

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

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence and Leader of the House

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence and Leader of the House, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (ACiDs) of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 (the Bill).

In my opinion, the ACiDs for the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

Amendments to the Bill are required following further consideration of issues raised in stakeholder submissions to the Legal Affairs and Safety Committee, namely that:

- clause 16 of the Bill may limit the timing and location of an interview of a person by the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee);
- references in the Bill to consent being provided by a 'legal guardian' in clauses 15(2)(b) and 16(2)(b) of the Bill need clarification and may be inconsistent with the presumption of capacity reflected in Queensland's guardianship laws; and
- the examples of reprisal in clause 19 of the Bill should include other forms of reprisal more relevant to detention settings (including women in detention settings).

The ACiDs will:

- remove the limitations in clause 16 of the Bill on when and where the Subcommittee conducts an interview (essentially to remove the requirement to visit a place of detention to be able to interview a person);
- remove clauses 15(2)(b) and 16(2)(b) of the Bill which provide for a ‘legal guardian’ to consent on a detainee’s behalf to avoid inadvertently limiting the ability of a person to provide consent; and
- expand the examples of ‘detriment’ to include other forms of reprisal that may be more relevant to a person in detention.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 *Human Rights Act 2019*)

In my opinion, the human rights under the HR Act that are relevant to the ACiDs are the right to privacy and reputation (section 25). As identified in the statement of compatibility for the Bill, clause 15 includes the safeguard of consent of the person or their legal guardian for the Subcommittee to retain, copy or include in any notes identifying information about a person and this mitigates the limitation on the right to privacy. The ACiD removing consent by a ‘legal guardian’ in clause 15(2)(b) does not dilute this safeguard as consent is still required if the Subcommittee wants to retain, copy or take notes of a detainee’s identifying information.

Conclusion

In my opinion, the ACiDs for the Bill are compatible with human rights under the HR Act because they do not limit a human right.

YVETTE D’ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence
and Leader of the House