



## **Inspector of Detention Services Bill 2021**

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Submission by the Queensland Mental Health Commission

November 2021

## The Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. Under the Act, the Commission must focus on systemic mental health and substance misuse issues.<sup>1</sup>

In exercising its functions under the Act, the Commission takes account of issues affecting people who are vulnerable to, or otherwise at significant risk of, developing mental health issues, as well as recognising the importance of custom and culture when providing treatment, care and support to Aboriginal and Torres Strait Islander peoples.

The Commission works in four main ways:

- developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drug use
- undertaking reviews and research to inform decision-making, build the evidence base, support innovation and identify good practice
- facilitating and promoting mental health awareness, prevention and early intervention
- establishing and supporting statewide mechanisms that are collaborative, representative, transparent and accountable.

The Commission promotes policies and practices that are aligned to the vision of the *Shifting Minds Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023 (Shifting minds)*<sup>2</sup> for a fair and inclusive Queensland, where all people - including Aboriginal people and Torres Strait Islanders - living with problematic alcohol and other drug issues – can achieve positive mental health and wellbeing and live their lives with meaning and purpose.

*Shifting minds* guiding principles include respect for human rights and dignity. Focus area 1 of “Better Lives” aims at strengthening human rights protections and improving responses to human rights complaints.

*Shifting minds* also aims at reducing involvement with the criminal justice system for people with a mental illness and/or problematic alcohol and/or other drug use.

## Overview

The Commission welcomes the opportunity to make a submission to the *Inspector of Detention Services Bill 2021*.

We note that the objectives of the Bill are to create a new role of the Inspector of Detention Services to provide independent oversight over places of detention, namely: prisons, community corrections centres, work camps, youth detention centres and watch houses.

Independent inspectors will provide much needed accountability and transparency in the operation of places of detention and will provide the community with insight into detention environments.

The Commission agrees that there is a need to promote the improvement of places of detention and detention services with a focus on ensuring the humane treatment of detainees and the prevention of harm, including torture, cruel, inhumane or degrading treatment.

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<sup>1</sup> Section 11(2)(a) of the *Queensland Mental Health Commission Act 2013*

<sup>2</sup> [https://www.qmhc.qld.gov.au/sites/default/files/files/qmhc\\_2018\\_strategic\\_plan.pdf](https://www.qmhc.qld.gov.au/sites/default/files/files/qmhc_2018_strategic_plan.pdf)

The introduction of the Inspector of Detention Services will strengthen human rights protections in Queensland.

Although the Bill will improve oversight of the listed places of detention, the Commission wishes to highlight that secure mental health facilities and closed psychiatric hospitals wards are still lacking similar oversight mechanisms.

The Commission was hoping that progress would be made with the implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* which is to provide for independent inspections of all closed facilities, including locked wards. Unfortunately, issues regarding implementation are still subject to ongoing discussions between the States and Territories and the Australian Government.

## Aspects of the Bill relevant to the work of the Commission

- Human Rights protections

The Commission has a strong focus on human rights protections and creating a human rights culture in Queensland in view of the *Human Rights Act 2019*. We support increased protections for some of the most vulnerable people in our community – prisoners with a mental illness and/or alcohol and other drug use.

- Lived experience of mental illness and alcohol and other drug use

People living with mental illness are significantly over-represented in the justice system in Australia, with the AIHW reporting that approximately 2 in 5 prison entrants (40%) and prison releases (37%) reported a previous diagnosis of a mental health condition, including alcohol and other drug use disorders<sup>3</sup>.

In 2018, in Queensland 2 in 5 (39%) of people entering prison reported previously being told they had a mental health condition; 1 in 3 (32%) of people entering prison, and 1 in 8 (13%) leaving prison had high or very high levels of psychological distress<sup>4</sup>.

The prevalence of mental health issues in places of detention requires that people with lived experience of mental illness and/or problematic alcohol and/or other drug use are involved as staff supporting the Inspector with the reviews similar to people with a lived experience of the effects of detention and people who identify as Aboriginal or Torres Strait Islander.

Lived experience roles as defined in the *Queensland Framework for the Development of the Mental Health Lived Experience Workforce*<sup>5</sup> are for people employed specifically to:

- use their personal understanding of life-changing mental health challenges, service use and periods of healing / personal recovery, to assist others
- use their life-changing experience of supporting someone through mental health challenges, service use and periods of healing/personal recovery, to assist others.

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<sup>3</sup> <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>

<sup>4</sup> <https://www.aihw.gov.au/getmedia/eed8fe1f-1473-4a83-9b2d-62141ff3b23a/Prisoners-Qld.pdf.aspx>

<sup>5</sup> [https://www.qmhc.qld.gov.au/sites/default/files/qmhc\\_lived\\_experience\\_workforce\\_framework\\_web.pdf](https://www.qmhc.qld.gov.au/sites/default/files/qmhc_lived_experience_workforce_framework_web.pdf)

- Disclosure of information

The Commission has concerns about the 'disclosure of information' section and the limits to confidentially proposed in the Bill. The definition of 'confidential information' is very broad and creates many provisos for the Inspector to disclose personal information which could have a disproportionate impact on people with problematic substance use concerns and has the potential to breach an individual's privacy rights.

The explanatory notes state that the Inspector may seek health information about a detainee and that a detainee's consent must be sought in the first instance but where consent is denied or not possible then the information may be provided in the absence of consent. There are no parameters around this or explanation around what considerations need to be made to disclose the information in the absence of consent (e.g. there is an overriding public interest in disclosing the information or that it is necessary to avert risk to health and safety etc). This gap should be addressed.

- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

In December 2017, the Australian Government ratified the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). The objective of the present OPCAT is to establish 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. Issues regarding implementation are still subject to ongoing discussions between the States and Commonwealth Government. This is why there is currently no single body with the primary function of independent oversight of all places of detention, including closed mental health facilities. A renewed and stronger focus on finalising the discussions with the Commonwealth Government would ensure all places of detention – not just the ones mentioned in the Bill – would have much needed independent oversight.

## Conclusion

The Commission supports the Bill as it provides for more accountability and transparency of the prison system and other places of detention.

The Commission is pleased to see the involvement of people with a lived experience of detention and Aboriginal and Torres Strait Islander people being involved in the reviews as support staff. However, the Bill falls short of appropriately involving people with a lived experience of mental illness and/or problematic AOD use as expert staff to support the Ombudsman in the oversight of places of detention.

We have raised concerns about the disclosure of information section of the Bill which we recommend should be reviewed.

The Commission is calling for independent reviews of all places of detentions, including locked wards through the finalisation of the implementation of OPCAT.