

TASMANIA

OPCAT IMPLEMENTATION BILL 2021

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**SCHEDULE 1 – TASMANIAN NATIONAL PREVENTIVE
MECHANISM**

OPCAT IMPLEMENTATION BILL 2021

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

**An Act to enable the Optional Protocol to the Convention
against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment to be given effect within
Tasmania and for related purposes**

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

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

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Purpose of Act

The purpose of this Act is to enable –

- (a) a national preventive mechanism to be
appointed and maintained to fulfil the

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mandate set out in Part IV of the
Optional Protocol; and

- (b) the Subcommittee to fulfil the mandate
set out in Article 11 of the Optional
Protocol –

in relation to Tasmania.

4. Interpretation

- (1) In this Act –

department means department as defined in
the *Administrative Arrangements Act*
1990;

deprivation of liberty has the meaning that it
has in the Optional Protocol;

detainee means a person in a place of
detention who is deprived of his or her
liberty;

detaining authority, in relation to a place of
detention, means the person or entity for
the time being in charge of the place of
detention and includes any person or
entity responsible for the day-to-day care,
control, health and safety of detainees in
that place of detention;

entity includes an unincorporated body;

expert means an expert selected in accordance
with Article 13 of the Optional Protocol;

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function includes a power, authority or duty;

information includes documents, records, recordings, registers, data and electronic communications;

Ministerial arrangement means an arrangement entered into under section 29;

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

National Preventive Mechanism Coordinator means the Office of the Commonwealth Ombudsman established by the *Ombudsman Act 1976* of the Commonwealth or another body nominated from time to time as the National Preventive Mechanism Coordinator for Australia in relation to the Optional Protocol;

Optional Protocol means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, as amended and in force for Australia from time to time;

place of detention – see section 5;

public authority has the meaning that it has in the *Ombudsman Act 1978*;

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relevant authority means the following persons and bodies:

- (a) the responsible Secretary;
- (b) a detaining authority;
- (c) a public authority;
- (d) a person or body, or class of persons or bodies, prescribed for the purposes of this definition;

responsible Minister, in relation to a place of detention, means a Minister administering an Act, or portion of an Act, conferring functions on, or regulating the exercise of functions by, detaining authorities for that place of detention;

responsible Secretary means –

- (a) the Secretary responsible for a place of detention; or
- (b) in the case of the Department of Police, Fire and Emergency Management, the Commissioner of Police; or
- (c) in the case of services provided in a place of detention, the Secretary of the department responsible for the provision of those services;

Secretary means the Secretary of the Department;

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staff, in relation to a Tasmanian national preventive mechanism, means a person who is appointed, employed or made available under section 12 and includes a person to whom a function is delegated in accordance with section 11;

Subcommittee means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with the Optional Protocol;

Tasmanian national preventive mechanism means a person appointed under section 8.

- (2) For the purposes of this Act, an entity or person engaged by or on behalf of a detaining authority or the State to provide services under a contract as, or on behalf of, a detaining authority is taken to be a detaining authority.

5. Meaning of *place of detention*

- (1) In this section –

closed psychiatric facility means the following facilities within the meaning of the *Mental Health Act 2013*:

- (a) an approved facility;
- (b) a secure institution.

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- (2) In this Act, a place of detention is any place, subject to the jurisdiction and control of Tasmania, that the Subcommittee must be allowed to visit under Article 4 of the Optional Protocol.
- (3) Without limiting subsection (2), any of the following places that are subject to the jurisdiction and control of Tasmania and in which persons are deprived of their liberty is a place of detention for the purposes of this Act:
- (a) a correctional centre, prison, detention centre or other similar place (however described);
 - (b) a hospital or other similar place;
 - (c) a closed psychiatric facility;
 - (d) a police station or court cell complex;
 - (e) a vehicle used or operated to convey detainees;
 - (f) a place prescribed for the purposes of this section.

6. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

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7. Relationship to other laws

A provision of any other Act that prevents, or limits, the exercise of any function by a Tasmanian national preventive mechanism or the Subcommittee, with respect to a detainee or place of detention in accordance with this Act, has no effect or operation to the extent of any inconsistency with this Act.

**PART 2 – TASMANIAN NATIONAL PREVENTIVE
MECHANISM**

Division 1 – Appointment, functions and staffing

8. Tasmanian national preventive mechanism

- (1) The Governor may appoint a person, or more than one person, as a Tasmanian national preventive mechanism.
- (2) Schedule 1 has effect with respect to a Tasmanian national preventive mechanism and his or her appointment.

