

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *OPCAT Implementation Bill 2021*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

On 17 December 2017 the Australian Government ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – known commonly as OPCAT.

OPCAT establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

As the then Minister for Foreign Affairs, the Hon Julie Bishop MP, aptly noted at the time, this ratification was a significant victory for human rights in Australia. It will improve oversight of places of detention, including immigration detention facilities, prisons, juvenile detention centres, and various psychiatric facilities.

OPCAT supplements and expands existing mechanisms that states and territories may have for inspections and monitoring of standards of facilities, such as the custodial inspector regime, chief psychiatrist, official visitor functions, health complaints, and others.

Ratification was the beginning of an ongoing discussion about OPCAT oversight and monitoring of places of detention across our country. This is because it is the responsibility of all state and territory governments to ensure our OPCAT obligations are fulfilled, not just the Commonwealth.

Mr Speaker, in compliance with our international obligations, this Bill delivers on our Government's commitment to be OPCAT compliant by January 2022, which is the timeframe by which Australia is required to be OPCAT compliant.

Mr Speaker, OPCAT sets two overarching responsibilities for every Australian state and territory, namely:

- to allow monitoring visits by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (of the Committee against Torture) – commonly known as the Subcommittee; and
- to designate an independent monitoring body for the prevention of torture and ill-treatment at the domestic level – which the Protocol names the ‘National Preventive Mechanism’, or NPM for short.

I note that a standalone Act for OPCAT is one of the important outcomes of our extensive consultation.

It was first proposed to include OPCAT provisions in a separate part of the *Custodial Inspector Act 2016* because the framework of that Act was designed in 2016 in consideration of future OPCAT requirements.

In response to feedback on the draft Bill however, the decision was made to further strengthen our framework for OPCAT in a standalone Act. This clarifies and supports the independent operation of the NPM in relation to a broader class of places of detention. The revised Bill was provided to stakeholders for further comment, and minor further adjustments were made. The input from our stakeholders is greatly appreciated.

### Subcommittee

Turning first to the Subcommittee, and to provide a brief overview, its mandate under OPCAT is to:

- visit places under Australia's jurisdiction and control where persons are or may be deprived of their liberty;
- advise and assist Australia and its NPMs on their establishment and functioning; and
- co-operate with other international, regional and national organisations and institutions working to strengthen protections against torture and ill-treatment.

The Subcommittee is comprised of 25 experts from countries party to OPCAT, elected for four year terms. Visits to Australia by the Subcommittee will typically comprise at least two members, depending on the nature of the visit, who may be accompanied by experts selected from a roster maintained by the United Nations. After a visit, the Subcommittee will report to the relevant government on action to be taken to improve the treatment of detainees, including conditions of detention.

Mr Speaker, I note that the Subcommittee had intended to visit Australia last year, but that visit is understandably postponed due to the COVID-19 pandemic.

Within the Bill, Part 3 creates a framework to enable these Subcommittee visits to places of detention. Consistent with OPCAT, it establishes a general rule of enabling the Subcommittee to have unrestricted access to places of detention, to interview detainees and other persons, and access to relevant information. The ability to object to these functions are provided for in very limited circumstances, consistent with the Protocol.

For example, Article 14(2) provides for objection to an SPT visit “only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder” that temporarily prevent the carrying out of a visit. Notably, a state of emergency by itself is not a reason for objection. However, public safety issues arising from the emergency could be an objection, if necessary. As the Commonwealth is the OPCAT signatory, objections are made by the Attorney-General of the Commonwealth.

It is expected that during a visit the Subcommittee will also meet with government officials, our NPM, and relevant stakeholders including from non-governmental organisations.

This Subcommittee framework is based on model law developed by jurisdictions and the Commonwealth, and in that regard I note that the Australian Capital Territory and Northern Territory have also passed legislation following this model. I understand that other jurisdictions’ frameworks are still in development.

