

CLAUSE NOTES

OPCAT Implementation Bill 2021

Clause 1 **Short title**

Specifies the name of the proposed Act.

Clause 2 **Commencement**

Provides for the Act to commence by proclamation.

Clause 3 **Purpose of Act**

Provides that the purpose of the Act is to establish Tasmania's national preventive mechanism, and to enable the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, to their mandates as set out at Article 11 of OPCAT.

Article 11 provides that the Subcommittee shall:

(a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Clause 4 Interpretation

Provides for a range of definitions to certain terms used in the Act.

Clause 5 Meaning of *place or detention*

Provides a definition for 'place of detention' by reference to Article 4 of the Optional Protocol, unless a places is otherwise prescribed for the purposes of the section, and includes an indicative list of places that meet this definition.

Article 4 of OPCAT relevantly defines 'place of detention' as meaning "any place under [a State Party's] jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence". It further defines 'deprivation of liberty' to mean "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority."

Clause 6 Act binds Crown

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

Clause 7 Relationship to other laws

States that if a provision of another Act 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, that provision has no effect or operation to the extent of any inconsistency with this Act.

Part 2 - Tasmanian national preventive mechanism

Clause 8 Tasmanian national preventive mechanism

Provides that the Governor may appoint one or more persons as a Tasmanian national preventive mechanism(s), and that the terms and conditions of the appointment are detailed in Schedule 1.

Clause 9 Functions

Provides for the functions to be carried out by the Tasmanian national preventive mechanism. These include:

(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 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 who he or she believes may supply relevant information, in accordance with Article 20(d) of the Optional Protocol;

Article 20(d) provides “The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information”

(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 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.

Clarifies that the Tasmanian national preventive mechanism may amend its published guidelines and standards from time to time.

Clause 10 Independence

Provides that the Tasmanian national preventive mechanism, its staff, and any person to whom they have delegated functions are authorised and required to act independently and impartially, and have complete discretion in the exercise of their functions.

Clause 11 Delegation

Provides that the Tasmanian national preventive mechanism may delegate any function (except this power to delegate), to any person whom they consider competent to perform the function being delegated.

Clause 12 Staff

Provides for the employment of staff by the Tasmanian national preventive mechanism to enable them to exercise their functions under the Act.

States that employment is subject to and in accordance with the *State Service Act 2000*, and enables for arrangements to be made for the appointment of existing State Service officers.

Clarifies that when appointing or employing staff, the Tasmanian national preventive mechanism is to take into consideration the following –

(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;

(c) whether the staff have a conflict of interest in relation to the purposes of this Act.

Requires that the Tasmanian national preventive mechanism notify the Secretary when a person ceases to be a staff member.

Clause 13 **Inspection of place of detention**

Provides power for the Tasmanian national preventive mechanism to access, inspect and review any place of detention, aspect of a place of detention or any equipment or facilities used in connection with that place.

Enables the Tasmanian national preventive mechanism and their staff to take any photographs, films or audio or visual recordings they consider necessary to perform their functions.

Clarifies that the Tasmanian national preventive mechanism may publish a schedule of inspection dates and locations.

Clause 14 **Identification**

Requires the Tasmanian national preventive mechanism to issue itself and its staff an identity card that displays, at a minimum, the name and a recent photo of the person to whom it is issued.

Requires that when the Tasmanian national preventive mechanism is exercising their functions under the Act they are to allow a detainee or staff of a place of detention to inspect their identity card.

Provides that the Tasmanian national preventive mechanism is to take reasonable steps to retrieve and dispose of an identity card when a staff member ceases to be employed.

Clause 15 **Access to persons**

Entitles the Tasmanian national preventive mechanism to unrestricted access to detainees.

Provides that that the Tasmanian national preventive mechanism may have private interviews with detainees without witnesses, either personally or with an interpreter if deemed necessary.

Requires a person in charge of a place of detention, their staff or a person providing services in the place cannot, without consent of the detainee read, copy or remove any correspondence from a detainee to the Tasmanian national preventive mechanism or vice versa.

Clause 16 **Requiring of documents &c.**

Enables the Tasmanian national preventive mechanism to require another person to provide to it, or a designate, any information, document or thing in

that person's possession or control considered relevant to an inspection (conducted under clause 13).

Clarifies that this information may include number and treatment of detainees and the conditions of their detention; and places of detention, including the number of such places and their location.

Stipulates that the Crown cannot prevent or obstruct information from being produced, or evidence from being given, for the purposes of an inspection; and that a person cannot be excused on the ground that it would disclose legal advice furnished to an agency or instrumentality of the Tasmanian government or other applicable authority.

