

# Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022

## Explanatory Notes

### Short title

The short title of the Bill is the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022.

### Policy objectives and the reasons for them

The purpose of the Bill is to facilitate visits by the United Nations Subcommittee on Prevention of Torture (the Subcommittee) to places of detention in Queensland.

The Subcommittee has the ability to conduct visits to Australia under the Optional Protocol to the Convention Against Torture (OPCAT).

The Commonwealth Government ratified OPCAT on 21 December 2017.

OPCAT aims to prevent torture and cruel, inhuman or degrading treatment or punishment by establishing a two-part system of regular visits to places where persons are deprived of their liberty. OPCAT requires ratifying state parties to:

- accept periodic visits by the Subcommittee to places of detention; and
- establish a domestic national preventive mechanism (NPM) to conduct regular visits to places of detention.

The Subcommittee is established under Article 2 of OPCAT and has a mandate to visit places of detention and make recommendations to state parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

To enable the Subcommittee to fulfil its mandate, state parties that ratify OPCAT undertake to provide the Subcommittee with:

- unrestricted access to all places of detention and their installations and facilities, subject to particular grounds for objecting to a visit;
- unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, and the number and location of places of detention;
- unrestricted access to all information referring to the treatment of those persons and conditions of detention;
- the ability to privately interview persons deprived of their liberty and any other person the Subcommittee believes may supply relevant information; and

- the liberty to choose the places it wants to visit and persons it wants to interview.

The Bill demonstrates Queensland's support for the principles of OPCAT and provides a consistent framework to provide the Subcommittee with access to places of detention in Queensland; and information to assist the Subcommittee to fulfil its mandate under OPCAT. The Bill will also remove legislative barriers that restrict physical access to inpatient units of authorised mental health services (AMHS) under the *Mental Health Act 2016* (Mental Health Act) or to the forensic disability service (FDS) under the *Forensic Disability Act 2011* (Forensic Disability Act).

## **Achievement of policy objectives**

The Bill achieves the policy objectives by establishing a standalone legislative framework to facilitate Subcommittee visits to places of detention in Queensland by:

- providing the Subcommittee with access to places of detention;
- allowing the Subcommittee to access information for the purpose of fulfilling its functions under OPCAT;
- allowing the Subcommittee to interview persons who are detained and other relevant persons; and
- protecting persons who provide information to, or assist the Subcommittee, from reprisals.

The Bill also contains necessary safeguards to enable detaining authorities to preserve privacy, security, good order, welfare and safety in places of detention during visits by the Subcommittee.

### Scope of the Bill

Clause 4 of the Bill outlines the places of detention to which the Bill applies, which are community corrections centres (the Helana Jones Centre), prisons, work camps, youth detention centres, inpatient units of AMHS, the FDS, police watch-houses, police holding cells and other places in a police station where a person is detained, court holding cells, and any other place where a person is detained (other than a private residence) prescribed by regulation. The scope of the Bill also includes vehicles primarily used or operated for the purpose of transporting a person who is detained to or from a place of detention.

The purpose of defining places of detention is to provide clarity as to the procedures to be followed to facilitate a visit by the Subcommittee. The Bill does not operate to prevent the Subcommittee from visiting other places where a person may be deprived of their liberty.

### Access to places of detention

Clauses 7 and 8 of the Bill require that the Minister with responsibility for the place of detention and the detaining authority must ensure the Subcommittee and any accompanying person (e.g. experts and interpreters) have unrestricted access to any part

of the place of detention. This aligns with the Subcommittee's mandate as provided for in OPCAT.

It is intended that the Subcommittee may be accompanied by an expert of demonstrated professional experience and knowledge in the fields covered by OPCAT. Article 13(3) of OPCAT outlines the process for determining accompanying experts, which allows experts to be selected from a roster of individuals put forward by the state party, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention.

