



Australian Capital Territory

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018

A2018-3

Republication No 2

Effective: 18 September 2024

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About this republication

The republished law

This is a republication of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 18 September 2024. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 18 September 2024.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see [Legislation Act 2001](#), s 133).



Australian Capital Territory

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Australian Capital Territory

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018

An Act to enable the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to be given effect within the ACT

Part 1 Preliminary

1 Name of Act

This Act is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*place of detention*—see section 7.’ means that the term ‘place of detention’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Meaning of *detaining authority*

(1) In this Act:

detaining authority, for a place of detention—

- (a) means the entity in charge of the place of detention; and
- (b) includes any entity responsible for the day-to-day care, control, health and safety of detainees in the place of detention.

(2) For this Act, an entity engaged by, or on behalf of, a detaining authority or the Territory to provide services to detainees in a place of detention as, or on behalf of, a detaining authority or the Territory is taken to be a detaining authority.

Examples

- 1 a non-government organisation contracted to provide education services on behalf of the detaining authority
- 2 the provision of health services to detainees at a place of detention by a different administrative unit to the one that is responsible for the place of detention

6A Responsible entities for places of detention

(1) In this Act:

responsible entity, for a place of detention—each of the following is a ***responsible entity*** for a place of detention:

- (a) the responsible Minister for the place of detention;
- (b) the responsible director-general for the place of detention;
- (c) the detaining authority for the place of detention.

(2) If a responsible entity is required to do a thing under this Act in relation to a place of detention and the particular responsible entity is not stated for the requirement—

- (a) any responsible entity for the place of detention may do the thing; and
- (b) if the responsible Minister for the place of detention does not do the thing—the responsible Minister must ensure the thing is done.

7 Meaning of *place of detention*

In this Act:

place of detention, means any place that the NPM or subcommittee must be allowed to visit under the Optional Protocol, article 4, that is subject to the jurisdiction and control of the Territory.

Note Under the Optional Protocol, art 4, the Territory must allow visits to any place under its jurisdiction and control and in which people are or may be involuntarily deprived of their liberty.

8 Relationship to other laws

A provision of another territory law that prevents or limits the exercise of any function by the NPM or subcommittee, in relation to a detainee or place of detention under this Act, has no effect to the extent of any inconsistency with this Act.

Part 1A ACT National Preventive Mechanism

Division 1A.1 Preliminary

8A Object—pt 1A

The object of this part is to enable the NPM to be established and maintained to fulfil the mandate set out in the Optional Protocol, part IV.

8B Definitions—pt 1A

In this part:

Commonwealth Ombudsman means the person appointed under the [Ombudsman Act 1976](#) (Cwlth), section 21.

custodial inspector means the custodial inspector appointed under the [Custodial Inspector Act 2017](#), section 9.

investigative entity means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission, the ombudsman, the custodial inspector and the integrity commissioner.

NPM coordinator means the Commonwealth Ombudsman or another entity on which the function of the National Preventive Mechanism Coordinator is conferred from time to time.

Note See the [Ombudsman Regulations 2017](#) (Cwlth), s 17 (1).

staff of the NPM means—

- (a) any public servant or person mentioned in section 8G; and
- (b) any consultants and contractors engaged under section 8H.

Division 1A.2 Establishment and functions of NPM

8C ACT National Preventive Mechanism established

- (1) The ACT National Preventive Mechanism is established.
- (2) The NPM is comprised of each entity prescribed by regulation.

8D Functions of the NPM

The NPM has the following functions:

- (a) to improve the treatment and conditions of detainees in places of detention, and to strengthen the protection of detainees against torture and other cruel, inhuman or degrading treatment or punishment, by doing the following:
 - (i) examining the treatment of detainees in places of detention;
 - (ii) making recommendations and observations to responsible entities for places of detention;
 - (iii) submitting proposals and observations concerning existing or draft legislation that relates to detainees or places of detention;
- (b) any other function given to the NPM under this Act or another territory law.

8E Functions of the NPM—guidelines

- (1) The NPM must make guidelines about the way in which it exercises its functions.
- (2) The guidelines must be consistent with, and reasonably appropriate and adapted for implementing, the Optional Protocol.

