

CAT, OPCAT, and Preventive Monitoring

An introductory guide



> Introduction

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Optional Protocol to the Convention against Torture (OPCAT) are international human rights agreements concerned with preventing and eradicating the use of torture and other cruel, inhuman or degrading treatment or punishment (or ‘ill treatment’).

CAT obliges States to outlaw torture and ill treatment and take effective measures to prevent them from occurring. States must investigate allegations, ensure accountability for perpetrators and provide redress to victims.

OPCAT supplements CAT and helps states uphold their obligation to *prevent* torture and ill treatment. It does this by establishing a system of visits by international and domestic experts to regularly monitor conditions and treatment of people deprived of their liberty.

It is widely recognised that people deprived of their liberty are at heightened risk of torture and ill treatment. This is because they are often held in closed, isolated, and secure environments where members of the public, the media and non-government organisations have limited or no access. Additionally, people deprived of their liberty may have limited autonomy and control over many aspects of daily life, are dependent on authorities for ensuring their basic needs and rights are met and have limited ability to contact the outside world or remove themselves from unsafe situations. They may also be subject to significant restrictions, poor living conditions, and use of restrictive practices such as seclusion, restraint, and solitary confinement, that can increase the risk of ill treatment.

Indigenous peoples, people with disabilities, and children from marginalised backgrounds are often disproportionately represented in these settings and are therefore at increased risk of harm.



People can be deprived of their liberty in a wide range of contexts, in both public and private settings, including during arrest and police custody, in prisons and youth detention centres, immigration detention, secure mental health settings, secure residential settings (such as residential aged care or disability homes), during transport or escort by authorities, and in other situations where they are not free to leave.

Impartial and independent scrutiny of the treatment and conditions of people deprived of their liberty therefore plays a vital role in eliminating the practice of torture and ill treatment. Preventive oversight is intended to strengthen human rights protections and making recommendations for improvement. It also increases transparency and supports safer and more respectful environments strengthens public confidence and accountability and contributes to continuous improvement across systems and services.

Preventive oversight can benefit people deprived of their liberty, staff, service providers, authorities and the broader community. By identifying risks and systemic issues before harm occurs, preventive oversight can help improve treatment, conditions and practice, contributing to safer environments, better outcomes and greater respect for human rights.

> The Convention against Torture (CAT)

CAT is a United Nations (UN) human rights treaty. It was adopted by the UN General Assembly in 1984 and entered into force in 1987. Australia has been a party to CAT since 1989. As of 2025, CAT has 175 States Parties, making it one of the most widely adopted international human rights treaties.

CAT defines torture and recognises that both torture and ill treatment are serious violations of human rights. The treaty requires countries that become a party to it to take all necessary legislative, administrative, judicial, and other appropriate measures to prevent acts of torture (Article 2) and specifies a range of additional steps that countries must take to adequately prevent, prohibit and redress torture and guarantee non-recurrence.

Under CAT, countries must commit to:

- preventing torture and ill treatment
- ensuring torture is a criminal offence under domestic law
- promptly and impartially investigating allegations of torture and other ill treatment
- providing safeguards for people deprived of their liberty
- ensuring education and training of officials relating to the prohibition of torture
- providing avenues for complaints and accountability
- ensuring victims of torture obtain redress and right to compensation



- complying with the principle of non-refoulement by not expelling, returning or extraditing a person to another State where there are substantial grounds for believing they would be in danger of being subjected to torture
- establishing universal jurisdiction, which requires countries to investigate and prosecute suspected crimes of torture irrespective of the nationalities and territories where it took place.

CAT also establishes the Committee against Torture, which consists of international experts that monitor country's implementation of CAT. They review periodic reports from countries on their progress, consider individual communications, and conduct inquiries.

> The Optional Protocol to the Convention against Torture (OPCAT)

OPCAT was adopted by the UN General Assembly in 2002 and entered into force in 2006. Australia became a party to OPCAT in 2017. As of 2025, 96 States are party to OPCAT reflecting a growing international commitment to preventive action as a means of preventing torture and ill treatment.

