

Implementing OPCAT in the Australian Capital Territory

An overview of existing monitoring mechanisms in place where people are deprived of their liberty

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This project was the work of Australian National University Law and Social Justice Students:

Holly Fredrickson, Huiruo Pang, Serena Ricci, Shaun King, Zehra Kazmi, Olivia Pursey, Aline Aida Damaj, Alessandra Hayward, Annika Reynolds, Jacqueline Hickman, Matthew Zagor (Convenor of ANU Law and Social Justice Unit)

The Steering Group of mentors for this project consisted of Bonnie Millen (Advocacy for Inclusion), Eliza Moloney (ACTCOSS), Corinne Dobson (Individual) and Rebecca Minty (ACT Inspector of Correctional Services)

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List of abbreviations

ACAT	ACT Civil and Administrative Tribunal
ACSA	Aged Care and Community Services Australia
ACT	Australian Capital Territory
AMC	Alexander Maconochie Centre
CPT	(European) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	Convention on the Rights of Persons with Disabilities
DOLS	Deprivation of Liberty Safeguards
FMHS	Forensic Mental Health Services
ICCPR	International Covenant on Civil and Political Rights
ICO	Intensive Correction Order
NDIS	National Disability Insurance Scheme
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UK	United Kingdom
UN	United Nations

Introduction

The Optional Protocol to the United Nations Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is a human rights treaty that requires State Parties to open up all places of deprivation of liberty for independent monitoring, in order to prevent torture and ill-treatment. The OPCAT aims to provide a concrete and practical mechanism to fulfil the international prohibition against torture contained in the United Nations (UN) Convention Against Torture, which includes an obligation to take effective measures to prevent torture and ill-treatment.

The obligations contained in the OPCAT are twofold. First, State Parties must allow a UN Subcommittee, known as the UN Subcommittee for the Prevention of Torture (SPT) to visit places of detention in their territory, and provide confidential reports to those States and/or monitoring bodies about conditions of detention and measures to prevent torture and ill-treatment. The second aspect of the OPCAT requires State Parties establish or designate an independent entity (or entities), known as a National Preventive Mechanism (or NPM) to regularly visit places of deprivation of liberty, and work constructively with detaining authorities on measures to reduce risks of abuse and ill-treatment. Importantly, NPMs must carry out preventive rather than reactive monitoring. They must visit regularly to assess risk and then work collaboratively with detaining authorities to provide recommendations that assess risk. NPM functions are focused on systemic issues and do not respond to individual complaints.

The OPCAT defines place of detention broadly, and in practice the definition includes all places where someone is not free to leave by virtue of an order (or with knowledge or acquiescence) of the State. There are a number of essential requirements outlined in the OPCAT that an NPM must meet. These include: be independent from government; have the power to access all places of deprivation of liberty; have the power to talk to detainees and others in private; have the right to access all relevant information including registers; and the NPM must have staff with suitable expertise, such as a legal or medical background.

Australia signed the OPCAT in 2009 and ratified in December 2017. At the time of ratification, Australia elected to delay the obligation to establish domestic monitoring mechanisms for three years.

The Australian Government noted on ratification that the Commonwealth Ombudsman would play a coordinating role, but it was up to states and territories to nominate the monitoring bodies that would be responsible for oversight of types of detention for which they are responsible. As the Commonwealth is responsible for immigration, military and some Australian Federal Police detention, it falls to the States and Territories to nominate oversight entities for prisons, court transport, police cells, secure mental health facilities, secure disability settings and potentially secure aged care facilities. At the time of writing no Australian state or territory has designated its NPM.

The Australian Capital Territory (ACT) Government has not yet indicated potential NPMs that will be required to conduct preventive oversight of its places of deprivation of liberty. Therefore, this report seeks to contribute to the ACT's NPM designation process by conducting a stocktake of places of deprivation of liberty in the ACT, as well as a stocktake of the independent entities at an ACT level that currently perform an oversight role in relation to places of deprivation of liberty.

While this report maps out the potential scope of places and situations where the OPCAT may apply, its purpose is not to prescribe the precise manner in which the OPCAT should be implemented in the ACT, nor to specify what places and situations the NPM in the ACT should focus on and prioritise. It examines the key provisions of the OPCAT, how these provisions have been interpreted internationally, and the potential implications for how the OPCAT may be applied in the ACT. Its intent is to contribute to discussion in the ACT on what the ACT's NPM will look like.

This report contains three parts. Part A considers places of deprivation of liberty. It looks at how the concept of detention is defined in the OPCAT and assesses places that may be considered places of detention in the ACT. Part B examines current monitoring and oversight arrangements in the ACT, including the range of independent statutory entities in the ACT with monitoring functions. It then considers potential gaps in existing monitoring arrangements, and whether current monitoring entities have the features required of NPMs under the OPCAT (for example, legislative powers and functions).

The SPT has emphasised the importance of involving civil society in the implementation of the OPCAT and, accordingly, Part C of this report examines the important role of civil society in monitoring places where people are deprived of their liberty, and considers some overarching considerations for strengthening the engagement between civil society and statutory monitoring bodies within the ACT.

The report concludes by noting that there is no one entity in the ACT that has the powers, functions or expertise to perform the role of an ACT NPM. However, the process of conducting a stocktake of places and entities is intended to assist ACT government policy makers in deliberations about the designation and establishment of the NPM.

The scope of the OPCAT

The objective of the OPCAT is to “establish a system of regular visits undertaken by international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment”.¹ It is therefore important to clarify what constitutes detention and deprivation of liberty under the OPCAT and, accordingly, the range of places and situations that may fall within the scope of oversight by the NPM (or NPMs) in the ACT.

What is detention?

Detention and deprivation of liberty are defined in Article 4 of the OPCAT. Article 4(1) defines detention as a situation “where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence”. Deprivation of liberty is defined by Article 4(2) of the OPCAT as meaning “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”.

Read together, and consistently with the object and purpose of the treatyⁱ OPCAT covers any situation including a public or private custodial setting under the jurisdiction or control of the State party, where persons may be deprived of their liberty and are not permitted to leave, either by an order given by any judicial, administrative or other authority or at its instigation or with its consent or acquiescence.²

It is inevitable that there will be a degree of opaqueness about the precise parameters of the definition when translated into operational practice. However, the preventive approach which underpins the OPCAT means that as expansive an interpretation as possible should be taken in order to maximise the preventive impact of the work of the NPM. The SPT takes the view that any place in which a person is deprived of liberty (in the sense of not being free to leave), or where it considers that a person might be being deprived of their liberty, should fall within the scope of its visiting mandate – and, in consequence, under the visiting mandate of an NPM – if it relates to a

¹ *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/RES/57/199 (18 December 2002) art 1.

² New Zealand Human Rights Commission, *He Ara Tika, A pathway forward: The scope and role of the Optional Convention Protocol to the Convention against Torture (OPCAT) in relation to Aged care and disability residences and facilities* (Report, June 2016)¹² (*‘He Ara Tika’*).

situation in which the State either exercises, or might be expected to exercise a regulatory function. Importantly, this approach is not affected by whether the place of deprivation of liberty is privately owned and run or in public hands.

The scope of ‘places of detention’: practice in overseas jurisdictions

NPMs around the world have taken different approaches to the scope of places of detention within their jurisdiction.

The role of NPM in **New Zealand** is performed by 5 different bodies and oversee different places of detention, specifically police cells, prison, youth justice facilities and youth residences, and armed forces detention cells.³ In 2016, a recommendation was made by the New Zealand Human Rights Commission to designate a body as NPM to monitor the treatment in aged care and disability residences.⁴

The definition of ‘places of deprivation of liberty’ is interpreted more broadly in **Ukraine**, and includes ‘closed facilities’.⁵ In addition to overseeing prisons, police stations, immigration facilities, juvenile detention centres, court facilities, children’s care homes, psychiatric institutions and military units, the Ukrainian NPM has included hospices and palliative departments within hospitals in the places to detention to be monitored in 2015.⁶ Further, the conflict zone, where anti-terrorist operations are conducted close to the Donetsk and Luhansk People’s Republics, are overseen by the Ukrainian NPM due to the start of hostilities in Eastern Ukraine with an aim to protect the vulnerable, especially children, people with disabilities and elderly people.⁷

The Norwegian NPM mandate covers sectors including prisons and transitional housing, police custody facilities and places with interrogation rooms, immigration detention centre, customs and excise’s detention premises, and the Norwegian armed forces’ custody facilities.⁸ The NPM in Norway is also responsible for overseeing housing for people with developmental disabilities, mental health care institutions, nursing homes and child welfare institutions.⁹ Further, the scope of Norwegian NPM

³ New Zealand Human Rights Commission, *2016/17 Monitoring Places of Detention: Annual report of activities under the Optional Protocol to the Convention Against Torture (OPCAT)* (Report, July 2016 to 30 June 2017).

⁴ *He Ara Tika* (n 2) 6.

⁵ Naomi Burke-Shyne, ‘Ukraine Applies Anti-Torture Standards to Health Care’, *Open Society Foundations*, (Web Page) <<https://www.opensocietyfoundations.org/voices/ukraine-investigates-health-care-abuses-torture>>.

