Speech By

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MEMBER FOR MAIWAR

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INSPECTOR OF DETENTION SERVICES BILL

Mr BERKMAN (Maiwar—Grn) (11.23 am): In my contribution on the Inspector of Detention Services Bill I want to begin by making it clear that the Greens will support this bill. I think there is no denying that we need greater transparency and accountability in places of detention in Queensland, and an Inspector of Detention Services to uphold human rights and ensure basic human dignity and justice in places of detention is well overdue. While the bill is a step forward, we need to be clear about the fact that it does not properly meet our obligations under OPCAT, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. I will first of all voice some concerns about the independence and resourcing of the inspectorate and then I will raise some issues about where, when and how it will operate.

To align with OPCAT's requirements, the inspectorate should be an independent statutory body. That is what this government said they supported in response to the 2018 report on Taskforce Flaxton. Under this bill the existing Queensland Ombudsman will act as the newly established Inspector of Detention Services. Although the Ombudsman has experience as an integrity body, the critical role of Inspector of Detention Services requires total independence. In its submission the Queensland Council for Civil Liberties noted that the Sofronoff inquiry also intended that the inspectorate role would be separate from the Ombudsman. Establishing an integrity body to promote accountability and transparency in detention services is a significant improvement on the status quo even in the form proposed by the government, but it must not only be independent but also adequately resourced.

Based on lessons from Tasmania, Steve Carauna, coordinator of the Australia OPCAT Network, raised concerns about the dual appointment approach. In its 2018-19 and 2019-20 annual reports the Tasmanian inspector noted that they could 'only dedicate ten per cent of ... time to the inspectorate.' The submission from Australia OPCAT Network highlights how this occurs over time. It states—

> ... in his 2019-2020 Annual Report it was highlighted that 'It is overwhelmingly apparent that additional staff are required. The inadequacy of staffing is reflected by the long delays between onsite inspections and the publication of reports.' More recently in his *Lockdowns Review* 2021, the Inspector noted again 'resourcing constraints have prevented me from undertaking the review. It is only now possible because I was provided with temporary additional staff resources, and could therefore prioritise it.'

I support the suggestion from Sisters Inside and Queensland Advocacy Inc. that we adopt the Western Australian model of independent oversight and ensure a fully funded, resourced and robust standalone entity. If the Ombudsman is appointed in the IDS role it is imperative that the government ensures adequate additional funding, staffing and departmental support to ensure the functions of the inspector are fulfilled and that, importantly, places of detention are genuinely held accountable for the humane treatment of detainees. It is our job as elected representatives to ensure that the protection of human rights, dignity and safety is not dismissed or diminished in the name of cost savings.

The other concern that was most consistently raised in submissions on the bill was how unduly narrow the definition of a place of detention is. Sisters Inside, the Queensland Public Advocate, Change the Record, ATSILS, Human Rights Law Centre, QAI, Prisoners' Legal Service and the Law Society all recommended that the definition be expanded so it is consistent with OPCAT, which defines a place of detention as anywhere that a deprivation of liberty occurs—in effect, a place that a person cannot leave

of their own free will. The definition in this bill only includes community correction centres, prisons, watch houses and work camps. It leaves psychiatric wards, forensic mental health facilities, immigration detention and compulsory care facilities without oversight from the inspectorate. The bill explicitly excludes people being transported or detained for treatment or care under the Mental Health Act 2016 and the journey to a watch house following arrest.

As Sisters Inside points out in their submission, people are routinely transferred between prisons and mental health institutions. The Prisoners' Legal Service emphasised that people detained under the Mental Health Act are serving sentences of imprisonment. This bill creates an artificial and concerning divide between them and people detained in prison. In their submission PLS states—

> 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.

Again I would urge the government to not do this process by halves either out of penny-pinching or laziness. This is an opportunity to get it right, and the definition should be expanded so that it is consistent with OPCAT.

I am also concerned that the bill appears to set a minimum five-year inspection cycle for high security prisons and places prescribed by regulation. As much as the government might emphasise that this is only the minimum and inspections may occur more often than that, we know that the minimum sets the expectation. Particularly if the Ombudsman is performing this dual role it risks being under-resourced. As Change the Record points out, the ACT, Tasmania and WA have inspection frequencies of three years. Inspections every three years strike a far more appropriate balance between the available resources of the inspectorate and the priority to protect and promote human rights.

The more frequent the inspections, the fewer opportunities for human rights infringements, for institutional abuse and for safety concerns to continue overlooked and uncorrected for long periods of time. The government should amend their bill to at least align with the standards set in other jurisdictions.

The frequency of inspections is particularly problematic when we consider young people in detention. Children have particular needs and rights and they are particularly vulnerable in detention. While we continue to lock up young children—children as young as 10—inspections should be more frequent in these facilities. Given the limited number of youth prisons in Queensland, this is entirely feasible. It is also completely reasonable that the inspectorate be required to have specialised knowledge and expertise related to young people, yet this bill has no such requirement. The Queensland Family and Child Commission suggested that this should include expertise in child trauma and the identification and prevention of child sexual abuse.

The commission also recommends the inspectorate be notified whenever a child is to be kept in a police watch house overnight. It is well documented that putting children alongside adults—away from the youth specific procedures, training and resources of a detention centre—puts them at great risk of human rights violations. It is well known in this place and elsewhere that I do not believe children, especially young children, belong in prisons or watch houses at all, but if the government insists on putting them there it must take special care to ensure their rights are upheld.

Finally, I want to implore the government to create a clear mechanism for the inspectorate to receive, process and action complaints from individual detainees. A number of submissions pointed out that, although section 11 appears to permit the inspector to receive complaints, there is no specific provision in the bill to process and resolve these. The explanatory notes specifically say that the role will be preventive not responsive to individual complaints. It is not clear to me what the point is of a complaints process that essentially goes nowhere. There needs to be a process for dealing with these complaints within the inspectorate.

In conclusion, I reiterate that the Greens will support this bill because a new Inspector of Detention Services is certainly better than none at all. It is clear that, with ongoing overcrowding, under-resourced rehabilitation programs, human rights infringements, frequent and long lockdowns, and the ongoing overrepresentation of First Nations and disabled people in detention, this is well overdue. However, it will not work unless it is properly resourced, genuinely independent and broad enough to cover all places of detention in Queensland. It must include specialised oversight for children and young people and a process for people in detention to have their complaints heard and actioned. These underlying issues will not go away if we legislate a piecemeal, half-baked answer to the myriad calls for an inspectorate to meet our OPCAT obligations. This is our chance to get it right so we genuinely safeguard the rights of detainees in Queensland. I implore the government to take these suggestions on board and to create an Inspector of Detention Services that can perform this important role as well as Queenslanders expect and deserve.