Access to a facility may only be restricted or prohibited in limited circumstances. Clause 9 of the Bill allows a responsible Minister to object to a visit by the Subcommittee to a particular place of detention if the responsible Minister believes there is an urgent or compelling reason to temporarily prevent the Subcommittee's access to the facility. An objection must be made on grounds of national defence, public safety, natural disaster, or serious disorder in the place of detention. These grounds mirror the grounds for objection to a visit provided in Article 14(2) of OPCAT.

The responsible Minister must notify the Subcommittee of an objection to a visit to a place of detention as soon as practicable, and a notice must outline the day or days on which the Subcommittee is prevented from visiting the place of detention and the reasons for temporarily preventing the visit. It is intended that an objection by a Minister will relate to a specific facility, rather than all facilities within their portfolio responsibility.

As outlined in the Bill and OPCAT, it is intended that an objection to a visit is made for urgent or compelling reasons only. For example, the responsible Minister may object to a visit to a facility that is affected by a bushfire or flood during the period of the Subcommittee's visit.

As the Subcommittee's visiting itinerary will remain confidential during a visit, clause 10 of the Bill allows a detaining authority to temporarily restrict or prohibit access to all or part of a facility in exceptional circumstances, which is intended to allow the detaining authority to respond to critical incidents that may arise at the time of the Subcommittee visit.

It is intended that a detaining authority will assess the circumstances at the place of detention at the time of the Subcommittee visit; and, if reasonably necessary to maintain the security, good order and management of the facility, or the health and safety of persons in the facility, temporarily prohibit or restrict the Subcommittee from accessing all or part of the place of detention for the shortest period reasonable in the circumstances. For example, a detaining authority may temporarily restrict the Subcommittee's access to part of a facility if a person who is detained there becomes distressed and presents a risk to themselves or the Subcommittee. Access may also be temporarily restricted for the purpose of conducting essential operations.

It is intended that any restriction or prohibition to access is temporary and does not prevent the Subcommittee from resuming the visit after circumstances that required the temporary prohibition or restriction have ended. The detaining authority must record in

writing the reasons for the temporary prohibition or restriction, as well as the date, time and duration, and this information must be provided to the responsible Minister.

### Access to information

Clause 13 of the Bill provides the Subcommittee with unrestricted access to information relevant to the Subcommittee's purpose that is in the possession or under the control of the relevant Minister or the detaining authority for a place of detention. This encompasses any information that is relevant to the Subcommittee's purpose in evaluating any needs or measures that should be adopted to strengthen the protection of persons deprived of their liberty against ill-treatment.

Information that is relevant to the Subcommittee purpose includes, but is not limited to, the number of persons detained at a facility, the treatment of persons detained at a facility, and the conditions of detention applying to persons detained at a facility. This information may relate to the general care, wellbeing, health care, and education of persons detained at that place of detention. Clause 15(1) provides that the Subcommittee may retain, copy or take notes of any non-identifying information they are given access to under clause 13.

Regarding identifying information, the Subcommittee will be able to view identifying information, including personal and health information, about a person at a place of detention if the Subcommittee has visited the place of detention. Clause 15(2) of the Bill allows the Subcommittee to retain, copy or take notes of identifying information about a person who is detained if that person or, if the person does not have capacity, their legal guardian, consents. This is to provide the person with discretion as to whether or not their identifying information is retained by the Subcommittee. It is noted that Article 16(2) of OPCAT requires the Subcommittee to obtain the express consent of a person if it is proposed that their personal data is to be published.

The purpose of allowing the Subcommittee to access identifying information, including personal and health information, is to ensure the Subcommittee can fulfil its mandate under OPCAT; and make accurate assessments and recommendations as to any measures that may be necessary to strengthen the protection of persons deprived of their liberty.

### Interviews

Clause 16 of the Bill allows the Subcommittee to interview any person the Subcommittee believes may be able to provide information related to the detention of a person. This includes, for example, a person who is detained at a place of detention or a staff member at a place of detention.

The Subcommittee may not interview a person unless they consent to the interview, and that consent may be withdrawn at any time throughout the interview. If a person does not have capacity to consent, their legal guardian may provide consent.

An interview may be conducted with the assistance of an interpreter and to provide flexibility, an interview may be conducted in person, or by means of electronic communication if the Subcommittee decides to.