⁶ Association For the Prevention of Torture, ‘Putting prevention into practice, 10 years on: the Optional Protocol to the UN Convention against Torture’ (2016) 14 < https://www.ap.t.ch/content/files_res/putting-prevention-into-practice-opcat10.pdf >.

⁷ *Ibid* 16.

⁸ Norwegian Parliamentary Ombudsman, *The Parliamentary Ombudsman’s Annual Report for 2018 as National Preventive Mechanism against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (Report, 2018) 2 <<https://www.sivilombudsmannen.no/wp-content/uploads/2019/04/Annual-report-2018.pdf>>.

⁹ *Ibid*.

oversight also extends to involuntary institutional treatment, including involuntary treatment of people with substance abuse problems.¹⁰

In its first 6 official visits the SPT visited seven less traditional places of detention, including: a shelter for children and distressed women,¹¹ a children's home, a detoxification centre for people with substance abuse issues, an education and training centre for children, a military prison, a juvenile guardianship council and two psychiatric institutions (one of which was annexed to a prison).

As a tool of prevention, the NPM should have the power to access as broad a range as possible in order to determine whether the State is or ought to be exercising such a regulatory function, as well as to examine the manner in which existing detention powers and regulatory functions are being exercised. In so doing, the NPM must be mindful of the principle of proportionality (that is, focusing resources on areas of greatest risk) when determining its priorities and focus of its work.

The evolving understanding of deprivation of liberty

Deprivation of liberty is generally understood in a broad sense to mean the placement of a person in a setting that person is not free to leave. Traditionally this has referred to situations in which people have been arrested, are in detention, are imprisoned or are interred in psychiatric facilities.¹² However, there is growing recognition that there are other places, such as residences and facilities, where a person may effectively be deprived of their liberty and detained in practical effect, even though the facility itself may not be designed or intended primarily for the restriction of liberty.

There is also a recognition of situational detention – where people are deprived of their liberty in specific situations. Powers for situational detention are commonly held by authorities such as the police, immigration and border control, or biosecurity agencies. Whilst the time period for

¹⁰ Ibid.

¹¹ In Mauritius, October 2007.

¹² Concluding Observations state Committee concern under the UN CRPD Liberty and security of the person (art. 14) (b)

Ongoing practice of compulsory treatment for persons with “cognitive and mental impairment”, including through indefinite detention in psychiatric centres, despite recommendations of the Senate Community Affairs References Committee’s 2016 report on indefinite detention of persons with “cognitive and psychiatric impairment

Committee on the Rights of Persons with Disabilities (2019) *Concluding observations on the combined second and third reports of Australia*, CPRD/C/AUS/CO/2-3

detention may be short, there are risks of abuse and ill-treatment that arguably warrant oversight by NPMs.

The Austrian Ombudsman Board (AOB) is the NPM for Austria, and its functions include monitoring coercive measures carried out by government, for example, police operations during large-scale raids, at major events, gatherings and demonstrations, and during deportations. The essential purpose of the AOB exercising oversight in this area is to recognise and remedy risk factors, ideally to prevent human rights infringements at an early stage.¹³

There has also been a growing recognition that people who are deprived of their liberty in these places may be particularly vulnerable to abuse and ill-treatment, as revealed in a plethora of inquiries into the treatment of people with disabilities in institutional settings.

As noted above, the OPCAT defines deprivation of liberty as “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”. The recognition that a person may be detained in private settings, and by an ‘other’ authority which is neither judicial nor administrative in nature, makes this a very broad definition.

Based on this understanding of what constitutes ‘deprivation of liberty,’ a number of disability, aged, health and other groups have strongly advocated for Australian jurisdictions to establish NPMs with an expansive and inclusive scope, for example to scrutinise restrictive practices by privately owned and operated disability support providers.

This report will first consider **when** can people be detained (ie, the circumstances that detention may occur) in the criminal and civil system and then **where** people can be detained (the places that the detention occurs), in criminal and civil systems. Whilst not making comment on what existing or new entities in the ACT may be suited to oversight these situations and places of detention, the purpose of this discussion is to provoke consideration of this issue.

¹³ Austrian Ombudsman Board ‘Preventive Human Rights Monitoring’, (Web Page)
<<https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring#anchor-index-2930>>.

When can people be detained in the ACT?

Criminal justice system

Full-time imprisonment

Legislation in the ACT authorises the full-time detention in a correctional centre of people accused of and convicted of criminal offences. For a person convicted of an offence that has imprisonment as a maximum penalty, the court has the power to sentence the offender to imprisonment.¹⁴ This must be served by full-time detention unless the court orders an intensive corrections order or a suspended sentence. Authority for this detention must be provided by a warrant for imprisonment.¹⁵ The full-time imprisonment of an unsentenced detainee is called remand and must be authorised by a court order.¹⁶

Other situations where an offender can be held in full-time detention include where a parole order is cancelled and the offender is re-committed to full-time detention to serve their remaining sentence of imprisonment.¹⁷ This is the same for an offender whose release on licence has been cancelled.¹⁸ An offender on an intensive corrections order will serve the remainder of their sentence in full-time detention if they are convicted of another offence or if the offender withdraws consent.¹⁹ An offender who has breached their good behaviour order may also be remanded in custody until they can be brought before the ACT Supreme Court.²⁰ The court also has the power to make an imprisonment order for people who default fines, at a rate of \$300 of the outstanding fine per day.²¹ An ACT magistrate may also make an order for detention for an accused who has been found not guilty because of mental impairment for an immediate review by the ACT Civil and Administrative Tribunal (ACAT).²² A judge can make an order for detention to ensure a person's appearance as a witness at the Australian Crime Commission.²³

Arrest

¹⁴ *Crimes (Sentencing) Act 2005* (ACT) s 10.

¹⁵ *Corrections Management Act 2007* (ACT), s 64; *Children and Young People Act 2008* (ACT), s 156.

¹⁶ *Crimes (Sentence Administration) Act 2005* (ACT), ss 16-18, 320E (for young offenders).

¹⁷ *Ibid* ss 160-1.

¹⁸ *Ibid* s 312.

¹⁹ *Ibid* ss 65-6, 69.

²⁰ *Ibid* s 107.

²¹ *Ibid* s 116ZK.

²² *Crimes Act 1900* (ACT) ss 328-9 ('*Crimes Act*').

²³ *Australian Crime Commission Act 2003* (ACT) s 27.

Police exercising powers of arrest amounts to situational detention. Police in the ACT can arrest a person either with or without a warrant from the court. Where a police officer suspects on reasonable grounds that a person has committed an offence and proceeding by summons would not be appropriate, they may arrest the person without a warrant.²⁴ The alternative is to apply to an ACT magistrate who can issue a warrant for the person's arrest,²⁵ although a police officer does not have to be carrying the warrant at the time of the arrest.²⁶ Arrest can occur in any public place or in any 'premises'.²⁷

Searches and forensic procedures

Criminal suspects may be searched or ordered to undergo forensic procedures without their consent. An ACT magistrate can make an order authorising a forensic procedure for adults not in custody, adults in custody, persons incapable of consent and children.²⁸ A police officer has the power to order a non-intimate forensic procedure where the suspect has not consented.²⁹ Suspects may be kept in custody for as long as reasonably necessary to carry out the forensic procedure, whether or not they are already detained.³⁰ Suspects already in custody may be transferred to the custody of a police officer for the purposes of hearing an application for an order for a forensic procedure.³¹

Police officers have the power to stop, search and detain people without a search warrant if they suspect on reasonable grounds that a person is or has been involved in a criminal offence and the circumstances are serious and urgent.³² The court may issue a search warrant to search premises or a person for evidential material relating to an offence.³³ A warrant in force for the search of a person can authorise the executing officer record fingerprints and take forensic samples, as well as seize items found on or in the possession of the person.³⁴

Police also have powers of search and seizure under the *Drugs of Dependence Act 1989* (ACT) which can be used under a warrant, in circumstances of seriousness and urgency or under an order made by a court.³⁵ At a crime scene, the police have the power to detain and conduct a frisk

²⁴ *Crimes Act* (n 21) s 212.

²⁵ *Magistrates Court Act 1930* (ACT) s 42.

²⁶ *Crimes Act* (n 21) s 213.

²⁷ *Ibid* s 220.

²⁸ *Crimes (Forensic Procedures) Act 2000* (ACT) ss 18, 27, 31.

²⁹ *Ibid* s 28.

³⁰ *Ibid* ss 40, 40B.

³¹ *Ibid* ss 36, 77A.

³² *Crimes Act* (n 21) s 207.

³³ *Crimes Act* (n 21) s 194.

³⁴ *Crimes Act* (n 21) s 195.