9. Functions

- (1) A Tasmanian national preventive mechanism has the following functions:
 - (a) to regularly examine the treatment of persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
 - (b) to require the provision of, or access to, or to copy and retain copies of, information held by any person concerning –
 - (i) detainees, including the number and treatment of such detainees

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and the conditions of their detention; and

- (ii) places of detention, including the number of such places and their location;
- (c) to access, inspect and review places of detention in accordance with section 13;
- (d) to interview detainees, and any other persons whom he or she believes may supply relevant information, in accordance with Article 20(d) of the Optional Protocol;
- (e) to have contact, meet and exchange any information obtained in accordance with this Act with the Subcommittee and a national preventive mechanism of any other Australian jurisdiction;
- (f) to refer matters relating to a detainee or place of detention to an appropriate agency for consideration or action;
- (g) to receive information from any person, body or agency in relation to a detainee or place of detention;
- (h) to make recommendations, and provide advice, to the relevant authorities with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into

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- consideration the relevant norms of the United Nations;
- (i) to develop and publish guidelines and standards in respect of detainees or places of detention;
 - (j) to submit proposals and observations concerning existing or draft legislation that relates to detainees or places of detention;
 - (k) to publish reports, recommendations, advice or findings in relation to detainees or places of detention;
 - (l) to engage in consultation in relation to policy relating to detainees or places of detention with a responsible Secretary or a responsible Minister;
 - (m) such other functions as may be conferred or imposed on a Tasmanian national preventive mechanism under this or any other Act;
 - (n) to do all things necessary or convenient to be done in connection with, or incidental to, the exercise of his or her functions.
- (2) A Tasmanian national preventive mechanism may from time to time amend the guidelines and standards prepared and published under subsection (1).

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10. Independence

In exercising functions under this Act, a Tasmanian national preventive mechanism, a person to whom functions have been delegated under section 11 and any staff of a Tasmanian national preventive mechanism appointed, employed or made available under section 12, are authorised and required to act independently and impartially, and have complete discretion in the exercise of those functions.

11. Delegation

A Tasmanian national preventive mechanism may delegate any of his or her functions under this Act, other than this power of delegation, to any person or body that is, in the opinion of the Tasmanian national preventive mechanism, competent to perform that function.

12. Staff

- (1) Subject to and in accordance with the *State Service Act 2000*, a person may be appointed or employed for the purposes of enabling a Tasmanian national preventive mechanism to exercise his or her functions under this Act.
- (2) A Tasmanian national preventive mechanism may make arrangements with a Secretary of a department for State Service officers and State Service employees employed in the department to be made available to enable a Tasmanian

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national preventive mechanism to exercise his or her functions under this Act.

- (3) A State Service officer or State Service employee made available under subsection (2) may serve a Tasmanian national preventive mechanism in any capacity in conjunction with State Service employment.
- (4) In appointing or employing staff, or making arrangements for staff to be made available under this section, a Tasmanian national preventive mechanism is to take into consideration –
 - (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 people identifying as belonging to diverse groups, including the following groups:
 - (i) cultural and ethnic groups, including people who identify as Aboriginal or Torres Strait Islander;
 - (ii) people living with disability; and
 - (c) whether the staff have a conflict of interest in relation to the purposes of this Act.
- (5) If a person ceases to be staff of a Tasmanian national preventive mechanism, the Tasmanian

national preventive mechanism is to notify the Secretary of that cessation within 30 days after its occurrence.

Division 2 – Inspections

13. Inspection of place of detention

- (1) A Tasmanian national preventive mechanism may access, inspect and review any place of detention, aspect of a place of detention or any equipment or facilities used in connection with a place of detention –
 - (a) at any time and on as many occasions as he or she thinks fit; and
 - (b) with or without notice; and
 - (c) with any assistance or equipment that he or she thinks is reasonably necessary.
- (2) A Tasmanian national preventive mechanism and any member of staff of a Tasmanian national preventive mechanism may take such photographs, films or audio or visual recordings as he or she considers necessary to perform his or her functions.
- (3) A Tasmanian national preventive mechanism may publish a schedule of the dates and locations at which he or she intends to carry out inspections under this section.

