LEGAL AFFAIRS AND SAFETY COMMITTEE

Members present:
Mr PS Russo MP—Chair
Ms SL Bolton MP
Mr DJ Brown MP
Ms JM Bush MP
Mrs LJ Gerber MP
Mr JE Hunt MP
Mr AC Powell MP

Staff present:
Ms R Easten—Committee Secretary
Ms M Westcott—Assistant Committee Secretary

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

TRANSCRIPT OF PROCEEDINGS

MONDAY, 29 NOVEMBER 2021

Brisbane

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The committee met at 8.43 am.

CHAIR: Good morning. I declare open the public hearing 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 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.

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

On 28 October 2021, the Hon. Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, introduced the Inspector of Detention Services Bill 2021 into the parliament. It was referred to the Legal Affairs and Safety Committee for examination.

The purpose of the hearing today is to hear evidence from stakeholders who made submissions as part of the committee's inquiry. Only the committee 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. In this regard, I remind members of the public that, under the standing orders, the public may be excluded from the hearing at the discretion of the committee. The proceedings are being recorded by Hansard and broadcast live on the parliament's website.

Media may be present and will be subject to my direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media, and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobiles phones off or to silent mode. The program for today has been published on the committee's webpage, and there are hard copies available from committee staff.

BOAL, Mr Jay, Delegate, Together Queensland

MILLER, Mr Craig, Delegate, Together Queensland

THOMAS, Mr Michael, Assistant Branch Secretary, Together Queensland

CHAIR: I now welcome representatives from Together Queensland. I invite you to make a short opening statement, after which committee members may have some questions for you.

Mr Thomas: My apologies, we were still sorting out on the weekend who else was coming. Mr Jay Boal is a delegate at Capricornia Correctional Centre and Mr Craig Miller is at Brisbane Correctional Centre.

As per our submission, we think the object of the bill is laudable. There have been a number of inquiries, Flaxton not the least of them, that talked about the need for having a truly independent inspectorate for detention centres. That is useful. If you have an independent inspectorate that is answering to a chief executive who runs the detention centres, or the jails in this case, from our point of view that is problematic. Our concern with the bill is that focusing solely on OPCAT is retrograde. Up until now, correctional centres have had the chief inspector and, yes, there were issues about the independence of the chief inspector. In the past chief inspectors have certainly sought to be independent, but there was still a structural problem. The oversight provided by the chief inspector previously was much more holistic.

OPCAT is an international treaty and, by definition therefore, is the lowest common denominator. In terms of the focus on torture in OPCAT, that is not a problem we are facing in the jails in Queensland, especially not now that they are publicly owned. In terms of officers, whilst we as a country are a

signatory to the optional protocol, to suggest or even infer, by including it in the title, that there are issues within Queensland's correctional centres with torture is somewhat offensive. What we do by focusing on OPCAT is focus only on the first-order treatment of prisoners. We miss the second-order effects by having a more holistic approach. In the submission I looked at the tests that the old inspectorate used to focus upon such as safety. This bill focuses on that. Prisoners, even the most vulnerable, are held safely. There is respect. There are aspects of the bill around dignity that certainly go to that. I think OPCAT focuses less on purposeful activity in terms of prisoners being able to engage in activity that is likely to benefit them and less on resettlement.

I give three examples where a less holistic bill is going to be problematic. The first is around work health and safety. We have had a number of incidents recently. Borallon was recently provided improvement notices by the inspectorate because it was using isocyanates in its industries. They are harmful, toxic chemicals. They have tests going on around that at the moment. That was done through the Work Health and Safety Act. That does not apply to prisoners. The issue of isocyanates had been raised at Capricornia two years ago with a complaint through the work health and safety process. They were withdrawn from Capricornia, but there was no check to see if they were being used anywhere else.

We just recently had the riot at Capricornia. Officers had raised concerns about work health and safety in regard to tools. There was a shed that had picks, petrol, hedging tools and so forth in it. Issues had been raised about the security of those but they were ignored. When the riot happened, that shed was immediately broken into. The prisoners were using the petrol for chroming and Molotov cocktails. They were running around with a hedger—a long thing with a chainsaw blade on the end. It is not quite the *Texas Chainsaw Massacre*, but they are still running around with it. That puts the prisoners at risk as a second-order effect.

The other one that I talk to is with regard to drugs. Drugs are a huge issue within prison. They are ubiquitous. We know that one of the major vectors for drugs is visits, despite all the focus of Flaxton on the staff. We now are sure of that because when COVID hit and visits were stopped in prisons the supply of drugs just disappeared. We have now opened up, yet we still have no controls in place. We have no body scanners in place. The legislation is very restrictive in allowing searches, even if you are sure prisoners are bringing in drugs.

OPCAT will not necessarily go to that; it will not go to hearing the concerns of the prison officers around drugs. The second-order effect of not dealing with that is immense in terms of the safety and the humane treatment of prisoners.

The other matter that I think is important which I do not talk to in the submission—in the submission I talk to the general position and treatment of correctional officers—is that we have the lowest paid correctional officers in the country. If you are a cleaner in a jail at the moment, for the first four years you earn more than a correctional officer. If that is the respect in which the government or the employer holds the correctional officers, that is going to have a flow-on effect in terms of the respect under which the prisoners are treated because it becomes a cultural norm, if you like.

The other matter that I did not talk about is that of resettlement. Industries in corrections at the moment are absolutely in crisis. Because of the overcrowding issues, you have a certain number of spots in industries, if you like, and that is the resettlement aspect. That is the 'train them up, get them get back into the community' and so forth. At the moment we have not increased the number of spots, but we are at well over 150 per cent capacity, so the access to industries is limited. Because of the overcrowding and some of the issues in respect of being short on posts, everyone is under immense stress. The amount of sick leave for mental health is going through the roof. Correctional officers' levels of PTSD are right up there with ambulance and just short of police. Some of the studies out of the States say that the correctional officers there have a higher level of PTSD than Iraq War vets. We are seeing an increase in people being off sick. Those positions are not being filled. What we do is we shut industries and divert people around.

If the independent inspectorate is not looking at that, is not looking holistically at the way we run prisons and is only focusing narrowly on OPCAT, it misses all of those other things whose second-order effects end up with a prison system that is not rehabilitating. My friend Mr Boal uses this term a lot: we are racking and stacking them at the moment in terms of the overcrowding. That is a much more real clear and present danger to our prisoners than torture is ever going to be in Queensland.

We would certainly urge the committee to look at the focus of this bill and expand it to something that is a lot more holistic and actually looks more like what the chief inspector used to do in terms of the four tests that I have included in our inspectorate. Make it independent—sure, that is great—but do not narrow its focus.

Mr POWELL: You have already answered this, but I want to extrapolate a bit more. I think the solution you are proposing is: yes, keep the independence where it is being proposed in this bill but add these extra aspects. Can you also, in answering that, if it is as simple as that, indicate whether there needs to be an aspect around officer safety and whether that is currently looked at in terms of inspections or whether that needs to be added as well? I know that naturally comes from addressing some of these things, but my concern is that this is very prisoner focused; there is not a lot of looking at the officers' safety and their wellbeing.

Mr Thomas: The short answer to the question is yes; the long answer is yes, absolutely. There needs to be that focus. At the moment, because of all the issues facing officers and the stress and the safety, that has an effect on prisoners. If we take it that the aim of this bill is to ensure the people who society chooses to incarcerate are treated in a way that means they come back into society better than they went in, then Corrective Services is failing that at the moment. Officer safety is a big part of it. If you have officers who are stressed, feel unsafe and are on edge, that has a flow-on effect to the holistic culture of a prison. Yes, we would absolutely say that the bill needs to focus not only on that first-order treatment of prisoners but also on the second-order culture of the prison system, including officer safety, officer rights and entitlements, the equipment they use and the training.

Flaxton was about this. One of the things Flaxton recommended was a mentoring system. We are more in need of that than ever because the turnover in prison at the moment is just immense, because of the stress and because of the rapid increase in the number of people we are incarcerating. We are getting very new people going in and they get in there and say, 'Oh, my God, what have I chosen? This is not the career option,' and then they are out again. We need to mentor all of those sorts of things. If you are going to have an independent inspectorate to go in and look at how prisons are run, look at the entirety of how prisons are run.

