The role of Civil Society in monitoring and overseeing closed environments

Working Paper No 2

Australian Research Council Linkage Grant,
Applying Human Rights Legislation in Closed Environments: A Strategic Framework for Managing Compliance

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1. Introduction

a. Background

In 2008 the Law Faculty at Monash University was awarded an Australian Research Council (ARC) Linkage grant to examine the application of human rights in a range of closed environments.¹ The ARC project is being conducted in conjunction with five Industry Partners in four Australian jurisdictions: the Commonwealth Ombudsman, Victorian Ombudsman, the Victorian Public Advocate, and the Victoria Office of Police Integrity, the Victorian Human Rights and Equal Opportunity Commission and the WA Office of the Custodial Inspector. All are independent bodies each with external scrutiny responsibilities, including in relation to closed environments.

The aim of the research project is to understand how closed environments incorporate human rights considerations in managing the conditions and treatment of persons held in these facilities. The project enables comparisons across different types of facilities, as well as across the four jurisdictions, two of which have human rights legislation (Victorian and ACT), while two do not (Commonwealth and WA).² The specific settings being addressed are prisons, police cells, forensic psychiatric institutions, closed mental health and disability units, and immigration detention.

The ACT and Victoria introduced human rights legislation in 2004 and 2006 respectively.³ The legislation essentially adopts the rights articulated in the UN International Covenant on Civil and Political Rights (1966).⁴ Each Act requires public authorities to act consistently with these rights, and provides for scrutiny of new legislation for compliance with human rights. Government agencies have therefore also been required to review their policies and practices to ensure compliance with these principles.

The research findings from the project are informing development of strategic frameworks to facilitate and strengthen the practical implementation of human rights practices within these facilities.

The project is also informing the work of oversight and monitoring bodies. These include formal external scrutiny bodies, such as the Ombudsman and human rights commissions, and civil society groups, such as independent visitor schemes and

¹ For the purposes of this project a ‘closed environment’ is defined as ‘any place where persons are or may be deprived of their liberty by means of placement in a public or private setting in which a person is not permitted to leave at will by order of any judicial, administrative or other order, or by any other lawful authority relevant to the project’s goals.’
² Victoria has the Charter of Human Rights and Responsibilities Act 2006 (Victoria) and the ACT has the Human Rights Act 2004 (ACT). Western Australia currently has no specific human rights legislation.
³ Human Rights Act 2004 (ACT); Charter of Human Rights and Responsibilities Act 2006 (Vic)
volunteer and advocacy groups that play a significant role in support for residents in closed facilities.⁵

Several studies are being conducted on key components of the project. This Working Paper presents findings from surveys of and interviews with members of civil society working with people held in closed environments.

Other Working Papers report on perspectives of senior management within government departments that have responsibilities for a range of secure facilities (Working Paper 1) and on formal monitoring bodies (Working Paper 3).⁶

b. The importance of civil society groups in monitoring and protecting human rights in closed environments

The importance of allowing visitors into closed environments is emphasised by the Optional Protocol to the Convention Against Torture and Other Inhumane or Cruel Punishment (OPCAT). Article 3 of the Optional Protocol states that:

‘Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.’

Monitoring and oversight of closed environments is a function that is carried out in a plethora of ways in the various sectors. It is carried out through court proceedings and formal complaints-handling bodies, through legislative reform and review, through bodies with powers of inspection, and through the informal attention and visits of volunteers and non-government organisations.

The groups covered in this paper are civil society groups, groups we have collectively referred to as ‘volunteer and advocacy groups’ (‘V&A’).⁷ They cover a range of agencies, from those with formal legislative power to inspect and visit, to those which have been established locally to act as advocates. Some, such as the lawyers, are employed in advocacy roles, or provide advice and advocacy pro bono, but most of the groups interviewed carry out their programs through volunteers. They are, therefore, ‘self-selecting, involving people with a commitment to the interests of the residents/inmates of the closed environments they visit.’⁸ Many volunteers who were interviewed spoke of being motivated to volunteer by their

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⁷ The work of formal monitoring bodies is examined in our Working Paper 3, and in the collected papers in Bronwyn Naylor, Julie Debeljak, Inez Dussuyer and Stuart Thomas (eds.) Monitoring and Oversight of Human Rights in Closed Environments (Monash University Law Faculty 2012).
⁸ Bronwyn Naylor, Julie Debeljak, Inez Dussuyer and Stuart Thomas (eds.) Monitoring and Oversight of Human Rights in Closed Environments (Monash University Law Faculty 2012), 48.
own previous experiences with closed environments, whether personally or through the experiences of close friends or family members.

