Speech By

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MEMBER FOR CLAYFIELD

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

Mr NICHOLLS (Clayfield—LNP) (4.27 pm): After that little congratulatory message that you gave to members for the previous debate, I look forward to setting a new standard in respect of this piece of legislation, which I am sure all members will appreciate. When it comes to this bill—it has taken a long time to arrive at this part of the debate—the Attorney-General is having a tough old time when it comes to human rights here in Queensland. The Attorney is part of a government that has flagrantly and offhandedly overridden its own Human Rights Act in what are some of the most mendacious political contortions since the last time the Palaszczuk government tried to show that it is tough on crime.

Along with being forced to eat substantial slices of humble pie over previous comments about breach of bail, the Attorney-General has apparently been sidelined in responding to the youth justice crisis enveloping Queensland, and particularly evident here in Cairns, by her comrade in arms the police minister. Has anyone noticed that it is always the police minister bringing in changes to the Bail Act, the Criminal Code or the Youth Justice Act? Where, one might reasonably ask, is the Attorney-General in all of this? Her predecessor was certainly all over the issue when the Labor government started weakening the laws around criminal gangs and youth offenders back in 2016.

Where is the Attorney's advice to cabinet as the state's first law officer? Did she present any of her department's evidence to the cabinet? Surely, all the Attorney would have to do is dust off the cabinet submissions from a few years ago when her predecessor the member for Redcliffe was all about going soft on youth crime. It would seem that, even if she did give advice, the Attorney was overshadowed by the ever-increasing presence of the police minister. Then, just when it seemed things could not get worse for the Attorney and the lefties in this government, they get a blast from organisations that they always thought they could reliably count on—the Human Rights Commission and the United Nations.

What horror! The United Nations and the Human Rights Commission criticising a left-wing, progressive Labor government—the self-proclaimed most progressive government Queensland has ever had, coming under attack not just from the United Nations but now from its own Human Rights Commissioner, and not once but twice. What is the cause of this calamity? It is Labor's failure to implement the Optional Protocol to the Convention Against Torture—otherwise and sensibly shortened to OPCAT—a United Nations administered international treaty containing obligations that signatories are obliged to meet, and guess what: Queensland has not met them.

First of all, on 23 October last year the UN Subcommittee on Prevention of Torture issued a statement saying that it had been—I use the words that they used—'obstructed' and that its OPCAT visit 'had been compromised to such an extent that they had no option but to suspend it'. This is the United Nations. We remember that the Premier quoted the United Nations only yesterday. What has this government done? It has obstructed the United Nations inspection committee and has

compromised that inspection to such an extent that it had no option but to suspend it. That statement from last year went on to say—

It is deeply regrettable that the limited understanding of the SPT's mandate and the lack of cooperation stemming from internal disagreements—

we know that is this Labor government: chaos, confusion and crisis—

especially with respect to the states of—

wait for it—

Queensland and New South Wales, has compelled us to take this drastic measure.

Thanks to Queensland Labor incompetence, Australia joined only three other countries in having such visits suspended: Rwanda, Ukraine and Azerbaijan.

The second broadside from the UN was delivered on 21 February this year. That is only just over three months ago. The UN announced it was not merely suspending but in fact totally cancelling its OPCAT inspection after being denied full access to institutions in New South Wales and Queensland. That decision was made despite this bill. It was reported the Subcommittee on Prevention of Torture said that assurances it asked for in both states—New South Wales and Queensland—were not guaranteed. Again, because of Queensland Labor failures, Australia now joins Rwanda as the only other country to have inspections terminated. What a record!

More recently, this Labor government's record on the incarceration of young children has come under attack by Queensland Human Rights Commissioner Scott McDougall, who, following revelations on the ABC that the state had locked two boys in their cells for 24 hours a day and in one instance for 22 days straight, reportedly said—

This is appalling treatment and everyone in Queensland and indeed Australia should be reviled by that story.

Mr McDougall went on to warn that such cases may breach Queensland's Human Rights Act, which states—

All persons deprived of liberty must be treated with humanity and with respect ..

