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Committee Secretary
Legal Affairs and Safety Committee
Parliament House

Inspector of Detention Services Bill 2021 (Qld)

Submission by Prisoners' Legal Service

18 November 2021

Introduction

Thank you for the opportunity to provide feedback about the draft Inspection of Detention Services Bill 2021 (the Bill).

PLS is a community legal centre that has operated in Queensland for over 30 years. We provide legal advice and representation to people in prison about matters arising from imprisonment. PLS has significant expertise regarding the impact of incarceration on the most vulnerable members of our society.

PLS conducts prison visits, operates a telephone advice line, provides community legal education and responds to mail from people in prison across the state. PLS also provides legal representation to people in prison, in relation to parole decisions and prison matters. The majority of people who receive legal representation from PLS are First Nations people and people with disabilities.

On 27 August 2021, PLS provided submissions relating to an earlier version of the Bill through a targeted consultation process. We acknowledge and welcome the significant amendments that have since been made following that consultation. Nevertheless, we have outstanding concerns about the limitations of the proposed Inspection of Detention Services Model and consider that further amendments are required.

PLS has had an opportunity to view submissions made by the following stakeholders relating to the current version of the Bill:

- Mr Steven Caruana of the Australia OPCAT Network dated 10 November 2021; and
- Sisters Inside dated 18 November 2021.

PLS supports the content of both of those submissions. PLS does not intend to replicate comments that have already made by others and which we agree with. Instead, we provide this submission to illustrate why implementing the recommendations made by Mr Caruana and Sisters Inside is vitally important to ensure the Inspectorate can achieve its purpose.

State of Queensland's prisons

There are chronic and systemic human rights concerns within Queensland's prisons. Over the past three years, a number of published reports have identified different concerns about the state of affairs in Queensland prisons.[1]

Violence is chronically under-reported. Serious violent and sexual assaults are common. People in prison do not report these experiences because doing so places their safety at risk.[2] Many people in

[1] See for example, Human Rights Watch, 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia' (Report, 2018); Crime and Corruption Commission, 'Taskforce Flaxton' (Final Report 2018); Department of Health, Clinical Excellence Division, 'Offender Health Services Review – Final Report' (Report, October 2018); Anti-Discrimination Commission Queensland, 'Women in Prison 2019: A Human Rights Consultation Report' (Report 2019); Tamara Walsh et al., 'Legal perspectives on solitary confinement in Queensland' (Report, 18 May 2020).

[2] Legal Aid Queensland, 'Task Force Flaxton – Corruption Risks in Queensland Corrective Services Facilities' (Submission to Taskforce Flaxton, 11 April 2018) <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Public%20Hearings/Flaxton/Submission/Taskforce-Flaxton-Submission-13-Legal-Aid-Queensland-2018.pdf>.

prison are victims of institutional and sexual abuse from childhood.[3] Queensland Corrective Services psychologists primarily employ a risk management approach, rather than a trauma-informed approach.[4] It is PLS' experience that this approach exacerbates existing trauma from those experiences for people in prison.

Since January 2020, there have been nine deaths in custody in Queensland. Of those, five are recorded as having been in a 'single occupancy cell' and four of them were under the age of 40.[5]

Solitary confinement is increasingly used to manage vulnerable people who cannot be kept safe, either due to their own self-harming behaviours or the risk they face from others in prison.[6] Health care is chronically underfunded and there are numerous barriers to accessing timely and appropriate health services for people in prison.[7] People with disabilities face particular barriers accessing specialised services due to lack of proper diagnosis, long waiting lists, negative staff attitudes and lack of resources.[8]

Access to rehabilitation in prison is limited. For more than a decade, PLS has observed significant numbers of people failing to receive access to recommended rehabilitation programs prior to becoming eligible for parole.[9]

