over 4000 people per year across more than 400,000 square kilometers of Ipswich and South West Queensland. Now in our 41<sup>st</sup> year, TASC has developed from a small community legal center to a committed provider of high quality legal advice, social justice and advocacy services. TASC is one of the largest regional community legal and advocacy services in Queensland, where the community and staff work together in partnership to continue to enable justice and change lives.

We are focused on social justice and support, and advocate for our clients, who are culturally and linguistically diverse, and come from the most vulnerable and marginalized sectors of our community. They include First Nation people, refugees and those with disabilities, mental illness and financial disadvantage. We do our best to support the community we work with to promote, protect and preserve their legal and human rights.

## Human Rights

Human Rights are at the forefront of our consideration at TASC, and we are committed to upholding a standard of practice that consistently promotes and ensures them. A persons' human rights are not negated whilst they are in detention, and it is important to ensure there are regulatory bodies in place safeguarding those rights. This is particularly important in places where there are potentially higher risks of ill-treatment, and those within are unable to protect themselves, and are therefore reliant on a system that does. As noted in the Australian Human Rights report, Implementing OPCAT in Australia, regardless of whether a person is detained, be it their fault or not, their human rights must continue to be respected.<sup>1</sup>

By supporting the monitoring of these places of detention, as a nation we are not only honoring our commitment to international compliance, we are providing for safer, fairer and a more transparent system of detainment, of which all Australian's can rely. As the Australian Human Rights Commission, Ms. Lorraine Finlay, stated at the National Optional Protocol to the Convention against Torture (OPCAT) Symposium 2022, we should not be developing our National Preventive Mechanism to meet the commitment deadline with basic tick-a-box compliance. We need to develop our National Preventive Mechanism network to go beyond just complying, to "demonstrate to the world leadership and best practice".<sup>2</sup>

## Prohibition on Torture

The Optional Protocol to the Convention against Torture (OPCAT) was developed to ensure those who are deprived of their liberty are not treated in ways that are cruel, inhuman and degrading or are subjected to torture. Torture, according to relevant Australian Government reports and *The Criminal Code Act 1995* (Cth), is defined as the intentional infliction of severe pain and suffering.<sup>3</sup> Treatment inflicted that does not meet the threshold of Torture is regarded as ill-treatment, meaning; cruel, inhuman or degrading.<sup>4</sup>

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<sup>1</sup> Australian Human Rights Commission, "Implementing OPCAT in Australia" (Communications Unit, 2020).

<sup>2</sup> National OPCAT Symposium 2022, "Australian Human Right Commissioner, MS Lorraine Finlay" (Opening Address).

<sup>3</sup> Australian Government Attorney-General's Department, "Prohibition on torture and cruel, inhuman or degrading treatment" (Public Sector Guidance Sheet and The Criminal Code Act 1995 (Cth) Div 274

<sup>4</sup> Ibid.

Australia has provisions prohibiting torture and ill-treatment already in our domestic laws, in Acts such as; the *Criminal Code Act*, *Crimes Act* and *Australian Security Intelligence Organisation Act*.<sup>5</sup> These laws criminalise acts of torture, committed within Australia, and with the consent of the Commonwealth Attorney-General, outside Australia. The existing laws apply to persons in places such as prisons, police lockups, military and immigration detention centers, extending to those being taken into custody or detained for questioning.

This non-derogable prohibition on torture is an absolute right, which cannot be limited or altered, not even in a state of emergency or war. Making laws to prohibit torture and ill-treatment is a necessity that goes only partly toward meeting Australia's obligation under the Convention as signatories. The Australian Government ratified OPCAT in December 2017, creating an obligation to take all necessary legal action under International Human Rights, to promote and uphold the Articles of the Convention.<sup>6</sup> Specifically Article 2, which provides that the signatory states "shall cooperate in the implementation of the present Protocol".<sup>7</sup> The Human Rights Commission report, outlines the activities required to implement OPCAT in Australia and notes that Queensland is one of the last states to implement obligatory protections.<sup>8</sup>

