

Recent developments

Katherine Cook

New ACLEI Commissioner appointed

Commonwealth Attorney-General Christian Porter is pleased to announce that Ms Jaala Hinchcliffe has been appointed to lead the Australian Commission for Law Enforcement Integrity (ACLEI).

Ms Hinchcliffe is currently the Deputy Commonwealth Ombudsman, a position she has held since November 2017.

From 2015 to 2017, Ms Hinchcliffe was an Assistant Secretary in the Department of Parliamentary Services, and held senior executive positions in the Office of the Commonwealth Director of Public Prosecutions from 2007 to 2015.

Her appointment comes at a key time for ACLEI — the agency responsible for detecting, investigating and preventing criminality and corruption in Commonwealth law enforcement agencies.

‘I congratulate Ms Hinchcliffe on her appointment and I am confident she will be a strong and diligent leader in the Morrison Government’s ongoing efforts to prevent corruption within the public sector’, the Attorney-General said.

Ms Hinchcliffe commences her appointment on 10 February for a period of five years.

The Attorney-General also acknowledged the valuable work of outgoing ACLEI Commissioner, Mr Michael Griffin AM, and thanked him for continuing in the role until Ms Hinchcliffe’s commencement.

<<https://www.attorneygeneral.gov.au/media/media-releases/new-aclei-commissioner-appointed-7-february-2020>>

Report on the current state of immigration detention facilities

The Commonwealth Ombudsman, Michael Manthorpe PSM, has published a report about his Office’s activities in overseeing immigration detention during the first half of 2019.

This report summarises the Commonwealth Ombudsman’s oversight of immigration detention facilities during the period from January to June 2019. It draws on observations from the Office’s inspections of immigration detention centres during the period as well as other aspects of its oversight, including handling of complaints and preparation of assessments of the circumstances of people in long-term detention.

This Office has conducted inspections of immigration detention facilities since 2011. Previously the Office has shared its observations directly with the department, the Australian Border Force (ABF) and their service providers and published a summary in the Ombudsman’s

annual report. This report marks the first instance in which the Ombudsman has publicly released a report regarding his Office's activities in overseeing immigration detention.

In 2018 the Ombudsman's Office was made the National Preventive Mechanism (NPM) with responsibility for inspecting places of detention under the control of the Commonwealth, in line with the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), which Australia ratified in 2017. The Office is also the NPM Coordinator for Australia. In this capacity, the Ombudsman has decided to commence regularly publishing information about the Office's work in oversight of immigration detention. From 2021 the Office will also commence inspecting places of detention operated by the Australian Defence Force and the Australian Federal Police, and we intend to prepare similar reports on the results of those inspections.

During the period covered by the report, the Office conducted inspections of immigration detention facilities in Brisbane Qld, Adelaide SA, Perth WA, Northam WA, Villawood NSW and Melbourne Vic. These inspections were undertaken using the Ombudsman's own motion powers under the *Ombudsman Act 1976*.

The report outlines concerns the Office has about the facilities within modular high-security compounds in immigration detention facilities. These concerns have been communicated to the department and the ABF, and the relevant facilities will continue to be a focus of inspections.

The report also highlights the Ombudsman's concerns with respect to the very long duration of detention of some detainees.

The Office will continue to monitor these issues and report on progress in future reports.

<<https://www.ombudsman.gov.au/media-releases/media-release-documents/commonwealth-ombudsman/2020/report-into-the-current-state-of-immigration-detention-facilities>>

Commonwealth Ombudsman publishes report on the readiness of Australia to implement OPCAT

The Commonwealth Ombudsman, Michael Manthorpe PSM, has published a report which provides a comprehensive and contemporary overview of Australia's readiness to implement the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). OPCAT is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse.

OPCAT requires the establishment of a system of independent monitoring for places of detention. Independent monitoring includes consideration of conditions, practices and treatment that could amount to cruel, inhuman or degrading treatment or punishment.

OPCAT also provides for visits by the United Nations Subcommittee on Prevention of Torture (SPT) as a further safeguard of protections for people in places of detention. The SPT recently announced it will visit Australia in the coming months.

The report examines the work of 55 existing Commonwealth, state and territory inspection and oversight bodies as part of a baseline assessment of OPCAT readiness. The report also discusses what effective implementation should look like.

A critical obligation arising from OPCAT is the establishment of a system of regular preventive visits by independent bodies, known as National Preventive Mechanisms (NPMs). When Australia announced its ratification of OPCAT in December 2017, it exercised its discretion to delay the establishment of its NPMs for three years. All jurisdictions need to nominate NPMs to enable Australia to comply with the requirements of OPCAT. We have now passed the mid-point of the three-year period, yet so far only the Commonwealth and Western Australia have nominated NPMs.