Parole decision-making in Queensland is in crisis. There are chronic delays in the consideration of parole applications and parole suspension decisions, resulting in large numbers of people who do not pose a risk to the community, remaining in prison.[10] The system adopted for communicating parole decisions results in the most vulnerable people being excluded from the process due to their social and economic disadvantage, such as an inability to read or write.[11]

The current crisis with parole decision-making directly contributes to issues within prisons, particularly overcrowding. As at 17 August 2021, there were 10,153 people in prison.[12] Overcrowding causes increased pressures and tensions amongst staff and people in prison. Forcing people to sleep on the floor and double up in small cells creates significant safety and hygiene issues.[13]

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[3] Butler, et al., 'Childhood sexual abuse among Australian prisoners' (2001) Venereology Vol 14(3).

[4] Anti-Discrimination Commission Queensland, 'Women in Prison 2019: A Human Rights Consultation Report' (Report 2019) 173.

[5] See QCS media statements online at <https://corrections.qld.gov.au/media/>.

[6] Tamara Walsh et al., 'Legal perspectives on solitary confinement in Queensland' (Report, 18 May 2020).

[7] Department of Health, Clinical Excellence Division, 'Offender Health Services Review – Final Report' (Report, October 2018) [xi].

[8] Human Rights Watch, 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia' (Report, 2018), 66.

[9] See for example, *Gough v Southern Queensland Regional Parole Board* [2008] QSC 222, [54]-[78] and *Burridge v Parole Board Queensland* [2021] QSC 244, [119].

[10] See Felicity Caldwell, 'Prisoners kept behind bars for months amid backlog', *Brisbane Times* (20 April 2021) <https://www.brisbanetimes.com.au/politics/queensland/prisoners-kept-behind-bars-for-months-amid-parole-board-backlog-20210420-p57kqa.html>. See also PLS submission, Police Powers and Responsibilities Bill 2021 (Qld) (8 October 2021) <https://documents.parliament.qld.gov.au/com/LASC-C96E/PPROLAB202-10FD/submissions/00000005.pdf>.

[11] See for example, Prisoners Legal Service, 'Annual Report 2020-21', 12 and 15.

[12] Katie Hall, 'Probe into parole glut', *Townsville Bulletin* (23 August 2021) 12.

[13] Queensland Ombudsman, 'Overcrowding at Brisbane Women's Correctional Centre (Report, September 2016) viii, 17.

These factors create an environment that harvests mistreatment, hinders rehabilitation and brutalises some of the most vulnerable members of the Queensland community. It is therefore unsurprising that over 50% of people released from prison back into the community will reoffend and return to prison within two years.[14]

Scope and definitions

It remains troubling that the State government has not made a decision about whether the Inspector will be delegated as the National Preventive Mechanism (NPM) to meet Queensland's obligations under the Optional Protocol to the Convention Against Torture (OPCAT).[15]

It is difficult to envisage that an additional NPM aimed at meeting OPCAT obligations for places of detention in Queensland will be established once this system is in place. For this reason, the obligations within OPCAT should be contained in this legislation from the outset.

PLS is extremely concerned about the current definitions for 'detention service' and 'places of detention' contained within clauses 5 and 6 of the Bill, for the same reasons as identified by Sisters Inside. The government should comply with the intentions of OPCAT by expanding these definitions to cover all places where someone may be deprived of their liberty.

The Explanatory Notes to the Bill identify that people being transported, detained or treated under the *Mental Health Act 2016* (Qld) are not included within the definition of detention services because they are in the custody of the Office of the Chief Psychiatrist.[16] However this does not alter the reality that many people are detained in mental health facilities. Mental health facilities must therefore be included in the definition of a place of detention.

