



**IPRT Submission to the Joint Committee on Justice on the
General Scheme of the Inspection of Places of Detention Bill 2022**

5th August 2022

About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights and protection of everyone in the penal system and the progressive reform of Irish penal policy, with prison as a sanction of last resort. IPRT publishes a wide range of evidence-informed policy positions and research documents; we campaign across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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Executive Summary

As requested by the Committee, this submission examines the General Scheme of the Inspection of Places of Detention Bill 2022 “*Head by Head*” but includes at the outset an ‘Introduction’ and a section on ‘Background and Overarching Observations’.

The **Introduction** discusses the intentions of the Bill (pp.3-4), while the **Background and Overarching Observations** discusses the background to OPCAT and the role of National Preventive Mechanisms (NPMs); the importance of resourcing for the new bodies created by the Bill; the need to ensure the independence of the NPMs and NPM coordinating body; and the need to ensure the Bill is as coherent as possible (pp.4-8). The **Initial Provisions** of the Bill, and importance of ensuring the financial independence of NPMs, are discussed at pp.8-9.

Part 1: Chief Inspector of Places of Detention and Inspectorate for Places of Detention of the Bill is discussed at pp.9-22 and highlights IPRT’s views on matters such as: concerns around how Heads 5 and 6 might undermine the independence of the Chief Inspector of Places of Detention; detailed recommendations for strengthening Head 8 on the functions of the Chief Inspector; concerns around Head 11(10)(a) in regards what the Chief Inspector can say before an Oireachtas committee; and recommends how the Chief Inspector’s powers of publication might be strengthened and clarified in Head 12.

Comments on **Part 2: Prison Visiting Committees** (at pp.22-26) are kept relatively brief in light of the ongoing Department of Justice consultation on the role of Prison Visiting Committees (PVCs). IPRT’s observations focus on: the need to consider closely the proposal to place PVCs under the supervision of the Chief Inspector and clarify whether PVCs are intended to be a designated NPM; and strengthening Heads 13(12)-(13) in regards publication of PVC reports.

IPRT’s observations on **Part 3: Inspection Mechanisms for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment** (at pp.26-35) discuss: expanding the definition of “*place of detention*” under Head 14; the need for Head 16 to clarify aspects of IHREC’s role as NPM coordinating body particularly in regards the distinct nature of this function and the powers IHREC will have in its new role; the ways in which Head 17 and the powers of individual designated NPMs might be strengthened; the significant amendments needed in Head 18 to ensure compliance with OPCAT and SPT guidelines in the designation of individual NPMs; IPRT’s concerns about the plans to convert the Inspector of Prisons into the NPM for the whole criminal justice sector within Head 19; and finally the need to amend Heads 20 and 21 to ensure full compliance with OPCAT.

Finally, IPRT makes very brief **Concluding Remarks** at pp.35-36.

Introduction

1. IPRT welcomes the opportunity to make a submission to the Joint Committee on Justice on the General Scheme of the Inspection of Places of Detention Bill 2022 ('the Bill'). This is an important, and overdue, piece of legislation.
2. IPRT's understanding is that this Bill, in its current form, will reform three broad areas as follows:
 - a. It amends Part 5 of the Prisons Act 2007 in its entirety, by replacing the existing Inspector of Prisons with a new Inspectorate of Places of Detention that is led by a Chief Inspector. The Bill accordingly sets out the appointment procedures, functions and powers of the Chief Inspector and Inspectorate of Places of Detention. **These provisions are found in Part 1 of the Bill.**
 - b. It updates the appointment procedures, functions, powers and duties of the Prison Visiting Committees (which will implicitly involve amendment of the Prisons (Visiting Committees) Act 1925 and related secondary legislation). As acknowledged in the Note on Head 13, however, this is in the context of the Department of Justice stakeholder consultation on reform of the Visiting Committees¹ and the results of that consultation will likely inform the further drafting of this section of the Bill. IPRT will therefore keep our comments on this aspect of the Bill relatively brief.² **These provisions are found in Part 2 of the Bill.**
 - c. It provides the framework for ratification of the Optional Protocol to the Convention Against Torture (OPCAT) by establishing National Preventive Mechanisms (NPMs) that will ensure inspection of all places of detention in Ireland. The arrangement proposed for Ireland in this legislation is a multiple-institution model, with the Irish Human Rights and Equality Commission (IHREC) acting as the central coordinating body for several different NPMS. **These provisions are found in Part 3 of the Bill.**
3. These various overlapping provisions are complex and must be carefully examined and drafted so as to ensure they mutually complement each other (as well as existing legislation) and work towards both implementing OPCAT and building a robust, effective and efficient inspection and monitoring regime of all places of detention in Ireland.

¹ Details of the consultation can be found here: <https://www.gov.ie/en/consultation/187f7-review-of-prison-visiting-committees/>.

² In particular, please note that IPRT will be making a more detailed submission to the Department's consultation and will therefore set out our detailed proposals for reform of the Visiting Committees in that submission.

4. IPRT understands that the Bill is still very much in draft form and is only the first step towards making the significant reforms proposed. We anticipate that there will be a lot of further work on the Bill over the coming months and we hope to continue engaging with this Committee, as well as the Department of Justice and other key stakeholders, in developing an effective piece of legislation which delivers transformative change and attracts widespread support.

Background and Overarching Observations

Understanding OPCAT and the Role of National Preventive Mechanisms

5. Ireland signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which provides for the prohibition on torture as an absolute and non-derogable prohibition, in 1992 and ratified it in 2002.³ OPCAT was later adopted by the UN General Assembly in 2002 and came into force in June 2006,⁴ with the explicit objective of establishing “*a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment*”.⁵ Ireland signed OPCAT in October 2007 but has yet to ratify it.⁶
6. It is important to reiterate at the outset that the purpose of OPCAT is to provide for the effective prevention of torture through international monitoring (via the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT))⁷ and national monitoring (via National Preventive Mechanisms (NPMs)).⁸ The key point is that both the SPT and NPM roles are preventive. This means that NPMs are **not** investigative bodies and they do not undertake investigations or adjudicate on complaints concerning torture or ill-treatment, even if they encounter such cases while carrying out their visiting function.⁹ **This is an important distinction to keep in mind when considering the various**

³ IHREC, *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, available at: <https://www.ihrec.ie/our-work/cat/>; UN Office of the High Commissioner for Human Rights, *Status of Ratification Interactive Dashboard - Ireland*, available at: <https://indicators.ohchr.org/>.

⁴ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.vii, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

⁵ See Article 1 of OPCAT, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>.

⁶ See OPCAT Ireland webpage, available at: <https://opcat-ireland.com/>.

⁷ For more information on the SPT, see here: <https://www.ohchr.org/en/treaty-bodies/spt/introduction-committee>.

⁸ This submission will discuss the role of NPMs in more detail but some basic background information is available here: <https://www.ohchr.org/en/publications/professional-training-series/preventing-torture-role-national-preventive-mechanisms>.

⁹ UN High Commissioner for Human Rights, *Preventing Torture: The Role of National Preventive Mechanisms* (Professional Training Series No.21) (2018), at p.5, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf.

duties of the new Inspectorate of Places of Detention and Chief Inspector as set out in this Bill.

The Importance of Resourcing

7. An overarching and cross-cutting issue arising in this Bill is the question of resourcing. This arises particularly in connection with the new extended remit of the Chief Inspector / Inspectorate of Places of Detention and IHREC.
8. Head 19 of the Bill makes clear that the **Chief Inspector / Inspectorate of Places of Detention** will take on the role of NPM for prisons as well as Garda Síochána Stations (as well as vehicles used by An Garda Síochána and the Irish Prison Service (IPS)). This means the Chief Inspector will be responsible for inspecting 12 prisons and approximately 120 Garda Síochána Stations which are located all over the island.¹⁰
9. This aspect of the Bill is discussed in further detail below (at paragraphs 86-89) but as a general point IPRT is clear that if the Inspectorate is to be expected to carry out regular and effective inspections of all such places of detention in the criminal justice sector, it will need sufficient staff, expertise and infrastructure to perform these duties. It is not clear to IPRT that the existing Inspector of Prisons currently has enough resources, or the necessary expertise to examine and inspect Garda stations, and this accordingly is a matter which will need to be examined closely if the staff and existing resources are to transfer over to the new body.¹¹ They will need to be supplemented and enhanced with a ring-fenced budget if they are to take on the proposed new roles.
10. A 2018 independent review of the structure and resources of the Office of the Inspector of Prisons further noted that consideration should only be given to extending the remit of the Inspector to places of detention within the jurisdiction of the Courts Service and An Garda Síochána once the Inspector had established a “*comprehensive and robust inspection regime*”

¹⁰ This figure of 120 is taken from a 2021 Garda Síochána Inspectorate report on custody services in Ireland, which noted that of 564 operational garda stations in Ireland, 120 had custody facilities with approximately 492 cells. See Garda Síochána Inspectorate, *Delivering Custody Services A Rights-Based Review of the Treatment, Safety and Wellbeing of Persons in Custody in Garda Síochána Stations* (2021), at pp.VII & 16, available at: <https://www.gsinsp.ie/wp-content/uploads/2022/06/Garda-Inspectorate-Delivering-Custody-Services.pdf>.

