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Consideration of Australia's ratification of the *Optional Protocol* *to the Convention against Torture*

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE
JOINT STANDING COMMITTEE ON TREATIES**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the Joint Standing Committee on Treaties (JSCOT) in its consideration of Australia's ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).
2. OPCAT is an international agreement aimed at preventing torture, and cruel, inhumane or degrading treatment or punishment, building on the work of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). The primary aim of OPCAT is to prevent torture and cruel, inhuman and degrading treatment of people who are deprived of their liberty.
3. The Commission is pleased that the government has tabled the National Interest Analysis (NIA) and that the NIA recommends the ratification of OPCAT.¹ During the nearly three years since the Australian Government signed OPCAT on 19 May 2009, the Commission has consistently urged the government to take the steps necessary for ratification of the treaty. Ratification of OPCAT will fulfil the commitment made by the Australian Government in its response to recommendations arising from the United Nations Human Rights Council's Universal Periodic Review.²
4. The Commission has significant experience in monitoring conditions of detention, primarily in the context of Australia's immigration detention network. The Commission has undertaken monitoring work for over 15 years, including through conducting two national inquiries, and through regular visits to immigration detention facilities. The reports of these inquiries and inspections make recommendations to the Australian Government aimed at protecting the human rights of asylum seekers, refugees and others held in immigration detention.³

2 Summary

5. The Commission agrees with the view expressed in the NIA that OPCAT 'will improve outcomes in the detention of people in Australia by providing a more integrated and internationally recognised mechanism for oversight'.⁴ As made clear in the preamble to OPCAT, 'the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention'.⁵
6. People who are deprived of their liberty are particularly vulnerable to violations of their human rights. The Commission has serious ongoing concerns about the treatment of some groups of people who are deprived of their liberty in Australia, including people in immigration detention.
7. The Commission is also concerned that current mechanisms for scrutiny of conditions of detention in Australia are inadequate to properly safeguard people deprived of their liberty from mistreatment. Australia lacks a systematic and coordinated approach to the monitoring and reporting of conditions of

detention across jurisdictions and places of detention. Ratification and implementation of OPCAT will make an important contribution to ensuring better oversight of conditions of detention in Australia.

8. This submission will consider:
- what ratification of OPCAT would require of Australia
 - the benefits of preventive monitoring of places of detention
 - whether Australia currently has an effective system of monitoring conditions of detention
 - some practical considerations regarding the ratification and implementation of OPCAT.

3 Recommendations

Recommendation: The Australian Government should ratify OPCAT and work promptly towards its full implementation in Australia.

4 What would ratification of OPCAT require of Australia?

9. The central objective of OPCAT is set out in article 1 in the following terms:

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and cruel, inhumane or degrading treatment or punishment.

10. OPCAT specifically requires that a State Party must:
- allow unrestricted access to the United Nations Subcommittee for the Prevention of Torture (SPT) to visit places of detention within Australia's jurisdiction
 - designate independent expert bodies to form a National Preventative Mechanism (NPM), responsible for making regular visits to places of detention.
11. OPCAT provides for the preventive monitoring of places of detention with the primary aim of preventing the mistreatment of people deprived of their liberty through the identification of systemic issues that could lead to their mistreatment. Preventive monitoring ensures that 'detaining authorities are accountable for conditions in places of detention' and results in greater transparency.⁶
12. Under article 4(1), a State Party must allow both the SPT and NPM to make visits to 'any place where people are deprived of their liberty'. Places of detention covered by OPCAT include traditional places of detention such as prisons, juvenile detention institutions, police stations, locked psychiatric wards and immigration detention facilities, as well as other forms of detention such as prisoner transport, court security and military detention facilities.⁷

