

Submission by the  
Commonwealth Ombudsman

to the Committee against Torture in its consideration of Australia’s sixth periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Submission by the Commonwealth Ombudsman, Iain Anderson

**30 September 2022**

# Executive Summary

1. I thank the Committee against Torture (the Committee) for the opportunity to make this submission in relation to Australia’s sixth period review. I make this submission as the Commonwealth Ombudsman in my capacities as:
   1. the National Preventive Mechanism (NPM) for places of detention under the control of Australia’s federal government (Commonwealth NPM), and

b. Coordinator of the NPMs (NPM Network) nominated by Australia’s federal, state and territory governments, to give effect to Australia’s obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

1. An overview of my Office is provided at **Annex A**.
2. As of 30 September 2022, not all Australian jurisdictions had nominated NPMs. Australia’s NPM obligations will commence on 20 January 2023. The Australian NPMs nominated to date have varying degrees of visit expertise and familiarity with the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention).
3. The incomplete status of Australia’s NPM Network impacts on the ability of my Office to comment on matters falling within the list of issues prior to submission of the sixth periodic report of Australia (*UN Doc CAT/C/AUS/QPR/6*) (LOIPR).
4. I make this submission recognising the value of the Committee’s reporting procedure in promoting compliance with the Convention, as well as the role of NPMs under OPCAT in giving effect to the preventive obligations in Articles 2 and 16 of the Convention. I also recognise the Committee’s extensive interest in the progress of Australia’s OPCAT implementation, particularly after its decision at its 73rd session on Australia’s extension request under Article 24 of OPCAT.[[1]](#footnote-1)
5. I value this and future opportunities to engage with the Committee. Once fully established, Australia’s NPM Network will be important in improving the treatment and conditions of people in detention, in preventing torture and other ill treatment and, through this, supporting Australia’s obligations under Articles 2 and 16 of the Convention.
6. This submission is based on my Office’s work to implement the OPCAT mandate, as NPM Coordinator and as Commonwealth NPM. Where this submission considers matters relating to Australia’s states and territories, it is also based on publicly reported information which I consider worth bringing to the Committee’s attention.
7. In preparing this submission, my Office has consulted with the 11 NPMs currently appointed across Australia. [[2]](#footnote-2)

## Structure

1. This submission is separated into three parts:
   1. in **part one**, I summarise NPM implementation progress to date in Australia.
   2. in **part two**, I discuss the scope of places of detention in Australia falling under Article 4 of OPCAT, with respect to NPM powers and progressive implementation.
   3. in **part three**, I address certain immigration detention matters engaging the Convention which have arisen in my role as Commonwealth NPM.
2. To guide the Committee’s work, each part refers to relevant articles of the Convention and to relevant paragraphs of the LOIPR. I conclude each part with suggested recommendations the Committee may wish to consider, in forming its concluding observations to the State party.
3. I have included annexes and links at the end of this submission, highlighting further reports and information the Committee may find relevant.

## Key observations

### Submission

1. As I discuss in **part one**, Australia has made significant progress towards OPCAT implementation, though more work remains. Key outstanding matters are the need to:
   1. appoint NPMs in those Australian jurisdictions which have not yet done so;
   2. consider legislative frameworks so as to address NPM powers and protections, and visits by the Subcommittee on Prevention of Torture (SPT); and
   3. resolve funding roadblocks to ensure all Australian NPMs can meet the OPCAT mandate.
2. A significant remaining issue for Australia in implementing OPCAT, as I discuss in **part two**, is how it moves towards ensuring NPM visit activity within the full scope of Article 4 of OPCAT. The federal government has suggested a gradual approach focusing first on what it calls ‘primary places of detention’.
3. However, I recognise that there is no such distinction between ‘primary places’ and other places under Article 4 of OPCAT. There are risks of torture and ill treatment in all places where people are or may be detained. All governments should work towards all places of detention within the scope of OPCAT having adequately funded NPMs with legal authority to perform regular visits in accordance with OPCAT.
4. On immigration detention in Australia, which I consider in **part three** as Commonwealth NPM, I observe there are key matters arising from my Office’s most recent public report on monitoring immigration detention,[[3]](#footnote-3) which may engage the Convention.
5. I have suggested recommendations for the Committee based on some of my Office’s own recommendations and suggestions made directly to detaining authorities. Fundamentally, these are about minimising risks of torture and other ill treatment to people in immigration detention by ensuring appropriate:
   1. use of immigration detention, with measures explored to reduce the numbers of people detained;
   2. material facilities used for immigration detention;
   3. supports and services in place for people with vulnerability;
   4. oversight accessibility for all people in immigration detention;
   5. restrictions placed on people in detention only to the extent necessary; and
   6. access available for all people in immigration detention to spaces and activities which support their health and wellbeing.

### Other matters relating to people in detention engaging the Convention

1. While outside of my mandate as Commonwealth NPM, I note the extensive issues raised by the Committee within the LOIPR which relate to detention environments not under the jurisdiction and control of Australia’s federal government. I also recognise Australia’s NPMs are to fulfil the OPCAT mandate with regards to all places of detention in Australia controlled at any level of government in Australia’s federal system.
2. However, at this stage of Australia’s OPCAT implementation, I am unable to provide comment on behalf of the NPM Network as a whole on substantive detention matters engaging the Convention, which go beyond the scope of the Commonwealth NPM. Not all NPMs are in place nor are they all conducting visit activity under an OPCAT mandate, to enable such comment.
3. This means this submission does not consider detention issues falling within the oversight jurisdiction of state and territory NPMs. I wish to reiterate to the Committee that this does not reflect a view on the relative importance of any such issues, including from the perspective of Australia’s obligations under the Convention. The NPM Network will continue to work hard towards fulfilling the mandate expected of NPMs under OPCAT, and in furtherance of the Convention’s preventive focus in Articles 2 and 16.
4. As NPM Coordinator, I also anticipate I will coordinate and consolidate an annual report covering activity of all of Australia’s NPMs in accordance with Article 23 of OPCAT. I envisage this process to be a key means of enabling publicly accessible commentary by the NPM Network as a whole, on matters relating to the OPCAT mandate which engage Australia’s obligations under the Convention.  I intend for these reports to be provided to the SPT, to ensure their ongoing awareness of NPM Network activity in Australia.

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# List of suggested recommendations for the Committee’s consideration

Below is a list of my suggested recommendations found elsewhere in the submission. The Committee may wish to consider these in preparing its concluding observations to the State party.

## Part 1: OPCAT implementation progress to date in Australia

**Suggested recommendation 1:** The Committee may wish to recommend that federal, state and territory governments take all necessary steps towards implementation of OPCAT prior to 20 January 2023, when the last of Australia’s treaty obligations enter into force.

**Suggested recommendation 2:** The Committee may wish to recommend that federal, state and territory governments ensure legislative frameworks are in place (or if they are not, to develop such frameworks) for NPMs’ powers and protections, and to support visits by the SPT.

**Suggested recommendation 3:** The Committee may wish to recommend that federal, state and territory governments resolve funding questions and that all NPMs be guaranteed adequate, ongoing funding to perform their mandate under OPCAT, and to the full extent required under the treaty.

## Part 2: The scope of places of detention in Australia falling under Article 4 of OPCAT, with respect to NPM powers and progressive implementation

**Suggested recommendation 4:** The Committee may wish to recommend that federal, state and territory governments work to ensure all places of detention within the scope of OPCAT have an NPM with legal authority to perform regular visits in accordance with OPCAT and that NPM funding arrangements encompass any widening of scope.

## Part 3: Observations on immigration detention matters within the scope of the Commonwealth NPM

**Suggested recommendation 5**: The Committee may wish to recommend the federal government actively pursue measures to reduce the number of people held in immigration detention facilities.

**Suggested recommendation 6:** The Committee may wish to recommend the federal government cease using hotel-based ‘alternative places of detention’ (APODs) for immigration detention more than 4 weeks in duration, including for any refugees and asylum seekers transferred to Australia from regional processing countries (RPCs) for medical treatment.

**Suggested recommendation 7:** The Committee may wish to recommend the federal government ensure timely mental health reviews of at-risk people in detention, to provide appropriate supports and avoid unnecessary extended placement in ‘high care accommodation’ (HCA). Further, The Committee may wish to recommend the federal government consider higher care or ‘Tier 4’ placements in appropriate residential care facilities as the first option to be explored for people with complex mental health concerns which make them particularly vulnerable in immigration detention.

**Suggested recommendation 8:** The Committee may wish to recommend the federal government make alterations to HCA rooms used for quarantine placements.

**Suggested recommendation 9:** The Committee may wish to recommend the federal government implement a policy outlining HCA use for quarantine.

**Suggested recommendation 10:** The Committee may wish to recommend the federal government work with relevant state and territory correctional services to provide people in immigration detention held in correctional facilities with a means to privately contact and be contacted by my Office. Noting that correctional facilities are not under the control of the federal government, the Committee may also wish to recommend state and territory governments work with state and territory oversight bodies (including any other NPM responsible for oversight of the relevant correctional facilities) to ensure people in immigration detention held in correctional facilities can also contact and be contacted by any other relevant oversight body.

**Suggested recommendation 11:** The Committee may wish to recommend the federal government ensure any uses of pat searches and mechanical restraints against people in immigration detention when travelling offsite occur only when necessary, as a last resort after exhaustion of other alternatives, and follow a risk-based approach.

**Suggested recommendation 12:** The Committee may wish to recommend the federal government ensure all immigration detention facilities, including North West Point Immigration Detention Centre (NWPIDC) and APODs, have equivalent provision of programs and activities, and substantially the same access to medical and welfare services.

**Suggested recommendation 13:** The Committee may wish to recommend the federal government ensure people in immigration detention have sufficient time out of accommodation compounds, including to access fresh air and engage in recreation.

# Part 1: OPCAT implementation progress to date in Australia on NPMs

**LOIPR:**

* Paragraph 16 – independent monitoring, oversight and inspection of places of detention
* Paragraph 28 – OPCAT ratification (and implementation) process

**Convention:**

* Article 2 – effective measures to prevent acts of torture
* Article 16 – prevention of other acts of cruel, inhuman or degrading treatment or punishment

## Australia’s federal structure

1. Australia is a federation of six states and two self-governing internal territories. Powers and responsibilities are divided between the federal, state and territory governments by Australia’s Constitution.[[4]](#footnote-4)
2. This division of powers impacts both responsibility over places of detention, and responsibility over their oversight. The federal, state and territory governments each have jurisdiction and control over places of detention which fall under OPCAT’s scope.
3. As a consequence, detention oversight is also divided between these levels of government. This extends to Australia’s approach to implementing NPM obligations under OPCAT.
4. On ratifying OPCAT, the federal government foreshadowed that Australia’s NPM would be established as a cooperative network of federal, state and territory bodies responsible for inspecting places of detention, to be coordinated by an NPM Coordinator.
5. This means that NPM oversight of immigration detention facilities, Australian Defence Force (ADF) places of detention, and Australian Federal Police (AFP) places of detention falls within scope of the Commonwealth NPM (a role performed by my Office). Oversight of adult prisons, juvenile detention, police station cells, and closed mental health and forensic disability facilities fall within scope of state and territory NPMs.
6. A map of Australian jurisdictions, including with the 11 NPMs, across the federal and five Australian state and territory jurisdictions who have been appointed as of 30 September 2022, is provided at **Annex B.**

## Progress towards OPCAT implementation by Australian governments

1. The Office is encouraged by Australia’s progress towards appointing its Network of NPMs ahead of commencement of Australia’s NPM obligations in January 2023. However, as explained below, more work is needed before Australia will be fully compliant with those obligations.