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14. Identification

- (1) A Tasmanian national preventive mechanism is to issue to himself or herself, and each member of staff of the Tasmanian national preventive mechanism, an identity card.
- (2) An identity card must contain at least the name and a recent photograph of the person to whom it is issued.
- (3) A Tasmanian national preventive mechanism, and a member of staff of a Tasmanian national preventive mechanism, when exercising his or her functions under this Act, is to allow a detainee or member of staff of a place of detention to inspect his or her identity card.
- (4) When a person ceases for any reason to be a member of staff of a Tasmanian national preventive mechanism, the Tasmanian national preventive mechanism is to take reasonable measures to retrieve the person's identity card or ensure that it has been properly disposed of.

15. Access to persons

- (1) A Tasmanian national preventive mechanism is entitled to access to a detainee at all times.
- (2) The person in charge of a place of detention, each member of the staff of a place of detention and any person providing services in a place of detention –

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- (a) must allow a Tasmanian national preventive mechanism to conduct an interview with a detainee, out of the hearing of any other person; and
- (b) must allow a Tasmanian national preventive mechanism to be accompanied by an interpreter in conducting an interview with a detainee if deemed necessary by the Tasmanian national preventive mechanism; and
- (c) must not, without the approval of the detainee, read, copy or remove any correspondence –
 - (i) from a detainee to a Tasmanian national preventive mechanism; or
 - (ii) from a Tasmanian national preventive mechanism to a detainee.

16. Requiring of documents &c.

- (1) A Tasmanian national preventive mechanism may, by notice served on a person, require that person to produce to –
 - (a) the Tasmanian national preventive mechanism; or
 - (b) a person designated by the Tasmanian national preventive mechanism –

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any information, document or thing in that person's possession or control that the Tasmanian national preventive mechanism considers relevant to an inspection carried out under section 13.

- (2) Information required to be produced under subsection (1) may include information relating to –
 - (a) the number and treatment of detainees and the conditions of their detention; and
 - (b) places of detention, including the number of such places and their location.
- (3) The Crown may not prevent or obstruct information from being produced, or evidence from being given, for the purpose of an inspection carried out under section 13, even though it would be entitled to do so if the inspection were a legal proceeding held before a court.
- (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 furnished to an agency or instrumentality of the Tasmanian government or another authority to which this Act applies.

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17. Action on evidence of breach of duty

If, during or after an inspection carried out under section 13, a Tasmanian national preventive mechanism is of the opinion that –

- (a) there is evidence of a breach of duty or misconduct on the part of the responsible Secretary or any officer or employee of an agency or instrumentality of the Tasmanian government; and
- (b) in all the circumstances, the evidence is of sufficient force to justify his or her doing so –

the Tasmanian national preventive mechanism may bring the evidence –

- (c) in the case of the responsible Secretary, to the notice of a responsible Minister; and
- (d) in any other case, to the notice of the responsible Secretary.

18. Recommendations and advice

- (1) A Tasmanian national preventive mechanism may make such recommendations or provide such advice, with respect to an inspection carried out under section 13, to a relevant authority as he or she considers necessary or appropriate.
- (2) A relevant authority is to enter into dialogue with the Tasmanian national preventive mechanism regarding the steps to be taken to

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enable effect to be given to a recommendation made, or advice provided, under subsection (1).

- (3) If a Tasmanian national preventive mechanism makes a recommendation or provides advice under subsection (1) to a relevant authority, he or she may request the relevant authority to notify him or her, 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 such steps have been or are proposed to be taken, the reasons why they have not been taken or, as the case may be, are not proposed to be taken.
- (4) Where it appears to the Tasmanian national preventive mechanism that no appropriate steps have been taken within a reasonable time, he or she may, after considering any comments made by or on behalf of the relevant authority to whom the recommendation was made or advice was provided, send to the Premier and a responsible Minister a copy of that recommendation or advice together with a copy of any such comments.

19. Report

- (1) A Tasmanian national preventive mechanism may, at any time –
 - (a) provide a report to a responsible Minister, or a relevant authority, on any

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matter relating to an inspection carried out under section 13; and

- (b) give advice as the Tasmanian national preventive mechanism considers necessary or appropriate in relation to the matter.
- (2) If, at any time after providing a report under subsection (1), the Tasmanian national preventive mechanism considers it necessary or appropriate to do so, he or she may table the report in each House of Parliament.
- (3) A responsible Minister, or a relevant authority, may prepare a response to the report and provide it to the Tasmanian national preventive mechanism.

