

Legislation, Policy and Programs
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Submission to statutory review of the *Inspector of Correctional Services Act 2017*

Thank you for the opportunity to provide feedback to the statutory review of *the Inspector of Correctional Services Act 2017* (the *ICS Act*).

ACTCOSS advocates for social justice in the ACT and is the peak body for not-for-profit community organisations in Canberra. Given the nexus between incarceration and social disadvantage, ACTCOSS has a long history of advocating for reforms to reduce incarceration, address the drivers of offending, and uphold the dignity and rights of people engaged with the criminal justice system. As part of this advocacy, we supported Australia's ratification of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and its implementation in the ACT, including the establishment of the Office of the Inspector of Correctional Services (OICS) and its designation as one component of the ACT's National Preventive Mechanism (NPM).

ACTCOSS believes the establishment of the OICS has played an invaluable role in providing independent oversight and monitoring of the ACT's correctional services. Out of public view and containing people who are socially marginalised and stigmatised, correctional facilities are places where tensions between the need for security and the simultaneous need to ensure human dignity come into sharp relief. Preventive oversight and monitoring are crucial in such insular environments, increasing transparency and providing a means of identifying problems and preventing ill-treatment and abuse.

Since its inception, the OICS has helped to strengthen transparency around the operations of correctional services and facilities, highlighting a range of issues and providing a raft of recommendations through Healthy Prison Reviews of the Alexander Maconochie Centre (AMC) and a Health Centre Reviews of the Bimberi Youth Justice Centre. In undertaking these reviews, the OICS has been proactive in engaging with a range of stakeholders, including ACTCOSS and other civil society organisations.

While ACTCOSS supports the establishment of the OICS and believes it has been largely effective in providing independent oversight of correctional services, this submission identifies a number of ways in which its legislative mandate, resourcing, and context of operations could be further improved in order to strengthen its preventive monitoring role. We also believe such changes are necessary to ensure the OICS, as part of the ACT NPM, aligns with the requirements of the OPCAT and is empowered to meet its preventive mandate.

Summary of recommendations

1. Amend the Objects of the *ICS Act* to explicitly refer to the OPCAT, with reference to the OICS's preventive monitoring and independent oversight mandate as a member of the ACT NPM.
2. Amend the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* to identify the ACT NPM bodies; clearly set out the respective roles, powers and scope of coverage of the NPM member bodies; and to ensure a coordinated and coherent approach across the NPM as a whole.
3. Amend the *ICS Act* and the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* to enable the OICS, and the ACT NPM as a whole, to exchange information and have dialogue with the SPT, consistent with the OPCAT.
4. To ensure independence and enable the OICS to effectively fulfil its function, establish the Inspector as an Officer of the Legislative Assembly.
5. Remove provisions in the *ICS Act* which require draft reports of the OICS to be submitted to the relevant Minister and director general at least six weeks prior to tabling reports in the Legislative Assembly.
6. Ensure the Inspector has unfettered access to correctional centres and is able to speak to or privately interview any person they deem relevant to fulfil their functions, by:
 - amending Subsection 19(3) of the *ICS Act* to clarify the Inspector can privately interview persons out of the hearing of any other person, to add an additional paragraph stating that Inspector may speak to, or privately interview, "any other person who the inspector believes may supply relevant information";
 - amending Paragraph 21(1)(b) of the *ICS Act* to empower the Inspector to talk to each detained person or person involved in the provision of corrections or custodial services (including justice health services) in the correctional centre at any time.
7. Amend provisions in the *ICS Act* to ensure the Inspector has the requisite OPCAT powers and privileges, including the power to regularly examine the treatment of detained persons, and to access all information they deem relevant, at all times.
8. Amend the functions of the Inspector specified in the *ICS Act* to allow for greater flexibility as to how the Inspector achieves the Objects of the Act and to ensure consistency with the functions of an NPM under OPCAT.
9. Amend the *ICS Act* to provide flexibility as to what the Inspector considers to be a 'critical incident' requiring a review, which could include any incident that in the Inspector's view is sufficiently serious in its effects on detained people or staff.
10. Repeal the power for the Minister to make guidelines under section 20 of the *ICS Act*.
11. Amend subsection 18(1) to include the other roles of an NPM, including submitting proposals and observations on existing and draft legislation, public advocacy, awareness raising and capacity building.

12. Amend the definition of “detrimental action” (sub-section 26(4)) to reflect the language and scope of reprisals as set out in the OPCAT.
13. Insert a requirement in the *ICS Act* for the Government, or relevant minister, to formally respond to tabled reports within a specified timeframe.
14. Add a section to Part 4 of the Act to ensure reports are provided to the UN Subcommittee for the Prevention of Torture and/or the Commonwealth Ombudsman (as Australia’s NPM Coordinating body).
15. Amend the *ICS Act* to specify a clear term of appointment for the Inspector, with an objective and independent dismissal process, in order to promote stability, predictability and independence in the role.
16. Ensure the remuneration and conditions for the Inspector’s role align with comparable full-time statutory office holders.
17. Replace the term ‘detainee’ with ‘detained person’ throughout the text of the *ICS Act*.
18. To strengthen the coordination and visibility of the ACT NPM, consider either appointing one of the ACT NPM entities as the central coordinating body for the NPM in the ACT (with appropriate resourcing to fulfil this function), or to reinstating a full-time NPM Coordination Director role.
19. Ensure funding and resourcing for the OICS is increased and guaranteed in legislation, with resources provided by government in a single, dedicated budget line item to allow the OICS to determine its internal budget allocation.
20. Maintain and further strengthen OICS engagement with the community sector and other civil society entities, with consideration given to establishing more formalised mechanisms to facilitate input from civil society, and ensuring the OICS is appropriately resourced to undertake such engagement.
21. Ensure the OICS is resourced to provide multi-disciplinary and specialist expertise on the protection and promotion of children’s rights and wellbeing in detention, including the unique vulnerabilities experienced by Aboriginal and Torres Strait Islander children deprived of their liberty.
22. Ensure the OICS has the capabilities, expertise and resourcing necessary to discharge its mandate in a way that is disability inclusive.
23. Ensure that the ACT Government prioritises timelier implementation of OICS recommendations, with more regular reporting on the implementation of recommendations and the establishment of additional mechanisms to increase accountability.

