



## **Ombudsman Amendment (National Preventive Mechanism) Regulations 2019**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 04 April 2019

Peter Cosgrove  
Governor-General

By His Excellency's Command

Christian Porter  
Attorney-General

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# Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules.....	1
<b>Schedule 1—Amendments</b>		<b>2</b>
	<i>Ombudsman Regulations 2017</i>	2



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## 1 Name

This instrument is the *Ombudsman Amendment (National Preventive Mechanism) Regulations 2019*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	10 April 2019

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Ombudsman Act 1976*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Ombudsman Regulations 2017*

#### 1 Section 5

Insert:

*National Preventive Mechanism Network* means the persons and bodies separately appointed or established by the Commonwealth and each State and Territory to give effect to Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### 2 At the end of the regulations

Add:

### Part 4—National Preventive Mechanism functions

#### Division 1—National Preventive Mechanism Body function

##### 16 National Preventive Mechanism Body function

- (1) For the purposes of paragraph 4(2)(a) of the Act, the National Preventive Mechanism Body function is conferred on the Ombudsman.
- (2) The National Preventive Mechanism Body function is to be performed for the purposes of giving effect to the Commonwealth's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the *Optional Protocol*), so far as those obligations relate to places of detention under the control of the Commonwealth.

Note: The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is in Australian Treaty Series 2018 No. 5 ([2018] ATS 5) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (3) The National Preventive Mechanism Body function includes the following:
  - (a) undertaking regular inspections of places of detention;
  - (b) giving information to the United Nations Subcommittee on Prevention of Torture and other Cruel or Degrading Treatment or Punishment to facilitate the inspection of places of detention by the Subcommittee;
  - (c) functions incidental to the function of National Preventive Mechanism Body.
- (4) For the purposes of this section, the Commonwealth's obligations under the Optional Protocol do not include the obligations of each of the States and Territories under the Optional Protocol.

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**Division 2—National Preventive Mechanism Coordinator function****17 National Preventive Mechanism Coordinator function**

- (1) For the purposes of paragraph 4(2)(a) of the Act, the function of National Preventive Mechanism Coordinator is conferred on the Ombudsman.
- (2) The function of National Preventive Mechanism Coordinator is to be performed for the purposes of giving effect to Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the *Optional Protocol*).
- (3) The function of National Preventive Mechanism Coordinator includes the following:
  - (a) consulting with governments and other bodies on the development of standards and principles regarding the treatment and conditions of persons deprived of their liberty;
  - (b) collecting information on oversight arrangements in relation to persons deprived of their liberty and undertaking related research;
  - (c) proposing options and developing resources to facilitate improvements in oversight arrangements in relation to persons deprived of their liberty, including by:
    - (i) facilitating the sharing of expertise, knowledge and practice in order to build on the existing work of detention inspectorates of the Commonwealth, the States and the Territories; or
    - (ii) proposing options for reducing duplication of, and overlap in, inspections of places of detention; or
    - (iii) proposing options for covering gaps in oversight of places of detention;
  - (d) communicating, on behalf of the National Preventive Mechanism Network, with the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
  - (e) convening meetings and facilitating collaboration between any of the following for the purposes of giving effect to the Optional Protocol:
    - (i) State and Territory governments and governments of other countries;
    - (ii) National Preventive Mechanism persons and bodies, including such persons and bodies outside Australia;
  - (f) giving information to the following for the purposes of giving effect to the Optional Protocol:
    - (i) the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
    - (ii) State and Territory governments and governments of other countries;
    - (iii) National Preventive Mechanism persons and bodies, including such persons and bodies outside Australia;
  - (g) reporting to the public and to Commonwealth, State and Territory Ministers on the following:
    - (i) the implementation of the Optional Protocol;
    - (ii) the activities of the National Preventive Mechanism Network;
  - (h) making recommendations to the Commonwealth in relation to the implementation of the Optional Protocol;

- (i) functions incidental to the function of National Preventive Mechanism Coordinator.

Note: For *National Preventive Mechanism Network*, see section 5.

- (4) In performing the function of National Preventive Mechanism Coordinator, the Commonwealth Ombudsman must not compel or direct a person or body that is a part of the National Preventive Mechanism Network.