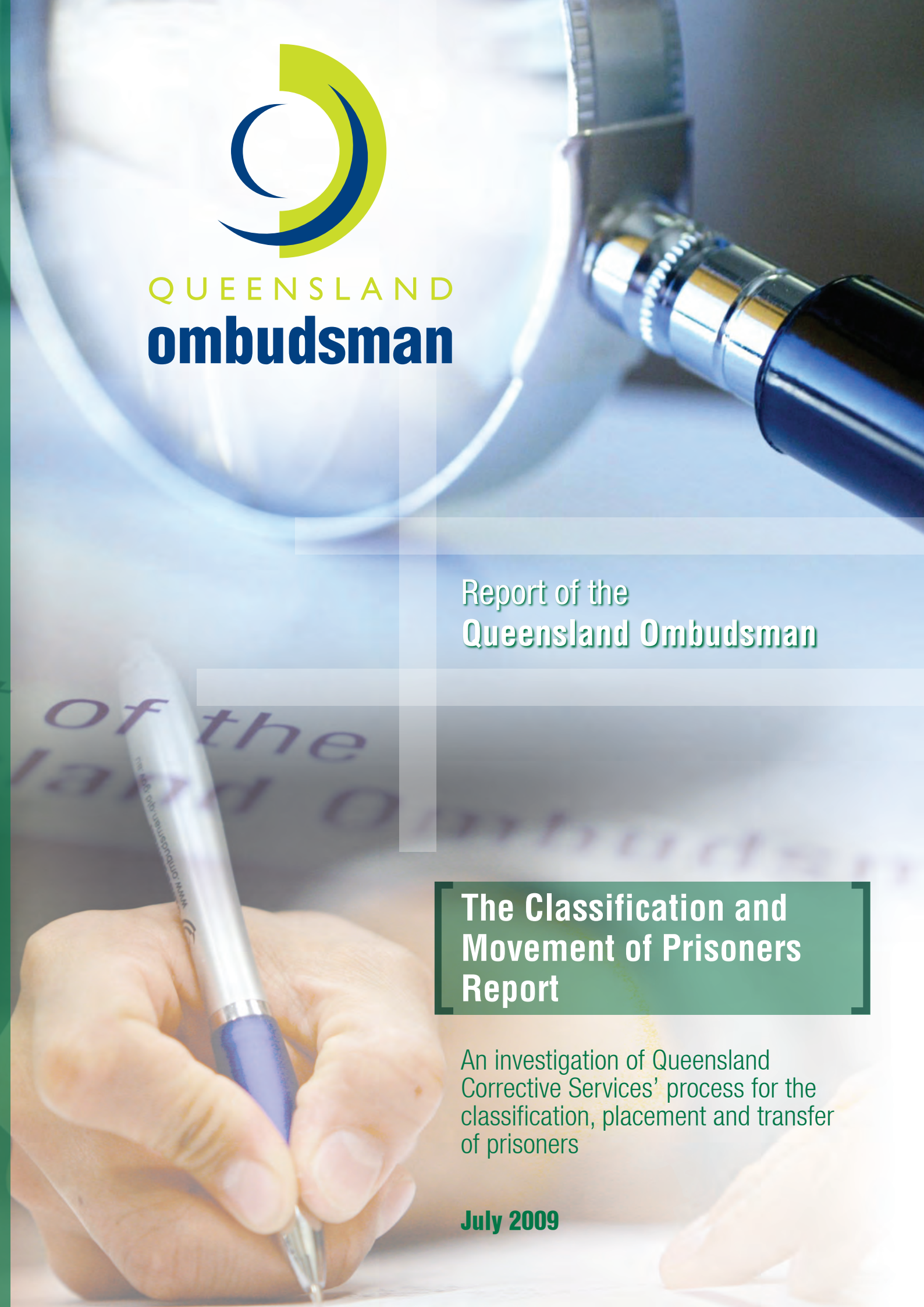

QUEENSLAND
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Report of the
Queensland Ombudsman

The Classification and Movement of Prisoners Report

An investigation of Queensland Corrective Services' process for the classification, placement and transfer of prisoners

July 2009

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QUEENSLAND ombudsman

23 July 2009

Mr Paul Hoolihan MP
Acting Deputy Speaker
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Hoolihan

In accordance with section 52 of the *Ombudsman Act 2001*, I hereby furnish to you my report, *The Classification and Movement of Prisoners Report: An investigation of Queensland Corrective Services' process for the classification, placement and transfer of prisoners.*

Yours faithfully

David Bevan
Queensland Ombudsman

Enc.

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Dictionary and abbreviations

Centre	Corrective services facility, also known as a prison, prison farm or prison work camp
Chief executive	The chief executive of QCS who is also the chief executive for the purpose of the *Corrective Services Act 2006*
Delegate	Delegate of the chief executive for a security classification decision, placement decision or transfer decision
Department of Community Safety	A Queensland Government department, established on 26 March 2009
Guidelines	Security Classification and Placement Assessment Guidelines
IOMS	QCS' electronic Integrated Offender Management System
Ombudsman Act	*Ombudsman Act 2001*
OMT	Offender Management Team or the Offender Management Review Team for a centre. A team that reviews prisoners' security classification at intervals in accordance with s.13 of the Corrective Services Act and makes recommendations to delegates about security classifications and placements.
Placement decision	An administrative decision made during the SPA process about the centre in which the prisoner will be accommodated. If that decision is to place the prisoner at another centre, the decision is followed by a transfer decision under s.66 or s.68 of the Corrective Services Act.
QCS	Queensland Corrective Services (before 26 March 2009, a department of the Queensland Government and since 26 March 2009, a business unit of the Department of Community Safety) and private companies that manage centres
Security classification decision	Decision under s.13 of the Corrective Services Act

SPA	Security classification and placement assessment, the result of which is recorded in a security classification and placement assessment (SPA) form. The complete process envisages that the Offender Management Team reviews an offender's classification (at intervals in accordance with s.13 of the Corrective Services Act) and records its review recommendation on a SPA form. The OMT also conducts a review of placement and also records its placement recommendation on the SPA form.
SPA form	A form generated by IOMS that records decisions about the security classification and placement of prisoners
Transfer decision	Decision under s.66 or s.68 of the Corrective Services Act

Executive Summary

Security classification and placement reviews of prisoners are conducted by Queensland Corrective Services (QCS) through a process known as a security classification and placement assessment or SPA. QCS' Offender Management Team (OMT) at each corrective services facility reviews a prisoner's classification in accordance with s.13 of the *Corrective Services Act 2006* and records its assessment and review recommendation on a SPA form. The OMT also conducts reviews of placement and records its assessment and placement recommendation on a SPA form.

The chief executive or a delegate then makes decisions about security classification, placement and, if necessary, transfer and also records the decision on the SPA form.

Under the Corrective Services Act, a prisoner dissatisfied with a transfer order may, within seven days of receiving notice of the order, apply to the chief executive for a reconsideration of the decision.

Previous investigation

In 2007, I received a complaint from a prisoner (Smith) about a security classification and placement decision made by QCS. Prisoner Smith had allegedly committed a breach of discipline while at Prison A and, consequently, had been transferred to Prison B while the breach was investigated.

After QCS' investigation, prisoner Smith was not charged with any breach. Despite this outcome, and despite the delegate allocating prisoner Smith a low security classification, the delegate decided that Smith should remain at Prison B (a higher security prison than Prison A) rather than be returned to Prison A.

In making this decision, the delegate did not follow the recommendation of the OMT, which had recommended that prisoner Smith be transferred back to Prison A. The delegate also failed to record any reasons for the placement decision and did not provide any reasons to Smith, who wished to be transferred back to Prison A.

I investigated the complaint and recommended to the acting chief executive:

- that reasons ought to be given for security classification decisions, and
- that where a placement decision made by a delegate does not follow a recommendation by the OMT and does not accord with the prisoner's preference, reasons should be given to the prisoner for the decision.

As a result of a subsequent meeting I had with the acting chief executive and further correspondence, I believed that QCS had agreed to implement both recommendations. I also understood from the meeting that the acting chief executive had undertaken to ensure that delegates provided reasons for such decisions wherever the circumstances permitted.

On 23 September 2008, the same delegate carried out another assessment of prisoner Smith's placement. Once again, the delegate failed to record any reasons for the placement decision and did not provide any reasons to Smith. The delegate did not follow the OMT's recommendation that Smith be transferred back to Prison A. The delegate used exactly the same words he had used in the previous decision, which I had considered to be inadequate.

Own initiative investigation

Partly as a result of investigating the complaint of prisoner Smith, I decided to conduct an own initiative investigation into QCS' security classification, placement and transfer practices and procedures to determine whether the maladministration I found in prisoner Smith's case was present in the management of other prisoners.

I was also mindful that the Corrective Services Act, which commenced on 28 August 2006, removed the right of prisoners to apply for judicial review of decisions about security classifications and transfers.[1] Also, the Ombudsman's Office is the only independent body, external to QCS, which is able to review security classification, placement and transfer decisions on its own initiative.