³⁵ *Drugs of Dependence Act 1989* (ACT) s 184.

search or ordinary search of a person they reasonably suspect as possessing evidence from the crime scene.³⁶

Transporting and escorting detainees

Detainees remain deprived of their liberty when they are being transported and escorted. Legislation in the ACT provides for this by authorising an “escort officer” who is usually a corrections officer, to have custody of the person for the purpose of transporting them.³⁷ This is explicitly provided for in relation to escorting a detainee to court.³⁸ Escort officers also have authority to transport full-time detainees to NSW correctional centres or return them to the ACT, under the directions of the director-general.³⁹ Detainees can be transferred to health facilities, mental health facilities or approved community care facilities.⁴⁰ Young people also remain in detention while they are transferred to health facilities, mental health facilities, correctional centres when they are 21 years of age and interstate.⁴¹

Other sentencing orders

A broad interpretation of deprivation of liberty may include intensive corrections orders (ICOs) because the offender cannot leave the ACT and is under the supervision of the Director-General of the Justice and Community Safety Directorate (Director-General) who can direct them to live at a certain address, undertake programs and report to a corrections officer.⁴² Additional conditions on an ICO can also include a non-association order or place restriction order.⁴³ Non-association and place restriction orders can also be made as part of a sentence for some other offences.⁴⁴ Accommodation orders can be made for young offenders, meaning that they must live at a certain place or with a certain person.⁴⁵

The core conditions of parole may also amount to a deprivation of liberty as the offender must only live at the premises approved by the Director-General, report to a person at a time and place nominated by the Director-General, and not leave the ACT for longer than 1 day without prior written permission.⁴⁶ A good behaviour order made by a court could also be considered a

³⁶ *Crimes Act* (n 21) s 210G.

³⁷ *Corrections Management Act 2007* (ACT) s 35; *Children and Young People Act 2008* (ACT) s 104.

³⁸ *Corrections Management Act 2007* (ACT) s 38; *Children and Young People Act 2008* (ACT) s 105.

³⁹ *Crimes (Sentence Administration) Act 2005* (ACT) ss 20, 35, 37.

⁴⁰ *Corrections Management Act 2007* (ACT) s 54.

⁴¹ *Children and Young People Act 2008* (ACT) ss 109, 109A, 112, 114-132.

⁴² *Crimes (Sentence Administration) Act 2005* (ACT) s 42.

⁴³ *Crimes (Sentencing) Act 2005* (ACT), s 11.

⁴⁴ *Ibid* s 23.

⁴⁵ *Ibid* s 133Z.

⁴⁶ *Crimes (Sentence Administration) Regulation 2006* (ACT) reg 4.

deprivation of liberty where it is subject to a probation or supervision condition, as the offender is then unable to leave the ACT for more than 24 hours.⁴⁷ A good behaviour order must be made where a suspended sentence is ordered.⁴⁸

Civil detention and other settings where people are deprived of liberty

There are a range of civil and de facto places of detention in the ACT that may fall under the scope of the OPCAT. These include mental health orders, mental health facilities, hospitals, aged care, community services and disability institutional settings.

In some instances, the boundaries between these settings and the criminal justice system may be porous. For example, people detained within the criminal justice system may at times receive treatment within a hospital and persons charged with criminal offences but deemed not mentally fit to plead may be detained in forensic mental health facilities without having been found guilty of an offence.

Case study of situational detention: Mental health orders

Where a person is deemed to lack decision-making capacity and/or where their mental illness or mental disorder is placing them or the community at significant risk, the *Mental Health Act 2015* (ACT) authorises involuntary measures to provide assessment, treatment and care for that person. ACAT is responsible for making a range of decisions under the Act about a person's mental health treatment or care.

There are a number of Mental Health Orders that ACAT can make under the Act including:

- Psychiatric Treatment Orders (PTOs) for people who have a mental illness;⁴⁹
- Community care orders (CCOs) for people with a mental disorder;⁵⁰
- Restriction Orders (for ordering where a person with a mental illness or mental disorder must reside/be detained or not approach particular places or people or do particular activities);
- Forensic Psychiatric treatment orders (FPTOs);⁵¹ and
- Forensic Community care orders (FCCOs)⁵²

A person who refuses to comply with the order can be taken by the police, an authorised ambulance officer, a doctor, or mental health officer to an approved mental health facility for treatment.

There are situations where a person may be detained without the full mental health assessment and order process being undertaken. This is called 'emergency detention' and includes apprehension and

⁴⁷ *Crimes (Sentence Administration) Act 2005* (ACT) s 86.

⁴⁸ *Crimes (Sentencing) Act 2005* (ACT) s 12.

⁴⁹ *Mental Health Act 2015* (ACT) s 58.

⁵⁰ *Ibid* s 66.

⁵¹ *Ibid* ss 101-2.

⁵² *Ibid* s 108.

transfer to the Emergency Department of the Canberra Hospital by a police officer, ambulance paramedic, Mental Health Officer, or a doctor. Under section 80 of the *Mental Health Act 2015 (ACT)*, a person can be taken to any 'approved mental health facility', but in accordance with ACT Health policy, only the Canberra Hospital Emergency Department is equipped and authorised to accept people brought in under an emergency apprehension. A doctor or mental health officer is also able to detain a person who has attended a mental health facility voluntarily, provided the person meets the criteria for apprehension.

Once detained, an initial examination by a doctor must occur within four hours, and involuntary detention and treatment may be then authorised for a period of no more than three days. A Consultant Psychiatrist can apply to the ACAT for an extension of the period of detention for a maximum of a further 11 days.

Case study: Deprivation of Liberty Safeguards (DOLS)

The UK's implementation of the Deprivation of Liberty Scheme in relation to OPCAT provides a useful reference point with potential application for the ACT.

The Deprivation of Liberty Safeguards (DOLS) are an amendment to the *Mental Health Care Act (2005)*. It is only applicable to care homes and hospitals in England and Wales. A court of protection order is required to apply DOLS in other settings. DOLS are additional safeguards provided for in the Mental Health Care Act (2005) that restrict and restrain people. Care homes and hospitals must request a standard authorisation, which requires six assessments before it can be issued. Safeguards include delegating legal powers upon a person to represent the subject (Relevant Person's Representative), challenge Court of Protections Authorisations, and access to IMCAs (Independent Mental Capacity Advocates).

Although it operates in a foreign jurisdiction, provisions of it can be applied to the ACT setting. The DOLS provide an exemplary framework for effectively incorporating international treaties and obligations, such as the OPCAT, into domestic settings. Adapting a model such as this has the potential to improve assistance to vulnerable residents in the ACT community.

Source: <https://www.scie.org.uk/mca/dols/at-a-glance>

Where can people be detained in the ACT?

Criminal justice system

Places declared as correctional centres in the ACT are the Alexander Maconochie Centre (AMC), the ACT Courts precinct cells (under the ACT Supreme and Magistrate's Court), and

Bimberi Youth Justice Centre for children and young people.⁵³ What was previously the Symonston Remand Centre is still declared a correctional centre but it is not currently in use.⁵⁴ Under ACT legislation, full-time detainees may also be kept in a NSW correctional centre.⁵⁵ While the oversight of the ACT NPM would not extend to interstate correctional centres, the transport of detainees to these would if it were provided by ACT Corrective Services. Transport of detainees in the ACT is currently provided by the Court Transport Unit which is part of ACT Corrective Services. Their duties include escorting detainees to and from court, special leave escorts and medical escorts.⁵⁶ In the case of transport of any persons deprived of their liberty, for example, by ACT Corrective Services or ACT Police, transport vehicles are places of deprivation of liberty under the OPCAT.

The other key place where people are detained in a criminal justice setting is in police watch houses (lockups) and cells. These are defined in legislation as 'a cell (however described) for the detention of a person at a police station'.⁵⁷ Persons are detained and held in police custody primarily for one of three reasons: they are charged with a criminal offence; they have been arrested on a warrant; or they are intoxicated in a public place.

The ACT has police stations at Belconnen, Canberra City, Gungahlin, Tuggeranong and Woden.⁵⁸ The Canberra City Watch House provides a charging and custodial facility that operates 24 hours a day and is the only watch house in Canberra. Other ACT police stations provide only holding cells that can be used for temporary detention of persons, pending their release or transfer to the watch house. These stations have no charge or bail facilities and are not staffed to provide fulltime custodial care for detainees. In the watch house, detainees are either charged with an offence or, in the case of intoxicated persons, lodged in custody. If a detainee has been taken into custody as a result of intoxication, he or she will be placed directly into an intoxicated person's cell, rather than a holding cell. Similarly, detainees assessed as violent or 'at risk' will generally be placed in an 'at risk' cell, rather than a holding cell. The law requires that those charged must be brought before a court at the first available opportunity and must not be detained continuously at a police cell for a period longer than 36 hours, or 12 hours for young detainees.⁵⁹

⁵³ *Corrections Management (Correctional Centres) Declaration 2009 (No 2)*; *Corrections Management (Correctional Centres) Declaration 2007 (No 4)*; *Children and Young People (Detention Places) Declaration 2008 (No 2)*.

⁵⁴ *Corrections Management (Correctional Centres) Declaration 2009 (No 3)*.

⁵⁵ *Corrections Management Act 2007* (ACT) s 25; *Crimes (Sentence Administration) Act 2005* (ACT) ss 26, 36.

⁵⁶ *Corrections Management (Functions, Court Transport Unit) Policy 2008*.

⁵⁷ *Corrections Management Act 2007* (ACT) s 29.

