




Speech By
Hon. Shannon Fentiman

MEMBER FOR WATERFORD

Record of Proceedings, 30 August 2022

INSPECTOR OF DETENTION SERVICES BILL

Second Reading

 **Hon. SM FENTIMAN** (Waterford—ALP) (Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence) (12.05 pm), in reply: I thank honourable members for their contributions to the debate on the Inspector of Detention Services Bill 2021. As I have previously indicated, the Palaszczuk government is committed to making sure that places of detention and detention services in Queensland are managed well and support detainees' general care, treatment and wellbeing.

We care about the human rights of all people, including those in detention. That is why the bill establishes an Inspector of Detention Services: to promote the improvement of detention services and places of detention; to uphold the humane treatment and conditions of people who are detained; and to prevent harm to detainees.

The inspector's independent oversight will be over prisons, community correction centres, youth detention centres and police watch houses. This oversight will occur through a system of regular inspections and reviews of places of detention and detention services as well as through independent, transparent reporting. The bill provides the inspector with powers to carry out their role including the power to enter a place of detention at any time, whether announced or unannounced; to carry out a review or inspection; and to access any part or place of detention or any vehicle or equipment used at a place of detention or detention services.

The inspector's reports on a review or mandatory inspection must include recommendations to promote improvements through changes in law or administrative action or by changes in infrastructure at a particular place of detention. Reports may also explore systemic themes drawn from the experiences of detainees. Annual reports of the inspector will track the progress of the inspector's recommendations, and all reports by the inspector must be provided to the Speaker for tabling.

Important safeguards and protections are provided to enable people to speak freely to the inspector, to protect confidential information and to facilitate information sharing. I am proud to say that the bill brings to fruition the recommendations of a number of Queensland criminal justice system reviews to establish an independent inspector over adult correctional services or youth detention centres, with this government extending the inspector's remit to include police watch houses.

I would now like to address comments made by honourable members during the course of the debate. The member for Clayfield gave us an illustrious historical recap of the prison system and noted his concerns in relation to the impact of this bill on the Ombudsman. His concerns lay in the Ombudsman being appointed as the Inspector of Detention Services. Although the Ombudsman will hold a dual appointment, the inspector will be a separate and functionally independent statutory appointment with its own staff and its own operating budget.

The government has approved initial and ongoing funding to ensure the inspector is adequately resourced to perform its functions without impeding on the functions of the Ombudsman. I know that the Minister for Children and Youth Justice and Minister for Multicultural Affairs outlined the funding

made available to the Ombudsman as a result of this appointment but, just to confirm, the government will provide the inspector with \$9.388 million over four years from 2021-22 and \$2.974 million per annum ongoing from 2024-25. The funding provides for the inspector to engage up to 16 FTEs to assist in performing its functions. The funding will allow the inspector to fulfil the functions set out in the bill efficiently and effectively.

The inspector has distinct functions and powers separate to those of the Ombudsman. The inspector will report separately to parliament on its operation and in relation to inspections and reviews. When performing functions of the inspector, a staff member will not be able to perform functions of the Ombudsman. The inspector will also control the Ombudsman's office to the extent that officers of the Queensland Ombudsman are involved.

The government identified the Queensland Ombudsman to hold the position of the Inspector of Detention Services due to the synergies between the roles, including that the Queensland Ombudsman is independent, reporting directly to parliament, and already oversees many of the places of detention included in the inspector's scope.

As an established office, the Ombudsman has existing relationships with places of detention and no other Queensland body is functionally independent with sufficiently similar breadth and scope of powers. There is also alignment between the current functions and powers of the Queensland Ombudsman and those of the inspector, including own motion powers to investigate systemic issues, powers to enter a place, power to make recommendations to authorities, ability to monitor implementation of recommendations, as well as reporting to parliament on matters. The Office of the Queensland Ombudsman also possesses similar privileges, immunities and protections when exercising its functions. Further, there are opportunities to monitor funding and resourcing for the inspector, for example, through the inspector's public annual reports in clause 21. There is also a portfolio parliamentary committee responsible for oversight of the inspector.