OPCAT

The OPCAT is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse. What makes the OPCAT unique in relation to other oversight and accountability mechanisms is the focus on preventing ill-treatment and harm before it occurs. This is achieved by establishing a system of regular preventive visits by independent bodies, known as National Preventive Mechanisms (NPMs), and accepting visits from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading treatment or Punishment (SPT). Preventive visits enable OPCAT bodies to identify risk factors, analyse both systemic faults and patterns of failures, and propose recommendations to address the root causes of ill-treatment or abuse. In this way, the mandate of an NPM differs from other oversight bodies: it seeks to identify patterns and detect systemic risks of ill-treatment, rather than investigating or adjudicating complaints.

ACTCOSS has consistently advocated for the full implementation of the OPCAT in the ACT, and in a way that promotes stronger and more consistent human rights protections for people who are detained across the full range of settings where people are deprived of their liberty. We welcomed the ACT Government's announcement in early 2022 that the OICS, the ACT Human Rights Commission and the ACT Ombudsman had been nominated as the oversight bodies comprising the ACT's multi-body NPM. However, despite issuing a public statement to give effect to this arrangement, the NPM as a collective entity does not have a separate legal basis in the ACT. No legislation or other formal document or process was created or enacted to establish the NPM and, to date, ministerial statements constitute the only basis for the NPM designation. There is also no specific reference to the OPCAT in the *ICS Act*, nor is the NPM and its constituent bodies referred to in the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*.¹

ACTCOSS believes that the ACT's NPM should have a clear legislative foundation that sets out its role, functions and structure. Accordingly, amending the Object of the Act to explicitly refer to the OICS's preventive mandate under the OPCAT is important to ensure the OICS functions effectively as an NPM and to provide a clear basis for the OICS's OPCAT-related powers, functions, roles and responsibilities. This is consistent with recommendations made by the SPT, particularly in relation to multi-body NPMs where the member bodies have functions and roles that extend beyond their OPCAT functions. Without a clear statutory underpinning, the SPT note that "the specific NPM-related activities are not necessarily given the proper importance when members/bodies are working within their statutory mandate".²

We note the ACT Government has committed to amending the *ICS Act* and the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)* to formally recognise the designation and OPCAT-specific functions of the entities that comprise the ACT's NPM. ACTCOSS welcomes this commitment and we urge the ACT Government to expedite the process to ensure the appropriate legislative settings are in place as soon as possible.

¹ The *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* is primarily designed to enable and facilitate visits by the SPT, and makes no reference to the NPM and/or domestic monitoring bodies.

² Subcommittee on Prevention of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, [Visit to United Kingdom of Great Britain and Northern Ireland undertaken from 9 to 18 September 2019: recommendations and observations addressed to the State Party](#), 2020 CAT/OP/GBR/ROSP/1. p. 6

Under the existing legislation, the Object of the *ICS Act* is to “promote the continuous improvement of correctional centres and correctional services” via “the systematic review and scrutiny of the correctional centres and services” and “independent and transparent reporting” (subsection 6(1)). We believe this section could be augmented to state the object of the Act is to:

“promote the continuous improvement of correctional centres and correctional services *with a focus on—*

- (a) promoting and upholding the humane treatment of detainees, including humane conditions of their detention;*
- (b) embedding best practice human rights practice in correctional centres and services; and*
- (b) preventing detainees from being subjected to harm, including torture and cruel, inhuman or degrading treatment.*

This is to be achieved by

- (a) The systematic review and scrutiny of correctional centres and services, *including through preventive monitoring and independent oversight in accordance with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).*
- (b) Independent and transparent reporting.

[note: additional text in italics]

Reference to the preventative role of the OICS is vital to underscore the core purpose of the OICS as part of the ACT’s NPM, and ACTCOSS maintains that inclusion of the phrase ‘best practice’ reflects the expectation that correctional facilities and services will not be complacent in just meeting minimum standards, but should strive to achieve best-practice human rights.

To ensure a clear legislative basis for the ACT NPM as a whole, ACTCOSS also recommends that the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* be amended to identify the ACT NPM bodies, and to clearly set out their respective roles, powers and scope of coverage. This should include enshrining the necessary powers, privileges and immunities for *all* members of the NPM, in accordance with the provisions of the OPCAT.

ACTCOSS is concerned current arrangements for the ACT NPM are not sufficient to incorporate the full range of places where people may be deprived of their liberty, as defined in Article 4 of the OPCAT³. The SPT has consistently emphasised the importance of a comprehensive approach to the provisions of Article 4, and reiterated this in the Subcommittee’s draft general comment on Article 4, released in 2023.⁴ Concerns around the fragmented structure of the multi-body NPM and its inability to visit all places of detention as defined under Article 4 was also expressed

³ Article 4 of OPCAT defines places of detention and deprivation of liberty in broad terms. Article 4 (1) contains a definition of the places that the SPT and NPMs have the mandate to visit, namely any place under a State party’s jurisdiction or control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. Article 4 (2) contains a definition of the term “deprivation of liberty” as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”.

⁴ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), [Draft general comment No. 1 on places of deprivation of liberty \(article 4\)](#), 2023.

by the SPT in its recently released report containing recommendations and observations from its visit to Australia in 2022.⁵ Moreover, where some of the designated NPM bodies have an existing oversight role, it is not clear that any additional resources have been allocated to enable them to undertake the ongoing *preventive* monitoring required under OPCAT. As a consequence, there is insufficient oversight and a lack of preventive monitoring in places where highly vulnerable people are deprived of their liberty in the ACT.

The lack of a statutory underpinning for the NPM as a whole, and its member bodies, also impedes a strategic, coordinated and accountable approach to OPCAT implementation. Coordination between entities that comprise the NPM is essential to ensure oversight is effectively discharged across all places of detention, monitoring takes place in a coordinated fashion, and information is shared in the interests of meeting OPCAT obligations. Coordination across NPM members is also important given the cross-cutting themes and common issues across closed settings and given the same vulnerable people often move between different closed environments.

Legislation should also specifically recognise the NPM obligation to exchange information and have dialogue with the SPT – yet this is not reflected in either the *ICS Act* or the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

We note that the SPT report from its visit to Australia in 2022 stressed the importance of strengthening coordination for the multi-body, jurisdictional NPM structures that have been adopted in Australia, and recommended that a central coordinating agency be designated:

Where several institutions collectively constitute the national preventive mechanism, one should be designated as the coordinator at the state level. In cases where one state does not have a mechanism, the federal coordinator must be afforded the competence to cover the places of deprivation of liberty in that particular state.⁶

Recommendation 1. Amend the Objects of the ICS Act to explicitly refer to the OPCAT, with reference to the OICS’s preventive monitoring and independent oversight mandate as a member of the ACT NPM.