- (3) The guidelines must provide for procedures of the NPM, including—
 - (a) how the NPM identifies matters that require particular care or sensitivity when carrying out an examination of the treatment of detainees in places of detention or in a particular place of detention; and
 - (b) how the NPM works with the NPM coordinator, the subcommittee and investigative entities; and
 - (c) anything else prescribed by regulation.
- (4) The guidelines may include any other procedures of the NPM, including how the NPM works with responsible entities for places of detention to improve the treatment and conditions of detainees in places of detention.
- (5) Before making the guidelines, the NPM must—
 - (a) consult with the responsible directors-general for each place of detention and the chief police officer; and
 - (b) consider any recommendations or advice received during the consultation undertaken under paragraph (a).
- (6) The guidelines are a notifiable instrument.
- (7) The guidelines must be made available on the NPM's website.

8F Independence of NPM

- (1) The NPM is not subject to the direction of anyone else in relation to the exercise of a function under this Act.
- (2) Staff of the NPM, in relation to the exercise of a function under this Act, are not subject to the direction of anyone except—
 - (a) the NPM; or
 - (b) another member of staff of the NPM who is authorised by the NPM to give the direction.

- (3) No-one may require the NPM or staff of the NPM to act other than independently and impartially in the exercise of a function under this Act.

8G Arrangements for staff

The NPM may arrange with the head of service to use the services of the following:

- (a) a public servant;
- (b) a person prescribed by regulation.

8H Consultants and contractors

- (1) The NPM may engage consultants and contractors.
- (2) However, the NPM must not enter into a contract of employment under this section.

8I Delegation

The NPM may delegate a function under this Act to a member of staff of the NPM.

Note For laws about delegations, see the [Legislation Act](#), pt 19.4.

**Division 1A.3 Examination of treatment of detainees
in places of detention**

8J Inspection of place of detention

- (1) In examining the treatment of detainees in a place of detention, the NPM may, at any time, visit a place of detention to inspect the place of detention.
- (2) The NPM may, but need not, give the detaining authority for the place of detention notice of a visit.

- (3) The NPM may give notice of a visit by making a schedule of the dates on which it intends to visit a place of detention publicly available.
- (4) The NPM may, in visiting a place of detention, take into the place any equipment reasonably required to effectively carry out an inspection of the place.

Examples—equipment reasonably required

- 1 a recording device
- 2 a camera

8K Access to place of detention and things in place of detention

- (1) This section applies if the NPM visits a place of detention to inspect the place of detention.
- (2) A responsible entity for a place of detention must ensure that the NPM is given unrestricted access to the following:
 - (a) all parts of the place of detention;
 - (b) any vehicle or equipment used in the place of detention;
 - (c) all documents or other things in the place of detention that the NPM reasonably believes it requires access to in examining the treatment of detainees in the place.
- (3) However, a responsible entity for the place of detention may refuse access by the NPM to all or part of a place of detention—
 - (a) on 1 or more of the following grounds:
 - (i) national security;
 - (ii) a risk to public safety;
 - (iii) a natural disaster;
 - (iv) a serious disorder in the place of detention; and

- (b) only if the circumstances of the grounds mentioned in paragraph (a)—
 - (i) are urgent and compelling; and
 - (ii) temporarily prevent access by the NPM.
- (4) The existence of a state of emergency is not in itself a reason for a refusal under subsection (3).
- (5) A refusal under subsection (3) must—
 - (a) be made in writing; and
 - (b) include a statement of reasons for the refusal; and
 - (c) if practicable and reasonable, set out when the access will be allowed.
- (6) In this section:
state of emergency means—
 - (a) a state of emergency declared under the *Emergencies Act 2004*, section 156; or
 - (b) an emergency declared under the *Public Health Act 1997*, section 119.

8L Access to detainees and other people

- (1) In examining the treatment of detainees in a place of detention, the NPM may, either personally or through an interpreter, speak to, or privately interview, any detainee or other person in the place.
- (2) However, a detainee or other person has a right to refuse to speak to, or be privately interviewed by, the NPM.

