

Office of the Correctional Investigator.
60 Queen Street West, Ottawa, Ontario.
Tel 1 (613) 990 8904
Fax 1(613) 990 9091



NETWORKS

WORKING TOGETHER

EXTERNAL PRISON OVERSIGHT AND
HUMAN RIGHTS

NEWSLETTER

15 MARCH 2019

This network is committed to bringing together various agencies responsible for external prison oversight to share information and exchange best practices and lessons learned.

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WELCOME

Welcome Message from the Chair

I would first like to thank all our members for their continued support of this initiative. The Expert Network on External Prison Oversight and Human Rights now boasts 65 members from 20 countries – thank you for spreading the word!

Those of you who received the interim announcement dated February 15th will already be familiar with the following notice. You might wish to skip forward to our excellent content.

The next International Corrections and Prisons Association (ICPA) conference will be held in Buenos Aires, Argentina from October 27th - November 1st 2019. Please mark your calendars for this event. It would be wonderful if the network had a significant presence at the conference. If you are planning on attending and wish to present, you need **to submit your proposal online before April 30, 2019 - and please let us know if you do!**

Ideally, we would like to hold one plenary and one panel on prison oversight and human rights at the upcoming ICPA conference. **If you would like to be a panelist, please contact me and we will help to coordinate submissions.**

The plan is to also host two meetings during the conference: one with representatives of external oversight agencies, and a broader meeting on correctional oversight and human rights open to anyone from and outside the network. Further information about the conference and submission procedures can be found here:

<https://icpa.org/buenosaires2019/>



The featured topic for the current newsletter is Solitary Confinement. The practice of solitary confinement, or the isolation of prisoners from the general inmate population, has been employed since the early history of incarceration. Often characterized by sensory deprivation and neglect, the merits of this practice as a form of offender management (or an approach to correctional treatment) has long been the subject of debate. Nonetheless,

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correctional institutions still continue to “segregate”—a term more commonly used in modern correctional facilities—offenders from the general offender population for a variety of reasons. In response to growing concern about this practice, some jurisdictions have begun to implement reform strategies to minimize the usage of solitary confinement and to avoid its potential negative impacts.

The following are three articles written by some of our esteemed members on the topic of solitary confinement. We are truly thankful to the authors. We are thankful to the three experts who contributed articles on this important issue:



- **Dr. Sharon Shalev** - Research Associate, University of Oxford, United Kingdom.
- **The Honourable Justice David P. Cole** - Ontario Court of Justice, Canada.
- **Dr. Francisco Mugnolo** - Procuración Penitenciaria de la Nación, Argentina.

We would also like to acknowledge our network members from Australia – the featured country for the current newsletter – who contributed articles:

- **Deborah Glass**, Victorian Ombudsman, Victoria.
- **Fiona Rafter**, Inspector of Custodial Services, New South Wales.
- **Neil McAllister** (Inspector) & **Rebecca Minty** (Deputy Inspector), Australian Capital Territory.
- **Wayne Lines**, Ombudsman, South Australia.
- **Samay Zhouand**, Chief Inspector, Queensland Corrective Services.
- **Bronwyn Naylor**, Professor, Graduate School of Business and Law, RMIT University, Melbourne, Victoria.
- **Steven Caruana**, Inspections & Research Officer, Office of the Inspector of Custodial Services, West Australia.

The **next newsletter can be expected sometime in September 2019**, and we are pleased to announce that Argentina (the host of ICPA 2019) will be the featured jurisdiction. The theme for the next newsletter will mirror that of the 21st Annual ICPA

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conference: “Strengthening our Correctional Cornerstones: Rights, Dignity, Safety and Support.” **Please let us know if you wish to submit an article for the next issue.**

I look forward to seeing some of you at the upcoming ICPA conference in beautiful Buenos Aires!

With Appreciation,

Ivan Zinger, Correctional Investigator of Canada.

Monitoring and Evaluating Solitary Confinement

By Dr. Sharon Shalev

*Research Associate at the [Centre for Criminology](#),
University of Oxford & Independent Consultant at
[SolitaryConfinement.Org](#)*

Solitary confinement is one of the oldest and most universally used prison practices, and one of the harshest and most damaging ones. It is also a highly controversial practice which rarely fails to evoke strong reactions. For lay people, drawing on depictions of the practice in films such as [Murder in the First](#), or [Escape from Alcatraz](#), the term 'solitary confinement' conjures up images of half-naked, half-crazed individuals, lying in a dark dungeon, muttering to themselves, suffering this ill treatment at the hands of sadistic, brutal guards. Such torturous treatment, according to this view, is either a historical practice or one which only takes place in repressive regimes. Those more familiar with the prison world and the prevalence of solitary confinement tend to either condemn the practice as inhumane and barbaric, or support it as an unavoidable tool in the arsenal available to prison administrators in managing difficult and often volatile populations. The former point to the [literature documenting the harmful health effects of solitary confinement](#), while the latter claim that solitary confinement is no more damaging than imprisonment itself, and any accounts by prisoners or claims to the contrary by health professionals are misguided at best, and untruthful at worst.



In [debates](#) reminiscent of the 19th century [pamphlet wars](#) between those promoting the 'separate penitentiaries' (where all prisoners were held in complete separation from each other and worked inside their cell) and those promoting the 'silent penitentiaries' (where prisoners were separated at night but worked alongside each other in the day, in complete silence), each 'side' accuses the other of ignorance, naivety, exaggeration, or indifference to the pain of others (prison staff or prisoners, depending on the speaker). The issue is often presumed to be a zero sum game, with supporters of the practice suggesting that those who oppose it are 'for' prisoners and 'against' staff, and vice versa.

Solitary confinement and the Nelson Mandela Rules

Considering the extremity of solitary confinement and its [potential health and human rights implications](#), it is perhaps surprising that, until fairly recently, international human

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rights law offered little guidance. With the exception of the UN Basic Principles for the Treatment of Prisons (1990) which stated that “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use should be undertaken and encouraged”, international human rights law mostly remained silent on how to ascertain if, when and under which conditions, what was seen as an undesirable, but perhaps not entirely avoidable practice, became a form of prohibited treatment. In fact, it was not even clear what exactly constituted ‘solitary confinement’.

All this changed with the adoption of the revised (2015) UN Standard Minimum Rules for the Treatment of Prisoners (SMR, renamed the [Nelson Mandela Rules](#)) which, for the first time, include an entire section dedicated specifically to solitary confinement. The Nelson Mandela Rules (hereafter NMR) are a ‘soft law’ instrument – that is to say, they are not legally binding, but they do represent the most up to date, comprehensive international expert opinion on the practice and principles of human rights law, and are increasingly used by monitoring bodies and courts worldwide, contributing to their status as customary law. This has meant that not only do the revised Rules represent current thinking and sensibilities on the subject, but also that they are practical and realistic in their understanding of how prisons operate. I have also found, in my own work in [England](#) and in [New Zealand](#), that the Mandela Rules provide an excellent framework for inspecting and assessing conditions of confinement in general and solitary confinement units in particular.

Defining solitary confinement

A key contribution of the NMR is the introduction of a definition of solitary confinement. This definition aims to resolve the issue of the many different names given to what is essentially the same practice (e.g. segregation; separation; isolation) and to the units where solitary confinement takes place (including special management; control units; care and separation; special security and; supermax security, to name a few). Shifting the narrative away from titles and names, the definition in Mandela Rule 44 focuses on what the practice actually entails:

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

This definition is important as it makes clear that, when a prisoner is confined to a cell for 22 hours or more, that constitutes solitary confinement, regardless of the reason for this confinement or its name. The definition also hints at the detrimental effects of solitary confinement by setting acceptable timeframes for the practice: no longer than 15 consecutive days. Beyond this time frame it may constitute inhuman or degrading treatment, and hence [prohibited under international law](#).

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What constitutes 'humane conditions' and 'meaningful human contact'?

The Nelson Mandela Rules, alongside a long list of human rights treaties and conventions, make it clear that all prisoners, including those in solitary confinement, retain their basic human rights, including the right to be treated with dignity and respect. One aspect of this are physical conditions, which are often very poor in solitary confinement units. Evaluating these is straightforward: how big is the cell? Is it clean? Does the prisoner have access to sufficient natural and artificial light? Is there a window? Is there an alarm bell in the cell? Does it work? Are prisoners penalised if they use it? Is there a basin with drinking water? Is there a toilet? Is it separate from the main cell area? Do toilets have a lid, and a seat? Can prisoners keep personal belongings inside the cell?

The term 'meaningful human contact' is less straightforward, and since the adoption of the Mandela Rules we have already seen some debate around what constitutes 'meaningful contact'. A group of experts (of which I was part), convened for the purpose of providing [guidance on the interpretation and implementation of the Mandela Rules](#), suggested that

"Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity." (pp 88-89)

In other words, giving a prisoner their food tray or escorting them to the exercise yard do not constitute 'meaningful contact'. Developing a relationship with them, and interacting with them in a respectful way and treating them as the human beings they are - asking how they are, chatting to them about their family, football, the weather - do. When monitoring and evaluating solitary confinement units I find that meaningful contact is one of those things that you recognise in its absence. As well as observing whether staff practice [dynamic security](#) and their interactions with prisoners, chatting to staff helps to ascertain the degree to which they are familiar with the prisoners and their particular needs, issues and triggers.

Beyond being treated with respect for their human dignity, isolated prisoners should be provided with means to occupy themselves through access to programmes, education, and vocational training, where possible alongside others. Visits should be encouraged and facilitated. Time in solitary confinement should be used constructively and address some of the issues which led to the individual's placement. This can be assessed by looking at the daily regime and time out of cell offered to prisoners; their personal management plan; the setting of targets for progression out of solitary confinement and so on.

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Placing breaks on the use of solitary confinement

Mandela Rule 43 prohibits altogether the use of prolonged (longer than 15 days) and indefinite solitary confinement as punishment. Within the permitted timeframe, Rule 45(1) further elaborates:

Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.

The placement of a prisoner in solitary confinement must be lawful and subject to independent review. This can be ascertained through the paperwork accompanying the placement and is fairly straightforward. The terms 'exceptional cases' and 'last resort' require more digging around. The records must demonstrate why it was decided that there was no other choice than to segregate the individual prisoner, and document any other avenues which had been tried and failed. The number of prisoners in the unit, and the reasons for their placement, should help ascertain if solitary confinement is used routinely or if it is reserved for a handful of exceptional cases. The collection of good quality data and analysing it for trends is of course crucial.

The [Committee for the Prevention of Torture \(CPT\)](#)¹ helpfully developed a set of five tests for [assessing solitary confinement](#) in any one case, summarised as PLANN. Was the placement:

- **Proportionate** (is the harm/potential harm caused by, or to, the prisoner sufficiently serious to warrant solitary?)
- **Lawful** (competent authority? procedures followed? prisoner able to make representations?)
- **Accountable** (are there full records of the decision process and the daily regime?)
- **Necessary** (are only the least restrictive measures applied? are these individualised and flexible?)
- **Non-discriminatory** (is solitary confinement used disproportionately with a specific group of prisoners?)

Additional guidance can be found in the United Nations Office on Drugs and Crime's (UNODC) helpful [checklist for assessing compliance](#) with the Nelson Mandela Rules, and

¹ The CPT is a Council of Europe body mandated to carry out monitoring visits in prisons and other closed institutions throughout Europe.

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the [Association for the Prevention of Torture](#) and Prison Reform International's series of practical guides to assist monitors in assessing prison conditions in general, and solitary confinement in particular.

If all these tests have been met, the placement of a person in solitary confinement may be acceptable treatment. However, people belonging to one of a number of categories listed Mandela Rule 45(2) must never be isolated:

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

These prohibitions are well grounded in the literature highlighting the particularly [devastating health effects](#) of solitary confinement on these populations, and are backed by other [international human rights](#) instruments.

Finally, the Rules establish a system of internal and external oversight, and set out the role of [health professionals in solitary confinement units](#) (Rule 46) - to closely monitor the health of isolated prisoners, but to take no part in its imposition.

In conclusion

The fact that solitary confinement has been with us since the early days of the prison must not blind us to its harms, nor to its limited utility in achieving much beyond physically containing the individual separately from others. For too long prison managers and administrators have resorted to its use simply because it was there. Rather than arguing about the exact extent of the damage caused by solitary confinement, we must ask what if any are its advantages, and what exactly is hoped to be achieved by its imposition. The Nelson Mandela Rules remind us that we need to reserve it as a tool of last resort, when all else has failed and when no lesser restrictive method can achieve the purpose of the isolation. And then it must only be used for a very short time, whilst respecting the prisoner's basic rights and treating them with dignity and respect. They also remind us that if it looks and feels like solitary confinement, it probably is solitary confinement, no matter what it is called. They require us to recall that solitary confinement is an extreme and damaging practice. This much, as the Ontario Superior Court of Justice observed in a recent judgement, is indisputable:

“In the record there is ample evidence from Mr. Roberts that the long term confining of him in segregation had serious psychological consequences for him. But even if he had not deposed to that fact, it could today be taken as a matter of judicial notice. One

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does not need an affidavit to say that a gunshot to the arm hurts the arm; likewise, one does not need an affidavit to say that over a year in segregation, with almost no yard or other recreational time and simply sitting alone in a small cell for up to 23 hours a day, will turn a person into himself and create anxiety in dealing with others. Of course Mr. Roberts was adversely impacted by spending 426 days in segregation.”

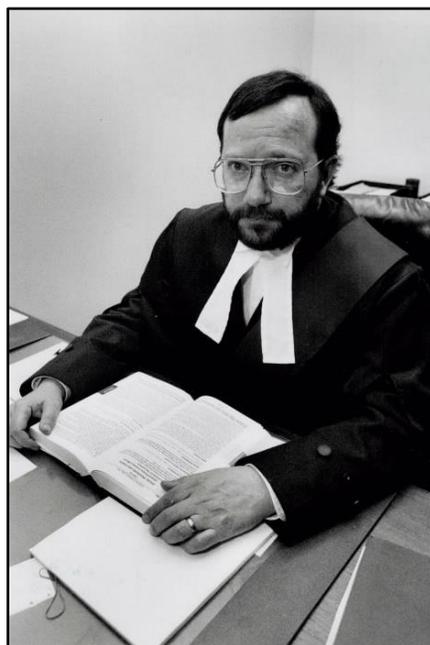
(R. v. Roberts, 2018 ONSC 4566, 27/07/18)

Segregation: the ‘State of Play’ in Canada

By the Honourable Justice David P. Cole

[Ontario Court of Justice](#), Canada.

There is a point in the recent fictional film about the legal career of U.S. Supreme Court Justice Ruth Ginsburg where she argues before three very conservative appellate judges that “laws and assumptions about what has until now been acceptable gender discrimination are no longer valid, because the culture has changed”. If several recent trial-level decisions from all across the country are indicative of a similar cultural shift, Canadian courts’ easy acceptance of penal administrators’ dogmatic insistence that lengthy – sometimes indeterminate – periods of time in segregation are essential to control inmate behavior are certainly being questioned and challenged. In this brief article, I wish to summarize the major cases decided in the last year or so.



Starting in 2016, the Canadian Civil Liberties Association launched two challenges – one in British Columbia and one in Ontario - to the ‘administrative segregation’ regime employed by federal correctional authorities in relation to *sentenced* prisoners serving sentences of two years or more. In both cases trial judges ruled that the current rules regarding placement in segregation and review of those decisions contravene various sections of Canada’s constitutional document, the *Charter of Rights and Freedoms*. Though the judges differed somewhat in their interpretations of what might be an acceptable structure for regulating segregation, they were both entirely clear that the present federal statutory, regulatory and policy structures are simply constitutionally inadequate. Both decisions have been appealed by the federal government. The appeals were argued in December 2018, and we are presently awaiting release of the opinions of the British Columbia and Ontario Courts of Appeal.

One of the arguments raised by the government lawyers on appeal is that there is no need for the appellate courts to rule on the point because the federal government has introduced new legislation that, if enacted, will substantially address many of the complaints raised at the trial level. The respective appellate courts have summarily rejected this aspect of the

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government's argument, ruling that since the progress of the legislation is uncertain, they should rule on the legality of the existing regime as if the new legislation will not be passed.

Bill C-83 would create separate units designed for sentenced inmates who cannot be housed in general population (whether for their safety or that of others), while offering them more health and rehabilitation services than are currently available (a subject on which the respective trial judges, to put it mildly, were scathing in their findings of fact). The proposed new legislation would increase "out of cell" time from two hours to four, and would allow medical professionals to have considerable say in decisions to review initial and continued segregation placement.

Critics of the new legislation – and there have been many – have raised two principal arguments against the new legislation. The first is that at least 'administrative' segregation (as distinct from 'disciplinary' segregation, following a finding of guilt for a serious institutional offence) should be entirely banned. The second – and in my view more realistic position – is that 'hard caps' should be placed on the length of time prisoners may spend in isolation. These proposals are usually aligned with the 15-day limit contained in the Mandela Rules.

Despite vigorous "behind the scenes" objections voiced by federal correctional officials, the federal government has indicated some willingness to consider enacting 'hard caps' as the legislation is debated in Committee and (perhaps) when the Bill returns to Parliament. No doubt we will have the constitutional guidance of the two appellate courts by the time Parliament takes up this matter again.

Approximately 2/3 of inmates in provincial institutions on a given day – and this doesn't differ much across the country - are *remand prisoners* (most of the remainder are serving sentences of up to two years less one day). Here there have been a number of successful challenges to the 'administrative' and 'disciplinary' segregation regimes in various provinces, mostly on the basis that the quality of decision-making by penal administrators is irregular and/or perfunctory, or that decisions to detain in segregation are made by penal administrators rather than external independent reviewers.

Perhaps of more interest is that sentencing judges hearing evidence in a number of cases have decided to reduce otherwise appropriate proposals for custodial sentences either because of poor penal conditions generally, or because of deficiencies in the administration of segregation while on remand. In the very recent Alberta decision in *R. v. Prystay* 2019 ABQB 8, the sentencing judge found that various behaviours of institutional officials in deciding to keep a remand prisoner in segregation for 13.5 months were so egregious that they amounted to a significant breach of the prisoner's *Charter* rights. The judge decided that the only fair remedy was to grant a very considerable reduction (3.75 days credit for each day spent in pre-sentence custody) in what would otherwise have been a perfectly appropriate "joint submission" as to the sentence that should be imposed.

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Two 2018 sentencing decisions by the Ontario Superior Court similarly resulted in sharp reductions in the sentences ultimately imposed. In *R. v. Charley* 2018 ONSC 3551 the judge writes: “the idea of due process [has] not really taken hold in the [Toronto South Detention Centre]’s disciplinary processes...corrections jargon and the use of grade school euphemisms do not do much to hide the punishing nature of [the offender’s] stay at the TSDC”. In *R. v. Roberts* 2018 ONSC 4566, a case involving the question of whether a prisoner who “voluntarily” segregated himself could then claim “enhanced credit” by way of a reduction in sentence due to poor custodial conditions, the same sentencing judge continued this theme: “Defence counsel has put into the record a large number of [segregation] review forms completed by staff at the TSDC. They all appear to be cut and paste jobs with no meaningful content” (para. 36).

By far the most shocking recent Ontario decision is the case of *R. v. Capay* 2019 ONSC 535, where a trial judge refused to allow a murder charge to proceed because of numerous constitutional violations made by provincial penal authorities resulting in a remanded accused spending 1,647 days in solitary confinement, most in a perpetually lit cell. Perhaps the most interesting legal aspect of the case is that, while the prosecutor did not agree with the exceptional remedy sought by defence counsel (a judicially imposed “stay of proceedings”), the prosecutor agreed that the behavior of the penal authorities should be subject to considerable censure. During the prisoner’s first two months in solitary, the accused – who had admittedly killed another prisoner by stabbing him with a pen – was kept in extreme isolation, never receiving a psychiatric evaluation or basic attention from prisoner staff, who had been instructed not to “enter into discussions” with him. Local and regional prison authorities were required by Ministry policy to conduct regular reviews of the accused’s segregation status, all designed to ensure that solitary confinement does not last longer than necessary. No reviews at all were conducted during the first few months, and most of the rest were found by the trial judge “to have remained irregular and perfunctory”. The judge further found that the harshness and squalor of the conditions in solitary were important factors in leading to his conclusion that the exceptional remedy of “a stay” should be imposed.

These then are the major cases decided by or pending in Canadian courts in the past few months. Other individual and “class” challenges to various aspects of segregation regimes are currently proceeding.

Individual Isolation: a Dimension of Prison Confinement



By the Investigations Department

[Procuración Penitenciaria de la Nación](#) (PPN) de la República Argentina.

Note: *As translated from the Spanish. If you would like the original, please request by email.*

In 2014, a study on penitentiary confinement called "Confinement as punishment" was carried out by the Investigations Department of Procuración Penitenciaria de la Nación (PPN) of the Republic of Argentina.

In this study,² the definitions of the term, confinement, were taken from two recognized dictionaries as a starting point: the Real Academia Española dictionary states the following: "*Banish someone to a mandatory residence or dwelling*" - "*Seclude within limits.*" The Espasa-Calpe states the following: "*To compulsorily send or banish someone to a place where they are prevented from leaving. Locking up in a place. Seclude.*" Its synonyms are: *exile, enclosure, detention, being penned in, incarceration, estrangement, imprisonment, seclusion, internment, isolation.* We feel that confinement should be considered in terms of isolation either by territorial uprooting or by intensive confinement to a cell or enclosure.

Thus, according to the federal prison network, composed of 35 prisons located in the different provinces of the national territory and that apporitions and holds 12,000 detainees (SNEEP, 2017),³ we worked on the concept of *isolation* by breaking it down into two categories: *socio-territorial isolation* and *individual isolation (confinement to a cell)*. The first refers to confinement as the willingness to transfer convicted prisoners hundreds and even over a thousand kilometres from their home of origin, establishing a physical limit that hinders and prevents access to courts, ombudsmen, human rights or social agencies, reducing their ability to sue, denounce / give visibility to concrete situations of violations of rights, build alliances with external actors and generate resistance to confinement. This prison policy, which continues to be implemented in Argentina today,

² Publication of the Procuración Penitenciaria de la Nación: Notebooks of Mandate No. 6. *Penitentiary confinement. A study on confinement as punishment.* Buenos Aires, 2014.

³ National System of Statistics on the Enforcement of Sentences, Crime Policy Secretariat, Ministry of Justice and Human Rights of the Nation.

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uproots and hinders family ties, which in turn prevents material assistance to alleviate food deficiencies and poor material detention conditions.

In general terms, punitive confinement implies for the detained person deprivation, separation and, at the same time, fixation in an enclosed space in which time is measured and monitored; that is to say, it represents a social, territorial, physical and emotional confinement. But this is not all that is involved: fixation in an enclosed space, the measuring and monitoring of time record the dimension of segregation, abandonment and dispossession when the confinement involves remoteness, with a geographical distance that produces uncertainty, dispossession and lack of communication (for a broader view, see Notebooks of Mandate No. 6).

Solitary confinement: individual confinement to a cell

With respect to the second dimension in which we have described the isolation as individual confinement to a cell, we must begin by mentioning that the 35 prisons that make up the Federal Penitentiary Service (SPF) have various arrangements, such as maximum security, medium security, penal colony, and there are also arrangements termed closed arrangements and open arrangements. None of these, even maximum security, involves solitary confinement as the living arrangement of an entire penitentiary unit. However, it should be noted that, (and the data provided in the following paragraphs reflect this), from the maximum security arrangement to the open arrangement, each and every one of the penitentiary units in the federal system provides space and arrangements in which solitary confinement is used to regulate and control the incarcerated population. From this analytical perspective, we can affirm that most of the 35 units have security and/or so-called Separation from Living Area (SAC) wards in which people with some type of disciplinary isolation sanction are accommodated and in which a solitary confinement arrangement is recognized for a limited period of time.

According to the study we are presenting, the partial results of the "Follow-up and Update 2017: Physical Abuse - Torture and Production and Management of Scarcity" investigation, the surveys in the National Registry of Cases of Torture (RNCT) and the institutional intervention reports included in the Annual Reports of the PPN, we can state that **the penitentiary governance authority in the area of federal prisons has over the last ten years created and expanded various *enclosed* spaces in the sense of individual confinement to a cell. This involves isolation that has a neutralizing effect on "safety and security" and its purpose is to monitor internal order in prisons.**

Included within the enclosed spaces are those that are officially intended for compliance with disciplinary sanctions. These sectors have been reconfigured, being used for other purposes that are not related to sanctioning/disciplinary practices, while at the same time

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the enclosed penal/prison procedure (individual confinement to a cell) has been extended to other non-punishment-related prison spaces.

With regard to the first transformation mentioned above, we maintain that there was a functional redefinition of the Separation from Living Area wards. In these sectors, isolation is used for a certain period of time and in various "institutional circumstances": admission to prison, punishment—also known as informal punishment, which is not bureaucratically recognized— temporary accommodation, relocation of accommodation, etc. There, the range of confinement to a cell varies from 22 to 24 hours per day. Lengths of stay are irregular and arbitrary, and prisoners may spend days or even months in solitary confinement in these wards.

Spending time in these solitary confinement wards within federal prisons means living in the worst material conditions, without access to water, without covers or mattresses—in some cases—with plugged toilets, and with overexposure to physical aggression, theft and threats from prison inmates that exploit the lack of communication among the inmates. Here are some stories from prisoners⁴ about their experience of individual confinement to a cell:

"I spent between 6 and 7 days in Ward K. I was in a place they call 'refugees' (...). It's a terrible place. There is no hygiene, there are rats. I had to expect that at night the rats would come to eat food leftovers in my cell. They opened the door only once every 23 hours and you had to take baths with the rats next door. No blanket, no light and with a mattress made out of newsprint and the remains of wool, full of cockroaches."

"You go crazy in your head and I think about my family, for days and days, in the dark, all alone, without being able to talk to anyone, with dirt everywhere; otherwise I would have no strength left and I would end up hanging myself, a lot of anxiety and anger."

"I was locked up 5 days, 24 hours a day, and the mattress was soaked, so I could hardly lie down, I screamed for a mattress or a blanket to throw on the floor and the only thing I got for my request was being hit with sticks and also that day they did not even take the urine bottle out to clean it or remove the fecal matter bag."

"They took me to the punishment cells and beat and kicked me there and left me two days without food. The cell had no light, it was dark all the time, and I had only a half a mattress. I didn't sleep at all because the cockroaches disgusted me and there were also rats there."

⁴ Over the last six years, more than 3,000 inmates who have suffered from this isolation practice have been interviewed for the purpose of the National Registry of Cases of Torture and various investigations have been carried out by the Investigations Department.

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In addition, staying in spaces in which solitary confinement is applied causes other aggravations relating to the violation of the rights of prisoners, which automatically arise from incarceration in prison. Not only are living conditions and exposure to physical violence worse there, but these problems are compounded by deficiencies in and lack of food, lack of health care and separation from family, among other things. For all these reasons and bearing in mind that they only enter solitary confinement wards to be punished, we gather that the severity of punitive isolation is no longer restricted to the application of punishments or sanctions provided for under the regulations, but also applies to a variety of people who pass through these isolation spaces.

We pointed out that there is a second aspect that we have identified and analyzed regarding the transformation of **prison isolation procedures** in recent years: this is the expansion of the *enclosure* practice (individual confinement to a cell) to common accommodation sectors, which is not provided for with respect to isolation sanctions/punishments under the Disciplinary Regulation.

In this type of isolation, a lesser amount of severity is used in terms of living conditions and communication with the outside world. The conditions in the cells are precarious, but they are not extreme as in the sanction wards (SAC), where they are intensified by the isolation conditions, the number of hours of confinement and the lack of activities (educational, work, recreational).

In the common accommodation ward, *solitary confinement* is usually applied in situations of admittance into the ward, regulatory sanctions (compliance with respect to the inmate's own cell) or informal punishments. Isolation is applied in a targeted way (to one or a few inmates) or it is applied to the total population of the ward (50 people). The time range of periods in cells varies from 18 to 24 hours of daily confinement.

According to the empirical corpus provided by the National Registry of Cases of Torture, in terms of the **solitary confinement category**, it can be asserted that confinement to a cell is a prison practice that is regularly applied in federal prisons. In the 2011-2017 period, a total of 2,824 inmates were victims of this penal practice; in interviews, they spoke of having experienced situations of isolation and their experiences were recorded in more than 30 of the 35 federal prisons in the Federal Penitentiary Service.

The survey conducted⁵ has enabled us to classify isolation facts as follows: formal/informal sanction; solitary confinement due to a penal and/or judicial

⁵ This is a survey based on an intentional inquiry/survey provided for in the Register that is not representative of the total population, in which the measure of solitary confinement is applied. In any case, the amount of data collected in the eight years of validity of the Register has enabled us to assert that solitary confinement is a systematic and generalized institutional practice in all federal prisons.

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security measure (Physical Integrity Protection),⁶ isolation for ward arrangements (admittance-entrance, sector and temporary accommodation).⁷

Annual breakdown of RNCT registered isolation victims in federal prisons

	2011	2012	2013	2014	2015	2016	2017	Total
Victims	326	315	494	435	454	447	353	2,824

Similarly, the survey on ill-treatment conducted in 2017-2018 on the basis of the "Physical Ill-treatment-Torture and Production and Management of Shortages" project, led by the Investigations Department of the Department of Prison Prosecution/Mandate, in its preliminary results warned that **51.3% of the population incarcerated in federal prisons, namely 6,400 inmates, has gone through at least one experience of solitary confinement in their current detention.** Cell isolation may range from a minimum of three days to a maximum of sixty days in cases of formal or informal sanctions, and in situations of entering the unit as a "temporary occupant" until transfer or relocation to another facility, and to a maximum unlimited stay, as in a living arrangement in a ward (e.g. Physical Integrity Protection Ward in the Federal Young Adults Complex).

Conclusion

Over the past 10 years, the solitary confinement procedure in federal prisons has expanded and solitary confinement "functions" have been diversified. Thus, the deprivation of liberty involves a series of additional punitive measures that are seen only in terms of punishment. These include accommodation in confined spaces, isolation, permanent restriction of movement, measured and monitored time, delay in granting and violation of rights, subjection to arbitrary rules and regulations, de-treatment, and physical and psychological prison violence for thousands of inmates at the federal level.

⁶ Among the multiple presentations and interventions of the Penitentiary Mandate before the judicial and executive spheres in order to limit and in some cases stop the application of the isolation measure, we have highlighted a decision of the Federal Court of Lomas de Zamora in October of the current year in which the judicial presentations of this Organization ordered the cessation of the isolation practice in the Federal Penitentiary Complex I ward. *"Federal Court No.1 of Lomas de Zamora this month ordered the authorities of the Federal Penitentiary Complex I of Ezeiza to apply the terms and conditions of protection of physical integrity provided for in the "Protocol for the Implementation of the Protection of Persons in Situations of Special Vulnerability."* It refers to "(...) the policy of solitary confinement to individual cells where inmates spend 20 to 22 hours a day." Therefore, in the judicial presentation, *"This Agency has for these reasons requested the cessation of the confinement arrangement involving the practice of torture and/or cruel, inhuman or degrading treatment."*

⁷ For further information, see Annual Reports of the Procuración Penitenciaria de la Nación and Annual Reports of the National Registry of Cases of Torture, PPN, CPM, GESP and DH.

FEATURED TOPIC: SOLITARY CONFINEMENT

The expansion of and allocation to all prison spaces of the invisible individual isolation procedure, and the scope of its deployment hinder the proper control by the Human Rights Protection Agencies for Persons Deprived of their Liberty.

Featured Jurisdiction: Australia

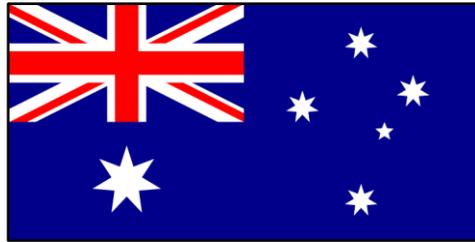
Australia is a federation composed of six states and two principal territories. The power to create criminal law is made and administered by the individual states and territories; however, a body

of criminal law is also made and administered by the Commonwealth government. New South Wales, South Australia and Victoria are common law jurisdictions while the Commonwealth, Australian Capital Territory, Northern Territory, Queensland, Tasmania and Western Australia are code jurisdictions.

Each state and territory has their own oversight mechanisms that oversee prisons and youth detention centres under their jurisdiction. In most states and territories, that oversight is conducted by a custodial inspector or ombudsman of general jurisdiction.

For More Information:

[State and Territory Corrections](#)



Optional Protocol to the Convention Against Torture in Australia



By Bronwyn Naylor

*[Professor of Law, Graduate School of Business and Law,](#)
RMIT University, Melbourne, Australia.*

Bronwyn has published widely on prison monitoring and *Optional Protocol to the Convention Against Torture* (OPCAT), and co-edited *Human Rights in Closed Environments*, Federation Press (2014).

Australia ratified OPCAT on 21 December 2017. At the same time Commonwealth Government announced that it will need three years to implement OPCAT, as permitted under article 24 of the treaty. It is therefore part way through the process of implementation. This article will provide some background to the ratification, and outline the progress with implementation to date.

It is important to be aware that prisons are managed at the state level in Australia, across eight jurisdictions (six states and two territories). This means that, while ratification and oversight of OPCAT involves the federal (or ‘commonwealth’) government, implementation in relation to prisons will in practice fall primarily to the states/territories.

The historical and social context is also important. Australia was colonised by the English in the late 18th century, and its Aboriginal (First Nations) people were displaced violently in ways that continue to reverberate, including in the justice system. Australia currently has a population of around 25 million people. It has had a relatively low incarceration rate until recent years, but in 2018 the rate of incarceration was 222 /100,000 (over 43,000 people), a 38% increase on the same time period 2013.⁸ Of further concern, Aboriginal people are hugely over-represented in the prison system. In 2018, 11,842 Aboriginal people were incarcerated, a rate of 2480/100,000 adult population. This represented 28% of the adult prison population, from a community constituting only 2% of the overall adult population of Australia. Both increased levels of imprisonment, and the vast over-representation of Aboriginal people in the prison system, are important issues for a national human rights-focussed monitoring regime.

⁸ Australian Bureau of Statistics (ABS; 30/11/18). Retrieved from:
<http://www.abs.gov.au/ausstats/abs@.nsf/0/C57B3CAC8D0EDB87CA25825000141F8F?Opendocument>

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Getting to implementation

Australia signed OPCAT in May 2009. However changes of government (and ideology) meant that another eight years were to pass before ratification occurred. Australia has ratified most UN conventions, but it has been widely criticised for its use of detention for asylum seekers, and also for its record in relation to Aboriginal Australians. These issues have been raised in (amongst other fora) the UN Human Rights Council's Universal Periodic Reviews (UPR). In the second UPR in 2016, 52 states commented on Australia's detention of refugees and 29 specifically referred to Australia's failure to ratify OPCAT.⁹

The plan to ratify was announced in a joint media release on 9 February 2017.¹⁰ The announcement came in the context of specific local events, along with – as noted in the media release – the government's decision to nominate for a seat on the UN Human Rights Council.

In July 2016 a shocking news broadcast showed images of violence and abuse of young people (all of them Aboriginal) in the Northern Territory's Don Dale youth detention centre, including use of tear gas and spit hoods.¹¹ The following day the federal government announced a Royal Commission into the NT youth justice system.¹² The broadcast also triggered inquiries and revelations of similar abuses in youth justice facilities in other states, and further calls for improved monitoring and the ratification of OPCAT.

The government announced that ratification would take place by the end of that year, and nominated the long-established Commonwealth Ombudsman to take on the role of coordinating the state and territory National Preventative Mechanisms.

Steps to implementation

Ratification of OPCAT requires the establishment of domestic monitoring bodies (NPM)s, as well as providing for visits by the UN Subcommittee on Prevention of Torture (SPT). I will focus on the first here.

OPCAT specifies that all NPMs must be able to provide robust independent monitoring: they are to be fully independent of government and detaining authorities, have full access

⁹ For a detailed analysis of Australia's steps to ratification see Richard Harding, (2019) 'Australia's Circuitous Path towards the Ratification of OPCAT, 2002-2017: The Challenges of Implementation' *Aust Jn Human Rights* (forthcoming)

¹⁰ OPCAT media release (2017) 'Improving oversight and conditions in detention' <https://dfat.gov.au/news/news/Pages/improving-oversight-and-conditions-in-detention.aspx>

¹¹ Australian Broadcasting Commission (2016) Australia's Shame, Four Corners Program (reported by Caro Meldrum-Hanna and presented by Sarah Ferguson), (Aired 25th July 2016).

¹² Royal Commission into the Protection and Detention of Children in the Northern Territory (2017).

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to places being monitored, be well-resourced, with all necessary expertise, and be able to report publicly on their findings (OPCAT articles 17-20).

OPCAT has now been ratified by 88 countries. Some have set up new agencies, but most have given the NPM role to an existing body; an Ombudsman office, human rights institution, or a combination of bodies in a 'mixed model' (as in the United Kingdom and New Zealand). Australia is likely to adopt a mixed model.

The implementation process in Australia therefore involves identifying all relevant places of detention, and all existing monitoring bodies, and – probably most challenging – decisions at state, territory and federal level about whether and how existing bodies could take on the OPCAT monitoring role, and what might be needed to make them OPCAT-compliant.

There are well-established general monitoring bodies across Australia, including Ombudsman Offices and Human Rights Commissions. These may include prisons in their mandate, but their powers are generally focussed on complaints-handling. There are also specialist prison monitoring bodies in four jurisdictions, independent statutory agencies with many of the powers specified under OPCAT. The first fully independent prisons inspectorate, modelled on the UK Inspector of Prisons, was established in West Australia in 2000: the Office of the Inspector of Custodial Services.¹³ Independent prison inspectorates have since been established in New South Wales, Tasmania and the Australian Capital Territory.¹⁴

Some of the Australian monitoring bodies, such as the prisons inspectorates and Ombudsman offices, have some or most of the OPCAT characteristics. However across Australia there are both gaps in coverage, and overlapping powers. There are also inconsistencies across states and territories, with varying degrees of independence and effectiveness of monitoring bodies.

Two specific investigations were set up in 2017 to support OPCAT implementation, one to be carried out by the Commonwealth Ombudsman, and the other by the Australian Human Rights Commission (AHRC).

The process of identifying 'places of detention' and establishing a 'baseline' of the extent to which existing oversight bodies are currently OPCAT-compliant is being carried out by the Commonwealth Ombudsman, in a review to be published in early 2019.¹⁵ The role of civil society in the implementation and ongoing operation of OPCAT in Australia is at the

¹³ *Inspector of Custodial Services Act 2003* (WA).

¹⁴ *Inspector of Custodial Services Act 2012* (NSW); *Custodial Inspector Act 2016* (Tas); *Inspector of Correctional Services Act 2017* (ACT).

¹⁵ Commonwealth Ombudsman (2018) 'Implementing OPCAT in Australia – an update from the Commonwealth Ombudsman' 7th Annual Prisons Conference, Melbourne, 2 August 2018.

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same time being examined by the AHRC. The AHRC has held national consultations and published a first report, and further consultations are currently underway.¹⁶

Implementation of OPCAT can be particularly complex in federal states. In Australia immigration and defence-related detention fall under the Commonwealth government, while most other forms of detention are managed at state or territory level. This therefore requires significant levels of consultation and co-ordination across different levels of government. OPCAT provides for multiple NPM bodies, for example in federal states, but emphasises that any individual NPM body must itself be fully compliant with its criteria (Article 17).

A key question will be the legal status of the NPMs. It is widely recognised that statutory authority is important for effective and robust monitoring. As the SPT has recently stated,

... it is imperative that the State Party enact NPM legislation which guarantees an NPM in full compliance with OPCAT and the NPM Guidelines. Indeed, the SPT deems the adoption of a separate NPM law as a crucial step to guaranteeing this compliance.¹⁷

This has been an ongoing issue in the UK. The Chair of the UK NPM wrote recently to the UK Ministry of Justice, highlighting concern that ‘...there are no statutory guarantees of independence for the NPM’ and that ‘the lack of a legislative base undermined the international credibility of the NPM’.¹⁸ Australian commentators have advocated formal statutory authority setting out such matters as the role of NPMs, their powers, and protections for informants.¹⁹

The Australian government has however made it clear that there are no plans for a legislative framework for OPCAT at the federal level. The federal Attorney General is understood to be developing an Intergovernmental Agreement with state and territory counterparts which is expected to spell out relevant responsibilities. It will be a matter for the states and territories as to whether they legislate separately.

It is also important that all governments commit to adequate funding for their NPMs. The Commonwealth government stated that it would fund the Commonwealth Ombudsman to

¹⁶ Australian Human Rights Commission (AHRC) (2018) OPCAT in Australia - Consultation Paper: Stage 2 AHRC, Sydney.

¹⁷ cited in AHRC 2018, 32

¹⁸ UK NPM (2018) Monitoring Places of Detention: Eighth Annual Report of the United Kingdom’s National Preventive Mechanism 1 April 2016 – 31 March 2017, Appendix 1

¹⁹ Example: AHRC 2018; S. Caruana (2018) ‘Enhancing best practice inspection methodologies for oversight bodies with an *Optional Protocol to the Convention Against Torture* focus, Report to the Winston Churchill Memorial Trust of Australia’

https://www.churchilltrust.com.au/media/fellows/Caruana_S_2017_inspection_methodologies_for_oversight_bodies_with_an_OPCAT_focus.pdf

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be the coordinating body, but made no commitment to any further funding.²⁰ The importance of adequate resourcing, and the grant of budgetary control, is a point that has been highlighted many times, in the Australian consultations and across NPMs internationally.

To date the Victorian Ombudsman has been the most proactive state body preparing for the implementation of OPCAT in Victoria. In 2017 the office carried out an 'OPCAT inspection' of the main women's prison, at the same time reviewing all places of detention and all related monitoring bodies in Victoria.²¹ In December 2018 the Ombudsman announced a second 'OPCAT inquiry', this time to review the use of solitary confinement in the detention of children and young people and examine possible NPM models, to report later in 2019.²²

Implementation is likely to be a slow process but promises to change the picture of rights-based monitoring in Australia.

²⁰ OPCAT media release (2017) 'Improving oversight and conditions in detention'
<https://dfat.gov.au/news/news/Pages/improving-oversight-and-conditions-in-detention.aspx>

²¹ Victorian Ombudsman, (2017) Implementing OPCAT in Victoria: Report and Inspection of the Dame Phyllis Frost Centre

²² <https://www.ombudsman.vic.gov.au/News/Media-Releases/Ombudsman-to-investigate-the-use-of-solitary-confi>

Strengthening Correctional Oversight through the *Optional Protocol to the Convention Against Torture*, and the role of Australia's domestic inspectorates



By Steven Caruana

Inspections and Research Officer - [Office of the Inspector of Custodial Services](#), Western Australia.

The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) came into force in 2006 and to date has been ratified by 89 State parties. The OPCAT introduces a two-tiered system of regular, independent, preventive visits to all places where people are deprived of their liberty.

At the international level, OPCAT necessitates the acceptance of periodic visits by the United Nations Subcommittee on Prevention of Torture (SPT) to inspect places of detention and report to State parties their findings. State parties must also establish and maintain a domestic visiting body termed the National Preventive Mechanism (NPM).

'National Mechanisms are the 'front line' of torture prevention' in that they can visit places of detention in a State much more frequently than the SPT. OPCAT sets out fundamental principles for the creation or designation of an NPM but with enough flexibility to consider each State's circumstances. The NPM can be established through the creation of a new organisation(s) or be designated to pre-existing organisation(s).

The 'preventive' mandate of OPCAT

Last year this author was fortunate enough to undertake a [research trip](#) into OPCAT implementation experiences through the award of a Winston Churchill Memorial Trust Fellowship. One of the concepts grappled with was understanding the distinction between an NPMs 'preventive' approach and that of other forms of oversight.

The Association for the Prevention of Torture, an NGO specialising in OPCAT implementation, suggests:

'the NPM's preventive approach revolves around identifying and analysing factors that may directly or indirectly increase or decrease the risk of torture and other ill-

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treatment. It seeks to systematically mitigate or eliminate risk factors and to reinforce protective factors and safeguards.'

The Chair of the SPT, Professor Sir Malcolm Evans further commented to the author that:

'...what the preventative approach should be is picking up on what the experience is of those who are living within that system, because the system could be working perfectly and still letting people down. It's only by actually understanding what the lived experience within the place is that you actually work out what actually is generating the potential for ill treatment and therefore what needs to be done about it.'

Preventive visiting is not merely about compliance with standards and regulations but are about identifying issues that are not easily quantifiable. It is essentially about understanding the 'lived experience' of those imprisoned and those who work within prisons, in order to make pragmatic recommendations or at the least raise awareness of issues that are or could potentially lead to mistreatment and torture which would otherwise not be picked up.

The preventive work of NPMs is also not limited to undertaking visits. The NPM has an advisory function, commenting on legislation and putting forward proposals to government. NPMs have an educative function, ensuring awareness is raised on issues of mistreatment and torture and assisting detaining agencies to more fully comply with their human rights obligations. Finally, NPMs have a cooperative function working with other inspection bodies and civil society both domestically, regionally and internationally.

Australia and the OPCAT

Australia's ratification of the OPCAT occurred in December 2017 as a result of a voluntary pledge by the Australian Government in its campaign for a seat on the United Nations Human Rights Council. At ratification, the Australian Government exercised its right under Article 24 of the OPCAT to delay the formal establishment of the Australian NPM for three years. A decision made to allow for the Federal, State and Territory governments to negotiate the NPM's legislative basis, its resourcing and its designation.

In similar fashion to countries like New Zealand and the UK, the Australian NPM will be a multibody entity arranged along jurisdictional lines. State and Territory governments, who have responsibility for all Australian correctional facilities, are yet to designate their NPMs.

The oversight of Australian correctional facilities is currently undertaken by a range of agencies whose mandates, powers, resourcing, frequency of visiting and independence vary between the jurisdictions. The provisions of the OPCAT will look to strengthen and complement rather than replace this existing oversight and it is more than likely some of these bodies will be designated NPMs.

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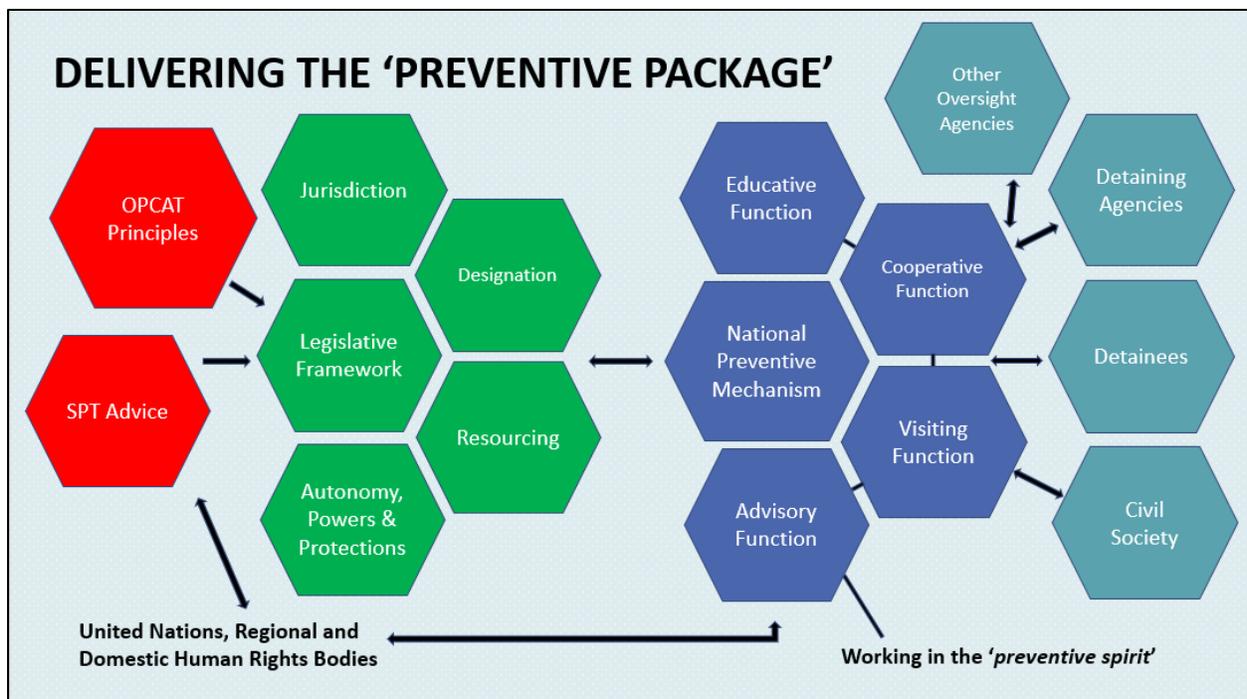
Strengthening the framework of existing bodies

In their 'Principles of Oversight', Commissioners White and Gooda of the *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, emphasised that:

'A key element in the effectiveness of an oversight body is its independence. It must be independent structurally and be seen to be independent by the community. It must be transparent in all its activities and must report directly to parliament.'

