

Implementing Human Rights in Closed Environments

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Welcome

This Conference is an outcome from an Australian Research Council Grant entitled *Applying Human Rights Legislation In Closed Environments: A Strategic Framework for Managing Compliance* (2008-2012). The project is being undertaken by four Chief Investigators (Professor Arie Freiberg, Associate Professor Bronwyn Naylor, Associate Professor Stuart Thomas and Dr Julie Debeljak), a Partner Investigator (Dr Inez Dussuyer), and six collaborating organisations: the Commonwealth Ombudsman; Ombudsman Victoria; the Victorian Equal Opportunity and Human Rights Commission; the Office of the Public Advocate (Vic); the Office of the Inspector of Custodial Services (WA); and the Office of Police Integrity (Vic).

The “closed environments” being examined under the research project are linked to the Collaborating Organisations. They are prisons, police cells, closed psychiatric and disability settings, and immigration detention facilities. The key aims of the research project are: to identify the impact in practice of human rights legislation on the functioning of these closed facilities; to understand and influence the work of the monitoring bodies whose role it is to scrutinise the treatment of people held in closed environments; and to propose strategic frameworks for implementing human rights in practice.

The Conference will bring together eminent international and national experts from government agencies, intergovernmental agencies, monitoring and oversight mechanisms, non-government organisations, practitioners, and academics working on implementing human rights in closed environments. It will enable representatives from different jurisdictions and different sectors, operating under international, regional and domestic frameworks, to examine how human rights are implemented and monitored in closed environments, where the potential risk for abuses is high. It will provide invaluable insights into the experience of comparative jurisdictions, highlighting the successes to date and the ongoing challenges in current practice, particularly the challenge in managing the balance between respecting the human rights of individuals, and the responsibility to maintain security and safety in different closed environments and the broader community.

We look forward to welcoming you to the conference.

Convenors: Julie Debeljak and Bronwyn Naylor

Committee: Julie Debeljak, Inez Dussuyer, Arie Freiberg, Bronwyn Naylor and Stuart Thomas

NAME BADGES/TICKETS

Admission to all sessions and catering is by the official conference name badge – please wear it at all times when at the conference.

PROGRAM CHANGES

Any last-minute program changes will be shown on the program on the notice board at the Registration Desk.

PRESENTERS AND CHAIRS

Plenary speakers using data projectors should give their presentation to the AV technician to load onto the computer.

Presenters in parallel sessions using data projectors should to load their presentations onto the computer in the room where they will be presenting a few minutes prior to the presentation. If you encounter any problems, please ask for help from the AV technician or from the Registration Desk.

Presenters are asked to convene at the front of the appropriate room with the Chair of their session a few minutes before the start of their session.

CONFERENCE FEES

Conference Registration includes catering throughout the conference, and the Monday Welcome Reception.

MOBILE PHONES AND PAGERS

Please turn these off while in sessions.

INTERNET ACCESS

WiFi is available to delegates. Please use the following:

Username: pvweb1

Password: mulcnet2012

SPECIAL DIETARY REQUIREMENTS

There will be ample vegetarian options throughout. If you have requested a gluten free or vegan diet, please collect your catering from the registration desk.

DELEGATES WITH ACCOMMODATION

Payments made when delegates registered for the conference should be credited to your hotel account; please check that this has been done when you check out. We recommend that you arrange for your luggage to be held at your hotel, rather than bringing it to the conference venue where storage space is very limited and security cannot be provided.

DISCLAIMER

At the time of printing, all information contained in this booklet is correct; however, the organising committee, its sponsors and its agents cannot be held responsible for any changes to the final structure or content of the program, or any other general or specific information published here.



The
Conference
Organiser

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8.45 am - 9.00 am

Welcome and Introductory Remarks Auditorium

Bronwyn Naylor and Julie Debeljak

9.00 am - 11.00 am

Plenary Session 1 Auditorium

International Perspectives on Recognising Human Rights in Closed Environments

Chair: Julie Debeljak

- | | |
|-------|--|
| 9.00 | The Duty of Reparation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (p 9): <i>Claudio Grossman</i> |
| 9.30 | Respecting the Rights of Refugees, Asylum-Seekers and Stateless Persons in Immigration Detention (p 9): <i>Ellen Hansen</i> |
| 10.00 | Detention and Disability (p 11): <i>Oliver Lewis</i> |
| 10.30 | Discussion |

11.00 am - 11.20 am Morning tea

11.20 am - 1.00 pm

Plenary Session 2 Auditorium

Comparative Experiences Implementing Human Rights in Closed Environments

Chair: Bronwyn Naylor

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|-------|---|
| 11.20 | Implementing Human Rights in Closed Environments (United Kingdom) (p 12): <i>Dame Anne Owers</i> |
| 11.50 | Human Rights in Canadian Federal Corrections: A Prison Ombudsman's Perspective (p 14): <i>Ivan Zinger</i> |
| 12.20 | Implementing Human Rights in Closed Environments (New Zealand) (p 13): <i>Natalie Pierce</i> |
| 12.45 | Discussion |

1.00 pm - 2.00 pm Lunch

2.00 pm - 3.00 pm

Parallel Sessions 3

Exploration of the International and Comparative Perspectives

Parallel Session 3A: Prisons (Auditorium)

Chair: Michael Levy

An Asian and Pacific Perspective (p 11): *Neil Morgan; facilitated discussion with Dame Anne Owers and Ivan Zinger*

Parallel Session 3B: Disability Settings (Seminar Room 5, Level 2)

Chair: Karen Toohey

Presentation by Ron McCallum; facilitated discussion with Claudio Grossman

Parallel Session 3C: Psychiatric Settings (Seminar Room 4, Level 2)

Chair: Penny Weller

Presentation by Tom Dalton; facilitated discussion with Oliver Lewis and Natalie Pierce

Parallel Session 3D: Asylum and Immigration (Seminar Room 3, Level 2)