Recommendation 2. Amend the Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 to identify the ACT NPM bodies; clearly set out the respective roles, powers and scope of coverage of the NPM member bodies; and to ensure a coordinated and coherent approach across the NPM as a whole.

Recommendation 3. Amend the ICS Act and the Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 to enable the OICS, and the ACT NPM as a whole, to exchange information and have dialogue with the SPT, consistent with the OPCAT.

⁵ SPT, [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#), 2023.

⁶ SPT, [Visit to Australia: recommendations and observations](#), 2023, p.4.

Legislated structure of Inspector role

Independence

The independence of the OICS is fundamental to its credibility and effectiveness as an oversight and monitoring body. Independence is also the lynchpin of the OPCAT scheme. Under Article 18 of OPCAT, Australia has agreed to “guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel”. This means that the NPM needs to enjoy “complete financial and operational autonomy”. OPCAT requirements refer specifically to the NPM’s functional independence, independence of its personnel, and financial autonomy. Without such independence, the ability of an NPM to carry out its functions is undermined and it will struggle to develop the trust and confidence of the individuals and communities whom it is designed to protect.

We believe there are a number of provisions in the *ICS Act* that need to be strengthened in order to guarantee the OICS’s independence, including provisions relating to the appointment of the Inspector. Currently, section 9 of the Act provides for the Inspector to be appointed by the Executive, however this does not preclude the involvement of decision makers from areas of the Executive (i.e. directorates) responsible for the operation of corrections. Under the ACT, the Executive can also end the appointment of the Inspector (section 12).

In addition, the *ICS Act* does not sufficiently protect against potential conflicts of interest when appointing the Inspector or their staff. The SPT has been very clear that “the State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest”.⁷ This should exclude from the NPM those who presently work in the criminal justice system or law enforcement, or individuals who are on short-term leave or secondment from these parts of government. Despite this, the *ICS Act* allows for individuals employed in the directorate responsible for the administration and operation of relevant correctional facilities to be employed by the Inspector to carry out her functions. This presents a clear perceived or potential conflict of interest, and it undermines the principle of independence. This is further exacerbated by section 15, which allows for the Inspector to use the services of a public servant.

We also have reservations about provisions in the *ICS Act* that require the Inspector to submit a draft copy of reports to the relevant Minister and director general at least six weeks before giving reports to the Legislative Assembly, in addition to requiring the Inspector to consider any comments made (section 29). Requiring an NPM to submit draft reports to the relevant ministry has been previously criticised by the SPT, and we believe it is contrary to the principle of independence.⁸ We acknowledge the *ICS Act* does include reference to public interest considerations in disclosure of information, including that “causing embarrassment to, or loss of confidence in, the Executive, a Minister or director-general” is *not* relevant to decisions around whether there is a public interest grounds against disclosure of a report or aspects of a report. Nonetheless, to guarantee against political influence and support the perceived and actual independence of the Inspector, we believe the decision to submit draft

⁷ SPT, [Guidelines on national preventive mechanisms](#), para. 18, 2010.

⁸ SPT, [Visit to the Netherlands for the purpose of providing advisory assistance to the national preventive mechanism: recommendations and observations addressed to the State party](#), UN Doc CAT/OP/NLD/1 (3 November 2016).

reports to the relevant directorate and director-general prior to providing them to the Legislative Assembly should be at the discretion of the Inspector.

Reflecting the vital oversight and accountability function of OICS and the requirements under the OPCAT, we believe designating the OICS as an Officer of the Legislative Assembly would strengthen its independence. The governance arrangement for an Officer of the Legislative Assembly is based on a relationship with the Parliament rather than with Executive government, ensuring independence from the entity the Officer is responsible for monitoring or scrutinising. Reporting is done through the Speaker of the Assembly, and appropriations for the Officer is included in the Appropriation Bill for the Office of the Legislative Assembly – thereby serving to reinforce the financial autonomy of the Officer.

In addition to enhancing independence, this arrangement would require the Inspector to be appointed by the Speaker on behalf of the Territory rather than by the Executive, following broad party consultation and approval of the relevant Parliamentary Committee. As an Officer of the Assembly, stricter conflict of interest provisions would apply (including not being appointed directly from the ACT public service), thereby alleviating some of the concerns expressed above regarding current appointment provisions in the *ICS Act*.

While ACTCOSS maintains that appointing the OICS as an Officer of the Assembly would be the best option to guarantee the independence of the Inspectorate, if this approach is not implemented consideration should be given to inserting an additional provision into the Act, expressly stating that the Inspector must act independently, impartially and in the public interest and is not subject to any direction or control from a Minister. Provisions of a similar nature have been incorporated into the foundational Acts for NPMs in other jurisdictions.

Recommendation 4. To ensure independence and enable the OICS to effectively fulfil its function, establish the Inspector as an Officer of the Legislative Assembly.

Recommendation 5. Remove provisions in the ICS Act which require draft reports of the OICS to be submitted to the relevant Minister and director general at least six weeks prior to tabling reports in the Legislative Assembly.

Powers

Article 20(d) of OPCAT provides that for the NPM to fulfil its mandate it must have:

The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information.

Subsection 19(3) of the *ICS Act* should be amended so that it is consistent with the language in Article 20(d) of OPCAT, making clear that the Inspector is able to conduct private interviews “out of the hearing of any other person” and without being physically witnessed. In addition, subsection 19(3) should be amended to add an additional paragraph, stating that the Inspector may speak to, or privately interview, “any other person who the inspector believes may supply relevant information”. This could include, for example, carers, advocates or staff from external community organisations that may visit the correctional centre.

Paragraph 21(1)(b) should be amended to state that the director-general must ensure that the Inspector:

(c) is able to talk to each *detained person or person involved in the provision of corrections or custodial services (including justice health services)* in the correctional centre at any time.

In addition to being able to conduct private interviews with detained persons or any person the NPM wishes to interview, under OPCAT an NPM must have the power to:

- regularly examine the treatment of people deprived of their liberty (Article 19(a))
- visit all places of deprivation of liberty (Articles 12(a), 14(c) and 20(c))
- choose the places they want to visit and the people they want to visit (Article 20c)
- make recommendations to the authorities to improve the treatment of people deprived of their liberty (Article 19(b))
- submit proposals and observations concerning existing or draft legislation (Article 19(c)).

