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

**Monitoring of Places of Detention (Optional Protocol to the
Convention Against Torture) Bill 2022 (Qld)**

Submission by Prisoners' Legal Service

11 January 2023

Introduction

1. Thank you for providing an opportunity to comment on the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022* (the Bill).
2. 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.
3. PLS conducts prison visits, operates a telephone advice line, provides community legal education, and responds to mail from people in prison in Queensland. PLS also provides legal representation to people in prison, in relation to parole decisions and prison conditions. Most people who receive legal representation from PLS are First Nations people and people with disabilities.
4. The purpose of this Bill is to facilitate visits by the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee) to places of detention in Queensland. The purpose of these visits is to protect people deprived of their liberty through the preventative detention monitoring regime established under the Optional Protocol to the Convention Against Torture (OPCAT), ratified by the Commonwealth Government in 2017.

Scope

5. PLS considers the Bill is currently deficient in scope and that the definition of 'place of detention' in clause 4 should be amended to meet State obligations under OPCAT.
6. Article 4 of OPCAT provides that each State Party should allow visits to the following locations:

'any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'.
7. Deprivation of liberty is further defined as:

'any form of detention of imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'.
8. Clause 4 of the Bill contains a much narrower definition. It lists specific categories of places to which the Subcommittee must be provided access.
9. The explanatory notes provide that the purpose of defining places of detention is to provide clarity and that the *'Bill does not prevent the Subcommittee from visiting other places where a person may be deprived of their liberty'*.¹ However, clause 4 has precisely that effect. It contains an exhaustive list which limits the locations that can be visited by the Subcommittee.² This interpretation is supported by clause 4(h) which permits visits to *'other places'* where they are *'prescribed by regulation as a place of detention'*.
10. It is inappropriate to limit the Subcommittee's visits to locations that have been prescribed by the government as 'places of detention'. There are locations where people are deprived of liberty that are not prescribed as places of detention in the Bill which require oversight. One

¹ Explanatory Notes, Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022, 2.

² Clauses 7 and 8 stipulate that detaining authorities must provide the Subcommittee with access to 'a place of detention'. There is no requirement for detaining authorities to provide access to locations which fall outside of this definition.

example is Residential Care Aged Care Facilities as discussed in the submissions by Townsville Community Law and Queensland Advocacy Incorporated.

11. Another example is the housing precincts which accommodate people subject to supervision orders under the *Dangerous Prisoners Sexual Offenders Act 2003* (Qld) (the precincts). These environments do not fall within the scope of the current definition of places of detention in the Bill, however they involve the deprivation of liberty within the meaning of Article 4 of OPCAT.³ They are located on prison property, surrounded by high barbed wire fences and are very closely monitored by Corrective Services, including through CCTV and regular dog squad patrols.⁴ Residents are subject to strict curfews upon release and thereafter subject to directions about their movements in the community.⁵ Visitors can only attend the precincts if approved and supervised by Corrective Services.⁶
12. PLS has long held human rights concerns about some of the practices within the precincts. Some of these concerns were recently illuminated by the Supreme Court of Queensland when considering whether to make a supervision order to release an elderly male prisoner who was deemed a low risk to the community. The court was concerned that due to the operation of policies at the precinct, releasing him to the precinct would result in limitations being placed on his access to food, health services, carers and the transportation necessary to transport him to doctors and hospitals, including in the event of a foreseeable medical emergency.⁷ In issuing his release, the Court commented on the inhumane conditions he would be subjected to at the precinct and the unsafe and unsatisfactory circumstances faced by an individual with complex medical problems as a result of government policy.⁸
13. This Bill creates an artificial distinction between traditional places of detention and other locations where the deprivation of liberty occurs.⁹ PLS considers that less recognisable places of detention in Queensland require urgent scrutiny by a detention monitoring body because they fall outside the scope of existing oversight agencies. For example, people detained at the precincts cannot access the Official Visitor regime, which is responsible for investigating complaints made by people in prison.
14. The restrictive definition of places of detention within the Bill also prevents essential oversight from occurring over the *interaction* between prisons and other locations where people are deprived of liberty.¹⁰ In PLS' experience, human rights issues often evolve due to gaps in service provision when people are transitioning between prison and other secure environments. The lack of access to medical care for the elderly prisoner mentioned above, was going to occur following his *release* from prison.
15. Agencies tasked with preventative detention monitoring must have access to all places of detention due to the interconnectedness of places where people are deprived of liberty. The

³ The European Court of Human Rights in *Stanev v Bulgaria* [2012] ECHR 46 identified that a person can be deprived of liberty even where they are free to leave the place of detention and not subject to constant monitoring. The court found that where an individual needed express permission to leave the place of detention and was subject to controls and restrictions when away from the facility they were deprived of their liberty under art 5 of the European Convention on Human Rights.