- (3) A responsible entity for the place of detention must ensure that the NPM is—
 - (a) given reasonable assistance to speak to, or privately interview, a detainee or other person; and
 - (b) able to speak to, or privately interview, a detainee or other person at any time.
- (4) A support person nominated by a detainee or other person may be present during the interview at their request and with the agreement of the NPM.
- (5) No responsible entity may, without the approval of the detainee or other person, read, copy or remove any correspondence—
 - (a) from a detainee or other person to the NPM; or
 - (b) from the NPM to the detainee or other person.
- (6) In this section:
privately interview means speaking with a person without the presence of any other person and without audio surveillance by electronic or other means.

8M Access to information, documents and other things

- (1) This section applies if the NPM believes on reasonable grounds that an entity can provide information or produce a document or something else relevant to its examination of the treatment of detainees in a place of detention.

Examples—information relevant to examination of the treatment of detainees

- 1 the number of detainees in a place of detention
- 2 the conditions of detention applying to detainees
- 3 the number or location of places of detention

- (2) The NPM may, by written notice given to the entity, require the entity to provide the information or produce the document or other thing.

- (3) The Territory must not prevent or obstruct the provision of the information or the production of the document or other thing under this section, even if the Territory would be entitled to do so if the examination were a legal proceeding.

8N Anyone may provide information, documents and other things

An entity that has information, a document or something else it believes is relevant to the NPM's examination of the treatment of detainees in a place of detention may provide or produce it to the NPM on its own initiative at any time.

Examples—entity

- 1 a responsible entity
- 2 an investigative entity
- 3 the subcommittee
- 4 the NPM coordinator
- 5 an entity that exercises a function under a law of a State, corresponding or substantially corresponding to a function of the NPM

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

8O NPM may keep document or other thing

- (1) If a document or something else is given to the NPM under section 8M or section 8N, the NPM may, for a period that is necessary for the NPM's consideration to which the document or thing relates—
- (a) take possession of, make copies of, or take extracts from, the document or take possession of the thing; and
 - (b) keep the document or thing.
- (2) During the period mentioned in subsection (1), the NPM must allow anyone who would be entitled to inspect the document or thing, if it were not in the possession of the NPM, to inspect it and, for a document, make copies of, or take extracts from, it.

- (3) At the end of the period mentioned in subsection (1), the NPM must return a document or thing.

Division 1A.4 Recommendations and reporting about treatment of detainees in places of detention

8P Treatment of detainees in places of detention—recommendations and observations

Following an examination of the treatment of detainees in a place of detention under division 1A.3, the NPM may make a recommendation or observation—

- (a) to any entity the NPM considers appropriate to respond to the recommendation or observation made; and
- (b) in a way the NPM considers appropriate.

8Q Treatment of detainees in places of detention—preparation of report

- (1) Following an examination of the treatment of detainees in a place of detention under division 1A.3, the NPM may prepare a report about the following:
 - (a) the examination;
 - (b) any recommendation or observation made under section 8P in relation to the examination;
 - (c) any steps that have been or are proposed to be taken in relation to the recommendation or observation made under section 8P.
- (2) The NPM may give a copy of the draft report to any responsible entity for the place of detention.

- (3) If the NPM gives a copy of the draft report to a responsible entity, the NPM—
- (a) may invite the entity to give comments on the copy of the draft report within a reasonable period; and
 - (b) must consider any comments given by the entity under paragraph (a).
- (4) The NPM may also give a copy of the draft report or a copy of part of the draft report to any other entity the NPM is satisfied has a direct interest in the draft report.
- (5) However, if the NPM gives a copy of the draft report or a copy of part of the draft report to an entity that is a non-public sector entity under subsection (4), the NPM must first do the things mentioned in subsections (2) and (3) with—
- (a) each responsible entity mentioned in the report; and
 - (b) each responsible entity that is, or is likely to be, directly affected by the report; and
 - (c) any other responsible entity prescribed by regulation.
- Note* Power to make a regulation includes power to make different provision in relation to different matters or different classes of matters, and to make a regulation that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).
- (6) In this section:
- non-public sector entity***—see the [Auditor-General Act 1996](#), section 13B.

