

2024

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Monitoring of Places of Detention Legislation Amendment Bill 2024

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# Monitoring of Places of Detention Legislation Amendment Bill 2024

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## **A Bill for**

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

5 **2 Commencement**

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

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

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

11 **3 Legislation amended**

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

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

16 **4 New Monitoring of Places of Detention (Optional Protocol**  
17 **to the Convention Against Torture) Regulation—sch 2**

18 (1) The provisions set out in schedule 2 are taken to be a regulation made  
19 under the *Monitoring of Places of Detention (Optional Protocol to*  
20 *the Convention Against Torture) Act 2018*, section 18.

21 (2) The regulation—

22 (a) is taken to be notified under the [Legislation Act](#) on the day  
23 this Act is notified; and

24 (b) commences on the commencement of schedule 2; and

25 (c) is not required to be presented to the Legislative Assembly under  
26 the [Legislation Act](#), section 64 (1); and

- 1 (d) may be amended or repealed as if it had been made under the  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

1 **Part 2** **Inspector of Correctional**  
2 **Services Act 2017**

3 **5 Long title**

4 *substitute*

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

6 **6 Section 1**

7 *substitute*

8 **1 Name of Act**

9 This Act is the *Custodial Inspector Act 2017*.

10 **7 Part 2 heading**

11 *substitute*

12 **Part 2 Custodial inspector**

13 **8 Section 9 heading**

14 *substitute*

15 **9 Appointment of custodial inspector**

16 **9 Section 9 (1) and notes**

17 *substitute*

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

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



1 **10 Delegation**  
2 **Section 16**

3 *after*

4 this Act

5 *insert*

6 or any other territory law

7 **11 Functions—generally**  
8 **Section 17 (2)**

9 *omit*

10 **12 Functions—examination and review**  
11 **Section 18 (1) (b)**

12 *substitute*

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

15 **13 Section 18 (3)**

16 *omit*

17 **14 Offence—taking detrimental action**  
18 **Section 26 (4)**

19 *substitute*

20 (4) In this section:

21 *detrimental action* includes the following:

22 (a) discriminating against a person by treating, or proposing to treat,  
23 the person unfavourably, including in relation to—

24 (i) the person's reputation; or

- 1 (ii) the person's career, profession, employment or trade; or  
2 (iii) the person's access to a correctional centre or a detainee;  
3 or  
4 (iv) if the person is a detainee—  
5 (A) the detainee's living conditions; or  
6 (B) the detainee's privileges; or  
7 (C) the surveillance or searches the detainee is subject to;  
8 or  
9 (D) where the detainee is held in a correctional centre;
- 10 (b) treating, or proposing to treat, a relevant organisation  
11 unfavourably, including in relation to—  
12 (i) the funding the organisation receives; or  
13 (ii) the organisation's access to a correctional centre or  
14 detainee; or  
15 (iii) the conditions on the organisation's service delivery in  
16 relation to a correctional centre or detainee;
- 17 (c) harassing or intimidating a person;  
18 (d) injuring a person;  
19 (e) damaging a person's property;  
20 (f) treating, or proposing to treat, a person unfavourably in any  
21 other way.
- 22 ***living conditions*** of a detainee, means, as relevant to the detainee,  
23 living conditions mentioned in—  
24 (a) the *Corrections Management Act 2007*, chapter 6 (Living  
25 conditions at correctional centres); or

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

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

5 (a) the *Corrections Management Act 2007*, section 154; or

6 (b) the *Children and Young People Act 2008*, section 289.

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

8 (a) promoting the interests of detainees; or

9 (b) delivering services to detainees.

## 10 **15 Section 27**

11 *substitute*

### 12 **27 Report about examination and review**

13 (1) The inspector must prepare a report after conducting the following:

14 (a) an examination and review of a correctional centre under  
15 section 18 (1) (a);

16 (b) an examination and review of correctional services under  
17 section 18 (1) (b);

18 (c) a review of a critical incident under section 18 (1) (c).

19 (2) Any recommendations included in a report must further the objects  
20 of this Act.

