

Australia may miss treaty deadline to establish torture protections for prisons, advocates warn

January 2022 looms as the target date but Western Australia is the only state or territory to have established monitoring mechanism



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Daniel Hurst
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Australia could miss an international deadline to introduce new safeguards against torture and abuse in jails, human rights advocates have warned.

The Australian government four years ago ratified a treaty to bring all its detention sites – including juvenile justice centres such as Don Dale and onshore immigration detention centres – under independent scrutiny to stop abuses.

January 2022 looms as the deadline to set up independent monitoring mechanisms but the federal government and almost all state and territory governments appear on track to miss it, according to the Change the Record coalition.

Western Australia is the only state or territory in Australia to have already set up its mechanism for oversight of prisons, called the Office of the Inspector of Custodial Services.

Change the Record, a First Nations-led national justice coalition, said if governments were serious about Closing the Gap they should urgently “end the discriminatory practices that drive our people behind bars”.

That should include fully implementing the Optional Protocol to the Convention Against Torture, known as Opcat, which aims to establish a system of regular independent inspections of places where people are deprived of their liberty.

“We have been calling on governments for the last three decades to take the deaths, mistreatment and abuse of our people in custody seriously,” said Cheryl Axleby, the co-chair of Change the Record.

“Implementing Opcat to ensure there is true independent oversight and accountability of police and prisons is a critical step to end the discriminatory laws, policies and practices that see our people die behind bars.”

Meena Singh, who is a legal director at the Human Rights Law Centre (HRLC), said it was “unacceptable that such little progress has been made in establishing and resourcing independent monitoring and oversight of places of detention across the country”.

“Abuse thrives behind closed doors,” Singh said. “We must shine a light on human rights abuses in prisons and police cells so we can end the use of cruel and degrading practices – like routine strip-searching and solitary confinement – once and for all.”

Change the Record wrote to the attorneys general of all states and territories and the federal government two weeks ago asking them to explain their progress towards the deadline.

So far only South Australia has offered a substantive reply and agreed to meet with advocates later this month. SA and Queensland have introduced legislation to their state parliaments but these bills have not yet passed through parliament.

Change the Record has written to the federal attorney general, Michaelia Cash, to say a number of states are believed to be waiting for clarity from the commonwealth, including about any funding support that may be provided, before they establish their own oversight bodies.

Opcat calls for independent bodies to be granted the power to regularly examine the treatment of the people in detention, including by inspections of all places of detention and closed environments.

The aim is to prevent torture and other cruel, inhuman or degrading treatment or punishment. Under Opcat, the oversight bodies should have the power to speak with detainees without witnesses, and the freedom to choose the places they want to visit and the persons they want to interview.

Australia told a UN human rights review earlier this year that it would set up “a cooperative network of federal, state and territory oversight bodies” facilitated by a coordinator, the office of the commonwealth ombudsman.

The federal attorney general’s department said it was involved in “ongoing” discussions with the states and territories about whether a written national agreement “would be useful in providing a clear framework”.

It said the government was “working with states and territories to implement Opcat by the time Australia’s obligations commence in January 2022”.

The office of the commonwealth ombudsman has been designated as the oversight body for places of detention under control of the commonwealth.

In responses to questions on notice from the latest round of Senate estimates, the office of the ombudsman said it had “enhanced the office’s long-standing inspection activities so that they are approaching Opcat requirements”.

That included “deeper engagement with civil society and the publication of more reports about the outcomes of the office’s inspections”. “This work continues to evolve,” the office said