The Bill (clause 17) also provides that a person being interviewed may have a support person present.

Clause 18 of the Bill provides that the Subcommittee must be allowed to interview a person without other people being present, except an accompanying expert, interpreter or a support person. An interview may be conducted privately if it is out of earshot of other people who are in the same room or area.

### Protections

The Bill (clause 19) protects any person who has provided or may provide information or other assistance to the Subcommittee from reprisals. Clause 20 of the Bill makes it an offence to take a reprisal. This is intended to facilitate full and frank sharing of information with the Subcommittee, particularly by persons who are detained, and to fulfil a key principle of OPCAT.

Clause 21 of the Bill protects persons from any civil or criminal liability who, honestly and on reasonable grounds, give information or make disclosures to the Subcommittee in support of its purpose. In these circumstances, no action, claim or demand may be taken or made of or against the person for giving the information or making the disclosure to the Subcommittee. This will apply despite any duty of secrecy or confidentiality or any other restriction on the giving or disclosure of information under other legislation or otherwise imposed.

### Other matters

To allow for the effective administration of the Bill, clause 22 states that the responsible Minister may give directions to a detaining authority for a place of detention for the purpose of assisting the detaining authority to meet the requirements of the Act. The detaining authority must comply with these directions.

Clause 23 provides that the Governor in Council may make regulations under the Bill. The Bill (clause 4) includes the ability for a regulation to prescribe other places of detention (other than a private residence) within the scope. This is intended to provide flexibility to prescribe particular places of detention as within the scope of the Bill that may, for example, not be in existence at the time of a Subcommittee visit.

### Amendments to other Acts

The Bill makes minor amendments to the *Corrective Services Act 2006* (CS Act) and the *Youth Justice Act 1992* (YJ Act) to allow the Subcommittee to fulfil its mandate while in those facilities without the ordinary approvals and procedures for visits and interviews.

## **Alternative ways of achieving policy objectives**

The Bill demonstrates Queensland's support of the principles of OPCAT and allows the Subcommittee to fulfil its mandate by establishing a framework to allow the Subcommittee to conduct visits to places of detention in Queensland. The Bill also removes the existing legislative barriers in the Mental Health Act and in the Forensic

Disability Act that prevent the Subcommittee from physically accessing inpatient units of AMHS and the FDS. There is no alternative way of achieving the policy objectives.

## **Estimated cost for government implementation**

The Subcommittee is responsible for costs associated with a visit to Australia, including travel and accommodation costs for the visiting delegation. The relevant agencies will be responsible for covering any costs incurred as a result of a visit.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles (FLPs) in the *Legislative Standards Act 1992* (Qld). Potential breaches of FLPs and justifications are addressed below.

**Legislation is to have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992* (Qld) (LSA), sections 4(2)(a) and (3).**

### Access to information

The disclosure of, or access to, personal or confidential information about an individual is a relevant consideration as to whether legislation has sufficient regard to the rights and liberties of individuals, as this will impact upon the privacy of an individual.

Clause 13 of the Bill outlines that, upon request from the Subcommittee, the responsible Minister and the relevant detaining authority are required to ensure the Subcommittee has unrestricted access to all information, in the possession or under the control of the responsible Minister or detaining authority, that is relevant to the Subcommittee's purpose.

Under the Bill, the Subcommittee may be provided with access to identifying information, including confidential information, about a person if the Subcommittee has visited the place of detention where the person is detained. This will impact upon the privacy of persons to whom the information relates. Access to this information is necessary to allow the Subcommittee to fulfil its mandate under OPCAT; and accurately assess any further measures that may be necessary to strengthen protections of persons deprived of their liberty from ill-treatment.

If the Subcommittee requests to copy, retain or take notes of identifying information, clause 15 of the Bill states the Subcommittee may only do so with the consent of the person to whom the information relates. If the person is unable to consent, the person's legal guardian must consent for the information to be released to the Subcommittee. This provides the person with autonomy to decide if the Subcommittee should be able to retain their identifying information. Additional safeguards are provided in Article 16(2) of OPCAT, which states that the Subcommittee must seek the express consent of a person if it intends to publish this personal data, and the Subcommittee guidelines which provide that members must maintain confidentiality during and after their period of membership.

