



# Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

*Systems and Legal Advocacy for vulnerable people with Disability*

Sub #9 to AHRC OPCAT NGO Consultation by Queensland Advocacy Incorporated (QAI)

## *OPCAT in Australia*

### Submission by Queensland Advocacy Incorporated

### Australian Human Rights Commission

July 2017

“Words have no power to impress the mind without the exquisite horror of their reality.”

**Edgar Allan Poe**

“To deny people their human rights is to challenge their very humanity.”

**Nelson Mandela**

“History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again.”

**Maya Angelou**

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**QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.**

**Patron: His Excellency The Honorable Paul de Jersey AC**

## About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our expertise in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the challenges, issues, needs and concerns of individuals who are the focus of this inquiry.

QAI deems that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. Further, QAI believes that all communities should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour. Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

QAI congratulates the Australian Human Rights Commission ("Commission") for the broad and in depth consultation it has engaged in with civil society regarding OPCAT in Australia. We were very pleased to be part of this process and are thankful for the opportunity to make a written submission, which we offer in addition to our oral submissions at the roundtable and the collective submission made by the OPCAT working group, to which we have contributed and which we endorse.

## QAI's recommendations

QAI offers the following recommendations:

### QAI recommends that:

1. While there are a number of inspection regimes that exist within different Australian jurisdictions, the initiatives are not comprehensive, consistent or sufficiently robust to protect vulnerable Australians from torture or inhuman or degrading treatment or punishment.
2. People with disability and mental illness are vastly over-represented in all these places of detention and are particularly vulnerable during their period of detention.
3. The current inspection frameworks have gaps in the protection of people with disability and mental illness.
4. People with disability and their representative organisations should be consulted in decisions around the design, development and implementation of the NPM model. People with both professional expertise of disability and human rights and people with lived experience of disability should be included in the visiting teams, as peer monitors to conduct inspections.
5. Full implementation legislation is vital if ratification of OPCAT is to be more than tokenistic.
6. The Australian Human Rights Commission should perform the national coordinating function under OPCAT.
7. Specific places of detention that are of immediate concern include
  - institutional and congregate care settings where people with disability reside;
  - the Forensic Disability Service Unit at Wacol, in Brisbane, Queensland;
  - the 'Duplexes' and 'TEAS' units at Wacol, in Brisbane, Queensland;
  - psychiatric hospitals;
  - residential aged care facilities and nursing homes;
  - boarding schools and 'special schools' where children with disability may be subjected to Restrictive Practices including seclusion and restraint.
8. The NPM should focus on the following broader systemic issues:
  - indefinite detention of persons with disability and/or mental illness;
  - persons with disabilities living in forced cohabitation and group homes;
  - persons with disabilities in prison;
  - persons with multiple vulnerabilities;
  - the use of Restrictive Practices on people with disabilities and mental illness;
  - the importance of advocacy for vulnerable persons.
9. Institutional settings where people with disability are detained have traditionally been closed-off and shielded from public scrutiny and should be prioritised by the NPMs.

## Background

QAI was grateful for the opportunity to attend the OPCAT Roundtable hosted by the Australian Human Rights Commission in Sydney on 8 June 2017. We have also been privileged to be a part of the OPCAT Network, and have contributed to the joint submission drafted by that group, which we fully endorse.

In this submission, we propose to expand upon the key considerations necessary to ensure that OPCAT in Australia is responsive to the needs of vulnerable people with disability and mental illness. We will confine this submission to this focus, but intend it to be considered in addition to our oral submissions made at the AHRC roundtable and the joint submission made by the OPCAT Network.

### **1. What is your experience of the inspection framework for places of detention in the state or territory where you are based, or in relation to places of detention the Australian Government is responsible for?**

Article 4 of the OPCAT defines places of detention as those places ‘where persons are or may be deprived of their liberty’. Examples of these places include prisons, police stations, prisoner and deportation transport, court security, juvenile detention centres and immigration detention centres, locked psychiatric wards or hospitals, compulsory care facilities, closed community-based residences for people with disability, boarding schools, aged care facilities, dementia units, nursing homes, child welfare institutions, schools with ‘exclusion’ or ‘time-out’ rooms, emergency rooms and rehabilitation facilities.

People with disability are vastly over-represented in all these places of detention and are particularly vulnerable during their period of detention. This is so notwithstanding that Article 14(b) of the CRPD states that the existence of a disability shall in no case justify a deprivation of liberty.’

In Queensland, there are some inspection frameworks in places in certain areas, but the frameworks are patchy and incomplete, with some of the notable gaps in coverage adversely affecting some of the most vulnerable people with disability. In certain places of detention – such as young people with disability in residential aged care facilities or nursing homes, people with disability incarcerated indefinitely in the Forensic Disability Service Unit, persons in Authorised Mental Health Service facilities – they are largely invisible and absent from the public discourse. The framework focuses on reactive rather than preventive monitoring which is a largely inadequate means of identifying and responding to systemic issues. The inspection bodies are not sufficiently staffed and resourced, and many lack the skills and expertise necessary to properly identify, understand and report torture, inhuman or degrading treatment.

#### ***Psychiatric Hospitals and Disability Accommodation***

In Queensland, as in other Australian jurisdiction,<sup>1</sup> inspectors are appointed under the *Mental Health Act 2016* (Qld) to inspect psychiatric hospitals.<sup>2</sup> However, the inspectors tend to be more concerned with inspecting the premises to seize objects or require documents to be

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<sup>1</sup> *Mental Health Act 2007* (NSW), s 137; *Mental Health Act 2014* (Vic), s 123, s 217; *Mental Health Act 2009* (SA), s 90(4)(a), *Mental Health Act 2014* (WA), s 335; *Mental Health and Related Services Act 1998* (NT), s 107; *Mental Health Act 2015* (ACT), s 236. Note that there are no specific provisions in relation to inspection, investigation or monitoring contained in the *Mental Health Act 2013* (Tas).