An NPM must also have access to:

- all information regarding people in closed environments, including the number of detained people and their location and the number of places of detention and their locations (Article 20(a))
- all information regarding the treatment of people in closed environments and the conditions of their detention (Article 20(b))
- all places of detention and their installations and facilities (Article 20(c)).

While the *ICS Act* does confer some of these powers to the OICS, it is not clear that all the necessary OPCAT obligations are met within the Act. For example, the power to ask for information, documents or other things (section 22) is limited to where the OICS are undertaking an 'examination or review under section 18'. Under section 18, an examination or review is defined as either a comprehensive examination and review of a correction centre or youth detention centre (to be undertaken at least once every three years), or a review of a critical incident. However, the OPCAT envisages a system of regular visits and ongoing monitoring, with an NPM having the requisite powers and privileges (including access to information) at all times.

Recommendation 6. Ensure the Inspector has unfettered access to correctional centres and is able to speak to or privately interview any person they deem relevant to fulfil their functions, by:

- ***amending Subsection 19(3) of the ICS Act to clarify the Inspector can privately interview persons out of the hearing of any other person, to add an additional paragraph stating that Inspector may speak to, or privately interview, "any other person who the inspector believes may supply relevant information";***
- ***amending Paragraph 21(1)(b) of the ICS Act to empower the Inspector to talk to each detained person or person involved in the provision of corrections or custodial services (including justice health services) in the correctional centre at any time.***

Recommendation 7. Amend provisions in the ICS Act to ensure the Inspector has the requisite OPCAT powers and privileges, including the power to regularly examine the treatment of detained persons, and to access all information they deem relevant, at all times.

Scope of functions and activities

It is important that the scope of the OICS's prescribed functions, and the activities deemed necessary to fulfil those functions, comply with the requirements of the OPCAT and enable the Inspector to effectively undertake preventive monitoring and oversight. ACTCOSS believes that certain provisions of the Act are unduly prescriptive and inflexible, impinging on the operational independence of the OICS and its capacity to provide effective oversight. In addition, the current scope of functions set out in the Act are narrow and do not reflect the full range of functions envisaged under the OPCAT.

Prescriptive and inflexible nature of current provisions

Certain provisions in the *ICS Act* that set out the OICS functions – and how it fulfils those functions – are overly prescriptive and inflexible. Section 17, 18 and 27 of the *ICS Act* specify that the Inspector's functions are to:

- comprehensively examine and review the AMC, Bimberi and Court Transport Unit every 3 years
- review certain specific 'critical incidents' as defined in the *ICS Act*
- review a particular issue in the youth or adult corrections environment (a 'thematic review')
- conduct inspection visits in relation to OICS functions of 'examination and review'.

Section 18 defines a 'critical incident' as: (a) the death of a person; (b) a person's life being endangered; (c) an escape from custody; (d) a person being taken hostage; (e) a riot that results in significant disruption to a centre or service; (f) a fire that results in significant property damage; (g) an assault or use of force that results in a person being admitted to a hospital; and, (h) any other incident identified as a critical incident by a relevant Minister or relevant director-general.

ACTCOSS believes limiting the definition of a critical incident to these specific matters risks excluding other potentially problematic incidents or issues, including matters that may be specific to youth detention. For instance, sexual assault not resulting in hospitalisation would not be considered a critical incident based on the criteria above unless identified by the relevant Minister or director-general. Narrowly prescribing what the Inspector is empowered to examine and review also contrasts with the flexibility afforded to NPMs in other jurisdictions, and is not consistent with the independent oversight and preventive monitoring function envisaged in the OPCAT.

Investigating critical incidents is not a core function of an NPM under the OPCAT. Rather than responding to or investigating a specific event, complaint or human rights violations after the fact, the underlying focus of an NPM is proactive and preventive, involving a systemic analysis of conditions and procedures to ascertain risk factors and support human rights. We acknowledge the critical incident reviews undertaken by the OICS have been a valuable means of identifying systemic problems and developing recommendations to overcome and prevent future recurrences. It is vital, however, that the OICS is adequately resourced to ensure resource-intensive critical incident reviews do not detract from the capacity of the OICS to discharge its wider functions and to provide the ongoing and holistic preventive monitoring envisaged under the OPCAT. Allowing the Inspector to exercise greater discretion in determining which incidents warrant a critical incident review may also ensure the resources of the OICS are best deployed to fulfil its monitoring and oversight role.

It is also important to allow sufficient operational independence and flexibility for the Inspector to determine the best means to fulfil the OICS's functions. As the SPT has stated, NPMs "should have exclusive authority to develop their

own rules of procedure in order to ensure their operational autonomy”.⁹ On this basis, we believe section 20 should be removed from the *ICS Act*. Section 20 enables the Minister to make guidelines about a matter the Inspector must review, with any such guidelines deemed a notifiable instrument. This provision impedes the Inspector’s operational independence as it requires the Inspector to undertake a review as directed by the Minister, or specify how the Inspector undertakes a review.

Recommendation 8. Amend the functions of the Inspector specified in the ICS Act to allow for greater flexibility as to how the Inspector achieves the Objects of the Act and to ensure consistency with the functions of an NPM under OPCAT.

Recommendation 9. Amend the ICS Act to provide flexibility as to what the Inspector considers to be a ‘critical incident’ requiring a review, which could include any incident that in the Inspector’s view is sufficiently serious in its effects on detained people or staff.

Recommendation 10. Repeal the power for the Minister to make guidelines under section 20 of the ICS Act.

Additional functions

The current scope of functions and activities provided for under the Act do not reflect the full range of functions required for NPMs. The NPM mandate consists of four functions: visiting, advisory, educational, and cooperation. As the SPT has stated:

While the institutional format of the national preventive mechanism is left to the State party’s discretion, it is imperative that the State party enact legislation that guarantees a mechanism that is in full compliance with the Optional Protocol and the mechanism guidelines of the Subcommittee...The mechanism’s legal framework should also provide for outward-facing functions of the NPM, such as submitting proposals and observations on existing and draft legislation, advocacy, awareness raising and capacity building, and require a separate budget line in the State budget for the funding of the NPM, in order to ensure its continuous financial and operational autonomy.¹⁰

Further reflecting the broad mandate and multiple functions of the NPM, the SPT has emphasised the need for NPMs to give greater weight to their non-visiting obligations. In its report to the Polish NPM, the SPT stated:

The Subcommittee emphasises that the activities of the mechanism should not be limited only to visiting places of deprivation of liberty. Among other functions, the mechanism needs to have a legal competence

⁹ United Nations Office of the High Commissioner for Human Rights, [Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide](#), Professional Training Series No. 21., (2018). p.17.

