




Speech By
Stephen Andrew

MEMBER FOR MIRANI

Record of Proceedings, 11 May 2023

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

 **Mr ANDREW** (Mirani—PHON) (12.53 pm): I rise to speak on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. The purpose of the bill is to facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland. The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—OPCAT—was ratified by Australia in 2017. OPCAT's main function is to protect the fundamental human rights of people detained in places such as prisons, immigration detention centres, hospitals and mental health facilities.

Rather than investigating cases after people have been subjected to torture or ill-treatment, OPCAT takes a preventative approach in attempting to identify and address problems at an early stage. For this purpose, the Subcommittee on Prevention of Torture—SPT—was set up under OPCAT and given almost unrestricted authority to perform its role of inspecting and monitoring places of detention. The subcommittee, therefore, has a mandate to visit any place where the people are deprived of their liberty and to make recommendations to state parties concerning the protection of those people.

To help fulfil this mandate, state parties like Australia have undertaken to provide the subcommittee with: (a) unrestricted access to all places of detention, their installations and facilities; (b) unrestricted access to all information concerning the number of persons deprived of their liberty and the number and location of places of detention; (c) unrestricted access to all information referring to the treatment of those persons and the conditions of their detention; (d) the ability to privately interview persons deprived of their liberty and any other person the subcommittee believes may supply relevant information; and (e) the liberty to choose the places it wants to visit and the people it wishes to interview.

Last year, however, the United Nations Subcommittee on Prevention of Torture was forced to suspend its visit to Australia after authorities in Queensland prevented the committee from accessing certain sites. According to the Queensland government, this was due to the state laws preventing access to people held in mental health inpatient settings. This was concerning to say the least. I am, therefore, strongly supportive of the bill's objective to facilitate visits by the subcommittee to all Queensland places of detention.

In particular, I welcome the removal of legislative barriers restricting the subcommittee from physical access to inpatient units of authorised mental health units under the Mental Health Act 2016 and to the Forensic Disability Service under the Forensic Disability Act 2017. These and other changes will ensure the subcommittee is able to make unannounced visits and conduct private interviews with detainees. It also prohibits reprisals or sanctions from being carried out against anyone assisting the subcommittee in its functions through the inclusion of a 'protection from reprisals' clause. These are all welcome changes and are to be commended.

I do, however, have concerns about some of the bill's clauses. To fulfil Australia's obligations under OPCAT, any limitations imposed on the subcommittee's powers should be minimal, human rights focused and consistent with the subcommittee's authority contained in OPCAT. Clause 4 of the bill

provides a definition for a 'place of detention'. As a part of this definition, the clause lists all the places the subcommittee is to be granted access to within Queensland. These include: a community corrections centre, prison or work camp, a youth detention centre, an inpatient unit of an authorised mental health service, a forensic disability service, a court cell, a watch house, a holding cell or other place in a police station where a person is detained, a place where a person is detained other than a private residence prescribed by regulation as a place of detention, and a vehicle primarily used or operated for the purpose of transporting a person who is detained to or from a place. The list is extensive, but it does not include all facilities where people are being deprived of their liberty in Queensland.

There are a number of other facilities where the use of restrictive practices amounts to the detention of individuals such as residential aged-care facilities and disability services settings. The definition in clause 4, therefore, needs to be expanded to capture such places. OPCAT offers guidance for a proper definition, saying it should encompass any place under the state party's jurisdiction and control and where persons are or may be deprived of their liberty. This accords with OPCAT's own description of places of detention as any place where an individual cannot leave of their own free will and where that place of detention is linked, either directly or indirectly, to a public authority.

I note that the bill's explanatory notes explain that the bill does not operate to prevent the subcommittee from visiting other places where a person may be deprived of their liberty. However, simply stating this in the notes is insufficient. The bill itself needs to expressly state that the subcommittee is free to visit any place under article 4 of the optional protocol that is subject to its jurisdiction and its control. The bill's definition of 'places of detention' contained in clause 4 should therefore be amended to ensure it is fully compliant with OPCAT.

Clause 9 of the bill allows the responsible minister to temporarily object to the subcommittee visiting a place on a number of urgent and compelling grounds including reasons of national defence, public safety, natural disaster or serious disorder in a place of detention. All of these grounds are considered with the grounds for exemption allowed in OPCAT. However, clause 10 of the bill goes further than this. Clause 10 will allow detaining authorities to restrict or prohibit access to facilities on grounds relating to the security, good order and management of the place of detention or for the protection of the health and safety of the person in the place of detention. This provision should be omitted from the bill. Its terms are far too broad and open to misuse. It could be interpreted to mean anything from extended lockdowns of the facility to not having enough staff working that day. This far exceeds the generally accepted grounds for an exemption contained under article 14 of OPCAT.

As one of the submitters on the bill stated, there are real and significant risks to people deprived of their liberty during emergency events.