



LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:

Mr PS Russo MP—Chair
Ms SL Bolton MP
Ms JM Bush MP
Mrs LJ Gerber MP (virtual)
Mr JE Hunt MP
Mr AC Powell MP (virtual)

Staff present:

Ms R Easten—Committee Secretary
Ms M Westcott—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE INSPECTOR OF DETENTION SERVICES BILL 2021

TRANSCRIPT OF PROCEEDINGS

MONDAY, 15 NOVEMBER 2021

Brisbane

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The committee met at 8.46 am.

CHAIR: Good morning. I declare open this public briefing for the Legal Affairs and Safety Committee's inquiry into the Inspector of Detention Services Bill 2021. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay my respects to elders past and present. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all share.

My name is Peter Russo, member for Toohey and chair of the committee. With me here today are: Mrs Laura Gerber, member for Currumbin and the deputy chair via teleconference; Ms Sandy Bolton, member for Noosa; Ms Jonty Bush, member for Cooper; Mr Jason Hunt, member for Caloundra; and Mr Andrew Powell, member for Glass House via teleconference.

On 28 October 2021, the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, Hon. Shannon Fentiman MP introduced the bill to the parliament. The parliament referred the bill to the Legal Affairs and Safety Committee for consideration. The purpose of today's briefing is to assist the committee with its examination of the bill.

Only the committee members and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. These proceedings are similar to parliament and are subject to the Legislative Assembly's standing rules and orders.

The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Any media present will be subject to my direction at all times. Persons in the room may be filmed or photographed by media and images may appear on the parliament's website or social media pages. Please turn mobile phones off or to silent mode.

I remind committee members that officers are here to provide factual or technical information. Any questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House. The program for today has been published on the committee's webpage and there are hard copies available from committee staff.

BANDARANAIKE, Ms Sakitha, Director, Strategic Policy and Legal Services, Department of Justice and Attorney General

HAIGH, Ms Nicala, Acting Principal Legal Officer, Strategic Policy and Legal Services, Department of Justice and Attorney General

ROBERTSON, Mrs Leanne, Assistant Director-General, Strategic Policy and Legal Services, Department of Justice and Attorney General

CHAIR: I welcome representatives from Strategic Policy and Legal Services, Department of Justice and Attorney-General who have been invited to brief the committee. The committee thanks you for your attendance. For the benefit of Hansard, I ask you to identify yourself with your name and title when you first speak. I invite you to make an opening statement after which committee members will have some questions for you.

Mrs Robertson: Thank you for the opportunity to brief the committee regarding the Inspector of Detention Services Bill 2021. The reasons for the bill are that the bill provides for a new role of the Inspector of Detention Services to provide independent oversight over certain places of detention. This responds to recommendations in a number of reviews which government has accepted that suggest the establishment of an independent inspector to oversee adult correctional centres, youth detention centres and police watch houses. These include relevant recommendations in the Independent Review of Youth Detention and the Queensland Parole System Review.

The main purpose of the inspector is to promote the improvement of places of detention and detention services with a focus on ensuring the humane treatment of detainees and the prevention of harm, including torture, cruel, inhuman or degrading treatment. The inspector will provide independent oversight through a system of regular inspections and reviews of places of detention and detention
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services. The focus will be on the prevention of harm by examining the systems and lived experiences of people who are deprived of their liberty. The inspector will consider the operation and management of facilities and the treatment and conditions of detainees against national and international materials that establish best practice.

Under the bill, the Queensland Ombudsman will be the Inspector of Detention Services appointed as an officer of the Parliament. Staff of the Office of the Queensland Ombudsman will support the inspector. The inspector will have distinct and separate statutory functions to that of the ombudsman. The inspector, like the ombudsman, will be functionally and operationally independent from government and will report directly to parliament on the performance of its functions. The inspector will not be subject to direction by any person about the way the inspector performs its functions. This is to ensure accountability and transparency in the way that places of detention and that people detained within them are managed. The inspector will provide independent oversight over places of detention defined as community correction centres—that is the Helana Jones Centre—prisons, watch houses, work camps and youth detention centres. The inspector will also be able to review a detention service at any time including transport of detainees.