Clause 17 Action on evidence of breach of duty

Provides that if, during or after an inspection, the Tasmanian national preventative mechanism believes that there is evidence of a breach of duty or misconduct on the part of the responsible Secretary or any officer or employee of a department, and that in the circumstances the evidence is of sufficient force to justify his or her doing so, the Tasmanian national preventative mechanism is to bring the evidence to the notice of the responsible Minister (in the case of the responsible Secretary) and in any other case to the notice of the responsible Secretary.

Clause 18 Recommendations and advice

Provides that the Tasmanian national preventative mechanism may make such advice or recommendations with respect to an inspection (under clause 13) as they consider necessary or appropriate in the circumstances.

Provides that a relevant authority is to enter into dialogue with the Tasmanian national preventive mechanism to enable effect to be given to a recommendation made, or advice provided; and enables the Tasmanian national preventive mechanism to 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.

In circumstances where it appears to the Tasmanian national preventive mechanism that no appropriate steps have been taken within a reasonable time, and after considering any comments made by or on behalf of the relevant authority, provides that they may send to the Premier and a responsible Minister a copy of that recommendation or advice together with a copy of any such comments.

Clause 19

Report

Provides that the Tasmanian national preventive mechanism may prepare a report on its findings relating to an inspection under clause 13, provide that report to a responsible Minister or a relevant authority, and may give advice as considered necessary or appropriate.

After providing a report to a responsible Minister or a relevant authority, provides that the Tasmanian national preventive mechanism may table that report in each House of Parliament.

Provides that a responsible Minister or relevant authority may prepare and provide the Tasmanian national preventive mechanism with a response to its report.

Clause 20

Opportunity to be heard

Provides that the Tasmanian national preventive mechanism is not to make recommendations or provide advice, make a report, or otherwise publish information that contains adverse or derogatory comments in respect of a person, unless certain things are done. This includes the Tasmanian national preventive mechanism giving the person a reasonable opportunity to appear before them or to make representations either orally or in writing.

Provides that the Tasmanian national preventive mechanism is not to make recommendations or provide advice, make a report, or otherwise publish information that contains adverse or derogatory comments in respect of the department responsible for the place of detention or the services provided in a place of detention, unless certain things are done. This includes the Tasmanian national preventive mechanism giving the responsible Secretary and any relevant officer or employee of the responsible department, a reasonable opportunity to appear before the Tasmanian national preventive mechanism or to make representations either orally or in writing.

The Tasmanian national preventive mechanism is also required to give a draft of the report to the responsible Secretary.

Clause 21

Referral of matters by Tasmanian national preventive mechanism

Provides that the Tasmanian national preventive mechanism may refer for investigation any matter raised by, or in the course of, the exercise of its functions to (a) a relevant authority; (b) a responsible Minister; (c) the Subcommittee.

Clarifies that the making of a referral does not affect its functions to inspect, make recommendations or provide advice in relation to, or report on, a matter.

Clause 22

Provision of information to Tasmanian national preventive mechanism

Provides that any person or body may provide information to the Tasmanian preventive mechanism that they consider relevant to the Tasmanian preventive mechanism's functions.

Clarifies that a person or body includes

- (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.

Clause 23 Disclosure of information to national preventive mechanisms

Provides that the Tasmanian national preventive mechanism may share information raised by, or in the course of, the exercise of its functions with other Australian state and territory national preventive mechanisms and the National Preventive Mechanism Coordinator.

Clause 24 Annual report

Requires the Tasmanian national preventive mechanism to submit an annual report to the National Preventive Mechanism Coordinator between 30 June and 31 October each year.

Outlines that the annual report must include:

- (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.

Clause 25 Disclosure of information by Tasmanian national preventive mechanism

Provides an offence for a person who is or has been the Tasmanian national preventive mechanism, their staff, or a delegate, to make a record of, or disclose

any information that was acquired in his or her official capacity and disclosed or obtained under the Act.

Provides that the offence above does not prevent the making of a record or disclosure of information where the making of the record or 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 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.

Provides that the offence provision also does not prevent the Tasmanian national preventive mechanism from disclosing information to –

- (a) to a relevant authority; or
- (b) to a responsible Minister; or
- (c) the Auditor-General or the Deputy Auditor-General appointed under the *Audit Act 2008*;
- (d) the Ombudsman and the Deputy Ombudsman appointed under the *Ombudsman Act 1978*;
- (e) to the Office of the Commonwealth Ombudsman established by the *Ombudsman Act 1976* of the Commonwealth; or
- (f) to a person exercising functions 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.

