



The Association for the Prevention of Torture (APT)

**Taking Action Now to Prevent Torture:
Australia's ratification of the Optional Protocol to the
Convention Against Torture**

**Submission to the Joint Standing Committee on Treaties
of the Parliament of Australia**

30 March 2012

About the APT

The Association for the Prevention of Torture (APT) is a Geneva-based international non-governmental organization working worldwide to prevent torture and other forms of ill treatment. The APT envisages a world in which no one is subjected to torture and other forms of ill treatment as promised by the Universal Declaration of Human Rights. To prevent torture and other forms of ill-treatment, the APT focuses its work on promoting effective legal frameworks, transparency in institutions and capacity strengthening. The APT has played a leading role in the adoption and entry into force of international and regional norms to prevent torture, including the OPCAT and continue to work worldwide on its ratification and effective implementation.

In Australia, the APT has worked with the Federal government, the Australian Human Rights Commission and civil society organizations on the OPCAT and promoting torture prevention in Australia, including facilitating an expert roundtable for government in 2011 with SPT members.

For more information about the OPCAT and the work of the APT, visit www.apt.ch

Executive summary

The APT strongly encourages Australia to ratify the Optional Protocol to the Convention Against Torture (OPCAT) without delay to follow up on its signature of the instrument in 2009. The benefits for Australia from ratification are significant, and more than offset the relatively 'modest' financial and administrative costs associated with the establishment and functioning of a National Preventive Mechanism (NPM).

A. Ratification will benefit Australia by:

1. Providing a practical tool for effective torture prevention, assisting Australia to meet existing obligations under human rights treaties;
2. Ensure detention monitoring at all levels of government is more comprehensive and coordinated;
3. Result in cost savings for the Commonwealth and State and Territory governments by preventing conditions and treatment that could give rise to costly litigation.
4. Enhance Australia's standing in the international community as a country that takes its human rights commitments seriously, and as a leader in torture prevention in the Asia Pacific region.

B. Australia should not delay ratification because:

1. The risk of ill treatment in detention is a significant issue urgently requiring a preventative approach.
2. Significant preparatory work has already been completed for OPCAT implementation adapted to Australia's federal system.
3. Timely ratification will enable Australia to propose a candidate for the 2012 UN Subcommittee for the Prevention of Torture (SPT) elections.

APT stands ready to assist the Australian government in its torture prevention work under the OPCAT.

Introduction

Torture and ill-treatment usually occur in secret. Persons deprived of their liberty are most at risk to be subjected to torture and ill-treatment as they are cut off from the outside world and solely depend upon the authorities for their most basic needs and rights. Detention monitoring through regular inspections of places of detention is one of the most effective ways to prevent torture and ill-treatment¹.

The OPCAT is an innovative treaty because unlike most other human rights treaties which leave it up to States to determine how best to promote and protect the rights they contain, the OPCAT aims to facilitate implementation of its parent Convention, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It requires States Parties to establish a system of regular visits to places where people may be deprived of their liberty by independent expert bodies known as National Preventive Mechanisms (NPMs).² In addition, it provides the legal basis for the creation of the UN Subcommittee on Prevention of Torture (SPT), which conducts its own visits to places of detention within states parties and has an advisory role in relation to States' implementation of the OPCAT, for example, by producing confidential reports for states after visits that include recommendations to government. The international and national preventive mechanisms are designed to be complementary, and the SPT also advises the NPMs directly on their powers, independence, functioning as well as means necessary to strengthen preventive measures in their countries (for example legal safeguards relating to detention).

The OPCAT entered into force in 2006. There are currently 62 States Parties – almost a third of all countries in the world, and an 22 additional States Signatories. These numbers are significant, given the OPCAT has only been open for ratification since February 2003. In the Asia Pacific region, New Zealand, the Maldives and Cambodia have ratified the OPCAT, and at the time of writing, the Philippine Senate had approved ratification with deposit of the instrument of ratification with the UN pending.

Australia signed the OPCAT in June 2009 and at the time was the second State Signatory in the Asia-Pacific region. Australia has extensively consulted with state and territory governments, the National Human Rights Commission and civil society organizations about OPCAT ratification and NPM establishment. Representatives from the Australian government and civil society attended the APT's Global Forum on the OPCAT in November 2011, where the latest developments on OPCAT implementation was discussed and experiences on torture prevention across the world were shared.³

Australia stands to reap significant benefits from ratifying OPCAT now, as outlined below. APT welcomes the Australian government's commitment to ratifying the OPCAT as expressed in the National Interest Analysis (NIA)⁴, and is grateful for the opportunity to provide comments to the Joint Standing Committee on Treaties. APT stands ready to assist the Joint Standing Committee with any further enquiries it may have.

