

Legal Affairs and Safety Committee

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

Department of Justice and Attorney-General response to submissions

The following submissions were received in relation to the Legal Affairs and Safety Committee's inquiry into the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 (the Bill):

1. Aged and Disability Advocacy Australia
2. Townsville Community Law
3. Office of the Information Commissioner
4. The Australian Workers' Union of Employees, Queensland
5. Anthony Shaw
6. Robert Heron
7. The Public Advocate
8. Legal Aid Queensland
9. Queensland Mental Health Commission
10. Australian Human Rights Commission
11. knowmore
12. Queensland Human Rights Commission
13. Commonwealth Ombudsman
14. Queensland Law Society
15. Queensland Advocacy for Inclusion
16. Queensland Indigenous Family Violence Legal Service
17. Prisoners' Legal Service
18. Australian Lawyers for Human Rights
19. Shane Cuthbert
20. Queensland Nurses and Midwives' Union
21. Youth Advocacy Centre

22. Aboriginal and Torres Strait Islander Legal Service

23. Queensland Family and Child Commission

24. Women's Legal Service Queensland

25. Queensland Youth Policy Collective

26. CONFIDENTIAL

27. Office of the Health Ombudsman

28. TASC National Limited

29. Sisters Inside Inc

The Department of Justice and Attorney-General's (DJAG) response is in relation to key issues raised in submissions in relation to the Bill.

Several submissions commented on the implementation of the Optional Protocol to the Convention Against Torture (OPCAT) in relation to the nomination of a national preventive mechanism (NPM) for Queensland. DJAG notes that the nomination of an NPM for Queensland is subject to continuing discussions with the Commonwealth Government regarding responsibility for ongoing and sufficient funding for an NPM. The departmental response does not address issues in relation to OPCAT implementation generally.

The current position of the Queensland Government is that it supports the principles of OPCAT, including visits by the United Nations Subcommittee on Prevention of Torture (Subcommittee), however, NPM nomination for Queensland is subject to continuing discussions with the Commonwealth, as ongoing and sufficient funding is important to ensure NPM functions are performed effectively. The Queensland Government will continue this dialogue with the Commonwealth.

No.	Submitter	Clause	Issue	Response
1	Aged and Disability Advocacy Australia	4	<p><u>Scope of Bill</u></p> <p>The submission recommends that the definition of 'place of detention' in clause 4 of the Bill is amended to expressly include residential aged care facilities and secure dementia units.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>

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				within scope of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic).
2	Townsville Community Law	4	<p><u>Scope of Bill</u></p> <p>The submission recommends that the definition of 'place of detention' in clause 4 of the Bill is amended to expressly include residential aged care facilities or residential aged care facilities are prescribed as a place of detention by regulation.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic).</p>
		General	<p><u>Human rights implications</u></p> <p>The submission recommends that a further Statement of Compatibility is prepared in accordance with Part 3 of the <i>Human Rights Act 2019</i> (HR Act) if the Queensland Government does not consider residential</p>	<p>DJAG considers the Bill does not limit human rights of individuals in places outside of the scope of the Bill, including residential aged care facilities, as the Bill is not intended to prevent the Subcommittee from visiting these places on a consent basis and in accordance with any relevant legislation.</p>

No.	Submitter	Clause	Issue	Response
			aged care facilities to be places of detention.	
3	Office of the Information Commissioner	12	<p><u>Definition of confidential information</u></p> <p>The submission recommends replacing 'generally, information about a person's affairs' in the definition of 'confidential information' with the definition of 'personal information' prescribed in section 11 of the <i>Information Privacy Act 2009</i> (IP Act).</p>	Clause 12 of the Bill defines 'confidential information' to include generally information about a person's affairs; and also lists information that is considered confidential or personal information under particular legislation.
		13	<p><u>Access to personal information</u></p> <p>The submission notes 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:</p> <ul style="list-style-type: none"> • 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 <i>Youth Justice Act 1992</i> (YJ Act). 	<p>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.</p> <p>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.</p>
		15	<p><u>Clarifying amendment in relation to confidential information</u></p> <p>The submission recommends amending clause 15(1) to include a reference to 'confidential information'.</p>	DJAG notes the policy intent of clause 15 of the Bill is to require consent of a person for the Subcommittee to retain, copy or take notes of identifying information <u>and</u> confidential information
		15	<p><u>Consent of non-detainees to access identifying or confidential information</u></p>	The policy intent is that the Subcommittee is able to retain, copy or take notes of identifying information about a detainee only. DJAG considers the clause as drafted fulfils this policy intent; noting also that this approach is consistent with the approach in Victoria (section 14 of the

