



Australian
Human Rights
Commission

Development of Queensland's inspection standards for youth detention centres and prisons

Submission by the Australian Human Rights Commission

27 March 2023

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1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Queensland Ombudsman and Inspector of Detention Services' consultation on inspection standards for youth detention centres and prisons (Qld Standards).
2. The Commission is Australia's National Human Rights Institution, with recognised independent status and roles in United Nations human rights fora. The Commission's purpose is to provide independent and impartial services to promote and protect human rights and fundamental freedoms in Australia.
3. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights.
4. The Commission has experience in the development of inspection standards relevant to immigration detention visits¹ and in its consultations on the implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (OPCAT).²

2 Developing the Standards

5. The Association for the Prevention of Torture (APT) has articulated that 'monitoring conditions of detention involves checking that these conditions correspond to national and international human rights standards and that those deprived of their liberty are treated with the respect due to their inherent dignity and value as human beings.'³
6. Expanding on this perspective, the Commission's *Implementing OPCAT in Australia* report (2020) acknowledged that the development and review of inspection standards should be informed by 'international human rights law'⁴, 'existing international and domestic documents that govern aspects of detention and inspections',⁵ and in addition 'systemic recommendations from other processes, such as coronial inquests.'⁶

7. The Commission acknowledges and supports the decision of the Queensland Ombudsman and Inspector of Detention Services to use existing standards from other independent inspectorates as a ‘starting point’ for the development of its own standards. This decision also aligned with the findings of the *Queensland Parole System Review* (2016) which stated, ‘the implementation of an independent Inspector of Correctional Services in Queensland, should draw upon a range of key features in Western Australia, New South Wales and the United Kingdom.’⁷
8. Both the New South Wales *Youth Justice Inspection Standards* (NSW Standards)⁸ and the Western Australian *Revised Code of Inspection Standards for Adult Custodial Services* (WA Standards)⁹ draw upon a ‘range of international and domestic treaties, covenants, instruments, standards and research,’¹⁰ as well as other domestic and international inspection agencies standards and upon their ‘own experience conducting inspections.’¹¹ Both standards are contemporaneous and therefore relevant to their specific operational contexts.
9. While the Commission is unable to comment on every aspect covered by the NSW and WA Standards, the following comments reflect some of the areas identified as being ones that could be strengthened and as relevant to the establishment of the Qld Standards.

Embedding a Human Rights Approach

10. While the NSW and WA Standards draw heavily on domestic and international human rights laws and standards, neither operate within the context of a Human Rights Act nor make explicit mention of either human rights protections or an operating philosophy that accords with human rights.
11. The Inspector of Prisons for Ireland, for example, does this by adopting a values-based approach within its inspection framework which includes:

‘Human Rights Focused: The Inspectorate will have a focus on human rights at the core of its work. This human rights focus will apply to prisoners, visitors, staff and others who come into contact with the IPS.’¹²
12. Her Majesty’s Inspectorate of Prisons Scotland (HMIPS) Standards also ‘have at their heart the upholding of the human rights of those detained in

prison.¹³ HMIPS adopts a 'human-rights based approach' which it describes as 'building the ability of the duty bearer to meet their obligations as well as enabling prisoners to understand and claim their rights.'¹⁴

13. The ACT Inspector of Correctional Services also makes explicit reference to human rights and the *Human Rights Act 2004* (ACT) within its Standards (ACT Standards).¹⁵ The ACT Standards recognise the *Human Rights Act 2004* (ACT) as providing 'an overarching statement of human rights to which all detainees and staff are entitled.'¹⁶ The ACT Standards note in their introduction that they 'provide detailed guidance as to the Inspectorate's interpretation of what a right requires in practice, and possible indicators that may demonstrate rights are being upheld.'¹⁷ Importantly, the ACT Standards 'do not limit or reduce any obligations' within the *Human Rights Act 2004* (ACT).¹⁸

14. Noting Queensland is also a Human Rights Act jurisdiction, the Commission recommends the Qld Standards make specific references to the *Human Rights Act 2019* (Qld) and that the operating philosophy of the Inspector of Detention Services convey a focus on human rights protections.

Recommendation 1: The Commission recommends the Qld Standards make specific references to the *Human Rights Act 2019* (Qld) and the operating philosophy of the Inspector of Detention Services convey a focus on human rights protection.

