

Serial 59

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022

Mr Paech

A Bill for an Act to amend the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

MONITORING OF PLACES OF DETENTION (OPTIONAL PROTOCOL TO
THE CONVENTION AGAINST TORTURE) AMENDMENT ACT 2022

Act No. [] of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* and for related purposes

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

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

3 Act amended

This Part amends the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

4 Section 3 amended (Interpretation)

(1) Section 3(1)

insert

Australian parliament means:

- (a) the Legislative Assembly; or
- (b) the Parliament of the Commonwealth or a State; or
- (c) the parliament or legislature of another Territory.

Chief NT NPM Inspector means the person holding or occupying the office of Chief NT NPM Inspector mentioned in section 30.

identifying information, in relation to a person, means information that:

- (a) identifies the person; or
- (b) enables the identity of the person to be ascertained or discovered.

national preventive mechanism has the meaning that it has in the Optional Protocol.

NT NPM means the National Preventive Mechanism (Northern Territory) established by section 15.

NT NPM Inspector means a person holding or occupying the office of NT NPM Inspector mentioned in section 21.

oversight body means a person or Agency, or an agency of the Commonwealth or of a State or of another Territory, that has the function, in whole or in part, of providing oversight in relation to places of detention or of preventing torture and other cruel, inhuman or degrading treatment or punishment, and includes:

- (a) a national preventive mechanism; and
- (b) the relevant Commonwealth agency.

prescribed office means any of the following:

- (a) the Ombudsman under the *Ombudsman Act 2009*;
- (b) the Children's Commissioner under the *Children's Commissioner Act 2013*;

- (c) the principal community visitor under the *Disability Services Act 1993*;
- (d) the principal community visitor under the *Mental Health and Related Services Act 1998*;
- (e) an office or designation prescribed by regulation.

relevant Commonwealth agency means the Commonwealth office or agency that has responsibility for the Commonwealth's obligations under Article 7 of the Optional Protocol.

- (2) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

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

Section 4(2)(c)

omit, insert

- (c) a part of a police station or court premises where a person may be detained or deprived of their liberty;

6 Section 9 amended (Ministerial arrangements)

Section 9(2)(f)

omit

juveniles

insert

children

7 Sections 14 and 15 replaced

Sections 14 and 15

repeal, insert

Part 2A Local inspections

Division 1 NT NPM

14 Object of Part

The object of this Part is to establish a national preventive mechanism to fulfil the mandate set out in Article 17 of the Optional Protocol in relation to places of detention in the Territory.

15 National Preventive Mechanism (Northern Territory) established

The National Preventive Mechanism (Northern Territory) is established.

16 Functions of NT NPM

- (1) The NT NPM must exercise its functions to improve the treatment and conditions of detainees and to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- (2) The NT NPM has the following functions:
 - (a) to regularly examine and review the conditions of detention and treatment of detainees;
 - (b) to contact and to collaborate and exchange information with other oversight bodies and the Subcommittee;
 - (c) to make recommendations and provide advice to Agencies and responsible Ministers for places of detention;
 - (d) to review and to comment and consult on policies and laws, including consultation with relevant representative organisations and groups;
 - (e) to report on the exercise of its functions;

- (f) any other functions conferred on the NT NPM under this or any other Act.

Example for subsection (2)(d)

An example of a relevant representative organisation or group is a group representing the interests of detainees or of a particular subset of detainees.

- (3) The NT NPM has the power to do all things necessary or convenient to be done in connection with, or incidental to, the exercise of its functions.

17 Cooperation with other oversight bodies

The NT NPM must cooperate with other oversight bodies in relation to its functions relevant to those bodies.

18 Independence of NT NPM

- (1) In exercising its functions the NT NPM must act independently, impartially and in the public interest.
- (2) The NT NPM is not subject to the direction or control of any person in relation to:
- (a) the exercise of the NT NPM's functions; and
 - (b) the content of any report or recommendation made by the NT NPM.

19 Staff of NT NPM

- (1) The NT NPM's staff consists of the following:
- (a) public sector employees employed for the NT NPM;
 - (b) persons employed in an Agency made available by the Chief Executive Officer under an arrangement with the NT NPM;
 - (c) persons engaged by the NT NPM as consultants.
- (2) A person involved in the management of a place of detention must not be employed or engaged under subsection (1) in relation to that place of detention.
- (3) In employing or engaging staff under subsection (1), the NT NPM must consider:
- (a) whether the staff have the required capabilities and professional knowledge required to undertake their duties; and

- (b) whether the staff adequately represent a balance of gender and of ethnic and minority groups, including:
 - (i) Aboriginal and Torres Strait Islander people; and
 - (ii) people living with a disability.