No.	Submitter	Clause	Issue	Response
			The submission notes clause 15(2) of the Bill does not include a provision to allow a non-detainee to consent to the Subcommittee retaining identifying or confidential information about them. The submission notes that clause 15(1) of the Bill operates to prevent the Subcommittee from retaining identifying information about a person other than a detainee.	<i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic).</i>
		N/A	<p><u>Confidentiality obligations for Subcommittee</u></p> <p>The submission states there may be merit in including a provision in the Bill obliging Subcommittee members to keep confidential any identifying or confidential information accessed under clause 13 of the Bill.</p>	<p>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.</p> <p>Noting the Subcommittee is an international body guided by its own protocols and procedures, DJAG considers the confidentiality obligations and the protections in the Bill are adequate to protect the privacy of individuals.</p>
		N/A	<p><u>Misuse of information</u></p> <p>The submission notes that there is no redress or complaint mechanism in the event that a person's identifying or confidential information is accessed, retained or otherwise misused contrary to the restrictions imposed by the Bill.</p>	DJAG notes the submission.
4	Australian Workers Union of Employees	16	<p><u>Protections for employees</u></p> <p>The submission recommends amending clause 16 of the Bill to require that employees are advised that:</p> <ul style="list-style-type: none"> • employees are aware of their rights not to consent to be interviewed; 	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

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			<ul style="list-style-type: none"> 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. 	could further consider whether the application of this provision should also be communicated to staff, detainees and other relevant persons.
5	Anthony Shaw	General	The submission supports visits by the Subcommittee.	DJAG notes the submission.
6	Robert Heron	16(2)(b)	<p><u>Allow person under guardianship to consent to an interview</u></p> <p>The submission recommends amending clause 16(2)(b) of the Bill to allow a person under guardianship to consent to an interview with the Subcommittee.</p>	The policy intent of clause 16(2)(b) is to allow an authorised person, on behalf of a person who does not have capacity (such as a guardian for personal matters appointed under the <i>Guardianship and Administration Act 2000</i> (Qld)), to engage with the Subcommittee to consent to an interview or agree to the release of their identifying information.
7	Queensland Public Advocate	4	<p><u>Scope of Bill</u></p> <p>The submission recommends the definition of 'place of detention' in clause 4 of the 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.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>

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				<p>While expanding the scope of the Bill is a policy decision for the Queensland Government, DJAG notes that residential aged care facilities (and secure dementia units) are regulated and funded by the Commonwealth Government; and in relation to disability group homes and accommodation settings, DJAG understands the Commonwealth Government has responsibility for registration of the majority of these settings through its role in delivering the National Disability Insurance Scheme. 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.</p> <p>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 that aged care facilities are not within scope of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic).</p>
		15(2)(b); 16(2)(b)	<p><u>Role of legal guardian</u></p> <p>The submission recommends replacing the definition of 'legal guardian' to clarify the term includes guardians under the <i>Guardianship and Administration Act 2000</i> or attorneys for personal matters under the <i>Powers of Attorney Act 1998</i>.</p>	<p>The policy intent is to allow an authorised person 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. For example, for an adult with impaired decision-making capacity this may be a guardian for personal matters appointed under the <i>Guardianship and Administration Act 2000</i> (Qld).</p> <p>DJAG will give further consideration to this recommendation.</p>
8	Legal Aid Queensland	9; 10	<p><u>Review of decisions made under clauses 9 and 10</u></p> <p>The submission notes that clauses 9 and 10 may operate to restrict the Subcommittee's access to places of detention and note Legal Aid Queensland's expectation that decisions made pursuant to clauses 9 and 10 are subject to the <i>Judicial Review Act 1991</i>.</p>	<p>The <i>Judicial Review Act 1991</i> (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>

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		4	<p><u>Scope of Bill</u></p> <p>The submission notes that the definition of place of detention excludes the Wacol Contingency Accommodation and facilities where people are detained against their will.</p>	<p>The submission is noted. The Bill reflects the Queensland Government's policy position regarding scope. As outlined in the Explanatory Notes, it is intended that the Bill does not prevent the Subcommittee from visiting a place of detention outside of the scope of the Bill. This would be by consent and in accordance with any relevant legislation.</p> <p>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.</p> <p>DJAG notes the Bill applies to a prisoner on an interim detention order or a continuing detention order under the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> (Qld), or a person who is ordered by a court to be detained under a civil order.</p>
		20	<p><u>Offence provision for reprisals</u></p> <p>The submission recommends that maximum penalty for taking reprisals should contain an imprisonment component.</p>	<p>DJAG considers the maximum penalty for the offence of taking reprisals is appropriate as it is consistent with the maximum penalties for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld).</p>
9	Queensland Mental Health Commission		<p>The submission welcomes legislation which removes legislative barriers which restrict access to inpatient units of authorised mental health services and the Forensic Disability Service.</p>	<p>DJAG notes the submission.</p>
10	Australian Human Rights Commission	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p>