Chair: Tania Penovic

Presentation by David Manne; facilitated discussion with Ellen Hansen

3.00 pm - 3.30 pm Afternoon tea

3.30 pm - 4.30 pm

Plenary Session 4 Auditorium

ARC Research Outcomes to date

Chair: Julie Debeljak

- | | |
|------|--|
| 3.30 | Overview of the ARC Project: <i>Bronwyn Naylor</i> |
| 3.35 | “Free to go” – Understanding what is Meant by a Closed Environment in Disability Facilities: <i>Patsie Frawley</i> |
| 3.55 | Monitoring for Human Rights in Australian Closed Environments: <i>Inez Dussuyer</i> |
| 4.15 | Discussion |

4.30 pm - 6.00 pm **Conference Reception**

8.30 am - 9.00 am *Arrival tea and coffee*

9.00 am - 11.10 am

Plenary Session 5 Auditorium

***Applying Human Rights in Closed Environments:
Practical Observations on Monitoring and Oversight***

Chair: Inez Dussuyer

- | | |
|-------|--|
| 9.00 | Why Australia Must Ratify and Implement OPCAT (p 10): <i>Richard Harding</i> |
| 9.25 | Applying Human Rights in Closed Environments: Practical Observations on Monitoring and Oversight (p 8): <i>President Catherine Branson</i> |
| 9.50 | Mental Health and Prisons (p 14): <i>John R Taylor</i> |
| 10.15 | Applying Human Rights in Closed Environments: Disability Settings (p 12): <i>Colleen Pearce</i> |
| 10.40 | Discussion |

11.10 am - 11.30 am *Morning tea*

11.30 am - 1.00 pm

Plenary Session 6 Auditorium

Changing Culture in Closed Environments: What Works?

Chair: Stuart Thomas

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|-------|---|
| 11.30 | Changing Culture in Closed Environments: What Works? (p 13): <i>Jem Stevens</i> |
| 12.00 | Changing Culture in Closed Environments: What Works? (p 7): <i>Colin Allen</i> |
| 12.30 | Discussion |

1.00 pm - 2.00 pm *Lunch*

2.00 pm - 3.00 pm

Parallel Sessions 7 Auditorium

Exploration of Practical Observations and Culture Change

Parallel Session 7A: Prisons (Auditorium)

Chair: Sue Tait

Providing an Ethical Framework to Guide Prison Staff: Laws, Procedures and Roles (or Chasing Rabbits) (p 7): *Astrid Birgden; facilitated discussion with Colin Allen and Richard Harding*

Parallel Session 7B: Disability Settings (Seminar Room 5, Level 2)

Chair: Bernadette McSherry

Challenges in Implementing Human Rights in Disability Settings (p 8): *Jeffrey Chan; facilitated discussion with Colleen Pearce*

Parallel Session 7C: Psychiatric Settings (Seminar Room 4, Level 2)

Chair: Matthew Carroll

Presentation by Ruth Vine; facilitated discussion with John R Taylor

Parallel Session 7D: Asylum and Immigration (Seminar Room 3, Level 2)

Chair: George Masri

Presentation by Paris Aristotle; facilitated discussion with President Catherine Branson and Jem Stevens

3.00 pm - 3.30 pm Afternoon tea

3.30 pm - 4.30 pm

Plenary Session 8 Auditorium

ARC Research Outcomes to date

Chair: Julie Debeljak

3.30 Human Rights and Respect in Prisons: *Bronwyn Naylor*
 3.50 Implementing Human Rights in Immigration Detention: *Tania Penovic*
 4.10 Discussion

4.30 pm - 4.45 pm

Closing Comments

Bronwyn Naylor

Auditorium

Changing Culture in a Closed Environment – What Works?**➤ Colin Allen**

International Centre for Prison Studies, University of Essex, UK

- a. Running prisons in the 21st century is a complex task. Managing them well is altogether more challenging.
- b. Successful prison management runs safe and secure systems that respect the humanity of prisoners and staff and provide opportunities for their development,
- c. As far as custody allows, a well run prison encourages prisoners to take responsibility for themselves and prepare for life after release,
- d. Adherence to international standards encourages professional staff relationships with prisoners. Such relationships contribute to prisoners' personal security and development by:
 - promoting individual attention, consistency, fairness,
 - challenging offending behaviour
 - modeling responsible behaviour.
- e. A shared vision of what constitutes successful culture change has both hard and soft criteria,
- f. The vision is realised by efficient management, systematic risk assessment, willingness to listen and hard work, followed by frequent and effective independent monitoring
- g. The process of culture change in a prison is affected by:
 - internal factors, including quality of leadership, staff / prisoner relationships, influential subcultures, and timing
 - natural resistance to change even when there are clear benefits,
 - external political and economic factors, including competition,
- h. Effective leadership carefully structures expectations to minimise unrest.
- i. A continuous programme of review and action guards against complacency. The process of improving prison culture never ends.
- j. A human rights approach to prison management makes practical sense:
 - Most nations are signatories to international human rights instruments that enshrine the legitimacy of an ethical human rights approach to imprisonment.
 - At the International Centre for Prison Studies we know from experience that a human rights approach works, especially when applied to the training and daily work of staff.
 - Nothing is more rewarding than making a difference by doing the right thing.

Providing an Ethical Framework to Guide Prison Staff: Laws, Procedures and Roles (or Chasing Rabbits)**➤ Astrid Birgden**

Deakin University, Victoria

Offenders are both rights-violators and rights-holders requiring a balance between managing offender risk and meeting offender need. From a human rights and therapeutic jurisprudence perspective, the law should have positive rather than negative outcomes. Therefore, culture change can occur at three levels- through the law, correctional procedures, and the role of corrections staff as legal actors. In terms of the law, human rights are prescribed in various UN instruments but prisoners are rarely mentioned and Australian courts have had a "hands-off" approach to prison administration. In terms of procedures, correctional staff are to adhere to the (outmoded) *Standard Guidelines for Corrections in Australia 2004* but the stated goals are to be

strived for rather than enforced. In terms of roles, the message regarding the community-offender balance is subsequently confusing for correctional staff. Dr Birgden will provide observations regarding the implementation of culture change within two projects she managed. One project initiated statewide delivery to Victorian correctional staff regarding ethics, staff values, and motivating offender change using a drama therapist and experiential learning. The other project was the establishment and management of a compulsory drug treatment prison in New South Wales which emphasised role modeling and “chasing rabbits down holes”. If correctional staff are not provided an adequate framework within which to work – which addresses moral values as well as legal or social rights – the risk is that an imbalance occurs between community protection and prisoner rights. In my view, this is what occurred with the role of US psychologists in the interrogation and torture of detainees under the Bush administration where timely ethical direction from the American Psychological Association was lacking. The concern is that a community-offender imbalance in prisons leads to similar ethical violations.