The principal objectives of the investigation were to:

- decide the extent to which QCS officers were complying with the legislation and the practices and procedures relating to the security classification, placement and transfer of prisoners
- decide the adequacy of those practices and procedures
- identify and recommend improvements to those practices and procedures
- if appropriate, recommend amendment to relevant legislation.

The investigation was conducted by, among other things, reviewing a sample of QCS' records for 200 prisoners serving 10 years or more and conducting workshops and interviews with relevant QCS officers and prisoners to clarify issues raised during the investigation.

As a result of my investigation, I have expressed three opinions about deficiencies in the administrative practices of QCS. I have also made 15 recommendations to improve QCS' practices and procedures for security classification, placement and transfer decisions.

Procedural fairness

Section 25(2) of the *Ombudsman Act 2001* provides that, when conducting an investigation, the Ombudsman must comply with the principles of natural justice.

Section 26(3) of the Ombudsman Act provides that, if at any time during the course of an investigation it appears there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be offered an opportunity to comment on the subject matter of the investigation before the report is made.

To satisfy this obligation, I provided a proposed report to Mr Jim McGowan, Director-General of the Department of Community Safety and invited his response, which he gave. I refer to Mr McGowan's response where appropriate throughout this report.

Section 55(2) of the Ombudsman Act provides that I must not make adverse comment about a person in a report unless I give that person an opportunity to make submissions about the proposed adverse comment.

[1] Sections 17 and 71, Corrective Services Act.

I issued a notice of adverse comment to one person and allowed them four weeks to make a submission. The person did not respond. I believe I have satisfied my obligation under s.55(2) of the Ombudsman Act.

Response of agency

In Mr McGowan's response to my proposed report, he noted, but made no submission on, my three proposed opinions. In relation to my 15 proposed recommendations, Mr McGowan:

- agreed with 12 of them
- suggested minor amendments to recommendations 2 and 3, which I have agreed to
- suggested an amendment to recommendation 14, which I have not agreed to for reasons set out in 8.4 of my report.

Public report

The Ombudsman Act provides that, if the Ombudsman considers it appropriate, the Ombudsman may present a report to the Speaker for tabling in the Assembly on a matter arising out of a performance of the Ombudsman's functions.[2] I have decided to report to Parliament on my investigation for the following reasons:

- the proper management of prisoners is a matter of considerable public interest
- publication of the report will bring the administrative deficiencies I have identified to the attention of a greater number of QCS officers
- it is important that QCS officers, prisoners and the public are aware that my Office has the power to independently review decisions made by officers about security classification, placement and transfer decisions.

Opinions

Opinion 1

The failure of delegates of the chief executive to give to prisoners adequate reasons for decisions about security classifications in the cases identified in my investigators' audit of QCS' files constituted, in each case, administrative action that was:

(a) contrary to law, for the purposes of s.49(2)(a) of the Ombudsman Act in that the delegate did not comply with the obligation in s.15 of the Corrective Services Act to give the prisoner an information notice containing reasons for the decision; and/or
(b) unreasonable or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 2

The failure of officers to record and/or give to prisoners adequate reasons for placement decisions in the cases identified in my investigators' audit of QCS' files constituted, in each case, administrative action that was unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.

[2] Section 52, Ombudsman Act.

Opinion 3

QCS' failure to advise all prisoners of their right under s.71 of the Corrective Services Act to apply in writing to the chief executive for a reconsideration of a transfer decision constitutes unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

Recommendations

Recommendation 1

The chief executive develop and implement procedures and guidelines that require the OMT to raise factors that may adversely affect a prisoner's security classification or placement assessment with the prisoner at the review meeting, unless to do so, in a particular case, could reasonably be expected to prejudice the security or good order of a centre.

Recommendation 2

If raising with a prisoner factors that may adversely affect the prisoner's SPA could reasonably be expected to prejudice the security or good order of a centre, an appropriate officer must record that fact on the SPA and record in a confidential document the factors not disclosed to the prisoner.

Recommendation 3

The chief executive develop and implement procedures and guidelines to require delegates to record in SPA forms adequate reasons for security classification decisions and to give the prisoner a print out of the SPA form within two working days after making a security classification decision to comply with the obligations under s.15 of the Corrective Services Act.

Recommendation 4

If a reason relevant to the delegate's security classification decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

Recommendation 5

The chief executive develop and implement procedures and guidelines to ensure that delegates record in the SPA form reasons for placement decisions unless to do so could reasonably be expected to prejudice the security or good order of a centre.

Recommendation 6

The chief executive develop and implement procedures to require delegates to give to the prisoner a print out of the SPA form immediately after making a placement decision recorded in the SPA form.

Recommendation 7

If a reason relevant to the delegate's placement decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

Recommendation 8

The chief executive develop and implement procedures to require that when a print out of the SPA form is given to the prisoner, a record be made of that fact and the date a copy of the form was given to the prisoner. Wherever practicable, the prisoner should acknowledge, in writing, receipt of the copy.

Recommendation 9

The chief executive develop and implement changes to the operation of IOMS to ensure all information entered in IOMS SPA forms can be easily reproduced in electronic and printed form.

Recommendation 10

The chief executive develop and implement procedures to ensure that any prisoner the subject of a transfer decision under s.66 or s.68 of the Corrective Services Act is made aware of the right to apply for a reconsideration of the decision under s.71 of the Act in sufficient time to make an application.

Recommendation 11

The chief executive develop and implement procedures to ensure that delegates record and give to prisoners reasons for transfer decisions under s.66 or 68 of the Corrective Services Act, unless to do so could reasonably be expected to prejudice the security or good order of a centre.

Recommendation 12

If a reason relevant to the delegate's transfer decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

Recommendation 13

The chief executive develop and implement procedures and guidelines to ensure that the information entered in a SPA form is sufficient to clearly show the purpose for which the form was created, namely, to record:

- the outcome of a security classification and/or placement review
- the transfer of a prisoner, at the prisoner's request, to another centre in circumstances unrelated to a review
- the transfer of a prisoner to another centre to facilitate a medical appointment, court appearance or leave of absence.

Recommendation 14

The Chief Inspector undertake a review, by 31 December 2010, to assess the extent of compliance by delegates with QCS' procedures and guidelines for the security classification, placement and transfer of prisoners.

Recommendation 15

The chief executive provide a copy of the Chief Inspector's report to the Ombudsman's Office within 14 days of receiving the report.

Chapter 1: Introduction

Under the *Corrective Services Act 2006* (Corrective Services Act), the chief executive:

- must review a prisoner's security classification in accordance with s.13 of the Corrective Services Act and inform the prisoner of the decision and reasons for the decision
- may transfer a prisoner from one corrective services facility to another.

Also under the Act, a prisoner dissatisfied with a transfer order may, within seven days of receiving notice of the order, apply to the chief executive for a reconsideration of the decision.

Under Queensland Corrective Services' (QCS') procedures, a prisoner dissatisfied with a placement decision may, within seven days of receiving notice of the decision, request a reconsideration of the decision.

The relevant provisions about transfer and placement are set out in chapter 3 of my report.

Security classification and placement reviews are conducted through a process known as a security classification and placement assessment or SPA. The Offender Management Team (OMT) reviews a prisoner's classification at intervals in accordance with s.13 of the Corrective Services Act and records its assessment and review recommendation on a SPA form. The OMT also conducts reviews of placement and records its assessment and placement recommendation on a SPA form. The SPA form is generated through QCS' electronic case management system for prisoners, known as the Integrated Offender Management System (IOMS). The chief executive or a delegate then makes decisions about security classification, placement and, if necessary, transfer and also records the decision on the SPA form.

The QCS website explains:[3]

> The Agency's Custodial Operations Directorate is responsible for managing the state's 11 publicly run and two private correctional centres, which incorporate a variety of high and low security facilities.
>
> Prisoners in Queensland's correctional system undergo constant safety and risk evaluation and are given a high or low security classification. This classification determines if the prisoner will serve time in either a high or low security centre. Many factors are used to determine each prisoner's security classification, including risk of escape and risk of harming others.
>
> Through this constant evaluation of each prisoner, the Agency can provide the prisoner with their own individual rehabilitation program.

[3] Queensland Corrective Services (16 July 2008) *Custodial Operations* [accessed at http://www.correctiveservices.qld.gov.au/About_Us/The_Department/Custodial_Corrections/index.shtml on 25 March 2009].

1.1 Background

On 31 August 2007, I received a complaint from a prisoner (Smith) about a security classification and placement decision made by QCS. Prisoner Smith had allegedly committed a breach of discipline while at Prison A and, consequently, had been transferred to Prison B while the alleged breach was investigated.

After QCS' investigation, prisoner Smith was not charged with any breach. Despite this outcome, and despite the delegate allocating Smith a low security classification, the delegate decided that Smith should remain at Prison B (a higher security prison than Prison A) rather than be returned to Prison A.

In making this decision, the delegate did not follow the recommendation of the OMT, which had recommended that prisoner Smith be transferred back to Prison A. The delegate also failed to record any reasons for the placement decision and did not provide any reasons to prisoner Smith, who wished to be transferred back to Prison A.