Improving Standards about Complaints for Children and Young People

15. The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN SPT) has highlighted that 'effective domestic mechanisms of oversight, including complaints mechanisms, form an essential part of the apparatus of prevention.'¹⁹

16. The Royal Commission into the Detention and Protection of Children in the Northern Territory (The Royal Commission) also reported, that 'encouraging young persons in detention to feel that they can make complaints to an external body about the system in which they reside or about officers which

act as their care givers and have power and control over them is important but clearly challenging.²⁰

17. Concerning this challenge, the Royal Commission identified that the complaints process within the Northern Territory was 'flawed' and deterred young people from making grievances because children and young people were reliant on centre staff to process their complaints and in some cases also write them.²¹
18. On the issue of complaints assistance, the NSW Standards articulate that 'young people feel, and are able to ask for help in completing their complaint' and 'receive help to pursue complaints and grievances beyond the centre with external bodies, if they need to.'²² The WA Standards additionally specify access to an 'accredited interpreter' and 'culturally appropriate mediation services' if needed.²³
19. Neither set of standards however clearly conveys the need for children and young people to be provided with appropriate, confidential, and independent assistance to make and resolve complaints. The Office of the Inspectorate (New Zealand) partly addresses this issue by including a criterion which states, 'If a prisoner is unable to file a complaint, their legal advisor, a member of the prisoner's family/ whānau or any other person with knowledge of the case may do so.'²⁴ The ACT Inspector of Correctional Services has a similar criterion which states 'where a detainee or their lawyer is unable to make a complaint or request, a member of the detainee's family or any other person who has knowledge of the case may do so.'²⁵
20. Noting their vulnerability, the Commission recommends that the Qld Standards specify that children and young people receive appropriate and independent assistance (including that which may be needed by way of having a disability (e.g., communication aids, intermediaries, etc.)) and advocacy to pursue or complete complaints.
21. The Royal Commission also commented that 'the message that complaints can be made would need to be promoted regularly by senior persons in the detention centres and that message would need to be reinforced by all those who work in the centre'.

22. The NSW Standards articulate that 'information about complaints is reinforced through notices and posters displayed throughout the centre in a range of formats.'²⁶ The Commission recommends that detention centre staff have a positive duty to educate children and young people about the ability to make complaints and regularly reinforce awareness about both how to make complaints and the protection from repercussions. This should be articulated in the Qld Standards.

Recommendation 2: The Commission recommends that the Qld Standards specify that children and young people receive appropriate and independent assistance (including that which may be needed by way of having a disability (e.g., communication aids, intermediaries, etc.)) and advocacy to pursue or complete complaints.

Recommendation 3: The Commission recommends that the Qld Standards specify that detention centre staff should be encouraged to regularly reinforce awareness about both how to make complaints and the protection from repercussions.

Learning from the COVID-19 Pandemic - Future Proofing

23. As noted by the OSCE Office for Democratic Institutions and Human Rights and the APT, the 'nexus of COVID-19 and deprivation of liberty has given rise to many considerations, risks, and challenges' for detention inspection agencies.²⁷

24. In Western Australia for example, the Inspector of Custodial Services reduced their routine physical presence at custodial facilities for a time and adjusted their method for inspections to include 'phone contact, video conferencing, surveys of prisoners and [consideration of] previous liaison visits.'²⁸ In Tasmania, the Office of the Custodial Inspector was forced to 'postpone' inspections due to restrictions on travel for interstate consultants.²⁹

25. Most Australian oversight bodies adjusted their methodologies 'to meet the situation caused by the pandemic in order to safeguard the public; staff and personnel working in detention facilities, including healthcare staff;

detainees; and themselves.³⁰ Some international inspectorates however took a more comprehensive approach to the pandemic and their Standards.

26. In the UK for example, Her Majesty's Chief Inspector of Prisons for England and Wales (HMIP) introduced COVID-19 specific 'scrutiny visits.' In explaining the rationale behind this decision HMIP observed:

'As time moved on, and the discrepancy between the restrictions in prisons and the community grew, it became apparent that, as an inspectorate, we needed to broaden and deepen the scope of our visits, and to focus on individual establishments. As well as looking at more traditional 'inspection' issues, we also needed to be able examine and come to a judgement on aspects that were particular to the COVID-19 emergency.'³¹

27. In New Zealand, the New Zealand Ombudsman produced a new set of expectations specific to the COVID-19 context, recognising and reinforcing the fact that 'human rights are inalienable' and 'even during these extraordinary times people can expect to be treated with care and respect.'³² These expectations aimed to 'ensure any restrictions on the normal conditions and treatment of people in places of detention are minimal, proportionate to the nature of the health emergency and in accordance with the law.'³³

28. The Commission recommends the Qld Standards incorporate the learnings made during the COVID-19 pandemic. Standards should include criterion examining emergency operational and procedural regulations and protocols; ensuring restrictive health measures are appropriate, trauma informed, gender sensitive and tailored to vulnerable cohorts of people detained; and, that diverse forms of communication are available to people detained to maintain contact with the outside world.