### **National Preventive Mechanism**

Article 3 provides that each state shall set up a domestic "National Preventive Mechanism" (NPM) to empower committee members with abilities to view places and visit with, persons in detention. This is to assist in ensuring an ongoing prevention, of torture or other cruel, inhuman or degrading treatment or punishment.<sup>9</sup> The creation of a domestic NPM is vital to accepting the Protocol, which will enable the Subcommittee on Prevention of Torture (SPT) to periodically visit places of detention.<sup>10</sup>

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<sup>5</sup> *The Criminal Code Act 1995* (Cth) Div 274, *Crimes Act 1914* (Cth) s23Q, *Australian Security Intelligence Organisation Act 1979* (Cth) s34T.

<sup>6</sup> *Ibid* 3.

<sup>7</sup> United Nations, "Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" (Human Rights Office of the High Commissioner, 18 December 2002) Article 2.

<sup>8</sup> Australian Human Rights Commission, "Implementing OPCAT in Australia" (Communications Unit, 2020).

<sup>9</sup> *Ibid* Article 3.

<sup>10</sup> Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022; explanatory notes.

The Subcommittee is a preventative mandate under Article 2 of the OPCAT making visits have a proactive approach to preventing torture and ill-treatment, through reporting back, and making recommendations to the State for improvements. The Protocol provides for signatory states to ensure an independent national preventive mechanism is introduced, with guaranteed autonomy, and necessary support to “discharge their prevention mandate”.<sup>11</sup> One of the basic principles from the Guidelines on National Preventive Mechanisms is that it should “complement rather than replace existing systems of oversight” and that the existence of an NPM should not prevent other protective complimentary systems.<sup>12</sup> Additionally and importantly, basic principle number 7 states: “The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text”.

### **Postponement**

Immediately on ratifying OPCAT the Australian Government took a three year option to postpone the implementation of NPM. Following that, an additional Covid-19 Pandemic driven formal request was made, from December 2021, for an additional one year postponement, to ensure necessary time to adequately meet our obligations. The current deadline of January 2023 is approaching and the introduction of the Bill for Monitoring Places of Detention (Optional Protocol to the Convention against Torture) supports the changes required to comply with Australia’s commitment.

Legally facilitating unrestricted access to physical visits, and enabling the passage of information pertaining to all places of detention by the Subcommittee, will allow for the mandate to be fulfilled. Providing a framework that gives access to persons detained, and preserving privacy and security, are demonstrative of Queensland’s commitment and support for the OPCAT principles.<sup>13</sup>

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<sup>11</sup>Australian Human Rights Commission, “Road Map to QOPCAT Compliance” (17 October, 2022)4.

<sup>12</sup> United Nations, “Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Guidelines on National Preventive Mechanisms, 9 December 2010) Basic Principle 5.

<sup>13</sup> Monitoring Of Places of Detention (Optional Protocol to the Convention Against Torture)Bill 2022; explanatory notes

## Our Clients

TASC supports, advises and advocates for persons who are detained every day, and has relationships with external stakeholders identified as places of detention under the Bill. Our team members enter these places regularly, and witness firsthand their surroundings, physical and emotional treatment, and the confronting nature of the detention centers and sometimes the detainees themselves, it is easy to forget how important human rights are. However, it is in this environment that consideration of human rights are even more important. Frequently, we find those detained have faced lifelong struggles with addiction or mental illness, have been affected by trauma, or perhaps identify with physical or cognitive disabilities. Being disadvantaged increases their need, and at the same time reduces their ability to adequately identify or rectify them.

Whilst working and visiting places of detention we are attuned to observing and reporting ill-treatment and welcome any mechanism that reinforces protections for our clients. We acknowledge and agree with Dr. Alice Edwards, who states, “The capacity to make an unannounced visit, with full access to all spots in a detention facility, at any time, and to speak to any detainee, is powerful deterrent to abuse”.<sup>14</sup>

**TASC supports the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022.**

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<sup>14</sup> National OPCAT Symposium 2022, Dr. Alice Edwards, UN Special Rapporteur on Torture, Speaker number 2.