Prisoner Smith made a complaint to my Office in the belief that placement at Prison B reduced the likelihood of parole.

I investigated and prepared a report, dated 24 June 2008, about the complaint. I considered that the delegate had failed to provide reasons to the prisoner for the security classification decision as required by the Corrective Services Act (s.15). As the delegate had given prisoner Smith a low classification, Smith was not concerned that reasons had not been provided. However, I recommended to the Acting Director-General (acting chief executive) that:

> The Department provide guidance and training to officers authorised to make decisions about the security classification of prisoners to ensure they are aware of their legal obligations under the Corrective Services Act to record and provide appropriate reasons for such decisions.

For the purpose of investigating the complaint about the prisoner's placement, I requested the Acting Director-General to have the delegate provide to me reasons for the placement decision. The delegate provided the reasons directly to me. The reasons did not relate to the issues referred to by the OMT in recommending that the prisoner be transferred back to prison A, and had not been raised with the prisoner.

I formed the opinion that the delegate should have recorded reasons for the decision on prisoner Smith's placement and should have provided those reasons to the prisoner, and that this failure constituted administrative action that was unreasonable within the meaning of s.49(2)(b) of the *Ombudsman Act 2001* (Ombudsman Act). I recommended to the Director-General (chief executive) that 'where a placement decision made by a delegate does not follow a recommendation by the OMT and does not accord with the prisoner's preference, reasons should be given to the prisoner for the decision'.

Initially, the Acting Director-General did not accept this recommendation. I then met with the Acting Director-General on 19 August 2008. Several officers from both of our respective offices were also present. As a result of the meeting, I believed that the Acting Director-General had accepted my recommendation that, as a matter of good administrative practice, adequate reasons should be provided to prisoners for placement decisions which did not follow a recommendation by the OMT and which did not accord with the prisoner's known preference.

I also understood from the meeting that the Acting Director-General had undertaken to ensure that delegates provided reasons for such decisions wherever the circumstances permitted. I accepted that it may not be practicable in a particular case to provide reasons (or to provide all reasons) for a placement decision, for example, where security concerns based on intelligence had led to the placement decision being made.

By letter dated 20 August 2008, I wrote to the Acting Director-General confirming the outcome of the meeting. In particular, I requested that several amendments be made to QCS' existing procedures and guidelines so as to implement my recommendations and to give effect to the matters agreed upon. I asked that copies of the amended documents be provided to my Office in due course. I also confirmed that QCS had agreed to provide its decision-makers with relevant training so as to reiterate their obligations when making decisions.

QCS subsequently provided my Office with copies of memoranda from its Legal Counsel which confirmed that administrative decision-making training had been delivered to members of the Offender Progression Review Committee, which manages some security classification and placement decisions for prisoners with sentences over 10 years,[4] and relevant custodial personnel.

On 23 September 2008, the same delegate carried out another assessment on prisoner Smith's placement and reached the same decision that Smith remain at Prison B. Once again, the delegate failed to record any reasons for the placement decision and did not provide any reasons to Smith. In making the placement decision, the delegate did not follow the OMT's recommendation that Smith be transferred back to Prison A. In fact, the delegate used exactly the same words that had been used in the previous decision about which I had expressed concern, that is:

> The delegate then gave consideration to the offender's placement. In determining the placement of the offender the authorised delegate consulted with members of the Offender Progression Review Committee and exercised the discretion delegated in accordance with Section 68 of the Corrective Services Act. The offender is approved to remain placed at … [Prison B] …

I gave a further report to the Acting Director-General about that decision. In my report, sent under cover of a letter dated 4 December 2008, I expressed the opinion that the placement decision about prisoner Smith was a decision for which reasons should have been given but were not given and this constituted administrative action of the kind referred to in s.49(2)(e) of the Ombudsman Act. The failure to give reasons also constituted unreasonable administrative action under s.49(2)(b) of the Ombudsman Act.

I also recommended that the delegate prepare a written statement of reasons in support of the placement decision made on 23 September 2008.

The Acting Director-General informed me by letter of 19 December 2008 that the delegate was on leave. Shortly after I sent my report to the Acting Director-General, a

[4] Namely, 'low classification or placement for prisoners serving more than 10 years where the prisoner is not currently classified low security and/or placed in a low custody facility. This is regardless of whether they have previously been placed in a low custody facility and/or classified low security' Queensland Corrective Services (11 February 2008) *Offender Progression Review Committee* [accessed on Queensland Corrective Services intranet on 14 April 2009]; see also Queensland Corrective Services (2007) *Annual Report 2006-07* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Annual_Reports/annual06-07/documents/AnnualReport06-07.pdf on 9 April 2009].

new chief executive (Director-General) was appointed. He responded to my recommendation by letter dated 6 February 2009, as follows:

> In order to action your recommendation, it is proposed that a new decision will be made regarding *[the prisoner's]* placement.
>
> …
>
> It is anticipated that the decision-maker will make a decision regarding *[the prisoner's]* placement by the end of March 2009.
>
> The decision-maker will provide a written statement of reasons for that decision to *[the prisoner]* and a copy will be provided to your Office.

1.2 Own initiative investigation

Partly as a result of investigating the complaint of prisoner Smith, I decided to conduct an own initiative investigation into QCS' security classification, placement and transfer practices and procedures to determine whether the maladministration I found in prisoner Smith's case was present in the management of other prisoners.

My decision was influenced by:

- the fact that the delegate for the decisions about prisoner Smith was an experienced senior officer of QCS, which suggested that other delegates may be following the same unreasonable practice
- the fact that, despite my formal opinion to the Acting Director-General that the delegate should have recorded, and given the prisoner, reasons for the decision about placement, the delegate again failed to record or give reasons when reviewing the decision.

I was also mindful that the Corrective Services Act, which commenced on 28 August 2006, removed the right of prisoners to apply for judicial review of decisions about security classifications (s.17). Section 71 of the Act also removed decisions about transfers from the scope of judicial review.

Prisoners can seek a review of those decisions by the chief executive and also contact an Official Visitor. However, the Ombudsman's Office is the only independent body, external to QCS, that is able to review security classification, placement and transfer decisions on its own initiative.

I note that the then Minister for Police and Corrective Services, in her second reading speech calling for the enactment of the Corrective Services Act, said:[5]

> I will continue to support prisoners' unfettered access to complaint mechanisms such as official visitors and the Ombudsman's office but this legislation makes it clear that prisoners will no longer have a right to request that these management decisions be judicially reviewed. Queensland's modern approach to prisoner assessment means that corrections staff can instantly and automatically monitor every aspect of a prisoner's institutional and community risk from the time they enter the prison system to the time they are released. That means that any determination made about what a prisoner should be classified and where they should be accommodated has been made using

[5] Queensland Parliament (29 March 2006) *Weekly Hansard* [accessed at http://parlinfo.parliament.qld.gov.au/isysquery/71bab5b3-d727-4b81-87f4-88efada66cc3/1/doc/2006_03_29_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au/isysquery/71bab5b3-d727-4b81-87f4-88efada66cc3/1/hilite/ on 2 April 2009].

> the most up-to-date offender information available. If a prisoner remains dissatisfied with a classification or placement decision they can continue to request that it be reviewed internally or take it up with an official visitor.

I informed the former chief executive of QCS of my intention to conduct an own initiative investigation[6] of security classifications, placements and transfers by letter dated 9 April 2008.

The principal objectives of the investigation were to:

- decide the extent to which QCS officers were complying with the legislation and the practices and procedures relating to the security classification, placement and transfer of prisoners
- decide the adequacy of those practices and procedures
- identify and recommend improvements to those practices and procedures
- if appropriate, recommend amendment to relevant legislation.

The primary means by which the investigation was conducted was to:

- consider the relevant legislation
- review QCS' security classification, placement and transfer practices and procedures
- review a sample of QCS' records (offender files and IOMS records) for prisoners serving 10 years or more, looking at SPAs made between 1 July 2006 and 30 June 2008
- conduct workshops and interviews with relevant QCS officers and prisoners to clarify issues raised from the review of files and QCS' security classification, placement and transfer practices and procedures.

The sample of 200 was taken from the total population of approximately 800 prisoners around the state serving sentences of 10 years or more.

Not all of the sample was random as would be the case if the sole purpose of the audit were to gather statistics. My Office's audit was conducted primarily as a performance audit, which has a qualitative and subjective aspect.[7] Given the type of audit conducted, there was no need for the sample to be 'random' or 'representative'. My investigators used information from complaints made by prisoners to my Office in choosing the sample. They also selected prisoners in the 'high profile' category to see whether the process followed in making decisions about these prisoners differed significantly from the process followed with other prisoners. Our audit showed no significant differences. This is appropriate and also enhances the quality of the report.

[6] Under s.12, Ombudsman Act.
[7] I discuss performance auditing in chapter 13 of Queensland Ombudsman (2007) *Tips and Traps for Regulators* [accessed at http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Tips%20and%20Traps%20for%20Regulators_Updated%20Mar%2009_FOR%20WEB.pdf on 2 April 2009].

