Parliamentary Committees



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

Report No. 42, 57th Parliament
Legal Affairs and Safety Committee
February 2023

Legal Affairs and Safety Committee

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Abbreviations

AHRC	Australian Human Rights Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Service
Attorney-General	The Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence
Bill	Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022
committee	Legal Affairs and Safety Committee
department/DJAG	Department of Justice and Attorney-General
DPSOA	*Dangerous Prisoners Sexual Offenders Act 2003* (Qld)
HRA	*Human Rights Act 2019* (Qld)
JR Act	*Judicial Review Act 1991* (Qld)
LAQ	Legal Aid Queensland
LSA	*Legislative Standards Act 1992* (Qld)
NPM	National Preventive Mechanism
QNMU	Queensland Nurses and Midwives Union
OIC	Office of the Information Commissioner
OPCAT	Optional Protocol to the Convention Against Torture
OQPC	Office of the Queensland Parliamentary Counsel
PLS	Prisoners Legal Service
QAI	Queensland Advocacy Incorporated
QLS	Queensland Law Society
Sisters Inside	Sisters Inside Inc
the subcommittee	United Nations Subcommittee on Prevention of Torture

Chair's foreword

This report presents a summary of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The Bill seeks to facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland.

As part of its Inquiry, the committee called for and received written submissions from stakeholders, was briefed by the Department of Justice and Attorney-General and heard evidence from organisations at a public hearing.

On the basis of all evidence submitted, the committee is satisfied the Bill will achieve its policy objectives. The committee recommends the Bill be passed.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Recommendation 1 **4**

The committee recommends the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 be passed. 4

Executive Summary

The Monitoring of Places of Detention (Optional Protocol of the Convention Against Torture) Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General), and referred to the Legal Affairs and Safety Committee (committee) on 1 December 2022.

Summary of the Bill

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.

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.

The Bill 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 under the *Mental Health Act 2016* or to the forensic disability service under the *Forensic Disability Act 2011*.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- scope of the Bill, particularly the definition of 'place of detention'
- access to places of detention
- access to information
- access to identifying information
- interviews
- reprisals and protections
- compliance of the Bill with the *Legislative Standards Act 1992*
- compliance of the Bill with the *Human Rights Act 2019*.

Conclusion

The committee has recommended that the Bill be passed.

1 Introduction

1.1 Policy objectives of the Bill

The Monitoring of Places of Detention (Optional Protocol of the Convention Against Torture) Bill 2022 (Bill) was introduced into the Legislative Assembly by the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence (Attorney-General), and referred to the Legal Affairs and Safety Committee (committee) on 1 December 2022.

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

The Bill 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 under the *Mental Health Act 2016* or to the forensic disability service under the *Forensic Disability Act 2011*.[1]

[1] Explanatory notes, pp 1-2.

1.2 Background

OPCAT is an international treaty that supplements the 1984 United Nations Convention Against Torture. OPCAT aims to prevent the torture and other ill-treatment of persons in places where people are deprived of liberty. It also establishes an international inspection system for places of detention. OPCAT was adopted by the United Nations General Assembly in New York on 18 December 2002, and it entered into force on 22 June 2006. Australia signed OPCAT on 19 May 2009 and ratified it on 21 December 2017.[2] At the time of ratification, the Australian Government made a declaration under Article 24 (Part IV) of OPCAT postponing the implementation of its obligations to establish its NPM for 3 years.[3]

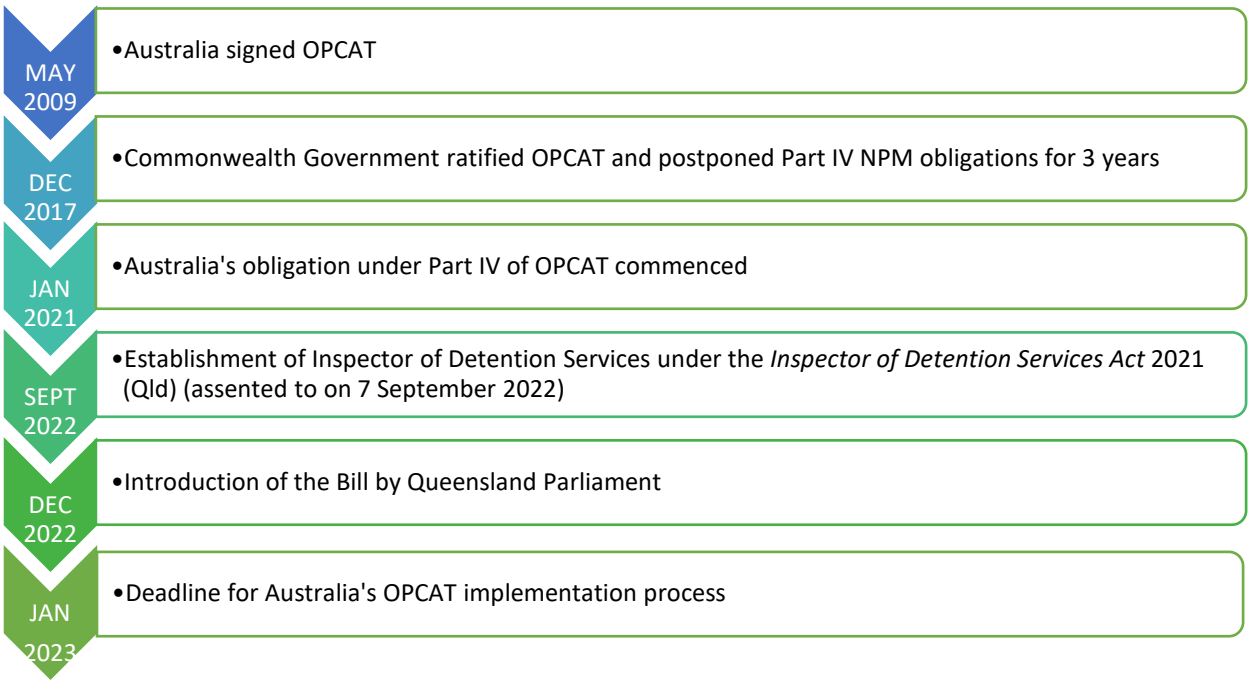
In broad terms, Australia's obligation of monitoring places of detention is separated into 2 components:

1. Periodic visits by the subcommittee to places of detention under Australia's jurisdictional control for the purpose of making recommendations to prevent torture and other ill-treatment of persons who are detained; and
2. The nomination of a domestic body or bodies to act as a NPM to regularly inspect and monitor the treatment of persons in places of detention across the country.[4]

The Bill focuses on the first of these and 'will bring greater transparency and public confidence by establishing a standalone legislative framework to facilitate a consistent approach to UN subcommittee visits to places of detention in Queensland'.[5]

1.3 Timeline of key OPCAT milestones

Set out below is a timeline showing the key milestones relating to OPCAT in Queensland.