4.1 Visits to Australia of Subcommittee for the Prevention of Torture

13. The SPT is comprised of 25 independent and impartial experts who are nationals of State Parties to OPCAT, serving in their individual capacities. OPCAT requires the State Party to enable the SPT to visit any place of detention within its jurisdiction. SPT visits are designed to complement the domestic monitoring system undertaken by the NPM. Article 11 describes the functions of the SPT, which are:
- to visit places of detention and make recommendations to State Parties regarding the protection of persons deprived of their liberty against torture and all other forms of ill-treatment
 - to advise and assist State Parties in the establishment, maintenance and strengthening of their national preventative mechanisms, including through the provision of technical assistance and training and by making recommendations to State Parties regarding the capacity and mandate of the mechanism.
14. OPCAT requires that the SPT has unrestricted access to places of detention; access to all relevant information, including on conditions of detention; and the opportunity to conduct private interviews with detainees and other relevant persons. The SPT engages with States on a totally confidential basis and unlike the NPM cannot publish reports and recommendations other than with the agreement of the State Party.
15. State parties are also required by OPCAT to examine the recommendations of the SPT and to enter into dialogue regarding possible implementation measures.
16. While the SPT is an important oversight mechanism, its visits will be infrequent, probably no more than one visit every seven year, lasting one or two weeks. The United Nations will fund the SPT visits and consequently these visits would make a minimum call on Australian resources.

4.2 The establishment of a National Preventive Mechanism

17. As discussed above, OPCAT requires the establishment of a National Preventative Mechanism, empowered at a minimum, to:
- regularly examine the treatment of persons deprived of their liberty in places of detention with the view of strengthening (if necessary) their protection against torture and other cruel, inhuman, or degrading treatment or punishment⁸
 - make recommendations to the relevant authorities regarding the improvement of the treatment and/or conditions of persons deprived of their liberty and prevention of torture, and other cruel, inhuman or degrading treatment or punishment⁹
 - submit proposals and observations concerning existing or draft legislation.¹⁰

18. The NPM could be made up of either one central organisation or several decentralised organisations as long as they comply with article 18 which requires the NPM to be functionally independent and to be provided with necessary resources for its proper functioning.
19. In order to ‘regularly examine the treatment of persons deprived of their liberty in places of detention’ the jurisdiction of the NPM must be visits-based. Article 4 requires that ‘each State Party shall allow visits’ by the NPM to all categories and places of detention within the remit of OPCAT. Access must be free and unfettered.
20. In order for visits to be effective, the NPM must have access to all relevant information about the operation of the detention system. For example, the NPM should have access to data as to the number of detainees and the places of their detention, as well as all information related to the treatment of these people and their conditions of detention.¹¹
21. Articles 22 and 23 require that the State Party examine the reports and recommendations of the NPM, enter into dialogue with the NPM on the implementation of its recommendations and publish and disseminate the annual reports of the NPM.
22. OPCAT also provides that the NPM shall have a ‘right to have contacts with the SPT’, including providing the SPT with information and meeting with it.

5 What are the benefits of preventive monitoring of places of detention?

23. Significant benefits arise from preventive monitoring of places of detention. The primary benefit is the prevention of torture and other cruel, inhuman or degrading treatment or punishment within places of detention. A system of preventive monitoring will assist in ensuring that Australia meets its obligations under CAT. The benefits, however, are likely to extend beyond Australia’s compliance with CAT. Preventive monitoring is also likely to assist Australia meet its obligations under the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Rights of the Child* (CRC). Like CAT, these treaties impose positive duties on State Parties to implement procedures to prevent torture and other cruel, inhuman, or degrading treatment or punishment.¹²
24. The ratification and implementation of OPCAT is likely to lead to improvements in the treatment of people who are deprived of their liberty and to the development of a rights-respecting culture within places of detention. Preventive monitoring can also lead to efficiencies and cost-savings for detaining authorities. These issues are considered below.

5.1 Preventive monitoring can lead to better protection of the rights of vulnerable people

25. People deprived of their liberty rely on detaining authorities to ensure protection of their rights, as they have very little control over the conditions in

which they live. People in detention are necessarily removed from the public eye, making independent external scrutiny of conditions of detention particularly important. The United Nations Committee against Torture, Cruel, Inhumane or Degrading Treatment or Punishment has highlighted the particularly vulnerable situation of a number of specific groups of people deprived of their liberty, including women, juveniles, Indigenous peoples and persons suffering from mental illnesses.¹³ The Commission agrees that these groups of people may be particularly vulnerable to mistreatment while they are in detention, and consequently that the conditions of their detention require close monitoring.

