

Inspector of Detention Services Bill 2021 Submission

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The Queensland Family and Child Commission (QFCC) acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies on which we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to their Elders past, present and emerging.

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Background

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Legal Affairs and Safety Committee regarding the Inspection of Detention Services Bill 2021 (the Bill).

The QFCC seeks to give practical effect to the rights of children and young people in Queensland through advocacy, awareness and accountability. Under the *Family and Child Commission Act 2014*, the QFCC is responsible for promoting the safety, wellbeing and best interests of children and young people, including those in contact with the youth justice system.

The introduction of an independent inspector of detention services in Queensland is an important step to provide safeguards for children in detention settings. This reform will respond to recommendations made in a series of reviews and inquiries within Queensland. It can also take part in fulfilling Queensland's future obligations under the United Nations *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* (OPCAT).

The QFCC has had previous involvement in the development of policy in this area. In August 2017, the Department of Justice and Attorney-General asked the QFCC to deliver a paper identifying options for a new youth detention oversight model for Queensland.

In March 2018, following an extensive review of existing models, the QFCC developed *Options for youth detention oversight—A model for inspecting places of detention in Queensland* (the Options Paper). This Options Paper has not yet been published by the Queensland Government.

The Options Paper offered a best practice model to establish a mechanism for overseeing places of youth detention in Queensland. It specifically focuses on addressing the unique vulnerabilities of children and meeting the needs of Aboriginal and Torres Strait Islander children, in detention settings.

The Bill positions responsibility for inspection of youth detention and adult corrections in a single inspectorate. While this model can help to develop efficiency and expertise, it is important the inspectorate maintains a clear focus on the unique rights, needs and best interests of children in detention. It is crucial that children are not lost in the volume of work assigned to a broader inspectorate function.

The Bill makes it clear that the focus of the Inspector established under the Bill will be the prevention of harm, rather than responding to complaints when harm occurs.

The QFCC believes a proactive approach to the prevention of harm and ill-treatment best protects the rights of children in detention. This submission seeks to highlight areas of the Bill that could be strengthened to better protect the rights, needs and best interests of children in Queensland.

Children's rights framework

Summary

- The detention inspectorate should operate in a rights-based framework to ensure the model is ready to be included as part of Queensland's future OPCAT compliance mechanisms.
- The framework in the Bill should provide separate obligations for the inspector relating to children's rights.
- The Bill should make explicit reference to the human rights and children's rights impacted by custodial processes.

The Bill seeks to introduce a new, independent Inspector of Detention Services to protect the rights of adults and children held in custody in Queensland.

The Bill indicates the Inspector's focus will be on the prevention of harm and improvement of the custodial environment in Queensland through examining the places of detention within its scope in accordance with several national and international materials that establish best practice.

To make clear that the inspectorate is a rights-based mechanism, the Bill should make explicit reference to the rights impacted by custodial processes.

As the Bill's scope includes places of detention for children, it should explicitly refer to the existing statutory rights of children in Queensland. Children in detention settings have rights set out in:

- **The Youth Justice Act 1992**

The Charter of Youth Justice Principles in Schedule 1 of the *Youth Justice Act 1992* provides for the rights of children who are in contact with the youth justice system, to keep them safe and promote their physical and mental wellbeing. These principles mandate the children are treated with respect and dignity, including while the child is in custody. A child who is detained in a detention centre must be:

- provided with a safe and stable living environment
- helped to maintain relationships with the child's family and community
- consulted about and allowed to take part in decisions affecting the child's life.

- **The Human Rights Act 2019**

Section 33 of the *Human Rights Act 2019* requires that children in the criminal process are segregated from all detained adults and brought to trial as quickly as possible. If convicted of an offence, a child must be treated in a way that is appropriate for that child's age.

- **The Child Protection Act 1999**

It is common for children held in custody to also be in contact with the child protection system. These children also have rights protected by the Charter of Rights for a Child in Care in Schedule 1 of the *Child Protection Act 1999*.