For example, the classified patient provisions of the *Mental Health Act 2016* (Qld) enables people in prison to be transferred to authorised mental health services for treatment and care when they become acutely unwell.[17] PLS has many clients who are transferred between prison and mental health institutions as classified patients. In 2019-20, a total of 436 people were referred to be considered for classified patient status and 224 people were admitted to mental health facilities as classified patients.[18]

Classified patients in mental health facilities are detained at all times.[19] They are serving sentences of imprisonment. It is artificial to create a divide between people detained in prison and people detained in mental health institutions. PLS holds significant concerns about the conditions experienced by classified patients detained in mental health institutions. It is our experience that some mental health institutions cannot provide certain classified patients with basic entitlements, such as family visits and confidential legal interviews.

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[14] Queensland Productivity Commission, 'Inquiry into imprisonment and recidivism' (Report, 01 August 2019), x.

[15] Legal Affairs and Safety Committee, Public Briefing – Inquiry into Inspector of Detention Services Bill 2021 (Qld), Transcript of proceedings, 15 November 2021, 6.

[16] Inspector of Detention Services Bill Explanatory Notes, 17.

[17] A helpful summary of the classified patient process can be found in the Queensland Health Classified Patient Factsheet available online at <https://www.health.qld.gov.au/__data/assets/pdf_file/0030/444963/classified-patients-fact.pdf>

[18] Chief Psychiatrist Annual Report 2019-20, 17.

[19] Limited 'community treatment' can be provided to classified patients if necessary but must be confined to the grounds and buildings of the mental health service where they are detained and they must be escorted at all times. See s219 of the *Mental Health Act 2016* (Qld).

Excluding mental health facilities from the remit of the Inspector means that human rights concerns within these institutions will remain unchecked. It also prevents oversight from occurring about the interaction between prisons and mental health institutions, where significant issues have been identified by the Supreme Court of Queensland regarding lack of bed space resulting in people being detained in prisons instead of mental health facilities.[20]

There are benefits to having one agency responsible for preventative detention monitoring in both prisons and mental health facilities due to the interconnectedness of these institutions. This is illustrated by the case study of *Jess provided in our submission of 27 August 2021, who was constantly transferred between prison and mental health facilities without any appropriate oversight into the cyclical nature of her transfers between solitary confinement in prison and placement in mental health facilities.[21]

Existing complaints bodies

An earlier version of the Bill purported to transfer the oversight of the Official Visitor Scheme (OVS) from Queensland Corrective Services to the Inspector. PLS agrees with the current version of the Bill which has removed the OVS from the remit of the Inspector. This aligns with its purpose of preventative detention monitoring rather than investigation of individual complaints. However, this does not alter the urgent need for significant reform to the OVS, which investigates individual complaints for people in prison.

Existing complaints bodies are not able to effectively address the human rights concerns in Queensland's prisons. PLS' previous submission dated 27 August 2021 identified significant inadequacies within the Official Visitor Scheme (OVS).[22] In addition, the Queensland Human Rights Commission (QHRC) is backlogged with high numbers of complaints, resulting in delayed notification to complainants about whether their complaint had been accepted.[23] Given the average period of imprisonment in Queensland is 3.9 months,[24] delays in accepting complaints can result in them becoming redundant because a person in prison is released before their complaint is considered. This means both individual and systemic issues remain unexplored.

Individual complaints serve an important function of providing an avenue for immediate redress for vulnerable people experiencing human rights abuses in prison. Complaints bodies and non-government organisations can also play an important role in advising the Inspectorate about thematic issues which require exploration.

We note that clause 27(2)(a) of the Bill enables information to be shared by the OVS with the Inspector, however there is currently a lack of clarity about how the various agencies involved in investigating, addressing and preventing human rights abuses in prisons will work together.

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[20] See for example, *Attorney-General for the State of Queensland v McCann* [2018] QSC 115 and *Attorney-General for the State of Queensland v Sands* [2020] QSC 45.

[21] A copy of PLS' original submission made as part of the confidential consultation process is provided as Annexure A to this submission. See Case Study B for the description of the experience of * Jess (not her real name).

[22] See Annexure A to this submission.

[23] Queensland Human Rights Commission, 'Annual Report 2020-21', 46.

