



**LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY**

**Social Policy Scrutiny Committee**

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

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**June 2018**



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## Chair's Preface

This report details the Committee's findings regarding its examination of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018. In accordance with the *Optional Protocol to the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment*, as ratified by the Commonwealth Government in December 2017, the Bill establishes the necessary legislative arrangements for the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to inspect places of detention in the Northern Territory.

All of the submissions to the inquiry supported the Bill and commended the Government for bringing the legislation forward. As highlighted by the Anti-Discrimination Commissioner, the Bill provides "a fundamental mechanism to ensure respect for and the proactive protection of the human rights of all detainees."<sup>1</sup>

While recommending that the Assembly pass this important piece of legislation, the Committee has proposed one amendment to ensure that the Bill is fully compliant with Article 14(1)(a) of the Optional Protocol.

On behalf of the Committee, I would like to thank all those who made submissions to the Committee's inquiry. The Committee also thanks the Department of the Attorney-General and Justice for their advice.

I would also like to thank my fellow Committee members for their bipartisan support of the legislative review process.








**Ms Ngaree Ah Kit MLA**

**Chair**

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<sup>1</sup> Submission No. 1, Northern Territory Anti-Discrimination Commission, p.1

## Committee Members

	<b>Ms Ngaree Ah Kit MLA</b> Member for Karama	
	<b>Party:</b>	Territory Labor
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	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
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	<b>Mrs Robyn Lambley MLA</b> Member for Araluen	
	<b>Party:</b>	Independent
	Parliamentary Position:	Acting Deputy Speaker
	<b>Committee Membership</b>	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	<b>Mrs Lia Finocchiaro MLA</b> Member for Spillett	
	<b>Party:</b>	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
	<b>Committee Membership</b>	
	Standing:	Public Accounts, Privileges
	Sessional:	Social Policy Scrutiny
	<b>Ms Sandra Nelson MLA</b> Member for Katherine	
	<b>Party:</b>	Territory Labor
	<b>Committee Membership</b>	
	Standing:	House
	Sessional:	Social Policy Scrutiny
	Select:	Estimates, Northern Territory Harm Reduction Strategy for Addictive Behaviours
	<b>Mr Chansey Paech MLA</b> Member for Namatjira	
	<b>Party:</b>	Territory Labor
	Parliamentary Position:	Deputy Speaker
	<b>Committee Membership</b>	
	Standing:	House
	Sessional:	Social Policy Scrutiny

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## **Acknowledgements**

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at the public briefing.

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## Terms of Reference

### Sessional Order 13

#### *Establishment of Scrutiny Committees*

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
  - (a) The Social Policy Scrutiny Committee
  - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
  - (a) any matter within its subject area referred to it:
    - (i) by the Assembly;
    - (ii) by a Minister; or
    - (iii) on its own motion.
  - (b) any bill referred to it by the Assembly;
  - (c) in relation to any bill referred by the Assembly:
    - (i) whether the Assembly should pass the bill;
    - (ii) whether the Assembly should amend the bill;
    - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
      - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
      - (B) is consistent with principles of natural justice; and
      - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
      - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
      - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
      - (F) provides appropriate protection against self-incrimination; and
      - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
  - (I) provides for the compulsory acquisition of property only with fair compensation; and
  - (J) has sufficient regard to Aboriginal tradition; and
  - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
  - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
  - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017



## **Recommendations**

### **Recommendation 1**

The Committee recommends that the Legislative Assembly pass the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 with the proposed amendment set out in recommendation 2.

### **Recommendation 2**

The Committee recommends that to ensure full compliance with Article 14(1)(a) of the Optional Protocol, the Bill be amended to require that the responsible Minister must permit the Subcommittee to have unrestricted access to information on the number of places of detention and the location of places of detention.

# 1 Introduction

## Introduction of the Bill

1.1 The Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, on 10 May 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 14 August 2018.<sup>2</sup>

## Conduct of the Inquiry

1.2 On 11 May 2018 the Committee called for submissions by 6 June 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.

1.3 As noted in Appendix 2, the Committee received four submissions to its inquiry all of which supported the proposed legislation. The Committee held a public briefing with the Department of the Attorney-General and Justice on 28 May 2018.

## Outcome of Committee's Consideration

1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:

- (i) whether the Assembly should pass the bill;
- (ii) whether the Assembly should amend the bill;
- (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
- (iv) whether the bill has sufficient regard to the institution of Parliament.

1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendment as set out in recommendation 2.