Volunteer and advocacy groups often see their role as bringing the values of the community into places of detention. In describing the role of prison visitors in the UK it has been stated that they:

…bring with them the values of the outside world to the closed and deformed world of the prisons. They keep alive in the prison a certain view of how human beings should be treated. They can be the eyes and ears from the outside…

Civil society has a role in both bringing community values into closed environments, and taking their observations and knowledge out to the community. Thus, through their visits, listening to detainees’ concerns and complaints and working with authorities, these agents of civil society can ‘counter the risk of institutions developing their own norms and values and losing sight of community values of human decency and dignity’.

As well as bringing community values into the closed environment, civil society bodies also aim to make the workings of the institution more transparent to the outside community. Their role can therefore be seen as providing a window into such facilities, to ensure transparency and accountability through their oversight and monitoring of human rights.

The rise of civil society (as defined as ‘associations of citizens entered into voluntarily to advance their interests, ideas and ideologies’) and its impact on enhancing democracy and reshaping government institutions has also been widely acknowledged by the United Nations which is both a participant in, and a witness to, an increasingly global civil society. Civil society’s growing influence appears in a wide range of areas, including advice on ethical and rights matters, facilitating reconciliation between conflicting groups and identifying the needs of vulnerable groups. Civil society organisations are UN system partners, providing valuable UN links to its conferences and are indispensable partners for UN efforts. Civil society has also been attributed roles in relation to the inspection of places of detention as part of the OPCAT processes. The Association for the Prevention of Torture has suggested that states’ parties to OPCAT can fulfill their obligations regarding National Preventative Mechanisms by involving civil society in the NPM mandate.

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10 Bronwyn Naylor, Julie Debeljak, Inez Dussuyer and Stuart Thomas (eds.) Monitoring and Oversight of Human Rights in Closed Environments (Monash University Law Faculty 2012), 11.
12 United Nations Secretary-General Ban Ki-Moon, (Speech delivered at the World Economic Forum, Davos, Switzerland, 29 January 2009).
The benefit, according to the APT, is to supplement the resources and expertise of existing institutions and to ‘help to legitimize both an NPM’s mandate and its credibility as an institution, not least because civil society organisations are often structurally independent from government’.\footnote{Ibid, 215.}

c. Nature of the civil society groups participating in this research

The groups that were interviewed represent a range of different organisations, varying in size, coverage, nature and funding. The interviewees included:

- community visitors to mental health facilities, disability homes, prisons and immigration detention centres
- legal services for prisoners or others in closed environments, and
- groups that focused on systemic advocacy for those in immigration detention, persons with disability or mental health issues.

The interviews were mostly carried out with civil society groups operating in Victoria, with a comparison provided by a smaller number of interviews and focus groups from Western Australia and the Commonwealth.

Many groups interviewed are quite small. Half of the organisations have less than 10 full-time employees, and a similar number of volunteers. Immigration detention visitor groups and asylum seeker advocacy groups had a much larger volunteer base of over 100 people.

All Victorian groups indicated that some or all of their members had undertaken human rights training, particularly since the introduction of the Victorian Charter of Rights in 2006. Training was usually conducted by the Victorian Equal Opportunity and Human Rights Commission. Many groups also provided some form of advocacy or human rights training either directly to clients, or to their volunteers.

Most groups rely on government funding to some degree, with some entirely supported through a mix of federal and state funding. Other groups, particularly in the immigration detention field, rely on community contributions and philanthropy for the majority of their funding.

A number of Independent Prison Visitors were interviewed, from the schemes operating both in Victoria and in Western Australia. The Prison Visitor schemes are run through the Office of Correctional Services Review (within the Department of Justice) in Victoria, and the Office of the Inspector of Custodial Services in Western Australia. Both schemes arrange volunteers to visit prisons on a regular basis, observing and talking to both prison officers and inmates. They can record and

report complaints, or attempt to resolve grievances by speaking on behalf of prisoners to authorities at the prison.

Independent Community Visitors working in disability and mental health settings were also interviewed. In Victoria the Office of the Public Advocate operates two Community Visitor programs. In Western Australia the Minister for Mental Health appoints ‘Official Visitors’ and the scheme is limited to mental health settings. These groups are authorised to conduct unannounced visits, and also provide a telephone advice service that is advertised throughout the relevant closed environments.

d. Method

The perspectives of members of civil society oversight and advocacy groups were obtained through a series of focus groups and interviews. We also circulated a brief survey to participants subsequently to obtain information on the structure, funding and status of the groups. The aim of the focus groups/interviews was to obtain an understanding of the ways in which V&A groups work in these sectors, what they see as their role, their views on their capacity and scope for addressing the human rights of people held in closed environments, and their evaluation of the impact of the Charter of Rights in Victoria.