Applying Human Rights in Closed Environments: Practical Observations on Monitoring and Oversight

➤ **Catherine Branson QC**

Australian Human Rights Commission, Australia

In recent years, the Commonwealth Government has been responsible for the detention of large numbers of people, often for prolonged periods of time, in Australia’s immigration detention network. In late 2010 close to 7000 people were held in closed immigration detention facilities, a number larger than the prison population in every state or territory other than NSW. Immigration detention facilities are subject to a complex system of monitoring and oversight, with a number of agencies playing a role.

This paper will explore the impact of monitoring and oversight of immigration detention facilities, using examples from the Commission’s recent monitoring work of both localised and systemic changes arising from monitoring visits. The paper will outline the work of the Commission in collaboration with the Commonwealth Ombudsman and the Attorney-General’s Department to develop human rights based standards for monitoring places of detention. Finally it will consider the importance of a national system to effective monitoring and oversight of immigration detention facilities.

Challenges in Implementing Human Rights in Disability Settings

➤ **Jeffrey Chan**

Department of Communities, Queensland

The vulnerability of people with disabilities to abuse and practices that infringe on their human rights are well documented and researched. Some of these practices include restraints and seclusion. The fact that many of them still live in closed environments exposes them to more risks. Living in closed environments also increases the “invisibility” of people with disabilities. This paper will briefly explore the reasons of the “why and how” people with disabilities continue to be vulnerable despite legislative and policy safeguards. It will highlight the groups of people with disabilities who are at increased risks of abuse and restrictive practices. A reflection on some emerging worrying trends in the disability service sector will also be explored, such as the misuse of occupational health and safety frameworks and a revival of congregate care living. A discussion on some strategies to implement human rights in disability settings will be presented.

The Duty of Reparation under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

➤ **Claudio Grossman**

American University Washington College of Law and the United Nations Committee against Torture

The United Nations Committee against Torture is a treaty body created under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The Committee performs a variety of supervisory functions including those outlined in Articles 19 and 22 of the Convention. Under Article 19, the Committee reviews State party reports regarding compliance with the obligations laid down in the Convention and adopts concluding observations and recommendations. Under the confidential petition mechanism of Article 22, the Committee reviews, and adopts decisions on, communications alleging violations of the Convention by participating State parties. When violations of the Convention occur involving torture or other forms of cruel, inhuman or degrading treatment or punishment, there are obligations of reparation under Articles 14 and 16, respectively. The jurisprudence of the Committee, however, has not provided sufficient guidance to the Member states, petitioners and international community in general as to the scope of this obligation. This contribution will analyze the duties that flow from Articles 14 and 16, focusing in particular on restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Respecting the Rights of Refugees, Asylum-Seekers and Stateless Persons in Immigration Detention

➤ **Ellen Hansen**

UNHCR Regional Representation, Canberra

The 1951 Convention relating to the Status of Refugees contains “refugee-specific rights”, which reflect the tenets of the 1948 Universal Declaration of Human Rights and the (then) draft International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights. The 1954 Convention relating to the Status of Stateless Persons similarly outlines the minimum standards of treatment of stateless persons.

Eligibility to the rights embodied within the 1951 Convention arises automatically upon satisfaction of the refugee definition.

Asylum-seekers pending formal status determination are likewise entitled to the rights and obligations contained in the 1951 Convention and other international human rights instruments. Detention may create significant impediments to the ability of an asylum-seeker, a refugee or a stateless person to access those other rights.

In extreme situations, the standards of treatment in detention may not only amount to inhuman and degrading treatment, or other breaches of fundamental international human rights law, but render the detention itself arbitrary, and thus in contravention of international law.

An asylum-seeker in detention also faces particular challenges to present his or her case, obtain appropriate representation and assistance, and receive due process. This impacts negatively on his or her right to seek asylum. Where the detention is in remote or isolated locations, or where detention has been prolonged, and mental health is significantly affected, this impact may be

particularly serious, especially for vulnerable persons, including the elderly, women, children, unaccompanied minors, and survivors of torture and trauma.

Limitations imposed by national law on the content of refugee rights, as compared to rights available to citizens, further exacerbates the implications of detention. The difficulty in challenging a negative security assessment for a refugee represents one such challenge.

Why Australia Must Ratify and Implement OPCAT

➤ **Richard Harding**

University of Western Australia, Western Australia

Ratification and implementation of OPCAT was raised with the Rudd Government in its very earliest days. The matter apparently became an agenda item to be taken forward, albeit with proper consultation but with unambiguous commitment. It seemed to fit with the strategic objective for Australia to become a leading regional member of the United Nations, aligned with international conventions relating to human rights and other issues of global significance.

Five years has elapsed since then. In that time the nations that have ratified OPCAT and are in the process of implementation has almost doubled, to 60. Membership of the Sub-Committee for the Prevention of Torture has increased from 10 to 25. Australia had become a signatory in May 2010, but missed the boat for possible membership of the SPT by not yet having ratified. (New Zealand was deservedly elected as a member, having energetically and committedly begun to implement OPCAT.)

Although there have been some minor improvements at the margins in terms of the accountability of various tiers of Australian governments for regime standards in places of detention, essentially the need for a national network of effective NPMs (national preventive mechanisms) has increased rather than diminished. Moreover, the other mechanisms typically available for securing human rights standards are not particularly robust in Australia, emphasising the need for a coherent and comprehensive system of NPMs.

