LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Mrs LJ Gerber MP
Ms SL Bolton MP (virtual)
Ms JM Bush MP
Mr JE Hunt MP (virtual)
Mr JM Krause MP

Staff present:
Mrs K O'Sullivan—Committee Secretary
Ms K Longworth—Assistant Committee Secretary
Ms M Telford—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE MONITORING OF PLACES OF DETENTION (OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE) BILL 2022

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 24 JANUARY 2023

Brisbane

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The committee met at 2.04 pm.

CHAIR: I declare open the public hearing for the committee's inquiry into the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill. My name is Peter Russo, the member for Toohey and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples whose lands, winds and waters we all share. With me today are: Laura Gerber, the deputy chair and member for Currumbin; Jonty Bush, the member for Cooper; and Jon Krause, the member for Scenic Rim. Jason Hunt, the member for Caloundra and Sandy Bolton, the member for Noosa, are attending via videoconference.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in these proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee. These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask people to turn their mobile phones off or to silent mode.

CORKHILL, Ms Heather, Senior Policy Officer, Queensland Human Rights Commission

HOLMES, Ms Neroli, Deputy Commissioner, Queensland Human Rights Commission

CHAIR: I now welcome representatives from the Queensland Human Rights Commission. Thank you for being here. I invite you to make an opening statement.

Ms Holmes: I acknowledge the traditional owners of the land on which we meet today and pay respects to elders past, present and emerging.

The Queensland Human Rights Commission welcomes this bill, which will ensure that the United Nations Subcommittee on the Prevention of Torture—or SPT—can return to undertake their vital work in monitoring places of detention in Queensland. The SPT can provide real benefits to Queensland by working cooperatively to identify systemic issues and areas of improvement in all places that people are deprived of their liberty; however, to ensure that the SPT has unimpeded access and to ensure that Queensland is compliant with OPCAT further changes need to be made to the bill as drafted.

In our submission we note that three key changes are needed: firstly, the definition of a place of detention needs to be broadened to ensure there is a clear lawful basis for the SPT to visit all places of detention. We note that the following places under state control would fall outside the list of places of detention in the bill: aged-care facilities operating through hospital and health services; people in disability group homes; and secure precincts for prisoners under the Dangerous Prisoners (Sexual Offenders) Act.

Secondly, the grounds for a temporary refusal of entry should be narrowed to include only the most exceptional circumstances as set out in OPCAT, such as when there is serious disorder in a place of detention. Security, good order and management of a place of detention, the health and safety of a person or the conduct of essential operations are not reasonable grounds to justify a temporary refusal of visitation. We are concerned that this may apply to periods of lockdown due to staff shortages. This is the very time that monitoring for human rights issues is most important. This approach is inconsistent with OPCAT and should be removed or at minimum should permit the minister to override an objection raised by a place of detention.

Thirdly, the bill should ensure that the United Nations Subcommittee on the Prevention of Torture can access information about detainees prior to visiting a place of detention to ensure that the SPT can carry out their mandate properly, such as in a situation where the SPT becomes aware that detainees have been transferred out of the place of detention prior to their arrival.

Finally, we did look at some of the other submissions that have made to the committee. In considering submissions such as those from the Australian Lawyers for Human Rights, Queensland Advocacy for Inclusion and the Prisoners' Legal Service we are also concerned about two further aspects to the bill: references to inability to consent to being interviewed or to the use of a person's information in clauses 15 and 16 of the bill. These clauses are inconsistent with the presumption of capacity reflected in Queensland guardianship laws and may raise inappropriate questions about capacity and environments where people may have cognitive impairments or are children. This may impede OPCAT from doing its job and prevent interactions with some of the most vulnerable people in detention. OPCAT should be allowed to walk around a facility and talk to whoever wishes to speak to them and not have to jump through a capacity approval process.

We are unsure how the bill will work alongside a provision in section 132 of the Corrective Services Act which prohibits interviews and written or recorded statements from prisoners without the chief executive's written approval. We question how this authority will be provided and we think that section 132 requires some clarification.

The bill represents an important step towards complying with OPCAT in Queensland, but from the Human Rights Commission's perspective much more needs to be urgently done to ensure full participation in Australia's national preventative mechanism and to clarify the roles and responsibilities of oversight agencies in Queensland. We hope that Queensland moves urgently to ensure it is OPCAT compliant.

Mrs GERBER: When you talked about broadening the definition of places of detention you listed out the places of detention that are currently not captured by the bill. I was wondering if you turned your mind to quarantine facilities and whether or not you believe they would be captured by the bill or whether they fall within one of the categories you have submitted would not be captured.

Ms Holmes: I think quarantine facilities would be captured, but I am not sure if they are within the jurisdiction of the Queensland parliament or the federal parliament.

Mrs GERBER: The quarantine facilities that are state owned would be within the jurisdiction of Queensland.

Ms Holmes: I see, with new facilities such as—

Mrs GERBER: The white elephant that is Wellcamp.

Ms Holmes: Yes, they would be covered and they should be covered.

Mrs GERBER: Just to clarify: do you think the bill covers that, or are you not sure? My reading of the bill is that it is very unclear because a quarantine facility—whether that be a hotel, a purpose designed and built quarantine facility, or whether a person is quarantining in their own home—is a place of detention. The person is not allowed to leave under a regulation put in place by the Chief Health Officer at the time. My reading is that it is very unclear as to whether or not this bill would apply in that situation. I am interested in your organisation's view.

Ms Holmes: We definitely think they should be covered. As to whether the wording at the present time does cover them, that is an issue.

Mrs GERBER: My reading of it is that it would not.

Ms Corkhill: I agree that it is unclear at present. The complexities within the explanatory notes indicate that, notwithstanding what is defined as a place of detention in the bill itself, the SPT will not be prevented from access to all places where people are deprived of their liberty, but that is not necessarily reflected in the words of the bill. Yes, I agree that places of quarantine very well could fall outside of the prescribed list here. It just says 'a place of detention means' and then it has a list. A simple solution might be that the word could be 'includes' and it would resolve the issue to create some clarity about some of these places of detention but without narrowly defining it and finding that in fact they do not have the authority to visit a place such as a quarantine facility.

Ms BOLTON: In your opening statement and your submission you mentioned a minister being given the power to override the decision of a detaining authority to exclude entry. In practice how effective would it be, given the minister has limited visibility of the circumstances on the ground at the facility?

Ms Holmes: Our preference would be that it does not require the override of the minister. We should go back to the primary position: OPCAT should be allowed to visit. I do think there are problems. The minister may not always know what is going on in a facility. We would like it to be as compliant with the original OPCAT protocol as it possibly can.

Ms Corkhill: If we turn to what OPCAT talked about in terms of objections to a place of detention, it says only circumstances relating to national defence, public safety, natural disaster or serious disorder may temporarily prevent visitation, so only in those very narrow circumstances. Our concern primarily is that it has been broadened to the extent that it includes essential operations in a prison. Ideally, As Neroli is saying, the best thing would be to in fact narrow the scope but at the very minimum have some sort of check and balance. You are quite right, Sandy. It may not be very practical but it is the best alternative we could come up with.

Ms BUSH: The issue around capacity and consent is one that interests me. It is quite broad. Could you unpack that a little bit and the impacts on vulnerable people?

