

2017

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2017

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Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2017

A Bill for

An Act to enable the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to be given effect within the ACT

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Monitoring of Places of Detention (Optional*
4 *Protocol to the Convention Against Torture) Act 2017.*

5 **2 Commencement**

6 (1) This Act commences on a day fixed by the Minister by written
7 notice.

8 *Note 1* The naming and commencement provisions automatically commence on
9 the notification day (see [Legislation Act](#), s 75 (1)).

10 *Note 2* A single day or time may be fixed, or different days or times may be
11 fixed, for the commencement of different provisions (see [Legislation](#)
12 [Act](#), s 77 (1)).

13 (2) However, the Minister must not fix a day for the commencement of
14 the Act that is earlier than 30 days after the day the Commonwealth
15 deposits its instrument of ratification of the Optional Protocol with
16 the Secretary of the United Nations.

17 (3) The [Legislation Act](#), section 79 (Automatic commencement of
18 postponed law) does not apply to this Act.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*place of detention*—see section 7.' means that the term 'place of detention' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

1 **6 Meaning of *detaining authority***

2 (1) In this Act:

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

4 (a) means the entity in charge of the place of detention; and

5 (b) includes any entity responsible for the day-to-day care, control,
6 health and safety of detainees in the place of detention.

7 (2) For this Act, an entity engaged by or on behalf of a detaining
8 authority or the Territory to provide services under a contract as, or
9 on behalf of, a detaining authority is taken to be a detaining
10 authority.

11 **7 Meaning of *place of detention***

12 In this Act:

13 *place of detention*, means any place that the subcommittee must be
14 allowed to visit under the Optional Protocol, article 4, that is subject
15 to the jurisdiction and control of the Territory.

16 *Note* Under the Optional Protocol, art 4, the Territory must allow visits to any
17 place under its jurisdiction and control and in which people are or may
18 be involuntarily deprived of their liberty.

19 **8 Relationship to other laws**

20 A provision of another territory law (other than an ACT privacy
21 law) that prevents or limits the exercise of any function by the
22 subcommittee, in relation to a detainee or place of detention under
23 this Act, has no effect to the extent of any inconsistency with this
24 Act.

1 **Part 2** **Visits by subcommittee**

2 **9** **Object—pt 2**

3 The object of this part is to enable the subcommittee to fulfil the
4 mandate set out in the Optional Protocol, article 11 (1) (a) so far as
5 it relates to places of detention.

6 **10** **Ministerial arrangements**

7 (1) The Minister may enter into arrangements (*Ministerial*
8 *arrangements*) with the Commonwealth Attorney-General to
9 facilitate the subcommittee's exercise of its functions in accordance
10 with the Optional Protocol within the ACT under this Act.

11 (2) Without limiting subsection (1), a Ministerial arrangement may be
12 made in relation to the following:

13 (a) the care, direction, control and management of detainees or
14 other people within places of detention;

15 (b) the safety and security of places of detention;

16 (c) access to, and disclosure of, information;

17 (d) publication of information;

18 (e) the privacy of individuals or their rights to the confidentiality
19 of personal information about them;

20 (f) the special needs of children and other vulnerable people;

21 (g) urgent and compelling risks to public health caused by
22 outbreaks of infectious diseases.

23 (3) A Ministerial arrangement must be consistent with, and reasonably
24 appropriate and adapted for implementing, the Optional Protocol.

- 1 (4) A detaining authority has, and may exercise, the functions
2 necessary, under the relevant Ministerial arrangements, to give
3 effect to the Optional Protocol.

4 *Note* A provision of a law that gives an entity (including a person) a function
5 also gives the entity powers necessary and convenient to exercise the
6 function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

- 7 (5) The Minister may enter into arrangements with the Commonwealth
8 Attorney-General for the exercise of functions under this Act in
9 relation to places of detention and detainees under the control and
10 jurisdiction of the Commonwealth.

11 **11 Duties of detaining authority and responsible Minister for**
12 **places of detention**

- 13 (1) This section applies if the subcommittee requests access to a place
14 of detention.

- 15 (2) The responsible Minister and detaining authority for the place of
16 detention must ensure that the subcommittee and any accompanying
17 expert or assistant are given access to, and are able to exercise their
18 functions in accordance with the Optional Protocol in, the place of
19 detention.

