

Protecting human rights in detention: Does anybody care?

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Abstract

A vital protection against abuses in detention is regular independent monitoring. But in Australia we have seen international detention monitoring bodies prevented from visiting detention facilities, and we have seen the refusal in some jurisdictions to fully implement a United Nations treaty ratified by Australia aimed at ensuring we have a comprehensive network of detention monitoring bodies. What is happening to our engagement with human rights at the international level?

Keywords

Criminal justice, federalism, human rights, incarceration, Indigenous legal issues, United Nations, OPCAT

Abuse is always a risk in places of detention – in prisons, in police cells, in immigration detention, or in locked disability or aged care or other facilities. When the State locks people up, it also takes on responsibility for their care. A vital protection against abuses in detention is regular independent monitoring.

However, in Australia we have seen international detention monitoring bodies prevented from visiting detention facilities, and we have seen the refusal in some jurisdictions to fully implement a United Nations (UN) treaty ratified by Australia aimed at ensuring we have a comprehensive network of detention monitoring bodies.

What is happening to our engagement with human rights at the international level?

Preventing visits by international human rights agencies

In December 2025, the UN Working Group on Arbitrary Detention (UN WG), a UN body visiting Australia at the invitation of the Australian government, was refused admission to detention facilities in the Northern Territory (NT), as well as to a facility in Western Australia (WA). Earlier, in 2022, another UN body, the Subcommittee on the Prevention of Torture (SPT), visiting Australia as part of Australia's adoption of a UN Treaty against torture in detention – the Optional

Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) – was denied access to all detention facilities in New South Wales (NSW) and to specific mental health facilities in Queensland, leading the SPT to suspend and ultimately terminate its visit.

This is a problem because both visits were elements of Australia's international human rights commitments. The refusal of entry is hugely embarrassing for Australia, and has tarnished its reputation. It suggests governments have things to hide.

It is also a problem because there is ample evidence that detention is not being managed well in many parts of Australia. We cannot afford to close off our detention facilities to independent external oversight.

We have recent examples in, for instance, the NT, Queensland and WA. In November 2025, the NT Ombudsman found 'unreasonable and oppressive' conditions in overcrowded NT police watchhouses.¹ NT prisons continue to be massively overcrowded following the 'tough on crime' policies of the Country Liberal Party government elected in August 2024.

In 2024, the Queensland government notoriously overrode its own *Human Rights Act* to allow children to be charged with adult offences, and to legalise holding children in police watchhouses and prisons for extended periods.²

And in WA, the Office of the Inspector of Custodial Services has regularly criticised the inhumane conditions in

¹Ombudsman NT, *Watch House Investigation Report* (November 2025) 6 https://ombudsman.nt.gov.au/news-and-publications/_2025/watch-house-investigation-report.

²*Making Queensland Safer Act 2024* (Qld).

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WA prisons, particularly the youth detention centres at Banksia Hill and Hakea Prison. Most recently, on 28 November 2025, the WA Coroner called for the urgent closure of Casuarina Prison's notorious Unit 18 following the death in custody in that unit of young Indigenous man, Cleveland Dodd – a recommendation which was immediately rejected by the WA government.³

In other confronting news, in the same week that the UN WG was making its visit, the Australian Institute of Criminology (AIC) reported increased numbers of deaths in prison and police custody across Australia. There were more deaths in prison custody in 2024–25 than in any year since 1979–80 (when the AIC began collecting the data), and the highest number of Indigenous deaths in prison custody for the same period.⁴

What happened when the UN oversight agencies came to visit?

