




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 30 March 2023

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

Second 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) (5.49 pm): I move—

That the bill be now read a second time.

On 1 December 2022, I introduced the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 into the Legislative Assembly. The bill was subsequently referred to the Legal Affairs and Safety Committee. I thank the committee members for their thorough consideration of the bill. I would also like to thank those stakeholders, organisations and individuals who made submissions to the committee and participated in the public hearing. On 24 February 2023 the committee tabled report No. 42 and made one recommendation: that the bill be passed. I thank the committee for its support for the bill.

The bill before the House provides a legislative framework to facilitate visits by the United Nations Subcommittee on the Prevention of Torture to places of detention in Queensland. The Commonwealth government ratified the Optional Protocol to the Convention Against Torture, or OPCAT, and under this protocol the subcommittee has the ability to visit places of detention in Australia. OPCAT is an international agreement that aims to prevent torture and cruel, inhuman or degrading treatment or punishment by establishing a system of regular visits to places where a person is deprived of their liberty. The bill is another commitment by this government to uphold human rights in Queensland. It recognises that the observance of human rights is the most effective and safe way to manage custodial environments. State parties that ratify OPCAT undertake to allow the subcommittee to periodically visit places where people are deprived of their liberty for the purpose of examining the treatment and conditions of people detained.

The subcommittee visited Australia in October 2022. The Palaszczuk government supported this visit and government agencies cooperated with the Commonwealth government and the subcommittee to facilitate the visit where possible by consent under existing legislation, policies and procedures. Due to legislative barriers in the Mental Health Act 2016 and the Forensic Disability Act 2011, the UN subcommittee could not be provided with physical access to the adult mental health services or forensic disability services. Access to those services are limited to certain categories of visitors. That is to preserve the safety and privacy of people with severe mental illness or significant cognitive impairments. The subcommittee was advised of these barriers prior to its arrival in Australia and was provided with workarounds for facilitating a visit to those facilities, including the ability to interview staff offsite and request information about the facilities. The subcommittee was advised that access to prisons, police watch houses and youth detention facilities in Queensland would be facilitated.

During their visit the subcommittee attended the Brisbane Women's Correctional Centre and were provided with full access to the facility. The subcommittee suspended its visit on 23 October and I note that the subcommittee has recently announced that it has decided to terminate its visit to Australia. While that is unfortunate, I would like to reiterate that the Queensland government remains committed to the principles of OPCAT and will continue to work with the Commonwealth government to determine how best to implement OPCAT across the country.

I will now address specific issues that were raised as part of the committee inquiry. Clause 4 defines places of detention that are within scope. These places are: community correction centres, prisons, work camps, youth detention centres, inpatient units of authorised mental health services, the Forensic Disability Service, court cells, police watch houses, police holding cells or other places at a police station where a person is detained and any vehicle used or operated for the primary purpose of transporting a detainee. The bill also allows any other place where a person is a detainee, other than a private residence, to be prescribed by regulation as a place of detention.

During the committee's inquiry, some stakeholders submitted that the scope of the bill should be broader. The purpose of specifically defining places of detention in the scope of the bill is to provide certainty to agencies and the subcommittee as to the processes to be followed for a visit to those facilities. The ability to prescribe by regulation other places as places of detention provides for flexibility in the future. I note that the committee was satisfied that due consideration had been given to clause 4 of the bill regarding the definition of 'place of detention'.

The bill also outlines specific circumstances where the subcommittee's access to a place of detention may be temporarily restricted or prohibited. Clause 9 of the bill outlines that a responsible minister for a place of detention may object to a visit on specific grounds and must notify the subcommittee of an objection as soon as possible. The grounds in this clause mirror those in article 14(2) of OPCAT. Clause 10 of the bill provides that a detaining authority for a place of detention may temporarily prohibit or restrict access to all or part of the place of detention on specific grounds and for the shortest time reasonable in all the circumstances.

Some stakeholders were critical of clause 10 of the bill as there is no equivalent in OPCAT, but the purpose of clause 10 is to allow a detaining authority to assess circumstances at a place of detention at the time of a visit to ensure the safety and wellbeing of persons at the place of detention. Safeguards are in place to ensure any restriction or prohibition is for the shortest time reasonable in the circumstances. If the detaining authority exercises this power, the reasons, date, time and duration of the restriction must be recorded and provided to the responsible minister. In addition, clause 22 of the bill provides that a detaining authority is subject to the direction of a responsible minister. The committee stated that it was satisfied that the bill as drafted considers the safety, security and wellbeing of all persons at the place of detention in various emergency and/or unforeseen circumstances.

To allow the subcommittee to fulfil its mandate, the bill allows the subcommittee to request and access information and to conduct interviews with people it believes may provide relevant information. To protect the privacy of detainees and support autonomy, a detainee must provide consent to allow the subcommittee to take notes of, copy or retain the person's identifying information. Similarly, a person must consent to being interviewed by the subcommittee. Clauses 15(2)(b) and 16(2)(b) of the bill as drafted outline that if a detainee does not have the capacity to consent, their legal guardian may consent on their behalf. These provisions allow an authorised person to engage with the subcommittee on a detainee's behalf where the detainee does not have the capacity to consent to ensure the detainee's rights and interests are protected.

Following stakeholder feedback, I foreshadow that I intend to move amendments during consideration in detail to remove subclauses 15(2)(b) and 16(2)(b) from the bill. It is considered that the reference to a legal guardian providing consent is not necessary to support the operation of these clauses as intended. To be clear, a person's consent will still be required to allow the subcommittee to retain identifying information about them or to interview a person. As the committee noted, the general requirement for consent to interviews is important and that consent can be withdrawn at any time.

During the committee's inquiry, stakeholders also flagged that clause 16(1) of the bill as drafted may restrict the subcommittee's mandate by requiring the subcommittee to visit a place of detention in order to interview a detainee. The policy intent is to allow the subcommittee to interview any person at a place of detention it visits as well as any other person it believes may provide information relevant to its purpose. This is intended to include detainees at places of detention that the subcommittee does not visit. I also foreshadow that I will be moving an amendment in consideration in detail to remove the reference to a subcommittee interviewing a detainee during a visit to clarify the intent of clause 16 of the bill.

The bill protects persons who provide information to or assist the subcommittee from reprisals. Clause 19 of the bill outlines the grounds for taking a reprisal against a person and states 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 assistance to the subcommittee. Clause 19 includes examples of detriment to a person and those examples are not exhaustive. During consideration in detail I intend to move an amendment to clause 19 to include other examples of detriment relevant to people in detention including women.

Although not relevant to the scope of the bill, several stakeholders commented on the nomination of a national preventive mechanism in Queensland for a domestic body. To effectively perform the functions of an NPM as required under OPCAT, adequate resourcing is required. The nomination of an NPM for Queensland is subject to discussions with the Commonwealth government regarding responsibility for ongoing and sufficient funding for an NPM. We will continue to work with the Commonwealth on this matter.

In conclusion, the development of the bill was made possible through the cooperation and expertise of key agencies and stakeholders. In particular, I would like to express my appreciation to all stakeholders who made submissions on the bill for their ongoing commitment to human rights in Australia. This bill represents the Palaszczuk government's support for the principles of OPCAT and furthers this government's commitment to upholding the humane treatment of people in detention. I commend the bill to the House.