Ms Holmes: I think Queensland is unusual in having this provision. Heather has checked the other acts in other jurisdictions and we can tell you that this provision is unique to Queensland. There are always issues about capacity of children. If someone has impaired decision-making capacity, that will give rise to issues of maybe not being able to speak to the SPT people who are walking around a youth detention centre. That is not appropriate. People should have the option if they wish to speak to them to do so freely without any impediments. We would prefer that whole section be removed from the bill. Heather might be able to amplify a little further.

Ms Corkhill: One of the further concerns is the term 'legal guardian' and what that means in a particular circumstance. As we know, there may be a child whose legal guardian is the state of Queensland and they are in youth detention. Does the SPT need to get the permission of the state? That is completely inappropriate in that situation. Certainly the starting point should be the presumption that the person does have capacity.

There are other provisions in monitoring of places of detention bills that could be looked at. I have had a look at the ACT and Tasmania which have alternative drafting which would avoid this altogether by simply having something like 'nothing in this section requires a person who objects or does not consent to being interviewed by the subcommittee to participate', rather than creating this additional barrier and complexity. We do not think it is necessary. In fact, it could mean there is inequality based on people's attributes such as if they are an older person. It might raise their capacity issues. It may be a younger person or a person with a disability. We think that needs to be closely looked at.

Ms BUSH: That goes to what I was thinking. For a number of the people potentially being visited in youth detention centres the decision-maker will be the state, or it will be a formal guardian potentially.

Ms Corkhill: The question is who can say whether the person has capacity or not and who should be making those judgements. As Neroli rightly said, if the person is there and able to talk about their experience then they should have that ability to do so.

Mr HUNT: How many people would normally make up a delegation to a centre?

Ms Holmes: I would probably have to take that on notice. When OPCAT visit they send a delegation out. I do not think it is a huge number. The last time they visited I am not quite sure how many people were in the group. I think it was fewer than 10.

Ms Corkhill: I have no information on that. We could take that on notice.

Mr HUNT: Where I was leading with that was that in any case an escort will be required. The more people in the delegation the more escorting officers will be required to keep an eye on the delegation and the prisoner demographics around the delegation as they move around inside a custodial centre. If there was a critical incident going on or if there was a staff shortage in that centre—and that is not unknown—is it your view that it should go ahead in any case?

Ms Holmes: Probably, because when lockdowns are happening is the time when most violations of people's rights are occurring. It is really important that OPCAT can do unplanned visits and go and have a look at what is going on. It is really important for them to be able to see the conditions that prisoners are in. If there are frequent lockdowns, that is a really important consideration for OPCAT to be able to appreciate—to be able to talk to the authorities about how they can minimise human rights impacts if lockdowns are happening a great deal and to hear from people when that is happening. I appreciate what you are leading to: how difficult it is for prison authorities or other places of detention to provide the necessary staff to enable that to occur. It is a very infrequent occurrence. Being able to rustle up some sort of support we would have thought is within the capacity of the organisations as large as the groups that we have looking after people in detention.

Mr HUNT: Therein lies the nub of my inquiry. It is infrequent so if it happens to coincide with a critical incident and staff are at a premium—contrary to what you might think, procuring staff at short notice is becoming increasingly problematic for correctional centres. If a number of staff are required

to facilitate the visit but through sheer bad luck the visit happens to coincide with a critical incident, other services within the centre would suffer as a consequence. When I say 'other services', if you are talking about a period of lockdown or something similar, the other services might include the provision of meals while they are still hot or the provision of meals full stop, medication, emergent medical escorts, emergent movements around the centre for the safety of the prisoner. One of those would have to give way. Is that factored into the idea that the visit must go ahead come what may?

Ms Holmes: OPCAT tries to be very cooperative, as I understand it, with the organisation. I do not think they are unreasonable. I think they try really hard to accommodate the needs of the facilities and make sure they are not inconveniencing the place of detention they are trying to visit, but it is important that they be given the opportunity to visit. That is the whole idea behind it. I am sure things could be negotiated between OPCAT and the authority being visited. I do not know without having looked at other experiences of OPCAT how that would occur. OPCAT has been operating in many jurisdictions for a very long time, and it does not seem to have caused great difficulties in those other jurisdictions operating under the OPCAT protocol. If you would like us to, we can take it on notice how they operate in those emergency situations to try to find out what the situation is there. From the knowledge that we have, we were not aware that it has become a big issue for OPCAT's operations where they are visiting.

Mr HUNT: I am not suggesting it would become a massive issue or even a barrier to OPCAT in general. I wanted to make the point and I also wanted some additional information. When a delegation arrives and the superintendent of the particular correctional centre makes the point, 'We have had a synchronised self-harm or a synchronised series of code yellows,' how much leeway would the delegation have? I hate to put it so crudely or simplistically, but is there a 'we can come back tomorrow morning' approach? Is there flexibility for the inspection to still go ahead outside the confines of, say, the critical incident?

Ms Holmes: I would have to take that on notice. We would have to ask how the OPCAT committee works. That is not something that is within our knowledge at the moment that I am aware of.

Ms Corkhill: A critical incident might in fact fall under urgent and compelling grounds depending on what it is. The biggest concern at the moment is that the threshold is simply the health and safety of a person. That does not escalate it necessarily to that level of severity. As long as the words of OPCAT are reflected in here—there will be times realistically when it will not be possible to visit. It is about finding the right balance there.

CHAIR: Was the delegation able to visit all the states while they were here? I cannot remember from the press.

Ms Holmes: I think they did manage to visit most states that they wished to visit. The only problems they had arising were in New South Wales. In Queensland there were no problems visiting any of the Corrective Services facilities. It was the forensic mental health units—they were closed down.

CHAIR: They could not get access to them. When they visited facilities, were there any situations where they had to come back or is that outside your remit?

Ms Holmes: It was not reported. OPCAT would not tell us that.

CHAIR: Because of confidentiality.

Ms Holmes: In the media, as far as we were aware, there were no reports of that happening.

CHAIR: Are their reports confidential to everybody or do they speak to the responsible minister to outline issues they detect? Where is the balance there?

Ms Holmes: Their reports are private to the entities and to the government. It is not a public discussion. That is one of the whole ideas behind OPCAT. It is supposed to be continuous and helpful improvement of detention facilities. It is not a name and shame. It really is trying to facilitate best practice and to help organisations to see what options there are for alternatives to what might be operating there. It is a very private process. It is not reported to anyone other than the authorities that are being visited.

Ms BOLTON: I have a quick question about your comment on page 4 of your submission that the bill does not provide access to disability group homes. Can you explain why this would be an issue under OPCAT?

Ms Holmes: Disability group homes can sometimes have locked facilities. People who live in certain disability homes will be within a place of detention. It can be for their own safety or sometimes it is for other reasons. That is a restricted practice—you are probably familiar with restricted practices legislation—where people can be locked up. Some detention facilities can be locked up for quite long periods of time. That is technically under the OPCAT places of detention definition. As we have seen with the royal commission into people with disability and issues of violence and misconduct against them, closed environments can be very unsafe environments where people do experience abuse and neglect. Those are places where OPCAT should be entitled to visit if they have the capacity.

Ms BOLTON: Would that include aged-care facilities in lockdown as we have seen with the pandemic?

Ms Holmes: Yes, it would.

Ms BUSH: That goes to my point. I was not sure if you were commenting just on the FDS, the Forensic Disability Service, or broader disability group homes, but it is the latter.