My investigators reviewed the IOMS records of 106 of those prisoners. The physical offender files of the other 94 prisoners were reviewed at:

- Woodford Correctional Centre
- Brisbane Women's Correctional Centre
- Wolston Correctional Centre.

Throughout the review, my investigators looked for, among other things, indications that:

- SPA forms had regard to all relevant matters, as specified in the procedure
- SPA forms contained reasons
- prisoners were provided with a copy of the SPA forms, or a summary
- wherever recommendations or decisions were made that were adverse to a prisoner, adequate reasons were given to the prisoner and recorded on the file.

After the records review, my investigators also considered the level of knowledge among prisoners of their right to have a transfer decision internally reviewed.

Chapter 2: About the Ombudsman and investigations

2.1 Jurisdiction and Ombudsman Act

The Ombudsman is an officer of the Parliament empowered to deal with complaints about the administrative actions of Queensland public sector agencies, including government departments, public authorities and local governments. As QCS is an 'agency' for the purposes of the Ombudsman Act, it follows that I may investigate its administrative actions.

Under the Ombudsman Act, I have authority to:

- investigate the administrative actions of public sector agencies on complaint or on my own initiative
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.[8]

If I consider that an agency's actions were unlawful, unreasonable, unjust or otherwise wrong, I may provide a report to the principal officer of the agency. In my report, I may make recommendations to rectify the effect of the maladministration I have identified or to improve the agency's policies, practices or procedures with a view to minimising the prospect of similar problems occurring.

2.2 Procedure for gathering evidence

Section 25 of the Ombudsman Act provides as follows:

> 25 Procedure
>
> (1) Unless this Act otherwise provides, the ombudsman may regulate the procedure on an investigation in the way the ombudsman considers appropriate.
>
> (2) The ombudsman, when conducting an investigation:
>
> (a) must conduct the investigation in a way that maintains confidentiality; and
>
> (b) is not bound by the rules of evidence, but must comply with natural justice; and
>
> (c) is not required to hold a hearing for the investigation; and
>
> (d) may obtain information from the persons, and in the way the ombudsman considers appropriate; and
>
> (e) may make the inquiries the ombudsman considers appropriate.

[8] Sections 6 and 12, Ombudsman Act.

I did not have to use any of my powers to obtain evidence under part 4 of the Ombudsman Act as QCS and all persons from whom information and/or documents were sought assisted my investigators.

2.3 Standard of proof and sufficiency of evidence

Section 49(2) of the Ombudsman Act outlines the matters on which the Ombudsman must form an opinion before making a recommendation to the principal officer of an agency under s.50.

The question of the sufficiency of evidence to support an opinion of the Ombudsman requires some assessment of weight and reliability. In making that assessment, the standard of proof, appropriate to the opinions required to be formed, needs to be applied.

Two standards of proof are known to the common law: the criminal standard and the civil standard. The criminal standard requires proof beyond reasonable doubt. The civil standard requires proof on the balance of probabilities. 'Balance of probabilities' essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true.

The civil standard of proof applies in investigations conducted by an Ombudsman.

The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved. In the case of *Briginshaw v Briginshaw* (1938) 60 CLR 336, Dixon J remarked that:

> The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved.

2.4 Procedural fairness

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making.

The rules of procedural fairness have developed to ensure that decision-making is both fair and reasonable.

Several sections of the Ombudsman Act require the Ombudsman to comply with the principle that persons the subject of adverse comment should be provided with an opportunity of being heard about a matter before a final opinion is formed.

Section 25(2) of the Ombudsman Act provides that when conducting an investigation, the Ombudsman must comply with the 'principles of natural justice'.

Section 26(3) of the Ombudsman Act provides that, if at any time during the course of an investigation it appears there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be offered an opportunity to comment on the subject matter of the investigation before the report is made.

To satisfy this obligation, I provided a proposed report to Mr Jim McGowan, Director-General of the Department of Community Safety and invited his response, which he gave. I refer to Mr McGowan's response where appropriate throughout this report.

Section 55(2) of the Ombudsman Act provides that I must not make adverse comment about a person in a report unless I give that person an opportunity to make submissions about the proposed adverse comment.

I issued a notice of adverse comment to one person and allowed them four weeks to make a submission. The person did not respond. I believe I have satisfied my obligation under s.55(2) of the Ombudsman Act.

2.5 Response of agency

In Mr McGowan's response to my proposed report, he noted, but made no submission on, my three proposed opinions. In relation to my 15 proposed recommendations, Mr McGowan:

- agreed with 12 of them
- suggested minor amendments to recommendations 2 and 3, which I have agreed to
- suggested an amendment to recommendation 14, which I have not agreed to for reasons set out in 8.4 of my report.

2.6 De-identification

This report is about the review of the practices and procedures of QCS about security classification and placement decisions and transfer decisions affecting prisoners. It is not necessary to identify individuals connected with my investigation and I have therefore deleted:

- references to the names of QCS officers and their position titles and instead referred to QCS officers, supervisors, delegates or senior officers
- other information that could identify any officer unless the information is critical to a purpose of this report.

Chapter 3: Corrective services legislation and QCS policies

3.1 Security classification

Section 13 of the Corrective Services Act provides:

> (1) The chief executive must review a prisoner's security classification—
> (a) for a prisoner with a maximum security classification—at intervals of not longer than 6 months; and
> (b) for a prisoner with a high security classification—at intervals of not longer than 1 year; and
> (c) for a prisoner whose term of imprisonment is changed by a court order—when the court orders the change.
> (2) The chief executive may review the security classification of a prisoner with a low security classification.
> *Example—*
> The chief executive may review the security classification if the prisoner's behaviour deteriorates.
> (3) When reviewing a prisoner's security classification, the chief executive must have regard to the matters mentioned in section 12(2).[9]

Section 14 of the Corrective Services Act provides:

> The chief executive may change a prisoner's security classification after reviewing it under section 13.

The *Procedure – Review*[10] provides:

> **2.1 Review of classification - secure custody**
>
> An offender's classification must be reviewed … in accordance with Corrective Services Act 2006 (Act) s13 and recorded on a security classification and placement assessment (SPA).
>
> When considering an offender's security classification the review team must provide a detailed summary for each of the factors listed in Act, s12, including identification of those factors which most influence the recommendation and decision, and also the degree of influence.
>
> …
>
> The completed SPA, including summaries, assessments, other relevant reports and recommendations must be forwarded to the relevant authorised delegate within one week of the offender's case being reviewed.

Under the *Instrument of Delegation of Chief Executive Powers*,[11] the chief executive delegates the power, under s.13 of the Corrective Services Act, to review the security classification of a prisoner serving 10 years or more to the Assistant Director-General, Custodial Operations and the General Manager, Custodial Operations.

[9] Namely, the nature of the offence for which the prisoner has been charged or convicted; the risk of the prisoner escaping, or attempting to escape, from custody; the risk of the prisoner committing a further offence and the impact the commission of the further offence is likely to have on the community; and the risk the prisoner poses to himself or herself, and other prisoners, staff members and the security of the corrective services facility.

[10] Queensland Corrective Services (22 July 2008 – Version 9) *Procedure – Review* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Annual_Reports/annual06-07/documents/AnnualReport06-07.pdf on 19 March 2009].

[11] Whittaker, N., Acting Director-General, Queensland Corrective Services (12 January 2009) *Instrument of Delegation of Chief Executive Powers.*

Page 10 of the *Security Classification and Placement Assessment Guidelines*[12] provides the following guidance to the delegate for recording the security classification decision:

> Note the recommendation and the factor/s which contributed to the decision. The reasons should provide a list of the factors considered most relevant to the decision.
>
> Any additional considerations to those noted in the recommendation are to be documented.
>
> Where the delegate does not concur with the recommendation a detailed explanation as to the reasons is required.

The direction to 'note the recommendation' is a reference to the recommendation of the OMT. As stated at chapter 1, the relevant OMT reviews a prisoner's classification at intervals in accordance with s.13 of the Corrective Services Act and records its assessment and review recommendation on a security classification and placement assessment (SPA) form.

For recording documents considered in reaching the security classification decision, it advises:

> NB: Shortcut comments such as 'all relevant documents' will not be acceptable.

Section 15 of the Corrective Services Act provides:

> **15 Notice of decision about prisoner's security classification following review**
>
> (1) After reviewing a prisoner's security classification, the chief executive must give the prisoner an information notice about the chief executive's decision following the review.
> (2) If the chief executive increased the prisoner's security classification, the information notice must include a statement that if the prisoner is dissatisfied with the decision, the prisoner may ask the chief executive to reconsider the decision by notice given to the chief executive within 7 days after the information notice is given to the prisoner.

'Information notice' is defined in schedule 4 as follows:

> **information notice**, about a decision of the chief executive, means a written notice that includes the following–
> (a) the decision;
> (b) the chief executive's reasons for the decision;
> (c) the date the decision has effect.

Section 27B of the *Acts Interpretation Act 1954* provides:

> **27B Content of statement of reasons for decision**
>
> If an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision (whether the expression 'reasons', 'grounds' or another expression is used), the instrument giving the reasons must also–

[12] Queensland Corrective Services (27 May 2008 – Version 4)
Appendix – Security Classification and Placement Assessment Guidelines [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappclassassesglines.doc on 19 March 2009].