This presentation will explore and illustrate these issues, contrasting the Australian position with some others where there has been fully-fledged commitment. The time for prevarication has passed; Australia should promptly ratify and implement OPCAT.

Detention and Disability

➤ **Oliver Lewis**

Mental Disability Advocacy Center, Hungary

In his paper, Oliver Lewis will outline key developments in monitoring the rights of people detained – either de jure or de facto – in psychiatric settings. This includes psychiatric hospitals as well as so-called social care institutions/homes which are congregated settings for people with psycho-social disabilities or intellectual disabilities which are isolated and segregated from the community. Five key points will be made.

First, the UN Sub-Committee for the Prevention of Torture has paid inadequate attention itself to such places of detention. Does the global monitoring body value people detained in such settings less than those detained in ‘traditional’ places of detention? Second, where domestic bodies visit such institutions, there are currently no measures to assess the effectiveness of such monitoring. Beyond anecdotes, does monitoring actually prevent torture and other forms of ill-treatment in these institutions? Third, monitoring bodies are overly deferential to medicine. Shouldn’t the international human rights community be able to define when medical treatment becomes ill-treatment? Fourth, given the move toward public participation in implementing services, why is monitoring so far behind? Why are experts by experience - (ex)users and survivors of psychiatry – excluded from monitoring in so many countries? And fifth, a point will be made about Article 19 of the UN Convention on the Rights of Persons with Disabilities, which sets out the right to live in the community with choices on an equal basis with others. Independent living can only be achieved through a process of desegregation and ensuring that community support services are accessible to and responsive to the needs of individuals with disabilities. Monitoring bodies play a crucial role in documenting human rights violations in these institutions, and in parallel they must call a spade a spade: segregation from society is itself a violation of international human rights law. This poses major challenges for monitoring bodies because of the optics of mandate drift. It poses equally weighty challenges for coordination of messages at UN, regional and domestic levels.

An Asian and Pacific Perspective

➤ **Neil Morgan**

Inspector of Custodial Services, Western Australia

To date, few countries in the Asian and Pacific region have ratified the Optional Protocol to the Convention against Torture. However, there have been many improvements 'on the ground' in prisons across the region over the past twenty years, underpinned by some fundamental philosophical changes. Based on the author's experience during fifteen years as Rapporteur for the Asian and Pacific Conference of Correctional Administrators (www.apcca.org), this presentation will explore some of those changes and will reflect on the role of human rights principles and international instruments in that evolution.

Implementing Human Rights in Closed Environments (United Kingdom)**➤ Anne Owers DBE**

Former Chief Inspector of Prisons for England and Wales, UK

This will draw on experience of independent inspection of prisons, young offender institutions, immigration detention centres, police and military custody, primarily in the UK, but also in conjunction with others in other countries, including the establishment of National Preventive Mechanisms as required by the Optional Protocol to the UN Convention against Torture (OPCAT).

Implementation of human rights is primarily the responsibility of the services responsible for operating detention facilities. Their standards need to reflect this, and be supplemented by processes of internal audit, complaints resolution, staff training and management and other procedures. Recent work by criminologists has emphasised the crucial impact of culture and relationships, as well as processes.

However, external oversight is recognised as critically important in national and domestic law. This is a requirement of OPCAT, and reflects the specific power relationships in places of detention and the vulnerability and isolation of those held. Mechanisms for this include citizen volunteer groups and independent inspection. Essentially, their role is preventative. This is supplemented by the reactive role of independent complaints and investigatory bodies. Together, they form the pillars of independent oversight and monitoring.

The Prisons Inspectorate of England and Wales has developed its own independent inspection criteria, covering all aspects of the different kinds of detention, referenced against international human rights standards. The paper will look at these criteria, the process of inspection, its results, and the nexus of relationships needed to achieve those results, including links with internal and other external oversight bodies. In the context of NPMs generally, it will look at the barriers that exist to assuring human rights implementation and the ways in which they might be overcome.

Applying Human Rights in Closed Environments: Disability Settings**➤ Colleen Pearce**

Office of the Public Advocate

This paper examines the range of closed environments in which people with disabilities reside in Victoria. These include prisons as well as disability-specific accommodation settings, such as mental health facilities, residential treatment facilities and group homes. The paper considers the range of legal mechanisms that authorise the placement of people with disabilities in closed environments, which include criminal justice orders, civil detention orders and the use of restrictive interventions. The paper also considers the position of people with disabilities who reside in closed environments without formal authorisation. The paper examines the role of the Office of the Public Advocate's staff and volunteers in monitoring the treatment of people with disabilities in closed environments, and considers a number of reform ideas.

Implementing Human Rights in Closed Environments (New Zealand)➤ **Natalie Pierce**

Independent Police Conduct Authority, New Zealand

The Independent Police Conduct Authority ('the Authority') is an Independent Crown Entity and is chaired by Justice L P Goddard, a High Court Judge.

The Authority's mandate under the Independent Police Conduct Authority Act 1988 is: to investigate complaints against Police concerning misconduct and neglect of duty or concerning any practice, policy or procedure of Police affecting a complainant; and to investigate incidents of death or serious bodily harm involving Police.

The Authority is also designated National Preventive Mechanism ('NPM') under the Optional Protocol to the Convention against Torture ('OPCAT') and has jurisdiction to monitor the conditions applicable to and the treatment of individuals who are detained in Police cells or who are otherwise in the custody of Police. The Authority's NPM mandate is provided in the Crimes of Torture Act 1989.

Every year, the Authority conducts preventive site visits to places of Police detention and makes recommendations to prevent ill-treatment. In addition to site visits, the Authority engages in other preventive activities and research initiatives.

The Authority Chair was elected to the United Nations Subcommittee on Prevention of Torture (SPT) for a two year term in October 2010. The Chair took her oath at the thirteenth session of the SPT in Geneva in February 2011. The work of the Chair as a member of the SPT is independent of the Authority's OPCAT mandate and the position is held by the Chair as an independent expert. While the two roles are functionally and operationally independent, they are nevertheless of direct relevance to each other and complementary to the Authority's Police oversight function.

