

**Question on notice no. 140**

**Portfolio question number: 141**

**2019-20 Supplementary budget estimates**

**Legal and Constitutional Affairs Committee, Attorney-General's Portfolio**

**Senator Nick McKim:** asked the Attorney-General's Department on 22 October 2019

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- (1. How is the Intergovernmental Agreement process progressing, given the National Preventive Mechanism (NPM) is due to commence in 2021? Mr Michael Johnson gave evidence to this Committee in estimates on 23 May 2018 referring to a proposal for an intergovernmental agreement on NPM obligations under OPCAT.
2. How does the Government intend to fund the NPM, to ensure it can operate as an effective monitoring system? Particularly when six months of operational cost to keep Christmas Island open (\$30 million) is roughly equivalent to funding the WA Office of the Inspector of Custodial Services for seven years.
3. Will there be any expansion of the current list of primary places of detention (priority list) to include aged care facilities, given the level of mistreatment being exposed by the Aged Care Royal Commission?

**Answer —**

Please see the attached answer.

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS**  
**SUPPLEMENTARY BUDGET ESTIMATES 2019-20**

**Attorney General's Department**

**LCC-SBE19-141 - OPCAT - National Preventive Mechanism**

**Senator Nick McKim asked the following question on 04 November 2019:**

1. How is the Intergovernmental Agreement process progressing, given the National Preventive Mechanism (NPM) is due to commence in 2021? Mr Michael Johnson gave evidence to this Committee in estimates on 23 May 2018 referring to a proposal for an intergovernmental agreement on NPM obligations under OPCAT.
2. How does the Government intend to fund the NPM, to ensure it can operate as an effective monitoring system? Particularly when six months of operational cost to keep Christmas Island open (\$30 million) is roughly equivalent to funding the WA Office of the Inspector of Custodial Services for seven years.
3. Will there be any expansion of the current list of primary places of detention (priority list) to include aged care facilities, given the level of mistreatment being exposed by the Aged Care Royal Commission?

**The response to the honourable senator's question is as follows:**

On 15 November 2018, the Attorney-General wrote to his state and territory counterparts recommending that negotiations on the Intergovernmental Agreement (IGA) be put on hold until after the release of the Human Rights Commissioner's and Commonwealth Ombudsman's reports (which at the time of writing was expected to be in mid-2019), noting that both reports would provide valuable analysis to support further IGA negotiations.

On 24 September 2019, the Commonwealth Ombudsman, as NPM Coordinator, released a report on Australia's readiness to implement OPCAT. The Human Rights Commissioner is expected to release his report in early 2020 following consultation with civil society on the implementation of OPCAT in Australia.

Following the release of the Human Rights Commissioner's report, the department will continue officer-level engagement with states and territories to finalise an IGA to establish a general framework for implementation of OPCAT.

Australia's NPM will be established as a cooperative network (the NPM Network) of Commonwealth, state and territory oversight bodies (NPM Bodies) that will be facilitated by an NPM Coordinator (the Office of the Commonwealth Ombudsman).

The Australian Government has agreed to fund oversight of Commonwealth places of detention by the Commonwealth Ombudsman, and the NPM Coordinator role within the Office of the

Commonwealth Ombudsman. The Government, in the 2018-19 Budget, provided the Office of the Commonwealth Ombudsman with funding of \$1.2 million over four years to carry out its new functions under OPCAT. As the Commonwealth's NPM Body, the Commonwealth Ombudsman already inspects immigration detention facilities within its existing functions. The additional funding allows for inspection of the Defence Force Correctional Establishment at Holsworthy Barracks and Australian Federal Police cells in Australia's external territories.

The Commonwealth Government is leading interaction with the UN Subcommittee on Prevention of Torture (SPT) and will meet any reasonable costs to governments facilitating an SPT visit, should one occur, in the first three years following ratification. The SPT has announced its intention to include Australia in its 2020 visiting programme, but has not yet announced specific dates.

The Commonwealth will discuss funding issues with the states and territories, as part of its officer-level engagement.

The Government considers the implementation of OPCAT to be an iterative process and is mindful of the principle of proportionality when determining prioritisation and focus, consistent with advice from the SPT. The NPM Network may consider over time the scope of other places which may fall within the definition of 'places of detention' as defined in Article 4 of OPCAT and make recommendations to government. The precise scope and functions of both the individual NPM body/ies in each jurisdiction and the overall NPM Network is a matter for discussion among the Commonwealth, state and territory governments. However, aged care facilities do not fit within the concept of 'places of detention' as set out in Article 4 of OPCAT and there is presently no proposal to include them in any list of primary places of detention.