Speech By

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MEMBER FOR CALOUNDRA

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

Mr HUNT (Caloundra—ALP) (5.07 pm): I rise to contribute to the debate on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. Isn't it lovely to hear the LNP, two speakers in, already attacking our frontline service delivery staff! They are absolutely on point. I will be ensuring that—

Government members interjected.

Mr HUNT: Do not worry, I will be taking your interjections and the *Hansard* to all of the custodial officers and youth detention workers in Queensland so that they can hear your magnificent contributions as you slur them again and again.

Mr DEPUTY SPEAKER (Mr Krause): Member for Caloundra, please ensure that your comments are directed through the chair.

Mr HUNT: I thank my fellow committee members: the chair and member for Toohey, Peter Russo; the inextinguishable Jonty Bush, the member for Cooper; Laura Gerber, the member for Currumbin; Jon Krause, the member for Scenic Rim; and Sandy Bolton, the member for Noosa. Manners cost nothing. As always, thanks go to the secretariat whose tireless efforts make these reports and hearings possible. The bill was referred to the Legal Affairs and Safety Committee on 1 December 2022. After hearing submissions on 24 January, the report was handed down in February 2023. A single recommendation came from the committee, which was simply that the bill be passed.

Russian novelist Fyodor Dostoevsky once famously opined that the degree of civilisation in a society can be judged by entering its prisons. The purpose of the bill is simply to facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland. The Commonwealth government ratified the Optional Protocol to the Convention Against Torture in December 2017, and article 2 of the OPCAT mandate means that visits can be made to places of detention and recommendations can be made to state parties.

To make this a reality, ratifying parties are obliged to provide the UN subcommittee with: 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, finally, the liberty to choose the places it wants to visit and persons it wants to interview. The bill will also make this possible in relation to our international obligations.

The bill makes plain that places of detention are: community corrections centres, prisons or work camps; youth detention centres; inpatient units of an authorised mental health service; the Forensic Disability Service; court cells; holding cells and other places in a police station where a person is detained; or any other place where a person is detained.

Having established this, the bill ensures that the responsible minister must ensure that the subcommittee and any accompanying person have unrestricted access to any part of the place of detention. Almost all submitters asked in one forum or another for an extension to the definition of a 'place of detention', to which the department responded quite correctly—

... the Bill does not prevent the subcommittee from visiting a place outside the Bill's scope. This would be by consent and in accordance with any relevant legislation.

...

DJAG notes clause 4 ... of the Bill allows the Governor in Council to make a regulation to prescribe other places of detention ... to be within scope of the Bill.

The committee comment is worth noting at this point. It states—

We are ... satisfied that due consideration has been given to clause 4 regarding the definition of 'place of detention' and the facilitation of visits by the subcommittee to other places outside the scope of the Bill with consent and in accordance with relevant legislation.

We are also satisfied that the regulation-making powers demonstrate sufficient regard to the institution of Parliament having regard to the subject matter left to regulation and the need for flexibility.

This should be set against the minister's responsibilities relating to national defence, public safety, natural disaster and serious disorder in the place of detention. Similarly, the detaining authority may temporarily—emphasis on 'temporarily'—prohibit or restrict access to the place of detention by the subcommittee if allowing access may prevent the maintenance of the security, good order and management of the place of detention or the health and safety of persons in the facility. These precautionary exceptions were not without criticism from some submitters. Sisters Inside contended—

... the castral system continuously uses the good order and management of a place of detention as a reason to restrict access, including because of issues with governance, such as staff shortage or lockdowns.

I would add that Sisters Inside is partially correct in making this assertion. Lockdowns and critical incidents do indeed make custodial operations challenging, but it must be remembered that 'challenging' in a custodial setting means fundamentally unsafe. This is precisely when it would be disastrous to invite any outside body, UN or otherwise, into a secured facility. A critical incident in a modern custodial facility requires all focus and attention to be on the management of the incident as safely and as expediently as possible. In short, the inspectors would be seeing a very atypical, almost misleading, snapshot of regular operations.

As with any body or process that accesses information or conducts interviews with complainants, provisions that safeguard people from reprisals are vital. Clause 19 protects any person who has provided or may provide information or other assistance to the subcommittee from reprisals. Clause 20 of the bill makes it an offence for a person to take a reprisal. The maximum penalty for the offence is over $14,000, or 100 penalty units.

The grounds for establishing a reprisal are outlined in clause 19 of the bill and state that a person must not cause, or attempt or conspire to cause, detriment to another person because that person has provided or may provide information or other assistance to the subcommittee. Detriment to a person includes anything that prejudices a person's safety or a person's career. Sisters Inside provided that this definition of 'detriment' was too narrow because, in their words—

... reprisals from staff and the institution are a dangerous reality in places of detention. We often hear stories of abuses of power by detention staff, including increased surveillance, room search, harassment by detention staff ...

These concerns were heard, and it is proposed that 'detriment' will include injury, damage or loss and an onerous change to the conditions of detention. That said, any suggestion that abuses of power from detention staff are common, uncommon or even rare is simply nonsense. These instances, if they occur, are extremely rare and no more prevalent than in any other facility where human failings will periodically occur.

To contextualise my strong believe in the professionalism of Queensland's modern first responders, let us remember that Jean Jacques Gautier, the visionary behind OPCAT, put forward his idea in 1976. In 1976, the understanding and approaches around penology were nowhere near as developed as they are now. OPCAT was designed to inspect places of detention far removed from a 21st century custodial setting in Queensland today. That is not to say that the motivation behind the adoption of OPCAT is outdated—far from it. I believe it is necessary if only to benchmark that our own places of detention are good and look for opportunities for improvement.

Let me be absolutely clear: torture does not occur in modern places of detention in Queensland, as the LNP are suggesting. Our first responders in places of detention are highly trained professionals who day in, day out strain every sinew to ensure that the entitlements of detainees are met. Places of detention can be violent, but the staff who work in them crave nothing more than a violence-free shift so they can return home to their families at the end of each day after having the much sought after 'quiet day'.

Cell searches for contraband, ramifications of a breach of discipline and the aftermath of restraint after an assault on a staff member or another inmate are not instances of torture, though they may be characterised that way by an offender or, in this debate, by the LNP. They are very simply the consequences and repercussions of a detainee's action. Similarly, restraints like handcuffs and body belts, though imposing to the untrained eye, are not instruments of torture.

I welcome the implementation of the monitoring of places of detention bill because it will invite scrutiny to our places of detention and highlight how civilised they are. For that reason, I commend the bill to the House.