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Inspector of Detention Services Bill 2021

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Legal Affairs and Safety Committee
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Legal Affairs and Safety Committee

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All web address references are current at the time of publishing.

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Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service (Queensland)
Attorney-General	The Hon Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence
Bangkok Rules	The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
Beijing Rules	The United Nations Principles for the Protection of All Persons Under Any Forms of Detention, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice
Bill	Inspector of Detention Services Bill
committee	Legal Affairs and Safety Committee
Crime and Corruption Act	*Crime and Corruption Act 2001* (Qld)
DCYJMA	Department of Children, Youth Justice and Multicultural Affairs
DJAG or department	Department of Justice and Attorney-General
HRA	*Human Rights Act 2019* (Qld)
HRLC	Human Rights Law Centre
Inspector	Inspector of Detention Services
Joint Submission	Joint submission from Change the Record, Aboriginal and Torres Strait Islander Legal Service (Queensland) and Human Rights Law Centre
knowmore	knowmore Legal Service
Legal Profession Act	*Legal Profession Act 2007* (Qld)
Local Government Act	*Local Government Act 2009* (Qld)
LSA	*Legislative Standards Act 1992* (Qld)
Medicines and Poisons Act	*Medicines and Poisons Act 2019* (Qld)
Nelson Mandela Rules	The United Nations Standard Minimum Rules for the Treatment of Prisoners
NPM	National Preventive Mechanism
OPCAT	*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* or Optional Protocol to the Convention Against Torture (short name)
OPG	Office of the Public Guardian

OQPC	Office of the Queensland Parliamentary Counsel
PeakCare	PeakCare Queensland Inc
PID Act	*Public Interest Disclosure Act 2010* (Qld)
PLS	Prisoner's Legal Service
QAI	Queensland Advocacy Incorporated
QCCL	Queensland Council of Civil Liberties
QCS	Queensland Corrective Services
QFCC	Queensland Family and Child Commission
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QPC	Queensland Productivity Commission
QPS	Queensland Police Service
Sisters Inside	Sisters Inside Inc

Chair's foreword

This report presents a summary of the Legal Affairs and Safety Committee's examination of the Inspector of Detention Services Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Attorney-General.

I commend this report to the House.

Peter Russo MP

Chair

Recommendations

Recommendation 1 **4**

The committee recommends the Inspector of Detention Services Bill 2021 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Women and the Prevention of Domestic and Family Violence
- Police and Corrective Services
- Fire and Emergency Services.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Inspector of Detention Services Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 28 October 2021. The committee is to report to the Legislative Assembly by 21 January 2022.

1.2 Inquiry process

The committee invited stakeholders and subscribers to make written submissions on the Bill. Twenty submissions were received.

The committee received a public briefing about the Bill from the Department of Justice and Attorney-General (department) on 15 November2021 (see Appendix B for a list of officials who attended).

The committee received written advice from the department in response to matters raised in submissions on 25 November 2021.

The committee held a public hearing on 29 November 2021 (see Appendix C for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The main objective of the Bill is to give effect to:

> … the Queensland Government's commitment to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres (the Helana Jones Centre), work camps, youth detention centres and police watch-houses (places of detention).[3]

1 *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

3 Explanatory notes, p 1.

The purpose of the Bill is to:

> … promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.[4]

It is proposed that the Bill:

> … will facilitate greater transparency and accountability in the way that places of detention, and the people detained within them, are managed by establishing a framework for the review of detention services and inspection of places of detention, and independent and transparent reporting, to support their improvement.[5]

The focus of the Inspector of Detention Services (Inspector) under the Bill:

> … will be on the prevention of harm rather than responding to complaints when harm occurs, and this preventative focus will examine the systems and the lived experiences of people detained.[6]

The Bill proposes to achieve its policy objectives by:

- establishing the role of the Inspector, to be held by the Queensland Ombudsman, and set out its functions and powers, with a focus on prevention of harm
- providing a framework for inspections and reviews of places of detention and detention services
- providing a framework for independent and transparent reporting.[7]

The Bill also addresses recommendations from a number of reviews into the Queensland criminal justice system, including:

- the Independent Review of Youth Detention
- the Queensland Parole System Review[8]
- Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons
- the Queensland Productivity Commission's Report: Inquiry into imprisonment and recidivism.[9]

1.4 Government consultation on the Bill

Both government and non-government stakeholders across a range of sectors involving detention services in Queensland were consulted prior to the Bill. The department, in consultation with Queensland Correctional Services, Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs, also convened information sessions on the Bill.[10] The explanatory notes provide that '[f]eedback received during targeted consultation has been considered and, where possible, has informed finalisation of the Bill'.[11]

The statutory bodies consulted include the following:

- Crime and Corruption Commission

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4 Explanatory notes, p 1.

5 Explanatory notes, p 1.

6 Explanatory notes, p 1.

7 Explanatory notes, p 3.

8 Also known as the 'Sofronoff Inquiry' after Mr Walter Sofronoff QC, who was appointed to lead the Queensland Parole System Review.

9 Explanatory notes, p 1. See also submission 1, pp 2-5 for a detailed discussion of these reviews.

10 Explanatory notes, p 16.

11 Explanatory notes, p 16.

- Queensland Ombudsman
- Health Ombudsman
- Commonwealth Ombudsman
- Office of the Public Guardian (OPG)
- Queensland Family and Child Commission (QFCC)
- Queensland Human Rights Commission (QHRC)
- Queensland Mental Health Commission
- the Queensland Productivity Commission.[12]

Legal stakeholders consulted included the following:

- Aboriginal and Torres Strait Islander Legal Service (ATSILS)
- National Aboriginal and Torres Strait Islander Legal Services
- Legal Aid Queensland
- Prisoners' Legal Service (PLS)
- Change the Record
- Human Rights Law Centre (HRLC)
- Australia Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) Network
- Queensland Council for Civil Liberties (QCCL)
- Queensland Law Society (QLS)
- Sisters Inside Inc (Sisters Inside).[13]

Unions and peak bodies consulted included the following:

- PeakCare Queensland (PeakCare)
- Human Rights Watch
- Queensland Nurses and Midwives Union
- Queensland Police Union of Employees
- Queensland Police Commissioned Officers' Union of Employees; Aged and Disability Advocacy Australia
- Queenslanders with Disability Network
- Queensland Advocacy Incorporated (QAI).[14]

The explanatory notes also noted that stakeholders with an interest in the custodial environment and education, health, wellbeing and support, and religious service providers, hospital and health services were also consulted.[15]

12 Explanatory notes, p 16.

13 Explanatory notes, p 16.

14 Explanatory notes, p 16.

15 Explanatory notes, p 16.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Inspector of Detention Services Bill 2021 be passed.

2 Examination of the Bill

In its examination of the Bill, the committee considered all the material before it. This section discusses a number of the key issues raised during the committee's examination of the Bill.

2.1 Establishment and resourcing

2.1.1 Proposal under the Bill

Section 33 of the Bill appoints the Queensland Ombudsman as the Inspector of Detention Services. Accordingly, the model proposed under the Bill for the establishment of the Inspector is based on the dual appointment model.[16]

The explanatory notes provided that:

> … the Inspector will consider the operation and management of facilities, as well as the treatment and conditions of people detained in accordance with national and international materials that establish best practice.[17]

These international materials include:

- The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)
- the United Nations Principles for the Protection of All Persons Under Any Forms of Detention, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
- the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).[18]

In terms of resourcing, the explanatory notes to the Bill provide that the 'Inspector will have its own resourcing dedicated to the performance of its functions'.[19]

2.1.2 Stakeholder comment

All of the submissions received indicated support for the establishment of an Inspector in Queensland. However, a number of submitters raised concerns about the appointment model proposed under the Bill and the resourcing of the Inspector.

The QCCL submitted that it 'has been campaigning for an inspector of prisons for years and welcomed the recommendation of the Sofronoff inquiry that one be established'.[20] However, the QCCL noted that the role of Inspector is to be performed by the Ombudsman and observed:

> Mr Sofronoff clearly intended that the Inspectorate would be separate from the Ombudsman. We suspect this a cost reducing measure and the Committee should seek an assurance that the Ombudsman will be adequately funded to carry out these additional tasks.[21]

Regarding the proposed establishment of the Inspector, the QHRC submitted:

> The Commission notes the synergies between the functions of the proposed Inspector and the Ombudsman's current functions, and that the Ombudsman satisfies many of the principles set out in OPCAT for an NPM [National Preventive Mechanism]. This includes being functionally independent from

16 Submission 1, p 2.

17 Explanatory notes, p 3.

18 Explanatory notes, p 3.

19 Explanatory notes, p 7.

20 Submission 3, p 1.

21 Submission 3, p 1.

> the executive government, providing safeguards from reprisal and powers to regularly examine and visit places of detention.
>
> Nonetheless, the experience of other jurisdictions emphasises the need to balance these new functions with the existing role of the Ombudsman. For example, the Tasmanian Ombudsman, who is also the Custodial Inspector, has reported that he can only dedicate ten per cent of time to the inspectorate, and long delays between onsite inspections and publication of reports due to inadequate staffing.[22]

In his submission, Mr Steven Caruana, coordinator of the Australia OPCAT Network and formerly a detention inspector for both the Office of the Inspector of Custodial Services, Western Australia and the Office of the Commonwealth Ombudsman, discussed the proposed model for the Inspector set out in the Bill and its non-compliance with past enquiries.[23] Mr Caruana recommended that:

> The QLD Government should reconsider its decision to appoint the QLD Ombudsman as the Inspector of Detention Services. The QLD Government should instead create a standalone independent statutory entity, like the WA Inspector of Custodial Services, to fulfil the role of Inspector of Detention Services.[24]

Similarly, Sisters Inside submitted:

> It seems clear to us that the Queensland Government has prioritised cost-savings over the rights and interests of Queensland prisoners. The Bill must be amended to provide for an independent Inspector of Detention Services based on the model that is currently in place in Western Australia.[25]

A number of stakeholders noted that the dual appointment model proposed under the Bill was most similar to the existing Tasmanian model. A number of stakeholders voiced concern about the adoption of this model in Queensland.[26] For example, the PLS submitted:

> PLS is concerned that the current model may not provide adequate resourcing to the Inspectorate. Clauses 35 and 36 of the Bill require the Queensland Ombudsman to provide administrative support services to the Inspectorate and enable delegation of Ombudsman staff to inspectorate duties. This arrangement is likely to lead to operational pressures similar to those experienced in Tasmania.[27]

In terms of the issue of resourcing, in its submission, the QHRC noted:

> … the importance of ensuring that the Inspectorate is adequately resourced and that the Ombudsman's existing functions (such as complaint handling) do not undermine its resources to undertake preventative work. In this regard, clauses 34 and 35 of the Bill are concerning, which imply the Inspector will rely on (existing) resources of the Ombudsman's office to fulfil its functions. The Commission welcomes the commitment in the Explanatory Notes that 'the Inspector will have its own resourcing dedicated to the performance of its functions.'[28]

In its submission, knowmore Legal Service (knowmore) also raised concerns about resourcing:

> We are concerned that such arrangements may lead to competition for limited resources and priorities with the Office of the Ombudsman, which in turn could adversely impact upon the performance of the Inspector's functions and the quality, scope and timeliness of the inspections undertaken, the reports published and the other duties that are to be discharged by the Inspector.[29]

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22 Submission 16, p 9.

23 Submission 1, pp 2-5.

24 Submission 1, p 5.

25 Submission 4, p 3.

26 See, in particular, Caruana, submission 1, pp 2-5; Sisters Inside, submission 4, p 3 and Prisoners' Legal Service, submission 11, p 6.