This presentation will explain the New Zealand experience of implementing human rights in closed environments within the OPCAT framework and will reflect on opportunities for further development of the Authority's preventive capacity.

Changing Cultures in Closed Environments - What Works?➤ **Jem Stevens**

Association for the Prevention of Torture (APT), Switzerland

This paper looks at what works to positively change cultures in closed environments to ones based on the respect for human rights and dignity. Closed environments include places of detention such as prisons, police custodies and immigration detention centres, as well as other places where individuals are deprived of their liberty and cannot leave of their own will, such as mental health institutions, psychiatric hospitals and old people's care homes.

There has been increasing interest in implementing human rights standards in places of deprivation of liberty over the years. Considering how to positively change cultures in these places is a key facet of this work, but one that has been explored to varying degrees in relation to different types of institutions. The added value of this approach is that it goes beyond seeking

specific measures or the implementation of particular recommendations, to look at the institution as a whole and the shared values and assumptions that influence behaviour within it.

The paper starts by asking what we mean by cultures in closed environments. It takes organisational culture theory as a model that can be drawn on to understand what constitutes cultures in these places and what factors influence them. It argues that there is no magic solution that can be used to positively change cultures in closed environments. But, drawing from the experience of the APT and its partners, the paper proposes some key processes, policies and practices that can contribute to positive culture change, and ultimately to better treatment and conditions in places of deprivation of liberty.

Mental Health and Prisons

➤ **John R Taylor**

Office of the Victorian Ombudsman

The mental health of prisoners in Victoria has long been a concern of the Victorian Ombudsman. He has addressed mental health issues in several of his reports to the Victorian Parliament.

In his most recent report of an investigation into *prisoner access to health care* (August 2011) the Ombudsman identified that about 28 per cent of Victoria's male prisoners have diagnosed mental health conditions, with the prevalence of schizophrenia and bipolar disorder almost 10 times greater than the community. Yet only about four percent of the male prison population has access to acute mental health care beds.

This paper addresses the challenges currently being faced in the Victorian prison system, drawing on case studies and recent research undertaken by the Ombudsman's office.

Human Rights in Canadian Federal Corrections: A Prison Ombudsman's Perspective

➤ **Ivan Zinger**

Office of the Correctional Investigator (OCI), Canada

The Correctional Investigator is mandated by Part III of the *Corrections and Conditional Release Act* to act as an independent Ombudsman for federally sentenced offenders in Canada. The primary function of the OCI is to investigate and bring resolution to individual prisoner complaints. As well, the Office has a responsibility to review and make recommendations on the Correctional Service of Canada's policies and procedures to ensure that systemic areas of concern are identified and appropriately addressed.

An important challenge for many countries, even for advanced democracies, is guaranteeing the human rights of its prisoners. The quality of regard to, and respect for, human rights may impact on the success of prisoners' reintegration and participation in society. This presentation will provide an overview of the role, responsibilities and legislative mandate of the OCI and highlight the following key human rights challenges in Canadian federal corrections:

- over-representation of Aboriginal people in prison;
- criminalization and warehousing of persons with mental health issues in prisons;
- hardening of the conditions of confinement;

- prevention of deaths in custody; and,
- access to rehabilitation programming.

The “changing profile” of the federal prisoner population has been used primarily to justify more austere prison conditions, lengthier incarceration periods, fewer opportunities for conditional release and additional resources for prison expansion. It will be argued that the “changing profile” should instead be used to identify important failures in Canadian public policy, and to advocate for the need for additional accountability, transparency and prison oversight in Canada, inclusive of the ratification of the UN *Optional Protocol on the Convention against Torture (OPCAT)*.

Mr Colin Allen

Associate, International Centre for Prison Studies, University of Essex, UK

Colin Allen has been working for the International Centre for Prison Studies on prison improvement projects, mainly in South America and Africa, and recently finished a successful six year project in Libya on the day before the revolution arrived!

Colin Allen was a youth leader in the East End of London before joining the Prison Service of England and Wales as an Assistant Governor in 1965. He worked with young offenders before becoming governor of a high security prison for men and subsequently governor of the country's largest prison for women. He left the Prison Service to work as a team leader in the embryonic independent prison inspectorate before being appointed Deputy Chief Inspector of Prisons.

Since completing work in Libya, Colin continues to be a trustee of the Prison Reform Trust and works with others in London on justice and peace issues, particularly with asylum seekers and refugees. He also continues to be a trustee of a local organisation providing access to the arts.

Mr Paris Aristotle AM

Director of the Victorian Foundation for Survivors of Torture, Victoria

Paris Aristotle AM is the Director of the Victorian Foundation for Survivors of Torture Inc (also known as Foundation House), a position he has held since he founded the organisation in 1987. He has held senior positions on government advisory bodies in the refugee resettlement and human service fields over the past 23 years. Among other positions, Paris is currently Chair of the Minister for Immigration and Citizenship's Council for Immigration Services and Status Resolution (CISSR) and a member of both the Refugee Resettlement Advisory Council (RRAC) and the Residence Determination Reference Group (RDRG). Paris has extensive experience in the area of refugee resettlement and the provision of services to survivors of torture, and has been a regular presenter and contributor to UNHCR meetings and publications over many years. In 2002 Paris was made a Member of the Order of Australia and in 2003 was awarded an Australian Centenary Medal - both honours recognising his longstanding work with refugees, in particular survivors of torture and trauma.

Dr Astrid Birgden

Consultant Forensic Psychologist and Fellow, Deakin University, Victoria

Astrid Birgden is Consultant Forensic Psychologist and Fellow, Deakin University, Victoria. Astrid has been a leader in the development of policy and the delivery of coerced services to offenders within disability services, corrections and the courts for 25 years. She has established and managed statewide services for offenders with an intellectual disability, mainstream sex offenders, and a compulsory drug treatment prison. She developed a statewide reducing reoffending framework in corrections and established two family violence courts. She has previously been a member on panels that oversee clients in closed environments, such as the Victorian Forensic Leave Panel and, since commencing as a consultant in 2011, has been involved in the review of treatment plans for clients in disability and psychiatric institutions. She publishes in the areas of offender rehabilitation, therapeutic jurisprudence and human rights, and has completed a Certificate in Advanced Mental Disability Law through New York Law School.

