



**Committee Secretary
Legal Affairs and Safety Committee
Parliament House**

Inspector of Detention Services Bill 2021 (Qld)

Submission by Prisoners' Legal Service

18 November 2021

Introduction

Thank you for the opportunity to provide feedback about the draft Inspection of Detention Services Bill 2021 (the Bill).

PLS is a community legal centre that has operated in Queensland for over 30 years. We provide legal advice and representation to people in prison about matters arising from imprisonment. PLS has significant expertise regarding the impact of incarceration on the most vulnerable members of our society.

PLS conducts prison visits, operates a telephone advice line, provides community legal education and responds to mail from people in prison across the state. PLS also provides legal representation to people in prison, in relation to parole decisions and prison matters. The majority of people who receive legal representation from PLS are First Nations people and people with disabilities.

On 27 August 2021, PLS provided submissions relating to an earlier version of the Bill through a targeted consultation process. We acknowledge and welcome the significant amendments that have since been made following that consultation. Nevertheless, we have outstanding concerns about the limitations of the proposed Inspection of Detention Services Model and consider that further amendments are required.

PLS has had an opportunity to view submissions made by the following stakeholders relating to the current version of the Bill:

- Mr Steven Caruana of the Australia OPCAT Network dated 10 November 2021; and
- Sisters Inside dated 18 November 2021.

PLS supports the content of both of those submissions. PLS does not intend to replicate comments that have already made by others and which we agree with. Instead, we provide this submission to illustrate why implementing the recommendations made by Mr Caruana and Sisters Inside is vitally important to ensure the Inspectorate can achieve its purpose.

State of Queensland's prisons

There are chronic and systemic human rights concerns within Queensland's prisons. Over the past three years, a number of published reports have identified different concerns about the state of affairs in Queensland prisons.¹

Violence is chronically under-reported. Serious violent and sexual assaults are common. People in prison do not report these experiences because doing so places their safety at risk.² Many people in

¹ See for example, Human Rights Watch, 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia' (Report, 2018); Crime and Corruption Commission, 'Taskforce Flaxton' (Final Report 2018); Department of Health, Clinical Excellence Division, 'Offender Health Services Review – Final Report' (Report, October 2018); Anti-Discrimination Commission Queensland, 'Women in Prison 2019: A Human Rights Consultation Report' (Report 2019); Tamara Walsh et al., 'Legal perspectives on solitary confinement in Queensland' (Report, 18 May 2020).

² Legal Aid Queensland, 'Task Force Flaxton – Corruption Risks in Queensland Corrective Services Facilities' (Submission to Taskforce Flaxton, 11 April 2018) <<https://www.ccc.qld.gov.au/sites/default/files/2019-08/Public%20Hearings/Flaxton/Submission/Taskforce-Flaxton-Submission-13-Legal-Aid-Queensland-2018.pdf>>.

prison are victims of institutional and sexual abuse from childhood.³ Queensland Corrective Services psychologists primarily employ a risk management approach, rather than a trauma-informed approach.⁴ It is PLS' experience that this approach exacerbates existing trauma from those experiences for people in prison.

Since January 2020, there have been nine deaths in custody in Queensland. Of those, five are recorded as having been in a 'single occupancy cell' and four of them were under the age of 40.⁵

Solitary confinement is increasingly used to manage vulnerable people who cannot be kept safe, either due to their own self-harming behaviours or the risk they face from others in prison.⁶ Health care is chronically underfunded and there are numerous barriers to accessing timely and appropriate health services for people in prison.⁷ People with disabilities face particular barriers accessing specialised services due to lack of proper diagnosis, long waiting lists, negative staff attitudes and lack of resources.⁸

Access to rehabilitation in prison is limited. For more than a decade, PLS has observed significant numbers of people failing to receive access to recommended rehabilitation programs prior to becoming eligible for parole.⁹

Parole decision-making in Queensland is in crisis. There are chronic delays in the consideration of parole applications and parole suspension decisions, resulting in large numbers of people who do not pose a risk to the community, remaining in prison.¹⁰ The system adopted for communicating parole decisions results in the most vulnerable people being excluded from the process due to their social and economic disadvantage, such as an inability to read or write.¹¹

The current crisis with parole decision-making directly contributes to issues within prisons, particularly overcrowding. As at 17 August 2021, there were 10,153 people in prison.¹² Overcrowding causes increased pressures and tensions amongst staff and people in prison. Forcing people to sleep on the floor and double up in small cells creates significant safety and hygiene issues.¹³

³ Butler, et al., 'Childhood sexual abuse among Australian prisoners' (2001) *Venereology* Vol 14(3).

