




Speech By
Dr Christian Rowan

MEMBER FOR MOGGILL

Record of Proceedings, 11 May 2023

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

 **Dr ROWAN** (Moggill—LNP) (11.33 am): I rise to contribute to the debate on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. On 1 December 2022, the Queensland Attorney-General and Minister for Justice introduced this legislation into the Queensland parliament. It was subsequently referred to the Legal Affairs and Safety Committee for its examination and consideration.

As outlined in the explanatory notes, the purpose of this legislation is to formally facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland. This subcommittee has the ability to conduct visits to Australia under the Optional Protocol to the Convention Against Torture, otherwise known as OPCAT. The purpose of OPCAT is to prevent torture and cruel, inhuman or degrading treatment or punishment, and this is achieved by the establishment of a two-part system of regular visits to places where persons are deprived of their liberty. Accordingly, OPCAT requires ratifying state parties to, firstly, accept periodic visits by the United Nations subcommittee to places of detention and, secondly, establish a domestic national preventive mechanism to conduct regular visits to places of detention. At this point I wish to acknowledge that it was the former federal Liberal National Party government which ratified the Optional Protocol to the Convention Against Torture in 2017.

So that the United Nations subcommittee can fulfil its mandate, it is accepted that the subcommittee, on ratification of the Optional Protocol to the Convention Against Torture, will be provided with the following: unrestricted access to all places of detention and their installations and facilities, subject to particular grounds for objecting to a visit; unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention and the number and location of places of detention; unrestricted access to all information referring to the treatment of those persons and conditions of detention; the ability to privately interview persons deprived of their liberty and any other person the subcommittee believes may supply relevant information; and the liberty to choose the places it will visit and the persons the subcommittee may wish to interview.

I note that the legislation will provide for a consistent framework enabling the subcommittee access to places of detention in Queensland and information to assist the subcommittee to fulfil its mandate under OPCAT. Importantly, I note that this legislation will also remove legislative barriers that restrict physical access to inpatient units of authorised mental health services under the Mental Health Act 2016 and forensic services under the Forensic Disability Act 2011. This is a significant inclusion and one which I will expand upon shortly.

As articulated by the Liberal National Party's shadow Attorney and shadow minister for justice at the start of this debate, the Liberal National Party opposition will not be opposing this legislation; however, there are a number of issues which have been raised that warrant further attention and consideration by the state Labor government.

I note that through the Legal Affairs and Safety Committee's inquiry, while stakeholders were broadly supportive of the policy objectives of the legislation, various concerns were raised. A number of stakeholders raised concerns in relation to the provision allowing the responsible minister to object to the United Nations subcommittee's visit on an urgent and compelling basis. The legislation states that this objection can be made on the grounds of national defence, public safety, natural disaster and any serious disorder in the place of detention. Stakeholders have argued that this provides an overly broad and vague basis for restricting the United Nations subcommittee's access, with some advocating for the provision to be narrowed to specify the circumstances under which the responsible minister can object. I note that the Queensland Human Rights Commission and the Australian Human Rights Commission have both suggested that the provision be amended to specify the reasons for which a visit can be prohibited and/or restricted.

Another issue raised by stakeholders was the bill's access-to-information provisions, with some arguing this could be used to gather personal information without the consent of the person concerned. The Office of the Information Commissioner submitted that personal information should only be disclosed with the consent of the person concerned, along with the Australian Human Rights Commission, which raised concerns that the provision could limit the effectiveness of the subcommittee's visit.

Stakeholders raised concerns about the penalties for reprisals against those who provide or may provide information to the subcommittee. While some submissions argued that the maximum penalty of 100 penalty points was too low, others argued that it should include imprisonment. I note that the Commonwealth Ombudsman in its submission drew to the Legal Affairs and Safety Committee's attention other state and territory jurisdictions where such penalties also include imprisonment.

I wish to acknowledge the many submissions received which explicitly referred to clause 4 of the legislation and specifically in relation to the definition of 'place of detention' in the legislation. Clause 4 provides for the places of detention to which this legislation applies, and these include community corrections centres, prisons, work camps, youth detention centres, inpatient units of an authorised mental health service, the Forensic Disability Service, court cells or watch houses, holding cells and other places in a police station where a person is detained, and any other place where a person is detained, other than a private residence, prescribed by regulation as a place of detention. The genuine issues that have been raised in relation to this definition certainly warrant additional consideration and stakeholder engagement by the Palaszczuk state Labor government. Notwithstanding that this has been a serious matter of contention, given the Labor government's delay in implementing the legislation, it is important that the bill is passed as soon as possible so that it may commence.

Before I conclude my contribution I want to note the support provided by the Queensland Nurses and Midwives' Union for the inclusion of inpatient units of authorised mental health services and the Forensic Disability Service in the scope of the legislation and to remove legislative barriers that prevent physical access to these facilities. This is an incredibly important inclusion, particularly given the troubling and problematic history of the Forensic Disability Service under the responsibility and management of the current state Labor government.

As the former Liberal National Party shadow minister for disability services, I have previously spoken about the Queensland Ombudsman's report into the detention of people at the Forensic Disability Service which was a then indictment of the Palaszczuk state Labor government. The Ombudsman's 2019 report found the patients of the Forensic Disability Service had been held in solitary confinement, often for years on end, with one patient at the time, known as 'Adrian', kept in seclusion for 99 per cent of the time with the repeated use of police dogs to control his behaviour. Not surprisingly, the Ombudsman found that the management of 'Adrian' was contrary to law, unreasonable, oppressive and improperly discriminatory.

Under questioning by the Liberal National Party during that year's budget estimates committee hearings, further evidence of the mismanagement, chaos and dysfunction of the Forensic Disability Service under the government was uncovered, including a high number of referrals for corrupt conduct and misconduct by some staff. Offenders must receive appropriate punishment for the offence of which they are found guilty. The penalties they receive, however, must also be met with a commitment to be treated humanely. This is particularly important where a person's liberty is removed or limited. Sadly, there have been a number of high-profile examples of the unacceptable treatment of persons in detention and in Forensic Service facilities under the current Queensland government. It is therefore most appropriate that the Forensic Disability Service is included in the definition as a place of detention.

In concluding my contribution, it is important that Queensland and Australia uphold and enhance our reputation as a society where human rights are protected, and this legislation will certainly improve accountability and transparency. I conclude by acknowledging all of our corrections officers staff. They

do some very important work in Queensland. They certainly deserve our support and respect because it can be very difficult and challenging at times for them. I join with other members in this House in acknowledging their important contributions.