(a) set out the findings on material questions of fact; and
(b) refer to the evidence or other material on which those findings were based.

Summary of security classification review process

At certain times the OMT must review a prisoner's security classification and provide a recommendation, on the SPA form, to the delegate. The delegate must make the security classification decision and record reasons on the SPA form. The delegate must give the written decision and reasons to the prisoner. If the decision is to increase the security classification, the delegate must provide the prisoner with written information as to how the prisoner can have the decision internally reviewed.

3.2 Placement and transfer

QCS uses the terms 'placement' and 'transfer' sometimes separately and sometimes interchangeably. For the purposes of this report, a placement decision is an administrative decision made during the security classification and placement review (SPA process).[13] If the placement decision is that the prisoner be placed in another centre, that decision is shortly followed by a transfer decision. The following legislation and procedures apply to placement and transfer decisions.

Section 66 of the Corrective Services Act provides:

> (1) The chief executive may, by written order (a **work order**), transfer a prisoner from a corrective services facility to a work camp.
> …
> (4) The chief executive must give a copy of the work order to the prisoner.
> …

Section 68 of the Corrective Services Act provides:

> (1) The chief executive may, by written order, transfer a prisoner from a corrective services facility to—
> (a) another corrective services facility …
> (2) The order may include the conditions the chief executive reasonably considers necessary to effect the transfer.
> …

The OMT (also called the 'offender management review team') conducts reviews of placement and records its decision on a SPA form.

Section 2.3 of QCS' *Procedure – Review*[14] provides:

> **2.3 Review of placement - custody**
>
> An offender's placement may be reviewed at any time during an offender's sentence, either individually or in conjunction with a review of classification. Reviews of placement are recorded on a SPA.

[13] As discussed at 7.2, in practice, SPA forms are generated for two other reasons, namely, a transfer at a prisoner's request and a transfer to another managing location to facilitate a medical appointment, court appearance or leave of absence. In those circumstances, the complete SPA process is not conducted and only parts of the SPA form are filled out.

[14] Queensland Corrective Services (22 July 2008 – Version 9) *Procedure – Review* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Annual_Reports/annual06-07/documents/AnnualReport06-07.pdf on 19 March 2009].

When considering an offender's placement the review team should take into account the following factors–

a. the offender's security classification;
b. the offender's personal circumstances;
c. the offender's attitude toward any pending deportation or extradition;
d. any medical concerns associated with the offender;
e. program availability;
f. the offender's escape rating;
g. the offender's risk to the community; and
h. any other relevant factor.

The offender management review team must discuss with an offender his/her preference for placement. The reasons for this preference must be recorded on IOMS. Written submissions or brief notes of oral submissions must be maintained on IOMS or the offender file.

Section 71 of the Corrective Services Act provides:

(1) This section applies if—

(a) the chief executive decides to transfer a prisoner under section 66 or 68, other than as the prisoner's initial placement after admission to a corrective services facility; and
(b) the prisoner is dissatisfied with the decision.

(2) The prisoner may, within 7 days after being given notice of the decision, apply in writing to the chief executive for a reconsideration of the decision.
(3) After reconsidering the decision, the chief executive may confirm, amend or cancel the decision.

Section 9.3 of QCS' *Procedure – Review* provides:

Placement

An offender may request a reconsideration of a decision made in relation to the offender's placement. Refer procedure - Transfer of Offenders.

Section 3.2 of QCS' *Procedure – Transfer of Offenders*[15] provides:

3.2 Reconsideration of Transfer

An offender may request a reconsideration of a decision made in relation to their placement. A request for reconsideration must be made within seven days after the offender is given notice of the decision on the administrative form - Transfer Reconsideration Request.

Refer Act s 71; Instrument of Delegation of Chief Executive Powers - Corrective Services Act 2006 (in-confidence); Instrument of Limitation of Corrective Services Officers' Powers (in-confidence); and administrative form - Transfer Reconsideration Request.

A transfer reconsideration may be requested for reasons that include–

a. the transfer procedures not being followed;

[15] Queensland Corrective Services (11 September 2007 – Version 9) *Procedure – Transfer of Offenders* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprotransfercust.shtml on 19 March 2009].

b. inappropriate or inaccurate information forming the basis of the transfer recommendation or decision; and
c. family or special circumstances that have not adequately been taken into consideration.

The reconsideration of the transfer decision must be completed within a period of 28 days of receipt of the offender's request for reconsideration. Consideration must be given to all material used in the original decision and any additional information provided by the offender. The decision must be conveyed to the offender on the administrative form - Notice of Decision on Transfer Reconsideration.

Under the *Instrument of Delegation of Chief Executive Powers*,[16] the chief executive delegates the power to make a work order[17] to the Assistant Director-General, Custodial Operations, the Executive Director, Offender Assessment and Services and the General Manager of a centre on certain conditions.

The chief executive delegates the power to transfer a prisoner to another corrective services facility[18] to the Assistant Director-General, Custodial Operations, the General Manager, Custodial Operations, the General Manager and Assistant General Manager of a centre and the Manager of the Helana Jones Centre[19] on certain conditions.

QCS' *Security Classification and Placement Assessment Guidelines*[20] provide the following guidance to the delegate about recording the placement decision:

Note any factors that may influence decision.

For recording documents considered in reaching the placement decision, it advises:

NB: Shortcut comments such as 'all relevant documents' will not be acceptable.

Summary of placement review process

The OMT may review a prisoner's placement at any time and record its review and recommendation to the delegate on the SPA form. The delegate must make a placement decision and record reasons for it on the SPA form. If the decision is to transfer the prisoner to another centre, the delegate will make a written order for transfer.

There is no requirement to notify the prisoner of:

- the transfer decision
- the reasons for the decision, or
- the prisoner's right to request that the decision be reconsidered.

[16] Whittaker, N., Acting Director-General, Queensland Corrective Services (12 January 2009) *Instrument of Delegation of Chief Executive Powers.*
[17] Section 66(1), Corrective Services Act.
[18] Section 68(1)(a), Corrective Services Act.
[19] A women's prison work camp.
[20] Queensland Corrective Services (27 May 2008 – Version 4) *Appendix – Security Classification and Placement Assessment Guidelines* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappclassassesglines.doc on 19 March 2009].

Chapter 4: Notice of adverse factors before decision

4.1 Introduction

One issue that concerned me in prisoner Smith's case was that the delegate did not follow the OMT's recommendation on placement, but relied on factors that had not been raised or discussed with the prisoner during the OMT review.

4.2 Procedural fairness

It is not clear whether there is a legal requirement for QCS to afford procedural fairness to prisoners when making placement and transfer decisions. There are no clear legal authorities that determine the point. In *Re Walker*, the Supreme Court held that such decisions cannot be regarded as affecting a prisoner's rights, interests or legitimate expectations.[21]

However, in *Renton v Bradbury & Anor*, the Supreme Court held that QCS' procedures, which at that time gave prisoners the right to be informed of an intention to transfer, and to be heard in relation to a proposed decision, were sufficient to give rise to a legitimate expectation that such procedures would be followed. Specifically, the procedures at the time gave prisoners a right to be heard about a proposed transfer. The court held therefore that because there was a legitimate expectation of a hearing, procedural fairness should be given in relation to the hearing.[22]

However, both of these decisions were made under previous legislation and procedures. I am not aware of any decision of a court on whether the provisions of the Corrective Services Act and the current QCS procedures give rise to an obligation on the part of the chief executive to give a prisoner procedural fairness when making decisions about security classification, placement and transfer.

4.3 Fair and reasonable administrative actions

The circumstances in which the Ombudsman may form the opinion that a decision is unreasonable or unfair (unjust) are not limited to those in which a court would hold there has been a breach of procedural fairness for failing to provide an opportunity to be heard. Section 49(2) of the Ombudsman Act describes the types of administrative action that may be the subject of a recommendation by the Ombudsman, namely, administrative action that:

(a) was taken contrary to law; or
(b) was unreasonable, unjust, oppressive, or improperly discriminatory; or
(c) was in accordance with a rule of law or a provision of an Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory in the particular circumstances; or
(d) was taken—

  (i) for an improper purpose; or
  (ii) on irrelevant grounds; or
  (iii) having regard to irrelevant considerations; or

(e) was an action for which reasons should have been given, but were not given; or

[21] See for example *Re Walker* [1993] 2 Qd. R. 345.
[22] *Renton v Bradbury & Anor* [2001] QSC 176, Muir J.

(f) was based wholly or partly on a mistake of law or fact; or
(g) was wrong.

It is common knowledge that an Ombudsman is entitled to make recommendations about a practice or procedure that the Ombudsman considers to be unreasonable.

