

# CAT, OPCAT, and Preventive Monitoring

## Frequently asked questions



### > About CAT and OPCAT

#### What are CAT and OPCAT?

The United Nations (UN) 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 sets out countries’ obligations to prevent and eradicate torture and ill treatment.

OPCAT builds on CAT by establishing a system of visits by international and domestic experts to regularly monitor conditions and treatment of people deprived of their liberty. The purpose of OPCAT is to *prevent* torture or ill treatment.

Australia became party to CAT in 1989 and OPCAT in 2017.

#### What is the difference between CAT and OPCAT?

CAT and OPCAT are closely connected, but they do different things.

CAT sets out countries’ legal responsibilities relating to torture and ill treatment. It requires countries to take steps to prevent torture and promptly investigate when it occurs.

OPCAT is a unique treaty in that it operationalises CAT and shifts the focus from reactive response to a preventive approach through regular independent monitoring. Its aim is to proactively identify risks and strengthen safeguards *before* harm occurs. These bodies do not undertake investigations, rather they are ‘forward looking’ and focus on systemic challenges.



## Why were CAT and OPCAT developed?

CAT and OPCAT were developed as part of a global struggle and commitment to eliminate the ‘scourge’ of torture and ill treatment throughout the world.

International human rights law recognises that people deprived of their liberty (in situations where they are not free to leave) are at increased risk of torture and ill treatment. This includes, for example, people in police custody, prisons, youth detention, immigration detention, and secure mental health settings. This is because they may have limited autonomy and control over their environment, relying on authorities to have their basic needs and rights met, and limited ability to seek help or remove themselves from unsafe situations.

Together, CAT and OPCAT aim to strengthen safeguards, oversight and accountability in these settings and situations.

## Does OPCAT apply only to prisons?

No. The OPCAT mandate is intentionally broad and applies to many different places and situations where people are deprived of their liberty, in either public or private settings. This can include:

- police custody
- prisons
- youth detention
- immigration detention
- secure mental health facilities
- secure residential facilities, such as disability homes or residential aged care
- court custody
- transport and escort arrangements
- other situations where a person is deprived of their liberty.

## > People who are deprived of their liberty

### What does “deprived of liberty” mean?

“Deprived of liberty” is a legal term used in OPCAT. It refers to situations where a person is not free to leave at will, whether that is temporary or permanent.

It is important to note that people can be deprived of their liberty with the consent and/or acquiescence of authorities, not just through a formal order.

Any deprivation of liberty must have a strict legal basis, or it would amount to arbitrary detention and a violation of fundamental human rights.



Additionally, being deprived of liberty does not mean a person forfeits or loses any of their other human rights, including the right to dignity, respect, and humanity.

## Why are people who are deprived of their liberty considered particularly vulnerable?

People who are deprived of their liberty are often entirely dependent on others for their safety, care and treatment, with limited access to the outside world. They may also be subject to significant restrictions, poor living conditions, and use of restrictive practices, such as seclusion, restraint, or solitary confinement, which can increase the risk of harm and ill treatment.

People deprived of liberty may have other characteristics which compound their vulnerability or impact the risks of harm, such as disability or mental health challenges. Indigenous peoples, people with disabilities, and children from marginalised backgrounds are often disproportionately represented in these settings and face increased risks of harm.

In addition, many places where people are deprived of liberty are closed, secure environments where members of the public, the media and non-government organisations have limited or no access, reducing opportunities for independent scrutiny of conditions and treatment.

Because of this, strong safeguards, transparency and accountability are especially important.

## Do people lose their human rights when they are detained?

No. People who are detained or otherwise not free to leave still retain their human rights, including the right to be free from torture and ill treatment.

Some rights may be lawfully restricted in certain circumstances and only where it is legal, necessary, proportionate, applied for the shortest period, and on-discriminatory. For example xx.

However, being detained does not remove a person's fundamental human rights, and the right to be free from torture is absolute.

## > Preventive Monitoring

### What is preventive monitoring?

where people are deprived of liberty. The aim is to proactively identify risks and strengthen safeguards before serious harm occurs.

Preventive monitoring focuses on:



- conditions and treatment
- systems and practice
- risks and safeguards
- continuous improvement over time.

## How is preventive monitoring different from investigations or complaints?

Preventive monitoring focuses on reducing the risk of harm before it occurs, by identifying systemic patterns or risks, making recommendations, and engaging in cooperative dialogue to promote and implement changes.

Complaint handling and investigations usually examine an incident or concerns after they arise. Preventive monitoring instead looks at broader systems, practices and conditions that may increase risks over time.

Both functions are important, but they serve different purposes.

## Why is preventive monitoring important?

Preventive monitoring helps strengthen transparency, accountability and safeguards in environments that are often closed to public view.

Effective oversight can:

- ensure people’s rights are protected and upheld
- proactively identify risks and broader system issues early
- support safer and more respectful environments
- strengthen public confidence
- support continuous improvement across systems and services.

Preventive monitoring can benefit people who are deprived of their liberty, staff, service providers, authorities, and the broader community.