Ms Holmes: And forensic disability as well, yes.

CHAIR: Jason, if you have a question it will be the last one for this session.

Mr HUNT: No, I am all right now, thanks, Chair.

CHAIR: I think there were two questions taken on notice: how many people are in the delegation attending a place of detention; and how flexible is the subcommittee during visits if an emergency occurs while at the place of detention. Is it possible to have that to the secretariat by 5 pm, 31 January?

Ms Holmes: To the best of our ability, yes, we will try and do that.

CHAIR: Thank you for your attendance once again.

ALEXANDER, Ms Matilda, Member, Human Rights and Public Law Committee, Queensland Law Society

FOGERTY, Ms Rebecca, Vice-President, Queensland Law Society

ROGERS, Mr Dan, Member, Human Rights and Public Law Committee, Queensland Law Society

CHAIR: Good afternoon. You are welcome to make an opening statement of five minutes after which committee members will have some questions for you.

Ms Fogerty: Thank you for inviting the Queensland Law Society to appear at the public hearing on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. I would like to respectfully recognise the traditional owners and custodians of the land on which this meeting is taking place, Meanjin. I recognise the country north and south of the Brisbane River as the home of both the Turrbal and Jagara nations and pay deep respects to elders past, present and future.

The Queensland Law Society strongly supports the full implementation of Australia's obligations under OPCAT. Whilst supportive of the bill, we have some concerns about clauses 2, 4, 10 and 14 of the bill which we have outlined in our submission. In particular, we are concerned with the narrow definition of 'place of detention' as contemplated by the bill.

I am joined today by members of the Human Rights and Public Law Committee, Mr Dan Rogers and Matilda Alexander, who will be pleased to receive questions from the committee.

Mrs GERBER: Thank you again for your appearance this afternoon and for sticking with us. It has been a long day. I am going to put to you the same question that I put to the Human Rights Commission around places of detention and incorporating a quarantine facility or a place of quarantine within the parameters of the bill. Do you think the bill currently covers that? If not, do you think it should?

Mr Rogers: I do not think it does cover that, and the solution to rectifying that problem is to adopt article 4 of OPCAT so that it makes clear that any place where a person is detained or may be detained is a place that can be the subject of a visit. A non-exhaustive list could be provided by way of guidance, but it should not be a closed category so that facilities that might emerge unexpectedly, as occurred after the COVID pandemic, are susceptible to visits as they should be.

Mrs GERBER: Does the Queensland Law Society see any benefit in places of quarantine all being captured under this bill as sites that could be inspected under OPCAT?

Ms Fogerty: Yes.

Mrs GERBER: Can you elaborate on that at all?

Ms Fogerty: We support the full implementation of OPCAT in Queensland.

Ms Alexander: While we could come up with a list of everywhere we can think of now, I do not think that replaces the need to have a non-exhaustive list because there may be something that arises next year that we have not thought of at all this year. Yes, include quarantine, disability group homes and aged-care facilities, but make that not an exhaustive list.

Ms BOLTON: If the reasons for temporary restriction of access from article 14 of OPCAT were adopted, do you think the legislation should provide any additional details than the ones we have already heard about to allow detaining authorities to interpret the terms appropriately?

Mr Rogers: The society's position is firstly that article 14(2) should be mirrored in the legislation so that it is a more narrow restriction on visits occurring. Your question really picks up on something Mr Hunt asked the Human Rights Commission, and that was around this issue of cooperation. The best indication of the extent to which there would be cooperation in those circumstances where there is a security concern is to look at the history of the UN subcommittee visits that have occurred over the last 15 years. During that period they have visited 81 countries, and last year was the fourth occasion ever they have had to suspend a visit. The best predictor of future behaviour is past behaviour. If they had been able to facilitate access to that degree of frequency across all sorts of countries with different developed legal systems, then I think we would have some confidence that there would be a dialogue that could occur.

It is important to recognise that OPCAT makes it really clear right at the outset that cooperation is one of the most important guiding principles that governs their visits. Following the suspension of the Australian visit ahead of the UN committee Justice Aisha Muhammed was interviewed on the ABC Law Report, and she made it really clear that they have been able to resolve those issues and come back

the day after almost every time they have visited countries apart from three occasions, but Australia became the fourth following Ukraine, Rwanda and Azerbaijan. Does that answer your question? It should remain very narrow. Perhaps some guidance might be provided to departmental staff, and that guidance could be provided in cooperation with the UN subcommittee, who might assist them to come to some agreement about what would be an emergent circumstance justifying nonaccess. But if it was weakened by not adopting article 14(2) in full it is not OPCAT compliant, and the bill presently is not.

Ms BOLTON: I am going to go back to aged-care facilities during the pandemic because I have not read exactly what the OPCAT penalties are. During the pandemic the conditions that aged-care residents were under was extremely distressing. Are those circumstances taken into account when OPCAT visits? How do they work with those facilities, especially when there is a total staff shortage and has been for years?

Ms Alexander: I understand that comes under the definition of torture, so they would look at some of those resources. A lack of resourcing to a sector is not an excuse for something that does breach the standards of torture or cruel, inhuman and degrading treatment, but certainly they would look at those matters in relation to defining what their concerns were in relation to the visit, what are the themes that are coming out of the visit.

Ms BUSH: I think your submission has been really clear about where you think those gaps are. What would be the risks if Queensland were not to adopt the full OPCAT articles in this bill?

Mr Rogers: It is no coincidence that subject matter experts who have provided submissions to you independent of each other have identified two or three key issues. They are certainly the more important issues, and I think that is quite telling. As I said before, the visit last year was only the fourth occasion ever. It was pretty embarrassing for Australia, and Queensland was particularly called out. As a state that has a Human Rights Act, that is pretty damaging for our reputation globally. If the bill is not amended in a number of discrete ways which have been specifically laid out, as I said, by independent organisations all happily scrambling to make submissions to you late in the year, there is a risk that when the visit occurs again we will be shamed in a way that the UN subcommittee does not seek to do. It happens very rarely. I just think it will be reputationally damaging for our state and our nation.

Ms Alexander: That is the risk at the international reputational level. There is a risk at a state reputational level as well but, more importantly, there is a risk to the people who are in the places of detention. This is about preventing torture. This is about preventing cruel and inhuman and degrading treatment. That is something that none of us want. We want to make sure that that treatment is prevented. We want to make sure that the internationally recognised preventions are there not just because it will make us look better internationally but because we actually believe in the right of every single human being in Queensland to be protected against torture and cruel, inhuman and degrading treatment.

Ms BUSH: The places of detention that you have listed are consistent with OPCAT principles and other jurisdictions. On the issue of consent and capacity, I just wanted your views on the elements of the bill in relation to that.

Ms Alexander: I would agree with the Human Rights Commission's statement that consent in the way it is phrased creates additional complexity that will inhibit the SPT in the doing of their work. For many people who are in closed environments their legal consent giver, their legal guardian—it might be the power of attorney or their responsible adult, in the case of a child—is the state. Essentially, OPCAT is meant to be monitoring the state's treatment of individuals, so to put the state then as the gatekeeper of whether or not people can tell their story I think creates barriers to the ability of the SPT to do their work, plus there will be a whole lot of confusing administrative barriers. When you walk around a prison you do not necessarily know who has capacity and who does not. Even in a mental health ward you would not necessarily know those things, so we are not going to be able to tell everyone they walk around and talk to. 'Hi, how are you going? Are you having a good day? Have you been subjected to this or that?' They do not want to have to go back to the authority and say, 'I want to talk to the person who is standing over there about what's happened to them today. Do they have a guardian?' It is just going to be practically really difficult, but also I think it will create either a perception or a reality that the UN does not have full and unfettered access.

