



# QUEENSLAND INDIGENOUS FAMILY VIOLENCE LEGAL SERVICE

Submission to the Legal Affairs and Safety Committee  
regarding the *Monitoring of Places of Detention*  
(*Optional Protocol to the Convention against Torture*)  
*Bill 2022*

11 January 2023

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# The Queensland Indigenous Family Violence Legal Service (QIFVLS) Submission to the 57<sup>th</sup> Queensland Parliament Legal Affairs and Safety Committee regarding the Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Bill 2022

## Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide submissions on the recently tabled Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022 (the Bill).

As a member of the Coalition of Peak Aboriginal and Torres Strait Islander peak organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#). While QIFVLS is particularly dedicated to achieving Target 13 (reducing family violence against women and children by at least 50%, towards zero by 2031), our experience is that family violence is an intersection point linking an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, the adult criminal justice system and the family law system. In that regard, a coordinated effort is required to achieve all socio-economic targets, including Targets 10 and 11 (reducing the overrepresentation of Aboriginal and Torres Strait Islander adults and youth in the criminal justice system).

We understand that the purpose of the Bill is to facilitate visits by the United Nations Subcommittee on the Prevention of Torture (the Subcommittee) to places of detention in Queensland. The Subcommittee, established by Article 2 of the Optional Protocol to the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) has a mandate to visit places of detention and make recommendations to state parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

We are supportive of the Bill and the direction it has taken towards legislating Queensland's obligations into law regarding the Subcommittee. We also have some points for consideration to make. These include the role of the national preventive mechanism (NPM) referred to in Article 17 of OPCAT and the related role of the Queensland Ombudsman as Inspector of Detention Services. While we are mindful that the purpose of the Bill is to facilitate visits by the Subcommittee, we believe that the Inspector of Detention Services will have a relevant role to play particularly in situations where the Subcommittee makes recommendations or findings directly related to people in detention together with subsequent provision for monitoring and other preventive measures to be undertaken by a domestic body charged with monitoring places of detention.

Our submissions primarily regard the impact on Aboriginal and Torres Strait Islander peoples who are being held in places of detention across Queensland. QIFVLS is a member of the Department of Justice and Attorney-General's (DJAG) Justice Policy Partnership which aims to develop a co-designed plan to reduce the overrepresentation of Aboriginal and Torres Strait Islanders who are being held in incarceration (Targets 10 & 11). The disproportionate figures mean that Aboriginal and Torres Strait

Islander families and communities acutely feel the effects when their loved ones in detention are mistreated or tortured or subject to punishment or reprisals.

The Women's Safety and Justice Taskforce (the Taskforce) examined the treatment of women and girls in custody and whether their treatment was consistent with their rights under the *Human Rights Act 2019*. The Taskforce extended an additional lens over complaints mechanisms and oversight in prisons and youth detention centres. Through a consultation process that included interviews with women in custody, the Taskforce's second report, *Hear Her Voice: Report Two*, related the experiences of women and girls in custody who were not treated with respect and dignity in prison.

Many of our clients are women who have had experiences in custody whether as accused persons/offenders, or as misidentified perpetrators of family and domestic violence. They are often dealing with significant trauma, mental health conditions, lack of access to Medicare while in custody and receive inconsistent quality of care particularly as far as pregnant mothers in custody are concerned<sup>1</sup>. In the best interests of our clients, we reiterate the Taskforce's findings that it is essential that legislative and administrative arrangements for custodial settings specifically protect and safeguard the rights and interests of women and girls in prison and detention<sup>2</sup>. This is consistent with the operation of section 17 of the *Human Rights Act 2019* (protection from torture, cruel, inhuman or degrading treatment).

The quality of care for children in custody requires even greater scrutiny. This is especially so when considering the 2018 study into children in youth detention with Fetal Alcohol Spectrum Disorder (FASD) at Western Australia's Banksia Hill Youth Detention Centre. The multidisciplinary study found that 36% of children/young people in detention had FASD and 89% had a severe brain impairment<sup>3</sup>.

For QIFVLS, this amplifies how children in detention have significant and complex healthcare needs. It is critical therefore to have an effective oversight system enabling the Subcommittee and the NPM/Inspector of Detention Services to have capacity to properly assess whether the government is meeting the needs of the vulnerable in our society who are in detention.