20. Opportunity to be heard

- (1) A Tasmanian national preventive mechanism is not to –
- (a) make recommendations or provide advice under section 18; or
 - (b) provide a report under section 19; or
 - (c) publish information obtained under this Act –

that contains adverse or derogatory comments in respect of a person unless the Tasmanian national preventive mechanism has given the person a reasonable opportunity –

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- (d) to appear before him or her; or
 - (e) to make representations to him or her, either orally or in writing.
- (2) A Tasmanian national preventive mechanism is not to –
- (a) make recommendations or provide advice under section 18; or
 - (b) provide a report under section 19; or
 - (c) publish information obtained under this Act –

that contains adverse or derogatory comments in respect of the department responsible for a place of detention or the services provided in the place of detention, unless –

- (d) the Tasmanian national preventive mechanism has given the responsible Secretary, and any relevant officer or employee of the responsible department, a reasonable opportunity –
 - (i) to appear before him or her; or
 - (ii) to make representations to him or her, either orally or in writing; and
- (e) the Tasmanian national preventive mechanism has provided a draft of the report to the responsible Secretary.

Division 3 – Referrals and reporting

21. Referral of matters by Tasmanian national preventive mechanism

- (1) A Tasmanian national preventive mechanism may refer for investigation to the following persons or bodies any matter raised by, or in the course of, the exercise of the functions of the Tasmanian national preventive mechanism:
 - (a) a relevant authority;
 - (b) a responsible Minister;
 - (c) the Subcommittee.
- (2) A Tasmanian national preventive mechanism's functions to inspect, make recommendations, provide advice in relation to, or report on, a matter are not affected by the matter having been referred under subsection (1) for investigation.

22. Provision of information to Tasmanian national preventive mechanism

- (1) A person or body may provide to a Tasmanian national preventive mechanism any information that he, she or it considers relevant to the exercise of the functions of the Tasmanian national preventive mechanism.
- (2) For the avoidance of doubt, the following persons or bodies may provide to a Tasmanian national preventive mechanism any information, referred to in subsection (1), that is raised by, or

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in the course of, the exercise of the functions of that person or body:

- (a) a relevant authority;
- (b) a responsible Minister;
- (c) the Office of the Commonwealth Ombudsman established by the *Ombudsman Act 1976* of the Commonwealth;
- (d) a person exercising functions in another Australian jurisdiction similar to those exercised by a Tasmanian national preventive mechanism under this Act;
- (e) the Subcommittee.

23. Disclosure of information to national preventive mechanisms

- (1) Despite a provision of this or any other Act, a Tasmanian national preventive mechanism may disclose information raised by, or in the course of, the exercise of his or her functions under this or any other Act to either or both of the following persons:
 - (a) a person exercising functions in another Australian jurisdiction similar to those exercised by a Tasmanian national preventive mechanism under this Act;
 - (b) the National Preventive Mechanism Coordinator.

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- (2) For the avoidance of doubt, subsection (1) applies to a person referred to in subsection (1)(a) in respect of any kind of place of detention.

24. Annual report

- (1) Each Tasmanian national preventive mechanism is required to submit an annual report to the National Preventive Mechanism Coordinator within the period of 4 months after 30 June in each year.
- (2) The annual report under this section is to include the following matters:
- (a) a description of the activities of the Tasmanian national preventive mechanism during that year in relation to the functions of the Tasmanian national preventive mechanism;
 - (b) an evaluation of the response of relevant authorities to the recommendations or advice of the Tasmanian national preventive mechanism;
 - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Tasmanian national preventive mechanism considers should be made as a result of the exercise of his or her functions.

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Division 4 – Offences

25. Disclosure of information by Tasmanian national preventive mechanism

- (1) Except as provided in subsections (2) and (3), a person who is, or has been, a Tasmanian national preventive mechanism, a delegate of a Tasmanian national preventive mechanism or staff of a Tasmanian national preventive mechanism must not, either directly or indirectly, make a record of, or disclose, any information that was –
- (a) acquired in his or her official capacity; and
 - (b) disclosed or obtained under this Act.

Penalty: Fine not exceeding 20 penalty units.

