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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

18 November 2021

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

By email only: lasc@parliament.qld.gov.au

Dear Committee Secretary

Submission regarding Inspector of Detention Services Bill 2021

I am writing to provide a submission on behalf of Sisters Inside Inc regarding the Inspector of Detention Services Bill 2021.

About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither “good” nor “bad” but rather, one’s environment and life circumstances play a major role in behaviour. Criminalisation is often the outcome of repeated and intergenerational experiences of violence (including state violence), poverty, homelessness, child removal and unemployment. Equally, policing, prisons and courts are not ‘neutral’ systems; they reflect and reproduce racialised, heteropatriarchal and ableist hierarchies, which we can see most clearly through the mass incarceration of Aboriginal and Torres Strait Islander women and girls.

Informed by our values, Sisters Inside advocates for the abolition of prisons, policing and other forms of state-sanctioned violence, control and imprisonment. We recognise that abolition requires us “to imagine a constellation of alternative strategies and institutions” (Davis, 2003, p.107). Therefore, Sisters Inside maintains a strategic interest in legislation to the extent that it affects criminalised women and girls. However, we remain ambivalent about the role and potential of independent oversight mechanisms to end society’s reliance on the prison system. We recognise some opportunity for these mechanisms to address the material conditions of women and girls who are currently in Queensland’s prisons and watch houses, as well as to provide some opportunities to meaningfully centre the voices and interests of criminalised women and girls.

Context

Queensland’s prison system has been in crisis for decades, but in the past few years conditions have been worsening at an accelerated pace for prisoners. In the past two years, an extremely high number of people have died in police and prison custody in Queensland. Since January 2020, nine adults have

died in Queensland prisons.[1] Additionally, in September 2020, a 49-year-old Aboriginal woman died in the Brisbane City Watch House (Smith, 2020). Further to these officially recognised deaths, in 2021 Sisters Inside has supported three mothers who have lost pregnancies in prison, including two late-term pregnancies.

The recent rise in deaths in custody has occurred at around the same time as new measures have been introduced in response to the COVID-19 pandemic; lawyers, support organisations and family members have largely been locked out of prisons (see Whittaker, 2021, pp.113-114; Blaber, Walsh and Cornwell, 2021, p.54; Allam, 2021b) and many prisoners have been placed into conditions of solitary confinement or overcrowding (Blaber, Walsh and Cornwell, 2021). We do not dispute the legitimate concerns about the transmission of COVID-19 within prisons; however, we are concerned that the measures taken by prisons are disproportionate, inconsistent with basic human rights and not subject to sufficient public scrutiny (see generally Blaber, Walsh and Cornwell, 2021). As Gomeroi legal scholar Alison Whittaker (2021, p.113) observes, the challenge of getting a clear picture about what occurs in prisons "is not a new problem, but [the emergency measures precipitated by COVID-19 have] exacerbated old conditions escalating under the prison industrial complex".

In Queensland, the *Human Rights Act 2019* (Qld) has entered into force. However, Aboriginal and Torres Strait Islander women and girls, people with disabilities and people with mental illness continue to be over-represented in prisons and, by implication, watch houses. (Australian Bureau of Statistics, 2021; Australian Institute of Health and Welfare, 2020a; Australian Institute of Health and Welfare, 2020b). Additionally, many people are now spending longer periods in prison due to extreme delays in relation to the Parole Board's consideration of applications for release (Caldwell, 2021). This situation has resulted in a substantial increase in applications to Queensland courts by prisoners for judicial review or for re-consideration of their sentence to mitigate the impact of parole delays (see Dibben, 2021; Murray, 2021; Keim, 2021). Judicial officers are also citing parole delays as the reason for reduced sentences at first instance (see Hardwick, 2021). By exacerbating the existing problems of overcrowding, the parole delays contribute to the likelihood of systemic human rights abuses in Queensland prisons.

The Inspector of Detention Services represents one mechanism to respond to human rights abuses, but only to the extent that this entity is adequately empowered, informed and resourced to challenge the status quo in prisons, watch houses and other places of detention. The Inspector's work will only be effective if it can make clear the relationship between individual 'incidents' and systemic issues. Individual complaints are often representative of systemic issues and, additionally, the treatment of people in prison at moments of crisis merits greater scrutiny as people are more likely to be subjected to human rights violations. To ensure the Inspector's role does not entrench an artificial division between individual and systemic issues, we believe more work must be done to address the serious deficiencies in complaints mechanisms and independent advocacy support for prisoners.

We note that the Bill does not address the role of the Official Visitors, who we assume will remain embedded within Queensland Corrective Services. The Sofronoff Review recommended that the Official Visitor scheme should be moved from Queensland Corrective Services to sit within the independent Inspectorate with oversight for prisons (see Sofronoff, 2016, recommendation 88). Whether or not the Official Visitor scheme is eventually embedded in the Inspector's office or another independent agency, the Queensland Government must address the known problems relating to the Official Visitor scheme (see also Kendall, 2020).[2]

[1] We determined this figure based on our review of QCS media statements available online: https://corrections.qld.gov.au/media/.