Ethics approval was obtained both from Monash Human Research Ethics Committee, and where required, from the ethics committees in relevant departments. A total of 19 focus groups and interviews were conducted by the researchers between June 2010 and August 2012, and notes and taped discussions were transcribed and analysed thematically.

The focus groups and interviews were broadly structured around the following key issues:

- What the role of volunteer/advocate involves and how the work is performed
- Examples of instances when the work of the group or individual has changed a situation.
- Problems and challenges faced in performing their work
- What authority and powers the group has to investigate, report and otherwise impact the protection of human rights in closed environments.
- The extent to which the Victorian Charter of Rights, or a lack of a formal human rights framework in Western Australia and Commonwealth jurisdictions, has impacted on their work.
- Ways that human rights could be better protected.

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15 The list of the organisations interviewed is provided at Appendix 1.
This Working Paper draws together some of the main findings on these issues from the focus groups and interviews.\(^{16}\)

2. Views of civil society groups on applying human rights in closed environments

a. How members of civil society groups see their role

The volunteer and advocacy groups play a range of roles in closed environments, from being a friend or just someone independent of the system to talk to, to being a representative in legal proceedings or providing legal advice, or being a personal advocate when problems arise. While the groups often have very different aims or goals, all groups play some role in the protection of human rights.

The role was described by the interviewees as:

- **Giving vulnerable people a voice:**
  - ‘I think our role in that jurisdiction in one sense is therapeutic. It’s giving a voice to the voiceless.’ Lawyer advocate for prisoners in psychiatric wards.
  - ‘Giving them a voice through us, through our reporting.’ Community visitor to disability residential facilities.

- **Helping individuals negotiate the system better**
  - ‘we don’t only just look at the advocacy issue, we actually provide support and education as we go… in the end you want people to be sufficiently knowledgeable about their own rights and they might be able to advocate for themselves.’ Community visitor to mental health facilities

- **Making the system itself better**
  - ‘My role as an advocate is to try and change the situation…’ Asylum seeker advocate
  - ‘the dream [is] to have the houses run as well as possible in the best interests of the people that [are] living there ‘Community visitor to disability residential facilities.

- **Providing an independent method of raising complaints.**
  - ‘To a certain extent that might be dealing with any of the issues they might be having in custody.’ Lawyer advocate for prisoners in psychiatric wards.
  - ‘That there is an outcome on some issues. In a lot of issues, nothing happens but it is worth it when you know that an issue has been addressed and you know, it has helped.’ Community visitor to disability residential facilities.

\(^{16}\) Additional descriptive information was collected on the structure and operation of the V&A groups, which is not included in this Working Paper.
• Bringing an ‘outsider’ community perspective to the closed environment
  • ‘Just to go in and observe. Talk to prisoners and prison officers and have an
    open mind as to everything that’s said to me.’ Prison visitor
  • ‘I think our role is mainly as a member of the community in the prison.’
    Prison visitor

• Bringing experiences of residents in closed environments out to the wider
  community, for example through media campaigns and submissions to
government: Prison advocates and lawyers

The role of civil society groups was clearly recognised by the people interviewed to
be varied, and seen to provide an essential contribution, over and above the avenues
provided by the closed facilities themselves.

b. The value of independent visitors to a closed environment

Many interviewees stressed the importance of having community members visiting
the closed environment system and bringing the values of the outside in.

• ‘They’re [the people who ring up the advice line] concerned about something that
  might be going on in one of these environments and only Community Visitors can [go
  in and visit, see what’s going on].’ Coordinator of Community visitors to
disability residential facility.

• ‘[Group homes] are a business. So they’re not necessarily going to give the same
  information as an… advocate. A lot of services will not tell their clients about their
  rights because it will actually put pressure on them to do things differently.’
  Disability advocate

• In relation to security staff at Immigration detention centres doubling as welfare
  officers, ‘from a human rights perspective, I think that system’s a bit flawed when
  your guard is also your welfare person’ Visitor to immigration detention

• ‘Using international mechanisms to seek to bring pressure to bear and ensure
  scrutiny of those conditions for detention.’ Prison advocate and lawyer

• ‘We’re not going in as clinicians. We’re not going in providing contrary
  pharmacological or any other advice. Our concern is essentially the human rights of
  the individual.’ Community visitor to mental health facilities

• ‘The [prison] staff often do like to have a chat to someone too… And it doesn’t
  necessarily have to go anywhere; I can just be a sounding board and the same for the
  prisoners. They might not want to talk to the officers for whatever reason but they can
  talk to me but it doesn’t mean that they’re committed to something being actioned
  unless they ask for it. … I think it diffuses their concerns about talking with people.’
  Prison visitor

• ‘[The fact that we are volunteers] has merit because … [w]e’re accountable in being
  responsible with the information that we’re given and how we deal with that
  information. But we are under no threat of losing our job as it were.’

