

Legislative Council—No 165

As received from the House of Assembly and read a first time, 26 October 2021

South Australia

OPCAT Implementation Bill 2021

A BILL FOR

An Act to implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in South Australia, and to make related amendments to the *Mental Health Act 2009*, the *Police Act 1998* and the *Youth Justice Administration Act 2016*.

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The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *OPCAT Implementation Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

Chief Executive means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

correctional institution has the same meaning as in section 4 of the *Correctional Services Act 1982*;

detainee means a person detained at a place of detention, and includes a former detainee;

detention means the incarceration (however described) of people in places of detention, and includes the placement of a person in a place of detention from which the person cannot leave at will by order of any judicial, administrative or other authority;

management authority of a place of detention means—

- (a) in the case of a training centre—the Chief Executive of the Department (within the meaning of the *Youth Justice Administration Act 2016*); or
- (b) in the case of a prescribed mental health facility—the Chief Executive of the Department (within the meaning of the *Mental Health Act 2009*); or
- (c) in the case of a prescribed custodial police station—the Commissioner of Police;

National Preventive Mechanism or **NPM** in respect of a place of detention—see section 5;

National Preventive Mechanism Coordinator or **NPM Coordinator** means the Commonwealth Ombudsman under the *Ombudsman Act 1976* of the Commonwealth;

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or **OPCAT** means the Optional Protocol of that name ratified by the Commonwealth on 21 December 2017, as in force from time to time;

place of detention—each of the following is a place of detention:

- (a) a correctional institution;
- (b) a training centre;
- (c) a prescribed mental health facility;
- (d) a prescribed custodial police station;

prescribed custodial police station means a police station, or police station of a class, prescribed by the regulations for the purposes of this Act;

prescribed mental health facility means a mental health facility, or mental health facility of a class, prescribed by the regulations for the purposes of this Act;

responsible Minister for an NPM means—

- (a) in the case of an NPM in respect of a training centre—the Minister to whom the administration of the *Youth Justice Administration Act 2016* is committed; or
- (b) in the case of an NPM in respect of a prescribed mental health facility—the Minister to whom the administration of the *Mental Health Act 2009* is committed; or
- (c) in the case of an NPM in respect of a prescribed custodial police station—the Minister to whom the administration of the *Police Act 1998* is committed;

training centre means a training centre for the reception, detention, correction and training of youths who offend against the criminal law established under the *Family and Community Services Act 1972* or the *Youth Justice Administration Act 2016*.

- (2) For the purposes of this Act, a reference to a relevant place of detention in relation to an NPM will be taken to be a reference to each place of detention in respect of which they are the NPM.

4—Application of Act

- (1) This Act is in addition to, and does not derogate from, any other Act or law.
- (2) Section 8, Part 3 and Part 4 of this Act do not apply to, or in relation to, an NPM in respect of a correctional institution.
- 5 (3) To avoid doubt, the provisions of this Act are to be read in conjunction with the relevant provisions relating to NPMs, or a person taken to be an NPM, in—
 - (a) in relation to an NPM for correctional institutions—the *Correctional Services Act 1982*; or
 - 10 (b) in relation to the NPM for training centres—the *Youth Justice Administration Act 2016*; or
 - (c) in relation to the NPM for prescribed mental health facilities—the *Mental Health Act 2009*; or
 - (d) in relation to the NPM for prescribed custodial police stations—the *Police Act 1998*.

15 Part 2—National Preventive Mechanisms

5—National Preventive Mechanisms for specified places of detention

- 20 (1) Each official visitor under Part 3 Division 2 of the *Correctional Services Act 1982* (as enacted by the *Correctional Services (Accountability and Other Measures) Amendment Act 2021*) will be taken to be an NPM in respect of the correctional institution (within the meaning of that Division) for which they are appointed as an official visitor.
- (2) The Training Centre Visitor under the *Youth Justice Administration Act 2016* will be taken to be the NPM in respect of training centres.
- 25 (3) The Principal Community Visitor under the *Mental Health Act 2009* will be taken to be the NPM in respect of prescribed mental health facilities.
- (4) An official visitor under Part 3 Division 2 of the *Correctional Services Act 1982* (as enacted by the *Correctional Services (Accountability and Other Measures) Amendment Act 2021*) designated by the Minister by notice in the Gazette as the NPM in respect of prescribed custodial police stations will be taken to be the NPM in
30 respect of prescribed custodial police stations.