¹¹ This may involve a discussion of the role (if any) of existing policing bodies, such as the Garda Síochána Inspectorate, the Policing Authority and the Garda Síochána Ombudsman Commission, within Ireland’s designated NPM for inspecting police detention facilities. This in turn may also involve consideration of the General Scheme of the Policing, Security and Community Safety Bill, which IPRT understands includes provisions disbanding the current Policing Authority and Garda Síochána Inspectorate so as to create a new ‘Policing and Community Safety Authority’ which will oversee and assess the performance of An Garda Síochána in relation to policing services alongside an in-house empowered inspection function. See Department of Justice, *General Scheme of the Policing Security and Community Safety Bill - Explanatory Memorandum* (2021), at p.4, available at: <https://www.gov.ie/en/publication/b9357-general-scheme-of-policing-security-and-community-safety-bill/>.

in the prison system”.¹² Again, it is not clear to IPRT that this has yet been achieved by the current Inspector of Prisons and it is noted in this regard that there has been no general comprehensive inspection report of an operational prison published in the State since 2014¹³ (albeit COVID-19 thematic inspections have taken place in each of the 12 prisons in Ireland over the past 18 months).¹⁴

11. Head 16 establishes **IHREC** as the coordinating body for all NPMS established in the State and sets out a range of duties that IHREC will have in connection with this new function. These include liaising with NPMs and international bodies; reviewing NPM reports and advising on systemic issues arising; and providing guidance to NPMs in carrying out their obligations under OPCAT.

12. Again, IPRT considers it imperative that IHREC is provided with sufficient staff and expertise to enable it to carry out these functions effectively. IHREC itself has also emphasised the importance of “ensuring appropriate funding, staffing, and data access for the effective functioning of the NPM co-ordinating body”.¹⁵ In advance of this Bill being passed into law, consideration must accordingly be given to the resource implications of this new additional role for IHREC and clear plans put in place for how these additional duties will be managed within IHREC. This is discussed further at paragraph 76 below.

Independence of the NPMs and NPM Coordinator

13. Articles 17 and 18(1) of OPCAT emphasise that NPMs must be independent, and the State must guarantee the “functional independence” of NPMs as well as the independence of their personnel. Article 35 of OPCAT makes clear that NPMs must be granted “such privileges and immunities as are necessary for the independent exercise of their functions”.

¹² PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.10, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

¹³ Department of Justice, *Overview of Mountjoy Prison Campus with particular emphasis on the Separation Unit by the Inspector of Prisons Judge Michael Reilly* (2014), available from: <http://www.justice.ie/en/JELR/Pages/PB14000234>. There was an inspection report of the Mountjoy Training Unit in 2017, which was a ‘semi-open’ low security prison in the prison estate but has since closed, see Office of the Inspector of Prisons, *Report on an Inspection of the Training Unit, Mountjoy Campus, carried out in accordance with Section 31(1) of the Prisons Act 2007* (2017), available from: <https://bit.ly/38vPAW9>.

¹⁴ The Inspector of Prisons has, for example, carried out COVID-19 Thematic Inspection Reports on all prisons in Ireland throughout 2021 along with other specific pieces of work, see Office of the Inspector of Prisons, *Thematic and Functional Reports*, available at: <https://www.oip.ie/publications/inspection-reports/thematic-and-functional-reports/>.

¹⁵ IHREC, *Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland’s fifth periodic report* (2022), at p.64, available at: <https://www.ihrec.ie/app/uploads/2022/06/Ireland-and-the-International-Covenant-on-Civil-and-Political-Rights.pdf>.

14. The SPT, in its 'Guidelines on national preventive mechanisms', has further stated that NPMs must be guaranteed their "operational independence" and should enjoy "complete financial and operational autonomy when carrying out its functions under the Optional Protocol".¹⁶ The SPT makes clear that this independence should be ensured by providing NPM staff and members with "such privileges and immunities as are necessary for the independent exercise of their functions" and not appointing any member to an NPM whose position could raise "questions of conflicts of interest".¹⁷
15. Concerns about the independence of the proposed Chief Inspector / Inspectorate of Places of Detention are discussed as relevant throughout this submission (see e.g. at paragraphs 24-28 and 79-82) but IPRT more broadly invites the Committee to consider the importance of independence of the NPMs and NPM coordinating body when examining all aspects of this Bill, and how the legislation can build in safeguards to guarantee their independence. Such independence is crucial to the effective prevention of torture and other ill-treatment as envisioned under OPCAT, and will require careful consideration of matters such as: the legal basis of NPMs; the independence of members / staff of NPMs and the appointments process for such positions; the privileges and immunities granted to NPMs; and the financial independence of NPMs (including e.g. the power of NPMs to draft its own budgets and allocate resources etc).¹⁸

Clarity of the Bill

16. While acknowledging that the Bill is in draft form and further work on its provisions is anticipated, IPRT emphasises the importance of ensuring clarity within the legislation. This Bill attempts to make a wide range of significant and complicated reforms, namely, the total overhaul of the statutory provisions relating to the Inspector of Prisons and Prison Visiting Committees alongside the introduction of a new instrument (the creation of NPMs and a related coordinating body) into Irish law. The ambition of the legislation is welcome, but it is important that such major reforms are progressed in as coherent a manner as possible.
17. As the Bill progresses and is amended in due course, it is therefore worth considering how it might be amended (both in language and structure) to create as logical and straightforward a

¹⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms* (2010), CAT/OP/12/5, at paras.8, 12, available from: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en.

¹⁷ *Ibid.*, at paras.18, 26.

¹⁸ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at pp.38-48, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>

framework as possible. An example of how the current Bill might be improved is to reconsider how the provisions relating to the Chief Inspector's various duties and powers are set out. As it stands, Part 1 of the Bill deals primarily with the Chief Inspector's investigative functions and existing inspection powers, while Part 3 (and Head 19 in particular) sets out the Chief Inspector's role as the NPM in the justice sector. These two Parts do not fully complement each other, however, and it is crucial that they are better aligned so as to provide absolute clarity as to the full extent of the new Chief Inspector / Inspectorate of Places of Detention's powers, duties and functions. Further work is also needed to detail the transitional provisions for not only the Chief Inspector (as set out in Heads 5(5)-(6)) but also the Senior Inspectors, Inspectors and other staff currently working for the Inspector of Prisons.

18. IPRT will, of course, continue to engage with the Bill as it progresses and welcomes the opportunity to make further submissions (in writing and orally) to the Committee as future iterations of the Bill are produced.

Initial Provisions

Head 3: Expenses

19. IPRT agrees that the expenses incurred in the administration of the legislation (which will presumably include paying for the increased functions of the Chief Inspector / Inspectorate of Places of Detention and IHREC as NPM coordinator) should be paid out of monies provided by the Oireachtas. IPRT questions, however, whether it is appropriate for the new Chief Inspector / Inspectorate of Places of Detention to remain within the Department of Justice and for that body's budget to remain within the Department of Justice vote (as indicated by the Notes to Head 3).
20. As discussed above, both OPCAT and the SPT guidelines on NPMs emphasise the importance of operational, functional and financial independence for NPMs. The Association for the Prevention of Torture (APT), drawing on international guidance on how national human rights institutions should devise their budgets, suggests that an NPM budget should "*not be merely an item in a larger ministry budget*".¹⁹ The APT has further stated that NPMs should not be placed under the "*institutional control of a ministry or minister of government, cabinet or*

¹⁹ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.47, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

executive council, President or Prime Minister".²⁰ In country reports, the SPT has noted the importance of clarity around the structure of NPMs and its place alongside relevant national departments, as well as the NPM's budgetary autonomy.²¹

21. IPRT acknowledges that this provision remains relatively scant on detail and that the exact financial and structural arrangements for the new Chief Inspector / Inspectorate of Places of Detention will require scrutiny, but recommends that the Committee give serious consideration to how the legislation might best ensure the Chief Inspector / Inspectorate of Places of Detention and NPM coordinating body are structurally and financially independent from the Department of Justice and the Minister for Justice.²² This might involve examining the potential for including specific provisions within the legislation that detail how NPMs (such as the Chief Inspector / Inspectorate of Places of Detention) are to draw up their budgets / how this money will be ring-fenced²³ and considering alternatives for the operational arrangements of the Chief Inspector / Inspectorate of Places of Detention.

Recommendation 1: The Committee should consider how the functional, operational and financial independence of the Chief Inspector / Inspectorate of Places of Detention and the NPM coordinating body might be best guaranteed within the legislation.

Part 1: Chief Inspector of Places of Detention and Inspectorate for Places of Detention

Head 4: Interpretation for Part 1

22. IPRT welcomes the inclusion of "*any vehicle used to transport a prisoner from one location to another*" and "*a holding area other than a court where a prisoner is being held immediately prior to or immediately after his or her production in court*" as falling within the definition of

²⁰ Ibid., at p.39.

²¹ See SPT, Visit to Switzerland undertaken from 27 January to 7 February 2019: recommendations and observations addressed to the State party Report of the Subcommittee (2021) (CAT/OP/CHE/ROSP/1), at paragraphs 17-27, available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fCHE%2fROSP%2f1&Lang=en.