[2] United Nations Treaty Collection, *Parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, www.treaties.un.org.

[3] Commonwealth Ombudsman, Implementation of Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, September 2019, Report 3, p 1.

[4] Queensland Parliament, Record of Proceedings, 1 December 2022, p 3844.

[5] Queensland Parliament, Record of Proceedings, 1 December 2022, p 3844.

1.4 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.4.1 *Legislative Standards Act 1992*

We examined the Bill and considered the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* (LSA) in particular:

- The extent to which the proposed powers to access, retain, copy or take notes of information relating to detainees would limit the right to privacy and whether such limitations are reasonable and demonstrably justifiable (Part 3)
- The extent to which the consequences and penalties imposed by the Bill are reasonable, proportionate and relevant to the actions to which the consequences and penalties relate (clauses 19 and 20)
- Whether the Bill has adequate justification for conferring immunity from proceedings or prosecution (clause 21).

In conclusion, we are satisfied that the Bill has sufficient regard to individuals' rights and liberties and institution of Parliament.

1.4.1.1 Explanatory notes

Explanatory notes were tabled with the introduction of the Bill. We are satisfied the explanatory notes contain the information required by Part 4 of the LSA and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

1.4.2 *Human Rights Act 2019*

Our assessment of the Bill's compatibility with the *Human Rights Act 2019* (HRA) is included below. We find the Bill is compatible with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. We are satisfied the statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4.2.1 Human rights issues arising under the Bill

The Bill seeks to facilitate Australia's compliance with OPCAT. The Bill, in incorporating aspects of OPCAT, addresses procedural mechanisms related to the prohibitions of torture, and cruel, inhuman or degrading treatment (s 17 of the HRA). The procedural provisions of the Bill also raise consideration of the human right to privacy and reputation (s 25 of the HRA) and the human right to humane treatment when deprived of liberty (s 30 of the HRA). The penalty provisions of the Bill might also be argued to raise the human right to property (s 24 of the HRA).

Prohibitions of torture, and cruel, inhuman or degrading treatment (s 17 of the HRA)

The Bill's procedural focus on monitoring of conditions of detention means that the Bill may only indirectly affect the right set out in s 17 of the HRA. The jurisprudence in Victoria and other common law jurisdictions on procedural obligations related to the prevention of torture, and other inhuman or degrading treatment or punishment, offers no clear answer as to whether procedural obligations set out in OPCAT can be held to be implicitly incorporated within the right in s 17 of the HRA. Whether or not these procedural obligations, in whole or in part, implicitly form part of the right set out in s 17 of the HRA, the Bill would nonetheless ensure that any such procedural obligations are not violated.

Privacy and reputation (s 25 of the HRA) and right to human treatment when deprived of liberty (s 30 of the HRA)

The access to persons in detention and related information given by the Bill to members of the subcommittee and relevant experts as provided in OPCAT potentially affects the right to privacy and reputation (s 25 of the HRA) and the right to humane treatment when deprived of liberty (s 30 of the HRA).

Any potential limitations on these rights imposed by the Bill are for the purpose of preventing violations of the right set out in s 17 of the HRA. The Bill therefore seeks to protect the rights of other detainees as well as any detainees to whom the subcommittee and associated experts are given access and related information. There is a rational connection between any limitation on the rights and the purposes of the limitation. There appears to be no less restrictive and reasonably available ways in which to achieve the purposes of OPCAT and we note the Bill contains appropriate safeguards and exceptions. The extent to which the Bill affects or interferes with the rights in ss 25 and 30 of the HRA is limited and the balance between the importance of the purpose of any limitation and the importance of preserving the rights in ss 25 and 30 of the HRA is fair and favours any limitations imposed by the Bill.

1.5 Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 be passed.

2 Examination of the Bill

The committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty-nine submissions were received (see Appendix A for a list of submitters).

The committee received a written briefing about the Bill from the Department of Justice and Attorney-General (department/DJAG) on 12 December 2022 and received a public briefing on the Bill from DJAG on 30 January 2023 (see Appendix B for a list of officials at the public departmental briefing). The committee also received advice from DJAG responding to the submissions on 20 January 2023.

As part of its Inquiries, the committee held a public hearing on 24 January 2023 in Brisbane to speak with stakeholders (see Appendix C for a list of witnesses).

The submissions, correspondence from DJAG and transcripts of the briefing and hearing are available on the committee's webpage.

In its examination of the Bill, the committee considered all the material before it. This section discusses a number of the key issues raised during the committee's examination of the Bill. It does not discuss all consequential, minor or technical amendments.

2.1 Scope of the Bill

2.1.1 Proposal under the Bill

Clause 4 of the Bill outlines the places of detention to which the Bill applies, which are:

- community corrections centres, prisons or work camps
- youth detention centres
- inpatient units of an authorised mental health service
- the forensic disability service
- court cells or watch houses
- holding cells and other places in a police station where a person is detained
- any other place where a person is detained (other than a private residence) prescribed by regulation as a place of detention.

The department provided the following explanation of the scope of the Bill at the public briefing:

> It specifically defines the places of detention within its scope to provide certainty as to the procedures to be followed for a visit. Defining specific places of detention is consistent with the approach in Victoria, as opposed to other jurisdictions which have a broad definition. The Bill will address the existing legislative barriers that prevented physical access to authorised mental health services and the Forensic Disability Service, highlighted when the subcommittee visited last year. Clause 4(1)(h) allows the Governor in Council to make a regulation to prescribe other places of detention, other than a private residence, to be within scope of the Bill. It is intended that the Bill does not prevent the subcommittee from visiting a place outside the Bill's scope. This would be by consent and in accordance with any relevant legislation.[6]

The explanatory notes also state that:

> 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.