6—Independence of NPMs

- (1) Despite a provision of any other Act or law, an NPM must act independently, impartially and in the public interest in the performance of functions, or the exercise of powers, under this Act.
- 35 (2) Despite a provision of any other Act or law, an NPM is not subject to the direction and control of a Minister under this or any other Act in relation to the performance of functions, or the exercise of powers, under this or any other Act (including in relation to the content of any report or recommendation made by the NPM).

7—Functions and powers of NPMs

In addition to any functions and powers conferred on an NPM under this Act, an NPM has the functions and powers referred to in—

- (a) in the case of an NPM for correctional institutions—Part 3 Division 2 of the *Correctional Services Act 1982* (as enacted by the *Correctional Services (Accountability and Other Measures) Amendment Act 2021*); or
- (b) in the case of the NPM for training centres—Schedule 1 of the *Youth Justice Administration Act 2016*; or
- (c) in the case of the NPM for prescribed mental health facilities—Schedule 1A of the *Mental Health Act 2009*; or
- (d) in the case of the NPM for prescribed custodial police stations—Schedule 1A of the *Police Act 1998*.

8—Delegation

- (1) Subject to this section, an NPM may delegate a function or power under this Act to any person or body that is, in the NPM's opinion, competent to perform or exercise the relevant function or power.
- (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.

9—NPMs may disclose information to other NPMs and NPM Coordinator

- (1) Despite a provision of this or any other Act or law, an NPM may disclose information (including personal information) obtained in the course of performing functions or exercising powers under this or any other Act to another NPM or to the NPM Coordinator (or both).
- (2) To avoid doubt, subsection (1) applies to NPMs in respect of the same or different kinds of places of detention.

10—Referral of matters to inquiry agencies etc not affected

- (1) Nothing in this or any other Act or law prevents an NPM from referring a matter to an inquiry agency or any other appropriate person or body at any time.
- (2) The referral of a matter does not prevent an NPM from performing functions or exercising powers in respect of the matter (but in such a case the NPM must endeavour to avoid, as far as is practicable, prejudice to any person affected by the referral).
- (3) In this section—

inquiry agency means—

- (a) South Australia Police; or
- (b) the Ombudsman; or

- (c) the State Coroner; or
- (d) the Independent Commissioner Against Corruption; or
- (e) the Office for Public Integrity; or
- (f) the Commissioner for Public Sector Employment; or
- 5 (g) the Health and Community Services Complaints Commissioner; or
- (h) any other person or body prescribed by the regulations.

Part 3—Reporting

11—Annual reporting by NPMs

- 10 (1) Each NPM must, not later than 31 October in each year, provide a report to the responsible Minister for the NPM on the work of the NPM during the previous financial year.
- (2) A report under subsection (1) must contain—
 - (a) any recommendations made by the NPM (whether in a report under section 12 or otherwise) during the financial year; and
 - 15 (b) any other information required by the regulations.
- (3) The responsible Minister for an NPM must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- 20 (4) The responsible Minister for an NPM must, as soon as is reasonably practicable after receiving a report under subsection (1), cause a copy of the report to be provided to the NPM Coordinator.
- 25 (5) If a report laid before Parliament under this section includes recommendations on any matter, the responsible Minister for the NPM must, within 8 sitting days of the expiration of 6 months after the report was laid before Parliament, cause a report to be laid before each House of Parliament giving details of any action taken or proposed to be taken in consequence of those recommendations.

12—NPMs may prepare additional reports

- (1) An NPM may, at any time, prepare a report to the responsible Minister for the NPM on any matter arising out of the performance of its functions under this Act.
- 30 (2) A report under subsection (1) may contain such recommendations as the NPM thinks fit.
- (3) The responsible Minister for an NPM must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- 35 (4) If a report laid before Parliament under this section includes recommendations on any matter, the responsible Minister for the NPM must, within 8 sitting days of the expiration of 6 months after the report was laid before Parliament, cause a report to be laid before each House of Parliament giving details of any action taken or proposed to be taken in consequence of those recommendations.

