



11 December

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Dear Secretary

RE: SUBMISSION ON THE *CUSTODIAL INSPECTOR AMENDMENT (OPCAT) BILL*

Amnesty International Australia welcomes the opportunity to provide this submission on the *Custodial Inspector Amendment (OPCAT) Bill* (the bill). Amnesty International Australia has celebrated the ratification and ongoing implementation of the Optional Protocol to the Convention Against Torture. The development of this bill is another step towards ensuring that torture and other forms of ill treatment have no place not only in Tasmania, but around the country.

Firstly, Amnesty International Australia recommends that the government consult with those over represented in the justice system, particularly Indigenous and Torres Strait Islander people. Young Indigenous and Torres Strait Islander people are 22 more times likely to be involved in the youth justice system than their non-Indigenous peers. The National Aboriginal and Torres Strait Islander Legal Services should be involved in the further development of the bill.

Amnesty International submits that the bill needs to be strengthened in three core areas: independence, scope and access.

Independence

Section 3 of the bill states that its objective is to: 'to provide independent, proactive, preventative and systemic oversight of custodial centres by the Custodial Inspector. The bill does not however establish an independent statutory office to carry out its functions.

OPCAT and Optional Protocol to the Convention Against Torture Subcommittee on Prevention of Torture (SPT) Guidelines on National Preventative Mechanisms (NPM) state that functional and operational independence of the NPM must be guaranteed.¹ Amnesty International Australia recommends that a clause be added to s25B of the bill that ensures that the NPM should be formed in such a way that it does not constitute any part of the government, parliament, judiciary or prison system.

¹ Optional Protocol to the Convention Against Torture article 18(1), Optional Protocol to the Convention Against Torture Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para.8

To comply with the *Principles relating to the Status of National Institutions* (The Paris Principles)² and the SPT Guidelines³, Amnesty International Australia recommends that the bill be amended to add an additional clause to Schedule 1 of the *Custodial Inspector Act 2016* (the Act) regarding the appointment procedure for the NPM. The procedure for the members of the NPM should be through an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. It should also set out a period of office that should be sufficient to foster the independent functioning of the NPM.

The bill also needs to be amended to codify that the government must not appoint to the NPM members who hold positions that could raise questions of conflict of interest.⁴

To ensure the independence of the NPM, it should enjoy complete financial and operating autonomy and avoid actual and perceived conflicts of interest when carrying out its functions.⁵ Further to this, the NPM should have its own premises. Where the NPM performs other functions in addition to those under the OPCAT, its NPM functions should be located within a separate unit or department, with its own staff and budget.⁶

Scope

Section 9 of the bill will give the NPM access to closed psychiatric facilities, prisons, forensic disability facilities and police stations. This is too narrow of a scope for the NPM to be effective; it should have access to any place where people are or may be deprived of their liberty, either by virtue of an order given by a public authority or at instigation or with its consent or acquiescence.

Amnesty International Australia recommends that section 9 of the bill be amended so that it defines places of detention as any places where people are or may be deprived of their liberty by 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.⁷ In practice, this should include police stations, military and other security forces' stations and detention centres, all pre-trial detention centres, remand prisons, prisons for sentenced persons (civilian and military), places outside prisons where prisoners are employed, hospitals or clinics where prisoners are treated, rehabilitation and similar centres for juveniles, immigration centres, transit areas at international ports, transit vehicles, centres for detained asylum seekers, refugees or internally displaced persons, psychiatric institutions, and other places of administrative detention where people are not permitted to leave at will, and places believed to be unofficial or secret places of detention.

Access

The NPM must have full, immediate, unhindered access to all places of detention. The Act currently

² Principles relating to the Status of National Institutions, principle 3

³ Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para. 9 and 16

⁴ Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para. 18

⁵ Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para. 12 and 30

⁶ Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para. 32, Principles relating to the Status of National Institutions, principle 2

⁷ Optional Protocol to the Convention Against Torture article 4(1) and 2

states that the 'Inspector may, at any time and on any number of occasions, inspect and review any custodial centre or any aspect of a custodial centre'. Amnesty International Australia recommends that this be strengthened to ensure that the NPM can make both announced and unannounced visits,⁸ be able to choose the places it wants to visit and set the frequency of its regular visits without interference,⁹ and be able to make contact with directors of places of detention and the executive.

Conclusion and Recommendations

The *Custodial Inspector Amendment (OPCAT) Bill* is a good foundation for the Tasmanian government's approach to establish a National Preventative Measure. As it stands though, there are several gaps in the bill when assessed against the *Optional Protocol on the Convention Against Torture*, particularly in relation independence, scope and access of the NPM.

Amnesty International Australia recommends that:

1. the government conducts meaningful consultation with Indigenous and Torres Strait Islander people, particularly young people, and particularly with people with lived experience of detention, in the further development of the bill.
2. a clause be added to s25B of the bill that ensures that the NPM should be formed in such a way that it does not constitute any part of the government, parliament, judiciary or prison system.
3. the bill be amended to stipulate an open, transparent and inclusive appointment procedure for members of the NPM.
4. the bill set a period of office for members of the NPM.
5. a strict exclusion of anyone holding positions that raise questions of conflict of interest from being a member of the NPM must be included in the bill.
6. the financial and operational independence of the NPM be guaranteed in the bill.
7. the definition of 'places of detention' be included in the bill so that it applies to any place where people are or may be deprived of their liberty.
8. the bill be amended in order to strengthen s14 of the act to ensure full, immediate and unhindered access to all places of detention

For further information please contact Joel MacKay at joel.mackay@amnesty.org.au or 0424 242 112.

Yours sincerely,



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⁸ Subcommittee on Prevention of Torture Guidelines on National Preventative Mechanisms, para. 24 and 25

⁹ Optional Protocol to the Convention Against Torture article 20(e)