## Summary of QIFVLS submissions

QIFVLS offers the following feedback:

- We welcome the Bill as a measure aimed towards ensuring best practice oversight of the state's prisons, youth detention centres, police watchhouse cells and other places of detention.
- Aboriginal and Torres Strait Islander people are overrepresented in prisons across Australia and are at greater risk of mistreatment, punishment or torture while in custody.
- While the Bill is focused towards facilitating the visit of the Subcommittee, we would argue for a further inclusion in the Bill to make specific reference to the national preventive mechanism (NPM) and the role of the Inspector of Detention Services.

<sup>1</sup> Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*, [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf) p607

<sup>2</sup> Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*, [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf), p588

<sup>3</sup> <https://bmjopen.bmj.com/content/8/2/e019605>

- In relation to ‘Place of detention’ – we believe the definition, as currently drafted in the Bill, is too narrow in comparison to the definition in Article 4 of OPCAT. We would submit that an expanded definition of ‘place of detention’ is adopted.

## About QIFVLS

QIFVLS is a not-for-profit legal service formed under the Family Violence Prevention Legal Services Program (‘FVPLSP’) through the Department of Prime Minister and Cabinet’s Indigenous Advancement Strategy (‘IAS’). FVPLSP fills a recognised gap in access to culturally appropriate legal services for Aboriginal and Torres Strait Islander victims of family and domestic violence and sexual assault.

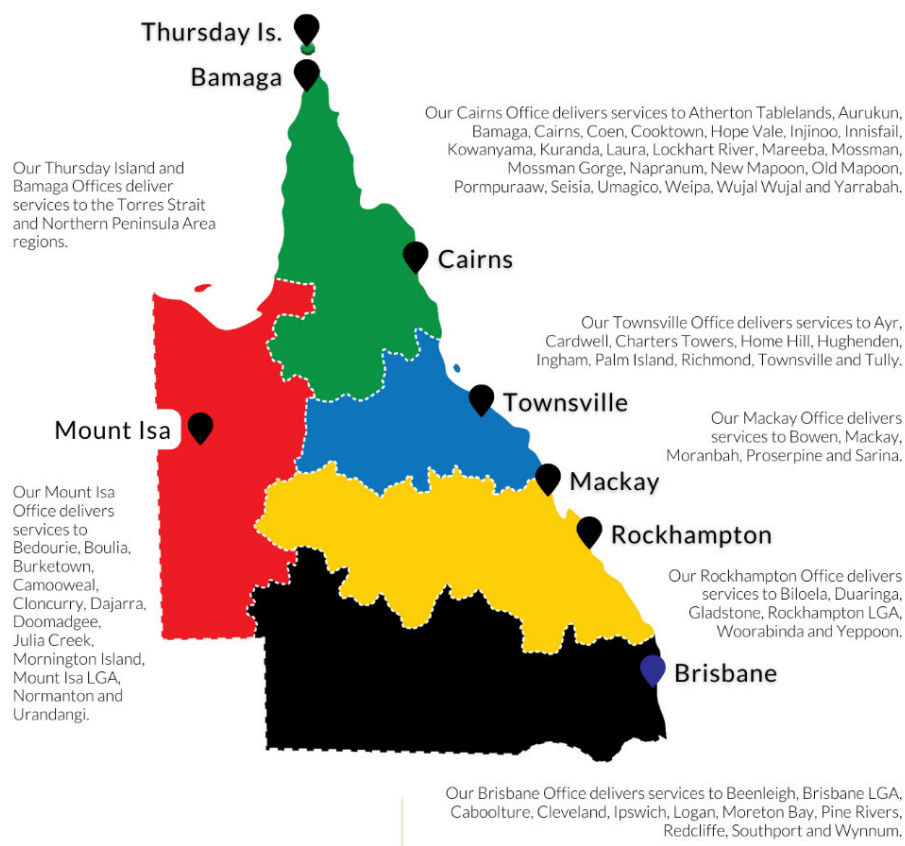
QIFVLS is one of fourteen (14) Family Violence Prevention Legal Services (‘FVPLSs’) across Australia and one of the thirteen (13) FVPLSs that are part of the National Family Violence Prevention Legal Service (‘NFVPLS’) Forum. We are one of two Aboriginal and Torres Strait Islander community-controlled family violence prevention legal service providers in Queensland.

