



Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023

Current as at 2 June 2023

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Queensland

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Contents

		Page
Part 1	Preliminary	
1	Short title	3
2	Main purposes	3
3	Definitions	4
4	Meaning of place of detention	4
5	Meaning of detaining authority	5
6	Relationship to other laws	5
Part 2	Access by subcommittee to places of detention	
7	Responsible Minister to ensure subcommittee permitted to visit and access a place of detention	5
8	Detaining authority to ensure subcommittee permitted to visit and access a place of detention	6
9	Responsible Minister may object to subcommittee visit to a place of detention	6
10	Detaining authority may temporarily prohibit or restrict access to place of detention	7
11	Procedures for visits to places of detention	8
Part 3	Access by subcommittee to information	
12	Definitions for part	8
13	Subcommittee may access information	10
14	Access to identifying information	11
15	Subcommittee may retain, copy or take notes of information ...	11
Part 4	Interviews conducted by subcommittee	
16	Subcommittee may interview any person	11
17	Person to be interviewed may request support person	12
18	Interviews to be held in private	12

Contents

Part 5	Protection from reprisals	
19	Reprisal and grounds for reprisals	13
20	Offence for taking reprisal	13
Part 6	Miscellaneous	
21	Protection against actions, claims and demands	14
22	Responsible Minister may give directions	14
23	Regulation-making power	14
Schedule 1	Dictionary	15

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023

An Act to provide for the monitoring of places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Part 1 Preliminary

1 Short title

This Act may be cited as the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023*.

2 Main purposes

The main purposes of this Act are—

- (a) 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 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; and
- (b) to provide for the subcommittee to be given access to information for the purposes of the subcommittee's functions under the Optional Protocol; and
- (c) 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.

3 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

4 Meaning of *place of detention*

- (1) A *place of detention* means—
 - (a) a community corrections centre, prison or work camp under the *Corrective Services Act 2006*; or
 - (b) a detention centre under the *Youth Justice Act 1992*; or
 - (c) an inpatient unit of an authorised mental health service under the *Mental Health Act 2016*; or
 - (d) the forensic disability service under the *Forensic Disability Act 2011*; or
 - (e) a court cell; or
 - (f) a watch-house; or
 - (g) a holding cell or another place in a police station where a person is detained; or
 - (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 mentioned in any of paragraphs (a) to (h).
- (2) Before a regulation is made under subsection (1)(h), the Minister must consult with the responsible Minister for the place about the proposed regulation.
- (3) In this section—

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

5 Meaning of *detaining authority*

A *detaining authority*, for a place of detention—

- (a) means the person or entity in charge of the place of detention; and
- (b) includes a person or entity responsible for the day-to-day care, control, health and safety of detainees in the place of detention.

6 Relationship to other laws

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

7 Responsible Minister to ensure subcommittee permitted to visit and access a place of detention

- (1) The responsible Minister for a place of detention must ensure that the subcommittee and an accompanying person are permitted to—
 - (a) enter and visit the place of detention; and
 - (b) have unrestricted access to any part of the place of detention.
- (2) This section applies subject to sections 9 and 10.

8 Detaining authority to ensure subcommittee permitted to visit and access a place of detention

- (1) The detaining authority for a place of detention must ensure that the subcommittee and an accompanying person are permitted to—
 - (a) enter and visit the place of detention; and
 - (b) have unrestricted access to any part of the place of detention.
- (2) This section applies subject to sections 9 and 10.

9 Responsible Minister may object to subcommittee visit to a place of detention

- (1) The responsible Minister for a place of detention may object to the subcommittee and an accompanying person visiting the 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 that place of detention on that day or those days on any of the grounds mentioned in subsection (2).
- (2) For subsection (1), the grounds are as follows—
 - (a) national defence;
 - (b) public safety;
 - (c) natural disaster;
 - (d) serious disorder in the place of detention.
- (3) If the responsible Minister objects under subsection (1), the Minister must, as soon as practicable, give a notice to the subcommittee stating—
 - (a) the day or days the subcommittee and accompanying persons are prevented from visiting the place of detention; and
 - (b) the reason for preventing the visit to the place of detention.

- (4) If the notice is 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.

10 Detaining authority may temporarily prohibit or restrict access to place of detention

- (1) The detaining authority for a place of detention may temporarily prohibit or restrict access to the place or part of the place by the subcommittee and an accompanying person if the detaining authority believes a ground mentioned in subsection (2) exists.
- (2) For subsection (1), the grounds are as follows—
 - (a) allowing access to the place or part of the place may prevent the maintenance of—
 - (i) security, good order and management of the place of detention; or
 - (ii) health and safety of a person in the place of detention (including a member of the subcommittee and an accompanying person);
 - (b) allowing access to the place or part of the place may prevent the conduct of essential operations by the detaining authority.
- (3) 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.
- (4) The detaining authority must—
 - (a) 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 of—
 - (i) the reasons for the prohibition or restriction; and

- (ii) the date and time when the prohibition or restriction began and its duration; and
- (b) give a copy of the record to the responsible Minister for the place of detention.

11 Procedures for visits to places of detention

- (1) 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.
- (2) However, 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, including, for example, a requirement about a visitor to the place—
 - (a) holding approval for the access; or
 - (b) being searched; or
 - (c) providing identification or identifying information.

