



Women  
With  
Disabilities  
Australia  
(WWDA)

Winner, National Human Rights Award 2001  
Winner, National Violence Prevention Award 1999  
Winner, Tasmanian Women's Safety Award 2008  
Certificate of Merit, Australian Crime & Violence Prevention Awards 2008  
Nominee, UNESCO Prize for Digital Empowerment of Persons with Disabilities 2020  
Nominee, National Disability Awards 2017  
Nominee, French Republic's Human Rights Prize 2003  
Nominee, UN Millennium Peace Prize for Women 2000

Subcommittee on Prevention of Torture and other Cruel,  
Inhuman or Degrading Treatment or Punishment (SPT)  
Human Rights Council and Treaty Mechanisms Division  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland  
Via Email: [ohchr-opcat@un.org](mailto:ohchr-opcat@un.org)  
Via Email: [ohchr-opcat@un.org](mailto:ohchr-opcat@un.org)  
Via Email: [cat@ohchr.org](mailto:cat@ohchr.org)

Cc Via Email: Dr. Alice Jill Edwards, Special Rapporteur on torture and other cruel, inhuman or degrading  
treatment or punishment, Via Email: [hrc-sr-torture@un.org](mailto:hrc-sr-torture@un.org)

Date: 23<sup>rd</sup> August 2022

Dear Ms Suzanne Jabbour (Chair) and SPT Subcommittee members,

I write from Women With Disabilities Australia (WWDA)<sup>1</sup>, the National Disabled People's Organisation (DPO) and National Women's Alliance (NWA) for women, girls, feminine identifying, and non-binary people with disability in Australia. As a DPO<sup>2</sup> and an NWA,<sup>3</sup> WWDA is governed, run, led, staffed by, and constituted of, women, girls, feminine identifying, and non-binary people with disability.

WWDA uses the term 'women and girls with disability', on the understanding that this term is inclusive and supportive of, women and girls with disability along with feminine identifying and non-binary people with disability in Australia.<sup>4</sup>

WWDA writes to you, with the utmost respect, regarding the SPT forthcoming visit to Australia in October this year. Our organisation is pleased that the SPT will be visiting Australia to undertake its mandate – given that Australia is a party to OPCAT.

WWDA appreciates the work of the UN Committee Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the SPT in your respective recent work to clarify to States Parties, the mandate of OPCAT and the SPT.

WWDA understands that, under the OPCAT, the SPT has unrestricted access to all places of detention, their installations, and facilities and to all relevant information relating to the treatment of persons and to conditions of detention. We further acknowledge that the SPT must also be able to

**Women With Disabilities Australia (WWDA)**

[wwda.org.au](http://wwda.org.au)

Ph: +61 438 535 123

PO Box 407, Lenah Valley, 7008 TASMANIA

*WWDA has Special Consultative Status with the Economic and Social Council of the United Nations*



Women  
With  
Disabilities  
Australia  
(WWDA)

undertake private and confidential interviews with both persons deprived of their liberty and any other person who, in the SPT's opinion, may supply it with relevant information.

The Australian Human Right Commission's (AHRC) Final Report '*Implementing OPCAT in Australia*' (2020),<sup>5</sup> which was developed through an extensive consultation process, reinforced the mandate of OPCAT, being that:

*'For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.'*<sup>6</sup>

Guidance from the SPT makes it clear that:

*[T]he preventive approach which underpins the OPCAT means that as expansive an interpretation as possible should be taken in order to maximise the preventive impact of the work of the NPM ... The SPT therefore takes the view that any place in which a person is deprived of liberty (in the sense of not being free to leave), or where it considers that a person might be being deprived of their liberty, should fall within the scope of its visiting mandate – and, in consequence, under the visiting mandate of an NPM – if it relates to a situation in which the State either exercises, or might be expected to exercise a regulatory function.'*<sup>7</sup>

It is now well established in international law that social care, disability, health, and mental health settings are places where torture and ill treatment can and do occur. The national consultation undertaken in Australia by the AHRC, clearly articulated in its final report '*Implementing OPCAT in Australia*' (2020)<sup>8</sup>, that it is critical that the implementation of OPCAT in Australia must include disability specific settings (such as group homes and other forms of segregated and closed settings), along with mainstream settings (where people with disability are deprived of their liberty) and also residential aged care settings - recognising that these are settings where people with disability are not only deprived of their liberty, but are also subject to, and at significant risk of, violence, abuse, neglect and exploitation.