OPCAT builds on the obligations under CAT to prevent torture and ill treatment through creating a system of preventive monitoring to places where people are deprived of their liberty. OPCAT is based on the principle that regular independent oversight is essential to prevent the risk of torture, ill treatment and other forms serious violations of human rights.

It also recognises that all people deprived of their liberty must be treated with dignity, respect, and humanity in accordance with international human rights law and standards.

To help countries meet their international human rights obligations, OPCAT establishes two oversight mechanisms: National Preventive Mechanisms (or NPMs); and the UN Subcommittee on Prevention of Torture – known as the SPT.

NPMs are independent monitoring bodies established at the domestic level while the SPT is an independent international treaty body that assists NPMs with their work, and visits countries periodically to conduct its own examinations.

Countries that become party to OPCAT are required to:

- establish and resource NPMs to undertake their role effectively
- allow regular visits by NPMs to places where people are deprived of their liberty, to examine treatment and conditions
- provide NPMs with access to all information, places and people relevant to preventive monitoring activities
- consider and look to implement NPM recommendations aimed at strengthening safeguards and improving systems and practices
- allow the SPT to visit places where people are deprived of their liberty.



> Preventive purpose

Preventing engagement involves regular independent oversight of places and situations where people are deprived of their liberty.

The purpose of preventive engagement is to identify risks before serious harm occurs and support continuous improvement and strengthening of safeguards over time. In contrast to complaints-handling, investigations or inspections that occur after incidents arise, preventive engagement focuses on systems-level factors (such as conditions, treatment, practices and broader systemic issues) that may increase the risk of ill treatment. Due to this system-level focus, preventive engagement may be informed by – but does not focus on – cases and incidents at an individual level.

Preventive engagement may include:

- visits to detention settings such as prisons, mental health units, or immigration facilities
- reviewing conditions and treatment such as living conditions, health care, legal and administrative measures, activities, and more
- speaking with people deprived of their liberty, staff, service providers, and other members of the community
- reviewing records, data, policies and procedures
- identifying systemic risks and issues
- making recommendations for improvement
- making observations and proposals on relevant legislation.

> National Preventive Mechanisms

NPMs have been described as *'the most significant single measure which states can take to prevent torture and ill-treatment occurring over time'*.¹

What makes NPMs distinct from other oversight bodies is that it is 'forward looking'. NPMs seek to identify opportunities to improve conditions and treatment and prevent torture and ill treatment; not to investigate or adjudicate on a past event.

Under OPCAT, NPMs exercise four key functions:

¹ Ms. Aisha Shujune Muhammad, Vice-Chair, United Nations Subcommittee on Prevention of Torture – NPM Guide EN.pdf (pg 1).



1. **Visits** – Conducting regular visits to situations where people are deprived of their liberty to assess their treatment and safeguards, identify risks, and make recommendations aimed at preventing torture and ill treatment.
2. **Providing advice** – Making recommendations and providing advice to governments and authorities on legislation, policies, practices and other measures that strengthen protections against torture and ill treatment.
3. **Enhancing cooperation** – Working collaboratively with governments, oversight bodies, civil society organisations and international preventive mechanisms to strengthen the prevention of torture and ill treatment.
4. **Educating** – Promoting awareness and understanding of torture prevention, OPCAT and the rights of people deprived of their liberty through training, guidance, and engagement with relevant stakeholders.

NPMs must be financially and functionally independent and have unrestricted access to all places, including any suspected places where persons are or may be deprived of their liberty, information and people necessary for monitoring activities.

NPMs are also empowered to determine the timing of visits, including whether they are unannounced, and may choose people to privately interview (including people deprived of liberty, staff, and authorities), who must be protected against sanctions and reprisals. NPMs should be made up of people from a range of backgrounds and seek a gender balance and representation of ethnic and minority groups in the country.