27 Submission 11, p 6.

28 Submission 16, pp 9-10.

29 Submission 17, p 5.

Similarly, the QLS submitted:

> We consider that the introduction of an Inspector of Detention Services must be accompanied by adequate and ongoing resourcing. To be able to discharge the obligations of the Bill and achieve the policy intent, the inspector will need to be provided sufficient financial resources and staffing. Accordingly, QLS is of the view that funding to the inspector should be contemplated within the legislation. We note that section 90A of the *Victorian Inspectorates Act 2011* (Vic) provides that the inspectorate's budget for each financial year is to be determined in consultation with the Parliamentary Committee. QLS has no firm view regarding how the Inspector is to be resourced and funded under the Bill. However, it is QLS's view that funding should be contemplated within the Bill to provide some guidance and assurance to the Inspector of Detention Services. This will also ensure that the Inspector of Detention Services is not completely subject to changing governments and political priorities.[30]

In the joint submission from Change the Record, ATSILS and HRLC (Joint Submission), concerns were raised about the proposed appointment of the Ombudsman as Inspector and resourcing issues

> Part 5 Section 33 of the Bill appoints the Queensland Ombudsman as the Inspector of Detention Services. We are concerned that locating this new Inspectorate function within the office of the Ombudsman risks inadequately resourcing the Inspector responsibilities. We stress the importance of ensuring the independence and financial and operational autonomy of the office of the Inspector.
>
> Key to this autonomy is adequate resourcing. Tying the resourcing of the Inspector to the resourcing of the Ombudsman risks the powers and responsibilities of the Inspector not being adequately provided for if both offices aren't fully funded and staffed according to their respective identified needs.
>
> The risks of such a "dual appointment" model are demonstrated in Tasmania, where the current Tasmanian Custodial Inspector (who is also the Tasmanian Ombudsman) highlighted resourcing and staffing constraints which were impeding his ability to perform crucial functions of his office, including conducting onsite inspections and the timely publication of reports. The Tasmanian Custodial Inspector asserted in both 2018-2019 and 2019-2020 Annual Reports that he 'can only dedicate ten per cent of... time to the inspectorate.'
>
> We recommend the government reconsider appointing the Ombudsman as Inspector, and instead create a standalone statutory Inspectorate. We further recommend that funding and resourcing for the Inspector be independently determined by the Inspector based on its assessment of what resources are required to carry out its functions. These resources should be guaranteed in legislation and provided by the government in a single, dedicated budget line item, with the Inspector determining its internal budget allocations according to its own work plan.[31]

Regarding resourcing concerns, the PLS suggested the following solution:

> In the long-term, it will be more cost-effective to properly fund the Inspectorate from the outset so that its focus on examining systems and preventing harm can reduce the number of individual complaints and legal proceedings commenced about human rights abuses stemming from systemic problems. An additional means by which to enhance the Inspector's capacity and ensure barriers associated with identifying and preventing harms in closed environments are overcome, is to expand the definition of services providers within clause 18 of the Bill to include non-government organisations. There is a wealth of knowledge and experience amongst non-government organisations in Queensland who work with people in prison from which the Inspectorate could benefit.[32]

Concerns about the model of appointment of the Inspector and the issue of resourcing of the Inspector were raised a number of times during the public hearing. For example, the HRLC commented:

> Serious consideration should also be given to creating a standalone statutory inspectorate instead of appointing the Queensland Ombudsman as Inspector of Detention Services. Funding and resourcing for

30 Submission 18, pp 1-2.

31 Submission 10, pp 5-6.

32 Submission 11, p 6.

> the inspector should be based on the inspector's own assessment, and this should be guaranteed in legislation.[33]

Similarly, Change the Record stated:

> With respect to resourcing, evidence from other jurisdictions, particularly Tasmania, has highlighted the challenges of inadequately resourcing offices that have a dual function. For example, with the proposed role in Queensland, using the Ombudsman, we are concerned that this new inspectorate function within the Office of the Ombudsman risks inadequately resourcing the new inspectorate responsibilities.[34]

Additionally, QHRC noted:

> In an ideal world, a society that really valued human rights would have a dedicated oversight body that had responsibility to inspect all places of detention, so all places where the state deprives people of their liberty—that would be the ideal situation—and it would be appropriately resourced to carry out that function. I think there is a real risk that housing the inspector inside the Ombudsman's office will ultimately lead to those functions competing with the existing functions of the Ombudsman. I do not think there is any doubt about that risk. A separate line item would certainly help, I think, to mitigate that risk to some extent, but it is not going to completely mitigate it.[35]

knowmore also referred to these issues:

> Our preference, and we think the best model, would be the standalone independent model based, for example, on the Western Australian model. We think that is more consistent with the recommendations that led to the development of the bill. It is more consistent with best practice and I would think that would operate as better security around an adequate level of resourcing, because you are looking at the needs of that office and the functions that it has to discharge and the evidence of that once it starts to deliver services and understand the resource pressures—you are looking at that in isolation. One of the concerns we have about embedding the model within the Ombudsman's office is that there must inevitably be some resource competition and priority, given the way the model is drafted at the moment.[36]

The QFCC recommended that the Bill also incorporate a separate statutory officer who identifies as Aboriginal and/or Torres Strait Islander due to the fact that 'nearly half of children within the Queensland youth justice system are of Aboriginal and/or Torres Strait Islander background':

> For this reason, staff of the inspectorate must operate in a way that provides cultural safety and authority for detainees. To support this, the QFCC believes the Bill should require a separate statutory inspector who identifies as Aboriginal and/or Torres Strait Islander, in addition to the inspector who is, under s.33, the Ombudsman.[37]

2.1.3 Department response

In response to stakeholder concerns about the appointment of the Queensland Ombudsman as the Inspector, the department stated:

> The Bill establishes the Inspector as a separate and functionally independent statutory appointment with distinct functions and powers. The Inspector will report separately to Parliament on its operations, and following inspections and reviews.
>
> The Bill provides that when performing functions of the Inspector, a staff member will not be able to also perform delegated functions under the Ombudsman Act 2001 (Qld) (clause 36(2)(b)). Further, the Bill

[33] Public hearing transcript, Brisbane, 29 November 2021, p 5.

[34] Public hearing transcript, Brisbane, 29 November 2021, p 6.

[35] Public hearing transcript, Brisbane, 29 November 2021, p 14.

[36] Public hearing transcript, Brisbane, 29 November 2021, p 17.

[37] Submission 14, p 6.

provides that when performing functions of the Inspector, the officer is subject to the direction of the Inspector and not the Ombudsman (clause 37).[38]

Regarding stakeholders concerns about using the Tasmanian model, the department stated:

Some submitters noted similarities with the Tasmanian model, including the challenges experienced by the Tasmanian Inspector.

DJAG notes that while the Tasmanian model has a Custodial Inspector who also holds the position of Ombudsman there are two key differences to the Queensland model proposed in the Bill.

First, the Custodial Inspector in Tasmania also holds a number of other statutory appointments including the Health Complaints Commissioner, Principal Mental Health Official Visitor and Coordinator of the Prison Official Visitors Scheme. The Inspector is also primarily responsible for receiving Public Interest Disclosures and Right to information external reviews.

Secondly, the Tasmanian permanent staffing establishment is low (the Inspector, 1 Principal Inspection Officer (0.9 FTE) and one Inspection and Research Officer (0.6 FTE equivalent) - as per Tasmanian Ombudsman Annual Report 2019/20).[39]

Regarding stakeholders concerns about the funding of the Inspector, the department stated:

As noted in the Explanatory Notes (page 10), the Queensland Government has set aside funding to ensure the Inspector can fulfill the functions set out in this Bill. As the department indicated at the public hearing, DJAG is not in a position to give any further information in relation to funding and resourcing at this point in time.

In consultation with the Queensland Ombudsman, DJAG is working to finalise the resourcing requirements and budget allocation. Pending passage of the Bill and once established, the financial and performance reporting for the Inspector will be reported on separately as part of the Queensland Ombudsman's annual report.[40]

Committee comment

The committee notes that the independence of the Inspector and the sufficient resourcing of the Inspector were both significant issues raised by stakeholders during the committee's inquiry into the Bill. The committee also notes that the department has advised that the Queensland Government has set aside funding to ensure the Inspector can fulfil the functions set out in the Bill. The committee further notes that the Bill establishes the Inspector as a separate and functionally independent statutory appointment with distinct functions and powers who will report separately to Parliament on its operations, and following inspections and reviews. It is the committee's view that it is important that the Ombudsman is adequately resourced to ensure that the role of the independent Inspector can be fulfilled effectively by the Ombudsman as contemplated by the Bill.

2.2 Scope

2.2.1 Proposal under the Bill concerning definitions of 'detention service' and 'place of detention'

Clause 5 of the Bill defines 'detention service'. The explanatory notes explain that the term means:

… the operation, management, direction, control or security of a place of detention, as well as the security, management, control, safety, care or wellbeing (this would include, for example, healthcare, disability services and education) of persons detained in a place of detention. It also provides that a 'detention service' includes the transportation of detainees (while in the custody of a relevant custodial

[38] Correspondence from the department dated 25 November 2021, attachment, pp 2-3.

[39] Correspondence from the department dated 25 November 2021, attachment, pp 3-4.

[40] Correspondence from the department dated 25 November 2021, attachment, p 2.

> entity) from any place of detention; or to a place of detention other than a watch-house; or to a watch-house from a court in which the person has appeared or another watch-house or place of detention.[41]

Clause 5(2) provides for a number of carve outs to the definition of 'detention service' as explained in the explanatory notes:

> It does not include those people who are transported or detained for treatment or care under the Mental Health Act 2016 (Qld) (as they are in the custody of the Chief Psychiatrist). It also does not include the journey after arrest to a watch-house for processing as this is before a person is remanded in custody by a prescribed police officer.[42]

Clause 6 of the Bill defines 'place of detention". Under the Bill, each of the following is a 'place of detention': a community corrections centre; a prison; a watch-house; a work camp; and a youth detention centre.[43]

These definitions are critical to the scope of the Bill and raised a number of concerns from stakeholders as discussed below.

2.2.2 Stakeholder comment

The Joint Submission acknowledged that 'the Bill as drafted has attempted to capture many custodial settings'.[44] The Joint Submission stated further:

> We appreciate the expanded definitions of detention services and places of detention in the Bill, including travel to a watch-house from a court in which the detainee has appeared, or from another watch-house or place of detention.[45]

Concerns were raised by a number of submitters that the definitions of 'detention service' and 'place of detention' in the Bill were too narrow.[46] For example, Sisters Inside submitted:

> The Bill adopts a very limited definition of "detention service" (clause 5) and "place of detention" (clause 6). We recommend the definitions of "detention service" and "place of detention" must be expanded to align with the reality that many prisoners experience multiple, intersecting forms of imprisonment and control. An expansive definition would also be in line with the intention of the Optional Protocol to the Convention Against Torture (OPCAT), assuming the Inspector of Detention Services will be designated as the NPM in Queensland.[47]

The Joint Submission also raised the following concerns about these definitions:

> However, we are concerned that the revised definitions are limiting. The prescriptiveness of Section 5 (1)(c)(iii) is explicitly so, confining the scope of the Inspector's work to transport between watch-houses, courts and places of detention. The risk of ill treatment of people in custody is acute in the first 24 hours of detention, including during transportation to places of detention. Section 5(2) excludes conditions where many adults, young people and children are transported by police and correctional officers between places of detention and mental health facilities/hospitals.
>
> We urge the government to adopt as expansive a definition of detention services and places of detention as possible to include all custodial environments where people are or may be deprived of their liberty within Queensland's jurisdiction, whether or not someone is detained with a warrant.

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41 Explanatory note, p 17.