²² IPRT, *Statement of Principles on Legislation to Ratify the Optional Protocol to the Convention against Torture (OPCAT)* (2018), at p.2, available from: https://www.iprt.ie/site/assets/files/6476/statement_of_principles_final.pdf.

²³ See an example of how such a process might work at Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at pp.46-47, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>. See also ss.21-22 and 26-27 of the Irish Human Rights and Equality Commission Act 2014 for a model of how the budgets / accounts of Ireland's national human rights institution are detailed within the legislation, available at: <https://revisedacts.lawreform.ie/eli/2014/act/25/front/revised/en/html>.

“prison” in the Bill. This will address the situation whereby prisoner escort services are not inspected or monitored in Ireland²⁴ and is a measure that has been recommended by IPRT as far back as 2019 (provided the Inspector is given adequate resources to carry out such inspections).²⁵

23. IPRT notes that the Bill continues to use the word “prisoner” in a similar manner to section 2 of the Prisons Act 2007 and accordingly misses an opportunity to reconsider the way in which we label people detained in our prisons. Words such as “prisoner” are arguably dehumanising²⁶ and alternatives (such as “imprisoned people” or “people in prison”) offer a more person-centred approach that avoids overly identifying people by their status as a person caught up in the criminal justice system.

Recommendation 2: The Committee should consider whether it is possible to reframe the language used in the Bill around “people in prison” as opposed to “prisoner”.

Head 5: Chief Inspector of Places of Detention

24. While IPRT welcomes certain provisions within Head 5, namely the involvement of the Public Appointments Service (PAS) in the appointment process for the Chief Inspector of Places of Detention (Head 5(2)) and the express statement of the independence of the Chief Inspector (Head 5(9)), other aspects of this Head raise concerns.
25. Specifically, IPRT is concerned by the proposal to give the Minister for Justice the power to appoint the Chief Inspector of Places of Detention (Head 5(1)) and the framing of the Chief Inspector as effectively holding that office only under the terms, conditions and approval of the Minister for Justice (Head 5(4)). This would appear to undermine the independence of the office and conflicts with guidance from the SPT and APT.

²⁴ Department of Justice and Equality, *Prisoner Escorts in the Criminal Justice System: Value for Money and Policy Review* (2018), at p.56, available at:

<https://www.justice.ie/en/JELR/VFMPR%20Prisoner%20Escorts%202018.pdf/Files/VFMPR%20Prisoner%20Escorts%202018.pdf>.

²⁵ IPRT, *Progress in the Penal System (PIPS): A framework for penal reform* (2019), at p.98, available at:

<https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2019.pdf>.

²⁶ See a discussion of this as follows: Vera Institute, *Words Matter: Don't Call People Felons, Convicts, or Inmates* (2021), available at:

<https://www.vera.org/news/words-matter-dont-call-people-felons-convicts-or-inmates>.

26. For example, the SPT in its 2020 recommendations and observations addressed to the UK NPM noted its concerns that the process for appointing the Chief Inspector of HM Inspectorate of Prisons, which involved the individual being appointed by the Secretary of State upon recommendation from the Ministry of Justice, might lead to “*perceptions of State involvement [that] could be detrimental to the credibility of the whole mechanism and undermine public confidence.*”²⁷ In its 2006 guidance, the APT noted that the decision as to whom to appoint to an NPM “*should not be directly decided by the executive branch of government*”.²⁸
27. Alternatives to this approach might include removing the Minister’s role in appointing or removing the Chief Inspector, or determining the terms and conditions of their office, and instead including provisions similar to those seen in the appointment procedures for Commissioners of IHREC, the Ombudsman and the Ombudsman for Children. Such an approach might mean that the Chief Inspector of Places of Detention is appointed, for example, by the President following an independent appointments process and the agreement of both Houses of the Oireachtas, and can only be removed by the President or Government and upon the agreement of both Houses.²⁹ The latter would in particular accord with APT guidance to the effect that the security of tenure for NPM members should be strong and potentially require the involvement of parliament in removal of members.³⁰
28. IPRT welcomes clarification on the length of tenure of the Chief Inspector and the limit on renewal of such an appointment beyond two consecutive terms of office (Heads 5(7)-(8)), but invites the Committee to consider how long that term of office should be to sufficiently “*foster the independent functioning of the NPM*” as recommended by the SPT.³¹

Recommendation 3: The Bill should ensure the independence of the appointments and removal procedures for the Chief Inspector of Places of Detention and consideration should

²⁷ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to the United Kingdom of Great Britain and Northern Ireland undertaken from 8 to 19 September 2019: recommendations and observations addressed to the national preventive mechanism - Report of the Subcommittee* (2020) (CAT/OP/GBR/RONPM/1), at para.52, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fGBR%2fRONPM%2f1&Lang=en.

²⁸ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.41, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

²⁹ See e.g. sections 13-14 of the Irish Human Rights and Equality Commission Act 2014; section 2 of the Ombudsman Act 1980; and section 4 of the Ombudsman for Children Act 2002.

³⁰ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.42, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

³¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanisms* (2010), CAT/OP/12/5, at para.9, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

be given to removing the relevant powers of appointment and removal from the Minister for Justice entirely.

Recommendation 4: The Committee should examine the proposed length of tenure for the Chief Inspector of Places of Detention and consider how long the term should be to ensure independence.

Head 6: Provision of Services to the Inspectorate of Places of Detention

29. IPRT is concerned by the specification that all “*funds, premises, facilities, services and staff as may be necessary for the proper functioning of the Inspectorate of Places of Detention*” are to be provided by the Minister for Justice (Head 6(2)). Similarly, the requirement that the Minister for Justice give their consent to the appointment of staff of the Inspectorate of Places of Detention and the terms / conditions of their service is inappropriate (Head 6(3)-(4)). Such provisions arguably conflict with the requirement that NPMs are operationally, functionally and financially independent (as discussed above) and does not meet the OPCAT requirement that State Parties guarantee the functional independence of NPM personnel (*per* Article 18(1)).
30. IPRT is particularly clear that staff working for the Inspectorate of Places of Detention must not be seconded from the Department of Justice (or other government departments / criminal justice agencies)³² and, as noted by the APT, the NPM should have the authority to “*choose and employ its own staff based on requirements and criteria that it alone determines*”.³³
31. While the Bill suggests that staff of the Inspectorate of Places of Detention will be appointed in line with the PAS procedures (*per* Head 6(5)), this could be made clearer and more explicit within the legislation.

Recommendation 5: The Bill should ensure the independence of all personnel working for the Inspectorate of Places of Detention by:

³² IPRT, *Statement of Principles on Legislation to Ratify the Optional Protocol to the Convention against Torture (OPCAT)* (2018), at p.5, available from: https://www.iprt.ie/site/assets/files/6476/statement_of_principles_final.pdf.

³³ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.40, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

- i. removing references to such staff being provided by the Minister for Justice;
- ii. removing references to the Minister for Justice having a role in the appointment or terms / conditions of employment of all such staff;
- iii. making explicit that no person may be seconded from the Department of Justice or other criminal justice agency into the Inspectorate; and
- iv. making clearer within the legislation the role of the Public Appointments Service in the appointment of staff.

Head 7: Appointment of Senior Inspectors

32. IPRT welcomes the fact that Head 7 gives the Chief Inspector ultimate decision-making as to whether or not to appoint a Senior Inspector and does not include the Minister for Justice or Department within this appointment process. That said, it is not clear whether recruitment for Senior Inspector roles is to progress through the PAS or not: this should be clarified and consideration given to specifying the role of PAS in the appointment process so as to ensure the greatest level of transparency for recruitment of these senior positions.

33. The detail within this provision remains relatively scant. The Committee might accordingly consider whether further detail on the extent and nature of the role of Senior Inspectors within the new Inspectorate of Places of Detention is needed.

Recommendation 6: The Bill should ensure the decision-making power for appointment of Senior Inspector(s) remains with the Chief Inspector but clarify the role of the Public Appointments Service in the recruitment and appointment process.

Recommendation 7: The Committee should consider whether this provision requires further detail on the role, duties and powers of Senior Inspector(s) within the new Inspectorate of Places of Detention.

Head 8: Functions of the Chief Inspector of Places of Detention in relation to inspection of prisons

34. IPRT welcomes the additional functions given to the Chief Inspector within Head 8 (and as compared to the existing section 31 of the Prisons Act 2007), including the power to investigate a serious adverse incident (Head 8(3)) as recommended by the 2018 independent review of the operation of the Inspector of Prisons.³⁴ There are a number of provisions within Head 8, however, on which IPRT has concerns.
35. First, it may be helpful to specify within Head 8(1) the regularity of inspections that is expected. The 2018 independent review of the Inspector of Prisons suggested that unannounced inspections of all prisons should take place at least once every three years (with particular prisons detaining those more vulnerable individuals, such as remand or female prisoners, inspected more often).³⁵ By contrast, the Inspector of Mental Health Services is required to inspect every approved centre “*at least once in each year*”³⁶ and the Health Information and Quality Authority (HIQA) appears to inspect Oberstown on an annual basis.³⁷
36. Given the dynamic nature of prisons, IPRT considers it essential that every prison is inspected by the Inspectorate at least once a year, whether such visits are unannounced, announced or constitute a thematic inspection. The Committee should ensure that a robust definition of “regular inspection” is accordingly included within the legislation, while considering how best to account for the different types of inspections / investigations that might take place.
37. Second, Head 8(2) should specify that all inspections must have regard to OPCAT, alongside the rights of prisoners and other matters detailed in this provision. This would correspond with Head 7(3) which specifies that Senior Inspectors must have regard to OPCAT when carrying out their duties.
38. Third, Head 8(5)(a) should specify that the Chief Inspector also has the power to engage external experts as needed and make clear that these external experts are entitled to accompany the Chief Inspector and Inspectorate staff on their visits. This is recommended by

³⁴ PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at pp.4-5, 51-52, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

³⁵ *Ibid.*, at p.62.

