

**Ms FYLES (Attorney-General and Justice):** Mr Deputy Speaker, I sincerely thank all members for their contribution to the debate and for the support they have offered.

I thank the Deputy Leader of the Opposition for indicating support of the Opposition and for the support of the bill and I also note she was on the Scrutiny committee—so I thank her along with all members of the Scrutiny committee for their contributions and work.

I thank the Member for Nelson for his support and comments on his bill, in particular, his acknowledgement that the government is committed to bringing this bill back before the Assembly to ensure that there is a just a fair mechanism for people in places of detention in the Northern Territory.

Like the Deputy Chief Minister said, we should not be uncomfortable about this bill because this is about giving effect to our international obligations. I also thank her and the contribution of the department of police as they are prepared and ready to meet our international obligations.

I also acknowledge what Minister Wakefield said about our commitment to restore trust in detention facilities and how this bill will help deliver some of the Royal Commission's recommendations. I thank the Members for Katherine, Arnhem and Karama for their contributions to debate.

Human rights recognise the value of each person irrespective of their background, beliefs, appearance or place of origin. They are to be centred on the belief that everyone has the right to be treated fairly and exist in a culture that recognises equality, dignity and mutual respect. Human rights are the universal standards for human behaviours or state actions.

This bill engages a number of rights protected under the International Covenant of Civil and Political Rights. It supports Article 7, the protection from torture, inhumane or degrading treatment and Article 10, humane treatment when deprived of liberty. Article 7 provides that:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

The very objective of the Optional Protocol to the Convention Against Torture—or as it is commonly known, OPCAT—is to establish a system of regular visits undertaken by independent and national bodies to places where people are deprived of their liberty in order to prevent torture, inhuman or degrading treatment or punishment.

Article 10 of the international covenant on civil and political rights provides that:

*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

The bill established the NT legislative framework to allow visits by a subcommittee of the UN to places of detention in the Northern Territory in the immediate obligation under OPCAT. By enabling these visitors, this bill establishes one of the mechanisms through which the NT can meet its positive obligations under OPCAT. People in our care—whether it is in a prison, a youth detention centre or a mental health facility—are in our care for a reason. It is our job to treat, support, rehabilitate and educate these people.

The purpose of OPCAT is to combat torture and other forms of mistreatment in places of detention. It also aims to reinforce the rights of people being held in detention. OPCAT facilitates this aim by establishing a framework to allow for a system of visitation by independent international and nation bodies to places of detention to ensure that torture and other cruel, inhumane or degrading treatment or punishment is not taking place.

The ratification of OPCAT is widely supported by non-government organisations such as the Law Council of Australia and the Royal Australian and New Zealand College of Psychiatrists. The Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2018 is supported by the Northern Territory Anti-Discrimination Commissioner, the Ombudsman, the Northern Territory Legal Aid Commission and the Criminal Lawyers Association of the Northern Territory.

The bill provides for independent inspection of places of detention in the Northern Territory. In the Northern Territory, places of detention, for the purposes of this bill, are our correctional facilities, including the two work camps, youth detention centres, police stations, court cells, health facilities and vehicles used or

operated to convey detainees. We have just heard from the Member for Karama about the importance of that.

The inspection will be carried out by a subcommittee established by the United Nations under the Optional Protocol Against Torture. The bill will form part of a network of state, territory and Commonwealth arrangements that are being put in place following the Commonwealth's ratification of the Optional Protocol Against Torture in December last year. To date, legislation for providing for visits by the UN subcommittee has been introduced in the Northern Territory and enacted in the ACT.

I am proud that we are one of the first jurisdictions to have this legislation in parliament. It highlights that we are open and transparent in our commitment to restoring trust in government and making sure we have robust mechanisms in place for independent scrutiny.

The Commonwealth ratified the UN Treaty Against Cruelty in 1988 and the optional protocol to this treaty provides for administrative mechanisms that deal with compliance with the treaty. Approximately 88 countries have ratified OPCAT, including Australia. Treaties are entered into by national governments, rather than states or territories. In the period between December 2017 and January 2018, the Commonwealth Government took various steps for the ratification of OPCAT. Australia is now considered bound by OPCAT.

There are two aspects of OPCAT—UN inspections and local inspections. OPCAT gives its countries options as to which of the two inspections to implement first. The Commonwealth Government has chosen, with the support of the states and territories, to implement the OPCAT provisions concerning UN visits.

Australian governments have three years from January 2018 to establish the local oversight bodies that comply with OPCAT. Under OPCAT the UN subcommittee can now visit Australia. While a visit to Australia is not in its published work program of the UN subcommittee for 2018 or 2019, the Northern Territory is ready and willing to facilitate such a visit when it takes place.