- 20 (3) In this section:

21 *assistant* means a person appointed under the Ministerial
22 arrangements to assist the subcommittee.

23 **12 Subcommittee's access to places of detention**

- 24 (1) This section applies if the subcommittee requests access to a place
25 of detention.

- 26 (2) The responsible Minister and detaining authority for the place of
27 detention must ensure that the subcommittee and any accompanying
28 expert or assistant are given unrestricted access to every part of the
29 place.

- 1 (3) However, if the detaining authority considers that 1 or more grounds
2 mentioned in the Optional Protocol, article 14 (2) may temporarily
3 prevent the carrying out of a visit by the subcommittee, the authority
4 may prohibit or restrict access to the place of detention so that the
5 Commonwealth Attorney-General may, under a Ministerial
6 arrangement, be requested, and decide whether or not, to object to
7 the visit.
- 8 (4) Also, the authority may prohibit or restrict access to the place of
9 detention if—
- 10 (a) an objection to the subcommittee's visit has been made by the
11 Commonwealth Attorney-General, under the Ministerial
12 arrangements, on 1 or more of the grounds mentioned in the
13 Optional Protocol, article 14 (2); and
- 14 (b) the objection has not been withdrawn or otherwise resolved by
15 the Commonwealth Attorney-General under the Ministerial
16 arrangements.
- 17 *Note* Under the Optional Protocol, art 14 (2) an objection to a visit to a
18 particular place of detention may be made only on urgent and
19 compelling grounds of national defence, public safety, natural disaster
20 or serious disorder in the place to be visited.
- 21 (5) In this section:
- 22 ***assistant***—see section 11 (3).

- 1 **13 Access to information**
- 2 (1) This section applies if the subcommittee requests access to a place
- 3 of detention.
- 4 (2) The responsible Minister and detaining authority for the place of
- 5 detention must ensure that the subcommittee and any accompanying
- 6 expert are given all relevant information that is requested by the
- 7 subcommittee for evaluating the needs and measures that should be
- 8 adopted to strengthen, if necessary, the protection of people
- 9 deprived of their liberty against torture and other cruel, inhuman or
- 10 degrading treatment or punishment.
- 11 (3) A detaining authority for the place of detention must, at the request
- 12 of the subcommittee and under the Ministerial arrangements, allow
- 13 the subcommittee to have unrestricted access to the following
- 14 information in relation to the place:
- 15 (a) the number of detainees in the place;
- 16 (b) the treatment of detainees in the place;
- 17 (c) the conditions of detention applying to detainees in the place.
- 18 (4) Access to which the subcommittee is entitled under this section—
- 19 (a) includes the right to inspect any record that is under the control
- 20 of the responsible Minister or a detaining authority, or whose
- 21 production the responsible Minister or detaining authority may,
- 22 in an official capacity, reasonably require; but
- 23 (b) does not include the right to inspect any record that is personal
- 24 information of a detainee, under an ACT privacy law, unless
- 25 the detainee consents to the inspection.
- 26 (5) A provision of any Act or other law, other than an ACT privacy law,
- 27 that restricts or denies access to records does not prevent the
- 28 responsible Minister or detaining authority from complying with
- 29 this section.

1 (6) In this section:

2 *record* means any document or other source of information
3 compiled, recorded or stored in written form or on film, or by
4 electronic process, or in any other manner or by any other means.

5 **14 Subcommittee may interview detainees and other people**

6 (1) This section applies if the subcommittee requests access to a place
7 of detention.

8 (2) The responsible Minister and detaining authority for the place of
9 detention must ensure that the subcommittee and any accompanying
10 expert are given reasonable assistance to interview, without
11 witnesses, either personally or through an interpreter, any detainee
12 or other person at the place who the subcommittee chooses to
13 interview.

14 (3) The responsible Minister for a place of detention must give the
15 subcommittee reasonable assistance to interview, without witnesses,
16 either personally or through an interpreter, any person who the
17 subcommittee believes may be able to give it relevant information
18 about the following matters:

- 19 (a) the place;
20 (b) the treatment of detainees at the place;
21 (c) the conditions of detention.

22 (4) A support person nominated by an interviewee may be present
23 during the interview at the interviewee's request and with the
24 agreement of the subcommittee.

25 (5) Nothing in this section requires a person who objects or does not
26 consent to being interviewed by the subcommittee to participate in
27 an interview.