³⁶ See section 51(1)(a) of the Mental Health Act 2001, available at: <http://revisedacts.lawreform.ie/eli/2001/act/25/revised/en/pdf?annotations=true>.

³⁷ See HIQA's reports on Oberstown for 2019, 2020 and 2021, HIQA, *Inspection reports – Children's detention school*, available at: <https://www.hiqa.ie/reports-and-publications/inspection-reports>.

the APT³⁸ and would ensure compliance with Article 18(2) of OPCAT, which talks about the experts of NPMs having the required capabilities and professional knowledge needed to carry out their duties. It would also echo the recommendations of the 2018 independent review into the Inspector of Prisons, which stated that the new Inspectorate's internal staff should be "*augmented by an external Expert Panel of suitably qualified individuals who can support inspections and investigations in specific specialist subject matter areas*".³⁹

39. Fourth, while Head 8(5)(b)-(c) is fairly detailed, IPRT invites the Committee to consider closely whether it provides the Chief Inspector with all the powers they will need to carry out effective inspections (in line with its NPM function) and investigations into serious adverse incidents and/or deaths. In particular, it would be helpful to make explicit within the legislation that the Inspector is entitled to obtain information connected with the management and operation of a prison (or prisons, or the overall IPS)⁴⁰ as well as information relating to a specific person.⁴¹

40. It would also be helpful to clarify the consent procedures required for accessing medical records pertaining to both living individuals and those who are deceased. This is important particularly in regards deceased individuals as the situation currently is that the provisions of the Prisons Act 2007 cannot be relied upon.⁴² As an interim arrangement pending legislative amendment, the IPS has agreed to release such records with consent from Next of Kin.⁴³ This inevitably leads in some instances to a failure to review healthcare / medical records where Next of Kin is unknown, cannot be located, or refuses to provide consent.⁴⁴

³⁸ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.51, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

³⁹ PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.8, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>

⁴⁰ PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.54, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

⁴¹ See e.g. the SPT comments in respect of Turkey, where it stated that NPMs must be granted by legislation the power to regularly examine the treatment of persons deprived of their liberty, including "*prompt, regular and unhindered access to all information relating to persons deprived of their liberty deemed relevant by the mechanism*" (emphasis added), SPT, *Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Turkey - Report to the State party* (2019) (CAT/OP/TUR/1), at para.22, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fOP%2fTUR%2f1&Lang=en.

⁴² The Inspector of Prisons routinely reports in all death in custody reports that the Attorney General has informed the IPS and Inspector that the provisions of the Prisons Act 2007 in relation to accessing healthcare /medical records of deceased prisoners in relation to investigations of deaths in custody cannot be relied upon. See Office of the Inspector of Prisons, *INVESTIGATION REPORT INTO THE CIRCUMSTANCES SURROUNDING THE DEATH OF Mr A 2019 AGED 22 IN MIDLANDS PRISON ON 27 JANUARY 2019* (2022), at p.4, available at: <https://www.oip.ie/wp-content/uploads/2022/01/OIP-DICIRep-Mr-A-2019.pdf>.

⁴³ *Ibid.*

⁴⁴ See for example an investigation where the Inspector could not access the relevant medical records, Office of the Inspector of Prisons, *INVESTIGATION REPORT INTO THE CIRCUMSTANCES SURROUNDING THE DEATH OF Mr J /2019 AGED 78 years In Connolly Hospital while in the custody of Arbour Hill Prison On 10 July 2019* (2021), at p.4, available at: <https://www.oip.ie/wp-content/uploads/2021/04/Office-of-the-Inspector-of-Prisons-Death-in-Custody-Investigation-Report-Mr-J-2019.pdf>.

41. Head 8 might accordingly set out that personal records (including medical records) for living individuals may only be obtained by the Chief Inspector with the consent of the individual and/or their legal guardian / representative but that records relating to a deceased individual may be obtained without the consent of any other party (as recommended by the 2018 independent review of the Inspector of Prisons).⁴⁵ It may also be worth considering the insertion of a general proviso within the legislation to the effect that no enactment or rule of law prohibiting or restricting the disclosure, sharing or communication of information shall preclude a person from providing the Inspectorate any information or record that is deemed by it to be required for the purpose of carrying out its functions.⁴⁶
42. Fifth, IPRT urges the Committee to strengthen Head 8(6) by making it a criminal offence for a person to refuse to cooperate, without due cause, with the Chief Inspector in the exercise of their powers. The current proposal, to make it unlawful and therefore open only to a “*civil action including court injunctions*”, is weak and does not match corresponding provisions applying to the Inspector of Mental Health Services⁴⁷ and HIQA⁴⁸ (as acknowledged by the Notes to Head 8). It is unclear from the Notes to Head 8 why it is considered necessary to adopt this “*compromise approach*”.
43. Citing UN guidance and “good practice”, the 2018 independent review of the Inspector of Prisons recommended that it should be a criminal offence to obstruct the Inspector or persons authorised by the Inspector in exercising their powers (with an obstruction including a “*failure to cooperate with the Inspectorate*”).⁴⁹ IPRT also recommends that it be made a disciplinary offence for prison officers or IPS staff to obstruct the work of the Inspectorate.⁵⁰ This amendment is needed in order to guarantee the effectiveness of the Chief Inspector’s various powers, particularly given reported issues for the Inspector in securing cooperation from the IPS and/or individual prisons in certain circumstances.⁵¹

⁴⁵ PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.54, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

⁴⁶ This was also a recommendation of the 2018 independent review of the Inspector of prisons, *ibid.*, at p.55.

⁴⁷ See section 53 of the Mental Health Act 2001, available at: <https://revisedacts.lawreform.ie/eli/2001/act/25/revised/en/pdf?annotations=true>.

⁴⁸ See section 79 (and section 65) of the Health Act 2007, available at: <https://revisedacts.lawreform.ie/eli/2007/act/23/revised/en/pdf?annotations=true>.

⁴⁹ PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.55, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

⁵⁰ *Ibid.*

⁵¹ See e.g. comments in the 2018 independent review, which noted that stakeholders highlighted the lack of full cooperation received from individual prisons, *ibid.*, at p.53. See also reports that the former Inspector of Prisons resigned in part due to attempts within the IPS to undermine her office, see Irish Examiner, *Prison inspector left position 'due to attempts to undermine her office'* (2022), available at: <https://www.irishexaminer.com/news/arid-40814280.html>.

44. Finally, in regards Heads 8(7)-(8), IPRT understands that it may be useful and necessary for the Minister of Justice to be kept updated on the work of the Chief Inspector. IPRT invites the Committee, however, to examine closely these provisions to ensure that they do not affect the Chief Inspector's independence in the exercise of their duties. It might also be necessary to amend the wording of these provisions if the Inspectorate is to be removed from the overall control of the Minister and Department (as recommended above at paragraphs 25-27).

Recommendation 8: Consideration should be given to amending Head 8(1) so as to specify the minimum number of inspections (whatever the type) of each prison required. The Committee should strongly consider inserting a minimum requirement of one visit per year for each prison.

Recommendation 9: Amend Head 8(2) to specify that all inspections conducted by the Chief Inspector must have regard to OPCAT.

Recommendation 10: Amend Head 8(5)(a) to specify that the Chief Inspector has the power to engage external experts and such external experts may accompany the Chief Inspector and Inspectorate staff on any visit to a place of detention.

Recommendation 11: Head 8(5) should be amended to:

- i. make explicit that the Chief Inspector is entitled to obtain all information relating to the management / operation of a prison as well as information relating to a specific person;
- ii. clarify the consent required for the Inspectorate to access the personal / medical records of living and deceased individuals; and
- iii. strengthen the entitlement of the Chief Inspector to information by clarifying that no other enactments restricting the sharing or disclosure of information will prevent a person providing the Chief Inspector with the information it needs to carry out its duties.

Recommendation 12: Amend Head 8(6) to make it (i) a criminal offence for a person to refuse to cooperate with the Chief Inspector in the exercise of their powers and (ii) a disciplinary offence for a prison officer or IPS staff member to refuse to cooperate.

Recommendation 13: The Committee should consider if Heads 8(7)-(8) require amendment in order to secure the independence of the Chief Inspector.