26. Preventive monitoring of places of detention has been demonstrated to have a positive impact on conditions of detention, as shown in the Commission's monitoring of conditions of immigration detention. For example, in 2007 and 2008, the Commission published reports on visits to immigration detention facilities that included recommendations that the Villawood Immigration Detention Centre in Sydney should be comprehensively redeveloped as soon as possible.¹⁴ The Department of Immigration and Citizenship has explicitly recognised that the major redevelopment of immigration detention facilities at Villawood that is currently underway is a direct response to these recommendations.¹⁵ More recently, Commission recommendations regarding the clinical governance within mental health services, have contributed to a restructuring of these services across the detention network, including through the appointment of a senior psychiatrist to take a leadership role in the provision of mental health services in detention.¹⁶
27. International experience also demonstrates that preventive monitoring can lead to improvements in the treatment of people deprived of their liberty. For example, in its 2010 report the New Zealand Human Rights Commission recorded a number of practical improvements to conditions of detention as a result of their detention visits. These included agreements to cease the use of a substandard facility, to upgrade a substandard facility to meet minimum health and safety standards, to alter an exercise area to improve access to the outdoors, to reduce lockdown hours, to provide children and young people with a say in how residences could be improved and improved treatment of sentenced prisoners with mental illnesses.¹⁷ Similarly, in its second annual report¹⁸ the United Kingdom National Preventative Mechanism reported a number of successes under the OPCAT regime. These include, for example, improved staff-prisoner relationships and prisoners increasingly being treated with respect for their human dignity.¹⁹
28. Importantly, OPCAT operates on a model of 'constructive dialogue' where monitoring bodies and detaining authorities engage in robust yet respectful conversations about conditions of detention and what can be done to improve them. Engagement in this dialogue lays the framework for proactive steps to be taken by detaining authorities to improve the conditions of detention and to minimise the risk that people deprived of their liberty will be mistreated.

5.2 Preventive monitoring will identify emerging issues of concern

29. One of the key benefits of preventive monitoring is that it can lead to the early identification of systemic issues of concern that might result in the mistreatment of people deprived of their liberty.
30. Some pertinent examples can be drawn from the experience of the New Zealand NPM which has identified previously unrecognised areas of concern in places of detention through its visits, including the use of searches and restraints in places of detention²⁰ and health issues including the provision of mental health services.²¹ Visits have also prompted the Children's Commissioner and the Independent Police Conduct Authority to conduct a joint thematic review of the treatment of and issues affecting children and young people detained in police custody.²² In addition, New Zealand's Independent Police Conduct Authority is considering adopting the practice of reporting 'near misses' (suicide attempts or self-harms) in police custody.²³ The Police Conduct Authority also plans to expand pre-site visit assessments, which aim to engage police to identify trends and new areas which may warrant attention.²⁴

5.3 Preventive monitoring should lead to an improved culture within detention facilities

31. A system of preventive monitoring should lead to improvements in the culture within places of detention which will have a positive impact for all people who spend time in these facilities.
32. Preventative monitoring has been shown to contribute to the development of a more understanding staff culture within detention facilities. For example, the New Zealand experience has shown:

a high level of cooperation by the detaining agencies and willingness to engage with the NPMs. There has been an increase in referrals from agencies and institutions, who recognise the benefits and potential of the OPCAT mechanism to improve conditions, eliminate risk and prevent harm.²⁵

The United Kingdom NPM has also reported that preventive monitoring has contributed to an improved culture of 'respect for human dignity' within places of detention.²⁶

5.4 Preventive monitoring is a cost-effective way of improving the treatment of people deprived of their liberty

33. As noted above, regular monitoring of all places of detention will require the provision of specific resources. OPCAT recognises this need and requires State Parties to provide necessary resources for the functioning of the NPM.²⁷ Nevertheless, the OPCAT monitoring regime provides a cost-effective way of improving the treatment of people deprived of their liberty.