What did His Honour former Childrens Court president and now chair of the Queensland Sentencing Advisory Council say about that case? He said—

It might well have been unlawful.

He also said that the circumstances of Jack's detention—'Jack' is a pseudonym—appear to 'run contrary to all the principles and the act itself', referring to the Youth Justice Act.

A number of District Court judges have blasted the government and the department for their failure to provide information and reliable records in a timely manner. Judge Tracy Fantin recently said in a case involving a child who was held in a detention centre that the child had 'effectively been held in solitary confinement', which she described as 'cruel' and had 'no rehabilitative effect' and was a 'direct breach' of the state's youth justice laws. The result was that the child was immediately released, with no conviction recorded.

What did Judge Horneman-Wren say about another similar case where a child was kept in detention for lengthy periods of time? I have here a report from a media organisation I am not particularly fond of but I do read occasionally, the *Guardian*. I am sure that the *Guardian* would be well read by those on the other side of the chamber. It stated—

The judge said the boy—

Mr Hinchliffe interjected.

Mr NICHOLLS: The Australian version of the *Guardian*.

Mr Hinchliffe interjected.

Mr NICHOLLS: It is about a Queensland case.

Mr Hinchliffe interjected.

Mr NICHOLLS: I do not know it as well as you do, member for Sandgate. It states—

The judge said the boy was kept in solitary confinement for all but 60 seconds a day on 11 occasions, despite—

this is what the judge said—

"not a shred of evidence" that it was for his protection. This included 11 hours 59 minutes during the day, plus a 12-hour lockdown at night, he said.

The judge said—

On its face, repeated separations for 11 hours and 59 minutes cannot be seen as anything other than the most calculated contrivance to avoid the oversight of the chief executive.

This is what is happening in youth detention centres: repeated separation for 11 hours and 59 minutes that the judge says cannot be seen as anything other than a calculated contrivance to avoid oversight. What did the judge do? He granted the teenager bail, saying he had 'performed reasonably well on a conditional bail program' and his 'continued detention for these offences is, on no view of it, justified'.

This again shows this Palaszczuk government in chaos and crisis. When the United Nations, the Queensland Human Rights Commissioner, judges of the District Court charged with dealing with youth justice issues in this state and the chair of the Queensland Sentencing Advisory Council and a former president of the Childrens Court make these claims about breaches of the Human Rights Act, about it having no effect, of it being a calculated contrivance, of it being cruel punishment—this only demonstrates a government in chaos and a government in crisis.

What does the minister say? The minister says, 'It was not the correct information.' But she has said it on every occasion it has occurred. In February and then again in March, with repeated cases, the minister said, 'We're having an investigation. I've asked for the department to do better.' But it gets repeated time and time again.

What this leads to is a complete youth justice failure, because we are not getting the proper treatment for these young offenders. How many times do we hear the government say, 'We have this $500 million program and it is working'? How is it working when you are locking up a 13-year-old for 23 hours and 59 minutes a day in a 'calculated contrivance to avoid oversight'? How is it working when you are locking up a youth for 22 days straight, 20 hours a day? How is that acting as rehabilitation?

We make no bones about it: when it comes to dealing with crime—the causes of crime and the effects of crime and the community's expectation of punishment and deterrence—the LNP supports providing judges with the powers they need so that the sentence fits the crime. If that means removing detention as a last resort, so be it. We are prepared to let the judges make that assessment. That does not mean that people who are sentenced to detention or imprisonment are treated in an inhuman way that does not give them prospects of rehabilitation. That does not seem to be the case with the Palaszczuk Labor government. The evidence is right here before us in terms of how this government is failing—no consequence for actions and no community retribution or effective rehabilitation or treatment.

The Attorney cannot blame anyone for this failure. They cannot turn around and say it is the LNP's fault. They cannot blame the United Nations; they have already held it up. They cannot blame the judiciary—yet again. This all lands squarely at the feet of the Palaszczuk Labor government. It is a result of this Labor government's tardiness in implementing legislation necessary to enable visits by the Subcommittee on Prevention of Torture to places of detention in Queensland and its tardiness in implementing the inspector of places of detention.