Mr Rogers: If I could add, on the other end of the spectrum there is no power that compels a person detained to speak to them. It is a voluntary process.

Mr KRAUSE: In relation to the recommendation you are making about the expanded definition of places of detention, can you give the committee information about other jurisdictions that have adopted that or some form of expanded definition and what it goes to in those jurisdictions? I am just looking at the recommendation on page 3 of your submission.

Ms Alexander: Certainly OPCAT itself is the expanded definition.

Mr KRAUSE: I understand that.

Ms Alexander: OPCAT refers to places of detention. It does not refer to X, Y and Z; it refers to places of detention, which is deliberately broad to encompass emerging situations. I understand that Victoria has an expansive definition.

Mr Rogers: Would it assist if we looked at state- or territory-based equivalents?

Mr KRAUSE: I think that would be good, yes, other Australian and similar territories.

Mr Rogers: I think it would also be of use to the committee to consider comparative jurisdictions that have human rights legislation like New Zealand and Canada, so we can provide that.

CHAIR: Have you had a chance to look at the department's response to your submission?

Ms Fogerty: No.

Mr HUNT: So that I have not misunderstood, we are all aware that the underlying and quite correct goal of OPCAT is the prevention of torture. Is there an underpinning assumption then that prisoners in Queensland are being or have been tortured, or are we focused primarily on the prevention thereof?

Ms Alexander: This is a national obligation that Australia has taken on to implement OPCAT, so it is not about Queensland, and it is about all places of detention so it is certainly not about prisoners in Queensland. This is about a national government decision to provide protections. Yes, it does serve a great preventative mechanism, but unless they come out here and write their reports, we cannot say whether or not anything in particular is happening in any particular place of detention.

Mr Rogers: Secondly, I think it is important not to just focus on the word 'torture'. They are looking at torture, other cruel, inhumane or degrading treatment or punishment. It is designed to capture a broader range of conduct that might be considered unnecessary or inappropriate. Having that privately brought to our government's attention for the purposes of improved service delivery is a good thing.

CHAIR: In relation to your submission and some of the department's responses—I am revisiting them—in relation to clauses 2 and 10, where the submission recommends 'amending clauses 2(c) and 10 of the Bill to align with the grounds for objection in Article 14(2) of OPCAT'. The department's response is—

The policy intent of clause 2 is to facilitate the Subcommittee to fulfil its mandate…

I am sorry, you probably do not have this in front of you, and this is not helping.

Ms Fogerty: Can we take your question on notice, perhaps?

CHAIR: No.

Mrs GERBER: I can bring it over to you.

CHAIR: No, it is alright, Laura, thank you.

Mr Rogers: The key point about that recommendation is that there is a disparity between Article 14 of OPCAT, which provides a narrow basis to refuse access, and clauses 2 and 10 together create much broader exceptions which could undermine access and lead to the kind of suspension that occurred last year. The question we have taken on notice which we will look at is, 'What have other jurisdictions done? Where have they struck that balance?' It is a balance between security of facilities and allowing access, and we will happily look at that.

Mr KRAUSE: Following on from that comment—and I appreciate you are taking that question on notice—I wondered also, having now had a look at the UN's Committee against Torture membership which includes the Russian Federation and China, is there any way that you would be able to enlighten the committee about how they address these matters in terms of access for inspections?

Mr Rogers: I imagine they are grossly noncompliant and—

Mr KRAUSE: Yes, and I was going to ask another question.

Mr Rogers:—the reputation that they do not enjoy internationally reflects that. That is why it is pretty concerning when Australia was one of only four countries in the last 15 years that has had a suspension. I am not saying it is a precedent that we will become internationally regarded as a Russian Federation, but it is not helpful. There is a way to ensure that there is not a repetition of that, and that is to implement OPCAT in full. The concern of the society is that unless these couple of amendments are made, the risk is we will be here debating this in a year or two when they visit again, which they will, because Australia is a party to it.

Mr KRAUSE: I will not ask a follow-up there, Chair, because it is probably not relevant to the bill, but there must be some sort of domestic reporting mechanisms which would not involve placing the Queensland system at the judgement of countries like Russia and the People's Republic of China. There probably are mechanisms in place, but it is not relevant to this bill, I understand.

Mrs GERBER: It is good to put it on record, though. I have pulled this up; I can take that over, Chair.

CHAIR: No, leave it, because on the face of it, it is problematic.

Ms Alexander: I would say, in relation to that, that the SBT members come here as individuals as members of that committee rather than as representatives of their country, if that is what your concern is.

CHAIR: Do you have any information about the crossover between the Commonwealth government and the state? My understanding is that the Commonwealth government ratified the optional protocol and then the states adopted it.

Mr Rogers: The UN subcommittee is not really interested in states and territories; Australia is the signatory. In order for Australia to fulfil its obligations, they have to visit states and territories. The report is to Australia, but, as it happened last year, there was a necessary explanation given by the UN subcommittee as to why they suspended, and Queensland and New South Wales were called out.

CHAIR: It was obviously necessary for the Commonwealth government to ratify the protocols, so how does that mechanism work? I understand that they come to Australia, that they treat Australia as a whole, but how does the Commonwealth impact on what is happening? Do we know?

Mr Rogers: Any place where a person is detained or may be detained that is subject to a federal government agency or authority would also need to be OPCAT-compliant, as would state and territory based authorities.

CHAIR: But do we know why it needed to be ratified by the Commonwealth government?

Mr Rogers: Because we believe in the principles against the prevention of torture, cruel and inhumane treatment. That was taken at a broad policy level and most, if not all, developed nations followed that lead. If Australia was absent from that list of signatories—

CHAIR: Yes. I am interested in the comment which the department has made. The Commonwealth government ratified the protocol on 20 December 2017. It came into force in Australia on 21 January 2018. To me that comment does not make sense, because if it came into force in Australia in 2018, how did it come into force? Obviously we are here talking about a bill that has been introduced in 2022 which will be debated some time in 2023, but according to this, it came into force in 2018.

Ms Alexander: There is a bit of process involved after it is signed, and Australia did make commitments to fully implement OPCAT by a particular date. Most recently they said that date has now passed three days ago, so we had a time line where we told the UN, 'We have signed it, we have ratified it, and we are going to implement it by this stage,' and we still have not implemented that at a national level.

CHAIR: That is where it falls to the states to pass legislation?

Ms Alexander: Yes, and from a national perspective, they are coordinating national preventive mechanisms to the Commonwealth Ombudsman, and the Commonwealth Ombudsman is responsible for national places such as immigration detention. Then we will have some kind of coordinated function for state and territory national preventative mechanisms in our own states and territories.

CHAIR: But the reality is that the Commonwealth would have very few places of detention. Is it correct to say that most of them, if not the majority, are run by states and territories?

Mr Rogers: The Commonwealth relies on the cooperation of states and territories to fulfil its obligations; there is that reliance.

CHAIR: Thank you. That helps.