In 2022, when NSW refused the UN SPT entry to any NSW place of detention, the Premier asserted that the NSW prison system was 'the strongest in the country' and already had adequate oversight systems.⁵ The NSW Corrections Minister reportedly dismissed the proposal to allow the SPT to visit prisons saying

The whole role of our jail system is to keep people safe, [...] It's not to allow people just to wander through at their leisure. They should be off to Iran looking for human rights violations there.⁶

Then NSW Labor Opposition leader Chris Minns was concerned that this decision gave a poor impression of Australia's prisons; that 'people will believe that our prisons are as bad as Rwanda or Azerbaijan when we know that they're not'.⁷

As context, it may be noted that the recent AIC report on deaths in custody shows NSW as having the largest number of such deaths of all Australian jurisdictions in 2024–25. That state also recorded the highest number of

Indigenous deaths in prison custody of any jurisdiction; these figures were also the highest number in NSW since 1979–80.⁸ And in December 2025, the NSW Inspector of Custodial Services called for permanent closure of part of Sydney's Long Bay Correctional Complex, saying it was 'incapable of providing safe and humane conditions'.⁹

The SPT terminated its 2022 visit to Australia when it was refused entry to these facilities. In a scathing report on its Australian visit, the SPT said it had

observed a fundamental lack of understanding, among both federal and state authorities, of the Optional Protocol, ... [and] experienced a discourteous, and in some cases hostile, reception from a number of government authorities and officials in places of deprivation of liberty, not in keeping with the collaborative and assistance-based nature of its visit.¹⁰

The SPT was also highly critical of Australia's failure to fully implement OPCAT: that 'almost five years after ratification of the Optional Protocol, the national preventive mechanism has not been designated'.

Most recently the UN WG was invited by the Commonwealth government to carry out a visit under its mandate, to be conducted in December 2025. The NT government refused the UN WG entry to its correctional facilities, claiming 'staff safety and operational capacity concerns'.¹¹ The NT Corrections Minister reportedly said:

There's already a number of oversights and independent bodies who inspect the prisons and prisoners can make complaints. This is about keeping the staff safe, and I have got full confidence in the staff of corrections officers to do their job.¹²

Given the concerns already raised by domestic NT oversight bodies and others,¹³ and the reference to 'keeping the staff safe', one might wonder whether there are further issues being protected from disclosure.

As an aside, it was reported that around the time of the UN WG visit, officials from the United Arab Emirates were

³Inquest into the Death of Cleveland Keith Dodd (CORC 3139 of 2023) [2025] WACOR 49 Coroner Urquhart (28 November 2025) https://www.coronerscourt.wa.gov.au/_files/inquest_2025/DODD_Cleveland_Keith.pdf. See also Christopher Tan, 'WA Coroner blames Department of Justice failures for Indigenous teenager's death in custody', SBS News (online, 8 December 2025) <https://www.sbs.com.au/news/video/wa-coroner-blames-department-of-justice-failures-for-indigenous-teenagers-death-in-custody/jvxo9vqoy>.

⁴Merran McAlister, Hannah Miles and Samantha Bricknell, 'Deaths in Custody in Australia 2024–25: Statistical Report 57', Australian Institute of Criminology (2025) <https://www.aic.gov.au/publications/sr/sr57>.

⁵NSW reversed decision to allow UN inspection of prisons at last minute, committee told', *The Guardian* (online, 7 November 2022) <https://www.theguardian.com/australia-news/2022/nov/07/nsw-reversed-decision-to-allow-un-inspection-of-prisons-at-last-minute-committee-told>.

⁶NSW Corrections Minister quoted in Tamsin Rose and Eden Gillespie, 'NSW using prisoners as political pawns, critics say, after state refuses to let UN inspectors into detention facility', *The Guardian* (online, 20 October 2022) <https://www.theguardian.com/australia-news/2022/oct/20/nsw-turns-visiting-un-inspectors-away-from-queanbeyan-detention-facility>.

⁷Quoted in Rose and Gillespie (n 6).

⁸McAlister, Miles and Bricknell (n 4).

⁹NSW Inspector of Custodial Services, 'Inspection of the Long Bay Correctional Complex 2023–24' (Report, December 2025) 8 https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/Inspection_of_the_Long_Bay_Correctional_Complex_2023-24.pdf.