**8R Treatment of detainees in places of detention—
publication etc of final report**

- (1) The NPM may do the following with a report prepared under section 8Q:
 - (a) give the report to a responsible entity for the place of detention mentioned in the report;
 - (b) publish the report;
 - (c) give the report to the Speaker to table in the Legislative Assembly;
 - (d) give the report to any other entity.
- (2) However, before the NPM does a thing mentioned in subsection (1) (b), (c) or (d), the NPM must do the things mentioned in section 8Q (2) and (3) with—
 - (a) each responsible entity mentioned in the report; and
 - (b) each responsible entity that is, or is likely to be, directly affected by the report; and
 - (c) any other responsible entity prescribed by regulation.

Note If the report contains an adverse comment in relation to an entity the NPM must also give the entity a reasonable opportunity to respond to the proposed comment (see s 8V).
- (3) If the Legislative Assembly is sitting when the NPM gives a report to the Speaker, the Speaker must present the report to the Legislative Assembly within 5 sitting days after receiving the report.
- (4) If the Legislative Assembly is not sitting when the NPM gives the report to the Speaker—
 - (a) the report is taken to have been presented to the Legislative Assembly on the day the NPM gives it to the Speaker (the **report day**); and

- (b) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
 - (c) the Speaker must present the report to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election.
- (5) In this section:
- Speaker* includes—
- (a) if the Speaker is unavailable—the Deputy Speaker; and
 - (b) if both the Speaker and Deputy Speaker are unavailable—the clerk of the Legislative Assembly.
- unavailable*—the Speaker or Deputy Speaker is *unavailable* if—
- (a) they are absent from duty; or
 - (b) there is a vacancy in the office of Speaker or Deputy Speaker.

Division 1A.5 Information secrecy and sharing

8S Secrecy

- (1) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or

- (b) the person—
 - (i) does something that discloses protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being disclosed to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) (a) does not apply if the record of protected information about the person is made—
 - (a) with the person's consent; or
 - (b) under this Act or another territory law; or
 - (c) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (3) Subsection (1) (b) does not apply if the protected information about the person is disclosed—
 - (a) with the person's consent; or
 - (b) under this Act or another territory law; or
 - (c) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (d) for protected information that is information other than identifying information—to a permitted information recipient; or

- (e) for protected information that is identifying information—
 - (i) to a permitted information recipient; and
 - (ii) by the NPM or a member of staff of the NPM; and
 - (iii) in circumstances where the NPM is satisfied the disclosure is necessary and reasonable in the public interest.

- (4) A person to whom this section applies must not publish protected information about a person that is identifying information about the person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (5) Subsection (4) does not apply if the protected information about the person is published with the person's consent.
- (6) A person to whom this section applies must not be compelled to disclose protected information to a court or produce a document containing protected information to a court.
- (7) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

identifying information, about a person, means information that—

- (a) identifies the person; or
- (b) allows the person's identity to be worked out.

permitted information recipient means—

- (a) a responsible entity; or
- (b) the subcommittee; or
- (c) the NPM coordinator; or

- (d) an entity that exercises a function under a law of a State, corresponding or substantially corresponding to a function of the NPM.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

person to whom this section applies means a person who exercises, or has exercised, a function under this Act.

protected information means information about a person that is disclosed to, or obtained by, the NPM because of the exercise of a function by the NPM or a member of staff of the NPM under this Act.

8T Laws preventing etc providing information, documents and other things do not apply

- (1) This section applies if an entity provides information or produces a document or something else to the NPM because they believe it is relevant to the exercise of the NPM's functions.
- (2) A provision of another territory law that prevents or limits the provision of the information or the production of the document or thing has no effect.

8U Referral to investigative entity

- (1) This section applies if the NPM reasonably believes that a matter raised by, or in the course of, the exercise of its functions can be more appropriately dealt with by another investigative entity or an official visitor.
- (2) The NPM may decide to refer the matter together with any relevant documents, information or other things in the NPM's possession or control, to an investigative entity or an official visitor.
- (3) However, the referral must not include identifying information about an individual unless—
- (a) the individual has given consent; or

- (b) the NPM is satisfied that referring the matter is necessary and reasonable in the public interest.
- (4) Nothing in this section requires the investigative entity or official visitor to deal with the referred matter.
- (5) The NPM may enter into arrangements with an investigative entity or an official visitor about the referral of matters under this section.
- (6) In this section:
identifying information—see section 8S (7).
matter includes part of a matter.