[6] Public briefing transcript, Brisbane, 30 January 2023, p 1.

> 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.[7]

The Attorney-General explained that the purpose of this provision is to 'provide certainty to the UN subcommittee and government agencies as to the process to be followed for UN subcommittee visits to these facilities'.[8] She further clarified:

> The Bill does not prevent the UN subcommittee from visiting places not within the Bill's scope. The Bill requires the minister with the responsibility for the place of detention and the detaining authority to provide the UN subcommittee with unrestricted access to the place of detention, except in limited circumstances. As provided under OPCAT, the Bill provides that a responsible minister may object to a visit by the UN subcommittee on the grounds of national defence, public safety, natural disaster and serious disorder in a place of detention.[9]

The Bill provides for the delegation of legislative power in clauses 4(1)(h) (another place that may be prescribed as a place of detention) and 13(6)(c) (information that can be prescribed to be excluded information). The general regulation-making power in clause 23 is a common provision used to provide flexibility in regulation-making.

The explanatory notes state the regulation-making powers in clauses 4(1)(h) and 13(6)(c) provide flexibility for the future, and that the regulation-making power is considered justified as the power is limited to specific circumstances.[10]

2.1.2 Stakeholder comment

Many submissions referred to clause 4 and, specifically, the definition of 'place of detention' in the Bill.

The Queensland Nurses and Midwives Union (QNMU) supported the inclusion of inpatient units of authorised mental health services and the Forensic Disability Service in the scope of the Bill to remove legislative barriers that prevent physical access to these facilities.[11]

The submission from Aged and Disability Advocacy Australia recommended that the definition of 'place of detention' in clause 4 of the Bill be amended to expressly include residential aged care facilities and secure dementia units.[12] Similarly, Townsville Community Law recommended that the definition of 'place of detention' in clause 4 of the Bill be amended to expressly include that residential aged care facilities or residential aged care facilities are prescribed as a place of detention by regulation.[13]

The submission from the Queensland Public Advocate suggested that the definition of 'place of detention' Bill could be extended further to include those disability and aged-care settings where the utilisation of restrictive practices means that the residents in question are in effect detained.[14]

Legal Aid Queensland (LAQ) noted that the definition of place of detention excludes the Wacol Contingency Accommodation and facilities where people are detained against their will.[15]

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7 Explanatory notes, p 2.

8 Queensland Parliament, Record of Proceedings, 1 December 2022, p 3844.

9 Queensland Parliament, Record of Proceedings, 1 December 2022, p 3844.

10 Explanatory notes, pp 7, 8.

11 Submission 20, p 2.

12 Submission 1, p 2.

13 Submission 2, p 3.

14 Submission 7, p 1.

15 Submission 8, p 3.

A majority of the submissions that discussed clause 4 of the Bill recommended that this clause be amended to replace the definition of place of detention with the definition used in OPCAT.[16]

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) specifically noted the following places of detention that fall outside the scope of the Bill, as drafted, but would be caught within the scope of the Bill if the OPCAT definition was used.

(a) community facilities with locked wards, such as for dementia patients and those with an intellectual disability

(b) accommodation used to house those under Continuing Detention Orders and Community Supervision Orders, and

(c) places where children are placed under Child Protection Orders.[17]

ATSILS was also unsure whether a place where a person is being housed under a Forensic Disability Order is captured under section 4(1)(d) of the Bill.[18]

The Queensland Law Society (QLS) noted that by replacing the definition of 'place of detention' with that used in OPCAT, there would be coverage of: residential aged care facilities and residential homes; the Forensic Disability Service and disability group homes; facilities that use seclusion and chemical and physical restraints; hospital emergency rooms; locked wards; and immigration detention facilities.[19]

The Prisoners Legal Service (PLS) also recommended amending clause 4 to replace the definition of 'place of detention' with the definition used in OPCAT. PLS noted the definition of clause 4(h) which permits visits to places 'prescribed by regulation as a place of detention' excludes residential aged care facilities and housing precincts which accommodate people subject to supervision orders under the *Dangerous Prisoners Sexual Offenders Act 2003* (DPSOA).[20]

At the public hearing, Sisters Inside Inc (Sisters Inside) addressed the meaning of 'places of detention':

> In our view, the Bill should explicitly ensure that places of detention are not limited to places that are currently listed in clause 4. We believe that the current definition is too focused on traditional sites of detention, rather than taking a broader perspective on places of detention where people can experience intersecting forms of deprivation or control. In our view, all places where children or adults are coercively kept against their will are places of detention, and that should require oversight. As a starting point, we have recommended that the Bill should be amended to the definition contained in Article 4.1 of OPCAT.[21]

2.1.3 Department response

The department noted these comments and responded that:

> The Bill reflects the Queensland Government's policy position regarding scope. The Bill is intended to specifically define the places of detention within its scope to provide certainty as to the procedures to be followed for a visit to those facilities.

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16 See Australian Human Rights Commission (submission 10), Queensland Human Rights Commission (submission 12), Commonwealth Ombudsman – NPM Network (submission 13), Queensland Advocacy for Inclusion (submission 15), Queensland Indigenous Family Violence Legal Service (submission 16), Australian Lawyers for Human Rights (submission 18) and Sisters Inside (submission 29).

17 Submission 22, p 7.

18 Submission 22, p 7.

19 Submission 14, pp 3-4.

20 Submission 17, pp 2-3.

21 Public hearing transcript, Brisbane, 24 January 2023, p 11.

As outlined in the Explanatory Notes, it is intended that the Bill does not prevent the Subcommittee from visiting a place outside of the scope of the Bill. This would be by consent and in accordance with any relevant legislation.

DJAG notes clause 4(1)(h) of the Bill allows the Governor in Council to make a regulation to prescribe other places of detention (other than a private residence) to be within scope of the Bill. The Minister with responsibility for the Act must consult with the Minister with responsibility for the place proposed to be prescribed by regulation.