[24] Queensland Productivity Commission, 'Inquiry into imprisonment and recidivism' (Report, 01 August 2019), x.

Resourcing

Given the increasing size of the Queensland prison population and scale of systemic human rights concerns identified above, it is vital that the Inspector is properly resourced to serve its function.

PLS is concerned that the current model may not provide adequate resourcing to the Inspectorate. Clauses 35 and 36 of the Bill require the Queensland Ombudsman to provide administrative support services to the Inspectorate and enable delegation of Ombudsman staff to inspectorate duties. This arrangement is likely to lead to operational pressures similar to those experienced in Tasmania.[25]

The difficulties associated with relying on existing agencies to host independent bodies have become acutely evident through the parole crisis in Queensland, where the funding deficits have contributed to the wide-scale parole delays which ultimately come at a significant human and financial cost.[26]

In the long-term, it will be more cost-effective to properly fund the Inspectorate from the outset so that its focus on examining systems and preventing harm can reduce the number of individual complaints and legal proceedings commenced about human rights abuses stemming from systemic problems.
An additional means by which to enhance the Inspector's capacity and ensure barriers associated with identifying and preventing harms in closed environments are overcome, is to expand the definition of services providers within clause 18 of the Bill to include non-government organisations.[27] There is a wealth of knowledge and experience amongst non-government organisations in Queensland who work with people in prison from which the Inspectorate could benefit.

Conclusion

The Queensland prison system is in crisis with significant human rights concerns impacting some of the most vulnerable members of the community. Queensland needs a vigorous detention monitoring body that is designed to overcome the well-recognised barriers associated with identifying and preventing harms in closed environments.[28]

The Inspector should conform with obligations set out in OPCAT. The definitions of 'detention services' and 'place of detention' must be expanded. The Inspector must also be adequately resourced so that it can properly perform its function. In addition, there is an urgent need for the government to address deficiencies associated with the OVS to ensure that individual complaints can be appropriately identified and addressed.

Thank you for your consideration of this submission.

Yours sincerely

Helen Blaber
Director / Principal Solicitor

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[25] See pages 4, 5, 11, 12 and 13 of Mr Caruana's submission of 10 November 2021.

[26] See PLS Submission about parole delays dated 2 March 2021 available online at <https://secureservercdn.net/104.238.69.81/9hk.a4b.myftpupload.com/wp-content/uploads/2021/11/PLS-Parole-Delays-Submission_020321.pdf>.

[27] See pages 15 -16 of Mr Caruana's submission of 10 November 2021.

[S] See for example Kavev (2021) 'Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms'.

Prisoners' Legal Service

ANNEXURE A

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27 August 2021

Submission on the Queensland Inspector of Detention Services Bill 2021

Thank you for the opportunity to provide feedback about the draft Inspection of Detention Services Bill 2021 (the Bill).

About PLS

PLS is a community legal centre that has operated in Queensland for over thirty years. We provide legal advice and representation to people in prison about matters arising from imprisonment. PLS has significant expertise about the impact of incarceration on the most vulnerable members of our society.

PLS has run a number of successful projects aimed at reducing incarceration and recidivism, including helping people in prison draft parole applications and a financial counselling program for people in prison and their families. PLS maintains a strategic focus on the use of solitary confinement in Queensland due to our concerns about the prevalence of this practice and the harm it causes to individuals and society as a whole.

PLS conducts prison visits, operates a telephone advice line, and responds to mail from people in prison across the state. PLS also provides targeted legal representation on matters relating to imprisonment for people who are experiencing particular disadvantage. In 2020-21, of the clients who received PLS' legal representation:

- 77% were people experiencing disability
- 63% identified as First Nations people
- 23% were women

Scope of submission

The invitation has requested submissions about technical, operational and implementation issues only. Feedback is not being sought on the model itself as these policy decisions have already been endorsed by the Queensland Government. Unfortunately, it is simply not possible to provide any meaningful feedback on the Bill without addressing the serious deficiencies with the proposed model. If the Queensland Government wishes to implement an Inspectorate Regime that will prevent mistreatment of people in prison and provide a genuine accountability mechanism for the way prisons are managed, significant amendment to this model is required.