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

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

3 *substitute*

- 4 (1) Before presenting a report prepared under section 27 to the  
5 Legislative Assembly, the inspector must give the relevant Minister  
6 and relevant director-general a reasonable opportunity to comment on  
7 a draft report.
- 8 (1A) For subsection (1), a reasonable opportunity to comment is a period  
9 that is either—
- 10 (a) 6 weeks; or
- 11 (b) another period as agreed between the inspector, relevant  
12 Minister and relevant director-general.
- 13 (2) The relevant Minister and relevant director-general may provide  
14 comments in relation to the draft report to the inspector within the  
15 period mentioned in subsection (1A).

16 **17 Section 30**

17 *substitute*

18 **30 Presentation of report to Legislative Assembly**

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

- 1 (2) The relevant Minister may extend the period mentioned in  
2 subsection (1) (a) by an additional period of not more than 12 months.
- 3 (3) If the Legislative Assembly is sitting when the inspector gives a  
4 report to the Speaker, the Speaker must present the report to the  
5 Legislative Assembly within 5 sitting days after receiving the report.
- 6 (4) If the Legislative Assembly is not sitting when the inspector gives the  
7 report to the Speaker—
- 8 (a) the report is taken to have been presented to the Legislative  
9 Assembly on the day the inspector gives it to the Speaker  
10 (the *report day*); and
- 11 (b) the Speaker must arrange for a copy of the report to be given to  
12 each member of the Legislative Assembly on the report day; and
- 13 (c) the Speaker must present the report to the Legislative  
14 Assembly—
- 15 (i) on the next sitting day; or
- 16 (ii) if the next sitting day is the first meeting of the Legislative  
17 Assembly after a general election of members of the  
18 Assembly—on the second sitting day after the election.
- 19 (5) In this section:
- 20 *Speaker* includes—
- 21 (a) if the Speaker is unavailable—the Deputy Speaker; and
- 22 (b) if both the Speaker and Deputy Speaker are unavailable—  
23 the clerk of the Legislative Assembly.
- 24 *unavailable*—the Speaker or Deputy Speaker is *unavailable* if—
- 25 (a) they are absent from duty; or
- 26 (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.

1 **21 Dictionary, definition of *inspector***

2 *omit*

3 inspector of correctional services

4 *substitute*

5 custodial inspector

1 **Part 3** **Monitoring of Places of Detention**  
2 **(Optional Protocol to the**  
3 **Convention Against Torture)**  
4 **Act 2018**

5 **22** **Meaning of *detaining authority***  
6 **Section 6 (2)**

7 *substitute*

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

12 **Examples**

- 13 1 a non-government organisation contracted to provide education services on  
14 behalf of the detaining authority
- 15 2 the provision of health services to detainees at a place of detention by a  
16 different administrative unit to the one that is responsible for the place of  
17 detention

18 **23** **New section 6A**

19 *insert*

20 **6A** **Responsible entities for places of detention**

21 (1) In this Act:

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

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



- 1 (2) If a responsible entity is required to do a thing under this Act in  
2 relation to a place of detention and the particular responsible entity is  
3 not stated for the requirement—
- 4 (a) any responsible entity for the place of detention may do the  
5 thing; and
- 6 (b) if the responsible Minister for the place of detention does not do  
7 the thing—the responsible Minister must ensure the thing is  
8 done.

9 **24 Meaning of *place of detention***  
10 **Section 7**

11 *before*

12 subcommittee

13 *insert*

14 NPM or

15 **25 Relationship to other laws**  
16 **Section 8**

17 *omit*

18 (other than an ACT privacy law)

19 **26 Section 8**

20 *before*

21 subcommittee

22 *insert*

23 NPM or

1 **27 New part 1A**

2 *insert*

3 **Part 1A ACT National Preventive**  
4 **Mechanism**

5 **Division 1A.1 Preliminary**

6 **8A Object—pt 1A**

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

10 **8B Definitions—pt 1A**

11 In this part:

12 *Commonwealth Ombudsman* means the person appointed under the  
13 *Ombudsman Act 1976* (Cwlth), section 21.

14 *custodial inspector* means the custodial inspector appointed under the  
15 *Custodial Inspector Act 2017*, section 9.

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

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

23 *Note* See the *Ombudsman Regulations 2017* (Cwlth), s 17 (1).