### Nomination and establishment of Australian NPMs

1. As of 30 September 2022, six of Australia’s nine jurisdictions, including the federal government, have appointed one or more NPMs.
2. The appointed NPMs are as follows:

| **Jurisdiction** | **NPM** | **Notes** | **Date named** |
| --- | --- | --- | --- |
| Federal | Office of the Commonwealth Ombudsman[[5]](#footnote-5) | The Office: appointed as both NPM for places of detention under the control of the federal government (notably immigration detention, and AFP and ADF detention facilities), and as Coordinator of Australia’s network of NPMs.  I further explain the work of my Office below. | July 2018 |
| Western Australia | WA Office of the Inspector of Custodial Services[[6]](#footnote-6) | Appointed for justice-related facilities, including police lock‑ups. | July 2019 |
| WA Ombudsman[[7]](#footnote-7) | Appointed for mental health and other secure facilities. |
| Northern Territory | NT Ombudsman[[8]](#footnote-8) | Appointed as ‘interim NPM’.  Expected to be appointed for all places in the NT not otherwise visited by another NPM. | April 2021 |
| NT Children’s Commissioner[[9]](#footnote-9) | Proposed only, with legislation not yet passed.  Expected to be appointed for places where persons under 18 are detained. | Not yet appointed |
| Principal Community Visitor[[10]](#footnote-10) | Proposed only, with legislation not yet passed.  Expected to be appointed for disability care facilities and mental health treatment facilities. | Not yet appointed |
| South Australia | Training Centre Visitor[[11]](#footnote-11) | Appointed for training centres (youth detention facilities). | January 2022 |
| Principal Community Visitor[[12]](#footnote-12) | Appointed for closed mental health facilities and closed forensic disability facilities where people are detained for 24 hours or more. |
| Official visitors[[13]](#footnote-13) | Appointed for adult prisons, and police lock-ups or police cells where people are detained for 24 hours or more. |
| Australian Capital Territory | ACT Inspector of Correctional Services[[14]](#footnote-14) |  | January 2022 |
| ACT Human Rights Commission[[15]](#footnote-15) |  |
| ACT Ombudsman[[16]](#footnote-16) |  |
| Tasmania | Mr Richard Connock[[17]](#footnote-17) | Concurrently Tasmanian Ombudsman and Custodial Inspector. | February 2022 |
| Queensland |  | No NPM yet named |  |
| New South Wales |  | No NPM yet named |  |
| Victoria |  | No NPM yet named |  |

1. New South Wales (NSW) and Victoria are yet to identify their NPMs. Queensland is also yet to identify its NPM. However, the *Inspector of Detention Services Act 2022* creates a new inspector position, to be held concurrently by the Queensland Ombudsman.[[18]](#footnote-18)  While not an NPM, the Queensland Government has indicated this inspector position was designed to address key features of an NPM.[[19]](#footnote-19)

### Legislation

1. Under Australia’s federal system of government, legislative power is divided between the federal parliament and state/territory parliaments, in accordance with Australia’s Constitution.[[20]](#footnote-20) Each jurisdiction’s parliament may consider preparing and passing legislative frameworks for matters which fall within their jurisdiction in accordance with the Constitution. This extends to legislation concerning the implementation of OPCAT in Australia.

#### Federal level

1. The broad powers and functions of the Commonwealth Ombudsman are conferred by the *Ombudsman Act 1976*.[[21]](#footnote-21) These are further elaborated by the *Ombudsman Regulations 2017* (Ombudsman Regulations).[[22]](#footnote-22)  This is consistent with standard legislative practice in Australia, whereby more detailed regulations sit under an overarching Act.
2. In 2019, amendments were made to the Ombudsman Regulations to confer on the Ombudsman the functions as Commonwealth NPM (regulation 16) and NPM Coordinator (regulation 17). These commenced on 10 April 2019.
3. The Ombudsman Regulations are secondary legislation and a type of disallowable legislative instrument. This means although they are created by the executive and do not require passage through the legislature, there is an opportunity for them, and any changes to them, to be scrutinised by Australia’s federal Parliament, and particularly by the Senate Standing Committee for the Scrutiny of Delegated Legislation.[[23]](#footnote-23)  Further, either House of Parliament may pass a resolution to disallow the instrument or amendments, and if this occurs the instrument is repealed and has no effect.[[24]](#footnote-24) Thus, despite the instrument not needing to be passed by Parliament, there is still opportunity for review and action by the legislature.
4. The Ombudsman Regulations state that the function of the Commonwealth NPM includes undertaking regular inspections of places of detention under the control of Australia’s federal government. The Regulations also set out the functions as NPM Coordinator including facilitating expertise sharing within the NPM Network, communicating with the SPT, and reporting on the implementation of OPCAT.
5. Legislative change at a federal level to implement OPCAT has been limited to these amendments. There is no legislation at the federal level to provide for visits by the SPT. The federal government has not indicated it intends to make further legislative changes to give effect to OPCAT at this time.

#### State and territory level

1. The following states and territories have explicit OPCAT-related legislation in place:

| **Jurisdiction** | **Legislation** | **Notes** |
| --- | --- | --- |
| Tasmania | *OPCAT Implementation Act 2021* (Tas)[[25]](#footnote-25) | The Act commenced on 20 January 2022, and provides for both a Tasmanian NPM and SPT visits. |
| ACT | *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT)[[26]](#footnote-26) | The Act commenced on 30 April 2018, and provides for SPT visits only. |
| NT | *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (NT)[[27]](#footnote-27) | The Act commenced on 1 November 2018 and provides for SPT visits only. |
| Victoria | *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic)[[28]](#footnote-28) | The Victorian Parliament passed the Act, however it has not yet commenced. The Act provides for SPT visits only. |

1. The following territory has OPCAT-related legislation currently before parliament:

| **Jurisdiction** | **Legislation** | **Notes** |
| --- | --- | --- |
| NT | Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 (NT)[[29]](#footnote-29) | The Bill would amend the existing Act (which currently provides for SPT visits only – see previous paragraph) to provide for an NT NPM, made up of multiple ‘NT NPM Inspectors’. NPM Inspectors are expected to be the NT Ombudsman, NT Children’s Commissioner and NT Principal Community Visitor. |

1. South Australia (SA) has no OPCAT-related legislation in place but had previously proposed OPCAT-related legislation before parliament:

| **Jurisdiction** | **Legislation** | **Notes** |
| --- | --- | --- |
| SA | OPCAT Implementation Bill 2021 (SA)[[30]](#footnote-30) | The Bill would not have provided for SPT visits, only for SA NPMs (Training Centre Visitor, Principal Community Visitor, and official visitors).  The Bill was introduced to the SA Parliament in 2021 but lapsed before passing, due to the SA election in March 2022. A new Bill is under consideration by the new SA government. |

1. Queensland has no OPCAT-related legislation in place, but has passed new legislation which would contribute to meeting the OPCAT mandate:

| **Jurisdiction** | **Legislation** | **Notes** |
| --- | --- | --- |
| Queensland | *Inspector of Detention Services Act 2022* (Qld)[[31]](#footnote-31) | The Queensland Parliament passed the Act, however it has not yet commenced.  The Act creates a new inspector position, to be held concurrently by the Queensland Ombudsman. While not an NPM, it could be appointed as one if the Queensland Government decides.  The Act does not provide for SPT visits. |

1. The following jurisdictions have no OPCAT-specific legislation in place or currently proposed, for either NPMs or SPT visits:

| **Jurisdiction** | **Legislation** | **Notes** |
| --- | --- | --- |
| NSW | *Not applicable* | *Not applicable* |
| WA | *Inspector of Custodial Services Act 2003* (WA)[[32]](#footnote-32)  *Parliamentary Commissioner Act 1971* (WA)[[33]](#footnote-33) | The two appointed NPMs for WA, the WA Office of the Inspector of Custodial Services and the WA Ombudsman, are existing bodies and their activity governed by existing Acts.  Neither Act has been amended to reflect NPM appointment. |

1. I am encouraged by the efforts across jurisdictions to legislate to give effect to OPCAT. I am also pleased that the appointed NPMs possess many of the key characteristics expected of NPMs.
2. However, as the above information shows, legislative change to implement OPCAT in Australia remains incomplete. Some jurisdictions only provide in legislation for SPT visits or NPM powers and not both, and some jurisdictions currently legislate for neither.
3. This suggests a need to consider further adjustments, including in legislation, to give effect to OPCAT obligations and to enable NPMs to meet their full OPCAT mandate. This presents an opportunity to address gaps proactively in the course of Australia’s OPCAT implementation.

## Implementation of NPM functions by my Office

### Work of the Commonwealth NPM since nomination

1. The Office has been regularly inspecting immigration detention facilities since 2010, initially under separate legislative investigation functions unrelated to OPCAT.[[34]](#footnote-34) Since appointment as Commonwealth NPM, I have transitioned my previous inspection activity – which focused on immigration authorities’ administrative practices – towards an OPCAT compliant preventive approach. This has included a greater focus on human rights standards in my monitoring and visits.
2. Since appointment as Commonwealth NPM, my Office has also moved to public reporting of its inspection activity. This was in recognition of the importance of public visibility of OPCAT work. The Office has now published four public reports on its activities as Commonwealth NPM relating to immigration detention, and made a further public statement in relation to visit activity. [[35]](#footnote-35) The most recent report, released on 30 June 2022, informs part 3 of this submission.
3. While COVID-19 has presented unique challenges for oversight bodies, as Commonwealth NPM my Office has been committed to continuing regular oversight of immigration detention including during periods where in-person visit activity was not possible for health and safety reasons.
4. During these periods, the Commonwealth NPM maintained visibility through remote monitoring activity, which included regular review of:
   1. weekly reports from, and regular meetings with, the federal Department of Home Affairs;
   2. complaints received by my Office (managed by a separate part of the Office, but notified to the NPM);
   3. media reports; and
   4. feedback from peak bodies and civil society stakeholders.
5. The Office resumed its in-person NPM visit activity to immigration detention facilities in March 2022, including with direct engagement with people deprived of their liberty. The Office suspended visits between March and October 2020 and between June 2021 and March 2022. Resumption was subject to risk assessments on a case-by-case basis. However, between May and June 2020, my Office still visited all immigration detention facilities (with the exception of the APODs) in Brisbane, Melbourne, Adelaide, Western Australia (2 facilities) and Sydney, to personally review management of COVID-19 risks in immigration detention. The Office did not meet with detainees in person during these visits to minimise the risks of COVID-19 to both inspection staff and detainees. The Commonwealth NPM team understood that circumstances change quickly and that they needed to maintain a flexible and risk-based approach to visits, adapting their inspection schedule as required.
6. The Commonwealth NPM team remained prepared to postpone or cancel a visit if there was a COVID-19 outbreak at a facility. They also ensured they adhered to state and territory health directions, in addition to considering the risks posed by high rates of community transmission and COVID-19 outbreaks in detention facilities.
7. In 2021–22, my Office visited eight immigration detention facilities across the country.[[36]](#footnote-36)
8. In March and April 2021, the Commonwealth NPM commenced familiarisation visits to ADF and AFP places of detention respectively, which also fall under federal jurisdiction and control. Between 1 July and 30 September 2022, the Commonwealth NPM visited four ADF and two AFP places of detention (see table below).

| **Agency** | **Location** | **Dates** |
| --- | --- | --- |
| ADF | Lavarack Barracks Townsville, QLD | 24 August 2022 |
| ADF | Royal Australian Air Force (RAAF) Base Wagga Wagga, NSW | 20 September 2022 |
| ADF | Blamey Barracks Wagga Wagga, NSW | 20 September 2022 |
| ADF | Army Logistics Training Centre Bandiana, VIC | 21 September 2022 |
| AFP | Christmas Island: Christmas Island Police Station | 29 April 2022 |
| AFP | Norfolk Island: Norfolk Island Police Station | 3 August 2022 |

1. These familiarisation visits are an important step to develop methodology for conducting full OPCAT-compliant inspections of those places of detention, which will shortly follow.
2. The Commonwealth NPM intends to conduct visits to up to 17 more ADF and AFP places of detention prior to 30 June 2023.
3. A list of the Immigration Detention, AFP and ADF facilities that are established and currently operational (as of 30 September 2022) is at **Annex C**. The list of facilities changes over time, for example as immigration APODs are added or removed.