42 Explanatory note, p 17.

43 Clause 6 of the Bill.

44 Submission 10, p 5.

45 Submission 10, p 5.

46 See, for example, submission 4, pp 3-4; submission 10, p 5; submission 11, p 4 and submission 18, p 3.

47 Submission 4, p 3.

> We recommend that Section 5(1)(c) be amended to remove any carve-outs for transport to and from watch-houses when a person is in custody, and that Section 5(2) be removed from the bill.[48]

The PLS also noted that it was 'extremely concerned about the current definitions for 'detention service' and 'places of detention' contained within cls 5 and 6 of the Bill' and requested the government to 'comply with the intentions of OPCAT by expanding these definitions to cover all places where someone may be deprived of their liberty'.[49]

The PLS provided the following background in support of its concerns:

> The Explanatory Notes to the Bill identify that people being transported, detained or treated under the *Mental Health Act 2016* (Qld) are not included within the definition of detention services because they are in the custody of the Office of the Chief Psychiatrist. However this does not alter the reality that many people are detained in mental health facilities. Mental health facilities must therefore be included in the definition of a place of detention. For example, the classified patient provisions of the *Mental Health Act 2016* (Qld) enables people in prison to be transferred to authorised mental health services for treatment and care when they become acutely unwell. PLS has many clients who are transferred between prison and mental health institutions as classified patients. In 2019-20, a total of 436 people were referred to be considered for classified patient status and 224 people were admitted to mental health facilities as classified patients.
>
> Classified patients in mental health facilities are detained at all times. They are serving sentences of imprisonment. It is artificial to create a divide between people detained in prison and people detained in mental health institutions. PLS holds significant concerns about the conditions experienced by classified patients detained in mental health institutions. It is our experience that some mental health institutions cannot provide certain classified patients with basic entitlements, such as family visits and confidential legal interviews.[50]

The QLS submitted that 'clause 5(c) should be amended to expressly apply to detainees who are transferred to a health service for treatment'. The QLS elaborated as follows:

> We note that the Explanatory Notes state that *detention service* does not include those people who are transported or detained for treatment or care under the *Mental Health Act* 2016 (Qld) nor the journey after arrest to a watch-house for processing.[51]

The QLS also noted that:

> … consideration should be given to whether the inspector should have oversight over people who have been arrested (and are therefore detained by police), and people held in other types of facilities including mental health facilities and aged care facilities, particularly people who may be subject to restrictive practices.
>
> For example, aged care facilities can be places where patients/consumers are deprived of their liberty, and reviews, including the Royal Commission into Aged Care Quality and Safety, have highlighted the substandard monitoring of such facilities. In our view, these places house persons who may be particularly vulnerable to abuse and should therefore also be the subject of targeted reviews and inspections by the inspector.[52]

Similarly, Sisters Inside submitted:

> At minimum, the Bill must be clarified so that it applies to prisoners who may be transferred between prisons and mental health institutions, as these prisoners are highly vulnerable to human rights abuses because they are subjected to intersecting forms of control and surveillance.

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48 Submission 10, p 5.

49 Submission 11, p 4.

50 Submission 11, p 4.

51 Submission 18, p 3.

52 Submission 18, p 3.

> Equally, we see it as an artificial and arbitrary exclusion that people being transported by police upon arrest are not included within the definition of "detention services". As the Committee will be aware, any transport by police raises risks of human rights abuses, especially for Aboriginal and Torres Strait Islander people. In 1993, an 18 year old Aboriginal man, who was a dancer and well-known community member, died in police custody in South Brisbane, as he was being transported only a short distance after arrest (Browning, Clarke and Bremer, 2020). The police actions in relation to the teenager's arrest and transport have always been contested (see Clarke, 2020), and illustrate the need for independent oversight of transport practices that do not depend on death. The Bill must not enshrine a limited or technical definition of "detention services" because this will fail to achieve the goal of preventing human rights abuses by police.[53]

In relation to cl 6, the QLS submitted that 'consideration should be given to expanding the range of places subject to inspections to better align with OPCAT.'[54] The QLS also provided:

> We note that certain parts of detention facilities including solitary confinement and detention units, safety units, health centres, crisis support units, maximum security units, and remand facilities/areas likely already fall within the jurisdiction of the inspector. However this should be clearly articulated within the legislation, including by highlighting the vulnerability to torture and cruel, inhuman and degrading treatment associated with these aspects of prisons.[55]

2.2.3 Department response

In relation to the stakeholders concerns about the scope of the Bill as provided in the definitions of 'detention service' and 'place of detention', the department responded as follows:

> The Inspector's scope is a policy decision by Government.
>
> DJAG notes the Bill gives effect to a number of independent reviews (noted in the Department's briefing note and the Bill's explanatory notes) which looked at aspects of the Queensland criminal justice system; and which had a particular focus on prisons, youth detention and/or watch-houses.
>
> DJAG notes that in accordance with the Queensland Parole System Review Report recommendation that an independent inspector examine all operations of the adult correctional system, and noting the unique vulnerability of persons detained during transport, transportation of detainees to and from places of detention is included in the definition of 'detention services' in clause 5 of the Bill.[56]

In relation to the inclusion of the transport to hospitals for medical treatment in the definition of 'detention service', the department responded to stakeholder concerns as follows:

> The policy intention is to capture transportation of detainees from a place of detention (for example, to a hospital for medical treatment) where the detainee is in the custody of a 'relevant custodial entity' as defined in Schedule 1 (Dictionary).
>
> Transportation by Queensland Corrective Services between prison and hospital for medical treatment is captured within the definition of a 'detention service', and therefore may be the subject of a report prepared under clause 22 of the Bill.
>
> In relation to a detainee's medical treatment in hospital, this would not fall within the scope of the Inspector and would be subject to existing oversight mechanisms, such as the Health Ombudsman.[57]

In relation to the inclusion of the journey after arrest to the watch house in the definition of 'detention service', the department responded to stakeholder concerns as follows:

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53 Submission 4, pp 4-5.

54 Submission 18, p 3.

55 Submission 18, p 3.

56 Correspondence from the department dated 25 November 2021, attachment, pp 5-6.

57 Correspondence from the department dated 25 November 2021, attachment, p 6.

As set out in the Explanatory Notes (page 17), this does not include the journey after arrest to a watch-house for processing as this is before a person is remanded in custody by a prescribed police officer

This does not mean the risk of inhumane treatment during transportation of people who have been arrested but not brought before a court is not recognised, and other existing oversight mechanisms will apply. For example, the Queensland Police Service (QPS) advises that Chapter 16 of the QPS Operational Procedures Manual provides that police officers have a duty of care to those persons in their custody, which is recognised in both criminal law. There are additional duties imposed on police officers by the Criminal Code and Police Powers and Responsibilities Act 2000. A person is also entitled to make a complaint to the QPS about their treatment by police, and to external oversight bodies including the Crime and Corruption Commission and Queensland Human Rights Commission.[58]

2.3 Functions

2.3.1 Proposal under the Bill

Clause 8 of the Bill sets out the functions of the Inspector which include:

- to review or monitor a detention service at any time
- to inspect a place of detention at any time
- to prepare and publish standards in relation to carrying out inspections, and
- to report to Legislative Assembly on each review and inspection.[59]

In relation to mandatory inspections, the Bill provides that the Inspector will be required to inspect:

- each youth detention centre at least once every year
- each prison that is a secure facility at least once every 5 years, and
- all or part of a particular place of detention prescribed by regulation at least once every 5 years.[60]

The explanatory notes provide that the investigation of incidents is not in the Inspector's scope of functions under the Bill:

The Inspector's functions do not specifically include investigating incidents (such as riots, deaths and escapes) or alleged misconduct or alleged corruption by a staff member. For example, investigation of incidents in corrective services facilities will remain an internal function within Queensland Corrective Services (QCS) under the Corrective Services Act 2006 (Qld). Similarly, the Inspector will not investigate specific incidents within youth detention centres, as this will remain an internal function of the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) in accordance with audit, assessment and review requirements outlined in departmental operational policy and procedure. The investigation of incidents at police watch-houses will continue to be carried out by the Ethical Standards Command, Queensland Police Service (QPS). Investigation of deaths in custody will remain the jurisdiction of the Coroner; and where the Inspector reasonably suspects a matter involves or may involve corrupt conduct, the Inspector will be required to notify the Crime and Corruption Commission.

While the Inspector will not investigate specific incidents or complaints, the Inspector's reviews may consider systemic themes that arise from the individual experience of detained individuals or groups of people and/or an issue in one or more places of detention.[61]

58 Correspondence from the department dated 25 November 2021, attachment, pp 6-7.

59 Clause 8(1) of the Bill.

60 Clause 8(1)(c) of the Bill.

61 Explanatory notes, pp 4-5.

2.3.2 Stakeholder comment

2.3.2.1 Investigation of complaints and critical incidents

As noted above, under the Bill, specific prisoner complaints are not within the remit of the Inspector's functions, nor is the investigation of critical incidents.

The QCCL noted in its submission that 'there is no specific provision for prisoner complaints' under the Bill.[62]

Similarly, the QHRC noted that '[t]he Bill is silent as to the Inspector holding functions in relation to critical incidents'.[63] The QHRC also noted that 'the ACT Inspector of Correctional Services can investigate such issues, and has made recommendations concerning serious fires and riots'.[64]

In relation to critical incidents, the QHRC further submitted:

> The Explanatory Notes suggest that functions of this kind including the investigation of riots, deaths and escapes are not in scope, because they will continue to be investigated through internal mechanisms. The Explanatory Notes do not explain why the Inspector, if it chose to, should not be able to investigate such incidents and why it is preferable for internal investigation options only. Crucial insights can be gained by closely scrutinising the response to critical events, as often these are tension points where the human rights of those incarcerated must be weighed up against competing priorities including the good order and security of the prison or detention centre.[65]

The QHRC included in its recommendations on the Bill that the Inspector's functions under the Bill include the ability to investigate critical incidents.[66]

Regarding the relationship between individual complaints, incidents and systemic issues, Sisters Inside submitted:

> The Inspector's work will only be effective if it can make clear the relationship between individual 'incidents' and systemic issues. Individual complaints are often representative of systemic issues and, additionally, the treatment of people in prison at moments of crisis merits greater scrutiny as people are more likely to be subjected to human rights violations. To ensure the Inspector's role does not entrench an artificial division between individual and systemic issues, we believe more work must be done to address the serious deficiencies in complaints mechanisms and independent advocacy support for prisoners.[67]

The QLS was also concerned that the Inspector's functions will not include investigating incidents:

> In our view however, these matters should be considered by the inspector as they may be indicators of systemic issues or practices of torture and cruel, inhuman and degrading treatment within a detention facility, which are properly within the purview of the Inspector. In this regard, we note that the ACT Inspector has power under section 17 of the Inspector of Correctional Services Act 2017 to review critical incidents at correctional centres or in the provision of correctional services. The Act relevantly defines critical incident to mean the death of a person, a person's life being endangered, an escape from custody, a person being taken hostage, a riot that results in significant disruption to a centre or service, a fire that results in significant property damage, an assault or use of force that results in a person being admitted to a hospital, and any other incident identified as a critical incident by a relevant Minister or relevant director-general. According to the Explanatory Statement, the insertion of the definition of 'critical incident' aims to ensure 'accountability and public transparency of events that that may cause significant

62 Submission 3, p 1.

63 Submission 16, p 12.

64 Submission 16, p 12.

65 Submission 16, p 12.

66 Submission 16, p 12.

67 Submission 4, p 2.

> impact or harm in a custodial setting'. QLS submits that similar provisions should be inserted in the Queensland framework to promote accountability and transparency of critical incidents.[68]

In its submission, ATSILS discussed the interaction between systemic reviews and dealing with or referring individual complaints. ATSILS expressed concern that the Inspector will not be investigating specific incidents or complaints. ATSILS stated that 'it is also important to address individual issues uncovered during the reviews in situations when there is a clear and present threat to the safety of an individual prisoner or circumstances that amount to inhumane treatment.[69] ATSILS further submitted:

> While the role of the Inspector of Detention Services will be largely to add systemic issues and bring about changes in conformity with national and international standards, in some circumstances the Inspector should be able to respond to an immediate situation.[70]

ATSILS provided context to its concerns by explaining the situation in the United Kingdom:

> Such an approach was adopted in the United Kingdom to supplement the inspection process by HM Inspector of Prisons (UK) with an urgent notification process. The urgent notification process was established in 2017. An urgent notification is made when there is significant concern about the treatment and conditions of prisoner(s). The urgent notification process is not part of an inspection, it is a separate process in its own right.[71]

ATSILS also pointed out the following advantages to being able to investigate individual cases:

> It is important that the powers of review are not so constrained that serious failings in individual cases that become visible in the course of inspections by the Inspector of Detention Services cannot then be addressed.
>
> …
>
> A second aspect of the systemic versus individual conundrum is that some systemic issues can be so closely intertwined with individual cases that they should not be separated. For example, for resolving issues of access for terminally ill prisoners going without appropriate palliative care, the future improvement of access to palliative care will be too abstract an outcome for those presently suffering from lack of palliative care.[72]

2.3.2.2 Inspection standards

In relation to cl 8(d) which requires the Inspector to prepare and publish standards in relation to carrying out inspections, PeakCare recommended:

- 'the Inspector incorporate an overarching principle within their inspection standards and practices affirming that police watch-houses are not a suitable place for the detention of children and young people'[73]
- 'the development of specific standards for places of youth detention that are distinct from those applied to places of adult detention'[74]
- 'the development of specific standards for places of youth detention are informed by, and reflect the principles and articles contained within the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules), the *United Nations Convention on the Rights of*

68 Submission 18, p 6.

69 Submission 8, p 5.

70 Submission 8, p 5.

71 Submission 8, p 5.

72 Submission 8, p 5.

73 Submission 12, p 4.

74 Submission 12, p 4.

the Child, and the *United Nations Guidelines for the Prevention of Juvenile Delinquency* (The Riyadh Guidelines)' [75]

- 'the Inspector consult with relevant bodies including the Queensland Child and Family Commission, Queensland Human Rights Commission, and Office of the Public Guardian (with particular consideration for the Community Visitors Program) in developing specific best practice standards for the inspection of places of detention for children and young people'. [76]

The QFCC recommended that cl 8(d) 'be amended to require separate standards for places of youth detention that consider the unique rights, needs and best interests of children'. The QFCC further submitted that '[t]hese separate standards should reflect the unique vulnerabilities of children and the higher standards of care that should be afforded to them'.[77]

The QHRC also recommended as follows:

> In light of the risk of overcrowding in youth detention centres and the special protection children enjoy under the HR Act (s 26), informed by the United Nations Convention on the Rights of the Child, the Commission recommends the Bill require the Inspector to develop specific standards for young people in detention.[78]

The QHRC noted that 'the Western Australian, New South Wales and Australian Capital Territory inspectorates have all developed specific standards for young people' despite it not being a statutory requirement in those jurisdictions to do so.[79]

In relation to the preparation and publishing of inspection standards, knowmore suggested that 'these standards must include stronger reference to the *Human Rights Act 2019* (Qld), the Convention on the Rights of the Child, as well as the OPCAT'.[80]

In its submission, the Queensland Nurses & Midwives Union referred to the need for the mandatory inspections and reporting to comply with the Nelson Mandela Rules which are 'essential principles for ensuring detention services are adequate and they must be upheld and recorded as part of the review process'.[81]

2.3.3 Department response

2.3.3.1 Investigation of complaints and critical incidents

In response to the submissions calling for the Bill to include the investigation of particular complaints and critical incidents, the department stated:

> The Inspector's focus is on preventing harm through a system of regular reviews and inspections focused on systems reforms, rather than responding to harm through the investigation of particular matters and/or resolution of individual complaints.
>
> The Inspector's functions are intended to complement existing oversight mechanisms and not alter their mandate. To support this, the Bill contains provisions to allow the Inspector to enter into arrangements. For example, the Inspector can enter into an arrangement with a service provider (defined), which includes Queensland Corrective Services (clause 18). In addition, clause 20 provides that the Inspector may enter into an arrangement with a referral entity (defined) relating to matters about which the entity will notify the Inspector; matters about which the Inspector will notify the entity; and the handling of a review, inspection or other matter by the Inspector that could be dealt with by the entity.

75 Submission 12, p 4.

76 Submission 12, p 5.

77 Submission 14, p 5.

78 Submission 16, pp 11-12.

79 Submission 16, p 11.

80 Submission 17, p 15

81 Submission 7, p 4.

> It is not intended the Inspector will investigate particular incidents or complaints or matters relevant to alleged misconduct of a staff member at a prison. These incidents will remain an internal function within Queensland Corrective Services (or for other places of detention - the Department of Child Safety, Youth Justice and Multicultural Affairs or Queensland Police Service). However, as part of its general function to examine and review the detention services provided in places of detention, incidents such as riots, deaths and escapes may give rise to a systemic review by the Inspector.
>
> There are various complaint mechanisms available to prisoners within corrective services facilities. One of the most accessible and visible complaints processes is that conducted by Official Visitors through the Official Visitor Scheme. There are also other legislative mechanisms providing for oversight by external agencies and reviewing different aspects of issues within corrective services facilities (or other places of detention). For example, the Queensland Ombudsman, Queensland Human Rights Commission, and Crime and Corruption Commission also play a pivotal role in dealing with complaints made by prisoners.
>
> It is also noted that individual cases could lead to a systemic review by the Inspector. For example, the Western Australian Inspector of Custodial Services conducted a systemic review in response to the circumstances of a woman giving birth in Bandyup Women's Prison alone in her cell in 2018.[82]

2.3.3.2 Inspection standards

In relation to the Inspector's role with preparing and publishing inspection standards relating to children and young people, the department responded as follows:

> While the Bill does not provide for specific inspection standards for children in clause 8, it is open to the Inspector to publish separate standards for adults and children as a matter of practice, noting this is what other jurisdictions have done (such as Western Australia and New South Wales).[83]

In response to concerns about the Inspector having reference to the Nelson Mandela Rules, the department stated:

> As noted in the Explanatory Notes, inspection standards are intended to articulate best practice, and it is intended that the Inspector will have reference to international and national materials. These materials include the Nelson Mandela Rules, the United Nations Principles for the Protection of All Persons Under Any Forms of Detention, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offences (the Bangkok Rules).
>
> The Inspector may choose to reference these instruments as part of the standards. For example, inspection standards published in Western Australia and New South Wales include reference to the Convention on the Rights of the Child.[84]

2.4 Vulnerable detainees

2.4.1 Proposal under the Bill

A number of clauses in the Bill relate to vulnerable detainees with the key clauses being cls 9 and 38.[85]

Clause 9 of the Bill provides for the arrangement of a suitable person to help the Inspector carry out review or inspection of a place of detention and the review or inspection is relevant to a detainee.[86] In her Introduction Speech, the Attorney-General explained how cl 9 will operate:

> Measures in the bill are included to provide that the inspector must have regard to the cultural background and vulnerabilities of detainees, for example: when appointing staff to exercise the inspector's functions, to consider the desirability of staff reflecting the social and cultural diversity of detainees in Queensland, including those people who identify as Aboriginal or Torres Strait Islander; in

[82] Correspondence from the department dated 25 November 2021, attachment, pp 7-9.

[83] Correspondence from the department dated 25 November 2021, attachment, p 9.

[84] Correspondence from the department dated 25 November 2021, attachment, pp 9-11.

[85] See also cls 5, 8, 36 and 38 of the Bill

[86] Clause 9(1) of the Bill.

> carrying out a review or inspection, requiring the inspector to have regard to the cultural background or vulnerability of detainees; and consulting with people or using staff suitable to the cultural background or vulnerability of any detained person involved in an inspection or matter being reviewed. For a review or inspection relating to an Aboriginal person or Torres Strait Islander, the inspector must arrange for an appropriate representative for the detainee to help the inspector carry out the review or inspection. For a review or inspection relating to a child, the inspector must arrange for a person with expertise in child trauma, prevention and identification of child sexual abuse to help the inspector carry out the review or inspection.[87]

In correspondence to the committee, the department further explained the proposed operation of cl 9:

> Clause 9(2) requires the Inspector, if appropriate and practicable, to arrange for a suitable person to help the Inspector carry out a review or inspection of a detention service or place of detention.
>
> Clause 9(3) is intended to provide guidance on who may be a suitable person (without limiting the primary obligation in ss(2)).
>
> Clauses 9(4)-(8) operate to ensure that the Inspector must arrange for an appropriate representative or person if the review or inspection relates to particular detainees (who identifies as an Aboriginal person or Torres Strait Islander or a child who is a detainee).[88]

Clause 38 of the Bill permits the Inspector to consult with or engage a person who has professional skills or expertise to help the Inspector perform the Inspector's functions.

Concerns raised by stakeholders regarding the provisions relating to vulnerable detainees are discussed below.

2.4.2 Stakeholder comment

2.4.2.1 General

Clause 9(3) of the Bill sets out the factors that the Inspector 'may have regard to' in considering who is a suitable person. These factors being: (a) cultural background or vulnerability of the detainee, or (b) any views or wishes expressed by the detainee about who may be a suitable person to help the Inspector.

The OPG considered it more appropriate for the Bill to mandate a requirement for the Inspector to have regard to the two factors at paragraphs 9(3)(a) and (b) by replacing the phrase 'may have regard to' with 'must have regard to'.[89]

2.4.2.2 Aboriginal and Torres Strait Islander detainees

In regard to the constitution of the inspecting team, ATSILS submitted:

> In our view, these provisions could be strengthened with an inspecting team comprised of expertise and knowledge of particular cultural backgrounds and vulnerabilities of detainees.
>
> In particular, there should be Aboriginal and Torres Strait Islander representation on the inspecting team. Similarly, the inspecting team should be gender balanced. This will assist in supporting cultural safety and ensure that vulnerable people are supported to reduce the risks of compounding trauma with these processes.
>
> Consideration should also be given to requiring the inspecting team to include people with lived experience of incarceration or lived experience of detention for other purposes.[90]

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87 Queensland Parliament, Record of Proceedings, 28 October 2021, p 3389.