1                    *staff of the NPM* means—

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

4                    **Division 1A.2                    Establishment and functions of NPM**

5                    **8C                    ACT National Preventive Mechanism established**

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

8                    **8D                    Functions of the NPM**

9                    The NPM has the following functions:

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

- 1 **8E Functions of the NPM—guidelines**
- 2 (1) The NPM must make guidelines about the way in which it exercises
- 3 its functions.
- 4 (2) The guidelines must be consistent with, and reasonably appropriate
- 5 and adapted for implementing, the Optional Protocol.
- 6 (3) The guidelines must provide for procedures of the NPM, including—
- 7 (a) how the NPM identifies matters that require particular care or
- 8 sensitivity when carrying out an examination of the treatment of
- 9 detainees in places of detention or in a particular place of
- 10 detention; and
- 11 (b) how the NPM works with the NPM coordinator, the
- 12 subcommittee and investigative entities; and
- 13 (c) anything else prescribed by regulation.
- 14 (4) The guidelines may include any other procedures of the NPM,
- 15 including how the NPM works with responsible entities for places of
- 16 detention to improve the treatment and conditions of detainees in
- 17 places of detention.
- 18 (5) Before making the guidelines, the NPM must—
- 19 (a) consult with the responsible directors-general for each place of
- 20 detention and the chief police officer; and
- 21 (b) consider any recommendations or advice received during the
- 22 consultation undertaken under paragraph (a).
- 23 (6) The guidelines are a notifiable instrument.
- 24 (7) The guidelines must be made available on the NPM’s website.
- 25 **8F Independence of NPM**
- 26 (1) The NPM is not subject to the direction of anyone else in relation to
- 27 the exercise of a function under this Act.

- 1 (2) Staff of the NPM, in relation to the exercise of a function under  
2 this Act, are not subject to the direction of anyone except—
- 3 (a) the NPM; or
- 4 (b) another member of staff of the NPM who is authorised by the  
5 NPM to give the direction.
- 6 (3) No-one may require the NPM or staff of the NPM to act other than  
7 independently and impartially in the exercise of a function under  
8 this Act.

9 **8G Arrangements for staff**

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

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

14 **8H Consultants and contractors**

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

18 **8I Delegation**

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

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

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

3 **8J Inspection of place of detention**

- 4 (1) In examining the treatment of detainees in a place of detention, the  
5 NPM may, at any time, visit a place of detention to inspect the place  
6 of detention.
- 7 (2) The NPM may, but need not, give the detaining authority for the place  
8 of detention notice of a visit.
- 9 (3) The NPM may give notice of a visit by making a schedule of the dates  
10 on which it intends to visit a place of detention publicly available.
- 11 (4) The NPM may, in visiting a place of detention, take into the place any  
12 equipment reasonably required to effectively carry out an inspection  
13 of the place.

14 **Examples—equipment reasonably required**

- 15 1 a recording device  
16 2 a camera

17 **8K Access to place of detention and things in place of**  
18 **detention**

- 19 (1) This section applies if the NPM visits a place of detention to inspect  
20 the place of detention.
- 21 (2) A responsible entity for a place of detention must ensure that the NPM  
22 is given unrestricted access to the following:
- 23 (a) all parts of the place of detention;
- 24 (b) any vehicle or equipment used in the place of detention;
- 25 (c) all documents or other things in the place of detention that the  
26 NPM reasonably believes it requires access to in examining the  
27 treatment of detainees in the place.

- 1           (3) However, a responsible entity for the place of detention may refuse  
2           access by the NPM to all or part of a place of detention—
- 3           (a) on 1 or more of the following grounds:
- 4                 (i) national security;
- 5                 (ii) a risk to public safety;
- 6                 (iii) a natural disaster;
- 7                 (iv) a serious disorder in the place of detention; and
- 8           (b) only if the circumstances of the grounds mentioned in  
9           paragraph (a)—
- 10                 (i) are urgent and compelling; and
- 11                 (ii) temporarily prevent access by the NPM.
- 12           (4) The existence of a state of emergency is not in itself a reason for a  
13           refusal under subsection (3).
- 14           (5) A refusal under subsection (3) must—
- 15                 (a) be made in writing; and
- 16                 (b) include a statement of reasons for the refusal; and
- 17                 (c) if practicable and reasonable, set out when the access will be  
18                 allowed.
- 19           (6) In this section:
- 20           *state of emergency* means—
- 21                 (a) a state of emergency declared under the *Emergencies Act 2004*,  
22                 section 156; or
- 23                 (b) an emergency declared under the *Public Health Act 1997*,  
24                 section 119.