Mrs GERBER: Going back to the issue of broadening the scope of places of detention, that it covers off the bullet points in your submission, DJAG's response to that is—

As outlined in the Explanatory Notes, it is intended that the Bill does not prevent the Subcommittee from visiting a place outside of the scope of the Bill. This would be by consent and in accordance with any relevant legislation.

I am after the Law Society's view on that and whether that is sufficient.

Mr Rogers: It does not presently do that. It needs to make clear that it is any place where a person is detained or may be detained, and provide a non-exhaustive list, whereas presently, just picking up on your quarantine point, it seems to capture some but not others, and that can be reworked.

Ms Alexander: I think we have already seen the difficulties with visiting mental health facilities and the Forensic Disability Service with relying on existing laws and negotiations around consent, so I would not like to see that situation replicated in the future.

CHAIR: You have taken one question on notice, I understand, to provide an overview of the definition of 'places of detention' by the various Australian jurisdictions and others such as New Zealand and Canada, I think was mentioned, and any information on balancing when the subcommittee should or should not attend. If you contact the secretariat, they will help you. We need the information by Tuesday, 31 January, if that is possible. Thank you. That brings to a conclusion this part of the hearing for the OPCAT legislation. Thank you for your written submission and thank you for your attendance.

LUCAS-SMITH, Ms Tina, Sisters Inside

McHENRY, Ms Katie, Policy Officer, Sisters Inside

CHAIR: I now welcome representatives from Sisters Inside. Thank you for being here. I invite you to make an opening statement of five minutes and then the committee will have some questions for you.

Ms McHenry: We would firstly like to acknowledge the traditional owners of the land on which we have gathered today, the Turrbal and Jagera people. I pay my respects to elders past and present. Sovereignty was never ceded. This country always was and always will be the land of our First Nations people.

We would like to acknowledge the women and girls in prison, especially Aboriginal and Torres Strait Islander women and girls who are massively over-represented in systems of social control. We would also like to thank the committee for inviting us to speak today about the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill. In addition to our submission, we would also like to reference the civil society recommendations for effective implementation of OPCAT in Queensland of which Sisters Inside is a signatory.

As you may already be aware, Sisters Inside is an independent community organisation that exists to advocate for the collective human rights of women and girls in prison. Sisters Inside was established and grew out of the lifers and the long-termers of Boggo Road prison. A lot of the lifers and long-termers are still part of our committee today. We provide individual services for women and girls and their families, and we also advocate on issues affecting the needs and interests of criminalised and marginalised women and girls.

Ms Lucas-Smith: The UN Special Rapporteur on Torture has stated that avoiding imprisonment is one of the most effective safeguards against torture and ill-treatment. Sisters Inside is a prison abolitionist organisation. We are actively working towards the end of prisons and other castral structures and forms of social control in our society.

First and foremost, I want to outline that it is concerning that Australia has failed to meet the deadline to establish a national protective mechanism, and in October 2022 the subcommittee was denied access to places of detention in Queensland. Sisters Inside welcomes this bill, but we are extremely concerned that the bill does not go far enough in enabling the subcommittee to fulfil its obligations of monitoring places of detention. OPCAT's mandate states that the national protective mechanism must be allowed free access to all places of detention and be able to make recommendations and engage in constructive dialogue with detaining authorities as part of their role in protecting people deprived of liberty from harm, mistreatment and human rights abuses. The subcommittee must be allowed to attend places of detention without notice, hindrance or witnesses.

Ms McHenry: Some of the main points we would like to go over is the meaning of 'places of detention'. In our view, the bill should explicitly ensure that places of detention are not limited to places that are currently listed in clause 4. We believe that the current definition is too focused on traditional sites of detention, rather than taking a broader perspective on places of detention where people can experience intersecting forms of deprivation or control. In our view, all places where children or adults are coercively kept against their will are places of detention, and that should require oversight. As a starting point, we have recommended that the bill should be amended to the definition contained in Article 4.1 of OPCAT.

Ms Lucas-Smith: In regards to objecting or restricting access to prison, the bill must provide unrestricted access to ensure that the subcommittee can undertake their work in order to effectively monitor places of detention. As the bill currently stands, there is no complete unrestricted access. Given the purpose of the bill is to facilitate visits to places of detention to the subcommittee, the bill must go further than what currently exists. We are particularly concerned about section 10 and strongly recommend its removal. In our experience, the castral system continuously uses the good order and management of a place of detention as a reason to restrict access, including because of issues with governance, such as staff shortage or lockdowns. It is moments when the system is under pressure that the people detained are most at risk. It is more important that they have access at these times. It also ensures that they can witness how the place of detention actually responds to critical incidences in order to effectively monitor the treatment of people in detention.

Ms McHenry: We would also like to address the interviews. In our experience, women and girls are often quite hesitant to speak to police, people of authority or prison officers. In our view, clause 18 does not go far enough in ensuring that interviews can actually be conducted in private. We

recommended that it implicitly include that interviews must be held in a private room that is not recorded by the facility in which they are in detention, and cannot be overheard by other staff or potential witnesses.

We would also like to highlight an important point which is made by Prisoners' Legal Service in their submission but not contained in our original submission. Unfortunately, they are not able to attend today, but we would like to express some of those sentiments contained in their submission, particularly under section 132 of the Corrective Services Act. There is a prohibition on interviewing or obtaining statements from prisoners without written consent of the chief executive. There are some exceptions provided—the ombudsman, your legal representative or law enforcement. We agree with Prisoners' Legal Service's recommendation that section 132 of the Corrective Services Act should be repealed as essentially what it does is prevents people who are deprived of their liberty to speak freely about their experiences in custody, including people with lived experiences, which is particularly important, especially people who might be in the community serving their sentence on parole.

Ms Lucas-Smith: In regards to reprisals, reprisals from staff and the institution are a dangerous reality in places of detention. We often hear stories of abuses of power by detention staff, including increased surveillance, room searches, harassment by detention staff, threats to cancel visits with family, as well as threats for imprisoned mothers of removal of their children. The term 'detriment' is defined in the bill to include prejudice to the person's safety and prejudice to the person's career, including, for example, dismissal from the person's employment. The stories we have just outlined to the committee do not fit the narrow definition of 'detriment' under the act and, as such, does not encompass the true extent of the reprisals faced by women in detention. We encourage the committee to reconsider the definition of 'detriment'.

We would like to highlight the definition of 'reprisal' under the Tasmanian OPCAT Implementation Bill. For example, under section 36 of that act, a person must not—

(b) intimidate or harass, or threaten to intimidate or harass; or

(c) do any act that is, or is likely to be, to the detriment

—of the person.

Another comparison would be the consultation draft bill on monitoring places of detention in the Northern Territory, and that lists 'detrimental actions' under section 51(4). Some of these detention actions listed include injury, loss, damage, change of the conditions of detention, discrimination, intimidation and harassment, to name a few. Thank you. We look forward to taking any questions that the committee might have of us.

Mrs GERBER: Thank you for both your oral and written submission. I will put to you the same question that I put to other witnesses in relation to the definition of 'places of detention' and broadening it. In the opinion of Sisters Inside, do you think it should be broadened to also include places of quarantine, and do you think the bill currently captures places of quarantine?

Ms Lucas-Smith: No, the bill does not currently capture places of detention and we recommend that—

Mrs GERBER: Do you mean places of quarantine or detention?