<sup>2</sup> Inspectors are appointed under s 555(1) of the *Mental Health Act 2016* (Qld) (MHA) to investigate, monitor and enforce compliance with the MHA. The Chief Psychiatrist is responsible for appointing inspectors. The Chief Psychiatrist is also an inspector.

produced, rather than monitoring the conditions and welfare of the persons detained. The Chief Psychiatrist and Inspectors have the powers under Chapter 14 of the MHA when undertaking an investigation. An inspector can investigate a matter when the Chief Psychiatrist directs them to, for instance, if there is a concern regarding the patient's rights.<sup>3</sup> In general, however, there is a need for a significant change in focus of the inspections. The *Public Guardian Act 2014* (Qld) allows community visitors to inspect visitable sites to ensure that the interests of adults with impaired capacity are being adequately protected. Visitable sites are disability accommodation provided or funded by the NDIS or Department of Communities and authorised mental health services or private hostels (with level 3 accreditation).

Some Level 2 accredited hotels provide accommodation and support to people with disability who have significantly high support needs (some people have had to rely on other residents for assistance with personal care and/or from the manager for eating support) and are not subjected to the level of scrutiny or inspections as other hostels. People living in such hostels are subject to control and manipulation by the operators, who determine where the person is allowed to go outside the hostel, read their mail and act as gatekeepers against visitors. This issue has been raised by advocacy organisations with the Department of Communities, Child Safety and Disability Services and the Office of the Public Guardian but to date the only result has been that the advocates have been banned from visiting the sites. A community visitor can conduct unannounced 'spot checks', make inquiries and report upon the adequacy of services for the assessment, treatment and support of adults. The community visitor measures the suitability and standards of services for the accommodation, health and wellbeing of the adults. They can seek to resolve complaints and make timely referrals of unresolved complaints to the appropriate entities for further investigation. The Office of the Public Guardian puts out calls for community visitors. They must possess excellent problem solving skills and understand the concerns, views and wishes of the vulnerable.

The current inspection framework has been shown to be woefully inadequate in protecting people with disability from violence, abuse and neglect in both residential and institutional settings. This is exemplified by the findings and recommendations of the Senate Inquiry into Violence, Abuse and Neglect against People with Disability,<sup>4</sup> which has led to calls for a Royal Commission into this issue.<sup>5</sup>

### **Prisons**

The inspection of prisons is of specific concern to QAI in light of the significant over-representation of people with disabilities in prisons. People with disabilities are consistently overrepresented in the criminal justice system as victims and offenders, notwithstanding a long-term state and national downward trend in crime rates.

People with intellectual disabilities are imprisoned at approximately five times the rate of the general population. Queensland Corrective Services conducted a general survey of Queensland prisoners in 2002 and determined that 10% of the prison population at that time had IQs indicative of intellectual disability (below IQ 70) and that a further 29 per cent of prisoners were in the borderline range (IQ 70-79).<sup>6</sup> The significance of the overrepresentation

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<sup>3</sup> Chapter 10, part 4 of the MHA.

<sup>4</sup> See:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect)

<sup>5</sup> See: <http://www.abc.net.au/news/2017-03-03/royal-commission-into-abuse-of-disabled-people-ditched/8320364>;

<http://www.smh.com.au/federal-politics/political-news/labor-pledges-royal-commission-on-abuse-of-people-with-disabilities-20170525-gwd8mp.html>.

<sup>6</sup> Queensland Corrective Services. 2002. Intellectual Disability Survey 2002.

is illustrated by these figures, when considering people with intellectual disability make up only 2% of the general population.

In Queensland, the Office of the Chief Inspector within Queensland Corrective Services is responsible for maintaining transparency and accountability for corrective services. The *Corrective Services Act 2006* (Qld) empowers the Chief Minister to undertake inspections and reviews of operations of corrective services facilities. Their main responsibility is to provide independent scrutiny in relation to offenders' treatment and the application of standards and operational practices within correctional centres. The Chief Inspector is to maintain their independence through a direct reporting relationship with the Director-General. The Chief Inspector inspects correctional facilities to assess how well a facility performs against the Healthy Prison concept.<sup>7</sup> In addition, the Director-General appoints Official Visitors to ensure offenders have access to advocacy and advice. Visitors conduct regular visits to hear and resolve complaints.

### **Youth Justice**

In Queensland, as in all other states and territories, there are inspection regimes with responsibility for inspecting and monitoring youth detention centres. The Youth Detention Inspection Team completes quarterly inspections and monitors youth detention centres pursuant to *Youth Justice Act 1992* (QLD). Additionally, the Community Visitor Program and Office of the Public Guardian make regular visits to the Cleveland Youth Detention Centre and Brisbane Youth Detention Centre. During these visits, the young person is provided with access to an officer who is independent of a community organisation or Government Department who assists with working through any concerns, wishes and views. The Queensland Ombudsman also visits youth detention centres to evaluate service delivery and where necessary, make recommendations. This operates in conjunction with various internal oversight mechanisms including an embedded compliance monitoring role, a review process, proactive monitoring and quarterly performance reviews.

The Queensland framework appears to be structurally quite similar in key respects to the regimes in place in New South Wales,<sup>8</sup> Victoria,<sup>9</sup> South Australia,<sup>10</sup> Tasmania,<sup>11</sup> Western

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<sup>7</sup> The Healthy Prison concept has four key tests or principles: safety – even the weakest prisoners feel safe; respect – prisoners are treated with respect as individuals; purposeful activity – prisoners are fully and purposefully occupied and expected to improve themselves; and resettlement – prisoners are able to strengthen links with their families and prepare for release into the community. The Healthy Prison has the following key outcomes: appropriate steps are taken to ensure prisoners are protected from harm; prisoners are treated with respect for their dignity; centre staff treat prisoners with respect; meaningful contact with family and friends is maintained; prisoners' entitlements are accorded to them; prisoners take part in activities to prepare themselves for life outside of prison; prisoners receive the same standard of healthcare as a person would in the community; and appropriate steps are taken to ensure prisoners are safely reintegrated into the community.