¹⁰Subcommittee on Prevention of Torture (SPT), *Visit to Australia undertaken from 16 to 23 October 2022: Recommendations and observations addressed to the State party*, UN Doc CAT/OP/AUS/ROSP/1 (20 December 2023) paras 14 and 15 <https://docs.un.org/en/cat/op/aus/rosp/1>.

¹¹Lillian Rangiah, 'UN Working Group on Arbitrary Detention denied visits to NT prisons, meetings with government', ABC News (online, 10 December 2025) <https://www.abc.net.au/news/2025-12-10/nt-un-denied-visit-to-prisons-clp-finocchiario-government-jails/106121438>.

¹²Ibid.

¹³Ombudsman NT, *Report* (n 1). See also, eg, Amnesty International, 'Overcrowded prisons and trampled children's rights: One year of the CLP in the Northern Territory' (28 August 2025) <https://www.amnesty.org.au/one-year-of-the-clp-in-the-northern-territory/>; Joseph Hathaway-Wilson, 'Masses of NT prison rehabilitation sessions cancelled as prisoner numbers surge', ABC News (online, 23 October 2025) <https://www.abc.net.au/news/2025-10-23/majority-of-nt-prison-rehab-programs-cancelled-overcrowding/105916564>.

allowed to visit corrections facilities,¹⁴ presumably without causing disruption or creating safety issues.

The UN WG was able to visit Commonwealth facilities as well as some or all in NSW, the Australian Capital Territory (ACT) and WA. It reported constructive meetings in most places, but castigated the NT government for its 'complete lack of cooperation' which 'undermines the Working Group's ability to implement its mandate and deprives detainees of access to independent international protection.'¹⁵

In some exasperation, the chair of the UN WG, Dr Ganna Yudkivska, was quoted observing that:

[i]n over 30 years of UN detention monitoring worldwide this is the first time an entire region of the country had completely refused co-operation with our working group.¹⁶

It also deplored the refusal of entry to WA's controversial Unit 18, when the WA Coroner was calling for its immediate closure following the death of Cleveland Dodd.

Failure to fully implement the OPCAT

Regular independent domestic monitoring is a critical element of preventing abuses in places of detention. There are existing monitoring bodies across Australian jurisdictions, such as Ombudsman offices, prisons inspectorates and Children's Commissioners, but jurisdictions vary, and most such bodies have limited powers, limited budgets, and limited scope.

A new approach to human rights monitoring was promised when Australia ratified the UN treaty OPCAT in 2017. Ratification in this case was a promise by Australia to set up a comprehensive network of domestic bodies, National Preventive Mechanisms (NPMs), to visit and report publicly on all places of detention in Australia, with the aim of protecting the human rights of all people held there.

This places an obligation on the Commonwealth, and all states and territories, to establish and resource such bodies for all the places of detention under their control. At the Commonwealth level, these include immigration detention facilities; states and territories have responsibility primarily for the range of correctional places of detention.

OPCAT ratification also means agreeing that the UN SPT can visit places of detention, meet detaining authorities, governments and others, and provide advice to relevant

governments. The disappointing approach to its first visit by some jurisdictions has already been noted.

Domestic implementation is also incomplete, and has now largely stalled – with several jurisdictions refusing to engage with their obligations.

So how did we get here? Even given the political sensitivities about prisons and other forms of detention, why is there such blatant resistance to international human rights monitoring processes?