The key features of the bill have been discussed, but I will touch on the key clause in the bill, which is clause 6. It provides that the local NT legislation operate subject to the lawful exercise of any function of the UN subcommittee. This means that if OPCAT permits the UN committee to do something, then that can be done regardless of what a local Territory law might say. The main legislation affected will be legislation that controls the access to places of detention and information about persons held in places of detention.

Over the next three years the Commonwealth Government and state and territory governments will review Commonwealth, state and territory laws dealing with inspection regimes regarding the compliance of OPCAT. In the Northern Territory, this will involve reviews of legislation such as the *Correctional Services Act*, *Youth Justice Act*, and the *Mental Health and Related Services Act*.

It is anticipated that the required national inspections will be carried out at a state and territory level by independent state and territory agencies. The bill provides in clauses 10, 11, 12 and 13 for access to information concerning places of detention in the Northern Territory by the Sub-committee on Prevention of Torture and other Cruel, Inhuman, Degrading Punishment or Treatment. This is a sub-committee established in accordance with part two of the OPCAT as adopted by the General Assembly of the United Nations in December 2002.

For the purpose of facilitating the performance of the sub-committees function, the relevant NT minister can enter into arrangements with the Commonwealth Attorney-General. The ministerial arrangements must be consistent with and reasonably appropriate for the purpose of implementing the protocol. The arrangements cover matters relevant to providing access but also operating issues relating to the places of detention.

In dealing with places of detention, the UN sub-committee will work through the Commonwealth Department of Attorney-General that has the coordinating role. Clause 14 provides that a person who provides information or makes disclosures to the sub-committee is protected from any civil or criminal liability. This section overrides provisions in other acts that might cause disclosures to be illegal.

Clause 15 provides that it is an offence for any purpose to take detrimental action against a person who provides information or makes disclosures to the sub-committee. Clause 15(4) defines detrimental action and that includes actions against informants in the public sector or the place of detention. It includes actions such as causing injury, damage, loss or change in conditions of detention, intimidation or

harassment, adverse treatment in relation to employment, dismissal from a job or disciplinary proceedings relating to the job.

The government understands the enactment of the legislation is not critical for OPCAT to operate in the Northern Territory. This is the reason why many of the states and territories are not likely to enact legislation. However, once the Northern Territory legislation has been enacted, it spells out how Northern Territory operational agencies will interact with OPCAT. Once the bill is passed and ready for commencement, the department will advise key stakeholders such as the operators of places of detention in the Northern Territory and persons who represent detainees. General information will be provided for detained persons in correctional centres who are inmates or other places of detention.

I acknowledge the work of the Social Policy Scrutiny Committee. The bill was considered by them and I thank them for their work. In the report tabled by the committee in June 2018, they made recommendations subject to an amendment to ensure full compliance with Article 14(1)(a) of OPCAT. Article 14(1)(a) of OPCAT requires that the UN sub-committee be given unrestricted access to information on the number of places of detention along with the locations of those places. This was a technical amendment ensuring the unrestricted access is provided to the UN including secret places of detention. The NT does not operate secret places of detention and information about places of detention is publicly available therefore there are no issues but the government accepted the amendment. Later on I will move amendment to clause 12 to give effect to the recommendation.

Territorians who have their liberty taken away from them by reason of mental illness or community safety are entitled to be treated with dignity. No doubt, places of detention are challenging environments but as a government, we are also judged on how we treat people in places of detention. By having the OPCAT mechanism in place, we will be able to learn from international experts in this area and it reflects our commitment to let international best practice inform our continuous improvement of oversight of places of detention.

The Australian Human Rights Commissioner, Mr Edward Santow, was in Darwin in September last year. In his speech at the Austin Asche Oration he said:

*It is better to know we're a long way from home and that it'll be hard work to get back. It's better to know these things because that knowledge is a precondition to formulating a realistic plan to get us on the right path.*

We want to make sure that we are on the right path and we stay on the right path. This bill will help us make human rights work in practical, constructive ways in the Northern Territory.

I again acknowledge the hard working staff at the Department of the Attorney-General and Justice who have led the development of this bill. I also acknowledge, as the Deputy Leader of the Opposition said, that this had been drafted under the previous Attorney-General and acknowledge that work. Because the Commonwealth have now enacted their legislation, we are able to do so.

I acknowledge the staff throughout the scrutiny committee process, as well as the recommendations; the Office of Parliamentary Counsel for their work in drafting this bill and the amendments; and I thank the Social Policy Scrutiny Committee, particularly the Chair, the Member for Karama.

I commend the bill to the House.