8V Publishing etc adverse comment

- (1) The NPM must not publish an adverse comment in relation to an entity, unless the NPM has given the entity a reasonable opportunity to respond, orally or in writing, to the proposed comment.
- (2) The NPM must also not do a thing mentioned in section 8R (1) (Treatment of detainees in places of detention—publication etc of final report) in relation to a report that contains an adverse comment in relation to an entity, unless the NPM has given the entity a reasonable opportunity to respond, orally or in writing, to the proposed comment.

Division 1A.6 Miscellaneous

8W Identification of NPM

In exercising a function under this Act in relation to a person, the NPM must, as far as it is practicable and reasonable, make it clear to the person that the function is being exercised by the NPM under this Act.

8X Review—pt 1A

- (1) The Minister must review the operation of this part as soon as practicable after the end of its 2nd year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 12 months after the day the review is started.
- (3) This section expires 5 years after the day it commences.

Part 2 Visits by subcommittee

9 Object—pt 2

The object of this part is to enable the subcommittee to fulfil the mandate set out in the Optional Protocol, article 11 (1) (a) so far as it relates to places of detention.

10 Ministerial arrangements

- (1) The Minister may enter into arrangements (*Ministerial arrangements*) with the Commonwealth Attorney-General to facilitate the subcommittee's exercise of its functions in accordance with the Optional Protocol within the ACT under this Act.
- (2) Without limiting subsection (1), a Ministerial arrangement may be made in relation to the following:
 - (a) the care, direction, control and management of detainees or other people within places of detention;
 - (b) the safety and security of places of detention;
 - (c) access to, and disclosure of, information;
 - (d) publication of information;
 - (e) the privacy of individuals or their rights to the confidentiality of personal information about them;
 - (f) the special needs of children and other vulnerable people;
 - (g) urgent and compelling risks to public health caused by outbreaks of infectious diseases.
- (3) A Ministerial arrangement must be consistent with, and reasonably appropriate and adapted for implementing, the Optional Protocol.

- (4) A detaining authority has, and may exercise, the functions necessary, under the relevant Ministerial arrangements, to give effect to the Optional Protocol.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

- (5) The Minister may enter into arrangements with the Commonwealth Attorney-General for the exercise of functions under this Act in relation to places of detention and detainees under the control and jurisdiction of the Commonwealth.

11 Duties of responsible entities for places of detention

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) A responsible entity for the place of detention must ensure that the subcommittee and any accompanying expert or assistant are given access to, and are able to exercise their functions in accordance with the Optional Protocol in, the place of detention.
- (3) In this section:

assistant means a person appointed under the Ministerial arrangements to assist the subcommittee.

12 Subcommittee's access to places of detention

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) A responsible entity for the place of detention must ensure that the subcommittee and any accompanying expert or assistant are given unrestricted access to every part of the place.

- (3) However, if the detaining authority considers that 1 or more grounds mentioned in the Optional Protocol, article 14 (2) may temporarily prevent the carrying out of a visit by the subcommittee, the authority may prohibit or restrict access to the place of detention so that the Commonwealth Attorney-General may, under a Ministerial arrangement, be requested, and decide whether or not, to object to the visit.
- (4) Also, the authority may prohibit or restrict access to the place of detention if—
- (a) an objection to the subcommittee’s visit has been made by the Commonwealth Attorney-General, under the Ministerial arrangements, on 1 or more of the grounds mentioned in the Optional Protocol, article 14 (2); and
 - (b) the objection has not been withdrawn or otherwise resolved by the Commonwealth Attorney-General under the Ministerial arrangements.

Note Under the Optional Protocol, art 14 (2) an objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited.

- (5) In this section:
assistant—see section 11 (3).