88 Correspondence from the department dated 25 November 2021, attachment, p 11.

89 Submission 15, pp 4-5.

90 Submission 18, p 4.

Sisters Inside also submitted that cl 9 'could be further strengthened to ensure the voices, skills and insights' of Aboriginal and Torres Strait Islander people as well as people with lived experience of imprisonment 'are centred in the Inspector's work.[91] The Sisters Inside submission recommended that:

> … the Bill must make clear provision for the employment of Aboriginal and Torres Strait Islander people, and particularly Aboriginal and Torres Strait Islander women within the Inspector's office. Our preference would be for women and girls with lived prison experience to be employed.[92]

2.4.2.3 Children

In its submission, knowmore encouraged a stronger consideration of the best interests of the child principle, as contained in Article 3(1) of the UN *Convention on the Rights of the Child:*

> In particular, we emphasise the need for this in relation to the inspection and monitoring of youth detention facilities. While we acknowledge the compatibility with rights contained in the *Human Rights Act* (Qld) within this Bill, we note a lack of reference to the best interests of the child, other than the provision to monitor youth detention facilities more frequently compared with adult facilities.[93]

In regard to children within detention services, knowmore noted:

> Due to the particular vulnerabilities of children and their increased risk of exposure to sexual abuse, we submit that the Committee recommend a more robust approach to ensuring the protection of children within detention services.[94]

Similarly, the QFCC highlighted the vulnerabilities of children in detention and the impact this has in respect of the Inspector's role:

> Inspectors need to maintain a consistent presence in places where children are detained. The inspectorate must be able to regularly speak with children in detention, staff, and others.
>
> For this reason, the QFCC recommends the Bill be amended to include a function to maintain a consistent presence in youth detention centres. The inspector should be prepared to intervene to protect children's rights as soon as significant risks emerge.[95]

In regard to the engagement of professionals to assist the Inspector, PeakCare recommended that:

> … further consideration be given, as part of the operationalisation of the Inspector's functions, to the use of suitably skilled persons, such as social workers, who can support children and young people to advocate for their rights and entitlements when a mandatory inspection is being carried out. This recommendation directly supports the statement included in the Bill's explanatory notes that children "may lack the skills needed to advocate effectively for themselves, particularly within a detention environment."[96]

2.4.2.4 People with a disability

The QLS outlined in its submission the need for the provision of special support during inspections for people with a disability in detention centres:

> During inspections, support persons, communication aids and other necessary technologies and supports should be provided to people who are detained to ensure they can adequately express themselves and the perspectives of people with disability are adequately represented. While sections 15(g) and (h) go some way in allowing an inspector to use equipment and support persons during an inspection, these powers are discretionary. The Bill should be amended to mandate the presence of a support person or

91 Submission 4, p 4.

92 Submission 4, p 5.

93 Submission 17, p 11.

94 Submission 17, p 12.

95 Submission 14, p 7.

96 Submission 12, p 4.

the use of communication aids to ensure that detainees can express themselves and the views and experiences of persons with disability are heard.[97]

2.4.3 Department response

2.4.3.1 Aboriginal and Torres Strait Islander detainees

In response to concerns about the vulnerability of Aboriginal and Torres Strait Islander detainees, the department stated:

> In addition to the mandatory requirement (in clause 9) to use an appropriate representative, clause 36 requires the Inspector to take into account the desirability of delegates having a range of knowledge, experience (including lived experience of incarceration) or skills relevant to the performance of the Inspector's functions; and reflecting the social and cultural diversity of, and vulnerabilities within, the population of detainees in the State.
>
> Recognising that it may not always be possible for the Inspector to form a staffing establishment that has the knowledge, skills and experience, or reflects the social and cultural diversity, and vulnerabilities of the entire prison population, clause 38 of the Bill enables the Inspector to consult with or engage professionals or others who can help the Inspector perform its functions.
>
> While the provision of cultural safety training to detention services staff is not specifically mentioned in the Bill, it is anticipated that the Inspector will give consideration to embedding sociocultural perspectives for training and professional development for the Inspector's staff during the implementation phase. It is submitted that the definition of 'detention service' in clause 5(1) of the Bill is sufficiently broad to allow the Inspector to consider the cultural safety of detainees in a review of detention services.[98]

2.4.3.2 Children

In response to concerns about the vulnerability of children in detention, the department stated:

> The Bill provides that if a review or inspection relates to the detention of a child, the Inspector must arrange for a person whom the Inspector considers has appropriate expertise in the areas of child trauma and the prevention and identification of child sexual abuse to help the Inspector carry out the review or inspection (clause 9). Further, consistent with the approach of other jurisdictions, in developing inspections standards (clause 8(1)(d)), it is open to the Inspector to publish separate inspection standards for children and young people in detention, which are intended to articulate best practice for carrying out reviews and inspections, in reference to national and international materials, which can include the Convention on the Rights of the Child.[99]

Additionally, the department explained that:

> … if the Inspector becomes aware of systemic issues and risks in youth detention settings, it is open to the Inspector to undertake a review or inspection based on those issues at any time, noting that the mandatory annual inspection for youth detention centres is a minimum requirement. The Inspector can then make recommendations following a review or inspection, which could include recommendations on the level of presence required in youth detention centres by oversight bodies.[100]

2.4.3.3 People with a disability

In response to concerns about the vulnerability of people in detention who have a disability, the department stated:

> DJAG is of the view that the Bill already sufficiently enables the Inspector to consider the vulnerability and cultural safety of detainees, including detainees with a disability and to make recommendations and undertake thematic reviews relevant to the vulnerabilities and cultural backgrounds of detainees.

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97 Submission 18, pp 4-5.

98 Correspondence from the department dated 25 November 2021, attachment, pp 11-13.

99 Correspondence from the department dated 25 November 2021, attachment, p 13.

100 Correspondence from the department dated 25 November 2021, attachment, pp 14-15.

> The Bill also provides the Inspector with discretion to use equipment and/or support persons when communicating with detainees with disabilities, recognising that not all detainees with disabilities will require support to communicate their views. It is intended that the Inspector, when carrying out a review or inspection relating to a detainee with a disability, will assess the need for support persons or communication aids on a case-by-case basis.[101]

2.5 Frequency of mandatory inspections

2.5.1 Proposal under the Bill

As noted above, cl 8(c) of the Bill provides for the frequency of mandatory inspections. The proposal under this provision is that the Inspector will be required to inspect:

- each youth detention centre at least once every year
- each prison that is a secure facility at least once every 5 years, and
- all or part of a particular place of detention prescribed by regulation at least once every 5 years.[102]

In relation to the Inspector's mandatory inspection obligations, the explanatory notes provide:

> The Inspector will be required to conduct mandatory inspections at set intervals of certain places of detention, consistent with its preventative focus. The Inspector will be required to, at a minimum, inspect every five years each prison that is a secure facility (high security facilities) and all or a part of a particular place of detention prescribed by regulation.
>
> The Inspector will be required to conduct mandatory inspections of youth detention centres at least once every year. Currently, there are three youth detention centres – Brisbane Youth Detention Centre, West Moreton Youth Detention Centre, and Cleveland Youth Detention Centre. It is well established that children and young people in institutional settings can be more susceptible to abuse and may lack the skills needed to advocate effectively for themselves, particularly within a detention environment. Annual inspections are intended to provide a stronger safeguard for children in detention and align with the Royal Commission's Final Report recommendations.[103]

2.5.2 Stakeholder comment

The frequency of inspections was discussed in detail in the Joint Submission:

> To be an effective preventative body the Inspector must be empowered and resourced to undertake regular visits to places of detention, and have free and unfettered access to all places of detention, whether announced or unannounced; to all relevant documents and information; and to all persons including public employees and privately engaged contractors, including the right to conduct private interviews.
>
> The Inspector should have the discretion and power to determine the frequency of its own inspections, without being directed or limited by legislative requirements or budget constraints. It's our view that legislated minimum requirements for inspection frequency should not be needed to ensure the effective functioning of a well-resourced, independent Inspectorate. We also consider that a minimum inspection frequency on its own is a blunt instrument.
>
> We are also concerned that the Bill as written prescribes inspections at high security prisons and places prescribed by regulation at least once every 5 years. While we recognise the intention is to set a minimum expectation of inspection frequency, we are concerned that a 5-year inspection cycle for facilities that are identified as presenting a higher risk of abuse wouldn't be adequate. We would be very concerned if government budget-setting for the Inspectorate were to be based on expectations of such low inspection frequency.

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101 Correspondence from the department dated 25 November 2021, attachment, p 16.

102 Clause 8(1)(c) of the Bill.

103 Explanatory notes, p 5.

> If the government is intent on the Bill specifying a mandatory minimum inspection frequency, we suggest it align its minimum inspection frequency for adult correctional services with comparable legislation in other Australian jurisdictions, and in particular, Western Australia:
>
> - The ACT's *Inspector of Correctional Services Act 2017* requires that a new facility be inspected at least once within its first 2 years of operation, and at least once every 3 years thereafter;
> - Tasmania's *Custodial Inspector Act 2016* requires facilities be inspected at least once every three years; and
> - WA's *Inspector of Custodial Services Act 2003* requires that each prison, detention centre, court custody centre and lock-up be inspected at least once every 3 years.
>
> Accordingly, if the Bill intends to specify a mandatory minimum inspection frequency, we recommend amending Division 2 Section 8(1)(c) to require that each prison, detention centre, watch-house, court custody centre and lock-up be inspected at least once every 3 years, while retaining the requirement each youth detention centre be inspected at least once a year.[104]

The QLS also raised a number of concerns regarding the frequency of mandatory inspections in its submission:

> QLS supports regular liaison visits and monitoring of places of detention. However, we note that the mandatory inspections are subject to a limited scope. …
>
> The facilities subject to mandatory inspections are limited. Inspections will apply to three youth detention centres (Brisbane, Townsville and West Moreton) at least once a year. We consider that there is a need to include a wider range of facilities in the mandatory inspection scheme. In particular, consideration should be given to prescribing mandatory inspections for watch-houses and facilities in regional and remote areas to ensure that the inspector appropriately canvasses the jurisdiction. Whilst the Bill provides for mandatory inspections, including being able to inspect a particular place of detention prescribed by regulation at least once every five (5) years, we submit that further facilities who ought to be subjected to mandatory inspections should be set out in the Bill itself so there is certainty around the scope of these inspections.
>
> Further, in our view, there is a need for mandatory inspections of secure facilities to be conducted more regularly than at least once every five (5) years. QLS notes that other Australian jurisdictions require regular mandatory inspections every two (2) to three (3) years. Increasing the frequency of regular mandatory inspections of secure facilities is a proactive approach that assists in identifying systematic issues before they arise. Accordingly, QLS submits that the Bill should be amended to provide for more regular mandatory inspections of secure facilities.
>
> Our members have suggested that these mandatory inspections may need to be conducted every 12 to 24 months.
>
> We note that, if passed, the Act will be reviewed in five (5) years. If mandatory inspections of many facilities are only conducted every five years, the review will be unlikely to produce meaningful results. We consider that this factor weighs in favour of more regular inspections at the outset, which may be adjusted following the findings of the review.[105]

ATSILS also submitted that a three year cycle is needed for the inspection of places, not a five year cycle.[106]

Sisters Inside considered the 'minimum requirements to be insufficient', and stated further that:

> They do not reflect the reality that human rights abuses are routinely experienced in every prison, and that the prison system has been in crisis for a prolonged period, with no independent oversight. This

[104] Submission 10, pp 6-7.

[105] Submission 18, pp 3-4.

[106] Submission 8, p 7.

> limited commitment to inspections suggests that adequate resourcing is unlikely to be available for more frequent inspections.[107]

Regarding the inspection of youth detention facilities, knowmore submitted:

> At a minimum, we submit that an Inspector should inspect a youth detention facility on a bi-annual basis to ensure that the conditions of detention and treatment of youth detainees remain up to standard. The current high numbers of children in detention, and the ongoing impacts of COVID-19 upon how inspections may from time to time be conducted, underline this need.[108]

The QFCC submitted in terms of youth detention centres that 'annual inspections alone are not sufficient to allow the inspectorate to respond to emerging issues in detention centres in ways that truly protect children's rights'.[109]

In relation to unannounced visits and inspections, the QLS recommended in its submission that 'some inspections should be conducted with no or minimal notice in order to be effective'.[110] ATSILS agreed with this recommendation:

> We echo the comment from the Queensland Law Society that many of these inspections should be unannounced and there should be an ability to go in. My personal experience of the International Committee of the Red Cross inspecting areas of detention associated with armed conflict very much ran on that model and there is a very different picture that arises when these snap inspections and slices in time inform the inspection process.[111]

Mr Caruana noted that while 'the proposed Bill provides the Inspector of Detention Services the ability to make unannounced visits [Division 3, Section 14(2)], it does not in any way suggest that its visits should be unannounced nor should it'.[112] He recommended that 'the QLD Government should encourage, but not mandate, the Inspector or Detention Services to undertake predominately unannounced inspections to places of detention within its remit'.[113]

2.5.3 Department response

In response to concerns about the frequency of mandatory inspections, the department stated:

> The Bill's provisions regarding the scope of the Inspector and mandatory inspection requirements are policy matters determined by Government.
>
> Under the Bill, the Inspector undertakes:
>
> - an annual inspection of each of the three youth detention centres;
> - inspections of each prison that is a secure facility at least once every 5 years ('secure facility' as defined in Schedule 4 to the Corrective Services Regulation 2017); and
> - all or part of a particular place of detention prescribed by regulation at least once every 5 years.
>
> Although not required to conduct regular inspections of other places of detention, the Inspector will have oversight of these places of detention and can choose to go into these places at any time. It will be up to the independent Inspector to determine when and how these inspections will occur.