Ms Lucas-Smith: No, because people are being detained in that time, so we do not think that the current bill has the complexities of what places of detention are, so we would recommend that we go with the OPCAT definition of its 'site of detention' as anywhere that deprivation of liberty occurs.

Ms BOLTON: You have spoken about the interviews and the importance that they are totally confidential and private. Can you give me some more provisions to better ensure the privacy? You have mentioned a lot, but is there anything else you would like to add in there?

Ms Lucas-Smith: I think that it is important to ensure that nobody within the detention facility is able to actually overhear or witness the interviews. I understand that this might cause concerns regarding safety, and we have suggested that perhaps OPCAT could provide their own people to ensure safety if that was required. That would be our position. Would you agree?

Ms McHenry: Yes, because at the moment for interviews to be held in private, the detaining authority for a place of detention must allow the subcommittee to interview a person without any other person being present other than the items that are listed there. It needs to go further. It should actually specify, yes, interviews to be held in private, meaning in a separate room and not being recorded.

CHAIR: You spoke about section 132 of the Corrective Services Act in relation to having to get permission from the chief executive before your interview, and there are some exemptions in the act. This may be a question which is outside your remit or your knowledge, but do you know how this impacts on the ability of the organisation to visit other centres where they have interviewed people? My understanding is they did interview people here in Queensland.

Ms Lucas-Smith: They interviewed in some facilities, but were refused access to other facilities.

CHAIR: I understand the refusal, but what I am trying to work out is they did interview people in detention here in Queensland when they came?

Ms Lucas-Smith: We do not know, but I imagine it would have been with the approval of the chief executive.

CHAIR: They cannot go into a place of detention, walk up to a person and say, 'We are from this organisation. We would like to sit down and have a chat with you about your daily routine'? They cannot do that unless that person has permission from the chief executive?

Ms Lucas-Smith: Our understanding is that under the Corrective Services Act, that is not allowed at this time without approval of the chief executive.

CHAIR: Do you know how that would work in the situation where they present themselves to a correctional centre and say, 'We want to speak to people'? They are surprise visits, so how is this all organised in advance?

Ms Lucas-Smith: That is our concern: the visit needs to be unannounced. It does not need to be announced because as soon as you announce by asking permission, they know you are coming.

CHAIR: Yes, they know you are coming.

Mrs GERBER: DJAG's response to that on page 30 of their submission is that—

> the Bill provides that the provision of another Act that prevents or limits the performance of a function by the Subcommittee, in relation to a detainee or place of detention under the Bill, has no effect to the extent of any inconsistency with the Bill.

This is in response to Prisoners' Legal Service's submission around section 132. They are saying that clause 6 of the bill says that to the extent that 132 is inconsistent with the bill, it does not apply. That is DJAG's response to that concern. Do you have any response to that?

CHAIR: They may not have had a chance to read that.

Ms Lucas-Smith: We have not had an opportunity to look at DJAG's response, unfortunately.

CHAIR: That is okay. The deputy chair has accurately reflected what is said in the department's response.

Ms BUSH: In relation to clause 10 and the reasons to restrict a visit—again, I think we are all doing the same thing, looking at the DJAG response and trying to reconcile it—obviously there are elements in the bill that speak to how long that can happen in terms of it can only be for the period of time that is reasonable, and given that delegates come and stay for a couple of days, do you see an opportunity in the current bill as drafted that that could be negotiated, so, 'Maybe not today because there are lockdowns but come back tomorrow'?

Ms Lucas-Smith: That is not an unannounced visit then. They know they are coming tomorrow. They have announced a visit. It gives continuously an opportunity for visits to be refused; they know you are coming.

Ms BUSH: They do a series of announced and unannounced visits; is that correct?

Ms Lucas-Smith: They need to have the opportunity to do unannounced and then have access at that time. That is one of the biggest issues we have with this bill; that it does not allow it. We work in the prisons and we continuously are locked out because of exactly these reasons.

Ms BUSH: I was interested in that. In your experience going into prisons, you mentioned in your opening statement that that was being used. Can you speak to that, that that is your experience, or is that what you are hearing?

Ms Lucas-Smith: That is our experience as Sisters Inside, but also we have anecdotal evidence from the women inside that are being forced into lockdowns because of staff shortages or not able to attend medical appointments because they do not have enough staff. This reason of 'for the security and good order of the prison' is used continuously to stop access already, so it is just going to be used as another reason to stop access for OPCAT attending.

Mr HUNT: There is an understanding, is there not, that there is capacity within correctional centres at the moment, male and female, for confidential interviews to take place; that the infrastructure is there and it does occur currently?

Ms Lucas-Smith: Yes. It is able to happen, but it does not always happen.

Mr HUNT: In regards to OPs and whatnot, they can and do wander into a unit, request to see a prisoner, and the prisoner will be escorted and then there will be a completely confidential interview take place after that?

Ms Lucas-Smith: That does currently happen with legal appointments but, say, support staff are sometimes expected to actually speak to people within, say, a secure unit, next to where the officers' station is. It is not something that happens consistently, that access to support staff or people from outside the prison to have those conversations.

Mr HUNT: I needed to drill down to the fact that the capacity is there and it does happen.

Ms Lucas-Smith: It is able to happen, yes.

Mr HUNT: It also does happen, doesn't it?

Ms Lucas-Smith: Yes, it does happen in some circumstances.

Mrs GERBER: I wanted to give you the opportunity to take on notice that question that the chair put to you and that I also clarified around section 132. If you want me to ask the question again then perhaps you could come back to us with your response in relation to what DJAG has said when you have had an opportunity to read it.

Ms Lucas-Smith: Yes, we would appreciate that.

Mrs GERBER: My understanding of your oral submission is that, for section 132 of the Corrective Services Act which outlines that a person cannot interview a prisoner without the consent of the chief executive, you would like the bill to make it clear that the subcommittee does not require the consent of the chief executive. DJAG's response to that is that Queensland Corrective Services has advised that a consequential amendment to the Corrective Services Act is not necessary because 'clause 6 of the bill provides that the provision of another act that prevents or limits the performance of a function by the subcommittee, in relation to a detainee or place of detention under the bill, has no effect to the extent of any inconsistency with the bill'. I would be pleased to receive Sisters Inside response to that if you want to take that on notice.

CHAIR: The key to the deputy chair's question is 'if you want to take that on notice'.

Mrs GERBER: You do not have to.

CHAIR: You can say, 'No, sorry. Do your own research.'

Mrs GERBER: I am offering you the opportunity.

CHAIR: We would appreciate your input.

Ms Lucas-Smith: We would like an opportunity to provide a more informed response.

Mrs GERBER: I am just conscious that section 132 was not part of your written submission and you have only made it orally without the opportunity to read what DJAG has said.

CHAIR: Thank you for taking that on notice. It is very much appreciated. Are you able to provide your response to the secretariat by 5 pm on 31 January?

Ms Lucas-Smith: Yes, that is fine.

CHAIR: If there is any difficulty with that, contact the secretariat. Thank you for your written submission and thank you for coming along today to give evidence to the committee. It is very much appreciated.