1 **15 Protection against actions etc**

2 (1) A person is not subject to any civil or criminal liability for giving
3 any information or making any disclosure to the subcommittee in
4 the course of, and for the purposes of, the subcommittee performing
5 its mandate under the Optional Protocol, article 11 and no action,
6 claim or demand may be taken or made of or against the person for
7 giving the information or making the disclosure.

8 (2) This section has effect despite any duty of secrecy or confidentiality
9 or any other restriction on the giving or disclosure of information
10 (whether or not imposed by or under an Act) applicable to the
11 person.

12 (3) However, this section does not apply in relation to the giving of
13 information or making of a disclosure to which an ACT privacy law
14 applies.

15 **16 Protection against reprisals**

16 (1) A person commits an offence if—

17 (a) the person intentionally takes detrimental action against
18 someone else; and

19 (b) the detrimental action is taken wholly or partially because—

20 (i) the other person has given or disclosed information to the
21 subcommittee; or

22 (ii) the person believes the other person has given or
23 disclosed information to the subcommittee.

24 Maximum penalty: 110 penalty units, imprisonment for 2 years or
25 both.

- 1 (2) A detaining authority who engages in conduct that would be an
2 offence under subsection (1) is taken to have engaged in conduct
3 that constitutes misconduct in the performance of the detaining
4 authority's duties and that justifies the taking of disciplinary action
5 against the detaining authority, including disciplinary action
6 provided for—
- 7 (a) under an Act that regulates the employment or service of the
8 detaining authority; or
- 9 (b) under a contract of employment or contract for services that
10 governs the employment or engagement of the detaining
11 authority.
- 12 (3) In this section:
- 13 ***detrimental action*** means action causing, comprising or involving
14 any of the following:
- 15 (a) injury, damage or loss;
- 16 (b) change of the conditions of detention;
- 17 (c) intimidation or harassment;
- 18 (d) discrimination, disadvantage or adverse treatment in relation to
19 employment;
- 20 (e) dismissal from, or prejudice in, employment;
- 21 (f) disciplinary proceeding.

1 **Part 3 Miscellaneous**

2 **17 Directions of responsible Minister**

3 (1) The responsible Minister for a place of detention may give
4 directions to a detaining authority for the place of detention for this
5 Act.

6 (2) The detaining authority must comply with any directions given by
7 the responsible Minister under subsection (1).

8 (3) A direction is a notifiable instrument.

9 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

10 **18 Regulation-making power**

11 The Executive may make regulations for this Act.

12 *Note* A regulation must be notified, and presented to the Legislative
13 Assembly, under the [Legislation Act](#).

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- Act
- child
- Commonwealth
- correctional centre
- detention place
- entity
- exercise
- function
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- person (see s 160)
- territory law
- the Territory.

ACT privacy law means—

(a) the [Health Records \(Privacy and Access\) Act 1997](#); or

(b) the [Information Privacy Act 2014](#).

deprivation of liberty—see the Optional Protocol, article 4 (2).

Note ***Deprivation of liberty*** is defined in that article as meaning 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 their liberty.

detaining authority, for a place of detention—see section 6.

- 1 **expert** means an expert selected in accordance with the Optional
2 Protocol, article 13 (3).
- 3 **Ministerial arrangements**—see section 10.
- 4 **Optional Protocol** means the Optional Protocol to the Convention
5 against Torture and other Cruel, Inhuman or Degrading Treatment
6 or Punishment, adopted by the General Assembly of the United
7 Nations on 18 December 2002, as amended and in force for
8 Australia from time to time.
- 9 **Note** The Optional Protocol to the Convention against Torture and other
10 Cruel, Inhuman or Degrading Treatment or Punishment, is accessible at
11 www.ohchr.org.
- 12 **place of detention**—see section 7.
- 13 **responsible Minister** for a place of detention, means the Minister
14 administering an Act, or part of an Act, conferring functions on, or
15 regulating the exercise of functions by, a detaining authority for the
16 place.
- 17 **subcommittee** means the Subcommittee on Prevention of Torture
18 and Other Cruel, Inhuman or Degrading Treatment or Punishment
19 of the Committee against Torture, established in accordance with
20 the Optional Protocol, part II.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 24 August 2017.

2 Notification

Notified under the [Legislation Act](#) on 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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