[2] We note the Queensland Government in its response committed "to establish an independent inspectorate based on the conditions included in the recommendation". The response is available here: https://parolereview.premiers.qld.gov.au/.

Specific comments on the Bill

Sisters Inside provided feedback in relation to an earlier version of the Bill through a targeted and confidential consultation process. We note that the Bill has been substantially amended and cut back since that process. This section outlines our comments on the Bill before the Parliament and highlights our main concerns.

The model of independent oversight

Between 2006 and 2019, various inquiries in Queensland have recommended the adoption of an independent oversight mechanism for prisons, similar to the Western Australian Inspector of Custodial Services (see submission from Caruana 2021, pp.2-4 regarding the Bill, which helpfully summarises this history). This Bill represents the Queensland Government's legislative response to these recommendations.

We are disappointed that the Bill does not adopt the Western Australian model of a standalone and fully resourced independent oversight mechanism. Instead, the Bill proposes that the Queensland Ombudsman will be appointed as the Inspector of Detention Services (see clause 33), and the Ombudsman's office will be 'supported' by the Ombudsman's office.

Despite the commitment in the Explanatory Notes to the Bill that the "Inspector will have its own resourcing dedicated to the performance of its functions" (at p.7), it is difficult to see the decision to believe that this model will not have resourcing implications in practice. Other submissions in relation to the Bill have clearly outlined reasons why this model of embedding an independent mechanism within another entity does not work. The Tasmanian experience discussed in Caruana's submission (2021, p.4) is of serious concern, especially given the comparatively smaller prison population in Tasmania (see also Prisoners' Legal Service submission, noting the resource constraints relating to the Parole Board).

It seems clear to us that the Queensland Government has prioritised cost-savings over the rights and interests of Queensland prisoners. The Bill must be amended to provide for an independent Inspector of Detention Services based on the model that is currently in place in Western Australia.

Definition of 'detention service' and 'place of detention'

The Bill adopts a very limited definition of "detention service" (clause 5) and "place of detention" (clause 6). We recommend the definitions of "detention service" and "place of detention" must be expanded to align with the reality that many prisoners experience multiple, intersecting forms of imprisonment and control. An expansive definition would also be in line with the intention of the Optional Protocol to the Convention Against Torture (OPCAT), assuming the Inspector of Detention Services will be designated as the NPM in Queensland.

The Explanatory Notes to the Bill state (at p.17) that the definition of "detention services":

> does not include those people who are transported or detained for treatment or care under the *Mental Health Act 2016* (Qld) (as they are in the custody of the Chief Psychiatrist). It also does not include the journey after arrest to a watch-house for processing as this is before a person is remanded in custody by a prescribed police officer.

At minimum, the Bill must be amended to ensure that the above carve outs do not remain for prisoners.

It is routine practice for people to be transferred between prisons and mental health institutions, including secure facilities at The Park. This highlights the need for a more expansive definition of "detention services" and "place of detention" within the Bill to avoid a piecemeal approach to the implementation of OPCAT in Queensland. At minimum, the Bill must be clarified so that it applies to

prisoners who may be transferred between prisons and mental health institutions, as these prisoners are highly vulnerable to human rights abuses because they are subjected to intersecting forms of control and surveillance.

Equally, we see it as an artificial and arbitrary exclusion that people being transported by police upon arrest are not included within the definition of "detention services". As the Committee will be aware, any transport by police raises risks of human rights abuses, especially for Aboriginal and Torres Strait Islander people. In 1993, an 18 year old Aboriginal man, who was a dancer and well-known community member, died in police custody in South Brisbane, as he was being transported only a short distance after arrest (Browning, Clarke and Bremer, 2020). The police actions in relation to the teenager's arrest and transport have always been contested (see Clarke, 2020), and illustrate the need for independent oversight of transport practices that do not depend on death. The Bill must not enshrine a limited or technical definition of "detention services" because this will fail to achieve the goal of preventing human rights abuses by police.

We also note that police frequently work alongside paramedics in situations where people are or may be taken into custody. This joint response can result in negative outcomes for people. In 2015 and 2018, two Aboriginal men in their 30s have been killed in incidents involving a joint response by police and paramedics (see Rafferty and Kotaidis, 2021; Howells, 2019). In both of those cases, the Coroner's findings have discussed the physical restraint techniques used by police and the lack of care provided by paramedics, based on their own protocols. In our experience, Aboriginal and Torres Strait Islander women are disproportionately likely to have the police involved in instances when they need care from paramedics. At present, these joint response situations are subject to no independent oversight, unless a person dies. Therefore, we also suggest that the definition of "detention services" is amended to include transport of adults and children in ambulances, in all situations where there is police involvement.