BOWES, Mr Sean, Law Reform and Advocacy Officer, knowmore (via videoconference)

HANCOCK, Ms Lauren, Manager, Law Reform and Advocacy, knowmore

STRANGE, Mr Warren, Chief Executive Officer, knowmore

CHAIR: I now welcome the following representatives from knowmore: Warren Strange, Chief Executive Officer; Lauren Hancock, Manager Law Reform and Advocacy; and Sean Bowes, Law Reform and Advocacy Officer, via videoconference. Good afternoon, everybody. Thank you for being here. I invite you to make a five-minute opening statement, after which the committee will have questions for you.

Mr Strange: We thank the committee for the opportunity to make a submission on this bill and to appear today and speak to it. I would like to begin by acknowledging the traditional custodians of the lands on which we are meeting—either here the lands of the Turrbal and Jagera people or remotely on other lands—and we pay our respects to their elders. As you noted, Chair, with me is Lauren Hancock and Sean Bowes is on video from our Sydney team. Sean is the main author of our submission and is probably best placed to answer questions about the detail of that submission.

By way of opening, we broadly support the bill. We welcome its introduction and consideration. It is an important piece of legislation. We have outlined in our submission the importance of ensuring Queensland's compliance with its international human rights obligations. Particularly our focus is around ensuring that everything possible is done to minimise the potential occurrence of child sexual abuse of places of detention in Queensland and if it does occur that it is dealt with in an appropriate way.

While we broadly support the bill, we have identified some issues with it which are explained in more detail in our submission. That submission is written in the context of what the Royal Commission into Institutional Responses to Child Sexual Abuse said about places of detention particularly being closed environments and environments of very much heightened risk to the children that are detained there when it comes to the risk of child sexual abuse. That context informs our particular focus with our submission and our comments. It emphasises or underlines the importance of an effective OPCAT monitoring regime for children who are in detention.

As outlined in the introductory section of our submission, we have identified some issues in the bill relating to access to places of detention, access to information, the conducting of interviews, protections for people who provide information to the US subcommittee and some specific provisions relating to youth detention centres. That is all I wanted to say by way of opening. We are happy to take questions from the committee and answer those as best we can.

Mrs GERBER: Thank you, Mr Strange and Ms Hancock, for your appearance today. Can you expand on your submission around clause 10? You said it should be limited to those outlined in article 14(2) of OPCAT. Is that essentially the same submission that we have heard from other witnesses—that you think the definition should be broadened to align more with OPCAT—or are you submitting something different?

Mr Strange: I might go to Sean to answer that in a bit more detail.

Mr Bowes: It is very similar to submissions that have been made by other organisations and in particular by other legal organisations. The grounds that are set out in clause 10 for a detaining authority to temporarily restrict or prohibit access to a place of detention are far broader than the grounds that are provided in article 14 of OPCAT. This is in contrast to the powers that are granted to a minister to object. The minister's powers largely mirror those that are contained within OPCAT but there are far broader powers granted to obtaining authority. What we say is that those grounds should be narrowed to match the grounds that exist in article 14 of OPCAT and that those powers in article 14 of OPCAT would be sufficient and appropriate for detaining authorities to manage exceptional situations that may arise but without interfering with the ability of the UN subcommittee to carry out its important preventive work.

Ms BOLTON: I asked a previous witness about provisions that need to be included to better ensure the privacy of those being interviewed, especially youth.

Mr Strange: Again, Sean do you have any specific comments to add?

Mr Bowes: Yes, we do have some specific concerns around privacy. In particular, the explanatory notes to the bill express a view that it is sufficient if an interview with the UN subcommittee takes place out of earshot, which is contemplating a situation where there may be other people in the

room. In fact, it may be quite crowded. You may even be within the direct line of sight of the person you are wanting to speak about and that person may be a perpetrator. The view of privacy that is expressed by the explanatory notes to the bill is really not sufficient. That is something that we would like to see addressed so that it is clear that, for there to be adequate privacy in the interview with the UN subcommittee, the UN subcommittee needs to be able to hold interviews in a separate room away from other people.

Ms BOLTON: Is there anything else in addition to that or just a separate room?

Mr Bowes: A separate room and out of earshot, which is something that is contemplated by the explanatory notes at present. The problem is that the explanatory notes do not go beyond that.

Ms BOLTON: In addition, having someone for safety reasons accompany the UN subcommittee if there are concerns—for example, we have heard previously about detriment—would you see that as a viable option?

Mr Bowes: There would not be a problem in general terms with the child or with anybody else having a support person present in order to speak with the UN subcommittee. The problem with the explanatory notes at present is that they anticipate too little a degree of privacy rather than too great a degree. We certainly understand that it could very well be valuable for a person to have a support person present if they wish for that to happen.

Ms BUSH: Essentially your submission is to bring the bill closer in alignment with the drafting of OPCAT. In relation to your submission around removing clause 13(6)(c) about access to information being able to be prescribed through regulation, could you expand on that or the rationale for your recommendation on that?

Mr Bowes: OPCAT does not phrase a broad exception to the access to information that the UN subcommittee should be able to have. OPCAT uses the language of unrestricted access. We are concerned to see a provision that allows a very broad regulation-making power for the government to be able to exclude classes of information. We think that the other provisions that are contained in clause 13 are more than adequate to deal with restrictions on access to information.

If an unforeseen event arose in future where there was some need to address a different type of information that has not been envisioned, we submit that the appropriate way to deal with that would be by amendment to the legislation. The reason for that is that OPCAT assumes a very broad power for the UN subcommittee to access information and it should be truly exceptional if that is to be interfered with and not simply a matter of regulation.

Ms BUSH: In relation to the questions I have asked around capacity and who the legal decision-maker is and needing to get consent, I was after your views on that component.

Mr Bowes: I may have to take that one on notice if my colleagues do not have anything to add on that point.

Ms BUSH: Essentially it is one of the issues that you would see come up in your capacity. I certainly know, Warren, you have had to lot to do with this sector. What are some of the issues that come up around young people where the decision-maker is in fact the department or for people who have a formal guardian appointed and getting consent to interview people?

Mr Strange: I do not know if we have looked at that specifically in this context. I would think, subject to some further consideration, that we would want to have an inspection regime where the opportunity to engage with young people directly without having to go through those sorts of levels of approval which may present barriers to frank and unfettered access would assist the committee to discharge its functions. We would support that. I think certainly there should be ways that it should not be viewed as this person has legal responsibility or decision-making responsibility such as they might for other issues in relation to the work of the inspection committees. I think that the point made earlier about a support person is an important one. There will be some individuals who sit outside that legal decision-making framework but who support young people in detention centres who would be viewed as trusted support people to assist a young person in this type of context.

Ms BUSH: I do not think I need anything taken on notice.

CHAIR: Sean, are you happy with that answer?

Mr Bowes: Certainly.

CHAIR: We do not need to take it on notice if you are happy with that.

Mr Strange: We have not looked through the legal relationships in a technical way, but what I have said is a matter of principle. We are happy with that access being broad and unfettered and according respect to the rights of the children.

Mr HUNT: Very briefly I will tease this out again. It is a bit of repetition on my part. I was speaking with one of the earlier submitters. I need to lock this down. Insofar as confidentiality is concerned, there is currently facility in Queensland custodial settings for a prisoner to have a completely confidential conversation with an official visitor. The infrastructure exists, the procedure exists, for the prisoner to be removed—often sometimes at very emergent short notice—so they can have these discussions. I am almost trying to allay some concerns so that people realise that that facility does exist and is used, I would say, daily.