### Work of the NPM Coordinator since nomination

1. The function of NPM Coordinator is conferred on the Commonwealth Ombudsman by regulation 17 of the Ombudsman Regulations.
2. The regulation also lists the following functions of the NPM Coordinator:
   1. in relation to persons in detention
      1. consult with governments and stakeholders on the development of standards and principles
      2. collect information and undertake research
      3. propose options and develop resources to facilitate improvements in oversight arrangements
   2. communicate on behalf of the NPM Network with the SPT
   3. convene meetings and facilitate collaboration between NPMs, and state/territory and foreign governments
   4. give information to the SPT, NPMs, and state/territory and foreign governments
   5. report to the public and to federal, state and territory Ministers on OPCAT implementation and NPM activities
   6. make recommendations to the federal government in relation to OPCAT implementation.[[37]](#footnote-37)
3. The Ombudsman Regulations are clear that in performing the NPM Coordinator function, the Commonwealth Ombudsman must not compel or direct another NPM which is part of the NPM Network (regulation 17(4)).

#### Baseline assessment

1. In 2019, my Office as NPM Coordinator prepared a baseline assessment of Australia’s OPCAT readiness.[[38]](#footnote-38) The purpose of this report was to understand at that time the preparedness of Australia’s existing inspection and oversight bodies to meet OPCAT's NPM obligations, and to inform the design and implementation of NPMs across the country.
2. As part of that report, my Office mapped existing oversight and inspection bodies. Those bodies performed self-assessments of their own compliance with OPCAT at that time. This was an important opportunity for my Office as NPM Coordinator, the federal government, and the broader public, to understand the starting point of OPCAT implementation. Eight of those bodies reviewed in the report have so far been appointed as NPMs within the Australian NPM Network.

#### OPCAT Advisory Group

1. In early 2020, the Commonwealth Ombudsman established an OPCAT Advisory Group (OAG), with representatives from civil society and academia. Its purpose is to provide advice to my Office on OPCAT, and on the roles my Office plays in fulfilment of the OPCAT mandate.
2. In September 2022, I wrote to confirm the membership of OAG and to invite new members to join. The current membership of the OAG is:
   1. Ms Lorraine Finlay, Human Rights Commissioner
   2. Mr Paris Aristotle AO, Chief Executive Officer, Foundation House (Victoria)
   3. Emeritus Professor Neil Morgan AM, Former Inspector of Custodial Services (WA)
   4. Professor Bronwyn Naylor OAM, RMIT University, co-founder of the Australian OPCAT Network
   5. Ms Vicki Mau, Director of Australian Programs, Australian Red Cross
   6. Ms Anne Hollonds, National Children’s Commissioner
   7. Ms Carolyn Frohmader, Executive Director, Women with Disabilities Australia
   8. Mr Eddie Cubillo, a descendant of the Larrakia, Wadjigan and Central Arrernte peoples (Australian First Nations). He is a lawyer and legal academic.
3. It is my intent to have as diverse a membership group as possible, including people with lived experience.
4. Since the establishment of the OAG, there have been seven OAG meetings. The first meeting since my appointment as Commonwealth Ombudsman (and Chair of OAG) is scheduled for 5 October 2022.
5. To support transparency of activity, since the fourth meeting in April 2021, my Office began publishing communiqués after OAG meetings. These communiqués and further information about the OAG are available on my Office’s website.[[39]](#footnote-39)

#### Work to support the broader Australian NPM Network

1. While not all Australian jurisdictions have nominated NPMs, the nomination of 11 NPMs as of 30 September 2022 means Australia’s NPM Network is now emerging.
2. This year, my Office convened the first two meetings of the NPM Network (in March and August 2022), to bring together the nominated NPMs as a group for the first time.
3. As a Network in these two meetings, we started discussing:
   1. information-sharing;
   2. shared challenges;
   3. opportunities for collaboration; and
   4. the practicalities of implementing the NPM function in a multi body system, and how best to operate as a Network.
4. On behalf of the Network, my Office also publishes public communiqués after NPM Network meetings.[[40]](#footnote-40)

#### Input to state and territory governments on OPCAT legislation

1. As NPM Coordinator, I have also used the opportunity, expected by Article 19(c) of OPCAT, to submit proposals and observations on legislation. Particularly at this stage of Australia’s OPCAT implementation, I consider legislation giving effect to OPCAT itself to be an important part of this.
2. In this capacity, my Office provided comment, available publicly, on the following pieces of legislation relating to OPCAT implementation:
   1. Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (ACT)[[41]](#footnote-41)
   2. OPCAT Implementation Bill 2021 (Tas)[[42]](#footnote-42)
   3. Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)[[43]](#footnote-43)
3. The Office also provided further comments, which were not made public, on other pieces of OPCAT related legislation.

### Work as part of the NPM for the ACT since nomination

1. Since appointment in January 2022, my Office, as ACT Ombudsman, continues to consult with the ACT Government and work with the other two bodies who make up the multi-party ACT NPM: the ACT Human Rights Commission and the ACT Inspector of Correctional Services.
2. The ACT NPM holds regular meetings, and its immediate priorities are to support the effective implementation of NPM responsibilities and ensure there is clarity about the functions, powers and jurisdiction of each constituent part of the ACT NPM.
3. I anticipate my Office will be responsible for inspections of ACT Police cells in its capacity representing both the Commonwealth Ombudsman, as the Commonwealth NPM, and the ACT Ombudsman, as part of the multi-body ACT NPM.
4. The ACT Ombudsman has a broad oversight role regarding public administration in the ACT, which includes receiving, assessing and investigating complaints. In its role as part of the ACT NPM, the ACT Ombudsman will liaise with the ACT Inspector of Correctional Services and ACT Human Rights Commission to provide information on complaint trends. This information could be used to help inform inspections by highlighting aspects of detention that may require closer examination.

## Progress towards OPCAT implementation by other Australian NPMs

1. Australia’s NPMs are a diverse group. I commend the ongoing hard work by all appointed NPMs at their differing stages of OPCAT readiness, and with their different organisational profiles.
2. Already, despite NPM obligations not yet commencing, NPMs have been:
   1. conducting needs analyses for OPCAT implementation to identify knowledge gaps and training needs;
   2. joining each other’s existing inspection activity for skills development ;
   3. recruiting new staff to support NPM activity;
   4. participating actively in NPM Network discussions, including to determine what each can offer and what each may need; and
   5. continuing existing inspection activity as part of their non-OPCAT functions, where applicable.
3. While most NPMs have been appointed only since the beginning of 2022, I am pleased to see each NPM display a clear enthusiasm toward the OPCAT mandate, and its potential to support torture prevention objectives of the Convention. I expect this positivity to continue to be a key feature of Australia’s NPM Network once NPM obligations commence in January 2023.

## Priorities for my NPM functions over the next 6–12 months

### Commonwealth NPM

1. As Commonwealth NPM, my first priority is to continue my preventive monitoring of immigration detention facilities, and expand further into formal inspections of both AFP and ADF places of detention.
2. The Office will also continue updating the Commonwealth NPM inspection methodologies and assessment tools, to
   1. guide future inspections of immigration detention facilities;
   2. expand to support work visiting ADF and AFP places of detention; and
   3. where relevant, assist state and territory NPMs by providing methodologies and inspection tools which they may be able to adapt for their own use.
3. The Commonwealth NPM’s other main priorities will be around public reporting. This will include a public report covering inspection activities during the 1 July 2021 to 30 June 2022 period. I will then look to issue both future reports and public statements on key thematic issues, including on Commonwealth NPM visit activity beyond immigration detention.

### NPM Coordinator

1. As NPM Coordinator, my current priority is to prepare for and support the visit to Australia by the SPT in October 2022, imminent at time of writing. The Office is working with the SPT Secretariat to support the SPT in making the most of their visit and use their time in Australia effectively.
2. The Office is the focal point for Australia’s NPMs in liaison with the SPT. This is especially important given the number of NPMs involved in Australia’s NPM Network. I look forward to working with the SPT to ensure they can meet with Australia’s nominated NPMs and that each, including my Office, can learn from the SPT’s expertise and take lessons back to our ongoing NPM roles.
3. The Office is also continuing to support Australia’s NPM Network in the lead up to, and after commencement of, Australia’s NPM obligations. This extends both to the 11 NPMs currently appointed, as well as further NPMs once also appointed.
4. As a Network we will:
   1. move to formalise governance arrangements;
   2. develop an online information-sharing platform to enable visibility of each other’s work, for learning and consistency; and
   3. explore opportunities for further collaboration and training between Network members.
5. We will also determine, as a Network, our collective approach to annual reporting arrangements in accordance with Article 23 of OPCAT. I want to make sure annual reporting is efficient and effective, especially in a resource constrained environment across all NPMs, while using annual reporting as a central opportunity to explain the work we do to familiarise others with the nature and objectives of OPCAT.

### Civil society engagement

1. As both Commonwealth NPM and NPM Coordinator, I will also prioritise increasing engagement with civil society. I am committed to meaningful engagement with civil society as part of OPCAT implementation, and want to develop enduring means to do this.
2. Since my commencement in the role of Commonwealth Ombudsman on 1 August 2022, my Office has written to various government, independent and civil society stakeholders, to seek their views on individuals with lived experience or other relevant expertise who may wish to join the OAG. These individuals would provide insight into the challenges faced by specific cohorts in detention such as First Nations people, children, and people with disability. This insight is so that the OAG can be a means to understand and reflect the lived experience of these cohorts as part of my Commonwealth NPM and NPM Coordinator functions.
3. Recognising that people with disability are disproportionately represented in detention environments in Australia, my Office is also determining specific pieces of upcoming OPCAT work which would benefit from input from people with disability and their representatives. This may include meetings to discuss specific concerns in places of detention currently within my vising scope as Commonwealth NPM, and consultation on inspection standards.
4. The Office will then work towards a broader disability engagement strategy to shape ongoing input to my OPCAT work. The Office will also consider whether my work relating to people with disability will help inform comparable work in relation to other cohorts of people in detention that require particular care and consideration, including First Nations people.
5. This ambitious immediate forward work plan will be challenging within current resourcing. However, I recognise the importance of using the momentum currently present in Australia as we move towards commencement of the remaining obligations under OPCAT.

## Resourcing for Australia’s NPMs

1. In 2018, the federal government gave my Office ongoing funding of approximately $AUD300,000 per year to undertake functions as both Commonwealth NPM[[44]](#footnote-44) and NPM Coordinator. This was equivalent to funding for 1.7 additional staff and their travel costs. Since 2018, the resourcing needs of my Office to implement its OPCAT mandates have substantially exceeded this funding.
2. There have been protracted discussions between Australian federal, state and territory governments regarding the source of resourcing of state and territory NPMs. At the time of writing, funding issues had not yet been resolved between jurisdictions. This is impacting both some Australian jurisdictions’ willingness to nominate NPMs, and some appointed bodies’ capacity to undertake activity as an NPM.
3. In August 2021, the federal government, through the National Indigenous Australians Agency, announced funding to support its *Closing the Gap Implementation Plan*.[[45]](#footnote-45) This included one-off funding to states and territories for two years, to assist those jurisdictions with initial costs involved in implementing OPCAT, and acknowledging the overrepresentation of First Nations people in the criminal justice system. I understand that as of 30 September 2022 only the ACT Government has accepted this funding opportunity.
4. I am pleased where federal, state and territory governments have offered and provided financial support towards OPCAT implementation. However, I emphasise that – whatever the source – sufficient, ongoing funding is required for Australia’s NPM Network to fulfil the entirety of its OPCAT mandate. This includes to:
   1. conduct visits;
   2. have access to, and make use of, specialist expertise; and
   3. perform NPMs’ other advisory, educational and cooperation functions.
5. I am keen to expand my Office’s preventive monitoring activity as Commonwealth NPM further (as discussed further below), and my Office’s support to Australia’s NPM Network as NPM Coordinator, if additional resourcing is provided to support this.

