

Steven Caruana – Australia OPCAT Network

Presentation

Across Australia there are several immigration detention centres, transit accommodations and alternative places of detention in each of our States and Territories, however, responsibility for them rest solely with the Commonwealth Government. As does responsibility for our regional processing arrangements with Nauru and previously Papua New Guinea. According to official Departmental figures as of 31 May 2022, there were 1402 people in immigration detention facilities around Australia and the average period held in detention was 736 days.¹ As of 30 June 2022, there were 112 people remaining on Nauru.²

Australia ratified the OPCAT in 2017 but postponed its obligation to establish an NPM until January 2022 in line with the provisions of Article 24 of the OPCAT. Given our federated system of government, this delay was to be used to negotiate the establishment of a multibody NPM between the Commonwealth, States and Territories, coordinated at the federal level by the Office of the Commonwealth Ombudsman. Despite our extended timeframe, the Commonwealth Government requested an additional year extension which was granted by the Committee against Torture earlier this year.

Australia now has until 20th of January 2023 to establish its NPM and will need to provide a progress report at the 75th Session of the Committee against Torture in October as well as during the SPT's upcoming visit taking place just prior to this.

As well as being Coordinator, the Commonwealth Ombudsman was also designated the responsible NPM for federal places of detention in June 2018. Its remit includes immigration detention and places of detention under the control of the Australian Federal Police and Australian Defence Force. Its OPCAT jurisdiction however does not extend to the regional processing arrangements on Nauru (which has been a topic of controversy).

Since designation, the Office of the Commonwealth Ombudsman has worked progressively towards adopting an OPCAT lens to its existing monitoring work and its engagement with civil society.

In 2020, the Ombudsman established a civil society advisory group to provide expert advice and guidance on its NPM work. The group has met four times and the office produces communiques following its meetings. Supplementing this formal cooperation with civil society, are meetings with relevant and interested sector groups prior to inspections and a dedicated page on the Ombudsman's website providing regular updates and an OPCAT specific contact form.

Importantly, the Commonwealth Ombudsman's office continues to work on updating its inspection methodologies in line with its preventive human rights mandate, drawing on the experience and expertise of others including HMIP, the New Zealand Ombudsman, Inspector of Custodial Services Western Australia, the Australian Human Rights Commission, and the APT.

It has also shown a commitment to the transparency that OPCAT requires through the publication of its inspection reports. Since designation, the Ombudsman's Office has published four periodic inspection reports and a statement during the height of the COVID-19 lockdowns in Australia. These reports have complemented those of the Australian Human Rights Commission and have often

¹ <https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-may-2022.pdf>

² <https://www.homeaffairs.gov.au/about-us-subsite/files/population-number-resettled-30-june-2022.pdf>

helped raise the profile of detention related issues. For example, the Ombudsman and Human Rights Commissions observations on the use of mechanical restraints have been used as supporting evidence in strategic litigation currently before the federal court.

As to the notion of the potential of NPMs to reduce the use of immigration detention; It should be noted that the SPT in its concept of prevention paper states that ‘the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring.’³ In this regard NPMs are interested in the reduction of people in detention so far as it directly corresponds to a risk of ill treatment to which it finds evidence. In the context of Australian immigration detention, the Commonwealth Ombudsman has made recommendations both directly and indirectly linked to a reduced reliance on detention, including:

- decommissioning of the High Security Blaxland Compound at the Villawood Detention Centre⁴,
- reducing the number of people in detention to minimise the risk of COVID-19 spread across the network⁵; and
- limiting the use of hotels as Alternative Places of Detentions⁶.

To conclude my presentation, I would like to acknowledge that we are very fortunate to have the Commonwealth Ombudsman Mr Iain Anderson join us for this webinar, and I would like to provide him the opportunity to make some final remarks about the work of his office.

³ <https://daccess-ods.un.org/tmp/8775328.39775085.html>

⁴ https://www.ombudsman.gov.au/_data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report-January-to-June-2019.pdf

⁵ https://www.ombudsman.gov.au/_data/assets/pdf_file/0017/111950/1-July-2020-Statement-by-the-Commonwealth-Ombudsman-Michael-Manthorpe-on-the-management-of-COVID-19-risks-in-immigration-detention-facilities.pdf

⁶ https://www.ombudsman.gov.au/_data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf