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Australia falling behind on OPCAT obligations

The Law Council of Australia is very concerned the United Nations Subcommittee on Prevention of Torture (SPT) felt it had no choice but to suspend its visit to Australia in light of the obstructions it encountered in carrying out its mandate to inspect any and all places of detention it sees fit.

“The Law Council strongly welcomed Australia’s ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017 as a historic step,” Law Council of Australia President, Mr Tass Liveris said.

OPCAT is designed to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

“As a party to OPCAT, Australia is required to establish a system of regular visits, to be undertaken by independent international and national bodies, to all places of detention in Australia, including prisons, juvenile and immigration detention and mental health facilities,” Mr Liveris said.

“Independent and regular external scrutiny provides an important incentive for those running detention facilities to develop effective prevention strategies.

“Australia is obliged to receive the SPT and grant it access to places of detention, providing all relevant information and contacts required to enable it to perform its functions. It must grant unrestricted access to persons deprived of their liberty and allow the SPT to choose the places it wants to visit and the persons it wants to interview.

“The role of SPT should be viewed by all jurisdictions as a positive one, which is to monitor and provide recommendations and assistance to improve our places of detention. It is also a positive for the Australian public, given that SPT scrutiny can increase transparency regarding the situation of vulnerable children and adults in closed detention conditions.

“The issues which the SPT is likely to investigate are not fanciful, but are of real ongoing concern in Australia. They include conditions in juvenile and immigration detention, current practices regarding the seclusion and restraint of persons with disability, and the treatment of Aboriginal and Torres Strait Islander peoples in detention. Concerns about systemic failures in these areas have been the subject of recent Royal Commissions.

“The Law Council strongly supports urgent national dialogue between the federal, state and territory governments to ensure that the SPT can carry out its critical role.”

The Law Council is concerned that national momentum regarding OPCAT has stalled since ratification, and that across multiple jurisdictions, core gaps remain in the primary legislation, resourcing and coordinating frameworks which are required.

“We endorse a continuing central and constructive role for Australia in the international human rights system,” Mr Liveris said. “To do so effectively, Australia must be seen to play its part in upholding its international obligations domestically.”

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