<sup>8</sup> NSW has the Official Visitor scheme, which presents six-monthly written reports on standards of care relating to detainees' security, welfare and rehabilitation in youth justice facilities. The NSW Ombudsman and the NSW Inspector of Custodial Services also have oversight of youth detention.

<sup>9</sup> In Victoria, the Department of Health and Human Services manage youth justice matters. The Commission for Children and Young People established the Independent Visitor Program for Youth Justice Centres (Independent Visitors). Independent Visitors are a group of cautiously selected volunteers from many different backgrounds who have both personal and professional skills to support appropriate interaction with young detainees. The Independent Visitor provides information and assistance to aid the young people's experience of being in custody, monitor their safety and wellbeing and promote their rights and interests. They attend centres each month and can enter and inspect the centres and speak to any young detained person. Additionally, they can observe the centres' general routines and speak to staff about the services. Where possible, unit management and Independent Visitors meet to resolve any immediate issues. At the conclusion of each visit, Independent Visitors meet with the General Manager of the Precinct to discuss their observations and raise any issues held by staff and young people. Within seven days of each visit, Independent Visitors must provide a written report to the Principal Commissioner.

Australia<sup>12</sup> and the ACT,<sup>13</sup> and more comprehensive than the Northern Territory model, which is characterised by considerable discontinuity and fragmentation in service delivery,<sup>14</sup> although this is currently undergoing review in the aftermath of the notorious Don Dale incidents.<sup>15</sup> A Royal Commission into the Protection and Detention of Children in the Northern Territory and Commonwealth Attorney was triggered by the reporting of the Don Dale incidents, and it has been suggested by the Commonwealth Attorney-General that the scandal may not have occurred if better oversight bodies had been in place.<sup>16</sup>

**Images of alleged mistreatment at Townsville's Cleveland Youth Detention Centre emerged in 2016, prompting calls for the royal commission into Northern Territory juvenile detention to be extended to Queensland.**

One series of CCTV images obtained exclusively by 7.30 shows a boy, 17, being held face down by five adults. He was handcuffed, ankle-cuffed, stripped naked then left alone in isolation for more than an hour.

The incident was prompted by the boy refusing to have a shower.

Images from another incident caught on CCTV footage show a girl in a swimming pool being

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<sup>10</sup> The Guardian for Children and Young People conducts independent active monitoring through an administrative arrangement between Ministers. Advocates visit once every two months. However, at other times residents can call the Office of the Guardian to request advocacy. The Guardian and Senior Advocate visit twice each year to view the records and compile a report based on the conditions.

<sup>11</sup> Children and Youth Services are responsible for Community and Custodial Youth Justice Services in the Department of Health and Human Services. Community and Custodial Youth Justice Services coordinate diversionary community conferencing; provide statutory community based supervision of young people on court orders; provide safe and secure custodial services and pre-release and post-release support; provide integrated case management of young people on legal orders; and manage the community service order program. The Commissioner for Children provides advocacy to young people detained in the Ashley Youth Detention Centre (AYDC). The Commissioner conducts regular visits to the AYDC to certify that policies and practices are not operating in a way which constitutes an unjustified limitation on the enjoyment by these young people of rights they are entitled to notwithstanding their detainee status. AYDC detainees may contact the Commissioner or Ombudsman by telephone to raise issues of concern.

<sup>12</sup> The Department of Corrective Services is responsible for youth justice. The Office of the Inspector of Custodial Services (OICS) provides formal external oversight. OICS regularly inspects all justice facilities in WA and directly reports to the WA Parliament. The Inspector has published a Code of Inspection Standards for Young People in Detention to guide their work: [http://www.oics.wa.gov.au/wp-content/uploads/2013/11/Juvenile\\_Code\\_of\\_Inspection\\_Standards\\_V1.pdf](http://www.oics.wa.gov.au/wp-content/uploads/2013/11/Juvenile_Code_of_Inspection_Standards_V1.pdf). Following a serious incident in Banksia Hill in 2013, the OICS conducted an enquiry into the facility. The review recommended substantially reducing the number of scheduled and unscheduled lockdowns, the use of mechanical restraints and that strip search should not be used as routine measures and should only be used where it is assessed as required to reduce risk. Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013, pp. xiv–xv. The Department of Corrective Services appointed an Independent Youth Justice Board in 2014. The Youth Justice Board provides directions to the Youth Justice Steering Committee to evaluate the provision of services to children and young people in detention. In particular, the youth Justice Board hopes to promote stronger engagement with Aboriginal and Torres Strait Islander families and communities.

<sup>13</sup> The inspection framework in the ACT is comprised of four independent authorities: ACT Children and Young People Commissioner, Public Advocate of the ACT Official Visitor, and Aboriginal and Torres Strait Islander and Torres Strait Islander Official Visitor.

<sup>14</sup> Northern Territory Government. *Review of the Northern Territory Youth Justice System: Report*. September 2011.

<sup>15</sup> <http://www.news.com.au/national/breaking-news/mandatory-youth-prison-inspectors-for-nt/news-story/4e32d504341f1897c0d264f8472c25cb>

<sup>16</sup> Oversight may have prevented Don Dale: AG, SBS 9 February 2017.

threatened by security guards with an un-muzzled dog.

The disturbing images are contained within internal Government reports written in 2013 and 2015 by the Queensland Government's own Youth Detention Inspectorate.

Amnesty International received the reports under Freedom of Information laws.

<http://www.abc.net.au/news/2016-08-18/images-of-alleged-mistreatment-cleveland-youth-detention-centre/7758204>

**This report prompted an independent review of Queensland's youth detention centres ordered by State Attorney-General and Justice Minister Yvette D'Ath.**

She said the move was in response to serious allegations levelled against Queensland youth detention centre staff by former detainees and former employees:

<http://www.abc.net.au/news/2016-08-19/queensland-youth-detention-centres-independent-review-ordered/7767580>

### ***Aged Care***

Aged care falls within the ambit of federal responsibility. In the disabilities space, there is therefore some tension between aged care and the predominantly state-based disabilities portfolio (though this is in flux as many supports and services transition with the roll-out of the National Disability Insurance Scheme). There is an inspection protocol consisting of both announced and unannounced audits, which are reviewed against the Accreditation Standards.<sup>17</sup> Of significant concern to QAI is that many people with disability, including young people with disability, live in residential aged care facilities. This is problematic insofar as these facilities are generally not appropriate for the needs of people with disability. Many people with disability experience violence, abuse and neglect within residential aged care facilities. In circumstances where there is a death in an aged care facility, the presumption is that the death was age-related and therefore there is no investigation unless specifically requested by a family member of the deceased, even in circumstances where the person was not elderly.