Head 9 – Serious Adverse Incidents

45. IPRT welcomes this provision and the extension of the Chief Inspector’s role in investigating ‘Serious Adverse Incidents’ (SAIs) and the explanation of what might constitute such an incident (as detailed in Head 4). It is noted, however, that the list of potential SAIs in Head 4 does not include a “[s]ignificant breach of discipline by prison officers” as recommended by the 2018 independent review on the operation of the Inspector of Prisons.⁵² This is a potentially significant oversight, and the Committee should consider amending Head 4 to specify that an SAI could include such an incident. It might also be worth including within Head 4 an explicit statement to the effect that the list of SAIs referenced is non-exhaustive.

46. As for the role of the Director General in notifying the Chief Inspector of any SAI that occurs, it would be useful to detail in the legislation the timeframe within which the Chief Inspector must be informed. It has been suggested the timeframe could be “as soon as is reasonably possible” with a maximum period of 24 hours for notification. It would also be helpful to set out in the legislation that notification must be done in the format required by the Inspectorate.⁵³

Recommendation 14: Consideration should be given to (i) including within the definition of ‘Serious Adverse Incident’ per Head 4 a significant breach of discipline by prison officers and (ii) stating explicitly within Head 4 that the list of ‘Serious Adverse Incidents’ is non-exhaustive.

Recommendation 15: Expand Head 9(1) to specify that (i) the Director General must notify the Chief Inspector of any ‘Serious Adverse Incident’ as soon as is reasonably possible and no later than 24 hours after the incident occurred and (ii) such notifications are to be made in the format dictated by the Inspectorate.

⁵² PA Consulting, *OFFICE OF THE INSPECTOR OF PRISONS (OIP) REVIEW OF OPERATIONAL STRUCTURE AND RESOURCES Final* (2018), at p.51, available at: <https://iopdev.wpengine.com/wp-content/uploads/2021/02/OIP-PA-Consulting-Report-2018.pdf>.

⁵³ *Ibid.*, at p.55.

Head 10: Investigations of Deaths in Custody of Prisoners

47. It is positive that this provision finally places the role the Inspector plays in investigating deaths in custody on a statutory basis and IPRT broadly welcomes this provision.⁵⁴ It is important that the notification requirement detailed in Head 10(1) complements the existing Rule 47 of the Irish Prison Rules 2007, which detail the Governor’s duties where a prisoner dies in custody and includes requirements around notifying various bodies including the Inspector of Prisons.⁵⁵
48. Similar to above, it would also be helpful if Head 10(1) specified the period within which the Director General must notify the Chief Inspector of a death in custody (or death of person recently released from custody). As above, an appropriate maximum period for this might be 24 hours.

Recommendation 16: Expand Head 10(1) to specify that the Director General must notify the Chief Inspector of a death in custody etc as soon as is reasonably possible and no later than 24 hours after the death occurred.

Head 11: Accountability to Oireachtas Committees

49. IPRT broadly welcomes this provision to the extent that it makes clear that the Chief Inspector may be accountable to the Oireachtas: this would broadly correspond with the points around the independence of the Chief Inspector as detailed above.
50. That said, IPRT is very concerned by Head 11(10)(a) which states that the Chief Inspector – in appearing before an Oireachtas committee – shall not “*question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy*”. Restricting the ability of the Chief Inspector to question Government policies in this way arguably undermines the independence of the office, which is core to its role as an NPM. In particular, it would appear to undermine Article 19(c) of

⁵⁴ To date it has been done at the Minister’s request, see e.g. Office of the Inspector of Prisons, *INVESTIGATION REPORT INTO THE CIRCUMSTANCES SURROUNDING THE DEATH OF Mr A 2019 AGED 22 IN MIDLANDS PRISON ON 27 JANUARY 2019* (2022), at p.4, available at: <https://www.ojp.ie/wp-content/uploads/2022/01/OIP-DICIRep-Mr-A-2019.pdf>.

⁵⁵ See Rule 47(7) of the Prison Rules 2007, available at: <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print>.

OPCAT, which makes clear that NPMs must be granted – at a minimum – the power to submit proposals and observations concerning existing or draft legislation.

51. While similar provisions do appear in legislation relating to the Director of IHREC and the Ombudsman for Children, IPRT notes that these provisions only limit these individuals' ability to comment on a Government policy when appearing before the Public Accounts Committee (and not other Oireachtas committees).⁵⁶ It further does not appear that the Chief Commissioner of IHREC (a role which is arguably a better equivalent to the role of the Chief Inspector than the Director of IHREC) is subject to any such constraints in her appearances before Oireachtas committees. It is not accordingly clear why the Chief Inspector should be limited in their comments on Government policies before any Oireachtas committee, and IPRT would urge the Committee to closely consider whether this is appropriate or necessary.

Recommendation 17: Remove Head 11(10)(a) from the legislation on the basis that it significantly undermines the independence of the Chief Inspector and risks contravening Article 19(c) of OPCAT.

Head 12: Publication of Annual and other Reports

52. IPRT broadly welcomes the indication in Head 12 that the Chief Inspector will be given the power to publish their own reports. This has been something that IPRT has repeatedly recommended⁵⁷ and will be extremely important in improving the independence, transparency and efficiency of Inspectorate reports in the future.
53. That said, this provision must be amended to make clear that, in addition to the Inspectorate's powers to lay its annual report and specific investigation reports before the Oireachtas as *per* Head 12(1) and (3)-(4), it also has the power to lay its general prison inspection reports before the Oireachtas. While Head 17(1)(e) appears to give NPMs this power (and accordingly will give the Chief Inspector – as the NPM in the justice sector – the power to lay its inspection

⁵⁶ See: sections 22-23 of the Irish Human Rights and Equality Commission Act 2014, available at: <https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/pdf?annotations=true>; and sections 18-19 of the Ombudsman for Children Act 2002, available at: <https://revisedacts.lawreform.ie/eli/2002/act/22/revised/en/pdf?annotations=true>.

⁵⁷ See e.g. repeated recommendations within IPRT's annual *Progress in the Penal System* reports, IPRT, *Progress in the Penal System (PIPS): Assessing progress during a pandemic* (2021), at p.98, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2020.pdf>; IPRT, *Progress in the Penal System (PIPS): The need for transparency* (2022), at p.13, available at: https://www.iprt.ie/site/assets/files/7052/progress_in_the_penal_system_2021_-_final.pdf.

reports before the Houses of the Oireachtas), this should be made explicitly clear by including a reference to such power within Head 12 as well.

54. Heads 12(3)-(4) should also be amended to make explicit that the Chief Inspector has the power, after laying their annual report / investigation report / inspection report before the Houses of the Oireachtas, to publish such reports in such manner as they consider appropriate. This reflects similar wording used in the Irish Human Rights and Equality Commission Act 2014.⁵⁸
55. IPRT accepts that in some exceptional circumstances the Chief Inspector will need the power to amend or redact reports before publication, as provided by Head 12(5)-(6). Such provisions, however, must be considered in the context of Article 35 of OPCAT which makes clear that NPMs (and NPM staff) must be given “*such privileges and immunities as are necessary for the independent exercise of their functions*”. As noted by the UN High Commissioner of Human Rights, such measures protect the independent exercise of NPMs’ mandates.⁵⁹
56. These privileges / immunities must accordingly be set out explicitly within the Bill and might be modelled on the privileges / immunities detailed in Section 22 of the UN Convention on the Privileges and Immunities (in line with Article 35 OPCAT). This includes providing immunity from legal process in respect of words spoken or written or acts done in the performance of their duties.⁶⁰

Recommendation 18: Amend Head 12 to make clear that the Chief Inspector also has the power to lay before the Oireachtas its general prison inspection reports.

Recommendation 19: Amend Heads 12(3)-(4) to explicitly state the Chief Inspector’s power to publish all its reports in such manner as it considers appropriate.

⁵⁸ See section 28(3) of the Irish Human Rights and Equality Commission Act 2014, available at: <https://revisedacts.lawreform.ie/eli/2014/act/25/revised/en/pdf?annotations=true>.

⁵⁹ UN High Commissioner for Human Rights, *Preventing Torture: The Role of National Preventive Mechanisms* (Professional Training Series No.21) (2018), at p.19, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf.

⁶⁰ See section 22 of the UN Convention on the Privileges and Immunities, available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&clang=en. Ireland appears to have acceded to this Convention in May 1967.

Recommendation 20: Insert within Head 12 (or elsewhere within the Bill) a provision setting out the privileges and immunities applicable to NPMs and their staff, as required by Article 35 of OPCAT.

Part 2: Prison Visiting Committees

57. At the outset, IPRT emphasises that – as acknowledged by the Notes on Head 13 – the Department of Justice is currently undertaking a stakeholder consultation regarding the role of Prison Visiting Committees (PVCs).⁶¹ IPRT is engaging with the Department’s consultation and review, and this part of the legislation is very likely to change as the Department’s work on PVCs progresses. IPRT’s observations on Part 2 of the Bill are accordingly kept relatively brief on the basis that this section is likely to be subject to significant re-drafting in the future.