34. The costs in relation to the SPT's visits will be minimal as the United Nations is responsible for its expenditure and visits will likely only occur every seven years.
35. Overall international experience has shown that the cost of monitoring places of detention is relatively low. For example, the United Kingdom Chief Inspector's office runs at around 0.4 per cent of the total cost of administering places of detention in that jurisdiction. The operation of the Office of the Corrections Investigator in Canada costs just 0.15% of the total cost of the federal prison system.²⁸
36. It will be possible to minimise the costs of implementing OPCAT by utilising existing monitoring and review bodies to fulfil the functions of the NPM, with only minor changes to their structure, mandate or powers needed to ensure compliance with OPCAT requirements. In addition, there are potentially cost savings to be made under OPCAT as overlap in monitoring can be removed²⁹ and as organisations involved in detention management and oversight share information, guidelines, practices and problem solving measures with regard to conditions and treatment of people in detention.³⁰ For example the first annual report on the United Kingdom National Preventative Mechanism describes an increased cooperation and coordination among the existing oversight bodies forming their NPM, including identifying areas of duplication, and setting out the possibilities of cooperative reviews.³¹ The involvement of civil society will also be a cost-effective way of informing the NPM about the treatment of persons in places of detention and the extent to which recommendations are being implemented.³²

5.5 Preventive monitoring can contribute to a reduction in claims for compensation and associated costs of mistreatment

37. Preventive monitoring as required by OPCAT may also lead to a reduction in legal and administrative costs related to mistreatment of persons in detention.³³ As external accountability is strengthened, there is likely to be a decrease in incidences of mistreatment which give rise to compensation paid in settlements. This is particularly pertinent in the context of immigration detention. It is estimated that over the past decade, the Australian Government has spent more than \$16 million in compensation to people who experienced mistreatment in immigration detention.³⁴
38. Additional costs related to mistreatment in detention could also be reduced. These include, for example, the significant health, national security, public safety and reputational costs as well as the costs associated with the stress that such problems put on the criminal justice or immigration systems.³⁵

6 Does Australia currently have an effective system of preventative monitoring of all places of detention?

39. While there is monitoring of places of detention in many Australian jurisdictions, Australia does not have a comprehensive system of preventative monitoring of all places of detention, consistent across jurisdictions and across

categories of places of detention. Existing arrangements for monitoring places of detention were considered by Professors Richard Harding and Neil Morgan in their 2008 report regarding the implementation of OPCAT in Australia. They found that there are few agencies within Australia that carry out functions within the OPCAT remit in an OPCAT-compliant manner.³⁶ They noted that most agencies do not have free and unrestricted access to places of detention, some lack functional independence, and some have no system of measuring the extent to which their findings are reflected in changing practice. Harding and Morgan identified that a particular gap exists in the monitoring of detention in police lock-ups and police stations.³⁷ They also recommended that the functions and powers required for effective monitoring should be set out in legislation.

40. There are specific areas where the Commission believes that the implementation of OPCAT will lead to more effective monitoring of conditions of detention. In the area of immigration detention, for example, there is no monitoring body with all of the key features necessary to be fully effective. These include adequate funding to fulfill the role; the capacity to maintain an ongoing or regular presence at immigration detention facilities; a specific statutory power to enter immigration detention facilities; a commitment to comprehensive public reporting of conditions; and the capacity to require a public response from government.
41. The need for preventive monitoring of places of detention is highlighted through a consideration of instances where individuals have experienced mistreatment while deprived of their liberty. In each of the cases described below, preventive monitoring may have contributed to preventing these instances of mistreatment from occurring. In each of these cases the Commission has participated in an evaluation of the factors contributing to the mistreatment of the people deprived of their liberty, either by intervening in a coronial inquest, or by considering a complaint of a breach of human rights.
 - **Mr Ward's death and prisoner transport:** Mr Ward died in the back of a transport van during a long journey on a hot day. The van was poorly ventilated and had a defective climate control system. The Commission intervened in the Coronial Inquest into Mr Ward's death and made a submission that his death was a direct result of the failure to take adequate care to protect his life, in particular a breach of the right to life protected by article 6(1) of the ICCPR, as well as the right to humane and dignified treatment in articles 7 and 10(1). The Coroner found that Mr Ward's death was wholly avoidable and had been contributed to by the custodial officers, the custodial contractor, GSL, and the Western Australian Department of Corrective Services. The Coroner also found, consistent with the Commission's submissions, that the treatment of Mr Ward breached Australia's international legal obligations. The Office of the Inspector of Custodial Services had considered issues related to prisoner transport prior to Mr Ward's death and made recommendations to the Western Australian government.³⁸
 - **The Yousefi family and immigration detention:** This is just one case of many where the President of the Commission has found that the