Professor John McMillan, Commonwealth Ombudsman, has said:[23]

> There are now a great many independent statutory agencies that perform an important accountability and integrity function in the legal system. The list includes … ombudsmen … The function they discharge embraces legal compliance, good decision-making and improved public administration. But the shared concern of these agencies goes further to embrace institutional integrity.
>
> Chief Justice Spiegelman explains:[24]
>
> > Institutional integrity goes beyond a narrow concept of illegality to encompass at least two additional considerations. First, the maintenance of fidelity to the public purposes for the pursuit of which an institution is created. Secondly, the application of the public values, including procedural values, which the institution was expected and/or required to obey.
> >
> > This focus on fidelity to purpose and on applicable public values … distinguish[es] the integrity function from other governmental functions, including most executive, legislative and judicial decision-making, which are concerned with the quality of outcomes.

Also, on the Ombudsman's role in reviewing decisions within corrective services, one academic writes:[25]

> In some instances, the jurisdiction of Ombudsmen may be wider than the supervisory jurisdiction of the courts. For example, courts are extremely reluctant to examine the administrative decisions made by prison officials during an emergency, even though such decisions often cause great hardship to prisoners.[22] In other areas where courts have accepted that supervisory review extends to the decisions of prison officials, they have demonstrated such deference to prison officials that it may be suggested that judicial review does not provide an effective remedy for prisoners.[23] The jurisdiction of Ombudsman is not subject to such restraints.

Footnote 22 See, eg, McEvoy v Lobban [1990] 2 Qd R 235 at 241 (CA) where the court held that the managerial decisions of prison officials should only be reviewed on the grounds of bad faith.

Footnote 23 See Matthew Groves, 'Administrative Segregation of Prisoners: Powers, Principles of Review and Remedies' (1996) 20 Monash University Law Review 629 where it is concluded that prisoners sent to or detained in segregation have almost no prospect of gaining relief by way of judicial review except if prison officials blatantly fail to follow the procedures governing segregation.

This broad notion of fidelity or integrity in public office is reflected in both the *Public Service Act 2008* and the *Public Sector Ethics Act 1994*. In particular, s.100(2) of the Public Service Act states that a chief executive, in making decisions about particular individuals:

(a) must act independently, impartially and fairly; and

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[23] McMillan, J, Prof, Commonwealth Ombudsman (5-6 November 2004) *The Ombudsman and the Rule of Law*, Public Law Weekend, Canberra.
[24] The Hon J Spiegelman, 'Jurisdiction and Integrity', Second Lecture in the 2004 National Lecture Series of the Australian Institute of Administrative Law, referred to in McMillan, J, Prof, Commonwealth Ombudsman (5-6 November 2004) *The Ombudsman and the Rule of Law*, Public Law Weekend, Canberra.
[25] Groves, M. (2002) *Ombudsmen's Jurisdiction in Prisons* Monash University Law Review, 28(1), 181.

(b) is not subject to direction by any Minister.

Therefore, the Ombudsman Act and the Public Service Act both indicate that the chief executive of QCS has a duty to act fairly at all times, including when making security classification, placement and transfer decisions.

4.4 OMT practice

As I have said, a prisoner's security classification and placement are reviewed at specified intervals by the relevant OMT, which then makes a recommendation to the delegate.

Under s.13 of the Corrective Services Act, those intervals are:

- for a prisoner with a maximum security classification, at intervals of not longer than six months
- for a prisoner with a high security classification, at intervals of not longer than one year
- for a prisoner whose term of imprisonment is changed by a court order, when the court orders the change.

The security classification of a prisoner with a low security classification may be reviewed if the need arises, for example if the prisoner's behaviour deteriorates.

Of the sample prisoners, 81.0% were classified high security at the beginning of the audit period, 16.5% were classified low and 2.5% were classified maximum security.

During my investigators' visits to the centres, some prisoners and correctional officers said that factors that may adversely impact on a prisoner's security classification or placement assessment (such as negative case notes) are routinely raised with the prisoner at the review meeting.

I consider this to be good administrative practice and commend the centres concerned for implementing it.

Recommendation 1

The chief executive develop and implement procedures and guidelines that require the OMT to raise factors that may adversely affect a prisoner's security classification or placement assessment with the prisoner at the review meeting, unless to do so, in a particular case, could reasonably be expected to prejudice the security or good order of a centre.

In my proposed report, I made the following proposed recommendation 2:

> If raising with a prisoner factors that may adversely affect the prisoner's SPA could reasonably be expected to prejudice the security or good order of a centre, the OMT must record that fact on the SPA and record in a confidential document the factors not disclosed to the prisoner.

The chief executive, Mr Jim McGowan, Director-General of the Department of Community Safety responded:

> That the words 'the OMT' be replaced with the words 'an appropriate officer', as it may not be the members of the Offender Management Team who actually administer the records referred to in this recommendation.

I consider Mr McGowan's proposed amendment is reasonable and have agreed to it.

Recommendation 2

If raising with a prisoner factors that may adversely affect the prisoner's SPA could reasonably be expected to prejudice the security or good order of a centre, an appropriate officer must record that fact on the SPA and record in a confidential document the factors not disclosed to the prisoner.

4.5 Where delegate does not follow OMT recommendation

Senior officers advised that as many as one in four of all security classification and placement recommendations of the OMT are rejected by the delegate.

Sometimes, there are good reasons for not telling the prisoner the delegate's reasons for rejecting the recommendation. One senior officer advised that the delegate may be aware of intelligence relating to the prisoner that was not available to the OMT (for example, information that a prisoner is about to be assaulted) so that the delegate needs to order that the prisoner be transferred quickly to maintain good order within the centre.

In prisoner Smith's case, I recommended:

> That the Department amend its procedures to require that, in circumstances where a decision-maker for a placement decision intends not to follow an OMT recommendation that accords with the prisoner's preference, and the proposed decision can therefore be regarded as being adverse to the prisoner's interests, the decision-maker give the prisoner the opportunity to comment on all the issues the decision-maker intends to take into account in making the decision.

The then Acting Director-General (acting chief executive) declined to implement that recommendation. After considering his response, and re-examining prisoners' statutory right of internal review of security classification[26] and transfer[27] decisions, I have decided not to pursue compliance with this recommendation. I am satisfied that QCS' practice will not be unreasonable, unjust or oppressive provided the chief executive implements recommendations 1, 6 and 10 in this report.

[26] Section 16, Corrective Services Act
[27] Section 71, Corrective Services Act

Chapter 5: Recording and giving reasons for security classification and placement decisions

5.1 Public Records Act, IS40 and Best Practice Guide to Recordkeeping

Section 7 of the *Public Records Act 2002* provides:

> (1) A public authority must—
>
> (a) make and keep full and accurate records of its activities; and
> (b) have regard to any relevant policy, standards and guidelines made by the archivist about the making and keeping of public records.

This duty is reinforced by s.98(1)(h) of the Public Service Act, which makes chief executives responsible for:

> (h) ensuring maintenance of proper standards in the creation, keeping and management of public records.

Principle 7 of *Information Standard 40: Recordkeeping*,[28] published by the Queensland State Archivist provides:

> **Principle 7 - Full and accurate records must be made and kept for as long as they are required for business, legislative, accountability and cultural purposes.**
>
> To meet this principle records must be:
>
> …
> • adequate;
> • complete;
> • meaningful;
> …

The *Best Practice Guide to Recordkeeping*,[29] endorsed by the Queensland State Archivist, further explains the concept of full and accurate records and more specifically adequate, complete and meaningful records this way:

> Records must be adequate for the purposes for which they are created and kept. To be complete, records should contain not only the content, but also the structural and contextual information necessary to document a transaction.
>
> The record context represents all processes in which records participated. It should be possible to understand a record in the context of the processes that produced it and its relationship with other records. A record must be adequate to the extent necessary to:
>
> • Facilitate action by employees (including agents and contractors) and their successors at any level

[28] Queensland State Archivist (Queensland Government, Chief Information Office, Department of Public Works) *Information Standard 40: Recordkeeping* [accessed at http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/informationstandards/current/Pages/Recordkeeping.aspx on 19 March 2009].
[29] Queensland State Archivist (Queensland Government, Chief Information Office, Department of Public Works) (November 2006 – V1.04.00) *Best Practice Guide to Recordkeeping* [accessed at http://www.archives.qld.gov.au/downloads/IS40BestPracticeGuidetoRKv1.03.00.pdf on 19 March 2009].

- Allow for the proper scrutiny of the conduct of business by anyone authorised to undertake such scrutiny
- Protect the financial, legal and other rights of the organisation, its clients and any other people affected by its actions and decisions.

In the context of security classification, placement and transfer decisions, this means the records of those decisions must be detailed enough for:

- supervisors to properly internally review those decisions
- internal and external review bodies[30] to properly review those decisions
- prisoners to decide whether there are grounds for challenging those decisions.

5.2 Result of audit

In the guidelines, the suggested entries for 'factors and reasons' for security classification decisions and for placement decisions direct delegates to list the factors taken into account in making those decisions.

I think this is ambiguous. Listing the factors taken into account in making a decision is not necessarily the same thing as giving reasons as illustrated by the following case study.

Case study 1

The delegate gave the following 'factors and reasons' for a security classification and placement decision:

With regard to factors at Sections 12, 13, 19 and 68 of the Corrective Services Act 2006, suitably classified High and placed at [centre].