## What kinds of issues do preventive monitoring bodies examine?

Preventive monitoring bodies may examine a range of issues including:

- care and treatment
- access to healthcare and support services
- use of force or restrictive practices
- staffing and training
- complaint processes
- access to family or legal representatives



- cultural safety and supports
- physical environment, conditions and infrastructure
- policies, procedures, and rules
- broader system-wide risks and safeguards.

## > National Preventive Mechanisms (NPMs)

### What is a National Preventive Mechanism (NPM)?

An NPM is an independent body, or group of bodies, responsible for carrying out regular visits to places where people are deprived of their liberty, to examine their conditions and treatment with the purpose of preventing torture and ill treatment.

Different countries have adopted different NPM models depending on their legal and institutional systems. This includes single-body and multi-body NPMs. It also includes establishing new, dedicated bodies as NPMs or giving NPM functions to existing bodies.

In Australia, NPM functions are carried out by oversight bodies across Commonwealth, state and territory jurisdictions.

### Are NPMs part of the United Nations?

No. NPMs are domestic oversight bodies established by countries under OPCAT. They are not United Nations bodies, and their staff are not United Nations personnel.

### Are NPMs independent?

Yes. OPCAT requires NPMs (and their personnel) to be able to carry out their work independently. This helps ensure monitoring activities, findings and recommendations can be carried out objectively and free from improper influence. Independence is a fundamental requirement within the OPCAT framework.

### What powers should NPMs have?

Under OPCAT, NPMs are expected to have unrestricted access to all places, information and people necessary to carry out preventive monitoring effectively. This may include:

- visiting places where people are deprived of their liberty
- conducting unannounced visits
- accessing relevant information and records
- speaking privately with people deprived of their liberty and with staff
- examining treatment, conditions and safeguards
- making recommendations aimed at reducing risks and strengthening safeguards



The specific powers of NPM bodies should be set out in domestic legislation and reflective of OPCAT obligations.

## If these bodies already perform oversight functions, what is different about their role as an NPM?

Many oversight bodies already conduct inspections, investigations, complaint-handling, or compliance monitoring under domestic law. While there can be overlap between these activities and preventive monitoring, the NPM role has a different focus.

Preventive monitoring is aimed at identifying risks and strengthening safeguards before harm occurs. Rather than responding only after incidents arise, NPMs examine broader systems, practices, conditions and treatment to proactively identify factors that may increase the risk of harm over time.

In carrying out this preventive role, NPMs exercise four key functions:

- 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.

To support these functions, under OPCAT, NPMs are empowered to:

- conduct regular visits (at any time or day), including unannounced visits
- have unrestricted access all relevant places, information and people necessary for monitoring activities
- engage directly with people deprived of liberty, staff and authorities
- make recommendations aimed at improving systems and promoting good practice.

Designation as an NPM also places these bodies within the international preventive monitoring framework established under OPCAT, including engagement with the United Nations Subcommittee on Prevention of Torture (SPT).



## Do NPM bodies continue to perform their existing oversight roles?

Yes. In Australia, many bodies designated as NPMs already had existing oversight responsibilities before taking on preventive monitoring functions under OPCAT.

For example, some NPM bodies may also handle complaints, conduct inspections, undertake investigations or monitor compliance with domestic laws and standards.

When these bodies carry out preventive monitoring under OPCAT, they are acting in their role as an NPM. However, they continue to perform their other statutory functions as well. Bodies which are NPMs should have dedicated staff and budget to perform their NPM function.

## Can NPMs require governments or authorities to follow recommendations?

NPMs make recommendations rather than legally binding directions.

OPCAT is based on a preventive and cooperative approach. The aim is to strengthen safeguards and improve systems through dialogue, transparency, and ongoing engagement.

Governments and authorities are expected to consider NPM recommendations and engage constructively with preventive monitoring activities.

## > OPCAT in Australia

### How is OPCAT implemented in Australia?

Australia's OPCAT framework is made up of NPMs across Commonwealth, state and territory jurisdictions.

Different oversight bodies have been nominated to carry out preventive monitoring functions in different contexts and jurisdictions.

### Which states and territories have nominated NPMs?

National Preventive Mechanisms have been assigned in:

- the Commonwealth
- the Australian Capital Territory
- the Northern Territory
- South Australia



- Tasmania
- Western Australia

## Is Australia's OPCAT implementation complete?

No. Important progress has been made in establishing NPM bodies in different parts of Australia. However, more implementation work is still required in a range of areas including legislation, monitoring coverage, powers and resourcing. In addition, three Australian jurisdictions – New South Wales, Queensland and Victoria – do not yet have nominated NPMs.

## Why does OPCAT matter in Australia?

OPCAT is one of the critical ways that Australia can strengthen its commitment to eliminating torture and ill treatment across the country, ensuring that all people deprived of their liberty are treated with dignity, humanity, and respect.

Embedding OPCAT across all states and territories by establishing NPMs with the necessary powers to undertake their functions, would help proactively identify risks, strengthen safeguards, improve transparency and accountability, and support safe and humane treatment for all people deprived of their liberty.

Effective oversight in these settings enhances accountability, strengthens public confidence, supports the safety and wellbeing of both people deprived of liberty and staff, and contributes to continuous improvement across systems and services. This ensures benefits not only in places where people are deprived of their liberty, but across the community as a whole.

