

Summary of draft Northern Territory *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022*

GENERAL OUTLINE

The *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022* deals with:

- (a) the enactment of legislative requirements suitable for the operation in the Northern Territory Part IV of the *Optional Protocol to the Convention Against Torture (OPCAT)*;
- (b) the amendment of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* so as to provide for:
 - (i) the establishment, functions and powers of the Northern Territory National Preventive Mechanism (NT NPM);
 - (ii) the appointment by the Administrator of Inspectors (including a Chief Inspector) for the purposes of the performance of the functions and powers of the NT NPM;
 - (iii) the independence of the NT NPM and the NPM Inspectors;
 - (iv) the NT NPM to have powers and functions that are consistent with the obligations under OPCAT concerning matters such as access to places of detention, access to information, protections from civil and criminal liability, reporting, policy review, recommendations and communications with the United Nations Subcommittee and offences concerning reprisals and obstructions of Inspectors;
 - (v) the provisions in the Bill to operate not standing any other provision of the Acts that deal with places of detention or of the oversight of those places;
- (c) the amendment of the *Children's Commissioner Act 2013* so that the Children's Commissioner is, in the absence of a specific appointment, the NPM Inspector for pleas of youth detention;
- (d) the amendment of the *Correctional Services Act 2014* so as provide that the NPM Inspector for places of detention for adults is responsible for the official visitor roles under that Act;
- (e) the amendment of the *Disability Services Act 1993* so that the principal community visitor is, in the absence of a specific appointment, the NPM Inspector for places of detention under Part 6 of that Act;
- (f) the amendment of the *Mental Health and Related Services Act 1998* so that the principal community visitor is, in the absence of a specific appointment, the NPM Inspector for places of detention under Part 14 of that Act;
- (g) the re-numbering and/or re-enactment of sections 14-17 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

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NOTES ON CLAUSES

Part 1 Preliminary matters

Clause 1. Short title

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, may be cited as *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

Clause 2. Commencement

This is a formal clause that provides that the provisions of the Act commence on the date or dates fixed by the Administrator.

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

Clause 3. Act Amended

This clause provides that Part 2 deals with amendments to the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

Clause 4. Section 3 amended (Interpretation)

This clause amends section 3 so as to provide for the following definitions or references to definitions:

- **Chief NPM Inspector** (as defined in section 30 and as used in sections 31, 39 and 45);
- **identifying information** (as used in sections 43 and 44);
- **eligible person** (as used in sections 22, 26 and 27);
- **relevant Commonwealth agency** (as used in section 39);
- **national preventive mechanism** (as defined by reference to the provisions of Article 17 of OPCAT);
- **NPM Inspector** (as defined in section 21) and as used throughout new Part 2A of the Act);
- **oversight body** – defined as including any person or Agency under Northern Territory or Commonwealth law having oversight functions concerning places of detention or the prevention of torture (and related activities) and as used in sections 16, 17 and 44).

Clause 4(2) amends section 3 by including a standard drafting note concerning other definitions and provisions that might be contained in the *Interpretation Act 1978*.

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Clause 5. Section 4 amended (Meaning of *place of detention*)

This clause clarifies the meaning of “place of detention” so that when referring to a police station or complex it is referred to a place within such a police station or complex where a person may be detained.

Clause 6. Section 9 amended (Ministerial arrangements)

This clause amends section 9 by replacing the word “juveniles” with “children”. The word “children” is the usually word used in Northern Territory legislation when referring to persons aged under 18 years.

Clause 7. Sections 14 and 15 replaced

Sections 14 and 15 are to be renumbered as, respectively, sections 50 and 51 and, for that purpose, are being repealed and re-enacted as part of this clause. This clause also inserts new Part 2A (Local inspections) and new Part 2B (offences).

Part 2A Local inspections

Division 1 NT NPM

14 Object of Part

New section 14 sets out that the object of Part 2A is that of providing a national preventive mechanism for the Northern Territory. The amendments augment the current oversight mechanisms in place under legislation such as the *Children’s Commissioner Act 2013*, *Disability Services Act 1993*, *Ombudsman Act 2007* and *Mental Health and Related Services Act 1998*.

15 NT NPM established

New section 15 provides for the establishment of a body to be known as the Northern Territory National Preventive Mechanism (NT NPM). This provision implements Article 17 of OPCAT.

16 Functions of NT NPM

New section 16(1) sets out that the NT NPM must exercise its functions for the purpose of improving the treatment and conditions of detainees and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

New section 16(2) sets out the functions of the NT NPM. In summary, they are to examine and review conditions of detention and treatment of persons deprived of liberty, to interact with the UN Subcommittee and other oversight bodies, to make recommendations to government and to review and comment on policies and laws.

New section 16(3) sets out that the NT NPM has the power necessary to exercise its functions.