Ms BOLTON: With regard to the overcrowding and the difficulties in resettlement, you made mention that, as a result, you have to close down industries and redeploy. Can you extrapolate out what those industries are? Are they part of job training—all of those?

Mr Thomas: Yes, and if Jay or Craig want to add anything more to my answer because I get it wrong—they work there rather than me. The industries in there providing skills for prisoners are around construction works—building doors, building park benches or whatever it may be. It is about providing them real skills. When Borallon was set up—Borallon is called the Borallon Correctional Training Centre—the training lasted about six months before we were so overcrowded that it is just like any other mainstream centre now. There was a focus on training to rehabilitate prisoners.

The problem we have at the moment is that if you have 10 spots and 10 prisoners, every prisoner can do the training. We now have 10 spots and 20 prisoners, so either 20 get half the amount of training or only half of them get into industries. However, that is a big part of the rehabilitation piece.

In respect of the sorts of things you were talking about, Mr Powell, with respect to treating prisoners, we are brutalising prisoners at the moment. It is not deliberate. It certainly is not the officers; they are doing the best they can in a really difficult position. We should have the structure in place to treat them, train them and upskill them for releasing them back into the community. We have these simplistic focuses on, 'Let's lock more people up.' We are locking up people in an environment that means they come out considerably worse than when we put them in.

Ms BOLTON: And likely to come back in.

Mr Thomas: Then they will absolutely reoffend.

Mr Miller: For the industries there are tailor shops, bakeries, butchers and TAFE. Prisoners have to have meaningful activities when they are locked up inside. If they do not have meaningful activities, they do not have anything to do. If they do not have anything to do then obviously, because we are so overcrowded, they are living on top of each other. These issues just elevate. Because there are such limited spots in the industries, there is little opportunity for them to have meaningful activities.

Mr HUNT: You mentioned in your submission the Healthy Prison report. That is not a new document by any stretch. Can you very briefly drill down into the interplay between that and the bill, if there is any interplay?

Mr Thomas: The Healthy Prison report was something put in place by the previous chief inspector. It was very much a holistic view. That seems to have been jettisoned. This bill focuses on the independence but does not look at Healthy Prison, which came out of some of the initiatives out of the UK and so forth but really had a holistic view of how you run prisons to ensure they are humane and do what we say they are going to do, which is rehabilitate prisoners. It would seem to me that what the bill has done is focus very much on the independence bit. It has gone, 'Right, we are going to have

an independent inspector. What are we going to get them to look at? Ah, we've just signed the OPCAT treaty; we'll get them to look at that.' I think that misses some of the work that was done with Healthy Prison. To go to your point, Ms Bolton, we think that probably could have gone a bit further in terms of the treatment of staff as well. Instead of improving the holistic nature and the independence, we have improved the independence and dropped what we are looking at to the lowest common denominator. As I said, it is an international treaty. Lots of nations only sign up to it because it really is the lowest common denominator.

Mr POWELL: We are already succeeding.

Mr Thomas: Yes, and putting torture in. I understand that it is OPCAT, but if we are saying, 'We need an independent inspectorate to make sure we are not torturing prisoners'—I can tell you that at the moment we are not torturing prisoners. That is the least of our worries. The worry is that the system is brutalising them—not intentionally.

CHAIR: That concludes this session. Thank you for your evidence, for your written submissions and for attending today.

BARSON, Ms Ruth, Legal Director, Human Rights Law Centre (via videoconference)

GREENWOOD, Ms Kate, Barrister and Prevention, Early Intervention and Community Legal Education Officer, Aboriginal and Torres Strait Islander Legal Service (Queensland)

RAMARATHINAM, Ms Amala, Senior Lawyer, Human Rights Law Centre (via videoconference)

TREVITT, Ms Sophie, Executive Officer, Change the Record (via videoconference)

CHAIR: I invite you to make a short opening statement, after which the committee will have some questions.

Ms Ramarathinam: Good morning and thank you for having us here to give evidence to the inquiry into the Inspector of Detention Services Bill. To start, we acknowledge the traditional owners of the lands on which this hearing is taking place, the Turrbal people, as well as the traditional owners of the lands that we are coming to you from today, the Wurunderjeri, Woiworung and Bunurong peoples. We pay our respects to elders past, present and emerging. Sovereignty over the land has never been ceded and it is and always will be Aboriginal land.

The Human Rights Law Centre uses a combination of strategic legal action, policy solutions and advocacy to support the work of Aboriginal and Torres Strait Islander organisations to help create a fair legal system that is free from racial injustice. Queensland's prison population is exploding despite declining crime rates. The rate of imprisonment has risen by 160 per cent since 1992. In the last decade it has risen by about 61 per cent, even as actual offending rates have declined by as much as 20 per cent over that same period.

Aboriginal and Torres Strait Islander people, women and people with disabilities are being overimprisoned, and the rate of that overimprisonment is growing. Prisons are increasingly being used as a catch-all to all social problems and serving as warehouses for people who are experiencing poverty, family violence, housing instability and mental health conditions. These circumstances have increased the incidence and risk of human rights abuses including the overuse of solitary confinement, routine stripsearching, the warehousing of children in watch houses and the unacceptably high numbers of deaths in custody.

This bill, which seeks to prevent mistreatment behind bars through independent monitoring and oversight of places of detention, is welcomed. Our joint submission sets out a number of recommendations that would help achieve a best practice inspectorate. In addition to the evidence given by Ms Trevitt from Change the Record and Ms Greenwood from ATSILS, which we wholeheartedly support, we would like to bring the committee's attention to certain recommendations. The first is the need to adopt as expansive a definition of 'detention services and places of detention' as possible to include all places where people may be deprived of their liberty. Consideration should be given to removing minimum inspection frequencies. If they are to remain, inspections should be required every three years whilst retaining the requirement that each youth detention centre be inspected at least once a year.

Serious consideration should also be given to creating a standalone statutory inspectorate instead of appointing the Queensland Ombudsman as Inspector of Detention Services. Funding and resourcing for the inspector should be based on the inspector's own assessment, and this should be guaranteed in legislation. So that the inspector has appropriate powers, we recommend providing the inspector with the discretion to refer matters of concern to parliament, the ability to make its findings and recommendations publicly available, and the ability to require a public response from governments and detaining authorities. We also recommend removing limitations on the inspector's ability to make reports and referrals in a timely manner.

Abuse thrives behind bars. This bill intends for the Inspector of Detention Services to be an important mechanism of transparency and accountability for harmful prison practices. These checks and balances become much more urgent in the context of mass imprisonment, and we urge the committee to seize the opportunity that this bill presents.

In addition to this robust oversight mechanism, the government must also commit to reducing the number of people being funnelled into prison. It is time to prevent and end human rights abuses in places of detention through an independent, adequately resourced and culturally competent inspectorate.

Ms Trevitt: I am appearing from Ngunnawal country. We pay our respects to elders past and present. Change the Record is Australia's only First Nations led justice coalition. We are made up of a group of human rights organisations, legal organisations and Aboriginal controlled community organisations. We welcome the decision of the Queensland government to take these steps to legislate for oversight and monitoring of detention centres and services in Queensland. In our joint submission with the Human Rights Law Centre we noted four key areas of reform that we thought could be strengthened. Those are with respect to resourcing, scope, frequency of inspections and reporting.

With respect to resourcing, evidence from other jurisdictions, particularly Tasmania, has highlighted the challenges of inadequately resourcing offices that have a dual function. For example, with the proposed role in Queensland, using the Ombudsman, we are concerned that this new inspectorate function within the Office of the Ombudsman risks inadequately resourcing the new inspectorate responsibilities.

With respect to scope, as the Human Rights Law Centre said, we are particularly concerned with the narrowing of the scope the bill oversees—for example, the explicit exemption to exclude travel to a watch house from the purview of the inspector—and we are concerned that the bill's remit may not capture court cells and other situations where a person is in police or court custody outside of a prescribed place of detention.

With respect to frequency of detentions, it is our principled position that the inspector should be empowered to determine the nature and frequency of inspections themselves; however, if the bill were to mandate frequency we recommend that they look at comparable jurisdictions such as Western Australia, Tasmania and the Australian Capital Territory, which mandate inspections at least every three years as opposed to the bill's five years.

