

# Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) ACT National Preventive Mechanism Guidelines 2025 (No 1)\*

Notifiable instrument NI2025-494

made under the

**Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018, section 8E (Functions of the NPM—guidelines)**

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## **1 Name of instrument**

This instrument is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) ACT National Preventive Mechanism Guidelines 2025 (No 1)*.

## **2 Commencement**

This instrument commences on the day after notification.

## **3 ACT National Preventive Mechanism Guidelines**

We make the ACT National Preventive Mechanism Guidelines as set out at schedule 1 to this instrument.

Iain Anderson  
ACT Ombudsman

Pene Mathew  
ACT Human Rights  
Commissioner and  
President

Rebecca Minty  
ACT Inspector of  
Custodial Services

1 September 2025

\*Name amended under Legislation Act, s 60



## ACT NATIONAL PREVENTIVE MECHANISM GUIDELINES

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) establishes both international and national monitoring mechanisms to inspect places where people are deprived of their liberty, with the overall aim of preventing torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment). At a national level, these mechanisms are called the National Preventive Mechanism (NPM).

Australia ratified the OPCAT in December 2017 and agreed to the establishment of a multi-body NPM across the Commonwealth, states and territories to support Australia's obligations to implement the international treaty.

The ACT Custodial Inspector, ACT Human Rights Commission and ACT Ombudsman were nominated to jointly perform the function of ACT NPM by virtue of a [ministerial statement](#) dated 20 January 2022; and later established through the [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Regulation 2024](#), effective 18 September 2024.

Division 1A.2 Section 8E of the [Monitoring of Places of Detention \(Optional Protocol to the Convention Against Torture\) Act 2018](#) ('MPD (OPCAT) Act'), requires the ACT NPM to develop guidelines (the Guidelines) about the way in which it exercises its functions.

The Guidelines must be consistent with and reasonably appropriate and adapted for implementing the OPCAT. The Guidelines are to be interpreted in such a way that respects the functional independence of the ACT NPM to determine the way in which it performs its mandate (as guaranteed by the OPCAT and the MPD (OPCAT) Act).

The Guidelines are limited to the way in which the member bodies of the ACT NPM exercise their functions under OPCAT and may not be reflective of the way the member bodies exercise other non-OPCAT functions, and do not supersede existing relationship protocols between the member bodies on non-OPCAT activities.

## Membership

The ACT NPM is comprised of:

- the ACT Custodial Inspector
- the ACT Human Rights Commission
- the ACT Ombudsman.

New members can only be designated by the ACT Government by regulation.

## Purpose

The purpose of the ACT NPM is to improve the treatment of, and conditions for, people deprived of their liberty within the ACT and to strengthen the protection of people deprived of their liberty against torture and ill-treatment. It may do this by:

- examining the treatment of people in places of detention
- making recommendations and observations to responsible entities for places of detention
- submitting proposals and observations concerning existing or draft legislation that relates to detained people or places of detention.

## Working with ACT NPM members

The ACT NPM members will adopt a collaborative approach to working together as the ACT NPM. In doing so, the guiding principles ACT NPM members will take account of are:

### Guiding principles

- **Independence and impartiality:** being fair and reasonable in how it conducts its work. Providing an independent voice in promoting and bringing about transparency of and accountability for conditions and treatment in places of detention.
- **Human rights and prevention focused:** focusing on human rights at the core of its work. Exercising its preventive mandate to identify root causes and systemic risks of ill-treatment across places of detention and promoting strategies to reduce risk.

- **Collaborative and constructive:** cooperating meaningfully with stakeholders, including the wider community. Engaging in constructive dialogue with detaining authorities to promote and support continuous improvement.
- **Reliable and evidence-based:** Producing reliable public reports drawing on evidence, research and expertise. Professional and structured in the articulation of its findings, conclusions and recommendations.
- **Value lived experience:** Centring the lived experiences of people deprived of their liberty in its work and valuing the perspectives of staff and other stakeholders.

#### Delegation

- The head of each of the ACT NPM members may delegate powers of the MPD (OPCAT) Act to appropriate officers within their organisations.

#### Governance Meetings

- Governance meetings shall be held regularly.
- The Chair of the Governance meetings, and their term, will be agreed upon by the ACT NPM members.
- Governance meetings may be conducted in whole, or in part, in person and/or by video or telephone conference which allows all participants to communicate freely with each other.
- Where relevant, members may invite external people or organisations e.g. ACT Agency representatives, statutory officeholders, experts, and other Australian NPM members to attend governance meetings and provide feedback in relation to ACT NPM activities or provide briefings on related matters.

#### Member Decisions

Members shall make reasonable endeavours to reach any required decisions by consensus.

#### **Working with the Australian NPM Coordinator**

In July 2018, the Australian Government nominated the Office of the Commonwealth Ombudsman as the Australian NPM Coordinator. The Australian NPM Coordinator is tasked with coordinating the multi-body Australian NPM, comprising the Commonwealth, state and territory oversight bodies nominated by their governments as NPMs.