Detention services are defined in the bill to include the operation, management, direction, control or security of a place of detention; security, management control, safety, carer wellbeing of a detainee at a place of detention; and the transportation of detainees between places of detention.

Looking now at the functions of the inspector, a key function of the inspector will be to conduct inspections of places of detention and review detention services provided in those places. The bill includes a mandatory inspection regime for particular places of detention as well as allowing the inspector to inspect any places of detention within scope and conduct a review of its detention service at any time announced or unannounced. The inspector's focus will be on preventing harm through systems review, rather than responding to harm through the investigation of individual complaints or incidents. The bill provides that the inspector may refer individual matters to an appropriate body for further investigation. However, the inspector's reviews may consider systemic themes that arise from individual detainees' experiences, as well as an issue in one or more places of detention. To assist with consistency and transparency, the inspector is required to prepare and publish standards in relation to carrying out inspections.

Turning now to the inspector's powers, the inspector will have a broad power to do all things necessary to fulfil its preventative, proactive and independent mandate. When conducting an inspection or review, this includes the power to take any equipment to a place of detention, enter a place of detention at any time, access any information, including documents, about the place of detention or services provided to people detained, including health information, require answers to questions and speak to detainees privately, and require reasonable help for a review or inspection. The bill requires the inspector, when exercising its functions, to have regard to the good order and security of places of detention and the safety of people who work at places of detention.

The bill also allows the inspector to refer matters to the relevant minister with responsibility for a place of detention in circumstances where the inspector suspects, on reasonable grounds, that there is or has been a serious risk to the security, control, safety, care or welfare of a detainee or a detainee is or has been subject to cruel, inhuman or degrading treatment. The bill has information-sharing provisions such that information disclosed to the inspector will be protected except in specified circumstances. Those who provide information will be protected from victimisation or reprisals. It will be an offence for the inspector to disclose information obtained under the act, except in specified circumstances. Confidential information acquired under the bill and any evidence derived from that information, that is derived evidence, cannot be accessed under any order and is not admissible in any proceeding. A person cannot be compelled to produce this evidence or information or evidence related to it in any proceeding or in compliance with a requirement under an act or a legal process.

There are offence provisions in the bill and they are intended to support the inspector to perform their functions and encourage cooperation with the inspector. Offences include: knowingly providing false or misleading statements or information to the inspector; failure to comply with any lawful requirement of the inspector without reasonable excuse; or obstruct, hinder, resist or threaten the inspector in the performance of its duties without reasonable excuse.

The bill has certain reporting requirements. The bill requires the inspector to provide an annual report directly to the Speaker on the operation of the inspectors during the reporting period and reports directly to the Speaker following each mandatory inspection of a place of detention and following each review of a detention service. These reports must be tabled in parliament by the Speaker. The inspector may also prepare a report about any other inspection. The inspector can report on any other matter relating to its functions if the inspector considers it is in the interests of any person or in the public

interest. Reports generally may include advice or recommendations. For reports relating to inspections or reviews, the inspector must include recommendations. In the inspector's annual report, the inspector must include any recommendations the inspector made for changes to the law or for administrative action as well as an evaluation of action taken in response. The bill enables the parliamentary committee to oversee the performance of the inspector's functions including mandatory inspections.

There are various provisions in the bill which require the inspector to consider the cultural background and vulnerability of detainees. For example, when delegating functions, the inspector must consider the desirability of staff reflecting the social and cultural diversity of detainees, including people who identify as Aboriginal persons or Torres Strait Islander. In carrying out a review or inspection, where appropriate and practicable, the inspector must arrange for a suitable person to assist such as a disability advocate. The inspector must also use an appropriate representative or expert to assist the inspector carry out a review of inspection regarding Aboriginal persons or Torres Strait Islander detainees or children. To help the inspector perform its functions, the inspector may also consult with or engage professionals or persons with other appropriate skills or experience, for example, a former detainee, family member for a close member of a former detainee.