human rights of people in immigration detention have been breached. In this case, the President found that the Commonwealth breached a number of provisions of the ICCPR and CRC in relation to the Yousefi family, including the forcible removal of the then 10 year old Manoochehr Yousefi from Woomera Detention Centre to Baxter Detention Centre, and the failures to remove Manoochehr from detention, to provide him with access to appropriate health care and education and to act in the best interests of the child.³⁹ For many years, the Commission has recommended that the detention of children occur only as a last resort and for the shortest period of time, in line with Australia's international obligations.⁴⁰

- **Scott Simpson's death and prison conditions for the mentally ill:** In 2004 Mr Simpson hanged himself at the Long Bay Correctional Centre, Malabar, New South Wales. He had paranoid schizophrenia. The Commission intervened in the Coronial Inquest into Mr Simpson's death and made submissions that the treatment of Mr Simpson during his incarceration was inconsistent with articles 7 and 10(1) of the ICCPR with respect to his prolonged detention in segregated custody, particularly in light of his serious mental illness and the failure to provide adequate medical care, including psychiatric care to Mr Simpson.⁴¹ The Coroner found that Mr Simpson was not provided with adequate medical treatment during his incarceration and that the time Mr Simpson spent in segregation lead inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004. Preventive monitoring may have highlighted the systemic issues of concern relating to the treatment of people with mental illness within places of detention.
- **Mulrunji's death and police cells:** In 2004 Mr Mulrunji died in a police cell on Palm Island in Northern Queensland after a scuffle with a police officer, which resulted in his breaking his ribs and rupturing his liver. This case highlighted many systemic problems with policing in Aboriginal communities including their treatment while in police custody. The Commission intervened in the Coronial Inquest, making submissions including 40 recommendations aimed at protecting human rights and preventing future deaths,⁴² all of which were adopted by the Coroner.

7 Practical considerations for Australia in the implementation of OPCAT

42. The Commission notes a number of practical issues raised in the NIA that relate to the implementation of OPCAT, including that:
- upon ratification, a declaration would be made under article 24 of OPCAT to delay Australia's obligations regarding the establishment of an NPM for three years
 - there is an intention to pass legislation to enable the SPT to carry out its functions and to support the functions of the NPM

- arrangements for funding the NPM will require further consideration and consultation.
43. The Commission recognises that it will take some time to make the administrative and legislative arrangements necessary to fulfil the NPM obligations under OPCAT. However, this extension of time should not impede any jurisdictions that wish to establish their NPM ahead of this time-frame. The Commission also urges that resourcing be committed to the agency responsible for national coordination of the NPM as early as possible to ensure that effective institutional cooperation arrangements can be established and appropriate training can be implemented ahead of the full establishment of the NPM.
44. The Commission is currently involved in a collaborative project that aims to develop human rights based standards for monitoring immigration detention facilities. This project is being conducted in collaboration with the Commonwealth Attorney-General's Department and with the Commonwealth Ombudsman. These standards will form an agreed basis for monitoring immigration detention facilities. They will make an important contribution to the establishment of human rights based monitoring standards for any future NPM. The standards will be completed by mid-2012.
45. The Commission recognises that work will need to be conducted to consider monitoring mechanism areas where there are clear gaps in monitoring, particularly in the case of police lock-ups and police stations. The Commission urges that a full audit of both places of detention and monitoring mechanisms be conducted and made public as soon as possible after ratification of the treaty.
46. The Commission urges the Australian Government and state and territories to consult widely with civil society, including with people formerly deprived of their liberty during the implementation of OPCAT, particularly during the establishment of an NPM.
47. The Commission supports the introduction of legislation in all Australian jurisdictions to enable the SPT to carry out its functions and to support the functions of the NPM.
48. As noted above, while OPCAT recognises this need and requires State Parties to provide necessary resources for the functioning of the NPM, these costs need not be excessive. However, the Commission urges that adequate funds be made available both at the Commonwealth level and in each State and Territory to ensure that effective monitoring of conditions of detention can be undertaken.

