

## **CLAUSE NOTES**

### **Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013**

- Clause 1:** Short title
- Clause 2:** Commencement
- Clause 3:** Definitions
- Clause 4:** Defines a place of detention as any place that the Subcommittee must be allowed to visit under the Option Protocol. Sets out that the certain places where a person is involuntarily deprived of his or her liberty including a prison, detention centre, hospital, police station, court cell complex and a vehicle used to convey detainees are places of detention for the purposes of the Act.
- Clause 5:** Clarifies that the Act binds the Crown.
- Clause 6:** Provides that the provisions of this Act override any inconsistent provisions in other statutes that prevent or limit the exercise of the function of the Subcommittee.
- Clause 7:** Sets out the object of Part 2.
- Clause 8:** Provides for Ministerial Arrangements to be made between the Minister responsible for the Act and the Commonwealth Attorney-General for the purpose of facilitating visits by the Subcommittee and sets out a list of matters in respect to which such Arrangements can be made.

Because the Commonwealth is the signatory to the Convention, the Subcommittee will deal directly with the Commonwealth. The Ministerial Arrangements set out protocols for communication between the Commonwealth and the State in relation to the activities of the Subcommittee.

**Clause 9:** Sets out the duties of the detaining authority and responsible Minister in respect to a request for access by the Subcommittee to a place of detention.

**Clause 10:** Sets out the requirement that the Subcommittee be given unrestricted access to every part of a place of detention to which it has requested access. However where the detaining authority considers that one or more grounds specified in Article 14(2) of the Optional Protocol may temporarily prevent the carrying out of a visit it may restrict or prohibit access so that the Commonwealth Attorney-General may be requested to object and decide whether or not to object to the visit. If an objection has been made to the Subcommittee's visit has been made by the Commonwealth Attorney-General on one or more grounds specified in Article 14(2) and has not been withdrawn or resolved the detaining authority may restrict or prohibit access.

The grounds specified in Article 14(2) are national defence, public safety, natural disaster or serious disorder in the place to be visited.

**Clause 11:** Provides that the relevant Minister and detaining authority must provide all relevant

information that is requested by the Subcommittee for the specified purpose and provide unrestricted access to information about the number of and treatment of detainees in the place of detention and the conditions of detention that apply. The section does not allow the Subcommittee access to any record held by a defined protected professional. The term “record” is also defined.

**Clause 12:** Provides that the Subcommittee may interview detainees and other persons without witnesses and are provided with all reasonable assistance to do so. The section provides that the detainee may have a support person present during an interview if the Subcommittee agrees. A person who objects to or does not consent to being interviewed by the Subcommittee does not have to participate in the interview.

**Clause 13:** Provides protection against civil or criminal liability for a person who provides information or makes a disclosure to the Subcommittee for the purpose of the Subcommittee performing its mandate under Article 11 notwithstanding any duty of secrecy or confidentiality otherwise applicable.

**Clause 14:** Provides for an offence if a person takes detrimental action against another wholly or partially in reprisal for that other person giving or disclosing information to the Subcommittee. Provides that a detaining authority which takes detrimental action against another for the same reason is taken to have engaged in

misconduct in the performance of his or her duties as a detaining authority that justifies the taking of disciplinary action.

Defines “detrimental action”.

**Clause 15:** Allows the responsible Minister to issue directions to any detaining authority for the purpose of the Act. The detaining authority must comply with such directions.

**Clause 16:** Provides for the Governor to make regulations for the purposes of the Act.

**Clause 17:** Provides for the Act to be administered by the Minister for Justice.