### Recommendation 1

**The Committee recommends that the Legislative Assembly pass the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 with the proposed amendment set out in recommendation 2.**

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<sup>2</sup> Parliamentary Record, Debates-10 May 2018, <http://www.territorystories.nt.gov.au/jspui/bitstream/10070/299026/2/Debates%20Day%206%20-%2010%20May%202018.pdf>, pp. 10-12,

## **Report Structure**

- 1.6 Chapter 2 provides an overview; of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

## 2 Provisions of the Bill

### Background to the Bill

2.1 In presenting the Bill, the Attorney-General and Minister for Justice noted that in December 2017 Australia ratified the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Optional Protocol).<sup>3</sup> Adopted by the United Nations in 2002, the Optional Protocol aims to establish:

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.<sup>4</sup>

2.2 As a consequence, Australia has an immediate obligation to allow the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee) to conduct periodic inspections of places of detention.<sup>5</sup>

### Purpose and Overview of the Bill

2.3 The primary purpose of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill (OPCAT Bill) is to establish the necessary legislative arrangements for the United Nations Subcommittee to inspect places of detention in the Northern Territory. As highlighted in the Explanatory Statement, the Bill:

- a) defines places of detention for the purpose of Subcommittee visits;
- b) sets out the relationship between the Bill and other laws of the NT;
- c) provides for arrangements for the Subcommittee visits, including establishment of Ministerial arrangements for the purpose of facilitating Subcommittee visits;
- d) sets out the duties of detaining authorities and the responsible Minister;
- e) provides for the Subcommittee to access places of detention, access information and interview detainees and other people; and
- f) protects against action for giving information and against reprisal for disclosing information.<sup>6</sup>

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<sup>3</sup> Parliamentary Record, Debates – 10 May 2018, <http://www.territorystories.nt.gov.au/jspui/bitstream/10070/299026/2/Debates%20Day%206%20-%2010%20May%202018.pdf>, p. 10

<sup>4</sup> Statement of Compatibility with Human Rights, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial No. 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.1

<sup>5</sup> Statement of Compatibility with Human Rights, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial No. 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.1

<sup>6</sup> Explanatory Statement, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.1

### 3 Examination of the Bill

#### Introduction

- 3.1 All of the submissions received supported the Bill and commended the Government for bringing forward the legislation. However, a number of suggestions were made as to how the Bill might be improved. The following discussion considers the main issues raised in the evidence received and the public briefing provided to the Committee by the Department of the Attorney-General and Justice.

#### Definition of Detaining Authority

- 3.2 Under clause 3(1) a detaining authority for a place of detention means:  
the person or entity for the time being in charge of the place of detention and includes any person or entity responsible for the day-to-day care, control, health and safety of detainees in that place of detention.
- 3.3 The Criminal Lawyers Association of the Northern Territory (CLANT) suggested that, similar to the ACT legislation<sup>7</sup>, the definition of a detaining authority should:  
clearly state it also includes services engaged by or on behalf of a detaining authority or the Territory to provide services under a contract.<sup>8</sup>
- 3.4 However, it is noted that the suggested amendment proposed by CLANT is already included in the Bill as a standalone clause at 3(2) which provides that:  
For the purposes of this Act, an entity or person engaged by or on behalf of a detaining authority or the State to provide services under a contract as, or on behalf of, a detaining authority is taken to be a detaining authority.

#### Committee's Comments

- 3.5 The Committee is satisfied that the definition of a detaining authority as provided for under clauses 3(1) and (2) of the Bill is drafted in a sufficiently clear and precise manner and is consistent with the equivalent provisions of s 6 of the ACT legislation.

#### Meaning of Place of Detention

- 3.6 Clause 4(1) provides that a place of detention includes any place that the United Nations Subcommittee must be allowed to visit under Article 4 of the Optional Protocol. As provided for in the note to subsection (1) this includes any place where:  
Persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.
- 3.7 For the purposes of the Optional Protocol, Article 4(2) defines 'deprivation of liberty' as:

<sup>7</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*, s 6(2)

<sup>8</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, p.2

any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.<sup>9</sup>

3.8 Without limiting subsection (1), clause 4(2) of the Bill provides that such places include:

- (a) a correctional centre, prison, detention centre or other similar place (however described);
- (b) a part of a facility:
  - (i) at which health services are provided; and
  - (ii) where a person may be held under restraint or in seclusion or isolation;
- (c) a police station or court cell complex;
- (d) a vehicle used or operated to convey detainees.