Overarching Observations on Part 2

58. This Part of the Bill effectively places PVCs under the supervision of the Chief Inspector. While IPRT is not necessarily opposed to such a step, and can see the benefits of such oversight of the PVCs as well as the obviously complementary nature of the work of both mechanisms, we are of the view that careful consideration needs to be given to this restructure.

59. In particular:

- a. If the Chief Inspector is to take on such an oversight role, it will be necessary to provide that office with specific resources / staff to manage it.
- b. More fundamentally, it is important to address whether the conflation of these two important inspection and monitoring mechanisms risks diminishing the work of either or both.

60. The Notes to Head 13 also state that PVCs shall be “*OPCAT compliant*”. This is very much welcomed but it must be made clear within the legislation (and more broadly the Government must make clear its intention) whether it is envisioned that the PVCs will themselves be designated as an NPM. Insofar as IPRT understands, this is not currently the intention but it may be that this needs to be the subject of further discussion.

⁶¹ For more information, see: <https://www.gov.ie/en/consultation/187f7-review-of-prison-visiting-committees/>.

61. In this regard, IPRT notes that the UK Independent Monitoring Boards (IMBs) – entities that are like PVCs in that they are comprised of unpaid members of the community and conduct regular visits to prisons⁶² – are a designated NPM within the UK’s multi-institution model.⁶³ The APT, however, has recommended that community-based visiting schemes are not designated as an NPM on the basis that members “*will almost always lack the ‘professional knowledge’ and ‘expertise’ elements that are key requirements of an NPM under the OPCAT*”.⁶⁴
62. In particular, the APT points to Article 18(2) of OPCAT which makes clear that NPMs should be made up of experts with professional knowledge (which members of the PVCs, given their voluntary role, may lack). That said, the APT highlights the valuable contribution that community-based independent visiting schemes such as PVCs can make to the overall inspection and monitoring of places of detention, noting that they can work as a “*complementary, but separate, measure that can work in a mutually-reinforcing relationship with an NPM*”⁶⁵ and that they should be “*strongly encouraged in every State, but not as an ‘OPCAT NPM’ per se.*”⁶⁶

Recommendation 21: The Committee should consider whether PVCs should be placed under the remit of the Chief Inspector and, if such an approach is to be taken, the impact that this will have on the Chief Inspector’s functions and resources.

Recommendation 22: The Bill should clarify if the intention is for PVCs to be a designated NPM within the multi-institution model and, if that is the intention, consider carefully whether such an approach is appropriate.

Initial Submissions on Head 13

63. IPRT welcomes the indication within Head 13(4) that appointments to PVCs will be done through the PAS. This will significantly improve transparency around how individuals are appointed to PVCs, which is currently extremely unclear. This contrasts with the process

⁶² For more information on IMBs, see the website, available at: <https://www.imb.org.uk/independent-monitoring-boards/>.

⁶³ See the UK NPM list of members, available at: <https://www.nationalpreventivemechanism.org.uk/members/>.

⁶⁴ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.87, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>

⁶⁵ *Ibid.*, at p.88.

⁶⁶ *Ibid.*

adopted in the UK for IMBs where there is publicly available information on vacancies, the process for applying to become an IMB member and information events for interested individuals.⁶⁷

64. IPRT has concerns, however, in respect of several of the provisions within Head 13.
65. Head 13(5): Consideration should be given to whether it is appropriate for the Chief Inspector to be required to consult the Minister, IPS and Probation Service in deciding on the criteria for appointment of PVC members. At a minimum, if this provision is to be retained, the Chief Inspector should be required to also consult with IHREC (as NPM coordinator), relevant civil society organisations and people with experience of imprisonment.
66. Head 13(6): While it is accepted that vetting measures may be required, it is imperative that any such provisions do not have a chilling effect that prevents those with experience of imprisonment or the criminal justice system from applying for a position on a PVC. This should be clarified within the legislation by either amending the language used and/or including a provision that expressly sets out the desirability of appointing people with lived experience of imprisonment or the criminal justice system to PVCs and makes clear that a conviction will not preclude a person from being appointed to a PVC.
67. Heads 13 (12)-(13): Issues around the publication and timeliness of PVC reports has been a constant issue, with IPRT previously highlighting that there is often significant delay in publishing PVC reports.⁶⁸ This is seen most recently in the publication of the PVC Annual Reports 2020 in March 2022 i.e. approximately 15 months after the period to which the reports relate had ended.⁶⁹ Such delays undermine public scrutiny and accountability as well as the ability of organisations such as IPRT to respond in a timely and effective manner to the issues arising from the reports.
68. Reform in the area of publication is therefore crucial and IPRT is concerned that Heads 13(12)-(13) are not strong enough to address the various concerns arising. In particular:

⁶⁷ For more information, see: <https://www.imb.org.uk/join-now/>.

⁶⁸ IPRT, *Progress in the Penal System (PIPS): Assessing progress during a pandemic* (2021), at p.89, available at: <https://pips.iprt.ie/site/assets/files/Progress-in-the-Penal-System-2020.pdf>

⁶⁹ Department of Justice, *Prison Visiting Committee Annual Reports 2020* (2022), available at: <https://www.gov.ie/en/collection/3d94d-prison-visiting-committee-annual-reports-2020/>.

- a. It is not enough for a composite report to be published by the Chief Inspector in the place of publication of each individual PVC annual report (Head 13(13)). While a composite report that identifies broad themes or consistent issues arising across the prison estate would be helpful, this must be in addition to publication of individual prison reports. Such individual reports play an important function in highlighting the issues arising in specific prisons and non-publication risks certain issues remaining hidden from public scrutiny.
- b. The Notes to Head 13 suggest it is the Minister who will retain the power to publish reports. This arguably undermines the independence of the PVC reports and conflicts with the apparent intention of Head 13 for PVCs to come under the authority of the Chief Inspector. IPRT urges the Committee to amend Head 13 to make explicit that, if the PVCs are to fall within the Chief Inspector's remit, the Chief Inspector will have the power to lay the PVC annual reports before the Houses of the Oireachtas and publish them thereafter in such manner as they consider appropriate. Any provision around publication should further set out clearly the deadline for PVCs to submit their annual reports to the Chief Inspector and a timeline within which such reports must be published (whoever it is that publishes the reports).

Recommendation 23: Amend Head 13(5) to require the Chief Inspector to consult with IHREC, relevant civil society organisations and individuals with experience of imprisonment in deciding on the criteria for appointment to a Prison Visiting Committee. The Committee should also consider whether it is appropriate for the Chief Inspector to be required to consult with the Minister for Justice, IPS and Probation Service on these criteria.

Recommendation 24: Amend Head 13(6) to avoid any chilling effect on people with experience of imprisonment applying for appointment to a Prison Visiting Committee.

Recommendation 25: The Committee should closely examine Heads 13(12)-(13). These provisions should be amended to (i) ensure that Prison Visiting Committee annual reports in respect of each prison are published (either in the place of, or in addition to, a composite report) and (ii) provide the Chief Inspector, if their remit includes responsibility for the Prison Visiting Committees, with the power to publish all Prison Visiting Committee reports and

specify the deadline for submission of Prison Visiting Committee annual reports as well as the timeline for publication.

Part 3: Inspection Mechanisms for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

Head 14: Interpretation for Part 3

69. The definition of “place of detention” under Head 14 refers only to places where persons are detained “*by a court or under any enactment*” and arguably does not reflect the expansive definition provided by Article 4 of OPCAT, which defines places of detention as “*any place under its 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*”. The OPCAT definition deliberately adopts a “*broad, open-textured approach*” and UN guidelines make clear that the preventive function of OPCAT means that the interpretation of places of detention should be as extensive as possible “*in order to maximize the preventive impact of the work of NPMs*”.⁷⁰

Recommendation 26: Amend Head 14 to include a more extensive definition of “place of definition” that reflects Article 4 and the broad intention of OPCAT.

Head 15: Inspections of places of detention by International bodies

70. IPRT welcomes Head 15, which confirms the basis for visits from international bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN’s SPT to places of detention in Ireland. Visits from the SPT, which will commence upon Ireland’s ratification of OPCAT, will provide an important additional layer of monitoring and inspection.

⁷⁰ UN High Commissioner for Human Rights, *Preventing Torture: The Role of National Preventive Mechanisms* (Professional Training Series No.21) (2018), at p.7, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf.

71. While IPRT does not currently have any specific recommendations on Head 15, the State's relationship with the SPT will be a matter of ongoing dialogue and cooperation and it will be important that the State in due course has regard to the SPT's guidance on its visiting procedures.⁷¹

Head 16: Co-ordinating National Preventive Mechanism

72. IPRT broadly welcomes the decision to implement a multi-institution NPM model in Ireland, with IHREC acting as the NPM coordinating body. Designating Ireland's National Human Rights Institution (NHRI) as the coordinating body particularly has benefits insofar as IHREC has extensive experience with a rights-based approach to issues and their involvement in the NPM will help to build confidence in the operation of OPCAT.⁷²

73. That said, it is important that the Bill explicitly sets out IHREC's new NPM coordinating function as distinct from all its other responsibilities. UN guidelines suggest that the NPM function must "*operate within [the NHRI] as separate organizational units, with their own discrete Heads exercising operational autonomy*" and the organisational structure must ensure "*operational autonomy as regards their resources, work plans, findings, recommendations and direct (and, if need be, confidential) contact with the SPT*".⁷³

74. This observation is reflected in SPT country reports, with the SPT noting in a 2019 report on Portugal that "*[e]xperience suggests that a national preventive mechanism can most effectively exercise its mandate when it is located within a separate unit of the national human rights institution*".⁷⁴ In its 2018 report on Romania, the SPT discussed its concerns around the possible confusion or duplication of mandates within that country's designated NPM (called 'the Peoples' Advocate') and made clear that this entity "*should make a clear distinction between the mandate of the national preventive mechanism and the other functions of the People's Advocate*".⁷⁵

⁷¹ For more information on the SPT visiting function, see UN High Commissioner for Human Rights, *Visits - Subcommittee on Prevention of Torture*, available at: <https://www.ohchr.org/en/treaty-bodies/spt/visits>.