A legal advocate for prisoners observed that prison staff can become noticeably more
helpful when a Prison Visitor comes into the prison. The groups that were mainly
focused on visiting closed environments (rather than providing legal or other specific services) emphasised their role in bringing the ‘community gaze’ to closed environments. They also highlighted the value of visitors coming from diverse backgrounds with different knowledge and experiences. It was reiterated that advocacy should not be a ‘lawyers playground’: that a motivation for helping the individual or the group was the only expertise that was required.

c. Changing roles since the introduction of the Charter of Rights

Victorian interviewees were asked about the relationship between their volunteer role and human rights, and the introduction of the Charter of Rights in Victoria. Many commented that part of their role was to educate and inform clients of their human rights and the law. This was identified as a way of helping provide better protection, as ‘If they were more aware of their rights, then perhaps they would be better able to challenge [continued detention].’ Disability advocate

- ‘Our main job over the last few years that we’ve taken on, is a job of making sure that people with a disability and their families actually understand they have rights.’ Disability advocate
- ‘In the end you want people to be sufficiently knowledgeable about their own rights and they might be able to advocate for themselves.’ Community visitor to mental health facilities

d. Achievements

Hearing about their achievements from interviewees gives insight into the impact civil society groups can have. In giving these examples, many interviewees nonetheless emphasised that change took time to occur, and that while there may be individual successes, systemic change was more important and more gradual in nature.

Disability advocates highlighted helping clients have more control over decisions in their lives, such as preventing a decision to relocate a disability home into an area with cheaper housing, and ensuring that housing changes being discussed at the management level were also discussed with the residents.

Mental health facility visitors and disability advocates spoke of helping clients feel involved in their treatment plans and other decisions being applied to them. They spoke of providing support through review or appeal processes, and supporting clients to self-advocate.

Asylum seeker advocates and visitors spoke about successfully advocating for individuals to move to an immigration detention facility closer to family members who wished to visit those in detention.
Immigration detention visitors and prison visitors both gave examples of assisting to obtain access to medical attention for those in detention whose needs had been overlooked. One Prison Visitor told of helping a client in prison successfully advocate for herself. The client wanted to attend her daughter’s confirmation. The Prison Visitor helped write letters to various authorities, including the priest, and the client was ultimately successful.

Other Prison Visitors gave examples of helping resolve problems by improving communication between staff and prisoners. One prisoner was trying to gain accreditation for studies previously completed in prison. The prison education worker was following the issue up, but had not been communicating with the prisoner, and the longer it took, the more frustrated and angry the prisoner became. The independent Prison Visitor was able to find out what had happened and why there had been a delay and explain this to the prisoner. The Visitor remarked that the boredom that comes with being in the closed environment means that small problems like this become extremely significant for the individuals concerned, and they often need an independent party to resolve them amicably.

3. How civil society groups operate within and across closed environments

a. How the work of the civil society group is carried out

The Optional Protocol specifies that States must ensure that National Preventive Mechanisms (NPMs) have unfettered access to people and places, to carry out their role under OPCAT. Articles 19 and 20 state:

Article 19
The national preventive mechanisms shall be granted at a minimum the power:
(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
(c) To submit proposals and observations concerning existing or draft legislation.

Article 20
In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:
(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
(c) Access to all places of detention and their installations and facilities;
(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
(e) The liberty to choose the places they want to visit and the persons they want to interview;

The civil society groups interviewed for this paper do not have the status of NPM or, in many cases, any legislative status to monitor to protect rights. However access to
people and information, and the capacity to report what they see, is central to the role of ‘eyes and ears of the community’ outlined earlier. Providing a window into worlds that are otherwise closed to the mainstream population is both a privilege and a great responsibility. The experience of our interviewees in this respect is discussed in relation to each of the types of closed environments below.

i. Immigration Detention

Visitors to immigration detention facilities drew attention to the restrictions on visiting detainees in immigration detention. A visitor must book in to visit, and must book to visit a named person or persons. It was therefore not possible to visit simply to extend friendship or advocacy. Further, visitors are restricted to a ‘Visits Room’ which is overseen by guards with little privacy. One asylum seeker advocate stated that although there are private rooms available, these must be booked in advance. Upon booking, a case manager would ask why a private room was necessary and what would be discussed. This meant that visitors were reluctant to book a private room and draw attention to particular detainees in this way.

Visitors to immigration detention also expressed frustration that the rules and policies relating to visiting often changed, and could change without notice. One visitor told of arriving one week to visit and being told that only four people could be visited, instead of the usual six, so two people on the visit list could not be included.

ii. Mental Health Facilities

One advocacy group spoke about being able to make regular visits to mental health facilities. A visit usually took the form of an announced meeting for any interested patients. At these meetings clients could raise any problems they had and the advocacy group would discuss the rights that patients had. Issues arising out of these meetings would be discussed with staff. Another advocate said that they had a regular meeting with the relevant government Department to raise issues that were not being dealt with sufficiently by staff.