QIFVLS is exclusively dedicated to providing legal and non-legal support services to assist Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault with a breadth and scope of services which stretch to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Together with its legal services, QIFVLS can be distinguished from other legal assistance providers through its advantage in providing unique, specialised, culturally safe and holistic assistance from the front-end via a wrap-around model that embraces early intervention and prevention. We advocate this model in supporting access to justice and keeping victim-survivors of family violence safe.

QIFVLS services 80+ communities across Queensland including the Outer Islands of the Torres Strait, neighbouring Papua New Guinea and provides services in the areas of domestic and family violence; family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications. QIFVLS supports its clients through all stages of the legal process: from legal advice to representation throughout court proceedings. In addition, QIFVLS responds and addresses our clients’ non-legal needs through our integrated non-therapeutic case management process, which is addressed through the identified role of the Case Management Officer. QIFVLS as a practice, provides a holistic service response to our clients’ needs: addressing legal need and addressing non-legal needs, that have in most cases, brought our clients into contact with the justice system in the first place.

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As demonstrated by the above map QIFVLS is mainly an outreach service where our teams go into rural and remote communities to meet with clients. QIFVLS services over 80+ Aboriginal and Torres Strait Islander communities throughout Queensland. Recognising that Queensland is nearly five (5) times the size of Japan; seven (7) times the size of Great Britain and two and a half (2.5) times the size of Texas<sup>4</sup>, QIFVLS has eight (8) offices in Queensland –

- (1) a service delivery office in addition to its Head Office located in Cairns, responsible for servicing Cape York communities, Cooktown; Atherton Tablelands, Innisfail and Yarrabah (and communities in between);
- (2) a service delivery office in Bamaga responsible for servicing Cape York communities as far north as Bamaga and Umagico;
- (3) a service delivery office on Thursday Island responsible for servicing communities stretching to the Outer Islands of the Torres Strait, neighbouring Papua New Guinea;
- (4) a service delivery office in Townsville responsible for servicing Townsville, Palm Island, Charters Towers, Richmond and Hughenden (and communities in between);
- (5) a service delivery office in Rockhampton responsible for servicing Rockhampton, Woorabinda, Mt Morgan, Biloela (and communities in between);
- (6) a service delivery office in Mount Isa responsible for servicing Mount Isa, the Gulf of Carpentaria communities, as far south as Bedourie and across to Julia Creek (and communities in between);
- (7) a service delivery office in Brisbane responsible for servicing the Brisbane local government area.

<sup>4</sup> <https://www.qld.gov.au/about/about-queensland/statistics-facts/facts>

## Family violence as the cornerstone

QIFVLS' experience is that family violence is the cornerstone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the adult criminal justice system, the youth justice system, child protection system, housing and/or homelessness and the family law system.

These 'connectors' are further compounded or exacerbated for those living in regional, rural and remote parts of Australia, where there are restrictions on the availability of actual on the ground services to assist a victim escaping a violent relationship<sup>5</sup> (i.e., domestic violence support services and shelters; actual police presence within a community). Queensland's widely dispersed population also creates a phenomenon where we are incarcerating people hundreds and / or thousands of kilometres away from their country, communities and loved ones. Thus we are creating an environment of disconnection and displacement in which the state is traumatising people in a manner that is difficult to comprehend for non-Indigenous Australians.

## Lack of mention of a National Preventive Mechanism (NPM)

Part IV of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) details each state party's requirements to maintain, designate or establish one or several national preventive mechanisms (NPM). The Explanatory Memorandum to the Bill also notes that OPCAT requires ratifying state parties to establish a domestic national preventive mechanism (NPM) to conduct regular visits to places of detention. Despite these provisions, there is no mention in the Bill of the NPM in Queensland.

On the other hand, we note that the *Inspection of Detention Services Act 2022* (IDS Act) was passed by the Parliament on 30 August 2022 and received assent on 7 September 2022. The IDS Act would appear to make provisions for the Inspector of Detention Services to carry out the functions expected of an NPM. Nevertheless the IDS Act does not purport to fulfill the requirements of OPCAT. The IDS Act also makes no reference to OPCAT.