### National Preventive Mechanism (NPM)

Mr Speaker, I will now move to the National Preventive Mechanism (known as the NPM) under Part 2 of the Bill. This will be a new, permanent monitoring body for Tasmania. The Bill provides that the Governor may appoint a person, or more than one person, as a Tasmanian NPM. The primary function of the NPM will be to undertake regular, unannounced inspections of places of detention, to examine the treatment of detainees with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

Associated with this function, the Bill provides that the NPM will have power to –

- require the provision of or access to information about detainees, including the number and treatment of such detainees and the conditions of their detention;

- require the provision of or access to information about places of detention, including the number of such places and their location;
- to access, inspect and review places of detention;
- to interview detainees confidentially, and any other persons who the NPM believes may supply relevant information; and
- to contact, meet and exchange information obtained under its functions with the Subcommittee or other jurisdictions' NPMs;

Under OPCAT, places of detention is defined in open terms, and this is appropriately reflected in the Bill. It is any place under Tasmania's jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at their own instigation or with their consent or acquiescence.

For clarity, the Bill provides a list of places of detention that the Government has assessed to be within the scope of this definition. These include:

- a correctional centre, prison, detention centre or similar;
- a hospital or similar;
- a closed psychiatric facility;
- a police station or court cell complex; and
- a vehicle used or operated to convey detainees.

I want to highlight that the NPM will complement, and not replace, existing oversight and investigatory bodies in Tasmania – such as the Health Complaints Commissioner, Custodial Inspector, or our Official Visitors.

Indeed, it is expected that the NPM will liaise with and seek involvement from these existing bodies. As has occurred in other countries, we anticipate that implementation of the NPM will be an iterative process, and that its monitoring functions will evolve over time. Across Australia, jurisdictional NPMs will operate independently, under the coordination of the Commonwealth Ombudsman.

#### Broad Functions:

Mr Speaker, in addition to its inspection function, the Bill provides that the NPM may also:

- make referrals for consideration or action;

- receive information in relation to a detainee or place of detention;
- make recommendations and provide advice to the relevant authorities, particularly the Government;
- develop and publish guidelines and standards in respect of detainees or places of detention;
- submit proposals and observations concerning existing or draft legislation that relates to detainees or places of detention;
- publish reports, recommendations, advice or findings in relation to detainees or places of detention, including to Parliament, and through an annual report to the Commonwealth Ombudsman; and
- engage in consultation in relation to policy relating to detainees or places of detention with a responsible Departmental Secretary or a responsible Minister;

To protect persons who communicate with or intend to communicate with the NPM from sanction, reprisal or other prejudice, the Bill also creates a new 'protection of reprisal offence'.

Mr Speaker, the Bill rightly provides that the NPM is to exercise its functions independently and impartially, and with complete discretion. To ensure this independence, the NPM will be appointed by the Governor. The NPM will be required to identify any conflicts of interest directly to the Governor, and the NPM must address any conflicts as they arise.

As the Government has announced previously, we intend to recommend the Custodial Inspector, Richard Connock, to the Governor for appointment as Tasmania's inaugural NPM. Mr Connock will bring a wealth of collective expertise and experience to this new body, which will be necessary for its establishment and effective functioning.

The NPM will have the power to delegate to competent experts, and to hire staff or utilise staff of the Department of Justice. Experts and staff will also exercise independence and impartiality in their work. The Bill ensures that confidential information acquired in the course of the NPM's work is protected and not disclosed unless the specified circumstances apply.

I am pleased to say that the Australian Government has committed to contributing some funding to jurisdictions' NPM implementation. My Department is in discussions with the Commonwealth on this matter, as part of our commitment to ensuring appropriate resourcing of additional resources for the NPM through both Commonwealth contributions and our own budget process.

Mr Speaker, I mentioned earlier that Australia's ratification of OPCAT was the beginning of an ongoing discussion, and for Tasmania that has unquestionably been the case.

This Bill is a product of extensive consultations with a wide range of stakeholders within government, within Tasmania, across Australia, and internationally. I want to acknowledge and thank, in particular, the many stakeholders who provided consultation submissions, for taking the time to meet with my Department, and for writing to me personally. I also express my sincere thanks to the Custodial Inspector, Richard Connock, and the Commonwealth Ombudsman Michael Manthorpe and Deputy Penny McKay for their assistance.

Our Government is committed to ensuring that people in places of detention are treated humanely, appropriately, and in accordance with international law. I look forward to working with the NPM in this new role that independently provides oversight and an important responsibility.

I would also like to acknowledge the work of the Office of Parliamentary Counsel in drafting and finalising this substantial piece of legislation.

I commend the Bill to the House.