Community Visitors conduct monthly visits to mental health facilities. These can occur without advanced warning to the facilities. Visitors can observe and report on the conditions of the facility (for example things like cracked windows) and speak to clients about the facility. At the conclusion of the visit a report is prepared which is shown to staff before being sent to the Office of the Public Advocate.  

iii. Disability Facilities

Community Visitors to disability facilities can also make unannounced, as well as announced, visits. Such surprise visits can act as an incentive to ensure compliance with the relevant standards all through the year, as well as allowing Visitors to see how the facilities function routinely, when not specifically prepared for observation.

Disability advocates spoke about being approached by families, friends or staff members with concerns for the people in the disability facilities. They noted that when investigating an incident or problem there could be difficulties accessing documents or information. Concerns for the privacy of clients or staff could prevent advocates from finding out information such as which staff were on duty at the time of an incident.

Another issue for disability advocates was supporting clients to make complaints, as there is often a fear that making a complaint could have negative consequences for the future services of that client.

iv. Prisons

Prison Visitors interviewed generally visited on a monthly basis. They have unrestricted access to all areas of the prison and can speak to any prisoner or staff. Although prisons provide a sign-up sheet for people wanting to speak to the Visitor, generally the Visitors would walk around the entire facility to give a visible presence. Often this would also prompt prisoners to raise problems, or point out other prisoners that the Visitor should seek out to speak to. The Visitors remarked that being able to walk through the facilities meant they were a familiar face to prisoners, and helped make people feel comfortable to raise issues with them.

Legal advocacy groups also emphasised the value of raising prison human rights issues in the media, engaging in community education about prison matters, and providing information and referrals to other agencies.

Overall then, there are many ways in which civil society groups can carry out their role, some more proscribed than others, and often dependent – in the absence of legislated powers - on the support of the facility management.

b. Operating as a network

Many of those interviewed spoke about the various groups and authorities in a particular sector operating as a ‘network’, and discussed how duties, roles and authority are shared. They saw themselves as part of the network providing an additional voice for those inside closed environments. Indeed a prison advocacy group noted the diverse range of volunteers working with prisoners, and highlighted the importance of co-ordination to maximise the value they can provide.

- ‘We have mainly voluntary networks of people out there who keep us informed about what’s going on and we go out and provide more formal support within those contexts.’ Disability advocate
- ‘We try to include the staff group and the families and the advocates in [education programs] so they get it as well. So it flows through.’ Disability advocate
- ‘Clients who approached us for assistance … [are] referred to us through a whole range of channels.’ Prison advocates and lawyers
• ‘I think that we’re developing a terrific relationship with the programme staff. We’re here to support them really, to facilitate their work strictly speaking.’ Community visitor to disability residential facilities

• ‘There’s no one mechanism that can do it all. It’s a matter of saying that we what we need is a system of safeguards, each doing its part and then interacting.’ Disability advocate

• ‘There is a good level of communication between ourselves, the Office of the Senior Practitioner, and the Office of the Public Advocate…’ Disability advocate

It is clearly important that advocates can interact and liaise with various levels and sectors of closed environment. To be most effective, they do not operate in silos but draw on a range of practical referral mechanisms.

c. Using relationships to resolve issues

Volunteers and advocates also talked about the relationships they establish to solve problems. In some sectors this was described as enabling residents and clients to raise issues, while still remaining comfortable with the staff and wardens within the closed environments. Many interviewees spoke of detainees’ hesitance to raise complaints while remaining in the closed environment.

• ‘It took sometimes years of working with the client on and off to actually convince them that taking action will prevent abuse rather than bringing it on.’ Disability advocate

• Community Visitors ‘actually do have some power...they can keep asking questions until they get an answer that satisfied them...If we come to the Ombudsman and the Ombudsman comes back with an answer [the Visitors] are not quite comfortable with, they have the powers and the legislation to refer things to the Minister.’ Coordinator of community visitors to disability residential facility

• ‘I try not to use the media as a first resort, I usually try to go to responsible authorities and use the reasoned approach but in immigration it doesn’t always work’ Asylum seeker advocate

• ‘[Prisoners have] got to be treated as individuals, they’ve got to be listened to and their complaints have got to be acted upon and they’ve got to be treated with respect because respect engenders respect.’ Prison visitor.

Advocates need to maintain an understanding sympathy for staff concerns without uncritically accepting their view of an issue under discussion. This can be a difficult balance, but interviewees felt they were able to advocate persistently whilst retaining cordial relations.