*Examples for subsection 2(b)*

1. An isolation area declared under section 17 of the *Notifiable Diseases Act*.
2. An approved treatment facility as defined in section 4 of the *Mental Health and Related Services Act*.

3.9 While commending the explicit inclusion of police stations, court cells and transport vehicles,<sup>10</sup> the Northern Territory Legal Aid Commission (the Commission) raised concern that since some places of detention are not listed “doubt may arise as to whether or not they are covered by the Bill.”<sup>11</sup> The Commission recommended that the breadth of the definition of places of detention should either be clarified in the *Explanatory Statement* or clause 4(2) of the Bill should be expanded to explicitly include the following additional examples:

- privately owned and run facilities, such as aged care facilities, where residents are subject to residential restrictions by way of *Adult Guardianship Act*, PARTIIA of the *Criminal Code* or other statutory orders;
- secure care facilities;
- psychiatric treatment facilities;
- compulsory drug and alcohol treatment centres; and
- facilities for people with physical or intellectual disabilities.<sup>12</sup>

3.10 CLANT also suggested that, as is the case in the equivalent legislation in New Zealand<sup>13</sup>, subclause 4(2) could be amended to:

include more specific examples of places of detention in the Northern Territory for example:

- secure care facilities; and

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<sup>9</sup> Office of the High Commissioner, *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, p.2

<sup>10</sup> Northern Territory Legal Aid Commission, Submission No. 3, p.2

<sup>11</sup> Northern Territory Legal Aid Commission, Submission No. 3, p.2

<sup>12</sup> Northern Territory Legal Aid Commission, Submission No. 3, p.2

<sup>13</sup> *Crimes of Torture Act 1989* (NZ), s 6

- people in statutory out of home care.<sup>14</sup>

3.11 However, as highlighted in the *Explanatory Statement*, the purpose of clause 4 is to define the “scope of the term ‘place of detention’ by reference to Article 4 of the Optional Protocol”<sup>15</sup>, rather than to include specific examples of Northern Territory places of detention which fall within the parameters of Article 4; especially given that they may well change over time.

### **Committee’s Comments**

3.12 When read in conjunction with the Optional Protocol and associated notes and examples, the Committee is satisfied that clause 4 achieves its purpose of defining the scope of the term ‘place of detention’ and is drafted in a sufficiently clear and precise manner.

## **Ministerial Arrangements**

3.13 Pursuant to clause 12(2), a place of detention is required to permit the United Nations Subcommittee unrestricted access to a range of information ‘in accordance with Ministerial arrangements.’ As provided for by clauses 9(1) and (2), the Minister administering the Act may enter into arrangements with the Attorney-General of the Commonwealth on various matters ‘for the purpose of facilitating the exercise by the Subcommittee of its functions under and in accordance with the Optional Protocol.’

3.14 While acknowledging that subclause 9(3) requires that such arrangements ‘must be consistent with and reasonably appropriate and adapted for the purpose of implementing, the Optional Protocol’, the Commission suggested that:

On its face, this section [s 12(2)] may suggest that Ministerial arrangements could alter or fetter the type of information which must be provided to the Subcommittee ... For the avoidance of doubt, the Commission recommends that section 9(3) or the Explanatory Statement further clarify that the use of the words ‘in accordance with Ministerial arrangements’ must not be read to enable Ministerial arrangements to fetter or limit the scope of the Subcommittee’s mandate in any way.<sup>16</sup>

### **Committee’s Comments**

3.15 The Committee is of the view that given the requirements of subclause 9(3), it would be highly unlikely that the Commonwealth Attorney-General would agree to Ministerial arrangements that may fetter or limit the scope of the Subcommittee’s mandate in any way and does not consider that the amendment proposed by the Commission is necessary. The Committee further notes that, as drafted, clauses 9 and 12 are consistent with the equivalent provisions in the ACT legislation.<sup>17</sup>

<sup>14</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, p.2

<sup>15</sup> Explanatory Statement, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial No. 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.2

<sup>16</sup> Northern Territory Legal Aid Commission, Submission No. 3, p.2

<sup>17</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*, ss 10 & 13(2)

## Subcommittee's Access to Places of Detention

3.16 Clause 11(2) provides that:

If the detaining authority for a place of detention considers that one or more grounds specified in Article 14(2) of the Optional Protocol may temporarily prevent the carrying out of a visit by the Subcommittee, the detaining authority may prohibit or restrict access to the place of detention so that the Attorney-General of the Commonwealth may be requested to object, and decide whether or not to object, to the visit.

