

Inspector of Detention Services Regulation 2023

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Shannon Fentiman MP, Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Inspector of Detention Services Regulation 2023* (Regulation) made under the *Inspector of Detention Services Act 2022* (Inspector Act), *Corrective Services Act 2006* and *Public Sector Act 2022* (Public Sector Act).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Inspector of Detention Services Bill 2021 was passed by the Legislative Assembly on 30 August 2022 and received assent on 7 September 2022.

The Inspector Act gives effect to the Queensland Government's commitment to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres (the Helana Jones Centre), work camps, youth detention centres and police watch-houses (places of detention).

The Inspector Act establishes the Inspector of Detention Services (the Inspector). The purpose of the Inspector is to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.

This will facilitate greater transparency in the way that places of detention, and the people detained within them, are managed by establishing a framework for the review of detention services and inspection of places of detention, and independent and transparent reporting, to support their improvement.

The Inspector has a broad power to do all things necessary or convenient for, or in connection with, the performance of the Inspector's functions and to fulfil its preventative, proactive and independent mandate.

The position of Inspector is held by the Queensland Ombudsman (Ombudsman). The Inspector is supported by the Office of the Ombudsman and will be able to delegate the exercise of the Inspector's functions and powers to appropriately qualified staff of the Office of the Ombudsman. Staff exercising the Inspector's functions will not exercise the functions of the Ombudsman.

The Regulation is intended to support the Inspector's purpose and functions, including through consequential amendments to relevant Regulations.

The objectives of the Regulation are to:

- prescribe specific watch-houses as places of detention that the Inspector must inspect at least once every five years;
- amend the *Corrective Services Regulation 2017* (Corrective Services Regulation) to:
 - allow the Inspector to view a recording of a search of a prisoner where the prisoner is required to remove their clothing;
 - classify mail between the Inspector and a prisoner as privileged;
 - provide that phone calls between the Inspector and a prisoner are not classified as privileges; and
- amend the *Public Sector Regulation 2023* to include the Inspector as a prescribed person for the purposes of the Public Sector Act to protect the Inspector and officers of the Office of the Ombudsman from civil liability when engaging, or as a result of engaging, in conduct in an official capacity.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3, Human Rights Act)

The human right relevant to the Regulation is the right to privacy (section 25).

Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, Human Rights Act)

(a) the nature of the right

Section 25 of the Human Rights Act protects a person from unlawful or arbitrary attacks on their privacy, family, home or correspondence and from unlawful attacks on their reputation. The concept of 'privacy' is not defined in the Human Rights Act. The scope of the right is broad, and it has been interpreted to include an individual's geographical or spatial privacy and property.

The underlying value of the right is the importance of human beings as autonomous individuals with power over their actions and protecting a person's freedom from the unjustified involvement of public authorities in their private sphere¹.

The Regulation will amend the Corrective Services Regulation to allow the Chief Executive to show the Inspector a recording of a search of a prisoner where a prisoner is required to remove their clothing. This will limit the right to privacy of the person being searched with regard to bodily autonomy as the Inspector will be able to view sensitive footage of the person, without the consent of the person.

¹ *Director of Housing v Sudi* [2010] VCAT 328 [29].

- (b) the nature of the purpose of the limitation to be imposed by the Regulation if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom

The purpose of the Regulation is to support the operation of the Inspector Act, which has the main purpose of promoting the improvement of detention services and places of detention in Queensland with a focus on promoting and upholding the humane treatment of detainees, including humane conditions of their detention and preventing detainees from being subjected to harm, including torture and cruel, inhuman or degrading treatment.

The purpose of the limitation on the right to privacy is to ensure the Inspector has access to a wide range of information to provide an understanding of the conditions and treatment of people in places of detention and the areas of potential risk to the rights of people detained.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the right to privacy will achieve the purpose by ensuring the Inspector has access to relevant information to develop a full and accurate understanding of how a place of detention operates. Free unfettered access to a wide range of information that relates to the treatment of people in places of detention, including footage of searches, will allow the Inspector to make assessments about the adequacy of services being provided to detainees, and the general care being provided to people being detained. This will assist the Inspector to identify systemic issues that may need to be addressed in order to improve detention environments.

The limitation is therefore consistent with the values of a free and democratic society.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

There are no less restrictive and reasonably available ways to achieve the purpose. There are a number of safeguards in the Inspector Act which mitigate the limitation of the right to privacy. To ensure confidentiality of information, section 30 outlines that any person who has acquired or has had access to confidential information through the administration of the Inspector Act must not disclose or use the information, except in limited circumstances which are explicitly defined in the Inspector Act. A penalty applies where information is disclosed unlawfully. Where the Inspector discloses confidential information to an entity to be dealt with as a complaint, the Inspector must first seek the consent of the individual who would be the complainant prior to disclosing any information to the entity and cannot disclose the information if the individual does not consent (section 20(5)).

Similarly, the Inspector must take into consideration a number of factors when deciding to disclose confidential information if it is in the interests of an individual or the public interest (section 31). Section 23(2) outlines specific criteria for the Inspector to take into consideration when determining whether there is a public interest against disclosing information. Particularly, there is public interest against disclosure of confidential information if its release may lead to the identification of an individual or pose a risk to the health and safety of an individual.

(e) the balance between the importance of the purpose of the Regulation which, if enacted, would impose a limitation on human rights and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, I consider the importance of the purpose of the limitation and the Regulation, which is to support the effective operation of the Inspector Act and fulfilment of the Inspector's preventative, proactive and independent mandate, outweighs the limitation on the right to privacy.

(f) any other relevant factors

None.

Conclusion

I consider that the *Inspector of Detention Services Regulation 2023* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

SHANNON FENTIMAN MP
Attorney-General and Minister for Justice
Minister for Women and
Minister for the Prevention of Domestic and Family Violence

© The State of Queensland 2023