Turning now to the issue of relationship with existing oversight bodies, the bill provides that the inspector must ensure it does not duplicate, delay or interfere with other bodies or agencies that may have an investigative or oversight role in relation to one or all places of detention. There is also provision for the inspector to enter into arrangements to help avoid delay or unnecessary duplication of other statutory functions.

Chair, thank you again for the opportunity to brief the committee. We are happy to take questions.

Mrs GERBER: I would like to understand what role you think the inspector will be able to play in addressing prisoner overcrowding.

Ms Bandaranaike: Taking it back one step, the role of the inspector has a preventative focus. It is really focused on prevention of harm; it does not look at complaints or incidences. Its primary function is to do inspections of places of detention and it can also review detention services which is really quite broad. It could pick up and look at the management and operations of the place of detention, but it could also look at the care and wellbeing and the services that are provided to those people detained. That could include healthcare and education services, for example, and also include rehabilitative support to help them transition out of a prison, for example.

When the inspector does the inspections and review reports, the inspector must include recommendations and really systemic-type recommendations. The inspector can make recommendations around administrative action, for example, potentially law reform, and also potentially recommendations around infrastructure. That was a long way of saying, yes, the inspector can make systemic recommendations around those kind of matters.

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Ms BUSH: Given that there is already a number of bodies, both in government and independent, carrying out a similar function with announced and unannounced visits, I am curious about the value that this independent inspectorate will bring, particularly for prisoners. Could you expand on that?

Ms Bandaranaike: It is a good question. It is one that constantly has come up through our stakeholder consultation on the draft bill. The short answer is that this is one body and it provides external oversight of all those places of detention—so prisons, watch houses and youth detention centres. It is also the one body whose focus is on prevention of harm through those systemic inspections, regular inspections and reviews. It is not looking at individual complaints or incidents. It has that transparency in terms of that public reporting focus.

A combination of all of those things makes this inspector role unique and complementary to some of those oversight bodies who have arguably different scope and functions. For example, the Queensland Ombudsman is complaints driven; it looks at administrative actions of public sector agencies. The Official Visitor Program within the Office of the Public Guardian has a child advocacy function and can inspect and provide reports around children in detention. The State Coroner has a distinct role around reportable deaths. The CCC has a distinct role around investigating serious allegations of misconduct. The inspector is something different in terms of having that independent oversight role with a focus on prevention of harm over all of those places of detention.

Ms BUSH: Will they be going into forensic disability and secure mental health as well?

Ms Bandaranaike: No. The driver for this bill was a whole series of independent reviews that looked at aspects of the criminal justice system. That is the driver. The focus of what they looked at was essentially prisons, youth detention centres and watch houses.

Ms BOLTON: You spoke about transparency and yet on page 6 of the explanatory notes it states that an inspector may keep aspects of a report confidential. If that information does not come to parliament, who does it go to—and I understand it referred to it going to the Speaker. How would that be dealt with?

Ms Bandaranaike: In terms of the treatment of confidential information, or the assessment of whether something should be confidential or not?

Ms BOLTON: Both.

Ms Bandaranaike: I will start with the latter. There are provisions in the bill that require the inspector to turn their mind to whether it is in the public interest to disclose or not disclose confidential information. That is in clause 23. It lists particular considerations that the inspector must turn their mind to in order to determine whether any information in the report must be kept confidential and that outweighs any public interest in making those aspects of the report public. Just as an example, the sorts of considerations in clause 23 are things like looking at whether the information might undermine the security and good order of prisons or they might reveal the identity of a person disclosing information to the inspector and that kind of thing. There is quite a list in clause 23. They have to always do that.