⁷² Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at pp.81-82, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>

⁷³ UN High Commissioner for Human Rights, *Preventing Torture: The Role of National Preventive Mechanisms* (Professional Training Series No.21) (2018), at p.16, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf.

⁷⁴ SPT, *Visit to Portugal undertaken from 1 to 10 May 2018: observations and recommendations addressed to the State party - Report of the Subcommittee* (2019) (CAT/OP/PRT/1), at para.15, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx.

⁷⁵ SPT, *Visit to Romania undertaken from 3 to 12 May 2016: observations and recommendations addressed to the State party - Report of the Subcommittee* (2018) (CAT/OP/ROU/1), at para.21, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx.

75. In its current draft, IPRT is concerned that the Bill does not sufficiently set out the distinct nature of the NPM coordinating role and calls for the legislation to explicitly set out the distinct nature of this new function for IHREC. This might require amendment of the Irish Human Rights and Equality Commission Act 2014 and involve measures such as designating an additional and dedicated Commissioner for the NPM function and/or establishing a new unit in IHREC which focuses only on NPM matters.
76. A related point is the need for clear plans as to how IHREC will be resourced to take on the NPM coordinating role. The list of duties assigned to IHREC under Head 16(2) are extensive and will clearly require additional resourcing and staffing if they are to be met. Given that the duties include things like advising NPMs on systemic issues arising from NPM reports and providing guidance to NPMs on their obligations under OPCAT, it is clear that those assigned to carry out these duties should have knowledge, experience and expertise in both OPCAT and the prevention of torture more generally.
77. IPRT is further of the view that Head 16 must clarify various aspects of IHREC's new NPM coordination role. For example:
- a. The Bill does not make clear whether IHREC is guaranteed independence, safeguards and powers as apply more generally to NPMs (and as detailed in Heads 17 and 18). This might include powers to obtain information from relevant Ministers and agencies as needed (and as provided to individual NPMs *per* Head 17(4)-(5)). Such guarantees are recommended by the APT for any central coordinating NPM body.⁷⁶
 - b. The Bill does not explain whether IHREC, in its NPM coordinating function, is to have any power of inspection of a place of detention and/or if it has a residual power to inspect any place of detention not covered by the designation of one of the other NPMs. Again, this is a function which the APT has recommended would be appropriate for a central coordinating NPM body.⁷⁷
 - c. The Bill is silent on the power or duty of IHREC, as NPM coordinator, to produce and publish a collective annual report (drawing on the individual reports of the various NPMs). This is something that is done by the Chair of the UK NPM⁷⁸ and the SPT has

⁷⁶ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.93, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

⁷⁷ Ibid.

⁷⁸ See NPM, *Publications and resources*, available at: <https://www.nationalpreventivemechanism.org.uk/publications-resources/>.

recommended that the Chair presents such reports to Parliament directly so that it is “accountable to Parliament for the implementation of its mandate”.⁷⁹

Recommendation 27: Amend Head 16 to make explicit the distinct nature of the NPM coordinating role within IHREC.

Recommendation 28: The Committee should consider the resource implications for IHREC in taking on this new NPM coordinating function and whether this will require any legislative amendments.

Recommendation 29: Amend Head 16 to clarify:

- i. the independence of IHREC in its new NPM coordinating role and the safeguards and powers it is guaranteed as NPM coordinator;
- ii. whether IHREC, in its NPM coordinating role, is to have any power of inspection of places of detention; and
- iii. the power IHREC will have, as NPM coordinator, to produce and publish its own annual report.

Head 17: The functions of a National Preventive Mechanism (NPM)

78. Head 17 currently provides designated NPMs with many of the powers it is required to have by OPCAT. This provision could be strengthened further, however, as follows:

- a. To reinforce the independence of NPMs (as required by Articles 17 and 18 of OPCAT), Heads 17(1)(c) and (e) should specify that NPMs have the power to publish their annual reports and inspection reports in whatever manner they deem appropriate (once the reports have been laid before the Oireachtas). This would further ensure compliance with Article 23 of OPCAT, which requires State Parties to “undertake to publish and disseminate the annual reports of the national preventive mechanisms”.
- b. Head 17(1) should include specific reference to the power of NPMs to submit proposals and observations on existing and draft legislation as required by Article 19(c) of OPCAT, and the duty of the State to inform the NPM of any draft legislation

⁷⁹ SPT, *Visit to the United Kingdom of Great Britain and Northern Ireland undertaken from 8 to 19 September 2019: recommendations and observations addressed to the national preventive mechanism - Report of the Subcommittee* (2020), at paras.69-71, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx.

that may be under consideration which is relevant to its mandate and take into account any proposals or observations from the NPM on such legislation.⁸⁰

- c. Head 17 should make explicit that NPMs have the liberty to decide on the places falling under their remit that they want to visit as required *per* Article 20(e) of OPCAT.
- d. To ensure the State's timely engagement with NPM recommendations, Head 17(8) should either establish in legislation a minimum period within which Ministers are required to respond to an NPM or, at a minimum, provide the NPM with the power to set deadlines for a response and require Ministers to comply with such deadlines.

Recommendation 30: The Committee should examine Head 17 closely to ensure it complies with the requirements of OPCAT and recommend amending the Bill to strengthen provisions relating to:

- i. the publication of NPM reports;
- ii. the power of NPMs to make submissions on draft and existing legislation, and the duty of the State to consider such submissions;
- iii. the power of NPMs to decide where they wish to visit within their remit; and
- iv. the duty of Ministers to respond to NPM recommendations within a specified period of time.

Head 18: Designation of National Preventive Mechanisms (NPMs)

79. IPRT understands that Head 18 offers a pragmatic approach to setting up the framework for future designation of NPMs and welcomes the indication in the Notes on Head 18 that the relevant Departments “*have indicated their support for such an enabling mechanism to allow those Ministers to designate NPMs in relevant settings that amount to places of detention*”.

80. It is crucial, however, that the Bill makes clear that each designated NPM will need to establish a specific NPM unit within its existing structure, so as to ensure the separation of the NPM function from each organisation's other statutory functions. The need for this distinction in functions is a fundamental underlying principle of OPCAT, with the SPT stating:

⁸⁰ This is recommended by the SPT in its guidelines on NPMs, see SPT, *Guidelines on national preventive mechanisms* (2010) (CAT/OP/12/5), at para.28, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en.

*“Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget”.*⁸¹

81. This is a point that has been made repeatedly by the SPT in its country reports (see e.g. at paragraph 74 above). In its report on New Zealand, the country on which Ireland’s NPM multi-institution structure is modelled, the SPT noted that many of the component bodies had not received extra resources to carry out their mandate under OPCAT and that this – alongside general staff shortages – had *“severely impeded their ability to do so”*.⁸² The SPT explained that it was also concerned that New Zealand did not appear to consider the OPCAT mandate to be a *“core function of the bodies designated as the national preventive mechanism”*.⁸³

82. Such comments provide a stark lesson to Ireland and reinforce the importance of ensuring that all bodies or persons designated as an NPM understand the purpose of OPCAT and the role of NPMs, and that they are sufficiently resourced to establish a distinct unit or department tasked with carrying out the OPCAT mandate. Such resourcing is further required by Article 18(3) of OPCAT, which requires State Parties to *“make available the necessary resources for the functioning of the national preventive mechanisms”*.

83. While Head 18(2) talks about the criteria Ministers must consider when designating a body as an NPM, this provision should make explicit that the relevant Minister is responsible for taking *“the necessary measures”* to ensure that that the NPM experts have the *“required capabilities and professional knowledge”* to carry out their duties (as required by Article 18(2) of OPCAT). Head 18 should further set out the requirement that the relevant Minister *“strive for a gender balance and the adequate representation of ethnic and minority groups in the country”* (as per Article 18(2) OPCAT). Again, this was a concern raised by the SPT in respect of the New Zealand NPMs, with the SPT noting the *“lack of expertise in medical and mental health issues”* among experts working in the NPMs.⁸⁴

⁸¹ SPT, *Guidelines on national preventive mechanisms* (2010) (CAT/OP/12/5), at para.32, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

⁸² SPT, *Visit to New Zealand undertaken from 29 April to 8 May 2013: observations and recommendations addressed to the State party - Report of the Subcommittee* (2017) (CAT/OP/NZL/1), at paras.12-15, available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx

⁸³ *Ibid.*

⁸⁴ *Ibid.*, at para.13.