Australia was a proud leader in the establishment of the UN in 1945, after the Second World War, and is a signatory to most treaties, but in the latter stages of the 20th century, federal governments were increasingly dismissive of the decisions of UN tribunals and reports of UN committees.¹⁷ They rejected various findings by the UN Human Rights Committee of unlawful immigration detention,¹⁸ and the Howard government lobbied against the UN Declaration on the Rights of Indigenous Peoples, being in a small opposing minority when it was adopted by the UN General Assembly in 2007.¹⁹ In 2015, then Prime Minister (PM) Tony Abbott famously objected that 'Australians are sick of being lectured to by the United Nations', faced with a critical UN report on Australia's asylum seeker detention.²⁰

We need to go back a step to Australia's ratification – along with most other countries – of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987). The Optional Protocol to the CAT (OPCAT) was then developed to give practical force to the CAT by requiring the establishment of NPMs for all places of detention. In 2009, the Australian Labor government under PM Kevin Rudd signed up to OPCAT but it was then another eight years until, in 2017, Liberal Attorney-General George Brandis and Foreign Minister Julie Bishop announced that Australia would ratify OPCAT in that year, aiming to demonstrate Australia's international credentials while seeking a seat on the UN Human Rights Council.²¹

What has happened under OPCAT so far?

Australia was given four years to implement OPCAT, extended to January 2023, but going into 2026 we still see patchy implementation. It cannot be seen as complete while there are jurisdictions that have not nominated an NPM – 17 years since the treaty was signed, and nine years since ratification.²²

¹⁴Lillian Rangiah, 'United Nations delegation warns of Australia's treatment of prisoners, detainees and breach in human rights', ABC News (online, 13 December 2025) <https://www.abc.net.au/news/2025-12-13/united-nations-warn-australia-prison-detention-human-rights/106136950>.

¹⁵UN WG, *Working Group on Arbitrary Detention: Preliminary Findings from its Visit to Australia* (1 to 12 December 2025) | <https://www.ohchr.org/sites/default/files/statements/20251212-eom-stm-australia-wg-arbitrary-detention-en.pdf>.

¹⁶Rangiah, 13 December 2025 (n 14).

¹⁷Kate Eastman, 'Australia's Engagement with the United Nations' in Paula Gerber and Melissa Castan (eds), *Critical Perspectives on Human Rights Law in Australia: Vol 1* (Lawbook, 2021).

¹⁸Eastman, *ibid*; Devika Hovell, 'The Sovereignty Stratagem: Australia's response to UN human rights treaty bodies' (2003) 28(6) *Alternative Law Journal* 297–301.

¹⁹Daniel Hurst, 'Howard government worked with Canada to oppose UN declaration on Indigenous rights', *The Guardian* (online, 1 January 2024) <https://www.theguardian.com/australia-news/2024/jan/01/howard-government-canada-un-declaration-indigenous-rights>.

²⁰Danuta Kozaki, 'Abbott says Australians "sick of being lectured to by UN" after scathing report on asylum policies', ABC News (online, 9 March 2015) <https://www.abc.net.au/news/2015-03-09/tony-abbott-hits-out-united-nations-asylum-report/6289892>.

²¹Minister for Foreign Affairs, 'Improving oversight and conditions in detention' (Media Release, 9 February 2017) <https://www.foreignminister.gov.au/minister/julie-bishop/media-release/improving-oversight-and-conditions-detention>.

²²See Australian National Preventive Mechanism, *Submission to the Working Group on Arbitrary Detention December 2025 visit to Australia* (6 August 2025) 3 https://www.ombudsman.gov.au/__data/assets/pdf_file/0016/323314/Australian-NPM-submission-to-the-WGAD-December-2025-visit.pdf.

In 2018, the Australian government nominated the Commonwealth Ombudsman as its NPM, and also as the national Coordinating NPM. The Commonwealth NPM has actively conducted visits, and presented and publicised reports. It has also repeatedly called for recalcitrant jurisdictions to nominate their NPMs.²³

The ACT and Tasmania have made the necessary appointments, as has WA, at least in part. The NT and South Australia have made initial appointments but do not have anything approaching the comprehensive oversight required. All have commenced some forms of OPCAT-based monitoring.

However, the most populous states, NSW, Victoria and Queensland, have been intransigent. Despite numerous reports and reviews, they have stated that they will not comply unless the Commonwealth funds these agencies. And the Commonwealth has – with some minor exceptions – required the states and territories to nominate and resource NPMs themselves.

