

## TASMANIA

---

# **MONITORING OF PLACES OF DETENTION (OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE) BILL 2013**

---

## **CONTENTS**

### **PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Definitions
4. Places of detention
5. Act binds Crown
6. Relationship to other laws

### **PART 2 – VISITS BY SUBCOMMITTEE**

7. Object of Part
8. Ministerial arrangements
9. Duties of detaining authority and responsible Minister for places of detention
10. Subcommittee's access to places of detention
11. Access to information
12. Subcommittee may interview detainees and other persons
13. Protection against actions, &c.
14. Protection against reprisals

**PART 3 – MISCELLANEOUS**

- 15. Directions of responsible Minister
- 16. Regulations
- 17. Administration of Act

**MONITORING OF PLACES OF DETENTION  
(OPTIONAL PROTOCOL TO THE CONVENTION  
AGAINST TORTURE) BILL 2013**

*(Brought in by the Minister for Justice, the Honourable Brian  
Neal Wightman)*

**A BILL FOR**

**An Act to enable the Optional Protocol to the Convention  
against Torture and other Cruel, Inhuman or Degrading  
Treatment or Punishment to be given effect within  
Tasmania**

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

**PART 1 – PRELIMINARY**

**1. Short title**

*This Act may be cited as the *Monitoring of  
Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*.*

**2. Commencement**

This Act commences on a day to be proclaimed.

**3. Definitions**

(1) In this Act –

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

***deprivation of liberty*** has the meaning that it  
has in the Optional Protocol;

Note: Under Article 4(2) of the Optional Protocol ***deprivation of liberty*** means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which the person is not permitted to leave at will by order of any judicial, administrative or other authority.

***detainee*** means a person in a place of  
detention who is deprived of his or her  
liberty;

***detaining authority*** for a place of detention  
means the person or entity for the time  
being in charge of the place of detention  
and includes any person or entity  
responsible for the day-to-day care,  
control, health and safety of detainees in  
that place of detention;

***entity*** includes an unincorporated body;

***expert*** means an expert selected in accordance  
with Article 13 of the Optional Protocol;

***function*** includes a power, authority or duty,  
and *exercise* a function includes perform  
a duty;

***Ministerial arrangement*** means an  
arrangement entered into under section 8;

***Optional Protocol*** means the Optional  
Protocol to the Convention Against  
Torture and Other Cruel, Inhuman or

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 1 – Preliminary

s. 4

---

Degrading Treatment or Punishment,  
adopted by the General Assembly of the  
United Nations on 18 December 2002, as  
amended and in force for Australia from  
time to time;

***place of detention*** – see section 4;

***responsible Minister*** for a place of detention  
means the Minister administering the  
Act, or portion of an Act, conferring  
functions on, or regulating the exercise of  
functions by, detaining authorities for  
that place of detention;

***Subcommittee*** means the Subcommittee on  
Prevention of Torture and Other Cruel,  
Inhuman or Degrading Treatment or  
Punishment of the Committee against  
Torture, established in accordance with  
Part II of the Optional Protocol.

- (2) For the purposes of this Act, an entity or person engaged by or on behalf of a detaining authority or the State to provide services under a contract as, or on behalf of, a detaining authority is taken to be a detaining authority.
- (3) A note in the text of this Act does not form part of this Act.

**4. Places of detention**

- (1) In this Act –

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 5

Part 1 – Preliminary

---

***place of detention*** means any place that the Subcommittee must be allowed to visit under Article 4 of the Optional Protocol that is subject to the jurisdiction and control of Tasmania.

- (2) Without limiting subsection (1), any of the following places that are subject to the jurisdiction and control of Tasmania and in which persons are involuntarily deprived of their liberty are ***places of detention*** for the purposes of this Act –
- (a) a correctional centre, prison, detention centre or other similar place (however described);
  - (b) a hospital or other similar place;
  - (c) a police station or court cell complex;
  - (d) a vehicle used or operated to convey detainees.

**5. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**6. Relationship to other laws**

A provision of any other Act or statutory instrument of this jurisdiction that prevents, or limits, the exercise of any function by the

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 1 – Preliminary

**s. 6**

---

Subcommittee with respect to a detainee or place of detention in accordance with this Act has no effect or operation to the extent of any inconsistency with this Act.