Article 18 (1) of the OPCAT stipulates that 'States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.' State and Territory governments will need to consider these requirements thoughtfully in the designation of their NPMs.

Functional and perceived independence are matters of concern recently raised by both the [New South Wales Legislative Council](#) and the [Queensland Crime and Corruption Commission](#), in relation to the New South Wales Inspector of Custodial Services and Queensland Office of the Chief Inspector respectively. The author wishes to note that he is not in any way seeking to discredit the work of these two agencies but that these examples are illustrative of what the OPCAT seeks to remedy.



A model for creating an effective National Preventive Mechanism as delivered by the author in a recent presentation in Denmark.

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Shared practice and expertise

An obvious benefit of the OPCAT for existing correctional oversight bodies is the potential for sharing practices and engaging in cross-jurisdictional work. With reference to this point, the Australian NPM Coordinator and Commonwealth Ombudsman, Michael Manthorpe, has remarked:

‘The Optional Protocol offers an opportunity for the sharing of domestic best practice and the development of inspecting principles in a way that might be new in Australia. It offers oversight agencies across Australia the opportunity to learn not only from one another but from a community of NPMs globally.’

The UK NPM has for many years provided several good examples of the use of joint inspections and the development of shared [guidance material](#).

In the authors’ discussions with Dame Anne Owers, Former Chief Inspector of Her Majesty’s Inspectorate of Prisons for England and Wales, she reiterated the benefit of cross agency thematic projects:

‘One of things we did find was useful was having some sort of themed focus early on that everybody can contribute to... Cross-cutting issues like mental health, race or ethnicity, where there is real energy and you can do something of value and focus on an important issue for everyone, rather than just sharing experiences. So actually, putting some purpose behind it and producing some product that is different to the product that’s there at the moment.’

Where to from here?

These next two years are crucial times for the advancement of correctional oversight in Australia. Effective and substantial compliance with the OPCAT, in the fitting words of the Australian Human Rights Commissioner, Ed Santow, ‘**...could be the single most positive development this decade in improving conditions in all Australian places of detention.**’ State and Territory governments will need to turn their attention to the requirements of OPCAT. They will need to consider the most suitable existing agencies and what resourcing and legislative requirements will be necessary for them.

Equally important, Australian oversight agencies will need to proactively assess whether their mandate and methodologies are compatible with OPCAT. It is noted by this author that there already have been seen proactive efforts within most jurisdictions in this regard.

In Victoria, the Victorian Ombudsman has undertaken a [trial OPCAT inspection](#) and is currently reviewing the [solitary confinement of young people](#). In the Australian Capital Territory, the Inspector of Correctional Services has recently undertaken a [thematic review](#) of the treatment and care of remandees and will be conducting a comprehensive inspection in due course.

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There are many other examples across all jurisdictions. The inspectorate for which the author works, the Office of the Inspector of Custodial Services Western Australia (OICS), has long been considered the model OPCAT-compliant inspectorate in Australia.

A model inspectorate

‘An inspectorate cannot prevent or resolve every incident of poor conduct or abuse by officers. There will always be some officers who overstep the mark. The role of OICS is to reduce the risk of problems emerging, to identify systemic issues that can be addressed, and to ensure accountability where problems arise. OICS is also not able to prevent all systemic failings. However, it has proved to be good at predicting risk and at holding the system to account for avoidable systemic failings.’

Professor Neil Morgan, Inspector of Custodial Services Western Australia

The Office of the Inspector of Custodial Services Western Australia was established in 2000 and has arguably the most developed inspection systems for prisons, juvenile detention centres, prisoner transport, and court security within Australia. The inspectorate also reviews specific aspects of custodial services and the experience of individuals or groups, carries out thematic reviews, and manages an Independent Visitor Service.

The structural independence of the inspectorate is deeply entrenched by having a stand-alone statute, publishing all its reports and inspection standards, maintaining its own budget and staff and by the Inspector being an officer of Parliament. The legislation underpinning the inspectorate contains strong powers including unfettered access to sites, prisoners and the right to all documentation, the ability to conduct unannounced inspections and protections from reprisal. It is also an offence to hinder the inspectorate.

The inspectorate operates under a continuous inspection methodology with formal inspections of sites at least once every three years, supplemented with regular liaison and Independent Visitor reports, thematic reviews and through constructive dialogue with the administration.

The inspectorate approaches its relationship with the administration in a non-adversarial manner much in line with the ethos of the OPCAT. Preferring engagement that is positive, proactive, respectful and improvement-focused not blame-focused. The inspectorate also regularly identifies areas where the administration is working well. As Professor Neil Morgan, has stated, **‘it’s really important to have an office that praises good practice, as well as identifies areas for improvement.’**

The inspectorate is proactive and preventive rather than reactive and systemic with a human rights component. The inspectorate as an OPCAT-compliant model owes much of its success to its leadership. The current Inspector, Professor Neil Morgan and his

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predecessor, Professor Richard Harding, have long been considered authorities on the domestic implications of the OPCAT.

For more detailed information on the inspectorate please see refer to our [website](#).

The Victorian Ombudsman, Prisons and OPCAT

By Deborah Glass

[Victorian Ombudsman](#)

When the Victorian Ombudsman was established nearly 50 years ago, it was part of a worldwide expression of support for values that underpin the protection of human dignity and government accountability.

At its core, an Ombudsman's purpose is to redress the power imbalance between individuals and the state. This imbalance can be felt by anyone dealing with government but is particularly acute for people in detention – being deprived of liberty must be the ultimate power imbalance.

The *Ombudsman Act 1973* (Vic) gives my office a power to investigate administrative actions by Victorian state and local government authorities, or bodies acting on their behalf. This includes a power to investigate whether an administrative action is incompatible with a human right set out in our *Charter of Human Rights and Responsibilities Act* – Victoria being one of the few places in Australia to have a Human Rights Charter in legislation.

My jurisdiction covers many of the authorities that detain people in Victoria. The term 'administrative action' sounds dry but has a wide meaning. In the context of detention, it could include a decision to search a detainee, a refusal to allow family visits, or a failure to provide reasonable medical care.

My office of approximately 100 staff currently monitors the treatment of detainees in the following ways:

- We take complaints direct from detainees or appropriate representatives. The office has a 'freecall' telephone line at all adult prisons and youth justice facilities in the State. Telephone calls and mail to the Ombudsman are exempt from monitoring by authorities.
- We have used the 'own motion' powers in the Ombudsman Act to investigate systemic issues at places of detention, without the need for a complaint; such as:
 - [Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville](#) (2017)



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- [*Investigation into the rehabilitation and reintegration of prisoners in Victoria*](#) (2015)
- [*Investigation following concerns raised by Community Visitors about a mental health facility*](#) (2014)
- Ombudsman officers have been visiting adult prisons for at least 30 years to take complaints and observe conditions. They have also visited youth justice facilities, 'secure welfare services' for children and young people in the child protection system and Victoria's secure forensic mental health hospital.

When, in 2017, the Commonwealth Government announced that Australia would ratify the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), people might have assumed it would be business as usual in Victoria.

Victoria already has a right to protection from torture and other cruel, inhuman or degrading treatment in the Charter. The Charter also provides for a right to humane treatment for people deprived of liberty and specific rights for children and young people.

The state also has multiple monitoring bodies that try to ensure these rights are protected in practice.

For those of us working in this area, however, it was clear that OPCAT would require change. It introduces more rigorous standards for local inspections of places of detention by National Preventive Mechanisms (NPMs). By opening detention to United Nations scrutiny, it also demands much closer attention to international standards for the treatment of detainees.

Following the Commonwealth Government's announcement, I decided to investigate the practical changes needed to implement OPCAT in Victoria. The investigation mapped places of detention in Victoria and how they are monitored and compared this against OPCAT standards. It also tested how OPCAT inspections might work in practice by conducting a pilot OPCAT-style inspection at Victoria's main women's prison. The investigation report was tabled in the Victorian Parliament on 30 November 2017 and is available online [here](#).

The preventive nature of OPCAT inspections distinguishes them in purpose and methodology from other types of visits, including the more traditional Ombudsman investigations.

To continue this work, late last year I launched a second 'own motion' investigation related to OPCAT. This second investigation will feature a thematic inspection of the use of practices that may lead or amount to the 'solitary confinement' of children and young people in several closed environments across different portfolios.

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I have established a multi-disciplinary, multi-agency inspection team to inspect a maximum-security prison, a youth justice centre and a secure welfare facility over March and April 2019.

In an Australian first, my office has put together an advisory group comprised of leading oversight bodies and civil society organisations to assist my investigation. Members of the advisory group will be providing staff and other expertise to the inspection team, including expertise in dealing with childhood trauma and mental health.

A thematic inspection across multiple facilities presents a unique opportunity to examine practices across different closed environments, allowing the investigation to identify both examples of good practice and areas for improvement.

The inspection team will gather first-hand observations; speak confidentially with children, young people and staff; have access to inspect all areas of a facility; and review relevant records and documentation.

The Victorian Government has not announced which agency or agencies will serve as Victoria's NPM and where OPCAT inspections will take place. Whatever it decides, the NPM needs to be supported by clear legislative powers and protections, adequate funding and access to information.

It will cost money to ensure Victoria has properly resourced bodies to carry out inspections, and to implement their recommendations. But it costs far more to deal with the consequences of ill-treatment - which could be a huge bill for damage or compensation, or a Royal Commission - than setting up regular monitoring to prevent it and drive improvements.

The ratification of OPCAT is an important symbol of Australia's commitment to human rights. Its implementation, through setting up, resourcing or empowering independent agencies, is equally important in ensuring that commitment is not merely symbolic.

The Inspector of Custodial Services, New South Wales

By **Fiona Rafter**

Inspector, [*Office of the Inspector of Custodial Services*](#), New South Wales.



The purpose of the Inspector of Custodial Services (ICS) is to provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice. The Inspector is independent of Corrective Services New South Wales (CSNSW) and Juvenile Justice New South Wales (JJNSW) and reports directly to the New South Wales (NSW) Parliament. Under the provisions of the *Inspector of Custodial Services Act 2012* (the ICS Act), the Inspector is required to inspect each custodial centre once every five years and every juvenile justice centre once every three years, and table reports relating to these inspections in Parliament.²³

Included within the jurisdiction of the ICS are 40 correctional centres, six transitional centres and residential facilities, six juvenile justice centres, 12 24-hour court cell complexes, 64 court cell locations,²⁴ a fleet of 113 escort vehicles and a detainee transport fleet of 25 vehicles. At the end of the 2017-18 financial year, the adult inmate population was 13,630 and 292 juvenile detainees. Approximately 33% (n = 4,502) of the adult inmate population were held on remand, while approximately 55% (n = 160) of juvenile detainees were on remand. Of the adult inmate population approximately 24% (n = 3,332) are Aboriginal, and 48% (n = 141) juvenile detainees are Aboriginal.

Pursuant to the ICS Act, the ICS oversees the Official Visitor programs and is responsible for recruiting, advising, and training Official Visitors.²⁵ Official Visitors are community representatives appointed by the Minister for Corrections to visit correctional centres and juvenile justice centres in NSW. The role of Official Visitors is to be independent observers of the custodial environment, to report on the conditions in custodial facilities and to receive and deal with complaints. There are a total of 92 appointments to correctional centres and juvenile justice centres in NSW, including 17 Aboriginal Official Visitor appointments.

²³ Section 6(1)(d) *Inspector of Custodial Services Act 2012*

²⁴ Including five and eight hour cell locations.

²⁵ Section 6(1)(h) and 6(1)(i) *Inspector of Custodial Services Act 2012*

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The office of the ICS has a staffing establishment of 13 FTE positions. The permanent staffing establishment of the office is the Inspector, four Senior Inspection/Research Officers, one Inspection/Research Officer, two Research Assistants, one Official Visitor Coordinator, and one Executive Officer. In addition to the permanent establishment, there is one temporary Inspection/Research Officer, one temporary Research Assistant and one temporary Administration Assistant. The budget for the 2018-19 financial year is \$2.560 million.