20 Delegation

The NT NPM may delegate any of its powers and functions under this Act to a person.

Division 2 NT NPM Inspectors

21 Appointment of NT NPM Inspectors

- (1) The Administrator may appoint a person eligible under section 22 to be an NT NPM Inspector for a place of detention.
- (2) A person may be appointed under subsection (1) for more than one place of detention.
- (3) More than one person may be appointed under subsection (1) for a place of detention.
- (4) An appointment under subsection (1) may be made by reference to a prescribed office.
- (5) An NT NPM Inspector has the functions of the NT NPM under this Act in relation to a place of detention for which the NT NPM Inspector is appointed.
- (6) The responsible Minister for a place of detention for which the person is appointed must table a copy of the appointment in the Legislative Assembly within 6 sitting days after the appointment is made.
- (7) A person may hold office as, and exercise the functions of, an NT NPM Inspector in addition to holding a prescribed office.

Note for section 21

For further provisions relating to NT NPM Inspectors see the Children's Commissioner Act 2013, the Correctional Services Act 2014, the Disability Services Act 1993, the Mental Health and Related Services Act 1998 and the Youth Justice Act 2005 .

22 Eligibility for appointment

- (1) A person is eligible to be appointed as an NT NPM Inspector if the person:
 - (a) has suitable qualifications or experience relating to the NT NPM's functions; and
 - (b) is committed to the purposes of this Act and its underlying principles; and
 - (c) is not involved in the management of, and has no direct interest in, any place of detention; and
 - (d) is not any of the following:
 - (i) a judicial officer;
 - (ii) a member of an Australian parliament;
 - (iii) a member of a local government council or of an equivalent body in a State or another Territory;
 - (iv) a member of a political party;
 - (v) a prescribed officer of a Territory controlled entity; and
 - (e) the person does not have a recent political affiliation.
- (2) For subsection (1)(e), a person has a recent political affiliation if, at any time during the previous 5 years, the person:
 - (a) was a member of the Legislative Assembly or a local government council; or
 - (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or
 - (c) was a member of staff of a minister; or
 - (d) made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.
- (3) For subsection (2)(d), a person made a reportable donation if it was made by the person or by a body corporate of which the person was an office holder or majority shareholder at the time the donation was made.

- (4) In this section:

reportable donation means a gift or loan that is required to be disclosed or reported under Part 10 of the *Electoral Act 2004* or under a similar law in force in the Commonwealth or in a State or another Territory.

23 Term of appointment

- (1) The appointment of a person as an NT NPM Inspector is for a period of 5 years.
- (2) A person who is an NT NPM Inspector may be reappointed, if still eligible, for one further period of 5 years.

24 Conditions of appointment

- (1) An NT NPM Inspector holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.
- (2) An NT NPM Inspector's conditions of office:
- (a) cannot provide any conditions that are contingent on the NT NPM Inspector's performance in office; and
 - (b) cannot be varied during the NT NPM Inspector's term in office.

25 Acting NT NPM Inspector

- (1) The Administrator may appoint a person eligible under section 22 to act as an NT NPM Inspector for a place of detention:
- (a) during a vacancy in the office of an NT NPM Inspector for the place of detention; or
 - (b) during a period, or all periods, when an NT NPM Inspector for the place of detention is for any reason unable to perform the duties of the office.
- (2) An Acting NT NPM Inspector holds office on the conditions, including conditions about remuneration, expenses and allowances, determined by the Administrator.

26 Oath before taking office

- (1) Before exercising any functions as an NT NPM Inspector, an NT NPM Inspector must take an oath that the NT NPM Inspector will faithfully, impartially and truly exercise the functions of the NT NPM Inspector according to law.

- (2) Before exercising any functions as an Acting NT NPM Inspector, an Acting NT NPM Inspector must take an oath that the Acting NT NPM Inspector will faithfully, impartially and truly exercise the functions of the Acting NT NPM Inspector according to law.
- (3) The oath must be administered:
 - (a) for an NT NPM Inspector – by the Administrator; or
 - (b) for an Acting NT NPM Inspector – by the Administrator or the Minister.