Finally, with respect to reporting, we support the position of the inspector being an officer of the parliament and recommend that the inspector report directly to the parliament. Our concerns with respect to reporting relate to the perceived and actual independence of the role and ensuring public confidence in the position, particularly with respect to individuals who may make reports and to affected communities such as Aboriginal and Torres Strait Islander people. We echo the previous comments made by the Human Rights Law Centre and also by previous witnesses regarding the large number of people currently being incarcerated and detained within the Queensland detention system. We welcome this opportunity to appear today.

Mrs GERBER: Thank you all for your appearance. I am not sure if you have turned your minds to this, but my question is in relation to one of your recommendations. You say that the legislation should adopt an expansive definition to include detention services and places of detention and all custodial environments whether or not someone is detained with a warrant. If the expansive definition were adopted, potentially quarantine facilities could be captured by it. Is that something that you think the inspector should have the ability to look at, considering that right now we probably do not have any oversight over those facilities or anything that might be happening in those facilities? I acknowledge that obviously people in those facilities are not prisoners, but liberties are being removed from those people as a result of trying to maintain public safety. If the expansive definition were enacted and it did capture quarantine facilities, would that be appropriate, in the view of your respective organisations, or do you think that should be reworded so that it does not capture them?

Ms Trevitt: It would be our view that in any facility where people are being detained there should be oversight, particularly where that detention is involuntary. We would also support the inclusion of forensic facilities, mental health facilities and psychiatric units. Understanding that this is not an OPCAT bill, the principles behind OPCAT are principles which our organisation supports and they require the oversight of any facility in which people are detained. To my mind, that would include quarantine facilities.

Ms Barson: I absolutely agree with Sophie's comment. I would just build on that by saying that, ideally, this bill will form part of the Queensland government response to OPCAT. OPCAT's due date is January 2022. OPCAT is very clear that all places of detention, as Sophie said, where people's liberty is removed should be the subject of independent oversight and inspections. It might be that once the Queensland government considers its holistic response to OPCAT it will see that this inspector is one arm of it and that other inspectors and other mandated independent bodies provide the oversight and inspection of places like quarantine facilities, aged-care facilities and mental health facilities. Anywhere that someone's liberty is removed should be the subject of inspection. Whether or not it is this inspector or there is another body created to fulfil that function is a question for the government.

We also agree with the Queensland Human Rights Commission recommendation that the committee seek confirmation from the government that this inspector is, in fact, intended to form part of the Queensland government's response to OPCAT. If it is, it is abundantly clear that this is only one aspect of the government's compliance with OPCAT. It will have to invest in it and look at how it is going to comply with OPCAT in relation to all other places of detention, quarantine being one of them.

Ms Greenwood: As a brief overview, we welcome the introduction of a systemic review of both the places of detention and the services. We think that will overcome the compartmentalisation that occurs at the moment. We know there is some concern about overlap, but in our submission some overlap is necessary for that very purpose of overcoming compartmentalisation.

We particularly welcome the ability to basically have a standing review of places of detention. For example, Operation Flaxton conducted by the CCC covered a series of issues. That is always a reactive, one-point-in-time sort of review. The CCC was constrained in a fuller exploration of those issues, in our view, that an inspector of detention services would be able to follow through on a standing basis repeatedly across the inspection cycles.

We echo the comment from the Queensland Law Society that many of these inspections should be unannounced and there should be an ability to go in. My personal experience of the International Committee of the Red Cross inspecting areas of detention associated with armed conflict very much ran on that model and there is a very different picture that arises when these snap inspections and slices in time inform the inspection process.

The other aspect we see coming out of this is: too often ATSILS appears in inquests where there have been deaths in custody and a number of events have led to recommendations coming from the coroner. Unfortunately, all of that is only revisited when there is yet another death and questions are asked as to why the recommendations have not been implemented. In particular, one issue we have concerns about is the issue of razor blades to mentally fragile prisoners in the first few days of their incarceration. Unfortunately, there are repeated deaths as they are able to use those razors to commit suicide.

Another big issue is access to palliative care. Again, we would hope that the Inspector of Detention Services can surmount the siloed investigations into that aspect. Unless I can assist the committee further, that is my overview.

CHAIR: Thanks everybody for your attendance. Thanks for your very detailed submission and your recommendations contained within it for the committee to consider. Thank you, everybody.

Ms Greenwood: I will raise the question, if I may, of a good Samaritan inspection—that is, in the course of a systemic investigation the individual circumstances of a prisoner come to the attention of the Inspector of Detention Services. When things go right they go right, but when things go wrong they go horribly wrong. We would urge the committee to consider having some sort of capacity for that inspector to stop and take account of an individual case that has come to their attention in the course of the systemic review.

CHAIR: Thanks, Kate. I now welcome the next witnesses.

BLABER, Ms Helen, Director/Principal Solicitor, Prisoners' Legal Service

DOORIS, Ms Marissa, Policy Officer, Sisters Inside

CHAIR: Good morning. I invite you to make opening statements, after which the committee will have some questions for you.

Ms Blaber: I would like to acknowledge the traditional owners of the land on which we meet and pay my deep respect to elders past and present. PLS's written submission provides some context around the urgent need for proper oversight into human rights abuses within Queensland's prisons. I have been associated with PLS for over a decade and the state of affairs is undoubtedly the worst I have ever seen it.

One of the reasons agencies like PLS and Sisters Inside are so acutely aware of the human rights issues in prisons is because of how we operate. People in prison trust us: they tell us things they do not tell other agencies. We also know where to look and what to ask for. For these reasons we know what is actually occurring in prisons and it is distressing. It is vital that the inspector is established in such a way that it can capture an accurate picture of what is occurring. OPCAT has been designed for that purpose and Queensland should benefit from the learnings of other jurisdictions.

PLS's key concern with the bill as it currently stands is the lack of acknowledgement of OPCAT and the aspects which fail to comply with it. We cannot imagine that another body is going to be established to oversee prisons to meet OPCAT obligations in Queensland, so we think we should call this bill what it is and we should do what it should do, which is implement OPCAT obligations.

That leads to our other concerns, which include the narrow definitions of places of detention. The exclusion of mental health facilities from the scope of the inspector is completely inappropriate. There are many people who are transferred back and forth between prison and mental health institutions. There is an interconnectedness between these two institutions which in itself requires oversight.

The Supreme Court of Queensland has raised concerns on multiple occasions about people being kept in prison due to lack of bed space in mental health facilities. The only legitimate purpose for which mental health facilities could be excluded from the inspector's mandate is if there are plans to implement a separate oversight body for those institutions. Our view is that there should be a single oversight body for all places of detention including mental health facilities. I have visited people held in solitary confinement in prison compared to visiting people held in solitary confinement in mental health institutions and having the knowledge and experience of seeing conditions in both institutions has been extremely beneficial and has informed my actions about what steps I should be taking.

Finally, briefly, there is the complex issue of resourcing and interactions with existing complaints bodies. PLS's view is that a standalone inspector should be established to ensure that one properly resourced agency exists to tackle this specialist and complex issue. What is unclear is how that agency will interact with existing complaints bodies. While this bill is focused on implementing a preventive detention monitoring body, it would significantly benefit from interacting with agencies on the ground including those which investigate individual complaints.

PLS and many other agencies have criticised the official visitor regime, which is the existing complaints mechanism that sits under Queensland Corrective Services. Reform to that scheme is urgently needed and should be implemented at the same time as establishing the inspector to complement its operations. A properly functioning complaints body would likely prevent floods of individual complaints being made by people in prison to the inspector seeking a remedy from an independent agency and would provide information about systemic issues that require investigation by the inspector.

Ms Dooris: I would like to begin by acknowledging the traditional owners of the land where we are meeting, the Turrbal and Jagera peoples. I pay my respects to elders past and present, and I acknowledge that sovereignty was never ceded and this always was and always will be Aboriginal land. I think it is important to remember and centre this reality, especially as we grapple with the repercussions of settler colonialism that result in extreme rates of incarceration for Aboriginal and Torres Strait Islander adults and children.

As the committee is aware, this bill appoints the Queensland Ombudsman to be the Inspector of Detention Services. On paper, this represents a fairly significant shift in relation to the systemic oversight of prisons in Queensland, but this change has been a long time coming. From our perspective as Sisters Inside, this issue has been on the agenda for almost two decades with zero action by Queensland governments. It has been almost 16 years since the then Anti-Discrimination Commission of Queensland released the Women in Prison report in March 2006, which called for a robust oversight

model similar to that in Western Australia. This review and report were initiated in response to a submission by Sisters Inside in 2004 raising our concerns about the treatment of women in prison, particularly Aboriginal and Torres Strait Islander women and women with disabilities.