• ‘I think we [the prison visitors] are lucky… We get on well with management. If you didn’t get on well with management it wouldn’t be a very nice job to do.’ Prison visitor

d. Effect of status and funding on how groups operate
Volunteer and Advocacy groups generally fall into two categories: those that are formally recognised and obtain funding through government, and those that operate outside the formal structure and are largely voluntary and charity based. There are tensions and advantages to both of these approaches, impacting on the work the groups can achieve.

For those that operate with funding and a role prescribed by government, there is the risk of appearing to ‘bite the hand that feeds you.’

- ‘I believe an advocate has to be independent and cannot be funded by the body that actually funds the houses and the overseers of any house of residential closed facility.’ Disability advocate
- In ‘the Office of the Chief Psychiatrist, there’s a conflict of interest… It’s not independent of the Department…’ Community visitor to mental health facilities.

The advantages of having a prescribed role are clear, including having a right of access:

- ‘[Office of the Public Advocate Visitors] powers of entry and inspection are probably greater than the Police… Visitors can visit unannounced anytime they want.’ Coordinator of community visitors to disability residential facilities.

For those that do not fall into this category, there can be greater difficulty in being heard, and in obtaining access. This was particularly seen as a problem in the immigration detention field.

Civil society group(s) without government funding had to find other ways to promote the rights of people in detention:

- ‘But I don’t have any official status. The only reason that the Immigration Department or the Minister’s Office will listen to me is that you know, they know I could go to the media and if they want to keep something quiet it’s probably better to attend to it’. Asylum seeker advocate

4. Perceived impact of human rights legislation in Victoria

Most Victorian interviewees said when asked about the impact of the Victorian Charter that their role had always focused on protecting human rights and the introduction of the Victorian Charter had not done a lot to change how they worked.

Some observed that, even before the advent of the Charter, there had been an acknowledgement of the balancing act in place in mental health, prisons and disability when there are people living in a confined space, at least since the 1980s, when protective legislation in each field was introduced.
However, a common theme was that the Charter had introduced new language to talk about human rights, and bolstered the work that was already being performed. ‘It is about getting the language of human rights in all of our work, not just [for Disability] Community Visitors but with the people that we deal with as well’ (Coordinator of community visitors to disability residential facilities). Furthermore the introduction of one piece of legislation that operated across sectors ‘allows us to […] have those conversations across sectors’ as one disability advocate put it.

Many commented that the Charter was a valuable additional ‘tool’; its effectiveness should not however be judged simply by the number of cases where it changed the outcome, as processes and conversations across the sectors are being influenced, even if direct results are not shown. Advocacy groups involved specifically in litigation confirmed that the Charter had been beneficial in helping argue some cases.

Benefits that were identified by interviewees included:

- Influencing culture change across sectors, whilst noting that culture change had been occurring over previous years as well.
- Providing an imperative for education of staff across sectors about human rights
- Establishing new requirements for review of legislation and systemic policies.

By way of comparison, volunteers in the immigration sector spoke about the potential benefits of a formal human rights framework in the Commonwealth jurisdiction. One interviewee talking about human rights protections in the immigration sector emphasised: ‘That’s why we need the Charter, why we need all the powers we can get because everything can be overruled.’

In Western Australia, Prison Visitors identified a limited awareness of human rights amongst their clients. One Visitor noted that the only person who had raised human rights with him was someone who had been moved to a Western Australian prison from interstate.

5. Issues raised by focusing on human rights in closed environments

‘In an ideal world, [a] balance [would be] struck for every individual. Ideally you’ve got each person being assessed as to what level of liberty versus what level of protection…. But as soon as you start grouping people together, not only in big institutions but in group homes, there’s going to be impositions.’

Disability advocate

Issues identified by interviewees in protecting human rights included ensuring accountability of decision making in closed environments, the pressures and
compromises caused by resource limitations, ensuring individual autonomy within a closed environment, and respecting cultural differences in these environments.

a. Accountability

Interviewees raised a number of issues to do with the accountability of decision making in closed environments and the work of volunteers and advocates.

First, they pointed out that complaints and human rights violations can only truly be addressed when visitors to closed environments are completely independent, and have the authority to investigate and pursue complaints.

A disability advocate was concerned that they had difficulties uncovering the full facts surrounding an issue, in order to make a formal complaint about an incident occurring with a disability home, because the advocate service was not given access to the incident reports. A mental health advocate asserted an apparent lack of independence between authorities responsible for the care in mental health facilities, and authorities receiving the complaints.

Secondly, volunteers and advocates identified limitations to the avenues for residents or detainees to question day to day decisions about their lives. One lawyer supporting clients attending the Mental Health Review Board said ‘there’s accountability of the decision to subject someone to involuntary treatment [by going to the MHRB] but not necessarily accountability or reviewability of less significant or…. incidental decisions along the way in terms of what that treatment consists of.’

