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SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018

9.00 am, Monday, 28 May 2018

Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson, MLA, Member for Katherine

Witnesses:

Robert Bradshaw: Director Policy Coordination, Department of the
Attorney-General and Justice
Alison Hanson: Legislation Policy Officer, Department of the Attorney-
General and Justice

DEPARTMENT OF ATTORNEY-GENERAL AND JUSTICE

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Madam CHAIR: Good morning, everyone. Thank you for joining us. I am Ngaree Ah Kit, the Member for Karama and Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public briefing into the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018.

I acknowledge that this public briefing is being held on the land of the Larrakia people and I pay my respect to Larrakia elders, past, present and emerging. I also acknowledge my fellow committee members in attendance today, Sandra Nelson, Member for Katherine and via teleconference, Robyn Lambley, Member for Araluen.

I welcome to the table to give evidence to the committee from the Department of Attorney-General and Justice Robert Bradshaw, Director Policy Coordination and Alison Hanson, Legislation Policy Officer. Thank you for coming before the committee this morning. We appreciate you taking the time to speak to the committee and look forward to hearing from you today. This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply.

This is a public briefing that is being webcast through the Assembly's website. A transcript will be made use by the committee and may be put on the committee's website.

If at any time during the briefing you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

I will ask each witness to state their name for the record, and the capacity in which they appear. I will then ask you to make a brief opening statement before proceeding to the committee's questions. Could each of you please state your name and the capacity in which you are appearing?

Mr BRADSHAW: Madam Chair, I am Robert Bradshaw, Director Policy Coordination, Department of Attorney-General and Justice.

Ms HANSON: Madam Chair, I am Alison Hanson, Legislation Policy Officer with the Department of Attorney-General and Justice.

Madam CHAIR: Mr Bradshaw, would you like to make an opening statement this morning?

Mr BRADSHAW: Just briefly. This Bill reads a bit like a novel in the sense that you can read it—it makes sense by itself. So, I will not go through every clause.

The minister's explanatory speech set out the provisions of the legislation. Very briefly, the legislation provides for independent inspection of places of detention in the Northern Territory by a UN subcommittee. That is the core reason for the Bill.

The framework of the legislation is that in about 1989, the national government entered into a convention for preventing cruelty for people in places of detention. Later, in early the 2000s, the UN started to develop this protocol which deals with administrative mechanisms for ensuring compliance with the treaty—the convention of 1989.

In turn, the OPCAT—which is what we are discussing—has two core parts to it. One part deals with permitting inspections by the UN subcommittee—outside inspections—and the other part deals with developing local mechanisms called preventive mechanisms in Australia for independent inspections of places of detention.

This Bill deals only with the first set of provisions facilitating the UN visit, not the second, which is for another time.

In the period ending December 2017/January 2018, the Commonwealth took all the final steps to sign up to OPCAT. So, it is now in operation. The UN committee can now visit Australia. We are not expecting a visit—it does not appear imminent. It is not on the subcommittee's workload for 2018 or 2019, thus far. It publishes on the UN website where it is going, so there is plenty of notice.

The key clause of the Bill is clause 5, which basically provides that Northern Territory legislation operates subject to the protocol. If the protocol says that the UN committee can do A, B or C, then NT legislation operates subject to that.

That is where I will stop at the moment. That sets out my idea of the key background of the act and its contents.

Madam CHAIR: Thank you very much. I will now open it up to the committee for any questions.

Ms NELSON: I have a question, Madam Chair. Good morning. The first question has to do with the news—actually, it is not to do with that, it is instigated by what was reported in the newspapers over the last couple of days regarding the—I think it was the probation—not probationary house—what are they called? My mind has gone completely blank on the name of it.

There was a news article that raised concerns about a site for a halfway home for kids or people who were on probation, where they are residing. There was a new site that was being proposed to be built and the community is not happy about that. Now, we are considering looking at another site for that. Is that covered in this? Is that situation covered in this?

Mr BRADSHAW: I do not think so. Because this Bill only deals with places of detention where people are there against their will. I am not sure ...

Ms NELSON: Oh, okay.

Madam CHAIR: So this Bill would cover—it might have been Don Dale—a new proposed site for a new Don Dale Detention Centre?

Ms NELSON: It was part of that, yes.

Mr BRADSHAW: This Bill deals with inspections by the UN subcommittee. Issues about whether or not ...

Ms NELSON: Oh, the physical ...

Mr BRADSHAW: Yes.

Ms NELSON: Okay.

Mr BRADSHAW: Yes, issues about whether an NT facility has complied with the treaty is to be brought up to speed in the next three years. So, we have three years to bring things up to speed and to establish the independent bodies.

Ms NELSON: Okay, got it.

Mr BRADSHAW: I am not sure whether I mentioned this, but under OPCAT there are two main things, local inspections or independent inspections. The Commonwealth government has the choice of deciding which one to do first. With the support of all states and territories, the Commonwealth chose to go with the UN visits first and give us all three years to get the other stuff up to date.