13 Access to information

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) A responsible entity for the place of detention must ensure that the subcommittee and any accompanying expert are given all relevant information that is requested by the subcommittee for evaluating the needs and measures that should be adopted to strengthen, if necessary, the protection of people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.
- (3) A detaining authority for the place of detention must, at the request of the subcommittee and under the Ministerial arrangements, allow the subcommittee to have unrestricted access to the following information in relation to the place:
 - (a) the number of detainees in the place;
 - (b) the treatment of detainees in the place;
 - (c) the conditions of detention applying to detainees in the place.
- (4) Access to which the subcommittee is entitled under this section includes the right to inspect any record that is under the control of a responsible entity for the place of detention, or whose production the responsible entity may, in an official capacity, reasonably require.
- (5) A provision of any Act or other law that restricts or denies access to records does not prevent a responsible entity from complying with this section.
- (6) In this section:

record means any document or other source of information compiled, recorded or stored in written form or on film, or by electronic process, or in any other manner or by any other means.

14 Subcommittee may interview detainees and other people

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) A responsible entity for the place of detention must ensure that the subcommittee and any accompanying expert are given reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee or other person at the place who the subcommittee chooses to interview.
- (3) The responsible Minister for a place of detention must give the subcommittee reasonable assistance to interview, without witnesses, either personally or through an interpreter, any person who the subcommittee believes may be able to give it relevant information about the following matters:
 - (a) the place;
 - (b) the treatment of detainees at the place;
 - (c) the conditions of detention.
- (4) A support person nominated by an interviewee may be present during the interview at the interviewee's request and with the agreement of the subcommittee.
- (5) Nothing in this section requires a person who objects or does not consent to being interviewed by the subcommittee to participate in an interview.

Part 3 Miscellaneous

17 Directions of responsible Minister

- (1) The responsible Minister for a place of detention may give directions to a detaining authority for the place of detention for this Act.
- (2) The detaining authority must comply with any directions given by the responsible Minister under subsection (1).
- (3) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

17A Protection against actions etc

- (1) A person is not subject to any civil or criminal liability and no action, claim or demand may be taken or made of or against the person, for providing information, producing a document or thing or making a disclosure to—
 - (a) the subcommittee in the course of, and for the purposes of, the subcommittee performing its mandate under the Optional Protocol, article 11; or
 - (b) the NPM in the course of, and for the purposes of, the NPM performing its mandate under the Optional Protocol, part IV.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on the giving or disclosure of information (whether or not imposed by or under an Act) applicable to the person.

17B Protection against reprisals

- (1) An entity commits an offence if—
 - (a) the entity intentionally takes detrimental action against someone; and

- (b) the detrimental action is taken wholly or partially because—
 - (i) the person provided information, produced a document or thing or made a disclosure to the NPM or the subcommittee; or
 - (ii) the person proposed to provide information, produce a document or thing or make a disclosure to the NPM or the subcommittee; or
 - (iii) the entity believes the person has done a thing mentioned in paragraphs (i) or (ii).

Maximum penalty: 110 penalty units, imprisonment for 2 years or both.

- (2) A detaining authority who engages in conduct that would be an offence under subsection (1) is taken to have engaged in conduct that constitutes misconduct in the performance of the detaining authority's duties and that justifies the taking of disciplinary action against the detaining authority, including disciplinary action provided for—
 - (a) under an Act that regulates the employment or service of the detaining authority; or
 - (b) under a contract of employment or contract for services that governs the employment or engagement of the detaining authority.
- (3) In this section:
 - detrimental action*** means action causing, comprising or involving any of the following:
 - (a) injury, damage or loss;
 - (b) change of the conditions of detention;
 - (c) change to the treatment of a detainee;

- (d) intimidation or harassment;
- (e) discrimination, disadvantage or adverse treatment, including in relation to employment;
- (f) dismissal from, or prejudice in, employment;
- (g) disciplinary proceeding;
- (h) unfavourable treatment or proposed unfavourable treatment of a person or relevant organisation in any other way.

relevant organisation means a body that has as 1 of its activities—

- (a) promoting the interests of detainees; or
- (b) delivering services to detainees.

17C Protection of officials from liability

- (1) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

official means a person who exercises a function under part 1A (ACT National Preventive Mechanism).