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				<p>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.</p>
		10	<p><u>Temporary restriction power – grounds</u></p> <p>The submission recommends 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.</p>	<p>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 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.</p> <p>DJAG notes that this provision is also consistent with a similar provision in Victoria (section 8 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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.</p> <p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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)

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				<ul style="list-style-type: none"> - 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) <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction power – responsible Minister</u></p> <p>The submission recommends amending clause 10(4) to allow the responsible Minister to override a decision by a detaining authority to restrict access to a facility.</p>	<p>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.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14 of the Bill as requiring the Subcommittee to visit a facility to request identifying information about a detainee frustrates OPCAT and may allow reprisals against a detainee to go unaddressed.</p>	<p>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.</p> <p>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</p>

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				<p>to request general information under clause 13 about any place of detention, regardless of whether it visits the facility.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i> mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act 2021 (Tas)</i>, section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</i>, and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i> outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p>
11	knowmore	10	<p><u>Temporary restriction power – grounds</u></p> <p>The submission recommends 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.</p>	<p>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 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.</p> <p>DJAG notes that this provision is also consistent with a similar provision in Victoria (section 8 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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.</p>

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		10	<p><u>Temporary restriction power – responsible Minister</u></p> <p>The submission recommends amending clause 10 to explicitly state the responsible Minister can override a detaining authority's decision to temporarily prohibit or restrict the Subcommittee's access to a place of detention.</p>	<p>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.</p>
		13	<p><u>Access to information – regulation-making power</u></p> <p>The submission recommends removing clause 13(6)(c) which allows excluded information to be prescribed by regulation, as it is unclear and inconsistent with OPCAT.</p>	<p>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.</p> <p>DJAG notes section 3 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i> allows excluded information to be prescribed by regulation.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14 from the Bill as it restricts the Subcommittee's mandate.</p>	<p>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.</p> <p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention Act by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i> mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act 2021 (Tas)</i>, section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</i>, and</p>

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				section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i> outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.
		16	<p><u>Interviews</u></p> <p>The submission recommends 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.</p>	<p>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.</p> <p>DJAG will give further consideration as to whether the policy intent is met.</p>
		16	<p><u>Interviews</u></p> <p>The submission states that Explanatory Notes provide an unsatisfactory explanation of what constitutes a private interview in relation to clause 18 of the Bill. The Explanatory Notes state that an interview is conducted privately if it is conducted out of earshot of other people who are in the same room or area.</p>	<p>The example provided in the Explanatory Notes is intended to provide guidance as to when an interview may be considered private and was informed by the Subcommittee's recent visit to Australia. DJAG understands interviews may be conducted in open areas when a private room or space may not be practically available or safe for the Subcommittee to use for an interview. DJAG considers the information in the Explanatory Notes provides context to clause 18 of the Bill.</p>
		21	<p><u>Protection against actions, claims and demands</u></p> <p>The submission recommends amending clause 21 of the Bill to align it with protections from reprisals in clause 19 of the Bill or alternatively to provide that protections apply to any person who gives information to the Subcommittee in good faith.</p>	<p>Clause 21 of the Bill is in addition to protections against reprisals in clause 19 and 20 of the Bill. The intent of clause 21 of the Bill is to protect against any action, claim or demand a person who has acted honestly and reasonably in providing information or making a disclosure to the Subcommittee to assist it in fulfilling its mandate and making recommendations aimed at improving conditions and treatment of persons in detention. Clause 21(2) provides that a person is not subject to any civil or criminal liability for giving the information or making the disclosure. DJAG considers clause 21 as drafted fulfils this policy intent.</p>
12	Queensland Human Rights Commission	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of</p>	<p>The recommendation is noted. The Bill reflects the Queensland Government's policy position regarding scope. The Bill is intended to</p>

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			detention with the definition used in OPCAT.	<p>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..</p> <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction power – grounds</u></p> <p>The submission recommends amending clause 10(2)(a) to link it to the grounds in Article 14(2) of OPCAT and removing clause 10(2)(b) as it undermines the purpose of the Bill.</p>	<p>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 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 <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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.</p> <p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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

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				<ul style="list-style-type: none"> - 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) <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction power – responsible Minister</u></p> <p>The submission recommends amending clause 10 to explicitly state the responsible Minister can override a detaining authority's decision to temporarily prohibit or restrict the Subcommittee's access to a place of detention.</p>	<p>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.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission seeks further justification as to why the Subcommittee must visit a</p>	<p>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.</p>

No.	Submitter	Clause	Issue	Response
			place of detention to access identifying information about a person.	<p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic) mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act 2021</i> (Tas), section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT) outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p>
13	Commonwealth Ombudsman – NPM Network	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction power – grounds</u></p>	<p>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 place</p>