⁵⁸ Australian Federal Police, *Connect with us* (Web Page) <<https://police.act.gov.au/connect-us#stations>>

⁵⁹ *Corrections Management Act 2007* (ACT) s 30.

In circumstances where sentenced or remanded detainees cannot be accommodated at a correctional centre, such as where it cannot properly accommodate any more detainees, they can be detained in police cells or court cells without time limit.⁶⁰

Civil detention and other places of deprivation of liberty

Healthcare settings

Patients in healthcare settings may fall under the OPCAT's definition of places of detention if persons are or may not be free to leave. Places such as secure mental health facilities are clearly within the scope of the OPCAT however there are other health care settings that are not so clear-cut in relation to whether deprivation of liberty is or could be occurring.⁶¹ One example is geriatric wards in hospitals where wing doors may be secured to prevent patients from wandering. Palliative care units are also potentially relevant sites. It is not just a matter of whether a patient can, in theory, voluntarily discharge themselves from a hospital.

Emergency departments are another area where application of the OPCAT may have merit. Several submissions to the Australian Human Rights Commission's Inquiry on OPCAT in Australia explicitly refer to hospital settings (beyond secure mental health units) as falling within the scope of the OPCAT, including emergency departments (where people present with mental health disorders, substance abuse issues, and a range of conditions that prohibit them from freely leaving). Detainees usually held in custodial facilities may be transferred to hospitals for treatment and are under custodial supervision during this time (usually escorted by custodial officers and handcuffed for some or all of the time).

Australia's Interpretative Declarations on Convention on the Rights of Persons with Disabilities (CRPD) Articles 12 and 17 allow for the continuation of guardianship and mental health laws that deprive people of liberty on the basis of disability and subject them to forced medical interventions, both in institutions and in the community. While there have been some reviews and amendments to these laws in the ACT, there has been no action to end involuntary internment on the basis of

⁶⁰ Ibid s 34.

⁶¹ The Australian Senate tabled its *Inquiry Report into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia* in 2016. The Australian Government is yet to respond to the Report. The ACT Government is also yet to respond or implement recommendations as human rights compliant jurisdiction to the AMC.

disability or to end forced medical interventions. As a result, many people with intellectual, cognitive and psychosocial disability experience serious breaches of their human rights in the ACT, that require NPM oversight at a jurisdictional level.

Aged care

The Commonwealth Government has not included residential aged care facilities as a primary place of detention for the purpose of Australia's obligations to OPCAT and the Federal NPM oversight. It is hoped that the ACT, as a human rights jurisdiction, would take care to include aged care facilities as part of a local oversight as OPCAT does not allow reservations to be made to the definition of a place of deprivation of liberty, NPM mandates or any other provisions.

The current responsibility for oversight of Australia's aged care facilities lies with the newly formed Australian Aged Care Quality and Safety Commission from 1 January 2019. The Commission has replaced the Australian Aged Care Quality Agency and the Aged Care Complaints Commissioner, effectively combining the regulatory and complaints functions. This is because these are places regulated (and partially/fully funded) by the federal government, they are the subject of government oversight and they are places where people experience restricted liberty through the use of locked units and/or restrictive practices.⁶²

Many aged care residents are detained in locked units in residential aged care facilities; most are subject to government-sanctioned orders or schemes that require or permit this detention. Indeed, some legislative schemes specifically refer to 'detention' in this context. This is civil detention.

In light of the CRPD and the evidence that environmental restraints (such as code locks, locked gates and fences) negatively impact on residents in residential aged care facilities, the practice of detaining residents in residential aged care facilities needs to be questioned.⁶³ Unlawful detention is a form of arbitrary detention contrary to Article 9 of the ICCPR.

The 'responsibility for safeguarding vulnerable adults lies primarily with the state and territory governments', but at the same time, 'responsibility for ageing and aged care has increasingly

⁶² Senate Community Affairs References Committee which, after hearing evidence concluded:

'indefinite detention of people with cognitive or psychiatric impairment is a significant problem within the aged care context [. . .]. It is also clear this detention is often informal, unregulated and unlawful'.

⁶³ In 'older person services', the rate at which restraints are used has been increasing not decreasing - Australian Institute of Health and Welfare, 2019, *Mental Health Services: In Brief 2018*, p.19. <https://www.aihw.gov.au/getmedia/0e102c2f-694b-4949-84fb-e5db1c941a58/aihw-hse-11.pdf.aspx?inline=true>

been appropriated by the Commonwealth'.⁶⁴ The Australian Law Reform Commission's 2016 *Inquiry into Elder Abuse* recommended that the *Aged Care Act 1997 (Cth)* should provide for a 'official visitor' scheme for residential aged care, acting under Commonwealth legislation. This is currently an area that the ACT Government does not provide under the Official Visitors Scheme.

Although oversight of aged care appears to fall primarily to the Commonwealth, the ACT should be in close discussion with their Commonwealth counterparts to ensure ACT NPMs collaborate closely including to ensure consistency of visiting methodology and to share expertise on cross cutting issues – for example, disability.

Disability institutional settings

People with a disability are frequently over-represented in many conventional places of detention such as prisons, police lock up and youth justice facilities.⁶⁵ In addition, there are a range of disability specific and related institutions such as compulsory care facilities, closed community-based accommodation and residences for people with disability, aged care facilities, 'time out' and seclusion rooms, and segregated areas in educational settings and rehabilitation facilities that restrict the ability of persons with a disability to come and go at will. These places should come within the scope of NPM monitoring given that these high rates of violence in disability specific detention, suggesting that existing oversight mechanisms are not fully effective in preventing abuse and violence against persons with a disability.^{66 67} Academics and advocacy

⁶⁴ The Commonwealth's powers to make laws relating to aged care arise from its legislative power to make laws regulating corporations providing aged care, funding programs administered by states and territories, and its powers relating to age pensions, carer pensions and other welfare regimes

In Wendy Lacey, 'Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia' (2014) 36 *Sydney Law Review* 99, 102;

The Commonwealth's powers in relation to taxation, financial institutions, social security and superannuation arise from the banking, social welfare and powers respectively: Australian Constitution s 51(ii), (xiii), (xxiii), (xxiiiA). The Commonwealth does not have an enumerated power to legislate with regard to the welfare of adults generally.

In Australian Law Reform Commission, *Elder Abuse* (Discussion Paper No 83, December 2016) 31.

⁶⁵ Eileen Baldry, 'Disability at the Margins: Limits of the Law' (2014) *Griffith Law Review* 23(3) 370.

⁶⁶ Senate Community Affairs References Committee. 2015. *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age-related dimensions, and the particular situation of aboriginal and Torres strait islander people with disability, and culturally and linguistically diverse people with disability*. Canberra, Australian Capital Territory: Commonwealth of Australia, 54.

⁶⁷ Disabled Persons Organisations Australia, *Disability Inclusive National Preventive Mechanism (NPM)* (Position Paper, May 2018) < <https://dpoa.org.au/position-opcat-npm/>>

organisations have called for oversight over practices in these settings, such as restraint and seclusion, including those practiced in the context of ‘support’ and ‘therapy’.^{68 69 70 71} It is likely that there will be an increase in awareness of the nature and extent of abuse in closed environments as a result of the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.⁷²

The expanded definition of ‘visitable places’ for the ACT Disability Official Visitors Scheme that came into effect on 7 December 2018 is a promising start. These amendments to the *Disability Services Act 1991* empowered Disability Official Visitors to not only visit accommodation that is owned, rented or operated by a specialist disability service provider and residential aged care that accommodates an entitled person, but also visit accommodation at which a specialist disability service provider provides a specialist disability service. As the Community Services Directorate Website notes:

[These amendments are] important because this type of accommodation may previously have been excluded from the meaning of visitable place, as it may have been considered

⁶⁸ Gooding, P., A. Arstein-Kerslake, L. Andrews, and M. Bernadette. 2017. Unfitness to stand trial and the indefinite detention of persons with cognitive disabilities in Australia: Human rights challenges and proposals for change. *Melbourne University Law Review* 40, no. 3: 816.

⁶⁹ Senate Community Affairs References Committee. 2016. *Indefinite detention of people with cognitive and psychiatric impairment in Australia*. Canberra, Australian Capital Territory: Commonwealth of Australia; Sotiri, McGee, and Baldry 2012).

⁷⁰ Meredith Lea, Fleur Beaupert, Ngila Bevan, Danielle Celermajer, Piers Gooding, Rebecca Minty, Emma Phillips, Claire Spivakovsky, Linda Steele, Dinesh Joseph Wadiwel & Penelope June Weller (2018): A disability aware approach to torture prevention? Australian OPCAT ratification and improved protections for people with disability, *Australian Journal of Human Rights*, p.8

⁷¹ Jessica Robyn Cadwallader et al (2018), ‘Institutional Violence against People with Disability: Recent Legal and Political Developments’, *Current Issues in Criminal Justice* 29(3) 259.

⁷² The recommendations the 2015 Senate Community Affairs References Committee Inquiry documented that the levels of violence, abuse and neglect of people with disability in institutional and residential settings in Australia are such that a Royal Commission is warranted, with the Committee noting:

The committee is convinced that violence, abuse and neglect against people with disability is widespread and is occurring across all Australian communities. At the heart of this mistreatment are questions as to how our society views people with disability.