18 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) Before a regulation may be made to prescribe an entity of the NPM under section 8C (2)—
- (a) the Minister must give public notice of the proposed regulation and invite public submissions about it; and
 - (b) the Executive must consider any written submissions received in accordance with the public notice.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- Act
- chief police officer
- child
- Commonwealth
- correctional centre
- detention place
- entity
- exercise
- function
- notifiable instrument (see s 10)
- official visitor
- penalty unit (see s 133)
- person (see s 160)
- public notice
- territory law
- the Territory.

Commonwealth Ombudsman, for part 1A (ACT National Preventive Mechanism)—see section 8B.

custodial inspector, for part 1A (ACT National Preventive Mechanism)—see section 8B.

deprivation of liberty—see the Optional Protocol, article 4 (2).

Note ***Deprivation of liberty*** is defined in that article as meaning any form of detention, imprisonment or placement of a person in a public or private custodial setting which the person is not permitted to leave at will by order of any judicial, administrative or other authority.

detainee means a person in a place of detention who is deprived of their liberty.

detaining authority, for a place of detention—see section 6.

disclose includes communicate or publish.

expert means an expert selected in accordance with the Optional Protocol, article 13 (3).

information means information, whether true or not, in any form and includes an opinion and advice.

investigative entity, for part 1A (ACT National Preventive Mechanism)—see section 8B.

Ministerial arrangements—see section 10.

NPM means the ACT National Preventive Mechanism established under section 8C.

NPM coordinator, for part 1A (ACT National Preventive Mechanism)—see section 8B.

Optional Protocol means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, as amended and in force for Australia from time to time.

Note The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, is accessible at www.ohchr.org.

place of detention—see section 7.

produce includes allow access to.

responsible director-general, for a place of detention, means—

- (a) the director-general responsible for administering an Act, or part of an Act, conferring functions on, or regulating the exercise of functions by, a detaining authority for the place; or

- (b) if no Act confers functions on, or regulates the exercise of functions by, a detaining authority for the place—the director-general prescribed by regulation for the place; or
- (c) in any other case—the director-general responsible for administering this Act.

responsible entity, for a place of detention—see section 6A (1).

responsible Minister, for a place of detention, means—

- (a) the Minister administering an Act, or part of an Act, conferring functions on, or regulating the exercise of functions by, a detaining authority for the place; or
- (b) if no Act confers functions on, or regulates the exercise of functions by, a detaining authority for the place—the Minister prescribed by regulation for the place; or
- (c) in any other case—the Minister responsible for administering this Act.

staff of the NPM, for part 1A (ACT National Preventive Mechanism)—see section 8B.

subcommittee means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with the Optional Protocol, part II.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 A2018-3

notified LR 28 February 2018

s 1, s 2 commenced 28 February 2018 (LA s 75 (1))

remainder commenced 30 April 2018 (s 2 (1) and [CN2018-3](#))

as amended by

[Monitoring of Places of Detention Legislation Amendment Act 2024 A2024-41 pt 3](#)

notified LR 17 September 2024

s 1, s 2 commenced 17 September 2024 (LA s 75 (1))

pt 3 commenced 18 September 2024 (s 2 (1))

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Meaning of *detaining authority*

s 6 am [A2024-41](#) s 22

Responsible entities for places of detention

s 6A ins [A2024-41](#) s 23

Meaning of *place of detention*

s 7 am [A2024-41](#) s 24

Relationship to other laws

s 8 am [A2024-41](#) s 25, s 26

ACT National Preventive Mechanism

pt 1A hdg ins [A2024-41](#) s 27

Preliminary

div 1A.1 hdg ins [A2024-41](#) s 27

Object—pt 1A

s 8A ins [A2024-41](#) s 27

Definitions—pt 1A

- s 8B ins [A2024-41](#) s 27
 def **Commonwealth Ombudsman** ins [A2024-41](#) s 27
 def **custodial inspector** ins [A2024-41](#) s 27
 def **investigative entity** ins [A2024-41](#) s 27
 def **NPM coordinator** ins [A2024-41](#) s 27
 def **staff of the NPM** ins [A2024-41](#) s 27