Since the appointment of the inaugural ICS in October 2013, the ICS has tabled nine reports and made 260 recommendations. The nine reports are:

- The Invisibility of Correctional Officer Work (2014);
- Full House: The growth of the inmate population in NSW (2015);
- Making Connections: Providing Family and Community Support to Young People in Custody (2015);
- Lifers: Classification and regression (2015);
- Old and inside: Managing aged offenders in custody (2015);
- Prison Greens: The clothing and bedding of inmates in NSW (2017);
- 24-hour court cells in NSW (2018);
- The management of radicalised inmates in NSW (2018); and
- Use of force, separation, segregation and confinement in NSW juvenile justice centres (2018).

These nine reports are available on [the ICS website](#).

There are currently five reports in progress relating to 27 correctional centre inspections. These relate to the following themed inspections: Women on remand; Minimum Security; Programs, Employment and Education; Access and availability of health services; and Residential facilities.

In December 2017, Australia ratified the *Optional Protocol to the Convention Against Torture* (OPCAT). In addition to the inspection schedule, the ICS monitors and reports on the implementation of recommendations by Corrective Services NSW, Juvenile Justice NSW, and Justice Health and Forensic Mental Health Network. Regular visitation and monitoring is an important function of the ICS and is consistent with the requirements of OPCAT.

SELECTED CONTRIBUTIONS: AUSTRALIA

Prevention in the Capital: the Australian Capital Territory's Office of the Inspector of Correctional Services



Rebecca Minty

By **Rebecca Minty** (*Deputy Inspector*) & **Holly Fredericksen** (*Research and Inspections Officer*).

[Office of the Inspector of Correctional Services](#), Australian Capital Territory.

The Australian Capital Territory Office of the Inspector of Correctional Services (ACT OICS) was established in 2017 to provide independent oversight of ACT Correctional and Youth Justice facilities, focusing on continual improvement and prevention of ill-treatment. This oversight is provided through conducting periodic examination and reviews of ACT Correctional facilities and services, and reviewing critical incidents.

The ACT Inspector of Correctional Services is Neil McAllister. He was appointed to the position in March 2018 for a five year term. There are two other staff members, the Deputy Inspector, Rebecca Minty, and a Research and Inspections Officer, Holly Fredericksen.

Background to the establishment of the ICS

The role of Inspector was established with the passage of the *Inspector of Correctional Services Act 2017* (ACT) (ICS Act) in response to a number of critical incidents that had occurred at the ACT's one jail, the Alexander Maconochie Centre (AMC). In particular, the tragic death of a 25 year old Aboriginal man at the AMC in May 2016 prompted an independent inquiry. The ACT Government's response to that inquiry included a commitment to establish an Inspector of Correctional Services, although entities such as the ACT Human Rights Commission had called for an Inspectorate years earlier.

The establishment of preventive oversight over adult and youth detention in the ACT was particularly timely, given Australia ratified the *Optional Protocol to the Convention against Torture* (OPCAT) in December 2017. The legislation to establish the ACT OICS was developed to reflect the requirements and expectations around



The inaugural ACT Inspector of Correctional Services, Neil McAllister tabling a report at the ACT Legislative Assembly.

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the establishment of a national preventative mechanism under the OPCAT. This resulted in the creation of a preventative focused independent statutory authority with all the powers and guarantees required in OPCAT, for example, the right to access to any place of detention at any time, the power to speak with detainees and staff, and the right to access documents including registers. Furthermore, when conducting an examination and review, the ICS Act requires that the review team include those with expertise relevant to the subject matter being reviewed, and all reports from examinations and reviews must be publically tabled in the Legislative Assembly. By December 2019, the Inspector's jurisdiction will be expanded to include oversight of Bimberi, the ACT Youth Justice facility that has 40 beds but usually has less than 20 young persons detained at any one time.

Local context of the Australian Capital Territory

The ACT is a small jurisdiction with a population of just over 400,000 and is home to Canberra, the capital city of Australia. Until 2009 the ACT did not have a prison but instead sent detainees interstate to New South Wales. In some cases this meant incarceration hundreds of kilometres away from family. The ACT's first and only prison, opened in 2009 and is named after nineteenth century penal reformer Alexander Maconochie, who from 1840-1844 was the commandant of the convict colony of Norfolk Island off Australia's east coast and had enlightened ideas of focusing on rehabilitation rather than retribution. The AMC houses remand and convicted male and female detainees of all security classifications and has a population of around 500 detainees.

The ACT is one of two jurisdictions within Australia's federated structure that has stand-alone human rights legislation: the *Human Rights Act 2004* (ACT) (HR Act), and thus human rights law and practice informs the inspectorate's work. Of particular relevance is the right to be free from cruel, inhuman or degrading treatment or punishment; the right to humane treatment when deprived of liberty; and the principle of equality before the law. The HR Act also protects the distinct cultural rights of Aboriginal and Torres Strait Islander people. This right is particularly relevant given the shocking statistic that Aboriginal and Torres Strait Islanders make up less than 2 per cent of the ACT population but account for more than one third of all detainees in AMC, and close to two thirds of women detainees.

The role and function of the Inspectorate

Under the ICS Act, the Inspector is required to undertake an 'examination and review' of a correctional centre every two years and a correctional service every two years. The Inspectorate has adopted the World Health Organisation's 'Healthy Prison' approach to conducting the whole of prison reviews, and has developed ACT-specific inspection standards and an inspection framework (available on the website: www.ics.act.gov.au). The Inspector is also required to review critical incidents, defined in the ICS Act to include, for example, a death in custody, serious assault or an escape. The Inspectorate reviews critical incidents from a preventive rather than reactive stand point: seeking to identify any

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lessons learnt that could help prevent reoccurrence (as well as identify good practices). At the time of writing the Inspectorate has published two critical incident reports, both relating to detainee on detainee assaults. The Inspectorate does not take individual complaints but will refer these complaints to other oversight agencies, such as the ACT Ombudsman and ACT Human Rights Commission.

The Inspectorate's first thematic review: treatment and care of remandees

In February 2019 the Inspector tabled the first thematic review, 'The care and management of remandees at the Alexander Maconochie Centre 2018'. Remandees currently make up almost 40% of the ACT's overall prison population, and almost 60% of women in custody. Although the AMC was initially designed to separate convicted and remanded detainees, in recent years the two cohorts have been mixed due to overcrowding pressures. The review considered whether remandees were being treated in a manner consistent with the presumption of innocence contained in ACT corrections legislation and the HR Act, and made a number of findings that identified areas for improvement. These included the need for a specific policy on remandees, the need to accurately capture time out of cells and to introduce measures to avoid prolonged lock-ins, and the need for improvements in ensuring remandees have access to the outside world (in particular, family and lawyers). Access to family was noted as particularly important in the initial days after remand in custody and the stress, anxiety and trauma that can flow from detention.

Many issues identified in the review related to overcrowding at the AMC, something clearly beyond the control of ACT Corrective Services. High detainee numbers creates additional challenge in the ACT due to the many cohorts within the prison and the inability to use other prisons to absorb capacity or to send detainees who can't mix with others for whatever reason. This overcrowding and in particular the increase in numbers of women led to the movement of the female detainees from a purpose-built cottage-style accommodation area to a high security accommodation unit within the men's area, which had been designed to cater for males. It was concerning to see women accommodated at a higher security level than necessary for most of them, and also their limited access to services, programs and rehabilitation. Although women make up less than 10% of the overall AMC population, it is crucial that they are not disadvantaged in terms of equality of outcome compared to the men. The findings of the Inspector's reports will be subject to ongoing monitoring and follow up including as part of our first Healthy Prison Review to be conducted in mid-2019.

The 'Healthy Prison Review'

The review will be conducted against monitoring standards the Inspectorate has developed based on the elements of a healthy prison, and drawing from standards produced by other inspectorates including Her Majesty's Inspectorate of Prisons in the UK

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and prison inspectorates in Australia including in Western Australia, New South Wales and Tasmania.

The review will involve supplementing our small staff with experts on a contract basis to conduct a week of onsite inspections, including observations, file reviews, discussions with detainees and staff, and surveys of detainees, staff and visitors. Prior to the onsite component, the Inspectorate will conduct a survey of detainees, staff and visitors. We will also hold community forums and have invited submissions from stakeholders.

As the newest Australian prison inspectorate, ACT OICS are fortunate to have support and collaboration from other Australian inspectorates. This has taken the form of advice, conducting joint monitoring visits, and drawing inspiration from their standards, inspection framework and reports. This experience has been invaluable through the establishment phase of the ACT Inspectorate. The 'ACT approach' we are developing also seeks to maximise on the unique features of the ACT as a 'city-state' – all places of detention within 20 minutes of the city, and it is possible to meet key stakeholders regularly. We are therefore seeking to develop collaborative and constructive relationships with a range of stakeholders whilst maintaining independence. With Australia's recent OPCAT ratification it is an exciting time to be working in the area of preventive oversight in Australia. We strive to ensure continual improvement in corrections, but are also constantly reflecting on our own continual improvement so are pleased to be part of national and international networks for sharing experiences.

The South Australian Ombudsman

By Wayne Lines

[Ombudsman, South Australia.](#)

The South Australian Ombudsman Office (Ombudsman SA) was established in 1972 and investigates complaints about South Australian government and local government agencies under the *Ombudsman Act 1972 (SA)* as well as complaints about breaches of the workers compensation scheme service standards under the *Return to Work Act 2014 (SA)*. Ombudsman SA also conducts Freedom of Information reviews and receives referrals from the South Australian Independent Commissioner against Corruption to investigate allegations of misconduct and maladministration in public administration.



The Ombudsman is a designated relevant authority for receiving information about state and local government activities confidentially from whistle-blowers.

The Ombudsman responds to complaints and has the power instigate his own investigations. Over 95% of recommendations are accepted by the agencies that are investigated.

Ombudsman SA has a staff of 25 people and operates within a budget of AUD 3.2 million. Wayne Lines was appointed Ombudsman by the Governor of South Australia in 2014.

The Department for Correctional Services is a state government agency that has responsibility for nine prisons located across metropolitan and regional South Australia. Approximately 3,200 prisoners are accommodated in these facilities. While Ombudsman SA does not have a formal prison inspectorate function, the department is subject to the Ombudsman's oversight. In the 2017-18 year, Ombudsman SA received 744 complaints against the Department, similar to the previous year. This number represents approximately 31% of complaints received by Ombudsman SA against government departments. Prisons provide telephones in the common areas with a pre-set dial to the Ombudsman SA and there is a reasonable level of awareness of the Office amongst prisoners. Unsurprisingly, prisoner complaints are the major source of complaints against the department.

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In 2017-18 the Ombudsman completed eight formal investigations of the department arising from prisoner complaints and in the exercise of own motion powers. The Ombudsman published a number of a summary statement of them. The website link to the published reports is: www.ombudsman.sa.gov.au/publications/investigation-reports/

Some examples of recommendations that addressed systemic type issues within the department include:

- That the department implement a policy for the reception, induction and management of Non-English speaking prisoners.
- That the department implement a procedure of compliance checks to ensure that prisoner inductions are being completed.
- That the department issue an instruction to ensure that an Aboriginal person who is assessed as High Risk (of self-harm) should never be placed in Police Cells.
- That the department amend Standard Operating Procedure 100 to include that when a period of restriction is to be imposed on visiting a prisoner, the evidentiary basis for the restriction must be linked to the statutory authority being relied on and for it to be clearly articulated to the recipient in the written order.

Below are case summaries of investigations completed over the last 18 months that give some insight to the Offices' work in relation to prisoner complaints.

September 2018: [Department for Correctional Services – Handling of a prisoner's diabetes](#)

The Ombudsman investigated, upon his own initiative, three issues arising from the Department for Correctional Services' (the department) handling of a prisoner with type 1 diabetes. The investigation was instigated on the basis of information received from the Office of the Health and Community Services Complaints Commissioner (HCSCC).

On 8 February 2017, the prisoner was transferred from Port Lincoln Prison to Port Augusta Prison and shortly after approached South Australian Prison Health Service (SAPHS) about high blood sugar levels. On 21 February 2017, SAPHS forwarded a medical instruction to the General Manager of the Port Augusta Prison and requested that he consider the prisoner being managed in a facility where he could have insulin three times a day or, alternatively, give SAPHS staff access to him three times a day. SAPHS continued to raise concerns with prison management about the failure to facilitate doses of insulin three times daily. The Port Augusta Prison did not accommodate the three times daily doses. The prisoner was ultimately transferred to another prison on 28 March 2017.

The department and the Department for Health and Wellbeing have a Joint Systems Protocol (the Joint Systems Protocol) which provides guidance on the shared care for

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prisoners requiring complex case management. The department also has a standard operating procedure (**SOP 001A**) which deals with prisoner admission and case management.