## Suggested recommendations

1. The Committee may wish to recommend:
   1. federal, state and territory governments take all necessary steps towards implementation of OPCAT prior to 20 January 2023, when the last of Australia’s treaty obligations enter into force
   2. federal, state and territory governments ensure legislative frameworks are in place (or if they are not, to develop such frameworks) for NPMs’ powers and protections, and to support visits by the SPT
   3. federal, state and territory governments resolve funding questions and that all NPMs be guaranteed adequate, ongoing funding to perform their mandate under OPCAT, and to the full extent required under the treaty.

**Suggested recommendation 1:** The Committee may wish to recommend that federal, state and territory governments take all necessary steps towards implementation of OPCAT prior to 20 January 2023, when the last of Australia’s treaty obligations enter into force.

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# Part 2: The scope of places of detention in Australia falling under Article 4 of OPCAT, with respect to NPM powers and progressive implementation

**LOIPR:**

* Paragraph 9 – independent monitoring and inspection of regional processing centres
* Paragraph 16 – independent monitoring, oversight and inspection of places of detention
* Paragraph 28 – OPCAT ratification (and implementation) process

**Convention:**

* Article 2 – effective measures to prevent acts of torture
* Article 16 – prevention of other acts of cruel, inhuman or degrading treatment or punishment

## ‘Primary’ places of detention

1. From the lead-up to OPCAT ratification in 2017, the federal government proposed that Australia’s NPMs focus initially on what it called ‘primary places of detention’.[[46]](#footnote-46) This was to allow time for NPMs to establish themselves. It was also based on the progressive realisation of OPCAT obligations as reflected in international NPM experience.
2. The federal government’s definition of ‘primary places of detention’ was:
   1. adult prisons;
   2. juvenile detention facilities (excluding residential secure facilities);
   3. police lock-up or police station cells (only where people are held for equal to, or greater than, 24 hours);
   4. closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment (only where people are held for equal to, or greater than, 24 hours);
   5. closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24 hours);
   6. immigration detention facilities; and
   7. military detention (ADF) facilities.
3. In 2019, my Office estimated there were 1001 ‘primary places of detention’ in Australia under the jurisdiction and control of Australia’s states and territories.[[47]](#footnote-47) At the same time, my Office also estimated there were 29 primary places of detention in Australia under the jurisdiction and control of the federal government.[[48]](#footnote-48)
4. While not exhaustive, my Office also estimates there are close to another 1000 further police stations alone which meet the definition in Article 4 of OPCAT. Further places of detention beyond ‘primary places’ may include:
   1. police lock-up or police station cells where people are held for less than 24 hours;
   2. certain aged care facilities;
   3. certain disability care facilities; and
   4. quarantine facilities.[[49]](#footnote-49)
5. For the Commonwealth NPM, ‘primary places’ are immigration detention facilities, AFP holding cells, and ADF detention facilities.[[50]](#footnote-50) These places remain my Office’s focus at this point.
6. The powers conferred on the Commonwealth Ombudsman under the *Ombudsman Regulations 2017* do not limit my Office to inspecting only primarily places of detention,[[51]](#footnote-51) although I have not exercised my powers beyond this to date. I also recognise a distinction between ‘primary places’ and other places is not found in Article 4 of OPCAT, which defines the scope of places of detention for NPM visit activity.
7. International experience, and my Office’s own experience since being conferred its OPCAT responsibilities, indicate a progressive implementation of an NPM’s mandate is needed.
8. With current resourcing and expertise, in practice my Office is limited to monitoring ‘primary places’ of detention within its remit. While it is for NPMs to decide which places of detention to visit within the OPCAT mandate, to do this in a meaningful way is contingent on having the resources to do so.
9. For now, I envisage that once remaining Australian jurisdictions have nominated NPMs, inspections of all ‘primary places’ of detention across Australia will commence during 2022–23. However, I acknowledge that each NPM should make risk informed decisions on where to focus their inspection mandate as they develop their capability, and subject to their resourcing.

## NPM activity in places of detention beyond ‘primary places’

1. Despite the practical need for progressive implementation, under OPCAT, Australia’s NPM has a mandate to consider the treatment and conditions of all people in all places of detention within the scope of OPCAT. This is an extensive responsibility. However, at this time only those NPMs for federal, ACT, NT and Tasmanian places of detention have been appointed with exhaustive mandates in their respective legislative frameworks,[[52]](#footnote-52) which enable them to visit all places of detention which meet the OPCAT definition and fall within their jurisdiction.
2. I acknowledge the intersection between people with particular vulnerabilities and the environments where people are, or may be, deprived of their liberty. I acknowledge there are risks of torture and ill treatment in all places where people are or may be detained, and that concerns around treatment in such places are legitimate. These concerns are most acute for those with vulnerabilities.
3. There are two important tasks necessary for Australia to expand beyond ‘primary places of detention’. These are particular to a multi-body NPM arrangement.
   1. first is to ensure there are NPMs in place with the power to exercise the OPCAT mandate over all places of detention in Australia which fall under the scope of OPCAT.
   2. second is to determine, where there is any overlap or ambiguity, which specific NPM or NPMs are to inspect which place.
4. Once all Australian states and territories have NPMs in place, I envisage nominated NPMs and (where appropriate) federal, state and territory governments will start work on the following issues:
   1. clarifying which 'non-primary' places of detention NPMs should focus on next as a priority (such as holding facilities for less than 24 hours, and consideration of the extent to which aged care and disability care facilities are places of detention);
   2. clarifying which NPMs (both at different levels of government, and within those jurisdictions with more than one NPM) will expand their activity to monitor those places of detention, and whether further NPMs must be appointed; and
   3. organising funding arrangements for NPMs to inspect those ‘non-primary’ places of detention.
5. Not all NPMs already appointed currently have legal and policy authority, or funding, to visit all places within their jurisdiction which fall within OPCAT scope. I acknowledge that part of the above discussions will likely require action from federal, state and territory governments to address this point.

## Inspection of immigration regional processing centres in Papua New Guinea and Nauru (LOIPR paragraph 9; Convention Articles 2, 3)

1. The Office, in its role overseeing immigration detention, conducted numerous visits to the Regional Processing Centres (RPCs) of Papua New Guinea[[53]](#footnote-53) and Nauru from 2014 onwards.
2. The last such visit my Office undertook was in 2019, to Nauru. Visits ceased at that time having considered advice from the Department of Home Affairs that:
   1. the regional processing population in Nauru are not in detention and reside in community accommodation without restrictions on their movement; and
   2. a change in contractual arrangements transferred contractual responsibility for ongoing services at the former detention facilities – which continue to be provided to those residing in the community, for example healthcare – from the federal government to the Nauru Government.
3. The Office also understands that the remaining contractual responsibilities of the federal government relate to the management of facilities on Nauru which can be used for the reception of individuals for up to eight weeks ahead of their transfer into community accommodation pending the determination of their refugee status. The Office is exploring options with the Department of Home Affairs and the Attorney General's Department to ensure that appropriate protocols would be in place if an individual were to be detained. Visits by my Office may still require the approval of the Nauru Government.

## 5.4 Suggested recommendations

1. The Committee may wish to recommend:
   1. federal, state and territory governments work to ensure all places of detention within the scope of OPCAT have an NPM with legal authority to perform regular visits in accordance with OPCAT and that NPM funding arrangements encompass any widening of scope.

# Part 3: Observations on immigration detention matters within the scope of the Commonwealth NPM

## Significant issues observed regarding immigration detention

1. Below are selected critical issues which have arisen in my Office’s monitoring of Australian immigration detention facilities as Commonwealth NPM. They are drawn from the most recent Immigration Detention Oversight Report, published on 30 June 2022, which covers monitoring activity over the period July 2020 to June 2021. I identify various recommendations and suggestions made by my Office in that report, and suggest specific recommendations which may be beneficial for the Committee to consider.
2. The full report, and my Office’s previous public Monitoring Immigration Detention reports and statements, are available on my Office’s website.[[54]](#footnote-54)

### Long-term immigration detention (LOIPR paragraph 4; Convention Article 2)

1. The length of time people have been held in immigration detention in Australia has increased in recent years, exacerbated by COVID-19 related travel restrictions. At the end of May 2022, there were 1,402 people held in immigration detention facilities, with 496 of those in immigration detention for more than 2 years.[[55]](#footnote-55)
2. I am concerned about delays in the case progression of people in long-term immigration detention. This includes delays in administrative processes such as considering visa applications.
3. I consider prolonged or indefinite detention poses a significant risk to a person’s health and welfare.
4. In May 2021, the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021* amended section 197C of the *Migration Act 1958* (Migration Act) to prevent unlawful non citizens who engage Australia’s non-refoulement obligations from being involuntarily removed from Australia.[[56]](#footnote-56) I am concerned that, under existing Australian Government policy settings, the effect of this amendment may be to increase the risk of long-term or potentially indefinite detention. This is particularly the case for people assessed as engaging protection obligations, including under the Convention, but whose visa applications are refused or their visas cancelled.
5. Separate from my NPM functions, under section 486O of the Migration Act, the Commonwealth Ombudsman is required to provide Australia’s Minister for Immigration, Citizenship and Multicultural Affairs with an assessment of the appropriateness of arrangements for people who are held in immigration detention for more than two years, and then every six months for as long as these people remain in detention.
6. In these assessments, where appropriate, I may make recommendations regarding the person’s detention. A significant proportion of these recommendations support the Department of Home Affairs to consider alternatives to held detention in the person’s case. The recommended alternatives include considering the person who is the subject of the report for the grant of a visa, such as a bridging visa, or detention in the community under the power of the Minister for Immigration, Citizenship and Multicultural Affairs to grant people in detention a ‘residence determination’, that is, a community-based placement.
7. I support consideration of measures that could reduce the number of people held in immigration detention. In my latest report on monitoring immigration detention,[[57]](#footnote-57) I noted schemes in the United Kingdom and Canada to reduce the number of people in immigration detention as part of their COVID-19 risk mitigation, including the use of immigration bail measures and ankle monitors.

## Suggested recommendations

1. The Committee may wish to recommend the federal government:
   1. pursue measures to reduce the number of people held in immigration detention facilities.

### The appropriateness of the use of 'alternative places of detention', including for people in immigration detention transferred from Nauru to Australia for medical reasons (LOIPR paragraph 4; Convention Articles 2, 11)

1. Of the assessments my Office completed under section 486O of the *Migration Act 1958* between 1 July 2020 and 30 June 2021 concerning people in immigration detention for more than 2 years, 355 were for people transferred to Australia from an RPC for medical treatment. Some of these people were housed in hotel based APODs.