While expanding the scope of the Bill is a policy decision for the Queensland Government, DJAG notes that as residential aged care facilities (and secure dementia units) are regulated and funded by the Commonwealth Government, a nationally consistent approach could be beneficial for facilitating Subcommittee access to these facilities; noting also the vast majority of residential aged care services are operated by for-profit organisations and non-government organisations.

DJAG notes that the Commonwealth Government has not introduced legislation to facilitate access by the Subcommittee to residential aged care facilities. In addition, DJAG understands aged care facilities are not within scope of the *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic).[22]

The department also noted that the Bill applies to a prisoner on an interim detention order or a continuing detention order under the DPSOA, or a person who is ordered by a court to be detained under a civil order.[23]

Committee comment

We note submitters' concerns regarding expanding the definition of 'place of detention' in clause 4 of the Bill: for example, to expressly include residential aged care facilities and secure dementia units. We also note the response from DJAG in relation to these matters that the Bill does not prevent the subcommittee from visiting a place outside of the scope of the Bill. We note this was also stated by the Attorney-General in her explanatory speech.[24]

While we are satisfied that there is a genuine need for the subcommittee to be able to visit a place where a person is deprived of their liberty, we note DJAG's comments that the prescribed places of detention are reflective of the Victorian and Commonwealth Government's legislation and that the Bill allows the Governor in Council to make a regulation to prescribe other places of detention (other than a private residence) to be within the scope of the Bill. We further note DJAG's comments that residential aged care facilities are regulated by the Commonwealth Government and that a national consistent approach for access by the subcommittee to these facilities would be beneficial.

We are therefore satisfied that due consideration has been given to clause 4 regarding the definition of 'place of detention' and the facilitation of visits by the subcommittee to other places outside the scope of the Bill with consent and in accordance with relevant legislation.

We are also satisfied that the regulation-making powers demonstrate sufficient regard to the institution of Parliament having regard to the subject matter left to regulation and the need for flexibility.

2.2 Access to places of detention

2.2.1 Proposal under the Bill

Part 2 of the Bill deals with access by the subcommittee to places of detention.

[22] DJAG, correspondence, 20 January 2023, attachment, pp 3-4.

[23] DJAG, correspondence, 20 January 2023, attachment, p 9.

[24] Queensland Parliament, Record of Proceedings, 1 December 2022, p 3844.

The Bill provides that the Minister responsible for a place of detention and the detaining authority must ensure that the subcommittee and any accompanying person have permission to enter and visit a place of detention with unrestricted access.[25]

However, the responsible Minister may object to the subcommittee visiting a place of detention on a particular day if there is an urgent and compelling reason to temporarily prevent the visit based on any of the following grounds:

(a) national defence

(b) public safety

(c) natural disaster

(d) serious disorder in the place of detention.[26]

Similarly, the detaining authority may temporarily prohibit or restrict access to the place of detention by the subcommittee if allowing access may prevent the maintenance of:

(a) security, good order and management of the place of detention; or

(b) the health and safety of persons in the facility.[27]

2.2.2 Stakeholder comment and department response

In relation to clause 9, ATSILS recommended defining grounds in clause 9(2) of the Bill to provide some certainty in their application and noted there is no legislative process for the subcommittee to dispute an objection made under clause 9 of the Bill.[28]

Sisters Inside recommended the removal of clause 9 of the Bill as it is contrary to the policy objective of the Bill, which is to facilitate visits by the subcommittee to places of detention in Queensland.[29]

The department responded to these issues as follows:

> DJAG considers clause 9 of the Bill as drafted meets the policy intent, which is to legislatively provide for the ability of a responsible Minister to object to a visit in line with Article 14(2) of OPCAT.
>
> As noted in the submission, OPCAT does not provide definitions for the grounds for objection under Article 14(2). In addition, DJAG notes that legislation passed in all other jurisdictions does not provide definitions or examples of the grounds in Article 14(2) legislation ...
>
> Accordingly, DJAG does not consider it is appropriate to further define the grounds for objection as provided for in Article 14(2) of OPCAT.
>
> As provided for in clause 9(1) of the Bill, it is intended that a responsible Minister will only object to a visit if the Minister believes there is an urgent and compelling reason (in accordance with grounds in clause 9(2)) to temporarily prevent the Subcommittee's visit on a specific day or days.
>
> DJAG notes that legislation passed in other jurisdictions does not include a mechanism for the Subcommittee to dispute an objection to a visit.[30]

In relation to clauses 9 and 10 of the Bill, LAQ recognised that it is not possible to be 'too prescriptive given the sometimes unpredictable nature of events that can occur within and outside of a facility'.[31]

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25 Bill, clauses 7, 8.

26 Bill, clause 9.

27 Bill, clause 10.

28 Submission 22, p 9.

29 Submission 29, p 2.

30 DJAG, correspondence, 20 January 2023, attachment, pp 35-36.

31 Submission 8, p 2.

LAQ also noted an expectation that decisions made pursuant to clauses 9 and 10 are subject to the *Judicial Review Act 1991* (JR Act).[32] The department responded to this concern as follows:

> The *Judicial Review Act 1991* (Qld) (JR Act) applies to administrative decisions made under an enactment unless it is excluded by the JR Act. Decisions made under clauses 9 and 10 of the Bill have not been excluded by the JR Act. The question as to whether an administrative decision is subject to judicial review will ultimately depend on whether the person has standing (i.e. the person is aggrieved by the decision) and the grounds for the application (e.g. whether it is one of the prescribed grounds under the JR Act). (p 8)

A number of submissions recommended amending clauses 10(2)(a)(i) and (ii) to link the grounds to the serious disorder objection ground in Article 14(2) of OPCAT, and to remove clause 10(2)(b) from the Bill. [33]

Knowmore submitted that the grounds for allowing a detaining authority to temporarily restrict or prohibit the subcommittee's access to a place of detention under clause 10 should be limited to those outlined in Article 14(2) of OPCAT.[34] Similarly, the QLS recommended amending clauses 2(c) and 10 of the Bill to align with the grounds for objection in Article 14(2) of OPCAT.[35]

ATSILS suggested removing clause 10 from the Bill as the grounds are too broad and are not contained in OPCAT. The submission from ATSILS also noted that if it is necessary to allow a detaining authority to restrict access, the grounds should mirror Article 14(2) of OPCAT.[36]

