



Commonwealth
National
Preventive
Mechanism

 FOR CONSUMERS

Post Visit Summary

ADV Ocean Protector

08 August 2024

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Summary

Purpose of visit

During a planned visit to Australia's Indian Ocean Territories, the Commonwealth NPM team identified that the offshore patrol vessels, *ABFC Ocean Shield* and *ADV Ocean Protector* were patrolling in Australia's Exclusive Economic Zone (EEZ)¹ near the Cocos (Keeling) Islands and Christmas Island respectively.

The team arrived at Christmas Island around the time of a crew changeover for *ADV Ocean Protector* which meant the vessel was close to the island, and requested to go aboard and undertake an NPM visit. Australian Border Force's (ABF) Maritime Protection Command (MPC)² agreed, and facilitated transfer to and from the vessel as well as a host officer for the team whilst onboard.

The Commonwealth NPM has never visited a seagoing vessel before, and this was the first opportunity to observe the detention facilities onboard and speak to crew about how people may be detained at sea.

What the visit revealed

The vessel had a purpose-built facility that has been appropriately adapted in the event that people were detained onboard. It met most OPCAT requirements.

Priority repair of the CCTV cameras that were out of order when we visited will improve safety for all people detained at sea and the staff who interact with them. Fitting a partition to separate the communal showers such as a curtain is required to meet the minimum standards for privacy.

¹ An **Exclusive Economic Zone**, as prescribed by the 1982 *United Nations Convention on the Law of the Sea*, is an area of the sea in which a sovereign state has special rights regarding the exploration and use of marine resources, including energy production from water and wind.

² **Maritime Border Command** (MBC) is enabled by Australian Border Force (ABF) and the Australian Defence Force (ADF). It supports the whole of government effort to protect Australia's national interests by responding with assigned maritime and air assets for civil maritime security operations.

Recommendations, Suggestions, Comments

The following Recommendations are made on the basis of the NPM's visit:



Recommendation 1

Privacy screens or curtains should be installed in all shower facilities.

The following Suggestions are made on the basis of the NPM's visit:



Suggestion 1

A small supply of alternatives to thin camping mats be sought for use as mattresses in the accommodation for people who are detained longer than a week. They should be thicker, provide coverage over the whole bed base, and provide more comfort for sleeping in accordance with ICRC requirements (such as a hospital grade waterproof mattress).

Suggestion 2

The CCTV in the accommodation and outside areas be prioritised for repair as soon as possible.

Iain Anderson

Commonwealth Ombudsman



Facility

Australian Defence Vessel (ADV) *Ocean Protector* is an auxiliary naval vessel of the Royal Australian Navy, the maritime arm of the Australian Defence Force (ADF). ADV *Ocean Protector* is the sister ship of the large-hulled Australian Border Force Cutter (ABFC) *Ocean Shield* and, as part of Operation SOVEREIGN BORDERS³, provides, in conjunction with other fleet assets, a continuous presence in Australia's EEZ in order to protect Australia's maritime domain from security threats, including illegal maritime arrivals; maritime terrorism; piracy, robbery and violence at sea; compromise to biosecurity; illegal activity in protected areas; illegal exploitation of natural resources; marine pollution; and prohibited imports and exports.

After chartering the vessel for a number of years, the Australian government acquired the ADV *Ocean Protector* in 2015 to provide further capability to safeguard the security of Australia's maritime borders and handed management and control to the Navy in 2016. Teekay shipping, as the Contracted Vessel Operator (CVO), provide the operating crew for *Ocean Protector*, with all customs, border protection and enforcement duties conducted by embarked ABF and ADF personnel. A billeted, embarked Naval Liaison Officer provides the coordination between Teekay and ABF/ADF.

ADV *Ocean Protector* is crewed by 22 civilians (Teekay) and 50 ABF and ADF personnel.

The *Migration Act 1958* allows for detention of an unlawful non-citizen where an officer (as defined in the legislation) knows or reasonably suspects that a person is in Australia's migration zone, or is seeking to enter the migration zone and would become an unlawful non-citizen upon entering it.

Additionally, section 72(4) of the *Maritime Powers Act 2013* authorises a maritime officer to detain a person at sea for the purpose of taking that person to a place outside Australia e.g. from Australia's contiguous zone to another country or territorial waters (with permission from that country).

Therefore, people may be detained onboard ADV *Ocean Protector* for various periods of time while a determination is made whether they are owed non-refoulement obligations and where they are to be taken to (Australia or another place).

³ [Operation Sovereign Borders \(OSB\) \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/operation-sovereign-borders)

Observations

Safety

Embarkation

We were advised that detainees would be boarded in the same way that the NPM team was – via RHIB⁴ or tender⁵ which would be winched to a hatch on the side of the vessel. During this activity, all persons are required to wear a lifejacket and helmet for safety, and there would be ABF officers on the tender and on the vessel to assist the transfer.