The lack of acknowledgment that this regime will serve the purpose of meeting obligations under the Optional Protocol to the Convention Against Torture (OPCAT) for Queensland's prisons is concerning. It is difficult to envisage that an additional National Preventive Mechanism (NPM) aimed at meeting OPCAT obligations for prisons in Queensland will be established once this system is in place. For this reason, the purpose of OPCAT should be mirrored in the purpose of the Bill from the outset. It is not

appropriate that concerns about the scope of this regime be deferred for a review of the Bill in five years' time, when the existing shortcomings are readily identifiable.

PLS has had the opportunity to review submissions from the following individuals/agencies that have already been provided in relation to the Bill

- Steven Caruana of the Australia OPCAT network (28 pages)
- Sisters Inside dated 20 August 2021
- Queensland Advocacy Incorporated dated 26 August 2021

PLS supports the content of each of these submissions and their recommendations. We do not intend to repeat what has already been said by others. Instead, this submission will focus on the discrete topic of the Official Visitor Scheme (OVS) and our concerns that transferring this system from Queensland Corrective Services (QCS) to the Inspector of Detention Services (IDS) will replicate existing failings. PLS' position is that the OVS should be abandoned in its entirety and replaced with a new scheme that enables fulfilment of the powers and purpose of NPMs as identified in the OPCAT.

Situations of vulnerability

When considering any detention monitoring regime, it is fundamentally important to recognise situations of vulnerability that exist in closed environments which heighten the likelihood of mistreatment. Situations of vulnerability can arise due to personal, environmental or socio-cultural factors.[1] Some groups of people are specifically vulnerable.[2] Some environments will increase vulnerability for all people.

People with disability are chronically over-represented in the criminal justice system.[3] The prison system is not well equipped to meet disability-related complex needs and incarceration is a risk factor for elevating certain behavioural problems.[4] It is therefore unsurprising that people with disabilities who are in prison in Queensland, experience harsher conditions and higher levels of violence and abuse compared to others.[5]

First Nations people are also dramatically over-represented in prison due to dispossession, discrimination, inter-generational trauma and a lack of meaningful reform.[6] First Nations people also have higher incidence of disability which compounds the disadvantage they face in prison.[7]

Women in prison are one of the most disadvantaged groups in our society. Many have experienced sexual/physical abuse and have high mental-health needs and caring responsibilities for children, families and others.[8] First Nations women have much harsher experiences of imprisonment and are

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[1] Kavev (2021) 'Prisoners in a situation of vulnerability – A Handbook for National Preventive Mechanisms', 17.
[2] Ibid, 17.
[3] See Australian Institute of Health and Welfare, (2019) 'The health of Australia's prisoners 2018', 77,78,106,107.
[4] Rowe, et al. (2017) 'The provision of services under the NDIS for people with disabilities who are in contact with the criminal justice system' Submission to the Joint Standing Committee on the NDIS, 13.
[5] Human Rights Watch, (2018) 'I Needed Help, Instead I Was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia'.
[6] Tauli-Corpuz (2017) 'End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples' cited in Human Rights Watch, above n 5, 19-20.
[7] Ibid, 21.
[8] Anti-Discrimination Commission Queensland (2019) 'Women in prison report: a human rights consultation report', 61.

more likely to be held in solitary confinement, involved in a breach of discipline and held in secure custody.[9]

Placement in solitary confinement creates a situation of vulnerability for all persons, regardless of their individual characteristics.[10]

An effective detention monitoring body must be tasked with exploring risk factors associated with situations of vulnerability and implementing positive measures aimed at meeting the special needs of people facing those situations.[11]

