




Speech By
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MEMBER FOR CLAYFIELD

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INSPECTOR OF DETENTION SERVICES BILL

 **Mr NICHOLLS** (Clayfield—LNP) (5.34 pm): Prisons, jails, penitentiaries, correctional centres, detention centres, watch houses, the brig, stockades, borstal or the big house—call them what you will but they all have one primary purpose, and that is locking people up, segregating those who have done wrong from the wider community for varying periods, from overnight in a watch house for offences like drunk and disorderly to life behind bars for capital offences. It is a regimented life with strict discipline and effectively a community of the watched and the watchers—prisoners and prison officers.

Australia was originally seen as the opportunity for one big place of detention, established firstly as a penal colony. It became necessary after the British lost the American Revolutionary War in 1782, and the Americans, understandably, stopped taking British convicts. As the prisons and hulks in old Blighty filled to overflowing and became pestilent and disease ridden, the government in the United Kingdom had to take action. The result was the First Fleet of 11 ships—775 convicts were transported on six of those ships. Officials, marines and crew members and their families totalled another 645 souls and helped fill a further five ships. Indeed, Australia became a community of the watched and the watchers.

Under the command of Captain Arthur Phillip, the fleet arrived at Botany Bay on 20 January 1788. Finding Botany Bay unsuitable, Phillip sailed north to Port Jackson and found one of the finest harbours in the world. On 26 January 1788, the entire fleet was firmly at anchor at what we now know as Sydney Cove. In 1824 the penal colony of Moreton Bay was established, and I am sure honourable members in this place will know the history of Queensland well enough that I do not need to continue the history lesson.

Mr Skelton: We love it!

Mr NICHOLLS: I heard someone say they love it. I am not quite sure who, but he will be in strife for saying that. Suffice to say that, by the time the last convict ship arrived in Western Australia in 1868, about 162,000 convicts had been transported to Australia. At the time Australia was being considered as a suitable repository for every poor soul who stole a shilling or a loaf of bread, the idea of prisons as places for lengthy detention had been around only for a short time.

Indeed, until the late 18th century prisons were not used for lengthy periods of detention. They were mainly used for debtors, people awaiting trial and convicts waiting for their sentences to be imposed—and that was usually death or transportation. In fact, it is amazing to consider how many offences were punishable by death. The other alternatives were usually public events designed to deter and shame. Some of these included the ducking stool, the pillory, whipping, branding and the stocks. In 1688 in the United Kingdom there were 50 offences on the statute book punishable by death, but that number had almost quadrupled by 1776, and it reached 220 by the end of the century. Most of the laws introduced during that period were concerned with the defence of property.

Grand larceny was one of the crimes that drew the death penalty. It was defined as the theft of goods worth more than 12 pence—about one-twentieth of the weekly wage of a skilled worker at the time. As the 18th century proceeded, jurors often deliberately under assessed the value of stolen goods

in order to avoid a mandatory death sentence, highlighting I think something that the people who look at these things over the years know, and that is that jurors exercise a discretion not available to courts that does seek to avoid the imposition of mandatory sentences—something that we should always consider in this day and age as well. In any event, the result was obvious—overcrowded jails and overcrowded prison hulks moored in the Thames and at Portsmouth and Plymouth off the English coast.

In 1735 a prison reform movement started to get under way. The House of Commons conducted an inquiry into prison reform. Although unsuccessful at first, a fellow called William Hay, the member for Seaford in Sussex, introduced bills to the British parliament in 1736, and again in 1737, that sought to make some changes to the situation of prisoners and reform of the poor laws.

Mr Power: When are we getting to the 19th century?

Mr NICHOLLS: The 19th century is coming, member for Logan. Indeed, for you even the 20th century and the 21st century will be coming along in due course.

Mr Power: This is cruel and unusual punishment!

Mr NICHOLLS: For someone who sits in a Labor caucus, he speaks with knowledge. One of the ideas in those early bills, member for Logan, was the inspection of houses of correction. Although the bills failed to gain support, it was the start of action on the reform of prisons. Perhaps the most significant reformer of prisons in the 18th century was an obscure country squire named John Howard. Appointed High Sheriff of Bedfordshire in 1773, he took the role seriously and commenced inspecting the prisons within his remit. He was appalled at the state of the prisons he inspected. He commenced a tour of all prisons in England and across the continent and produced a seminal work called *The State of the Prisons* in 1777.

In 1774, prior to his book being published, he also gave evidence to the House of Commons committee about the conditions he had witnessed in English jails. It led to two acts which aimed to improve conditions in jails. The first abolished jailer's fees and the second enforced improvements in the system, leading to better prisoner health. His published writings on the subject were widely read, and his detailed accounts of inhumane conditions caused dismay.

Member for Logan, you may consider that listening to me is inhumane treatment, but I can tell you that am going to continue. If the ALP government cannot organise themselves to finish on time, then we are all going to suffer together. I want to let everyone know that is the case. Take it up with the Leader of the House, because she has the capacity to do something about it. I see the member for Greenslopes escaping. I know that I should not comment on it, but he is off like he just got out of Alcatraz.

