

SECOND READING SPEECH

Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013

Mr Speaker, this Bill is a necessary step towards the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which Australia signed in 2009.

Australia ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Optional Protocol is attached, in 1989.

The Optional Protocol 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.

The system of inspection is established in two parts. The first part, which is the subject of this Bill, provides for periodic visits to places of detention conducted by the United Nations Subcommittee for the Prevention of Torture.

Mr Speaker this Bill is based on a national model developed by an inter-jurisdictional working group led by NSW and overseen by the Standing Council of Law and Justice.

The model Bill was drafted to comply with the Optional Protocol with input from the Commonwealth Office of International Law.

It should be noted that if the States had not developed the model Bill, the Commonwealth had the option to legislate nationally to implement the treaty, utilising its 'foreign affairs' power in the Australian Constitution. The States took the

view that it was preferable to develop agreed state-based legislation.

The work of the national working group was complemented by a State based working group, comprised of representatives from the Departments of Justice, Health and Human Services, Police and Emergency Management and Premier and Cabinet, which provided comment and input to the model Bill.

Other than some minor amendments to reflect local drafting protocols and minor technical matters, this Bill reflects the model.

The Bill provides the United Nations Sub-Committee with access to places of detention, as well as information on detainees and sets out duties of detaining authorities.

A place of detention is any place where a person is deprived of their liberty, including prisons, police stations, psychiatric institutions, juvenile detention centres, and migrant detention centres.

The Bill overrides any inconsistent State legislation, but it is likely that the only “over-riding” will be the displacement of State privacy provisions. However, as OPCAT strictly limits the uses to which information obtained by the Committee may be put it is unlikely that this will significantly alter the protections available to an individual.

The Bill will be supplemented by Ministerial arrangements between the Commonwealth and an individual State. Ministerial arrangements may, for example, cover a process by which objections to visits can be made through the Commonwealth Minister for Foreign Affairs (given that the Commonwealth is the party to the treaty) and also clarify other necessary matters specific to individual jurisdictions.

It is expected that Ministerial Arrangements will be drafted through the inter-jurisdictional working group to enhance consistency between jurisdictions.

Based on past practices of the United Nations Subcommittee, it is estimated that it would visit Australia at least every five years to carry out inspections in co-operation with detaining authorities.

The second part of the system of inspection set out in the Optional Protocol is the establishment of an independent domestic body to conduct regular visits to, and monitor the treatment of, persons in places of detention.

This part of the system is known as the “national preventative mechanism”.

As provided for in the Optional Protocol, Australia has decided to defer the establishment of the national preventative mechanism for three years after ratification.

The inter-jurisdictional working group will re-convene in the future to work collaboratively on the national preventative mechanism.