¹ General recommendations of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, para.26.

² For a more complete introduction to the OPCAT, see APT/IIHR, OPCAT Implementation Manual, 2010, available at: http://www.apr.ch/index.php?option=com_docman&task=doc_download&gid=784&Itemid=256&lang=en.

³ For more information on the OPCAT global forum, see

http://www.apr.ch/index.php?option=com_k2&view=item&layout=item&id=1060&Itemid=270&lang=en.

⁴ National Interest Analysis [2012] ATNIA 6 (hereinafter 'NIA').

A. Reasons for Australia to ratify the OPCAT

1. **Australia should ratify the OPCAT because it provides a practical tool for effective torture prevention, assisting Australia to meet existing obligations under human rights treaties and in domestic law.**

Torture and other forms of ill treatment are considered as among the most brutal and unacceptable assaults on human dignity and are absolutely prohibited under international law. Australia is party to a number of treaties and instruments, which reflect this prohibition including the Universal Declaration on Human Rights (Article 5), the International Covenant on Civil and Political Rights (Article 7), and the United Nations Convention Against Torture (UNCAT). Under the UNCAT, Australia has the obligation to ‘take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’⁵. These international obligations to prevent and address torture and ill treatment sit side by side with some similar (albeit non-comprehensive) obligations under Australian statutory⁶ and common law.⁷

The OPCAT represents a unique opportunity for Australia to fulfil responsibilities under international and domestic law by protecting persons deprived of their liberty from torture. Since the OPCAT’s entry into force in June 2006, the Committee Against Torture has consistently recommended States give serious considerations to ratifying this instrument.⁸

Establishing an effective, OPCAT compliant NPM is one of the most effective actions Australia could take to prevent torture and fulfill its obligations under international law. In addition, and unlike the reporting requirements associated with other UN committees, the OPCAT does not foresee any additional obligation for the State party to report to the SPT. If Australia ratifies the OPCAT, the only obligation to report on measures taken to prevent torture would be the periodic report to the CAT already required under that treaty.

Case study: the OPCAT leading to improved strategic and whole of government coordination in the UK

‘In the wake of the United Kingdom’s ratification of OPCAT, Her Majesty’s Inspectorate of Constabulary and Her Majesty’s Inspectorate of Prisons commenced a joint programme of inspection of police custody throughout England and Wales. In previous years, inspections have found that police forces lacked effective attention to custodial issues at a strategic level. This picture changed in 2010–11, with HMIC and HMIP finding a clear strategic focus on the safety of detainees and decent treatment in the majority of forces visited, although there were exceptions.’

Taken from *Second Annual Report of the United Kingdom’s National Preventive Mechanism, 2010-11*, page 26.

Available at : <http://www.justice.gov.uk/downloads/publications/inspectorate->

⁵ UNCAT, Article 2.1.

⁶ For example *Federal law*: Criminal Code Act 1995 - as amended by the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010; *State laws*: State and Territory Crimes Acts

⁷ For example, in relation to immigration detention, see *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005) [207].

⁸ The Committee Against Torture encouraged Australia to ‘speedily conclude its internal consultation and ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.’ Committee Against Torture, Concluding Observations: Australia, for Aust. Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, ¶ 34, UN Doc. CAT/C/AUS/CO/3, 22 May 2008.

2. Australia should ratify the OPCAT because it will ensure detention monitoring at all levels of government is more comprehensive and coordinated.

As outlined in the NIA⁹ and submission of the Human Rights Law Center¹⁰, Australia already have a number of bodies that visit places of detention. The establishment and designation of NPMs would compliment existing structures, enabling them to conduct preventative monitoring. It would also close gaps in monitoring that exist, for example, in relation to detention in police cells.

Ratification will of course entail some administrative and legislative changes, which, owing to Australia's federal structure have some complexity. The APT acknowledges that federal and other decentralised States face challenges over and above those routinely encountered in the implementation of international human rights law. The division of responsibility between national and sub-national governments already complicates the State's traditional reporting obligations to UN Treaty Bodies such as the UN Committee against Torture, but a new layer of complexity is added given that the OPCAT requires the establishment of a national monitoring mechanism.