27 Vacancy in office

- (1) The office of an NT NPM Inspector becomes vacant if:
 - (a) the NT NPM Inspector resigns under section 28; or
 - (b) the NT NPM Inspector's appointment is terminated under section 29; or
 - (c) the NT NPM Inspector is found guilty of an offence, whether in the Territory or elsewhere, for which the maximum penalty is imprisonment for a term of at least 12 months, with or without a fine; or
 - (d) the NT NPM Inspector becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (e) the NT NPM Inspector becomes a candidate for election as a member of an Australian parliament or a local government council; or
 - (f) the NT NPM Inspector is no longer eligible under section 22.
- (2) A decision, an act or an omission of an NT NPM Inspector is not invalid only because of a defect in the appointment of the NT NPM Inspector, including not being eligible under section 22.

28 Resignation

An NT NPM Inspector may resign office by written notice given to the Administrator.

29 Termination of appointment

- (1) The Administrator may terminate the appointment of an NT NPM Inspector if:
 - (a) the NT NPM Inspector becomes physically or mentally incapable of satisfactorily performing official duties; or
 - (b) the NT NPM Inspector engages in corrupt conduct as defined in section 10 of the *Independent Commissioner Against Corruption Act 2017*; or
 - (c) the NT NPM Inspector engages in paid employment (excluding employment in a prescribed office) outside the duties of the office of an NT NPM Inspector without the approval of the responsible Minister; or
 - (d) the NT NPM Inspector is absent from duty, without the approval of the responsible Minister for a place of detention for which the NT NPM Inspector is appointed and without reasonable excuse, for 28 consecutive days or for 42 days in any period of 12 months.
- (2) The responsible Minister for a place of detention for which the NT NPM Inspector was appointed must immediately give the NT NPM Inspector a statement of reasons for the termination.
- (3) The responsible Minister for a place of detention for which the NT NPM Inspector was appointed must table in the Legislative Assembly the statement and any written response by the NT NPM Inspector within 6 sitting days after the termination.

30 Cooperation with other NT NPM Inspectors

An NT NPM Inspector must cooperate with other NT NPM Inspectors in relation to the exercise of their respective functions.

Division 3 Chief NT NPM Inspector**31 Appointment of Chief NT NPM Inspector**

The Administrator must appoint an NT NPM Inspector to be the Chief NT NPM Inspector.

32 Communication with relevant Commonwealth agency

The Chief NT NPM Inspector has the function of coordinating communication between the NT NPM and the relevant Commonwealth agency.

33 Chief NT NPM Inspector taken to be NT NPM Inspector

The Chief NT NPM Inspector is taken to be an NT NPM Inspector for a place of detention if no other person is appointed or taken to be an NT NPM Inspector for the place of detention.

34 Publication of guidelines

- (1) The Chief NT NPM Inspector may make guidelines and standards in relation to the conduct of NT NPM Inspectors.
- (2) Any guideline or standard made under subsection (1) must be published on the NT NPM Inspector's website.

Division 4 Inspections**35 Inspections**

- (1) The NT NPM may at any time visit or examine a place of detention, or any aspect of a place of detention, as the NT NPM considers appropriate.
- (2) The NT NPM is not required to give a detaining authority prior notice of any visit.

36 Access to places of detention

- (1) The NT NPM may visit and examine any place of detention, and any vehicle, equipment or other thing in, or relating to, a place of detention.
- (2) The NT NPM may take such photographs, films or audio or visual recordings as it considers necessary to exercise its functions.
- (3) Subject to subsection (4), the responsible Minister and detaining authority for a place of detention to which the NT NPM requests access must ensure that the NT NPM is:
 - (a) given unrestricted access to every part of that place; and
 - (b) able to exercise the NT NPM's functions under this Act in relation to the place of detention.

- (4) The responsible Minister or detaining authority for a place of detention may refuse a visit under this section only on urgent and compelling grounds of national security, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit.
- (5) A refusal under subsection (4) must be made in writing.
- (6) The existence of a declared state of emergency is not in itself a reason for a refusal under subsection (4).