#### Alternative places of immigration detention

1. While most people in held immigration detention are in purpose-built Immigration Detention Centres or Immigration Transit Accommodation, the relevant Minister (currently the Minister for Immigration, Citizenship and Multicultural Affairs) or their delegate may approve another location as an APOD. Due to individual and specific needs of people in detention, APODs may include places such as hospitals and aged care facilities.
2. The increased use of individual hotel rooms, or entire hotels, as APODs has been a means of easing capacity issues in detention facilities around Australia, especially with the increasing population of people in detention. APODs were also used in response to COVID-19 as a means of separating people in detention for quarantine purposes.
3. While APODs serve an important function in certain circumstances, I have concerns with the use of hotel-based APODs, and with long-term APOD use.
4. If used, APODs should cater to longer-term needs of people in detention through appropriate and accessible facilities. People detained in APODs should have access to appropriate services and supports which are delivered and accessible at standards commensurate with other immigration detention facilities in Australia.
5. The Office’s visits in 2020 found improvements compared to the previous year, in access to appropriate facilities, services and supports in APODs including the introduction of onsite medical and welfare staff and the ability to undertake outdoor activities. However, the onset of COVID-19 impacted negatively on this access, especially to outdoor activities and excursions.
6. The use of hotel rooms as APODs diminishes the privacy of people held in detention. During Commonwealth NPM visits, my Office found that security officers were often within the same room as people held at the APOD, or in the open doorway of a person’s room 24 hours a day to monitor their activities. People in detention were escorted by staff any time they left their room, and were sometimes physically restrained as they did so.
7. The Kangaroo Point APOD in Brisbane occupied an entire motel complex and accommodated medical transferees from Manus Island (PNG) and Nauru. It operated between February 2019 and April 2021, housing up to 102 people in detention during 2020–21. Access to communal and recreation areas was limited; recreational spaces were often crowded and did not allow sufficient space for most activities. Access to fresh air was also limited, with people in detention having intermittent access to a small outdoor area and limited excursion opportunities.
8. From December 2019, the Northern APOD in Darwin was used to accommodate mainly adult family groups of medical transferees from Manus Island and Nauru. In April 2021 the Commonwealth NPM visited the Northern APOD and noted accommodation areas were small and had no private areas for family groups to gather. Movement between bedrooms and other areas, and attendance at the medical clinic and dining room, were followed by a security officer. People in detention told the Commonwealth NPM team during its visit that this lack of privacy and constant surveillance significantly affected their mental health and wellbeing.
9. After visiting in February 2021, my Office was also concerned with the suitability of the Phosphate Hill APOD, on Christmas Island, for long-term detention given its lack of space, security, and storage. Some areas of the accommodation buildings were also structurally unsound. They also had concerns over the privacy of people in detention at this facility at the time as they had no control over the entrance of others to their own sleeping quarters.
10. The Office recommended that the Department of Home Affairs discontinue the use of the Phosphate Hill APOD, unless and until any rectification works could make that facility safe and serviceable. The Department of Home Affairs noted this recommendation, advising my Office that as of June 2022 the Phosphate Hill APOD was not currently in use, but was instead in contingency readiness. The Office will monitor this recommendation.

## Suggested recommendations

1. The Committee may wish to recommend the federal government:
   1. cease using hotel-based APODs for immigration detention more than 4 weeks in duration, including for any refugees and asylum seekers transferred to Australia from RPCs for medical treatment.

### Use of segregation in immigration detention (LOIPR paragraph 19; Convention Article 11)

1. I am concerned with aspects of the separation of some people in immigration detention from others through placement in high-care accommodation (HCA). HCA is a segregated environment within immigration detention facilities where high-risk people in detention can be managed with greater supervision and engagement.
2. HCA rooms are sterile and low stimulus environments. Under federal government policy, HCA must be used for the shortest practicable time and as a last resort. It should also only ever be used in the best interests of the person in detention.
3. However, in its monitoring, the Commonwealth NPM team found instances of HCA being used to manage risks of self-harm. This involved placing at-risk people in detention, who required monitoring, into HCA over several days, because the facility medical service provider was not available to undertake a mental health review. I consider this to be unreasonable. There should be timely mental health reviews of at-risk people in detention to ensure appropriate supports are in place, and to avoid any unnecessary or prolonged placements in HCA.
4. I am also concerned about the use of HCA for COVID-19 quarantine purposes.
5. People in immigration detention returning to an immigration detention facility from an offsite appointment were sometimes put into quarantine in HCA as a COVID-19 risk management measure.
6. However, the Commonwealth NPM team found a lack of high-level approval and oversight for people in detention undertaking up to 14 days’ COVID-19 related quarantine in HCA, particularly given the usual strict clearance processes required for HCA use.
7. Further, HCA rooms were generally not modified for quarantine, to make them more suitable for that purpose. People in detention were often also not given their personal belongings during quarantine in HCA. People in detention also lacked privacy quarantining in HCA, due to CCTV cameras being left turned on.
8. Finally, there were no policies in place governing HCA use for quarantine placements, including to specify the need for minimum access to fresh air and outdoor exercise and access to personal effects. This contributed to inconsistent approaches between immigration detention facilities.

## Suggested recommendations

1. The Committee may wish to recommend the federal government:
   1. ensure timely mental health reviews of at-risk people in detention, to provide appropriate supports and avoid unnecessary extended placement in HCA
      1. The Committee may also wish to recommend the federal government consider higher care or ‘Tier 4’ placements in appropriate residential care facilities as the first option to be explored for people with complex mental health concerns which make them particularly vulnerable in immigration detention.
   2. make alterations to HCA rooms used for quarantine placements; and
   3. implement a policy outlining HCA use for quarantine.

### Complaints management in immigration detention (LOIPR paragraphs 9, 22; Convention Articles 3, 13)

1. Access to an independent and impartial complaints management process is an essential element in ensuring the rights of people in detention are respected in detention environments.
2. I am satisfied that generally people in immigration detention have appropriate access to external complaint and oversight bodies. However, I have some concerns around complaint processes and access to external oversight.
3. When visiting APODs in Brisbane, the Commonwealth NPM team found some people in detention were reluctant to engage with them given the proximity of security service provider staff. Other people in detention expressed concerns about reprisals for speaking with the Commonwealth NPM. When visiting one APOD in Brisbane, a security service provider staff member interjected in a manner that sought to minimise a person’s complaint about the duration of their placement at the APOD.[[58]](#footnote-58) This lack of privacy to make complaints or otherwise speak with oversight bodies was concerning, noting Article 20 of OPCAT requires NPMs be granted the opportunity to have private interviews with people in detention.
4. People in detention who wished to make a complaint at the Yongah Hill Immigration Detention Centre (YHIDC) were required to request a complaint form from a staff member, rather than complaint forms being openly available and easily accessible. I consider this:
   1. acts as a significant disincentive to complain;
   2. inhibits the right of people in detention to lodge anonymous complaints; and
   3. increases the risk of real or perceived retaliation in response to making a complaint.
5. The Commonwealth NPM team found a lack of appropriate CCTV coverage at the APODs it visited. It also found shortcomings in CCTV footage at other facilities – either because of time limited retention, or digital data file corruption. These collectively increase the difficulty of review and investigation of an incident if a person in detention makes a complaint of mistreatment. In the absence of corroborative evidence such as CCTV footage, police often decline to investigate a complaint of assault by a person in immigration detention.
6. The Office recommended that the Australian Border Force ensure that CCTV footage of incidents in immigration detention facilities be adequately retained, to provide greater opportunity for review of activities in detention including when people in detention make claims of ill-treatment. The Department of Home Affairs accepted this recommendation. The Office will monitor the implementation of this recommendation.

#### Access to oversight by people in immigration detention in corrections

1. Under s 5(1) of the Migration Act, immigration detention can include being held in a prison or remand centre. A person in immigration detention may be held in a prison by virtue of serving a term of imprisonment or being on remand, but this is not always the case.
2. Reasons for such placements otherwise vary, but include where a person’s presence in an immigration detention facility is beyond that facility’s management capability, or a person in detention temporarily remains in a correctional facility after completing a sentence of imprisonment and is awaiting transfer to an immigration detention facility.
3. I am concerned that people in immigration detention who are held in correctional facilities, all of which are operated by states and territory governments, are not able to lodge complaints with my Office, or other oversight bodies, in private or anonymously. The Office’s ability to follow up privately with people in detention on any complaints they do lodge is also not possible, as telephone restrictions prevent people in detention from being contacted directly and privately while in a correctional facility. The Office recommended the Department of Home Affairs ensure people in detention have free access to complaint forms and anonymity to make a complaint at all facilities. The Department of Home Affairs accepted this recommendation. The Office will monitor the implementation of this recommendation
4. I have further concerns that people in immigration detention housed in correctional centres may not be given adequate information to make complaints to my Office, due to a lack of understanding of their capacity to do so as people in immigration detention by state/territory detaining authorities.

## Suggested recommendations

1. The Committee may wish to recommend the federal government:
   1. work with relevant state and territory correctional services to provide people in immigration detention held in correctional facilities with a means to privately contact and be contacted by my Office.
      1. Noting that correctional facilities are not under the control of the federal government, the Committee may also wish to recommend state and territory governments work with state and territory oversight bodies (including any other NPM responsible for oversight of the relevant correctional facilities) to ensure people in immigration detention held in correctional facilities can also contact and be contacted by any other relevant oversight body.

### Physical and mental health and wellbeing in immigration detention (LOIPR paragraph 16; Convention Article 11)

#### Wellbeing of people in detention

1. During a Commonwealth NPM visit, my Office observed at the YHIDC that security officers did not have the training or skills to provide a mental health-focused response to people in detention exhibiting mental health vulnerabilities or crises. A limited availability of on-site medical services, particularly after hours, led to a security-focused response to people in detention presenting with mental health vulnerabilities. I believe this risks further harm to both already vulnerable people in detention and to untrained security staff.
2. All people in immigration detention have a right to access age-appropriate structured educational, recreational, and cultural programs and activities. This is especially important in the context of long periods of time held in immigration detention, and has a link to maintaining health in detention. Access to skills development opportunities is also critical to supporting people in immigration detention in their post-detention lives. However, the Commonwealth NPM team observed some dissatisfaction among people held in detention with the lack of access to educational opportunities, including limitations on accessing online learning.
3. I emphasise the limited access to fresh air, exercise, and other programs and activities onsite in hotel APODs. This includes at the Meriton Hotel APOD in Brisbane,[[59]](#footnote-59) where there was no formal programs and activities schedule, and at the Kangaroo Point APOD in Brisbane,[[60]](#footnote-60) where the Commonwealth NPM team found excessive pat/frisk searches and wand scans to access offsite activity likely acted as a considerable deterrent to participation in excursions by people in detention.
4. I am also concerned people in immigration detention held in correctional facilities do not have adequate freedoms and privacy reflective of their administrative rather than punitive detention. This includes reasonable access to the internet and social media, the choice of daily activities, and privacy in their bedrooms – each of which impact wellbeing.

#### Uses of restraints on people in immigration detention

1. I consider any use of force against a person in immigration detention as high risk, due to the potential for such action to constitute abuse or ill treatment.
2. The Office found that people detained in APODs were subject to 'planned’ uses of force in the form of pat/frisk searches and mechanical restraints (handcuffs), by default, to access fresh air, outdoor recreation, and other essential services including medical care.
3. The need to access medical services offsite often meant people in detention were physically restrained during transit and, in some cases, during the consultation with the medical professional. The Office found the use of restraints risked exacerbating some medical conditions, especially for people in detention with mental health issues.
4. Restraint use can also reduce the willingness of people in immigration detention to seek necessary medical treatment. Some people in detention described feelings of humiliation being required to sit in handcuffs in waiting rooms at medical appointments. In my Office’s view, medical services should be available to people in detention onsite wherever possible and restraints should be used as a last resort, including to respect the rights and dignity of people in detention.

#### Immigration detention at the North West Point Immigration Detention Centre (NWPIDC), Christmas Island

1. NWPIDC, on Christmas Island, reopened in August 2020. This provided additional capacity across Australia’s immigration detention network. Christmas Island is isolated: located in the Indian Ocean, 1500 kilometres from the Australian mainland and 350 kilometres from Indonesia.[[61]](#footnote-61) The Commonwealth NPM team visited NWPIDC in February 2022 to assess the facility.
2. The re-opening of NWPIDC was rapid, and planning was impeded by its isolated location and COVID-19 restrictions. The standard of service provision was not comparable with that of mainland immigration detention facilities. After visiting NWPIDC in February 2022, the Commonwealth NPM team was concerned with various facets of the facility each of which ultimately linked to the health and wellbeing of people in detention.
3. Recreation and education activities and access at NWPIDC were limited, and people in detention were allegedly told by detaining authorities they needed to ‘earn’ more freedom of movement. The Office also believes the amount of time people in detention were spending in their accommodation compounds without access to meaningful activities is overly restrictive and not conducive to wellbeing.
4. People in detention at NWPIDC have limited ability to make meaningful contact with family, friends, lawyers, and other support networks. Access to legal support is particularly inhibited due to the inability of lawyers to visit the remote location of Christmas Island, and telecommunication access is poor. Unless the court or tribunal specifically requests their in-person attendance, people in detention are generally not transferred back to the mainland to appear; rather they participate in their hearings via virtual means. Preparation for participation by people in detention in legal proceedings may be impacted by the difficulty of contact with legal representatives. Limited internet connectivity required people in detention to hold private conversations with family and legal representatives in communal areas, where connectivity was available. The ability to confer with legal representatives during the hearing is also difficult.