Other core aspects of the NPM role are that information obtained is kept confidential, and that when undertaking monitoring activities, NPMs strictly ensure they **do no harm**. This means NPMs must ensure people deprived of their liberty are not inadvertently exposed to harm or compromised safety as a result of their visits. NPMs are also required to report annually on their activities.

The effectiveness of NPMs depends on their ability to undertake these functions without limitations, as well as constructive engagement and cooperation between governments, other oversight bodies, authorities involved in the deprivation of liberty, and the broader community.

Different countries have adopted different NPM models depending on their legal and institutional systems. In Australia, the NPM framework is a multi-body arrangement made up of oversight bodies across Commonwealth, state and territory jurisdictions. Many bodies nominated as NPMs already performed oversight functions before taking on preventive monitoring responsibilities under OPCAT.

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OPCAT in Australia

Under Australia’s OPCAT model, NPM responsibilities are shared across Commonwealth, state and territory jurisdictions. Different oversight bodies have been designated to carry out NPM functions in different contexts and jurisdictions.

NPMs have now been nominated for the Commonwealth, the Australian Capital Territory, the Northern Territory, South Australia, Tasmania and Western Australia. Victoria, New South Wales, and Queensland have yet to nominate NPMs.

Key terms and concepts

CAT	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is a United Nations human rights treaty that creates a positive obligation to prevent and eradicate torture and ill treatment. Under CAT, states should not only outlaw torture and ill treatment but should actively take steps to prevent torture and ill treatment from happening in the first place.
OPCAT	The Optional Protocol to the Convention against Torture (OPCAT) is a human rights treaty linked to CAT. OPCAT is a unique treaty in that it focuses on prevention through regular independent oversight and monitoring of places and situations where people are deprived of their liberty.
Torture	<p>Article 1 of CAT defines torture as ‘any act by which severe physical or mental pain or suffering is intentionally inflicted on a person for a specific purpose, such as obtaining information or a confession, punishment, intimidation, coercion, or discrimination, where the act is carried out by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity’.</p> <p>For an act to constitute torture under CAT, four key elements must be present:</p> <ul style="list-style-type: none">• the act (or omission) causes or results in severe pain or suffering to an individual, either physically or mentally



	<ul style="list-style-type: none"> • the act (or omission) must be inflicted or undertaken intentionally • the act (or omission) must be undertaken for a specific purpose • the act (or omission) must involve or be at the acquiescence of a public official or acting in an official capacity. <p>Whether treatment amounts to torture depends on the circumstances of each case. Factors such as a person’s age, sex, gender, health, disability or other characteristics may affect the severity and impact of the pain or suffering experienced.</p> <p>Freedom from torture is one of the few international human rights standards that is absolute or ‘non-derogable’ – that is, it cannot be limited or restricted for any reason, in any circumstances – even during war or a state of emergency.</p>
<p>Cruel, inhuman or degrading treatment or punishment (or ‘ill treatment’)</p>	<p>Article 16 of CAT requires States to prevent acts of cruel, inhuman or degrading treatment or punishment (ill treatment). Ill treatment encompasses conduct that causes physical or mental suffering or seriously undermines a person’s dignity.</p> <p>While torture and ill treatment are both absolutely prohibited, conduct may be classified as ill treatment where it does not satisfy the elements of torture under Article 1 of CAT. The distinction depends on the circumstances of each case, including the severity of suffering, the duration and effects of the treatment, and the characteristics and vulnerabilities of the person affected.</p> <p>Examples may include unsafe conditions, excessive use of force, inappropriate restraint practices, denial of medical care, humiliation or other treatment inconsistent with mental dignity.</p>
<p>Deprived of liberty</p>	<p>A person is deprived of their liberty when they are not free to leave a place or situation (where that is temporary or permanent). This may occur in a public or private setting, such as:</p> <ul style="list-style-type: none"> • during arrest or police custody • in prisons or youth detention • in immigration detention • in secure mental health settings • during transport or escort