- (2) Subsection (1) does not prevent a Tasmanian national preventive mechanism or a member of his or her staff making a record of or disclosing information if the making of the record or the disclosure –
- (a) is reasonably required for the proper exercise of the functions of the Tasmanian national preventive mechanism; or
 - (b) is done with the consent –
 - (i) in the case of information given by an officer of a place of detention or of a department

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- which provides a service at a place of detention – of the responsible Secretary or a responsible Minister; or
- (ii) in the case of information given by a member of a public authority – of the governing body of the authority or a responsible Minister; or
 - (iii) in any other case – of the person by whom the information was given, if that person is entitled or authorised to give the information.
- (3) Subsection (1) does not prevent a Tasmanian national preventive mechanism from disclosing information –
- (a) to a relevant authority; or
 - (b) to a responsible Minister; or
 - (c) to the Auditor-General or the Deputy Auditor-General appointed under the *Audit Act 2008*; or
 - (d) to the Ombudsman and the Deputy Ombudsman appointed under the *Ombudsman Act 1978*; or
 - (e) to the Office of the Commonwealth Ombudsman established by the *Ombudsman Act 1976* of the Commonwealth; or

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- (f) to a person exercising, in another Australian jurisdiction, functions similar to those exercised by a Tasmanian national preventive mechanism under this Act; or
 - (g) to the Subcommittee; or
 - (h) in the course of referring a matter under section 21.
- (4) A person must not compel a person who is or has been a Tasmanian national preventive mechanism or a member of his or her staff, in proceedings before a court or before a person authorised by law or by consent of parties to hear, receive and examine evidence, to disclose information that was –
- (a) acquired in his or her official capacity; and
 - (b) disclosed or obtained under this Act.
- (5) A person who is, or has been, a Tasmanian national preventive mechanism, a delegate of a Tasmanian national preventive mechanism or staff of a Tasmanian national preventive mechanism must not publish information, without the consent of the person to whom the information relates, that enables the identity of that person to be ascertained or discovered.

Penalty: Fine not exceeding 20 penalty units.

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- (6) A person must not use any information disclosed or obtained under this Act for his or her benefit or the benefit of any other person.

Penalty: Fine not exceeding 50 penalty units.

- (7) In this section, a reference to the disclosure of information includes a reference to the delivery or the giving to a person of that information or a copy of it or of any part of it.

26. Offence not to comply with requirement of Tasmanian national preventive mechanism

- (1) A person must comply with a request or requirement of a Tasmanian national preventive mechanism that is relevant to the exercise of the Tasmanian national preventive mechanism's functions under this Act.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (2) Subsection (1) does not apply if such compliance would require the person to provide information, answer questions, or produce documents –
- (a) in respect of which there is a lawful claim or right of privilege, if the information, questions or documents are not legal advice furnished to an agency or instrumentality of the Tasmanian

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government or other authority to which
this Act applies; or

- (b) that may incriminate the person in an offence.

27. Offences against Tasmanian national preventive mechanism

A person must not –

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten a Tasmanian national preventive mechanism, or a member of his or her staff, in the exercise of functions under this Act; or
- (b) without reasonable excuse, refuse, or wilfully fail, to comply with any lawful requirement of a Tasmanian national preventive mechanism, or a member of his or her staff, except as specified in section 26; or
- (c) wilfully make any false statement to mislead, or attempt to mislead, a Tasmanian national preventive mechanism, or a member of his or her staff.

Penalty: Fine not exceeding 50 penalty units.

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**PART 3 – MONITORING BY THE UNITED NATIONS
SUBCOMMITTEE ON PREVENTION OF TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT**

28. Interpretation

In this Part –

relevant place of detention means a place of detention to which the Subcommittee requests access.

29. Ministerial arrangements

- (1) The Minister may enter into arrangements with the Attorney-General of the Commonwealth for the purpose of facilitating the exercise in Tasmania by the Subcommittee of its functions under and in accordance with the Optional Protocol and the provisions of this Act.
- (2) Without limiting subsection (1), such Ministerial arrangements may be made for, or in respect of, the following:
 - (a) the care, direction, control and management of detainees and other persons within places of detention;
 - (b) the safety and security of places of detention;
 - (c) access to, and disclosure of, information;

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- (d) publication of information;
 - (e) the privacy of individuals or their rights to the confidentiality of personal information about them;
 - (f) the special needs of children, young persons who have not attained the age of 18 years and other vulnerable persons;
 - (g) urgent and compelling risks to public health caused by outbreaks of infectious diseases.
- (3) Ministerial arrangements made under this section must be consistent with, and appropriate for the purpose of implementing, the Optional Protocol.
- (4) A detaining authority has, and may exercise, such functions as are necessary, under the relevant Ministerial arrangements, to give effect to the Optional Protocol.
- (5) The Minister may enter into arrangements with the Attorney-General of the Commonwealth for the exercise of functions under this Act with respect to places of detention and detainees under the control and jurisdiction of the Commonwealth.