37 Access to information

- (1) The NT NPM may, by written notice served on a person, require the person to produce to the NT NPM any information, document or thing in the person's possession or control that the NT NPM considers relevant in relation to a place of detention, the treatment of detainees or the conditions of detention.
- (2) A notice under subsection (1) must state the reasons the NT NPM considers the requested information to be relevant.
- (3) The Crown must not prevent or obstruct information from being produced, or evidence from being given, for the purpose of an inspection carried out under this Act.
- (4) A person is not excused from giving information, producing a record or answering a question, when required to do so under this Act, on the ground that to do so would disclose legal advice provided to an Agency or other authority.

38 Interview of persons

- (1) The NT NPM may interview:
 - (a) any detainee; and
 - (b) any other person the NT NPM believes may be able to give relevant information concerning a place of detention, the treatment of detainees or the conditions of detention.
- (2) The responsible Minister and detaining authority for a place of detention must ensure that:
 - (a) the NT NPM is provided with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any person the NT NPM chooses to interview under subsection (1); and

- (b) any communication between the NT NPM and a detainee is afforded privacy and confidentiality; and
 - (c) correspondence between a detainee and the NT NPM or the Subcommittee is not read, copied or removed except in accordance with Part 3.5, Division 2 of the *Correctional Services Act 2014* or with the consent of the detainee.
- (3) A support person chosen by a person the NT NPM wishes to interview may be present during the interview at that person's request and with the agreement of the NT NPM.

39 Detaining authority to give reasonable assistance

- (1) A detaining authority must give reasonable assistance and cooperation to the NT NPM in the exercise of functions under this Act.
- (2) For subsection (1), reasonable assistance and cooperation includes answering questions and responding to enquiries.

40 Unreasonable obligations

In the exercise of its functions under this Act, the NT NPM must use its best endeavours not to impose an unreasonable or disproportionate obligation on a detaining authority.

41 Application of Division

This Division has effect despite anything to the contrary in any of the following:

- (a) the *Children's Commissioner Act 2013*;
- (b) the *Correctional Services Act 2014*;
- (c) the *Court Security Act 1998*;
- (d) the *Disability Services Act 1993*;
- (e) the *Health and Community Services Complaints Act 1998*;
- (f) the *Mental Health and Related Services Act 1998*;
- (g) the *Notifiable Diseases Act 1981*;
- (h) the *Ombudsman Act 2009*;
- (i) the *Public and Environmental Health Act 2011*;

- (j) the *Sheriff Act 1962*;
- (k) the *Youth Justice Act 2005*;
- (l) any other Act prescribed by regulation.

Division 5 Reporting and other matters

42 Reports of NT NPM

- (1) The NT NPM must, within 3 months after the end of each financial year, give to the responsible Minister for a place of detention a report on its activities during that year in relation to the place of detention.
- (2) In addition to any report provided under subsection (1), the NT NPM may at any time provide the responsible Minister for a place of detention with a report relating to the activities of the NT NPM.
- (3) The responsible Minister must table a copy of a report received under subsection (1) or (2) in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (4) The responsible Minister must provide the NT NPM with a response to any recommendations contained in the report.
- (5) The responsible Minister must table a copy of a response received under subsection (4) in the Legislative Assembly within 6 sitting days after the Minister provides the response.
- (6) The NT NPM must publish a report made under this section on the NT NPM's website.

43 Joint reports

Nothing in this Act prevents a report from being made jointly under this and another Act or between two or more oversight bodies.

44 Opportunity to be heard

The NT NPM must not make a recommendation or report or publish information obtained under this Act that contains an adverse or derogatory comment in respect of a person or Agency unless the NT NPM first gives the person or Agency a reasonable opportunity to make submission about the proposed comment.

45 Publication of identifying information

If the NT NPM obtains identifying information in the exercise of its functions, the NT NPM must not publish the information unless the person to whom the information relates consents to the release of the information.

46 Information sharing

- (1) Despite any other Act, the NT NPM may share and exchange information gained through the exercise of its functions with other oversight bodies or the Subcommittee.
- (2) Despite section 45, information shared under subsection (1) may include identifying information.
- (3) The NT NPM may at any time provide information to, or communicate, consult or collaborate with, other oversight bodies or the Subcommittee.

47 Policy review

The NT NPM may review and comment on any policy or law, whether in force or proposed, that relates to places of detention or to the prevention of torture or other cruel, inhuman or degrading treatment or punishment.

