

Tasmanian national preventive mechanism Implementation project

Civil society organisation
engagement expression
of interest

December 2022

About: This document provides information about the expression of interest process relating to the creation of the Tasmanian national preventive mechanism. It is intended for civil society organisations interested in participating in consultations.

The creation of the Tasmanian national preventive mechanism forms part of Australia's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

OPCAT is an international human rights agreement that complements and enhances compliance with the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). Australia ratified the CAT in 1989, and OPCAT in 2017.

OPCAT provides a framework aimed at strengthening the protection of people deprived of their liberty in places of detention through preventive engagement. It does this by establishing a system of regular visits to places of detention under the jurisdiction and control of a State Party. The visiting bodies also provide related policy feedback, observations and recommendations to government; and deliver education programmes.

The body that exercises this mandate at the domestic level is known as the 'national preventive mechanism' (NPM). At the international level, a United Nations body named the 'Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' has also been established, which will visit Australia periodically.

Under Australia's OPCAT ratification model, each state, territory, and the Commonwealth government will create its own NPM framework. To give effect to Tasmania's responsibilities, in 2021 the Tasmanian Government passed the *OPCAT Implementation Act 2021* (Tas). In February 2022, the Governor of Tasmania, the Honourable Barbara Baker AC, appointed Mr Richard Connock as Tasmanian NPM.

Civil society is an essential actor in the prevention of torture and other forms cruel, inhuman or degrading treatment or punishment. It will play a key role in the implementation and ongoing activities of the Tasmanian NPM.

Through this expression of interest, Mr Connock warmly invites civil society organisations to have a say on what is important for priority communities. The consultation process will enable the Mr Connock to develop best practice insights, informing key decisions on how the Tasmanian NPM office will operate.

Enquiries related to this expression of interest may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

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Acronyms and key words

Civil society	This includes a wide range of organisations, including non-governmental organisations and associations, professional associations, trade unions, academia, and faith-based groups.
CAT	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</i>
OPCAT	<i>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</i>
NPM	National preventive mechanism.
SPT	Subcommittee on Prevention of Torture.
'the Act'	<i>OPCAT Implementation Act 2021 (Tas).</i>
Ill-treatment	All forms of cruel, inhuman or degrading treatment or punishment.
Place of detention	Any place under [a State Party's] jurisdiction and control where persons are or may be 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. (OPCAT, Article 4(1))
Deprivation of liberty	Any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. (OPCAT, Article 4(2))

Introduction: what is the purpose of this expression of interest?

This expression of interest process is intended to provide civil society organisations with an opportunity to register their interest in participating in consultations on the development of the Tasmanian NPM.

Tasmania is embarking on the next stage of its journey to implement OPCAT, which will see the Tasmanian NPM become operational in 2023. This follows from the Tasmanian Government passing the *OPCAT Implementation Act 2021* (Tas) (the Act), creating a legal framework establishing the Tasmanian NPM as a new specialist institution; and in February 2022, the appointment of Mr Richard Connock as inaugural Tasmanian NPM.

To fulfil the functions of the Tasmanian NPM, as set out in the Act and provided under OPCAT, Mr Connock is now scoping how this new institution should be designed, and how it will operate. Stakeholder collaboration is sought to provide insights and inform key decisions made throughout this scoping process.

It is widely acknowledged that civil society played a leading role in advocating for Australia's ratification of OPCAT. It has a crucial role to play in strengthening the development and ongoing operations of Australia's network of NPMs. Indeed, in Tasmania, civil society has already played an important role, contributing valuable feedback on development of the Act.

Civil society possesses a deep substantive and applied understanding of the day to day matters to be considered by the Tasmanian NPM in the discharge of its functions. In particular, civil society organisations hold longstanding knowledge and experience working in closed places, places of restriction and other places where people are or may be deprived of their liberty or held against their will; and in assisting people who are victims of torture and other forms cruel, inhuman or degrading treatment or punishment ('ill-treatment'). For vulnerable communities, civil society organisations play a crucial role providing support services, advocating for policy reform and on behalf of individuals, and in illuminating their experiences and stories to the public.

Civil society engagement with the NPM is a key recommendation of the United Nations Subcommittee on Prevention of Torture (SPT). Recognising that this approach is best practice, NPMs around the world have adopted various models to ensure civil society actively participates in their activities. The Tasmanian NPM intends to follow this approach.