### Penalties

Offence and penalty provisions will impact upon the rights and liberties of individuals who contravene the provisions and must be adequately justified.

Clause 20 of the Bill makes it an offence for a person to take a reprisal. The maximum penalty for the offence is 100 penalty units. The grounds for establishing a reprisal are outlined in clause 19 of the Bill, and state that a person must not cause, or attempt or conspire to cause detriment to another person because that person has provided or may provide information or other assistance to the Subcommittee. Detriment to a person includes prejudice to the person's safety or to the person's career.

This offence provision will facilitate full and frank disclosure to the Subcommittee and will protect persons who provide information or assistance to the Subcommittee from detriment. The penalty is proportionate with reprisal offences in current legislation, including the *Inspector of Detention Services Act 2022* (Qld), section 41, and the *Ombudsman Act 2001* (Qld), section 47.

### Immunity

Immunity from proceeding or prosecution must be adequately justified.

Clause 21 of the Bill outlines that a person is not subject to any civil or criminal liability for giving information or making a disclosure honestly and on reasonable grounds to the Subcommittee for the purposes of the Subcommittee performing its mandate under OPCAT.

The purpose of this is to protect an individual who has acted honestly and reasonably in providing information to the Subcommittee to assist it in fulfilling its mandate and making recommendations aimed at improving conditions and treatment of persons in detention. This is in the public interest as it promotes the prevention of torture and other ill-treatment. An individual will only be immune from proceeding or prosecution if information is provided honestly and on reasonable grounds and for the purposes of the Subcommittee's mandate.

### **Legislation is to have sufficient regard to the institution of Parliament – LSA, sections 4(2)(b) and (4)**

#### Regulation-making power

Clause 23 of the Bill allows the Governor in Council to make regulations. Clause 4(1)(h) of the Bill allows the Governor in Council to make a regulation to prescribe other places of detention to be within scope of the Bill. This is limited to prescribing a place, other than a private residence, where a person is detained. A regulation can also prescribe information as excluded information (clause 13(6)(c)).

The purpose of allowing a place of detention to be prescribed by regulation is to provide flexibility in the future, for example, to account for places of detention that later come into existence. The Minister with responsibility for the Act must consult with the Minister with responsibility for the place proposed to be prescribed by regulation. The

ability to prescribe a place contains a safeguard on privacy by preventing a person's private residence from being prescribed under regulation. Similarly, the provisions in the Bill in relation to access to a place of detention and protections on privacy of identifying information will apply to persons who are detained in a place of detention prescribed by regulation.

The purpose of allowing other kinds of information to be prescribed by regulation as excluded information is similarly to provide for flexibility in the future as to information that may be considered so sensitive that it should be prescribed as excluded information.

The regulation-making power is considered justified as the power is limited to specific circumstances, and the making of a regulation is subject to scrutiny to ensure compliance with fundamental legislative principles in section 4(5) of the LSA.

## Consultation

In preparing the Bill, the Department of Justice and Attorney-General consulted with relevant government agencies, being Queensland Corrective Services, the Department of Children, Youth Justice and Multicultural Affairs, the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, Queensland Health and the Queensland Police Service.

## Consistency with legislation of other jurisdictions

The introduction of legislation to facilitate visits by the Subcommittee will bring Queensland more in line with Victoria, Tasmania, the Australian Capital Territory and the Northern Territory. These jurisdictions have passed legislation that provide the Subcommittee with access to places of detention and information; and allow the Subcommittee to conduct interviews with persons who are detained and others.

The Bill is generally consistent with the *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic).

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that the short title of this Act is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2022*.

*Clause 2* states the main purposes of this Act, which are: to facilitate visits to places of detention by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the subcommittee) for the purposes of the subcommittee's mandate under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; to provide for the subcommittee to be given access to information for the purposes of the subcommittee's functions under the Optional Protocol; and to provide for necessary



safeguards to enable detaining authorities to preserve privacy, security, good order, welfare and safety in places of detention during visits by the subcommittee.