No.	Submitter	Clause	Issue	Response
			<p>The submission recommends amending clause 10(2)(a) to link it to the grounds in Article 14(2) of OPCAT and removing clause 10(2)(b) as it undermines the purpose of the Bill.</p>	<p>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 <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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.</p> <p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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) <p>In a prison setting, clause 10 may be used, for example, during a live incident response or unforeseen emergency response within a corrective</p>

No.	Submitter	Clause	Issue	Response
			<p>The submission notes that in clause 10 there is no requirement for a detaining authority's belief that access should be restricted to be reasonable or objective.</p>	<p>services facility, such as a riot or fire. This may involve the temporary closure of walkways, part of a facility, or a whole facility.</p> <p>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.</p> <p>DJAG considers it is not necessary to include a specific requirement in clause 10 for the detaining authority belief, that access should be restricted, to be reasonable or objective. There is an implication of reasonableness as a statutory discretionary power is subject to the presumption of the law that the legislature intends the power to be exercised reasonably.</p>
		11	<p><u>Procedures for visits</u></p> <p>The submission recommends removing clause 11 from the Bill to ensure the Subcommittee's privileges and immunities are not undermined. Clause 11(1) outlines that a visit to a place of detention by the Subcommittee must be conducted in accordance with procedures that apply to a person visiting the place of detention. Clause 11(2) provides that a detaining authority may allow the Subcommittee to access a facility without complying with a requirement.</p>	<p>The policy intent of clause 11 is that as a general rule the Subcommittee must comply with visiting protocols of the place of detention, for example, adhering to search and identification processes. However it is intended that these requirements could be waived to facilitate the Subcommittee visit, if required.</p> <p>DJAG notes clause 11(2) of the Bill provides that a detaining authority may provide the Subcommittee and accompanying persons with access to a place of detention without complying with requirements about visiting the place. Examples are provided in the Bill – to include waiving a requirement about a visitor to the place holding approval for the access, being searched, or providing identification or identifying information (for example, a requirement for a visitor to provide particular biometric information).</p>
		13	<p><u>Access to information – regulation-making power</u></p> <p>The submission recommends clause 13, which provides that the Subcommittee may</p>	<p>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.</p>

No.	Submitter	Clause	Issue	Response
			access information in relation to its purpose, is amended to remove clause 13(6)(c), which provides the ability to prescribe excluded information by regulation.	DJAG notes section 3 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic) allows excluded information to be prescribed by regulation.
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14, which requires the Subcommittee to visit a place of detention to access identifying information about a person, from the Bill to improve consistency with OPCAT.</p>	<p>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.</p> <p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic) mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act 2021</i> (Tas), section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT) outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p>
		15	<p><u>Consent in relation to identifying information</u></p> <p>The submission recommends clause 15(2) is amended to allow the Subcommittee to retain, copy or take notes of identifying information but to require the</p>	DJAG considers the clause as drafted meets the policy intent, which is to protect the privacy of detainees and to provide the person with discretion as to whether their identifying information is retained by the Subcommittee. DJAG notes that the Subcommittee is already required by Article 16(2) of OPCAT to obtain consent of a person if it intends to publish their personal data.

No.	Submitter	Clause	Issue	Response
			Subcommittee to obtain the express consent of a person before publishing identifying information.	
		16	<u>Interviews</u> The submission recommends amending clause 16, which provides that the Subcommittee may conduct interviews, to emphasise that a person is not compelled to speak to the Subcommittee.	DJAG considers clause 16 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.
		20	<u>Reprisals – penalty</u> The submission recommends strengthening the penalty for reprisals to include imprisonment.	DJAG considers the maximum penalty for the offence of taking reprisals is appropriate as it is consistent with the maximum penalties for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld).
			<u>Reprisals – grounds</u> The submission recommends amending the reprisal offence to recognise other methods of retaliation.	DJAG considers the grounds for taking reprisal are appropriate as they are consistent with the grounds for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld). DJAG notes the examples in clause 19(6) of the Bill are not exhaustive.
14	Queensland Law Society	2 and 10	<u>Main purposes and temporary restriction</u> The submission recommends amending clauses 2(c) and 10 of the Bill to align with the grounds for objection in Article 14(2) of OPCAT. Clause 2(c) states that a main purpose of the Bill is to provide necessary safeguards to enable detaining authorities to preserve privacy, security, good order, welfare and safety in places of detention during visits by the Subcommittee and clause 10 of the Bill allows a detaining	The policy intent of clause 2 is to facilitate the Subcommittee to fulfil its mandate while ensuring detaining authorities are able to exercise their obligations in relation to the relevant places of detention, particularly regarding maintaining the safety and security of persons in the facility. DJAG considers clause 2 of the Bill as drafted fulfils this policy intent. DJAG notes that clause 2(c) of the Bill is consistent with section 1(c) of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic). 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 place of detention. It is intended that this ability to temporarily restrict access is