8 Conclusion

49. The Commission views OPCAT as a positive development and supports its ratification and implementation in Australia in a timely manner. The ratification and implementation of OPCAT would enhance Australia's domestic monitoring of places of detention, would enhance the prevention of torture and cruel,

inhuman or degrading treatment or punishment of persons deprived of their liberty and would contribute towards building a human rights respecting culture in places of detention. OPCAT is an important human rights treaty. Becoming a party to this treaty will lead to enhanced human rights protections for some of the most vulnerable people in Australia.

¹ National Interest Analysis [2012] ATNIA 6. At:

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=/jsct/28february2012/treaties/torture_nia.pdf (viewed 28 February 2012).

² Report of the Working Group on the Universal Periodic Review Australia, UN Doc A/HRC/17/10/Add.1. At: <http://www.un.org.au/Universal-Periodic-Review-news298.aspx> (viewed 28 February 2012).

³ Reports of Commission monitoring visits to immigration detention facilities are available at: http://www.humanrights.gov.au/human_rights/immigration/index.html#publications (viewed 28 March 2012).

⁴ National Interest Analysis, note 1, para [7].

⁵ *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* Preamble 2002, preamble.

⁶ National Interest Analysis, note 1, para [4].

⁷ R Harding & M Morgan, *Implementing the Optional Protocol to the Convention against Torture: Options for Australia*, Australian Human Rights Commission (2008), p1. At http://humanrights.gov.au/human_rights/publications/opcat/index.html (viewed 22 March 2012).

⁸ See *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* Preamble 2002, art 19(a).

⁹ See *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* Preamble 2002, art 19(b).

¹⁰ See *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* 2002, art 19(c).

¹¹ See *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment* 2002, art(s) 20(1) and (2)); Harding & Morgan, note 6, p18.

¹² See *International Covenant on Civil and Political Rights*, 1966, art(s) 7, 10 and 2 and *Convention on the Rights of the Child*, 1989, art(s) 37(a), 37(c) and 4.

¹³ CAT/C/AUS/Q/4, 6 June 2007.

¹⁴ See Australian Human Rights Commission, *Immigration detention report: Summary of observations following visits to Australia's immigration detention facilities* (2008). At:

http://humanrights.gov.au/human_rights/immigration/idc2008.html (viewed 20 March 2012). See also Australian Human Rights Commission, *Summary of Observations following the Inspection of Mainland Immigration Detention Facilities* (2007). At: http://humanrights.gov.au/human_rights/immigration/idc2007.html (viewed 20 March 2012).

¹⁵ For information on the Villawood Redevelopment Project see <http://www.villawoodredevelopment.immi.gov.au/>.

¹⁶ C Branson, *Applying Human Rights in Closed Environments: Practical Observations on Monitoring and Oversight* (Paper for the Implementing Human Rights in Closed Environments Conference, Monash University, Melbourne, 21 February 2012) p 3.

¹⁷ New Zealand Human Rights Commission, *Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention against Torture (OPCAT)* (2011) p 2. At <http://www.hrc.co.nz/2010/commission-releases-annual-report-on-opcat> (viewed 15 March 2012).

¹⁸ National Preventive Mechanism, *Monitoring places of detention Second Annual Report of the United Kingdom National Preventative Mechanism* (2010-11). At <http://www.justice.gov.uk/about/hmi-prisons/preventive-mechanism> (viewed 15 March 2012).