Once onboard, the mustering area where detained persons will be initially processed is semi-enclosed with roofing over most of the area and floor to ceiling metal panelling on the ocean side. We were advised that plastic matting would be placed on the ground and bunting would be placed around to demarcate the areas the detainees were allowed to access. They would be fully supervised while in this area, and this area is under continuous CCTV monitoring.

First aid and decontamination facilities and supplies are readily available and would be used as required before moving newly detained persons to the detention area. All ABF and ADF staff are trained to use all supplies.

⁴ A rigid-hulled inflatable boat (RHIB) is a lightweight but high-performance and high-capacity boat constructed with a rigid hull bottom joined to side-forming air tubes that are inflated with air to a high pressure so as to give the sides resilient rigidity along the boat's topsides.

⁵ A small boat that runs back and forth to a bigger boat (or ship). Named because it 'tends' to the needs of the larger craft.

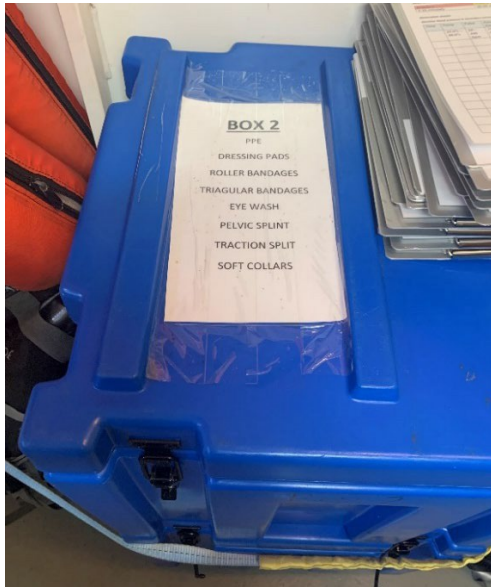


Image 1: First aid supplies for embarkation detained persons



Image 2: Decontamination station for crew and

Respect

Accommodation

ADV *Ocean Protector* can accommodate up to 120 detained people in austere conditions. There are a total of 123 beds, but the approved capacity is 120 persons due to detainee/crew ratio requirements.

There are seven (7) dormitory style (bunk beds) rooms spread across three levels of a detention unit that was retrofitted to the vessel when it was identified that it would be used for interception at sea. The rooms varied in capacity between 12 and 21 beds and were indicatively marked male, female and juvenile. However, we were advised that family groups would be accommodated together wherever possible regardless of gender. This is compliant with international guidance.⁶

⁶ A number of human rights provisions are specifically relevant to conditions in detention, such as:

- Articles 7, 10, and 17 of the *International Covenant on Civil and Political Rights*
- UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, General Assembly resolution 43/173 of 9 December 1988
- UN Standard Minimum Rules for the Treatment of Prisoners, 1955
- Rules for the Protection of Juveniles Deprived of their Liberty, 1990, A/RES/45/113, 14 December 1990

There are no mattresses provided, rather each new person detained is issued a foam camping mat to place on the bunk bed, along with linen and blankets.

This appeared to be a hygiene measure, ensuring every new person received a new mat, rather than having to use a mattress that had been previously used noting the limited capacity for forensic level cleaning onboard a vessel at sea. However, and especially noting the solid metal bunk beds, these foam mats do not meet the requirements of the International Committee of the Red Cross minimum standards for habitat (living quarters) in detention⁷ - *"...the bed must always have a mattress ..."*.

During our visit, ABF crew members were distributing bedding packs to each of the rooms, which included linen and sleeping attire.

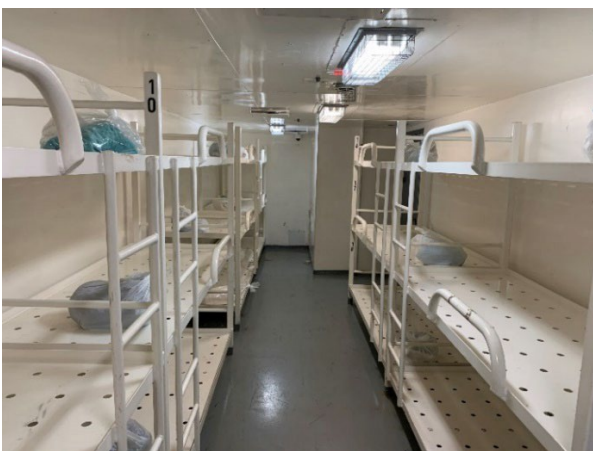


Image 3: Dormitory Accommodation



Image 4: Camping mats for use as mattresses

In addition to the dormitories, there were three isolation rooms with beds and extra bathroom facilities located adjacent to the Medical Centre. These rooms could be used for medical isolation when necessary, or if a detained person was particularly disruptive, similar to High Care Accommodation onshore.