- 1     **8L           Access to detainees and other people**
- 2           (1) In examining the treatment of detainees in a place of detention, the
- 3           NPM may, either personally or through an interpreter, speak to, or
- 4           privately interview, any detainee or other person in the place.
- 5           (2) However, a detainee or other person has a right to refuse to speak to,
- 6           or be privately interviewed by, the NPM.
- 7           (3) A responsible entity for the place of detention must ensure that the
- 8           NPM is—
- 9               (a) given reasonable assistance to speak to, or privately interview, a
- 10              detainee or other person; and
- 11              (b) able to speak to, or privately interview, a detainee or other
- 12              person at any time.
- 13           (4) A support person nominated by a detainee or other person may be
- 14           present during the interview at their request and with the agreement
- 15           of the NPM.
- 16           (5) No responsible entity may, without the approval of the detainee or
- 17           other person, read, copy or remove any correspondence—
- 18               (a) from a detainee or other person to the NPM; or
- 19               (b) from the NPM to the detainee or other person.
- 20           (6) In this section:
- 21               *privately interview* means speaking with a person without the
- 22               presence of any other person and without audio surveillance by
- 23               electronic or other means.



1 **8M Access to information, documents and other things**

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

6 **Examples—information relevant to examination of the treatment of detainees**

- 7 1 the number of detainees in a place of detention  
8 2 the conditions of detention applying to detainees  
9 3 the number or location of places of detention

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

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

16 **8N Anyone may provide information, documents and other**  
17 **things**

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

22 **Examples—entity**

- 23 1 a responsible entity  
24 2 an investigative entity  
25 3 the subcommittee  
26 4 the NPM coordinator  
27 5 an entity that exercises a function under a law of a State, corresponding or  
28 substantially corresponding to a function of the NPM

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

1 **8O NPM may keep document or other thing**

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

14 **Division 1A.4 Recommendations and reporting**  
15 **about treatment of detainees in places**  
16 **of detention**

17 **8P Treatment of detainees in places of detention—**  
18 **recommendations and observations**

- 19 Following an examination of the treatment of detainees in a place of  
20 detention under division 1A.3, the NPM may make a  
21 recommendation or observation—
- 22 (a) to any entity the NPM considers appropriate to respond to the  
23 recommendation or observation made; and
- 24 (b) in a way the NPM considers appropriate.

- 1 **8Q Treatment of detainees in places of detention—**  
2 **preparation of report**
- 3 (1) Following an examination of the treatment of detainees in a place of  
4 detention under division 1A.3, the NPM may prepare a report about  
5 the following:
- 6 (a) the examination;
- 7 (b) any recommendation or observation made under section 8P in  
8 relation to the examination;
- 9 (c) any steps that have been or are proposed to be taken in relation  
10 to the recommendation or observation made under section 8P.
- 11 (2) The NPM may give a copy of the draft report to any responsible entity  
12 for the place of detention.
- 13 (3) If the NPM gives a copy of the draft report to a responsible entity, the  
14 NPM—
- 15 (a) may invite the entity to give comments on the copy of the draft  
16 report within a reasonable period; and
- 17 (b) must consider any comments given by the entity under  
18 paragraph (a).
- 19 (4) The NPM may also give a copy of the draft report or a copy of part  
20 of the draft report to any other entity the NPM is satisfied has a direct  
21 interest in the draft report.
- 22 (5) However, if the NPM gives a copy of the draft report or a copy of part  
23 of the draft report to an entity that is a non-public sector entity under  
24 subsection (4), the NPM must first do the things mentioned in  
25 subsections (2) and (3) with—
- 26 (a) each responsible entity mentioned in the report; and

1 (b) each responsible entity that is, or is likely to be, directly affected  
2 by the report; and

3 (c) any other responsible entity prescribed by regulation.

4 *Note* Power to make a regulation includes power to make different provision  
5 in relation to different matters or different classes of matters, and to make  
6 a regulation that applies differently by reference to stated exceptions or  
7 factors (see [Legislation Act](#), s 48).

8 (6) In this section:

9 *non-public sector entity*—see the [Auditor-General Act 1996](#),  
10 section 13B.