¹⁰ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Turkey*, (12 December 2019), CAT/OP/TUR/1, paragraph 21.

to submit proposals and observations concerning relevant draft legislation and to undertake other preventive activities.¹¹

Similarly, the UN Office of the High Commissioner for Human Rights has noted that NPMs should develop strategies for making their work known to the general public:

In order to increase their institutional visibility, NPMs should develop strategies for making their mandates and work known to the general public and develop simple, accessible procedures through which the general public can provide them with relevant information. NPMs could, for example, produce and distribute further material on their mandates and activities in various languages to a wide range of audiences, including detention personnel, detainees, civil society at large, and professional associations such as those of lawyers and the judiciary.¹²

These broader range of functions and activities are not provided for in the *ICS Act*, which currently restricts the Inspector to “examine and review” correctional centres, services and critical incidents. We maintain that the Act should be amended to encompass the full range of OPCAT-related functions of the Inspector. In addition, the ACT Government should be required to alert the Inspector to any draft legislation relevant to the OICS mandate.

Recommendation 11: Amend subsection 18(1) to include the other roles of an NPM, including submitting proposals and observations on existing and draft legislation, public advocacy, awareness raising and capacity building.

Protecting against reprisals

Fear of reprisals is a major obstacle to effective monitoring work. Article 21(1) of OPCAT requires that any person or organisation who communicates with the NPM is protected from reprisal or sanction, and the SPT stresses that this requirement should be enshrined in legislation.

Section 26 of the *ICS Act* creates an offence of taking detrimental action against a person who makes a disclosure (or intends to make a disclosure) to the OICS. Currently, “detrimental action” is defined as action that involves:

- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person’s reputation, career, profession, employment or trade; or
- (b) harassing or intimidating a person; or
- (c) injuring a person; or
- (d) damaging a person’s property.

We believe the grounds of what constitutes detriment are too narrow. OPCAT Article 21(1) states that “[n]o authority or official shall order, apply, permit or tolerate any sanction against any person *or organization*” (emphasis

¹¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Poland undertaken from 8 to 19 July 2018: recommendations and observations addressed to the national preventive mechanism*. (30 March 2020), CAT/OP/POL/RONPM/1. Paragraph 31.

¹² UN Office of the High Commissioner for Human Rights, [Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide](#), (2018). p.30

added). The *ICS Act* makes no reference to detrimental actions taken against an organisation that communicates with the Inspector, such as losing funding, or being prohibited or hindered in gaining access to the corrections centre. In addition, while the stated actions are detrimental, they focus solely on a person's safety or career and do not recognise other measures that could be taken in retaliation against detained people, such as limiting contact with family, removing privileges, or moving a person to another facility.

While it is important there are statutory protections against reprisals, a range of proactive and ongoing measures are required to prevent retaliation and foster a culture where detained people, correctional staff and other organisations and individuals feel safe disclosing issues to monitoring and oversight agencies such as the OICS. There are a range of cultural and institutional factors within the custodial environment that can prevent detained people and staff from disclosing concerns to oversight and monitoring bodies – including the closed nature of the environment, an over-reliance on command-and-control structures, a fear of retaliation, and the inherent power imbalance between staff and detained people. These issues are often exacerbated for groups vulnerable to unfair treatment and discrimination, such as Aboriginal and Torres Strait Islander peoples, women, LGBTIQ+ people, people with disability and people from culturally and linguistically diverse backgrounds. Children in youth detention find themselves in situations of particular vulnerability and often intensely fear of reprisals due to the pronounced power imbalance, previous experience of trauma and discrimination, and distrust in government systems.

In addition to criminal sanctions, there needs to be additional actions or options to prevent reprisals and the fear of retaliation and sanction. This may include complaints mechanisms or other avenues to investigate allegations of reprisals (noting that high evidentiary threshold for prosecuting a criminal offence), actively following up and monitoring instances where there are well-founded concerns that reprisals may have been applied, and ongoing monitoring of the cultural and systemic barriers to disclosure.

Recommendation 12. Amend the definition of “detrimental action” (sub-section 26(4)) to reflect the language and scope of reprisals as set out in the OPCAT.

Reporting requirements and government accountability

Although the *ICS Act* sets out the process and requirements for tabling the Inspector's reports, there is no requirement for the government to formally respond to the recommendations made in these reports. This contrasts with the statutory requirement for ministers to respond to other oversight entities, such as the Auditor-General.

In addition, Article 22 of the OPCAT expressly creates a duty for detaining authorities to “examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.” As the UN Office of the High Commissioner for Human Rights has stated:

Legislation should clearly state the obligation of competent authorities to examine the recommendations of the national preventive mechanism and to enter into a dialogue with it regarding the implementation of its recommendations.¹³

¹³ UN Office of the High Commissioner for Human Rights, [Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide](#), (2018). p.51

Accordingly, to strengthen government accountability and the effectiveness of the OICS, the *ICS Act* should require the Government to respond to tabled reports within a specified timeframe (noting ministers are currently required to respond to reports tabled by the Auditor-General within four months).

In addition, the Act should be amended to ensure reports prepared by the OICS are also provided to the UN Subcommittee for the Prevention of Torture and the NPM Coordinator at the national level (the Commonwealth Ombudsman).

Recommendation 13. Insert a requirement in the ICS Act for the Government, or relevant minister, to formally respond to tabled reports within a specified timeframe.

Recommendation 14. Add a section to Part 4 of the Act to ensure reports are provided to the UN Subcommittee for the Prevention of Torture and/or the Commonwealth Ombudsman (as Australia's NPM Coordinating body).

Terms of appointment and tenure

The *ICS Act* should specify a clear term of appointment for the Inspector and must contain an independent and objective dismissal process. This is consistent with Article 18(4) of the OPCAT, which indicates NPMs should be established with due consideration to the Paris Principles regarding National Human Rights Institutions (NHRIs).¹⁴

Certainty in the term of appointment and the grounds upon which the Inspector may be dismissed are essential to promoting stability, predictability and independence in the role. Currently, the *ICS Act* stipulates that a person must not be appointed for a term of longer than five years (subsection 9(4)). As a general proposition, the Global Alliance of National Human Rights Institutions (GANHRI) recommends an appointment term for decision-makers in a NHRIs of between three to seven years. The typical term of appointment for human rights commissioners in Australia is five years, while the ACT auditor-general's term of appointment is seven years.