48 Recommendations

- (1) The NT NPM may make recommendations or provide advice to the Chief Executive Officer of an Agency.
- (2) The Chief Executive Officer must provide the NT NPM with a response to any recommendation made, or advice provided, under subsection (1).
- (3) If the NT NPM makes a recommendation or provides advice under subsection (1), the NT NPM may request that the Chief Executive Officer notify the NT NPM within a specified time of:
 - (a) the steps that have been or are proposed to be taken to give effect to the recommendation or advice; or
 - (b) if no steps have been or are proposed to be taken, the reasons why not.

Part 2B Protections and offences

49 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a function as an NT NPM Inspector or the Chief NT NPM Inspector or as a delegate or staff member of the NT NPM.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

exercise of a function includes the purported performance of the function.

50 Protection against actions

- (1) A person who provides information or makes a disclosure to the NT NPM or the Subcommittee:
 - (a) does not incur any civil or criminal liability in relation to the provision of the information; and
 - (b) cannot be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted standard of conduct in relation to the provision of the information; and
 - (c) cannot be held to have contravened any Act in relation to the provision of the information.
- (2) This section has effect:
 - (a) whether the information provided is true or false; and
 - (b) whether the person provides the information at the request of the NT NPM or Subcommittee or on the person's own initiative; and
 - (c) despite any duty of secrecy or confidentiality or any other restriction on the provision of information applicable to the person.

51 Protection against reprisals

- (1) A person commits an offence if:
- (a) the person intentionally takes an action against another person; and
 - (b) the action is a detrimental action and the person is reckless in relation to that circumstance; and
 - (c) the detrimental action is taken wholly or partly because the person believes the other person gave or disclosed information to the Subcommittee or the NT NPM.

Maximum penalty: 100 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(c).
- (3) A detaining authority who intentionally takes detrimental action against another person wholly or partly because the detaining authority believes the other person gave or disclosed information to the Subcommittee or the NT NPM is taken to have engaged in conduct that constitutes misconduct in the performance of the person's duties as a detaining authority.
- (4) A detrimental action taken by a detaining authority as described in subsection (3) justifies the taking of disciplinary action against the detaining authority, including disciplinary action provided for:
- (a) by or under an Act that regulates the employment or service of the detaining authority; or
 - (b) by or under a contract of employment or contract for services that governs the employment or engagement of the detaining authority.
- (5) A person may be found guilty of an offence under this section even if the other person did not in fact give or disclose information to the Subcommittee or the NT NPM.

- (6) In this section:

detrimental action means action causing, comprising or involving any of the following:

- (a) injury, damage or loss;
- (b) change of the conditions of detention;

- (c) intimidation or harassment;
- (d) discrimination, disadvantage or adverse treatment in relation to employment;
- (e) dismissal from, or prejudice in, employment;
- (f) disciplinary proceeding;
- (g) other disadvantage or prejudice of any kind.

52 Offence to obstruct NT NPM Inspector

- (1) A person commits an offence if:
 - (a) the person intentionally obstructs another person; and
 - (b) the other person is an NT NPM Inspector or a delegate or staff member of the NT NPM; and
 - (c) the NT NPM Inspector or the delegate or staff member of the NT NPM is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(b).
- (3) In this section:

obstruct includes hinder and resist.

8 Section 16 amended (Directions of responsible Minister)

Section 16

renumber as section 53

9 Section 17 amended (Regulations)

Section 17

renumber as section 54

Part 3 **Amendment of Children's Commissioner Act 2013**

10 Act amended

This Part amends the *Children's Commissioner Act 2013*.

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

After section 10(1)

insert

- (1A) The Commissioner is taken to be an NT NPM Inspector under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* for a place of detention (within the meaning of that Act) in which persons under 18 years of age are detained.

Part 4 **Amendment of Correctional Services Act 2014**

12 Act amended

This Part amends the *Correctional Services Act 2014*.

13 Section 4 amended (Definitions)

Section 4

insert

NT NPM, see section 3 of the *Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

NT NPM Inspector means:

- (a) the person appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* as the NT NPM Inspector for places of detention (within the meaning of that Act) administered under this Act; or
- (b) if more than one person is appointed for the position mentioned in paragraph (a) – the person first appointed.