Part 4—Miscellaneous

13—Confidentiality

- 5 (1) A person engaged or formerly engaged in the administration, operation or enforcement of this Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions or exercising powers under this Act except—
- (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - 10 (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency performing official duties under an Act relating to the detention of persons in the State; or
 - 15 (e) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.
- 20 (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

- 25 (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

14—Victimisation

- 30 (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information to an NPM under this or any other Act commits an act of victimisation.
- (2) However, causing detriment on the ground that a person—
- (a) has made a false allegation; or
 - (b) has not acted in good faith,
- does not constitute an act of victimisation.
- 35 (3) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- 5 (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- 10 (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- 15 (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.
Maximum penalty: \$10 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- 20 (8) In this section—
detriment includes—
- (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - 25 (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (d) threats of reprisal.

15—Obstruction etc

A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, an NPM in the performance of a function, or exercise of a power, under this or any other Act.

Maximum penalty: \$10 000.

16—False or misleading statements

A person must not make a statement knowing that it is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided to an NPM under this or any other Act.

Maximum penalty: \$10 000.

17—Protections, privileges and immunities

- (1) Nothing in this Act affects any rule or principle of law relating to—
- (a) legal professional privilege; or
 - 40 (b) "without prejudice" privilege; or

(c) public interest immunity.

5 (2) A person is excused from answering a question or producing a document or other material in connection with an inquiry if the person could not be compelled to answer the question or produce the document or material in proceedings in the Supreme Court.

(3) A person who provides information or a document to an NPM under this Act has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

10 (4) A person who does anything in accordance with this Act, or as required or authorised by or under this Act, cannot by so doing be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

18—Review of Act

15 (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and the report must be completed after the fourth, but before the fifth, anniversary of the commencement of this Act.

(3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

20 19—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may provide for—

25 (a) the exemption of a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and

(b) fines, not exceeding \$10 000, for offences against the regulations; and

(c) facilitation of proof of the commission of offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

30 (b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature; and

(d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, a responsible Minister, the Chief Executive or any other specified person or body; and

35 (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or another specified person or body.

- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be published on a website determined by the Minister; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Mental Health Act 2009*

2—Amendment of section 106—Confidentiality and disclosure of information

Section 106(2)—after subsection (f) insert:

- (fa) disclosing information to a National Preventive Mechanism under the *OPCAT Implementation Act 2021*; or

3—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—OPCAT Implementation Measures

1—Interpretation

In this Schedule—

detainee has the same meaning as in the *OPCAT Implementation Act 2021*;

management authority has the same meaning as in the *OPCAT Implementation Act 2021*;

National Preventive Mechanism or *NPM* means the person or body from time to time declared under the *OPCAT Implementation Act 2021* to be the National Preventive Mechanism in respect of prescribed mental health facilities;

Note—

The *OPCAT Implementation Act 2021* provides that the Principal Community Visitor is the National Preventive Mechanism for prescribed mental health facilities—see section 5 of that Act.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or *OPCAT* has the same meaning as in the *OPCAT Implementation Act 2021*;

5 *prescribed mental health facility* has the same meaning as in the *OPCAT Implementation Act 2021*;

responsible Minister for the NPM means the Minister to whom the administration of the *Mental Health Act 2009* is committed.

2—Purpose of Schedule

10 This Schedule sets out the functions and powers of the National Preventive Mechanism in relation to its official duties and functions under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3—Functions and powers of NPM

- 15 (1) The functions of the NPM under this Schedule are as follows:
- (a) to carry out regular inspections of each prescribed mental health facility;
 - (b) to make such recommendations relating to the detention of people under this or any other Act as the NPM considers necessary or appropriate;
 - (c) to report as required under this Schedule or the *OPCAT Implementation Act 2021*;
 - (d) such other functions as may be assigned to the NPM, or to NPMs generally, under this or any other Act.
- 20
- 25 (2) The NPM has such powers as may be reasonably necessary or convenient to perform the functions of the NPM under this Schedule.
- (3) Without limiting any other provision of this Act, but despite a provision of any other Act or law, the NPM may receive and consider information, reports and materials, and interview a detainee or other person in private.
- 30