The Inspector role was first advertised as a part-time position, with the Explanatory Memorandum for the *Inspector of Correctional Services Bill 2017* stating that "the role of the Inspector may be exercised in a part-time or per diem capacity depending on the workload requirements to ensure the efficient and effective function of the Act". We do not believe it is appropriate that the Inspector role is part time, noting the broad functions of the OICS and the substantial workload the role entails. Making the role part time may also increase the potential for conflicts of interest to arise.

Subsection 9(4) of the *ICS Act* further states that:

The inspector's conditions of appointment are the conditions agreed between the Executive and the inspector that are stated in the instrument of appointment, subject to any determination under the Remuneration Tribunal Act 1995.

Our understanding is that the Inspector's remuneration and related conditions of engagement are currently set out under Determination 13 of 2022, which covers part-time appointments to government boards and committees, and

¹⁴ [The Paris Principles](#) consist of a comprehensive series of recommendations on the role, composition, status, and functions of national human rights institutions (NHRIs).

involves remuneration in the form of a sitting fee. This is clearly inappropriate. The terms and conditions of the Inspector's appointment, including their remuneration, should align with comparable statutory office holders on a full-time basis.

ACTCOSS believes the appointment arrangements and terms of office for the Inspector need to be changed to ensure the role is fully independent, providing security of tenure and remuneration that mirrors comparable full-time statutory office holders. Based on publicly available information, it appears the terms and conditions of the Inspector's service can be modified to their detriment during their period of appointment, which would be a departure from the Paris Principles. Appointing the Inspector as an Officer of the Assembly, as recommended above, would also address these concerns and ensure the dismissal process is independent and objective.

Recommendation 15. Amend the ICS Act to specify a clear term of appointment for the Inspector, with an objective and independent dismissal process, in order to promote stability, predictability and independence in the role.

Recommendation 16. Ensure the remuneration and conditions for the Inspector's role align with comparable full-time statutory office holders.

Language

People with criminal justice histories are among the most stigmatised and marginalised members of the community, and are often referred to in an array of dehumanising labels. To avoid such language, we recommend using person-centred language and replacing the term 'detainee' with 'detained person' throughout the text of the Act.

Recommendation 17. Replace the term 'detainee' with 'detained person' throughout the text of the ICS Act.

Intersection between Inspector and other oversight mechanisms

Intersection with other corrections oversight mechanisms

Collaboration between oversight mechanisms operating in the corrections domain is important to strengthen accountability, avoid duplication, and prevent issues from falling between the 'cracks' given the different jurisdiction of each oversight agency. While the OICS does not handle complaints, it is important those agencies that do have a complaints handling function (namely the ACT Human Rights Commission, ACT Ombudsman and Official Visitors) regularly update the OICS on the overall nature and number of complaints in order to enable systemic trends and issues to be identified and monitored. Coordination and ongoing dialogue between the OICS, Official Visitors and the Aboriginal and Torres Strait Islander Children and Young People Advocate is essential. At the same time – and recognising the OICS may have access to more information (including personal information) than other monitoring bodies – in sharing information oversight agencies need to be extremely careful to adhere to their statutory obligations and respect the confidentiality, security, and sensitivity of that information.

ACTCOSS understands that a protocol has been developed to clarify expectations and support collaboration and information exchange between the different oversight agencies with responsibilities in the AMC.¹⁵ It is important this protocol is adhered to, and periodically revisited and updated where appropriate. Detained people, corrections staff and other relevant stakeholders should also have sufficient information and guidance to understand the respective roles of different oversight mechanisms. Some community sector stakeholders have voiced concerns regarding the lack of clarity in relation to who has oversight of justice health, who monitors transfers and continuity of care between AMC health services and forensic mental health services, and whether there is sufficiently robust oversight and regular coordinated monitoring of mental health services and support across the justice, forensic mental health and mental health systems, noting the regular flow of detained people between these different settings and systems. We also note that, until the recent ministerial reshuffle, ministerial responsibilities for justice health did not extend to the Corrections Minister, and this scenario does not appear to be accommodated in certain provisions of the Act.

Intersection with other NPMs and relevant oversight mechanisms

As indicated above, ACTCOSS has concerns regarding the lack of clarity in the respective roles, responsibilities and coordination of the bodies comprising the ACT NPM. We are concerned this is impeding robust preventive monitoring across all places in the ACT where people are deprived of their liberty. The fragmentation in responsibilities and lack of visibility of the NPM functions undertaken by the ACT Ombudsman and Human Rights Commission also contributes to the lack of overall institutional visibility of the ACT's NPM. As the Association for the Prevention of Torture has noted:

The NPM is all the institutions together. Each separate institution is a part of the NPM. The NPM as a whole should have coherence in its communications, goals, strategies, and approaches. All new multiple body NPMs should discuss their goals and strategies as NPM, and their internal organisation and work practices. This discussion could include institutional practices, the management of knowledge and information, decision-making processes, engagement with civil society, engagement with authorities, communications strategies, and responding to common issues. Discussions such as these can continue for ongoing evaluation and development, and to review the ways in which the NPM as a whole is working.

It is also important the Act is amended to ensure the ACT NPM can readily share information with the SPT, as per the requirements of the OPCAT.

ACTCOSS observes that, at the national level, the Commonwealth Ombudsman has played a visible and valuable role in coordinating and communicating NPM functions across Australia, and ACTCOSS is supportive of the contribution the OICS has made in joint statements made by the national coordinating NPM.

To support a more coordinated approach and to ensure the visibility and mandate of the overall NPM in the ACT, we recommend consideration is given to appointing one of the ACT NPM entities as the ACT NPM central coordinating body. Alternatively, consideration should be given to reinstating the full-time NPM Coordination Director role that existed up until July 2023.

¹⁵ [Relationship Protocol between agencies responsible for the oversight of the Alexander Maconochie Centre \(AMC\)](#), 2021.

Recommendation 18. *To strengthen the coordination and visibility of the ACT NPM, consider either appointing one of the ACT NPM entities as the central coordinating body for the NPM in the ACT (with appropriate resourcing to fulfil this function), or to reinstating a full-time NPM Coordination Director role.*

Extent to which the Act has supported better and more effective oversight

Since its inception, the OICS has played an invaluable role in increasing transparency of the ACT's corrections system, providing independent oversight of facilities and services, and identifying issues of concern and recommendations for improvements. While we commend the oversight and insights the OICS has provided to date, ACTCOSS believes there are a number of ways in which this important work can be enhanced.