Then they are also governed generally around dealing with confidential information, and that is in clause 30 of the bill. Once they gain confidential information, clause 30 is quite prescriptive around when they can disclose it. For example, they can disclose it in performing the functions under the act. They can disclose it with consent of the person. There are some quite prescriptive provisions in clause 30 about how to obtain consent and the process for that, whether it is adults or children. They are probably the two main provisions that govern the use of confidential information.

Mrs Robertson: It is important to clarify that in clause 23 of the bill matters that cannot be taken into account in deciding whether there is a public interest in disclosing are because it might cause embarrassment or a loss of confidence in government—those sorts of issues—or the possibility that it could be misunderstood. They are not factors. It is really those issues around undermining security, national security—those sorts of criteria which are fairly common in these sorts of reports.

Mr POWELL: I have two questions. Firstly, you made mention that the bill makes allowance for announced and unannounced visits. Obviously unannounced will make more of an impact in terms of getting to see what needs to be seen. Is there any reflection on the ratio in which you intend to apply those? Secondly, it is focused around prevention of harm, and you have spoken about detainees. Has there been any discussion about prevention of harm to custodial officers as well?

Mrs Robertson: In relation to the ratio of unannounced versus announced, it is virtually a matter for the inspector as to what they would decide in that space. As to a ratio, it will really be up to the inspector. It is not prescribed in the legislation as such.

Ms Bandaranaike: Yes, and I would just qualify that with one thing. While they can enter any of those places of detention at any time announced or unannounced, in certain places of detention the bill does prescribe a frequency in terms of inspections. The inspector obviously can do more than the mandated frequency, but there is provision in the bill that mandates frequency of inspections for certain places of detention.

Mrs Robertson: In terms of the second question around the custodial officers, the focus is really about the detainees in the actual facilities themselves. That is the focus of the bill.

Ms Bandaranaike: Yes.

Mr POWELL: Can I clarify then—and I do not know if our guests can clarify this—if it is not looking at prevention of harm for custodial officers, is there a body or an individual that currently has that responsibility?

Ms Bandaranaike: There is probably a range of bodies depending on what it is. For example, Corrective Services would continue to have their internal investigative functions. They have policies and procedures in place around not only protecting the detainees but also protecting their staff. Youth justice would have the same. While it is not the focus of the bill, there are probably more internal bodies that would look at those kinds of issues. This is about setting up a body that is really promoting detainees' human rights to make sure that they are protected and there are systems in place to prevent harm to detainees. That is really the focus of this body and this bill.

Mr HUNT: I am not sure who to address this to, so I will fire it out and see who picks it up. Following the member for Glass House's questions, the explanatory notes do speak to it being weighted very heavily in favour of the health and wellbeing of the detainees, which is good and right
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and proper. However, is there scope within this to expand and look at the actual custodial staff's health, safety and wellbeing within this particular document? In reporting to the minister there are elements around security, management and control which would be very custodial centric; those elements would be centred very much on custodial operations, not so much on the health and wellbeing of the prisoners. There seems to be some element in there for custodial officers' wellbeing, but it does not seem to be captured further within the document. Is there capacity for that?

If the document's purpose is to provide an overarching supervision of all places of detention—and I will tie in my second question as well. Things that are not covered within the scope include investigating incidents such as riots, deaths, escapes or alleged misconducted or alleged corruption by staff. It talks about what you were talking about, Sakitha: the department having their own internal mechanisms for looking at those things. If this position is intended to provide an overarching supervision of these places, would it not be better to have that included as well?

Mrs Robertson: I think the short answer to that is that would be—

Mr HUNT: Sorry, it was a better of a question. I am sorry.

Mrs Robertson: I take you back to clause 3 of the bill, which talks about the main purpose of the act. It is about improving those detention services and it is about the condition of detainees in that sense sort of thing and the reviews in relation to detention services and inspections and then coming over to the various functions of the actual inspector, which includes the reports, as you picked up. We would say that the intention of the bill is about the detainees and their treatment. I do not want to anticipate what an inspector might do on a particular report. I think it would be inappropriate for me to do that. I acknowledge your point, but as to whether the bill could be wider than that, that is ultimately a policy question for government.