	<ul style="list-style-type: none"> • in court custody • in other situations where a person cannot leave freely. <p>The SPT recommends countries take a broad approach to defining places of deprivation of liberty and that this can include places where people are deprived of their liberty with the consent and/or acquiescence of authorities, not just through a formal order.</p>
<p>Preventive monitoring</p>	<p>Preventive monitoring involves regular independent oversight aimed at identifying risks and strengthening safeguards before serious human rights violations occur.</p> <p>It focuses on prevention, identifying risks and promoting good practice, institutional reforms, and continuous improvement, rather than responding only after incidents arise.</p> <p>Preventive monitoring conducted by NPMs may involve:</p> <ul style="list-style-type: none"> • inspections or examination of facilities • discussion with people deprived of their liberty, staff, and any other relevant people • review of records and procedures • identification and systemic risks and gaps in safeguards <p>recommendations aimed at improving systems and reducing risks.</p>
<p>Risk</p>	<p>In an OPCAT context, risk refers to factors, practices, conditions or situations that may increase the likelihood of torture and ill treatment occurring.</p> <p>Risks may relate to, for example:</p> <ul style="list-style-type: none"> • physical environments • staffing levels or training • use of force or restrictive practices • access to healthcare or support services • isolation from family, friends and community or cultural connections, legal representatives or oversight bodies • policies, procedures or organisational culture • people in situations of vulnerability <p>Preventive monitoring focuses on identifying and reducing risks early, before serious harm occurs.</p>



<p>National Preventive Mechanism (NPM)</p>	<p>NPMs consist of independent domestic oversight body, or group of bodies, responsible for carrying out a range of functions, including preventive monitoring, under OPCAT.</p> <p>In Australia, NPM functions are carried out by oversight bodies across Commonwealth, state and territory jurisdictions.</p>
<p>Systemic issues</p>	<p>Systemic issues are broader problems or patterns within systems, policies, practices or environments that may increase the risk of harm or serious human rights violations, which may also disproportionately affect specific groups.</p> <p>Examples may include inadequate staffing, poor access to healthcare, unsafe physical environments, ineffective complaints processes or inappropriate use of restrictive practices.</p>
<p>Safeguards</p>	<p>Safeguards are measures intended to protect the rights, safety, and wellbeing of people who are deprived of their liberty.</p> <p>Safeguards may include:</p> <ul style="list-style-type: none"> • legal frameworks • independent oversight • policies and procedures • access to healthcare • legal assistance, contact with the outside world, cultural connections • complaint mechanisms • staff recruitment and training • protections against reprisals.
<p>Independence</p>	<p>Under OPCAT, NPMs (and their personnel) must be functionally independent, which includes legislative mandate, operational, and functional independence. This requires adequate resourcing to ensure monitoring activities can be carried out objectively, effectively, and free from improper political, executive, or institutional influence.</p> <p>including by being adequately resourced. This helps ensure monitoring activities, findings, and recommendations can be carried out objectively and free from improper influence.</p> <p>If a government agency is appointed as an NPM, it must have a degree of independence from executive government to ensure that it can carry out its functions without being unduly</p>



	<p>influenced by the government of the day. For example, an agency may have established legislation that affirms its independence from executive government.</p>
<p>Reprisals</p>	<p>Reprisals are negative actions taken against a person because they communicated (or were believed to communicate) with an NPM or participated in preventive monitoring activities.</p> <p>OPCAT requires protection against reprisals for people detained, staff, and any others who provide information to or engage with monitoring bodies.</p>
<p>United Nations Subcommittee on Prevention of Torture (SPT)</p>	<p>The SPT is a UN body established under OPCAT. It conducts visits to places of deprivation of liberty in countries that have become party to OPCAT and works with governments and NPMs to support preventive monitoring and implementation of OPCAT obligations.</p>