Senate Community Affairs References Committee. 2015. *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age-related dimensions, and the particular situation of aboriginal and torres strait islander people with disability, and culturally and linguistically diverse people with disability*. Canberra, Australian Capital Territory: Commonwealth of Australia, 54.

a private home. It is now included to take into account situations such as where a person may have both a tenancy agreement and support provision by a specialist disability service provider; or accommodation managed by a community housing provider for the purpose of accommodating a person with a disability, in which disability services are delivered.⁷³

However, it should be noted that the Official Visitor model in a range of closed environments (prisons, youth justice facilities, secure mental health facilities) is essentially a complaints-based approach.⁷⁴ While the visits are regular, Official Visitors seek to identify concerns or complaints and assist with their resolution. Through this work they may identify systemic issues that they can bring to their Minister's attention (or to the attention of other oversight entities), however, their primary role is not assessing risk across a whole system, and nor are they resourced to carry out that type of work. If Official Visitors were to take on the preventive function as part of an ACT NPM, careful consideration should be given to ensure the roles and functions are not confused.

Importantly, any entities designated as NPM in the ACT must not view the issue of treatment of persons with disability in a siloed fashion but a cross cutting issue relevant to all places of deprivation of liberty. If, for example, one oversight entity is designated as NPM for prisons only, and another entity to cover disability specific accommodation, there should be mechanisms in place for sharing insight, knowledge and expertise across all NPMs.

Consideration must also be had to the way an ACT NPM looking at disability specific issues interacts with the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission. The Commission was established in July 2018, but only has responsibility to oversee safeguards for NDIS participants, which equates to less than 10% of the Australian population of people with disability, even less in the ACT. The Commission's role is to provide a national, accessible, oversight, complaint and redress mechanism for people with disability who have experienced violence, abuse, exploitation and neglect.

Australia has not implemented the Concluding Observations relevant to people with disability arising from the Committee Against Torture's 2014 review of the combined fourth and fifth periodic

⁷³ The Community Services Directorate, 'Visitable Places and the Official Visitors for Disability Services', *DSA Amendments - Reporting Visitable Place information*,

⁷⁴ Observation of Quality Complaints and Regulation of the Official Visitors Scheme via <https://www.communityservices.act.gov.au/quality-complaints-and-regulation/Official-Visitor-Disability-Services/amendment-to-the-disability-services-act-1991>>.

reports of Australia⁷⁵ ⁷⁶ and it is anticipated that the most recent 2019 Concluding Observations will not also not be acknowledged, particularly under Article 19 of the CRPRD.

Institutional settings remain in the ACT, despite the changes under the NDIS. Yet, the reduction in institutional living arrangements has not correlated with an increase in community supports and services. The post-institutional living arrangements of many people with disability – such as small-scale congregate care or ‘group homes’ – can aptly be described as a new form of institutionalisation, which carries over many highly institutionalised practices and cultures.⁷⁷ ⁷⁸

Who monitors places of detention in the ACT?

The OPCAT sets up a system of regular preventive oversight, in order to identify and reduce risk. The OPCAT form of oversight can be distinguished from reactive, or complaints-based oversight which responds to incidents after they have occurred and may seek to provide a remedy, redress, compensation for victims or guarantees of non-repetition.

⁷⁵ Disability Rights Now 2019, *Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019*, in response to the List of issues prior to the submission of the combined second and third periodic reports of Australia [CRPD/C/AUS/QPR/2-3]

⁷⁶ See Human Rights Law Centre, *Australia’s 2nd Universal Periodic Review: Voluntary Commitments*. See also: Law Council of Australia, *Australia’s International Human Rights Obligations*.

⁷⁷ Meredith Lea, Fleur Beaupert, Ngila Bevan, Danielle Celermajer, Piers Gooding, Rebecca Minty, Emma Phillips, Claire Spivakovsky, Linda Steele, Dinesh Joseph Wadiwel & Penelope June Weller (2018): A disability aware approach to torture prevention? Australian OPCAT ratification and improved protections for people with disability, *Australian Journal of Human Rights*, p.9.

⁷⁸ The UN Concluding Observations noted concern of Australia not meeting the obligations of the UN CPRD Living Independently and Being Included in the Community (Article 19), specifically noting:

(a) The fact that the specialist disability accommodation (SDA) framework facilitates and encourages the establishment of residential institutions and will result in persons with disabilities having to live in particular living arrangements to access NDIS supports;

(b) The lack of appropriate, affordable, and accessible social housing, which severely limits the capacity of persons with disabilities to choose their place of residence.

In Committee on the Rights of Persons with Disabilities (2019) *Concluding observations on the combined second and third reports of Australia*, CPRD/C/AUS/CO/2-3

The ACT has several independent oversight entities that have a range of functions. Many have some of the powers required by the OPCAT, for example, independence from government; the ability to enter places of deprivation of liberty at any time; the power to view registers and records; and the power to speak to staff and detainees. Some have the power to instigate reviews, audits, or examinations (often termed an 'own motion' power). Few have the resources (even if they do have the power) to visit places of detention regularly to check detainees' conditions and treatment. Many were set up to resolve or investigate individual complaints or examine specific issues. Many have multiple roles and functions, and limited resources. So even if an existing oversight entity prima facie meets all the requirements for an NPM, unless they are sufficiently resourced to conduct preventive monitoring, they are not able to conduct effective preventive oversight.

There is also little consistency in the type and level of monitoring across different types of detention. While several oversight bodies visit ACT's prison, other places where people are deprived of their liberty lack any regular and formal monitoring from an independent entity.

The Commonwealth Ombudsman's 'Baseline OPCAT Survey' provides a useful snapshot of oversight entities, including the places they oversee and whether they meet the OPCAT requirements for an NPM. The tables relevant to the ACT have been annexed to this report. Annexure 1 provides an overview of existing oversight entities in the ACT and the places they are currently have an oversight mandate of some description for (though not necessarily OPCAT compliant oversight).

Annexure 2 provides an analysis of the powers and functions of existing oversight entities against the required criteria for an NPM under the OPCAT. The information in these two tables is based on a survey completed by the oversight entities directly.

Adult prisons

There are numerous entities that have an oversight role regarding the ACT prison, the AMC.

- The ACT Ombudsman has the mandate to handle complaints from detainees relating to maladministration.⁷⁹ The Ombudsman also has broad investigation and own motion powers in regard to maladministration in places of detention in the ACT.
- The ACT Inspector of Correctional Services was established to provide OPCAT style preventive oversight of ACT correctional centres and services in the ACT. The Inspector has the power to visit at any time and must conduct periodic whole of centre, and thematic

⁷⁹ *Corrections Management Act 2007* (ACT) s 51.

reviews as well as reviews of critical incidents, providing independent reports to the ACT Legislative Assembly.⁸⁰

- Official Visitors for corrections regularly visit prisons to handle complaints from detainees. The Official Visitors report quarterly to the Minister for Corrections.⁸¹ The Official Visitors are obliged to communicate and investigate conditions that are not compliant with the relevant operational act.⁸²
- The Health Services Commissioner and Discrimination Commissioner, operating under the Human Rights Commission Act can receive complaints from detainees about a health service, or a complaint about discrimination.
- The Human Rights Commissioner has the capacity to conduct a 'human rights audit' of an ACT government service including treatment of detainees to assess consistency with the *Human Rights Act 2004* (ACT).⁸³ For example, the ACT Human Rights Commission reported on the treatment of women at the AMC in 2014.⁸⁴
- The Public Advocate can visit adult correctional facilities to visit clients that are particularly vulnerable, in order to safeguard and advocate for their rights and protection of those in the ACT exposed to vulnerability.⁸⁵

Police watch houses and cells

There are no oversight bodies that regularly visit police watch houses, lock-ups and cells to monitor general conditions and treatment of detainees.

ACT Holding Cells that are controlled by ACT Policing fall under the jurisdiction of the Commonwealth Ombudsman. The Ombudsman is able to enter cells and conduct investigations regarding complaints about the facilities.⁸⁶ The Ombudsman reviews the complaints that the AFP

⁸⁰ *Inspector of Correctional Services Act 2017* (ACT) pt 3.

⁸¹ *Official Visitors Act 2012* (ACT) pt 4.

⁸² Ibid.

⁸³ *Human Rights Commission Act 2005* (ACT) s 27(1)(a).

⁸⁴ ACT Human Rights and Discrimination Commissioner, *Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre* (Report, April 2014) <<http://hrc.act.gov.au/wp-content/uploads/2015/02/HRC-Womens-Audit-2014.pdf>>.

⁸⁵ ACT Human Rights Commission, Public Advocate <<http://hrc.act.gov.au/public-advocate/>>.

⁸⁶ Commonwealth Ombudsman, *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) National Interest Analysis* (Supplementary Submission, April 2012) <https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jsct/28february2012/subs/sub22_1.pdf>.

categorizes as serious conduct issues.⁸⁷ Under s40XA of the Australian Federal Police Act, the Ombudsman is empowered to audit the provision of AFP complaints.