Prison advocates raised concerns about prisoners experiencing repercussions (from staff and other prisoners) when they made complaints, and also noted that prisoners can have difficulty obtaining information about rights within prisons.

Finally, interviewees noted, particularly in the area of immigration detention and also of prisons, that accountability for the care that detainees received could be limited when contracted and sub-contracted providers operated the detention facilities.

b. Resources

Protecting human rights in closed environments is about reaching a balance between the individual’s liberty, and the level of protection for the community or the individual. Many interviewees noted that limited resources and funding constituted a significant hurdle in achieving that balance, or improving circumstances for the individual. This was raised in a range of ways.

One advocate in the disability sector pointed out the tension for advocates knowing that due to the restricted levels of resources, a ‘win’ for their clients and resolution of one problem would mean the relocation of resources from another, probably equally
valuable area. Another advocate noted the compromises required by limited resources, for example when the policy requirement that two staff attend excursions meant that, when staffing was limited, residents were not able to leave their residence.

Other volunteers observed that the system was so vast that they felt they could be doing more visits and helping more people, but that their own time was limited, and there were simply insufficient resources to support this.

Volunteers and advocates in the mental health sector observed that some people were being detained in facilities longer than was necessary as there were no alternate accommodation options outside of the facility. Others commented that insufficient support for mental health generally in the community meant that there was an over-reliance on more restrictive mental health facilities, with few alternatives.

c. Autonomy in closed environments

Section 22(1) Charter of Rights: ‘All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.’

Many of the interviewees said the majority of complaints raised with them involved their clients wanting to retain some autonomy within a closed environment, whether that applied to their food, who they lived with and where, or just being involved in their treatment plans.

In mental health facilities, complaints ranged from the inadequacy of women’s facilities, such as sleeping areas separate from men’s areas, to the policy against smoking. There were concerns raised about clients not being involved in their treatment plans, but also about the ‘Catch-22’ presumption by doctors that if a person refused a particular treatment, this indicated the individual lacked capacity to give consent and their wishes were accordingly overridden.

Prison Visitors spoke about issues involving the food available at prisons. It was suggested that when most rights were being well-respected the complaints about the food increased, perhaps as prisoners sought to maintain some autonomy. Other complaints raised in prisons related to access to educational programs being limited, for higher security prisons, and depending on the length of the term remaining. Other Prison Visitors spoke of complaints about the choice of educational programs, and ensuring that prisoners were adequately prepared for their release at the end of their sentences.

d. Cultural issues

Section 14 Charter of Rights: ‘(1) Every person has the right to freedom of thought, conscience, religion and belief, including—
(a) the freedom to have or to adopt a religion or belief of his or her choice; and
(b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.

(2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Section 19 Charter of Rights: ‘(1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.’

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community-
(a) to enjoy their identity and culture; and
(b) to maintain and use their language; and
(c) to maintain their kinship ties; and
(d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

An issue raised by several interviewees was the respect for cultural rights in closed environments. It was noted that basic rights such as providing a safe environment, adequate food and education were given precedence, and that the social and recreational needs of those from diverse cultures were more often overlooked. For example, visitors to immigration detention facilities spoke about people who were being detained in sections of facilities where no one else spoke their language, or being held in a detention centre in locations which made it more difficult for family or community members to visit.

A Western Australian Prison Visitor identified the challenges posed by the increased attention to safety and security for recognition of cultural rights for Aboriginal detainees. For example, attendance at family funerals is a very important cultural practice that can be facilitated by WA prisons. However a high-profile case

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18 All prisoners are able to apply to attend the funeral of a person that is ‘significant to the prisoner’. Departmental policies provide that a person will be considered ‘significant to the prisoner’ where the relationship was one of immediate family or cultural or kinship. In August 2012 the Department published an information sheet on Aboriginal kinship, drafted with the assistance of the Aboriginal Prison Visitor service, to inform the application of its funeral permit policies. See Department of Corrective Services, Government of Western Australia, ‘Permit for Absence – Appendix 1: Information on Aboriginal Kinship’ Policy Directive 9, available at [http://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-09-appendix-01.pdf](http://www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-09-appendix-01.pdf) (accessed 30 Nov 2012).

The Department has financial and security limits on who is able to attend funerals, including:

- Generally no more than four prisoners may attend any one funeral
involving the death of a detainee whilst being transported in a police van has resulted in a preference for transportation by plane in remote areas. It was explained that as this is a much more expensive form of transport, it has led to a reduction in the number of detainees who can return to their communities for funerals.

Disability advocates noted the practice of providing pamphlets translated into relevant languages, but pointed out that these were limited to a literal translation of the words, without consideration of whether the concepts translated into the relevant culture.