Let us not forget that that was a bill that was introduced in 2021. It was passed with the support of this House—both sides—on 30 August 2022. It received assent on 7 September. Parts of it were proclaimed on 9 December 2022, but we still have not seen the inspector of places of detention carry out any functions. In fact, the government has not even started. It is still consulting on what it needs to be doing and what the standards for places of detention are—that is, nine months after the bill was passed and almost 24 months after it was introduced into the parliament.

Chaos, crisis, confusion: that is the Palaszczuk Labor government way. It is not as if the government has not known about its obligations under OPCAT for a fair while, because the treaty was signed by Australia in May 2009 and it was ratified by the coalition government nationally in December 2017 and at the time the national preventive mechanism was postponed at the request of the states to give them the capacity to prepare for it. Since December 2017 this government has known of the need to get the national preventive mechanism in place and Australia's obligations started in January 2021. In Queensland the government did not establish its own monitoring process, as I said, until September when the Inspector of Detention Services Act passed the House and the deadline for the full implementation of OPCAT passed in January this year.

Here is what the Australian Human Rights Commissioner said. We have had the United Nations, the Queensland Human Rights Commissioner, the judges, the Sentencing Advisory Council and now the Australian Human Rights Commission weighing into the failures. Ms Lorraine Finlay told the ABC that the cancellation of the visit that I referred to earlier was 'neither unexpected nor undeserved'. She went on to say—

We haven't approached the treaty with the urgency it deserves.

That is the advice and the evidence and the statement from the Australian Human Rights Commissioner. What is it all about? What has excited so much moral condemnation from the United Nations, the Queensland Human Rights Commission, the Australian Human Rights Commission, the judges and other human rights groups as well as some pretty strong suggestions here in Queensland from the submitters to the bill? Well, on 10 December 1984 the General Assembly of the United Nations adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Australia and 82 other countries signed that treaty and it has been ratified here in Australia since 1989. There are plenty who might well say, and with good reason, that Australia is one of the better parties to that treaty—not the best but much better than many others—but the reality, as I am sure many members will see instantly, is that talk is cheap and action much harder. In this instance, UNCAT, as it is known, was easy to sign but much harder to check on, let alone enforce. A scheme that had its genesis in Europe was devised to police countries' compliance with UNCAT. That scheme envisaged a system of inspection of places of detention.

Members might hark back with a degree of fondness to my contribution to the debate last September on the Inspector of Detention Services when I outlined the contribution of a certain squire of Bedfordshire, Mr John Howard—a great prison reformer, not the great Prime Minister—whose idea it was to inspect prisons and highlight the shortcomings and failures discovered with the aim of leading to the humane treatment of prisoners. This goes back three centuries. Whilst recently promoted in Europe, the idea of continuous inspection had far earlier origins in the United Kingdom and that scheme of inspections is broadly encompassed in the optional protocol, the subject of this bill.

The inspections consist of two parts. Firstly, there are inspections undertaken by the international Subcommittee on Prevention of Torture, the SPT. I can see members are enthralled by this dissertation in relation to the operations of the United Nations and this subcommittee, so I will continue. Secondly, there is a domestic system of inspections known as the national preventive mechanism. This bill deals with the first of those methods and is said to facilitate such inspections. This is quite a contested area. The vast majority of submissions to the committee highlight the concerns of many organisations with the definition of 'place of detention' in clause 4 of the bill. This is the most contentious issue that has been raised by submissions. Most would prefer to see the definition of 'place of detention' reflect Article 4 of OPCAT—that is, reflect what the treaty says, what we have signed up to. Many submissions highlighted the lack of coverage of residential aged-care facilities and secure dementia units where people may be held subject to some form of order or whose practices mean residents are in effect detained, and we only need to turn our minds back to what happened during COVID in places where elderly people were in fact almost against their will detained in residential aged-care centres.

