



Australian Capital Territory

Monitoring of Places of Detention Legislation Amendment Act 2024

A2024-41

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J2023-1283

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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Australian Capital Territory

Monitoring of Places of Detention Legislation Amendment Act 2024

A2024-41

An Act to amend legislation about monitoring of places of detention to establish the ACT national preventive mechanism, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Monitoring of Places of Detention Legislation Amendment Act 2024*.

2 Commencement

- (1) This Act (other than section 4) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 4 commences on this Act's notification day.

3 Legislation amended

This Act amends the *Inspector of Correctional Services Act 2017* and the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

Note This Act also amends other legislation (see sch 1).

4 New Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Regulation—sch 2

- (1) The provisions set out in schedule 2 are taken to be a regulation made under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*, section 18.
- (2) The regulation—
 - (a) is taken to be notified under the [Legislation Act](#) on the day this Act is notified; and
 - (b) commences on the commencement of schedule 2; and
 - (c) is not required to be presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1); and

- (d) may be amended or repealed as if it had been made under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*, section 18.
- (3) This Act is taken to be an amending law for the [Legislation Act](#), section 89 (Automatic repeal of certain laws and provisions) despite this section not being a provision mentioned in section 89 (12), definition of *amending law*.

Part 2 Inspector of Correctional Services Act 2017

5 Long title

substitute

An Act to provide for a custodial inspector, and for other purposes

6 Section 1

substitute

1 Name of Act

This Act is the *Custodial Inspector Act 2017*.

7 Part 2 heading

substitute

Part 2 Custodial inspector

8 Section 9 heading

substitute

9 Appointment of custodial inspector

9 Section 9 (1) and notes

substitute

- (1) The Executive must appoint a person as the custodial inspector.

Note For laws about appointments, see the [Legislation Act](#), pt 19.3.

10 **Delegation**
Section 16

after

this Act

insert

or any other territory law

11 **Functions—generally**
Section 17 (2)

omit

12 **Functions—examination and review**
Section 18 (1) (b)

substitute

- (b) may, but not more than once every 2 years, examine and review correctional services on the inspector's own initiative; and

13 **Section 18 (3)**

omit

14 **Offence—taking detrimental action**
Section 26 (4)

substitute

- (4) In this section:

detrimental action includes the following:

- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably, including in relation to—
- (i) the person's reputation; or

- (ii) the person's career, profession, employment or trade; or
- (iii) the person's access to a correctional centre or a detainee;
or
- (iv) if the person is a detainee—
 - (A) the detainee's living conditions; or
 - (B) the detainee's privileges; or
 - (C) the surveillance or searches the detainee is subject to;
or
 - (D) where the detainee is held in a correctional centre;
- (b) treating, or proposing to treat, a relevant organisation unfavourably, including in relation to—
 - (i) the funding the organisation receives; or
 - (ii) the organisation's access to a correctional centre or detainee; or
 - (iii) the conditions on the organisation's service delivery in relation to a correctional centre or detainee;
- (c) harassing or intimidating a person;
- (d) injuring a person;
- (e) damaging a person's property;
- (f) treating, or proposing to treat, a person unfavourably in any other way.

living conditions of a detainee, means, as relevant to the detainee, living conditions mentioned in—

- (a) the *Corrections Management Act 2007*, chapter 6 (Living conditions at correctional centres); or

- (b) the *Children and Young People Act 2008*, part 6.5 (Living conditions at detention places).

privilege of a detainee, means, as relevant to the detainee, a privilege mentioned in—

- (a) the *Corrections Management Act 2007*, section 154; or
(b) the *Children and Young People Act 2008*, section 289.

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

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

15 Section 27

substitute

27 Report about examination and review

- (1) The inspector must prepare a report after conducting the following:
- (a) an examination and review of a correctional centre under section 18 (1) (a);
 - (b) an examination and review of correctional services under section 18 (1) (b);
 - (c) a review of a critical incident under section 18 (1) (c).
- (2) Any recommendations included in a report must further the objects of this Act.

Note The main object of this Act is to promote the continuous improvement of correctional centres and correctional services (see s 6).

**16 Draft report to relevant Minister and director-general
Section 29 (1) and (2)**

substitute

- (1) Before presenting a report prepared under section 27 to the Legislative Assembly, the inspector must give the relevant Minister and relevant director-general a reasonable opportunity to comment on a draft report.
- (1A) For subsection (1), a reasonable opportunity to comment is a period that is either—
 - (a) 6 weeks; or
 - (b) another period as agreed between the inspector, relevant Minister and relevant director-general.
- (2) The relevant Minister and relevant director-general may provide comments in relation to the draft report to the inspector within the period mentioned in subsection (1A).