This provision implements Article 19 of OPCAT.

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17 Cooperation with other oversight bodies

New section 17 provides that the NT NPM (and thus also for Inspectors) must act in cooperation with other oversight bodies and may communicate, consult with and collaborate with other oversight bodies.

This provision implements Article 19 of OPCAT.

18 Independence of NT NPM

New section 18 provides that the NT NPM must act independently, impartially and in the public interest and is not subject to any direction or control from a Minister.

This provision implements aspects of Article 18.1 of OPCAT.

19 Staff of NT NPM

New section 19 provides that the NT NPM (and thus the Inspectors) can make arrangements with the relevant agency for use the services of public sector employees. The section prohibits the NPM employing or engaging the services of a person employed or engaged for a place of detention under the jurisdiction of the relevant NPM Inspector.

20 Delegation

New section 20 provides that an NPM (and thus NPM Inspectors) may delegate the powers and functions of the NT NPM.

Division 2 Inspectors

21 Appointment of NPM Inspectors

New section 21 provides for the appointment by the Administrator of Inspectors for the purposes of OPCAT. An appointment can be made by reference to a particular person or to a particular designation or office. The intention is the appointment can relate to either a type of place of detention (eg adult correctional centre or mental health facility) or to a functional area (eg youth). The appointments could be structured so that for any one place of detention more than one NPM may have jurisdiction. For example, the NPM Inspector for children may have jurisdiction regarding a child in a youth prison or the youth when in mental health facility or in a police or court cell.

The instrument of appointment must be tabled in the Legislative Assembly.

The section also makes it clear that an NPM Inspector may hold other statutory offices or exercise other statutory functions.

This provision also deals with Article 17 of OPCAT.

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22 Eligibility for appointment

Section 22 sets out the grounds of eligibility for appointment. The key grounds for the Administrator' decision in making an appointment are that the Administrator be satisfied that the person has suitable qualifications or experience, that the person is committed to the purposes of the Act and its underlying principles.

Additionally, there are a number of disqualifying factors such as being involved in the management of any place of detention, being a judicial officer, being a member of parliament or of council, being a member of a political party, being a prescribed Northern Territory officer or of an NT controlled entity and not to have any recent political affiliations (as set out in section 25(2)). These provisions are based on equivalent provisions in the *Audit Act 1995*.

This provision also deals with Article 18.2 of OPCAT.

23 Term of appointment

Section 23 provides that a term of appointment is for five years. A person can be re-appointed for one only further period of five years.

24 Conditions of appointment

Section 24 provides that an NPM holds office on terms and conditions determined by the Administrator and that the conditions cannot be varied during the term of office and that they cannot be contingent on performance in the office of an NPM Inspector.

This provision also deals with Article 18.1 of OPCAT.

25 Oath before taking office

Section 25 provides that an NPM Inspector must take an oath of office before commencing duties as an Inspector.

26 Acting NPM Inspector

Section 26 provides for the appointment of eligible persons as Acting NPM Inspectors. This can only occur if there is a vacancy or if another NPM Inspector is unable to perform the duties of the office of Inspector.

27 Vacancy in office

Section 27 spells out the circumstances in which the office of an NPM Inspector becomes vacant. They include resignation, termination, a finding of guilt for certain offences, bankruptcy, becoming a political candidate or ceasing to be an eligible person,

28 Resignation

Section 28 provides for resignations by NPM Inspectors.

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29 Termination of appointment

Section 30 sets out the grounds for termination of the appointments of NPM Inspectors. These grounds for termination are much the same as those that generally apply in the Northern Territory for senior independent statutory officers. They relate to inability, corruption, unapproved other employment or absence from duty. It is the responsibility of the relevant Minister to table in Parliament the reasons for the Administrator's decision to terminate the appointment. Any response from the NPM Inspector must also be tabled in Parliament.

30 Appointment of Chief NPM Inspector

New section 30 provides that the Administrator must appoint one of the NPM Inspectors as the "Chief NPM Inspector". The special functions and roles of the Chief NPM Inspector are set out in 31, 39 and 45.

31 Chief Inspector taken to be NPM Inspector

Section 31 provides that in the absence of a specific appointment for a place of detention of an NPM Inspector, the Chief Inspector is taken to be the NPM Inspector for that place of detention.

Division 3 Inspections

32 Inspections

New section 32 provides that NT NPM must carry out regular inspections of each place of detention. It also provides that the NT NPM is not required to give notice to a detaining authority of an inspection.

This provision implements Article 19(a) of OPCAT.

33 Access to places of detention

New section 33 provides that the NT NPM has access to places of detention. This provision implements Article 20(c) of OPCAT.

34 Access to information

New section 34 provides that the NT NPM has access to information. This provision implements Article 20(b) of OPCAT.