Recommendation 4: The Commission recommends the Qld Standards incorporate learnings made during the COVID-19 pandemic. Standards should include criterion:

- **examining emergency operational and procedural regulations and protocols;**
- **ensuring restrictive health measures are appropriate, trauma informed, gender sensitive and tailored to vulnerable cohorts of people detained; and**

- **ensuring diverse forms of communication are available to people detained to maintain contact with the outside world.**

3 Focus on Outcomes

29. The ACT Inspector of Correctional Services recognises that its Standards, in and of themselves, are 'not a checklist for compliance but a tool for qualitative evaluation of correctional centres and services.'³⁴ In like manner, the Qld Standards and the inspection function of the Inspector of Detention Services, should not be viewed as fulfilling, in totality, the purpose of Section 3 (1) of the *Inspector of Detention Services Act 2022*.³⁵

30. In reviewing the inspection standards and methodology of the Office of the Chief Inspector (OCI) for example, the Queensland Crime and Corruption Commission (CCC), in its *Taskforce Flaxton* report, pointed out that the methodology used by the OCI was 'generally consistent with other jurisdictions' and it delivered 'a consistent inspection report.'³⁶ However, stakeholders suggested the approach to inspections was 'mechanical' and 'more focused on process than outcome.'³⁷

31. The Commission draws to the attention of the Queensland Ombudsman and Inspector of Detention Services, the following statement by the UN SPT:

"[T]here is more to the prevention of torture and ill-treatment than compliance with legal commitments. In this sense, the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring. Such an approach requires not only that there be compliance with relevant international obligations and standards in both form and substance but that attention also be paid to the whole range of other factors relevant to the experience and treatment of persons deprived of their liberty and which by their very nature will be context specific."³⁸

32. The SPT has noted that working in the 'preventive spirit' includes 'identifying potential risks of torture and ill-treatment, highlighting gaps in human rights protection and making recommendations of a practical nature to address matters of concern.'³⁹ Further, the SPT emphasises the need for 'examining patterns of practices from which risks of torture may arise; advocacy, such as commenting on draft and implementing legislation;

providing public education; undertaking capacity building; and actively engaging with State authorities.⁴⁰

33. In fulfilling its obligations to prevent detainees from being subjected to harm, including torture and cruel, inhuman or degrading treatment; the Commission recommends the Inspector of Detention Services operate in a manner consistent with the obligations and best practice of a National Preventive Mechanism under the OPCAT.

34. The Commission also recommends the Inspector of Detention Services adopt the Principles for Best Practice espoused in the Commission's *Road Map to OPCAT Compliance* (2022).⁴¹

Recommendation 5: The Commission recommends the Inspector of Detention Services operates in a manner consistent with the obligations and best practice of a National Preventive Mechanism under the OPCAT.

Recommendation 6: The Commission recommends the Inspector of Detention Services adopt the Principles for Best Practice espoused in the Commission's *Road Map to OPCAT Compliance* (2022).

4 Recommendations

35. The Commission makes the following recommendations:

Recommendation 1: The Commission recommends the Qld Standards make specific references to the *Human Rights Act 2019* (Qld) and the operating philosophy of the Inspector of Detention Services convey a focus on human rights protections.

Recommendation 2: The Commission recommends that the Qld Standards specify that children and young people receive appropriate and independent assistance (including that which may be needed by way of having a disability (e.g., communication aids, intermediaries, etc.) and advocacy to pursue or complete complaints.

Recommendation 3: The Commission recommends that the Qld Standards specify that detention centre staff should be encouraged to regularly reinforce awareness about both how to make complaints and the protection from repercussions.

Recommendation 4: The Commission recommends the Qld Standards incorporate learnings made during the COVID-19 pandemic. Standards should include criterion:

- examining emergency operational and procedural regulations and protocols;
- ensuring restrictive health measures are appropriate, trauma informed, gender sensitive and tailored to vulnerable cohorts of people detained; and
- ensuring diverse forms of communication are available to people detained to maintain contact with the outside world.

Recommendation 5: The Commission recommends the Inspector of Detention Services operates in a manner consistent with the obligations and best practice of a National Preventive Mechanism under the OPCAT.

Recommendation 6: The Commission recommends the Inspector of Detention Services adopt the Principles for Best Practice espoused in the Commission's *Road Map to OPCAT Compliance (2022)*.

Endnotes

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- ¹⁷ *Ibid*, 6.
- ¹⁸ *Ibid*, 6.
- ¹⁹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (30 December 2010) *The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/OP/12/6, [5(g)]. <<https://undocs.org/Home/Mobile?FinalSymbol=CAT%2FOP%2F12%2F6&Language=E&DeviceType=Desktop&LangRequested=False>>.
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- ²² New South Wales Inspector of Custodial Services (n 8), 22 [1.14 The centre has an effective and confidential complaints mechanism in place that promotes the protection from repercussions of those who use it.]
- ²³ Western Australian Inspector of Custodial Services (n 9), 14 [Standard 26].
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