

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

Grievance

MS M.M. QUIRK (Landsdale) [9.28 am]: I thank the Minister for Corrective Services for taking my grievance this morning. I seek an update on the current status of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, I ask whether the state and commonwealth have finalised negotiations on resourcing and the inspection regime. What additional resources will the excellent Inspector of Custodial Services require to ensure that WA's obligations are complied with? Previous commonwealth Attorneys-General under the Turnbull and Morrison governments were dilatory in their negotiations with the states. I also ask that the WA government impress upon Attorney-General Dreyfus the need for expedition.

OPCAT aims to ensure the protection of people's human rights when detained, providing for a rigorous process of independent inspections of detention places in a country's jurisdiction. In doing so, OPCAT enables a light to be shone on the conditions for detainees.

In December 2017, Australia ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signalling it would be bound by its terms and comply with the treaty. However, on ratification, Australia made a declaration under article 24 to postpone the national preventive mechanism obligations for three years. This was to enable the commonwealth to work with states and territories on implementation, including establishing Australia's compliant oversight mechanisms. Its objective was to create a cooperative network of commonwealth, state and territory bodies responsible for inspecting places of detention facilitated by an NPM coordinator.

In July 2018, the Commonwealth Ombudsman commenced as Australia's NPM coordination body for the commonwealth. The NPM oversees the conduct of inspections of all places of detention. This includes prisons, juvenile detention centres, local and offshore immigration detention facilities, and other places in which people are deprived of their liberty. According to the protocol, the NPM must have a mandate to undertake regular preventive visits. It must be independent, both functionally independent and independent of personnel. It must have the expertise to conduct inspections and have professional knowledge. It must have the necessary resources. It must be given access to all places of detention and all relevant information, and the rights to conduct private interviews. It must have appropriate privileges and immunities. For example, there will be no sanctions for communicating with the NPM and confidential information will be treated as privileged. The NPM should be able to have dialogue with competent authorities regarding recommendations and have the power to submit proposals and observations concerning existing or proposed legislation.

Western Australia is the first state to establish its NPM. The Office of the Inspector of Custodial Services is the designated NPM for prisons, youth detention and police custody, and the Ombudsman Western Australia is the NPM for mental health and forensic disability facilities. The designation has not yet been accompanied by legislative amendment or, most importantly, added resources. In November 2013, the Community Development and Justice Standing Committee, of which I was chair, tabled its *In safe custody* report on custodial arrangements and police lock-ups. Finding 50 on page 133 states —

That until the OPCAT is ratified it is uncertain exactly what implications there will be with respect to police lock-ups however oversight by the Office of the Inspector of Custodial Services will likely facilitate Western Australia's future compliance with the OPCAT.

I am delighted to note that in addition to the oversight afforded by the OICS regime, the Attorney General has also implemented that committee's recommendations for a custody notification service aimed at preventing Aboriginal deaths in custody. Additionally, with strong support of the Attorney General, a bail support service through Legal Aid Western Australia has been created to ensure that, with practical assistance, those on remand can become more acceptable bail candidates.

For the purposes of completeness, I also mention section 15E of the Prisons Act that permits free and unfettered access of the minister, CEO or other authorised person to visit prisons 24/7. This permits those persons to satisfy themselves that the act is being complied with or that contracted services are adequately delivered. As a past Minister for Corrective Services, I availed myself of this opportunity on several occasions, because on my official visits there was an overwhelming smell of freshly mown lawn and bleach, but I digress.

In an article in the *Mandarin* of 25 January this year headed "Time's up for Australia to implement OPCAT, commissioner says", the Human Rights Commissioner says —

With the deadline for Australia to embed a coordinated protocol that guarantees an independent inspection system for all places of detention, experts say scrutiny of such venues has fallen by the wayside.

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The government should have embedded the measures of the protocol by 20 January this year, effectively guaranteeing the comprehensive and regular inspections of all places of detention, and prevention of human rights abuses before they occurred.

In a statement published on the commission website last week, human rights commissioner Lorraine Finlay said that it was time for Australia to establish an independent national preventive mechanism to conduct regular inspections—and to allow UN inspections—of all places of detention.

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The commissioner said that it was clear from state government feedback that additional funding and an overarching national framework for OPCAT implementation was needed.

This week, full implementation of OPCAT hit another hurdle with regard to reporting on 18 October that New South Wales had refused United Nations inspections in prisons. The Perrottet government plans to refuse entry of UN inspectors until such time as a funding agreement is in place with the federal government. I look forward to the minister's response.