11 **8R Treatment of detainees in places of detention—**  
12 **publication etc of final report**

13 (1) The NPM may do the following with a report prepared under  
14 section 8Q:

15 (a) give the report to a responsible entity for the place of detention  
16 mentioned in the report;

17 (b) publish the report;

18 (c) give the report to the Speaker to table in the Legislative  
19 Assembly;

20 (d) give the report to any other entity.

21 (2) However, before the NPM does a thing mentioned in  
22 subsection (1) (b), (c) or (d), the NPM must do the things mentioned  
23 in section 8Q (2) and (3) with—

24 (a) each responsible entity mentioned in the report; and

25 (b) each responsible entity that is, or is likely to be, directly affected  
26 by the report; and

- 1 (c) any other responsible entity prescribed by regulation.
- 2 *Note* If the report contains an adverse comment in relation to an entity the NPM  
3 must also give the entity a reasonable opportunity to respond to the  
4 proposed comment (see s 8V).
- 5 (3) If the Legislative Assembly is sitting when the NPM gives a report to  
6 the Speaker, the Speaker must present the report to the Legislative  
7 Assembly within 5 sitting days after receiving the report.
- 8 (4) If the Legislative Assembly is not sitting when the NPM gives the  
9 report to the Speaker—
- 10 (a) the report is taken to have been presented to the Legislative  
11 Assembly on the day the NPM gives it to the Speaker (the *report*  
12 *day*); and
- 13 (b) the Speaker must arrange for a copy of the report to be given to  
14 each member of the Legislative Assembly on the report day; and
- 15 (c) the Speaker must present the report to the Legislative  
16 Assembly—
- 17 (i) on the next sitting day; or
- 18 (ii) if the next sitting day is the first meeting of the Legislative  
19 Assembly after a general election of members of the  
20 Assembly—on the second sitting day after the election.
- 21 (5) In this section:
- 22 *Speaker* includes—
- 23 (a) if the Speaker is unavailable—the Deputy Speaker; and
- 24 (b) if both the Speaker and Deputy Speaker are unavailable—  
25 the clerk of the Legislative Assembly.
- 26 *unavailable*—the Speaker or Deputy Speaker is *unavailable* if—
- 27 (a) they are absent from duty; or
- 28 (b) there is a vacancy in the office of Speaker or Deputy Speaker.
-

1 **Division 1A.5 Information secrecy and sharing**

2 **8S Secrecy**

- 3 (1) A person to whom this section applies commits an offence if—
- 4 (a) the person—
- 5 (i) makes a record of protected information about someone
- 6 else; and
- 7 (ii) is reckless about whether the information is protected
- 8 information about someone else; or
- 9 (b) the person—
- 10 (i) does something that discloses protected information about
- 11 someone else; and
- 12 (ii) is reckless about whether—
- 13 (A) the information is protected information about
- 14 someone else; and
- 15 (B) doing the thing would result in the information being
- 16 disclosed to someone else.
- 17 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 18 both.
- 19 (2) Subsection (1) (a) does not apply if the record of protected
- 20 information about the person is made—
- 21 (a) with the person’s consent; or
- 22 (b) under this Act or another territory law; or
- 23 (c) in relation to the exercise of a function, as a person to whom this
- 24 section applies, under this Act or another territory law.

- 1           (3) Subsection (1) (b) does not apply if the protected information about  
2           the person is disclosed—
- 3           (a) with the person’s consent; or
- 4           (b) under this Act or another territory law; or
- 5           (c) in relation to the exercise of a function, as a person to whom this  
6           section applies, under this Act or another territory law; or
- 7           (d) for protected information that is information other than  
8           identifying information—to a permitted information recipient;  
9           or
- 10          (e) for protected information that is identifying information—
- 11           (i) to a permitted information recipient; and
- 12           (ii) by the NPM or a member of staff of the NPM; and
- 13           (iii) in circumstances where the NPM is satisfied the disclosure  
14           is necessary and reasonable in the public interest.
- 15          (4) A person to whom this section applies must not publish protected  
16          information about a person that is identifying information about the  
17          person.
- 18          Maximum penalty: 50 penalty units, imprisonment for 6 months or  
19          both.
- 20          (5) Subsection (4) does not apply if the protected information about the  
21          person is published with the person’s consent.
- 22          (6) A person to whom this section applies must not be compelled to  
23          disclose protected information to a court or produce a document  
24          containing protected information to a court.
- 25          (7) In this section:
- 26                *court* includes a tribunal, authority or person having power to require  
27                the production of documents or the answering of questions.