Approximately 30% of offender files my investigators reviewed had no reasons or inadequate reasons recorded for delegates' decisions about security classification or placement or both. Of that 30%, most merely listed factors of the kind stated in the case study.

5.3 What are reasons?

To meaningfully and accurately communicate decisions on security classification and placement, it is critical that delegates:

- have good records of the decision-making process
- are clear on the decision, reasons and the consequences of the decision.

Unclear decisions and reasons may indicate a wrong decision and/or a lack of confidence by the decision-maker in the decision made.

Reasons are the logical explanation for the decision. The steps of reasoning should link the facts to the decision so one can understand how it was made.[31]

[30] QCS' Internal Audit Branch, QCS' Offender Management and Services Directorate, the Office of the Chief Inspector and the Office of the Queensland Ombudsman.
[31] Queensland Ombudsman *Good Decisions Training Workbook.*

The New South Wales Ombudsman, in his publication *Good Conduct and Administrative Practice*, advises that reasons should include:[32]

- identification of the decision to be made
- the sources of all information relevant to the decision
- an adequate statement of the evidence relied on (if the existence or otherwise of a fact is to be relied upon, it must be set out in the reasons)
- the material questions of fact which arise from the evidence (a material fact is one on which the decision turns, eg, any essential preconditions set out in legislation or agency policy)
- findings on material questions of fact that may arise, including inferences drawn from those facts (if findings on a material fact are not set out it could be inferred that the fact was not considered)
- whether, in relation to material facts, the evidence was accepted or rejected (where the evidence on a material fact is conflicting, reference should be made to the available evidence and why certain evidence was preferred)
- the decision-maker's understanding of the applicable law and any issues of law which arise (which may necessitate summarising, paraphrasing or quoting relevant legislation)
- opinions or views on any such issues of law
- if the decision-maker is adopting the recommendation of another person or body, the decision-maker's reasons why this approach is being adopted
- conclusions derived from the facts and the law.

5.4 Security classification decisions

The following de-identified case study of a security classification decision illustrates the inadequacy of the reasons recorded by delegates in a significant number of cases we audited.

Case study 2

The delegate rejected the OMT's recommendation about security classification. These were the delegate's reasons:

On [date] [delegate], *the authorised delegate considered the offender's security classification. In determining this document notice was taken of the relevant Legislation and Procedure together with all aspects of the offender's case, information contained within the IOMS document and the comments of the General Manager and Sentence Management Team. After considering all the factors the delegate gave particular regard to: the risk of the offender to the community; the nature of the offences of which the offender has been convicted; the offender's previous criminal history; the period of imprisonment the offender is serving; along with the offender's previous conduct in a corrective services facility and was of the opinion that in accordance with s.12(2) of the Corrective Services Act 2006, the offender is appropriately classified High security.*

A person reading this entry is none the wiser about why the delegate reached his decision, except that he had regard to the list of issues one would expect delegates to consider in every case.

There is nothing to indicate how any of these issues influenced his decision. I accept that it may be unnecessary to specify the nature of the prisoner's offences or term of imprisonment but the delegate should have explained the relevance of, and weight he gave to, other matters such as:

[32] New South Wales Ombudsman (2nd edition, May 2006) *Good Conduct and Administrative Practice – Guidelines for state and local government*, Sydney.

- the information in the IOMS document
- the comments of the General Manager and Sentence Management Team
- the prisoner's previous conduct in a corrective services facility.

Opinion 1

The failure of delegates of the chief executive to give to prisoners adequate reasons for decisions about security classifications in the cases identified in my investigators' audit of QCS' files constituted, in each case, administrative action that was:

(a) contrary to law, for the purposes of s.49(2)(a) of the Ombudsman Act in that the delegate did not comply with the obligation in s.15 of the Corrective Services Act to give the prisoner an information notice containing reasons for the decision; and/or
(b) unreasonable or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

As a result of a recommendation I made in my report on my investigation of prisoner Smith's case,[33] the then Acting Director-General (acting chief executive) circulated a memorandum to the General Managers and Assistant General Managers of all Queensland correctional centres and four other executive level officers[34] on 1 August 2008. In it, the Acting Director-General required officers to provide a print out of the completed IOMS SPA form to the prisoner. Specifically, he said:

> Legislation requires that the information notice (which for these purposes is the completed SPA) containing the reasons for the decision must be given to the prisoner. Recent events have demonstrated that there is a need to keep a permanent record of the fact that the completed SPA has been physically given to the prisoner and the circumstances. To ensure that a record is maintained, a simple way is to have the prisoner sign a receipt for the document and the receipt be retained in the prisoner's file.

I commend the Acting Director-General for taking this action and consider that this requirement is of sufficient importance to be included in the procedures.

In my proposed report, I made the following proposed recommendation 3:

> The chief executive develop and implement procedures and guidelines to require delegates to record in SPA forms adequate reasons for security classification decisions and to give the prisoner a print out of the SPA form immediately after making a security classification decision in order to comply with the obligations under s.15 of the Corrective Services Act.

The chief executive, Mr Jim McGowan, Director-General of the Department of Community Safety responded:

> That the word 'immediately' be replaced with the words 'within 2 working days', as it may not be possible to provide the SPA form to the prisoner immediately (for example: if a decision is made by the delegate in central office late on a Friday afternoon and is not available at a correctional centre until Monday morning).

[33] The recommendation was *'The Department provide guidance and training to officers authorised to make decisions about the security classification of prisoners to ensure they are aware of their legal obligations under the Corrective Services Act to record and provide appropriate reasons for such decisions'*.
[34] Namely the Assistant Director-General, the Executive Director, Custodial Operations, the Acting Executive Director, Offender Assessment and Services and the General Manager, Custodial Operations.

> This amendment would not adversely impact upon the prisoner, as the review rights under s.15 of the Corrective Services Act 2006 do not commence until the SPA is given to the prisoner.

I consider Mr McGowan's proposed amendment is reasonable and have agreed to it.

Recommendation 3

The chief executive develop and implement procedures and guidelines to require delegates to record in SPA forms adequate reasons for security classification decisions and to give the prisoner a print out of the SPA form within two working days after making a security classification decision to comply with the obligations under s.15 of the Corrective Services Act.

Recommendation 4

If a reason relevant to the delegate's security classification decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

5.5 Placement

My investigators' audit also revealed that delegates recorded inadequate reasons for a significant number of placement decisions. The following case study illustrates what we found.

Case study 3

In determining offender Blank's placement, notice was taken of the relevant legislation, procedure and escape risk together with all aspects of the offender's case, information contained within the document and the comments of the sentence management team. Following the determination of the offender's classification, I then gave consideration to the offender's placement in accordance with s.68(1)(a) of the Corrective Services Act 2006 and decided that offender Blank is appropriately accommodated at XX Correctional Centre.

Once again, the delegate simply records the things he took notice of but not how those things influenced his decision.

In other cases, it appeared that delegates were **not even turning their minds** to the factors they recorded as part of their placement decision, as they sometimes used the same paragraph as their purported reasons for accepting or rejecting a recommendation, as the following two case studies demonstrate.

Case study 4

The delegate, in accepting the OMT's placement recommendation, stated:

The delegate, [name] gave consideration to the offender's placement on [date]. In determining the placement of the offender the authorised delegate exercised the discretion delegated in accordance with Section 68 of the Corrective Services Act 2006. The offender is appropriately accommodated at [centre].

Case study 5

The delegate, in rejecting the OMT's placement recommendation, stated:

The delegate, [name] gave consideration to the offender's placement on [date]. In determining the placement of the offender the authorised delegate exercised the discretion delegated in accordance with Section 68 of the Corrective Services Act 2006. The offender is appropriately accommodated at [centre]*.*

In many other cases, where rejecting a placement recommendation, this delegate inserted a sentence to the effect that *'The offender is encouraged to maintain a further period of good behaviour at* [the current] *Centre'*. This implies that the prisoner had not demonstrated good behaviour for a sufficient period to justify transfer. However, I consider that the addition of this sentence does not provide proper reasons.

As mentioned, the legislation and the guidelines do not require delegates to record their reasons for placement decisions or to give their reasons to the prisoner.

However, prisoners have the right to complain about placement decisions under QCS' *Complaints Management Procedure.*[35] This raises the question of how a prisoner can make an informed decision about whether to complain about their placement decision if the prisoner does not know the reasons for the decision.

Also, if a prisoner complains about a placement decision, the officer who reviews the decision will not be able to simply rely on hard copy or electronic records of the decision to assess if it was reasonable.

The New South Wales Ombudsman provides this explanation in *Good Conduct and Administrative Practice* of the importance of giving reasons for decisions:[36]

> **The purposes of reasons**
> …
> **1. Transparency:**
>
> - A person affected by a decision is better able to see:
>
> – the facts and reasoning that were the basis for the decision
> – that the decision was not made arbitrarily or based on mere speculation or suspicion
> – to what extent any arguments they put forward have been understood, accepted or formed a basis for the decision
> – whether they have been dealt with fairly
> – whether or not they should exercise any rights of objection, review or appeal
> – the case they will have to answer or counter should they wish to exercise any right of objection, review or appeal that may be available.
>
> - A person affected by a decision is also better able to adjust his or her position to ensure that if the discretion is exercised again he or she is more likely to succeed or will not be adversely affected.

