



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

*Protecting Queenslanders' individual rights and liberties since 1967*

The Secretary  
Legal Affairs and Safety Committee  
Parliament House  
QLD 4000

lasc@parliament.qld.gov.au

Dear Sir/Madam,

## **Inspector Detention Services Bill 2021**

Thank you for the opportunity to make a submission in relation to this Bill.

The QCCL has been campaigning for an inspector of prisons for years and welcomed the recommendation of the Sofronoff inquiry that one be established. It would however be remiss of us not to mention the fact that it is now almost 5 years since that recommendation was made. However, as they say, better late than never.

We would like to make the following comments in relation to the structural aspects of the system proposed in the Bill.

Firstly, we note, that the role is to be performed by the Ombudsman. Mr Sofronoff clearly intended that the Inspectorate would be separate from the Ombudsman. We suspect this a cost reducing measure and the Committee should seek an assurance that the Ombudsman will be adequately funded to carry out these additional tasks.

The second structural issue has been raised by advocates such as Debbie Kilroy, that there is no specific provision for prisoner complaints. It seems to us that section 11 would permit the Inspector to receive complaints. But if there is any doubt about the issue it should be specifically addressed by amendments to the Bill.

The third structural submission, is that the powers of the Inspector should be extended to inspecting the quarantine of people for health reasons, be it in hotels or otherwise. We make this recommendation on the assumption that the State will be operating a system of quarantine from now on.

It is our view plain that quarantine is a form of detention. There seems to be a rather odd argument by some that because people voluntarily fly home from overseas knowing they will be placed in quarantine; they are consenting to be going into quarantine. This is absurd.

There is no halfway house between a person being at liberty and that person being detained. They either are or they are not. If a person cannot leave a place without being arrested, they are detained, even if they arrived at the place voluntarily. And of course, people who leave quarantine without permission are tracked down by the police brought back and charged.

The Irish High Court recently heard a challenge to that country's hotel quarantine system, which is very similar to ours. The challenge was on the basis that it violated the Irish Constitution's Article 40.4, which prohibits unlawful detention, including detention in breach of the Constitution. Whilst the Court upheld the constitutionality of the hotel quarantine system,



it is clear that it accepted that hotel quarantine was a form of detention and therefore subject to review under Article 40.4 of the constitution<sup>1</sup>.

The government has announced its intention to build or operate facilities which can hold in total thousands of people, people who have committed no offence and who are being detained for the protection of the community. Those individuals are as much entitled to the protection of the Inspectorate as those who are in the custody of the corrective services or the police.

We would make the following comments on specific provisions of the bill:

1. Clause 12 (4) –consistently with our long-standing policy, we oppose this abolition of the privilege against self-incrimination.
2. Clause 44- the confidentiality of information supplied to the inspector has to be accorded the highest level of protection. This sort of information is likely to be a honeypot for law-enforcement authorities. The section needs therefore to go further and to prohibit access by law enforcement authorities to information obtained by the inspector even by a warrant or court order, unless the inspector consents and in the case of information likely to incriminate the provider of the information, that person also consents.

We trust this is of assistance to you in your deliberations

Yours faithfully



Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
18 November 2021

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<sup>1</sup> *Heyns v Tifco Ltd* [2021] IHEC 329 see para 5 [https://www.courts.ie/acc/alfresco/1093b15d-cfd4-4784-8c16-45ddeeae731a/2021\\_IHEC\\_329.pdf/pdf](https://www.courts.ie/acc/alfresco/1093b15d-cfd4-4784-8c16-45ddeeae731a/2021_IHEC_329.pdf/pdf)