107 Submission 4, p 4.

108 Submission 17, p 10.

109 Submission 14, p 7.

110 Submission 18, p 5.

111 Public Hearing transcript, Brisbane, 29 November 2021, p 7.

112 Submission 1, p 13.

113 Submission 1, p 14.

> These provisions are intended to balance transparency and accountability by mandating inspections in relation to particular places of detention, with giving the Inspector flexibility to plan when and how to inspect other places, depending on identified issues or risks.
>
> Prescribing particular places of detention via regulation is intended to create flexibility regarding (at a minimum) five-yearly mandatory inspections of other places of detention.[114]

2.6 Referral to Minister

2.6.1 Proposal under the Bill

Clause 17 of the Bill provides a process for the referral of relevant matters to the responsible Minister if the Inspector suspects on reasonable grounds that:

- there is, or has been a serious risk to the security, management, control, safety, care or wellbeing of a detainee at a place of detention, or
- a detainee is being or has been subjected to torture or cruel, inhuman or degrading treatment at a place of detention.[115]

The explanatory notes provided the rationale for this clause:

> To further support the role of the Inspector in assisting places of detention to strive for improvement and best practice, the Inspector may exercise its functions in response to a reference from the Minister or a Minister responsible for the place of detention in relation to a relevant matter of interest for the Minister. This provides responsible Ministers with the ability to act on and refer matters of serious concern that have been brought to their attention regarding the treatment and conditions of people detained. Any written Ministerial reference will be reported in the Inspector's annual report.[116]

2.6.2 Stakeholder comment

Sisters Inside raised the following concerns about the ministerial complaints process set out in cl 17 of the Bill and submitted there needed to be a clearer process to ensure procedural fairness for prisoners:

> Clause 17 of the Bill provides a process for the Inspector to raise matters related to an individual and only provides for these matters to be raised with the Minister after a show cause process with the responsible officer for the relevant "place of detention". Based on the limited detail in the Bill, it is difficult to conceptualise how this process will ensure procedural fairness for prisoners who are at greater risk of ongoing human rights abuses. For example, it is difficult to see how the Inspector would take responsibility to protect prisoners from reprisals, as no provision is made for the prisoner (or a representative) to be included in or notified about this process at any point. We suggest that there must be a clearer process to provide for appropriate notice to a person in prison (or their representative) about the Ministerial process.[117]

In relation to cl 17 of the Bill, ATSILS suggested that 'in some circumstances some form of witness protection should be afforded to the prisoner subjected to such illegal treatment'.[118]

The Joint Submission recommended that the Inspector be provided 'with the discretion to refer matters to the Minister without a mandatory 3 day 'show cause period' as 'these requirements undermine the independence and autonomy of the Inspector'.[119]

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114 Correspondence from the department dated 25 November 2021, attachment, pp 17-18.

115 Explanatory notes, p 22.

116 Explanatory notes, p 6.

117 Submission 4, p 5.

118 Submission 8, p 6.

119 Submission 10, p 8.

The QLS submitted that 'clause 17(1)(b) should refer to both torture and cruel, inhuman and degrading treatment or punishment, to reflect the OPCAT protections in their entirety'. The QLS also noted that:

> … while clause 17 provides a responsible officer an opportunity to make oral or written submissions and provide evidence about the relevant matter, it does not afford the same opportunity to the detainee or the person or persons who are the subject of the complaint. We consider that procedural fairness should be extended to both the detainee/s that are alleged to be subject to cruel, inhuman or degrading treatment and the person suspected of the mistreatment.[120]

The QLS also raised concerns about the legal consequences arising from this provision:

> We consider that clause 17 should include a legal consequence for a finding of cruel, inhuman or degrading treatment. Currently, after cruel, inhuman or degrading treatment is reported to the Minister, there is no further accountability provided for under the Bill. Where the treatment does not meet the criminal burden of proof for torture and/or the elements of a tortious claim, there will be no legal consequence arising from this finding.[121]

2.6.3 Department response

In relation to cl 17 generally, the department stated:

> Clause 17 is designed to allow more immediate and/or serious risks or matters of concern to be brought to the attention of the responsible officer for a place of detention, and responsible Minister, if necessary.[122]

Regarding the specific concerns of stakeholders regarding cl 17, the department responded:

> As noted by ATSILS, clause 17 is modelled on section 33A of *the Inspector of Custodial Services Act 2003* (WA), including the 3 day show cause period. While there is no express provision for some form of protection to be afforded to a detainee who may be the subject of a referral to a Minister pursuant to clause 17, clause 41 of the Bill provides that a person who takes a reprisal commits an offence (with a maximum penalty of 100 penalty units).
>
> It is intended that a person should be protected from victimisation or reprisals as a result of providing information to the Inspector. Reprisal and grounds for reprisal are defined in clause 40 of the Bill. Clauses 40 and 41 are modelled on similar provisions in section 50 of the *Inspector of Custodial Services Act 2003* (WA) and section 47 of the *Ombudsman Act 2001* (Qld), and are intended to facilitate the sharing of information with the Inspector without fear of reprisal, particularly by people who are detained and people working at places of detention.
>
> DJAG notes that clause 17 does not specifically provide for the Inspector to give notice to a person in prison (or their representative) because evidence of a detainee (e.g. obtained during a review or inspection such as written submissions) will be relevant before the show cause notice procedure is invoked. It is the responsible officer for the place of detention that is then responsible for making oral and written submissions or providing evidence about referral of the relevant matter. In relation to QLS's suggested amendment to the drafting of clause 17, 'torture' and 'cruel, inhuman or degrading treatment' are two separate categories of conduct, each of which would be a relevant matter for which the Inspector can issue a show cause notice if the Inspector suspects on reasonable grounds that a detainee is being, or has been, subjected to either type of conduct.[123]

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120 Submission 18, p 6.

121 Submission 18, pp 6-7.

122 Correspondence from the department dated 25 November 2021, attachment, p 21.

123 Correspondence from the department dated 25 November 2021, attachment, pp 21-22.

2.7 OPCAT

2.7.1 Provisions under the Bill

Although cl 3 of the Bill does use language that is similar, but not identical,[124] to that used in OPCAT, neither the Bill, the Introduction Speech nor the explanatory notes specifically reference OPCAT.

The OPCAT treaty was ratified by the Australian Government in 2017. In its submission, the Queensland Mental Health Commission explained the objective of OPCAT:

> The objective of the present OPCAT is 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.[125]

OPCAT imposes an obligation on Australia to create a National Preventive Mechanism (NPM).[126] The features of an NPM are discussed in detail by Mr Caruana in his submission.[127] He summarises an NPM as:

> … the domestic visiting body charged with undertaking regular, preventive visits to all places where people are deprived of liberty. Its aim is to work constructively to improve conditions and treatment in detention, including by identifying the risk factors and the root causes of torture and ill-treatment and making recommendations to the authorities on how they can be addressed.[128]

The link between OPCAT, an NPM and the Bill is explained in the submission from ATSILS:

> Australia is a signatory to and has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The international agreement has been adopted by governments who reaffirm torture, cruel, inhuman and other degrading treatment or punishment are prohibited and are against human rights. The convention directly deals with the need to provide and strengthen the protection for persons deprived of their liberty, like those who are in prison This requires State parties, including Australia, to implement a National Preventative Mechanism (NPM), which is, in effect, a national body responsible for coordinating the independent inspections of all places of detention by independent inspectorates in each state or territory.[129]

2.7.2 Stakeholder comment

While the OPG considered the Bill 'to be a step towards greater compliance' with OPCAT,[130] and similarly, knowmore commented that '[t]he Bill aligns partially with the OPCAT'[131], the QLS was concerned that language identical to OPCAT was not used in the Bill:

> We consider that the Bill as a whole should be compliant with the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment **(OPCAT).** The objective of OPCAT is to prevent the mistreatment of people in detention by establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty.

[124] See submission from the QLS discussed below (submission 18, p 2).

[125] Submission 10, p 4.

[126] Submission 1, p 5.

[127] Submission 1, pp 5- 6.

[128] Submission 1, p 5.

[129] Submission 8, p 7.

[130] Submission 15, p 6.

[131] Submission 17, p 7.

> To properly give effect to Australia's obligations under OPCAT, we consider that clause 4 of the Bill should expressly state the purpose of preventing torture, cruel, inhuman and degrading treatment *or punishment.*[132]

In its submission, the QHRC encouraged the committee to consider '[w]hether the Bill should be amended to better reflect OPCAT requirements and related guidance'.[133]

Similarly, in his submission, Mr Caruana, stated that:

> While the purpose of the Bill clearly articulates the inspection, review, and reporting function of the Inspector of Detention Services, it does not articulate the other functions of an NPM under OPCAT.[134]

The QHRC also recommended that the 'Committee seek confirmation from the Government that the Inspector is intended to form part of its response to OPCAT'.[135] During the public hearing, the HLRC agreed with this recommendation.[136]

In respect of an earlier draft of the Bill, the PLS raised the issue of OPCAT not being fully acknowledged in the draft legislation:

> The lack of acknowledgment that this regime will serve the purpose of meeting obligations under the Optional Protocol to the Convention Against Torture (OPCAT) for Queensland's prisons is concerning. It is difficult to envisage that an additional National Preventive Mechanism (NPM) aimed at meeting OPCAT obligations for prisons in Queensland will be established once this system is in place. For this reason, the purpose of OPCAT should be mirrored in the purpose of the Bill from the outset.[137]

At the public hearing, the PLS stated that this was its 'key concern' with the Bill:

> PLS's key concern with the bill as it currently stands is the lack of acknowledgement of OPCAT and the aspects which fail to comply with it. We cannot imagine that another body is going to be established to oversee prisons to meet OPCAT obligations in Queensland, so we think we should call this bill what it is and we should do what it should do, which is implement OPCAT obligations.[138]

QAI submitted that OPCAT implementation must be 'full and robust' and expressed:

> '… concerns that the impact of the current legislation could be whittled away to an 'OPCAT-lite' implementation in circumstances of inadequate resourcing or the appointment of an inspector who is not sufficiently experienced or inclined to robustly go boldly behind firmly closed doors'.[139]

The Public Advocate also noted that '[w]hile there is no direct reference in the Bill to a key international instrument in this area, the Bill sees Queensland making significant steps towards implementing the requirements' of OPCAT.[140]

However, in contrast to the views discussed above, Together Queensland raised concerns with the use of the word 'torture' in the Bill:

> While it is accepted that one of the aims of OPCAT is to prevent torture of detained persons that must be understood in the context of an international standard aimed at prison systems very different to those in Queensland. The union is unaware of any issue with "torture" in state run prisons, yet the explicit inclusion of that language implies that the issue exists. This is highly insulting to the thousands of

132 Submission 18, p 2.

133 Submission 16, p 2.

134 Submission 1, p 6.

135 Submission 16, p 6.

136 Public Hearing transcript, Brisbane, 29 November 2021, p 7

137 Submission 11, attachment, p1.

138 Public Hearing transcript, Brisbane, 29 November 2021, p 9.

139 Submission 13, p 3.

140 Submission 2, p 1.

> Correctional Officers that do a difficult and dangerous job on behalf of the community. It is a problem that does not exist, and the reference should be removed.[141]

During the public hearing, Together Queensland went further and stated:

> Our concern with the bill is that focusing solely on OPCAT is retrograde. …
>
> OPCAT is an international treaty and, by definition therefore, is the lowest common denominator. In terms of the focus on torture in OPCAT, that is not a problem we are facing in the jails in Queensland, especially not now that they are publicly owned. In terms of officers, whilst we as a country are a signatory to the optional protocol, to suggest or even infer, by including it in the title, that there are issues within Queensland's correctional centres with torture is somewhat offensive. What we do by focusing on OPCAT is focus only on the first-order treatment of prisoners.[142]

2.7.3 Department response

Regarding the concerns of stakeholders about the relationship between the Bill and Queensland's obligations in relation to the implementation of OPCAT, the department responded:

> The Queensland Government is yet to make a decision about OPCAT implementation in Queensland.
>
> However, DJAG has been cognisant of the key aspects of a National Preventative Mechanism under OPCAT in the establishment of the Inspector (for example, a preventative mandate, functional and operational independence).[143]

Committee comment

The committee notes the concerns raised during the inquiry by stakeholders that OPCAT is not specifically mentioned in the Bill. However, the committee also notes that the department has advised that a decision about OPCAT implementation in Queensland is yet to be made.