Our organisation is deeply concerned that the Australian Government's National Preventive Mechanism (NPM) which rests with the Commonwealth Ombudsman,<sup>9</sup> is severely limiting the places and settings in Australia that should be "covered" by OPCAT. We are also profoundly

**Women With Disabilities Australia (WWDA)**

wwda.org.au

Ph: +61 438 535 123

PO Box 407, Lenah Valley, 7008 TASMANIA

WWDA has Special Consultative Status with the Economic and Social Council of the United Nations



concerned that the respective Australian State and Territory governments, are also seriously limiting the intended scope of the implementation of OPCAT in Australia.

The Australian Government has clarified that, Australian monitoring schemes under OPCAT will cover only 'primary places of detention' where people are detained involuntarily for 24 hours or more. This federal government approach to OPCAT implementation is considered idiosyncratic and controversial. It excludes, for example, offshore immigration centres, as well as secure residential aged care facilities (RACFs) and disability group homes (DGHs) where many residents are behind locked doors or unable to leave.<sup>10</sup>

In 2019, the Committee on the Rights of Persons with Disabilities provided its Concluding Observations<sup>11</sup> on the combined second and third periodic report of Australia.<sup>12</sup> In the context of CRPD Article 15 (Freedom from torture and cruel, inhuman, or degrading treatment or punishment), the CRPD Committee expressed its concerns about:

- (a) Legislation, policies and practices that allow for psychotropic medication, physical restraint and seclusion under the guise of "behaviour modification" or restrictive practices against persons with disabilities, including children, in any setting, such as justice, education, health, psychosocial and aged care facilities.
- (b) The reported abuse of Indigenous young persons with disabilities by fellow prisoners and staff, prolonged solitary confinement, particularly of persons with intellectual or psychosocial disabilities, and a lack of safe and accessible channels for complaints.
- (c) Lack of engagement with persons with disabilities through their representative organizations regarding the designation and establishment of a disability inclusive National Preventive Mechanism (NPM).

The CRPD Committee subsequently made the following recommendations to Australia in its 2019 Concluding Observations:

- (a) Establish a nationally consistent legislative and administrative framework for the protection of all persons with disabilities, including children, from psychotropic medication, physical restraint and seclusion under the guise of "behaviour modification" and the elimination of restrictive practices, including domestic discipline/corporal punishment, in all settings.
- (b) Introduce policies and measure to protect persons with disabilities, including Indigenous youth with disabilities and persons with intellectual or psychosocial disabilities, from abuse



Women  
With  
Disabilities  
Australia  
(WWDA)

by fellow prisoners and staff and ensure that persons with disabilities cannot be held in solitary confinement.

(c) Ensure that organisations of persons with disabilities can effectively engage in the establishment and work of the national preventive mechanism.<sup>13</sup>

In relation to the SPT's upcoming visit to Australia, our organisation strongly urges the SPT to visit and include disability specific settings (such as group homes and other forms of segregated and closed settings), along with mainstream settings (where people with disability are deprived of their liberty) and also residential aged care settings – in order to give full effect to the OPCAT and SPT mandates.

In addition, we respectfully request that the SPT meet directly with the following Australian academics who have been working specifically on the implementation of CAT and OPCAT in Australia.

- Associate Professor Dinesh Wadiwel (The University of Sydney)
- Dr Claire Spivakovsky (University of Melbourne)
- Associate Professor Linda Steele (University of Technology Sydney)

These researchers have recently undertaken significant work in this area and are widely respected in Australia for their work. They have worked, and continue to work, as a Consortium specifically on the implementation of CAT and OPCAT in Australia.

The contact person for the Consortium of these three highly esteemed researchers is:

Associate Professor Dinesh Wadiwel  
Socio-Legal Studies and Human Rights  
Department of Sociology and Social Policy  
School of Social and Political Sciences  
The University of Sydney  
Tel. +61 2 9351 4811  
Email: [dinesh.wadiwel@sydney.edu.au](mailto:dinesh.wadiwel@sydney.edu.au)

WWDA trusts that the SPT will be able to meet with the Consortium members during its upcoming visit to Australia. Our organisation, as a DPO has been fortunate to collaborate with the Consortium on its work regarding OPCAT and CAT.

**Women With Disabilities Australia (WWDA)**

[wwda.org.au](http://wwda.org.au)

Ph: +61 438 535 123

PO Box 407, Lenah Valley, 7008 TASMANIA

*WWDA has Special Consultative Status with the Economic and Social Council of the United Nations*



Women  
With  
Disabilities  
Australia  
(WWDA)

WWDA looks forward to the SPT's upcoming visit to Australia, and trusts that the SPT will take our concerns into account. Along with this letter, we attach a report, published in 2020, from the Australia OPCAT Network (of which we are a member) entitled '*The Implementation of OPCAT in Australia*'. Chapter 3 of this Report deals with the issues for people with disability in the context of OPCAT implementation in Australia.

