

Question on notice no. 94

Portfolio question number: BE24-094

2024-25 Budget estimates

Legal and Constitutional Affairs Committee, Attorney-General's Portfolio

Senator David Shoebridge: asked the Australian Human Rights Commission on 31 May 2024—

Senator SHOEBRIDGE: Maybe this is to you, or maybe it's to the president: do you believe there should be a structured role for the commission when it comes to having the National Preventative Mechanism? I'm not suggesting you should be the NPM, but should there be structured engagement and a structured role for the commission, when we're talking about the federal implementation of OPCAT?

Ms Finlay: Perhaps we can answer that in this way: questions about the specific determination of who is designated as an NPM are questions for government. However, I can say that as the national human rights institution we do play a significant role in terms of encouraging the positive and full implementation of OPCAT in Australia. I can give the example that only last week we partnered with the Commonwealth Ombudsman to deliver training to NPMs around Australia, bringing them together in Canberra. We worked with the Association for the Prevention of Torture and also had the head of the UK NPM here to help provide that training. So we do work closely with the Ombudsman to support that important role, as the NPM coordinator, and to help support the full implementation of OPCAT in Australia.

Senator SHOEBRIDGE: But that's not grounded in policy. It's not grounded in legislation. I'm not saying that it's not the appropriate thing to do; I think it is the appropriate thing to do. But if you have arrangements like that that aren't grounded in formal government policy and aren't grounded in legislation but are effectively grounded in existing relationships-sometimes personal relationships-then that's hardly the kind of resilient, ongoing mechanism that we should be using if we want to implement OPCAT, is it, President?

Prof. Croucher: The commission has made submissions about this over the years in terms of what might be an appropriate structure. Perhaps we could take that on notice, and we can provide the information on notice as to what suggestions the commission has made in the past.

Answer —

Please see the attached answer.

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO
BUDGET ESTIMATES 2024-2025

PA-Australian Human Rights Commission

BE24-094 - Structured Role for the AHRC regarding National Preventative Mechanism

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Prof. Croucher: The commission has made submissions about this over the years in terms of what might be an appropriate structure. Perhaps we could take that on notice, and we can provide the information on notice as to what suggestions the commission has made in the past.

The response to the senator's question is as follows:

In 2008 Professors Richard Harding and Neil Morgan from the Centre for Law and Public Policy, Law School, University of Western Australia, were commissioned to complete research on the implementation of OPCAT in Australia. They recommended the Commission be designated as the National Preventive Mechanism (NPM) Coordinator in large part due to

existing responsibilities, and especially its role as Australia's 'flagship' human rights body in the international arena.¹

Support for the Commission to be the NPM Coordinator was also provided by civil society in the National Children's Rights Report 2016², OPCAT in Australia Interim Report to the Commonwealth Attorney-General (September 2017)³, and Implementing OPCAT in Australia (2020)⁴.

While the Commission is not a designated NPM or NPM Coordinator, we continue to promote and support OPCAT compliance, as well as providing an independent perspective on the actions Australia needs to take to ensure compliance with our international human rights obligations under OPCAT.

The Commission continues to work collaboratively with the Commonwealth Ombudsman as the NPM Coordinator, including through the participation of the Human Rights Commissioner and National Children's Commissioner on the OPCAT Advisory Group.

The Commission has in the past made several recommendations aimed at strengthening its existing relationship with the NPM. They include:

- formalising the input of our human rights expertise to the NPM framework by way of a Memorandum of Understanding⁵;
- delivering human rights education and training to the NPM, in partnership with the NPM Coordinator⁶; and
- providing expertise about child development, children's rights, trauma and how detention can affect children and young people⁷.

¹ Australian Human Rights Commission, Implementing the Optional Protocol to the Convention against Torture: Options for Australia A report to the Australian Human Rights Commission by Professors Richard Harding and Neil Morgan (Centre for Law and Public Policy, The University of Western Australia) (2008), 35-39 <<https://humanrights.gov.au/sites/default/files/document/publication/opcat.pdf>>

² Australian Human Rights Commission, Children's Rights Report 2016 (29 November 2016), 90-92 <https://humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf>

³ Australian Human Rights Commission, OPCAT in Australia Interim Report to the Commonwealth Attorney-General (September 2017), 22.

<https://humanrights.gov.au/sites/default/files/document/publication/20180618_OPCAT_Stage2_Consultation_Paper_Interim_report.pdf>

⁴ Australian Human Rights Commission, Implementing OPCAT in Australia (2020), 24

<https://humanrights.gov.au/sites/default/files/document/publication/ahrc_2020_implementing_opcat.pdf>

⁵ Australian Human Rights Commission, OPCAT in Australia Interim Report to the Commonwealth Attorney-General (September 2017), 22.

<https://humanrights.gov.au/sites/default/files/document/publication/20180618_OPCAT_Stage2_Consultation_Paper_Interim_report.pdf>; Australian Human Rights Commission, Implementing OPCAT in Australia (2020), 24-25

<https://humanrights.gov.au/sites/default/files/document/publication/ahrc_2020_implementing_opcat.pdf>

⁶ Australian Human Rights Commission, Implementing OPCAT in Australia (2020), 26

<https://humanrights.gov.au/sites/default/files/document/publication/ahrc_2020_implementing_opcat.pdf>

⁷ Australian Human Rights Commission, Road Map to OPCAT Compliance (17 October 2022), 14.

<https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf>

These recommendations align with the Global Alliance of National Human Rights Institutions (GANHRI) ‘Kyiv-Copenhagen Outcomes Declaration’ which states that National Human Rights Institutions (NHRIs) should (when not designated the NPM) ‘establish and maintain complementary and mutually reinforcing programmes for effective collaboration [with the NPM]’ and ‘provide regular training and continuous support to NHRI members and staff involved in work related to torture and other ill-treatment.’⁸

⁸ Global Alliance of National Human Rights Institutions, Kyiv-Copenhagen Outcome Declaration, Torture and Other Ill-treatment: The role of National Human Rights Institutions (8 November 2023). <https://ganhri.org/wp-content/uploads/2023/11/Kyiv-Copenhagen-Outcome-Declaration_EN.pdf>