It has taken Queensland governments over 15 years to introduce legislation for the independent oversight of prisons. A lot has happened in that time, but we are very disappointed to see that this legislation does not adopt the Western Australian model. Given the nature of the bill, we are sceptical about the potential for the bill and the inspector's activities to genuinely address systemic human rights abuses in prisons and to prevent, most importantly, the premature death of prisoners.

The issues we raised in 2004 have only become more entrenched in the intervening period. Aboriginal and Torres Strait Islander women and girls continue to be criminalised and imprisoned at extremely high rates. There have been an extraordinary number of deaths in prisons and watch houses in the last two years in Queensland. In 2021 Sisters Inside supported three women in Queensland prisons who lost pregnancies, including two late-term pregnancy losses in the third trimester. We consider the late-term deaths of those babies to be deaths in custody. It is an absolute disaster that in 2021 two pregnant mothers lost their babies in prison under the full supervision and care of the state. Nationally, deaths of babies born between 20 weeks gestation to 28 days after birth—that is the perinatal period—represent less than one per cent of all births. Those deaths in Queensland prisons speak to a gendered dimension of deaths in custody that is often ignored in public discourse. As Helen alluded to, they speak to the fact that imprisonment cannot be hived off from health care and health care cannot be hived off from imprisonment. They are not separate issues. They are deeply linked to how people experience imprisonment, how they are moved between institutions of detention and on their survival. We have outlined specific feedback on the bill in our submission.

Our main concerns are about the proposed model and the limited scope of the bill in its definition of places of detention and detention services. Ultimately, we believe that no amount of reform can change the inherently violent and abusive nature of prisons and policing. As long as those institutions do exist, we will advocate for mechanisms that provide a greater level of accountability and respond to the material conditions of women and girls in prison. Thank you for the opportunity to make an opening statement. I am happy to answer the committee's questions.

Mrs GERBER: Thanks for your appearance today and taking the time to make those very well thought out opening statements for the committee. I put the same question to other submitters who appeared before us as I put to you. In the expansive definition you are proposing, if the bill was amended to include all places where people are detained there is the possibility that would include quarantine facilities. Is that something you have turned your mind to, and do you think the inspector should have the ability to look at individuals who are in quarantine facilities and the liberties that may be taken from them as a human rights issue?

Ms Blaber: I had not turned my mind to it. My instinctive response is that I do not see an issue with it. One of the things with human rights legislation and human rights analysis is that it always has to be proportionate and it always has to look at what is the purpose. What may be appropriate in one institution is not necessarily going to be appropriate in another institution. Having one body overseeing a range of different institutions with different purposes is not inappropriate in itself.

Ms Dooris: I am fairly similar to Helen. I had not turned my mind to it, but I agree. What we are talking about here and the purpose of this legislation is not only about individual cases; it is about looking at that systemic level about policies, procedures and how things function to produce violent or harmful outcomes for people. That obviously depends on the purpose of the detention or what is going on in those institutions, but it is often at the interface of health care and other forms of coercive detention that we see real problems. I think we can only see those patterns if we look across and if we have an expansive overview. Obviously the inspector will have discretion about where they chose to focus their time. Potentially, as some quarantine facilities lessen that may not remain a long-term issue. From our point of view, for people in prison there needs to be the most expansive definition because of how those people are moved between institutions and detention services.

Ms Blaber: I should also just mention that prisons are also being used to quarantine people. We did a complaint to the Human Rights Commission last year about the quarantining of a young Aboriginal woman in solitary confinement and the various concerns we had about that. That was being done for public health reasons, but it was in a prison. The Queensland Human Rights Commission actually published a report about that complaint—that is pretty rare; I think they have only published about two reports—identifying their concerns about the various problems with how that quarantining had been done in prison because there was limited access to medication, phone calls and all of those kinds of things because it was taking place in a prison. That was a young Aboriginal woman with mental health issues who had just come into custody.

Mrs GERBER: That is perhaps a good example of why there should be oversight.

Ms Dooris: Exactly.

Mrs GERBER: The Together union, one of our first submitters, mentioned that this bill does not address some of the more holistic aspects of prison life; in particular, it does not address purposeful activity and resettlement in an appropriate way to enable prisoners to come out and be meaningful contributors to society afterwards or allow them to have purposeful activity whilst in prison. Do you want to comment on that? Do you think the bill addresses those two aspects well enough, or would you like to see it go further in relation to purposeful activity and resettlement?

Ms Dooris: I think it will be at the discretion of the inspector to look at the material conditions of people in prison, and if that is access to things like activity—or the lack thereof, which is most often the case—then I am sure that will be part of the review. I am a bit confused about what exactly the union is calling for in that sense.

Ms Blaber: I think it is covered. I suspect one of the things they are worried about—and we are worried about it as well and have been for over a decade—is the lack of access to things like rehabilitation programs in prison. That is not just purposeful activity; it is also often a precondition to getting released on parole. There are lots of people who have not had access. That has been a problem for a very long time. In our submission I referenced case law from over a decade ago and case law from two months ago about this exact same issue.

In my view, that is a human rights issue. It does not necessarily get to the threshold of torture, but if the bill is broad enough to encompass human rights issues generally then certainly someone not getting access to a rehabilitation program in custody, which then prevents them from getting released on parole, impacts their right to liberty, so it comes within the compass of human rights. In terms of purposeful activity, there was litigation recently handed down by the Supreme Court where, in coming to the conclusion there was a breach of the Human Rights Act, they looked at the activities the prisoner was given access to in prolonged solitary confinement. I have not scanned the bill with that particular question in mind, but the umbrella of human rights can encompass lots of things.

We also have to be realistic about what the inspectorate can and cannot do. Obviously the inspectorate is not going to be able to engage in oversight of what happens in the community. That is not realistic. The lack of preparedness for people getting out into the community is a real issue—a massive issue—and probably why we are seeing lots of people come back into custody. I do not know that this is a realistic place for it to be addressed, because if you put too many burdens onto this one body it may not be able to achieve anything. I do think there are real and valid issues to do with resettlement, but I do not know that this is the place for it.

Ms Dooris: From our perspective, the focus always has to centre on the most vulnerable people in prisons because I think from their perspective—and when we look at their material conditions we see the worst; we see the patterns of violence. When Helen talks about people in solitary confinement, people who are subjected to repeated safety orders or people who are subjected to other forms of punishment on top of the punishment of imprisonment within that system and then the way that impacts their lack of access to parole, the way that overcrowding impacts a lack of access to parole, the way that parole delays have flow-on consequences for all of those things, it is the interconnectedness of those things that the inspector will be looking at. In terms of specific interventions or specific activities, I think that narrows the focus maybe too much. This is a broader look at the way that policies, procedures and the real material conditions in prisons impact on human rights. There is a real risk that it would burden the inspector to focus on every specific thing.

Ms BOLTON: Just to expand on the member for Currumbin's question, I think what I interpreted from Together Queensland was about second-tier effects. When speaking about resettlement, we have the situation that the material conditions of the prisons in overcrowding then reduce access to those activities or industries, as they called them, that give them the skills when leaving. Within the scope—and, Marissa, I understand what you are saying—

CHAIR: Sandy, we have gone over time. Can you please get to the question?

Ms BOLTON: Sure. Would you agree that should be in the scope?

Ms Dooris: I think it would be.

Ms Blaber: I am just looking at proposed section 3. The main purpose is to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including humane conditions of detention. I think what you are talking about there would be encompassed within that, but if in doubt you can expand the main purpose

to talk about human rights more generally. That would probably be something I would support. It makes it crystal clear that the scope of this is to look at human rights generally and that then alleviates those concerns, I think.

Ms BUSH: Your submission touched on the Western Australian model. Can you summarise for us, in your experience and anecdotally, what works about that model, particularly for women and children?