On 9 May, as part of the public hearing of the Queensland Ombudsman with the Legal Affairs and Safety Committee, the Ombudsman indicated that the additional funding envelope for the inspector is sufficient. The transcript shows that the member for Scenic Rim asked—

The new role the Ombudsman is picking up in another short while is the Inspector of Detention Services. I would like to ask if a commitment of funding has been made in relation to that role or if you are going to have to get out the begging bowl to government?

The Ombudsman responded—

Thank you for that question. I know it was quite a topical issue in the hearings conducted by the committee. A commitment of funding has been made, and I have advised the department of justice that I consider it to be sufficient to perform those functions. I think there is a strategic review in the bill after four or five years. We will know by then if more resources are needed. That review will be a good opportunity to check in on that. I am pretty confident that the allocation of funding is sufficient—or the promised allocation.

While I note some concern in relation to the transportation of detainees, the inspector's scope covers the transport of a detainee while in the custody of Queensland Corrective Services, Queensland police or youth justice in particular circumstances, being transport from any place of detention, or transport to a place of detention other than a watch house, or transport to a watch house from a court where the detainee has appeared, or to another watch house or place of detention.

The inspector's scope includes transport of a detainee to and/or from an authorised mental health service if the detainee is transported by the QCS, the QPS or youth justice. For example, the transport of an adult prisoner by QCS from a prison to the Park, an authorised mental health service, will be within scope. However, the inspector's scope does not include people who are transported or detained for treatment or care under the Mental Health Act 2016 because these detainees are patients in the custody of the Chief Psychiatrist. Prisoners transported to or from the PAH Secure Unit who are held on remand or serving a sentence of imprisonment in detention will come within the inspector's scope because the Princess Alexandra Hospital Secure Unit is declared a prison as per schedule 1 to the Corrective Services Regulation 2017.

The member for Currumbin raised concerns in relation to the number of inspections required under the act. The inspector is required to carry out mandatory inspections of particular places of detention, consistent with its preventive focus. However, the inspector will have flexibility to inspect other places of detention within its scope at any time as it sees fit or as systemic issues are identified.

The inspector is required to conduct annual inspections of the three youth detention centres in Queensland, being the Youth Detention Centre, West Moreton Youth Detention Centre and the Cleveland Youth Detention Centre; inspections at least once every five years for each prison that is a secure facility; and inspections at least every five years of all or part of a place of detention prescribed by regulation.

In relation to the frequency of mandatory inspections, relevant recommendations from the independent review of youth detention, *Queensland parole system review*, did not specify frequency of inspections. Further, there are other opportunities to look at this issue. For example, the relevant portfolio parliamentary committee responsible for the oversight of the inspector can look at this issue under clause 96 and, as part of the act's review, the act must be reviewed as soon as practicable five years after commencement.

The bill aims to balance transparency and accountability with providing flexibility for the independent inspector. The inspector can choose to inspect any place of detention within its scope at any time, including facilities that require mandatory inspections. It will be up to the independent inspector to determine when and how these inspections will occur. In addition to this, the inspector may inspect all watch houses at any time and can consider watch houses in the exercise of its review functions.

The bill allows a regulation to be made prescribing particular places of detention that the inspector must inspect at least once every five years. The provisions in the bill around inspection and mandatory inspections are intended to balance transparency and accountability by mandating inspections in relation to particular places of detention with giving the inspector flexibility to plan when and how to inspect other places depending on identified issues or risks.