The Australian Human Rights Commission and the Queensland Human Rights Commission as well as Aged and Disability Advocacy Australia, the Commonwealth Ombudsman, NPM Network, the Queensland Law Society, Prisoners' Legal Service, ATSILS and many others all called for the definition to mirror that used in OPCAT. The department response is that, as a matter of policy regarding the scope of the bill, the government has chosen the definitions in clause 4 deliberately. It offers some fairly feeble excuse but does not fully explain why that policy scope has been chosen, and that may be something that the minister may care to elaborate on. Basically, the policy scope it responded to is that this is the decision the government has made and that is why we are doing it, but there is no reason for that policy. There is no explanation as to why that scope has been chosen. It may well be a very worthwhile policy decision.

In passing I note that the OPCAT treaty includes both public and private custodial settings. Paragraph 2 of Article 4 of OPCAT would have made for some interesting findings during the compulsory lockdowns endorsed by this state during the COVID pandemic. The department responses provided in paragraph 2.1.3 of the explanatory notes lacks any intellectual rigour at all. It simply says that the bill is intended to define the places of detention within its scope to provide certainty as to the procedures to be followed for a visit to those facilitates. It totally fails to say how this would be any different if the OPCAT definition was to be used or why different procedures for different types of facilities could not have been developed. If you want to say it is different for a secure dementia unit in a hospital or if you want to say it is different for a secure residential facility, why is it different and can a different definition be used? While not objecting to the bill in its current form, there is certainly no real explanation provided as to why the OPCAT definition is not preferred. There just seems to be a slavish adherence to the Victorian model as if following 'Dictator' Dan is a good excuse. Other issues—

Government members interjected.

Mr NICHOLLS: I thought you were falling asleep over there. I thought I would just throw that in.

An opposition member interjected.

Mr NICHOLLS: That is it; exactly right. As if following 'Dictator' Dan would be any reason to do anything, it seems to be the only excuse used here in Queensland.

Other issues are raised by submitters including access to judicial review of ministerial decisions as well as access to information. On this score, it is interesting to note clause 6 of the bill, which on my reading is designed to overcome the excuse that was proffered by the government for the suspension of the original inspections—namely, that the existing laws prevented the SPT inspectors from entering mental health inpatient units and the Forensic Disability Service.

When the original inspections in October last year were cancelled, the excuse was given that the legislation did not provide for access to those types of facilities. Nowhere in the explanatory notes or the bill itself are the restrictive provisions identified. The reasons given to the United Nations subcommittee for not allowing the inspection to occur last year have not been specifically dealt with in the explanatory notes, nor have they been dealt with in the bill itself. It has not been identified what this secret clause or provision was that stopped it going ahead.

It is interesting to note that the Queensland Advocacy for Inclusion CEO, Matilda Alexander, said she was still not satisfied 'of the legislative basis for why the subcommittee could not physically access the inpatients unit at the time'. Perhaps the Attorney-General could do what the department and the explanatory notes do not and actually identify where those restrictions in the Mental Health Act and the Forensic Disability Act are.

I also note the Public Guardian's comments that even as this bill passes this place, Queensland will still not be fully compliant with OPCAT as the creation of the Inspector of Places of Detention—to use the Public Guardian's comment—is not sufficient for Queensland to fully comply with OPCAT as there are significant limitations on where inspections will happen. So another government body—not the LNP, it is another government body, the Public Guardian—is pointing out the limitations in the scheme.

An honourable member: A different guardian?

Mr NICHOLLS: A different Public Guardian, but the same role. You rissoled the last one. You did not like the last report.

Mr DEPUTY SPEAKER (Mr Krause): Member for Clayfield!

Mr NICHOLLS: I don't think 'rissole' is unparliamentary. It is a term of food and it is a common saying. They would know it in Cairns.

Mr DEPUTY SPEAKER: Member for Clayfield, please do not reflect on the chair. I was going to say could you please direct your comments through the chair.

Mr NICHOLLS: Indeed. I am very grateful for your guidance. I have highlighted the serious tardiness of this government in coming to grips with a relatively straightforward piece of legislation that in substance is only 12 pages long—my speech is 17 pages. It could have been done faster. This tardiness has embarrassed this government and the state. This is all down to a chaotic and crisis-ridden Labor government and its lack of direction and focus as its term comes thankfully to an end in the next 20 months. It cannot blame the LNP or past governments in respect of this bill. We will not be opposing this bill.