4—Inspection of prescribed mental health facilities

- (1) Subject to this clause, the NPM may, in relation to a prescribed mental health facility, do any or all of the following:
- (a) inspect any part of the prescribed mental health facility in which detainees are detained and such other parts of a prescribed mental health facility as the NPM considers relevant to their functions under this Schedule or the *OPCAT Implementation Act 2021* (and for that purpose may have free and unfettered access to the prescribed mental health facility);
 - (b) conduct interviews with detainees;
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- 40

- (c) make such inquiries about the detention of detainees at the prescribed mental health facility as the NPM thinks fit.
- (2) Subject to this clause, an inspection of a prescribed mental health facility—
- 5 (a) may be made by the NPM at any time; and
- (b) may be of such length as the NPM thinks appropriate.
- (3) Without limiting any other provision of this or any other Act, the NPM need not give notice of an inspection of a prescribed mental health facility under this clause.
- 10 (4) The NPM must, in the course of an inspection of a prescribed mental health facility—
- (a) take reasonable steps to ensure that the safe administration of the prescribed mental health facility is not compromised by the inspection; and
- 15 (b) comply with the reasonable directions of the person in charge of the prescribed mental health facility in relation to any genuine concerns the person may have in relation to—
- (i) the security of the prescribed mental health facility; and
- 20 (ii) the safe management of the prescribed mental health facility; and
- (iii) the safety or health of the NPM, or detainees or staff of the prescribed mental health facility.
- (5) If a person in charge of a prescribed mental health facility refuses at any time to allow the NPM to inspect the prescribed mental health facility because of concerns relating to the matters referred to in subclause (4)(b), the person in charge must, as soon as reasonably practicable, provide the NPM with written advice as to why entry to the prescribed mental health facility was refused.
- 25 (6) The NPM may be assisted in the exercise of powers under this clause by such persons as the NPM considers appropriate.
- (7) The regulations may make further provision in relation to inspections of prescribed mental health facilities under this clause.
- 30

5—Provision of information to NPM

- 35 (1) Subject to this clause, a government or non-government organisation must, at the NPM's request, provide the NPM with free and unfettered access to information relevant to the exercise of the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.

(2) If the NPM has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the NPM's functions, the NPM may, by notice in writing provided to the person, require the person to do 1 or more of the following:

(a) to provide that information to the NPM in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;

(b) to produce that document to the NPM;

(c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.

(3) A notice under subclause (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.

(4) A notice under subclause (2) must provide a period of time for compliance with a requirement under that subclause that has been determined by the NPM to be reasonable in the circumstances.

(5) A person must comply with a requirement under subclause (2).
Maximum penalty: \$5 000.

(6) However, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the *Independent Commissioner Against Corruption Act 2012*.

(7) In addition, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of—

(a) criminal intelligence; or

(b) information in relation to or connected with a victim of, or witness to, an offence committed by a detainee.

(8) If a document is produced in accordance with a requirement under this clause, the NPM may take possession of, make copies of, or take extracts from, the document.

6—Delegation

(1) Subject to this clause, the NPM may delegate a function or power under this Schedule to any person or body that is, in the NPM's opinion, competent to perform or exercise the relevant function or power.

(2) A delegation under this clause—

(a) must be in writing; and

(b) may be conditional or unconditional; and

- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

7—Staff and resources

The NPM must be provided with the resources reasonably required for exercising their functions under this Schedule and the *OPCAT Implementation Act 2021*.

8—Confidentiality of information

Information about individual cases disclosed to the NPM is to be kept confidential and is exempt from disclosure under the *Freedom of Information Act 1991*.

9—Conflict of interest

- (1) The NPM must inform the Minister in writing of any direct or indirect interest that the NPM has or acquires that conflicts or may conflict with the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.
- (2) The NPM must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the NPM's functions in relation to a particular matter and, unless the conflict is resolved to the Minister's satisfaction, the NPM is disqualified from acting in relation to the matter.

