



Australian Capital Territory

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018

A2018-3

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Australian Capital Territory

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018

A2018-3

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:

J2017-226

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018*.

2 Commencement

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

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

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

- (2) However, the Minister must not fix a day for the commencement of the Act that is earlier than 30 days after the day the Commonwealth deposits its instrument of ratification of the Optional Protocol with the Secretary of the United Nations.
- (3) The [Legislation Act](#), section 79 (Automatic commencement of 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.

6 Meaning of *detaining authority*

(1) In this Act:

detaining authority, for a place of detention—

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

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

7 Meaning of *place of detention*

In this Act:

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

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

8 Relationship to other laws

A provision of another territory law (other than an ACT privacy law) that prevents or limits the exercise of any 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 Visits by subcommittee

9 Object—pt 2

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

10 Ministerial arrangements

- (1) The Minister may enter into arrangements (*Ministerial arrangements*) with the Commonwealth Attorney-General to facilitate the subcommittee's exercise of its functions in accordance with the Optional Protocol within the ACT under this Act.
- (2) Without limiting subsection (1), a Ministerial arrangement may be made in relation to the following:
 - (a) the care, direction, control and management of detainees or other people within places of detention;
 - (b) the safety and security of places of detention;
 - (c) access to, and disclosure of, information;
 - (d) publication of information;
 - (e) the privacy of individuals or their rights to the confidentiality of personal information about them;
 - (f) the special needs of children and other vulnerable people;
 - (g) urgent and compelling risks to public health caused by outbreaks of infectious diseases.
- (3) A Ministerial arrangement must be consistent with, and reasonably appropriate and adapted for implementing, the Optional Protocol.

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

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

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

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

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) The responsible Minister and detaining authority for the place of detention must ensure that the subcommittee and any accompanying expert or assistant are given access to, and are able to exercise their functions in accordance with the Optional Protocol in, the place of detention.
- (3) In this section:

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

12 Subcommittee's access to places of detention

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) The responsible Minister and detaining authority for the place of detention must ensure that the subcommittee and any accompanying expert or assistant are given unrestricted access to every part of the place.

- (3) However, if the detaining authority considers that 1 or more grounds mentioned in the Optional Protocol, article 14 (2) may temporarily prevent the carrying out of a visit by the subcommittee, the authority may prohibit or restrict access to the place of detention so that the Commonwealth Attorney-General may, under a Ministerial arrangement, be requested, and decide whether or not, to object to the visit.
- (4) Also, the authority may prohibit or restrict access to the place of detention if—
- (a) an objection to the subcommittee’s visit has been made by the Commonwealth Attorney-General, under the Ministerial arrangements, on 1 or more of the grounds mentioned in the Optional Protocol, article 14 (2); and
 - (b) the objection has not been withdrawn or otherwise resolved by the Commonwealth Attorney-General under the Ministerial arrangements.

Note Under the Optional Protocol, art 14 (2) an objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited.

- (5) In this section:
assistant—see section 11 (3).

13 Access to information

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

- (6) In this section:

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

14 Subcommittee may interview detainees and other people

- (1) This section applies if the subcommittee requests access to a place of detention.
- (2) The responsible Minister and detaining authority for the place of detention must ensure that the subcommittee and any accompanying expert are given reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee or other person at the place who the subcommittee chooses to interview.
- (3) The responsible Minister for a place of detention must give the subcommittee reasonable assistance to interview, without witnesses, either personally or through an interpreter, any person who the subcommittee believes may be able to give it relevant information about the following matters:
 - (a) the place;
 - (b) the treatment of detainees at the place;
 - (c) the conditions of detention.
- (4) A support person nominated by an interviewee may be present during the interview at the interviewee's request and with the agreement of the subcommittee.
- (5) Nothing in this section requires a person who objects or does not consent to being interviewed by the subcommittee to participate in an interview.

15 Protection against actions etc

- (1) A person is not subject to any civil or criminal liability for giving any information or making any disclosure to the subcommittee in the course of, and for the purposes of, the subcommittee performing its mandate under the Optional Protocol, article 11 and no action, claim or demand may be taken or made of or against the person for giving the information or making the disclosure.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on the giving or disclosure of information (whether or not imposed by or under an Act) applicable to the person.
- (3) However, this section does not apply in relation to the giving of information or making of a disclosure to which an ACT privacy law applies.

16 Protection against reprisals

- (1) A person commits an offence if—
 - (a) the person intentionally takes detrimental action against someone else; and
 - (b) the detrimental action is taken wholly or partially because—
 - (i) the other person has given or disclosed information to the subcommittee; or
 - (ii) the person believes the other person has given or disclosed information to the subcommittee.

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

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

Part 3 Miscellaneous

17 Directions of responsible Minister

- (1) The responsible Minister for a place of detention may give directions to a detaining authority for the place of detention for this Act.
- (2) The detaining authority must comply with any directions given by the responsible Minister under subsection (1).
- (3) A direction is a notifiable instrument.

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

18 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative 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.

expert means an expert selected in accordance with the Optional Protocol, article 13 (3).

Ministerial arrangements—see section 10.

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.

Note The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, is accessible at www.ohchr.org.

place of detention—see section 7.

responsible Minister for a place of detention, means the Minister administering an Act, or part of an Act, conferring functions on, or regulating the exercise of functions by, a detaining authority for the place.

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.

Endnotes

1 Presentation speech

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

2 Notification

Notified under the [Legislation Act](#) on 28 February 2018.

3 Republications of amended laws

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

I certify that the above is a true copy of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018, which originated in the Legislative Assembly as the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2017 and was passed by the Assembly on 15 February 2018.

Clerk of the Legislative Assembly

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