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 7

Part 2 – Visits by Subcommittee

---

**PART 2 – VISITS BY SUBCOMMITTEE**

**7. Object of Part**

The object of this Part is to enable the Subcommittee to fulfil the mandate set out in Article 11(a) of the Optional Protocol so far as it relates to places of detention.

**8. Ministerial arrangements**

- (1) The Minister administering this Act may enter into arrangements with the Attorney-General of the Commonwealth for the purpose of facilitating the exercise by the Subcommittee of its functions under and in accordance with the Optional Protocol within Tasmania under the provisions of this Act.
- (2) Without limiting subsection (1), such Ministerial arrangements may be made for or with respect to the following:
  - (a) the care, direction, control and management of detainees and other persons within places of detention;
  - (b) the safety and security of places of detention;
  - (c) access to, and disclosure of, information;
  - (d) publication of information;



*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 2 – Visits by Subcommittee

**s. 9**

- 
- (e) the privacy of individuals or their rights to the confidentiality of personal information about them;
  - (f) the special needs of juveniles and other vulnerable persons;
  - (g) urgent and compelling risks to public health caused by outbreaks of infectious diseases.
- (3) Ministerial arrangements made under this section must be consistent with, and reasonably appropriate and adapted for the purpose of implementing, the Optional Protocol.
  - (4) A detaining authority has, and may exercise, such functions as are necessary, under the relevant Ministerial arrangements, to give effect to the Optional Protocol.
  - (5) The Minister administering this Act may enter into arrangements with the Attorney-General of the Commonwealth for the exercise of functions under this Act with respect to places of detention and detainees under the control and jurisdiction of the Commonwealth.

**9. Duties of detaining authority and responsible Minister for places of detention**

The detaining authority and responsible Minister for a place of detention to which the Subcommittee requests access must ensure that the Subcommittee, any accompanying experts

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 10

Part 2 – Visits by Subcommittee

---

and any persons appointed under Ministerial arrangements to assist the Subcommittee are given access to, and are able to exercise their functions under and in accordance with the Optional Protocol in, the place of detention.

**10. Subcommittee's access to places of detention**

- (1) The responsible Minister and detaining authority for a place of detention to which the Subcommittee requests access must ensure that the Subcommittee, any experts accompanying the Subcommittee and any persons appointed under Ministerial arrangements to assist the Subcommittee are given unrestricted access to every part of that place, except as provided by subsections (2) and (3).
- (2) If the detaining authority for a place of detention considers that one or more grounds specified in Article 14(2) of the Optional Protocol may temporarily prevent the carrying out of a visit by the Subcommittee, the detaining authority may prohibit or restrict access to the place of detention so that the Attorney-General of the Commonwealth may, in accordance with Ministerial arrangements, be requested to object, and decide whether or not to object, to the visit.
- (3) A detaining authority may prohibit or restrict access to the place of detention –
  - (a) if an objection to the Subcommittee's visit has been made by the Attorney-General of the Commonwealth, in

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 2 – Visits by Subcommittee

**s. 11**

accordance with Ministerial  
arrangements, on one or more of the  
grounds specified in Article 14(2) of the  
Optional Protocol; and

- (b) the objection has not been withdrawn or  
otherwise resolved by the Attorney-  
General of the Commonwealth in  
accordance with Ministerial  
arrangements.

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

**11. Access to information**

- (1) The responsible Minister and detaining authority for a place of detention to which the Subcommittee requests access must ensure that the Subcommittee and any accompanying experts are provided with all relevant information that is requested by the Subcommittee for the purpose of evaluating the needs and measures that should be adopted to strengthen, if necessary, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.
- (2) A detaining authority for a place of detention must, at the request of the Subcommittee and in accordance with Ministerial arrangements, permit the Subcommittee to have unrestricted

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 11

Part 2 – Visits by Subcommittee

---

access to the following information in relation to the place of detention:

- (a) the number of detainees in the place of detention;
  - (b) the treatment of detainees at the place of detention;
  - (c) the conditions of detention applying to detainees in that place of detention.
- (3) Access to which the Subcommittee is entitled under this section includes the right to inspect any record that is under the control of the responsible Minister or a detaining authority, or whose production the responsible Minister or detaining authority may, in an official capacity, reasonably require.
- (4) A provision of any Act or other law that restricts or denies access to records does not prevent the responsible Minister or detaining authority from complying with this section.
- (5) However, this section does not entitle the Subcommittee to access any record held by any of the following persons (***protected professionals***):
  - (a) a registered health professional, within the meaning of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*, concerning a private health service provided to a person who is or was a detainee;