Ms NELSON: Great.

Mr BRADSHAW: That really means establishing the independent inspection regimes and looking at the facilities themselves.

Ms NELSON: How does that tie in with the Royal Commission report or the recommendations in that report?

Mr BRADSHAW: The Royal Commission report dealt with physical facility as well, but it also dealt with OPCAT in the respect of children. It suggested that the Children's Commissioner be the independent local mechanism for dealing with complaints and dealing with independent inspections.

Ms NELSON: Okay.

Madam CHAIR: I have a quick question. I am curious to see what sort of consultation was done prior to the Bill being drafted. Can you give us an explanation about which stakeholders were consulted and how the department went about that?

Mr BRADSHAW: This Bill is the culmination of about 10 years' worth of work. In the previous government, minister Elferink introduced in 2013 a Bill almost the same as this one. There was a great deal of consultation regarding that. We had a discussion paper and explanatory statement on the website. I think we wrote to key stakeholders and got their comments. Basically, as I recall, there maybe were a few quibbles about the Bill but there was general support for the Bill.

So, that Bill, in effect, lapsed because the Commonwealth—that Bill started off its career when Labor was in power nationally, and it was then introduced when the CLP came into power here. Then the Commonwealth government had a change of mind at that time and just did not proceed with OPCAT under the first Abbot government. So, the NT Bill—along with the Bills in Tasmania and the ACT—in effect lapsed. This occurred in about 2015, in our case.

We took the view that that kind of consultation meant there had been sufficient local consultation and nothing much had changed. The Commonwealth Human Rights Commission did quite a bit of consultation last year on OPCAT. So, I guess we did not feel the need to do it again.

Madam CHAIR: But you have already done the consultation?

Mr BRADSHAW: Yes.

Madam CHAIR: I take your point, Robert, thank you very much. In clarifying, could you tell us what the difference is between the previous Bill that was presented by the previous Attorney-General and this new Bill?

Mr BRADSHAW: There is a slight difference in the name, in the sense that when it was originally developed, it was assumed that all the states and territories would have a Bill. So, the old name had 'National Uniform Legislation' in the title. Whereas it now appears that not all the states and territories will have a Bill. The ACT has already enacted and passed a Bill and we are next. It is a bit dubious whether some of the bigger states will do it. The Commonwealth has decided it does not need legislation.

There was some minor tweaking of the offence provision and the definition of 'place of detention'.

Alison, can you ...

Ms HANSON: I agree that that is really about it.

Madam CHAIR: Thank you for that. I found the Bill—like you said, Robert—very easy to read. I thought a lay person could really follow it and I wish more of our Bills were like that. It was really interesting to see that the definition of 'place of detention' also included the vehicle in which someone is transported. Yes, I was interested to see that provision. It makes sense, so I was happy to see that.

Robyn, do you have any questions?

Mrs LAMBLEY: What is currently in place to monitor these places of detention?

Mr BRADSHAW: Locally, we have a range of people. For example, under the *Correctional Services Act* and the Youth Justice legislation, we have the scheme of official visitors who are appointed by the Minister and who can receive complaints and then report back through the Minister. The weakness of that is that the Minister is in charge of both the places of detention system and the independent review system, so that is problematic.

We have provisions under the *Mental Health and Related Services Act* whereby there is also an official visitor scheme, but it is administered by the Anti-Discrimination Commissioner. She is appointed to that role, so that is arguably a much more independent role. Then, the Ombudsman has a general jurisdiction over things like police cells, court-type cells and vehicle-type detention. Probably also there is one other fairly obscure place of detention which is under the *Notifiable Diseases Act*. You can be detained under that act as well. Yes, they are the main ones.

Madam CHAIR: Thank you.

Mr BRADSHAW: In some ways, the Ombudsman is at the apex of that current system.

Madam CHAIR: Yes. Would you envisage any intended visits by the United Nations subcommittee would be forthcoming with a lot of notice for us to prepare?

Mr BRADSHAW: There is always plenty of notice. As I said, you can look at its program on the UN website. It has everywhere it is going this year. It is going to what looks like about 100 countries—a lot of them in Africa and places like that. It has its preliminary program for 2019, so I imagine you get at least a year-and-a-half.

I understand it visits countries once every five to 10 years. There is a general expectation that it will visit Australia sooner rather than later—so, in the next two, three or four years. When it comes to a country, I gather it works very closely with the Commonwealth government, which is why this Bill has clauses dealing with entering into agreements with the Commonwealth government. It spends about two weeks in the country, which means that its visits are fairly fleeting and ...

Ms NELSON: Very brief.

Mr BRADSHAW: Yes. I gather from talking to the Commonwealth people who work more closely with it than we ever will that generally it is done very cooperatively. I image it would give plenty of notice.

Madam CHAIR: Fantastic.

Ms NELSON: Why is it so important that the UN monitors, or comes and visits? Why is it so important to us?