Case study: OPCAT in a decentralized state

The United Kingdom of Great Britain and Northern Ireland is an example of a State that although is not a federal one, is extensively administratively decentralised. Northern Ireland, Wales and Scotland have their own elected governments, and municipal (county, borough, shire and city) governments throughout the British Isles have significant powers. Broadly speaking, the divisions along regional lines mirror those in federal States – the principal difference being that they are not based on a single constitutional law with enumerated powers. As a result of this decentralisation and the United Kingdom's generally progressive approach to ensuring independent oversight of places where persons may be deprived of their liberty, there were already several different agencies doing relevant work when the United Kingdom ratified the OPCAT, and no fewer than 18 discrete bodies were eventually designated as the NPM.

From APT OPCAT Briefing: Implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Federal and Decentralized States, March 2011.

Available at <http://www.apr.ch/>

Responsibility for different categories of detainees, for example, is divided between Federal and State/Territory government so that although for example, prisons and most police detention facilities are the responsibility of state governments, the Federal government is responsible for immigration detention facilities. Ratification of the OPCAT should be seen as a unique opportunity to strengthen their existing institutions that are carrying out detention monitoring activities, widen the mandate of those which do not comply with the OPCAT criteria and fill in gaps where no comprehensive monitoring currently exists such as police cells. The designation and design of the Australian NPM can be tailored to best suit Australian conditions and governance structures, and can be done in such a way that the interests of the states

and territories can be taken into account. It is worth remembering that none of the Australian states and territories was opposed to ratification of the OPCAT, in the 2003-2004 inquiry by the Joint Standing Committee on Treaties.

⁹ NIA, para 5.

¹⁰ Human Rights Law Center, Preventing ill-treatment and promoting humane conditions of detention: Australia's ratification of the OPCAT, Submission to the Joint Standing Committee on Treaties, para 4.3.

Several of the 62 States Parties to the OPCAT are countries with federal or decentralised structures including Argentina, Brazil, Germany, Mexico, Spain, Switzerland and the United Kingdom. Most of these States have either designated their NPM or started consultations on what should be the most appropriate NPM. Further, Austria, Belgium and South Africa are federal or decentralized states that have signed the OPCAT. In Argentina and Brazil, some preventive mechanisms have been designated locally (in states and provinces). By ratifying now, Australia could benefit from information sharing with other federal and decentralized states parties.

The flexibility of OPCAT is that no one approach or NPM structure is proscribed in the treaty. This means NPMs be crafted to fit the situation in country. The SPT has stated that:

In meeting their obligations under the Optional Protocol to set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other ill-treatment, States parties must choose the model they find most appropriate, taking into account the complexity of the country, its administrative and financial structure and its geography.¹¹

Of the 39 NPMs that have been designated in states parties to date, 10 have been entirely new bodies, 20 have been existing National Human Rights Institutions, 5 have been ombudsman plus others, and 4 have been multiple bodies. The NIA indicates the multiple body designation is most likely for Australia, so the experiences of the New Zealand and Sweden as countries that have designated multiple body thematic NPMs (based on the types of detention) are likely to be relevant as well as the United Kingdom, which designated a multiple body NPM that contain both a thematic as well as regional focus. The experiences of Brazil and Argentina too may provide insights, given these countries like Australia are federal states with vast geographic territories that have designated some NPM bodies based on jurisdiction.

Significantly, ratification will also entail a new relationship for the Federal and State / Territory governments with the SPT. The modus operandi of the SPT is based on mutual cooperation and support, and should not be confused with the more reactive, complaints-driven approach of the Special Rapporteur on Torture. There will be no adversarial approach or public reproach by the SPT of states parties or detaining authorities. Instead, SPT will work with domestic NPMs to produce confidential reports and offer advice and assistance. Press releases by the SPT only contain information on the places of detention visited and not on the substantive content or outcomes of visits. Further, given the current workload of the SPT, inspections visits are likely to happen only once every 10-15 years and thus the majority of the preventive work will be done by domestic detention monitoring bodies. Further, after ratification, Australia stand to benefit from the SPT's new alternate types of visit, which are shorter and focus purely on issues relating to establishment and functioning of NPMs.