##### Movement to and from NWPIDC

1. Australia’s network of immigration detention facilities is large and geographically dispersed. The Office noted the detrimental impact of involuntary transfers between different facilities on the health of people in detention. This included for people in detention transferred to NWPIDC.
2. People in detention placed at NWPIDC were advised their transfer to other facilities would not be possible without sufficient medical reasons. Compassionate reasons such as family separation or sick family members were not considered.
3. Many people in detention who were transferred to NWPIDC also expressed unhappiness to the Commonwealth NPM team about their inability to receive visits from family and friends due to the high cost and infrequency of travel options to Christmas Island.
4. Delays to requests for voluntary removal from Australia were also not explained, and there was a lack of information about the removal process and any barriers to removal.
5. The Office recommended that the Department of Home Affairs ensure that removals staff are present to facilitate removals of people in detention and provide information about the removal process. The Department of Home Affairs accepted this recommendation. The Office will monitor the implementation of this recommendation.

##### January 2021 disturbance

1. Five months after the re-opening of NWPIDC, an onsite peaceful protest escalated to a large-scale disturbance which lasted several days and resulted in significant damage to facility infrastructure, safety risks to people in detention and staff, and disruption to essential service delivery.
2. The disturbance arose from the frustrations of people in detention and dissatisfaction with the conditions of detention at NWPIDC, notably the:
   1. isolated location;
   2. limited access to services;
   3. substandard internet connectivity;
   4. limited access to recreational activities; and
   5. delays with voluntary removals to their home country.
3. During the disturbance, medical services and, in particular, medication were not provided to people in detention.

##### Healthcare at NWPIDC

1. The Commonwealth NPM team found a lack of both specialised torture and trauma services, and drug and alcohol rehabilitation programs and staff, available to people in detention at NWPIDC. The facility’s isolation and its limited health care facilities also raised my Office’s concerns about the consequences of any COVID-19 outbreak on Christmas Island.
2. Health care available on Christmas Island as a whole is limited, and acute medical care is unavailable. This means people in detention must be transferred the considerable distance, by air, to mainland Australia to meet various medical needs.
3. Where manageable on Christmas Island, people in detention at NWPIDC are sent to the local hospital for any conditions unable to be treated onsite. However, it takes approximately 40 minutes for an ambulance to reach NWPIDC in an emergency. At the time of the Commonwealth NPM team’s visit, medical staff were not onsite at NWPIDC 24 hours a day.
4. The Office recommended that the Department of Home Affairs:
   1. ensure specialised torture and trauma services are engaged for people in detention at NWPIDC, and ensure proactive medical provider engagement with people in detention at NWPIDC previously receiving torture and trauma services to support continuity of treatment; and
   2. ensure specific drug and alcohol staff are engaged, and drug and alcohol rehabilitation and redirection programs facilitated, for people in detention at NWPIDC.
5. The Department of Home Affairs accepted both recommendations. The Office will monitor the implementation of these recommendations. The Office also suggested that the Department of Home Affairs ensure medical staff are in place at NWPIDC 24 hours a day, 7 days a week.

## Suggested recommendations

1. The Committee may wish to recommend the federal government:
   1. ensure any uses of pat searches and mechanical restraints against people in immigration detention when travelling offsite occur only when necessary, as a last resort after exhaustion of other alternatives, and follow a risk-based approach.
   2. ensure all immigration detention facilities, including North West Point Immigration Detention Centre (NWPIDC) and APODs, have equivalent provision of programs and activities, and substantially the same access to medical and welfare services.
   3. ensure people in immigration detention have sufficient time out of accommodation compounds, including to access fresh air and engage in recreation.

# Additional Information

## Annexes

**Annex A**: Office of the Commonwealth Ombudsman – Overview

**Annex B**: Map of Australian jurisdictions with NPMs currently appointed, as of 30 September 2022

**Annex C**: Places of detention under the control of Australia’s federal government – Detention facilities subject to Commonwealth NPM monitoring, as of 30 September 2022

## Links

Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022

Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2020*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/112560/Report-No.-04_2021-Monitoring-Immigration-Detention-The-Ombudsmans-activities-in-overseeing-immigraiton-detention-January-June-2020-A2184717.pdf), 30 June 2021

Commonwealth Ombudsman, [*Immigration Detention Oversight – July to December 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/111390/Six-monthly-immigration-detention-report-Jul-Dec-2019.pdf), 14 August 2020

Commonwealth Ombudsman, [*Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities*](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), 1 July 2020

Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report_January-to-June-2019.pdf), 17 February 2020

Commonwealth Ombudsman, [*Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): baseline assessment of Australia’s OPCAT readiness*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/106657/Ombudsman-Report-Implementation-of-OPCAT.pdf), September 2019

## Key legislation

**Constitution**

[*Australian Constitution*](https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/523_PPP/2012_Australian_Constitution.pdf?la=en&hash=36CA5EE66398B6B00A93302D53FD31ABEA4EECAB)

**Federal**

[*Legislation Act 2003* (Cth)](https://www.legislation.gov.au/Details/C2019C00084)

[*Ombudsman Act 1976* (Cth)](https://www.legislation.gov.au/Details/C2021C00508)

[*Ombudsman Regulations 2017* (Cth)](https://www.legislation.gov.au/Details/F2021C00027)

**Australian Capital Territory**

[*Human Rights Commission Act 2005* (ACT)](https://www.legislation.act.gov.au/a/2005-40)

[*Inspector of Correctional Services Act 2017* (ACT)](https://www.legislation.act.gov.au/a/2017-47/)

[*Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT)](https://www.legislation.act.gov.au/a/2018-3)

[*Ombudsman Act 1989* (ACT)](https://www.legislation.act.gov.au/a/alt_a1989-45co/)

**Northern Territory**

[*Children’s Commissioner Act 2013* (NT)](https://legislation.nt.gov.au/en/Legislation/CHILDRENS-COMMISSIONER-ACT-2013)

[*Disability Services Act 1993* (NT)](https://legislation.nt.gov.au/en/Legislation/DISABILITY-SERVICES-ACT-1993)

[*Mental Health and Related Services Act 1998* (NT)](https://legislation.nt.gov.au/en/Legislation/MENTAL-HEALTH-AND-RELATED-SERVICES-ACT-1998)

[*Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (NT)](https://legislation.nt.gov.au/en/Legislation/MONITORING-OF-PLACES-OF-DETENTION-OPTIONAL-PROTOCOL-TO-THE-CONVENTION-AGAINST-TORTURE-ACT-2018)

[*Ombudsman Act 2009* (NT)](https://legislation.nt.gov.au/en/Legislation/OMBUDSMAN-ACT-2009)

**Queensland**

[*Inspector of Detention Services Act 2022* (Qld)](https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2022-018)

**South Australia**

[*Correctional Services Act 1982* (SA)](https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FCORRECTIONAL%20SERVICES%20ACT%201982)

[*Disability Services (Community Visitor Scheme) Regulations 2013* (SA)](https://www.legislation.sa.gov.au/lz?path=%2FC%2FR%2FDisability%20Services%20(Community%20Visitor%20Scheme)%20Regulations%202013)

[*Mental Health Act 2009* (SA)](https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FMental%20Health%20Act%202009)

[*Youth Justice Administration Act 2016* (SA)](https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FYOUTH%20JUSTICE%20ADMINISTRATION%20ACT%202016)

**Tasmania**

[*OPCAT Implementation Act 2021* (Tas)](https://www.legislation.tas.gov.au/view/whole/html/asmade/act-2021-026)

**Victoria**

[*Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic)](https://www.legislation.vic.gov.au/as-made/acts/monitoring-places-detention-united-nations-subcommittee-prevention-torture-opcat-act)

**Western Australia**

[*Inspector of Custodial Services Act 2003* (WA)](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a6999.html)

[*Parliamentary Commissioner Act 1971* (WA)](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a572.html)

# Annex A: Office of the Commonwealth Ombudsman – Overview

## Purpose

The Office of the Commonwealth Ombudsman (my Office) is a non-corporate government entity established under the *Ombudsman Act 1976*.

The Office was established to ensure fair and accountable administrative action by federal government entities and prescribed private sector organisations by investigating complaints, reviewing administrative action, and statutory compliance inspections and reporting.

The Office delivers this outcome by:

* providing assurance that federal government entities and prescribed private sector organisations my Office oversees act with integrity and treat people fairly
* influencing enduring systemic improvement in public administration in Australia and the region.

## Ombudsman roles and functions

The Office is responsible for the following major functions:

* complaint management
* oversight of government agencies
* oversight of prescribed private sector organisations
* oversight of the Public Interest Disclosure Scheme
* responding to reports of serious abuse in the Department of Defence
* inspections of the use of certain covert and intrusive powers by law enforcement bodies
* National Preventive Mechanism (NPM) Coordinator, and NPM for places of detention under the control of the federal government (Commonwealth NPM), under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The Office has jurisdiction over all federal government entities and their contracted service providers, subject to some specific statutory exclusions, such as the Australian Taxation Office and intelligence agencies.

The Office also oversees the activities of a range of private sector organisations, including:

* private health insurers
* postal operators that elect to register with the Postal Industry Ombudsman (PIO) scheme
* some providers of education services.

The Commonwealth Ombudsman has the following separate titles that describe specific functions and powers:

* Defence Force Ombudsman (DFO) investigates actions arising from the service of a member of the Australian Defence Force (ADF). The DFO can investigate complaints from current or former members of the ADF about administrative matters relating to Defence agencies. Since 1 December 2016, the DFO's functions were expanded to provide an independent mechanism to report serious abuse in Defence.
* PIO investigates complaints about Australia Post and private postal operators that elect to register with the PIO scheme.
* Overseas Students Ombudsman investigates complaints from overseas students about private education providers in Australia.
* Private Health Insurance Ombudsman protects the interests of private health insurance consumers.
* VET Student Loans Ombudsman investigates complaints from certain higher education students who have accessed certain student loans programs.

Additional information is available in the Commonwealth Ombudsman’s annual reports available [here](https://www.ombudsman.gov.au/publications/reports/annual).

## Separation of my Office’s NPM roles from other Office activity

Since being appointed as the Commonwealth NPM and NPM Coordinator, my Office has adopted measures to support functional separation between these roles and its other functions. This is in order to meet the OPCAT mandate as a body which also performs other, non-OPCAT functions.

These measures include the following:

* The Commonwealth NPM and NPM Coordinator teams are specific, dedicated teams within my Office’s organisational structure.
* They are functionally and organisationally separate from my Office’s complaints handling team (which considers, among other matters, complaints relating to places of detention under the jurisdiction of the federal government).
* The staff of the Commonwealth NPM and NPM Coordinator work exclusively on NPM matters.
* There is financial separation for the Commonwealth NPM and NPM Coordinator teams, which are allocated specific funding internally for their functions.
* The Commonwealth NPM team regularly monitors complaints received by my Office to assist with identifying emerging issues and trends in immigration detention.
* If the Commonwealth NPM team receives a complaint during a visit, it will refer the complaint to my Office’s complaints handling team.
* The Office’s OPCAT functions as the Commonwealth NPM and NPM Coordinator are specifically provided for as discrete functions within the governing legislative framework.
* The Office is also considering how best to ensure its future public reporting on Commonwealth NPM activities can be clearly separated from reporting on other functions of my Office. [[62]](#footnote-62)

## ACT Ombudsman

The Commonwealth Ombudsman is also the ACT Ombudsman. The ACT Ombudsman's role is delivered by my Office under an agreement with the ACT Government. The Commonwealth Ombudsman can deal with most complaints involving the administrative actions of ACT Government agencies and police. The legislation governing the ACT Ombudsman authorises my Office to investigate complaints about or issues relating to:

* ACT Government agencies
* ACT Policing
* Reportable Conduct Scheme
* Freedom of information
* ACT Judicial Council
* Public interest disclosures.