Official visitor scheme

The *Corrective Services Act 2006* (Qld) (CSA) currently contains a process for official visitors to be appointed to visit each prison once a month.[12] During those visits, the official visitors investigate individual complaints made by people in prison and review safety orders (SOs) and maximum security orders (MSOs).[13]

Each prison must have at least one official visitor who is a lawyer, a female (where assigned to visit female prisons) and a person who identifies as Aboriginal or Torres Strait Islander (where assigned to visit a prison where there are a significant proportion of prisoners who identify as Aboriginal or Torres Strait Islander).[14] Official Visitors are coordinated by the Office of Chief Inspectorate (OCI) who in turn, reports to Queensland Corrective Services (QCS).

The OCI and OVS have been criticised for lack of independence due to their connection with QCS.[15] The Bill proposes to transfer the scheme from the oversight of QCS to the IDS to address identified problems associated with lack of independence. The difficulty with this proposal is that it assumes lack of independence is the primary problem with the existing OVS, when this is not the case.

From PLS' perspective, lack of independence is not the primary problem with official visitor's ability to conduct meaningful investigations of complaints and reviews into orders for vulnerable people in prison. It is our experience that the individuals appointed as official visitors discharge their duties impartially. We consider the more pressing issue is that the scope of the official visitor's duties as currently defined in the CSA, prevents them from undertaking a proper review of the lawfulness of decisions and human rights abuses faced by vulnerable people in prison. In addition, official visitors often lack expertise in relation to situations of vulnerability and do not take a preventative, proactive approach towards mistreatment that occurs in prison.

Solitary confinement

The deficiencies of the OVS can be examined through an analysis of reviews conducted by official visitors into the orders which authorise placement of people in prison in prolonged solitary confinement.

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[9] Ibid, 63.
[10] Shalev (2008) 'A sourcebook on solitary confinement', 69.
[11] Above n 1, 17.
[12] *Corrective Services Act 2006* (Qld) s 286.
[13] *Corrective Services Act 2006* (Qld) ss 56; 63 and 290.
[14] *Corrective Services Act 2006* (Qld) s 286.
[15] Crime and Corruption Commission Qld (2018) 'Taskforce Flaxton An examination of corruption risks and corruption in Queensland prisons', 49; Sofronoff (2016) Queensland Parole System Review, para 1230.

Solitary confinement involves a person being locked down in their cell for at least 22 hours a day with limited or no association with others.[16] Prolonged solitary confinement is when a person has been held in these conditions for more than 15 days.[17]

The adverse health effects of solitary confinement are well-documented; ranging from florid psychotic disturbances, to less dramatic effects such as difficulties with concentration or tolerating external stimuli.[18] For people who have pre-existing mental health conditions, solitary confinement exacerbates their illness and significantly increases their risk of suicide and self-harm.[19] Solitary confinement can also undermine the goals of good order and security of a prison by making people more disordered and anti-social, thus hindering their ability to reintegrate into the prison population and the community.[20]

International standards prohibit the use of solitary confinement for people with disability and the use of prolonged solitary confinement (periods longer than 15 days).[21] These standards are increasingly being upheld overseas with courts making findings that prolonged solitary confinement breaches their domestic human rights instruments.[22]

The use of solitary confinement in Queensland's prisons and the corresponding human rights concerns are well documented.[23] Under the CSA, the placement of people in prolonged solitary confinement is authorised by MSOs and SOs. While there are time limits for the duration of each of these orders, the CSA permits an unlimited number of consecutive orders to be made, meaning people can spend months or years in solitary confinement.[24]

MSOs and SOs are the only two types of orders within the CSA that contain an express requirement for official visitors to conduct regular reviews.[25] These review requirements exist due to the seriousness of involuntary separation of people in prison, particularly in light of the Royal Commission into Aboriginal Deaths in Custody, which emphasised the need for effective measure to prevent incidents of self-harm in custody and more accountable decision making processes.[26]

PLS considers the OVS is ineffective in preventing the harms associated with solitary confinement or meeting the recommendations by the Royal Commission into Aboriginal Deaths in Custody.