Establishment and functions of NPM

- div 1A.2 hdg ins [A2024-41](#) s 27

ACT National Preventive Mechanism established

- s 8C ins [A2024-41](#) s 27

Functions of the NPM

- s 8D ins [A2024-41](#) s 27

Functions of the NPM—guidelines

- s 8E ins [A2024-41](#) s 27

Independence of NPM

- s 8F ins [A2024-41](#) s 27

Arrangements for staff

- s 8G ins [A2024-41](#) s 27

Consultants and contractors

- s 8H ins [A2024-41](#) s 27

Delegation

- s 8I ins [A2024-41](#) s 27

Examination of treatment of detainees in places of detention

- div 1A.3 hdg ins [A2024-41](#) s 27

Inspection of place of detention

- s 8J ins [A2024-41](#) s 27

Access to place of detention and things in place of detention

- s 8K ins [A2024-41](#) s 27

Access to detainees and other people

- s 8L ins [A2024-41](#) s 27

Access to information, documents and other things

- s 8M ins [A2024-41](#) s 27

Anyone may provide information, documents and other things

- s 8N ins [A2024-41](#) s 27

NPM may keep document or other thing

- s 8O ins [A2024-41](#) s 27

Endnotes

4 Amendment history

Recommendations and reporting about treatment of detainees in places of detention

div 1A.4 hdg ins [A2024-41](#) s 27

Treatment of detainees in places of detention—recommendations and observations

s 8P ins [A2024-41](#) s 27

Treatment of detainees in places of detention—preparation of report

s 8Q ins [A2024-41](#) s 27

Treatment of detainees in places of detention—publication etc of final report

s 8R ins [A2024-41](#) s 27

Information secrecy and sharing

div 1A.5 hdg ins [A2024-41](#) s 27

Secrecy

s 8S ins [A2024-41](#) s 27

Laws preventing etc providing information, documents and other things do not apply

s 8T ins [A2024-41](#) s 27

Referral to investigative entity

s 8U ins [A2024-41](#) s 27

Publishing etc adverse comment

s 8V ins [A2024-41](#) s 27

Miscellaneous

div 1A.6 hdg ins [A2024-41](#) s 27

Identification of NPM

s 8W ins [A2024-41](#) s 27

Review—pt 1A

s 8X ins [A2024-41](#) s 27
exp 18 September 2029 (s 8X (3))

Duties of responsible entities for places of detention

s 11 hdg sub [A2024-41](#) s 28

s 11 am [A2024-41](#) s 29

Subcommittee's access to places of detention

s 12 am [A2024-41](#) s 29

Access to information

s 13 am [A2024-41](#) s 29, s 30

Subcommittee may interview detainees and other people

s 14 am [A2024-41](#) s 31

Protection against actions etcs 15 om [A2024-41](#) s 32**Protection against reprisals**s 16 om [A2024-41](#) s 32**Protection against actions etc**s 17A ins [A2024-41](#) s 33**Protection against reprisals**s 17B ins [A2024-41](#) s 33**Protection of officials from liability**s 17C ins [A2024-41](#) s 33**Regulation-making power**s 18 am [A2024-41](#) s 34**Dictionary**

dict am [A2024-41](#) s 35

def **ACT privacy law** om [A2024-41](#) s 36

def **Commonwealth Ombudsman** ins [A2024-41](#) s 37

def **custodial inspector** ins [A2024-41](#) s 37

def **disclose** ins [A2024-41](#) s 37

def **information** ins [A2024-41](#) s 37

def **investigative entity** ins [A2024-41](#) s 37

def **NPM** ins [A2024-41](#) s 37

def **NPM coordinator** ins [A2024-41](#) s 37

def **produce** ins [A2024-41](#) s 37

def **responsible director-general** ins [A2024-41](#) s 37

def **responsible entity** ins [A2024-41](#) s 37

def **responsible Minister** sub [A2024-41](#) s 38

def **staff of the NPM** ins [A2024-41](#) s 39

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 30 Apr 2018	30 Apr 2018– 17 Sept 2024	not amended	new Act

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