

**SUBMISSION NO. 32**  
**TT on 28 February 2012**

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**ombudsman** VICTORIAN

23 March 2012

File No: OV/301-02

Mr Kelvin Thomson MP  
Chair, Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA



Dear Mr Thomson

**Submission to the Joint Standing Committee on Treaties Inquiry into the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

The Victorian Ombudsman welcomes and supports the Federal Government decision to ratify and implement the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*.

To assist the Inquiry in its deliberations, I attach my submission.

Should you require any further information, your staff may contact Dr Inez Dussuyer, Principal Investigation Officer on (03) 9613 6237.

Yours sincerely

  
OMBUDSMAN

Attach.

**VICTORIAN OMBUDSMAN SUBMISSION  
TO THE JOINT STANDING COMMITTEE ON TREATIES INQUIRY  
INTO THE OPTIONAL PROTOCOL TO THE CONVENTION  
AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR  
DEGRADING TREATMENT OR PUNISHMENT**

**Introduction**

The tabling by the Australian Government of the National Interest Analysis proposing that Australia ratify the Optional Protocol is an important development in meeting Australia's international human rights obligations and to 'prevent torture and other cruel, inhuman and degrading treatment or punishment'. It would enhance and strengthen current arrangements to prevent such treatment and overcome some of the limitations of existing measures for the protection of persons held in all places of detention. Implementation of the Optional Protocol would enable rationalisation, coordination and strengthening of the accountability and oversight arrangements across Australia.

This submission is made by the Victoria Ombudsman in response to the terms of reference issued by the Joint Standing Committee on Treaties Inquiry into the Optional Protocol through its National Interest Analysis. It seeks to provide the Committee with an overview of the role of the Ombudsman and its skills and experience in relation to people held in 'closed environments'<sup>1</sup> for criminal and/or administrative purposes and to bring to the Committee's attention the ways in which the Victorian Ombudsman currently monitors custodial facilities and other places where people are deprived of liberty.

The Victorian Ombudsman understands the complexities of implementing OPCAT in a Federal state; and acknowledges the extensive consultation coordinated by the Commonwealth during the past year on issues for the arrangements for OPCAT ratification and implementation and the development of a national framework for the inspection of places of detention. These issues include the obligations relating to the establishment of independent monitoring bodies, the National Preventive Mechanisms, and the obligations enabling the international UN Sub-Committee for the Prevention of

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<sup>1</sup> 'Closed environments' are defined as any place where persons are or may be deprived of their liberty by means of placement in a public or private setting in which a person is not permitted to leave at will by order of any judicial, administrative or other order, or by any other lawful authority.

Torture<sup>2</sup> to carry out its functions and inspect places of detention to 'regularly examine the treatment of persons deprived of their liberty'.

### Role and functions of the Victorian Ombudsman

The Victorian Ombudsman administers the *Ombudsman Act 1973* and the *Whistleblowers Protection Act 2001* and is responsible for promoting fairness, integrity, respect for human rights and administrative excellence in the Victorian public sector.

The Ombudsman's mission is to:

- Independently investigate, review and resolve complaints concerning administrative actions of state government departments, local councils and statutory authorities
- report the results to complainants and agencies
- report to Parliament
- improve accountability and
- promote fair and reasonable public administration.

Many of the complaints received each year by the Victorian Ombudsman are from or relate to some of Victoria's most vulnerable citizens and those deprived of liberty including prisoners<sup>3</sup> and people with severe intellectual or mental health conditions held in secure care.

While the Victorian Ombudsman has always protected human rights as part of his generalist jurisdiction, since January 2008 compliance with the Victorian Charter of Human Rights is mandatory for all Victorian public sector agencies, including custodial and secure facilities. Following an amendment to the *Ombudsman Act 1973*<sup>4</sup>, the Ombudsman was given the power to investigate any administrative actions incompatible with the human rights it protects. The importance of this enhanced function has been demonstrated by a number of investigations listed below where human rights abuses were identified.

The Ombudsman's statutory functions extend beyond handling and investigating individual complaints reactively. He has broader powers to conduct 'own motion' investigations to inquire into systemic concerns including those where there may potentially be

<sup>2</sup> Comprising of ten independent experts who meet periodically to conduct field visits to countries party to the Optional Protocol and to advise them on the functioning of the independent monitoring bodies.

<sup>3</sup> Complaints from prisoners to the Ombudsman increased by nearly 400 per cent between 2006 and 2011.

<sup>4</sup> Section 13 (1A).

breaches of human rights and where the treatment and conditions of persons deprived of liberty is of concern.

The Ombudsman is an independent officer of the Victorian Parliament. His office provides a free service that investigates complaints about administrative actions taken by Victorian government agencies, including departments, most statutory authorities and local government. It is impartial, ethical and respectful of individual rights.

The scope of the Ombudsman's jurisdiction covers more than 600 public sector agencies, including all major places of detention Victoria - public and private prisons, prisoner transport; juvenile detention centres, closed/secure psychiatric and disability facilities as well as aged care units. It also includes a major police cell facility (the Melbourne Custody Centre).

The powers of the Ombudsman are extensive (similar to those of a Royal Commission) and include the ability to summons witnesses, to enter premises of an authority and inspect anything therein, and would meet the requirements of the Optional Protocol. Particularly relevant to the requirements is that the Ombudsman is able to have:

- unfettered access to all categories and places of detention
- access to data relating to the number and location of detainees and all information about their treatment as well as their conditions of detention
- private interviews with detainees and other persons who it believes can supply relevant information
- undertake to disseminate and publish annual reports of inspections.