In recent research conducted by Professor Tamara Walsh of the University of Queensland (in partnership with PLS), interviews were conducted with lawyers and advocates working with people detained in solitary confinement in Queensland prisons.

The report produced containing this research, contains comments from participants about the limitations of the OVS:

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[16] *The Nelson Mandela Rules*, Rule 44. See also Walsh et al. (2020) 'Legal perspectives on solitary confinement in Queensland', 9.
[17] Ibid.
[18] Grassian, 'Psychiatric Effects of Solitary Confinement' (2006) 22 Washington University Journal of Law and Policy, 325.
[19] Walsh et al., above n 16, 10.
[20] Ibid.
[21] *The Nelson Mandela Rules*, Rules 43,44 and 45.
[22] See for example *Francis v Ontario* [2021] ONCA 197.
[23] Human Rights Watch, above n 5, 39-57; Walsh et al., above n 16, Anti-Discrimination Commission Queensland, above n 8, 140-143.
[24] Walsh et al., above n 16, 16.
[25] *Corrective Services Act 2006* (Qld) ss 56; 63. Reviews are also required by psychologists where safety orders are made because the person is considered to pose a risk to themselves or others, however these reviews are generally conducted by QCS psychologists and therefore lack independence.
[26] *Corrective Services Bill 2006*, Explanatory Notes, 7-8.

'I don't know that I've ever seen [an official visitor] recommend that the order be cancelled…I've even spoken to official visitors who have said to me, "I don't feel that I can do anything else." And they've acknowledged how traumatised they are by seeing the effects of solitary confinement on people. But they don't think it's their role to discuss that. Their role is to discuss whether the legislative criteria has been met. And they say yes.' [27]

The report went on to note that participants said that:

> *''unlawful'* practices often go unchallenged. In particular, participants said that it was common for prisoners on safety orders not to be provided with two hours out of their cells each day, yet this *'just slips through and nobody notices'.'*[28]

In relation to the impact of legal representation, it found:

> Legal visits were also important to ensure accountability; in one group, participants said that *'the most effective way I have found to ever get somebody off a safety order is just to go and visit them.'* This, they said, *'shows that quite often the safety orders aren't really justified'* and prisoners are reliant upon lawyers to provide a check on decision-making.'[29]

The failure to engage in vigorous reviews of people detained in solitary confinement can have devastating consequences. Walsh's review of coroner's inquest findings in Australia, found that 49 inquest findings mentioned terms relating to solitary confinement and 72% of these prisoners were found to have died as a result of suicide.[30] A common theme amongst these suicides is insufficient oversight and inadequate mental health monitoring.

PLS is aware that over the last 16 months, there have been nine deaths in custody in Queensland. Of those, five are recorded as having been in a 'single occupancy cell' and four of them were under the age of 40.[31] These numbers raise serious concerns about the effectiveness of the existing detention monitoring provided by the OVS.

PLS case studies

The below de-identified case studies were taken from PLS files which contained copies of official visitor reports and case notes that were obtained through Right to Information.

Case study A: Pete

Pete (not his real name) is an Aboriginal man in his thirties with a history of mental illnesses such as paranoid schizophrenia and depression. Pete was detained in solitary confinement on consecutive safety orders for approximately six months. While in solitary confinement, Pete was regularly deprived of his legislatively required two hours of exercise each day and his requests for stimuli in his cell were denied. Pete's mental state deteriorated, causing him to regularly defecate on the floor and write on the walls of his cell with his own faeces.