*Clause 3* states that the dictionary is provided in schedule 1.

*Clause 4* defines a place of detention for the purposes of the Bill as:

- (a) a community corrections centre, prison, or work camp under the *Corrective Services Act 2006*;
- (b) a detention centre under the *Youth Justice Act 1992*;
- (c) an inpatient unit of an authorised mental health service under the *Mental Health Act 2016*;
- (d) the forensic disability service under the *Forensic Disability Act 2011*;
- (e) a court cell;
- (f) a watch-house;
- (g) a holding cell or another place in a police station where a person is detained;
- (h) another place where a person is detained, other than a private residence, prescribed by regulation as a place of detention; or
- (i) a vehicle primarily used or operated for the purpose of transporting a person who is detained to or from a place in paragraphs (a) to (h).

Before a regulation is made to prescribe a place as a place of detention, the responsible Minister for the Bill must consult with the responsible Minister for the place about the proposed regulation.

In this section, a court cell means a place attached to or near a court that is used for detaining prisoners of the court and other persons.

*Clause 5* defines a detaining authority for the purposes of the Bill as the person or entity in charge of the place of detention. A detaining authority includes a person or entity responsible for the day-to-day care, control, health and safety of detainees in the place of detention.

*Clause 6* states that a provision of another Act that prevents or limits the performance of a function by the subcommittee, in relation to a detainee or place of detention under this Act, has no effect to the extent of any inconsistency with this Act.

## **Part 2 Access by subcommittee to places of detention**

*Clause 7* subclause (1) states that the responsible Minister for a place of detention must ensure the subcommittee and an accompanying person are permitted to enter and visit the place of detention and have unrestricted access to any part of the place of detention.

Subclause (2) outlines that this section applies subject to sections 9 and 10.

*Clause 8* subclause (1) states that a detaining authority for a place of detention must ensure the subcommittee and an accompanying person are permitted to enter and visit the place of detention and have unrestricted access to any part of the place of detention.

Subclause (2) outlines that this section applies subject to sections 9 and 10.

*Clause 9* subclause (1) states that a responsible Minister for a place of detention may object to the subcommittee and an accompanying person visiting a place of detention on a particular day or particular days if the responsible Minister believes there is an urgent and compelling reason to temporarily prevent the subcommittee's visit to the place of detention on that day or those days on any grounds outlined in subsection (2).

Subclause (2) outlines the possible grounds on which a responsible Minister may object to a visit under subsection (1), which are: national defence; public safety; natural disaster; serious disorder in the place of detention.

Subclause (3) states that if the responsible Minister objects to a visit under subsection (1), the Minister must, as soon as practicable, give a notice to the subcommittee stating the day or days the subcommittee and accompanying persons are prevented from visiting the place of detention; and the reason for preventing the visit to the place of detention.

Subclause (4) states that if the notice has been given to the subcommittee, the responsible Minister and a detaining authority for the place of detention are not required to allow the subcommittee or an accompanying person to enter the place of detention on the day or days stated in the notice.

*Clause 10* subclause (1) outlines that the detaining authority for a place of detention may temporarily prohibit or restrict access to the place or part of the place of detention by the subcommittee and an accompanying person if the detaining authority believes a ground in subsection (2) exists.

Subclause (2) outlines the grounds on which a detaining authority may temporarily prohibit or restrict access to the place or part of a place of detention under subsection (1), which are: where allowing access to the place or the part of the place may prevent the maintenance of security, good order and management of the place of detention; or may prevent the maintenance of the health and safety of a person in the place of detention, including a member of the subcommittee and an accompanying person. The detaining authority may also temporarily restrict or prohibit access where allowing access to the place or part of the place may prevent the conduct of essential operations by the detaining authority.

Subclause (3) states that a prohibition or restriction of access to a place of detention or part of a place of detention under subsection (1) must be only for the shortest period reasonable in the circumstances.