35 Interview of persons.

New section 35 provides that the NT NPM may interview detainees and any other person who may have information concerning places of detention or the conditions of detention. This provision deals with Article 20(d) and (e) of OPCAT.

The section provides that the responsible Minister and the detaining authority must ensure that the Inspector is provided with assistance with interviews. The section also provides that the

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person being interviewed can have a support person present at the interview.

36 Detaining authority to give reasonable assistance

Section 36 provides that a detaining authority must provide reasonable assistance to the NT NPM when the NPM is exercising functions under the Act.

37 Unreasonable obligations

New section 37 provides that the NT NPM must not impose unreasonable or disproportionate obligations on a detaining authority.

38 Application of Division

New section 38 spells out that provisions of Division 2 apply notwithstanding anything in the *Children's Commissioner Act 2013*, *Correctional Services Act 2014*, *Court Security Act 1998*, *Disability Services Act 1993*, *Health and Community Services Complaints Act 1998*, *Mental Health and Related Services Act 1998*, *Notifiable Diseases Act 1981*, *Police Administration Act 1978*, *Public and Environmental Health Act 2011*, *Sherriff Act 1962*, and the *Youth Justice Act 2005*.

Division 4 Reporting and other matters

39 Reports of Chief NPM Inspector

New section 39 provides that the Chief NPM Inspector may communicate with or provide reports or other information to the relevant Commonwealth agency. That agency is currently the Ombudsman.

40 Reports of the NPM

New section 40 provides that the NT NPM must provide, for tabling in Parliament, an annual report to the Minister responsible for each applicable place of detention. The minister is then obliged to table the report in Parliament and is obliged to respond to the NT NPM in respect of any recommendations contained in the annual report.

This section is intended to work so that, if there are two or more Inspectors, each of them must provide a report with, if necessary, a separate report to each Minister (for example, if the NPM Inspector is responsible for places of detention administered by different Ministers).

This provision also deals with Articles 22 and 23 of OPCAT.

41 Joint reports

This section makes it clear that a report for NT NPM purposes can be combined with another report being made by the NT NPM in respect of some other role.

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42 Opportunity to be heard

This section provides that the NT NPM is not to make recommendations or provide advice, or make recommendations, make a report or otherwise publish information that contains adverse or derogatory comments in respect of a person or government agency unless the NT NPM gives the person or agency a reasonable opportunity to appear before the NT NPM or to make representations to the NT NPM.

This section is based on section 20 of the *OPCAT Implementation Act 2021 (Tasmania)*.

43 Publication of identifying information

New section 43 provides that the NT NPM must not publish information obtained in the exercise of functions under the Act unless it is otherwise lawful to do or if the information is non-identifying (as defined in section 4) or the person involved has consented to the publication.

This provision deals with Article 22.2 of OPCAT.

44 Information sharing

New section 44 provides that an Inspector may share and exchange information with other oversight bodies. The term “oversight bodies” is defined in clause 4 (amendment to section 3 of the principal Act) so to include all persons or agencies of the Northern Territory or the Commonwealth that have OPCAT-like functions.

45 Publication of guidelines

New section 45 provides that the Chief NPM Inspector may prepare and publish guidelines and standards in respect of the conduct of NPM Inspectors. It is expected that the Chief NT NPM Inspector will provide leadership to any other NPM Inspectors but the legislation does not impose on the other NPM Inspectors an obligation to comply with guidelines and standards.

46 Policy review

New section 46 provides that the NT NPM may review and comment on policies or policy proposals relating to the treatment and conditions of detainees.

This provision deals with Article 19(c) of OPCAT.

47 Recommendations

New section 47 provides that the NT NPM can make recommendations to a Chief Executive Officer with the aim of improving the treatment and conditions of detainees. This section implements Article 19(b) of OPCAT.

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48 Communication with Subcommittee

New section 48 provides that an Inspector may communicate at any time with the UN Subcommittee (as defined in section 3(1) of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*).

This provision deals with Article 20(f) of OPCAT.

Part 2B Protections and offences

49 Protection from liability

New section 49 provides that a person exercising the functions of an Inspector is not civilly or criminally liable for acts or omissions that occur in good faith. The Territory may still be liable for such acts and omissions.

50 Protection against reprisals

Section 50 is a revised version of current section 14.

51 Protection against reprisals

Section 51 is a re-enacted version of current section 15.

52. Offence to obstruct NPM Inspector

New section 52 provides that it is an offence to intentionally obstruct an NPM Inspector knowing that the Inspector is acting in an official capacity. The maximum penalty for breach is 100 penalty units (\$15,800) and/or two years imprisonment.

Clause 8. Section 16 amended (Directions of responsible Minister)

This clause provides that current section 16 is renumbered as section 53.

Clause 9. Section 17 amended (regulations)

This clause provides that current section 17 is renumbered as section 54.