The ACT NPM will support the Australian NPM Coordinator by:

- collaborating to support Australian NPM activities in line with the agreed upon Australian NPM Terms of Reference, Strategic Plan and other policies for joint work
- communicating updates to the Australian NPM Coordinator on work of ACT NPM
- collaborating with the Australian NPM Coordinator on any formal reporting of the Australian NPM.

### **Working with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

OPCAT creates a two-part system to support preventing torture and other ill treatment in places of detention. NPMs are the national part of this system, while the international part is the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The SPT conducts visits to places of detention in each country that is party to OPCAT and provides advice and assistance to the countries which are party to OPCAT as well as to their NPMs.

The ACT NPM will support the SPT by:

- collaborating to support SPT activities in line with the agreed upon Australian NPM Terms of Reference, Strategic Plan and other policies for joint work
- communicating updates to the SPT on work of ACT NPM where relevant — e.g. contributions to regional meetings
- seeking formal advice from the SPT on certain matters pertaining to the OPCAT mandate

- collaborating with the Australian NPM Coordinator on any formal reporting of the Australian NPM to the SPT.

### **Working with Investigative Entities**

Investigative entities, as defined under the MPD (OPCAT) Act, have the power to require the production of documents or the answering of questions. These include for example, the Chief Police Officer for the ACT, the ACT Human Rights Commission, the ACT Ombudsman, the ACT Custodial Inspector and the Integrity Commissioner.

Official Visitors provide independent oversight of services for people in government institutions and community facilities who are dependent on service providers in certain environments, including places of detention. These include environments such as corrections, mental health, disability and places where children and young people live. They are appointed under the [Official Visitor Act 2012](#).

The ACT NPM may refer a matter, together with any relevant documents, information or other things in the ACT NPM's possession or control, to an investigative entity or an official visitor, if:

- the ACT NPM reasonably believes that a matter raised by, or during the exercise of its functions can be more appropriately dealt with by another investigative entity or an official visitor.

The ACT NPM may enter into arrangements with other investigative entities or official visitors about the referral of matters.

### **Working with Responsible Entities**

A responsible entity, for a place of detention, includes:

- the responsible Minister for the place of detention
- the responsible director-general for the place of detention
- the detaining authority for the place of detention.

The ACT NPM will use a combination of announced, unannounced and semi-announced visits to places of detention.

The advantage of announced visits is that the visiting team can obtain information from the responsible entity beforehand and that the relevant people are present in the place of detention on the day(s) of the visit. To vulnerable people in detention and people needing predictability and structure, it may be beneficial that they are prepared for the visit to the place of detention.

The use of unannounced visits may have a general preventive effect and provides the ACT NPM with a more realistic snapshot of how the place of detention operates. Unannounced visits are carried out in connection with the specific aims of the visit. This may apply for instance in response to credible intelligence or reporting that a place of detention has problems of a more serious nature.

A semi-announced visit means the ACT NPM notifies the responsible entity that they expect to visit during a specific period, for instance within a particular month, but does not specify the exact date and time. Semi-announced visits combine the advantages of announced and unannounced visits.

Irrespective of the type of visit undertaken, the ACT NPM will:

- assign a focal point for communication and coordination between the ACT NPM and the responsible entity when visiting a place of detention
- be clearly identifiable, with its staff wearing a badge or other means of identification
- explain clearly, to people deprived of their liberty and staff, the objectives and the limitations of the ACT NPM's work
- engage in constructive dialogue with the responsible entity regarding the nature of the visit, any requests for information, timeframes, reporting and follow up
- be timely in notifying the responsible entity of any concerns requiring immediate action identified by the ACT NPM during the visit
- ensure that any confidential information acquired during the visit is fully protected
- not take any action or measure which could endanger staff or people deprived of their liberty
- monitor for any risk of reprisals arising from a visit or the provision of information to the ACT NPM
- respect the internal rules of the place visited to the extent the NPM considers it in appropriate in the circumstances

- consider the advice of the responsible entity on matters of safety and security
- consider engaging experts to assist with its work — such as people with lived experience, Aboriginal and Torres Strait Islander peoples and people with disability.
- be factual and unbiased in dealing with both people deprived of their liberty and staff, engaging in a manner that is not coloured by feelings or preconceived opinions
- treat all people deprived of their liberty, authorities and staff, and fellow visitors with decency and respect.

#### Identifying matters that require particular care or sensitivity

ACT NPM visits vary in scale, nature and intensity, depending on the aim of the visit. In each individual case, ACT NPM members will make a specific decision on how the visit is to be undertaken in light of the aim of the visit, the nature of the individual institution, and who is detained within the institution. ACT NPM members will also consider the appropriate skills and/or expertise required by the team undertaking the visit. If necessary, ACT NPM members will assist the responsible entity to understand the OPCAT mandate of the ACT NPM ahead of any proposed visit.

The ACT NPM will have due regard to the vulnerability of the people deprived of their liberty. ACT NPM members will maintain an ongoing dialogue with responsible entities and other investigative entities or official visitors, to understand current matters requiring particular care or sensitivity and will consider their advice. ACT NPM members will also consider additional pressures which may be impacting responsible entities and detained persons.

#### **Review of the Guidelines**

The Guidelines will be reviewed by the ACT NPM on an annual basis, or earlier if required, to ensure continuing relevance and ongoing improvement.