Developing an NPM operating model that includes ongoing engagement and collaboration with civil society can strengthen each-other's ability to generate preventive change, and reduce the risk of torture and ill-treatment occurring. Participating in this consultation provides a valuable opportunity to have a say on what is important for priority communities, and to learn more about how the Tasmanian NPM will operate.

To operationalise the office of the Tasmanian NPM, this stage of implementation process will seek to address important applied matters that have yet to be fully explored in the Australian context. This includes, for instance, understanding the places that the Tasmanian NPM will visit, identifying key visit themes, and developing standards and guidelines to

prevent torture and ill-treatment. Feedback provided through this consultation process will directly shape development of the Tasmanian NPM's operating model, the identification of budget requirements, and any related stakeholder or community needs.

The Tasmanian NPM, Mr Richard Connock, wants to hear from anyone interested in the work of the NPM, particularly organisations who work in places of detention and/or represent people deprived of their liberty, as well as individuals with relevant lived experience. This includes in particular civil society organisations representing the following populations:

- People in places of detention
- People who have been released from places of detention
- Victims, detained as (alleged) perpetrators
- Aboriginal and Torres Strait Islander people
- Children and young people
- Women
- Pregnant people
- People with children
- Older people
- People who are gay, lesbian, bisexual, transgender, intersex and queer
- People with disability and impairment
- People with mental illness
- People from culturally and linguistically diverse backgrounds
- Refugees and people seeking asylum
- People living in regional, rural and remote communities
- People affected by substance misuse
- People with poor literacy skills
- People experiencing or at risk of homelessness

To assist in evaluating whether this process is relevant to an organisation's activities, this document provides below a general overview of OPCAT and the NPM framework.

Instructions on how to respond to this expression of interest process are provided below.

How to respond to this expression of interest

Civil society organisations and individuals are invited to respond to this expression of interest by registering to participate via email as follows:

Address: enquiries@npm.tas.gov.au

Subject: 'EOI – Tasmanian NPM implementation'

Body: Name of your organisation and contact details to receive correspondence (contact name, email address, and phone number).

Please include a brief (1 – 2 page) background of your organisation's mission and activities, which includes:

- (1) How your mission relates to the work of OPCAT
- (2) What populations you represent
- (3) What places of detention/places where people may be deprived of their liberty you have expertise in (if any).

A summary of each consultation round will be included in the Tasmanian NPM's implementation report. Individual consultation responses will not be published. Please indicate in your expression of interest if you would prefer that your participation in this consultation process be treated as confidential. Civil society organisations are welcome to publish their submissions to this consultation process on their respective websites.

Parties are encouraged to respond to this expression by **9 January 2022**.

Late registrations to this expression of interest will not be excluded, but may not receive an extension of time to provide a submission under any active round of consultations.

Enquiries related to this expression of interest may be made to Mark Huber, Project Manager, OPCAT Implementation Project, at enquiries@npm.tas.gov.au.

What will the consultation process look like?

Collaboration under this stakeholder engagement process is expected to occur through several rounds of consultation, commencing in early January 2023.

The anticipated progression of consultations is as follows:

1. Developing a shared understanding of the places that the Tasmanian NPM will be expected to visit, as required by OPCAT.

This will be an opportunity for civil society organisations to understand the scope of the Tasmanian NPM's visiting mandate, and provide feedback on how it could apply to their community.

2. Identification of applicable human rights obligations, norms, law, and best practice.

This will be an opportunity for civil society organisations to understand and contribute feedback on national and international obligations applicable to their community, and best practice to prevent torture and ill treatment. Insights provided will assist the Tasmanian NPM to develop appropriate visit methodologies, including themes for visits to places of detention, and appropriate visit standards and guidelines.

Due to the high number of anticipated participants, each consultation round will consist of the distribution of a background information document, which stakeholders may provide feedback on, accompanied by a request for responses to a series of key questions, and any additional information considered relevant.

Stakeholder feedback may be followed up with individual or group discussions. Stakeholders are not required to participate in each consultation round.

The first round of consultations is anticipated to commence in mid-January 2023, with feedback due by late-February 2023. Further information will be provided in the consultation paper.

Background

I. What is OPCAT?

OPCAT is a new type of international human rights agreement aimed at strengthening the protection of persons in places of detention. It is open to be joined by any State that has signed the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the CAT).

International law provides that torture is a crime in all circumstances; it is never allowed nor justifiable. It is what is known as an absolute and non-derogable prohibition, and a *jus cogen*, meaning it is binding on all States.

Australia ratified the CAT in 1989, and OPCAT in 2017.