The jurisdiction of inspectors empowered under the Community Visitor program (discussed above) is limited and does not authorise visits to aged care homes or facilities where people with disability are living. This is a significant omission, particularly given that no investigations are conducted into deaths of people with disability in aged care facilities unless specifically requested (the assumption is that they died from an age-related cause, irrespective of the age of the person and despite that many young people with disability live in residential aged care facilities).

### ***Immigration Detention Centres***

QAI holds grave concerns about the conditions of people with disability and mental illness in immigration detention facilities. We are not alone in raising those concerns – indeed, alarm over the treatment of all people within immigration detention facilities, but particularly the most vulnerable people (including people with disability) have long been raised by civil society.

The Australian Human Rights Commission has found that Australia's mandatory detention laws, as administered by the Commonwealth, have resulted in the long-term detention of

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<sup>17</sup> These Standards are located in the *Quality Care Principles 2014* (Cth).



unauthorised arrival children, including children with disabilities, and that systemic failures in the detention of children with disabilities have created particular difficulties for, and breached the human rights of, these children.

The Migration Act 1958 (Cth) does not provide for any specific inspection regimes. However, the Act requires the Commonwealth Ombudsman to assess the appropriateness of the immigration detention arrangements for each person detained for two years or more. The Commonwealth Ombudsman conducts announced and unannounced visits of immigration detention facilities. The Ombudsman monitors whether detention service standards, including access to medical and other services and activities which promote detainees' wellbeing are being met. The Ombudsman provides feedback to the Department of Immigration and Citizenship.

The Office of the Inspector of Custodial Services has no jurisdiction regarding immigration detention centres. Red Cross is the only humanitarian organisation which conducts regular and frequent independent monitoring across Australia. Any issues of humanitarian concern are raised with the Department of Immigration and the Australian Government. In addition, the Red Cross engages in confidential advocacy with the Australian Government and Department of Immigration.

The Australian Human Rights Commission (AHRC) has monitored and reported on the conditions of places of detention for over 17 years. The Commission investigates complaints regarding alleged human rights breaches; conducts visits to centres and publishes reports; develops minimum standards to protect human rights and conducts national inquiries.

The United Nations High Commissioner for Refugees (UNHCR) regularly conducts inspections of offshore places of detention and provides reports to the government and meets frequently with senior government officials. However, the details of the UNHCR reports generally remain confidential.

The Immigration Detention Advisory Group (IDAG) advises on the appropriateness and adequacy of detention services. IDAG members are appointed by the Minister for Immigration and Citizenship and either individually or collectively visit Immigration Detention Centres to obtain information on the operation and environment of each centre. The IDAG accordingly, develops a work program, agreed with the Minister, which identifies priority issues to be addressed over the next 12 months.

### ***Whether there are any crucial gaps or overlap in the inspection framework***

QAI notes that there presently exists, at a state and territory level, an existing framework of different monitoring bodies, some of which are compliant with OPCAT. However, this framework is patchy and incomplete and – of utmost concern to QAI – some of the most gaping holes in the coverage affect some of the most vulnerable Australians.

We understand that the Commonwealth is proposing to give significant discretion to the states and territories regarding how they will fulfil the inspection functions. It is vital that there is co-ordination and consistency between the disparate bodies involved, including in the language used. It is also vital that due attention is paid to ensuring that the inspection framework covers all vulnerable people in Australia, and in particular, that there are appropriate and robust safeguards in place to protect the most vulnerable people, including people with disability and mental illness.

There is presently a significant gap insofar as there are state-based or national inspection bodies with oversight and responsibility for inspecting institutions where people with disability are housed. The extent of the violence, abuse and neglect of people with disability, including

in institutional settings where they may reside against their will, is such that a 2015 Senate Inquiry documented recommended a Royal Commission into this issue.<sup>18</sup>

The CRPD states that people with disability and their representative organisations must be consulted in the development of policy and legislation that impacts them.<sup>19</sup> The involvement of people with disability and their representative organisations would help to ensure that the NPMs developed are disability responsive. This is critical considering that people with disability are disproportionately over-represented in places of detention, including disability-specific places of detention such as the Forensic Disability Service Unit (discussed further, below) and in general places of detention such as prisons, juvenile detention centres and immigration detention centres.

Many disability-specific institutions are not presently widely recognised as places of detention yet meet the definition prescribed by the OPCAT.<sup>20</sup> For example, psychiatric wards and hospitals, compulsory care facilities, residential facilities and group homes, aged care facilities, boarding schools, among others, all meet this definition yet in Australia, there is presently a lack of an inspection framework in place to monitor these facilities.

### ***Staffing or relevant professional expertise important for inspections***

The CRPD<sup>21</sup> requires that people with disability and their representative organisations should be consulted 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 and their representative organisations. QAI submits that it is also vitally important to include people with both professional expertise of disability and human rights and people with lived experience of disability on the visiting teams, as peer monitors to conduct inspections. As proposed by the Commission, QAI agrees that it is important that mental health professionals are included on visiting teams.

This lived experience, supplemented by the expertise of other members of the visiting team around critical issues, is necessary to equip the visiting teams to understand and identify relevant issues and concerns. Given the significant over-representation of people with disability and mental illness across all settings where people are incarcerated (both traditional and disability-specific places of detention),<sup>22</sup> it is vital that disability is not compartmentalised as a separate, specialist issue but rather understood as relevant to all of the work of the NPMs. The work of the NPM should be underpinned by a disability inclusion action plan to ensure the accessibility and inclusivity of the NPM's work. Further, it should be recognised that inspectors who are keenly attuned to the needs and rights of vulnerable people with disability and/or mental illness will therefore be highly skilled in identifying and responding to the issues confronting a wider range of people from disparate backgrounds and life circumstances.