While the report highlights that there are existing inspection and oversight bodies in all jurisdictions, it also describes that there are gaps in oversight, scope, resourcing and in some instances a lack of genuine independence in the inspecting bodies in various jurisdictions. The report therefore serves as a baseline against which to track progress over time.

‘The next critical step is for jurisdictions that have not done so to nominate NPMs’, Mr Manthorpe said. ‘This is more than a technical, bureaucratic requirement. Over time, all jurisdictions will need to address the gaps between the current state described in the report and what OPCAT requires. I look forward to working with all jurisdictions on this important endeavour.’

The report complements the work being done by the Australian Human Rights Commission (AHRC), led by Human Rights Commissioner, Edward Santow. While the AHRC’s work has focused on engagement with civil society, the Ombudsman’s report is based on engagement with and self-assessment by the entities that currently have a role in oversight and inspection of places of detention.

<<https://www.ombudsman.gov.au/media-releases/media-release-documents/commonwealth-ombudsman/2019/commonwealth-ombudsman-publishes-report-on-the-readiness-of-australia-to-implement-opcat>>

Email highlighted as a key risk for data breaches

Malicious or criminal attacks including cyber incidents remain the leading cause of data breaches involving personal information in Australia, with almost one in three breaches linked to compromised login credentials, a new report shows.

This includes phishing attacks which caused at least 15 per cent of data breaches notified to the Office of the Australian Information Commissioner (OAIC) from July to December 2019.

The OAIC’s latest *Notifiable Data Breaches (NDB) Report* warns organisations about the risks associated with storing sensitive personal information in email accounts.

Australian Information Commissioner and Privacy Commissioner, Angelene Falk, also highlighted the risk of harm to individuals whose personal information is emailed to the wrong recipient (9 per cent of all breaches).

'The accidental emailing of personal information to the wrong recipient is the most common cause of human error data breaches', Commissioner Falk said.

'Email accounts are also being used to store sensitive personal information, where it may be accessed by malicious third parties who breach these accounts.

'Organisations should consider additional security controls when emailing sensitive personal information, such as password-protected or encrypted files.

'This personal information should then be stored in a secure document management system and the emails deleted from both the inbox and sent box.'

Personal information stored in email accounts can include financial information, tax file numbers, identity documents and health information, which can be exploited by malicious actors who gain access to inboxes.

In other key findings of the report:

- 537 data breaches were notified to the OAIC during the reporting period, a 19 per cent increase on the previous six months
- malicious or criminal attacks (including cyber incidents) accounted for 64 per cent of all data breaches
- human error remained a key factor in data breaches, causing 32 per cent of NDBs
- health service providers remained the leading source of NDBs over the six-month period, notifying 22 per cent of all breaches. The OAIC has jointly developed an action plan to help the health sector contain and manage data breaches and implement continued improvement
- finance is the second highest reporting sector, notifying 14 per cent of all breaches
- most data breaches affected less than 100 individuals, in line with previous reporting periods.

Commissioner Falk said the NDB scheme is now well established as an effective reporting mechanism.

'There is now increasing focus on organisations taking preventative action to combat data breaches at their source and deliver best practice response strategies', Commissioner Falk said.

'Where data breaches occur, organisations and agencies must move swiftly to contain the breach and minimise the risk of harm to people whose information has been compromised.'

Read the Notifiable Data Breaches Report for July–December 2019 at <[oaic.gov.au/notifiable-data-breaches-report-july-december-2019](https://www.oaic.gov.au/notifiable-data-breaches-report-july-december-2019)>.

The health sector data breach action plan was developed with the Australian Digital Health Agency, Australian Cyber Security Centre and Services Australia. It can be downloaded at <[oaic.gov.au/data-breach-action-plan-for-health-service-providers](https://www.oaic.gov.au/data-breach-action-plan-for-health-service-providers)>.

<<https://www.oaic.gov.au/updates/news-and-media/email-highlighted-as-a-key-risk-for-data-breaches/>>

South Australian Court of Appeal to commence sittings in 2021

South Australia's new dedicated Court of Appeal is set to begin operations at the start of next year, Attorney-General, Vickie Chapman, announced.

The move follows last month's announcement that eminent barrister Mark Livesey QC has been appointed to the new Court.

'Establishing a new Court of Appeal will help deliver efficiencies in the Supreme Court, by allowing appeals to be heard by a dedicated group of judges in a standalone court', Ms Chapman said.

'By commencing the new court at the start of next year, there will be time to establish the necessary practices and procedures to support the court, and finalise accommodation details.'

Attorney-General Chapman said she had been in ongoing discussions with the Chief Justice on the possible makeup of the new Court and other operational issues ahead of the 1 January start date.