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Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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**30. Duties of detaining authority and responsible
Minister for places of detention**

The detaining authority and a responsible Minister in relation to a relevant place of detention must ensure that the Subcommittee, any accompanying experts and any persons appointed under Ministerial arrangements to assist the Subcommittee are –

- (a) given access to the relevant place of detention; and
- (b) able to exercise their functions under and in accordance with the Optional Protocol in that place.

31. Subcommittee’s access to places of detention

- (1) A responsible Minister and a detaining authority in relation to a relevant place of detention must ensure that the Subcommittee, any experts accompanying the Subcommittee and any persons appointed under Ministerial arrangements to assist the Subcommittee, are given unrestricted access to every part of that place, except as provided by subsections (2) and (3).
- (2) If the detaining authority in relation to a place of detention considers that one or more grounds specified in Article 14(2) of the Optional Protocol may temporarily prevent the carrying out of a visit by the Subcommittee, the detaining authority may prohibit or restrict access to the

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place of detention so that the Attorney-General of the Commonwealth may, in accordance with Ministerial arrangements, be requested to object, and decide whether or not to object, to the visit.

- (3) A detaining authority may prohibit or restrict access to the place of detention –
 - (a) if an objection to the Subcommittee’s visit has been made by the Attorney-General of the Commonwealth, in accordance with Ministerial arrangements, on one or more of the grounds specified in Article 14(2) of the Optional Protocol; and
 - (b) the objection has not been withdrawn or otherwise resolved by the Attorney-General of the Commonwealth in accordance with Ministerial arrangements.

32. Access to information

- (1) A responsible Minister, a responsible Secretary and a detaining authority in relation to a place of detention to which the Subcommittee requests access must ensure that the Subcommittee and any accompanying experts are provided with all relevant information that is requested by the Subcommittee for the purpose of evaluating the needs and measures that should be adopted to strengthen, if necessary, the protection of persons deprived of their liberty against torture

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and other cruel, inhuman or degrading treatment or punishment.

- (2) A detaining authority in relation to a place of detention must, at the request of the Subcommittee and in accordance with Ministerial arrangements, permit the Subcommittee to have unrestricted access to the following information in relation to the place of detention:
 - (a) the number of detainees in the place of detention;
 - (b) the treatment of detainees at the place of detention;
 - (c) the conditions of detention applying to detainees in that place of detention.
- (3) Access, to which the Subcommittee is entitled under this section, includes the right to inspect any information that is under the control of a responsible Minister or a detaining authority, or whose production the responsible Minister or detaining authority may, in an official capacity, reasonably require.
- (4) Despite subsections (1) and (2), this section does not entitle the Subcommittee to request information held by any of the following persons (*protected professionals*) in the following circumstances:
 - (a) a registered health professional, within the meaning of the *Health Practitioner*

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Regulation National Law (Tasmania) Act 2010, concerning a private health service provided to a person who is or was a detainee;

- (b) an Australian lawyer, within the meaning of the *Legal Profession Act 2007*, or other lawyer concerning legal advice given to a client who is or was a detainee;
 - (c) any other person who acted in a professional capacity with a person who is or was a detainee and who was under an express or implied obligation arising under law not to disclose any information or confidence arising out of that relationship.
- (5) A protected professional is not subject to any civil or criminal liability if the Subcommittee is given access under this section to any information of a kind referred to in subsection 4 by the responsible Minister or a detaining authority and no action, claim or demand may be taken or made of or against the protected professional with respect to disclosure of the information.

33. Subcommittee may interview detainees and other persons

- (1) A responsible Minister and a detaining authority in relation to a place of detention to which the Subcommittee requests access must ensure that

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the Subcommittee and any accompanying experts are provided with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee or any other person at the place of detention whom the Subcommittee chooses to interview.

