

16 November 2021

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Via email: lasc@parliament.qld.gov.au

Dear Committee Secretary

Thank you for the opportunity to comment on the Inspector of Detention Services Bill, which constitutes a significant step in improving our state's monitoring of places of detention.

My role as Public Advocate is to advocate for systemic reform in relation to adults with impaired decision-making ability. I wish essentially to make one point about the Bill, which concerns the monitoring of places in which people with impaired decision-making ability are detained.

The Inspector of Detention Services Bill (clause 6) defines 'place of detention' to include the following:

- '(a) a community corrections centre;
- (b) a prison;
- (c) a watch-house
- (d) a work camp;
- (e) a youth detention centre'.

While some of the people who are held in the above settings are people with impaired decision-making ability, there are other, often disability-specific, settings where people with impaired decision-making ability are also held. These include acute mental health facilities, the Forensic Disability Service, and some disability and aged-care settings where the utilisation of restrictive practices means that the residents in question are in effect detained.

While there is no direct reference in the Bill to a key international instrument in this area, the Bill sees Queensland making significant steps towards implementing the requirements of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which Australia ratified in 2017; the Commonwealth, state and territory governments in Australia are currently designing the way OPCAT will be implemented here.

OPCAT requires (Article 1) the establishment of 'a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment'. In defining 'deprivation of liberty' Article 4 provides that this 'means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority'.

The Australian Human Rights Commission (AHRC) has pointed out, in its *Implementing OPCAT in Australia* report (2020, p. 42), that 'OPCAT has broad application to any place where an individual cannot leave of their own free will, and where that place of detention is linked, either directly or indirectly, to a public authority'. The Commission has further noted (p. 43) the Commonwealth government's view that 'primary places of detention' should be prioritised for OPCAT compliance

purposes. While residential aged care facilities would not, according to the Commonwealth government, be included in that category, the Commonwealth Ombudsman, in the *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* report (2019, p. 5), notes the Commonwealth government's suggestion that 'primary places of detention' would, however, include 'closed facilities or units where people may be involuntarily detained by law for mental health assessment or treatment (where people are held for equal to, or greater than, 24hrs such as a locked ward at a residential institution)' and 'closed forensic disability facilities or units where people may be involuntarily detained by law for care (where people are held for equal to, or greater than, 24hrs)' (see also AHRC, *Implementing OPCAT in Australia* report, p. 43).

In Queensland such facilities would include acute mental health services where people are held on an involuntary basis and the Forensic Disability Service. At present Queensland's Inspector of Detention Services Bill (clause 6) does not extend to cover inspections in these facilities. In order to implement OPCAT in Queensland, however, it will be important for such facilities to be included in OPCAT-compliant monitoring. This coverage could be provided for in the current Bill; failing that, it will need to be the subject of future legislation.

I would also look to a time when the monitoring of other settings in Queensland are covered by OPCAT-compliant legislation, including places where the use of restrictive practices amounts to detention of the individuals involved – such as residential aged care facilities and disability services settings. In addition to enabling Queensland to meet the requirements of OPCAT, this would inevitably lead to significant improvements in the well-being and treatment of people in those settings.

A final comment I would make is that any meaningful monitoring of the conditions in, and treatment of people in mental health, aged care and disability settings needs, of course, to be focussed on improving such conditions and treatment, and therefore requires sector-specific expert guidance. To that end, I do recommend, as a guide to the optimal way of monitoring detention in those settings, *The Ithaca Toolkit for monitoring human rights and general health care in mental health and social care institutions*.

Thank you for receiving my comments on the Bill. Please don't hesitate to contact me if you would like me to discuss further any of the points raised here.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)
Public Advocate