⁴ Anti-Discrimination Commission Queensland, 'Women in Prison 2019: A Human Rights Consultation Report' (Report 2019) 173.

⁵ See QCS media statements online at <<https://corrections.qld.gov.au/media/>>.

⁶ Tamara Walsh et al., 'Legal perspectives on solitary confinement in Queensland' (Report, 18 May 2020).

⁷ Department of Health, Clinical Excellence Division, 'Offender Health Services Review – Final Report' (Report, October 2018) [xi].

⁸ Human Rights Watch, 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia' (Report, 2018), 66.

⁹ See for example, *Gough v Southern Queensland Regional Parole Board* [2008] QSC 222, [54]-[78] and *Burrige v Parole Board Queensland* [2021] QSC 244, [119].

¹⁰ See Felicity Caldwell, 'Prisoners kept behind bars for months amid backlog', *Brisbane Times* (20 April 2021) <<https://www.brisbanetimes.com.au/politics/queensland/prisoners-kept-behind-bars-for-months-amid-parole-board-backlog-20210420-p57kqa.html>>. See also PLS submission, Police Powers and Responsibilities Bill 2021 (Qld) (8 October 2021) <<https://documents.parliament.qld.gov.au/com/LASC-C96E/PPROLAB202-10FD/submissions/00000005.pdf>>.

¹¹ See for example, Prisoners Legal Service, 'Annual Report 2020-21', 12 and 15.

¹² Katie Hall, 'Probe into parole glut', *Townsville Bulletin* (23 August 2021) 12.

¹³ Queensland Ombudsman, 'Overcrowding at Brisbane Women's Correctional Centre (Report, September 2016) viii, 17.

These factors create an environment that harvests mistreatment, hinders rehabilitation and brutalises some of the most vulnerable members of the Queensland community. It is therefore unsurprising that over 50% of people released from prison back into the community will reoffend and return to prison within two years.¹⁴

Scope and definitions

It remains troubling that the State government has not made a decision about whether the Inspector will be delegated as the National Preventive Mechanism (NPM) to meet Queensland's obligations under the Optional Protocol to the Convention Against Torture (OPCAT).¹⁵

It is difficult to envisage that an additional NPM aimed at meeting OPCAT obligations for places of detention in Queensland will be established once this system is in place. For this reason, the obligations within OPCAT should be contained in this legislation from the outset.

PLS is extremely concerned about the current definitions for 'detention service' and 'places of detention' contained within clauses 5 and 6 of the Bill, for the same reasons as identified by Sisters Inside. The government should comply with the intentions of OPCAT by expanding these definitions to cover all places where someone may be deprived of their liberty.

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.¹⁶ 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.¹⁷ 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.¹⁸

Classified patients in mental health facilities are detained at all times.¹⁹ 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.

¹⁴ Queensland Productivity Commission, 'Inquiry into imprisonment and recidivism' (Report, 01 August 2019), x.

¹⁵ Legal Affairs and Safety Committee, Public Briefing – Inquiry into Inspector of Detention Services Bill 2021 (Qld), Transcript of proceedings, 15 November 2021, 6.

¹⁶ Inspector of Detention Services Bill Explanatory Notes, 17.

¹⁷ A helpful summary of the classified patient process can be found in the Queensland Health Classified Patient Factsheet available online at <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/444963/classified-patients-fact.pdf>

¹⁸ Chief Psychiatrist Annual Report 2019-20, 17.

¹⁹ Limited 'community treatment' can be provided to classified patients if necessary but must be confined to the grounds and buildings of the mental health service where they are detained and they must be escorted at all times. See s219 of the *Mental Health Act 2016* (Qld).