17 Section 30

substitute

30 Presentation of report to Legislative Assembly

- (1) The inspector must give the Speaker a report prepared under section 27—
 - (a) for an examination and review of a correctional centre conducted under section 18 (1) (a) or of correctional services conducted under section 18 (1) (b)—within 6 months of completing the examination and review; and
 - (b) for a review of a critical incident conducted under section 18 (1) (c)—at a time the inspector considers appropriate having regard to the circumstances of the critical incident.

- (2) The relevant Minister may extend the period mentioned in subsection (1) (a) by an additional period of not more than 12 months.
- (3) If the Legislative Assembly is sitting when the inspector 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 inspector gives the report to the Speaker—
- (a) the report is taken to have been presented to the Legislative Assembly on the day the inspector 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.

18 Dictionary, note 2

insert

- body

19 Dictionary, note 2

omit

- person (see s 169)

substitute

- person (see s 160)

20 Dictionary, new definition of *critical incident*

insert

critical incident means any event in a correctional centre or in the provision of correctional services that involves any of the following:

- (a) the death of a person;
- (b) a person's life being endangered;
- (c) an escape from custody;
- (d) a person being taken hostage;
- (e) a riot that results in significant disruption to a centre or service;
- (f) a fire that results in significant property damage;
- (g) an assault or use of force that results in a person being admitted to a hospital;
- (h) any other incident identified as a critical incident by a relevant Minister or relevant director-general.

21 Dictionary, definition of *inspector*

omit

inspector of correctional services

substitute

custodial inspector

Part 3

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

22 Meaning of *detaining authority* Section 6 (2)

substitute

- (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

23 New section 6A

insert

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.

24 **Meaning of *place of detention***
Section 7

before

subcommittee

insert

NPM or

25 **Relationship to other laws**
Section 8

omit

(other than an ACT privacy law)

26 **Section 8**

before

subcommittee

insert

NPM or

27 New part 1A

insert

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.

28 Section 11 heading

substitute

11 Duties of responsible entities for places of detention

29 Sections 11 to 13

omit

The responsible Minister and detaining authority

substitute

A responsible entity

30 Section 13 (4) and (5)

substitute

- (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.

**31 Subcommittee may interview detainees and other people
Section 14 (2)**

omit

The responsible Minister and detaining authority

substitute

A responsible entity

32 Sections 15 and 16

omit

33 New sections 17A to 17C*insert***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).

34 Regulation-making power New section 18 (2)

insert

- (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.

35 Dictionary, note 2

insert

- chief police officer
- official visitor
- public notice

36 Dictionary, definition of *ACT privacy law*

omit

37 Dictionary, new definitions

insert

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

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

disclose includes communicate or publish.

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.

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

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

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).

38 Dictionary, definition of *responsible Minister*

substitute

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.

39 Dictionary, new definition of *staff of the NPM*

insert

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

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Auditor-General Act 1996

[1.1] Section 10 (1), note

substitute

Note The auditor-general must consult with the custodial inspector in relation to the exercise of a function under pars (a) to (d) involving a detainee or correctional centre or service (see [Custodial Inspector Act 2017](#), s 33).

Part 1.2 Children and Young People Act 2008

[1.2] Section 137, definition of *accredited person*, paragraph (e) and section 144 (2) (b) (iv)

omit

inspector of correctional services

substitute

custodial inspector

[1.3] Section 153 (1), note 1

substitute

Note 1 The custodial inspector may also enter and inspect a detention place (see [Custodial Inspector Act 2017](#), s 19).