Resourcing

Current funding of the OICS is inadequate and additional resourcing is imperative to ensure the Inspectorate can fulfil its mandate and provide ongoing and robust oversight. Adequate resourcing is also key to the Inspectorate's financial and operational autonomy.

Article 18 of OPCAT provides that the "States Parties undertake to make available the necessary resources for the functioning of the national preventative mechanisms". The NPM Guidelines further stipulate:

States parties have a legal obligation to make a specific allocation of the resources necessary to allow NPMs to function effectively and independently and carry out all OPCAT-related tasks. Financial autonomy is a fundamental prerequisite for independence. The legislation providing for the establishment of NPMs should also include provisions regarding the source and nature of their funding, and specify the process for the allocation of annual funding to the NPMs.¹⁶

ACTCOSS has consistently advocated for adequate resourcing of the OICS and believes the benefits are clear and compelling. Ill-treatment in prisons and other places where people are deprived of their liberty can result in significant administrative and legal costs associated with investigations, coronial inquiries, and litigation. In addition to the harms experienced by detained persons, poorly functioning correctional facilities generate an ongoing cost burden on health and other service systems (including mental health) and can contribute to high rates of recidivism. As the Victorian Ombudsman has stated: "it costs far more to deal with the consequences of ill-treatment – which could be a huge bill for damage or compensation, or a Royal Commission – than setting up regular monitoring to prevent it and drive improvements".¹⁷

Resourcing should be provided in a way that enables NPM bodies to fulfil OPCAT's core functions; respects the functional, structural and personal independence of NPM bodies; and ensures multidisciplinary monitoring and effective liaison with, and involvement of, civil society representatives and people with lived experience of detention in the OPCAT inspection process.

¹⁶ UN Office of the High Commissioner for Human Rights, [Preventing Torture – The Role of National Preventive Mechanisms – A Practical Guide](#), 2018, p.16

¹⁷ Victorian Ombudsman, [Implementing OPCAT in Victoria: Report and Inspection of the Dame Phyllis Frost Centre](#), 30 November, 2017, p.5

Recommendation 19. Ensure funding and resourcing for the OICS is increased and guaranteed in legislation, with resources provided by government in a single, dedicated budget line item to allow the OICS to determine its internal budget allocation.

Relationship with civil society

ACTCOSS believes that ongoing engagement with civil society is vital to support and strengthen the work of the OICS and to ensure it is able to drive meaningful change in the ACT's correctional facilities. Civil society, including those with lived experience, possess a deep substantive and applied understanding of the day-to-day matters considered by the OICS in the discharge of its functions. Several ACTCOSS member organisations, for example, hold longstanding knowledge and experience working in places where people are or may be deprived of their liberty, as well as assisting people who have experienced ill-treatment in correctional facilities or other closed settings. Many civil society organisations play a crucial role providing support services to communities disproportionately involved in the criminal justice system, advocating for policy reform and on behalf of individuals. This expertise and knowledge can contribute to monitoring that is undertaken in a more inclusive and effective way.

Civil society engagement with the NPM is a key recommendation of the SPT. Recognising this approach is best practice, NPMs around the world have adopted various models to ensure civil society actively participates in their activities. For example, the Tasmanian NPM recently recommended the establishment of a formal and permanent Civil Society Advisory Council, which would be integrated into its governance structure.

To date, the OICS has regularly engaged with ACTCOSS, and has made significant efforts to be accessible to and engage with other civil society organisations. This includes participation in the Justice Reform Group (JRG), a cross-sectoral forum convened approximately every two months by ACTCOSS, with a focus on issues related to the criminal justice system, including justice reform, human rights, and social determinants of contact with the justice system. The JRG has a broad membership, including not-for-profit organisations working within the ACT's criminal justice system, people with lived experience of the justice system, carers, disability and mental health organisations, and a range of other organisations and individuals supporting those who are disproportionately involved with the criminal justice system. Despite its limited resources, the OICS has been proactive in engaging with the community sector and other civil society actors when undertaking healthy prison reviews and other key functions.

In addition to maintaining these more informal modes of engagement, ACTCOSS believes consideration could be given to more formalised mechanisms to support the input of civil society. We note, for example, that a Civil Society Advisory Council has been recommended in Tasmania to promote regular civil society engagement with the Tasmanian NPM and to provide specialist advice on matters critical to the success of the Tasmanian NPM.

Advisory bodies or working groups, either with a general or thematic focus, can be a valuable means of drawing upon the insights and expertise of diverse civil society representatives, including people with lived experience of detention. In overseas jurisdictions, some NPMs have established advisory bodies on a permanent basis to enable ongoing discussion of the NPM's work, while others have established working groups on an ad hoc basis to deal with specific topics. These advisory bodies can either be composed exclusively of civil society representatives or, alternatively, involve both civil society and representatives from government agencies. Permanent advisory bodies

can oversee and advise on various aspects of the NPM operations including reviewing visiting protocols and methods, and advising on monitoring priorities.

Advisory or working bodies can also focus specifically on supporting or evaluating the implementation of the NPM's recommendations, and we believe this warrants particular consideration in the ACT. A regular and institutionalised forum that includes both government and non-government representatives can provide a constructive avenue for following up on the recommendations of the NPM, developing concrete steps for their implementation, and generating "more responsibility from the authorities to engage in a proactive dialogue with the NPM".¹⁸ While the risk of ineffective oral exchanges without outcome remains, "working groups with a clearly defined goal and composed of the relevant and competent stakeholders and experts have proven to be a useful forum to jointly develop concrete plans and solutions for complex problems, and to assign responsibilities among the different actors".¹⁹

Recommendation 20. Maintain and further strengthen OICS engagement with the community sector and other civil society entities, with consideration given to establishing more formalised mechanisms to facilitate input from civil society, and ensuring the OICS is appropriately resourced to undertake such engagement.

Children

It is crucial the OICS has the requisite expertise and resourcing to effectively monitor children and young people in places of detention. Despite this, additional funding was not initially provided to the OICS when its remit expanded to include the Bimberi Youth Justice Centre in 2019. We understand that a modest increase of funding in the 2023-24 Budget enabled the OICS to convert a temporary contract position into a permanent full-time position, however we remain concerned that the current level of funding places constraints on the capacity to undertake robust oversight of children and young people in detention.