The Hon. Catherine Branson QC

President and Human Rights Commissioner, Australian Human Rights Commission, Australia

The Hon. Catherine Branson QC was appointed President of the Australian Human Rights Commission on 7 August 2008 and commenced her five year term on 14 October 2008. On 12 July 2009 she additionally became the Human Rights Commissioner.

At the time of her appointment as President of the Commission, she was a judge of the Federal Court of Australia, a position she had held since 1994.

As President and Human Rights Commissioner, Catherine Branson has led the Commission's work regarding the protection of human rights in closed environments. This work has largely concerned issues relating to Australia's system of mandatory and indefinite immigration detention. Since mid-2010 the Commission has conducted five monitoring visits to immigration detention facilities following which it has

published comprehensive reports regarding the conditions of detention. The Commission regularly engages with the Minister for Immigration and the Department of Immigration regarding asylum seeker and immigration detention policy including, for example, on issues such as the mental health impacts of prolonged and indefinite detention, the detention of families and unaccompanied children, and the situation of people who have received adverse security clearance.

Catherine Branson has also led the Commission's advocacy for the ratification and implementation of the *Optional Protocol to the Convention Against Torture*. The Commission has published a report regarding the implementation of OPCAT in Australia, held a public seminar with the involvement of key staff from the Association for the Prevention of Torture and regularly liaised with the Commonwealth Attorney-General's Department regarding progress towards ratification.

Dr Jeffrey Chan

Chief Practitioner Disability and Director of Forensic Disability, Queensland

Jeffrey Chan is Queensland's inaugural Chief Practitioner Disability and statutory role of Director of Forensic Disability. In these roles, he provides high-level clinical advice to the Director-General of the Department of Communities and reports to the Minister of Disability Services on forensic disability matters. Jeff has significant senior executive, teaching, clinical practice, legislative and research experience of more than 25 years in the human services industry, mostly in disability services. Prior to his current appointment, he held the inaugural statutory role in Victoria of protecting the rights of people with a disability subject to restrictive interventions and compulsory treatment order. Jeff was an Australian Human Rights Award Finalist 2010 in the Community (Individual) category for his work in protecting the rights of people with disability subject to restraints and seclusion.

Mr Tom Dalton

Chief Executive Officer, Forensicare, Victoria

Tom Dalton BA, LLB has been the Chief Executive Officer at Forensicare since December 2009. Forensicare is a Victorian State Government agency providing forensic mental health services through the Thomas Embling Hospital, the Melbourne Assessment Prison, Dame Phyllis Frost Centre, and other state run prisons and a community outpatient clinic.

Tom's background is as a lawyer. He commenced with Forensicare as Corporate Counsel in 1999, with responsibility for providing high level legal services to the organisation and staff. Prior to commencing with Forensicare, Tom worked in the Legal Unit of the (then) Department of Human Services advising on mental health and intellectual disability law. He has previously worked in Community Legal Centres and in private practice.

Dr Julie Debeljak

Deputy Director, Castan Centre for Human Rights Law; Senior Lecturer in Law, Monash University, Victoria

Julie Debeljak is a foundational Deputy Director of the Castan Centre for Human Rights Law, and a Senior Lecturer in Law at Monash University. She teaches and researches in domestic, comparative and international human rights law.

Julie has published widely in the human rights area, including publications on human rights and democracy, the domestic implementation of human rights obligations (including articles on the Victorian Charter of Human Rights and Responsibilities), the rights of indigenous peoples, and access to civil justice and human rights.

Julie has completed numerous consultancies preparing various governmental and non-governmental bodies for the commencement of the Victorian Charter, including training for the Judicial College of Victoria, the Victorian Equal Opportunity and Human Rights Commission, the Department of Justice, and the Victorian Bar Association. She has also been engaged as a consultant human rights trainer by the Commonwealth, and has trained Indonesian and Iraqi civil servants in Australia, and civil servants in Burma.

Julie is a lead investigator on two major research grants funded by the Australian Research Council: (a) the first research grant concerned Australia's Legal Response to Trafficking in Persons in the Asia-Pacific region; and (b) the second research grant relates to Human Rights in Closed Environments.

Dr Inez Dussuyer

Principal Investigation Officer, Office of the Victorian Ombudsman

Dr Inez Dussuyer is a Principal Investigations Officer at the Victorian Ombudsman's Office. She has been a Chief Investigator on the ARC project and has contributed to the ARC research by conducting interviews, surveys and focus groups across a number of closed environments. Dr Dussuyer has also had a role, in a monitoring capacity, investigating conditions for persons in custody for the Victorian Ombudsman.

Dr Patsie Frawley

Research Fellow, Living With Disability Research Group, Faculty of Health Sciences, LaTrobe University, Victoria

Patsie Frawley is undertaking research in disability facilities for the ARC grant 'Applying Human Rights in Closed Environments'. Patsie's other research work includes an ARC research project on the History of Self Advocacy in Victoria, and research and program development in relationships, sexuality and violence and abuse prevention with people with an intellectual disability. She has published in these areas and in inclusive research practice with people with an intellectual disability. Contact details:p.frawley@latrobe.edu.au9479 3041

Professor Claudio Grossman

Chair, United Nations Committee Against Torture, USA

Claudio Grossman is Professor of Law and Dean of American University Washington College of Law and the Raymond Geraldson Scholar for International and Humanitarian Law. He is chair of the United Nations Committee Against Torture, where he has served as a committee member since 2003. Previously, Claudio served as a member of the Inter-American Commission on Human Rights (1993-2001), its President (1996-97, and 2001), its special rapporteur on the rights of indigenous populations (2000-2001), and its first special rapporteur on women's rights (1996-2000). Claudio has authored books and articles on international law, human rights, and the law of international organizations, and has received numerous awards for his contributions to these fields, including the Henry W. Edgerton Civil Liberties Award from the American Civil Liberties Union of the National Capital Area, recognizing his lifetime of work defending and advancing civil liberties.