Youth justice centres

There are a number of oversight entities that cover Bimberi Youth Justice Centre, though none currently have a comprehensive preventive mandate. However, the role of the Inspector of Correctional Services will expand in December 2019 to provide preventive oversight of Bimberi.

The existing oversight functions of Bimberi comprise of:

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- The Commissioner for Children and Young People which has a complaint handling function in relation to complaints from children and young people in Bimberi, as well as the power to conduct a Commission Initiated Inquiry;
- The Public Advocate, that has a role to safeguard the wellbeing of and advocate for the rights of vulnerable persons. Legislation requires the Director-General of the Community Services Directorate to provide the Public Advocate with all notices of a segregation direction⁸⁸, and also specifies that the Public Advocate *must* inspect the register of searchers at least once every three months.⁸⁹
- The Children and Young Person Commissioner, who has a systemic advocacy role in relation to children and young people generally.
- Children and Young Person Official Visitors. Official Visitors are individuals independent from government that regularly visit Bimberi to speak with young detainees and staff about any concerns they have regarding the treatment of young detainees.⁹⁰ The Official Visitor may at any reasonable time enter a 'visitable place', including a youth justice detention centre, following a complaint or at the Official Visitor's own initiative. Official Visitors can request information and make enquiries about matters raised in the complaint.⁹¹ They may also make recommendations to Bimberi management and provide advice to government and community organisations about how to improve services for young detainees. They report legislative non-compliance and complaints received in relation to Bimberi to the Minister for Children and Young People.⁹² The Official Visitor program is administered

⁸⁷ ACT Ombudsman, Complaints and Inspections <http://ombudsman.act.gov.au/publications-and-media/reports/annual-reports/annual-report-2007-08/complaints_1.html>

⁸⁸ *Children and Young People Act 2008* (ACT) s 207.

⁸⁹ *Ibid* s 195.

⁹⁰ *Ibid* pt 2.3, s 37.

⁹¹ *Official Visitor Act 2012* (Act) s 14.

⁹² *Ibid* s 16-7.

through the Department of Community Services, with appointments made by the responsible Minister

- The ACT Ombudsman, responsible for overseeing the ‘reportable conduct’ scheme including receiving complaints of abuse and mistreatment of children and young people.

Part 6.3 of the *Children and Young People Act 2008* allows for inspections at Bimberi by a judge, magistrate, member of the Legislative Assembly, Human Rights Commissioner and the Ombudsman. These parties are empowered to, at any reasonable time, enter and inspect a detention place or any other place where a detainee is or has been directed to work or participate in an activity.⁹³

Designated mental health facilities

There are no independent oversight bodies that regularly visit designated mental health facilities to monitor conditions and treatment of persons deprived of their liberty, however several oversight entities have oversight roles including:

- The Health Services Commissioner who investigates complaints about health services.⁹⁴ Recommendations that arise from a complaint can be broader than to resolve the initial complaint and be given to third-parties including providers of places of detention.⁹⁵ An entity that is given a recommendation by the Commission is required to tell the Commission in writing about the actions it has taken in response to the recommendation within 45 days of receiving notice, or suffer civil penalties.⁹⁶
- The Official Visitor for Mental Health has the power to visit designated health facilities and report conditions to the operational Minister.⁹⁷ The Visitor is obligated to report health facilities that are not complaint with the Mental Health Act 2005 (ACT).⁹⁸ Reportable issues include the appropriateness of facilities, as well as the treatment of individuals and whether it is being conducted in the least possible restrictive environment.⁹⁹ The Official Visitor may also consider complaints and may consult with individuals at designated health facilities directly.¹⁰⁰

⁹³ *Children and Young People Act 2008* (Act) pt 6.3.

⁹⁴ *Human Rights Commission Act 2005* (ACT) s 25(1)(b).

⁹⁵ *Ibid.*

⁹⁶ *Ibid* s 52A.

⁹⁷ *Official Visitor Act 2012* (ACT) s 14(1); *Mental Health Act 2015* (ACT) s 211.

⁹⁸ *Mental Health Act 2015* (ACT) ss 211, 212(b).

⁹⁹ *Ibid* s 211.

¹⁰⁰ *Ibid.*

- The Public Advocate can exercise their functions under the Human Rights Commission Act 2005 to advocate for the rights of vulnerable persons and enter designated mental health facilities.¹⁰¹

Disability settings and services

The ACT Disability Official Visitor is appointed to regularly visit visitable places to monitor and investigate the welfare of persons in disability accommodation and resolves complaints, as well as identify and report on systemic issues.¹⁰² Visitable places for the Disability Official Visitor includes:

- accommodation that is owned, rented or operated by a specialist disability service provider;
- residential aged care that accommodates a person with a disability; and
- accommodation at which a specialist disability service provider provides a specialist disability service (which may be a private residence, but the 'family home' is excluded).

The Human Rights Commission has a dedicated Disability and Community Services Commissioner who can investigate complaints regarding disability services¹⁰³ and may conduct 'Commission Initiated Inquiries' into systemic issues.

The Office of the Senior Practitioner for the ACT plays a role in relation to disability settings in seeking to reduce and eliminate the use of restrictive practices in the ACT. The Senior Practitioner is not independent from government and sits within the Community Services Directorate. The Senior Practitioner can receive complaints into the use of restrictive practices relating to a positive behaviour support plan, conduct investigations arising from a complaint or of his/her own accord, and make directions to a provider in relation to a positive behaviour support plan.

Civil society and OPCAT

The ACT government is not compelled to designate existing oversight entities to be its own NPM. It may opt to create a new entity to cover all places, or to cover some places and situations where there are no entities with a current *preventive* focus.

Civil society organisations have significant experience and expertise working in closed environments, including in providing support and advocacy services and programmes to persons deprived of their liberty, as well as seeking remedies or redress for rights violations that occur in

¹⁰¹ *Mental Health Act (2015) (ACT) s 32*

¹⁰² *Official Visitors Act 2012 (ACT) ss 7, 14.*

¹⁰³ *Human Rights Commission Act 2005 (ACT) s 21(1).*

closed environments. Furthermore, civil society can bring expertise about marginalised groups and their experiences in detention, which can enhance the capacity of NPMs to prevent ill treatment. Amongst OPCAT State Parties there are many international examples of civil society participation in OPCAT, including directly as part of the NPM.

The Australian Human Rights Commission's *2017 Interim Report on OPCAT* consultations contained preliminary proposals on how OPCAT could be implemented in Australia. Several proposals are highly relevant to civil society involvement in OPCAT implementation:

Table 1. Selected aspects of AHRC Proposals contained in the Interim Report, as they relate to civil society.

Proposal 2	The Commission proposes that the Australian Government establish an NPM system that . . . sets up formal paths of engagement with civil society organisations and human rights institutions.
Proposal 5	. . . Australia's federal, state and territory governments should provide resources to support NPM activities in a way that . . . ensures effective liaison with, and involvement of, civil society representatives and people with lived experience of detention in the OPCAT inspection process.
Proposal 6	. . . the Australian Government commit to the development of national standards that govern <i>how detention inspections should take place</i> by the bodies performing the NPM function. These standards should . . . provide for community members to identify concerning detention practices . . . [and] ensure appropriate expertise among inspectors, including by working with specialists and civil society representatives.
Proposal 11	. . . [T]he federal agency responsible for NPM co-ordination establish formal arrangements with civil society representatives, such as an advisory committee, during the early stages of OPCAT implementation.
Proposal 13	. . . [I]mmediately after ratification, the Australian Government coordinate with state and territory governments to commence implementation of OPCAT, including by . . . conducting education and awareness raising about the implementation of OPCAT . . . [and] establishing an advisory council for NPM activities.

Note. AHRC = Australian Human Rights Commission; NPM = National Preventive Mechanism; OPCAT = Optional Protocol to the Convention Against Torture. Source: AHRC (2018b, 14–17)

Source: Minty, R (2019): 'Involving civil society in preventing ill treatment in detention: maximising OPCAT's opportunity for Australia', *Australian Journal of Human Rights*.

In the ACT, there are a wide range of civil society organisations that work in closed environments. Some examples include Winnunga Nimmitajah Aboriginal Community Health Organisation which provides health services in the AMC; Advocacy for Inclusion that provides advocacy and support for persons with a disability detained or at risk of being detained; and the Women's Centre for Health Matters which regularly attends the AMC to provide support to female detainees. Across a range of deprivation of liberty settings, access to community organisations is also important to support persons deprived of their liberty pre and post-detention. In this way, for persons deprived of their liberty civil society can emphasise their connection with, rather than exclusion from society.

In OPCAT State Parties, civil society organisations play different roles in relation to detention oversight and vis-à-vis NPMs, including:

- Formally included as part of the NPM, for example, to regularly jointly conduct monitoring with an oversight institution;
- Individuals joining a monitoring team to contribute specific expertise or bring certain perspectives or experience. Having persons with lived experience of detention, from a

culturally or linguistically diverse background, or an Aboriginal and/or Torres Strait Islander person can offer important insights and perspectives;

- Civil society groups playing a formal advisory role to an NPM; or
- Informal engagement with an NPM to share information about conditions and issues in detention.¹⁰⁴

When designating NPMs in relation to closed environments in the ACT, the Government should consider what role ACT civil society organisations can play and how different roles could be formally or informally integrated into NPM operation.