Frequency of inspections

Clause 8(1)(c) of the Bill sets out the minimum frequency of inspections for youth prisons (at least once each year), secure adult prisons (at least once every 5 years) and other places of detention prescribed by regulation (at least once every 5 years). We consider these minimum requirements to be insufficient. They do not reflect the reality that human rights abuses are routinely experienced in every prison, and that the prison system has been in crisis for a prolonged period, with no independent oversight. This limited commitment to inspections suggests that adequate resourcing is unlikely to be available for more frequent inspections.

A requirement for more frequent inspections must be legislated to at least ensure that **all** adult and youth prisons are inspected during the initial period that the Bill is in force.

The need to centre Aboriginal and Torres Strait Islander women and girls with lived experience as experts

The Bill includes some provision for engagement with Aboriginal and Torres Strait Islander people, as well as people with lived experience of imprisonment (e.g. clauses 9 and 38). In our view, the Bill could be further strengthened to ensure the voices, skills and insights of these experts are centred in the Inspector's work.

To the extent that the Inspector produces authoritative 'knowledge', including standards and official guidance, *about* the needs, interests or positions of Aboriginal and Torres Strait Islander women and girls in prison, this will not be accountable to the women and girls whom it purports to know. As Whittaker (2018, p.35) argues, to move beyond practice of "extractive witnessing", legal mechanisms

like the Inspector must embrace critical Indigenous research methodologies that are built around self-determination and Indigenous control of data and knowledge production.

We recommend that the Bill must make clear provision for the employment of Aboriginal and Torres Strait Islander people, and particularly Aboriginal and Torres Strait Islander women within the Inspector's office. Our preference would be for women and girls with lived prison experience to be employed.

Ministerial complaints process

Clause 17 of the Bill provides a process for the Inspector to raise matters related to an individual and only provides for these matters to be raised with the Minister after a show cause process with the responsible officer for the relevant "place of detention". Based on the limited detail in the Bill, it is difficult to conceptualise how this process will ensure procedural fairness for prisoners who are at greater risk of ongoing human rights abuses. For example, it is difficult to see how the Inspector would take responsibility to protect prisoners from reprisals, as no provision is made for the prisoner (or a representative) to be included in or notified about this process at any point. We suggest that there must be a clearer process to provide for appropriate notice to a person in prison (or their representative) about the Ministerial process.

Relationships with non-government organisations

Part 2, Division 4 of the Bill sets out the framework for the Inspector's relationship with other entities. By only providing for the Inspector's relationship with official institutions, including the institutions it inspects, the Bill aligns the Inspector with the priorities of these institutions and gives them legislative significance. These provisions miss an opportunity to provide explicit guidance for the Inspector to engage with non-government organisations that represent or work closely with people in prison, as well as Indigenous-community controlled organisations and the family members of Aboriginal and Torres Strait Islander people who have died in prison or police custody. The Bill should be amended to clarify the Inspector's engagement with non-government organisations that support people in prison and their families.

Consideration of the peace and good order of prisons

Under clause 48 of the Bill, a person performing a function under the Bill must have regard to the good order and security of the place of detention and the safety of any person at, or whose work is connected with, the place of detention. We question how it is possible for the Inspector to assess the factors under clause 48, except based on information provided by the staff responsible for "detention services". This is highly problematic as those staff have a direct interest in concealing issues from inspection.

This clause needs to be amended to make it clear *how* the staff under the Bill are expected to have regard to these factors and to empower them to question staff of 'detention services' to seek entry. If an inspection (announced or unannounced) does not proceed due to this section, the reasons for this decision by the Inspector must be reported in the Annual Report.

The position of the Inspector

Although the Bill amends the *Ombudsman Act 2001* (Qld) so that the conflict of interest provisions apply to the Inspector (see clause 73), these provisions assume an individualised and discrete approach to identifying and 'resolving' conflicts of interest.

In addition to these provisions, we suggest that the Bill must clearly state that the Inspector must not be a former employee of a government or private company involved in "detention services", especially Queensland Corrective Services or the Queensland Police Service. The possibility that a former

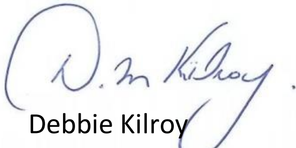
employee of a 'detention service' could be the head of the independent oversight mechanism for these places, represents a serious conflict with the spirit and purpose of the Bill, that cannot be 'resolved'. Conflicts of interest ought to be considered at the systemic level and this should be reflected in the Bill.

Concluding comments

In this submission, we have provided feedback on the Bill. More broadly, we are concerned that the conditions for women and girls in prison are continuing to deteriorate without any effective mechanisms for individualised complaint, oversight or advocacy support. In addition to this Bill, the Queensland Government must commit to review the Official Visitor scheme to ensure that there is an independent and proactive review mechanism that is focused on the individual needs of prisoners.

Should you wish to discuss this submission further, please feel free to contact me at

Yours sincerely,



Debbie Kilroy
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