Provides that the Tasmanian national preventive mechanism, their staff or delegate, or a person who was in one of those roles, must not be compelled to disclose information to a court, or a person who is authorised by law or by consent of parties, to hear, receive and examine evidence. This applies in

respect to information that was acquired in his or her official capacity and disclosed or obtained under the Act.

Provides that the Tasmanian national preventive mechanism, their staff or delegate, or a person who was in one of those roles, 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.

Provides an offence for a person to use or disclose any information for his or her benefit, or for the benefit of another person.

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.

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

Provides an offence for a person who does not 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 the Act.

Provides an exception to the offence in circumstances where compliance by the person would require them 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 government or other authority to which this Act applies; or

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

Clause 27 Offences against Tasmanian national preventive mechanism

Provides an offence for a person to, without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Tasmanian national preventive mechanism or a member of their staff in the performance of their functions.

Provides an offence for a person to, without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Tasmanian national preventive mechanism or their staff, except as provided at section 26 of the Act.

Provides for an offence to wilfully make any false statement to mislead or attempt to mislead the Tasmanian national preventive mechanism or their staff.

Part 3 - monitoring by the united nations subcommittee on prevention of torture and other cruel, inhuman or degrading treatment or punishment

Clause 28 Interpretation

Provides a definition of 'relevant place of detention' under Part 3 of the Act – which is “a place of detention to which the Subcommittee requests access.”

Clause 29 Ministerial arrangements

Provides for Ministerial Arrangements to be made between the Minister responsible for the Act and the Commonwealth Attorney-General for the purpose of facilitating visits by the Subcommittee and sets out a list of matters in respect to which such Arrangements can be made.

Clause 30 Duties of detaining authority and responsible Minister for places of detention

Sets out the duties of the detaining authority and responsible Minister in respect to a request for access by the Subcommittee to a place of detention.

Clause 31 Subcommittee's access to places of detention

Sets out the requirement that the Subcommittee be given unrestricted access to every part of a place of detention to which it has requested access.

However where the detaining authority considers that one or more grounds specified in Article 14(2) of the Optional Protocol may temporarily prevent the carrying out of a visit it may restrict or prohibit access so that the Commonwealth Attorney-General may be requested to object and decide whether or not to object to the visit.

If an objection has been made to the Subcommittee's visit has been made by the Commonwealth Attorney-General on one or more grounds specified in Article 14(2) and has not been withdrawn or resolved the detaining authority may restrict or prohibit access.

The grounds specified in Article 14(2) are national defence, public safety, natural disaster or serious disorder in the place to be visited.

Clause 32 Access to information

Provides that the relevant Minister, responsible Secretary and detaining authority must provide all relevant information that is requested by the Subcommittee and any accompanying experts for the specified purpose and provide unrestricted access to information about the number of and treatment of detainees in the place of detention and the conditions of detention that apply.

Clarifies that 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.

The section does not allow the Subcommittee access to any record held by a defined 'protected professional', which is –

- (a) a registered health professional, within the meaning of the *Health Practitioner 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.

Provides an exemption to criminal liability to a protected professional in circumstances where the Subcommittee is provided information referred to in this section 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.

Clause 33 Subcommittee may interview detainees and other persons

Provides that the Subcommittee and any accompanying experts may interview detainees, and other persons who it 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, without witnesses and are to be provided with all reasonable assistance to do so. Clarifies that an interpreter may be present.

The section provides that the detainee may have a support person present during an interview if the Subcommittee agrees. A person who objects to or does not consent to being interviewed by the Subcommittee does not have to participate in the interview.

In the case of a detainee who is subject to a detention order under the *Youth Justice Act 1997*, the section also requires the Subcommittee advise the detainee that they may refuse to be interviewed by the Subcommittee, and if they consent to being interview may choose to bring a support person.

Clause 34 Exemption from *Personal Information Protection Act 2004*

Provides that a person who is a personal information custodian, within the meaning of the *Personal Information Protection Act 2004*, does not contravene that Act simply by collecting, using, disclosing or otherwise dealing with information for the purposes of this Act.

Clause 35 Protections for provision of information

Provides that a person who provides information to a Tasmanian national preventive mechanism or the Subcommittee under this Act does not incur any civil or criminal liability, cannot be held to have breached any code of professional etiquette or ethics, or to have departed from any accepted standard

of professional conduct; and cannot be held to have contravened any Act in respect of the provision of that information.

Clarifies that the section applies to information obtained in accordance with –

- (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*.

Clause 36 Protection from reprisal

Creates an offence providing that 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
- (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. This supports OPCAT requirements for no sanction for such conduct to be applied to a person.

Clause 37 Directions of responsible Minister

Provides that a responsible Minister in relation to a place of detention may give directions to any detaining authority for the place of detention for the purposes of this Act, and that the detaining authority is to comply with the directions given.