All accommodation areas, including the stairwells to move between them, were monitored by 24 hour CCTV. One of the cameras monitoring a 21 bed dormitory was out of commission when we visited. We were advised that a request for repair had been lodged and was being processed. This room would not be used, or used as a last resort if all other rooms were occupied until the camera was fixed.

There were no people detained while we were onboard.

⁷ Nembrini, Pier Giorgio (2013). [Water, Sanitation, Hygiene and Habitat in Prisons](#). Geneva: International Committee of the Red Cross



Suggestion 1

A small supply of alternatives to thin camping mats be sought for use as mattresses in the accommodation for people who are detained longer than a week. They should be thicker, provide coverage over the whole bed base, and provide more comfort for sleeping in accordance with ICRC requirements (such as a hospital grade waterproof mattress).

Suggestion 2

The CCTV in the accommodation and outside areas be prioritised for repair as soon as possible.

Ablutions

Bathroom and toilet facilities for both genders were available on all three levels of the accommodation unit, and there were accessible facilities for people with disabilities.

Shower rooms, which contained three shower heads were communal with no privacy screens. In accordance with UNHCR guidance, the architecture of shared showers should guarantee a minimum amount of privacy, and the showers should be separated from each other by partitions.⁸

Each toilet was within its own stall, with a plastic curtain for privacy, and met all requirements for ventilation and hygiene.

⁸ Guideline 8.48 – UN High Commissioner for Refugees (UNHCR) (2012). *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*



Image 5: Shower facilities



Image 6: Toilet facilities



Recommendation 1

Privacy screens or curtains should be installed in all shower facilities.

Wellbeing and Social Care

Interview facilities

There were two interview rooms in the detention unit, which included comfortable chairs, tables, and phones for the use of detained persons as required. These rooms could accommodate individuals and families comfortably, and could be used to contact legal representatives or other family members, or by NPM OPCAT Monitors to speak to people in detention as required by domestic and international guidance.⁹

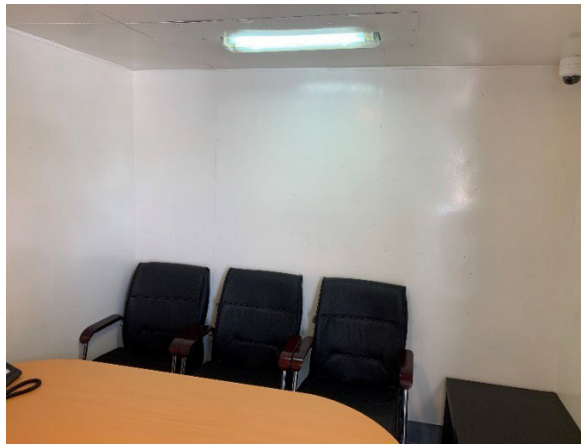


Image: Interview room

Stores

We were shown extensive storage areas and were advised that the vessel carries supplies of welfare clothing (including sleeping and day attire, underwear, shoes, thongs) and hygiene supplies for men, women and children, as well as nappies, formula and other necessities for babies.

Supplies of bottled water in addition to the shipboard desalination plant were also stored and available and available to crew and people in detention.

⁹ Article 20 – *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

41 – *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) Article 14 – *International Covenant on Civil and Political Rights*



Image 8: Welfare stores



Image 9: Child and baby stores

Property room

We were shown a number of Property Rooms, where property of people detained at sea would be stored. We were advised that any property taken from detained persons would be registered, secured in a bag, and a detailed receipt provided to the person. This is aligned with previous Ombudsman recommendations to this effect regarding accurate records of detainee property.



Image 10: Property Room

Physical and Mental Health

Medical facilities

The vessel has been retrofitted with a medical deckhouse which includes three clinic beds, a Pathology Lab, a well-stocked Pharmacy, and radiology facilities. Aspen Medical provides onboard support under contract to the Department of Home Affairs/Australian Border Force. The clinic is staffed by a General Practitioner and a Registered Nurse/Midwife. The nurse advised she had extensive experience in remote area medicine.



Image 11: Medical Clinic

The Pharmacy held extensive stocks of medications and vaccines, including for paediatric use, for both crew and detained persons.

The Pathology Lab was NATA accredited and they could process collected samples onboard, including rapid COVID PCR.

While the preferred option for the provision of any radiology procedure is for services to be conducted onshore, the Australian Border Force is authorised under section 33 of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) to deal with mobile or portable medical X-ray apparatus on the *ADV Ocean Protector*. ARPANSA has confirmed the licence holder to be in compliance with the requirements of the Act, the Regulations, and licence conditions.