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<sup>18</sup> See:

[www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect) .

<sup>19</sup> See Articles 4 and 33 of the CRPD.

<sup>20</sup> See Article 4 of the OPCAT.

<sup>21</sup> See Articles 4 and 33 of t.

<sup>22</sup> 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 4<sup>th</sup> and 5<sup>th</sup> Reports of Australia by the Committee to the Convention Against Torture', *People with Disability Australia*.

## **2. How should the key elements of OPCAT implementation in Australia be documented?**

### ***Whether it is necessary to have a formal agreement (or other such document) that sets out the core elements of how OPCAT will operate***

QAI understands that the Commonwealth's present intention is to not enact legislation implementing OPCAT in Australia, although minor and incidental legislative reforms may be made. QAI does not support this position. We submit that effective implementation of OPCAT within Australia – and compliance with the requirements of OPCAT ratification – demands specific legislation that is clear and comprehensive insofar as it mandates compliance with the substantive provisions of OPCAT. We are aware that the process of developing legislation was initiated by the Council of Australian Governments (CoAG) a number of years ago, but that to date no legislation has been finalised or passed. Legislation must be developed having regard to the APT OPCAT manual.<sup>23</sup>

QAI holds specific concerns that, firstly, the lack of specific and focused domestic legislation would mar OPCAT implementation and compliance and secondly, that attempts to implement OPCAT through incidental legislative reform would not only be less rigorous and comprehensive, it would also potentially result in inconsistencies in the protections afforded to different people within Australia. This can be seen in the context of current practices that should be covered by OPCAT – for example, the legislation regulating the use of Restrictive Practices on persons with disability. Not only are there significant state and territory differences, there is also a fundamental disparity in the treatment of different groups – even so far as the state of Queensland restricting the rights of persons living with Restrictive Practices within the context of the NDIS. The application of Restrictive Practices on persons with disability is sanctioned provided the legislative requirements are met, whilst the application of Restrictive Practices on persons without disability who exhibit similar behaviours is not similarly sanctioned.

## **3. What are the most important or urgent issues that should be taken into account by the NPM?**

### ***Specific places of detention that are of immediate concern***

Without seeking to undermine the urgency of ensuring that all places of detention are opened up to scrutiny and brought into compliance with the prescribed international human rights standards, QAI notes that there are certain institutions that have been traditionally 'closed off' and unaccountable and therefore have sanctioned horrific human rights abuses of very vulnerable and disempowered people. The recent Senate Inquiry into violence and abuse against people with disability in residential and institutional settings, discussed above, has highlighted some of the horrors that have and are occurring against people with disability in Australia. That inquiry was quickly followed by an inquiry into indefinite detention of people with disability,

We therefore note that the following sites should be prioritised as being of immediate concern:

- Institutional and congregate care settings where people with disability reside;
- The Forensic Disability Service Unit at Wacol, in Brisbane, Queensland;
- Psychiatric hospitals;

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<sup>23</sup> [http://www.apr.ch/content/files\\_res/opcat-manual-english-revised2010.pdf](http://www.apr.ch/content/files_res/opcat-manual-english-revised2010.pdf).

- Residential aged care facilities and nursing homes;
- Boarding schools and ‘special schools’ where children with disability may be subjected to Restrictive Practices including seclusion and restraint.

We note that, given that disability-specific institutions are not specifically identified as an example of a place of detention under OPCAT, they are vulnerable to being omitted from the inspection regime and should be directly prioritised.

We emphasise that in monitoring these places of detention, the NPM must be equipped with appropriate skills and expertise to be able to identify the varying forms that torture, inhuman and degrading treatment and punishment can take. It is not just physical conditions of detention and absence of abuse that should satisfy inspection criteria, but also evidence of appropriate focus on rehabilitation, moving people out of detention. There is a role for the NPM to play in assessing the quality of Positive Behaviour Support and rehabilitation plans and determining how well they are tailored to meet the needs of the individual (input from appropriate professionals is critical in this regard).

**Case study: The Queensland Forensic Disability Service Unit**

The FDS Unit, which opened on 18 July 2011<sup>24</sup> is a purpose-built, medium secure, highly structured and supervised residential treatment and rehabilitation facility in Wacol, Brisbane, with the current capacity to accommodate and provide care for up to ten individuals. As a medium secure facility, there are security features in place, including fully fenced outdoor areas, locked doors, provision for search and seizure of items from residents, the requirement that all visitors be admitted through central security and refusal of visitors where their visits ‘were reported to result in a deterioration of behaviour following visit’.<sup>25</sup> The Unit is operated by Regional Service Delivery Operations and managed by the Department of Communities, Child Safety and Disability Services using a forensic disability model of service delivery.<sup>26</sup>

It was not intended to operate on a retributive mandate – the stated function is not to punish but rather to minimise the risk that persons placed under a Forensic Order (Disability) allegedly pose to themselves and to others, and to provide care for those held in detention, with a view to ultimately releasing them from the order and fully reintegrating them within the community. Both the non-retributive and transitional features of the FDS are important to acknowledge. Persons under a Forensic Order (Disability) have been *charged* with an indictable offence but this charge has never been tested in a court of law and therefore whether in fact the offence was committed at all, and if so by the relevant person, has not been proven to the requisite standard (which is the criminal standard of proof – ‘beyond reasonable doubt’). Further, a person cannot be found criminally responsible for an offence committed while the person was of ‘unsound mind’. This means that even if the person did commit the offence, they cannot be held criminally culpable for it if their intellectual or cognitive impairment impairs their capacity to the requisite extent, nor does the person have an ‘end date’ to their incarceration. From this viewpoint, indefinite restrictive orders and/or incarceration of persons with an intellectual or cognitive impairment within the FDS entails multiple breaches of their human rights.