Clause 38 Protection from liability

Provides that anything done or omitted to be done under the Act, that is done in good faith by a monitoring authority, as defined in the clause, will not subject them to any action, liability, claim or demand.

A monitoring authority is defined as –

- (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;

(e) any persons appointed under Ministerial arrangements to assist the Subcommittee.

The monitoring authority also does not incur any personal liability in relation to anything done or omitted to be done in good faith in the exercise, or purported exercise, of any function under this Act.

Where a civil liability would attach to the monitoring authority, it attaches to the Crown instead.

Clause 39 Regulations

Provides that the Governor may make regulations for the purposes of the Act. Other standard provisions relating to regulations are also included.

Clause 40 Administration of Act

Provides that until other administrative arrangements are made under the *Administrative Arrangements Act 1990*, administration of the Act is assigned to the Minister for Justice and the Department of Justice.

Schedule 1 – Tasmanian national preventive mechanism

Clause 1 Interpretation of Schedule

Provides a definition of 'parliament' – to mean the Parliament of the Commonwealth or of any State or Territory.

Clause 2 Eligibility for appointment

Provides that a person must not be appointed as or carry out the role of Tasmanian national preventive mechanism if that person is or becomes a member of or a candidate for election to a House of Parliament in any State or Territory or in the Commonwealth; or has been a member of a House of Parliament in any State or Territory or in the Commonwealth within the last 3 years.

Provides that a person may hold office as Tasmanian national preventive mechanism in conjunction with the office of Ombudsman.

Clause 3 Acting Tasmanian national preventive mechanism

Provides that the Tasmanian national preventive mechanism is considered to be absent from his or her office if he or she is absent from duty, absent from Australia, is suspended from the office of Tasmanian national preventive mechanism or is otherwise unable to perform the functions of that office.

Provides that the Minister may appoint a person to act as Tasmanian national preventive mechanism during any or every period during which the Tasmanian national preventive mechanism is absent.

Provides that the person who is acting as Tasmanian national preventive mechanism is taken to be the Tasmanian national preventive mechanism, and that this Act and any other Act applies to that person as if he or she were the Tasmanian national preventive mechanism.

Clause 4 Term of office

Provides that the Tasmanian national preventive mechanism may hold office for a period that is specified in the instrument of appointment. That period must not exceed 5 years but the person may be reappointed.

Clause 5 Conditions of appointment

Provides that the Tasmanian national preventive mechanism is entitled to be paid the remuneration and allowances determined by the Governor.

Provides that if a State Service officer or employee is appointed as Tasmanian national preventive mechanism, that person is entitled to retain his or her existing and accruing rights as Tasmanian national preventive mechanism and that this is taken to be a continuation of service.

Provides that where a person ceases to be Tasmanian national preventive mechanism and reverts back to being a State Service officer or employee, the period of service as Tasmanian national preventive mechanism is taken to be service in the State Service for the purpose of determining his or her rights.

Provides that if certain conditions of appointment are not provided for in this Act, those conditions are determined by the instrument of appointment for the Tasmanian national preventive mechanism.

Provides that where a person is appointed as Tasmanian national preventive mechanism the *Public Sector Superannuation Reform Act 2016* applies as if they were an employee.

Clause 6 Conflict of interest

Requires the Tasmanian national preventive mechanism to inform the Governor in writing of any direct or indirect conflict of interest with their functions, and after informing the Governor must take steps to resolve the conflict or possible conflict. Unless the conflict is resolved to the Governor's satisfaction, the Tasmanian national preventive mechanism is disqualified from acting in relation to the matter.

Clause 7 Resignation

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

Clause 8 Suspension

Provides that the Governor may suspend the Tasmanian national preventive mechanism from office if satisfied that the Tasmanian national preventive mechanism:

- (a) is physically or mentally incapable of continuing as Tasmanian national preventive mechanism; or
- (b) is unable to perform the role adequately or competently; or
- (c) has been convicted in Tasmania or elsewhere of an offence which is 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.

Provides that where the Tasmanian national preventive mechanism has been suspended from office, they are restored to office if 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 suspension, and 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 the statement is laid before it.

Clause 9 Removal from office

Provides that the Governor, on addresses from both Houses of Parliament, may remove the Tasmanian national preventive mechanism from office. The Tasmanian national preventive mechanism may not be removed from office unless this occurs.

Clause 10 Filling a vacancy

Provides that the Tasmanian national preventive mechanism vacates office if he or she dies, resigns or is removed from office in accordance with the previous clause.

Provides that the Governor may appoint a person to the vacant office of Tasmanian national preventive mechanism for the remainder of the Tasmanian national preventive mechanism's term of office