- (2) It is the duty of a responsible Minister in relation to a place of detention to provide the Subcommittee with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any person who the Subcommittee believes may be able to give it relevant information concerning the place of detention, the treatment of detainees at it or the conditions of their detention.
- (3) Nothing in this section prevents a person, chosen by a person whom the Subcommittee wishes to interview, from being present during the interview at that person's request.
- (4) Nothing in this section requires a person, who objects to, or who does not consent to, being interviewed by the Subcommittee, to participate in an interview.
- (5) Before undertaking an interview in accordance with this section, it is the duty of the Subcommittee to advise a detainee who is subject to a detention order under the *Youth Justice Act 1997* that –

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- (a) the detainee may refuse to be interviewed by the Subcommittee; and
- (b) if the detainee consents to being interviewed by the Subcommittee, the detainee may choose a person to be present at that interview.

PART 4 – PROVISION OF INFORMATION

34. Exemption from *Personal Information Protection Act 2004*

A person who is a personal information custodian, within the meaning of the *Personal Information Protection Act 2004*, is not taken to have contravened that Act by reason of collecting, using, disclosing or otherwise dealing with information in accordance with this Act.

35. Protections for provision of information

- (1) This section applies if a person provides information to a Tasmanian national preventive mechanism or the Subcommittee –
 - (a) as requested or required by the Tasmanian national preventive mechanism or the Subcommittee, respectively, under this Act; or
 - (b) of their own volition for the purposes of this Act.
- (2) In so far as the information referred to in subsection (1) is provided in good faith, whether the information is true or false, the person –
 - (a) does not incur any civil or criminal liability; and
 - (b) cannot be held to have breached any code of professional etiquette or ethics, or to

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have departed from any accepted standard of professional conduct; and

- (c) cannot be held to have contravened any Act –

in respect of the provision of that information.

- (3) For the avoidance of doubt, this section applies to information obtained in accordance with the following Acts:

- (a) *Anti-Discrimination Act 1998*;
- (b) *Commissioner for Children and Young People Act 2016*;
- (c) *Custodial Inspector Act 2016*;
- (d) *Health Complaints Act 1995*;
- (e) *Ombudsman Act 1978*.

36. Protection from reprisal

A person must not –

- (a) prejudice, or threaten to prejudice, the safety or career of; or
- (b) intimidate or harass, or threaten to intimidate or harass; or
- (c) do any act that is, or is likely to be, to the detriment of; or

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- (d) incite or permit another person to take any of the actions specified in paragraph (a), (b) or (c) in relation to –

another person because the other person has provided, is providing or may in the future provide information, whether true or false, to a Tasmanian national preventive mechanism or the Subcommittee for the purposes of this Act.

Penalty: Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

PART 5 – MISCELLANEOUS

37. Directions of responsible Minister

- (1) A responsible Minister in relation to a place of detention may, by notice in writing, give directions to any detaining authority for the place of detention for the purposes of this Act.
- (2) The detaining authority is to comply with any directions given by a responsible Minister under this section.

38. Protection from liability

- (1) In this section –

monitoring authority means –

- (a) a Tasmanian national preventive mechanism; or
 - (b) any staff of a Tasmanian national preventive mechanism; or
 - (c) the Subcommittee; or
 - (d) any staff or accompanying experts of the Subcommittee; or
 - (e) any persons appointed under Ministerial arrangements to assist the Subcommittee.
- (2) Anything done or omitted to be done, in good faith, by a monitoring authority, does not make

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the monitoring authority subject to any action, liability, claim or demand.

- (3) A monitoring authority does not incur any personal liability in respect of any act done or omitted to be done by the monitoring authority in good faith in the exercise, or purported exercise, of any function under this Act.
- (4) A civil liability that would, but for this section, attach to a monitoring authority attaches to the Crown.

39. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

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- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by a Tasmanian national preventive mechanism or any other specified person or body.

40. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**SCHEDULE 1 – TASMANIAN NATIONAL
PREVENTIVE MECHANISM**

Section 8

1. Interpretation of Schedule

In this Schedule –

Parliament includes the Parliament of the Commonwealth or of any State or Territory.