The mandate of the FDS is that each person should progress along an individualised development plan that is designed with input from the person, their family, professionals and supporters. However, the reality is starkly different, with Forensic Orders (Disability)

<sup>24</sup> Department of Communities, *Forensic Disability Service: Service Model*, 2.

<sup>25</sup> See FDA Ch 7.

<sup>26</sup> Department of Communities, *Forensic Disability Service: Service Model*, 2.

operating indefinitely and significantly fettering autonomy and habilitation.

For those whose orders require detention within the FDS Unit or an Authorised Mental Health Service (AMHS), there are very limited opportunities for social and community interaction and involvement. This appears to result from a reticence to approve community involvement because of the risk assessment-based model that the FDS operates on, which places a heavy emphasis on the risk component. From this perspective, the prospect of community engagement is considered to pose unduly high levels of risk and, particularly for some residents, be excessively resource-intensive and difficult to arrange.

While the drafters of the *Forensic Disability Act 2011* (Qld) (FDA) emphasised that human rights principles must underpin the establishment and operation of the FDS, the reality of the FDS Unit is very different to this vision. From the design features and protocols that the FDS Unit operates on to the treatment of its residents, there is little to distinguish the lived experience of those detained within the FDS from incarceration within a mainstream prison. Indeed, incarceration within the FDS is often more isolating and the detention significantly longer than the sentence that would have been imposed had the person been convicted and sentenced for the same offence within the mainstream criminal justice system. This is not unique to the Queensland FDS Unit – indeed, this concern was recently voiced by the Honourable Wayne Martin, the Western Australian Chief Justice:<sup>27</sup>

*There is an urgent need for action. There have been reviews of this topic for many years now. It's been a contentious issue, not only in WA, but in other jurisdictions. And there are a number of problems arising from it. We've seen a couple of celebrated cases in WA where people have been detained in custody for longer periods than they would have served if they'd been convicted of the offence with which they were charged.*

In Queensland, the former Chief Practitioner Disability described the FDS Unit as unfit for human habitation, with its stark environment resembling the harshest prison-like setting. The indefinite nature of the incarceration, in contrast to a sentence imposed by a criminal court which has an end date and prospects of parole, destroys hope. There are no mechanisms in place to effectively guarantee the release of a person from the FDS within a designated timeframe, instead there is a systemic cycle of restrictions and human rights abuses.

***Broader systemic issues that the NPM should focus on, such as indefinite detention of people with cognitive disabilities***

QAI agrees that there is a need for the NPM to focus on particular systemic issues.

In the event that a thematic approach is taken to the monitoring and investigation of places of detention, QAI proposes that the themes should align not with characteristics of particular groups, but rather with particular issues. For instance, rather than focusing on people with disability or persons in immigration detention, the focus may be on all persons subjected to arbitrary or indefinite detention, or all persons subjected to forced treatment whilst in detention. Certain practices that persons with disability are subjected to that breach their human rights, such as indefinite detention within the Forensic Disability Service unit at Wacol, in Queensland, are considered separately from the detention of persons without disability. As such, they become normalized for people with disability and rationalized (in this example, as a way of 'protecting' people with disability from the ordinary application of the criminal laws of

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<sup>27</sup> <http://www.abc.net.au/7.30/content/2015/s4271739.htm>.

Queensland). This is a discriminatory way of looking at these practices and one which has catastrophic consequences for vulnerable people. If the issue is instead couched in terms of the blanket recognition that it is never appropriate to indefinitely detain any person, this highlights the inappropriateness of subjecting entire groups of people with a particular characteristic to that treatment.

QAI proposes that the NPM should focus on the following broader systemic issues:

1. *Indefinite detention of persons with disability and/or mental illness*

QAI submits that indefinite detention is never appropriate, particularly for vulnerable people with disability. In his report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez, noted that children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment and that this increased vulnerability warrants higher standards and broader safeguards for the prevention of torture and ill-treatment for this group.<sup>28</sup>

*Owing to their unique physiological and psychological needs, which render them particularly sensitive to deprivation and treatment that otherwise may not constitute torture, children are more vulnerable to ill-treatment and torture than adults. The detention of children, including pretrial and post-trial incarceration as well as institutionalisation and administrative immigration detention, is inextricably linked – in fact if not in law – with the ill-treatment of children, owing to the particularly vulnerable situation in which they have been placed that exposes them to numerous types of risk. Moreover, the response to address the key issues and causes is often insufficient.*

He called for the imposition of 'high standards' to classify treatment and punishment as cruel, inhuman or degrading, noting that the 'particular vulnerability' of children imposes a heightened obligation of due diligence on States to take additional measures to ensure their human rights to life, health, dignity and physical and mental integrity.<sup>29</sup>

QAI endorses this approach of looking at particular characteristics or vulnerabilities of people when determining whether a particular act or omission constitutes torture, cruel, inhuman or degrading treatment or punishment. We submit that the particular vulnerabilities of people with disability and mental illness place them in a position of similarly having a heightened vulnerability to ill-treatment and torture than adults without disability or mental illness.

It is now well-understood that the detention, in particular indefinite detention, of persons with an intellectual or cognitive impairment, has severely detrimental effects. The imposition of an indefinite, restrictive order denies certainty for the future, can be inconsistent with habilitation and can keep people enmeshed in a questionable system in regards to any benefit or suitability.

2. *Persons with disabilities living in forced cohabitation and group homes*

It is well documented that the conditions of institutional settings<sup>30</sup> can give rise to incidents of violence, abuse and neglect of people with disability within them. The 'closed' nature of

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<sup>28</sup> United Nations General Assembly. Human Rights Council, 28<sup>th</sup> Session. 5 March 2015, p 15.

<sup>29</sup> United Nations General Assembly. Human Rights Council, 28<sup>th</sup> Session. 5 March 2015, p 15.