3.17 As highlighted in the note to clause 11(2), under Article 14(2) of the Optional Protocol an objection to a visit to a particular place of detention may only be made:

on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.<sup>18</sup>

3.18 CLANT suggested that the way in which Article 14(2) of the Optional Protocol has been implemented in clause 11 of the Bill “unnecessarily provides control to detaining authorities to restrict access and may be used as a mechanism to delay access.”<sup>19</sup> To ensure greater clarity and transparency, CLANT proposed that clause 11 be amended to emphasise the temporary nature of any restrictions on access to places of detention by the Subcommittee.<sup>20</sup>

3.19 However, as pointed out by Mr Peter Shoyer (OmbudsmanNT):

Given the occasional nature of Subcommittee visits and the concerns that may flow regarding allowing ‘outsiders’ access to facilities and information, it is important that there be a clear and undisputed basis for such access. In its current form, the Bill provides strong support for Subcommittee visits, while still allowing agencies to maintain some control in necessary circumstances. It provides an appropriate balance while ensuring that the Northern Territory and Australia meet international commitments in an open and accountable manner.<sup>21</sup>

### **Committee's Comments**

3.20 Since the Bill clearly refers to situations that may ‘temporarily prevent the carrying out of a visit by the Subcommittee’, the nature of the grounds that may be used as the basis for an objection, and the fact that the Commonwealth Attorney-General must be satisfied with such before an objection is made, the Committee is of the view that clause 11 is drafted in a sufficiently clear and transparent manner. The Committee further notes that it is consistent with the equivalent provisions in the ACT legislation.<sup>22</sup>

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<sup>18</sup> Office of the High Commissioner, *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, p.6

<sup>19</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, pp.2-3

<sup>20</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, p.3

<sup>21</sup> OmbudsmanNT, Submission No. 4, p.2

<sup>22</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT), s 12



## Access to Information

- 3.21 If the Subcommittee requests access to a place of detention, Clause 12(1) provides that the responsible Minister and the respective detaining authority ‘must ensure that the Subcommittee and any accompanying experts are provided with all relevant information that is requested by the Subcommittee for the purpose of evaluating the needs and measures that should be adopted to strengthen, if necessary, the protection of persons deprived of their liberty against torture and the cruel, inhuman or degrading treatment or punishment.’
- 3.22 CLANT expressed the view that “there should be no discretion provided to the responsible Minister or detaining authority to decide what information is relevant.”<sup>23</sup> However, it is noted that the Bill does not provide the responsible Minister or the detaining authority with any discretionary power to determine what information requested by the Subcommittee is relevant. Moreover, should there be any dispute regarding compliance with the Subcommittee’s request for information the matter would be subject to judicial review.
- 3.23 CLANT also noted that, unlike the ACT legislation<sup>24</sup>, the Bill does not require that the inspection of a detainee’s personal records by the Subcommittee is subject to the detainee’s consent:
- Similar to the ACT Bill, detainees should have the right to consent or not to the inspection of their personal information. This is not a protection afforded by the Bill in its current form.<sup>25</sup>
- 3.24 While acknowledging that the Bill may limit Article 17 of the *International Covenant on Civil and Political Rights* regarding the right to privacy, the *Statement of Compatibility on Human Rights* points out that the purpose of the Bill necessarily involves striking a balance between the right to privacy and ensuring detainees are protected from torture and other cruel or degrading treatment or punishment.<sup>26</sup>
- 3.25 It is further noted that the limitations on privacy are minimised through the Subcommittee’s guidelines:
- The guiding principle for the Subcommittee is to highlight generic and system issues, rather than individual issues. The Subcommittee may only ‘address the State party about individual cases, if it is deemed necessary in order ... to avoid irreparable damage to the person(s) concerned’ and then only with the consent of the individual concerned. Part III of the guidelines clearly sets out the Subcommittee’s confidentiality obligations, including that information gathered by the Subcommittee is and must remain confidential and no personal data is to be published without the express consent of the person concerned.<sup>27</sup>
- 3.26 Mr Peter Shoyer (OmbudsmanNT) also pointed out that:

<sup>23</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, pp.2-3

<sup>24</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*, s 13(4)(b)

<sup>25</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, p.4

<sup>26</sup> Statement of Compatibility with Human Rights, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial No. 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.4

<sup>27</sup> Statement of Compatibility with Human Rights, *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 (Serial No. 53)*, <https://parliament.nt.gov.au/committees/spsc/53-2018>, p.4