Part 3 Amendment of Children's Commissioner Act 2013

Clause 10. Act amended

This clause provides that Part 3 amends the *Children's Commissioner Act 2013*.

Clause 11. Section 10 amended (Commissioner's functions and powers)

This clause amends section 10. It provides that in the absence of a specific appointment of an NPM Inspector for the purposes of any place where a person aged under 18 may be detained the Children's Commissioner be taken to be the NPM Inspector.

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Part 4 Amendment of *Correctional Services Act 2014*.

Clause 12. Act amended

This clause provides for Part 4 dealing with amendments to the *Correctional Services Act 2014*.

Clause 13. Section 4 amended (Definition)

This clause amends section 4 by inserting a definition of NPM Inspector.

Clause 14. Section 32 repealed (Minister's guidelines)

Clause 12 provides for the repeal of section 32. Under the new legislation the relevant NPM Inspector, rather than the Minister, will have responsibility for official visitors.

Clause 15. Act further amended

This clause provides for schedule 1, which makes further amendments to the *Correctional Services Act 2014*.

Part 5 Amendment of *Disability Services Act 1993*.

Clause 16. Act amended

This clause provides for Part 5 dealing with amendments to the *Disability Services Act 1993*.

Clause 17. Section 50 amended (Appointment)

This clause amends section 50 so that in the absence the appointment of the principal community visitor, the NPM Inspector is taken to be the principal community visitor.

The clause also amends section 50(2) so that the principal community visitor is responsible for the appointment of visitors.

The clause amends section 50(4) so that the term of appointment of visitors is up to five years rather than three years.

Clause 18. Section 51 repealed (Interim community visitor)

This clause repeals section 51 consequential to the replacement of the Minister by the NPM Inspector as the person responsible for the appointment of official visitors.

Clause 19. Act further amended

This clause provides for schedule 2 which contains further amendments to the *Disability Services Act 1993*.

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Part 6 Amendment of *Mental Health and Related Services Act 1998*

Clause 20. Act amended

This clause provides for Part 6 dealing with amendments to the *Mental Health and Related Services Act 1998*.

Clause 21. Section 101 amended (Principal community visitor)

This clause amends section 101 so that in the absence the appointment the principal community visitor, the NPM Inspector is taken to be the principal community visitor.

The clause repeals and replaces section 101(2).

Clause 22. Section 101A amended (Resignation and termination of appointment – principal community visitor)

This clause amends section 101A consequentially to the amendments made by clause 21. This makes it clear that the Minister's capacity to terminate the appointment of a principal visitor under section 101A(2) does not apply if the principal visitor is an NPM Inspector.

Clause 23. Section 103 amended (Community visitors)

This clause amends section 103 so that the principal community visitor rather than the Minister is responsible for the appointment of official visitors.

Clause 24. Section 103A amended (Resignation and termination of appointment – community visitor)

This clause amends section 103A so that resignations and terminations of community visitors are dealt with by the principal community visitor rather than the Minister.

Clause 25. Section 103B repealed (Interim appointment of community visitor)

This clause amends repeals section 103B. If, as contemplated by clause 23, the principal community visitor appoints community visitors there will no longer need to be a section providing for short term appointments by the principal community visitor.

Clause 26. Section 106 amended (Visiting duties)

This clause amends section 106 by removing the Minister's power of direction.

Part 7 Amendment of *Independent Commissioner against Corruption Act 2017*

Clause 27. Act amended

This clause provides for Part 7 dealing with amendments to the *Independent Commissioner against Corruption Act 2017*.

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Clause 28. Section 4 amended (Definitions)

This clause amends the definition of “independent entity” by providing that NPM Inspectors and the NT NPM are independent entities.

This means that the Act applies to the NPM Inspectors in the same way that it applies to other oversight and judicial bodies.

Clause 29. Section 93 amended (Meaning of protected communication)

This clause amends section 93 so that the provisions in the Act dealing with protected communications apply to the NT NPM and the NPM Inspectors in the same way as they apply to the other bodies listed in section 93(1).

Part 8 Repeal

Clause 30. Repeal of Act

This is a standard clause for parts of legislation which consists entirely of amendments to other legislation. It provides that the Act ceases to have effect once it has performed its function of repealing or amending the other legislation.

Schedule 1 Correctional Services Act 2014 further amended

Schedule 1 amends sections 26, 37, 28 and 30 so that references to the Minister are replaced by references to the NPM Inspector. This reflects the proposals that the NPM rather than the Minister is responsible for official visitors.

Schedule 2 Disability Services Act 1993 further amended

Schedule 2 amends sections 52, 61 and 62 so that references to the Minister are replaced by references to the principal community visitor. This reflects the proposals that the principal community visitor rather than the Minister is responsible for official visitors.