84. Finally, IPRT notes that the SPT advises that NPMs are identified through an “*an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society*” (emphasis added).⁸⁵ This is echoed by IHREC in its recent recommendation to the UN Human Rights Committee that the State provide a “*statutory basis for the involvement of civil society organisations in the operation of the National Preventative Mechanism*”.⁸⁶ As the APT notes, including relevant civil society organisations in the process of determining the NPM will help ensure the NPM is “*credible and...effective*”.⁸⁷

85. In addition, even where civil society organisations are not a designated NPM, they can play an extremely important role in providing information to the NPM; ensuring external scrutiny and accountability for the NPM’s work; and enhancing the NPM’s effectiveness by promoting awareness of the NPM among detainees.⁸⁸ It would therefore be helpful to include within Head 18 (or elsewhere in the Bill) a statutory basis for relevant civil society organisations to play a role in designating NPMs and engaging with such NPMs once established. This might include amending Heads 18(1)-(2) to require the Minister to consult with relevant civil society organisations in designating the NPMs and setting out a formal role for civil society in the operation of NPMs.

Recommendation 31: Amend Head 18 to explicitly set out (i) the requirement that designated NPMs must establish a distinct unit or department that is responsible for carrying out the OPCAT mandate and (ii) the need for all designated NPMs to be sufficiently resourced to do this.

Recommendation 32: Amend Head 18 to make explicit that the relevant Minister is responsible for ensuring (i) all experts on the NPM have the necessary capabilities and professional knowledge to carry out the OPCAT mandate and (ii) the NPM has an appropriate gender balance and adequate representation of ethnic and minority groups.

⁸⁵ SPT, *Guidelines on national preventive mechanisms* (2010) (CAT/OP/12/5), at para.16, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/OP/12/5&Lang=en

⁸⁶ IHREC, *Ireland and the International Covenant on Civil and Political Rights Submission to the Human Rights Committee on Ireland’s fifth periodic report* (2022), at p.64, available at: <https://www.ihrec.ie/app/uploads/2022/06/Ireland-and-the-International-Covenant-on-Civil-and-Political-Rights.pdf>.

⁸⁷ Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.70, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

⁸⁸ *Ibid.*

Recommendation 33: Amend Head 18 (or other provisions in the Bill) to include a clear statutory basis for relevant civil society organisations' involvement in designating NPMs and their ongoing engagement with NPMs once established.

Head 19: Chief Inspector of Places of Detention as the National Preventive Mechanism in the Justice Sector

86. Head 19 of the Bill requires careful examination to scrutinise the proposal to effectively convert the Inspector of Prisons into the NPM for the criminal justice sector, thereby extending the Inspector's remit to include the inspection of all places of detention within the justice sector. IPRT's concerns are twofold.
87. First, as discussed above at paragraphs 8-10, there are serious questions as to whether the Chief Inspector will have the resources or necessary staffing expertise to effectively carry out its OPCAT functions in respect of all prisons; Garda Síochána Stations; vehicles used by An Garda Síochána and the IPS; and court cells (or other places where a person is detained immediately before and after being escorted to court). As noted by IHREC's 2017 report on Ireland and OPCAT, an extension of the Inspector of Prisons' remit risks overloading "*an already busy mandate and would inevitably require additional resources*".⁸⁹
88. Second, IPRT has concerns that the Bill does not sufficiently clarify the distinct functions assigned to the new Chief Inspector / Inspectorate of Places of Detention (again as discussed above at). These functions are effectively investigative (as set out in Part 1) and preventive (as set out in Part 3), but the current draft of the Bill is confusing in explaining the delineation of these duties and how they will operate alongside each other within the new Inspectorate. While of course some of this detail will need to be worked out by the new Inspectorate once established, it is crucial that the legislative framework is as clear as possible so that all parties can understand what exactly is expected of this new entity.
89. It will further be necessary for this legislation to clarify the role of the new Inspectorate in carrying out other, existing, duties of the Inspector of Prisons, such as its role in overseeing

⁸⁹ IHREC, Ireland and the Optional Protocol to the UN Convention against Torture (2017), at p.9, available at: <https://www.ihrec.ie/app/uploads/2017/09/Ireland-and-the-Optional-Protocol-to-the-UN-Convention-against-Torture.pdf>.

complaints (*per* Rule 57B of the revised Prison Rules 2007)⁹⁰ and responding to letters from people in prison (*per* Rule 44(1)(h) of the revised Prison Rules 2007).⁹¹ As it stands, the Bill is completely silent on these aspects of the Inspector’s work.

Recommendation 34: The Committee should examine Head 19 very carefully and consider:

- i. the implications of extending the Inspector of Prisons’ remit to all places of detention in the criminal justice sector;
- ii. how the legislation can best clarify and establish the distinct roles of the new Inspectorate in regards both its investigative and preventive functions; and
- iii. how existing duties of the Inspector of Prisons that are not currently referenced in this Bill are to be incorporated and managed going forward.

Head 20: Personal Data

90. Head 20 is welcome and goes some way to implementing Article 21(2) of OPCAT which specifies that confidential information collected by an NPM “*shall be privileged*” and personal data not published without the “*express consent*” of the person concerned. The APT has stated that there should be “*no exceptions to the privilege attaching to confidential information collected by the NPM*”, noting that it is crucial for the effective functioning of NPMs that people giving information to it feel confident their information will not later be disclosed.⁹²

Recommendation 35: Amend Head 20 to reflect Article 21(2) of OPCAT and make explicit the principle that confidential information collected by an NPM is privileged.

⁹⁰ See Rule 57B as inserted into the Prison Rules 2007 by the Prison Rules (Amendment) 2013, available at: <https://www.irishstatutebook.ie/eli/2013/si/11/made/en/print>.

⁹¹ See Rule 47 of the Prison Rules 2007, available at: <https://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article57>. See also the Inspector of Prisons website for an overview of its various existing functions, available at: <https://www.oip.ie/what-we-do/>.

⁹² Association for the Prevention of Torture (APT), *Establishment and Designation of National Preventive Mechanisms* (2006), at p.44, available at: <http://www.apr.ch/en/resources/publications/guide-establishment-and-designation-npms-2006>.

Head 21: Protection from Sanction

91. IPRT welcomes Head 21 which reflects the requirements within Articles 15 and 21(1) of OPCAT on the provision of information to the SPT without fear or sanction or disclosure, while acknowledging that Head 21(1)(b) is required to ensure such provision cannot be used by an agency official to deliberately give an NPM or the SPT false information.
92. IPRT's only comment in regards this provision is to suggest that it may be an appropriate place to insert a provision within the Bill that explicitly sets out the privileges and immunities that are accorded to the SPT and all NPMs so that they can independently exercise their functions (as required by Article 35 of OPCAT and discussed above). The APT makes clear that such privileges and immunities must apply "*personally to each member of the NPM*" but notes that it may be appropriate to allow a majority of the NPM to vote in favour of waiving these immunities in certain defined circumstances.⁹³

Recommendation 36: Consideration should be given on whether a provision should be included in the Bill under this Head setting out the privileges and immunities that apply to the SPT and designated NPMs. If so, careful consideration should be given to the wording of this provision.

Concluding Remarks

93. Ireland is a country that knows all too well the abuses that can occur behind closed doors. This Bill, and the ratification of OPCAT, represents an historic opportunity to strengthen the culture of human rights within Irish detention facilities and put in place safeguards to ensure that some of the most vulnerable individuals in our society are protected.
94. IPRT urges the Committee to accordingly give this Bill the time and attention it deserves, and to ensure that it is as effective as possible. As the Bill progresses through the Houses of the Oireachtas, IPRT recommends that the Government should immediately ratify OPCAT in the

⁹³ Ibid., at p.43.

meantime. This has been recommended by IHREC⁹⁴ and is possible under Article 24 of OPCAT, which provides that a State – upon ratification – may make a declaration postponing the implementation of their obligations under Part III (relating to visits from the SPT) or Part IV (relating to NPMs) for a maximum of three years (extendable by a further two years).⁹⁵ Immediate ratification would further signal Ireland’s commitment to OPCAT and preventing torture in places of detention and help ensure the current momentum is not lost.

95. Finally, IPRT reiterates our willingness to further assist the Committee in its work on this Bill and would very much welcome the opportunity to meet with the Committee to discuss the Bill in further detail.

⁹⁴ IHREC, *Ireland and the International Covenant on Civil and Political Rights: Submission to the Human Rights Committee on Ireland’s fifth periodic report* (2022), at p.63, available at: <https://www.ihrec.ie/app/uploads/2022/06/Ireland-and-the-International-Covenant-on-Civil-and-Political-Rights.pdf>; and IHREC, *Ireland and the Convention against Torture: Submission to the United Nations Committee against Torture on Ireland’s second periodic report* (2017), at p.4, available at: <https://www.ihrec.ie/app/uploads/2017/07/Ireland-and-the-Convention-against-Torture.pdf>.

⁹⁵ This is extendable by an additional two years upon representations being made to the UN Committee against Torture by the State Party and following consultation with the SPT.