Image 12: Pharmacy



Image 13: Pathology Lab

Eating facilities

We were advised that food is prepared daily onboard in the ship's main commercially rated kitchen facilities. In the event that a large number of persons were detained onboard, there was a separate galley available which could be activated for use at short notice.

We were advised that food of nutritional value suitable to age, health, and cultural/religious background would be provided.¹⁰ Special diets for pregnant or breastfeeding women would also be made available.¹¹

There did not appear to be a designated dining area for the people in detention, rather they were encouraged to eat outside in the open air area.

¹⁰ Rule 20 – *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules)

¹¹ Rule 48 – United Nations (2010). *Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the Bangkok Rules), A/C.3/65/L.5.



Image 14: Contingency Galley

Access to fresh air

We were shown an outdoor deck area on level 3 of the detention unit which could be used by all persons detained at sea if they wished – It opened directly off the accommodation area. The area was surrounded by waist high railings that had a significant drop off either side on to the deck(s) below. This area had very little shade at most times of the day and was open to the elements.

For these reasons, an area on a lower deck was the preference for outdoor recreation and fresh air. This second area was mostly covered but did have some access to sunlight with screening in place to provide shelter from the elements. We noted that this area did not have operational CCTV. There was a camera fitted, but it was not working when we visited. To ensure a safe environment for outdoor exercise, the CCTV surveillance should be repaired as soon as possible.

We were advised that there were no set minimum times for access to fresh air/outdoor recreation and the only restrictions would be that it be accessed in day light hours and under appropriate supervision. This is compliant with international guidance such as the Mandela Rules, UN Detention Guidelines, and Special Rapporteur Reports.

Methodology

The Commonwealth NPM visits places of detention to:

- monitor the treatment of people in detention and the conditions of their detention and
- identify any systemic issues where there is a risk of torture or ill-treatment
- make recommendations, suggestions, or comments promoting systemic improvement.

The Commonwealth NPM conducts three types of visits: announced, unannounced, and semi-announced. The type, location, and timing of each visit is determined by the Commonwealth NPM alone.

Each place of detention is assessed in terms of its performance based on the management and conditions for people in detention. We assess these against the 5 indicators of a healthy detention facility, adapted from those used by other international and domestic visiting bodies.

The five indicators of a healthy centre are¹²:

Indicator	Description
Safety	people in detention are held in safety and that consideration is given to the use of force and disciplinary procedures as a last resort
Respect	people in detention are treated with respect for their human dignity and the circumstances of their detention
Purposeful activity	the detention facility encourages activities and provides facilities to preserve and promote the mental and physical well-being of people in detention
Well-being and social care	people in detention are able to maintain contact with family and friends, support groups, and legal representatives, and have a right to make a request or complaint
Physical and mental health	people in detention have access to appropriate medical care equivalent to that available within the community. Stakeholders work collaboratively to improve general and individual health conditions for people in detention

¹² These indicators have been adapted from expectations used by international and domestic inspectorates.

The Commonwealth National Preventive Mechanism Mandate

The *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) is an international human rights treaty designed to strengthen the protections for people deprived of their liberty and potentially vulnerable to mistreatment and abuse.

OPCAT does not create new rights for people who are detained, rather it seeks to reduce the likelihood of mistreatment. OPCAT combines monitoring at an international level (by the Subcommittee for the Prevention of Torture) and by National Preventive Mechanisms (NPMs) at a domestic level.

NPMs are independent visiting bodies, established in accordance with OPCAT, to examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and other cruel, inhuman, or degrading treatment or punishment.

An NPM is not an investigative body. The mandate of an NPM differs from other bodies working against torture in its preventive approach: it seeks to identify patterns and detect systemic risks of torture, rather than investigating or adjudicating complaints concerning torture or ill-treatment.

In July 2018, the Australian Government announced the Commonwealth Ombudsman as the visiting body for Commonwealth places of detention (the Commonwealth NPM). At present, the Commonwealth NPM visits places of detention operated by:

- the Department of Home Affairs
- the Australian Federal Police
- the Australian Defence Force



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COM 2023/233

Iain Anderson
Commonwealth Ombudsman
Level 5, 14 Childers Street
Canberra ACT 2600

Dear Mr Anderson, *Iain*

Thank you for your letter dated 9 October 2023 and the Post Visit Summary of Australian Defence Vessel (ADV) Ocean Protector as part of the Commonwealth National Preventive Mechanism's Visit under the Optional Protocol to the Prevention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The ABF has shared the Post Visit Summary with the Royal Australian Navy (RAN).

The ABF accepts the recommendation and suggestions made by the National Preventive Mechanisms and, along with the RAN as the vessel owner, will remediate the identified items at the next available opportunity.

Should you wish to discuss the ABF's response, please contact [REDACTED]

Yours sincerely

[Signature]
Michael Outram APM
Commissioner

7th November 2023

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