Ms Ellen Hansen

Senior Protection Officer, UNHCR Regional Representation, Canberra

Ellen Hansen is currently the Senior Protection Officer for UNHCR's Regional Office in Canberra which covers Australia, New Zealand, Papua New Guinea and the Pacific. She has over 25 years' experience in international law and policy. Ellen originally graduated in Arts (Honours) and Law from the University of Sydney and has studied international law at The Hague Academy of International Law and as a United Nations Disarmament Fellow. She joined UNHCR in 1998, after ten years in the Australian Department of Foreign Affairs, five of which were as First Secretary in the Australian Embassy in Paris. Immediately prior to her current position, she served in UNHCR's Secretariat at its Headquarters in Geneva. Her current duties cover a broad range of asylum and refugee protection issues, in a very diverse region. They include reviewing and making recommendations on detention policies and practices as they affect refugees and asylum-seekers.

Emeritus Professor Richard Harding

University of Western Australia, Western Australia

Emeritus Professor Richard Harding was the foundation Inspector of Custodial Services from 2000 until 2008. He has written extensively in the area of the regulation of prison standards both within Australia and globally. His longstanding concern for human rights is reflected in his ongoing study of the impact of OPCAT. In this regard he has lobbied the Australian Government repeatedly.

Richard has at various times been Director of the Australian Institute of Criminology, a member of the Australian Law Reform Commission, a director of the Australian Broadcasting Commission, and a consultant to numerous governments and corporations both within Australia and overseas as to prison regimes and conditions.

Mr Oliver Lewis

Executive Director, Mental Disability Advocacy Center, Hungary

Oliver Lewis is Executive Director of the Mental Disability Advocacy Center, an international human rights organisation based in Budapest, Hungary. A law graduate from London School of Economics (UK), he undertook post-graduate studies in medical law and ethics before qualifying as a barrister and working as a research assistant on mental health law reform at the UK's Department of Health. As a non-practising barrister, Oliver is an associate member of the human rights barristers set Doughty Street Chambers, London. He is recurrent Visiting Professor in Law at the Central European University in Budapest, and is a faculty member of the International Diploma on Mental Health Law and Human Rights, run by the Indian Law Society in Pune, India. Oliver has published papers on the interface of human rights law, public policy and disability. He serves on the editorial board of the European Yearbook on European Disability Law.

Mr David Manne

Executive Director, Refugee & Immigration Legal Centre, Victoria

David Manne is a lawyer and migration agent, and Executive Director of the Refugee & Immigration Legal Centre (RILC). He has worked in various capacities assisting refugees and asylum seekers for over 16 years. He sat on the Board of the Refugee Council of Australia for seven years, and currently sits on the Victorian Foundation for the Survivors of Torture Ethics Committee, the Human Rights Law Centre Board, as well as a wide range of other committees in the immigration area, including the DIAC-NGO Humanitarian Dialogue and the Onshore Protection Consultative Group.

David was selected as a non-government organisation member of the Australian delegation to the 2008 UNHCR Executive Committee meeting in Geneva, and was invited by UNHCR Headquarters to participate and present at an international roundtable on detention in Geneva. In 2010, he was invited to attend the UN High Commissioner for Refugees 'Dialogue on Protection Challenges', held in Geneva, and was recently appointed to the UN High Commissioner for Refugees Advisory Board of Eminent Persons. David also headed RILC's legal teams in the recent successful High Court challenges in the cases of Plaintiff M61 v The Commonwealth & Ors (regarding the Government's 'offshore processing' regime in Australia) and Plaintiffs M70/M106 v The Commonwealth & Ors (regarding the Government's 'Malaysian Solution').

Emeritus Professor Ron McCallum AO

Chair, United Nations Committee on the Rights of Persons with Disabilities, Australia

Emeritus Professor Ron McCallum AO, University of Sydney, is the Chair of the United Nations Committee on the Rights of Persons with Disabilities. The primary function of this Committee is to monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities. In 1993, Ron was the first totally blind person to be appointed to a full professorship at any Australian or New Zealand university. From 2002 to 2007, he served as Dean of the University of Sydney Law School, and from 2001 to 2009 he was the inaugural President of the Australian Labour Law Association. Ron's academic field of expertise is labour relations law, and he is a consultant to HWL Ebsworth Lawyers. Ron is a Deputy-Chair of the Board of Directors of Vision Australia which is Australia's largest blind welfare organisation. In January 2011, Prime Minister Julia Gillard designated Ron as Senior Australian of the Year 2011.

Professor Neil Morgan

Inspector of Custodial Services, Western Australia

Appointed as Inspector of Custodial Services (WA) on 30 March 2009, Neil was previously Winthrop Professor of Law at the University of Western Australia (UWA). He has also been a member of the Parole Board of Western Australia, and a consultant to numerous government departments and other agencies in Australia. He has been Rapporteur for the Asian and Pacific Conference of Correctional Administrators since 1997, and his research has focused mainly on Aboriginal justice issues, criminal law, sentencing, and the administration of sentences in Australia and the Asia Pacific region. Recent publications include *Criminal Law in Malaysia and Singapore* (with Stanley Yeo and Chan Wing Cheong), LexisNexis, Singapore, 2007. Neil has received national awards for his contributions to student teaching and learning, as well as a number of teaching awards at UWA.

Dr Bronwyn Naylor

Associate Professor, Law Faculty, Monash University, Victoria

Bronwyn Naylor is a Chief Investigator on the ARC grant, 'Applying Human Rights in Closed Environments'. She teaches and researches in criminal law, criminal justice and human rights, is an investigator on other related grant-funded projects, and has published extensively in these areas. Bronwyn Naylor's research under the ARC grant has included interview and survey research with management, staff and prisoners in Victorian prisons, and at the Victorian forensic psychiatric hospital.