WWDA thanks the SPT for the opportunity to provide this correspondence. We look forward to engaging with the SPT and hearing the outcomes of your visit to Australia.

With kind regards

Carolyn Frohmader

Carolyn Frohmader  
Executive Director

*Finalist, 100 Women of Influence Awards 2015*  
*Australian Human Rights Award (Individual) 2013*  
*State Finalist Australian of the Year 2010*  
*Inductee, Tasmanian Women's Honour Roll 2009*  
*Australian Capital Territory Woman of the Year Award 2001*

<sup>1</sup> See: <https://wwda.org.au/>

<sup>2</sup> Disabled People's Organisations (DPOs) are recognised around the world, and in international human rights law, as self-determining organisations led by, controlled by, and constituted of, people with disability. DPOs are organisations of people with disability, as opposed to organisations which may represent people with disability. The United Nations Committee on the Rights of Persons with Disabilities has clarified that States should give priority to the views of DPOs when addressing issues related to people with disability. The Committee has further clarified that States should prioritise resources to organisations of people with disability that focus primarily on advocacy for disability rights and, adopt an enabling policy framework favourable to their establishment and sustained operation. See: Committee on the Rights of Persons with Disabilities, *General Comment No. 7 on the Participation of Persons with Disabilities, Including Children with Disabilities, through Their Representative Organizations, in the Implementing and Monitoring of the Convention*, UN Doc CRPD/C/GC/7 (9 November 2018).

<sup>3</sup> <https://www.pmc.gov.au/office-women/grants-and-funding/national-womens-alliances>

<sup>4</sup> WWDA represents more than 2 million women and girls with disability in Australia, has affiliate organisations and networks of women with disability in most States and Territories, and is recognised nationally and internationally for our leadership in advancing the rights and freedoms of all women and girls with disability. Our organisation operates as a transnational human rights organisation - meaning that our work, and the impact of our work, extends much further than Australia. WWDA's work is grounded in a human-rights based framework which links gender and disability issues to a full range of civil, political, economic, social and cultural rights. All WWDA's work is based on co-design with and participation of our members. WWDA projects are all designed, governed, and implemented by women and girls with disability. See: [wwda.org.au](http://wwda.org.au)

<sup>5</sup> Australian Human Rights Commission (AHRC) (2020) *Implementing OPCAT in Australia*. ISBN: 978-1-925917-23-9. Available at: <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>

**Women With Disabilities Australia (WWDA)**

[wwda.org.au](http://wwda.org.au)

Ph: +61 438 535 123

PO Box 407, Lenah Valley, 7008 TASMANIA

*WWDA has Special Consultative Status with the Economic and Social Council of the United Nations*



Women  
With  
Disabilities  
Australia  
(WWDA)

---

<sup>6</sup> Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art 4(2). Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

<sup>7</sup> Cited in: The Australia OPCAT Network (2020) The Implementation of OPCAT in Australia. Available at:

[https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Implementation\\_of\\_OPCAT\\_in\\_Australia.pdf](https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Implementation_of_OPCAT_in_Australia.pdf)

<sup>8</sup> Australian Human Rights Commission (AHRC) (2020) Implementing OPCAT in Australia. ISBN: 978-1-925917-23-9. Available at:

<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>

<sup>9</sup> See: <https://www.ombudsman.gov.au/what-we-do/monitoring-places-of-detention-opcat>

<sup>10</sup> Grenfell, L. & Caruana, S. (2022) Are we OPCAT ready? So far, bare bones. Australia Alternative Law Journal 2022, Vol. 0(0) 1–6.

<sup>11</sup> Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 511<sup>th</sup> meeting (20 September 2019) of the 22<sup>nd</sup> session; UN Doc. CRPD/C/AUS/CO/2-3.

<sup>12</sup> [Combined second and third periodic reports submitted by Australia under article 35 of the Convention](#) (CRPD). Date of submission 7 September 2018. UN Doc. CRPD/C/AUS/2-3.

<sup>13</sup> Committee on the Rights of Persons with Disabilities (2019) [Concluding observations on the combined second and third periodic reports of Australia](#), adopted by the Committee at its 511<sup>th</sup> meeting (20 September 2019) of the 22<sup>nd</sup> session; UN Doc. CRPD/C/AUS/CO/2-3.

**Women With Disabilities Australia (WWDA)**

wwda.org.au

Ph: +61 438 535 123

PO Box 407, Lenah Valley, 7008 TASMANIA

*WWDA has Special Consultative Status with the Economic and Social Council of the United Nations*