Article 2 of the CAT imposes a positive obligation on a State Party to adopt effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Article 16 of the CAT extends this obligation to the prevention of ill-treatment.

Despite these obligations, torture and ill-treatment continues to occur in many locations globally.

To improve a Member State's compliance with the CAT, OPCAT provides a complementary framework developed to strengthen the protection of people deprived of their liberty in places of detention through preventive monitoring, providing advice and recommendations, cooperating with authorities, and education. Recognising that torture and ill-treatment is more likely to occur in places not subject to external scrutiny, OPCAT establishes a system whereby regular visits are made to places of detention by independent, external person(s).

OPCAT is a unique international agreement, requiring that its functions be carried out by both international and national independent monitoring bodies.

At the international level, OPCAT has established a new, standing subcommittee to the CAT, called the 'Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' (the SPT). OPCAT provides that the SPT may visit any place of detention under the jurisdiction of a State Party (to OPCAT). Following a visit, the SPT recommends action to be taken to improve the treatment of detainees or persons being held against their will, including conditions of detention. States party to OPCAT are obligated to receive the SPT and grant it unfettered access to places of detention, certain information, and agree to engage cooperatively with the SPT during its visits. The SPT will visit Australia periodically.

At the national level, upon ratifying OPCAT, the State Party is required to establish a new NPM framework. OPCAT is the first international agreement that includes as a mandatory component the creation of a national body to play a key role in its implementation. Similar

to the SPT, NPMs are independent visiting bodies, established at domestic level. Because SPT visits may be multiple years apart and short in duration, the NPM plays a critical role in effectively preventing torture and ill-treatment by being a permanent, regular presence that is able to engage actively with State authorities, stakeholders and civil society.

Australia's SPT obligations commenced upon ratifying OPCAT in 2017, while it is required to be NPM compliant by January 2023.

2. What is a national preventive mechanism?

The NPM is a visiting body established for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment. It is required to be independent in the exercise of its mandate, operations, and finances. The NPM mandate consists of four functions: visiting, advisory, educational, and cooperation. OPCAT does not create any new substantive human rights obligations.

The NPM's primary function is undertaking preventive monitoring of places of detention. Under this function, the NPM is required to regularly examine the treatment of the persons deprived of their liberty, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

Article 4 of OPCAT defines places of detention and deprivation of liberty in broad terms. This recognises that torture and ill-treatment can occur in a wide range of settings. The places visited by the SPT and by NPMs goes beyond prisons and youth justice facilities. In other States, NPMs visit places such as police stations, military detention, detention centres (including pre-trial detention centres and immigration detention centres, and transport vehicles to and from those facilities), mental health facilities, and social care facilities (such as hospitals, aged care, and educational facilities).

During these visits, places of detention are evaluated for compliance with the State's international human rights obligations, other relevant United Nations norms, applicable domestic laws, and relevant best practice. To effectively exercise their mandate, NPMs are required to have unfettered access to places of detention, private access to persons held in those places, access to related things and information, and contact with authorities. Consistent with their preventive focus, NPMs do not investigate complaints.

Following a visit, NPMs exercise their advisory function by making recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and ill-treatment. The relevant authorities are required by OPCAT to enter into dialogue with the NPM to discuss possible measures to implement its recommendations. The NPM does not have the power to enforce implementation, although it may emphasise observed failures in follow-up reporting.

Alongside these recommendations, NPMs also submit feedback on draft legislation and proposed policy; review rules, methods and practices; deliver education programmes to relevant authorities, stakeholders and the wider public; and cooperate with government and

non-government entities to share experiences and improve their effectiveness. The NPM issues an annual report on its activities, and may publish other reports or information relevant to its functions.

NPMs are required to uphold the principle of confidentiality. This means that a person's personal information obtained by the NPM in the exercise of its functions cannot be published without that person's consent.

Reprisal against a person for providing information to an NPM or the SPT (or because they may provide information in the future) is prohibited. With respect to the Tasmanian NPM, protection from reprisal has been made a specific offence under Tasmanian law.¹

3. What is preventive monitoring?

Under OPCAT, the NPM exercises its functions through a preventive lens. Article 19 of OPCAT outlines the objective of visits as being to strengthen, if necessary, the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment, and with the aim of improving the treatment and the conditions of the persons deprived of their liberty. In other words, visits are aimed at preventing future occurrences of torture and ill-treatment.