2. Eligibility for appointment

- (1) A person must not be appointed as, or carry out the role of, a Tasmanian national preventive mechanism if he or she –
 - (a) is, or becomes, a member of a House of Parliament; or
 - (b) is, or becomes, a candidate for election as a member of a House of Parliament; or
 - (c) has, within the previous 3 years, been a member of a House of Parliament.
- (2) A person may hold office as a Tasmanian national preventive mechanism in conjunction with the office of Ombudsman under the *Ombudsman Act 1978*.

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3. Acting Tasmanian national preventive mechanism

- (1) In this clause, a Tasmanian national preventive mechanism is absent if he or she –
 - (a) is absent from duty; or
 - (b) is absent from Australia; or
 - (c) is suspended from the office of Tasmanian national preventive mechanism; or
 - (d) is otherwise unable to exercise the functions of that office.
- (2) The Governor may appoint a person to act as a Tasmanian national preventive mechanism during any or every period during which a Tasmanian national preventive mechanism is absent.
- (3) While a person appointed under subclause (2) is acting as a Tasmanian national preventive mechanism –
 - (a) that person is taken to be a Tasmanian national preventive mechanism; and
 - (b) this Act and any other Act applies to that person as if he or she were a Tasmanian national preventive mechanism.

4. Term of office

A Tasmanian national preventive mechanism holds office for such term, not exceeding 5

years, as is specified in the instrument of appointment, and may be reappointed.

5. Conditions of appointment

- (1) A Tasmanian national preventive mechanism is entitled to be paid the remuneration and allowances specified in his or her instrument of appointment.
- (2) If a State Service officer or State Service employee is appointed as a Tasmanian national preventive mechanism, that officer or employee is entitled to retain all his or her existing and accruing rights as if service as a Tasmanian national preventive mechanism were a continuation of service as such an officer or employee.
- (3) Where a person ceases to be a Tasmanian national preventive mechanism and becomes a State Service officer or State Service employee, service as a Tasmanian national preventive mechanism is service in the State Service for the purposes of determining his or her rights as such an officer or employee.
- (4) A Tasmanian national preventive mechanism holds office on such conditions in relation to matters not provided for by this Act as are specified in his or her instrument of appointment.
- (5) A person who is appointed as a Tasmanian national preventive mechanism is an employee

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for the purposes of the *Public Sector Superannuation Reform Act 2016*.

6. Conflict of interest

- (1) A Tasmanian national preventive mechanism must inform the Governor in writing of any direct or indirect interest that the Tasmanian national preventive mechanism has, or acquires, that conflicts or may conflict with the Tasmanian national preventive mechanism's functions under the Act.
- (2) After advising the Governor under subclause (1), the Tasmanian national preventive mechanism must take steps to resolve the conflict or possible conflict between a direct or indirect interest and the Tasmanian national preventive mechanism's functions in relation to a particular matter and, unless the conflict is resolved to the Governor's satisfaction, the Tasmanian national preventive mechanism is disqualified from acting in relation to the matter.

7. Resignation

A Tasmanian national preventive mechanism may resign by signed notice given to the Governor.

8. Suspension

- (1) The Governor may suspend a Tasmanian national preventive mechanism from office if the

Governor is satisfied that the Tasmanian national preventive mechanism –

- (a) is physically or mentally incapable of continuing as a Tasmanian national preventive mechanism; or
 - (b) is unable to exercise adequately or competently the functions of the office of Tasmanian national preventive mechanism; or
 - (c) has been convicted, in Tasmania or elsewhere, of an offence punishable by a term of imprisonment; or
 - (d) has become bankrupt, applied to take the benefit of the law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of his or her remuneration or estate for their benefit; or
 - (e) has engaged in misconduct.
- (2) Where a Tasmanian national preventive mechanism has been suspended from office, the Tasmanian national preventive mechanism is restored to office if –
- (a) a statement specifying the reasons for the suspension is not laid before each House of Parliament during the first 7 sitting-days of that House following the suspension; and

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- (b) each House of Parliament does not pass an address praying for the removal of the Tasmanian national preventive mechanism from office during the session in which, and within 30 sitting-days after, such a statement is laid before it.

9. Removal from office

- (1) The Governor, on addresses from both Houses of Parliament, may remove a Tasmanian national preventive mechanism from office.
- (2) A Tasmanian national preventive mechanism may not be removed from office except as provided in subclause (1).

10. Filling a vacancy

- (1) A Tasmanian national preventive mechanism vacates office if he or she –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under clause 9.
- (2) The Governor may appoint a person to the vacant office of Tasmanian national preventive mechanism.