The Ombudsman considered three issues:

- Whether the department wrongly failed to comply with the Joint Systems Protocol and SOP 001A
- Whether the department unreasonably delayed taking action following receipt of a medical instruction from SAPHS regarding the prisoner
- Whether the department unreasonably delayed taking action following receipt of a medical instruction from SAPHS regarding the prisoner.

In relation to issue 1, the Ombudsman's view was that the department's failure to comply with the Joint Systems Protocol and SOP 001A was wrong within the meaning of section 25(1)(g) of the *Ombudsman Act*. The Ombudsman recommended that the department provide a further report on the progress of the review of food options and completion of the Diabetes Management Action Plan.

In relation to issue 2, the Ombudsman's view was that the department's failure to accommodate three times daily access or otherwise give proper consideration to transferring the prisoner to another prison was unreasonable within the meaning of section 25(1)(b) of the *Ombudsman Act*. The Ombudsman recommended that the department amend its procedure regarding medical instructions to include:

- an indication as to the level of urgency/seriousness of an instruction
- a timeframe for compliance
- a requirement that the department provide reasoning if a medical instruction cannot be complied with, including a timeframe for responses in this regard.

In relation to issue 3, the Ombudsman's view was that by failing to retain official records, the department acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the *State Records Act*. The Ombudsman has informed the Manager of State Records of this matter.

June 2018: [Department for Correctional Services – Failure to amend record of gender](#)

The Ombudsman investigated a complaint by a transgender prisoner (the complainant), that the Department for Correctional Services (the department) had failed to amend its records to reflect that she identifies as a female, resulting in a delay in her transfer to the Adelaide Women's Prison (AWP). The complainant also raised concerns that the

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department had failed to amend the name on her cell door to reflect her chosen name. The Ombudsman's view was that there were no proper grounds for the department's refusal to amend its records and identify the complainant by her chosen name, and that it had been aware of these issues as early as 2015 yet failed to take steps to address them until after it had been notified of the investigation in September 2017. The Ombudsman did not, however, consider that the department had unreasonably delayed the complainant's transfer to AWP. The department accepted the Ombudsman's provisional recommendations prior to the finalisation of the investigation.

December 2017: Department for Correctional Services and Central Adelaide Local Health Network (South Australian Prison Health Service) – Wrongful placement and delay in providing medication

At the time of the complaint, the complainant was a remand prisoner. The complainant's admission process occurred at Yatala Labour Prison, where he was assessed by both the Department for Correctional Services (DCS) and the South Australian Prison Health Service (SAPHS). As a result, it was known to both agencies that the complainant is Aboriginal, has a history of self-harm and attempted suicide and diagnosed depression for which he takes prescribed medication. The complainant was deemed to be a high risk prisoner and was then transferred to Holden Hill Police Cells. The complainant made his complaint to the Ombudsman on the fourth day when he still had not been provided his medication. The complainant explained that he was not coping with his placement at Holden Hill Police Cells and made threats of suicide.

The Ombudsman found that DCS had acted in a manner that was wrong within the meaning of section 25(1)(g) of the *Ombudsman Act* by accommodating the complainant at Holden Hill Police Cells and that the delay in SAPHS providing the complainant's medication was in accordance with a policy and practice that is unreasonable within the meaning of section 25(1)(c) of the *Ombudsman Act*. In undertaking the investigation it became apparent that DCS had failed to retain official records in accordance with the *State Records Act* and therefore the Ombudsman also found that DCS had acted in a manner that was contrary to law within the meaning of section 25(1)(a) of the *Ombudsman Act*.

November 2017: Department for Correctional Services – Failure to induct prisoner

The Ombudsman received a complaint from a prisoner that he had been in prison for over four weeks and had only just managed to contact his family by telephone. The Ombudsman conducted an investigation and found that by failing to induct the prisoner when he entered the prison, as well as failing to induct the prisoner as he entered various different units within the prison, the department acted in manner that was wrong within the meaning of the *Ombudsman Act 1972*. The Ombudsman also found that by failing to assist the prisoner to make phone calls such as a free officer-assisted call that each prisoner receives upon entry to prison, and by failing to pass on messages from the prisoner's wife,

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who had been attempting to get in contact with him, the department acted in a manner that was wrong with the meaning of the *Ombudsman Act*. The Ombudsman made a range of recommendations, including that the department implement a procedure of compliance checks to ensure inductions are being completed, that the department apologise to the complainant, and that the department conduct a review of how contact from family members is managed.

September 2017: [Department for Correctional Services – Unjust and oppressive separation of a prisoner](#)

The Ombudsman received a complaint from a prisoner concerning the circumstances and duration of his separation from other prisoners within G Division (the high security division) of Yatala Labour Prison. The Ombudsman conducted an investigation and concluded that the Department for Correctional Services unreasonably failed to document confidential intelligence information leading to the prisoner's separation, unjustly directed that the prisoner be separated from all other prisoners and contravened section 36(9) of the *Correctional Services Act* by failing to provide a report to the Minister as soon as reasonably practicable after giving the direction. The Ombudsman further found that the department's failure to revoke the separation direction for a period of 66 days was oppressive and was in accordance with a rule of law (namely section 36 of the *Correctional Services Act*) that is oppressive. The Ombudsman issued a range of recommendations, including that the department issue an apology and consider the provision of an ex gratia payment to the prisoner. The Ombudsman also recommended that section 36 of the *Correctional Services Act* be amended to establish a maximum period that a prisoner may ordinarily be kept separated from other prisoners and to require regular review by the Minister of a prisoner's prolonged separation under the Act.

Chief Inspector of the Queensland Corrective Services

By Samay Zhouand

Queensland Chief Inspector.

The Chief Inspector is a statutory position created under the Queensland *Corrective Services Act 2006* to bring scrutiny to the standards and operational practices relating to corrective services systems. The Office of the Chief Inspector (OCI) has multiple functions that help to ensure that Queensland has a strong and evidenced based accountability framework.

The primary way the OCI carries out its mandated function to provide critical oversight of prisoner treatment and the effectiveness of prisoner services is through the inspection and assessment of Queensland's 14 correctional centres against established 37 *Healthy Prison* standards and thematic reviews of specific areas of Queensland Corrective Services (QCS) operations. The standards cover the following eight subject areas:



1. Safety
2. Respect
3. Purposeful Activity
4. Re-entry
5. Women in Custody
6. Vulnerable Prisoners
7. Close Supervision Prisoners
8. Corruption Prevention

All correctional centres are subjected to full announced inspections and follow-up inspections of each centre occur 12 months after the original inspection to monitor and report on the implementation of recommendations. The OCI also conducts inspections and thematic reviews across the spectrum of community based corrections with a view to improving service delivery and maximising offender outcomes. There are 34 district

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offices and 133 reporting services. This includes remote Aboriginal and Torres Strait Islander communities.

An equally important function, and one which is recognised in section 296 of the *Corrective Services Act 2006*, is for the OCI to conduct and coordinate investigations of significant incidents that occur in corrective services facilities and community corrections. Incidents the subject of investigations include escapes, deaths in custody (other than by natural causes), riots or other acts of sustained resistance by prisoners. For community corrections, investigations relate to incidents that have a significant impact on community safety or offender outcomes. As part of these investigations, incidents are critically analysed and recommendations made for improvements with a view to reducing the likelihood of the incident occurring again in the future.

A third important function of the Chief Inspector is the state-wide coordination of the Official Visitor Scheme (OVS). Official Visitors are independent members of the community who visit each correctional centre in the state. The OVS provides a regular, easily accessible and independent program of visitation to assist prisoners to manage and resolve their complaints with QCS. In addition, Official Visitors review key decision and orders in the correctional system such as, for example, safety orders and maximum security orders.

QCS: A Systemic Overview

A reform context:

Queensland Corrective Services is currently undergoing significant reforms following multiple reviews of both community and custodial corrections and its establishment as a standalone State Government department in 2017.

A key reform specific to the role of prison inspections arose out of the Queensland Parole System Review in 2016, with a recommendation to establish an independent external inspectorate of correctional services. When established, the independent inspectorate will form the role of the National Preventative Mechanism for Queensland, working with the Commonwealth Ombudsman, to implement the inspection schedule required for the United Nations *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). The Queensland Government is currently considering how best to create this independent body, which will also be influenced by the Human Rights Bill 2018 that was passed by the Queensland Parliament. The Bill includes provisions to establish a Human Rights Commission in Queensland.

In addition, Queensland Corrective Services is examining the recommendations arising out of the Crime and Corruption Commission's Taskforce Flaxton, which examined corruption risks in the custodial correctional system in Queensland. The reforms, since QCS formed as a department in its own right in 2017, are being led by Commissioner Peter Martin APM

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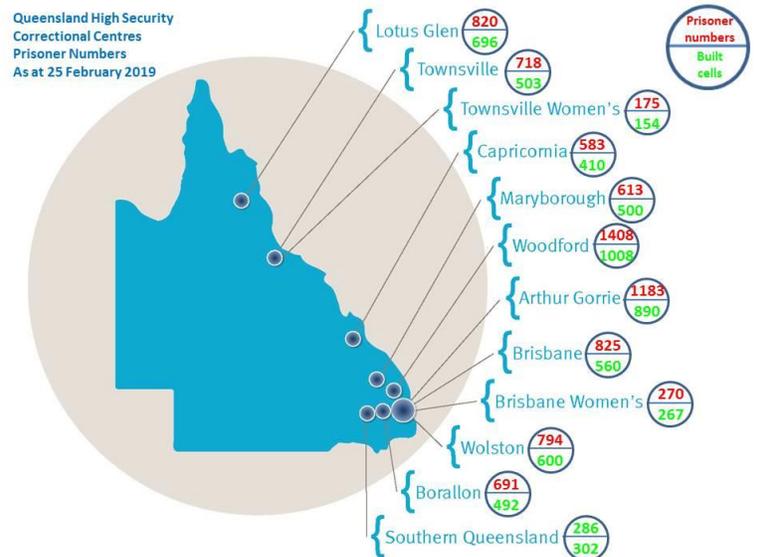
and three new Deputy Commissioners who are supporting the Commissioner to lead generational reforms to ensure QCS is a mature, corruption resistant, top tier frontline public safety agency.

Commissioner Martin joined Queensland Corrective Services in November 2017 after serving the people of Queensland for 38 years in the Queensland Police Service. As Deputy Commissioner, Regional Operations, he was responsible for the strategic direction, leadership, overview and review of the delivery of policing services across all five regions in Queensland.

Like most jurisdictions, Queensland is experiencing major overcrowding in its prisons, which has a flow on effect in terms of the impacts of sharing cells and increased incidents involving staff and prisoners and the increased use of segregation. The department is also refocusing the way it delivers services to the most vulnerable in the system – both in custody and in the community – in particular those with disabilities (including mental health), women and Aboriginal and Torres Strait Islander peoples who are over-represented in the system. Below is a snapshot of the Queensland system.