<sup>30</sup> 'Institutional and residential settings' include: residential institutions; boarding houses; group homes; respite care services; day centres; recreation programs; mental health facilities; hostels; supported accommodation; prisons; schools; out of home care; special schools, boarding schools, school buses; hospitals; juvenile justice facilities; disability services; aged care facilities. See Joint NGO Submission to the 2015 Universal Periodic Review of Australia. Available from Human Rights Law Centre < <http://hrhc.org.au/upr/>>.

institutional settings makes it difficult to detect, investigate and prosecute acts of violence,<sup>31</sup> and the lack of reporting of violence and ‘cover ups’ by staff and management of institutions is a significant factor that hinders the adequate investigation and prosecution of offences of this nature.<sup>32</sup>

In 2013, the United Nations, building upon its history of concern about the forms of violence against people with disability in Australia, issued an urgent call for investigations into violence against women and girls with disability in institutional environments.<sup>33</sup> While these recommendations remained largely unaddressed for a significant period, a Senate inquiry into violence, abuse and neglect of people with disability in institutional and residential settings was conducted in 2015<sup>34</sup> and has been followed by widespread calls for a Royal Commission into this same issue.

### 3. *Persons with disabilities in prison*

Persons with disability in prison are particularly vulnerable, notwithstanding their over-representation. They may have specific needs that are not met in an ordinary detention environment, and certain programs (including those that will make them eligible for parole) remain inaccessible to their disability support needs. Many people with disability lack a strong network of family and friendship support and are therefore particularly vulnerable to isolation while incarcerated. The detention environment, and denial of access to usual community programs and supports, may have a negative impact on their capacity.

There are some examples of prison programs that have been designed to address the needs of prisoners with an intellectual disability (such as Port Phillip Prison’s Joint Treatment Program, Loddon Prison’s program from violence offenders with intellectual disability and Victoria’s Acquired Brain Injury Correctional Service Program). These are commendable initiatives that could be replicated throughout Australia. However, we caution the need for safeguards to ensure the programs meet the needs of persons with disability without stigmatising, indefinitely detaining or otherwise further disadvantaging them or that they in themselves are the pinnacle of such programs. There is always room for improvement.

### 4. *Persons with multiple vulnerabilities*

Persons with multiple vulnerabilities are particularly in need of safeguards. QAI submits that there is a need for the Government to place particular focus on understanding the continuation of disempowerment and abuse. For some children with disabilities, their experience of detention, inhuman and degrading treatment and punishment starts very early in life, by seclusion within educational institutions and centres. This can then later transmute

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<sup>31</sup> Phillip French, Julie Dardel and Sonya Price-Kelly, People with Disability Australia, *Rights Denied: Towards a National Policy Agenda about Abuse, Neglect and Exploitation of Persons with Cognitive Impairment* (2009).

<sup>32</sup> See for example *Director of Public Prosecutions v Vinod Johnny Kumar* [20 November 2013] VCC. See also Victorian Equal Opportunity and Human Rights Commission, *Beyond doubt: The experiences of people with disabilities reporting crime – Research findings* (2014).

<sup>33</sup> See, eg, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Australia*, UN Doc. CRPD/C/AUS/CO/1. (4 October 2013); Committee on the Elimination of Discrimination against Women, *Concluding Observations: Australia*, UN Doc. CEDAW/C/AUS/CO/7. (30 July 2010); Committee Against Torture, *Concluding Observations: Australia*, UN Doc. CAT/C/SR.1284. (November 2014); Human Rights Committee, International Covenant on Civil and Political Rights, *List of issues prior to the submission of the sixth periodic report of Australia*, UN Doc. CCPR/C/AUS/Q/6. (9 November 2012); Committee on the Rights of the Child, *Concluding Observations: Australia*, UN Doc. CRC/C/AUS/CO/4. (19 June 2012).

<sup>34</sup> See <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Violence\\_abuse\\_neglect](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Violence_abuse_neglect)>. QAI made a detailed submission to this inquiry. The Australian Parliament has initiated an inquiry in the Senate, but an independent judicial inquiry is still required: Joint NGO Submission to the 2015 Universal Periodic Review of Australia. Available from Human Rights Law Centre <<http://hrlc.org.au/upr/>>.

into incarceration within youth detention centres, authorised mental health services, forensic disability services and adult correctional centres.

#### 5. *The use of Restrictive Practices on people with disabilities and mental illness*

The use of Restrictive Practices on persons with disabilities and mental illness is an issue that must be prioritised and addressed. In 2013 the Special Rapporteur on Torture called for an “absolute ban on all coercive and non-consensual measures, including restraint and solitary confinement.”<sup>35</sup> QAI submits that the NPM must seek to enforce this ban. We discuss this important issue further, below.

#### 6. *The importance of advocacy for vulnerable persons*

Access to appropriate and skilled advocacy, chosen by the person where possible,<sup>36</sup> is vital to helping to assert, protect and defend that person’s human rights.

The CRPD places a strong emphasis on the importance of representation and advocacy for persons with disability. Article 12 of the CRPD prescribes the requirement that persons with disability be provided with the support they may require to exercise their legal capacity, while Article 13 requires that they be accorded effective and equal access to justice. The right to legal representation is critical, and therefore it is of utmost concern that it is not translated from the CRPD into domestic law, policy or practice.

As Perlin notes, the ‘presence of counsel is the lynchpin to authentic change in this area of the law’.<sup>37</sup> Without free, regularised and organised legal representation for both individual and systems advocacy work, Perlin considers the legislative and judicial creation of rights to be illusory – ‘paper victories’ only.<sup>38</sup> Perlin explains:<sup>39</sup>

*The CRPD’s focus on the right to counsel is critical. One of the most critical issues in seeking to bring life to international human rights law in a mental disability law context is the right to adequate and dedicated counsel.*

The right to legal representation is important for all persons, but is particularly critical for all members of vulnerable and disempowered groups, including people with disabilities.

#### **Current practices on seclusion and restraint**

QAI has made submissions to the United Nations Committee on the Convention on the Rights of Persons with Disabilities on the need for Restrictive Practices to be recognized as government-sanctioned forms of torture. This position is also held by the UN Special Rapporteur on Torture, Juan Méndez. The Special Rapporteur found that seclusion (solitary

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<sup>35</sup> 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](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

<sup>36</sup> Some people may be so damaged by a lifetime of restrictions and isolation to not understand that an advocate is on their side and will speak up on their behalf. There needs to be an automatic response to appoint an advocate in some instances.