Official visitors reviewed and confirmed Pete's safety orders three times. Their reports contain no regard for the negative impact that solitary confinement was having on Pete's pre-existing mental health conditions or his long term prospects of rehabilitation and reintegration. The report made no recommendations for changes to his

[27] Walsh et al., above n 16, 47.
[28] Ibid, at 48.
[29] Ibid, at 46.
[30] Ibid, at 35.
[31] See QCS media statements online at https://corrections.qld.gov.au/media/.

conditions or removal from his order. Additionally, despite repeatedly using Pete's poor behaviour as grounds to extend his safety order, the official visitor reports did not once mention his poor mental health. In fact, Pete's episodes were often dismissed as childlike tantrums.

PLS made submissions to Queensland Corrective Services which resulted in improved conditions for Pete under his safety order and shortly after, he was released on bail.

Case study B: Jess

Jess is an Aboriginal woman in her forties with a significant history of mental illness. During her time in prison, she spent more than a year in solitary confinement on safety orders which were made for a range of reasons including to manage her mental health/behavioural and medical conditions, being at risk of suicidal and self harm behaviours, being difficult to manage and displaying poor institutional behaviours. The safety orders appeared to be made and confirmed as a way to manage Jess's unpredictable behaviour and the risk she posed to others, yet with no regard for the long-term prospects for her mental health, rehabilitation, and reintegration.

Jess was transferred to mental health facilities several times. Although this invariably had a positive impact on her medical conditions, she would then be placed directly back in solitary confinement after being discharged, causing a re-deterioration of her mental state. While in solitary confinement, Jess' case notes show that she was regularly deprived of her legislatively required two hours of exercise each day due to 'non-compliance'.

Jess's safety orders were regularly reviewed and confirmed as being appropriate by official visitors to the prison. The reports produced by the official visitors raised no concerns about the way in which Jess's medical conditions were being managed or the cyclical process of her mental state deteriorating after she returned from mental health facilities and was placed back into solitary confinement. They also made no reference to her lack of exercise yard access.

For example, one report by an official visitor acknowledged that Jess had a history of behavioural deterioration following her reintegration into solitary confinement from mental health facilities, and yet provided this as a reason for confirming the safety order. Another review found that the management of Jess's medical conditions and medication contributed to the need for the safety order.

Jess was released from prison on bail, shortly after providing instructions to PLS.

Conclusion

This submission has focused on drawing attention to the failings of the OVS by highlighting deficiencies in relation to solitary confinement reviews, due to our strategic focus and particular expertise in this area. However, we hold equal concerns that the investigatory functions conducted by the OVS are failing to provide meaningful redress for other mistreatment that occurs in prison, including use of force[32], strip searches[33] and breaches of discipline decisions. This is not the fault of the individual official visitors. It is also not caused by lack of independence. The OVS system has not been designed to overcome the unique challenges associated with conducting detention monitoring in closed environments.

Queensland needs a vigorous detention monitoring body that is designed to overcome the well-recognised barriers associated with identifying and preventing harms in closed environments. Effective

[32] See for example PLS Submission to Taskforce Flaxton at https://www.ccc.qld.gov.au/sites/default/files/2019-08/Public%20Hearings/Flaxton/Submission/Taskforce-Flaxton-Submission-4-Prisoners-Legal-Service-2018.pdf
[33] See for example Anti-Discrimination Commission Queensland, above n 8, 128.

detention monitoring aimed at preventing human rights violations requires positive measures that go beyond the mere inspection and monitoring of compliance that occurs within the current OVS.[34]

When investigating harsh prison conditions, there must be a specific requirement to explore whether there are less restrictive means available to achieve the goal of good order and security in prisons. There is also an urgent necessity for independent mental health and medical professionals to be involved in detention monitoring so that appropriate consideration can be given to how prison management decisions impact people experiencing disability and mental health conditions. Specific obligations must exist for monitoring places within prisons that are vulnerable to abuse. Chapter IV of OPCAT provides a starting point for NPMs aiming to achieve this standard.

Thank you for your consideration of this submission.

Yours sincerely

Helen Blaber
Director / Principal Solicitor

[34] Above n 1,17.