¹⁰⁴ See Minty, R (2019): Involving civil society in preventing ill treatment in detention: maximising OPCAT's opportunity for Australia, *Australian Journal of Human Rights*, p.7.

Table 1: places of detention in the ACT

(Adapted from Commonwealth Ombudsman's OPCAT Baseline Assessment 2019)

Entities	Adult Prisons (including Correctional Centres and work camps)	Juvenile Facilities (including Training Centres, Youth Detention Centres and Youth Justice Centres)	Closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment	Closed forensic disability facilities or units where people may be involuntarily detained by law for care	Police lock-ups or police station cells	Disability residences	Other
ACT Inspector of Correctional Services	Alexander Maconochie Centre	Bimberi Youth Justice Centre	N/A	N/A	N/A	N/A	ACT Court cells ACT Court transport vehicles
ACT Official Visitor scheme	Alexander Maconochie Centre	Bimberi Youth Justice Centre	Adult Mental Health Unit Extended Care Unit (Brian Hennessy Rehabilitation Centre) Ward 2N at Calvary Public Hospital Older Persons Mental Health Inpatient Unit	Dhulwa Mental Health Unit	N/A	Specialist disability service provider accommodation Residential aged care where a person with a disability lives Accommodation where a specialist disability service provider provides a service	
ACT Ombudsman	Alexander Maconochie Centre	Bimberi Youth Justice Centre	N/A	N/A	N/A		ACT Court Cells ACT Court transport vehicles

ACT Human Rights Commission (incorporating the ACT Children and Young Peoples Commissioner)	Alexander Maconochie Centre	Bimberi Youth Justice Centre	Adult Mental Health Unit Extended Care Unit (Brian Hennessy Rehabilitation Centre) Ward 2N at Calvary Public Hospital Mental Health Assessment Unit Older Persons Mental Health Inpatient Unit	Dhulwa Mental Health Unit	N/A		ACT Magistrates Court cells ACT Tribunal cells ACT Supreme Court cells
ACT Public Advocate	Alexander Maconochie Centre	Bimberi Youth Justice Centre	Adult Mental Health Unit Brian Hennessy Rehabilitation Centre Ward 2N at Calvary Public Hospital Mental Health Assessment Unit Older Persons Mental Health Inpatient Unit	Dhulwa Mental Health Unit	N/A		Considering recommencing inspections of court cells for children and young people

Table 2: ACT oversight entities

(Adapted from Commonwealth Ombudsman's OPCAT Baseline Assessment 2019)

		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission ¹⁰⁵	ACT Children and Young People Commissioner and Public Advocate
1	Date of creation	Enabling legislation effective 8 December 2017. Inaugural Inspector of Correctional Services appointed 14 March 2018.	The expanded ACT Official Visitor Scheme commenced on 1 September 2013 following amendments to the <i>Official Visitor Act 2012</i> (ACT)	11 May 1989	1 November 2006	
	Inspection role or oversight	Inspection role	Inspection and visit role	Oversight and complaints investigation role	Inspection and visit role	
OPCAT Framework						
Independence Articles 18(1), 18(3), 18(4)						
2	Legislative basis	<i>Inspector of Correctional Services Act 2017</i> (ACT)	<i>Official Visitor Act 2012</i> (ACT)	<i>Ombudsman Act 1989</i> (ACT)	<i>Human Rights Commission Act 2005</i> (ACT)	
3	Autonomous resource allocation and expenditure	Has autonomy to make decisions on how to expend resources.				
4	Personal and institutional independence from facilities inspected	The Inspector is fully independent from ACT Corrective Services.	An independent statutory entity.	Is independent and impartial.	The Act establishes a statutory agency which is independent from government.	
Composition Article 18(2)						

¹⁰⁵ The ACT Human Rights Commission includes the Discrimination, Disability and Health Services Commissioner, and also encompasses the Victims of Crime Commissioner who may provide therapeutic support/financial assistance to torture victims where the crime occurred in the ACT.

5	Gender ratio	Currently one male, two female.	<p>Mental health facilities - three females and one male Mental Health Official Visitors.</p> <p>Alexander Maconochie Centre - two females and one male Corrections Official Visitors.</p> <p>Bimberi Youth Justice Centre -two female Children and Young People Official Visitors.</p>	The ACT Ombudsman is male. All other staff working on oversight of correctional services matters within the ACT Ombudsman are female.	All of the substantive Commissioner positions are filled by women. A majority of the staff performing inspection functions for the Commission are also women.	There are currently six advocate staff members who undertake inspections on behalf of the Public Advocate. Five of these staff members are female.
6	Ethnic and minority representation	Section 18(2) of the Act requires consultation with, or suitability to the cultural background or vulnerability of any detainee involved in a matter being examined or reviewed.	There are two Indigenous Official Visitors, one under s 57 of the <i>Corrections Management Act 2007</i> (ACT), and one under the <i>Children and Young People Act 2008</i> (ACT). ¹⁰⁶	<p>One of the staff members working on correctional services matters identifies as Aboriginal.</p> <p>Several ethnic and minority groups are represented among ACT Ombudsman staff more broadly.</p>	Several ethnic and minority groups are represented among substantive Commission staff.	No ethnic minority groups are currently represented.

¹⁰⁶ There is no separate scheme for Indigenous Official Visitors; Indigenous Official Visitors are managed by the ACT Official Visitors Scheme.

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
7	Expertise and professional knowledge	Corrective Services Law Human Rights	All official visitors are qualified under varying qualification requirements contained in the specific Acts establishing the three separate disciplines with the scheme.	The expertise and professional knowledge include backgrounds in corrections, government administration and community services.	The expertise and professional knowledge includes backgrounds in law, human rights law, discrimination law, health services, and community services.	The expertise and professional knowledge includes backgrounds in mental health and forensic services; complex disability; child protection; and youth justice, and professional backgrounds in social work and occupational therapy.
8	Expertise and external supplementation	Section 14 allows the Inspector to engage contractors to assist in the exercise of any function.	Ability to appoint qualified experts, if required.	Section 30AB(1) provides that the Ombudsman may engage contractors and consultants.	Not stated	Not stated
Access to places Article 4(1)						

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
9	Legislative basis to inspect	<i>Inspector of Correctional Services Act 2017 (ACT) (ICS Act)</i>	<i>Official Visitor Act 2012 (ACT) Corrections Management Act 2007 (ACT) Children and Young People Act 2008 (ACT) Mental Health Act 2015 (ACT) Mental Health (Secure Facilities) Act 2016 (ACT) Disability Services Act 1991 Housing Assistance Act 2007</i>	<i>Ombudsman Act 1989 (ACT)¹⁰⁷ Children and Young People Act 2008 (ACT) s153 Corrections Management Act 2007 (ACT) s56A</i>	<i>Human Rights Act 2004 (ACT) s 41¹⁰⁸ Human Rights Commission Act 2005 (ACT) s 48¹⁰⁹ Corrections Management Act 2007 (ACT) Children and Young People Act 2008 (ACT) Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT) Mental Health Act 2015 (ACT) Mental Health (Secure Facilities) Act 2016 (ACT)</i>	

¹⁰⁷ Section 5(1)(b): vests the ACT Ombudsman with the power to investigate action that relates to a matter of administration by his or her own motion. Note: The Ombudsman **must** consult with the inspector of correctional services regarding any investigation under par (b) involving a detainee or correctional centre or service.

¹⁰⁸ Section 41 vests the Commission with a broad power to review the effect of Territory laws on human rights and to report in writing to the Minister.

¹⁰⁹ Section 48 of the Act vests the Commission with the power to investigate and report on systemic issues in relation to matters related to its functions.

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
10	Places currently inspected	Alexander Maconochie Centre ACT Court Cells ACT Court Transport Vehicles	Alexander Maconochie Centre Bimberi Youth Justice Centre Dhulwa Mental Health Unit Adult Mental Health Unit Older Persons Mental Health Inpatient Unit. Extended Care Unit (Brian Hennessy Rehabilitation Centre) Ward 2N, Calvary Public Hospital	Alexander Maconochie Centre	Alexander Maconochie Centre Bimberi Youth Justice Centre Dhulwa Mental Health Unit Adult Mental Health Unit Adult Mental Health Rehabilitation Unit Brian Hennessy Rehabilitation Centre Ward 2N at Calvary Public Hospital Mental Health Assessment Unit Older Persons Mental Health Inpatient Unit	Alexander Maconochie Centre Bimberi Youth Justice Centre Adult Mental Health Unit Dhulwa Mental Health Unit Extended Care Unit (Brian Hennessy Rehabilitation Centre) Ward 2N, Calvary Public Hospital Mental Health Assessment Unit Older Persons Mental Health Inpatient Unit.
11	Unannounced visits	Able to access a facility at any time under s 19.	Able to access a facility at any time under s 15(1).	Able to enter a correctional centre at any reasonable time under s56A of the <i>Corrections Management Act</i> for the purposes of exercising the Ombudsman's functions under the Act.	Yes	Yes