Example—

a requirement for a visitor to provide particular biometric information

Part 3 Access by subcommittee to information

12 Definitions for part

In this part—

confidential information—

- (a) includes—
 - (i) generally, information about a person’s affairs; and

- (ii) information that is confidential information under—
 - (A) the *Corrective Services Act 2006*, section 341; or
 - (B) the *Forensic Disability Act 2011*, section 122; or
 - (C) the *Hospital and Health Boards Act 2011*, section 139; or
 - (D) the *Youth Justice Act 1992*, section 284; and
 - (iii) personal information under the *Mental Health Act 2016*, section 776; and
 - (iv) information that must not be disclosed under the *Police Service Administration Act 1990*, section 10.1; but
- (b) does not include—
- (i) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
 - (ii) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

detaining authority, for a place of detention, also includes 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—

education service provider, health service provider

identifying information means information that identifies an individual or from which an individual can be reasonably identified.

13 Subcommittee may access information

- (1) This 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 (the *subcommittee purpose*).
- (2) 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 responsible Minister that is relevant to the subcommittee purpose.
- (3) On receiving the request, the detaining authority 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.
- (4) Information that is relevant to the subcommittee purpose includes the following—
 - (a) the number of detainees in the place of detention;
 - (b) the treatment of detainees at the place of detention;
 - (c) the conditions of detention applying to detainees in that place of detention;
 - (d) information about the treatment of detainees in a place of detention;
 - (e) information about the conditions of detention applying to detainees in a place of detention.
- (5) A provision of an Act or another law that restricts or denies access to information does not prevent the responsible Minister or detaining authority from complying with this section.
- (6) In this section—

excluded information means—

- (a) Cabinet information that is exempt information under section 48 of the *Right to Information Act 2009*; or
- (b) information that is subject to legal professional privilege; or
- (c) other information of a kind prescribed under a regulation for this definition.

14 Access to identifying information

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.

15 Subcommittee may retain, copy or take notes of information

- (1) The subcommittee may retain, copy or take notes of any information (other than identifying information) the subcommittee is given access to under section 13.
- (2) 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.

Part 4 Interviews conducted by subcommittee

16 Subcommittee may interview any person

- (1) The subcommittee may interview—

- (a) a person at a place of detention; and
 - (b) another person who the subcommittee believes may be able to provide information related to the detention of a detainee, including—
 - (i) the treatment of the detainee; and
 - (ii) the conditions of detention to which a detainee is subject.
- (2) However, the subcommittee must not interview a person unless the person consents to the interview.
- (3) A person who consents to an interview under subsection (2) may withdraw the consent at any time.
- (4) An interview may be conducted with the assistance of an interpreter.
- (5) An interview may be conducted by the subcommittee—
- (a) in person; or
 - (b) by means of electronic communication, if the subcommittee decides to.

17 Person to be interviewed may request support person

A support person nominated by a person to be interviewed may be present during the interview.

18 Interviews to be held in private

The detaining authority for a place of detention must allow the subcommittee to interview a person without any other person being present, other than—

- (a) an accompanying expert; or
- (b) an accompanying interpreter; or
- (c) a support person nominated under section 17.

Part 5 Protection from reprisals

19 Reprisal and grounds for reprisals

- (1) 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.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) 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.
- (6) In this section—
detriment, to a person, includes—
 - (a) prejudice to the person's safety or wellbeing, including, for example, intimidation or harassment of the person; and
 - (b) prejudice to the person's career, including, for example, dismissal of the person from the person's employment.

20 Offence for taking reprisal

A person who takes a reprisal commits an offence.

Maximum penalty—100 penalty units.

Part 6 **Miscellaneous**

21 **Protection against actions, claims and demands**

- (1) 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.
- (2) The person is not subject to any civil or criminal liability for giving the information or making the disclosure.
- (3) No action, claim or demand may be taken or made of or against the person for giving the information or making the disclosure.
- (4) 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.

22 **Responsible Minister may give directions**

- (1) 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 the detaining authority to meet the requirements of this Act.
- (2) The detaining authority must comply with a direction given by the responsible Minister.

23 **Regulation-making power**

The Governor in Council may make regulations under this Act.

Schedule 1 Dictionary

section 3

accompanying person means any of the following persons accompanying the subcommittee—

- (a) an expert;
- (b) an interpreter;
- (c) another person assisting the subcommittee.

confidential information, for part 3, see section 12.

deprivation of liberty, in relation to a person, has the meaning that it has in the Optional Protocol.

Note—

Under the Optional Protocol, article 4(2), deprivation of liberty means any form of detention, imprisonment or placement of a person in a public or private custodial setting which the person is not permitted to leave at will by order of any judicial, administrative or other authority.

detainee means a person in a place of detention who is deprived of the person's liberty.

detaining authority, for a place of detention—

- (a) generally—see section 5;
- (b) for part 3—see section 12.

expert means an expert selected in accordance with the Optional Protocol, article 13.

identifying information, for part 3, see section 12.

Optional Protocol means the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, as amended and in force for Australia from time to time.

place of detention see section 4.

responsible Minister, for a place of detention, means—

- (a) for a community corrections centre, prison or work camp under the *Corrective Services Act 2006*—the Minister who administers that Act; or
- (b) for a detention centre under the *Youth Justice Act 1992*—the Minister who administers that Act; or
- (c) for an inpatient unit of an authorised mental health service under the *Mental Health Act 2016*—the Minister who administers that Act; or
- (d) for the forensic disability service under the *Forensic Disability Act 2011*—the Minister who administers that Act; or
- (e) for a court cell—the Minister who administers the *Justices Act 1886*; or
- (f) for a watch-house, a holding cell or another place in a police station where a person is detained—the Minister who administers the *Police Service Administration Act 1990*; or
- (g) for a vehicle primarily used or operated for the purpose of transporting a person who is being detained—the Minister who administers the Act under which the person is detained; or
- (h) for another place, other than a private residence, prescribed by regulation where a person is being detained—the Minister who administers the Act under which the person is detained.

subcommittee means the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture, established in accordance with the Optional Protocol, part II.