#### **Current monitoring of places of detention by the Victorian Ombudsman**

Ombudsman reports tabled in the Victorian Parliament relating to persons held in custody or 'closed environments' demonstrate a proactive approach by the office in addressing the conditions and treatment of persons deprived of liberty. The reports at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au) include:

- Investigation into prisoner access to health care - August 2011
- Investigation of an Assault of a Disability Services client by Department of Human Services staff - March 2011
- Investigation into conditions at the Melbourne Youth Justice Precinct-Whistleblowers Protection Act 2001 - October 2010

- Investigation into contraband entering a prison and related issues - June 2008
- Investigation into the use of excessive force at the Melbourne Custody Centre - November 2007
- Investigation into conditions for persons in custody - July 2006.

To ensure that action on the implementation of the Ombudsman recommendations occurs, outcomes are regularly monitored by the Ombudsman and have been reported on in two recent Parliamentary reports:

- Ombudsman's recommendations: report on their implementation - February 2010
- Ombudsman's recommendations: second report on their implementation - October 2010.

In recent years the Ombudsman has given particular attention to the conditions and treatment of persons held in custody or in secure facilities and has adopted a proactive approach so as to prevent abuses from occurring.

One element of this approach is the regular inspection and 'familiarisation' visits to all Victorian prisons, including unannounced visits. These are based on the premise that the more open and transparent custodial facilities are, the less likely that abuse will occur. Officers of the Victorian Ombudsman formally arrange and schedule visits to all prisons and has included more than 20 such visits during 2011. Visits have also been conducted to juvenile detention facilities as well as the Melbourne Custody Centre (privately operated under contract to Victoria Police). These visits involve Ombudsman staff:

- meeting with the General Manager and the facility's liaison officer and other staff and inmates
- addressing any ongoing concerns or complaint trends
- visiting all areas of the prison to view conditions, with particular attention being paid to specialist units such as restricted regimes, protection units and medical areas
- completing an audit that considers the conditions and treatment of persons in custody, including any human rights issues
- ensuring concerns identified during these visits are brought to the attention of the Commissioner of Corrections Victoria

- recording details of observations made during visits to enable assessment of actions to be taken on the concerns identified.

Ombudsman staff also visit community residential units for persons with disabilities, secure psychiatric units and aged care facilities on a case by case basis.

Monitoring of police cells (other than the Melbourne Custody Centre) has been a function of the Office of Police Integrity<sup>5</sup>, which has developed an audit process following the joint Victorian Ombudsman/Office of Police Integrity report in 2006. However, concern by the Ombudsman over recent increasing numbers of detainees held in police cells (where conditions and amenities are basic) has led to a meeting being hosted in April 2012 by the Ombudsman with key stakeholders to identify factors contributing to the high numbers in police cells and ways of resolving this situation.

#### **Potential role of the Ombudsman in Optional Protocol implementation in Australia**

The Victorian Ombudsman is aware of the requirements set out for a National Preventive Mechanism in compliance with the Optional Protocol (particularly Articles 17-23). The Ombudsman's office already includes a number of these requirements in its current functions and operations.

In addition to statutory independence and its extensive powers, the office of the Victorian Ombudsman has experienced staff with skills and expertise in conducting inspections and investigations into 'closed environments'. It already has a schedule of regular visits to prisons and juvenile justice centres; it carries out unannounced inspections when required and conducts visits on a case by case basis to other secure facilities. The Ombudsman is also able to publish and disseminate reports of visits and investigations as appropriate.

A further consideration in a role for the Ombudsman in relation to the Optional Protocol's National Preventive Mechanisms, is facilitating the insights and concerns from civil society/civil organisations<sup>6</sup>, such as prison visitors, to usefully contribute to accountability and oversight for places of detention. The

<sup>5</sup> The Office of Police Integrity is to be disbanded in July 2012 and will be replaced by the Independent Broad based Anti-Corruption Commission; it is unclear at this stage what role this new body will have in relation to the monitoring of police cells.

<sup>6</sup> Refers to a range of organisations including non-governmental organisations, prison pastoral groups, lay visiting schemes legal aid and medical associations.

Ombudsman is aware, for example of the role that lay/community visitors (under the responsibility of the Victorian Public Advocate) play in relation to disability and mental health facilities and would appreciate consideration of how such independent monitoring by civil society organisations could be extended into other 'closed environments', such as police cells and juvenile justice centres (see for example the Ombudsman's report on conditions at the Melbourne Youth Justice Precinct, October 2010).

One option would be to designate the Victorian Ombudsman as a state-based National Preventive Mechanism in Victoria, with a Commonwealth based National Preventive Mechanism coordinating the state-based National Preventive Mechanisms. Further consideration and consultation would be required as to what extent the criteria for a state-based National Preventive Mechanism are compatible with the Ombudsman's existing functions.

The Victorian Ombudsman has also made a major contribution and been a research partner since 2008 in the Law Faculty Monash University ARC funded research on human rights in 'closed environments' - which includes prisons, police cells, immigration detention centres, and secure psychiatric and disability facilities. The Ombudsman has participated in a number of research forums in relation to human rights in 'closed environments' (see for example [www.law.monash.edu.au/castancentre/events/2012/closed-environments.html](http://www.law.monash.edu.au/castancentre/events/2012/closed-environments.html)). One component of the research<sup>7</sup> has been to examine through surveys and interviews, how oversight and monitoring responsibilities of 'closed environments' are being carried out across Australia, and what activities and processes are used to fulfil accountability and scrutiny roles within secure settings where the potential for abuse can be high.

<sup>7</sup> Working Paper *Role of oversight and monitoring bodies in closed environments*, March 2012, Monash University Law School, (yet to be published).