Sisters Inside recommended removing clause 10 of the Bill.[37] At the public hearing, Sisters Inside commented:

> In regards to objecting or restricting access to prison, the Bill must provide unrestricted access to ensure that the subcommittee can undertake their work in order to effectively monitor places of detention. As the Bill currently stands, there is no complete unrestricted access. Given the purpose of the Bill is to facilitate visits to places of detention to the subcommittee, the Bill must go further than what currently exists. We are particularly concerned about section 10 and strongly recommend its removal. In our experience, the castral system continuously uses the good order and management of a place of detention as a reason to restrict access, including because of issues with governance, such as staff shortage or lockdowns. It is moments when the system is under pressure that the people detained are most at risk. It is more important that they have access at these times. It also ensures that they can witness how the place of detention actually responds to critical incidences in order to effectively monitor the treatment of people in detention.[38]

In relation to clause 10, Queensland Advocacy Incorporated (QAI) recommended either removing clause 10 or alternatively amending clause 10 to include a clear definition of essential operations, require the responsible Minister to table a written record in Parliament within a certain timeframe, and require a detaining authority to make subsequent arrangements for a visit as soon as possible.[39]

In relation to submitters' comments on clause 10, the department stated:

> The policy intent of clause 10 is to allow a detaining authority to assess circumstances at a place of detention at the time of a visit by the Subcommittee to ensure the safety and wellbeing of persons at the

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32 Submission 8, p 3.

33 See, for example, Australian Human Rights Commission (submission 10), Queensland Human Rights Commission (submission 12) and Commonwealth Ombudsman – NPM Network (submission 13).

34 Submission 11, p 8.

35 Submission 14, p 2.

36 Submission 22, p 3.

37 Submission 29, pp 3-4.

38 Public hearing transcript, Brisbane, 24 January 2023, p 11.

39 Submission 15, pp 5-6.

place of detention. It is intended that this ability to temporarily restrict access is provided in addition to the responsible Minister's ability to object to a visit under clause 9 of the Bill. Accordingly, DJAG considers clause 10 as drafted meets the policy intent.

DJAG notes that this provision is also consistent with a similar provision in Victoria (section 8 of the Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)).

The general intent of this clause is that any restriction, or temporary prohibited access would only occur in extraordinary circumstances that threaten the safety, security or well-being of people detained, staff and others, including Subcommittee delegates. In these cases, it is also the intention that steps would be taken to negotiate alternative arrangements – for example, postpone the Subcommittee's access to a more suitable time.[40]

DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:

- in a mental health setting - it may be appropriate to temporarily restrict access to an area while a patient is receiving treatment or if it would be unsafe to the patient, staff or Subcommittee to allow access
- in a forensic disability setting – it may be appropriate to temporarily restrict access while a person is receiving therapeutic intervention, which is private and confidential (and allowing access during those interventions would disturb and disrupt clients)
- in a youth justice setting – it may be appropriate to temporarily restrict access where it would present a significant impediment to the delivery of a service to a young person and the service could not be reasonably postponed. This may include a medical appointment with a visiting medical officer that must occur at a certain time
- in a police facility – it may be appropriate to temporarily restrict access during periods of prisoner movements (court escorts or prison transfers)

In a prison setting, clause 10 may be used, for example, during a live incident response or unforeseen emergency response within a corrective services facility, such as a riot or fire. This may involve the temporary closure of walkways, part of a facility, or a whole facility.

DJAG notes that clause 10(3) provides that a prohibition or restriction on access must only be for the shortest period reasonable in the circumstances, and that clause 10(4) requires a detaining authority to provide the responsible Minister with written reasons for the restriction.[41]

A number of submitters recommended amending clause 10(4) to allow the responsible Minister to override a decision by a detaining authority to restrict access to a facility.[42]

The department responded:

Clause 22 of the Bill provides that a detaining authority is subject to the direction of a responsible Minister. While the exercise of this power is a matter for the relevant Minister, a Minister could direct a detaining authority not to restrict Subcommittee access under clause 10 of the Bill.[43]

[40] DJAG, correspondence, 20 January, 2023, attachment, p 12.

[41] DJAG correspondence, 20 January 2023, attachment, pp 10-11.

[42] See for example, Australian Human Rights Commission (submission 10), knowmore (submission 11), QHRC (submission 12) and Legal Aid (submission 8).

[43] DJAG, correspondence, 20 January 2023, attachment, p 13 and p 16.

Committee comment

While we note the submitters' concerns regarding the powers to temporarily prohibit or restrict access by the subcommittee to place of detention, in particular those of Sisters Inside that people detained are at most risk during times when the system is under pressure, we are satisfied there is a genuine need to assess the situation in order to ensure the safety, security and well-being of people detained, staff and the subcommittee before facilitating a visit.

We concur with LAQ's comments that it is not possible to be too prescriptive given the unpredictable nature of events that can occur within and outside of a facility. We are satisfied that the Bill as drafted considers the safety, security and wellbeing of all persons at the place of detention in various emergency and/or unforeseen situations.

Given the broad nature of these powers and their potential to affect persons detained, staff, the subcommittee and the broader community in an adverse manner, the committee is pleased to note that care has been taken to include a number of safeguards to limit the use of the proposed power to temporarily prevent the visit including that:

- the prohibition or restriction of access must be for the shortest period reasonable in the circumstances
- the detaining authority must provide the responsible Minister with the written reasons for the prohibition or restriction including the date, time and duration of the prohibition or restriction
- the responsible Minister could direct a detaining authority not restrict access of the subcommittee to the facility or parts of the facility.

2.3 Access to information

2.3.1 Proposal under the Bill

The right to privacy, and the disclosure of private or confidential information, are relevant to the consideration of whether legislation has sufficient regard to individuals' rights and liberties.[44]

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.[45]

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.[46]

The subcommittee may retain, copy or take notes of any information (other than identifying information) it is given access to under clause 13. However, the subcommittee may retain, copy or include in notes taken identifying information about a detainee only if the detainee, or the detainee's legal guardian, consents.[47]

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44 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook), p 113.