We also heard from the member for Currumbin about how this bill does not sufficiently support OPCAT. The Queensland government supports the principles of OPCAT. However, Queensland will make no formal commitment to implement OPCAT until ongoing funding for NPMs is resolved with the Commonwealth government—an issue that may be resolved a lot more easily now that we have a new federal government—and this is consistent with every other jurisdiction. Although the purpose of the inspector bill is not to give effect to OPCAT, the inspectorate has been designed to encompass key features of an NPM as outlined in OPCAT. These features include: a preventive visiting mandate; financial and functional independence; unrestricted access to places of detention, persons and information; the ability to make public reports and recommendations; and privileges, immunities and protections from reprisals.

The Queensland government will work with the Commonwealth and other states and territories to determine how best to implement OPCAT in Australia. We understand that Commonwealth funding for OPCAT remains an outstanding issue with all other jurisdictions.

I note that the member for Surfers Paradise raised concerns, as did a number of members in fact, about the over-representation of First Nations people in custodial settings. Under the bill, staff appointments must take into account desirability of delegates having a range of knowledge, experience or skills relevant to the performance of the functions of the inspector. In addition, the inspector, under clause 66, must consider appointing staff who reflect the social and cultural diversity of, and vulnerabilities within, the population of detainees in Queensland.

The inspector will also be able to consult with or engage professionals and other people to assist in the performance of the inspector's functions and may arrange for a suitable person to help carry out a review or inspection. This may include subject matter experts, people suitable to the cultural background or vulnerability of any detained person, or people with lived experience of incarceration or disability. Suitable persons may include, for an inspection involving a detainee who is unable to speak with reasonable fluency in English, engaging an interpreter to translate an interview. It may also involve consideration of specific requests by LGBTIQ+ detainees.

It is well known that Aboriginal adults and juveniles and Torres Strait Islander adults and juveniles are over-represented in Queensland's justice system. It is important that the inspector and staff are culturally competent when engaging with people who identify as an Aboriginal person or a Torres Strait Islander person. If a review or inspection relates to a detainee who identifies as an Aboriginal or Torres Strait Islander person, the inspector must arrange for an appropriate representative for the detainee to assist the inspector. Such a representative is a person who identifies as an Aboriginal or Torres Strait Islander person or has appropriate authority to speak about Aboriginal tradition or island custom in relation to the detainee.

In response to the member for Maiwar's concerns, consistent with other inspectorate bodies the inspectorate is not a complaint body; it is an independent body established to look at systemic issues in places of detention. Complaints will continue to be managed by existing bodies, but this bill allows bodies that perform complaints based functions to share and for the inspector to access that information and inform the inspector's reviews, inspections and reports. As part of its general functions to review detention services, the inspector may also conduct systemic reviews following incidents or complaints.

I thank the member for Caloundra for his contribution to the debate and his tireless advocacy for corrective services officers across this state.

While the main purpose of this bill is to promote the improvement of detention services and places of detention, this includes a review of detention services associated with places of detention. These are defined broadly to include, for example, the operation and management of a place of detention and the safety, care and wellbeing of a detainee at a place of detention. It is therefore open to the inspector to consider overcrowding as part of an inspection or review and to report to the Legislative Assembly on the issue, including any advice or recommendations.

While the inspector's focus is on the treatment of detainees, detention services is also broadly defined to include the operation, management, direction, control or security of a place of detention. It is therefore open to the inspector to review staffing arrangements at a place of detention, including the safety and treatment of staff, and make recommendations for improvements. Ultimately it is a matter for the independent inspector as to what a review or inspection will focus on.

In conclusion, I once again thank all honourable members for their contributions during the debate and specifically wish to thank members of the Legal Affairs and Safety Committee for their thorough consideration of the bill. I would also like to take this opportunity to thank those stakeholders, organisations and individuals who made submissions to the committee and participated in the public hearing.

This bill will deliver significant benefits to Queenslanders through independent oversight for places of detention and detention services and recommended improvements in custodial environments in Queensland. It is an important piece of legislation that brings Queensland broadly into line with other jurisdictions across Australia that have independent inspectorates. The bill brings greater transparency and public confidence into how places of detention are managed. I commend the bill to the House.