No.	Submitter	Clause	Issue	Response
			authority to temporarily restrict access to a place of detention.	<p>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.</p> <p>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.</p> <p>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.</p>
		4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with that used in OPCAT, which would include 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.</p>	<p>The recommendation is noted. 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. The scope of the Bill includes the forensic disability service under the <i>Forensic Disability Act 2011</i> (Qld) and an inpatient until of an authorised mental health service under the <i>Mental Health Act 2016</i> (Qld).</p> <p>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.</p> <p>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.</p> <p>While expanding the scope of the Bill is a matter for the Queensland Government, DJAG understands that as responsibility for residential aged care facilities, disability group homes and immigration detention facilities is either shared with, or the sole responsibility of the Commonwealth</p>

No.	Submitter	Clause	Issue	Response
				Government, a nationally consistent approach could be beneficial for facilitating Subcommittee access to these facilities.
15	Queensland Advocacy for Inclusion	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>
		7 and 8	The submission recommends making it an offence for a responsible Minister or detaining authority to fail to comply with statutory obligations in clauses 7 and 8.	DJAG notes this is a policy matter for government.
		10	<p><u>Temporary restrictions</u></p> <p>The submission recommends removing clause 10 or alternatively amending clause 10 to:</p> <ul style="list-style-type: none"> • include a clear definition of essential operations; • require the responsible Minister to table a written record in Parliament within a certain timeframe; • require a detaining authority to make subsequent arrangements for a visit as soon as possible. 	<p>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 place of detention. DJAG notes that this provision is also consistent with a similar provision in Victoria (section 8 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>The general intent of clause 10 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.</p>

No.	Submitter	Clause	Issue	Response
				<p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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) <p>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.</p> <p>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.</p>
		11	<p><u>Procedures at a facility</u></p> <p>The submission recommends amending clause 11 to include a provision requiring Subcommittee members and accompanying persons to provide evidence of their identities and authorisation to conduct visits under OPCAT.</p>	<p>The policy intent of clause 11 is that as a general rule the Subcommittee and an accompany person must comply with visiting protocols of the place of detention, for example, adhering to search and identification processes.</p>

No.	Submitter	Clause	Issue	Response
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14 of the Bill, as it limits the Subcommittee's ability to access information.</p>	<p>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.</p> <p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i> mirrors clause 14 of the Bill and requires the Subcommittee to visit a place of detention to access identifying information about a person. Section 32(1) of the <i>OPCAT Implementation Act 2021 (Tas)</i>, section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</i>, and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i> outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p>
		15	<p><u>Consent to retain identifying information</u></p> <p>The submission recommends replacing clause 15 with a provision that requires the Subcommittee to treat all identifying information confidentially and to protect it from further disclosure, with a requirement to return or destroy the information within a specified period of time after the completion of its reporting function. Further, in the</p>	<p>DJAG considers the clause as drafted meets the policy intent, which is to protect the privacy of detainees and to provide the person with discretion as to whether their identifying information is retained by the Subcommittee. DJAG notes that the Subcommittee is already required by Article 16(2) of OPCAT to obtain consent of a person if it intends to publish their personal data.</p>

No.	Submitter	Clause	Issue	Response
			<p>event that the Subcommittee wishes to publish personal data, require the Subcommittee to obtain the express consent from the person concerned.</p>	
		16	<p><u>Interviews – guardian consent</u></p> <p>The submission recommends 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, assessments about decision-making capacity should not deny a detainee the opportunity and fundamental right to be interviewed by the Subcommittee.</p>	<p>The policy intent of clause 16(2)(b) is to allow an authorised person (for example, a guardian appointed for personal matters under the <i>Guardianship and Administration Act 2000</i> (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.</p>
16	Queensland Indigenous Family Violence Legal Service	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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..</p> <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction</u></p> <p>The submission seeks further clarity about the inclusion of clause 10 in the Bill. The submission notes that clause 10 does not require the detaining authority to advise the</p>	<p>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 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</p>

No.	Submitter	Clause	Issue	Response
			Subcommittee about a temporary restriction.	<p>under clause 9 of the Bill. DJAG notes that clause 10 is also consistent with a similar provision in Victoria (section 8 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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.</p> <p>DJAG is advised by relevant agencies that examples of the application of clause 10 may include:</p> <ul style="list-style-type: none"> - 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 - it may be used 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.