45 Explanatory notes, p 4.

46 Explanatory notes, p 4.

47 Bill, cl 15.

2.3.2 Stakeholder comment and the department's response

The Office of the Information Commissioner (OIC) submitted that it is best practice that personal information only be disclosed with the consent of the person to whom the information relates, and recommends amending clause 13 to either:

- prevent the subcommittee from accessing an individual's identifying/confidential information in the absence of their consent; or
- include an information sharing principle similar to that in section 297C of the *Youth Justice Act 1992* (Qld).[48]

In relation to the OIC's comments in this regard, the department responded:

> DJAG considers the clause as drafted achieves the policy intent, which is to allow the Subcommittee to access (that is, view) identifying or confidential information for the purpose of assessing whether the information may be relevant to its visit and subsequent report. It is intended that, if the Subcommittee determines the information is relevant, the consent of the person is required under clause 15(2) of the Bill for the Subcommittee to retain, copy or take notes of the information.
>
> DJAG considers this process strikes a balance between protecting the privacy of individuals and allowing the Subcommittee to fulfil its mandate to have unrestricted access to information as provided for in Article 14 of OPCAT.[49]

A number of submitters, including knowmore and Commonwealth Ombudsman – NPM Network, recommended removing clause 13(6)(c) which allows excluded information to be prescribed by regulation, as it is unclear and inconsistent with OPCAT.[50]

The department responded to this recommendation as follows:

> The policy intent to allow other kinds of information to be prescribed by regulation as excluded information is to provide flexibility in the future as to information that may be considered so sensitive that it should be prescribed as excluded information.[51]

DJAG also noted that section 3 of the *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic) allows excluded information to be prescribed by regulation.[52]

The submission from the QNMU commented that the subcommittee should be able to scrutinise budgets for the provision of healthcare and ensure that those budgets are adequate to meet the health needs of people who are detained in these facilities.[53]

The department responded:

> The intent of clause 13 of the Bill is to allow the Subcommittee to have unrestricted access to 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. DJAG notes that for the purpose of Part 3 of the Bill, the definition of a detaining authority includes service providers, such as health service providers.[54]

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48 Submission 3, p 1.

49 DJAG, correspondence, 20 January 2023, attachment, p 5.

50 Submission 11 and submission 13.

51 DJAG, correspondence, 20 January 2023, attachment, p 13.

52 DJAG, correspondence, 20 January 2023, attachment, p 13.

53 Submission 20.

54 DJAG, correspondence, 20 January 2023, attachment, pp 34-35.

2.4 Access to identifying information

2.4.1 Proposal under the Bill

Clause 14 of the Bill relates to access to identifying information and 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.

2.4.2 Stakeholder comment and department response

A number of submitters recommended removing clause 14.[55] Specifically, the Australian Human Rights Commission (AHRC) raised concerns that requiring the subcommittee to visit a facility to request identifying information about a detainee frustrates OPCAT and allows reprisals against a detainee to go unaddressed.[56] Knowmore also recommended removing clause 14 from the Bill because it restricts the subcommittee's mandate.[57]

The department responded to these concerns as follows:

> DJAG considers clause 14 of Bill as drafted meets the policy intent, which is to protect the privacy of individuals, particularly in relation to access to sensitive information, while facilitating the Subcommittee's ability to fulfil its mandate in relation to access to information that may be relevant to its purpose.
>
> DJAG notes that the Subcommittee's ability to request information generally under clause 13 of the Bill is not linked to a visit by the Subcommittee to a place of detention. That is, the Subcommittee is able to request general information under clause 13 about any place of detention, regardless of whether it visits the facility.[58]

DJAG also noted that legislation passed in other jurisdictions, such as in Victoria, Tasmania, the Northern Territory and the Australian Capital Territory, links the subcommittee's ability to access to information to facilities that the subcommittee visits or requests to access.[59]

In its submission, the QNMU noted that maintaining confidentiality of personal health information is important and raised concerns about the subcommittee's ability to access confidential information that could be used to identify a person without the person's consent.[60]

The department responded:

> DJAG notes that the intent of clause 14 of the Bill is to require a detainee's consent for the Subcommittee to retain, copy or take notes of identifying and confidential information about the detainee. It is intended that the Subcommittee is able to view this information without consent to allow it to determine whether to request to retain the information with the consent of the relevant person under clause 14.
>
> As outlined in the Explanatory Notes, the Subcommittee Guidelines provide that members must maintain confidentiality during and after their period of membership; and Article 16(2) of OPCAT states that the Subcommittee must seek the express consent of a person if it intends to publish their personal data.[61]

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55 For example, see knowmore (submission 11), QAI (submission 15), PLS (submission 17) AHRC (submission 18) and Sisters Inside (submission 29).

56 Submission 10, p 6.

57 Submission 11, p 9.

58 DJAG, correspondence, 20 January 2023, attachment, p 11.

59 DJAG, correspondence, 20 January 2023, attachment, p 14.

60 Submission 20, p 3.

61 DJAG, correspondence, 20 January 2023, attachment, p 35.

Committee comment

We are satisfied that Part 3 has sufficient regard to the rights and liberties of individuals.

We have considered the safeguards proposed and are satisfied that the proposed power to access an individual's identifying/confidential information, although limiting their right to privacy, has sufficient regard to individuals' rights and liberties and is reasonable and demonstrably justifiable to ensure the subcommittee is able to evaluate the needs or measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

2.5 Interviews

2.5.1 Proposal under the Bill

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 do so.[62]

2.5.2 Stakeholder comment and department response

The Australian Workers Union of Employees recommended amending clause 16 of the Bill to require that employees are advised that:

- employees are aware of their rights not to consent to be interviewed
- employees are aware of their rights to withdraw consent at any time
- employees are warned prior to the commencement of any interview that their evidence may be used against them in any related civil or criminal proceedings, and
- employees are advised of the right to be represented during an interview by a union official or legal practitioner of their choice.[63]

The department responded as follows:

> DJAG considers the clause as drafted adequately provides that a person is not required to be interviewed by the Subcommittee. DJAG considers this is outlined in clause 16(2), which provides that the Subcommittee must not interview a person unless the person or their legal guardian consents, and clause 16(3), which provides that a person who consents to an interview may withdraw this consent at any time. As part of implementation (subject to passage of the Bill), relevant portfolio agencies could further consider whether the application of this provision should also be communicated to staff, detainees and other relevant persons.[64]