Ms Dooris: Absolutely. It is a standalone model, and the real concern for us is that in rolling this inspector into the Ombudsman it means that the attention and resourcing of the Ombudsman is much more limited. We know that women and girls are a much smaller proportion of the population of people in prison, although not insignificant. What that means is that the inspector's attention is very easily focused on the majority of the prison population—which would be men—and much more high-profile matters, which include things that men are subject to that women are not in Queensland prisons, such as maximum security orders. Those things rightly deserve the inspector's attention. They are highly coercive and highly violent practices within prisons that require systemic oversight. The lack of a standalone body means that it is much more likely that the concerns of women and children, which are very specific, may not have the time and attention they need. We are also concerned that, with the Queensland Ombudsman, it is hard to imagine how the function will work as a complaints body for individual prisoners and in this oversight role. That is something that is hard to discern from the bill.

CHAIR: That brings to a conclusion this part of the hearing. We thank you for your written submissions and for attending today.

ALEXANDER, Ms Matilda, Chief Executive Officer, Queensland Advocacy Inc.

Ms Alexander: Thank you for the opportunity to take part in this public hearing. I would like to begin by acknowledging the traditional owners of the land upon which we meet, the Turrbal and Jagera people. We would like to acknowledge the experiences of First Nations Australians with disability and the intersectional disadvantage they have suffered. We pay our respects to Aboriginal elders past, present and emerging including our president, Byron Albury.

QAI is an independent community based advocacy organisation and community legal centre that advocates for people with a disability with the mission of promoting, protecting and defending the needs and rights of people with disability in Queensland. QAI has over 35 staff working across our mental health, human rights and NDIS advocacy programs. QAI's work with our clients underpins our understanding of the challenges, needs and concerns of people with disability and informs our campaigns at state and federal levels for change in attitudes, laws and policies. I have also personally been involved in monitoring and reporting on numerous closed environments, both here and overseas.

QAI has provided feedback on OPCAT compliance generally in the past and we are pleased to note that significant change is represented in the current bill. However, we retain concerns about aspects of the bill and question whether the legislation provides ongoing guarantees for its effective implementation. We consider that this bill misses an opportunity to ensure the robust and thorough representation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A more explicit link to OPCAT as a well-established international framework would enhance the bill and more easily facilitate the adoption of a range of standards and guides to assist with monitoring. Examples include the Mandela standard, minimum rules for the treatment of prisoners; the Bangkok rules for the treatment of women prisoners; and the Ithaca toolkit for monitoring human rights and health care in psychiatric and social care institutions.

At all times, OPCAT implementation should be undertaken in a way that is disability aware and focused on the needs of people with disability. We acknowledge and call to your attention the disproportionate number of people with disability who are right now incarcerated in institutions that are the subject of this bill. We are worried about the many other closed environments that are not considered in this bill and for whom OPCAT monitoring is yet to be proposed.

This model could work well with the right inspector, good connections with other bodies, and resourcing. However, the legislation before us is at risk of being reinterpreted by successive governments in a way that could only be described as 'OPCAT lite'—under-resourced, lacking connection and without a deep understanding of the lived experience of being detained. Whilst we recognise the difficulty in legislating a guarantee to avoid resourcing and personnel issues, we reiterate our solution: an increased number of mandatory visits to ensure more resources, and mandatory requirements which describe the inspector and their team. The Western Australian model is one that would be helpful. I fully support the earlier suggestion to incorporate human rights into the purpose of this act.

It is great to see the recognition of lived experience of detention, disability and Aboriginal and Torres Strait Islander voices as an option for the inspector to incorporate but this inclusion should be more than an option, in order to ensure a robust and strong OPCAT model. The work to implement the several reports that inspired this bill, together with Australia's obligations under OPCAT, is ongoing. The community visitor scheme in prison remains problematic. A robust and standalone monitoring entity remains outstanding. The recognition of disability-specific harm, such as restrictive practices for behavioural control in closed environments, continues. These are urgent issues that need to be addressed so that we can all live in a society that is free and equal. Thank you.

Ms BOLTON: Aside from the restrictive practices that you mentioned, could you expand on what being 'disability aware' looks like on the ground?

Ms Alexander: The Ithaca toolkit that I mentioned is a good guide on how to monitor a specific closed environment—how to develop the tools to look beyond communication difficulties and things that may present as behavioural issues but which are really underlying disability characteristics and be able to analyse those behaviours and say, 'Maybe we should not be putting this person in solitary confinement. What we should be doing is addressing the underlying cause.' That is another example. The case studies that are in our submission talk through a few more examples of disability-specific detention.

Ms BUSH: The member for Noosa has picked up a bit of the information I was after—which of those toolkits you would recommend. In your experience with the work you are doing now in prisons, I was interested in whether the current system adopts a trauma informed approach or whether any of these models pick up on a trauma informed approach in working with prisoners.

Ms Alexander: Unfortunately, the Disability Royal Commission has highlighted the intersection between trauma and disability. When we are talking about the prisoner population, we are talking about a population that is highly traumatised by events throughout their lives and a population that has a hugely disproportionate number of people with disabilities. We are skimming off all of the most disadvantaged people and putting them into an environment that makes all of their problems worse. Certainly, a trauma informed approach would be advisable.

A disability-aware approach is about co-designing the model and the toolkits. The Ithaca toolkit is good—it is an international toolkit—but to really address what is going on in Queensland, we need to be talking to people with a disability in Queensland and involving them in the day-to-day inspections and the day-to-day development of the modelling tools. QAI are currently putting together a disability-aware toolkit that is specifically for Queensland. That should be out by approximately the middle of next year.

Ms BUSH: Are they using positive behaviour support plans in prisons currently? How does that work in terms of restrictive practices?

Ms Alexander: In prisons, there are a lot of restrictive practices. QAI works in mental health facilities and forensic disability services, but certainly restrictive practices are rife within the prison setting as a means of behavioural control. The way they are being used, the appropriateness of when they are used and the length of time they are being used is the crux of this bill. This is about stopping torture and cruel, inhuman and degrading treatment, so when does it cross that line? When do those restrictive practices become that level of harm?

Ms BUSH: Does your organisation have a role in working with Corrective Services to ensure any restrictive practice is recorded at their end? Do you oversight that?

Ms Alexander: Do you mean within mental health facilities, more than Corrective Services?

Ms BUSH: Corrective Services, but if you are not working there then mental health facilities?

Ms Alexander: Certainly, there are legislative requirements about recording restrictive practices in a mental health setting. We do a lot of mental health tribunal work, for example, that looks at accountability around those laws to make sure that there is transparency and oversight. Without this broader OPCAT framework, the work that we can do is limited.

Mr HUNT: Could you outline what you understand to be restrictive practices?

Ms Alexander: Restrictive practices are used to control someone's behaviour in a way that can be restrictive. It could be chemically restrained; it could be physically restrained; it could be holding someone down; it could be using shackles or body belts. There is a range of different restrictive practices provided for under law in Queensland.

Mr HUNT: Is the contention that it is overused or that it should not be used?

Ms Alexander: The definitions of torture and cruel, inhuman and degrading treatment come down to the purpose of it being used. If I was to be put in handcuffs in order to stop me being a witness for a criminal matter against a corrupt police person and I was put in solitary confinement for an hour, that would be more likely to be torture because the purpose is to stop me from engaging in that kind of behaviour. The definitions are a bit more complex than simply, 'Is somebody put in handcuffs, a body belt or a spit hood?'—although those things, in themselves, could be torture. Some interpretations say that any time somebody is put in a hood that is torture—that is what I would say. There is subtlety in the way that international law has interpreted restrictive practices and the factors that change a restrictive practice that is allowable under law into one that is cruel, inhuman and degrading treatment or torture.

CHAIR: Thank you for your written submissions and your attendance today.

Ms Alexander: Thank you.

COSTELLO, Mr Sean, Principal Lawyer, Queensland Human Rights Commission (via videoconference)

McDOUGALL, Mr Scott, Commissioner, Queensland Human Rights Commission

CHAIR: Welcome. I invite you to make a short opening statement, after which the committee will have questions for you.

Mr McDougall: Thank you, Chair. Good morning, committee. The Queensland Human Rights Commission supports the passage of the Inspector of Detention Services Bill. As stated in the explanatory notes, the government consulted with the commission in developing the bill. The bill seeks to implement a recommendation previously made by this commission in our Women in Prison reports. However, the bill misses the opportunity firstly for Queensland to fully participate in Australia's national preventive mechanism under the OPCAT protocol which is, as you know, due to commence in early 2022 and secondly to clarify the roles and responsibilities of various agencies with oversight functions in Queensland.