Subcommittee, see section 3 of the *Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

14 Section 26 amended (Appointment of official visitors)

(1) Section 26(1) and (3)

omit

Minister

insert

NT NPM Inspector

(2) Section 26(4)

omit

(3) Section 26(5)

omit

3 years

insert

the term, not exceeding 5 years, specified in the instrument of appointment

15 Section 27 amended (Vacation of office)

Section 27(a)

omit

Minister

insert

NT NPM Inspector

16 Section 28 amended (Termination of appointment)

Section 28(1) and (2)

omit

Minister

insert

NT NPM Inspector

17 Section 29 repealed (Frequency of visits)

Section 29

repeal

18 Section 30 amended (Inquiry and report by official visitor)

(1) Section 30(1)

omit

as necessary for the purposes of section 29.

insert

as directed by the NT NPM Inspector.

(2) Section 30(3)

omit

Minister

insert

NT NPM Inspector

(3) Section 30(4)

omit

(4) Section 30(5)

omit

or (4)

19 Section 32 repealed (Minister's guidelines)

Section 32

repeal

20 Section 151 amended (Definitions)

Section 151, definition ***protected correspondent***, after paragraph (k)

insert

(ka) the NT NPM;

(kb) the Subcommittee;

21 Section 156 amended (Nomination of nominated examiners)

(1) After section 156(1A)

insert

(1B) Despite subsection (1), for protected items where the protected correspondent is the NT NPM or the Subcommittee, the nominated examiner is:

(a) the Inspector; or

(b) a person agreed to by the Commissioner and the Chief NT NPM Inspector.

(2) Section 156(3)

insert

Chief NT NPM Inspector, see section 3 of the *Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

22 Chapter 6, Part 6.3 inserted

After section 223

insert

Part 6.3 Transitional matters for Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022

224 Official visitors

(1) The appointment of an official visitor under section 26(1), as in force immediately before the commencement, is taken to be an appointment made under section 26(1) as in force after the commencement.

(2) Despite subsection (1), a person who was an official visitor immediately before the commencement continues to hold office for the balance of the term that was determined at the time of the person's appointment.

(3) In this section:

commencement means the commencement of Part 4 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

Part 5 Amendment of Disability Services Act 1993

23 Act amended

This Part amends the *Disability Services Act 1993*.

24 Section 50 amended (Appointment)

(1) Section 50(1)

omit

must

insert

may

(2) After section 50(1)

insert

(1A) If no person is appointed under subsection (1), the NT NPM Inspector appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* for places of detention (within the meaning of that Act) administered under Part 6 of this Act is taken to be the principal community visitor.

(1B) If more than one person is appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* as an NT NPM Inspector for places of detention (within the meaning of that Act) administered under Part 6 of this Act, the person first appointed is the relevant NT NPM Inspector for the purposes of subsection (1A).

(3) Section 50(2)

omit

Minister

insert

principal community visitor

(4) Section 50(4)

omit

holds office for 3 years

insert

under subsection (1) or (2) holds office for the term, not exceeding 5 years, specified in the instrument of appointment

25 Section 51 repealed (Interim community visitor)

Section 51

repeal

26 Section 52 amended (Resignation and termination of appointment)

Section 52(1) and (2)

omit

Minister

insert

principal community visitor

27 Section 57 amended (Visiting and inspections of residential facilities)

Section 57(3)

omit

28 Section 61 amended (Appointment of members)

Section 61(1) and (4)

omit

Minister

insert

principal community visitor

29 Section 62 amended (Resignation and termination of appointment of members)

Section 62(1) and (2)

omit

Minister

insert

principal community visitor

30 Section 64 amended (Reports by community visitors panel)

Section 64(4)

omit

31 Part 9 inserted

After section 76

insert

Part 9 Transitional matters for Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022**77 Community visitors**

- (1) The appointment of a principal community visitor under section 50(1), as in force immediately before the commencement, is taken to be an appointment made under section 50(1) as in force after the commencement.
- (2) The appointment of a community visitor under section 50(2), as in force immediately before the commencement, is taken to be an appointment made under section 50(2) as in force after the commencement.
- (3) Despite subsections (1) and (2), a person who was a principal community visitor or an official visitor immediately before the commencement continues to hold office for the balance of the term that was determined at the time of the person's appointment.

(4) In this section:

commencement means the commencement of Part 5 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

Part 6 Amendment of Independent Commissioner Against Corruption Act 2017

32 Act amended

This Part amends the *Independent Commissioner Against Corruption Act 2017*.

