

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Factsheet

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The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international treaty which aims to prevent the mistreatment of people deprived of their liberty.

What is torture?

The prohibition on torture is an absolute, fundamental and non-derogable principle of international law, meaning it cannot be justified in any circumstances.

'Torture' is defined in the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT) as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

It includes pain or suffering inflicted on a person in order to punish, intimidate or obtain information or a confession from them.

The CAT also prohibits other acts of cruel, inhuman or degrading treatment or punishment which do not amount to 'torture', when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Under the [International Convention on Civil and Political Rights](#) (ICCPR), the prohibition on torture and cruel, inhuman or degrading treatment or punishment is even broader, since it does not require the involvement of a public official. It can include severe pain or suffering inflicted by someone acting in a personal or private capacity.

What is OPCAT?

The [Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT) is an international treaty which aims to prevent the mistreatment of people deprived of their liberty in any setting, including in prisons, immigration detention centres, aged care homes, hospitals and other facilities.

How does OPCAT aim to prevent torture?

OPCAT recognises that people deprived of liberty may be particularly vulnerable to mistreatment and abuse. It seeks to prevent this mistreatment by establishing a system of regular visits undertaken by independent international and national bodies to detention sites.

It requires States to allow visits by two complementary monitoring systems:

1. National Preventive Mechanisms (NPM), independent expert bodies set up by and in each State party to OPCAT with powers to visit places of detention, examine the treatment of people deprived of liberty, and make recommendations to improve their treatment and conditions; and
2. the Subcommittee on the Prevention of Torture (SPT), a United Nations body composed of 25 independent experts from a range of national and professional backgrounds who visit States parties to OPCAT to inspect places of detention, support the establishment and independent functioning of NPMs, and cooperate with other bodies for the prevention of torture in general.

NPMs and the SPT focus on identifying patterns and detecting systemic risks of torture in places of deprivation of liberty, rather than investigating individual cases of wrongdoing.

How is OPCAT relevant to immigration detention in Australia?

Australia has [a policy of mandatory detention](#) that requires all 'unlawful non-citizens' to be held in immigration detention. This detention can occur in formal immigration detention centres, as well as in places referred to by other names such as 'Immigration Transit Accommodation' sites and 'Alternative Places of Detention' (APODs), which include hotels, hospitals, etc. People may also be detained at sea during [maritime interception operations](#) under Operation Sovereign Borders, or in the context of [offshore processing arrangements](#).

Issues relating to the [risk of torture in immigration detention in Australia](#) include:

- secrecy around the location of and conditions in places of detention;
- excessive uses of force and restraints in immigration detention;
- inadequate provision of health care in immigration detention;
- the treatment of vulnerable groups in detention, including children;
- the lack of time limits on or judicial oversight of immigration detention, and the potential for some people to be detained indefinitely; and
- the lack of guaranteed access to legal representation for people in detention.

The [Commonwealth Ombudsman](#) is the NPM responsible for monitoring places of immigration detention within Australian territory and under Australian 'jurisdiction' abroad (including at sea). It has a [long history of visiting immigration detention centres](#) as part of its broader mandate. However, there are [concerns that it may not be provided with adequate human and financial resources](#) to fulfil its new NPM functions with respect to immigration detention, particularly given the number, range, location and distance between places where non-citizens are or may be deprived of their liberty, and the complexity of the task of establishing an effective and regular preventive inspection regime in these places.