No.	Submitter	Clause	Issue	Response
				<p>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.</p> <p>It is intended that a detaining authority will advise the Subcommittee by appropriate means if access to all or part of a facility is to be temporarily restricted under clause 10. For example, if the Subcommittee is in the facility and the detaining authority determines access to particularly part of the facility should be temporarily restricted on a ground under clause 10, DJAG considers the detaining authority would advise the Subcommittee verbally of the restriction.</p>
17	Prisoners Legal Service	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p> <p>The submission notes the definition as drafted excludes residential aged care facilities and housing precincts which accommodate people subject to supervision orders under the <i>Dangerous Prisoners Sexual Offenders Act 2003</i>.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p> <p>The Bill applies to a prisoner on an interim detention order or a continuing detention order under the <i>Dangerous Prisoners (Sexual Offenders) Act 2003</i> (Qld) (DPSOA), or a person who is ordered by a court to be detained under a civil order.</p> <p>QCS has advised that an offender subject to a supervision order under the DPSOA is required to comply with mandatory conditions. This includes that the offender is released from custody into the community under the supervision of a corrective services officer, must report to and receive visits from the officer as directed by the court, and comply with a curfew or monitoring direction. A supervision order may also contain any</p>

No.	Submitter	Clause	Issue	Response
				<p>other requirement the court thinks appropriate to ensure adequate protection of the community or for the offender's rehabilitation, care or treatment.</p> <p>Contingency accommodation can accommodate offenders subject to a supervision order in the community under the DPSOA who are unable to be housed more generally in the community, for reasons of their own safety and wellbeing and to ensure adequate protection of the community.</p> <p>There is no legislative or policy requirement for offenders to transition through the contingency accommodation if suitable accommodation is available in the community.</p> <p>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.</p> <p>DJAG notes that the Commonwealth Government has not introduced legislation to facilitate access by the Subcommittee to residential aged care facilities. In addition, aged care facilities are not within scope of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14 of the Bill and amending clause 13 to provide that the Subcommittee does not have the right to access personal information about a detainee unless the detainee consents to the access being provided.</p>	<p>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.</p> <p>Clause 14 of the Bill is consistent with section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>. Section 32(1) of the <i>OPCAT Implementation Act 2021 (Tas)</i>, section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</i>, and section 13(1) of the <i>Monitoring of Places of Detention</i></p>

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				<p><i>(Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i> outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p> <p>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. The policy intent, in relation to identifying or confidential information is to allow the Subcommittee to access (that is, view) this information for the purposes 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 or their legal guardian is required under clause 15(2) of the Bill for the Subcommittee to retain, copy or take notes of the information.</p>
		17	<p><u>Interviews – support person</u></p> <p>The submission states that the ability for a detainee to request a support person for an interview is insufficient and places the onus on a person who may have limited capacity to seek support.</p>	<p>DJAG considers clause 17 of the Bill as drafted is appropriate to provide the detainee with discretion as to whether they wish to have a support person present during an interview.</p> <p>DJAG notes that legislation passed in other jurisdictions includes the same provision to allow a person to request a support person is present during an interview. Particularly, this provision is included in section 10 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>, section 33(3) <i>OPCAT Implementation Act 2021 (Tas)</i>, section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)</i>, and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)</i></p>
		16	<p><u>Interviews – operation of section 132 of the Corrective Services Act 2006</u></p> <p>The submission notes the operation of section 132 of the <i>Corrective Services Act 2006</i>, which outlines that a person cannot</p>	<p>QCS has advised that a consequential amendment to the <i>Corrective Services Act 2006 (Qld)</i> is not considered necessary.</p> <p>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</p>

No.	Submitter	Clause	Issue	Response
			interview a prisoner without the consent of the Chief Executive. The submission recommends amending clause 16 of the Bill to make it clear that the Subcommittee does not require the consent	<p>relation to a detainee or place of detention under the Bill, has no effect to the extent of any inconsistency with the Bill.</p> <p>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.</p> <p>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.</p>
18	Australian Lawyers for Human Rights	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>
		10	<p><u>Temporary restriction</u></p> <p>The submission recommends aligning the grounds for temporary restriction by a detaining authority in clause 10 of the Bill with grounds for objection to a visit under Article 14(2) of OPCAT and clause 9 of the Bill.</p>	<p>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 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 <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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</p>

No.	Submitter	Clause	Issue	Response
				<p>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.</p> <p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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) <p>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.</p> <p>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.</p>
		General	<p><u>Prolonged state of emergency</u></p> <p>The submission recommends the Bill is amended to include contingencies to</p>	<p>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.</p>

