**Disability Inclusive National Preventive Mechanism (NPM)**

This document provides a draft position on a disability inclusive National Preventive Mechanism (NPM) for consideration by the disability advocacy sector. It considers how the disability sector would approach Australian ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and outlines some proposals on preferred NPM characteristics.

Ratification of OPCAT

Despite ratifying the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1989, and signing the Optional Protocol in 2009, Australia is yet to ratify OPCAT. Ratifying OPCAT would strengthen oversight and monitoring of places of detention by designating or creating an NPM.

This preventive monitoring would provide an additional mechanism for Australia to meet obligations under the Convention on the Rights of Persons with Disabilities (CRPD), as well as the other relevant human rights instruments to which Australia is party. Note in particular that that Article 15 CRPD reinforces the right of persons with disability to freedom from torture or to cruel, inhuman or degrading treatment or punishment. This right is a crucial pillar in the range of obligations reinforced by CRPD including the rights to equal recognition before the law (Article 12), access to justice (Article 13), liberty and security of person (Article 14), freedom from exploitation and abuse (Article 16), bodily integrity (Article 17) and the right to live independently and be included in the community (Article 19).

Inclusive monitoring mechanisms

As clearly outlined in the CRPD (articles 4 and 33), people with disability and their representative organisations should be consulted and actively involved in the development of policy and legislation that affects them. Therefore, decisions around the design, development and implementation of the NPM model must be made in consultation with people with disability.

Co-design by people with disability and their representative organisations throughout the NPM designation and establishment process would ensure that the NPM, its processes and mechanisms are not only disability aware, but disability responsive. The NPM must not view disability as a separate, specialist issue to be dealt with by other stakeholders, rather it should approach its mandate with a disability lens across the entirety of its work.

People with disability are vastly over-represented in traditional sites of detention such as prisons.[[1]](#footnote-1) In addition there are a large number of disability specific places of detention where persons with disability may not be permitted to leave at will, such forensic mental health detention or involuntary detention under civil mental health laws.[[2]](#footnote-2) It should also be noted that there is evidence that some sites of detention, or practices within sites of detention, lead to impairment for some detainees.[[3]](#footnote-3) Given these factors, it is vital that the voices, expertise and experiences of people with disability are incorporated in the NPM, its standards, mechanisms, teams and monitoring efforts.

Developing a disability lens to the NPMs work would include: a formal advisory panel of people with disability or their representative organisations; the development of a disability inclusion action plan to ensure that the body operates in a fully inclusive and accessible manner; the use of peer monitors with disability to conduct inspections; and engagement with people with disability to develop the monitoring criteria, the role and make-up of inspection teams, and decision making regarding which places of detention should be prioritised.

Places of detention

As outlined in article 4 of the OPCAT, places of detention are those ‘where persons are or may be deprived of their liberty’, that may include commonly offered examples including prisons, police stations, prisoner and deportation transport, court security, juvenile detention centres, military detention facilities and immigration detention centres. People with disability are frequently over-represented in many of these places of detention.

In addition, disability specific institutions must be included within the scope of OPCAT monitoring. The OPCAT definition includes a range of settings which a person may not be permitted to leave at will. Consequently, this can refer to many types of disability specific institutions where people with disability are either formally detained or compelled to remain such as locked psychiatric wards or hospitals, compulsory care facilities, closed community-based residences for people with disability, aged care facilities, dementia units, nursing homes, child welfare institutions, emergency rooms, “time out” and seclusion rooms in educational settings, boarding schools, and rehabilitation facilities. These facilities exist despite Article 14(b) of the CRPD stating ‘that the existence of a disability shall in no case justify a deprivation of liberty,’ thereby prohibiting detention on the basis of a person’s perceived or actual impairment and regardless of whether or not additional factors are also used to justify the deprivation of liberty.[[4]](#footnote-4) Therefore, it is paramount that inspection of these disability specific institutions is prioritised by the NPM, not only to monitor conditions and practices but also as a step towards ending disability based detention.

Key practices to be prioritised by the NPM

There is considerable evidence that the right of people with disability to be free from involuntary treatment, violence, torture and other forms of ill-treatment are frequently breached in places of detention.[[5]](#footnote-5) NPM monitoring places of detention through a disability lens would assist in identifying individual and systemic issues, and also provide a framework to address them in an appropriate and disability responsive way. Thus Australia would be progressing fulfilment of its obligations under both CAT and the CRPD.

Specifically, the NPM must address the issue of various methods of restraints on people with disability in detention as a priority across its work, including physical, chemical and mechanical restraints. In 2013 the Special Rapporteur on Torture called for an “absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement,”[[6]](#footnote-6) and the NPM must seek to enforce this ban.

Summary of recommendations:

* The NPM must not view disability as a separate, specialist issue. The NPM should be disability neutral yet disability responsive.
* A disability inclusion action plan must be developed to ensure the NPM operates in a fully accessible and inclusive manner.
* The NPM must engage persons with specific expertise in disability human rights and support needs, including people with disability.
* People with disability and their representative organisations should be consulted through the creation of a formal advisory panel. This advisory panel should be consulted for the development of the monitoring criteria, the role and constitution of inspection teams, and the NPM’s decision making regarding the prioritisation of certain places of detention.
* The NPM must address and prioritise the issue of restraints, seclusion and forced treatment relating to people with disability in all forms of detention.
* People with disability must be included as peer monitors to conduct inspections and participate in making recommendations to relevant authorities and submitting relevant reform proposals to improve conditions of people deprived of their liberty.

1. Baldry, E. 2014. *Disability at the Margins: Limits of the Law.* Griffith Law Review, Vol. 23, No. 3, 370-388; PWDA, 2014. ‘Consideration of the 4th and 5th Reports of Australia by the Committee to the Convention Against Torture’, *People with Disability Australia.*  [↑](#footnote-ref-1)
2. See Frawley, P. and Naylor, B. ‘Human Rights and People with Disabilities in Closed Environments.’ *Law in Context*, Vol. 31, 2014: 48-83. [↑](#footnote-ref-2)
3. See for example Green J.P. and Eagar, K. ‘The health of people in Australian immigration detention centres.’ *Medical Journal of Australia*. 2010; 192 (2): 65-70. [↑](#footnote-ref-3)
4. See Committee on the Rights of Persons with Disabilities, *Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities, The right to liberty and security of persons with disabilities*, Adopted during the Committee’s 14th session, held in September 2015, paras 6-7, available: [http://www.ohchr.org/\_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc&action=default&DefaultItemOpen=1](https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CRPD/GC/GuidelinesArticle14.doc&action=default&DefaultItemOpen=1) [↑](#footnote-ref-4)
5. Above n 1; see also Bevan, N. and Sands, T. 2016. *Submission to the Senate Inquiry into Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia,* Australian Cross Disability Alliance; Sydney, Australia. Available: <http://dpoa.org.au/wp-content/uploads/2016/04/ACDA_IndefiniteDetention_Submission_April2016.pdf> ; [↑](#footnote-ref-5)
6. Mendez, J. E. 2013. A/HRC/22/53 para 63, available: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\_English.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf) [↑](#footnote-ref-6)