The Association for the Prevention of Torture notes that this process “can be understood as any visit to a place of deprivation of liberty, with the objective of identifying root causes of ill-treatment and other human rights problems, understanding systemic issues and finding ways to address them.”²

This means that the NPM's aim is not to respond to specific events, allegations or complaints. Instead their approach is proactive; aiming to ensure that circumstances in which such events, allegations or complaints may occur are less likely to arise. In Tasmania, such complaints or allegations would be made to the Ombudsman, or Tasmania Police. Visits to places of detention are regular, focusing on systemic improvement rather than on any particular individual, and involve ongoing dialogue with relevant authorities.

The prevalence of torture and ill-treatment can be influenced by many factors. Addressing all factors on each visit can be difficult to achieve, and resource intensive. Preventive visits accordingly can take a number of forms, and can be announced or unannounced. Follow-up visits often occur.

To ensure that visits are appropriately thorough, a common approach is for visits to a place to be broken down into ‘themes’, although this may vary on a case-by-case basis. A visit

¹ OPCAT Implementation Act 2021 (Tas), section 36.

² Association for the Prevention of Torture, *Knowledge Hub – NPM Toolkit – Activities – Preventive Visits* <https://www.apr.ch/en/knowledge-hub/npm-toolkit/activities/preventive-visits> [Accessed 30 November 2022].

may be comprehensive, in the sense that it will aim to address many or all themes in-depth, on a single occasion. These visits typically take several days. Or a visit may focus on one particular theme only, which may take less than a day. Under each theme, the NPM will typically have regard to relevant standards and guidelines, and may include the involvement external experts (e.g. specialist medical practitioners).

The choice of visit type (e.g. comprehensive, specific theme, ad hoc, or follow-up) and prioritisation of regularity of visits to certain places, and relevant themes, is determined following the principle of proportionality. This principle takes into consideration factors such as strategy, available resources, and analysis of a situation, which can include the identified risk of likelihood of torture and ill-treatment occurring. NPMs are expected to develop an internal program to ensure that it deploys its resources as effectively as possible.

4. What does Australia's NPM model look like?

OPCAT does not specify a particular NPM organisational model, enabling a State Party to set up, designate or maintain one or several NPMs. Around the world, States that have established NPMs have generally done so differently. In a similar way, Australia's approach to NPM implementation will also be unique.

The 'Australian NPM' collectively consists of a network of NPMs set up by each state and territory government, and the Commonwealth government.

This multi-NPM approach was selected by Australian governments due to jurisdictional complexities arising from Australia's federated system of government. In Australia, each state and territory government, and the Commonwealth government, operate and maintain power over certain places of detention—notably prisons and other detention facilities, court cells, police cells, health facilities, and social care facilities. Accordingly, Australian governments will each give effect to Australia's NPM obligations separately, for persons deprived of liberty under their respective jurisdiction and control. Similarly, all Australian governments are required to take steps to ensure that the SPT can exercise its visiting mandate.

All Australian NPMs will operate independently, while the Commonwealth NPM (the Commonwealth Ombudsman) holds an additional responsibility of coordinating and facilitating information flows among the network.

In Tasmania, the NPM framework currently consists of a single, dedicated and independent body, which has been established by the Tasmanian Parliament under standalone legislation, the *OPCAT Implementation Act 2021* (Tas). This legislation sets out all of the NPMs powers, functions and duties, and includes specific provisions to facilitate SPT visits.

Further information about OPCAT:

OPCAT came into force globally in 2006. Over this time a great deal has been published about OPCAT, Australia's ratification, and other countries' existing NPMs. Below is a short list of freely available materials for those seeking further information.

- UN General Assembly, *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment*, 9 January 2003, A/RES/57/199
<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>
- UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, (resolution 39/46), United Nations, Treaty Series, vol. 1465, p. 85
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- *OPCAT Implementation Act 2021* (Tas)
<https://www.legislation.tas.gov.au/view/html/asmade/act-2021-026>
- UN OHCHR, website of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (also provides information about NPMs):
<https://www.ohchr.org/en/treaty-bodies/spt>
- UN OHCHR, *Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide* (2018)
<https://www.ohchr.org/en/publications/professional-training-series/preventing-torture-role-national-preventive-mechanisms>
- UN OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (2022 ed.)
<https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0>
- Association for the Prevention of Torture (relevant information about OPCAT and the NPM is provided in the 'Knowledge Hub')
<https://www.ap.t.ch/en>
- Commonwealth Ombudsman, *Monitoring places of detention – OPCAT*
<https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat>
- Australian Human Rights Commission, *OPCAT: Optional Protocol to the Convention against Torture*
<https://humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>