MR W.J. JOHNSTON (Cannington — Minister for Corrective Services) [9.35 am]: I thank the member for this grievance. The member for Landsdale is not only a former Minister for Corrective Services, but also has a lifetime commitment to human rights. I knew the member when we both lived in Canberra. Her deep and abiding interest in human rights was already evident back then and she has continued with that for her entire political career. She is to be greatly respected for the work that she has contributed to this area.

This is a difficult issue for the implementation of the regime, and I will explain why. We have been in discussion with the commonwealth government for some time about the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The issue is that only the commonwealth government can enter into international treaties, but the commonwealth government does not run criminal detention facilities. It runs other detention facilities, including immigration detention facilities. We have been keen to understand from the commonwealth what assistance it will provide to us to implement the regime otherwise known as the national preventive mechanism. Western Australia was the first state to design an NPM, which is the Office of the Inspector of Custodial Services combined with the Ombudsman WA. We have been seeking support from the commonwealth for the additional costs, which are not insignificant but also not substantial, for the operation of that. We are having to take on additional responsibilities because the commonwealth government has decided to enter into a UN convention. The Office of the Inspector of Custodial Services already has the right to inspect and deal with all matters in the prisons and the detention centre, but not in police lock-ups. Additional activity is required for that and the Ombudsman, who has partial oversight of the mental health services, needs to have that extended.

The other thing we want from the commonwealth is a clear picture of what procedures it is going to apply to immigration detention facilities. The challenge is not with the announced visits, but with the unannounced visits. Although the Office of the Inspector of Custodial Services has an absolute right to visit prisons, for example, it does not mean that its officers can just turn up at two o'clock in the morning; they have their own agreed protocol. For example, we would suggest to the commonwealth that the OPCAT inspectors—the SPT; otherwise known as the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment—go to a detention facility in the company of the NPM, whether that is the Ombudsman or the Inspector of Custodial Services. Apparently that is not acceptable to the SPT, even though the NPM is designed to be independent, like both those offices are independent of government. We think that that is the best way forward so that we do not get into these meaningless disputes, which is what is happening in New South Wales and Queensland. Queensland has refused SPT access to mental health facilities because that access does not comply with its relevant legislation to deal with mental health facilities.

The other question we have for the commonwealth is that if there is a recommendation from United Nations committee that oversees these matters that results in financial implications for the implementation of that recommendation, who pays for that? The state of Western Australia is not a party, and cannot be a party, to the protocol because we are not a state party; we are a subnational jurisdiction. Therefore, if the commonwealth were to have a recommendation that it implement an obligation, we would be happy to work with it on that, but given that that is the commonwealth's obligation, we are not sure how that would be implemented.

We have been in discussions with the former commonwealth government for many years and have written letters asking for information, but it was not very engaged with us on that topic and often our letters were not answered. The new commonwealth government has been in office for only a brief time, and the SPT is now in Australia and wants to do inspections, but none of these issues have been answered, because for the past four or five years we have not been able to get a clear picture from the commonwealth government. I feel sorry for Hon Mark Dreyfus, the

federal Attorney-General, because he has been left with this bucket of stuff that needs to be sorted out and has still not been properly resolved, and the SPT is now in Australia.

I point out to the member that the SPT has not visited Syria, Iran, Iraq, North Korea or Russia. The SPT has visited Azerbaijan, Bolivia, Bulgaria, Burkina Faso, Cape Verde, Cambodia, Ecuador, Ghana, Guatemala, Kurdistan, Lebanon, Liberia, Mauritania, Morocco, Mozambique, Nauru, Nicaragua, Nigeria, Philippines, Moldova, Senegal, Sri Lanka, Tunisia and Turkey. However, the SPT reports about those visits are confidential. They are not on the United Nations website for us to read. As I have said, Syria, Iran, Iraq, North Korea and Russia have not had SPT visits, and we do not know what occurred with the visits to the other countries that I have listed.

I imagine, given what was happened in New South Wales and Queensland, that the SPT will make a breathless report criticising Australia. However, that is about administration, not about the question of torture. I am happy to table the report of the SPT visit to New Zealand, which made great criticism of that country. However, again, it is not about whether torture occurred; it is about the procedures that are used in the detention process. I table that document.

[See paper [1595](#).]

Mr W.J. JOHNSTON: I am confident that there is no torture in Western Australian jails and detention facilities. I expect that the same is true in our police lock-ups and mental health institutions. However, I am afraid that we will get a bad report because of these procedural reasons.