Where NPMs have been nominated, they have been able to work over the past three years in collaboration with the Commonwealth NPM, but needless to say neither Victoria, NSW nor Queensland have a seat at these discussions.

‘You’re not the boss of me’

Obstructive state responses, along with the responses of NSW to the SPT visit, and of the NT to the visit of the UN WG, look like the ‘sovereignty strategy’ that Professor Hovell labelled, back in 2003, ‘you’re not the boss of me’.²⁴ Tony Abbott’s complaints linger on.

The limited implementation of OPCAT also highlights ongoing challenges of federalism. Australia is the State Party to international agreements where – as particularly salient in the case of OPCAT – much of the implementation falls to the states and territories.²⁵ Federalism also sees inevitable tensions where responsibilities overlap. While OPCAT implementation has been nominally on the agenda of various Councils of Attorneys-General,²⁶ the Commonwealth government has generally resisted calls for financial assistance to establish NPMs. A hands-off approach was also demonstrated when the Commonwealth Attorney-General faced calls for federal intervention following the NT’s exclusion of the UN WG, with a spokesperson reportedly seeking to ‘distance the Commonwealth’ and quoted simply as saying, ‘[t]he decision of the Northern Territory to not participate in the visit is a matter for their government’.²⁷

The UN WG, however, warned Australia that it could not rely on states and territories having responsibility for

criminal justice systems ‘as an excuse to avoid accountability to its international human rights obligations.’²⁸

What will produce meaningful action?

The heads of corrective services agencies in all Australian jurisdictions recently published updated *Guiding Principles for Corrections in Australia* (October 2025), a ‘statement of national intent, around which each Australian state and territory will develop its practices, policies, and performance standards’. These are, admittedly, unenforceable and aspirational, but they cite the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) and refer to ‘existing or future National Preventive Mechanisms set up in line with Australia’s ratification of the [OPCAT]’.²⁹

But there is no common willingness to adopt and implement these international principles about the protective monitoring of people held in detention, and we see individual jurisdictions brazenly dismissing the authority of international monitoring agencies. Contempt towards international human rights processes and mores seems to have become politically acceptable.

Ultimately, places of detention that ensure human rights are protected not only demonstrate compliance with international legal and political obligations, but are safer and more effective institutions that lead to safer communities.

We need a strong federal government that leads on fundamental human rights principles and values its standing in the international community, and we need states and territories that recognise and embrace their role in implementing human rights. Australians deserve better of their governments.

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²³For example, Australian National Preventive Mechanism, *Monitoring places of detention under the Optional Protocol to the Convention against Torture: Annual Report of the Australian National Preventive Mechanism – 1 July 2023 to 30 June 2024* (Report) 6–8 https://www.ombudsman.gov.au/__data/assets/pdf_file/0018/317160/Australian-NPM-Annual-Report-2023-24.pdf.

²⁴See Hovell (n 18).

²⁵See Ben Buckland and Audrey Olivier-Muralt, ‘OPCAT in federal states: Towards a better understanding of NPM models and challenges’ (2019) 25(1) *Australian Journal of Human Rights* 23–43.

²⁶See, eg. Standing Council of Attorneys-General, *Communiqué* (28 April 2023): ‘Participants committed to continue to work together towards full implementation of OPCAT obligations.’ <https://www.ag.gov.au/about-us/publications/standing-council-attorneys-general-communications>.

²⁷Rangiah, 10 December 2025 (n 11).

²⁸Rangiah, 13 December 2025 (n 14).

²⁹Government of Australia through the Corrective Services Administrators’ Council, *Guiding Principles for Corrections in Australia* (Rev ed, 2025) 4 <https://www.corrections.vic.gov.au/about-the-corrections-system/frameworks-policies-and-standards/guiding-principles-for-corrections>.