

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

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Submission to

Legal Affairs and Safety Committee

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

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Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the *Legal Affairs and Safety Committee* (the Committee) for the opportunity to provide input into the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*.

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing and midwifery workforce including registered nurses (RN), midwives, nurse practitioners (NP) enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 67,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from students and early career clinicians to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation, the QNMU is the peak professional body for nurses and midwives in Queensland.

Through our submissions and other initiatives, the QNMU expresses our commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to achieve health equity and ensure the voices of Aboriginal and Torres Strait Islander nurses and midwives are heard. The QNMU supports the Uluru Statement from the Heart and the call for a First Nations Voice enshrined in our Constitution. The QNMU acknowledges the lands on which we work and meet always was, and always will be, Aboriginal and Torres Strait Islander land.

The QNMU commends the Queensland government for introducing legislation that will enable Australia's international obligations to be met, following the ratification by the federal government of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; Australian Human Rights Commission, 2022). We support the purpose of the Bill which will enable the United Nations Subcommittee on Prevention of Torture (UNSPT) to conduct visits to places of detention in Queensland, which is a proactive measure to prevent torture and other ill-treatment of vulnerable people (Human Rights Law Centre, 2022). We will make some brief comments in relation to specific parts of the Bill.

Scope of Bill – Meaning of Place of Detention

The QNMU supports that an inpatient unit of an Authorised Mental Health Service (AMHS) under the *Mental Health Act 2016*, and the Forensic Disability Service (FDS) under the *Forensic Disability Act 2011* are included as places of detention which can be inspected. The QNMU has made previous submissions advocating for greater oversight and protection of people in detention, including for people who are placed in AMHS and FDS. This is particularly the case, given that we have knowledge that people who have been subject to a Forensic Disability Order have been detained in an AMHS, despite not having a mental health disorder, nor the AMHS having any capacity to provide treatment. We therefore endorse the removal of legislative barriers to enable greater scrutiny of practices in these facilities.

Further, the QNMU considers that the UNSPT should be able to scrutinise budgets for the provision of healthcare and ensure that those budgets are adequate to meet the health needs of people who are detained in these facilities. This is particularly important as the QNMU is aware of cases in these places of detention where the required health budget established through the Business Planning Framework (BPF) has not been met. Please note that the BPF is “an industrially mandated methodology designed to support business planning for the purpose of managing nursing and midwifery resources and workload management in public sector health facilities” (State of Queensland [Queensland Health], 2021, p. 1).

Access to Information

The QNMU acknowledges that the Bill includes safeguards to protect the confidential health information of people in detention, while enabling the UNSPT to fulfill its purpose under OPCAT. For example, while Clause 13 enables the UNSPT to have access to relevant information for the purpose of evaluating whether actions need to be taken to strengthen protections for people in detention against ill-treatment, Clause 15(2) requires that the UNSPT may only retain identifying confidential information if the detainee has provided consent, or if they are unable to consent, that their legal guardian has consented.

However, we express some qualms regarding access to confidential information that could be used to identify people in detention if the UNSPT has visited the relevant place of detention, without the need to obtain the detainee’s consent (Clause 13). Maintaining confidentiality of personal health information is important for building confidence between detainees and health practitioners, particularly regarding sensitive issues that the detainee does not want shared with custodial staff. Providing the UNSPT with access to identifying, including confidential information must be considered carefully to ensure that unintended outcomes, such as detainees being unwilling to seek healthcare, are not a consequence of this legislation.

References

- Australian Human Rights Commission. (2022, 24 October). *Human Rights Commission calls for urgent action to address fallout from suspension of UNSPT visit* <https://humanrights.gov.au/about/news/media-releases/human-rights-commission-calls-urgent-action-address-fallout-suspension-un>
- Human Rights Law Centre. (2022, 24 October). *Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland* <https://www.hrlc.org.au/news/2022/10/24/joint-statement-of-concern-regarding-suspension-of-un-subcommittee-on-torture-visit-to-australia-following-lack-of-co-operation-in-new-south-wales-and-queensland>
- State of Queensland (Queensland Health). (2021). *Business Planning Framework: The methodology for nursing and midwifery workload management*. https://www.health.qld.gov.au/data/assets/pdf_file/0022/1103773/bpf-2021.pdf