Mr Strange: Perhaps I will answer that. Sean is based in Sydney. My experience of actually going into prisons and working directly with prisoners is now somewhat dated. To answer the member's question, I understand that those facilities exist but they do not exist to the same standard in every correctional facility around the state. Again, with the qualification that my personal experience is dated, I can well remember difficulties in legal representatives getting timely access to prisoner clients because of the limited number of confidential interview rooms and also staffing was impacted in a major way.

There were often impediments explained by way of, 'We simply do not have the resources to be able to move prisoners around the correctional centre to bring them from a wing into the environment where the interview rooms are, so we cannot accommodate an interview for the next week,' or something like that. There are some practical impediments. I think those facilities do exist in all the major correctional centres, but it is a matter of how many of them and the level of demand, particularly given that in the prisons that have a remand population lawyers are understandably needing to see those clients quite regularly. Some of that is now done over video as well. That is obviously an increasing way of accessing people in prison environments. I hope that sheds some light on the question.

Mr HUNT: Certainly. I do not want to reflect on the august qualities of my fellow committee members who have legal qualifications and have visited prisons on occasion, Chair. I think there might be a difference between quickly trying to get a prisoner down for a legal visit in the visits block with something as high profile and as important as a UN delegation for OPCAT. I am firmly of the belief that if that were the case the facilities would be cleared reasonably sharpish. That is not to say, Chair, that you were not afforded the highest priority when you were visiting.

CHAIR: You will have to wait for my memoirs to find out what happened when I went to correctional centres.

Mr Strange: I suspect there are some differences across the correctional centres too with the visibility of who is receiving a visit. I think that is potentially a factor around the confidentiality. The actual conversations when they are happening may well be able to be kept entirely confidential but the fact that somebody is going to a particular area at a time that coincides with an OPCAT inspection I think will be an issue in some prison environments.

Mr HUNT: Is there a way around that, do you think? I think you are absolutely correct. I think that that is an issue and that played out when the centres were visited by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Mr Strange: Yes. I was just thinking the same thing. We visited every prison around Australia during the royal commission or we went with the royal commission to see clients who were prisoners in every prison. It very much came down to the attitude and cooperation of local prison management as to how those visits were conducted and the degree of assistance and confidentiality that was accorded to the prisoner clients we were seeing. That varied greatly across prisons throughout the country. Queensland was generally quite receptive around respecting the privacy and confidentiality of prisoners and particularly the purpose that we were going into the prison to engage with them for.

Ms Hancock: Just as there is variation within the correctional facilities, I suspect that is also true across other places of detention. OPCAT and the provisions of the bill are broader than correctional facilities.

Mr Bowes: In terms of Mr Hunt's question as to whether there is any way around the confidentiality issue of a prisoner being seen to speak with a member of the UN subcommittee, while that is an operational matter to be determined between the prison authority and the UN subcommittee, the kinds of options that might help with that might include something like having a phone number that people can call or having a designated member of staff who they are able to approach confidentially. We are concerned to see strong legislative provisions to require steps to be taken to guarantee confidentiality.

Mr HUNT: Sean, the provision of phone numbers et cetera is also problematic. Warren, as you would also be aware, when the royal commission was rolling out, one of the major difficulties was the reception from the prisoner demographic—the wider demographic, not the specific victims—who were extremely adverse and hostile to a group coming in and trying to speak to individual prisoners. It was very challenging for some of those people to come forward.

Again, Sean, the experience up here with that was that the exercise yards contain the phones, so there is no such thing as a confidential phone call unless you remove the prisoner from the unit and take them to one of these interview rooms, but again you cannot disguise that. When you take 'prisoner Blogs' out of the unit for an undisclosed purpose, prison units being what they are heads will swivel and eyes will move—why is Blogs moving to the interview room? They will know within minutes where Blogs has gone—maybe not for the purpose but they will know. It is a very challenging thing, as the Royal Commission into Institutional Responses to Child Sexual Abuse showed. Warren, you would be familiar with the difficulties that played out there.

Mr Strange: Yes. Prisons can present a particular challenge for attempting to engage with prisoners around these sorts of matters and how their interaction with anyone who is perceived to be an authority figure is viewed by their colleagues. Again, that was quite varied across the royal commission. At one stage we got to a position at the height of the royal commission where 10 per cent of the Queensland prison population were clients of our legal service. When you think about it, the prison population was about 9,000—I am talking about the adult population at that time—and a large proportion had come forward and engaged with us. That said a lot about the over-representation of survivors in that environment. It also said a lot about breaking down the barriers and the stigma of identifying as a survivor of child sexual abuse in that environment.

We had some prisons where virtually entire wings of prisoners came forward to speak about their childhood experiences. Particularly amongst the Aboriginal clients, some of the elder members were supporting predominantly younger men to come forward and talk about their experiences to us and to the royal commission and to get some assistance. It did break that mould of suspicion and stigmatisation of people who were engaging with an outside body to some extent. One would hope that that might happen with the OPCAT inspection regime as well—that people might see the purpose of it and view it differently from engaging with other law enforcement agencies which is always viewed with suspicion.

Mr HUNT: I think some prisoners will. Any time a prisoner is seen talking to anyone basically in a jacket and tie, they are seen as a dog, irrespective of whatever the subject matter is, and that is a real impediment to proper consultation in jails.

Mr Strange: Yes.

CHAIR: In your concluding remarks in your submission, you talk about 'amending clause 21 to strengthen protections against actions, claims and demands for people who provide information to the UN subcommittee'. I think clause 21 is about the protection of someone who may give information to the subcommittee or is it broader than that? You noted in your submission that you wanted it strengthened. I was trying to understand strengthened in what way? It is a double-barrel question, Warren.

Mr Strange: That is all right. Sean, did you want to address that and explain the concerns that we had about the current wording there?

Mr Bowes: The concern with the wording around section 21 is that in order to engage the protection of that section there is a four-criteria test that has to be met. The information has to be given, first, honestly and, secondly, on reasonable grounds. It has to be in the course of the subcommittee performing its mandate and it has to be for the purpose of the subcommittee performing its mandate.

The effect of having those four criteria as a legal matter in the test is to dilute the confidence that people can have in their ability to rely on that clause to protect them and also to raise the prospect that if they are challenged and they do experience retaliation as a result of giving information to the UN subcommittee, such as legal action or threatened legal action against them, they then find themselves in a legal process where they have to establish that they meet each of those four criteria rather than simply being able to rely on a broad protection of the sort that is given in other sections that deal with reprisals in general.

In our submission one thing that we respectfully ask the committee is to strongly consider taking out that test altogether and simply making it the case that any person who provides information to the UN subcommittee is protected from actions, claims and demands. In the event that that is not seen as a suitable option, what we put forward as an appropriate test would be a test of good faith so that any person who provides information in good faith is protected.

CHAIR: The good faith test would be broad enough in the legal process.

Mr Bowes: Certainly. It mirrors the test that was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse in relation to protections that should exist for people who make reports about child sexual abuse in institutional contexts. The royal commission said that they should be protected from civil and criminal liability if they do that in good faith. This would be essentially adopting that principle and applying it in the context of the UN subcommittee.

CHAIR: Thank you for your written submission and thank you for your attendance here today. There are no questions taken on notice. Thank you to everyone who has participated today and to all those who helped to organise this hearing including the secretariat and the Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 3.46 pm.