

## Victoria has spent billions on prisons, but has shirked its duty to oversight



*Aboriginal and Torres Strait Islander people are three times more likely to die in custody because of inadequate medical care compared to non-Indigenous people.*

By Nerita Waight and Andreea Lachsz  
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The truth is an essential foundation for justice. We must understand the reality of existing circumstances before we can repair the damage caused by injustice. This is the principle that underpins truth-telling processes like the Yoo-rrook Justice Commission and it is also the principle at the foundation of the independent oversight of detention.

While the Yoo-rrook Justice Commission has been established for some time now and is just months away from publishing an interim report, the Victorian government has made no progress on establishing independent detention oversight.

Four years ago, Australia ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Under OPCAT, the Commonwealth, state and territory governments are required to set up independent detention oversight bodies. These bodies would have the power to make unannounced inspection visits to all places of detention, including prisons, youth detention facilities and police cells.

The visits would allow the body to witness the operation of a facility and speak directly to the people detained within them. After collecting this evidence, the independent detention oversight body would identify poor or corrupt practices that were leading to the mistreatment of people in those facilities and make recommendations for improvements.

The independent body could then publish their findings, the truth, publicly if they believed it would lead to better practices within the facility.

This approach is unique, in that it is forward-looking, rather than being reactive like our existing oversight bodies.

The Victorian and Commonwealth governments' inaction means they will now inevitably miss the January 2022 OPCAT implementation deadline. While that might not be surprising, given the 30-year failure to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody, it is disappointing, to say the least.

With Aboriginal people being grossly over-represented in Victoria's criminal legal system and prisons, they will, once again, suffer the most as a result of this government's failure to implement independent detention oversight.

Culturally appropriate OPCAT implementation is critical. And yet, despite the Victorian Aboriginal Legal Service's repeated requests for the Andrews government to conduct robust consultations with the Aboriginal community and Aboriginal Community Controlled Organisations, not even this first step on the path to establishing independent detention oversight has taken place. In contrast, many other Australian governments have commenced consultations, drafted legislation or designated their detention oversight bodies.

Fair access to medical care in prisons is an issue that a Victorian detention oversight body could investigate. Incarcerated people are excluded from accessing Medicare and the Pharmaceutical Benefits Scheme. This is particularly egregious during a pandemic that has seen the extensive use of quarantine in prisons for all new receptions and a delayed vaccination rollout compared to the rest of the community.

We know that Aboriginal and Torres Strait Islander people are three times more likely to die in custody because of inadequate medical care compared to non-Indigenous people.

*"All you need to understand is that it is about exposing the truth to achieve justice."*

With damning reports by both the Victorian Ombudsman and the Independent Broad-based Anti-Corruption Commission last year, it is indisputable that Victoria needs more transparency and accountability across the prison system.

Victoria needs a mechanism for ongoing preventive oversight of detention, with regular and unimpeded access to detained people. The Victorian government has the

opportunity and the power (and obligation) to save the lives of Aboriginal people right now, and waiting for the outcomes of other processes is an unethical political decision.

Despite this, in its last budget, the Victorian government allocated only \$500,000 over four years for OPCAT implementation, a woefully inadequate amount. The same government has spent billions of dollars on police and prisons, resulting in Victoria's expenditure on the justice system growing at twice the rate of other states over the last decade.

Of course, the Commonwealth government is also complicit, shirking its responsibilities to the international and Australian community. It has made a similarly inadequate commitment to one-off funding, of an undisclosed amount, for OPCAT implementation under its Closing the Gap Implementation Plan.

A progressive Victorian government would not breach its international human rights obligations, ignore expert advice, and continually fail to implement urgently needed reforms. Failing to act on bail reform, raising the age of criminal responsibility and OPCAT implementation is, to put it bluntly, regressive.

It can be hard to understand the importance of Victoria's obligation to implement independent detention oversight under Australia's OPCAT commitment. We can all get lost in the dense and technical language. But to understand OPCAT, all you need to understand is that it is about exposing the truth to achieve justice.

With upcoming elections this year, it is time for the Victorian and Commonwealth governments to work with Aboriginal communities to end Aboriginal deaths in custody.

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