Subclause (4) outlines that a detaining authority must, for each temporary prohibition or restriction of access to a place of detention or part of a place of detention under subsection (1), make a written record outlining the reasons for the prohibition or restriction; and the date and time when the prohibition or restriction began and its duration. A copy of the written record must be given to the responsible Minister for the place of detention.

*Clause 11* subclause (1) states that a visit to a place of detention by the subcommittee and an accompanying person must be conducted in accordance with any procedures that apply to a person visiting the place of detention.

Subclause (2) states that, despite a provision of another Act, a detaining authority for a place of detention may allow the subcommittee or an accompanying person to access the place of detention without complying with a requirement about visiting the place of detention. Such requirements may include a requirement about a visitor to the place holding approval for the access, being searched, or providing identification or identifying information (for example, a requirement for a visitor to provide particular biometric information).

### **Part 3 Access by subcommittee to information**

*Clause 12* outlines definitions for the part. Confidential information is defined to include: generally, information about a person's affairs; and information that is confidential information under section 341 of the *Corrective Services Act 2006*; section 122 of the *Forensic Disability Act 2011*; section 139 of the *Hospital and Health Boards Act 2011*; section 284 of the *Youth Justice Act 1992*; personal information under section 776 of the *Mental Health Act 2016*; and information that must not be disclosed under section 10.1 of the *Police Service Administration Act 1990*. Confidential information does not include: information already publicly disclosed unless further disclosure of the information is prohibited by law; or statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

For the purpose of this part, detaining authority for a place of detention is defined to also include an entity engaged by or on behalf of the person or entity in charge of the place of detention or the State to provide services under a contract as, or on behalf of, the person, entity or the State. Examples include an education service provider or a health service provider.

Identifying information is defined to mean information that identifies an individual or from which an individual can be reasonably identified.

*Clause 13* subclause (1) states that the section applies if the subcommittee asks the responsible Minister or a detaining authority for a place of detention for information for the purpose of the evaluation of any needs or measures that should be adopted to strengthen the protection of people deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. This is the definition for the subcommittee purpose.

Subclause (2) states that on receiving the request, the responsible Minister must ensure that the subcommittee has unrestricted access to all information (other than excluded information) in the possession or under the control of the relevant Minister that is relevant to the subcommittee purpose.

Subclause (3) states that on receiving a request from the subcommittee, a detaining authority for a place of detention must ensure that the subcommittee has unrestricted access to all information (other than excluded information) in the possession or under the control of the detaining authority that is relevant to the subcommittee purpose.

Subclause (4) outlines information that is relevant to the subcommittee purpose, which includes: the number of detainees in the place of detention; the treatment of detainees at the place of detention; the conditions of detention applying to detainees in that place of detention; information about the treatment of detainees in a place of detention; and information about the conditions of detention applying to detainees in a place of detention.

Subclause (5) states that a provision of any Act or other law that restricts or denies access to information does not prevent the responsible Minister or detaining authority from complying with this section.

Subclause (6) outlines the definition for excluded information, which means: Cabinet information that is exempt information under section 48 of the *Right to Information Act 2009*; information that is subject to legal professional privilege; or other information of a kind prescribed under a regulation for this definition.

*Clause 14* states that the subcommittee must not be given access under section 13 to identifying information (including confidential information) about a person at a place of detention (including a detainee) unless the subcommittee visits that place of detention or has visited that place of detention.

*Clause 15* subclause (1) states that the subcommittee may retain, copy or take notes of any information (other than identifying information) the subcommittee is given access to under section 13.

Subclause (2) states that despite subsection (1), the subcommittee may retain, copy or include in any notes taken identifying information (including confidential information) about a detainee in a place of detention only if: the detainee consents to the subcommittee doing so; or for a detainee who is unable to consent, the detainee's legal guardian consents to the subcommittee doing so.

## **Part 4 Interviews conducted by subcommittee**

*Clause 16* subclause (1) outlines that the subcommittee may interview a person at a place of detention during a visit to that place of detention; and another person who the subcommittee believes may be able to provide information related to the detention of a detainee, including about the treatment of the detainee and the conditions of detention to which a detainee is subject.