Excluding mental health facilities from the remit of the Inspector means that human rights concerns within these institutions will remain unchecked. It also prevents oversight from occurring about the interaction between prisons and mental health institutions, where significant issues have been identified by the Supreme Court of Queensland regarding lack of bed space resulting in people being detained in prisons instead of mental health facilities.²⁰

There are benefits to having one agency responsible for preventative detention monitoring in both prisons and mental health facilities due to the interconnectedness of these institutions. This is illustrated by the case study of *Jess provided in our submission of 27 August 2021, who was constantly transferred between prison and mental health facilities without any appropriate oversight into the cyclical nature of her transfers between solitary confinement in prison and placement in mental health facilities.²¹

Existing complaints bodies

An earlier version of the Bill purported to transfer the oversight of the Official Visitor Scheme (OVS) from Queensland Corrective Services to the Inspector. PLS agrees with the current version of the Bill which has removed the OVS from the remit of the Inspector. This aligns with its purpose of preventative detention monitoring rather than investigation of individual complaints. However, this does not alter the urgent need for significant reform to the OVS, which investigates individual complaints for people in prison.

Existing complaints bodies are not able to effectively address the human rights concerns in Queensland's prisons. PLS' previous submission dated 27 August 2021 identified significant inadequacies within the Official Visitor Scheme (OVS).²² In addition, the Queensland Human Rights Commission (QHRC) is backlogged with high numbers of complaints, resulting in delayed notification to complainants about whether their complaint had been accepted.²³ Given the average period of imprisonment in Queensland is 3.9 months,²⁴ delays in accepting complaints can result in them becoming redundant because a person in prison is released before their complaint is considered. This means both individual and systemic issues remain unexplored.

Individual complaints serve an important function of providing an avenue for immediate redress for vulnerable people experiencing human rights abuses in prison. Complaints bodies and non-government organisations can also play an important role in advising the Inspectorate about thematic issues which require exploration.

We note that clause 27(2)(a) of the Bill enables information to be shared by the OVS with the Inspector, however there is currently a lack of clarity about how the various agencies involved in investigating, addressing and preventing human rights abuses in prisons will work together.

²⁰ See for example, *Attorney-General for the State of Queensland v McCann* [2018] QSC 115 and *Attorney-General for the State of Queensland v Sands* [2020] QSC 45.

²¹ A copy of PLS' original submission made as part of the confidential consultation process is provided as Annexure A to this submission. See Case Study B for the description of the experience of * Jess (not her real name).

²² See Annexure A to this submission.

²³ Queensland Human Rights Commission, 'Annual Report 2020-21', 46.

²⁴ Queensland Productivity Commission, 'Inquiry into imprisonment and recidivism' (Report, 01 August 2019), x.

Resourcing

Given the increasing size of the Queensland prison population and scale of systemic human rights concerns identified above, it is vital that the Inspector is properly resourced to serve its function.

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.²⁵

The difficulties associated with relying on existing agencies to host independent bodies have become acutely evident through the parole crisis in Queensland, where the funding deficits have contributed to the wide-scale parole delays which ultimately come at a significant human and financial cost.²⁶

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.²⁷ 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.

Conclusion

The Queensland prison system is in crisis with significant human rights concerns impacting some of the most vulnerable members of the community. Queensland needs a vigorous detention monitoring body that is designed to overcome the well-recognised barriers associated with identifying and preventing harms in closed environments.²⁸

The Inspector should conform with obligations set out in OPCAT. The definitions of 'detention services' and 'place of detention' must be expanded. The Inspector must also be adequately resourced so that it can properly perform its function. In addition, there is an urgent need for the government to address deficiencies associated with the OVS to ensure that individual complaints can be appropriately identified and addressed.

Thank you for your consideration of this submission.

Yours sincerely



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²⁵ See pages 4, 5, 11, 12 and 13 of Mr Caruana's submission of 10 November 2021.

²⁶ See PLS Submission about parole delays dated 2 March 2021 available online at <https://secureservercdn.net/104.238.69.81/9hk.a4b.myftpupload.com/wp-content/uploads/2021/11/PLS-Parole-Delays-Submission_020321.pdf>.

²⁷ See pages 15 -16 of Mr Caruana's submission of 10 November 2021.

²⁸ See for example Kavev (2021) 'Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms'.