Knowmore recommended removing clause 16(1) as it restricts the subcommittee's mandate by requiring the subcommittee to visit a place of detention in order to interview a person at the place of detention.[65]

62 Explanatory notes, p 4.

63 Submission 4, pp 1-2.

64 DJAG, correspondence, 20 January 2023, attachment, pp 5-6.

65 Submission 11, pp 9-10.

In response, the department stated:

> The policy intent of clause 16(1) is to make it clear that the Subcommittee is able to interview any person, including a detainee or staff member, that is at a place of detention the Subcommittee visits. Clause 16 as a whole is intended to allow the Subcommittee to interview any person at a place of detention it visits, as well as any other person it believes may provide information relevant to its purpose. DJAG will give further consideration as to whether the policy intent is met.[66]

The QAI recommended removing clause 16 from the Bill noting that regardless of whether the detainee has impaired decision-making capacity, no interview should occur without the individual's express consent. Similarly, the QAI submitted assessments about decision-making capacity should not deny a detainee the opportunity and fundamental right to be interviewed by the subcommittee.[67]

The department responded:

> The policy intent of clause 16(2)(b) is to allow an authorised person (for example, a guardian appointed for personal matters under the *Guardianship and Administration Act* 2000 (Qld)), to engage with the Subcommittee to consent to an interview or agree to the release of identifying information, on behalf of the person who does not have capacity to consent, to ensure the person's rights and interests are protected.[68]

Sisters Inside also recommended removing clause 16 of the Bill, noting concerns in relation to a person's legal guardian being required to consent to an interview.[69]

In responding, the department stated:

> The policy intent of clause 16(2)(b) is to allow a person who does not have capacity to consent to an interview or the release of their identifying information to engage with the Subcommittee, with the consent of an authorised person (for example, a guardian appointed for personal matters under the Guardianship and Administration Act 2000 (Qld)). DJAG will give further consideration to the use of the term 'legal guardian' to ensure this policy intent is reflected.[70]

At the public hearing, the QHRC noted its concerns regarding clauses 15 and 16 of the Bill:

> These clauses are inconsistent with the presumption of capacity reflected in Queensland guardianship laws and may raise inappropriate questions about capacity and environments where people may have cognitive impairments or are children. This may impede OPCAT from doing its job and prevent interactions with some of the most vulnerable people in detention. OPCAT should be allowed to walk around a facility and talk to whoever wishes to speak to them and not have to jump through a capacity approval process.
>
> We are unsure how the Bill will work alongside a provision in section 132 of the *Corrective Services Act* which prohibits interviews and written or recorded statements from prisoners without the chief executive's written approval. We question how this authority will be provided and we think that section 132 requires some clarification.[71]

PLS also noted the operation of section 132 of the *Corrective Services Act 2006*, which outlines that a person cannot interview a prisoner without the consent of the Chief Executive. The PLS recommended amending clause 16 of the Bill to make it clear that the subcommittee does not require the consent of the Chief Executive.[72]

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66 DJAG, correspondence, 20 January 2023, attachment, p 14.

67 Submission 15, p 9.

68 DJAG, correspondence, 20 January 2023, attachment, p 26.

69 Submission 29, p 5.

70 DJAG, correspondence, 20 January 2023, attachment, pp 40-41.

71 Public hearing transcript, Brisbane, 24 January 2023, p 2.

72 Submission 17, p 5.

The department responded:

> QCS has advised that a consequential amendment to the *Corrective Services Act* 2006 (Qld) is not considered necessary. Clause 6 of the Bill provides that the 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 the Bill, has no effect to the extent of any inconsistency with the Bill. The Bill provides at clause 16 that the Subcommittee may interview a person at a place of detention during a visit to that place of detention. In addition, clauses 19 and 20 of the Bill provides that it is an offence for a person to cause, or attempt to conspire to cause, detriment to another person because the person has provided information to the committee. [73]

Committee comment

We note submitters' concerns regarding consent for interviews conducted by the subcommittee including capacity, awareness of the consent requirement and their right to withdraw their consent at any time during the interview. We also note responses from the department in relation to these matters that the Bill as drafted adequately provides that a person is not required to give consent and that a person can only be interviewed with their consent or consent of an authorised person (for example, a guardian appointed under the *Guardianship and Administration Act 2000* (Qld)).

We appreciate the general need for the subcommittee to gather information from and about persons deprived of their liberty; however, we note the importance of ensuring that provisions relating to interviews conducted by the subcommittee capture the requirement of the person's (or authorised person's) consent to be interviewed and that this consent can also be withdrawn at any time.

2.6 Reprisals and protections

2.6.1 Proposal under 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 for a person to take a reprisal. The maximum penalty for the offence is 100 penalty units ($14,375).[74] 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 is intended to fulfil a key principle of OPCAT and will facilitate full and frank disclosure to the subcommittee, particularly by persons who are detained and will protect persons who provide information or assistance to the subcommittee from detriment.[75]

Other offence provisions in the statute book for taking reprisal range from 100 penalty units[76] to 200 penalty units[77] and 167 penalty units (and 2 years imprisonment).[78] The proposed penalty of 100 penalty units falls within the range of penalties that currently exist in the statute book. 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.[79]

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73 DJAG, correspondence, 20 January 2023, attachment, pp 30-31.

74 The value of a penalty unit is currently $143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

75 Explanatory notes, p 5 and p 7.

76 See *Family Responsibilities Commission Act 2008*, s 129, *Residential Services (Accreditation) Act 2002*, s 174.

77 See *Hospital and Health Boards Act 2011,* s 121; *Health Ombudsman Act 2013,* s 262.

78 See *Guardianship and Administration Act 2000*, s 247B; *Ambulance Service Act 1991*, s 36Y; Transplantation and Anatomy Act 1979, s 49B; *Public Interest Disclosure Act 2010*, s 41.