Subclause (2) outlines that the subcommittee must not interview a person unless the person, or, if the person is unable to consent, the person's legal guardian, consents to the interview.

Subclause (3) states that a person who consents to an interview under subsection (2) may withdraw the consent any time.

Subclause (4) states that an interview may be conducted with the assistance of an interpreter.

Subclause (5) states that an interview may be conducted during a visit by the subcommittee in person or by means of electronic communication if the subcommittee decides to.

*Clause 17* states that a support person nominated by a person to be interviewed may be present during the interview.

*Clause 18* states that the detaining authority for a place of detention must allow the subcommittee to interview a person without any other person being present, other than an accompanying expert, an accompanying interpreter or a support person nominated under section 17.

## **Part 5 Protection from reprisals**

*Clause 19* subclause (1) states that a person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, any person has provided or may provide information or other assistance to the subcommittee.

Subclause (2) states that an attempt to cause detriment includes an attempt to induce a person to cause detriment.

Subclause (3) states that a contravention of subsection (1) is a reprisal or the taking of a reprisal.

Subclause (4) states that a ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

Subclause (5) states that for the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

Subclause (6) outlines that detriment to a person includes prejudice to the person's safety and prejudice to the person's career, including, for example, dismissal of the person from the person's employment.

*Clause 20* states that a person who takes a reprisal commits an offence. The maximum penalty is 100 penalty units.

## **Part 6 Miscellaneous**

*Clause 21* subclause (1) states that this section applies to a person who, honestly and on reasonable grounds, gives information or makes a disclosure to the subcommittee in the course of, and for the purpose of, the subcommittee performing its mandate under the Optional Protocol, Article 11.

Subclause (2) states that the person is not subject to any civil or criminal liability for giving the information or making the disclosure.

Subclause (3) states that no action, claim or demand may be taken or made of or against the person for giving the information or making the disclosure.

Subclause (4) states that this section applies despite a duty of secrecy or confidentiality or another restriction on giving or disclosing information (whether or not imposed under an Act) that applies to the person.

*Clause 22* subclause (1) states that the responsible Minister for a place of detention may give directions to a detaining authority for the place of detention for the purpose of assisting a detaining authority to meet the requirements of this Act.

Subclause (2) outlines that the detaining authority must comply with a direction given by the responsible Minister.

*Clause 23* states that the Governor in Council may make regulations under this Act.

## **Part 7 Amendments of Acts**

### **Division 1 Amendment of this Act**

*Clause 24* states that this division amends this Act.

*Clause 25* amends the long title of the Act to omit ‘and to amend’.

### **Division 2 Amendment of Corrective Services Act 2006**

*Clause 26* states that this division amends the *Corrective Services Act 2006*.

*Clause 27* subclause (1) amends schedule 4 of the Act to insert definitions for ‘Optional Protocol’, ‘UN expert’ and ‘UN subcommittee’.

Subclause (2) amends the definition of accredited visitor in schedule 4 of the Act to insert a member of the UN subcommittee, a UN expert accompanying the UN subcommittee, and an interpreter or other person assisting the UN subcommittee accompanying the subcommittee.

### **Division 3 Amendment of Youth Justice Act 1992**

*Clause 28* states that this division amends the *Youth Justice Act 1992*.

*Clause 29* amends section 263A(3) of the Act to insert a person who is a member of the UN subcommittee, a person accompanying the UN subcommittee as a UN expert, interpreter or other person assisting the subcommittee.

*Clause 30* amends section 272 of the Act to omit subsection (1) and insert that this section does not apply to a community visitor (child), a child advocacy officer, a member of the UN subcommittee, a person who is accompanying the UN Subcommittee as a UN expert, interpreter or other person assisting the subcommittee.

*Clause 31* amends schedule 4 of the Act to insert definitions for ‘Optional Protocol’, ‘UN expert’ and ‘UN subcommittee’.

## **Schedule 1 Dictionary**

Schedule 1 is the dictionary and defines particular words used in this Act.