Speech By

Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 23 May 2023

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

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence) (11.49 am), in reply: I thank honourable members for their contributions to the debate on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. This bill represents the Palaszczuk government's ongoing support for the principles of the Optional Protocol to the Convention Against Torture, known as OPCAT, and furthers this government's commitment to upholding the humane treatment of people in detention. As members know, OPCAT is an international treaty which aims to improve how people's human rights are protected when they are detained. Under OPCAT, the subcommittee has a mandate to visit places of detention in Australia for the purpose of examining the treatment of people detained and preparing a country report with recommendations to improve the treatment of detainees.

The bill will enable the subcommittee to carry out its mandate in Queensland by providing a standalone legislative framework to facilitate subcommittee visits to places of detention in Queensland. Importantly, and consistent with the OPCAT principles, the bill will allow the subcommittee access to places of detention in Queensland, access to relevant information to evaluate the treatment of people who are detained, and the ability to interview people deprived of their liberty and any other person who the subcommittee considers may provide relevant information. The bill also provides for protections against reprisal for people who provide information or assistance to the subcommittee.

I now want to address specific comments made by honourable members during the course of this debate. Time and again we see the opposition attempt to take the high moral ground on its human rights record, but when it came down to securing human rights in Queensland the LNP voted against the bill. When we were introducing legislation to enshrine equality under the law and the preservation of the inalienable rights of every human being, where was the LNP? Unlike the LNP, this government is committed to ensuring Queenslanders enjoy the rights conferred by Australia's international obligations. Unlike the LNP, this government actually works hard to implement legislation such as this bill.

As pointed out by the member for Clayfield, it was the Commonwealth government that made the decision to ratify OPCAT on 21 December 2017 and it entered into force in Australia on 20 January 2018. Given this, it has been important for Queensland to work collaboratively with our federal, state and territory counterparts on the implementation of OPCAT. While we recognise that Australia's OPCAT obligations extend to all places of detention as defined in article 4 of OPCAT, consistent with the Commonwealth government's plan, implementation efforts have taken a staged approach. This bill is an example of our commitment to working with the Commonwealth to facilitate subcommittee visits as the first component of OPCAT. It demonstrates our strong and continued support of OPCAT.

In relation to national preventive mechanisms, NPMs, the Queensland government continues to work with the Commonwealth government to ensure there is ongoing and sufficient funding for NPMs to function effectively. Resourcing is important for effective NPM implementation. This is a separate

issue to the bill and a separate component of OPCAT. I note that funding for NPMs remains an outstanding issue for most jurisdictions and that Victoria and New South Wales are also yet to nominate NPMs. At the most recent meeting of the Standing Council of Attorneys-General in April 2023, participants committed to continue to work together towards full implementation of OPCAT obligations. Noting that commitment of Attorneys-General, I am pleased to see that the Commonwealth government's budget papers for 2023-24 state that the Australian government is providing funding to support implementation of OPCAT in each jurisdiction, and I welcome these ongoing discussions.

The member for Clayfield also commented on the fact that the Inspector of Detention Services has not yet started. The inspectorate has required an establishment period to allow for the recruitment of staff and the development of practices and procedures. This process commenced late last year. The inspectorate will commence full operation from 1 July this year. The inspector is an independent statutory appointment to oversee prisons, youth detention centres and police watch houses. While unrelated to this bill, the inspectorate has been designed to encompass key features of an NPM as outlined in OPCAT such as having a preventative visiting mandate, financial and functional independence and unrestricted access to places of detention. Both the commencement of the inspectorate's operations and the provisions outlined in this bill shall improve our system of oversight in places of detention.

I acknowledge the contribution made by the member for Clayfield in relation to the United Nations subcommittee visit. To be clear, at the time of the inaugural visit of the subcommittee, from 16 to 27 October 2022, neither the Commonwealth nor the Queensland governments had passed legislation to implement OPCAT obligations. Regardless, the Queensland government supported the subcommittee visit and worked with the Commonwealth government and the subcommittee prior to its arrival to facilitate the visit through existing legislation, policies and procedures. Queensland agencies consistently made this support clear to the subcommittee and communicated about the existing legislative barriers that restricted physical access to inpatient units of authorised mental health services and the Forensic Disability Service.

There is no statutory basis in the Mental Health Act 2016 to currently allow the subcommittee physical access to inpatient units of authorised mental health services. The legislation was deliberately drafted to only allow for specific categories of permitted visitors to appropriately protect the safety and privacy of people with severe mental illness. These categories are outlined in the Mental Health Act at sections 281 to 283 and chapter 14. The United Nations Subcommittee on Prevention of Torture does not satisfy any of those categories of permitted visitors, which is why we are introducing this bill to ensure it has appropriate access to facilities in the future.

Similarly, I am advised that the Forensic Disability Act 2011 also tightly restricts access to the Forensic Disability Service and its clients. There is no provision currently in the Forensic Disability Act 2011 that would permit entry of the subcommittee. Despite these barriers, when the subcommittee visited Australia Queensland proposed other ways visits could be facilitated such as conducting interviews remotely with patients or staff. Importantly, subject to passage of this bill, the subcommittee will be able to physically access these facilities in the event it chooses to return to Australia and OPCAT implementation is continuing.