In our submission we made several recommendations for the committee's consideration about improvements that could be made to the bill and the framework it sits within. As an agency responsible for promoting understanding and public discussion of human rights, as well as handling complaints about human rights and discrimination—including from those people in detention and detention centre staff—we have a significant interest in developing a robust oversight model for Queensland. With that in mind, our key recommendations include that the government publish information about how the inspector will fit into the existing oversight framework and any further changes that are necessary for Queensland to participate appropriately in Australia's implementation of OPCAT. We have sought clarity about the future for official visitors working in prisons, as at the moment prisoners must go through a two-step process involving official visitors before they can take any complaint to us under the Anti-Discrimination Act.

The bill is introduced at a time when youth justice issues are clearly to the fore and, sadly, there are high numbers of children coming into detention. I am very concerned about the numbers of children being held in police watch houses and detention centres and about the duration of their detention. I think this will have to be a high priority area for the incoming inspector; we have recommended that the inspector be notified if a child spends more than 24 hours in police detention anywhere in the state. Nonetheless, I welcome the introduction of this bill and I believe the inspector is an important addition to Queensland's oversight framework. Thank you.

Mrs GERBER: Thank you for your submission and for making the time to be here today. My question is in two parts. All submitters today have raised concerns with the funding model for the inspectorate—that it is adequately funded and that there is a line item in the budget that ensures that funding model. Some submitters have taken it a step further and said that, in order to ensure that the inspectorate is adequately resourced, it should be separate from the Ombudsman. What is the Human Rights Commission's perspective? Do you think if it gets a separate line item that would adequately resource it or do you think it needs to be taken a step further so that it is ensured for the future?

Mr McDougall: In an ideal world, a society that really valued human rights would have a dedicated oversight body that had responsibility to inspect all places of detention, so all places where the state deprives people of their liberty—that would be the ideal situation—and it would be appropriately resourced to carry out that function. I think there is a real risk that housing the inspector inside the Ombudsman's office will ultimately lead to those functions competing with the existing functions of the Ombudsman. I do not think there is any doubt about that risk. A separate line item would certainly help, I think, to mitigate that risk to some extent, but it is not going to completely mitigate it. I think they are valid concerns that have been raised.

Mrs GERBER: You have taken me in your answer there to the second part of my question which is around the scope and ensuring the inspectorate can adequately look at all places where people are detained. We have heard from other submitters that that should include mental institutions and other facilities. I have raised with a couple of the submitters that potentially that could encompass quarantine facilities because ultimately, whilst those people are not prisoners, there are certain liberties that are being taken away from people whilst the government is trying to balance the public health. I am interested in your perspective on that as being an increased scope, essentially.

Mr McDougall: It is very difficult without knowing the intention of the funding arrangements because obviously it will dilute the capacity of the agency to perform its functions if you broaden the functions without contemporaneously broadening the funding. Ultimately it is a question of the funding

that is supplied and also the vigour with which the leadership of the inspectorate pursues those matters. Ultimately there are limited resources for any agency and they have to make choices about what they are going to prioritise.

Ms BOLTON: Within your submission you spoke on extending the inspector's powers to be able to look at critical incidents. Why do you believe that is really necessary in that role?

Mr McDougall: I think whenever we see these incidents that happen from time to time they do not happen by accident. There is often a complex set of circumstances that have arisen, usually involving systemic issues, that generate that incident. An example that springs to mind that is not related is if you look to what is going on in the Solomon Islands at the moment. It is a very complex history and set of circumstances that have led to that situation. I would say that it is similar in prison environments as well and there would be some really valuable systemic recommendations that the inspector could make if they were given access to prisons at those critical times when those critical incidents occur. Sean may want to add to that response.

Mr Costello: Probably only to add that the ACT inspector of prisons, which is one of the existing inspectors that this bill is based upon, does have the ability to investigate those critical incidents and has looked at things like riots and fires. There is some precedence there, to Scott's point, about how, even when looking at systemic issues, these inspectors can draw upon those lessons learnt from those critical incidents in the work they do.

Ms BUSH: Obviously are there are a number of players already in this space. We have heard that from other submitters as well. I was interested in your views on how well that interaction works now. We have official visitors; Queensland Corrective Services have their ESU; the Queensland Ombudsman goes in. How does that interaction work in real time between those players?

Mr McDougall: That is a very good question. I think there is definitely scope for all of the players, as you call them, to get in a room and actually work out who is going to do what. One of the recommendations we have made in our submission is that the government provide some clear direction as to responsibilities, because there is a risk with this bill that we are adding yet another player without really clarifying the roles of each organisation. I think there is a risk, when you do that, that you increase the likelihood that important systemic issues and also individuals are going to fall through the cracks. We would be certainly in favour of participating in such a discussion to make it clear and for the government to set that out in some form of communication—not necessarily a statutory instrument even but an administrative arrangement. That is our position. Sean, did you have anything to add to that?

Mr Costello: No, only just to note that the bill does make arrangements for the oversight agencies to enter into some cooperative one-on-one arrangements, but, as Scott said, it would probably, as we have recommended, be very useful for the government to specify how they think overall the system is now going to work with the inspector.

Mr McDougall: Chair, I should apologise for taking over your role. It is a matter for you to ask questions.

CHAIR: Whatever works is my attitude.

Mr HUNT: This is a very broad question so I apologise in advance for that. Are there any specific initiatives that would come under OPCAT that you think this inspector would be specifically charged to look at as OPCAT rolls out into an operational place of detention? Are there any key targets that you would be looking at specifically and this inspector would be able to look at?

Mr McDougall: So any particular issues of concern at the moment? Obviously children in watch houses is the one that is most pressing, in my view. We have several children being detained right now in Queensland watch houses for periods up to 10 days and in some cases beyond that, which is completely unacceptable. That has to be dealt with urgently. We have also made a recommendation that whenever a child spends more than 24 hours, as I said in my opening, there should be a notification to the inspector. In terms of other issues within the existing scope, there are a litany. I could refer you to our previous report, the Women in Prison report, where there are issues that are ongoing. The fact that our prison system and our youth justice system are under such strain and there are large issues that flow from overcrowding—those issues alone that flow from that fact would keep the inspector quite busy.

CHAIR: Sean, would you like to add anything?

Mr Costello: Thank you, Chair. I was only going to pick up some of the issues that the Together union raised this morning in their evidence and just note that, certainly when these OPCAT-like bodies have looked to develop standards for how they are going to do their work, things like the Healthy Prisons model have definitely been part of setting those standards. For example, the ACT inspector,

again another existing detention service inspector, in its standards for adult corrections specifically mentions Healthy Prisons and the Healthy Prisons model and talks about how they are going to deal with things like pressures on staff and safety and purposeful activity. I suppose in terms of lessons learned from OPCAT, that Healthy Prisons model is certainly part of the existing standards for corrections.

CHAIR: Is the system in the ACT a separate inspector rather than coming under the umbrella of an existing body?

Mr Costello: My understanding is that all of the existing inspectors—Western Australia, New South Wales and ACT—are standalone. I think the ACT may have been co-located for a time, and may still be, with the ACT Human Rights Commission, but generally they are functionally separate from any other agency, yes.

CHAIR: Unless anyone has any further questions, I intend to conclude this session. Thank you for your attendance and thank you for your written submissions.

Proceedings suspended from 10.09 am to 10.26 am.

STRANGE, Mr Warren, Chief Executive Officer, knowmore Legal Service

CHAIR: I welcome Mr Don Brown, the member for Capalaba, who is sitting in for Jonty Bush. Welcome, Mr Strange. I invite you to make a short opening statement, after which committee members will have some questions.

Mr Strange: Good morning and thank you, Chair, for the opportunity to appear today. I forward an apology from Ms van Toor from knowmore. She was due to appear with me this morning via video link but she has become unwell and is unable to attend so it is just me this morning. I begin by acknowledging the traditional owners of the lands on which we meet today and pay my respects to their elders.