Dame Anne Owers DBE

Former Chief Inspector of Prisons for England and Wales, UK

Anne Owers was Chief Inspector of Prisons for England and Wales from 2001-10, carrying out independent inspection of prisons, immigration detention centres, police and military custody, and coordinating the UK's National Preventive Mechanism under the UN Optional Protocol against Torture.

Anne was educated at Girton College, Cambridge, after which she taught and did research in Zambia. She had a long career in the non-governmental sector, focusing on asylum, race, human rights and criminal justice, having been General Secretary of the Joint Council for the Welfare of Immigrants and Director of JUSTICE, the British section of the International Commission of Jurists. She has reported on women's prisons in Canada and Jamaica and from 2010 to 2011 she chaired an independent review of the prison system in Northern Ireland. She also chairs two national NGOs working with offenders in prison and the community.

Ms Colleen Pearce

The Public Advocate, Office of the Public Advocate, Victoria

Colleen Pearce has 30 years experience in the community and health sectors. She has been Victoria's Public Advocate since 2007. Colleen is a passionate advocate for the rights and interests of people with a disability. She sees the most significant human rights issues facing people with cognitive impairments or mental health issues in Victoria as the inappropriate use of restrictive interventions and violence. On behalf of the Office, Colleen has been outspoken on these issues.

Colleen chairs the Community Visitor Disability, Health Services and Mental Health Boards. She is a member of the Board of Frontier Services, an organisation providing community services across remote northern Australia and a board member of the Connecting Home, an organisation providing services to the Stolen Generations.

Ms Tania Penovic

Law Faculty, Monash University, Victoria

Tania Penovic is a Deputy Director of the Castan Centre for Human Rights Law, a lecturer in law at Monash University and a member of the ABC Advisory Council. She has been involved in a number of enquiries into federal and Victorian law reform and in professional human rights training programs for judges and government officials. Tania has written a number of papers and submissions on Australia's treatment of asylum seekers and is conducting research under the ARC grant into the implementation of human rights in immigration detention facilities.

Ms Natalie Pierce

Legal Advisor to Chair, Independent Police Conduct Authority, New Zealand

Natalie Pierce is the Legal Advisor to the Chair of the Independent Police Conduct Authority. Working closely with the Chair and Manager: Investigations, Natalie's role involves planning and implementing the Authority's OPCAT programme in New Zealand. In addition, Natalie provides legal advice for the Authority's serious and public interest investigations under the Independent Police Conduct Authority Act 1988. Natalie is a graduate of the University of Otago, New Zealand (Law and European Studies). Her LLM thesis considers issues arising under Article 25 of the Rome Statute of the International Criminal Court. Natalie has worked as an Intern at UNHCR's Regional Office in Canberra (Legal / Resettlement Section); the Senior Tutor and Fellow in Residence of Knox College, Dunedin; Judicial Research Counsel, Dunedin District and High Court; guest lecturer in Criminal Justice and International Criminal Law at the University of Otago Faculty of Law; and as a Legal Advisor, Assembly of States Parties Review Conference of the Rome Statute of the International Criminal Court (Kampala, 2010).

Ms Jem Stevens

Asia Pacific Programme Officer, Association for the Prevention of Torture, Switzerland

Jem Stevens is a graduate in law with a master's degree in human rights and democratization. She has been working for the Association for the Prevention of Torture (APT) since 2009, as its first Asia-Pacific Programme Officer and currently as APT Delegate. In these roles, Jem has worked with governments and civil society organizations all over the Asia-Pacific, providing advice and support on measures to prevent torture and other ill-treatment. Previously, Jem was Human Rights Officer with the Office of the High Commissioner for Human Rights in Nepal, where she focused on serious human rights violations during the conflict in Nepal, including torture and enforced disappearances. She has also worked for a number of human rights and non-profit organisations in Japan, including as part of the Daiwa Anglo-Japanese Foundation Scholarship programme.

Mr John Taylor

Deputy Ombudsman, Victoria

John Taylor was appointed to the position of Deputy Ombudsman for Victoria in 2004. Prior to that he was a Senior Assistant Commonwealth Ombudsman, managing the Commonwealth Ombudsman's State and Territory offices and corporate services.

John has had extensive experience in conducting investigations and reviews across a wide range of State and Federal agencies. A recent investigation was his Investigation into an allegation about Victoria Police crime statistics – a report to Parliament tabled in June 2011.

Dr Ruth Vine

Chief Psychiatrist, Department of Health, Victoria

Ruth Vine is the Chief Psychiatrist of Victoria under the Mental Health Act.

Ruth initially joined the Department of Human Services in 1999 to take up a newly created position of Deputy Chief Psychiatrist. In 2004 she was appointed Director, Mental Health. Ruth has previously worked in forensic and general psychiatry. She holds both medical and law degrees, and has contributed to the development of legislation and policy in the areas of mental health, disability, and the management of mentally ill offenders.

Dr Ivan Zinger

Executive Director and General Counsel, Office of the Correctional Investigator (Federal Prison Ombudsman), Canada

Ivan Zinger received his degree in Common Law from the University of Ottawa in 1992, and completed his articles of clerkship at the Federal Court of Canada. In 1999, he obtained his Ph.D. at Carleton University (Ottawa) in Psychology of Criminal Conduct. He is a Research Adjunct Professor with the Law Department at Carleton University, Ottawa.

Ivan joined the Public Service of Canada in 1996. For the past 15 years, he has held a variety of senior managerial, policy and research positions in public safety-related federal departments and agencies. In 2004, he joined his current employer, the Office of the Correctional Investigator (Federal Prison Ombudsman), and was appointed Executive Director and General Counsel for this Office in January 2009.

Over the years, Ivan has developed expertise in domestic and international human rights in prison settings. His academic publications are significant and include articles on a variety of subjects, including ethics, human rights, dangerous offenders, correctional treatment, the diagnosis of psychopathy, correctional release and penal segregation.