The member for Clayfield also noted concerns raised by stakeholders during the committee process about the bill defining 'places of detention' rather than using the broad definition under article 4 of OPCAT. I want to be clear: places of detention are defined in the bill to provide certainty as to the procedures to be followed for a subcommittee visit to those facilities. This is consistent with the Commonwealth government's incremental approach to OPCAT implementation. It will not prevent the subcommittee from visiting other places where a person may be deprived of their liberty. Such visits would be managed by consent and in accordance with any relevant legislation, policies and procedures. The relevant laws, policies and procedures will depend on the particular place the subcommittee wishes to visit, and there will be information provided to the subcommittee about this detail ahead of any visit. Not all jurisdictions in Australia have specific legislation to facilitate subcommittee visits. The bill also provides for a regulation that may later prescribe other places of detention, other than a private residence, as within the scope of the bill.

The member for Noosa raised that the bill should cover disability group homes and accommodation settings where people with disability reside in a group setting. She also raised whether the bill should extend to aged-care facilities, including secure dementia units within these facilities. I note that residential aged-care facilities and disability group homes and accommodation settings are primarily regulated and funded by the Commonwealth government. Given this, a nationally consistent approach may be beneficial to looking at whether to legislate subcommittee access to these places.

With respect to quarantine facilities raised by the member for Currumbin, under clause 4(1)(h) of the bill, the Governor in Council could make a regulation to prescribe other places of detention, other than a private residence, to be within the scope of the bill. This must be done in consultation with the minister with responsibility for the place to be prescribed by regulation. With respect to the Wacol precinct raised by the member for Noosa, facilities where persons are on an interim detention order or a continuing detention order under the Dangerous Prisoners (Sexual Offenders) Act 2003 are captured by the bill as they are deemed to be detained in prison under section 43A(2) of the Corrective Services Act 2006.

The members for Moggill and Mirani have questioned the breadth of the discretion to restrict access to places of detention. The grounds in the bill for a responsible minister to object to a visit of the subcommittee mirror the grounds provided in OPCAT in article 14(2)—that is, national defence, public safety, natural disaster or serious disorder in the place of detention. An example noted in the explanatory notes is that a responsible minister may object to a visit to a facility that is affected by a bushfire or flood during the period of the subcommittee's visit.

Additionally, a detaining authority under clause 10 can restrict or temporarily prohibit access to all or part of a place of detention during a visit to preserve the security, good order and management of the place, the health and safety of any person in the place of detention, or to allow the conduct of essential operations.

Given the subcommittee's itinerary is confidential, clause 10 allows a detaining authority to respond to critical incidents that may arise at the time of the visit. For example, a detaining authority may temporarily restrict the subcommittee's access to part of a facility if a person who is detained there becomes distressed and presents a risk to themselves or the subcommittee. Any temporary restriction on access has safeguards. It must only be for the shortest period reasonable under clause 10(3) and, if exercised, a detaining authority must provide written reasons to the responsible minister under clause 10(4). Further, the operation of clause 22 of the bill provides that a detaining authority is subject to the direction of the responsible minister. This means that the responsible minister has the ability to direct the detaining authority not to restrict subcommittee access.

The member for Clayfield has questioned the government's stance on youth justice, as did the member for Toowoomba North in his recent contribution. In response to those points, I simply say this: the member for Clayfield was the treasurer who oversaw a $170 million cut to the Department of Justice and Attorney-General and cut 507 jobs from the Department of Justice and Attorney-General. He oversaw the boot camp cost blowouts, saw $15,000 wasted by the then attorney-general and now Deputy Leader of the Opposition on helicopters to visit the failed boot camp when he could have driven, and scrapped diversionary programs.

As I mentioned not long ago during question time, when coming into government I saw the impact of their cuts to youth justice programs. I visited the Cleveland Youth Detention Centre in Townsville and saw the brand new trade training centre sitting empty. I asked the staff what it used to be used for. They said they were teaching kids, including First Nations kids from places such as Palm Island, how to rebuild outboard motors. We know that that form of transport is critical for those who live in places such as the Torres Strait, the cape and Palm Island. That sort of transport is important. Those are skills that young people can use in their communities, but the facility was sitting empty. It was a wasted facility. The training staff had been pulled, the funding had been scrapped and that amazing facility was sitting empty. I am proud that we re-established those training programs.

Today, the member for Toowoomba North talked about transparency of processes and how we need to make sure we have proper facilities and programs to look after those young people, but he did not acknowledge at all what they did when in government—and what I highly suspect they would do if returned because they have already said they have identified over $2 billion worth of cuts—and I find that extraordinary. They talk about the bodies that look at transparency. Yes, but those are the bodies that they cut funding from, including the Public Guardian. They cut that funding. We know what they did to the PCCC in the middle of the night. They talk about bodies to look at transparency, but they did everything to shut down those bodies, to quieten them and to hide information.

I find absolutely astounding the comments made today by the member for Toowoomba North and his outrage around detention centres and how youths are treated. In public they say, 'Just lock the little thugs up', but they come in here and say, 'What are you doing for the young people who end up in detention? What are the programs? What are you doing to divert them from crime?' When they were in government they scrapped every diversionary program that existed, including the Murri Court and youth justice diversion programs. It is astounding.

In conclusion, I thank all honourable members for their contributions during the debate. I thank those stakeholders, organisations and individuals who made submissions to the committee and participated in the public hearings. I thank them for their ongoing advocacy in this area. Once again I thank the committee for its oversight of the bill. The bill is an important piece of legislation that demonstrates Queensland's support for OPCAT and helps meet Australia's international human rights obligations. It is consistent with Queensland's commitment to promoting good detention practices and upholding the humane treatment of people in detention. I commend the bill to the House.