Ms Bandaranaike: This is probably not going to directly answer your question, but as you say, the inspector does have a broad mandate to look at detention services—and that is very broadly defined. Whilst it is up to the independent inspector to choose a particular place of detention or a review to look at—just as an example, when other inspectorate jurisdictions like the WA Inspector of Custodial Services have looked at inspections for places of detention they have made recommendations related to staff training and staff ratios. Recommendations can be made related to staff. It has to be connected to, as Leanne said, the main purpose of the act, which is really about improving the management operations of the facility or an improvement of services for that person. If we do look at examples of other jurisdictions, they have made those kinds of recommendations around staffing levels and staffing training, for example.

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Mr HUNT: The main purpose talks about 'preventing detainees from being subjected to harm, including torture and cruel, inhuman or degrading treatment'. I have a concern around the use of the word 'torture' in Queensland custodial settings, principally because the scope of that word can be expanded or contracted depending on the lens of the person using the word. If you looked at custodial operations through a particular lens—for example, if you looked at a prisoner in a spit mask or a body belt, it is quite a confronting image. You could, if your motives were not great, identify that as that person is being subjected to cruel or inhuman torture. I do have an issue with the particular use of that word and I also have concerns about how it might be applied through a particular lens. Would anyone like to offer a comment on the use of that word?

Ms Bandaranaike: I could offer a broad comment but not a specific comment.

Mr HUNT: Again, it is a broad question.

Ms Bandaranaike: As a broad comment, that language in the main purpose in clause 3 is picking up the human rights language included in the Human Rights Act. That is my broad comment. I am not sure I can add anything specific to that. It does not give any guidance, but the language is consistent with what is used in the Queensland Human Rights Act.

Mrs GERBER: I have a question with a focus on youth detention centres. I understand that that is within the remit of the bill. Can you talk the committee through what role the inspector might play in ensuring that detention services rehabilitate youths?

Mrs Robertson: Under the bill, the inspector can look at services in facilities. That would include things like education services, the re-entry service providers—this is for young people who are to be released back into the community—substance misuse programs and services, and vocational education and training. That concept of detention services is quite wide. That is where the inspector would be able to look at what is happening and look at the adequacy of those services and make recommendations and comments accordingly.

Mrs GERBER: You are looking at not just the service that is provided but also the effectiveness of those services in the detention centre in achieving their intended purpose which might be to rehabilitate youths or to provide them with skills so that when they are released back into the community they have either community around them or a skill set in order to make sure they can go on and be productive members of society—so looking at the effectiveness of those services, not just the services themselves.

Ms Bandaranaike: Absolutely. That is one of the main things that the inspector would be looking at—the effectiveness of those services and the accessibility of services as well.

Ms BOLTON: Leanne, I am going to go to resourcing. In effect, the Queensland Ombudsman is always on overload. Given we have just heard how expansive and broad this role is, there is no mention anywhere about not only the funding that is required to establish this but what ongoing extra resources are going to be provided to the Ombudsman.

Mrs Robertson: As the explanatory notes say, the government has set aside some funding to ensure the inspector can fulfil the functions in the bill. In consultation with the Ombudsman, we are working to finalise those requirements and allocation accordingly.

It is important to note that the financial and performance reporting of the inspector will be reported on separately as part of the Queensland Ombudsman annual report. I am not in a position to give you any further information in relation to funding and resourcing at this point in time. My understanding is that, based on what is likely to be allocated, the Ombudsman does not anticipate that the work of the inspector will impact on the productivity of the Ombudsman in relation to the Ombudsman's discrete and separate functions per se.

Ms BUSH: I have a final question that might go to the member for Caloundra's point in terms of how this orientates us for OPCAT and the alignment there.

