

To: Attorney-General Mark Dreyfus KC MP
Foreign Affairs Minister Senator Penny Wong
Human Affairs Minister Clare O'Neil MP
Immigration Minister Andrew Giles MP
Employment and Workplace Relations Minister Tony Burke MP – concerning *Work Health and Safety Act 2011* (WHS Act) non-compliances by Home Affairs re immigration detainees

From: Refugee Action Collective (Victoria) (RAC (Vic))

Re: Obstruction of the UN Subcommittee on Prevention of Torture (SPT) – issues arising

Date: 1 November 2022

Dear Ministers

RAC (Vic) agrees with the widespread expressions of concern and/or condemnation by, inter alia, the Australian Human Rights Commission and the 70 groups and individuals who signed the letter prepared by Australian Lawyers for Human Rights. The NSW and Queensland obstruction that prompted the SPT's abrupt departure on 24/10/22 has further tarnished Australia's already deteriorating international reputation in relation to human rights. Prompt rectification is vital.

Of the facilities that deprive people of liberty and thus come under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) and its *Optional Protocol* (OPCAT), only immigration detention facilities (IDFs) directly concern RAC (Vic). We note below the previous government's delays in implementing OPCAT, then draw your attention to a history of apparently systemic detainee-related CAT breaches, by Immigration/Home Affairs, within IDFs.

LNP delays

When Australia (via the Turnbull LNP government) ratified OPCAT in December 2017, it postponed the obligation to form a National Preventive Mechanism (NPM) Network – the local implementation/compliance OPCAT group needed to complement the UN's international group (SPT) – 'til 20/1/22. In May 2022, the UN Committee against Torture acceded to the Morrison LNP government's request to postpone the NPM deadline by another year, to 20/1/23. It did so "on the assumption that the State [Australia] will establish its [NPM] in full adherence [with OPCAT] provisions ..." by then.

Update

The Cth Ombudsman's NPM bulletin of 26/10/22 noted that only 6 of Australia's 9 governments had thus far nominated their NPM representatives: Qld, NSW and Vic were yet to do so. Meanwhile, the SPT's first visit to Australia, originally listed for April 2020 but COVID-delayed, had been rescheduled to occur on 16–27 October 2022. The SPT, prior to its abrupt departure, visited at least one IDF known to RAC (Vic) – MITA (the Melbourne Immigration Transit Accommodation facility).

Systemic CAT non-compliances by Immigration/Home Affairs re IDF detainees – for example:

- 15 un-prevented sexual assaults of child detainees at Nauru's regional processing centre (RPC) 2012–2015;
- failure to provide at PNG's Manus Island RPC (a) Meropenem (a vital, tropical infections antibiotic), and (b) a regime of quick emergency medical airlifts to Australia – failures that the Qld State coroner's report said contributed to the "preventable" death, in 2014 at a Brisbane hospital, of detainee Hamid Khazaei;
- 8,000 forced inter-IDF airlifts of detainees (often handcuffed) 2017–19, averaging 6 airlifts per detainee pa;
- Home Affairs' sabotage of the 'Medevac' amendments to the *Migration Act 1958* in 2019 while they were still in force, denying "medical or psychiatric assessment or treatment" to most Medevac transferees; and
- 10+ years of detainee-related non-compliances with WHS Act duties, offshore and onshore, by Immigration /Home Affairs/Australian Border Force – most also amounting to CAT non-compliances.

RAC (Vic) will shortly provide evidence of the above in a submission to the Ombudsman and SPT.

Yours sincerely

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