Speech By

Jonty Bush

MEMBER FOR COOPER

Record of Proceedings, 10 May 2023

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

Ms BUSH (Cooper—ALP) (5.24 pm): 'A measure of any society can be found in how it treats its most vulnerable members.' This quote by Mahatma Gandhi is a favourite of mine and it captures two of the values that I hold close: justice and equity. The introduction of this bill is an opportunity to progress those values, and I rise to speak in support of the monitoring of places of detention bill 2022. The people this bill seeks to protect are defined. They are prisoners, they are those residing in authorised mental health facilities, they are those detained in watch houses, they are young people in youth detention. Whilst some may debate the degree of vulnerability these people hold, no-one could argue that their statutory detention creates a positive obligation on the state to ensure that their human rights are protected and upheld. This is not just a concept recognised by our government but an international doctrine.

Australia is signatory to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, otherwise known as OPCAT. The OPCAT agreement aims to prevent torture and cruel, inhuman or degrading treatment or punishment for those held in detention. In accordance with OPCAT's requirements, Australia has agreed to establish an independent National Preventive Mechanism, or NPM, to conduct inspections of all places of detention and closed environments and to also agree to international inspections of places of detention by the United Nations Subcommittee on Prevention of Torture. Earlier this year our government took another step in this direction by establishing an Inspector of Detention Services to promote the improvement of detention services and places of detention and prevent harm to detainees. This bill makes yet another contribution towards this objective in bringing greater transparency and public confidence by establishing a stand alone legislative framework to facilitate a consistent approach to the UN subcommittee's visits to places of detention in Queensland.

One of Australia's obligations in relation to monitoring places of detention is to facilitate periodic visits by the United Nations subcommittee. This is an important oversight and monitoring mechanism. Many of us would be aware of the UN subcommittee's visit to Queensland in October last year. While our state agencies cooperated and worked to support that visit, the UN subcommittee did encounter legislative barriers which were frustrating and only allowed the subcommittee to partially exercise their functions and powers. The introduction of this bill will address those legislative barriers around access, including issues faced in accessing authorised mental health services and the Forensic Disability Service. Importantly, the bill recognises that the observance of human rights is the most effective and safe way to manage custodial settings.

The focus of the bill is: to enable the UN subcommittee to undertake visits to places of detention; to conduct private interviews with detainees and any relevant person for the purpose of its mandate under OPCAT; to provide access to relevant information to the UN subcommittee; and to offer protection from reprisals against anyone assisting the UN subcommittee. The bill also provides safeguards to enable detaining authorities to preserve privacy, security, good order, welfare and safety in places of

detention during visits by the subcommittee. Importantly, the bill will provide certainty to the UN subcommittee and government agencies as to the process to be followed for visits to facilities by defining the places of detention that fall within its scope.

There were a couple of areas of interest to me within the bill, so I focussed my inquiries as a member of the parliamentary committee oversighting the bill on those areas within the public hearings. The first area of interest for me was in relation to the giving of consent. This relates particularly to clauses 15(2)(b) and 16(2)(b), which prescribe that the subcommittee cannot talk to an individual without consent. If the person is unable to consent, the person's legal guardian must consent to the interview. For me this was an important part to interrogate, because many of the individuals captured under the bill probably do have formal guardians appointed as decision-makers. For example, some people who are experiencing mental health challenges may also have fluctuating capacity to make decisions about their lives. If a person has been admitted into an authorised mental health facility, particularly under an involuntary treatment order, it may be that they are not the legal decision-maker for matters relating to their treatment.

Children in the youth justice system may have the chief executive appointed as their legal decision-maker. This was an area I inquired into during the public hearings. The department did commit to looking at these particular provisions and doing a cross-jurisdictional analysis. I can see that the Attorney-General will be moving amendments to the bill during consideration in detail that will deal with this issue by omitting these clauses. This will remove the requirement for a legal guardian to consent to the interview where a person does not have the capacity to consent. The bill will instead be silent on what should occur where a person does have capacity to consent, but this would not preclude the subcommittee from seeking express consent from the formal guardian if the person does not have legal capacity to participate in an interview.