79 Explanatory notes, p 5.

Whether legislation has sufficient regard to rights and liberties of individuals can depend on whether the legislation confers immunity from proceeding or prosecution without adequate justification.[80] The explanatory notes state the conferral of such immunity is justified because it is in the public interest and promotes the prevention of torture and other ill-treatment.[81]

Though the right to property could be argued to be implicated by clause 20, there is no reasonable argument that such a penalty would involve an arbitrary deprivation of property in breach of the right in s 24 of the HRA.

2.6.2 Stakeholder comment and department response

A number of submitters, for example Queensland Youth Policy Collective and ATSILS, recommended increasing the maximum penalty for the offence for taking reprisals in clause 20.[82] LAQ and the Commonwealth Ombudsman – NPM Network both specified in their written submissions that the penalty for reprisals should include imprisonment.[83]

The department responded that it considered the maximum penalty for the offence of taking reprisals to be appropriate as it is consistent with the maximum penalties for similar offences in section 41 of *the Inspector of Detention Services Act 2022* (Qld) and section 47 of *the Ombudsman Act 2001* (Qld).[84]

The Commonwealth Ombudsman – NPM Network also recommended amending the reprisal offence to recognise other methods of retaliation.[85]

The department responded that it considered the grounds for taking reprisal appropriate as they are consistent with the grounds for similar offences in section 41 of *the Inspector of Detention Services Act 2022* (Qld) and section 47 of *the Ombudsman Act 2001* (Qld).[86]

The submission from Sisters Inside also recommended reconsidering the definition of 'detriment' in clause 19 of the Bill to better reflect experiences of women in detention.[87] At the public hearing, Sisters Inside elaborated on these concerns regarding the definition of 'detriment' in clause 19:

> In regards to reprisals, reprisals from staff and the institution are a dangerous reality in places of detention. We often hear stories of abuses of power by detention staff, including increased surveillance, room searches, harassment by detention staff, threats to cancel visits with family, as well as threats for imprisoned mothers of removal of their children. The term 'detriment' is defined in the Bill to include prejudice to the person's safety and prejudice to the person's career, including, for example, dismissal from the person's employment. The stories we have just outlined to the committee do not fit the narrow definition of 'detriment' under the act and, as such, does not encompass the true extent of the reprisals faced by women in detention. We encourage the committee to reconsider the definition of 'detriment'. We would like to highlight the definition of 'reprisal' under the Tasmanian OPCAT Implementation Bill. For example, under section 36 of that act, a person must not— (b) intimidate or harass, or threaten to intimidate or harass; or (c) do any act that is, or is likely to be, to the detriment —of the person. Another comparison would be the consultation draft Bill on monitoring places of detention in the Northern Territory, and that lists 'detrimental actions' under section 51(4). Some of these detention actions listed

80 *Legislative Standards Act 1992* (LSA), s 4(3)(h).

81 Explanatory notes, p 7.

82 Submissions 22 and 25.

83 Submissions 8 and 13.

84 DJAG, correspondence, 20 January 2023, attachment, p 38.

85 Submission 13, p 5.

86 DJAG, correspondence, 20 January 2023, attachment, p 38.

87 Submission 29, p 6.

include injury, loss, damage, change of the conditions of detention, discrimination, intimidation and harassment, to name a few.[88]

In its response to Sisters Inside's written submission, the department stated:

DJAG notes the examples of 'detriment' to a person in clause 19(6) of the Bill are not exhaustive; and the policy intent is that it could include other forms of reprisal noted in the submission, particularly relevant to people in detention (including women), such as increased surveillance, room searches and threats to cancel visits with family. DJAG will further consider whether the provision gives effect to the policy intent.[89]

Committee comment

We note the proposed penalty of 100 penalty units falls within the range of penalties that currently exist in the statute book and as such are satisfied that clause 20 has sufficient regard to the rights and liberties of individuals. We are also satisfied that the maximum penalty for the offence of taking reprisals is appropriate and that the immunity is sufficiently justified.

We recognise the importance of ensuring all forms of reprisals are captured by the definition of 'detriment' and note the department's response in relation to Sisters Inside's concerns regarding the definition of 'detriment' in that the definition is not exhaustive and could include other forms of reprisal. We also note the department will consider further whether the provision gives effect to the policy intent.

88 Public hearing transcript, Brisbane, 24 January 2023, p 12.

89 DJAG, correspondence, 20 January 2023, attachment, p 41.

Appendix A – Submitters

Sub #	Submitter
001	Aged and Disability Advocacy Australia
002	Townsville Community Law
003	Office of the Information Commissioner
004	The Australian Workers' Union of Employees, Queensland
005	Anthony Shaw
006	Robert Heron
007	The Public Advocate
008	Legal Aid Queensland
009	Queensland Mental Health Commission
010	Australian Human Rights Commission
011	knowmore
012	Queensland Human Rights Commission
013	Commonwealth Ombudsman
014	Queensland Law Society
015	Queensland Advocacy for Inclusion
016	Queensland Indigenous Family Violence Legal Service
017	Prisoners' Legal Service
018	Australian Lawyers for Human Rights
019	Shane Cuthbert
020	Queensland Nurses and Midwives' Union
021	Youth Advocacy Centre
022	Aboriginal and Torres Strait Islander Legal Service
023	Queensland Family and Child Commission
024	Women's Legal Service Queensland
025	Queensland Youth Policy Collective
026	Confidential
027	Office of the Health Ombudsman
028	TASC National Limited
029	Sisters Inside Inc

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Ms Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services (SPLS), DJAG
- Ms Sakitha Bandaranaike, Director, SPLS, DJAG
- Ms Nicala Haigh, Acting Principal Policy Officer, SPLS, DJAG

Appendix C – Witnesses at public hearing

Queensland Human Rights Commission

- Neroli Holmes, Deputy Commissioner
- Heather Corkhill, Senior Policy Officer

Queensland Law Society

- Rebecca Fogerty, Vice President of the Queensland Law Society
- Dan Rogers, Member of the QLS Human Rights and Public Law Committee
- Matilda Alexander, Member of the QLS Human Rights and Public Law Committee

Sisters Inside Inc

- Katie McHenry, Policy Officer
- Tina Lucas Smith

knowmore

- Warren Strange, Chief Executive Officer
- Lauren Hancock, Manager Law Reform and Advocacy
- Sean Bowes, Law Reform and Advocacy Officer