Mrs Robertson: I guess it is fair to say that the government is yet to make a decision in relation to OPCAT implementation.

Ms Bandaranaike: I can add maybe one or two things. Whilst the government is yet to make a decision around OPCAT, and whilst there is more information to come about the expectations about a body or bodies that will do this national preventative mechanism work under OPCAT, the policy intention is that the inspector has been set up with some of those key functions of what could be expected of a national preventative mechanism in mind such as the preventing visiting mandate and the function, operation and independence et cetera.

Mrs GERBER: I understand that under the bill, if the minister asks the inspector to look into something, the inspector can also do that. When the inspector provides their report, will it be indicated that this has been done at the request of the minister? How will we know what investigations the inspector has done in its independent role and what investigations the inspector has done at the request of the minister?

Ms Bandaranaike: Do you mind repeating that question?

Mrs GERBER: I understand that as part of the bill the inspector may perform certain functions at the request of a minister. When the report to the Legislative Assembly is done, how will we know what investigations have been done at the request of a minister and what investigations have been done as a result of the independent powers of the inspector?

Ms Bandaranaike: When the inspector is writing its annual report on its operations which is tabled in parliament, clause 21 specifies particular things that the report has to include. One of them is that, if there has been a ministerial request made during that reporting period, that has to be included in the inspector's annual report on operations. That clause specifies particulars around that request—a description of the request, a description of any action that the inspector has taken in response to that request and, if the inspector decided not to take any action or further action, a statement for the reasons for that decision.

In relation to the second part of the question about inspections and reviews, that is a separate requirement under the bill. That is clause 22. After each mandatory inspection and after each review of a detention service, the inspector must prepare a report and give that to the Speaker. That also has to be tabled in parliament. The inspector may also prepare other reports that they may do in relation to inspections or any other function. They also have to be tabled in parliament. Those inspection and review reports have to include recommendations to effectively promote the improvement of detention services or places of detention. It is clauses 21 and 22.

CHAIR: The explanatory notes advise that the focus of the inspector will be the prevention of harm rather than responding to complaints. It is, however, likely that complaints will be made to the inspector. How would that be addressed?

Ms Bandaranaike: Clause 20 of the bill enables administrative arrangements to be entered into with complaints bodies like the Queensland Ombudsman, the Health Ombudsman and the Office of the Public Guardian, for example. That is a framework that enables those administrative arrangements to be in place between the inspector and those relevant complaint bodies as to how best and who best should manage that complaint or investigation noting that the inspector will not actually have a specific role around responding to complaints.

CHAIR: The bill stipulates visits to certain places of detention. I am trying to understand how big a job that may be. How many prisons in Queensland are regarded as being secure facilities?

Ms Bandaranaike: I should note that this is not within DJAG's portfolio.

CHAIR: Sorry.

Ms Bandaranaike: My understanding is that currently in terms of prisons—prisons are defined in the Corrective Services Act, in the regulation—there are 11 high-secure prisons. Then there are two low-secure prisons. The secure unit at the Princess Alexandra Hospital is also defined as a prison under the corrective services legislation. That brings the total, I think, to 14 prisons. Then there are 13 work camps as well that are within scope.

Ms Haigh: It will also include the Helana Jones community corrections centre.

CHAIR: Again, I know this is outside your portfolio, but what is the number of youth detention centres?

Ms Bandaranaike: It is connected again to the definition in the Youth Justice Act. Currently there are three youth detention centres—Brisbane, Cleveland and West Moreton.

Chair, can I make one correction? I think the member for Cooper asked me about the interface between other bodies. I talked about the official visitor program in the Office of the Public Guardian. I meant to say the community visitor program in the Office of the Public Guardian. My apologies.

CHAIR: That concludes this briefing. Thank you to the departmental officers who have participated today. Thank you to our Hansard reporters. An archived broadcast and transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public briefing for the committee's inquiry into the Inspector of Detention Services Bill closed.

The committee adjourned at 9.27 am.