3. Australia should ratify the OPCAT because it will result in cost savings for the government.

Ratifying OPCAT is not without financial outlay for the Federal and State and Territory governments. Where existing bodies are designated as NPMs, there will be initial set-up costs of ensuring that the preventative monitoring functions of the body in question are OPCAT compliant, such as ensuring

¹¹ See Subcommittee for the Prevention of Torture, Third annual report of the SPT (April 2009 to March 2010), UN. Doc CAT/C/44/2, § 49, 25 March 2010.

that preventive detention monitoring is functionally separate from detention complaint handling functions. In some areas, such as monitoring of police cells, more significant changes will need to be made to establish OPCAT compliant oversight. After NPMs have been designated these bodies will require an ongoing budget, which the NIA describes as ‘modest’¹². Adequate funding for NPMs is an obligation arising under the treaty, and crucial for NPMs to effectively prevent torture.¹³

The Australian government’s position in the NIA is that ‘individual jurisdictions should bear their own costs because of their responsibility for the welfare of the relevant detainee populations’¹⁴. The method for determining who bears the cost of OPCAT compliance is of course a matter for Australia to determine. The OPCAT establishes clear obligations for States Parties to provide necessary resources for the functioning of the NPMs¹⁵, regardless of how the government funds are sourced. In unitary states national governments usually provide the majority of resources given they have the most power over state revenue. Switzerland, in contrast is an example of a decentralized funding arrangement given its 26 cantons retain fiscal autonomy under the Constitution, as well as all other powers not specifically delegated to the federation.

Cost of non-prevention

Value for money in the context of the OPCAT comes from a national implementation that effectively reduces the risk of ill-treatment, although some benefits are difficult to quantify in financial terms. When it is revealed, ill-treatment can severely damage the reputation of a government – both at home and overseas. The administrative and legal costs associated with investigations¹⁶ and defending the authorities against allegations of ill-treatment are also significant. Furthermore, poorly functioning places of detention and ineffective systems of deprivation of liberty generate an ongoing cost burden on national health systems (including mental health), national security, law and order and the criminal justice system¹⁷.

Some benefits to society from torture prevention can be more readily quantified in financial terms, for example, the significant reduction in litigation expenses resulting from reduced incidence of ill-treatment. The Australian Lawyers Alliance Immigration Detention Network cites some alarming statistics about the financial cost of maltreatment in Australian immigration detention, noting:

‘...more than \$16 million in compensation has been paid to detainees’ in the past decade as a result of negligence and psychological injury of asylum seekers and refugees’¹⁸.

‘Between 2008 and 2010, more than 50 immigration detainees have received an average of \$100,000 each in compensation payouts’. In 2008, there were 32 cases, with a total payout of \$3.3 million, and 22 cases between July 2009 and May 2010, involving a total of \$2.1 million.’¹⁹

¹² NIA, para 34.

¹³ See OPCAT, Article 18.3.

¹⁴ NIA, para 35.

¹⁵ See OPCAT, Article 18.3.

¹⁶ Under articles 12 and 13 of UNCAT, States Parties are obliged to conduct an examination of any allegation of torture, and to follow this up with a full investigation if there are reasonable grounds to believe an act of torture has been committed.

¹⁷ See APT/IIHR, OPCAT Implementation Manual, 2010, p 191. Available at www.aptc.ch.

¹⁸ Australian Lawyers Alliance (hereinafter ALA), *Australia’s Immigration Detention Network: Submission to the Joint Select Committee on Australia’s Immigration Detention Network*, August 2011 at page 14, citing Heather Ewart, ‘Australia to pay price for detainee compensation’ ABC News, June 20 2011. Accessed 8 August 2011 at <http://www.abc.net.au/news/2011-06-20/australia-to-pay-price-for-detainee-compensation/2765046>.

¹⁹ ALA, at page 14, citing Simon Kearney, ‘Compensation bill for asylum seekers rising’, *The Sunday Telegraph*, September 19 2010. Accessed 8 August at <http://www.dailytelegraph.com.au/news/national/compensation-bill-for-asylum-seekers-rising/story-e6freuzr-1225926099583>.

Just a small part of these costs would cover the establishment and operating costs of an NPM, making ratification of OPCAT a value-for-money proposition. With regular unannounced inspections of places of detention and resulting recommendations from NPMs to governments that target systemic issues, problems such as inadequate detention conditions and overcrowding can be brought to light and addressed prior to them causing ongoing suffering to detainees. In light of these financial costs of ill treatment, the 'modest' investment of torture prevention through ratification of the OPCAT is money well spent by a government.