Additional information is available in the ACT Ombudsman’s annual reports available [here](https://www.ombudsman.act.gov.au/publications/reports/annual-reports).

## ACT NPM

In January 2022, [the ACT Government announced the ACT Ombudsman](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2022/supporting-the-human-rights-of-detainees) as one part of the multi-body NPM for places of detention under the control of the ACT. The other bodies forming part of the ACT NPM are the ACT Inspector of Correctional Services and the ACT Human Rights Commission.

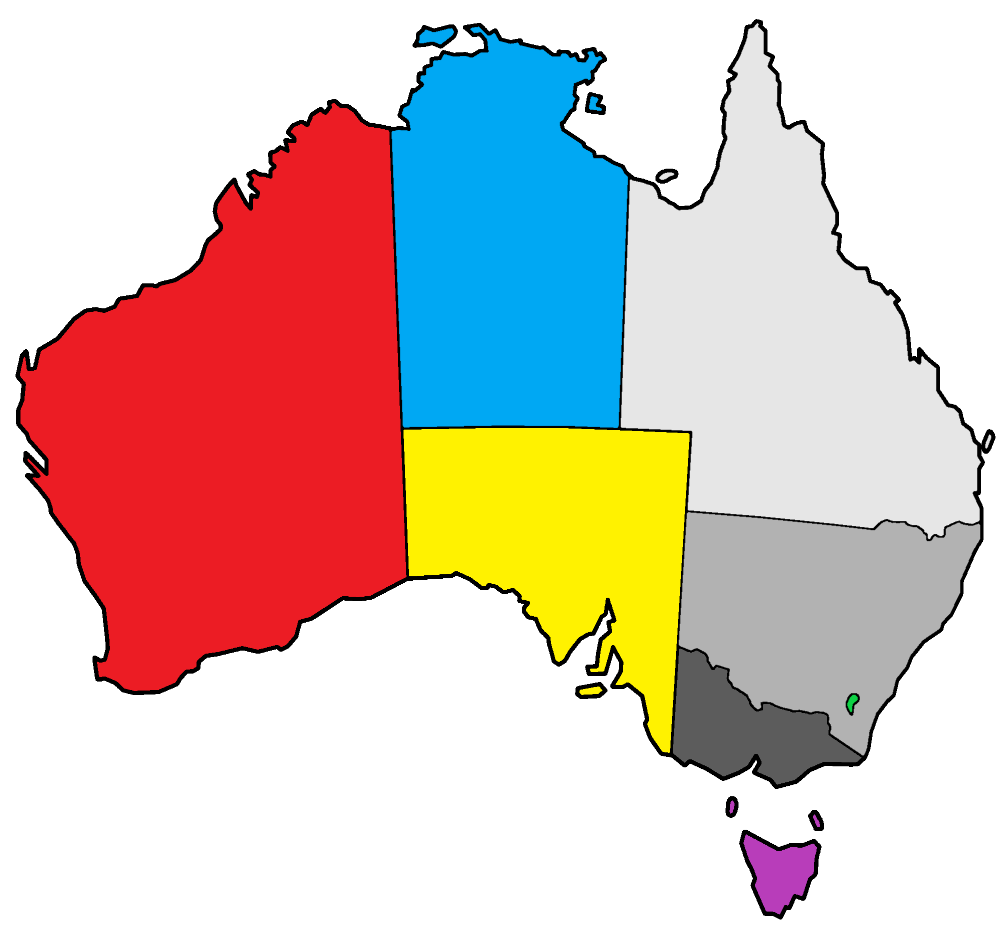
The Office continues to consult with the ACT Government and work with the ACT Inspector of Correctional Services and the ACT Human Rights Commission to support the effective implementation of my NPM responsibilities and ensure there is clarity about the functions, powers and jurisdiction of each constituent part of the ACT NPM.

The Office’s function as part of the ACT NPM is separated from the Commonwealth NPM and NPM Coordinator functions, and separated from complaints management activity. Like the Commonwealth NPM however, access to complaint matters, such as the analysis of trends, is an important part of contributions to ACT NPM activity.

Official visitor for children in immigration detention

The Office also has in‑principal agreement with the Department of Home Affairs to take on the role of official visitor for children in immigration detention. The purpose of this is to implement recommendation 15.15 of the [*Royal Commission into Institutional Responses to Child Sexual Abuse*](https://www.childabuseroyalcommission.gov.au/final-report).

# Annex B: Map of Australian jurisdictions with NPMs currently appointed

*As of 30 September 2022*

**Australian Capital Territory**

**Tasmania**

**Victoria**

**New South Wales**

**Queensland**

**South Australia**

**Western Australia**

**Northern**

**Territory**

|  |  |  |
| --- | --- | --- |
| **Jurisdiction** | **NPM** | **Date named** |
| Federal | Office of the Commonwealth Ombudsman | July 2018 |
| Western Australia (WA) | WA Office of the Inspector of Custodial Services (*for justice-related facilities, including police lock‑ups*) | July 2019 |
| WA Ombudsman (*for mental health and other secure facilities*) |
| Northern Territory (NT) | NT Ombudsman (*interim NPM; expected to be appointed for all places in the NT not otherwise visited by another NPM*) | April 2021 |
| NT Children’s Commissioner (*for places where persons under 18 are detained*) | *\*\*\*Expected only – not yet appointed* | |
| Principal Community Visitor (*for disability care facilities and mental health treatment facilities*) | *\*\*\*Expected only – not yet appointed* | |
| South Australia | Training Centre Visitor (*for training centres (youth detention facilities)*) | January 2022 |
| Principal Community Visitor (*for closed mental health facilities and closed forensic disability facilities where people are detained for 24 hours or more*) |
| Official visitors (*for adult prisons, and police lock-ups or police cells where people are detained for 24 hours or more*) |
| Australian Capital Territory (ACT) | ACT Inspector of Correctional Services | January 2022 |
| ACT Human Rights Commission |
| ACT Ombudsman |
| Tasmania | Mr Richard Connock (*concurrently Tasmanian Ombudsman and Custodial Inspector*) | February 2022 |
|  | | |
| Queensland | *No NPM yet named* |  |
| New South Wales | *No NPM yet named* |  |
| Victoria | *No NPM yet named* |  |

# Annex C: Places of detention under the control of Australia’s federal government

Detention facilities subject to Commonwealth NPM monitoring as of **30 September 2022**

|  |  |  |
| --- | --- | --- |
| **Home Affairs/Australian Border Force\*** | **Australian Defence Force** | **Australian Federal Police** |
| **Australian Capital Territory[[63]](#footnote-63)** | | |
|  |  | City Watch House |
|  |  | Gungahlin Police Station |
|  |  | Belconnen Police Station |
|  |  | Woden Police Station |
|  |  | Tuggeranong Police Station |
| **New South Wales** | | |
| Villawood Immigration Detention Centre (IDC) | Defence Force Corrective Establishment – Holsworthy |  |
| Meriton Suites Hotel – alternative place of detention (APOD) – Sydney | Army Recruit Training Centre/Blamey Barracks – Kapooka (Unit Detention Centre (UDC)) |  |
|  | 1st Recruit Training Battalion Wagga Wagga |  |
|  | RAAF Base Wagga – Forest Hill (UDC) |  |
|  | RAAF Base Williamtown (UDC) |  |
| **Victoria** | | |
| Melbourne Immigration Transit Accommodation (ITA) – Broadmeadows | Defence Force School of Signals/Simpson Barracks – Watsonia (Area Detention Centre (ADC)) |  |
| Broadmeadows Residential Precinct – Broadmeadows |  |  |
| Park Hotel – APOD – Carlton | Army Logistics Training Centre/Gaza Ridge Barracks – Bandiana (UDC) |  |
| **South Australia** | | |
| Adelaide ITA – Kilburn | RAAF Base Edinburgh – Adelaide (ADC) |  |
| **South Australia (*continued*)** | | |
| Adelaide – APOD – Quality Inn O’Connell |  |  |
| **Western Australia** | | |
| Perth IDC – Redcliffe | HMAS Stirling/Fleet Base West – Garden Island (UDC) |  |
| Yongah Hill IDC – Northam |  |  |
| Aloft Hotel – APOD – Perth |  |  |
| **Northern Territory** | | |
| Northern APOD - Quality frontier hotel | 5th Battalion, Royal Australian Regiment/Robertson Barracks – Darwin (ADC) |  |
| **Queensland** | | |
| Brisbane ITA – Pinkenba | 1st Battalion Royal Australian Regiment/Lavarack Barracks – Townsville (ADC) |  |
| Meriton Suites APOD – Brisbane | 2nd Battalion Royal Australian Regiment/Lavarack Barracks – Townsville (UDC) |  |
| Quality Inn Airport Heritage – APOD – Brisbane | 8th/9th Battalion Royal Australian Regiment/Gallipoli Barracks – Enoggera (ADC) |  |
|  | RAAF Base Amberley (UDC) |  |
| **External Territories** | | |
| Indian Ocean Territories | | |
| North West Point IDC – Christmas Island |  | Christmas Island Police Station |
| Construction Camp APOD |  | Cocos (Keeling) Islands Police Station (West Island) |
| Jervis Bay Territory | | |
|  |  | Jervis Bay Territory Police Station |
| South Pacific | | |
|  |  | Norfolk Island Police Station |

\* Alternative places of detention (APODs) are established frequently, and are in use for varied periods of time. Further APODs exist than those listed, including commercial hotels, hospitals and specialised medical facilities.