Mr Power interjected.

Mr NICHOLLS: You will like this. I think members on the other side will like this because it goes to their philosophy. He advocated a system of state controlled prisons in which the regime was tough—which is us—but the environment healthy—which was us as well. In 1779 the Penitentiary Act authorised the construction of two prisons in accordance with those theories. Howard advocated a regime of solitary confinement, hard labour and religious instruction. The objective of imprisonment, he believed, was reform and rehabilitation, not just punishment. Since that time the use and policy behind prisons, incarceration and things like solitary confinement has continued to bedevil policymakers and administrators right up to this day.

The Productivity Commission in its 2020-21 paper—I told you we would get to the 21st century, member for Logan—reports that Australia's criminal justice system—I think this is important or I would not say it otherwise—imposes a large and growing cost on taxpayers as well as indirect costs on prisoners, their families and society as a whole. Prisons are expensive, costing Australian taxpayers \$5.2 billion in 2019-20, or more than \$330 per prisoner per day on average. More than 40,000 people were in Australia's prisons as at 30 June 2020, although many more will flow through the prison system over the course of a year. Imprisonment rates and government expenditure on Corrective Services have been rising for several decades in all jurisdictions. That is certainly the case here in Queensland, as I will demonstrate in a moment or two. Australia's imprisonment rate is above the OECD average, and prisons are already operating at or above designed capacity—certainly here in Queensland and territories that is the case—and if current policies and trends continue, there is no doubt we will continue to need more and bigger prisons with larger capacity.

While this is not the subject of this bill in strict terms, it provides context for the complexity of the issue and does highlight the size of the job of the proposed Queensland inspector of prisons. It is an enormous task. In Queensland, the latest figures from the Government Statistician's office show an annual increase in prisoner numbers of 15 per cent and an increase in the crude rate of 13.9 per cent. That is the rate per 100,000 prisoners. In numbers, that means on 30 June last year there were 9,952 prisoners in Queensland jails, almost 1,300 more than the year before. That is a very substantial

increase. They are housed in 14 correctional facilities. There are obviously watch houses and three youth detention centres around the state. Even in my own electorate, Clayfield, there is the Helana Jones centre, a low-risk centre for women providing a home-style setting, on Sandgate Road. I note that this bill implements a policy taken to the last election by the government to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons and the like. I want to advise that the LNP will not be opposing this bill.

Mr Stevens: We gave them a vote, remember?

Mr NICHOLLS: That was a long stretch even for me. I do want *Hansard* to record that I value the contribution of the member for Mermaid Beach, as I always do.

Mr Stevens interjected.

Mr NICHOLLS: What do they call that mask? That is the other thing I want to know. Openness, transparency and accountability in the administration of places of detention carries on the tradition of John Howard that I have described previously in my contribution from three centuries ago.

This bill introduces the dual appointment model. Section 33 appoints the Queensland Ombudsman as the Inspector of Detention Services. I do want to note why this may be considered important. I took the time to investigate the Queensland Corrective Services website to investigate how effective the Office of the Chief Inspector of Prisons, which has been set up as a subdivision of Queensland Corrective Services, has been and to see what inspections have taken place.

The website says it is updated as at 2019, so this is the latest and most available information from that website. The last full announced inspection and report was carried out at the Southern Queensland Correctional Centre, the Gatton centre, which is in the member for Lockyer's electorate and I think just past the member for Ipswich West's area. That last full report was carried out in 2013.

The Office of the Chief Inspector may have been doing inspections, but they certainly have not been put up on the website or reported about. We do have reports going to the Arthur Gorrie Correctional Centre from 2012 and a follow-up in 2013; Borallon in 2009 with a follow-up in 2010; and the women's correctional centre. The others are there; it is just that nothing has happened since 2013. One wonders what the Office of the Chief Inspector has been doing in the absence of reports on the website that say they have been doing something. They may have been, but certainly the website does not update that information. The website also does not update prisoner number information. You have to go to the Government Statistician's office to find that. Queensland Corrective Services' information, at the very least, seems to be two years old. In fact, the Queensland Government Statistician gets his information from the report on government services by the federal government, the famous RoGS that we all know and hear about. We know that not much has been happening in this space.

There are many arguments about the model that would best serve the policy intent behind the bill. I have listened to what the minister taking up the cudgels on behalf of the Attorney-General said in her contribution to the debate a few minutes ago. There are many arguments about the model that would best serve the policy intent behind the bill. I think it would be fair to say that this model might be considered the most economical model utilising, as it does, the existing offices and facilities of the Ombudsman. I also note the minister's contribution in terms of the funds that will now be made available to support the Ombudsman in its role, and this answers one of the major queries that was raised by the vast majority of submitters.