10—Regulations

The regulations may make further provision in relation to the functions and powers of the NPM under this Schedule.

Part 3—Amendment of *Police Act 1998*

4—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—OPCAT Implementation Measures

1—Interpretation

In this Schedule—

detainee has the same meaning as in the *OPCAT Implementation Act 2021*;

management authority has the same meaning as in the *OPCAT Implementation Act 2021*;

National Preventive Mechanism or **NPM** means the person or body from time to time declared under the *OPCAT Implementation Act 2021* to be the National Preventive Mechanism in respect of prescribed custodial police stations;

Note—

The *OPCAT Implementation Act 2021* provides that a designated official visitor under the *Correctional Services Act 1982* is the National Preventive Mechanism for prescribed custodial police stations—see section 5 of that Act.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or **OPCAT** has the same meaning as in the *OPCAT Implementation Act 2021*;

prescribed custodial police station has the same meaning as in the *OPCAT Implementation Act 2021*;

responsible Minister for the NPM means the Minister to whom the administration of the *Police Act 1998* is committed;

responsible officer, in relation to a prescribed custodial police station, means—

- (a) the officer in charge of the prescribed custodial police station; or
- (b) if a member of SA Police has, for the time being, been designated by the officer in charge of the prescribed custodial police station as the officer with responsibility for prisoners at the prescribed custodial police station—that officer.

2—Purpose of Schedule

This Schedule sets out the functions and powers of the National Preventive Mechanism in relation to its official duties and functions under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3—Functions and powers of NPM

(1) The functions of the NPM under this Act are as follows:

- (a) to carry out regular inspections of each prescribed custodial police station;
- (b) to make such recommendations relating to the detention of people by South Australia Police as the NPM considers necessary or appropriate;
- (c) to report as required under this Schedule or the *OPCAT Implementation Act 2021*;
- (d) such other functions as may be assigned to the NPM, or to NPMs generally, under this or any other Act.

- (2) The NPM has such powers as may be reasonably necessary or convenient to perform the functions of the NPM under this Act.
- (3) Without limiting any other provision of this Act, but despite a provision of any other Act or law, the NPM may receive and consider information, reports and materials, and interview a detainee or other person in private.

4—Inspection of prescribed custodial police stations

- (1) Subject to this clause, the NPM may, in relation to a prescribed custodial police station, do any or all of the following:
- (a) inspect any part of the prescribed custodial police station in which detainees are detained and such other parts of the prescribed custodial police station as the NPM considers relevant to their functions under this Act or the *OPCAT Implementation Act 2021* (and for that purpose may have free and unfettered access to the prescribed custodial police station);
 - (b) conduct interviews with detainees;
 - (c) make such inquiries about the detention of detainees at the prescribed custodial police station as the NPM thinks fit.
- (2) Subject to this clause, an inspection of a prescribed custodial police station—
- (a) may be made by the NPM at any time; and
 - (b) may be of such length as the NPM thinks appropriate.
- (3) Without limiting any other provision of this or any other Act, an NPM need not give notice of an inspection of a prescribed custodial police station under this Act.
- (4) An NPM must, in the course of an inspection of a prescribed custodial police station—
- (a) take reasonable steps to ensure that the safe administration of the prescribed custodial police station is not compromised by the inspection; and
 - (b) comply with the reasonable directions of the officer in charge of the prescribed custodial police station in relation to any genuine concerns the officer may have in relation to—
 - (i) the security of the prescribed custodial police station; and
 - (ii) the safe management of the prescribed custodial police station; and
 - (iii) the safety or health of the NPM, or detainees or staff of the prescribed custodial police station.

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- (5) If the officer in charge of a prescribed custodial police station refuses at any time to allow an NPM to inspect the prescribed custodial police station because of concerns relating to the matters referred to in subclause (4)(b), the officer in charge must, as soon as reasonably practicable, provide the NPM with written advice as to why entry to the prescribed custodial police station was refused.
- (6) An NPM may be assisted in the exercise of powers under this clause by such persons as the NPM considers appropriate.
- 10 (7) The regulations may make further provision in relation to inspections of prescribed custodial police stations under this clause.