1            *identifying information*, about a person, means information that—

2            (a) identifies the person; or

3            (b) allows the person’s identity to be worked out.

4            *permitted information recipient* means—

5            (a) a responsible entity; or

6            (b) the subcommittee; or

7            (c) the NPM coordinator; or

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

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

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

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

18            **8T            Laws preventing etc providing information, documents**  
19            **and other things do not apply**

20            (1) This section applies if an entity provides information or produces a  
21            document or something else to the NPM because they believe it is  
22            relevant to the exercise of the NPM’s functions.

23            (2) A provision of another territory law that prevents or limits the  
24            provision of the information or the production of the document or  
25            thing has no effect.



1 **8U Referral to investigative entity**

2 (1) This section applies if the NPM reasonably believes that a matter  
3 raised by, or in the course of, the exercise of its functions can be more  
4 appropriately dealt with by another investigative entity or an official  
5 visitor.

6 (2) The NPM may decide to refer the matter together with any relevant  
7 documents, information or other things in the NPM's possession or  
8 control, to an investigative entity or an official visitor.

9 (3) However, the referral must not include identifying information about  
10 an individual unless—

11 (a) the individual has given consent; or

12 (b) the NPM is satisfied that referring the matter is necessary and  
13 reasonable in the public interest.

14 (4) Nothing in this section requires the investigative entity or official  
15 visitor to deal with the referred matter.

16 (5) The NPM may enter into arrangements with an investigative entity or  
17 an official visitor about the referral of matters under this section.

18 (6) In this section:

19 *identifying information*—see section 8S (7).

20 *matter* includes part of a matter.

21 **8V Publishing etc adverse comment**

22 (1) The NPM must not publish an adverse comment in relation to an  
23 entity, unless the NPM has given the entity a reasonable opportunity  
24 to respond, orally or in writing, to the proposed comment.

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

7 **Division 1A.6 Miscellaneous**

8 **8W Identification of NPM**

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

13 **8X Review—pt 1A**

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

19 **28 Section 11 heading**

20 *substitute*

21 **11 Duties of responsible entities for places of detention**

1 **29 Sections 11 to 13**

2 *omit*

3 The responsible Minister and detaining authority

4 *substitute*

5 A responsible entity

6 **30 Section 13 (4) and (5)**

7 *substitute*

8 (4) Access to which the subcommittee is entitled under this section  
9 includes the right to inspect any record that is under the control of a  
10 responsible entity for the place of detention, or whose production the  
11 responsible entity may, in an official capacity, reasonably require.

12 (5) A provision of any Act or other law that restricts or denies access to  
13 records does not prevent a responsible entity from complying with  
14 this section.

15 **31 Subcommittee may interview detainees and other people**  
16 **Section 14 (2)**

17 *omit*

18 The responsible Minister and detaining authority

19 *substitute*

20 A responsible entity

21 **32 Sections 15 and 16**

22 *omit*

**33** **New sections 17A to 17C**

2 *insert*

**17A** **Protection against actions etc**

4 (1) A person is not subject to any civil or criminal liability and no action,  
5 claim or demand may be taken or made of or against the person, for  
6 providing information, producing a document or thing or making a  
7 disclosure to—

8 (a) the subcommittee in the course of, and for the purposes of, the  
9 subcommittee performing its mandate under the Optional  
10 Protocol, article 11; or

11 (b) the NPM in the course of, and for the purposes of, the NPM  
12 performing its mandate under the Optional Protocol, part IV.

13 (2) This section has effect despite any duty of secrecy or confidentiality  
14 or any other restriction on the giving or disclosure of information  
15 (whether or not imposed by or under an Act) applicable to the person.

