



Australian perspectives on OPCAT

TERP 12th National Forum

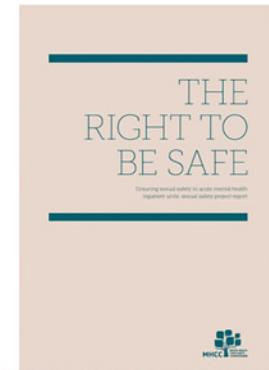
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Introduction

- providing a perspective on OPCAT based on insights from MHCC’s work and involvement in national and state consultations
- MHCC drew attention to OPCAT in recent report:
The right to be safe. Ensuring sexual safety in acute mental health inpatient units. The sexual safety project.



Outline of presentation

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) & the Optional Protocol (OPCAT)- How do they apply?
- Implementing OPCAT- risks and barriers
- Background to OPCAT in Australia
- Implementation of OPCAT in Australia
- Implications of OPCAT for mental health services
- What should we be doing now?

CAT & OPCAT

CAT:

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)- adopted by UN in 1984

- Australia became signatory in 1985, and ratified CAT in 1989

OPCAT:

Optional Protocol to the CAT, adopted 2002, entered into force in 2006

- requires independent inspections by ‘National Preventative Mechanisms (NPMS) and the UN Subcommittee (SPT)
 - Australia ratified OPCAT on 21 December 2017, following 84 other countries, 65 of which have established NPMS
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How does CAT apply in Australia?

- obligations under CAT almost 30 years
- reflected in various state based legislation:

Victorian Charter of Human Rights and Responsibilities 2006

s10. Protection from torture and cruel, inhuman or degrading treatment A person must not be— (a) subjected to torture; or (b) treated or punished in a cruel, inhuman or degrading way;

Victorian Mental Health Act 2014- Objectives & Principles

s10(c) to protect the rights of persons receiving assessment and treatment
s11(e) persons receiving mental health services should have their rights, dignity and autonomy respected and promoted

How does OPCAT apply in Australia?

- Ratification of OPCAT requires Australia to set up a system of unannounced and unrestricted visits by NPMs to all places of ‘detention’
- definition of ‘detention’ is broad:
 - ‘any place under jurisdiction or control of the state where persons *are or may be* deprived of liberty’- *includes mental health units/psychiatric hospitals*
- definition of ‘*cruel, inhuman or degrading treatment or punishment*’ is also broad and includes acts that fall short of torture and:
 - ‘*involve a minimum level of physical or mental suffering...*’

Implementing OPCAT – risks & barriers

Risks of focusing on new monitoring mechanisms:

- need to act on existing human rights obligations and safeguards

Barriers to recognising ‘cruel, degrading & inhumane treatment’:

- *“We judge ourselves on the basis of our intentions...[but] We judge others on the basis of their impact of their actions on us”*
- *‘Look for what is not being seen’ and ‘listen to what is not being said’*
- Need for genuine collaborative reviews of incidents of restrictive practices, supportive complaints processes & commitment to prevention

Background to OPCAT in Australia

- Calls for Australia to ratify OPCAT for many years
- Various research and reports on ‘Human Rights in Closed Environments’
- Australian OPCAT Network formed in 2015 to advocate for ratification and implementation- includes mental health organisations
- In February 2017, the then Attorney- General asked the Australian Human Rights Commission to lead a consultation process on the implementation of OPCAT, first stage held in September 2017
- National symposium on OPCAT held in November 2017
- Australian government ratified OPCAT on 21 December 2017
- Commonwealth Ombudsman assigned role of NPM coordinator.....

Implementation of OPCAT in Australia

- Australia has three years to full implementation of OPCAT- initial focus on ‘primary places of detention’
- Australian Human Rights Commission is conducting second round consultations on scope, priorities of OPCAT and NPM models
- Victorian Ombudsman investigation and report: *‘Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre’*
- Commonwealth Ombudsman is surveying existing oversight and ‘inspectorate’ bodies to inform model of state and territory NPMs

See also: Steven Caruana *‘Enhancing best practice methodologies for oversight bodies with an OPCAT focus’* Churchill Fellowship July 2018

Implications for mental health services

- timing of inclusion for OPCAT inspections and definitions of ‘closed’ mental health facilities not yet determined
- role to advocate for inclusive approach and for NPM teams to have appropriate expertise and diversity, particularly ‘expertise by experience’

Imperatives to prevent *cruel, degrading & inhumane treatment* already exist

- need to ensure that a commitment and understanding of human rights underpins all aspects of mental health service provision
- OPCAT reports have highlighted the importance of accessible complaints processes for safeguarding rights and addressing risks

MHCC sexual safety project

- Issues of sexual safety identified in complaints

Breaches of sexual safety: *experiences in which a person is not, or does not feel, sexually safe, including experiences of sexual activity, sexual harassment and alleged sexual assault*

- Focused on sexual safety as a fundamental human right
- Obligations of services to uphold right to be safe and provide a safe environment:

Mental Health Act, Charter of Human Rights & Responsibilities, National Mental Health Standards, National Safety and Quality Health Service Standards, OPCAT

- Breaches experienced as *cruel, degrading & inhumane treatment*
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What should we be doing now?

As a sector we need to:

- find a common language of human rights to describe experiences and incidents
- initiatives such as the Victorian Chief Psychiatrist's Human Rights project and Safewards
- include human rights into curriculum for all clinicians
- strive for compassionate, trauma informed care, and
- ensure that we are maximising the impact of current monitoring mechanisms and safeguards

What should we be doing now?

And most importantly we need to ensure that services are truly hearing the voices of consumers through:

- consumer-centred practices
- asking the right questions
- co-designed and co-produced approaches
- lived experience workforce, and
- accessible and supportive complaints processes

References:

- <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>
- <http://www.ombudsman.gov.au/about/monitoring-places-of-detention-opcat>
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- https://www.acoss.org.au/wp-content/uploads/2017/07/Australia-OPCAT-Network-Joint-Submission_Final.pdf
- <https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Implementing-OPCAT-in-Vic-report-and-inspection>



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