Although vulnerability affects all persons deprived of their liberty, children find themselves in situations of particular vulnerability because of their age and stage of maturity, the complex developmental trauma experienced by a high proportion of children engaged with the youth justice system, and the long-term damaging effects of detention on their well-being and development. They differ from adults in terms of their physical and emotional development and their specific needs, which require special protection. As the Australian Children's Commissioners and Guardians (ACCG) has emphasised, children and young people in youth justice detention are subject to a specific set of risks and face a particular set of issues, and the vulnerabilities of children and young people require different strategies and standards to those used for adults.²⁰

¹⁸ Birk, M., Zach, G., Long, D., Murray, R., Suntinger, W., *Enhancing impact of National Preventive Mechanisms. Strengthening the follow-up on NPM recommendations in the EU: strategic development, current practices and the way forward*, Ludwig Boltzmann Institute of Human Rights, Vienna, 2015, p. 57.

¹⁹ Birk et al., *Enhancing impact of National Preventive Mechanisms*, 2015, p. 57.

²⁰ Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices*, 2016.

Monitoring children and young people therefore requires a high degree of sensitivity, tailored methodologies, and expertise about child development, trauma and the specific nature and effects of children's experiences of detention and how these differ from adults. At an operational level this should include expertise in child-centred interviewing and other engagement practices, child development, trauma-informed practice, and child and adolescent mental health. Noting the overrepresentation of Aboriginal and Torres Strait Islander children and young people in the youth justice system, and the unique vulnerabilities experienced by Aboriginal and Torres Strait Islander children who are deprived of their liberty, the OICS should also maintain a focus on empowering and promoting the cultural safety of Aboriginal and Torres Strait Islander children in detention.

Recommendation 21. Ensure the OICS is resourced to provide multi-disciplinary and specialist expertise on the protection and promotion of children's rights and wellbeing in detention, including the unique vulnerabilities experienced by Aboriginal and Torres Strait Islander children deprived of their liberty.

Disability inclusion

We acknowledge the work the OICS has undertaken to adopt a disability-inclusive approach to its work. This has included, for example, engaging contractors with disabilities to assist in identifying issues with Bimberi's induction building and processes, bringing attention to issues such as the lack of Easy-English induction materials, the lack of captions on video, and the preponderance of hard surfaces that sound bounces off, making hearing difficult.

ACTCOSS are particularly concerned about the ongoing, unmet needs of people in AMC with disability, particularly those with cognitive/intellectual disability and those with complex psychosocial disability. As noted by the Disability Royal Commission in October 2022, '[p]eople with intellectual, cognitive and psychosocial disabilities are overrepresented in the criminal justice system' and, 'are more likely to have difficulty coping with the prison environment and to experience a higher rate of comorbid mental health disorders and physical conditions ... increased risk of being disadvantaged and socially isolated... [and] also at higher risk of returning to custody'.²¹ The Disability Royal Commission assessed that approximately 40% of people entering prison in Australia have a mental health condition, and that people with cognitive disability who have more than one disability have the highest rates of contact with the criminal justice system.²²

The Disability Royal Commission further recommended that disability-inclusive approaches to implementing the OPCAT be adopted in all jurisdictions:

National Preventive Mechanism (NPM) bodies in all Australian jurisdictions should implement their functions in a disability-inclusive way by enabling people with disability in places of detention to share information and experiences with the NPM using a variety of communication forms; ensuring staff participate in ongoing education and training about the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, human rights and issues affecting

²¹ Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability, *Submissions of Counsel Assisting following Public hearing 27, Conditions in detention for people with disability in the criminal justice system*, (24 November 2022, 12 para 25-27. <https://disability.royalcommission.gov.au/system/files/2023-03/Public%20hearing%2027%20-%20Counsel%20Assisting%20submissions%20-%20SUBM.0054.0001.0026.PDF>

²² Royal Commission into Violence, Abuse, Neglect & Exploitation of People with Disability, *Final Report - Volume 8, Criminal justice and people with disability [33]* (29 September 2023)

people with disability in places of detention; ensuring staff conducting NPM inspections have the skills and experience to provide reasonable adjustments, communication supports and supported decision-making to people with disability when required; involving people with disability in the inspection of places of detention; collecting and publishing data about people with disability in places of detention, aligned with disability inspection standards.

Articles 4 and 33 of the Convention on the Rights of Persons with Disabilities contain obligations to ensure that people with disability, and their representative organisations, are consulted and actively involved in the development of policy and legislation that affects them. Accordingly, decisions concerning the design, development, and implementation of the ACT's NPM should be co-designed by, or at a minimum actively involve, people with disability and relevant stakeholder bodies.

Recommendation 22. Ensure the OICS has the capabilities, expertise and resourcing necessary to discharge its mandate in a way that is disability inclusive.

Extent to which the examination, review and reporting functions have helped to promote better practice

Since its inception, the OICS has undertaken significant work to promote better practice, including through several comprehensive Healthy Prison Reviews and a Health Centre Review of Bimberi. We believe the evidence-based and constructive recommendations provided in these reviews provide a solid basis and clear direction for preventing ill treatment and improving the ACT's correctional centres and services.

While the OICS reports have provided impetus for some important changes, we note that many of the recommendations made by the Inspector are yet to be implemented. As this submission has highlighted, the OICS has a vital role to play in identifying areas requiring improvement, developing recommendations, and engaging in constructive dialogue with stakeholders, including ACT corrections and the ACT Government. Ultimately, however, responsibility for implementing the recommendations of the OICS and improving services and conditions rests with corrections and the respective ministers.

Recommendation 23. Ensure that the ACT Government prioritises timelier implementation of OICS recommendations, with more regular reporting on the implementation of recommendations and the establishment of additional mechanisms to increase accountability.

Conclusion

Australia's ratification of the OPCAT presented the ACT Government with an historic opportunity to strengthen the culture of human rights within places where people are deprived of their liberty, including in the ACT's prison and youth detention facilities. As discussed in this submission, the enactment of the *ICS Act* was an important step in this direction, but further legislative changes and appropriate resourcing are needed to ensure the OICS fulfils its OPCAT obligations.

ACTCOSS would welcome the opportunity to further discuss any matters raised in this submission, and looks forward to continuing to work with the OICS and the ACT Government to ensure the dignity and human rights of people detained in our corrections and youth justice system are upheld.



Yours sincerely

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