**17B** **Protection against reprisals**

17 (1) An entity commits an offence if—

18 (a) the entity intentionally takes detrimental action against  
19 someone; and

20 (b) the detrimental action is taken wholly or partially because—

21 (i) the person provided information, produced a document or  
22 thing or made a disclosure to the NPM or the  
23 subcommittee; or

24 (ii) the person proposed to provide information, produce a  
25 document or thing or make a disclosure to the NPM or the  
26 subcommittee; or

- 1 (iii) the entity believes the person has done a thing mentioned  
2 in paragraphs (i) or (ii).
- 3 Maximum penalty: 110 penalty units, imprisonment for 2 years or  
4 both.
- 5 (2) A detaining authority who engages in conduct that would be an  
6 offence under subsection (1) is taken to have engaged in conduct that  
7 constitutes misconduct in the performance of the detaining  
8 authority's duties and that justifies the taking of disciplinary action  
9 against the detaining authority, including disciplinary action provided  
10 for—
- 11 (a) under an Act that regulates the employment or service of the  
12 detaining authority; or
- 13 (b) under a contract of employment or contract for services that  
14 governs the employment or engagement of the detaining  
15 authority.
- 16 (3) In this section:
- 17 ***detrimental action*** means action causing, comprising or involving  
18 any of the following:
- 19 (a) injury, damage or loss;
- 20 (b) change of the conditions of detention;
- 21 (c) change to the treatment of a detainee;
- 22 (d) intimidation or harassment;
- 23 (e) discrimination, disadvantage or adverse treatment, including in  
24 relation to employment;
- 25 (f) dismissal from, or prejudice in, employment;
- 26 (g) disciplinary proceeding;
- 27 (h) unfavourable treatment or proposed unfavourable treatment of a  
28 person or relevant organisation in any other way.

- 1            *relevant organisation* means a body that has as 1 of its activities—  
2            (a) promoting the interests of detainees; or  
3            (b) delivering services to detainees.

4    **17C      Protection of officials from liability**

- 5            (1) An official, or anyone engaging in conduct under the direction of an  
6            official, is not personally liable for anything done or omitted to be  
7            done honestly and without recklessness—  
8            (a) in the exercise of a function under this Act; or  
9            (b) in the reasonable belief that the conduct was in the exercise of a  
10           function under this Act.  
11           (2) Any civil liability that would, apart from subsection (1), attach to an  
12           official attaches instead to the Territory.  
13           (3) In this section:  
14           *official* means a person who exercises a function under part 1A  
15           (ACT National Preventive Mechanism).

16    **34      Regulation-making power**  
17    **New section 18 (2)**

18           *insert*

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

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1 **35 Dictionary, note 2**

2 *insert*

- 3 • chief police officer  
4 • official visitor  
5 • public notice

6 **36 Dictionary, definition of ACT privacy law**

7 *omit*

8 **37 Dictionary, new definitions**

9 *insert*

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

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

14 **disclose** includes communicate or publish.

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

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

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

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

23 **produce** includes allow access to.

- 1                    ***responsible director-general***, for a place of detention, means—
- 2                    (a) the director-general responsible for administering an Act, or part
- 3                    of an Act, conferring functions on, or regulating the exercise of
- 4                    functions by, a detaining authority for the place; or
- 5                    (b) if no Act confers functions on, or regulates the exercise of
- 6                    functions by, a detaining authority for the place—the
- 7                    director-general prescribed by regulation for the place; or
- 8                    (c) in any other case—the director-general responsible for
- 9                    administering this Act.

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

11                   **38                   Dictionary, definition of *responsible Minister***

12                   *substitute*

- 13                   ***responsible Minister***, for a place of detention, means—
- 14                   (a) the Minister administering an Act, or part of an Act, conferring
- 15                   functions on, or regulating the exercise of functions by,
- 16                   a detaining authority for the place; or
- 17                   (b) if no Act confers functions on, or regulates the exercise of
- 18                   functions by, a detaining authority for the place—the Minister
- 19                   prescribed by regulation for the place; or
- 20                   (c) in any other case—the Minister responsible for administering
- 21                   this Act.