<sup>37</sup> Perlin, Michael, ‘Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the UN Convention on the Rights of Persons with Disabilities’ (2012) 44 GEO. WASH. INT’L L. REV. 1, 34.

<sup>38</sup> Perlin, Michael, *The Significance of the Convention on the Rights of Persons with Disabilities – And Why It Demands the Creation of an Asian/Pacific Disability Rights Tribunal*, available from: <<http://ssrn.com/abstract=2512846>>, 11.

<sup>39</sup> Perlin, Michael, *The Significance of the Convention on the Rights of Persons with Disabilities – And Why It Demands the Creation of an Asian/Pacific Disability Rights Tribunal*, available from: <<http://ssrn.com/abstract=2512846>>, 9.



confinement) on a person with disability is cruel, inhuman or degrading treatment which, if applied for prolonged periods, constitutes torture.<sup>40</sup>

At present, the use of seclusion and restraint (both chemical restraint and physical restraint) are regulated by legislation in Queensland, as in other Australian jurisdictions. Restrictive practices occur not only in disability services, but also within mental health, schools, and prison settings. Research and data on the use and impact of restrictive practices on people with disability is limited. However the available research suggests 'challenging behaviour' exhibit by a person with a disability is the result of the maladaptive environment.

In the context of children, Juan Méndez has recognized that an important safeguard against torture and other forms of ill-treatment is the support given to children in detention to maintain contact with parents and family through telephone, electronic or other correspondence, and regular visits at all times. His recommendations include that children should be placed in a facility that is as close as possible to the place of residence of their family, with any exceptions to this requirement clearly described in the law and not left to the discretion of the competent authorities. Moreover, he contends that children should be given permission to leave detention facilities for a visit to their home and family, and for educational, vocational or other important reasons, emphasizing that the child's contact with the outside world is an integral part of the human right to humane treatment, and should never be denied as a disciplinary measure. Further, Méndez recommends that children in detention be provided with purposeful, out-of-cell activities.<sup>41</sup> This recognition of the vital importance of therapeutic rehabilitation for persons in incarceration has broader significance – to ignore such basic therapeutic need could consign a person to a lifetime of such experience. The provision of appropriate habilitation and rehabilitation is particularly critical for persons with intellectual or cognitive disabilities, whose skills and capacity can fluctuate in accordance with their environment.

QAI submits that an issue of pressing concern is the detention of very vulnerable people. We take the view that it is not possible to detain highly vulnerable people for any length of time without it amounting to torture or cruel, inhumane or degrading treatment in breach of OPCAT.<sup>42</sup>

#### **4. How should Australian NPM bodies engage with civil society representatives and existing inspection mechanisms (eg NGOs, people who visit places of detention, etc)?**

QAI submits that it is vital for the NPM to engage directly with and be informed by the people that they are charged with protecting and by their advocates and professionals. Civil society organisations have a vital role to play in monitoring places of deprivation of liberty. We propose that delegations of NGOs could be formed on a periodic basis to visit sites with the NPMs.

We note that it is important that the consultation and engagement can happen with ease, frequency and meaning. We propose that the central coordinating NPM should engage directly with civil society, rather than via another body. In this regard, we note that, while the Attorney-General has announced that the Commonwealth Ombudsman would perform the national coordinating function, this function may better be performed by another entity. Ideally, an independent body would be established for this purpose, but of the existing bodies, we submit the Australian Human Rights Commission is ideally placed to perform this function.

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<sup>40</sup> <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf> para.78 and 32.

<sup>41</sup> United Nations General Assembly. Human Rights Council, 28<sup>th</sup> Session. 5 March 2015, p 17.

<sup>42</sup> This is consistent with Juan Méndez's recommendations re children under 12, discussed above.

The Commission has the requisite human rights expertise and established consultative processes that would equip it for this role.

**5. How should the Australian NPM bodies work with key government stakeholders?**

We refer to and endorse the submissions made by the OPCAT Network.

**6. How can Australia benefit most from the role of the SPT?**

The OPCAT provides for the establishment of a cooperative relationship between the SPT and the NPMs. This cooperation is vital to the success of the OPCAT in Australia. A core component of this involves ensuring there is open dialogue between the SPT and the NPMs, with the NPMs seeking the SPT advice at regular intervals and additionally as appropriate.

QAI submits there is a need to ensure that there are mandatory protocols in place for the detection and reporting of issues to the SPT and also for responding to and acting upon SPT recommendations. The SPT's role in advising and assisting the Australian Government to develop effective procedures and mechanisms to detect and prevent torture, inhuman and degrading treatment and punishment is highly valuable, particularly having regard to the SPT's expertise in this area. The NPMs must be receptive to advice and guidance from the SPT.

The Government should commit to publishing the SPT's visit reports, to enable public scrutiny and accountability.

**7. After the Government formally ratifies OPCAT, how should more detailed decisions be made on how to apply OPCAT in Australia?**

We refer to and endorse the submissions made by the OPCAT Network.

**8. Other relevant considerations**

Institutional settings where people with disability are detained have traditionally been closed-off and shielded from public scrutiny. This has created the situation where violence and abuse can and has proliferated unchecked. Disability-specific institutions have not been subjected to the same standards of scrutiny and regulation as other detention institutions such as correctional centres.

While recent events – including the de-institutionalisation movement, the Senate Inquiry into violence, abuse and neglect of people with disability and the legislative reforms around the use of Restrictive Practices – have shone a light on some of the forms of torture and other cruel, inhuman or degrading treatment or punishment that people with disability can be subjected to, people with disability remain largely excluded from public discourse.

## **Conclusion**

QAI congratulates the Commission for initiating this consultation. We are pleased by the Commission's designation of this consultation process as the first in a two-phase process for the implementation of OPCAT in Australia. We note the Commission's advice that more detailed decisions regarding how OPCAT will operate in Australia will be made during the three-year ratification period commencing following ratification in December 2017. QAI would welcome the opportunity to be involved in those discussions.