We have lodged our submission and I do not seek to address all of that in my opening comments, which I will keep brief. We have not sought to address all aspects of the bill. We have focused on those that are most relevant to the interests of our client group as survivors of child sexual abuse in institutional settings. As the committee would know, the Royal Commission into Institutional Responses to Child Sexual Abuse found that children detained in Australian youth detention settings are exposed to a higher risk of sexual abuse. That remains so. It was more so in historical times but it remains so in the current day. As a service we have a very long history, particularly here in Queensland, of working with survivors who are now or have been in adult prison settings. They are very much over-represented in that population. Many of them experienced child sexual abuse and often severe physical and emotional abuse in youth detention settings.

There are three key points that we have addressed in our submission. One is around the frequency of inspections, which we would like to see increased from what is mandated in the bill at the moment, particularly in the context of youth detention settings.

The second point is around the structure and the model that has been adopted. We understand that the model that has been incorporated in the bill places the inspectorate within the Ombudsman's office. Our preference, along with some of the other bodies that have made submissions to the committee, would be to favour an independent or fully independent standalone inspectorate model in the fashion of the Western Australian model.

The third main area addressed in our submission is around the approach of the inspector to the discharge of their functions and the importance, particularly for people who are survivors of child sexual abuse, that that approach is a culturally safe and appropriate one. It needs to be a trauma informed approach supported by sufficient expertise to recognise indications of child sexual abuse, particularly in youth detention settings, and it needs to be able to act appropriately and respond to people who are in detention and on a more systemic level. That is what I would like to say by way of opening comments, thank you, Mr Chair.

Mrs GERBER: My question relates to the funding of the inspectorate. Currently, all of the submitters have expressed some concern in relation to the inspectorate being appropriately funded. There have been two proposals: essentially that it stay within the Ombudsman's office but it be given its own line item in the budget so that the funding can be guaranteed; or that it be an independent, separate body and in that way the funding model is guaranteed by way of it having its own bucket of funding. I am curious about your opinion. Based on your opening statement, I think it would be the independent one, but if it gets its own line item would that be satisfactory or does something more need to happen?

Mr Strange: Our preference, and we think the best model, would be the standalone independent model based, for example, on the Western Australian model. We think that is more consistent with the recommendations that led to the development of the bill. It is more consistent with best practice and I would think that would operate as better security around an adequate level of resourcing, because you are looking at the needs of that office and the functions that it has to discharge and the evidence of that once it starts to deliver services and understand the resource pressures—you are looking at that in isolation. One of the concerns we have about embedding the model within the Ombudsman's office is that there must inevitably be some resource competition and priority, given the way the model is drafted at the moment.

Ms BOLTON: We have heard of the impacts of overcrowding from some of our other witnesses, specifically for those who have been sexually abused and are now imprisoned. What types of specific impacts does overcrowding create?

Mr Strange: It can be a problem. It can particularly be a problem in protection classification environments within prisons because you have generally a higher proportion of sex offenders who are serving sentences in those environments. You may then have more opportunity for those offenders or

prisoners to come into contact with people who are survivors. That can be highly traumatising. We have at times heard of survivors who have been placed in cells alongside child sex offenders or otherwise have had to associate with them within the prison environment. That is not only traumatising; it is also potentially dangerous in terms of the reactions that people might understandably display to that sort of situation.

Ms BOLTON: You would say it is important that that be part of the inspector's role?

Mr Strange: I think so. I think the inspector's focus is on systemic issues and I would think that the current situation, with the pressure that our prison system is under with the high volume of prisoners and the parole situation—all of those factors will play out within the prison environment in issues that the inspector should be looking at.

Mr HUNT: A number of submitters have talked about the Western Australian model. Are you able to expand on what you think the key differences are between the Western Australian approach and the bill as it stands?

Mr Strange: I think the key one for us is the structural independence: it is not part of another entity; it is a standalone body. Obviously the model in the Queensland bill and the Western Australian model report to parliament as the oversight. I think structural independence—that control over resourcing and staffing and how the role is discharged—will be improved by having a truly independent and standalone body that is not subject to competition about priorities and resources.

One of the other points we made in our submission is that the Ombudsman's office has for many years discharged a range of functions in relation to the corrective services system, including prisoner complaints. There will have been relationships developed around that. There will be an existing culture. We think, particularly given the current pressures on the Queensland prison system, that a new approach and a standalone model is the preferred one.

Mr HUNT: Is there also a difference in the scope of the Western Australian model?

Mr Strange: I am sorry, I have not looked in detail at the different powers. I am aware of some differences in the inspection frequency regime which, again, we think would potentially be valuable changes to the current bill. I am not aware any specific differentiation in the powers of the two. It is mainly, from our perspective, around that structural independence.

Mr BROWN: What is your concern about the culture of the Office of the Queensland Ombudsman?

Mr Strange: I think in discharging current functions there will be relationships that have been developed. Coming into this role, parliament is appointing an inspector and giving them broad powers to look at a range of systemic issues. I think fresh eyes and a truly independent—

Mr BROWN: Is there any evidence that you can give about the current culture within the office of the Ombudsman that you are concerned about?

Mr Strange: No. I am somewhat removed from being able to comment on that. I am talking as a matter of principle.

Mr BROWN: Let us get away from principles and actually talk about the evidence in front of us. Wouldn't the experience and ability of the Ombudsman's office to reduce administration costs also allow greater funding to go towards the inspectorate?

Mr Strange: I understand that is the rationale for the model. I do not know whether that will be what happens in practice. As I have said, I think there is a potential for competition amongst resources and priorities. There are administrative savings in the way that the model is structured, but how that ultimately plays out is really an operational issue that will unfold over time.

Mr BROWN: Do you have any concerns about the operation of the Office of the Queensland Ombudsman at the moment? Do you have any evidence of that?

Mr Strange: No. We are not closely involved.

Mr BROWN: They have been involved in detention and youth detention.

Mr Strange: Yes. I have not followed closely what they have done in that space other than to know that, I think probably for the time that we have had an ombudsman, they have had responsibility for dealing with administrative issues relating to corrective services. I did have a much closer perspective on that in previous roles, but that is seven or eight years ago now.

CHAIR: There being no further questions, Mr Strange, thank you for your attendance and your written submission.

Mr Strange: Thank you.

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

BARTHOLOMEW, Mr Damian, Chair, Children's Law Committee, Queensland Law Society

SHEARER, Ms Elizabeth, President, Queensland Law Society

CHAIR: Good morning. I invite to you make a short opening statement, after which committee members will have some questions for you.

Ms Shearer: Thank you, Chair and committee, for inviting us to attend today. In opening, I acknowledge the traditional owners of the lands on which we meet here in Meanjin, the Turrbal and Jagera people, and pay deep respect to elders past, present and emerging, and to the law men and law women who, for tens of thousands of years, ensured the peace, order and good governance of this place long before it became known as Queensland.

The Queensland Law Society acknowledges the importance of establishing a robust legislative framework to protect the rights of individuals who have been detained. We support the establishment of an Inspector of Detention Services to promote the humane treatment and the conditions of people detained. Notwithstanding this support, we have some concerns regarding the bill that are outlined in our written submission. I will summarise four of them for now.

One is that we think the bill is not sufficient to comply with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment. We think there needs to be an increase to the scope to include all facilities where people are detained, not just those named in the act. This relates to the OPCAT compliance issue. We think the regulation of mandatory inspections for some facilities is insufficient and there should be greater frequency to watch houses and youth detention centres in particular as they are used to detain children, who require greater protection. On the suitability of the inspectorate staff used to carry out inspections, we think there is scope for improvement.

I said there were four but there is a fifth. The final issue is that this function needs to be sufficiently resourced for it to be anything more than a tick-and-flick, name-only thing. To provide real protection resourcing is important. I am joined today by Damian Bartholomew and Matilda Alexander. We will be pleased to take any questions that you have.

Mrs GERBER: Thank you very much for your opening statement. It was very comprehensive and a nice summary. My question is in two parts. The first relates to funding. We have heard from all submitters today that there are issues in relation to ensuring this role is adequately funded. Some submitters have said that, in order for it to be more than just a name, it should be completely independent and not within the remit of the Queensland Ombudsman. Other submitters have said that funding should just be a line item. I am interested in your perspective on that. Do you think the purpose would be best served if it was completely independent and its own statutory body or does the funding just need to be looked at within this bill and it be given its own line item so that it can be guaranteed?

Ms Shearer: I think our position is: as long as it is adequately resourced. The Western Australian model, which is standalone, is a good one but we do not have a strong view that it could not operate effectively from the Ombudsman's office, as long as it is adequately resourced and not lost in the high volume of all sorts of complaints that that office deals with.