While we understand that the purpose of the Bill is to facilitate visits by the Subcommittee, we believe in uniformity and a coordinated approach and we would like to see recognition of a NPM in the Bill.

We understand from the Committee's 2021 report into the Inspector of Detention Services Bill that there may be an intention by the Department of Justice and Attorney-General to designate the Inspectorate as a NPM in future subject to ongoing funding arrangements with the Commonwealth government<sup>6</sup>.

## Relationship with the Inspector of Detention Services

Building further upon the absence of the Bill's reference to the NPM, we are also struck by the lack of any reference to the Queensland Ombudsman's role as Inspector of Detention Services under the *Inspector of Detention Services Act 2022*. We understand that presently there is no commencement date for the IDS Act<sup>7</sup>, although certain provisions commenced by proclamation on 9 December 2022. Nevertheless, we

<sup>5</sup> Australian Institute of Health and Welfare (AIHW), Alcohol and other drug use in regional; and remote Australia: consumption, harms and access to treatment 2016-17. Cat.no. HSE 212. Canberra.

<sup>6</sup> Report No. 21, Legal Affairs and Safety Committee, Inspector of Detention Services Bill 2021, (January 2022), <https://www.parliament.qld.gov.au/docs/find.aspx?id=5722T22>, p36

<sup>7</sup> <https://www.qlsproctor.com.au/2022/12/new-law-to-permit-un-access-to-detention-centres/>

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underscore the significant role for the Inspector of Detention Services in terms of providing independent oversight of prisons, youth detention centres and police watchhouses.

From our point of view, it is foreseeable that a visit by the Subcommittee will be inextricably intertwined with the functions of a NPM/Inspector of Detention Services.

We highlight that the Taskforce examined prison standards and oversight, noting how current standards for prisons in Queensland are not gendered and that inspections by the office of the Chief Inspector are not routinely published<sup>8</sup>. This reinforces our view that the Bill should contain references to a NPM and to the Inspector of Detention Services. In the absence of any reference to the IDS Act, we would like to see a clear outline of the functions of a NPM under the Bill.

## Clause 4 - Narrow definition of a place of detention

Article 4 of OPCAT outlines a broad definition of a place of detention. This expansive approach has been adopted by the ACT in section 7 of its Act<sup>9</sup>:

### **7 Meaning of place of detention**

*In this Act:*

**place of detention**, means 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 the Territory.

*Note - Under the Optional Protocol, art 4, the Territory must allow visits to any place under its jurisdiction and control and in which people are or may be involuntarily deprived of their liberty.*

While we appreciate that there are a number of different places listed under clause 4, including the possibility of further places being prescribed by regulation under clause 4(1)(h), our preference would be for a broad definition that closely follows the wording under article 4 of OPCAT.

## Clause 10 - Detaining authority may temporarily restrict or prohibit access to the subcommittee

We note that clause 10 allows a detaining authority to temporarily prohibit or restrict access to a place of detention by the subcommittee and an accompanying person where access may prevent the maintenance of security, good order and management of the place of detention or the health and safety of a person in the place of detention. We are uncertain about the necessity for this provision given that the responsible Minister can object to a subcommittee visit to a place of detention under clause 9 of the Bill.

We note that there does not seem to be any requirement to notify the subcommittee of the temporary prohibition under clause 10, unlike clause 9 where the responsible Minister is required to give notice to the subcommittee of their objection to the subcommittee's visit. Would the detaining authority's powers

<sup>8</sup> Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*, [https://www.womenstaskforce.qld.gov.au/data/assets/pdf\\_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf](https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf), p622

<sup>9</sup> *Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Act (ACT) 2018*, section 7

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to temporarily restrict or prohibit access to the subcommittee form the basis of the responsible Minister’s objection under clause 9? We would be grateful for clarity around the need for clause 10.

## Conclusion

We take this opportunity to thank the Committee for considering our submissions regarding the Bill. We trust that the Committee appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and a Family Violence Prevention Legal Service.

We look forward to being involved in future consultations that will contribute to informing the Bill as it progresses through Parliament, in a way that will contribute to ensuring culturally appropriate and adequate conditions together with enhancing oversight of people in detention in Queensland.

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Legal Affairs and Safety Committee