⁴ Patrick Keyzer and I R Coyle, 'Reintegrating sex offenders into the community: Queensland's proposed reforms' (2009) 34(1) *Alternative Law Journal* 27, 28.

⁵ *Attorney General for the State of Queensland v Grant (No 2)* [2022] QSC 252, 39 ('AG v Grant').

⁶ Rachel Riga and Ciara Jones, 'Security bolstered after alleged assault of teenage girl at housing for dangerous sex offenders at Wacol, in Brisbane's west' *ABC News* (Article, 2 December 2022) <<https://www.abc.net.au/news/2022-12-02/qld-dangerous-prisoner-assault-girl-wacol-charges/101727706>>.

⁷ *AG v Grant* (n 5) 127.

⁸ *AG v Grant* (n 5) 165, 173, 176.

⁹ PLS previously criticised the Inspector of Detention Services Bill 2022 (Qld) for making a similar distinction: Prisoners' Legal Service, Submission No 11 to Legal Affairs and Safety Committee, Parliament House *Inquiry into Inspector of Detention Services Bill 2021 (Qld)* (18 November 2021).

¹⁰ Again, PLS raised similar concerns in relation to the operation of the Inspector of Detention Services Bill 2022 (Qld): *Ibid* 4.

human rights issues which exist in these environments are unlikely to be explored or remedied if the current restrictive approach to detention monitoring in Queensland is maintained.

16. PLS recommends that clause 4 be amended to define place of detention as “*any place that the Subcommittee must be allowed to visit under the Optional Protocol, Article 4, that is subject to the jurisdiction and control of Queensland.*”¹¹
17. This aligns with Article 4 of OPCAT and meets the recommendation of the Australian Human Rights Committee to adopt an inclusive approach to the definition of deprivation of liberty so that the Subcommittee itself can determine which places of detention should be visited.¹²

Access to personal information

18. Clause 14 provides that a responsible Minister or detaining authority for a place of detention must not give the Subcommittee access to identifying information about a person at a place of detention unless the Subcommittee ‘*visits or has visited that place of detention*’.
19. The explanatory notes to the Bill contain no guidance as to the purpose of this provision or why visiting a place of detention provides government bodies with authority to share personal information about people deprived of their liberty.
20. We consider it important that the Subcommittee has sufficient access to information prior to commencing visits to determine its priorities and the focus of its work. The release of personal information should not depend on the Subcommittee conducting a visit to the place of detention where an individual is detained.
21. However, PLS maintains such information should be provided within the confines of privacy protections that prevent the disclosure of personal information about people in detention to third parties. PLS considers that the personal information of people deprived of liberty should only be shared with the Subcommittee where an individual consents to the release of their personal information.
22. PLS recommends clause 14 be removed and a provision be inserted in clause 13 to provide that the Subcommittee does not have the right to access any information that is the personal information of a detainee unless the detainee consents to the access being provided.¹³

Supported decision making

23. PLS endorses the recommendation made by Queensland Advocacy Incorporated to include provisions for detainees to access the support and information they require to exercise their legal capacity and to make or participate in decision-making regarding their engagement with the Subcommittee on an equal basis with others.
24. Legal guardians may not always be appointed for people in detention who lack the capacity to engage with the Subcommittee. The right contained within clause 17 for a person being interviewed to request a support person is insufficient and inappropriately places the onus on a person who may have limited capacity to seek support.

¹¹ See also *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT) s 7.

¹² Australian Human Rights Commission, ‘Roadmap to OPCAT Compliance’, *Australian Human Rights Commission* (Road Map, 17 October 2022) 10-12 <https://humanrights.gov.au/sites/default/files/opcat_road_map_0.pdf>.