Mrs GERBER: I refer to your opening statement that the powers should be expanded, per se, to include all places of detention, which potentially would include a mental institution or such detentions that probably are not canvassed by the bill or specifically outlined. I will pose to you the same question that I posed to other submitters. I am not sure if you have turned your mind to this, but potentially that could encompass quarantine facilities. If it was appropriately funded, is that something that should be looked at and there should be oversight of?

Ms Shearer: Our view is that it should cover anywhere people are detained. That would include quarantine facilities. Probably our more significant concern is in relation to watch houses and the transport of people to watch houses. We think that is a glaring omission.

Ms Alexander: Certainly OPCAT compliance talks about closed facilities. In some of the case law it says a protest could be a closed facility if the police are blocking people from leaving. Really, it should be a lot broader. Some aged-care facilities may be closed facilities. Some aspects of education could be a closed facility. An inspectorate that is an OPCAT compliant model would be able to look at any closed environments in Queensland.

Mrs GERBER: It is hard to fathom, I guess, with the current funding model and how it is structured, how the Queensland Ombudsman would be able to do all of that without an actual line item of funding because there are competing interests there. That is a concern that you all share in relation to the funding?

Ms Shearer: I think we are concerned that it is not just a minimalist model, with going to prisons once every five years being sufficient. We think it has to be a living and effective model and for that it will need resources. In relation to whether the detention is under the criminal law or the civil law, it does not really matter if you are detained. If you are detained in a locked ward in a hospital, you are detained as if you were in a prison. People in locked wards in aged care or locked wards in mental health facilities are very vulnerable and I do not understand why they are any less deserving of protection than people in prisons. I do not know if you want to add anything about children, Damian?

Mr Bartholomew: Only to say that I think it is particularly important that it does include the transport facilities for people who are in police custody. Certainly the society has had discussion about the adverse consequences we have seen in other states and what has happened to occupants of police transport who have died and who have suffered significant injury in police transport, so it is very important that this legislation would cover that.

To answer your question in terms of the issue of resources, the frequency of those visits is very important—increasing that frequency for ensuring effective resources. To answer the present question in terms of children, the particular anomaly within the bill may be, of course, that we have adult facilities being inspected on a five-yearly basis and we have children's facilities being inspected on a one-yearly basis, however watch houses are included in that five-yearly basis. We know that, for instance, on Saturday there were more young people being held in a watch house than were being held in the new West Moreton Youth Detention Centre. Obviously if we are continuing with the situation where we have children being held in watch houses on regular occasions for lengthy periods of time, which is unfortunately currently continuing to occur, it is important that the frequency of watch house attendances be escalated at least to reflect the visitations to the detention centres.

Ms BOLTON: I would like to go to point 5 of your submission regarding the implementation of the inspector's recommendations and accountability. We have heard from earlier witnesses the need for transparency, including reporting recommendations being public but also to parliament. You note that there is no provision for the enforcement or implementation of the inspector's recommendations. Can you give us the background to your concerns on that particular recommendation?

Ms Alexander: I think we can see a really clear example of this kind of problem in the coronial inquest field, where coroners have made, time after time, the same recommendations about hanging points, the same recommendations about collaborations between corrective services and Queensland Health and those recommendations do not have any kind of follow-up or any kind of requirement. That is why you see again the same death for the same reasons that all these resources went into identifying and articulating and publicly stating but without any kind of accountability for the solution. What we want to see here is an ability to say what the problem is, an ability to really deeply listen to the people who are being detained and to have that communication be a two-way street—not just going back and forth between the powers that be within a prison but also going back to the people detained, which is not currently built into this law. Then once that has been made public we need to make sure that makes a difference, that it stops that ever happening again.

Ms BOLTON: Basically it is about the oversight to make sure that when things are recommended they are done?

Ms Alexander: Absolutely.

Mr HUNT: The submission states—

> … we consider that clause 4 of the Bill should expressly state the purpose of preventing torture, cruel, inhuman and degrading treatment or *punishment*.

'Punishment' is in italics in the submission. Is that in addition, over and above?

Ms Alexander: That is based on the international law around the OPCAT provisions.

Mr HUNT: Could you tease out for me what '*punishment*' means in the context of your submission?

Ms Alexander: It is bringing it into line with international case law so there would not be a dispute. When we are looking at a particular practice, we can draw on those.

Mr HUNT: Any particular practices, though? Is there anything that stands out?

Mr Bartholomew: I do not know that there is any particular punishment that we are seeking to highlight, only to say that there is an importance for us that there is a consistency between the provisions of the convention and the legislation that is trying to be implemented.

Mr HUNT: No specific examples of anything that has caused concern?

Ms Shearer: No, it is really just a consistency point of view: if this is the piece of legislation the government says enacts obligations under OPCAT, the legislation should be consistent.

Mrs GERBER: We heard from the Human Rights Commissioner around wanting to ensure the inspectorate has adequate oversight over children in detention centres. One of the recommendations from the Human Rights Commissioner was that notification be given as soon as a child is detained and in a detention centre or a watch house so that adequate oversight can happen. Is that something that the society would support as well, or what mechanisms do you see should be in place in order to adequately protect and have oversight over youths in detention or watch houses?

Mr Bartholomew: As indicated, the society is particularly concerned to ensure that the interests of children are properly reflected in this legislation. The importance of having adequate access to the watch house in particular, as well as the detention centre, is very important and, as indicated, is an omission possibly within the legislation. I do not know that the society has a particular view about the best mechanism to do that, but I think generally the sentiment of the Human Rights Commission does seem to be an appropriate mechanism for ensuring the inspectorate is aware of that so they can ensure that is being undertaken. Probably consistent with that is the frequency of attendance even at the detention centre. Perhaps from one year to six months might be a more appropriate period, taking into consideration the vulnerability of young people and the very young age of some young people being held in both watch houses and detention centres.

Ms Shearer: I think that would need to come with sufficient resourcing so that the notification is not just off into the ether.

Mr BROWN: In regard to the expansion of the scope to aged-care settings and quarantine, is that not already covered off by the functions of the Aged Care Quality and Safety Commission, the Health Ombudsman and the Ombudsman?

Ms Shearer: I think the aged-care commission has demonstrated significant failures in protection, so this is a mechanism that is being introduced in Queensland for some facilities of detention, and our point is: why not extend that to all facilities where people are being detained?

Mr BROWN: At the moment we are seeing a lot of failures from the federal government and states having to step in. You are saying this is another one of those examples?

Ms Shearer: No, I am not drawing any conclusion about the respective responsibilities for failures that have occurred. I am saying that you are establishing a regime that will allow some inspection.

Mr BROWN: That is inspection powers from the aged-care commission?

Ms Shearer: We are saying that it is an environment in which this regime would also be helpful.

Mr BROWN: It would be a double-up, would it not?

Ms Alexander: You talked about the Ombudsman and the Health Ombudsman as well as the aged-care oversight. I think we need to look at the purpose of those bodies. The purpose under the Ombudsman Act is to improve government administration. The purpose is not to monitor and look for torture or cruel, inhuman and degrading treatment. This is a very important purpose that we need to explicitly cover for our international obligations. I think the recent Owen-D'Arcy case in the Supreme Court really highlighted how those differences in roles can play out. In that matter the Ombudsman and the official visitors had been regularly having contact with Mr D'Arcy, but it was not until it went to the Supreme Court that the Supreme Court was able to say this treatment—keeping you in solitary confinement for seven years—is a breach of humane containment. It does demonstrate that it depends what question you are asking when you are doing those monitoring visits and what is the purpose of those visits. The purpose here is about preventing torture and cruel, inhuman and degrading treatment, and that needs to be explicitly articulated.

CHAIR: That concludes this public hearing. Thank you very much to all the witnesses who have participated today. Thank you to our Hansard reporters. Thank you to the secretariat. An archived broadcast and a transcript of these proceedings will be available on the committee's parliamentary webpage in due course. I declare this public hearing for the committee's inquiry into the Inspector of Detention Services Bill 2021 closed.

Mrs GERBER: Would you be able to send the committee a copy of that Supreme Court judgement that you just referred to.

Ms Alexander: Yes.

The committee adjourned at 10.56 am.