Safeguards for children in youth detention

Summary

The Bill should be amended to include:

- a requirement that the inspectorate must have understanding and expertise in child trauma, and the identification and prevention of child sexual abuse
- a requirement, in s.8(d), that separate standards are prepared and published for youth detention centres, and that these consider the needs and best interests of Aboriginal and Torres Strait Islander children
- a separate statutory officer under s.33 who identifies as Aboriginal and/or Torres Strait Islander, to engage with and take into account the views of Aboriginal and Torres Strait Islander peoples when undertaking inspections

On 15 December 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) released its Final Report. In the report, the Royal Commission recommended establishment of

an independent oversight body with the appropriate visitation, complaint handling and reporting powers, to provide oversight of youth detention. This could include an appropriately funded and independent Inspector of Custodial Services or similar body. New and existing bodies should have expertise in child-trauma, and the prevention and identification of child sexual abuse (recommendation 15.10).¹

The Queensland Government's response to the Royal Commission Final Report was accepted in-principle.

The QFCC welcomes provisions under s.9 of the Bill requiring the inspector to consider 'appropriate expertise in the areas of child trauma and prevention and identification of child sexual abuse' in staffing. The inspectorate will need to speak directly to children in detention settings, in ways that are child sensitive and trauma responsive. It must also let children know what happens with the information they provide.

The inspectorate must understand the distinct and unique rights of children, and a capacity to perform its functions within a children's rights framework.

Section 8(d) requires the inspector to prepare and publish standards in relation to carrying out inspections. The QFCC recommends this be amended to require separate standards for places of youth detention that consider the unique rights, needs and best interests of children.

These separate standards should reflect the unique vulnerabilities of children and the higher standards of care that should be afforded to them.

¹ 'Recommendation 15.10 Independent Oversight of Youth Detention', *Royal Commission into Institutional Responses to Child Sexual Abuse Final Report*, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf, 48

Separate statutory officer who identifies as Aboriginal and/or Torres Strait Islander

At present, nearly half of children within the Queensland youth justice system are of Aboriginal and/or Torres Strait Islander background.² The *Youth Justice Strategy 2019-2023* states Aboriginal and Torres Strait Islander children and young people are 31 times more likely to be held in custody compared with their non-Indigenous peers.³

For this reason, staff of the inspectorate must operate in a way that provides cultural safety and authority for detainees. To support this, the QFCC believes the Bill should require a separate statutory inspector who identifies as Aboriginal and/or Torres Strait Islander, in addition to the inspector who is, under s.33, the Ombudsman.

There are two provisions in the Bill enabling support by an Aboriginal and/or Torres Strait Islander person in the inspection process. Section 9(5) requires the inspector to arrange for an Aboriginal and/or Torres Strait Islander representative with appropriate cultural authority to help the inspector where an inspection relates to an Aboriginal and/or Torres Strait Islander detainee. It is not clear whether this section will be relevant in relation to the annual inspections of youth detention centres, which are intended to be broad and thematic.

Secondly, under s.36 of the Bill, the inspector may delegate functions to an appropriately qualified officer of the Ombudsman with regard to the need for the staff to reflect the social and cultural diversity of detainees, including in relation to those who identify as Aboriginal and/or Torres Strait Islander. This is a welcome provision that allows delegation to an official who identifies as Aboriginal and/or Torres Strait Islander, however it does not make this a statutory requirement.

The QFCC believes the inspectorate would benefit from a statutory requirement to have Aboriginal and/or Torres Strait Islander leadership. This could be achieved by establishing two statutory inspectors in a similar way to provisions under s.11 the *Family and Child Commission Act 2014* (Qld), which establish two commissioners, one of whom must be an Aboriginal and/or Torres Strait Islander person.

The separate statutory officer should have discrete legislative responsibility to engage with and take into account the views of Aboriginal and Torres Strait Islander peoples when undertaking inspections.

² Queensland Government 2019, *Working Together, Changing the Story, Youth Justice Strategy 2019-2023*.
<https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf> accessed 11 August 2021.

³ Ibid, p.6.

Need for independent, transparent, and ongoing oversight mechanism

Summary

The Bill should be amended to include:

- a requirement that the inspector must have an on-going presence across the youth detention centres
- and/or, enable easy information sharing between the Office of the Public Guardian undertaking regular visits and the chief executive of Youth Justice responsible for quarterly inspections of the youth detention centres.