No.	Submitter	Clause	Issue	Response
			ensure compliance with the Convention Against Torture during prolonged periods of a state of emergency that may impact the Subcommittee's ability to safely access a place of detention.	DJAG notes that legislation passed in all other jurisdictions does not include contingencies to ensure compliance with the Convention Against Torture during prolonged periods of a state of emergency (see section 7(1) of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic), section 31(2) <i>OPCAT Implementation Act 2021</i> (Tas), section 11(2) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 12(3) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT)).
		9 and 10	<p><u>Restriction to access</u></p> <p>The submission recommends the Bill is amended to include provisions in clauses 9 and 10 which require the responsible Minister or detaining authority to arrange access to a facility by the Subcommittee as soon as reasonably practicable after a period of objection or temporary restriction.</p>	<p>DJAG considers it will depend on the circumstances as to whether the Subcommittee is able to, or chooses to, continue its visit to the place of detention.</p> <p>DJAG notes that the intention of clause 9 of the Bill is that any objection to a visit is made on urgent and compelling grounds only for specified period of time. Similarly, clause 10 of the Bill provides that a detaining authority may only restrict access for the shortest period of time reasonable in the circumstances.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends clause 14 of the Bill is removed.</p>	<p>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.</p> <p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic) mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act</i></p>

No.	Submitter	Clause	Issue	Response
				2021 (Tas), section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT) outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.
		16	<p><u>Consent of guardian for interviews</u></p> <p>The submission recommends removing clause 16(2)(b) from the Bill on the basis that a person who may have limited capacity should have autonomy to consent to speak to the Subcommittee.</p>	<p>The policy intent of clause 16(2)(b) is to allow an authorised person (for example, a guardian appointed for personal matters under the <i>Guardianship and Administration Act 2000</i> (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.</p> <p>DJAG considers the clause as drafted fulfils this policy intent.</p>
19	Shane Cuthbert	General	The submission notes personal experiences of the submitter.	<p>DJAG acknowledges the submission and experiences of Mr Cuthbert.</p> <p>QCS advises that the matters raised in this submission have been referred to the QCS Professional Standards and Governance Command. QCS expects the highest ethical and professional standards of conduct by all their employees. When serious allegations are raised against QCS employees, those matters are fully assessed and investigated when necessary.</p>
20	Queensland Nurses and Midwives Union	4	<p><u>Scope of Bill</u></p> <p>The submission supports 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 facility.</p>	DJAG notes support for the scope of the Bill.
		13	<p><u>Access to information</u></p> <p>The submission considers the Subcommittee should be able to scrutinise budgets for the provision of healthcare and</p>	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

No.	Submitter	Clause	Issue	Response
			ensure that those budgets are adequate to meet the health needs of people who are detained in these facilities.	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.
		14	<p><u>Access to identifying information</u></p> <p>The submission notes that maintaining confidentiality of personal health information is important and takes issue with the Subcommittee's ability to access confidential information that could be used to identify a person without the person's consent.</p>	<p>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.</p> <p>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.</p>
21	Youth Advocacy Centre	General	The submission supports the submissions tendered by the Australian Human Rights Commission.	DJAG notes this submission and the departmental response provided to the submission by the Australian Human Rights Commission.
22	Aboriginal and Torres Strait Islander Legal Service	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p> <p>The submission notes places of detention that fall outside of the scope of the Bill as drafted.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>
		9	<p><u>Objection to visit</u></p> <p>The submission recommends defining grounds in clause 9(2) of the Bill to provide</p>	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.

No.	Submitter	Clause	Issue	Response
			<p>some certainty in their application and notes there is no legislative process for the Subcommittee to dispute an objection made under clause 9 of the Bill.</p>	<p>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 (see section 7(1) of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic), section 31(2) <i>OPCAT Implementation Act 2021</i> (Tas), section 11(2) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 12(3) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT)).</p> <p>Accordingly, DJAG does not consider it is appropriate to further define the grounds for objection as provided for in Article 14(2) of OPCAT.</p> <p>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.</p> <p>DJAG notes that legislation passed in other jurisdictions does not include a mechanism for the Subcommittee to dispute an objection to a visit.</p>
		10	<p><u>Temporary restriction</u></p> <p>The submission recommends removing clause 10 from the Bill as the grounds are too broad and are not contained in OPCAT. The submission notes that if it is necessary to allow a detaining authority to restrict access, the grounds should mirror Article 14(2) of OPCAT.</p>	<p>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 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 <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic)).</p> <p>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,</p>

No.	Submitter	Clause	Issue	Response
				<p>for example, postpone the Subcommittee's access to a more suitable time.</p> <p>DJAG is advised by relevant agencies that examples of essential operations referred to in clause 10(2)(b) of the Bill may include:</p> <ul style="list-style-type: none"> - 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) <p>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.</p> <p>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.</p>
		19 and 20	<p><u>Reprisals – penalty</u></p> <p>The submission notes the maximum penalty for the offence for taking reprisals in clause 20 of the Bill is not sufficient.</p>	<p>DJAG considers the maximum penalty for the offence of taking reprisals is appropriate as it is consistent with the maximum penalties for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld).</p>