5—Provision of information to NPM

- 15 (1) Subject to this clause, a government or non-government organisation must, at the NPM's request, provide the NPM with free and unfettered access to information relevant to the exercise of the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.
- 20 (2) If the NPM has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the NPM's functions, the NPM may, by notice in writing provided to the person, require the person to do 1 or more of the following:
- 25 (a) to provide that information to the NPM in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- (b) to produce that document to the NPM;
- (c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.
- 30 (3) A notice under subclause (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (4) A notice under subclause (2) must provide a period of time for compliance with a requirement under that subclause that has been determined by the NPM to be reasonable in the circumstances.
- 35 (5) A person must comply with a requirement under subclause (2).
Maximum penalty: \$5 000.
- 40 (6) However, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the *Independent Commissioner Against Corruption Act 2012*.

(7) In addition, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of—

- (a) criminal intelligence; or
- (b) information in relation to or connected with a victim of, or witness to, an offence committed by a detainee.

(8) If a document is produced in accordance with a requirement under this clause, the NPM may take possession of, make copies of, or take extracts from, the document.

6—Delegation

(1) Subject to this clause, the NPM may delegate a function or power under this Schedule to an official visitor under Part 3 Division 2 of the *Correctional Services Act 1982*.

(2) A delegation under this clause—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

7—Staff and resources

The NPM must be provided with the resources reasonably required for exercising their functions under this Schedule and the *OPCAT Implementation Act 2021*.

8—Confidentiality of information

Information about individual cases disclosed to the NPM is to be kept confidential and is exempt from disclosure under the *Freedom of Information Act 1991*.

9—Conflict of interest

(1) The NPM must inform the Minister in writing of any direct or indirect interest that the NPM has or acquires that conflicts or may conflict with the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.

(2) The NPM must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the NPM's functions in relation to a particular matter and, unless the conflict is resolved to the Minister's satisfaction, the NPM is disqualified from acting in relation to the matter.

10—Regulations

The regulations may make further provision in relation to the functions and powers of the NPM under this Schedule.

Part 4—Amendment of *Youth Justice Administration Act 2016*

5—Amendment of section 49—Confidentiality

Section 49—after subsection (f) insert:

or

- (g) to a National Preventive Mechanism under the *OPCAT Implementation Act 2021*.

6—Insertion of Schedule 1

After section 55 insert:

Schedule 1—OPCAT Implementation Measures

1—Interpretation

In this Schedule—

detainee has the same meaning as in the *OPCAT Implementation Act 2021*;

management authority has the same meaning as in the *OPCAT Implementation Act 2021*;

National Preventive Mechanism or *NPM* means the person or body from time to time declared under the *OPCAT Implementation Act 2021* to be the National Preventive Mechanism in respect of training centres;

Note—

The *OPCAT Implementation Act 2021* provides that the Training Centre Visitor is the National Preventive Mechanism for training centres—see section 5 of that Act.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or *OPCAT* has the same meaning as in the *OPCAT Implementation Act 2021*;

responsible Minister for the NPM means the Minister to whom the administration of the *Youth Justice Administration Act 2016* is committed.

2—Purpose of Schedule

This Schedule sets out the functions and powers of the National Preventive Mechanism in relation to its official duties and functions under the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

3—Functions and powers of NPM

- (1) The functions of the NPM under this Act are as follows:
- (a) to carry out regular inspections of each training centre;

- 5
- (b) to make such recommendations relating to the detention of people under this or any other Act as the NPM considers necessary or appropriate;
 - (c) to report as required under this Schedule or the *OPCAT Implementation Act 2021*;
 - (d) such other functions as may be assigned to the NPM, or to NPMs generally, under this or any other Act.
- 10
- (2) The NPM has such powers as may be reasonably necessary or convenient to perform the functions of the NPM under this Schedule.
 - (3) Without limiting any other provision of this Act, but despite a provision of any other Act or law, the NPM may receive and consider information, reports and materials, and interview a detainee or other person in private.