The QFCC welcomes provisions in s.14(1) of the Bill allowing the inspector to enter a place of detention at any time. It is also pleasing to see provisions in s.21 of the Bill requiring the Minister to table the inspector's annual report within two weeks of receiving it, and provisions in s.22 requiring the inspector to provide reports to the Speaker on inspections and allowing reports on other functions as appropriate.

This will allow the inspector to be independent from government and provide for the inspector to be transparent and accountable to the community through reporting to Parliament.

Currently, s.8 of the Bill requires the inspector to inspect each youth detention centre at least once every year. The QFCC believes annual inspections alone are not sufficient to allow the inspectorate to respond to emerging issues in detention centres in ways that truly protect children's rights.

Regular visitation

Inspectors need to maintain a consistent presence in places where children are detained. The inspectorate must be able to regularly speak with children in detention, staff, and others.

For this reason, the QFCC recommends the Bill be amended to include a function to maintain a consistent presence in youth detention centres. The inspector should be prepared to intervene to protect children's rights as soon as significant risks emerge.

Information sharing

The QFCC welcomes provisions under s.12 of the Bill allowing the inspector to require information relating to their functions. This will help to make sure information is shared between oversight bodies to achieve coordination and efficiency across the system.

The QFCC holds some concerns that the Bill does not make any changes to the existing youth detention inspectorate operating within the Department of Children, Youth Justice and Multicultural Affairs. At present, under s.263(4) of the *Youth Justice Act 1992*, the chief executive responsible for youth justice is required to inspect each detention centre at least once every three months.

This effectively means the Bill will result in two parallel statutory inspection regimes operating in youth detention centres.

The operation of the two parallel inspection schemes may cause confusion for children in detention settings, as well as their families, as they seek to advocate for their interests while in custody. It will also increase the burden

on children in detention who will be asked to speak to different sets of inspectors, internal and independent, in different timeframes.

In addition, the Bill does not provide the inspectorate with a visiting function such as that of the Independent Visitors in the Western Australian Office of the Inspector of Custodial Services. Visitation will remain a function of the community visitor scheme in the Office of the Public Guardian.

In this context, the QFCC suggests policy and practice guidance must clearly support routine information sharing between the youth detention inspectorate of the Department of Children, Youth Justice and Multicultural Affairs, the Office of the Public Guardian, and the Inspector of Detention Services, to enable timely intervention as soon as any issues arise.

Requirements where children are held in watchhouses

Summary

- The Bill should be amended to include a requirement, in Division 2 of the *Police Powers and Responsibilities Act 2000*, for the inspector to be informed whenever a child is to be kept in custody in a watch house overnight or for more than one night.

The Queensland Police Service *Operating Procedures Manual* (Chapter 16 Custody) requires for circumstances when a child is to be held in custody in a watch house overnight without being transferred to a youth detention centre, the prescribed officer in charge of the watchhouse is to record the reasons for the decision to hold the child in custody in the child's relevant QPRIME custody report. This process aids information flow and monitoring for extensive and excessive terms of detention in a watchhouse.⁴

If a child is to be kept in custody in a watch house longer than one night, the officer in charge of the watch house is required to notify the relevant officer from the Department of Children, Youth Justice and Multicultural Affairs.⁵

The QFCC believes the inspector should also be informed when a child is kept in a watch house, both overnight and for more than one night. The Bill should include amendments to Division 2 of the *Police Powers and Responsibilities Act 2000* requiring Queensland Police Service to provide this information to the inspector, to allow timely inspection of watch houses where there are emerging and significant risks to children's rights.

⁴ 16.17.5. 'Custody of Children in Watchhouses', Chapter 16, *Operations Police Manual Issue 84.2* (effective 8 November 2021), Queensland Police Service, <https://www.police.qld.gov.au/sites/default/files/2021-11/OPM%20-%20Chapter%2016%20-%20Custody.pdf>, p. 55. Accessed 11 November 2021.

⁵ 16.17.3 'Care of Children in Custody', Chapter 16, *Operations Police Manual Issue 84.2* (effective 8 November 2021), Queensland Police Service, <https://www.police.qld.gov.au/sites/default/files/2021-11/OPM%20-%20Chapter%2016%20-%20Custody.pdf>, p. 54. Accessed 11 November 2021.