Prison Visitors in Western Australia spoke about Aboriginal detainees raising issues of ‘fairness’ when they noticed that Muslim detainees were provided with Halal food, but they were not given food appropriate to their Indigenous culture. They noted that there could be a distinction made between cultural and religious requirements.

Interviewees also pointed out that the practice of religious beliefs in closed environments often raised difficulties, something that was seen in a range of environments, from immigration detention to prisons to disability homes. One example was that some mental health facilities did not have separated sections for men and women, which could cause distress, for religious reasons, amongst some patients.

### 6. Summary and discussion

This Working Paper has identified some key themes from interviews with volunteers and advocates working in and around closed environments. The interviews provide insights into a wide range of volunteer and advocacy groups across the sectors, and into the variety of ways that people engage with closed environments with the aim of supporting detainees and protecting their rights. This review is not, of course, comprehensive review, but provides some insights into the benefits of having independent visitors and observers in the system.

- Generally prisoners are only able to attend if the funeral is within 200km of the nearest prison facility


19 See State Coroner (Western Australia), *Inquest into the Death of Ian Ward* (Ref No 9/09). In July 2011 the State of Western Australia was prosecuted by WorkSafe and pleaded guilty to offences under ss. 22(1)(a), 22A(2) and 3A(3)(b)(i) of the *Occupational Safety and Health Act 1984* (WA) in relation to the death of Mr Ward and the use of prisoner transport vehicles, and was fined $285,000. For more information see Department of Commerce, Government of Western Australia, ‘Prosecution Details’, available at [http://prosecutions.commerce.wa.gov.au/prosecutions/view/1348](http://prosecutions.commerce.wa.gov.au/prosecutions/view/1348) (accessed 11 December 2012).
The majority of funding for the groups interviewed (with the exception of asylum seeker advocates) comes from a mix of state and federal funding. This may impact on the degree to which civil society groups feel comfortable holding government accountable in the running of closed environments. Allowing reporting to different arms of government was seen as one way to negotiate this. As discussed in the paper the limits on resources can significantly affect what groups can achieve, and how closely volunteers and advocates can monitor closed environments. Many people commented that they would like to visit more facilities, or more often, or follow up more complaints, but that they were limited by resources and funding.

Those interviewed often described a personal connection to the closed environments they worked in, arising from their personal experience or that of a close friend or family member. They all spoke with enthusiasm about how they aspired to improve the system, just by bringing the community values into the closed environment, or by helping to achieve systemic change. The importance of building relationships between civil society and staff, government authorities and the clients, as well as between civil society groups themselves, was emphasised. Using these relationships was seen as integral to reaching a good balance of rights protections.

The groups interviewed varied in their ability to access the closed environments, with immigration detention being the most restricted and conditional in allowing visits. Greater access came with a more prescribed role, for example the Community Visitors who have legislation governing their right to access mental health and disability facilities. With the overarching need for and right to security and safety in closed environments, some controls on access to closed environments are inevitable. However it is clear that considerable benefits can accrue, both in the individual interactions provided by visitors, and in the broader exposure of the closed environment to the community.

Constraints on achieving goals of human rights protection include limited funds, limited powers, and varied levels of independence. As Australia moves towards ratification of OPCAT it will be important to consider how the unique work of volunteer and advocacy groups can be enhanced and contribute to an effective strategic framework of monitoring in closed environments. Civil society groups might, for example, be auspiced independently through Ombudsman or Inspectorate offices or other National Preventive Mechanisms, and might be expressly included in the monitoring scheme established by NPMs.

In allowing monitoring access to closed environments there is a flow between the inside and outside worlds, bringing community values into closed environments, and at the same time demystifying them, making them more accountable and transparent to the community. This window is essential to protecting the human rights of people held in closed environments.
Appendix

Groups from whom participants attended focus groups or interviews for this project

Action on Disability within Ethnic Communities Inc.
Asylum Seeker Resource Centre
Australian Community Support Organisation
Bridge of Hope Foundation
Centre for Human Rights of Imprisoned People
Community Visitors, Victorian Office of the Public Advocate (Mental health and disability)
Coordinators of community visitors, Victorian Office of the Public Advocate (Mental health and disability)
Council of Official Visitors (WA)
Federation of Community Legal Services
Friends of Maribyrnong Detention Centre
Lentara UnitingCare (formerly Hotham Mission Asylum Seeker Project)
Human Rights Law Resource Centre
Prison Visitors (Victoria and WA)
Prisoners’ Legal Service
Refugee and Immigration Legal Centre
Victoria Legal Aid
Victorian Advocacy League for individuals with Disability Inc.
Victorian Association for the Care and Resettlement of Offenders
Victorian Mental Illness Awareness Council
Youth Disability Advocacy Service