33 Section 4 amended (Definitions)

(1) Section 4

insert

NT NPM, see section 3 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

NT NPM Inspector, see section 3 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

(2) Section 4, definition **independent entity**, after paragraph (m)

insert

(ma) the NT NPM or an NT NPM Inspector;

34 Section 93 amended (Meaning of *protected communication*)

After section 93(1)(b)(vi)

insert

(via) the NT NPM or an NT NPM Inspector;

Part 7 Amendment of Mental Health and Related Services Act 1998

35 Act amended

This Part amends the *Mental Health and Related Services Act 1998*.

36 Section 101 amended (Principal community visitor)

(1) Section 101(1)

omit

must

insert

may

(2) Section 101(2) and (3)

omit, insert

- (2) If no person is appointed under subsection (1), the NT NPM Inspector appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* for places of detention (within the meaning of that Act) administered under Part 14 of this Act is taken to be the principal community visitor.
- (3) If more than one person is appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* as an NT NPM Inspector for places of detention (within the meaning of that Act) administered under Part 14 of this Act, the person first appointed is the relevant NT NPM Inspector for the purposes of subsection (2).
- (4) A principal community visitor appointed under subsection (1) holds office for the term, not exceeding 5 years, specified in the instrument of appointment and is eligible to be reappointed.
- (5) A principal community visitor appointed under subsection (1) must have the qualifications determined by the Minister.

37 Section 101A amended (Resignation and termination of appointment – principal community visitor)

(1) Section 101A(1), after "visitor"

insert

under section 101(1)

(2) Section 101A(2) and (3)

omit

the principal community visitor

insert

a principal community visitor appointed under section 101(1)

38 Section 103 amended (Community visitors)

(1) Section 103(1) and (3)

omit

Minister

insert

principal community visitor

(2) Section 103(2)

omit

3 years

insert

the term, not exceeding 5 years, specified in the instrument of appointment

39 Section 103A amended (Resignation and termination of appointment – community visitor)

Section 103A(1), (2) and (3)

omit

Minister

insert

principal community visitor

40 Section 103B repealed (Interim appointment of community visitor)

Section 103B

repeal

41 Section 106 amended (Visiting duties)

(1) Section 106(1)

omit

(1)

(2) Section 106(2)

omit

42 Part 23 inserted

After section 185

insert

Part 23 Transitional matters for Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022**186 Community visitors**

- (1) The appointment of a principal community visitor under section 101(1), as in force immediately before the commencement, is taken to be an appointment made under section 101(1) as in force after the commencement.
- (2) The appointment of a community visitor under section 103(1), as in force immediately before the commencement, is taken to be an appointment made under section 103(1) as in force after the commencement.
- (3) Despite subsections (1) and (2), a person who was a principal community visitor or a community visitor immediately before the commencement continues to hold office for the balance of the term that was determined at the time of the person's appointment.
- (4) In this section:

commencement means the commencement of Part 7 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

Part 8 Amendment of Youth Justice Act 2005

43 Act amended

This Part amends the *Youth Justice Act 2005*.

44 Section 5 amended (Interpretation)

Section 5(1)

insert

NT NPM Inspector means:

- (a) the person appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* as the NT NPM Inspector for places of detention (within the meaning of that Act) administered under Part 8 of this Act; or
- (b) if more than one person is appointed under the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* as the NT NPM Inspector for places of detention (within the meaning of that Act) administered under Part 8 of this Act – the person first appointed.

45 Section 169 amended (Appointment of official visitors)

- (1) Section 169(1), (4) and (5)

omit

Minister

insert

NT NPM Inspector

- (2) Section 169(3)

omit

3 years

insert

the term, not exceeding 5 years, specified in the instrument of appointment

46 Section 170 amended (Functions of official visitors)

Section 170(2) and (3)

omit

Minister

insert

NT NPM Inspector

47 Part 17, Division 8 inserted

After section 239

insert

Division 8 Transitional matters for Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022**240 Official visitors**

- (1) The appointment of an official visitor under section 169(1), as in force immediately before the commencement, is taken to be an appointment made under section 169(1) as in force after the commencement.
- (2) Despite subsection (1), a person who was an official visitor immediately before the commencement continues to hold office for the balance of the term that was determined at the time of the person's appointment.
- (3) In this section:

commencement means the commencement of Part 8 of the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*.

Part 9 Repeal**48 Repeal of Act**

This Act is repealed on the day after it commences.