Mr BRADSHAW: I guess it is important because Australia has agreed to the convention and then ratified this compliance mechanism. In terms of why we have legislation rather than just leave it to negotiation—which is what the Commonwealth is planning to do—it was our view—at a departmental level and in talking to the various other NT oversight agencies—that is it is relatively complex to deal with a relationship between a UN committee and state and territory legislation which spells out secrecy-type issues, access and a range of things. We had the fear of a UN committee turning up at the front door of a place of detention—particularly one of the more obscure ones like the vehicle or a hospital—and being met with someone who demanded to know exactly why they had the right to come to this place and deny them cooperation.

That is why we have gone along the legislative line, because unlike the Commonwealth, we do not have a group of people who are expert in dealing with treaties. The legislation will stop people needing to get legal opinions on quite complex issues around the relationship between a treaty entered into by the national government and the local territory or state legislation, which purports to tell people how they are supposed to behave.

Ms NELSON: Yes. I worked for the UN for four-and-a-half years, so ...

Mr BRADSHAW: I guess Alison has pointed out ...

Ms NELSON: This sort of legislation is great.

Mr BRADSHAW: Alison has pointed out to me one of the important points, which Alison can address, if you want.

Ms HANSON: Section 15 provides protection against reprisals for people who give information to the subcommittee. That is an important aspect of the Bill.

Madam CHAIR: I completely agree.

Ms NELSON: I agree.

Madam CHAIR: I also like the clause where it said that the interviews will be done in private so people feel safe, I guess, to be able to engage one-on-one without that fear of reprisal for what they say.

Ms HANSON: It puts a framework around it that is legislated for.

Madam CHAIR: Yes. I am guessing that if the Bill passes, there would need to be some sort of mechanism to inform those who are in detention about these changes and the fact that if they are ever approached for an interview they can feel safe to do so because all of these mechanisms will be put in place?

Mr BRADSHAW: I think we do that when we find out that the committee is coming to Darwin—to the Northern Territory. Then whoever ends up being—the critical people we need to get on board are the people who are running the places—the detention ...

Ms NELSON: So, it is not the sort of thing you can actually pre-empt? It is much better that you do it at the time that it is requested, or a confirmed date of meeting or interview—that sort of thing?

Mr BRADSHAW: Yes, I think so. Let us say they come to Australia—it is not totally certain they come to the Northern Territory ...

Ms NELSON: Yes.

Mr BRADSHAW: If they come to the Northern Territory, the odds are they would probably go to the youth detention places and they probably will not go to the hospital.

Ms NELSON: Yes, I agree. The impact this will have on service providers as well will be a positive impact. It certainly helps to facilitate or make it a little easier as well for service providers to know what their boundaries are and to have guidance in regard to this sort of monitoring and exposure to organisations like the United Nations as well.

Will this Bill then lead itself on to provision of guidance or guidelines for service providers as well on how to conduct themselves or ...

Mr BRADSHAW: What are you meaning when talking about service providers?

Ms NELSON: Well ...

Mr BRADSHAW: The places ...

Ms NELSON: The places of detention, yes.

Mr BRADSHAW: Yes.

Ms NELSON: The Department of Corrections staff, for example, or operational staff, executive staff?

Mr BRADSHAW: We would spell that out because what the Bill envisages is arrangements with the Commonwealth as to how people should behave when dealing—I image that is where we would set that out and then we would have to educate people about that.

What the Commonwealth is doing at the national level is getting the Commonwealth Ombudsman to be the coordinator of all the local and national preventative mechanisms.

Ms NELSON: Okay.

Mr BRADSHAW: That is where, I assume we would start developing those kinds of protocols.

Ms NELSON: Okay.

Madam CHAIR: Are there any further questions from the committee?

Mrs LAMBLEY: I do not have any more questions.

Madam CHAIR: Thank you. Member for Katherine?

Ms NELSON: Yes, I have one last question. It is pretty simple. How will this legislation affect the average, every-day Territorian who is not necessarily involved in ...

Mr BRADSHAW: It will not have any impact on other people, other than when you happen to be in a—it is more to defend the rights of the individuals who are in places of detention. They may not even get to know about it.

I understand a lot of the work of the committee is in working with the people who are doing the detaining, rather than necessarily talking to people who are in the prison or a place of detention. It is based more around the systems.

Madam CHAIR: I take the Member for Katherine's point. I also see this as a great opportunity for stronger compliance and the protection of human rights while in detention. Yes. Do you have any further information you wanted to leave with the committee this morning?

Mr BRADSHAW: Not from me.

Madam CHAIR: No worries. Thank you very much for appearing before us today. I appreciate you taking the time out of your busy schedules to give us a public briefing and further information on the Bill before the committee.

Ladies and gentlemen, this now concludes the public briefing. Thank you for your time. Thank you, Robyn.

Mr BRADSHAW: Thank you.

The committee concluded