[141] Submission 20, p 3.

[142] Public Hearing transcript, Brisbane, 29 November 2021, pp 1-2.

[143] Correspondence from the department dated 25 November 2021, attachment, p 42.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Right to privacy regarding personal information

Clauses 12, 13, 14, 15 and 16 enable the Inspector to access confidential personal information, including health information, from a range of sources.

These clauses raise issues of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.[144]

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

The explanatory notes state that the Inspector's power to obtain confidential personal information is necessary to:

- ensure the Inspector has access to all information relating to places of detention, in particular the treatment and conditions of people detained;
- enable the Inspector to fulfil the statutory functions of inspecting, examining and reviewing places of detention and the services within places of detention;
- enable the Inspector to assess the conditions and treatment of people detained against national and international materials that establish best practice in relation to the treatment and conditions of detained persons, and
- enable the Inspector to identify opportunities and develop recommendations for the improvement of the operations of places of detention that will prevent harm and ill treatment of people detained.[145]

Clause 30 makes it an offence to disclose information obtained by the Inspector except in specified circumstances, including:

- for confidential information about a person who is an adult – with the person's consent or if the person is unable to consent – with the consent of a legal guardian of the person, or
- for confidential information about a child – with the consent of the child, if the child has been told the information to be disclosed or used and to whom, as well as the reason for disclosing or using the information, or with the consent of a parent or legal guardian of the child, or

144 *Legislative Standards Act 1992* (LSA), s 4(2)(a).

145 Explanatory notes, p 11.

- for the purposes of providing information to the Ombudsman, the Public Guardian, QHRC or Health Ombudsman regarding a referral of a complaint, and with the consent of the individual, or
- in accordance with the general power of disclosure in the public interest or a person's interest, and
- as otherwise required under another Act (for example, pursuant to section 38 of the *Crime and Corruption Act 2001* (Qld) (Crime and Corruption Act).[146]

The explanatory notes also stated that:

> An additional safeguard relates to the publication of reports in that the Inspector must keep aspects of a report confidential and not provide it to the Speaker of the Legislative Assembly if there is an overriding public interest against disclosure of the information which overrides the public interest in favour of disclosure. Factors that may support a public interest against disclosure include whether the information could identify or allow identification of any person detained or staff at a place of detention. This test must also be applied if the Inspector intends to exercise the general power of disclosure in the public interest.[147]

Committee comment

The committee is satisfied that the Bill has sufficient regard for the individual's right to privacy due to the presence of safeguards.

3.1.1.2 Proportionality and relevance of penalties

The key offences under the Bill are summarised below:

Inspections and investigators

Clause 12 creates an offence for failing to comply with the Inspector's requirement to provide information or attend for a review or inspection without reasonable excuse. The maximum penalty is 100 penalty units ($13,785).[148]

Clause 14 creates an offence for failing to comply with the requirement to provide the Inspector access to people, places and things within a detention facility unless the person has a reasonable excuse. The maximum penalty is 100 penalty units.

Clause 16 creates an offence for failing to comply with the requirement to give the Inspector reasonable help to carry out a review or inspection without a reasonable excuse. The maximum penalty is 100 penalty units.

Clause 42 creates an offence for giving an official carrying out the Inspector's duties information that the person knows is false or misleading in a material particular. The maximum penalty is 100 penalty units.

Clause 43 creates an offence for obstructing an official carrying out the Inspector's duties, or someone assisting the official carrying out the Inspector's duties, unless the person has a reasonable excuse. The maximum penalty is 100 penalty units.

Clause 47 requires a person following the end of their appointment as an officer to return their identity card to the Inspector within 14 days, unless the person has a reasonable excuse. Failure to return an identity card is an offence with a maximum penalty of 10 penalty units ($1,378.50).

146 Explanatory notes, p 11.

147 Explanatory notes, p 11.

148 A penalty unit is $137.85 – see the Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

Confidentiality

Clause 30 creates an offence in that a person (such as an official carrying out the Inspector's duties, or a person who has assisted an official to carry out a review or inspection) must not disclose confidential information to anyone else, or use the information, other than in specified circumstances. The maximum penalty is 100 penalty units.

Reprisals

Clause 41 creates an offence for taking a reprisal against a person for providing information or assistance to an official carrying out the Inspector's duties. The maximum penalty is 100 penalty units.

Issues of fundamental legislative principle

The creation of new offences and penalties affects the rights and liberties of individuals.[149]

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[150]

In determining whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied by the legislation.

Offences regarding investigators

The offences detailed in cls 12, 14, 16, 42 and 43 are similar to offences applying to other investigators, including in the *Local Government Act 2009* (Local Government Act), the Crime and Corruption Act, the *Medicines and Poisons Act 2019* (Medicines and Poisons Act) and the *Legal Profession Act 2007* (Legal Profession Act). The proposed maximum penalties of 100 penalty units are equal to the penalties under the Legal Profession Act, but higher than those under the Crime and Corruption Act (85 penalty units) and the Local Government Act (40 to 50 penalty units). The Medicines and Poisons Act prescribes a maximum penalty of 50 penalty units for non-compliance with a requirement to assist an investigator, and a maximum penalty of 100 penalty units for obstructing an investigator.

Clause 47 is equivalent to offences in the Local Government Act that apply to local government workers, authorised persons and authorised officers. The proposed maximum penalty of 10 penalty units is the same as the penalty for these offences.

Confidentiality

The offence created by cl 30 is similar to an offence in the Local Government Act relating to the use and release of information by councillors and local government employees, which attracts a maximum penalty of 100 penalty units. The equivalent offence within the Crime and Corruption Act has a maximum penalty of 85 penalty units.

Reprisals

The offence created by cl 41 is similar to offences in the Local Government Act and the *Public Interest Disclosure Act 2010* (PID Act), which protect a person making a public interest disclosure. The

[149] LSA, s 4(2)(a)

[150] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

proposed maximum penalty for the offence in cl 41 is 100 penalty units, which is significantly lower than the maximum penalties of 167 penalty units for the offences under the Local Government Act and the PID Act.

It should be noted that the explanatory notes are silent as to the proportionality and relevance of the above penalties. However, generally, the level of penalties for offences in the Bill is commensurate with similar offences in other legislation. It should be noted that there are some exceptions to this, for example, the offences in Medicines and Poisons Act. No offence appears to have a disproportionate maximum penalty.

Committee comment

The committee considers, on balance, the penalties in the Bill are proportionate and appropriate and justified in the circumstances.

3.1.2 *Legislative Standards Act 1992*, section 4(3)(b) – natural justice – right to be heard

Clauses 21, 22, 23, 24, 25 and 26 establish a framework for reporting by the Inspector. These reports will relate to the exercise of the Inspector's functions with regard to inspections of places of detention and reviews of detention services, as well as anything else relevant to their functions the Inspector considers appropriate. The Inspector's reports will be provided to the Speaker of the Legislative Assembly to be tabled in Parliament.

Legislation should be consistent with the principles of natural justice.[151]

Reports of the Inspector relating to reviews and inspections may include information that could be considered adverse to individuals, affecting their rights. Regarding this, the Office of the Queensland Parliamentary Counsel (OQPC) handbook states:

> One of the principles of natural justice is that a person is entitled to adequate notice and opportunity to be heard before any judicial order is pronounced against him, so that he, or someone acting on his behalf, may make such representations, if any, as he sees fit.[152]

Clause 24 sets out that the Inspector must provide notifiable entities with a copy of the draft report and a notice inviting the entity to make submissions to the Inspector. The explanatory notes state that this clause has the effect of making the Bill consistent with the principles of natural justice:

> … the Bill provides for natural justice in that the Inspector must not publish or make a report to Parliament that sets out an opinion that may be expressly or impliedly critical of a person or entity without first providing an opportunity to that person or entity to make submissions regarding the matter. The Inspector is not bound to amend a report in light of any submissions but must ensure the report adequately reflects the submissions received.
>
> …
>
> By providing the Inspector's reports to the Speaker of the Legislative Assembly and publishing them separately, there will be greater transparency and accountability about how places of detention are managed, and the conditions and treatment of persons detained. The Bill strikes an appropriate balance between the rights of individuals to natural justice, and the public interest in transparent and independent reporting on how places of detention are managed.[153]

[151] LSA, s 4(3)(b).

[152] OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

[153] Explanatory notes, pp 13-14.

Committee comment

On balance, the committee is satisfied that any breach of fundamental legislative principle in relation to section 4(3)(b) of the LSA is justified in the circumstances.

3.1.3 *Legislative Standards Act 1992*, section 4(3)(c) – delegation of administrative power

Clause 36 provides the Inspector with the power to delegate the exercise of the Inspector's functions under this Bill to an appropriately qualified officer of the Queensland Ombudsman.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.[154]

The OQPC Notebook states:

> The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[155]

Clause 36 could be seen to breach the fundamental legislative principle that administrative power should only be delegated in appropriate cases and to appropriate persons.

The explanatory notes provide the following justification, citing the safeguards in place over the exercise of the function:

> … the provision is limited to delegation of functions to an officer of the Office of the Queensland Ombudsman, and the Inspector must consider the person, the subject of the delegation, to be appropriately qualified to perform the functions or exercise the powers delegated to them. Furthermore, the delegation would only be for the period of time the person is engaged by the Inspector to carry out the particular functions. A further safeguard is that the Inspector may not delegate to any other person the functions and powers to provide reports to Parliament and publish those reports.
>
> To further safeguard the independence of the Inspector, the Bill also provides that officers of the Queensland Ombudsman cannot be delegated functions of the Inspector if they are already delegated a function under the *Ombudsman Act 2001* (Qld).[156]

Committee comment

The committee is satisfied that the delegation of administrative power in the Bill is appropriate.

3.1.4 *Legislative Standards Act 1992*, section 4(3)(d) – onus of proof

Clauses 12, 13, 14, 16, 43 and 47 all prohibit non-compliance with a requirement made by the Inspector without reasonable excuse.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.[157]

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

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154 LSA, s 4(3)(c).