4—Inspection of training centres

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- (1) Subject to this clause, the NPM may, in relation to a training centre, do any or all of the following:
 - 20 (a) inspect any part of the training centre in which detainees are detained and such other parts of the training centre as the NPM considers relevant to their functions under this Act or the *OPCAT Implementation Act 2021* (and for that purpose may have free and unfettered access to the training centre);
 - (b) conduct interviews with detainees;
 - (c) make such inquiries about the detention of detainees at the training centre as the NPM thinks fit.
 - 25 (2) Subject to this clause, an inspection of a training centre—
 - (a) may be made by the NPM at any time; and
 - (b) may be of such length as the NPM thinks appropriate.
 - 30 (3) Without limiting any other provision of this or any other Act, an NPM need not give notice of an inspection of a training centre under this clause.
 - (4) The NPM must, in the course of an inspection of a training centre—
 - 35 (a) take reasonable steps to ensure that the safe administration of the training centre is not compromised by the inspection; and
 - (b) comply with the reasonable directions of the person in charge of the training centre in relation to any genuine concerns the person may have in relation to—
 - 40 (i) the security of the training centre; and
 - (ii) the safe management of the training centre; and
 - (iii) the safety or health of the NPM, or detainees or staff of the training centre.

- 5
- (5) If a person in charge of a training centre refuses at any time to allow an NPM to inspect the training centre because of concerns relating to the matters referred to in subclause (4)(b), the person in charge must, as soon as reasonably practicable, provide the NPM with written advice as to why entry to the training centre was refused.
- (6) The NPM may be assisted in the exercise of powers under this clause by such persons as the NPM considers appropriate.
- (7) The regulations may make further provision in relation to inspections of training centres under this clause.

10 **5—Provision of information to NPM**

- 15
- (1) Subject to this clause, a person must, at the NPM's request, provide the NPM with free and unfettered access to information relevant to the exercise of the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.
- 20
- (2) If the NPM has reason to believe that a person is capable of providing information or producing a document that may be relevant to the exercise of the NPM's functions, the NPM may, by notice in writing provided to the person, require the person to do 1 or more of the following:
- 25
- (a) to provide that information to the NPM in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- (b) to produce that document to the NPM;
- (c) to attend before a person specified in the notice and answer relevant questions or produce relevant documents.
- 30
- (3) A notice under subclause (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (4) A notice under subclause (2) must provide a period of time for compliance with a requirement under that subclause that has been determined by the NPM to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subclause (2).
Maximum penalty: \$5 000.
- 35
- (6) However, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under the *Independent Commissioner Against Corruption Act 2012*.
- 40
- (7) In addition, information or a document is not required to be provided or produced under this clause if to do so would involve the disclosure (directly or indirectly) of—
- (a) criminal intelligence; or

(b) information in relation to or connected with a victim of, or witness to, an offence committed by a detainee.

(8) If a document is produced in accordance with a requirement under this clause, the NPM may take possession of, make copies of, or take extracts from, the document.

6—Delegation

(1) Subject to this clause, the NPM may delegate a function or power under this Schedule to any person or body that is, in the NPM's opinion, competent to perform or exercise the relevant function or power.

(2) A delegation under this clause—

(a) must be in writing; and

(b) may be conditional or unconditional; and

(c) is revocable at will; and

(d) does not prevent the delegator from acting in any matter.

7—Staff and resources

The NPM must be provided with the resources reasonably required for exercising their functions under this Schedule and the *OPCAT Implementation Act 2021*.

8—Confidentiality of information

Information about individual cases disclosed to the NPM is to be kept confidential and is exempt from disclosure under the *Freedom of Information Act 1991*.

9—Conflict of interest

(1) The NPM must inform the Minister in writing of any direct or indirect interest that the NPM has or acquires that conflicts or may conflict with the NPM's functions under this Schedule or the *OPCAT Implementation Act 2021*.

(2) The NPM must take steps to resolve a conflict or possible conflict between a direct or indirect interest and the NPM's functions in relation to a particular matter and, unless the conflict is resolved to the Minister's satisfaction, the NPM is disqualified from acting in relation to the matter.

10—Regulations

The regulations may make further provision in relation to the functions and powers of the NPM under this Schedule.