

Health aged care and retirement living briefing

Preventive visits to aged care facilities and disability accommodation – it's only a matter of time

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Aged care facilities and disability accommodation can be places of detention under the Optional Protocol to the Convention Against Torture

The *Optional Protocol to the Convention Against Torture (OPCAT)* requires the Australian Government to appoint an independent body (known as a National Preventive Mechanism (**NPM**)) to do preventive visits to places of detention. The definition of 'places of detention' goes beyond those traditionally thought of such as prisons or police cells.

In fact, a place of detention under OPCAT includes aged care facilities and community based disability accommodation where residents may be deprived of their liberty. A person will be deprived of their liberty if they are not permitted to leave at will. For example, a resident residing in a locked dementia unit or community based disability accommodation where the external doors or gates are locked to prevent a resident from leaving.

The purpose of preventive visits is to pre-emptively examine the systems and experiences in places of detention rather than respond to specific incidents or complaints. Notably, international guidance recommends a third of visits should be unannounced, although this is not mandatory under OPCAT.

In December 2017 Australia ratified OPCAT but exercised its right to delay its operation for three years. In December this year that period comes to an end and Australia will be required to comply with OPCAT.

Prior to ratifying OPCAT the Attorney-General at the time, George Brandis, announced that Australia would only be conducting preventive visits at primary places of detention 'such as prisons, juvenile detention, police cells and immigration facilities'.

The Commonwealth Ombudsman (**Ombudsman**) (designated the NPM Coordinator) reinforced this approach by only focusing on primary places of detention in its 2019 report that explored Australia's readiness to implement OPCAT.

However, the Ombudsman also indicated that as Australia's ability to conduct preventive visits increases, the places of detention visited must be expanded to the broad definition under OPCAT. This is necessary for Australia to meet its international obligations.

While aged care facilities and community based disability accommodation will be initially excused from preventive visits, it is simply a matter of time before they are included within the scope of places to be visited. This time may be sped up by both the Aged Care and Disability Royal Commissions.

Some international experiences of implementing OPCAT follow a similar pathway to that mapped out by the Ombudsman.

For example, Germany initially limited the scope of its NPM to primary places of detention. But as the NPM's resources and systems developed, it expanded the scope to include aged care facilities.

The New Zealand NPM's initial scope included secure, state-run health and disability facilities including residents in locked dementia units. However, its scope was only expanded to include privately run aged care facilities in June 2018. This expansion occurred 11 years after New Zealand ratified OPCAT and is expected to take three years to implement.

“ A 'place of detention' reaches far beyond those that traditionally come to mind. ”

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