[1.4] Section 154 (5), definition of *inspection law*, examples

insert

- [Custodial Inspector Act 2017](#)

[1.5] Section 154 (5), definition of *inspection law*, examples, 4th dot point

omit

[1.6] Section 179 (c) etc

omit

inspector of correctional services

substitute

custodial inspector

in

- section 179 (c)
- section 195 (5) (d)
- section 200 (5), definition of *protected electronic communication*, paragraph (c)
- section 201 (4), definition of *protected mail*, paragraph (c)
- section 222 (3) (d)
- section 280 (5), definition of *protected mail*, paragraph (c)
- section 576, definition of *accredited person*, paragraph (e)
- section 634 (1) (d)

[1.7] Dictionary, new definition of *custodial inspector*

insert

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

[1.8] Dictionary, definition of *inspector of correctional services*

omit

Part 1.3 **Corrections Management Act 2007**

[1.9] Section 15 (2) (b) (iv) etc

omit

inspector of correctional services

substitute

custodial inspector

in

- section 15 (2) (b) (iv)
- section 31A (2) (d) (ii)
- section 33A (2) (d) (ii)
- section 51 (c)

[1.10] Section 56 (1), note

substitute

Note The custodial inspector may also enter and inspect a correctional centre (see [Custodial Inspector Act 2017](#), s 19).

[1.11] Section 62 (5), definition of *inspection law*, examples

insert

- [Custodial Inspector Act 2017](#)

[1.12] Section 62 (5), definition of *inspection law*, examples, 4th dot point

omit

[1.13] Section 66 (1) (d) etc

omit

inspector of correctional services

substitute

custodial inspector

in

- section 66 (1) (d)
- section 103 (5), definition of *protected electronic communication*, paragraph (c)
- section 142 (3)
- dictionary, definition of *accredited person*, paragraph (d)

[1.14] Dictionary, new definition of *custodial inspector*

insert

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

[1.15] Dictionary, definition of *inspector of correctional services*

omit

[1.16] Dictionary, definition of *protected mail*, paragraph (c)

omit

inspector of correctional services

substitute

custodial inspector

Part 1.4 **Freedom of Information Act 2016**

[1.17] Schedule 1, section 1.15

substitute

1.15 Information in possession of custodial inspector

Information in the possession of the custodial inspector appointed under the *Custodial Inspector Act 2017*, section 9 that has been obtained or generated in relation to an examination or review conducted under that [Act](#), section 18.

1.16 Information in the possession of the ACT national preventive mechanism

Information in the possession of the ACT National Preventive Mechanism established under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*, section 8C that has been obtained or generated in relation to an examination of the treatment of detainees in places of detention under that [Act](#), division 1A.3.

Part 1.5 Human Rights Commission Act 2005

[1.18] Section 48 (1), note 2

substitute

Note 2 The commission—

- (a) must consult with the custodial inspector in relation to any commission-initiated consideration involving a detainee or correctional centre or service (see [Custodial Inspector Act 2017](#), s 33); and
- (b) may refer a matter to the inspector if the commission reasonably believes the matter can be more appropriately dealt with by the inspector (see [Custodial Inspector Act 2017](#), s 34).

Part 1.6 Ombudsman Act 1989

[1.19] Section 5 (1) (b), note

substitute

Note The ombudsman—

- (a) must consult with the custodial inspector in relation to any investigation under par (b) involving a detainee or correctional centre or service (see [Custodial Inspector Act 2017](#), s 33); and
- (b) may refer a matter to the inspector if the ombudsman reasonably believes the matter can be more appropriately dealt with by the inspector (see [Custodial Inspector Act 2017](#), s 34).

Part 1.7 Remuneration Tribunal Act 1995

[1.20] Schedule 1, part 1.2, new dot point

insert

- custodial inspector

[1.21] Schedule 1, part 1.2

omit

- inspector of correctional services

Schedule 2 **New Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Regulation**

(see s 4)



Australian Capital Territory

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Regulation 2024

Subordinate Law SL2024-

made under the

[Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Act 2018](#)

1 Name of regulation

This regulation is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Regulation 2024*.

2 NPM entities—Act, s 8C (2)

The NPM is comprised of—

- (a) the custodial inspector; and
- (b) the human rights commission; and
- (c) the ombudsman.

3 Functions of the NPM—guidelines—Act, s 8E (3) (c)

The guidelines must provide for how the entities that comprise the NPM work together to efficiently and effectively exercise functions as the NPM.

4 Arrangements for staff—Act, s 8G

- (1) This section applies if the Commonwealth Ombudsman is the ombudsman.
- (2) A person who is a member of the ombudsman staff under the *Ombudsman Act 1989*, section 30 (2) (b) is prescribed.

Note The person must be appointed or employed under the *Public Service Act 1999* (Cwlth).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 16 May 2024.

2 Notification

Notified under the [Legislation Act](#) on 17 September 2024.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Monitoring of Places of Detention Legislation Amendment Bill 2024, which was passed by the Legislative Assembly on 28 August 2024.

Clerk of the Legislative Assembly

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