




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 1 December 2022

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

Introduction

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.31 am): I present a bill for an act to provide for the monitoring of places of detention under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and to amend this act, the Corrective Services Act 2006 and the Youth Justice Act 1992 for related purposes. I table the bill, the explanatory notes and a statement of compatibility with human rights. I nominate the Legal Affairs and Safety Committee to consider the bill.

Tabled paper: Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 [2032](#).

Tabled paper: Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022, explanatory notes [2033](#).

Tabled paper: Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022, statement of compatibility with human rights [2034](#).

The Palaszczuk government is committed to protecting the human rights of all Queenslanders, including those in detention. In 2019, Queensland's Human Rights Act commenced ensuring public entities had specific obligations to act and to make decisions compatible with human rights. This historic legislation saw the enhancement of protections for Queenslanders in their dealings with public entities and protects specific rights including protection from torture and cruel, inhuman or degrading treatment and humane treatment when deprived of liberty.

Earlier this year, the Palaszczuk government further upheld the rights of those in detention by establishing an Inspector of Detention Services to promote the improvement of detention services and places of detention and prevent harm to detainees. Today I am proud to introduce this bill to the House. It will bring greater transparency and public confidence by establishing a standalone legislative framework to facilitate a consistent approach to UN subcommittee visits to places of detention in Queensland. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, known as OPCAT, is an important international treaty that aims to prevent the torture and other ill-treatment of persons in places where people are deprived of liberty.

In 2017, the Commonwealth government ratified OPCAT. Australia's obligation of monitoring places of detention is separated into two components. First, it requires periodic visits by the United Nations subcommittee on Prevention of Torture to places of detention under Australia's jurisdictional control for the purpose of making recommendations to prevent torture and other ill-treatment of persons who are detained. The second component is to nominate a domestic body or bodies to act as a national preventive mechanism to regularly inspect and monitor the treatment of persons in places of detention across the country.

The bill delivers on the Premier's announcement in the House on 26 October to introduce legislation by the end of this year. It will remove the current legislative barriers which were encountered by the UN subcommittee during their recent visit to Australia. Members would be aware that the UN subcommittee made its inaugural visit to Australia in October this year. I would like to reiterate that Queensland agencies cooperated with the subcommittee in the lead-up to the visit. Access was provided to all facilities in Queensland as far as was permitted under the existing legislation, policies and procedures. The introduction of this bill will address those legislative barriers around access, such as the issues faced in accessing authorised mental health services and the Forensic Disability Service. Importantly, the bill represents another commitment made by this government to uphold human rights in Queensland and recognises that the observance of human rights is the most effective and safe way to manage custodial environments.

The focus of the bill is to: facilitate UN subcommittee visits to places of detention in Queensland for the purpose of its mandate under OPCAT; provide for access to information relevant to the UN subcommittee's purpose; and provide necessary safeguards to enable detaining authorities to preserve the privacy, security, good order and welfare and safety in places of detention during visits by the subcommittee.

The bill defines places of detention that fall within its scope. This will provide certainty to the UN subcommittee and government agencies as to the process to be followed for UN subcommittee visits to these facilities. Places of detention that are defined in the bill are: prisons; community correction centres and work camps; youth detention centres; inpatient units with an authorised mental health service; the Forensic Disability Service; court cells, police watch houses, police holding cells, or other places in a police station where a person is detained; any vehicle primarily used or operated for the purpose of transporting a detainee; and any other place other than a private residence prescribed by regulation where a person is a detainee.

The bill does not prevent the UN subcommittee from visiting places not within the bill's scope. The bill requires the minister with the responsibility for the place of detention and the detaining authority to provide the UN subcommittee with unrestricted access to the place of detention, except in limited circumstances. As provided under OPCAT, the bill provides that a responsible minister may object to a visit by the UN subcommittee on the grounds of national defence, public safety, natural disaster and serious disorder in a place of detention.

The bill also provides safeguards to allow for the maintenance of security, good order and management of the facility and to protect the health and safety of the detainees and other people in the facility, or to conduct essential operations. Under the bill, a responsible minister and a detaining authority must ensure the UN subcommittee has unrestricted access to all the information in their possession or control that is relevant to the UN subcommittee's purpose. Access to information could include, for example, the number of places of detention and their location, the number of detainees in a place of detention and information about their treatment and conditions of detention. Information could also include personal or health information.

The provisions contained in the bill balance allowing the UN subcommittee access to information to perform their functions under OPCAT with the necessary safeguards to protect the privacy of individuals. To safeguard privacy, in addition to the UN subcommittee's own guidelines, consent of the detainee is required if the UN subcommittee seeks to retain, copy or take notes of the identifying information. In order to protect particularly sensitive documents, the bill provides the UN subcommittee is not able to access excluded information, defined in the bill to mean cabinet information, information subject to legal professional privilege or other information that is prescribed by regulation.

The bill allows the UN subcommittee to interview detainees and other people that the UN subcommittee considers can provide relevant information. Consent is first required and a person may nominate a support person to be present during an interview and the bill provides that interviews must be held in private, away from others. To facilitate full and frank disclosure to the UN subcommittee, the bill provides protection to a person from reprisals. It makes it an offence for a person to take a reprisal action against another person for providing information or assistance to the subcommittee. It protects a person from civil or criminal liability in particular circumstances.

Subject to the passage of the bill, it is proposed that the bill will commence on assent. While outside the bill's scope, I note the Commonwealth government's ratification of OPCAT also requires nominating domestic bodies to conduct independent inspections of places of detention. NPMs complement the existing oversight mechanisms that are already in place in Queensland to prevent mistreatment or protect the human rights of detainees. 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. We will continue this dialogue with the Commonwealth.

The introduction of the bill today represents an important step in Queensland's commitment to work in good faith towards implementing OPCAT here in Queensland. Together with the Inspector of Detention Services Act 2022 passed earlier this year, the bill demonstrates our ongoing commitment to human rights and ensures that fair and equitable treatment of individuals in places of detention is upheld. The Queensland government will continue to work with the Commonwealth government and other states and territories regarding OPCAT implementation in Australia. I commend the bill to the House.

First Reading

Hon. SM FENTIMAN (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (11.39 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to Legal Affairs and Safety Committee

Madam DEPUTY SPEAKER (Ms Bush): In accordance with standing order 131, the bill is now referred to the Legal Affairs and Safety Committee.