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 2 – Visits by Subcommittee

s. 12

- 
- (b) an Australian lawyer, within the meaning of the *Legal Profession Act 2007*, or other lawyer concerning legal advice given to a client who is or was a detainee;
  - (c) any other person who acted in a professional capacity with a person who is or was a detainee and who was under an express or implied obligation arising under law not to disclose any information or confidence arising out of that relationship.
- (6) A protected professional is not subject to any civil or criminal liability if the Subcommittee is given access under this section to any record of a kind referred to in subsection (5) by the responsible Minister or a detaining authority and no action, claim or demand may be taken or made of or against the protected professional with respect to disclosure of any information contained in the record.
- (7) In this section –

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

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 12

Part 2 – Visits by Subcommittee

---

**12. Subcommittee may interview detainees and other persons**

- (1) The responsible Minister and detaining authority for a place of detention to which the Subcommittee requests access must ensure that the Subcommittee and any accompanying experts are provided with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any detainee the Subcommittee chooses to interview and any other person at the place of detention who the Subcommittee chooses to interview.
- (2) It is the duty of the responsible Minister for a place of detention to provide the Subcommittee with all reasonable assistance to interview, without witnesses, either personally or through an interpreter, any person who the Subcommittee believes may be able to give it relevant information concerning the place of detention, the treatment of detainees at it or the conditions of their detention.
- (3) Nothing in subsection (1) prevents a support person chosen by a person the Subcommittee wishes to interview from being present during the interview at that person's request and with the agreement of the Subcommittee.
- (4) Nothing in this section requires a person who objects to, or who does not consent to, being interviewed by the Subcommittee to participate in an interview.

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 2 – Visits by Subcommittee

s. 13

---

**13. Protection against actions, &c.**

- (1) A person is not subject to any civil or criminal liability for giving any information or making any disclosure to the Subcommittee in the course of, and for the purposes of, the Subcommittee performing its mandate under Article 11 of the Optional Protocol and no action, claim or demand may be taken or made of or against the person for giving the information or making the disclosure.
- (2) This section has effect despite any duty of secrecy or confidentiality or any other restriction on the giving or disclosure of information (whether or not imposed by or under an Act) applicable to the person.

**14. Protection against reprisals**

- (1) A person who intentionally takes detrimental action against another person that is wholly or partially in reprisal for the other person giving or disclosing information to the Subcommittee is guilty of an offence.

Penalty: Fine not exceeding 85 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A detaining authority who intentionally takes detrimental action against another person that is wholly or partially in reprisal for the other person giving or disclosing information to the Subcommittee is taken to have engaged in

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 14

Part 2 – Visits by Subcommittee

---

conduct that constitutes misconduct in the performance of his or her duties as a detaining authority and that justifies the taking of disciplinary action against the detaining authority, including disciplinary action provided for –

- (a) by or under an Act that regulates the employment or service of the detaining authority; or
  - (b) by or under a contract of employment or contract for services that governs the employment or engagement of the detaining authority.
- (3) This section extends to a case where a person takes detrimental action against another person even if the other person did not in fact give or disclose information to the Subcommittee.
- (4) In this section –

***detrimental action*** means action causing, comprising or involving any of the following:

- (a) injury, damage or loss;
- (b) change of the conditions of detention;
- (c) intimidation or harassment;



*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

Part 2 – Visits by Subcommittee

**s. 14**

- 
- (d) discrimination, disadvantage or adverse treatment in relation to employment;
  - (e) dismissal from, or prejudice in, employment;
  - (f) disciplinary proceeding.

*Monitoring of Places of Detention (Optional Protocol to the  
Convention Against Torture) Act 2013*  
*Act No. of*

s. 15

Part 3 – Miscellaneous

---

**PART 3 – MISCELLANEOUS**

**15. Directions of responsible Minister**

- (1) The responsible Minister for a place of detention may, by notice in writing, issue directions to any detaining authority for the place of detention for the purposes of this Act.
- (2) The detaining authority must comply with any directions given by the responsible Minister under this section.

**16. Regulations**

The Governor may make regulations for the purposes of this Act.

**17. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.