4. Ratifying OPCAT will enhance Australia's standing with the international community and demonstrate regional leadership

Ratification of the OPCAT will fulfill a promise Australia has made to the international community, most recently before the Human Rights Council at the Universal Periodic Review. It would enhance Australia's credibility in the international community and would reflect positively in Australia's campaign for a seat on the UN Security Council for 2013-2014. The majority of current Security Council members have either ratified or signed the OPCAT. The OPCAT is a treaty fundamentally premised on basic equality and dignity of all human beings and is an example of a UN mechanism that, to paraphrase the former Australian Minister for Foreign Affairs, 'gives international expression to that enduring Australian value of a fair go for all'²⁰.

The Asia Pacific region to date has the lowest levels of OPCAT ratification in the world. However, with the Philippines very close to becoming the fourth States Party in the region, ratification by Australia would add significant momentum and leadership to torture prevention activities in the region, particularly important given the Australian aid program's emphasis on governance, human rights and justice in the Asia Pacific²¹.

5. Ratification of OPCAT will improve the environment of detention centers for staff as well as detainees.

Preventive detention monitoring focuses on ensuring detainees are treated with dignity and respect, given that they are the ones deprived of their liberty and thus vulnerable to abuse. However, conditions and work conditions of detention center staff should not be overlooked and regular inspection can also highlight measures to improve staff practices and reduce occupational health and safety risk for staff, as highlighted in the Australian Lawyers Alliance submission to this inquiry. This issue was recently highlighted on ABC's 4 Corners Program in relation to a leaked ComCover report that detailed risk indicators for immigration detainees and immigration center staff alike.²² Some of the issues highlighted in this report are of the kind an NPM's whole-of-system approach would be able to identify, suggest recommendations and follow up on recommendations in order to improve the general environment in places of detention.

²⁰ Speech by former Foreign Minister Kevin Rudd to the National Press Club, Canberra, 1 June 2011. Available http://www.foreignminister.gov.au/speeches/2011/kr_sp_110601.html.

²¹ See AusAID website : <http://ausaid.gov.au/keyaid/gover.cfm>

²² ALA, p 16.

Case study: the OPCAT and detention center staff

'In 2010–11, Her Majesty's Chief Inspector of Prisons for Scotland published inspection reports on three prisons – Glenochil, Peterhead and Addiewell – as well as a thematic review of arrangements for progressing prisoners from closed to open conditions. ...

HMCIPS identified several areas of special interest which are fundamental to offender management. One such area is staff training and development. HMCIPS found shortfalls in role-specific staff training at both Glenochil and Peterhead. At Glenochil, this had resulted in some staff lacking the confidence and competence to perform their role effectively. HMCIPS was encouraged by a thorough staff training programme at Addiewell.'

Taken from *Second Annual Report of the United Kingdom's National Preventative Mechanism, 2010-11*, page 22.
Available at : <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/npm-annual-report-2010-11.pdf>

B. The importance of timely ratification

1. The risk of ill-treatment in detention is a significant issue in Australia urgently requiring a preventative approach

Concerns in relation to treatment of detainees in Australia were recently highlighted during the UPR of Australia in February 2011, including:

- The mandatory detention of irregular migrants including children, highlighted by a number of recent deaths in custody.
- Human rights concerns relating to off shore immigration processing centres.
- Disproportionate detention rates of aboriginal people, and their conditions and treatment in detention.
- Excessive use of force by the police.
- Detention without charge and allegations of torture and ill-treatment in the context of counter-terrorism.

A challenge faced by many existing oversight institutions in Australia is

Case study: the OPCAT shining a light on detention practices in New Zealand

'The Chief Inspector encountered two cases that caused much concern. One involved a mental health patient who had been in virtually constant restraint and seclusion for nearly six years to prevent the patient from assaulting other patients and staff. Another example was a young mentally disabled patient, held pursuant to the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, who had been kept in seclusion for a lengthy period.

In both instances the Chief Ombudsman wrote to the respective Chief Executives of the District Health Boards concerned. As a result, one patient has been moved to a more suitable facility and the other now has a management plan to facilitate a move into a suitable community based facility.'

Taken from New Zealand Human Rights Commission (as coordinating NPM) 'Monitoring Places of Detention', *Annual Report of Activities under the OPCAT, 2008-2009*, page 13.

that resourcing or operational realities mean bodies are reacting to incidents, complaints or day-to-day operational requirements. Preventative monitoring gives NPMs the ability to identify systemic issues and provide holistic, targeted, policy-based recommendations. The New Zealand case study on this page shows how preventative visits can expose ill-treatment that otherwise may not come to light. Practices such as those described above can be revealed through NPM activities due to the regular and unrestricted access to places of detention that NPMs have, as well as the NPMs broad mandate of carrying out general inspections of conditions and more specific tasks such as inspecting detention registers.