¹⁹ National Preventive Mechanism, *Monitoring places of detention*, note 19, p 19.

²⁰ New Zealand Human Rights Commission, note 18, p 24.

²¹ New Zealand Human Rights Commission, note 18, p 3.

²² New Zealand Human Rights, note 18, p 3.

²³ New Zealand Human Rights Commission, note 18, p12.

²⁴ New Zealand Human Rights Commission, note 18, p12.

²⁵ New Zealand Human Rights Commission, note 18, p 23.

²⁶ National Preventive Mechanism, *Monitoring places of detention*, note 19, p 19.

²⁷ See *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*, 2002, art 18(3).

²⁸ Professor R Harding, *Ratifying and Implementing OPCAT: Has Australia missed the boat?* (paper for the Implementing Human Rights in Closed Environments Conference, Monash University, Melbourne, 21 February 2012) p 6. At <http://www.law.monash.edu.au/castancentre/events/2012/closed-environments-papers-and-powerpoints.html> (viewed 18 March 2012).

²⁹ Harding, above, p 6.

³⁰ National Interest Analysis, note 1, para [7].

³¹ National Preventive Mechanism, *Monitoring places of detention*, note 19, p 15.

³² Association for the Prevention of Torture, *Establishment and Designation of National Preventative Mechanisms* (2006), p 70. At

http://kms1.isn.ethz.ch/serviceengine/Files/ISN/30709/ipublicationdocument_singledocument/866f5958-420a-4c82-a83a-66d1855d9fc3/en/NPM.Guide.pdf (viewed 17 March 2012).

³³ Association for the Prevention of Torture, *Implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment in Federal and other Decentralised States* (March 2011), p14. At:

http://www.apt.ch/index.php?option=com_docman&task=doc_download&gid=126& (viewed 17 March 2012).

³⁴ Heather Ewart 'Australia to pay price for detainee compensation' *ABC News*, 20 June 2011. At

<http://www.abc.net.au/news/2011-06-20/australia-to-pay-price-for-detainee-compensation/27650466>.

³⁵ Association for the Prevention of Torture, note 34, p 14.

³⁶ Harding & Morgan, note 6, p 2.

³⁷ Harding & Morgan, note 6, p14.

³⁸ Office of the Inspector of Custodial Services, *Thematic Review of Court Security and Custodial Services in Western Australia* (2010). At

<http://www.custodialinspector.wa.gov.au/downloadpdf.cfm?objectid=D9BC9B7C-E7F2-2F96-3B1439EF46CC78B55> (viewed 21 March 2012).

³⁹ Australian Human Rights Commission, *Mr Parvis Yousefi, Mrs Mehrnoosh Yousefi and Manoochehr Yousefi v Commonwealth of Australia (Department of Immigration and Citizenship) Report into arbitrary detention, the standard of treatment in detention and rights of the child in detention* (2011) AusHRC 46. At: <http://www.humanrights.gov.au/legal/humanrightsreports/AusHRC46.html>. Other relevant examples of mistreatment in immigration detention reported by the Commission include

Reports No. 21, 23, 34, 25, 27, and 28, available at: <http://www.humanrights.gov.au/legal/humanrightsreports/index.html>.

⁴⁰ See Australian Human Rights Commission, *A Last Resort? The Report of the National Inquiry into Children in Immigration Detention*. At: http://www.humanrights.gov.au/human_rights/children_detention_report/index.html.

⁴¹ Human Rights and Equal Opportunity Commission, *Submission to the Coroner's Inquest into the Death of Scott Simpson*. At: <http://www.humanrights.gov.au/legal/intervention/simpson.html>.

⁴² Human Rights and Equal Opportunity Commission, *Submission to the Coroner's Inquest into the Death of Mulrunji*. At: <http://www.humanrights.gov.au/legal/intervention/mulrunji.html>. The Coroner's decision can be found at <http://www.justice.qld.gov.au/courts/coroner/findings/mulrunji270906.doc>.