Relevant snapshot: Queensland Corrective Services

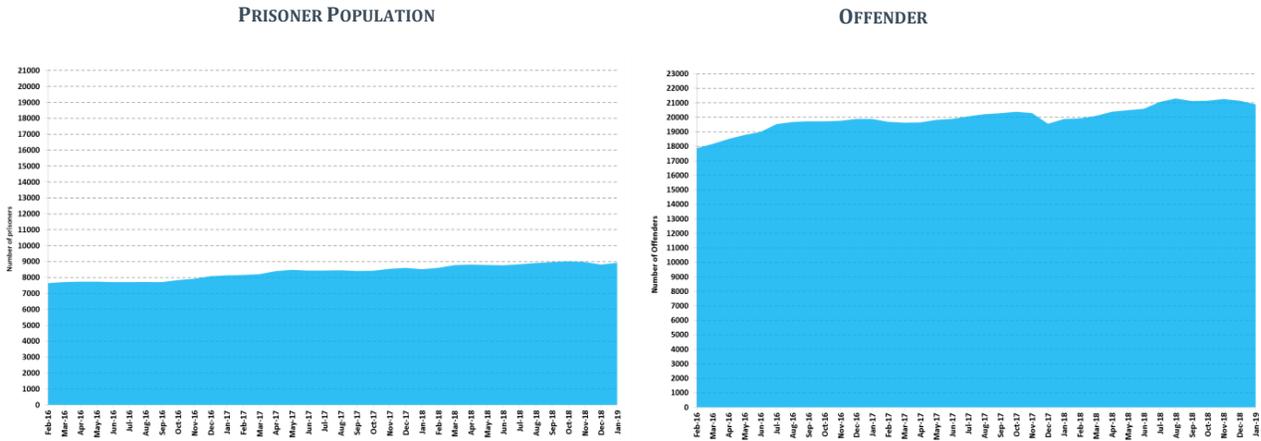
Custodial - Statewide Overview – as at 25 February 2019				
	Male	Female	Total	%
Prisoner Count	8,121	904	9,025	
Indigenous Status				
Indigenous	2,563	330	2,893	32.1%
Non-Indigenous	5,558	574	6,132	67.9%
Prisoners Subject to Terrorism Offences				
Remand	1	0	1	0.01%
Sentenced	2	0	2	0.02%
Prisoners Subject to Parole Suspension – as at 31 January 2019				
Number	1,321	143	1,464	
Sentenced Prisoners				
Serving ≤ 12 months	721	104	825	13.7%
Serving > 12 months	4,778	437	5,215	86.3%



Legal Status	Male		Female		Total	
	No.	%	No.	%	No.	%
Sentenced	5,499	68%	541	59.8%	6,040	67.2%
Remand	2,582	32%	363	40.2%	2,985	32.8%

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Average population by month – three year trend – February 2016 to January 2019



Community Corrections Statewide overview – as at 31 January 2019

	Male	Female	Total
Offender Total – Distinct Count	15,991	4,930	20,921
Indigenous Status – Distinct Count			
Indigenous	3,562	1,326	4,888
Non-Indigenous	12,429	3,604	16,033
Order Types			
Supervision orders	14,169	4,270	18,439
Reparation Orders	2,829	1,020	3,849
Parolees Subject to Electronic Monitoring as at 25 February 2019			
Number	195	5	200

Academic Articles

Ahalt, C., Rothman, A., & Williams, B. A. (2017). Examining the role of healthcare professionals in the use of solitary confinement. *BMJ*, 359, j4657.

Prison healthcare professionals work in a unique clinical environment designed to punish rather than to heal. Amid global calls for penal reform, healthcare professionals have an ethical responsibility to speak out about correctional practices that endanger health and human rights. We examine this responsibility in relation to prolonged solitary confinement, a practice that persists in prisons around the world. [[Link to Article](#)]

Gendreau, P., & Labrecque, R. M. (2018). The Effects of Administrative Segregation. *The Oxford handbook of prisons and imprisonment*, 340.

Abstract

This essay considers debate over the extent to which some inmates should be isolated from others within prison, the impact of isolation on psychological well-being during confinement, and the implications for supermax prisons with 23-hour lockdown. The need for administrative segregation and solitary confinement is assessed in the context of improving the safety of individual inmates as well as preventing collective violence. These ideas are contrasted with the downside of isolation, including the possibility of compounding problems with existing mental illnesses, the development of “new” psychological problems during confinement, increased demands for psychological and psychiatric resources, and the problems posed for successful re-entry. However, contrary to some scholarly discourses, evidence to date suggests that administrative segregation does not produce dramatic negative psychological effects unless extreme conditions apply. [[Link to Article](#)]

Haney, C. (2018). Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285-310.

A robust scientific literature has established the negative psychological effects of solitary confinement. The empirical findings are supported by a theoretical framework that underscores the importance of social contact to psychological as well as physical well-being. In essence, human beings have a basic need to establish and maintain connections to others and the deprivation of opportunities to do so has a range of deleterious consequences. These scientific conclusions, as well as concerns about the high cost and lack of any demonstrated penological purpose that solitary confinement reliably serves,

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have led to an emerging consensus among correctional as well as professional, mental health, legal, and human rights organizations to drastically limit the practice. [[Link to Article](#)]

Labrecque, R. M., & Mears, D. P. (2019). Prison system versus critics' views on the use of restrictive housing: Objective risk classification or ascriptive assignment? *The Prison Journal*.

Abstract

Despite the widespread use of restrictive housing in correctional institutions, little is known about the factors associated with placement in this setting. This study advances two theoretical arguments about the use of this practice. The prison system view argues this housing is essential for institutional order and that, accordingly, only inmates who pose an objective risk to safety get placed in such housing. By contrast, the critics' view argues this housing causes adverse effects and disproportionately targets certain inmates based on their ascriptive characteristics, such as their mental health status or race. The results indicate support for both perspectives. [[Link to Article](#)]

Shalev, S. (2017). Solitary confinement as a prison health issue. *WHO Guide to Prisons and Health*, p. 27-35. (2014 Ed.). Copenhagen: World Health Organization.

The present commentary documents how correctional authorities can capitalize on law-and-order politics, find new ways to advance their own agenda, and enjoy a certain degree of immunity from public scrutiny. It examines the impact on federal corrections of a decade of tough on crime policies in Canada, reviews correctional and conditional release statistics, and analyses trends that shaped federal corrections over that period. It also highlights how law and-order politics can influence the internal culture of correctional authorities and human rights compliance. [[Link to Article](#)]

Smith, P. (2009). Solitary confinement – History, practice, and human rights standards. *Prison Service Journal*. 3-11.

This paper traces the history of solitary confinement and the gradual development of what eventually became human rights standards on the use of isolation in prisons. [[Link to Article](#)]

PRISON OMBUDS...IN THE NEWS!

Prison Ombuds...in the News!

DEBORAH GLASS



Checks on Vic youth solitary confinement.
[\[Kaitlyn Offer, *The Australian*, Mar. 4, 2019\]](#)

FIONA RAFTER



NSW youth detainees subjected to inappropriate strip searches and isolation, report finds.
[\[Kevin Nguyen & Angelique Lu, *ABC News*, Nov. 23, 2018\]](#)

NEIL McALLISTER



Canberra prisons watchdog announced.
[\[Michael Inman, *Canberra Times*, Mar. 14, 2018\]](#)

WAYNE LINES



SA Ombudsman wants prisoner held in solitary confinement for 66 days to be compensated.
[\[Peter Jean, *The Advertiser*, Oct. 19, 2017\]](#)

SAMAY ZHOUAND



Inside Australia's 'powder keg' private prison.
[\[Mark Willacy & Alexandra Blucher, *ABC Investigations*, Jun. 20, 2018\]](#)

NEIL MORGAN



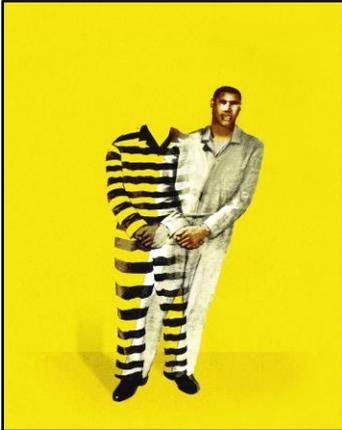
Prisoner mental health services attacked in damning Inspector of Custodial Services report.
[\[Nicolas Perpetch, *ABC News*, Nov. 27, 2018\]](#)

Events

- Technology in Corrections: Digital Transformation / Apr. 2019 / [Details](#)
- Spring Conference on Correctional Health Care / Apr. 2019 / [Details](#)
- Justice Health Conference / Apr. 2019 / [Details](#)
- 5th Biennial Alberta Criminal Justice Symposium / May 2019 / [Details](#)
- 4th North Amer. Correctional & Crim. Just. Psych. Conference / May 2019 / [Details](#)
- 15th Reintegration Puzzle Conference / June 2019 / [Details](#)
- Correctional Mental Health Care Conference / July 2019 / [Details](#)
- American Correctional Association's 149th Congress / Aug. 2019 / [Details](#)
- Forum on Criminal Justice / Sep. 2019 / [Details](#)
- Correctional Services Healthcare Summit / Sep. 2019 / [Details](#)
- ICPA 21st AGM and Conference / Oct. 2019 / [Details](#)
- 2nd European Conference on Prison Health / Oct. 2019 / [Details](#)
- Canadian Criminal Justice Association Congress / Nov. 2019 / [Details](#)
- 2019 ANZSOC Conference / Dec. 2019 / [Details](#)
- ICPA 22nd AGM and Conference / Oct. 2020 / Details to be confirmed

NEW PUBLICATIONS

New Publications!

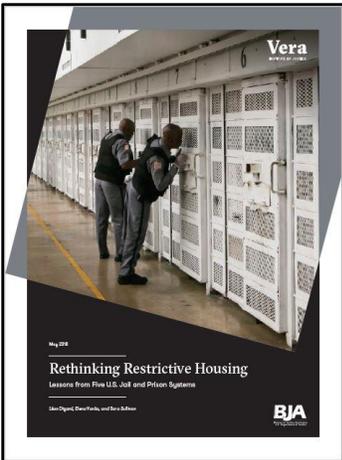


[Reimagining Prison \(October 2018\)](#)

Vera Institute of Justice

Authors: Delaney, R., Subramanian, R., Shames, A., & Turner, N.

“This document—unlike anything we have ever produced at the Vera Institute of Justice (Vera)—is about the possibility of radical change. It asserts a dramatic reconsideration of the most severe criminal sanction we have: incarceration. It articulates a view that is sure to be alien to many. Yet we need not accept as a given the way we do things now, and we encourage you to envision a different path.”

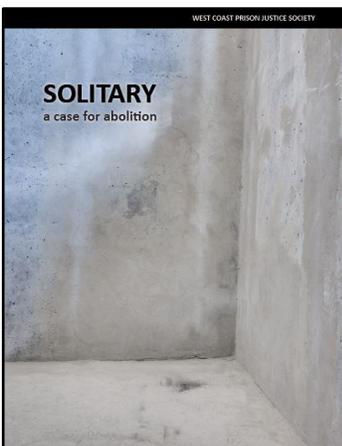


[Rethinking Restrictive Housing \(May 2018\)](#)

Vera Institute of Justice

Authors: Digard, L., Vanko, E., & Sullivan, S.

“A number of departments of corrections are now taking steps to reduce their reliance on restrictive housing. Through a competitive application process, Vera selected and worked with five sites—Nebraska; Oregon; North Carolina; New York City; and Middlesex County, New Jersey—to study their use of restrictive housing and make recommendations for ways to reduce the practice. This report summarizes Vera’s key findings and recommendations.”

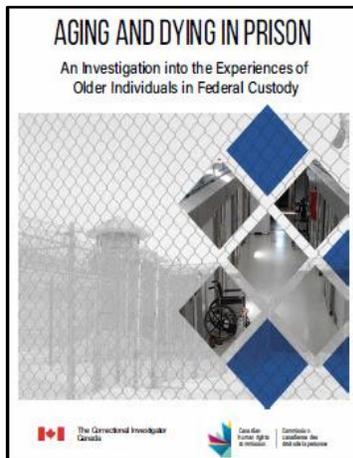


[Solitary: A Case for Abolition \(November 2016\)](#)

West Coast Prison Justice Society, British Columbia, Canada.

“This report draws upon history, research and examples from other jurisdictions and contexts, to provide a set of recommendations for establishing best practices for the care of one of the most vulnerable populations in Canada – prisoners at risk of solitary confinement.”

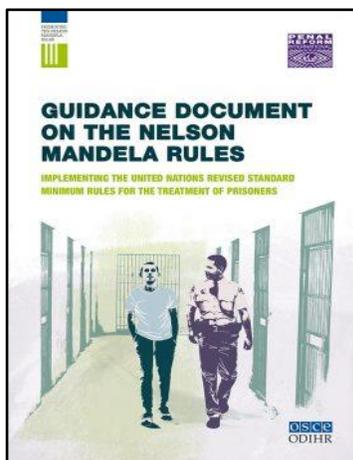
NEW PUBLICATIONS



[AGING AND DYING IN PRISON: An Investigation into the Experiences of Older Individuals in Federal Custody \(February 2019\)](#)

Office of the Correctional Investigator of Canada.

“The Office of the Correctional Investigator (the Office) and the Canadian Human Rights Commission (the Commission) conducted a joint investigation examining the experiences of older individuals (50 years of age and older) in federal custody and those supervised in the community. The partnership between the Office and the Commission provided perspective in how to ensure public safety while respecting and protecting the unique needs, dignity and rights of older persons under federal sentence.”



[GUIDANCE DOCUMENT ON THE NELSON MANDELA RULES \(2018\)](#)

Penal Reform International

“Produced by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Penal Reform International (PRI), this document provides guidance for implementing the revised UN Standard Minimum Rules for the Treatment of Prisoners, known as the UN Nelson Mandela Rules.”