155 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

156 Explanatory notes, p 14.

157 LSA, s 4(3)(d).

For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.[158]

Generally, in criminal proceedings:

- the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt, and
- the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negativing the excuse or defence beyond reasonable doubt.[159]

Such 'reasonable excuse' provisions are discussed in some detail in the OQPC publication: *Principles of good legislation: Reversal of onus of proof*. That discussion starts with the following:

> If legislation prohibits a person from doing something 'without reasonable excuse' it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse. While there is no Queensland case law directly on point, the Northern Territory Supreme Court has held that the onus of proving the existence of a reasonable excuse rested with the defendant on the basis that the reasonable excuse was a statutory exception that existed as a separate matter to the general prohibition… That approach is consistent with the principles used to determine whether a provision contains an exception to the offence or whether negativing the existence of the reasonable excuse is a matter to be proved by the prosecution once the excuse has been properly raised …
>
> … [It] is understood that in Queensland, 'reasonable excuse provisions' are drafted on the assumption that the Justices Act 1886, section 76 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse. On the other hand, … departments have often taken the view in their Explanatory Notes that a provision containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.[160]

The OQPC discussion concludes:

> It seems likely that in most cases a reasonable excuse will constitute a statutory exception to be proved by the defendant. However, in the absence of an express statement as to the allocation of the onus, the question will ultimately need to be determined by a court having regard to the established rules of statutory interpretation.[161]

Elsewhere, the OQPC has noted:

> Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.
>
> For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.[162]

The explanatory notes for the Bill are silent on this issue of fundamental legislative principle.

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158 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

159 See OQPC, *Principles of good legislation: Reversal of onus of* proof, p 3, at https://www.oqpc.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf

160 See OQPC, *Principles of good legislation: Reversal of onus of* proof, p 25.

161 OQPC, *Principles of good legislation: Reversal of onus of proof*, p 26.

162 OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 36.

In considering the issue regarding similar provisions in other Bills, explanatory notes justify the reversal of the onus of proof on the basis that establishing the defence would involve matters which would be within the defendant's knowledge or on which evidence would be available to them.[163]

It is likely that such would be the case in relation to the matters covered by the relevant clauses here. In other words, it can reasonably be anticipated that such matters would be peculiarly within the knowledge of the individual person, and so it is reasonable to require the person, to disclose this information.

Committee comment

The provisions in the Bill might be seen to reverse the onus of proof, in providing that a person does not commit an offence if the person has a reasonable excuse. The person bears the onus of proof to show that they had a reasonable excuse.

The committee considers that the breach of fundamental legislative principle in the provisions is sufficiently justified, given that the facts giving rise to the reasonable excuse are likely to be within the knowledge of the defendant.

3.1.5 *Legislative Standards Act 1992*, section 4(3)(e) – power to enter premises

Clause 14 confers power on the Inspector to enter a premises at any time without notice and without a warrant issued by a judge or other judicial officer.

Clause 15 provides the Inspector with the necessary powers for carrying out an inspection or review, such as interviewing a detainee, filming inside a place of detention, and inspecting and making copies of documents.

Clause 16 contains a 'help requirement'. It gives the Inspector power to require a person involved in providing a detention service for a place of detention to give the Inspector reasonable help to exercise a power for carrying out the review or inspection, including, for example, to give information.

Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[164]

The OQPC states:

> The [Scrutiny Committee] has commented that departures from the safeguards provided by search warrants should always be carefully considered and adequately justified in the context of the subject matter dealt with in the particular Bill.[165]

The explanatory notes can be seen to provide 'careful consideration' and 'adequate justification', as they detail the multiple restrictions regarding the power to enter premises and seize property without a warrant that are contained within the Bill:

- the Inspector's power to enter premises is limited to places of detention within scope;
- any person authorised to exercise the Inspector's powers will be issued with an identity card and must show the card when exercising a power (or at the first reasonable opportunity) and return the card at the end of the appointment (failure to do so without a reasonable excuse is an offence under this Bill);
- the Inspector's power to request and be given access to any part of a place of detention must be balanced against the Inspector's duty to be mindful of the good order and security of a place of detention and the safety of people at the facility;

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163 For recent examples, see the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018, explanatory notes, p 17; Public Trustee (Advisory and Monitoring Board) Amendment Bill 2021, explanatory notes, p 8.

164 LSA, s4(3)(e).

165 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 47.

- the Inspector's power to seize property is limited to taking copies of documents for the purpose of fulfilling the Inspector's functions;
- the power to require a person to answer the Inspector's questions and produce documents is limited to particular persons at the place of detention or who perform a detention service at the place of detention; and
- any information obtained by the Inspector may only be disclosed in specified circumstances outlined in the Bill.[166]

The explanatory notes also stated that:

> [The power is] considered justified given the objective of the Inspector is to promote the improvement of places of detention, with a focus on preventing harm by promoting and upholding the humane treatment and conditions of people detained. In order to protect against harm occurring, a proactive regime is required which enables the Inspector to observe the operations of places of detention as well as the gathering of information on the operations of facilities and the lived experiences of places of detention.[167]

Additionally, the OQPC stated:

> Strict adherence to the principle [that the power to enter premises should generally only permitted with the occupier's consent or with a warrant] may not be required if the premises are…premises of a public authority.[168]

Committee comment

Noting that detention services are 'premises of a public authority', and the presence of safeguards against the power to seize property, the committee is satisfied the breach of fundamental legislative principle is justified.

3.2 *Legislative Standards Act 1992*, section 4(3)(f) – self-incrimination

Clause 12 provides that a person must comply with any lawful requirement of the Inspector unless there is a reasonable excuse, with self-incrimination not constituting a reasonable excuse.

Legislation should provide appropriate protection against self-incrimination.[169]

By mandating that a person must comply with a lawful requirement of the Inspector, the Bill abrogates an individual's right to claim privilege against self-incrimination, and so can result in a breach of this fundamental legislative principle.

Clause 49 provides some evidential immunity, to apply if an individual gives information to the Inspector in response to a requirement made by the Inspector:

- for a person to give information relevant to a review or inspection (under cl 12(2)), or
- for a person involved in providing a detention service for the place of detention to give the Inspector reasonable help to exercise a power for carrying out a review or inspection (under the help requirement in cl 16(2)).

In these circumstances:

166 Explanatory notes, p 15.

167 Explanatory notes, p 15.

168 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

169 *LSA*, s 4(3)(f).

> Evidence of the information, and other evidence directly or indirectly derived from the information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.[170]

The immunity will not extend to a proceeding about the false or misleading nature of the information or anything in which the false or misleading nature of the information is relevant evidence.[171]

The explanatory notes suggested this immunity balances the abrogation of the privilege against self-incrimination:

> The abrogation of the privilege is balanced by the provisions in the Bill that prohibit the use of information (both primary and derived) obtained by the Inspector (or delegate) in any criminal, civil or disciplinary proceeding against the person, with the exception of proceedings relating to the false or misleading nature of the information provided.[172]

The explanatory notes also set out this justification for the abrogation of the right to protection against self-incrimination:

> Empowering the Inspector to obtain information about treatment and/or harm that has occurred in places of detention will allow the Inspector to make recommendations that may prevent future harm and improve the conditions and treatment of people detained. The public interest in preventing future harm outweighs any potential infringement of an individual's right to protection against self-incrimination.[173]

Committee comment

Noting the prohibition in cl 49 on the use of information provided to the Inspector in criminal, civil or disciplinary proceedings (except where the proceedings relate to the provision of false or misleading information), the committee is satisfied that the abrogation of the privilege is justified.

3.3 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

The explanatory notes do not traverse a number of issues of fundamental legislative principle, including the reversal of the onus of proof and the proportionality and relevance of penalties.

Furthermore, the explanatory notes do not refer to specific clause numbers in considering issues of fundamental legislative principle.

Bearing in mind the desirable outcome of better informing the Parliament, committees and the community about proposed legislation, best practice is for explanatory notes to clearly identify each specific clause giving rise to the issue or which is relevant to any discussion regarding justification for the breach of fundamental legislative principle. The explanatory notes otherwise comply with part 4 of the LSA.

170 Clause 49(2).

171 Clause 49(3).

172 Explanatory notes, p 13.

173 Explanatory notes, p 13.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[174]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[175]

The HRA protects fundamental human rights drawn from international human rights law.[176] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Clauses 4, 5 and 6 – Definitions

By giving a list of places of detention and services, and removing some services from scope (for example, cl 5(2)), cls 4, 5 and 6 create a risk that some places of detention are not subject to scrutiny. OPCAT makes it clear that all places of detention must be covered. Whilst the Bill is no doubt drafted on the basis that there are other bodies that have oversight functions (and the Inspector will be able to enter into arrangements with other bodies),[177] two points are noted:

- Bodies being overseen by more than one agency should not be problematic as long as there is suitable coordination – indeed, more scrutiny should secure the preventive function.
- Whilst it is permissible to have different bodies carrying out oversight functions, reflecting their different expertise in relation to different places of detention, it is important to have a coordinating body with suitable stature and independence, which an Ombudsman invariably fulfils.

4.1.2 The Bill as a whole, and in particular clause 9 (Arranging for a suitable person to help carry out review or inspection)

The Bill recognises some aspects of discrimination, for example cls 8(2) and 9(4) and (5) and 9(6) and (7). The explanatory notes reference the fact that the Inspector can be assisted by a person with a disability or a person with suitable cultural expertise in relation to detainees who identify as being an Aboriginal person or a Torres Strait Islander.[178] From this, it can be assumed that there is a desire to have a regime that is compliant with non-discrimination standards.

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174 HRA, s 39.

175 HRA, s 8.

176 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

177 Explanatory notes, p 8.

178 Explanatory notes, p 7.

Committee comment

The committee finds that the Bill is compatible with human rights other than as outlined above. However, the limits on the human rights outlined above are reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA.

Committee comment

The statement of compatibility tabled with the introduction of the Bill contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Steven Caruana
002	The Public Advocate
003	Queensland Council for Civil Liberties
004	Sisters Inside Inc
005	Queensland Network of Alcohol and Other Drug Agencies Ltd
006	Crime and Corruption Commission
007	Queensland Nurses & Midwives' Union
008	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
009	Australian Lawyers Alliance
010	Joint submission – Change the Record, Aboriginal and Torres Strait Islander Legal Service (Queensland) and Human Rights Law Centre
011	Prisoners' Legal Service
012	PeakCare Queensland Inc.
013	Queensland Advocacy Incorporated
014	Queensland Family and Child Commission
015	Office of the Public Guardian
016	Queensland Human Rights Commission
017	knowmore
018	Queensland Law Society
019	Queensland Mental Health Commission
020	Together Queensland

Appendix B – Officials at public departmental briefing

Department of Justice and Attorney-General

- Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Ms Sakitha Bandaranaike, Director, Strategic Policy and Legal Services
- Ms Nicala Haigh, Acting Principal Legal Officer, Strategic Policy and Legal Services

Appendix C – Witnesses at public hearing

Together Queensland

- Mr Michael Thomas, Assistant Branch Secretary
- Mr Jay Boal, Delegate
- Mr Craig Miller, Delegate

Change the Record, Aboriginal and Torres Strait Islander Legal Service (Queensland) and Human Rights Law Centre (Joint Submission)

- Ms Sophie Trevitt, Executive Officer, Change the Record (via videoconference)
- Ms Kate Greenwood, Barrister and Prevention, Early Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service (Queensland)
- Ms Ruth Barson, Legal Director, Human Rights Law Centre (via videoconference)
- Ms Amala Ramarathinam, Senior Lawyer, Human Rights Law Centre (via videoconference)

Sisters Inside and Prisoners' Legal Service

- Ms Marissa Dooris, Policy Officer, Sisters Inside
- Ms Helen Blaber, Director/Principal Solicitor, Prisoners' Legal Service

Queensland Advocacy Incorporated

- Ms Matilda Alexander, CEO

Queensland Human Rights Commission

- Mr Scott McDougall, Commissioner
- Mr Sean Costello, Principal Lawyer (via videoconference)

knowmore Legal Service

- Mr Warren Strange, CEO

Queensland Law Society

- Ms Elizabeth Shearer, President
- Mr Damian Bartholomew, Chair, Children's Law Committee
- Ms Matilda Alexander, Member, Human Rights and Public Law Committee