

5 June 2018

Secretary
Social Policy Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
DARWIN NT 0801

By email SPSC@nt.gov.au

Dear Sir/Madam

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

I write to support the passage of the Bill.

The focus of the reader of the Bill and the Optional Protocol is initially drawn to the word 'Torture'. This raises the stakes considerably. Surely there is no torture or prospect of torture in our jurisdiction.

However, it is important to appreciate that the Bill and the Protocol are equally concerned with the potential for cruel, inhuman or degrading treatment or punishment.

This expands the remit of the Protocol far beyond consideration of torture to more common issues regarding the treatment of individuals who are detained in a way that deprives them of their liberty. It makes the provisions of the Protocol very relevant to the day to day operations of the various facilities and systems in every Australian jurisdiction where individuals are detained.

The Protocol recognises the need for State parties to ensure that there are national preventive mechanisms in place to monitor and scrutinise the treatment of detained individuals. The precise form which those mechanisms may take in the Northern Territory in the future remains subject to determination. This Bill does not deal with that issue.

However, the Protocol also recognises a need for overarching international scrutiny in the form of occasional visits from, or on behalf of, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The aim of the Bill is to facilitate such visits and to ensure unimpeded access for the purpose of those visits. This is achieved subject to limited reservations of powers for NT government agencies to maintain necessary levels of care and control.

The need to provide for such external scrutiny arises from Australia's commitment to the Optional Protocol. But more fundamentally, it is a function of transparency and accountability. While external scrutiny will be carried out by independent NT bodies on an ongoing basis, visits of the Subcommittee will provide the opportunity for the Territory and stakeholders in the Territory and beyond to review practice here against measures undertaken elsewhere in Australia and across the world.

Recent history in the NT shows that there are many challenges faced in relation to treatment of individuals in detention. These are challenges about which it is important to have open and informed dialogue and discussion. The Territory can benefit from Commonwealth and international input into the solutions to the challenges it faces. Visits and reports by the Subcommittee will help to inform and elevate public discussion about these issues.

The Bill establishes a basis for the Subcommittee to access individuals and information about individuals. With that in mind, 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.

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.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P. Shoyer', written in a cursive style.

PETER SHOYER
Ombudsman