¹³ See for example *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (ACT) s 13(4)(b).

Interviews and statements

25. An essential function of the Subcommittee is to conduct interviews with people who are deprived of liberty and obtain statements regarding their conditions of detention. These powers are contained within clauses 15,16,17 and 18 of the Bill.
26. PLS draws the Committee's attention to s132 of the *Corrective Services Act 2006* (Qld), which contains a prohibition on interviewing or obtaining statements from prisoners without the written consent of the Chief Executive. Exceptions are provided where the information is being obtained by the prisoner's lawyer, the Ombudsman or a law enforcement agency.¹⁴ It is PLS' experience that this provision is often overlooked, however it has serious implications as it creates an offence punishable by up to 2 years imprisonment.
27. PLS recommends that s132 of the *Corrective Services Act 2006* (Qld) be repealed. It is inconsistent with the right to freedom of expression contained within s21 of the *Human Rights Act 2019* (Qld) and 'seriously compromises the transparency, accountability and integrity of corrective services.'¹⁵
28. While s132 does not contain an outright prohibition on obtaining interviews or statements, requiring consent from the Chief Executive generally means that prisoners who wish to engage with external bodies must be identified to the detaining authority. This has the practical effect of preventing prisoners from engaging due to fear of reprisals for participating in processes which may be critical of authorities. A law that prevents people deprived of liberty from speaking about their experiences in custody prevents those with lived experience from making an invaluable contribution to the development of policies regarding imprisonment and rehabilitation.
29. In the alternative to repealing s132 of the *Corrective Services Act 2006* (Qld), PLS submits this provision should be amended to make clear that the Subcommittee does not require consent from the Chief Executive to conduct interviews and obtain statements when engaging with prisoners in Queensland.

Systemic concerns

30. There are chronic and systemic human rights concerns within Queensland's prisons. In recent years, a number of published reports have identified different concerns about abuse, neglect and the use of prolonged solitary confinement within prisons, particularly with regard to people who are experiencing vulnerabilities.¹⁶ The proper implementation of OPCAT is essential to ensure these issues are adequately explored and addressed.
31. PLS takes this opportunity to re-state the systemic concerns we share with other civil society organisations regarding the implementation of OPCAT in Queensland.
32. On 12 December 2022, PLS and other civil society organisations wrote to the Attorney-General sharing six specific recommendations that we consider necessary to improve the OPCAT model in Queensland. A copy of that letter and our recommendations is *attached*.

¹⁴ *Corrective Services Act 2006* (Qld), s132(2).

¹⁵ Tamara Walsh 'Suffering in silence: Prohibitions on interviewing prisoners in Australia, the US and the UK' (2007) 33(1) *Monash University Law Review* 72, 79.

¹⁶ See for example: Human Rights Watch, *I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia* (Report, February 2018); Crime and Corruption Commission, *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* (Final Report, 14 December 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).

33. We urge the government to adopt these recommendations to prevent the mistreatment of people and provide meaningful protections against torture and other cruel, inhuman or degrading treatment or punishment for people deprived of their liberty.

Summary of recommendations

34. In these submissions PLS makes five recommendations to maximise the efficacy of the Subcommittee in Queensland and protect the rights of the people deprived of liberty:
1. Amend clause 4 to define place of detention as “*any place that the Subcommittee must be allowed to visit under the Optional Protocol, Article 4, that is subject to the jurisdiction and control of Queensland.*”
 2. Insert a provision in clause 13 to provide that the Subcommittee does not have the right to access any information that is the personal information of a detainee unless the detainee consents to the access being provided.
 3. Remove clause 14.
 4. Include provision for detainees to access the support and information they require to exercise their legal capacity and to make or participate in decision-making regarding their engagement with the Subcommittee on an equal basis with others. *Endorsement of recommendation made by Queensland Advocacy Incorporated.*
 5. Repeal section 132 of the *Corrective Services Act 2006* (Qld). In the alternative, amend s132 of the *Corrective Services Act 2006* (Qld), to provide that the Subcommittee does not require consent from the Chief Executive to conduct interviews and obtain statements when engaging with prisoners in Queensland.

Thank you for your consideration of these submissions.

Yours faithfully,



Helen Blaber
Director / Principal Solicitor