

**Australian National OPCAT Symposium**

**Australian Human Rights Commission in Partnership with RMIT University**

**Keynote address by Dr Alice Edwards, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**9 September 2022 (Pre-recorded)**

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Ladies and Gentlemen,;

I begin today by acknowledging the Traditional Custodians of the land upon which this important symposium is taking place and their Elders past and present. I also pay my respects to the Aboriginal and Torres Strait Islander peoples attending today.

Thank you for this opportunity to address you, in my new capacity as UN Special Rapporteur on Torture, at this important national symposium as Australia gets ready to finalise its network of state, territory and federal preventive mechanisms and moves to the business end of making sure they function effectively to prevent torture and ill-treatment in any place where persons are deprived of their liberty. I take note that Australia is a long-term party to the UN Convention against Torture, ratifying in 1989, and what we are here to speak about today, the Optional Protocol to the UN Convention against Torture, which Australia ratified in 2017.

The role that incarceration has played in Australia's history since British white settlers arrived, is a dark one. Over an 80 year period, from 1788 until 1868, approximately 162,000 convicts were sent to Australia, of which one in seven were women. Most were sent for petty crimes. Among them, political prisoners were also transported – today we'd probably call them refugees.

The problematic of incarceration in Australia has particular significance for the First Nations people that to date has not been adequately addressed. Australia's history notably records many terrible events, not least the forcible removal of the 'stolen generations' of children into homes and institutions where unforgivable crimes occurred; and today – despite some progress – there are disproportionate incarceration rates and deaths in custody of indigenous

Australians and unacceptable patterns of inequality for our brothers and sisters within criminal justice systems.

Historians recount how the colonial period – based on establishing Australia as a penal colony for British overcrowded jails, has shaped Australia’s national identity. It also appears to have a continuing legacy in Australia’s prison system. That assertion is not too far-fetched when one considers the following:

- After the United States, Australia spends the most on its incarceration system in the world.
- State and territory governments spend approximately 5.2 billion Australian dollars annually.
- Australia’s imprisonment rates are increasing – and according to the OECD, they are the third fastest in the OECD, at 39 per cent growth. Only Turkey (120 per cent) and Colombia (46 per cent) have experienced faster growth.
- A third of the prison population in Australia is on remand. This proportion has almost doubled since 2000. The average time spent on remand has increased from 4.5 months in 2001, to 5.8 months in 2020.
- Australia is the only industrialised country that mandatorily detains asylum-seekers and putative refugees; and which also has maintained a cruel system of off-shore detention in violation of international law, regrettably producing some recent popularity in replicating the failed experiment in at least two European countries.

There are plenty of studies to show that trauma is inter-generational. So a former colony built on prison and prison labour that opts to ratify the OPCAT can only gain from a system of inspection bodies that are able to visit any place where persons are held against their will. The capacity to make unannounced visits with full access to all spots in a detention facility, at any time, and to speak to any detainee, is a powerful deterrent to abuses, but moreover, has been found in other countries to be one of the strongest ways to improve conditions in detention and the humane treatment of detainees.

Australia is a developed democracy that not unlike other such countries generally thinks things are going along swimmingly, until they aren’t. Until a breaking news story or a

whistle-blower shatters that comfortable view. That's what an OPCAT national preventive mechanism body is intended to avoid – that complacency, that out-of-sight, out-of-mind mentality, when society looks away and forgets about its unwanted citizens, many times, its most vulnerable. NPMs can act as a warning system, alert for when internal mechanisms break down. It is not however a replacement for good prison management or humane and well-regulated custody arrangements. Those internal procedures – including internal disciplinary codes and hearings – need to remain robust and functional. However, what an OPCAT body adds is its 'external' function and therefore arms-length eyes, ears, taste and smell.

In Australia, we don't have to look back too far back to see why independent bodies are so important.

If you will indulge me, I'd like to tell you a short anecdote about why I've long been convinced about the utility of external oversight bodies.

When I was in my fourth year of my Arts/Law degree at UTAS (University of Tasmania), I was clerking in Sydney during the period of the Royal Commission into Police Corruption in the summer 1994-95. At the invitation of the Royal Commissioner James Wood, a family friend of my grandmother, who it turns out had written a handwritten card unbeknownst to me, informing him that her youngest granddaughter was coming to Sydney from Hobart and didn't know anyone there.

Those hearings which I had the privilege of gaining access to – and the extensive commission powers – were eye opening for me as a young law student, to see that in a 200 year old parliamentary democracy such as ours, with a strong foundation in the rule of law, that the largest police force in the country could be so endemically riddled with corruption and misconduct, such that the Royal Commissioner Wood described the problem as 'systemic and endemic'. This Commission followed the FitzGerald Inquiry in Queensland some years earlier, which also focused on police misconduct and corruption. When I was at dinner with the Wood family later that evening at their home, a loud noise sent the family running to cover. I was startled. The matter was quickly resolved and the

24/7 close security team assigned to the Commissioner confirmed that this time it was not a bomb, and not another letterbox bomb, that he had previously received.

This was in a developed democracy. The outcome of that inquiry will be familiar to all of you, and was the establishment of a Police Integrity Commission that later changed to the Law Enforcement Conduct Commission, and many other recommendations including the removal of the Police Commissioner and root-and-branch reforms. At times, drastic action is required. All critical incidents must now be investigated. In the 2020-21 period, over 3000 complaints were assessed and 125 investigations carried out in New South Wales.

Now that is the value of external bodies. It was obvious to me then as a 21 year old law student. And now we have all the research and evidence in the world to back up the view that external bodies prevent abuse, misconduct, corruption, and in extreme cases, torture. They act as a check on power. Even in the best functioning democracies, there are risks, weaknesses and blind spots.

When people are behind bars, it is the ultimate isolation from society. The UN Convention against Torture even acknowledges there is inherent harm from being incarcerated in accordance with lawful sanctions; however, standards of treatment are to be humane and no one shall be subjected to forms of cruel, inhuman or degrading treatment or punishment, of which torture is the most severe amongst them. The criminal punishment is removal from society for a period of time commensurate with the crime, the punishment is no greater, no narrower. The punishment is not to degrade, to humiliate, to intimidate, to abuse or to torture. The punishment is the deprivation of liberty, plain and simple, and that is punishment enough.

Preventing torture is everyone's business and everyone's responsibility. Australia signs international treaties regularly via the Constitutional Power. The ratification of OPCAT is no different. The obligations exist at the federal level, and also flow to state and territory governments. No matter the level of government, or seniority of public officials, they each bear responsibilities and obligations to prohibit and prevent torture and other ill-treatment as part of the Commonwealth of Australia. I congratulate the states and territories that have already seen the wisdom of this preventive mechanism and have

taken concrete action to designate or establish NPMs. While appreciating there remain some budgetary questions, which I trust can be resolved quickly, I plea with those governments yet to come on board that please do not let budgetary matters stand in the way of adhering to the absolute prohibition against torture, and preventing acts of torture or inhuman treatment in your state.

I conclude by noting that with the upcoming visit of the UN Sub-Committee on the Prevention of Torture next month, as well as Australia's review by the UN Committee against Torture later in the year, and my own appointment as the first Australian to occupy the post of the UN Special Rapporteur on Torture, it seems that all eyes are on you. I encourage you to make this year count!

Thank you.