'I have been continuing talks with the Chief Justice about how the new Court of Appeal will operate, with due consideration of likely workload levels and other operational concerns', Ms Chapman said.

'Additional funding has been allocated for an extra Judge, to ensure that there are sufficient resources in place to allow for the operation of both divisions.'

'With this in mind, it has been determined that the new Court of Appeal will consist of five judges, while seven judges will remain within the General Division of the Supreme Court.'

'The Chief Justice will be able to preside over matters in either jurisdiction as needed.'

Ms Chapman said she was continuing to consult with the Chief Justice, with further appointments to be made in the coming months.

'This is a significant reform and I look forward to announcing the appointment of the remaining judges who will oversee the new Court's functions.'

<<https://www.premier.sa.gov.au/news/media-releases/news/court-of-appeal-to-commence-sittings-in-2021>>

Queensland Human Rights Act commences on 1 January 2020

Historic human rights legislation came into force on 1 January 2020, further enhancing the protections for Queenslanders in their dealings with public entities.

Acting Attorney-General and Minister for Justice, Dr Anthony Lynham, said the commencement of Queensland's *Human Rights Act 2019* meant public entities had a specific obligation to act and make decisions compatible with human rights.

'From today, Queenslanders will no longer have to rely on a patchwork of protections when they believe their freedom, equality or dignity is being challenged by a public entity', he said.

'Instead they will have access to a momentous piece of legislation — one that protects their human rights when interacting with public entities.

'This includes the state government, local government, public service employees and other organisations performing public work.

'It's a significant step towards a human rights-based approach to government planning, policy and service delivery.'

The Human Rights Act protects 23 human rights:

- recognition and equality before the law;
- right to life;
- protection from torture and cruel, inhuman or degrading treatment;
- freedom from forced work;
- freedom of movement;
- freedom of thought, conscience, religion and belief;
- freedom of expression;
- peaceful assembly and freedom of association;
- taking part in public life;
- property rights;
- privacy and reputation;
- protection of families and children;
- cultural rights generally;
- cultural rights — Aboriginal people and Torres Strait Islanders;

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- right to liberty and security of person;
 - humane treatment when deprived of liberty;
 - fair hearing;
 - rights in criminal proceedings;
 - children in the criminal process;
 - right not to be tried or punished more than once;
 - retrospective criminal laws;
 - right to education; and
 - right to health services.

Dr Lynham said the newly established Queensland Human Rights Commission, which replaces the Anti-Discrimination Commission, would administer the new *Human Rights Act*.

'The Queensland Human Rights Commission will also have the power to receive and conciliate human rights complaints', he said.

For more information about the *Human Rights Act 2019* and the Queensland Human Rights Commission, visit <www.qhrc.qld.gov.au>.

<<http://statements.qld.gov.au/Statement/2020/1/1/queensland-human-rights-act-commences-today>>

Major step towards a streamlined, single tribunal for Tasmania

Elise Archer, Attorney-General:

I am pleased to announce that, for the first time in Tasmania, a single tribunal will be established to streamline services and improve access to justice.

The Tasmanian majority Liberal government is committed to establishing a single civil and administrative tribunal. This important reform has been discussed by governments over many years, but we are getting on with making it happen.

Tasmania is currently the only state that does not yet have a single tribunal and, as the Attorney-General and Minister for Justice, I have driven this significant reform to establish the Tasmanian Civil and Administrative Tribunal (TasCAT), confident that it will deliver a more client-centric focus particularly for our protective jurisdictions.

TasCAT will also assist to promote alternative dispute resolution programs and provide greater consistency in decision-making, while enabling seamless service delivery to clients.

A significant amount of work will be undertaken in 2020 to deliver a new single tribunal for Tasmania.

The first step is the establishment of the new physical space for the co-location of the first tranche of tribunals to come under the new TasCAT umbrella.

It is expected that Tasmania's Resource Management and Planning Appeal Tribunal, the Guardianship and Administration Board, Workers Rehabilitation and Compensation Tribunal, Asbestos Compensation Tribunal, Motor Accident Compensation Tribunal, Anti-Discrimination Tribunal, Forest Practices Tribunal, Health Practitioners Tribunal and Mental Health Tribunal will be the first to be co-located at the new Barrack Street facilities in Hobart.

These facilities are currently being specially fitted out for the needs of the new single tribunal and its broad range of clients.

We are working closely with Tasmania's current tribunals and their stakeholders to ensure they are consulted through this transition phase.

In coming months, legislation will be brought before state Parliament to formalise the single tribunal arrangement.

The new single tribunal is expected it to be operational by the second half of this year.

<http://www.premier.tas.gov.au/releases/major_step_towards_a_streamlined,_single_tribunal_for_tasmania>