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
12	Frequency of visits	Once every 7 to 10 days.	Up to weekly	<p>Monthly outreach visits plus attendance at two monthly detainee delegate's meetings.</p> <p>Ad-hoc visits to individual complainants as required.</p>	Visits and inspections vary in frequency depending on what is required by the review or consideration being undertaken.	<p>Adult Mental Health Unit and Mental Health Assessment Unit - weekly</p> <p>Bimberi Youth Justice Centre and Dhulwa Mental Health Unit - fortnightly</p> <p>Older Persons Mental Health Inpatient Unit and Brian Hennessy Rehabilitation Centre - monthly</p> <p>Alexander Maconochie Centre - fortnightly (on average)</p>
13	Duration of visits	The duration varies depending on the purpose, it may be for a meeting of 1 hour duration, to a full day when visiting as part of an examination and review.	1-3 hours	2-4 hours	Visits and inspections vary in duration depending on what is required by the review or consideration being undertaken.	
Access to information Article 20(a) and 20(b)						

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
14	Right to access all information – treatment and conditions: files, registers, medical records, dietary provisions and other data	Statutory authority under s 22 to access all information required.	Able to access information on request under ss 15, 18 and 19.	There is no blanket right to this information unless pertaining to the conduct of a notified investigation under s 9 of the Ombudsman Act. In this circumstance, the Ombudsman has the power to obtain information under s 11. The Ombudsman also has power to access specified information under the <i>Children and Young People Act 2008</i> including therapeutic protection register and register of searches and use of force (see s634(1)(d) and s 195(5)(e)).	<p>Yes, the Commission has broad powers to access information regarding the treatment and conditions of people in detention in the ACT.</p> <p>S 73 of the <i>Human Rights Commission Act 2005</i> vests a broad power in the Commission to require a person to provide information or produce a document or other thing where it is relevant to a consideration in relation to a complaint.</p> <p>The <i>Children and Young People Act 2008</i>, the <i>Mental Health Act 2015</i> and the <i>Mental Health (Secure Facilities) Act 2016</i> also contain a number of specific provisions vesting the Commission with powers to access and inspect specified information and registers within Bimberi and secure mental health facilities.</p> <p>Sections 144(2) and 222(3) of the CYP Act, and sections 18(5), 27(5), 59(5), 64(2)(b) and 65(5) of the MH(SF) Act apply.</p>	

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
Access to Persons Article 20(d) and 20(e)						
15	Private interviews in location of choice	Sections 19(3) and 21(1)(b) permit speaking to all persons in private.	Able to speak to whomever in private.	Able to speak with whomever in private.	Yes, there are various provisions in the legislation governing specific places of detention in the ACT which provide the Commission with access to people detained in those places.	
16	Choice of interviewee	Sections 19(3) and 21(1)(b) permit speaking to all persons in private.	Able to speak to whomever.	Able to speak with whomever.	Able to speak to whomever required.	
17	Ability to interview staff, detainees and other relevant persons	Sections 19(3) and s21(1)(b) permit speaking to all persons in private.	Able to speak to whomever required.	Section 9 allows to speak with whomever the Ombudsman sees fit.	Able to speak to whomever required.	
Reports and Recommendations Article 19(b), 19(c)						
18	Ability to make post visit reports	Requirements to produce a report under s 27.	Yes	Sections 15(5) and 18 allow a report to be produced in relation to a complaint.	Yes	
19	Who report to	ACT Legislative Assembly	The Minister and relevant Directorate[s].	ACT Legislative Assembly or publically.	To anyone the Commission considers appropriate, s 84 relates.	
20	Post visit recommendations and measures for improvements	Has the ability to do so under s 27(2)(e).	Has the ability to make recommendations.	Sections 15 and 18 allow recommendations to be made in the outcome of an investigation.	Yes, the Commission may make recommendations in reports produced in relation to individual complaints and Commission-Initiated Considerations, for example, s 85 of the HR Commission Act.	
21	Any requirement for recipient of report to examine and engage with recommendations on possible implementation measures	No requirement for a recommendation to be implemented.	Any recommendations made are required to be acted upon.	If recommendations are made, under s 18(4) the agency can be required to provide particulars of any action taken in relation to the recommendations.	Under s 85 any recommendations made are required to be acted upon.	

22	Publication of an annual report	No legislative requirement to do so, however amendments are being sought.	Yes	Annual reports are tabled before the ACT Legislative Assembly and published on its website.	Yes
23	Ability to make submissions, proposals and observations on relevant legislation	Yes	Yes	Yes	<p>Yes. The Commission reviews all draft Cabinet submissions for compatibility with the <i>Human Rights Act 2004</i> (ACT), including those containing proposals for legislative and policy changes, and is able to submit formal comments on cabinet submissions.</p> <p>The Commission is also regularly consulted directly by various ACT Government Directorates on new legislative and policy proposals raising human rights issues, and contributes policy submissions to inquiries or consultations relevant to our work.</p>

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
Privileges, Immunities and Protections from Reprisals Articles 21 and 35						
24	Protection from disclosure to government, judiciary, other organisations or persons	Provisions under s 37, set up an offence of disclosing 'protected information' unless required by the Act or another Territory law or order of the Court.	Under ss 16 and 17, information received is protected from disclosure.	N/A	Information about a person that is disclosed to, or obtained by, Commission staff because of the exercise of a function under the HR Commission Act is referred to as 'protected information' for the purposes of that Act. There are also relevant provisions under the <i>Information Privacy Act 2014</i> (ACT) and the <i>Health Records (Privacy and Access) Act 1997</i> .	
25	Legislative basis for protection	<i>Inspector of Correctional Services Act 2017</i> (ACT)	<i>Official Visitor Act 2012</i> (ACT)	<i>Ombudsman Act 1989</i>	<i>Human Rights Commission Act 2005</i> (ACT)	
26	Protection from arrest, detention or seizure of personal baggage	Provisions under s 38 protects liability for conduct engaged under the Act. There is no provision that specifically relates to protection from arrest or detention, seizure of personal baggage.	Section 24 relates.	Ombudsman staff are not personally liable for anything done or omitted to be done in good faith in exercise of or purported exercise of any power or authority conferred under the Ombudsman Act (see s 34)..	Commission staff are not personally liable for anything done or omitted to be done honestly and without recklessness in the exercise of a function under the HR Commission Act.	
27	Protected from interference with communications	Section 19(6) provides communications without the presence of persons or surveillance devices.	Section 24 relates.	Section 51 of the <i>Corrections Management Act</i> provides for protected communications that are not listened to or recorded. Section 179 of the <i>Children and Young People Act 2008</i> provides for protected communications between young detainee and the Ombudsman.	The legislation governing the operation of both Bimberi Youth Justice Centre and the Alexander Maconochie Centre provides protections against interference with communications between the Commission and detainees.	

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
28	Hold confidential information unable to be disclosed without the express consent of the providers of that information	Yes	An Official Visitor is entitled to disclose all matters in their report.	<p>S 33(2): information holder must not make a record of, or divulge, or communicate to any person, any information acquired because of the person being an information holder, being information that was disclosed or obtained under the provisions of this Act. Maximum penalty: 50 penalty units, imprisonment for 6 months or both.</p> <p>S 33(3)(b): Subsection 2 doesn't prevent an information holder from divulging or communication information to a person if information was provided with consent of the provider of that information.</p>	Information about a person that is disclosed to, or obtained by, Commission staff because of the exercise of a function under the HR Commission Act is referred to as 'protected information' for the purposes of that Act.	
Ability to Contact SPT Article 26						
29	Ability to have direct and confidential contact with the UN SPT	There is no reference in the ICS Act to be in contact with the SPT.	No material to state unable to contact.	Yes	There is no reference in the HR Commission Act about contact with the SPT. UN Committee visits are contemplated by the <i>Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i> .	
30	Contact include meetings, exchanges of information and/ or training sessions	There is no reference in the ICS Act to be in contact with the SPT.	No material to state unable to contact	Yes	There is no reference in the HR Commission Act about contact with the SPT.	

OPCAT Framework		ACT Inspector of Correctional Services	ACT Official Visitor scheme	ACT Ombudsman	ACT Human Rights Commission	ACT Children and Young People Commissioner and Public Advocate
Inspection Methodology, Standards and Principles						
31	Inspection Methodology	In process of establishing such.	Provision of a document to Official Visitors setting out their powers.	Currently, no separate inspection methodology or standards – dependent on general investigations procedures. Oversight strategy being developed.	Inspection processes vary by place of detention, but generally involve inspection of relevant registers and documents and speaking confidentially with people detained in those places and hearing any concerns or issues they may wish to raise. The Public Advocate has a routine practice of viewing randomly selected CCTV footage of uses of force.	
32	Defined standards to assess places of detention	Standards for examination and review are currently being developed.	Not particularly.		The standards against which the Commission assesses places of detention are primarily derived from the legislative requirements and protections in the HR Act, HR Commission Act and the various pieces of legislation governing the places of detention, including the Children and Young People Act; and the Mental Health Act; the Mental Health (Secure Facilities) Act. The Commission also is also guided by the policies and procedures for various places of detention set out in notifiable instruments.	