

Attorney-General George Brandis and Foreign Affairs Minister Julie Bishop have [announced](#) that Australia will implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([OPCAT](#)).

This ratification has been a long time coming. Australia signed OPCAT in 2009. Despite consistent pressure from the United Nations (UN), non-governmental organisations (NGOs) and the Australian Human Rights Commission, successive governments have dragged their heels on implementing it.

The news that Australia is now committing to implementation has so far been warmly welcomed by [NGOs](#) .

What is OPCAT?

OPCAT is a UN human rights treaty that came into effect in 2006. The optional protocol builds on the convention against torture.

Optional protocols are commonly used in the human rights treaty system as additions to core treaties. In this case, it aims to strengthen the protection of people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. In order to prevent torture, its main objective is to establish a system of regular visits by independent international and national bodies to places of detention, such as prisons and immigration detention centres.

The treaty established a subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment. The subcommittee can visit any place where people may be deprived of their liberty in states that have ratified OPCAT. The subcommittee also provides assistance and advice to states on establishing a National Preventive Mechanism (NPM) – a state obligation under the treaty.

The NPM is responsible for visiting places of detention, making recommendations to relevant authorities and co-operating with the subcommittee. Yesterday's press release implies that Australia's NPM will be the Office of the Commonwealth Ombudsman. [Most states](#) have nominated an ombudsman or their national human rights institution as their NPM.

The NPM and the selection of its members should be identified by an open, transparent and inclusive process. This should involve a wide range of stakeholders, including the public.

What will it mean for Australia?

Australia has committed to ratifying OPCAT by December 2017. The NPM must then be established within one year of ratification and in accordance with the OPCAT treaty and associated [guidelines](#).

The NPM will undertake visits to places of detention, including prisons and immigration detention centres, and make recommendations. Periodic visits by the subcommittee will also take place, bringing international scrutiny to places of detention.

So, for example, the Maribyrnong centre – dubbed the [harshest](#) immigration detention centre in Australia – would warrant a visit. There, international members of the subcommittee could speak directly with detainees without immigration officials present.

For most human rights treaties, negative findings on a state's human rights performance by the responsible treaty body are made publicly available. This is not the case with OPCAT. Instead, recommendations and observations will be communicated confidentially to the state; these are only made public at the request of the state.

The subcommittee routinely recommends that states publish the report on their visit. So far, many states have opted to maintain confidentiality.

However, several have published their reports. For example, the subcommittee visited Italy in September 2015. Italy decided to publish the [report](#) on that visit one year later. Criticisms of

Italy included the use of mandatory detention and the detention of migrant children.

Given Australia's reluctance to bring public attention to issues in immigration detention, as evidenced by [whistle-blower legislation](#), the confidentiality clause is likely to have been appealing. The exception is that if the state refuses to cooperate with the subcommittee, or to take steps to improve the situation in light of the recommendations, the Committee against Torture can opt to make a public statement on the matter or publish the report of the subcommittee.

Australia now joins the 83 other UN member states that have ratified OPCAT. It is noteworthy that the [joint press release](#) by Brandis and Bishop concludes with the statement:

Australia is committed to the international human rights system, as demonstrated by its candidacy for a seat on the Human Rights Council for the 2018-20 term.

If running for a seat on the Human Rights Council leads to increased compliance with international legal obligations and [improved relations with the UN](#), this can only be a good thing for the protection of human rights. The government may seek to maximise opportunities such as the upcoming [visit](#) from the UN Special Rapporteur on Violence against Women.

Also significant is Australia's review by the UN Committee on the Elimination of Racial Discrimination, which is scheduled for later this year. Spoiler alert: a repeal of [Sections 18C and 18D](#) of the Racial Discrimination Act is unlikely to be viewed favourably by the committee.

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New deal on torture a step in the right direction for Australia's human rights law

Written by Fiona McGaughey, Lecturer, University of Western Australia

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