No.	Submitter	Clause	Issue	Response
		22(1)	<p><u>Directions</u></p> <p>The submission notes that clause 22 of the Bill does not include a penalty or consequence of non-compliance with the requirement for a detaining authority to comply with directions from the responsible Minister.</p>	DJAG considers clause 22 of the Bill as drafted is appropriate as it places a statutory obligation on a detaining authority to comply with the directions of a responsible Minister.
23	Queensland Family and Child Commission	4	<p><u>Scope of the Bill</u></p> <p>The submission welcomes clarification in clause 4 of the Bill of places within the scope of Subcommittee visits.</p>	DJAG notes the submission.
24	Women's Legal Service Queensland	General	The submission supports the submissions tendered by the Australian Human Rights Commission.	DJAG notes this submission and the departmental response provided to the submission by the Australian Human Rights Commission.
25	Queensland Youth Policy Collective	19 and 20	<p><u>Reprisals – penalty</u></p> <p>The submission recommends increasing the maximum penalty for the offence for taking reprisals in clause 20 of the Bill.</p>	DJAG considers the maximum penalty for the offence of taking reprisals is appropriate as it is consistent with the maximum penalties for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld).
26	Confidential	N/A	N/A	N/A
27	Office of the Health Ombudsman	General	The submission notes the Office of the Health Ombudsman is keen to ensure the Subcommittee will be empowered to raise concerns and disclose information to this regulator should they make observations or receive information which poses a risk to the health and safety of persons in detention.	DJAG notes that the Bill does not prevent the Subcommittee, as an independent international body, from contacting entities in relation to issues that may arise before, during or after a visit.
28	TASC Legal and Social Justice Services	General	The submission notes the purpose of the Subcommittee.	DJAG notes the submission.

No.	Submitter	Clause	Issue	Response
29	Sisters Inside	4	<p><u>Scope of Bill</u></p> <p>The submission recommends amending clause 4 to replace the definition of place of detention with the definition used in OPCAT.</p>	<p>The recommendation is noted. 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.</p> <p>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.</p> <p>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.</p>
		9	<p><u>Objection to visit</u></p> <p>The submission recommends 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.</p>	<p>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.</p>
		10	<p><u>Temporary restriction</u></p> <p>The submission recommends removing clause 10 of the Bill.</p>	<p>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 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. DJAG notes that this provision is also consistent with a similar provision in Victoria (section 8 of the <i>Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 (Vic)</i>).</p> <p>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,</p>

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				<p>for example, postpone the Subcommittee's access to a more suitable time.</p> <p>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.</p>
		14	<p><u>Access to identifying information</u></p> <p>The submission recommends removing clause 14 of the Bill as it limits the ability of the Subcommittee to effectively monitor places of detention.</p>	<p>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.</p> <p>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.</p> <p>DJAG notes that legislation passed in some other jurisdictions links the Subcommittee's ability to access to information to facilities that the Subcommittee visits or requests to access.</p> <p>Section 13 of the <i>Monitoring of Places of Detention Act by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022</i> (Vic) mirrors clause 14 of the Bill. Section 32(1) of the <i>OPCAT Implementation Act 2021</i> (Tas), section 12(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (NT), and section 13(1) of the <i>Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018</i> (ACT) outline that the relevant Ministers and detaining authorities must provide the Subcommittee with access to information about a place of detention if the Subcommittee requests access to the place of detention.</p>
		16	<p><u>Interviews – consent</u></p> <p>The submission recommends removing clause 16 of the Bill, noting concerns in</p>	<p>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</p>

No.	Submitter	Clause	Issue	Response
			relation to a person's legal guardian being required to consent to an interview.	authorised person (for example, a guardian appointed for personal matters under the <i>Guardianship and Administration Act 2000</i> (Qld)). DJAG will give further consideration to the use of the term 'legal guardian' to ensure this policy intent is reflected.
		18	<u>Interviews</u> The submission recommends that interviews must be held in a private room that is not recorded and cannot be overheard.	DJAG notes that clause 18 of the Bill provides that interviews must be held privately. DJAG notes the example provided in the Explanatory Notes is intended to provide guidance as to when an interview may be considered private and was informed by the Subcommittee's recent visit to Australia. DJAG understands interviews may be conducted in open areas when a private room or space may not be practically available or safe for the Subcommittee to use for an interview. DJAG considers the information in the Explanatory Notes provides context to clause 18 of the Bill.
		19	<u>Reprisals – grounds</u> The submission recommends reconsidering the definition of 'detriment' in clause 19 of the Bill to better reflect experiences of women in detention.	Clause 19 and the grounds for taking reprisal are consistent with the grounds for similar offences in section 41 of the <i>Inspector of Detention Services Act 2022</i> (Qld) and section 47 of the <i>Ombudsman Act 2001</i> (Qld). 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.