

TASMANIA

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**CUSTODIAL INSPECTOR AMENDMENT (OPCAT)  
BILL 2020**

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consultation draft

**CUSTODIAL INSPECTOR AMENDMENT (OPCAT)  
BILL 2020**

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

**A BILL FOR**

**An Act to amend the *Custodial Inspector Act 2016***

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:

**1. Short title**

This Act may be cited as the *Custodial Inspector Amendment (OPCAT) Act 2020*.

**2. Commencement**

This Act commences on a day to be proclaimed.

**3. Principal Act**

In this Act, the *Custodial Inspector Act 2016*\* is referred to as the Principal Act.

**4. Section 3 substituted**

Section 3 of the Principal Act is repealed and the following section is substituted:

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\*No. 30 of 2016

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### 3. Purposes of Act

The purposes of this Act are –

- (a) to provide independent, proactive, preventative and systemic oversight of custodial centres by the Custodial Inspector; and
- (b) to enable the Custodial Inspector to fulfil the role of a national preventative mechanism within the meaning of OPCAT.

### 5. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *mandatory inspection*:

*national preventative mechanism* has the same meaning as in OPCAT;

- (b) by inserting the following definition after the definition of *officer of the Inspector*:

**OPCAT** means the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by the Commonwealth on 21 December 2017;

**6. Section 6 amended (Functions)**

Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (1):
  - (ba) to carry out the functions of a national preventative mechanism;
- (b) by inserting the following subsection after subsection (2):
  - (3) The Inspector is to ensure that guidelines and standards prepared and published under subsection (1) are published on a website operated by, or on behalf of, the Inspector.

**7. Section 10 amended (Delegation)**

Section 10 of the Principal Act is amended by inserting “including any functions and powers specific to the fulfilment of his or her role as a national preventative mechanism,” after “Act,”.

**8. Section 22 amended (Public interest considerations)**

Section 22(1) of the Principal Act is amended by omitting “to Parliament” and substituting “provided under this Act”.

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**9. Part 4A inserted**

After section 25 of the Principal Act, the following Part is inserted:

**PART 4A – NATIONAL PREVENTATIVE  
MECHANISM**

**25A. Interpretation**

(1) In this Part –

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

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

*Commonwealth Ombudsman* means the Commonwealth Ombudsman established by the *Ombudsman Act 1976* of the Commonwealth;

*forensic disability facility* means –

- (a) a facility at which a person with intellectual or cognitive disabilities may lawfully be detained for a period of 24 hours or more; or

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- (b) a place prescribed as a forensic disability facility –

but does not include a closed psychiatric facility;

*specified facility* means the following:

- (a) a closed psychiatric facility;
  - (b) a custodial centre;
  - (c) a forensic disability facility;
  - (d) a police station.
- (2) Where a closed psychiatric facility, forensic disability facility or police station forms part of a larger facility, the definitions of those facilities, or that police station, extend only to the part of the larger facility in which persons may lawfully be detained.

**25B. Custodial Inspector as national preventative mechanism**

- (1) The Inspector is to fulfil the role of a national preventative mechanism.
- (2) Unless otherwise specified in this Part, when fulfilling the role of a national preventative mechanism, the Inspector is

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to operate in accordance with the provisions of this Act as if –

- (a) references to a custodial centre are references to a specified facility; and
- (b) references to a detainee are references to a detainee of a specified facility.

**25C. Inspections as national preventative mechanism**

- (1) When fulfilling the role of a national preventative mechanism, the Inspector is to carry out regular inspections of each specified facility.
- (2) For the avoidance of doubt, sections 13, 15, 19 and 21 do not apply to an inspection carried out under subsection (1).

**25D. Reporting as national preventative mechanism**

- (1) The Inspector is to submit an annual report to the Commonwealth Ombudsman in relation to inspections carried out under section 25C.
- (2) Sections 20 and 22 apply to a report made under subsection (1) as if it were a report made under Part 3.



**25E. Disclosure and communication to national preventative mechanism**

Where a provision of an Act –

- (a) prohibits or restricts; or
- (b) authorises or requires the imposition of a prohibition or restriction on –

the disclosure or communication of information, that provision does not apply to, or in respect of, the disclosure or communication of information in a manner that will prevent or restrict the Inspector from fulfilling the role of a national preventative mechanism.

**25F. Use of information**

The Inspector may use information acquired or obtained in his or her role as –

- (a) the Inspector, when fulfilling his or her role as a national preventative mechanism; and
- (b) a national preventative mechanism, when fulfilling his or her role as the Inspector.

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**10. Section 29 amended (Referral for investigation)**

Section 29(1) of the Principal Act is amended by omitting “mandatory inspection or an occasional inspection and review” and substituting “mandatory inspection, an occasional inspection and review or an inspection carried out under section 25C”.

**11. Section 31 amended (Inspector may require documents &c.)**

Section 31 of the Principal Act is amended by omitting “mandatory inspection or an occasional inspection and reviewreview” and substituting “mandatory inspection, an occasional inspection and review or an inspection carried out under section 25C”.

**12. Section 32 amended (Evidence &c.)**

Section 32(1) of the Principal Act is amended by omitting “mandatory inspection or an occasional inspection and review under this Act review” and substituting “mandatory inspection, an occasional inspection and review or an inspection carried out under section 25C”.

**13. Section 34A inserted**

After section 34 of the Principal Act, the following section is inserted in Part 5:

**34A. Publication of information**

(1) In this section –

*non-identifying information* means information in relation to a person that does not –

- (a) contain identifying details in relation to the person; or
- (b) enable the identity of the person to be ascertained or discovered.

(2) If the Inspector obtains information in performing functions or exercising powers under this Act, the Inspector must not publish the information unless –

- (a) it is lawful to do so; or
- (b) the information is non-identifying information; or
- (c) the person to whom the information relates consents to the release of the information.

**14. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.