It is important to appreciate that the focus of the Subcommittee is on the protection of human rights of individuals. Reporting by the Subcommittee is naturally undertaken at a high level and would not commonly provide detailed information relating to individuals. Nothing in my experience would lead to concern that a United Nations subcommittee of this type would do anything but act with due regard to the welfare and privacy protection of individuals.<sup>28</sup>

3.27 Similarly, Ms Sally Sievers (Northern Territory Anti-Discrimination Commissioner) noted that the proposed legislation:

provides a fundamental mechanism to ensure respect for and the proactive protection of the human rights of all detainees.<sup>29</sup>

3.28 CLANT also raised concerns with clause 12(2) which provides that a detaining authority for a place of detention must provide the Subcommittee with unrestricted access to information regarding the number of detainees, the treatment of detainees, and the conditions of detention applying to the detainees. However, as CLANT pointed out, Article 14(1)(a) of the Optional Protocol also requires that the Subcommittee be given unrestricted access to information on the number of places of detention and their location.<sup>30</sup> CLANT therefore proposed that Clause 12 be amended to ensure full compliance with the Optional Protocol.

### **Committee's Comments**

3.29 The Committee is satisfied that clause 12(1) does not provide the responsible Minister or a detaining authority the power to determine what information requested by the Subcommittee is relevant and notes that, as drafted, this clause is consistent with the equivalent provision in the ACT legislation.<sup>31</sup>

3.30 While acknowledging that clause 12 has the potential to limit a detainee's right to privacy under Article 17 of the *International Covenant on Civil and Political Rights*, the Committee considers that the Bill strikes an appropriate balance between the right to privacy and ensuring that detainees are protected from torture and other cruel or degrading treatment or punishment.

3.31 The Committee does, however, agree with CLANT's comments regarding the need to ensure that the Bill complies with all aspects of Article 14(1)(a). As proposed by CLANT, the Committee recommends that the Bill be amended to require that the responsible Minister must permit the Subcommittee to have unrestricted access to information on the number of places of detention and the location of places of detention.

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<sup>28</sup> OmbudsmanNT, Submission No. 4, p.2

<sup>29</sup> Northern Territory Anti-Discrimination Commission, Submission No. 1, p.1

<sup>30</sup> Office of the High Commissioner, *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, p.6

<sup>31</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*, s 13(2)

## Recommendation 2

The Committee recommends that to ensure full compliance with Article 14(1)(a) of the Optional Protocol, the Bill be amended to require that the responsible Minister must permit the Subcommittee to have unrestricted access to information on the number of places of detention and the location of places of detention.

## Subcommittee may Interview Detainees and Other Persons

3.32 Clause 13(4) provides that there is no requirement for persons who object to, or who do not consent to, being interviewed by the Subcommittee to participate in an interview. However, CLANT suggested that since the Subcommittee's focus is to highlight generic and system issues, and given that clause 14 protects persons from any civil or criminal liability for giving any information or making any disclosure to the Subcommittee, "detaining authorities should not be given an option to object to being interviewed."<sup>32</sup>

3.33 However, unlike Article 14(1)(a),(b) and (c), it is noted that Article 14 (1)(d) of the Optional Protocol does not require that the Subcommittee be granted 'unrestricted access' when it comes to interviewing detainees or detaining authorities. Rather, it requires that the Subcommittee be granted:

the opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information.<sup>33</sup>

## Committee's Comments

3.34 The Committee is satisfied that, as drafted, clause 13(4) complies with Article 14(1)(d) of the Optional Protocol and is both compatible with Article 17 of the *International Covenant on Civil and Political* rights regarding the right to privacy, and consistent with the equivalent provision in the ACT legislation.<sup>34</sup>

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<sup>32</sup> Criminal Lawyers Association of the Northern Territory, Submission No. 2, p.4

<sup>33</sup> Office of the High Commissioner, *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, p.6

<sup>34</sup> Office of the High Commissioner, *International Covenant on Civil and Political Rights*, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, p.10; and *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (ACT)*, s 14(5)

## **Appendix 1: Submissions Received and Public Briefing**

### **Submissions Received**

1. Northern Territory Anti-Discrimination Commission
2. Criminal Lawyers Association of the Northern Territory
3. Northern Territory Legal Aid Commission
4. OmbudsmanNT

### **Public Briefing – Monday, 28 May 2018**

#### ***Department of the Attorney-General and Justice***

- Mr Robert Bradshaw: Director Policy Coordination
- Ms Alison Hanson: Legislation Policy Officer

### **Note**

Copies of submissions and transcript of public briefing are available at:  
<https://parliament.nt.gov.au/committees/spsc/53-2018>

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