The Australian government clearly understands the utility of the preventative approach, given that it responded to the UPR by stating that ‘Australia is committed to ratifying the OPCAT as a matter of priority’²³.

2. Significant preparatory work has already been completed for OPCAT implementation adapted to Australia’s federal system.

The APT notes the Australian governments decision to ratify the OPCAT subject to a declaration under Article 24,²⁴ which would delay obligations relating to the NPM for four years total (a three year delay in addition to the one year provided for with an ordinary ratification).²⁵ This declaration would give Australia sufficient time to finalize the substantial consultation and planning already completed. The APT has been involved in some of this preparatory work including an experts roundtable with SPT members attended by representatives from various Federal government departments, participation at an Australian Human Rights Commission event along with Federal government and civil society representatives in 2009, a contribution to the 2009 National Human Rights Consultation as well as contact with State and Territory leaders on the issue of the OPCAT. In the interim between ratification and the obligation coming into force, Australia can benefit from technical support and advice from the SPT, other States Parties and organizations such as the APT. Other countries that have utilized this provision when ratifying include Germany, Hungary, Montenegro and Romania.

Experience from other states parties to the OPCAT indicate that whilst coordination and planning of NPMs prior to designation is a necessary precursor to ratification (and Australia’s consultation and planning to date will stand it in excellent stead), many key lessons can only be learnt from seeing how NPMs operate in practice. The SPT recognize this, noting:

The development of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally²⁶.

The ‘learning by doing’ approach lends itself well to the innovative nature of the OPCAT and the collaborative role of the SPT that works to support national and local actors prevent torture.

²³ See Human Rights Council, Report of the Working Group on the Universal Periodic Review: Australia, ¶ 31, UN Doc. A/HRC/17/10, 24 March 2011.

²⁴ NIA, para 25.

²⁵ NIA, para 25.

²⁶ First Annual Report of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/40/2, 14 May 2008, para.28(n).

3. Australia should not delay ratification in order that an Australian candidate can be put forward for the forthcoming SPT elections.

Ratification prior to June 2012 would enable Australia to propose a candidate for the SPT, which will have elections in October 2012. Since inception, the SPT has benefited from significant input from European and Latin American States, and more recently from Asia-Pacific input with a member each from the Maldives and New Zealand. The initial years of SPT work is shaping the operation of this key, practice-focused UN body. Early States are therefore in a position to influence the SPT *modus operandi* in a way that reflects their particular concerns and expectations as well as their leadership role on a regional and global basis. An Australian member of the SPT would enable the country to share its considerable pool of individuals with expertise in torture prevention and demonstrate the country's commitment to the prevention of torture and ill-treatment. As a regional balance is important, an Australian candidate would be an important addition to those seeking election.

Conclusion

Ratification of the OPCAT provides an opportunity for Australia to consolidate and build on existing mechanisms for monitoring and oversight of places of detention. A comprehensive system of preventative monitoring will significantly reduce the likelihood of torture or other forms of cruel and inhuman treatment or punishment from occurring. This has normative benefits for Australian society, practical meaning for those deprived of their liberty in Australia, and also financial benefits for government through reduced litigation for ill treatment and physically and mentally healthier detainees which results in a reduced demand on government services in detention and post release.

Ratification will represent fulfillment of promises made to the international community and provide strong human rights leadership in the Asia Pacific region.

Detaining authorities should not be alarmed at the new relationship with the SPT and with NPMs that comes with ratification. The *modus operandi* of the SPT and domestic NPMs is not about investigating allegations of torture but of working in a confidential and collaboration way to improve conditions in detention for detainees with lasting benefits for society more generally.

The significant steps already taken to date by Australia stand the country in good stead for ratification now. The act of ratification does not presuppose that fully functioning OPCAT compliant systems are already in place, instead it introduces realistic timeframe and avails Australia of expert advice and support. The APT is encouraged by the strong developments in Australia in moving towards the OPCAT and urges continuation to ratification and beyond. The APT stands ready to assist the Australian government in its work to prevent torture and other ill treatment in Australia.

APT/30.03.12