1. [UN Doc CAT/C/73/3](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f73%2f3&Lang=en) – *Decision adopted by the Committee on the request submitted by Australia under article 24 (2) of the Optional Protocol to the Convention* (3 June 2022). [↑](#footnote-ref-1)
2. Commonwealth Ombudsman, Australian Capital Territory (ACT) Human Rights Commission, ACT Inspector of Correctional Services, ACT Ombudsman, Northern Territory (NT) Ombudsman, South Australia (SA) official visitors, SA Principal Community Visitor, SA Training Centre Visitor, Tasmanian NPM, Western Australia (WA) Office of the Inspector of Custodial Services, WA Ombudsman. [↑](#footnote-ref-2)
3. Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022. [↑](#footnote-ref-3)
4. [*Australian Constitution*](https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/523_PPP/2012_Australian_Constitution.pdf?la=en&hash=36CA5EE66398B6B00A93302D53FD31ABEA4EECAB). [↑](#footnote-ref-4)
5. See website of my Office of the Commonwealth Ombudsman [here](https://www.ombudsman.gov.au/). [↑](#footnote-ref-5)
6. See website of the WA Office of the Inspector of Custodial Services [here](https://www.oics.wa.gov.au/). [↑](#footnote-ref-6)
7. See website of the WA Ombudsman [here](https://www.ombudsman.wa.gov.au/). [↑](#footnote-ref-7)
8. See website of the NT Ombudsman [here](https://www.ombudsman.nt.gov.au/); see also NT Legislative Assembly, [*Hansard*](https://territorystories.nt.gov.au/10070/885052/0/0) (1 September 2022) p 35. [↑](#footnote-ref-8)
9. See website of the NT Office of the Children’s Commissioner [here](https://occ.nt.gov.au/). See also [Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 (NT)](https://legislation.nt.gov.au/LegislationPortal/Bills/~/link.aspx?_id=423FBE19A0884DC198E2B8C06FE88FA3&amp;_z=z), Part 3; NT Legislative Assembly, [*Hansard*](https://territorystories.nt.gov.au/10070/885052/0/0) (1 September 2022) p 35. [↑](#footnote-ref-9)
10. See website of the NT Community Visitor Program [here](https://cvp.nt.gov.au/community-visitors/principal-community-visitor); see also NT Legislative Assembly, [*Hansard*](https://territorystories.nt.gov.au/10070/885052/0/0) (1 September 2022) p 35. [↑](#footnote-ref-10)
11. See website of the SA Training Centre Visitor [here](https://gcyp.sa.gov.au/). [↑](#footnote-ref-11)
12. See website of the SA Community Visitor Scheme [here](https://communityvisitorscheme.sa.gov.au/). [↑](#footnote-ref-12)
13. The SA official visitors do not currently have a website. Official visitors are appointed under Part 3 of the [*Correctional Services Act 1982* (SA)](https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FCORRECTIONAL%20SERVICES%20ACT%201982), by reference to one or more correctional institutions. Under that Act, ‘correctional institution’ includes any premises declared as a prison by the SA Governor. For official visitors, ‘correctional institution’ also includes a vehicle (including a police vehicle) on the grounds of a correctional institution or used to transport prisoners to or from correctional institutions. For official visitors, ‘correctional institution’ also includes a cell at a court being used to accommodate a prisoner. Currently, SA official visitors are also responsible for visiting police cells that have been declared to be a prison under that Act [↑](#footnote-ref-13)
14. See website of the ACT Inspector of Correctional Services [here](https://www.ics.act.gov.au/reports-and-publications). [↑](#footnote-ref-14)
15. See website of the ACT Human Rights Commission [here](https://hrc.act.gov.au/). [↑](#footnote-ref-15)
16. See website of the ACT Ombudsman [here](https://www.ombudsman.act.gov.au/). [↑](#footnote-ref-16)
17. The Tasmanian NPM does not currently have a website. Noting the concurrent offices held by the Tasmanian NPM, see website of the Tasmanian Custodial Inspector [here](https://www.custodialinspector.tas.gov.au/home). [↑](#footnote-ref-17)
18. [*Inspector of Detention Services Act 2022* (Qld)](https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2022-018), ss 7(1), 33. [↑](#footnote-ref-18)
19. Queensland Parliament, [*Hansard*](https://documents.parliament.qld.gov.au/events/han/2022/2022_08_30_WEEKLY.pdf) (30 August 2022) p 2254. [↑](#footnote-ref-19)
20. [*Australian Constitution*](https://www.aph.gov.au/-/media/05_About_Parliament/52_Sen/523_PPP/2012_Australian_Constitution.pdf?la=en&hash=36CA5EE66398B6B00A93302D53FD31ABEA4EECAB). [↑](#footnote-ref-20)
21. See [*Ombudsman Act 1976* (Cth)](https://www.legislation.gov.au/Details/C2021C00508). [↑](#footnote-ref-21)
22. See [*Ombudsman Regulations 2017* (Cth)](https://www.legislation.gov.au/Details/F2021C00027). [↑](#footnote-ref-22)
23. See [Senate Standing Committee for the Scrutiny of Delegated Legislation](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation). [↑](#footnote-ref-23)
24. See [*Legislation Act 2003* (Cth)](https://www.legislation.gov.au/Details/C2019C00084), s 42; see also Parliament of Australia – Guide to Senate Procedure, [Disallowance](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Brief_Guides_to_Senate_Procedure/No_19). [↑](#footnote-ref-24)
25. [*OPCAT Implementation Act 2021* (Tas)](https://www.legislation.tas.gov.au/view/whole/html/asmade/act-2021-026). [↑](#footnote-ref-25)
26. [*Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT)](https://www.legislation.act.gov.au/a/2018-3). [↑](#footnote-ref-26)
27. [*Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (NT)](https://legislation.nt.gov.au/en/Legislation/MONITORING-OF-PLACES-OF-DETENTION-OPTIONAL-PROTOCOL-TO-THE-CONVENTION-AGAINST-TORTURE-ACT-2018). [↑](#footnote-ref-27)
28. [*Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic)](https://www.legislation.vic.gov.au/as-made/acts/monitoring-places-detention-united-nations-subcommittee-prevention-torture-opcat-act). [↑](#footnote-ref-28)
29. [Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022 (NT)](https://legislation.nt.gov.au/LegislationPortal/Bills/~/link.aspx?_id=423FBE19A0884DC198E2B8C06FE88FA3&amp;_z=z). [↑](#footnote-ref-29)
30. [OPCAT Implementation Bill 2021 (SA)](https://www.legislation.sa.gov.au/lz?path=/b/archive/opcat%20implementation%20bill%202021). [↑](#footnote-ref-30)
31. [*Inspector of Detention Services Act 2022* (Qld)](https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2022-018). [↑](#footnote-ref-31)
32. [*Inspector of Custodial Services Act 2003* (WA)](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a6999.html). [↑](#footnote-ref-32)
33. [*Parliamentary Commissioner Act 1971* (WA)](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a572.html). [↑](#footnote-ref-33)
34. See [*Ombudsman Act 1976* (Cth)](https://www.legislation.gov.au/Details/C2021C00508), s 5(1)(b). [↑](#footnote-ref-34)
35. See:

    Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022

    Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2020*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/112560/Report-No.-04_2021-Monitoring-Immigration-Detention-The-Ombudsmans-activities-in-overseeing-immigraiton-detention-January-June-2020-A2184717.pdf), 30 June 2021

    Commonwealth Ombudsman, [*Immigration Detention Oversight – July to December 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/111390/Six-monthly-immigration-detention-report-Jul-Dec-2019.pdf), 14 August 2020

    Commonwealth Ombudsman, [*Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities*](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), 1 July 2020

    Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report_January-to-June-2019.pdf), 17 February 2020. [↑](#footnote-ref-35)
36. Immigration detention facilities visited from July 2021 to June 2022:

    Victoria: Melbourne Immigration Transit Accommodation (ITA), and the Park Hotel APOD

    NSW: Villawood Immigration Detention Centre, and the Meriton Suites APOD

    WA: Yongah Hill Immigration Detention Centre (YHIDC), and the Perth ITA

    SA: Adelaide ITA

    Christmas Island: NWPIDC. [↑](#footnote-ref-36)
37. See [*Ombudsman Regulations 2017* (Cth)](https://www.legislation.gov.au/Details/F2021C00027), reg 17. [↑](#footnote-ref-37)
38. Commonwealth Ombudsman, [*Baseline assessment of Australia’s OPCAT readiness*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/106657/Ombudsman-Report-Implementation-of-OPCAT.pdf)(2019). [↑](#footnote-ref-38)
39. OAG meeting communiqués can be found on my Office’s OPCAT webpage, [here](https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat). [↑](#footnote-ref-39)
40. NPM Network meeting communiqués can be found on my Office’s OPCAT webpage, [here](https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat). [↑](#footnote-ref-40)
41. [Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (ACT)](https://www.legislation.act.gov.au/b/db_65935/); my Office’s comments can be found on my OPCAT webpage, [here](https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat). [↑](#footnote-ref-41)
42. [OPCAT Implementation Bill 2021 (Tas)](https://www.parliament.tas.gov.au/Bills/current/49_of_2021.html); my Office’s comments can be found on my OPCAT webpage, [here](https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat). [↑](#footnote-ref-42)
43. [Custodial Inspector Amendment (OPCAT) Bill 2020 (Tas)](https://www.justice.tas.gov.au/__data/assets/pdf_file/0010/591931/Custodial-Inspector-Amendment-OPCAT-Bill-2020-Consultation-Draft-October-2020.PDF); my Office’s comments can be found on my OPCAT webpage, [here](https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat). [↑](#footnote-ref-43)
44. Additional to resources provided to my Office to inspect immigration detention facilities, before appointment as Commonwealth NPM. [↑](#footnote-ref-44)
45. See National Indigenous Australians Agency, [*Closing The Gap – Commonwealth Implementation Plan*](https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf) (5 August 2021) p 50. [↑](#footnote-ref-45)
46. See Senate Standing Committee on Legal and Constitutional Affairs, [*Additional Estimates 2019–20 question on notice LCC-AE20-50*](https://www.aph.gov.au/api/qon/downloadattachment?attachmentId=f458fc2e-bbf2-4ccc-8da8-49b246b437b6) (Attorney-General’s Department), 3 March 2020. [↑](#footnote-ref-46)
47. Commonwealth Ombudsman, [*Baseline assessment of Australia’s OPCAT readiness*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/106657/Ombudsman-Report-Implementation-of-OPCAT.pdf)(2019), page 31. [↑](#footnote-ref-47)
48. Commonwealth Ombudsman, [*Baseline assessment of Australia’s OPCAT readiness*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/106657/Ombudsman-Report-Implementation-of-OPCAT.pdf)(2019), page 32. [↑](#footnote-ref-48)
49. In February 2020, the SPT [advised](https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/2020.03.03-Advice_UK_NPM.pdf) that any place where a person is held in quarantine and from which they are not free to leave is a place of deprivation of liberty for the purposes of OPCAT and within the visiting mandate of an NPM. In March 2020, the SPT [confirmed this earlier advice and advised](https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf) all other places from which persons are prevented from leaving for similar purposes fall within the scope of the OPCAT mandate. [↑](#footnote-ref-49)
50. Only ADF members can be held in ADF detention facilities. The ADF system of military corrective establishments is three tiered: it comprises unit detention centres, area detention centres and a corrective detention centre (the Defence Force Correctional Establishment). This system contains no ‘prisons’. [↑](#footnote-ref-50)
51. [*Ombudsman Regulations 2017* (Cth)](https://www.legislation.gov.au/Details/F2021C00027), reg 16(2). [↑](#footnote-ref-51)
52. Listed in section 3.2.2.2 above. [↑](#footnote-ref-52)
53. Information from the Department of Home Affairs is that [regional processing arrangements in Papua New Guinea (PNG) ended on 31 December 2021](https://www.homeaffairs.gov.au/about-us/what-we-do/border-protection/regional-processing-and-resettlement). [↑](#footnote-ref-53)
54. See:

    Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022

    Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2020*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/112560/Report-No.-04_2021-Monitoring-Immigration-Detention-The-Ombudsmans-activities-in-overseeing-immigraiton-detention-January-June-2020-A2184717.pdf), 30 June 2021

    Commonwealth Ombudsman, [*Immigration Detention Oversight – July to December 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0015/111390/Six-monthly-immigration-detention-report-Jul-Dec-2019.pdf), 14 August 2020

    Commonwealth Ombudsman, [*Statement by the Commonwealth Ombudsman Michael Manthorpe on the management of COVID-19 risks in immigration detention facilities*](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), 1 July 2020

    * Commonwealth Ombudsman, [*Immigration Detention Oversight – January to June 2019*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0017/109700/Immigration-Detention-Oversight-Report_January-to-June-2019.pdf), 17 February 2020.

    [↑](#footnote-ref-54)
55. Department of Home Affairs, [*Immigration Detention Statistics for 31 May 2022*](https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-may-2022.pdf), p 12. [↑](#footnote-ref-55)
56. [*Migration Act 1958* (Cth)](https://www.legislation.gov.au/Details/C2021C00357), [*Migration Amendment (Clarifying International Obligations for Removal) Act 2021* (Cth)](https://www.legislation.gov.au/Details/C2021A00035). [↑](#footnote-ref-56)
57. Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022, p 1. [↑](#footnote-ref-57)
58. Commonwealth Ombudsman, [*Monitoring Immigration Detention – The Ombudsman’s oversight of immigration detention – July 2020 – June 2021*](https://www.ombudsman.gov.au/__data/assets/pdf_file/0012/115005/Monitoring-immigration-detention-report-July-2020-to-June-2021.pdf), 30 June 2022, p 25. [↑](#footnote-ref-58)
59. The Meriton Hotel APOD in Brisbane ceased operation as an APOD in July 2021. At the same time a separate APOD was approved at another Meriton Hotel, also in Brisbane. [↑](#footnote-ref-59)
60. The Kangaroo Point APOD ceased operation as an APOD in April 2021. [↑](#footnote-ref-60)
61. Australian Government, [*Parks Australia – Christmas Island location*](https://parksaustralia.gov.au/christmas/plan/where-is-christmas-island/). [↑](#footnote-ref-61)
62. See [*Ombudsman Regulations 2017* (Cth)](https://www.legislation.gov.au/Details/F2021C00027), Part 4, Division 1. [↑](#footnote-ref-62)
63. Further consideration and discussions with relevant federal and ACT agencies required to agree on the jurisdictional remit of Commonwealth and ACT NPMs. [↑](#footnote-ref-63)