It is important to note that the vast majority of submitters did not support the dual model and mainly supported the creation of a separate inspectorate. That was the evidence of many of the submitters—including Sisters Inside, knowmore and a number of other organisations. They all supported that. A fellow called Mr Steven Caruana wrote a very lengthy and detailed submission. He previously worked for the inspector of prisons in Western Australia and the Commonwealth in a similar role.

Minister, I understand you said \$9.3 million over three years—I think that was in your speech, which I am sure you will recall immediately—and \$2.4 million ongoing, which is another number that springs to mind. There will also be 16 extra staff going into the Ombudsman's office. That goes some way to addressing the concerns of submitters to the committee that it would be another obligation lobbed on to the Ombudsman's office that they would have to do with their existing resources. That additional funding will certainly be necessary, given the scale of the task I have identified in relation to the size of the state, the number of detention centres, the workload that is required and the potential to expand that to other areas given the definition that was identified in the legislation, such as the movement of prisoners or people in detention from one place to another. I think that is good news and it goes some way to addressing concerns that would otherwise be raised, rather than it just being lobbed on to everyone else.

It is important to identify a number of key comments made in some of the submissions. Mr Caruana wanted to amend the bill, and he said that appointing the Ombudsman does not align with the acceptance of recommendations arising from several past reports, including the reports of Mr Walter Sofronoff, the recently retired Chief Justice of the Court of Appeal. He suggested that we should reconsider the decision to appoint the Queensland Ombudsman as the Inspector of Detention Services and we should instead create a standalone independent statutory authority, like the Western Australian Inspector of Custodial Services.

He sought to include a number of other amendments to include a national preventive mechanism, including an obligation to submit proposals and observations on existing and draft legislation. He made other suggestions, including a requirement to ensure that the annual report is provided to the UN Subcommittee on Prevention of Torture and the Commonwealth Ombudsman. That was for the purpose of OPCAT, which the minister addressed as well. Throughout the submissions, there is a lot of reference back to OPCAT and its operations. There are a number of issues there.

The Public Advocate raised issues regarding settings that are disability specific, such as acute mental health facilities, the Forensic Disability Service and some disability and aged-care settings; otherwise it cannot comply with OPCAT. The Queensland Council for Civil Liberties supported the bill but highlighted the five years it has taken for the government to finally implement the recommendations from the Sofronoff inquiry and that the implementation is not as was recommended by Mr Sofronoff. I have already mentioned Sisters Inside. The Queensland Network of Alcohol and other Drug Agencies wanted to make some amendments because of the potential limits to health, particularly in relation to consent. The CCC in their submission provided by the former chair, Mr MacSporran, supported part 2 of the bill and looked at it in terms of being able to carry out their investigative duties of the inspector as a public official. That is the other side of the equation, if you like. The Queensland Nurses and Midwives' Union made submissions, and the Australian Lawyers Alliance had something to say about it. Quite a number of other organisations went down the path of making suggestions on how the matter could be improved.

I think the government has considered the matter and has come up with a model that it believes meets the obligations. The provision of funding to enable the Ombudsman to carry out the role of inspector of prisons, as well as the additional staff necessary to carry out that task, will address a number of those concerns. It is a model that we will watch with interest. The experience in Tasmania has been less than satisfactory, but as I understand it the Ombudsman in Tasmania already had a number of other roles and obligations and this was another one heaped onto them in order to get an inspectorate going. Ultimately, that has been less than successful in terms of the workload required. If I recall correctly, there is one person to do it and one research officer who is on 0.9 of an FTE. That certainly does not fill the bill.

We will hear from a number of people in relation to prison officers who are concerned that their views are not being taken into account and that they are somewhat offended that they might be considered to be engaging in torture and the breach of human rights. This has come through the Together union on behalf of the hardworking prison officers. We know there have been significant issues in some of our correctional centres and prisons. The work they do is difficult work, often conflicted work and dangerous work. We saw that in the Townsville detention centre where a prison officer lost an eye four or five years ago. The prison officers were concerned that they would be overlooked and categorised as some form of thuggish bully from movies of the 1950s and 1960s.

Mr Stevens interjected.

Mr NICHOLLS: I do not think I will take that interjection at this time. As worthy as I feel it would have been had I been able to hear it through his mask, I think I will just carry on.

Those prison officers are working in difficult conditions and deserve the support of the government and all of us in this place for the job they do in difficult places. I think the member for Mermaid Beach said this morning that prisons are full of people who did not commit the crime and who do not want to be there. They want to get out a lot of the time, so it is a very difficult job to maintain discipline in those places.

The LNP will not be opposing the bill. We will keep an eye on how it goes through the appropriate processes of the reports of the inspector and the estimates process. We are pleased to see the funding that has been announced by the minister to enable that project to go on. We look forward to seeing it established and we look forward to seeing its reports. As it was when that obscure country squire John Howard in the 18th century started his review of prisons, inspection, openness and transparency are the way that we will see humane conditions in our prisons and in our prison system. We are a better society for that all the way through.