22                   **39                   Dictionary, new definition of *staff of the NPM***

23                   *insert*

24                   ***staff of the NPM***, for part 1A (ACT National Preventive

25                   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 **[1.5] Section 154 (5), definition of *inspection law*, examples,**  
2 **4th dot point**

3 *omit*

4 **[1.6] Section 179 (c) etc**

5 *omit*

6 inspector of correctional services

7 *substitute*

8 custodial inspector

9 *in*

- 10 • section 179 (c)  
11 • section 195 (5) (d)  
12 • section 200 (5), definition of *protected electronic*  
13 *communication*, paragraph (c)  
14 • section 201 (4), definition of *protected mail*, paragraph (c)  
15 • section 222 (3) (d)  
16 • section 280 (5), definition of *protected mail*, paragraph (c)  
17 • section 576, definition of *accredited person*, paragraph (e)  
18 • section 634 (1) (d)

19 **[1.7] Dictionary, new definition of *custodial inspector***

20 *insert*

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

23 **[1.8] Dictionary, definition of *inspector of correctional services***

24 *omit*

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1 **Part 1.3** **Corrections Management**  
2 **Act 2007**

3 **[1.9] Section 15 (2) (b) (iv) etc**

4 *omit*

5 inspector of correctional services

6 *substitute*

7 custodial inspector

8 *in*

- 9 • section 15 (2) (b) (iv)  
10 • section 31A (2) (d) (ii)  
11 • section 33A (2) (d) (ii)  
12 • section 51 (c)

13 **[1.10] Section 56 (1), note**

14 *substitute*

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

17 **[1.11] Section 62 (5), definition of *inspection law*, examples**

18 *insert*

- 19 • [Custodial Inspector Act 2017](#)

20 **[1.12] Section 62 (5), definition of *inspection law*, examples,**  
21 **4th dot point**

22 *omit*

- 1 **[1.13] Section 66 (1) (d) etc**
- 2 *omit*
- 3 inspector of correctional services
- 4 *substitute*
- 5 custodial inspector
- 6 *in*
- 7 • section 66 (1) (d)
- 8 • section 103 (5), definition of *protected electronic*
- 9 *communication*, paragraph (c)
- 10 • section 142 (3)
- 11 • dictionary, definition of *accredited person*, paragraph (d)
- 12 **[1.14] Dictionary, new definition of *custodial inspector***
- 13 *insert*
- 14 *custodial inspector* means the custodial inspector appointed under the
- 15 [Custodial Inspector Act 2017](#), section 9.
- 16 **[1.15] Dictionary, definition of *inspector of correctional services***
- 17 *omit*
- 18 **[1.16] Dictionary, definition of *protected mail*, paragraph (c)**
- 19 *omit*
- 20 inspector of correctional services
- 21 *substitute*
- 22 custodial inspector

1 **Part 1.4** **Freedom of Information Act 2016**

2 **[1.17] Schedule 1, section 1.15**

3 *substitute*

4 **1.15 Information in possession of custodial inspector**

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

9 **1.16 Information in the possession of the ACT national**  
10 **preventive mechanism**

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

1 **Part 1.5** **Human Rights Commission**  
2 **Act 2005**

3 **[1.18] Section 48 (1), note 2**

4 *substitute*

5 *Note 2* The commission—

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

13 **Part 1.6** **Ombudsman Act 1989**

14 **[1.19] Section 5 (1) (b), note**

15 *substitute*

16 *Note* The ombudsman—

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

1 **Part 1.7** **Remuneration Tribunal Act 1995**

2 **[1.20] Schedule 1, part 1.2, new dot point**

3 *insert*

- 4 • custodial inspector

5 **[1.21] Schedule 1, part 1.2**

6 *omit*

- 7 • inspector of correctional services





- 
- 1    **1**            **Name of regulation**
- 2                    This regulation is the *Monitoring of Places of Detention (Optional*
- 3                    *Protocol to the Convention Against Torture) Regulation 2024*.
- 4    **2**            **NPM entities—Act, s 8C (2)**
- 5                    The NPM is comprised of—
- 6                    (a) the custodial inspector; and
- 7                    (b) the human rights commission; and
- 8                    (c) the ombudsman.
- 9    **3**            **Functions of the NPM—guidelines—Act, s 8E (3) (c)**
- 10                   The guidelines must provide for how the entities that comprise the
- 11                   NPM work together to efficiently and effectively exercise functions
- 12                   as the NPM.
- 13    **4**            **Arrangements for staff—Act, s 8G**
- 14                   (1) This section applies if the Commonwealth Ombudsman is the
- 15                   ombudsman.
- 16                   (2) A person who is a member of the ombudsman staff under the
- 17                   *Ombudsman Act 1989*, section 30 (2) (b) is prescribed.
- 18                   *Note*        The person must be appointed or employed under the *Public Service*
- 19                   *Act 1999* (Cwlth).

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

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

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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