[35] Queensland Corrective Services (7 November 2008 – Version 4) *Procedure – Complaints Management* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Accountability/documents/accprocomplaint.shtml on 19 March 2009].
[36] New South Wales Ombudsman (2nd edition, May 2006) *Good Conduct and Administrative Practice – Guidelines for state and local government*, Sydney.

2. Accountability:

- Decision-makers who are required to give reasons have a greater incentive to base their decisions on acknowledged facts.
- Supervisors and managers are better able to see if legal requirements, agency/government policies and standard practices have been complied with.
- People or bodies with an external review role are in a better position to assess the decision, for example whether it was reached lawfully, based on relevant considerations, or based on the merits of the case.

3. Quality:

- Decision-makers who are required to give reasons have a greater incentive to:
  – rigorously and carefully identify and assess the relevant issues
  – properly justify recommendations and decisions.

- Other decision-makers are able to apply decisions to future cases by using the reasons as guidance for the assessment or determination of similar issues.

…

In a prison context, giving prisoners adequate reasons for placement decisions is conducive to the good order of the prison. People, whether they are prisoners or law abiding members of the community, feel aggrieved if they think they are the subject of an inconsistent, arbitrary or unjust decision. In the prison environment any measure that is likely to reduce prisoner tension and volatility and is reasonably practicable is worth considering. The giving of reasons for placement decisions seems to me to be such a measure.

In normal circumstances, I consider it is fair and reasonable[37] as well as good administrative practice for the delegate to record reasons for a placement decision and to provide those reasons to the prisoner.

I consider that the former Acting Director-General's direction that a copy of the SPA recording a security classification decision be given to the prisoner should be extended to SPAs recording placement decisions as well. I also consider that this practice should be incorporated into a formal procedure.

Opinion 2

The failure of officers to record and/or give to prisoners adequate reasons for placement decisions in the cases identified in my investigators' audit of QCS' files constituted, in each case, administrative action that was unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.

Recommendation 5

The chief executive develop and implement procedures and guidelines to ensure that delegates record in the SPA form reasons for placement decisions unless to do so could reasonably be expected to prejudice the security or good order of a centre.

[37] As required by s.49, Ombudsman Act and s.100(2), Public Service Act.

Recommendation 6

The chief executive develop and implement procedures to require delegates to give to the prisoner a print out of the SPA form immediately after making a placement decision recorded in the SPA form.

Recommendation 7

If a reason relevant to the delegate's placement decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

5.6 Recording prisoner receipt of SPA form

My investigators noted that two of the three centres audited usually place a copy of the SPA with the prisoner's signature and date on file, as proof that the prisoner is aware of the contents of the SPA form and has received details of how to request a review of the security classification decision. This is consistent with the former Acting Director-General's memorandum of 1 August 2008.

For the other centre, it was not always possible to decide from IOMS or the hard copy record whether a prisoner had in fact been provided with a copy of the SPA form.

I make the following recommendation for the improvement of records management in accordance with the Public Records Act, *Information Standard 40: Recordkeeping* and the *Best Practice Guide to Recordkeeping*.

Recommendation 8

The chief executive develop and implement procedures to require that when a print out of the SPA form is given to the prisoner, a record be made of that fact and the date a copy of the form was given to the prisoner. Wherever practicable, the prisoner should acknowledge, in writing, receipt of the copy.

5.7 Information missing from SPA forms

As with prisoner Smith's case, my investigators' review found that sometimes the IOMS SPA form failed to record all relevant information due to a limit on characters per field.

The then Acting Director-General acknowledged on 17 November 2008 that IOMS has a fault that 'cuts off' parts of information entered into fields after the character limit is reached and indicated that a technical fix for this is being developed. He advised that in the interim, prisoners are being provided with a full copy of the information contained in the SPA forms.

Recommendation 9

The chief executive develop and implement changes to the operation of IOMS to ensure all information entered in IOMS SPA forms can be easily reproduced in electronic and printed form.

Chapter 6: Transfers

6.1 Prisoners' knowledge of right of review

Neither the Corrective Services Act nor the procedures require that prisoners be informed of their right to apply for a review of a transfer decision. The *Prisoner Information Booklet*,[38] which is intended to be given to prisoners upon their initial reception into the corrective services system, mentions that the right of review exists but not how to apply for it.

One senior officer told my investigators that prisoners can go to the library to read what the Corrective Services Act says about their right of review. This is not a fair and reasonable approach. A prisoner's knowledge of their right of review should not be dependent on their initiative or ability to research their rights. Prisoners should be informed of their review right at the time they are given notice of the transfer decision.

I note here that my investigators' audit showed that one centre regularly informed prisoners in writing of their right to have transfer decisions reviewed. I commend the centre on implementing this practice.

Opinion 3

QCS' failure to advise all prisoners of their right under s.71 of the Corrective Services Act to apply in writing to the chief executive for a reconsideration of a transfer decision constitutes unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

Recommendation 10

The chief executive develop and implement procedures to ensure that any prisoner the subject of a transfer decision under s.66 or s.68 of the Corrective Services Act is made aware of the right to apply for a reconsideration of the decision under s.71 of the Act in sufficient time to make an application.

6.2 Reasons for transfer decision

Although s.71 provides a right of review of a transfer decision under s.66 or s.68, a prisoner cannot make an informed decision about whether to apply for a review if they do not know the reasons for the decision.[39] Similarly, an internal reviewer who does not have access to the reasons for the initial decision cannot simply rely on QCS' records to review it.

As there is no longer a right of review of a transfer decision under the Judicial Review Act, it is particularly important that reasons be given for transfer decisions.

[38] Queensland Corrective Services (19 February 2009 – Version 9) *Prisoner Information Booklet* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Reviews_and_Reports/prisoner_information_booklet.pdf on 19 March 2009].

[39] For example, the prisoner does not know whether inappropriate or inaccurate information formed the basis of the decision, or whether special circumstances were adequately taken into account.

Recommendation 11

The chief executive develop and implement procedures to ensure that delegates record and give to prisoners reasons for transfer decisions under s.66 or 68 of the Corrective Services Act, unless to do so could reasonably be expected to prejudice the security or good order of a centre.

Recommendation 12

If a reason relevant to the delegate's transfer decision cannot be disclosed to a prisoner because its disclosure could reasonably be expected to prejudice the security or good order of a centre, the delegate must record that fact on the SPA and record that reason in a confidential document.

Chapter 7: Incomplete SPA forms

My Office's review found that many SPA forms on IOMS are empty, often accompanied with a notation that they were created simply to 'facilitate a transfer' or a medical appointment.

My investigators asked sentence management officers (officers who generate SPA forms) and senior officers for explanations about this practice.

7.1 Transfer at prisoner's request

Sentence management officers explained that where a transfer is requested by a prisoner, the sentence management officer is still required to generate a SPA to create the *Form 9* (transfer form),[40] which is required to travel with the prisoner during the transfer. The officers confirmed that in those cases, the SPA form will be virtually blank. They confirmed there is no other way to change the centre that is recorded as the managing location on IOMS.

However, a senior officer advised that there should never be a blank SPA form if the prisoner is moved to another centre. More particularly, if a prisoner requests to go to another centre, the sending centre would still need to consider whether transferring the prisoner to the other centre is a good decision, particularly from the point of view of whether the transfer would affect the security or good order of either centre, and would need to fill out a SPA accordingly.

Another senior officer further explained that when a prisoner requests a transfer to another centre, the sending centre would still go through the SPA process, although it may not necessarily convene a full OMT because only certain information would be needed to decide whether the transfer should occur. The officer confirmed that some of the fields in the SPA form should be filled out to some extent.

7.2 Transfers for medical appointments and court appearances

SPA forms are also generated for medical appointments (including admission to hospital) and court appearances. A senior officer explained that if the medical appointment or court appearance is too far away from the prisoner's centre for the prisoner to return the same day, a SPA form would be generated to change the prisoner's managing location to another centre in Brisbane for the duration of the appointment (which may be a stay in hospital) or appearance (which may be several days).[41]

Similar to the situation where a prisoner requests a transfer, the centre would not need to convene a full OMT because only limited information would be needed to decide whether the transfer should occur and the fields in the SPA form would be filled accordingly.

Therefore, in practice, SPA forms are generated for any of three reasons, namely:

- security classification and/or placement review

[40] Queensland Corrective Services (Form 9, Version 1, Corrective Services Act 2006 (s.68)) *Order for Transfer of a Prisoner.*

[41] The actual appointment or appearance is always recorded separately in IOMS, but officers do not need to generate a SPA form to make that record.

- prisoner request for transfer
- transfer to another managing location to facilitate a medical appointment, court appearance or leave of absence.

It appears that SPA forms generated as a result of a review are the only SPA forms QCS expects to be filled in completely. This is not clear from the procedures and guidelines and some sentence management officers were obviously unsure as to the information required to be entered in a SPA form in some circumstances.[42] Consequently, in some cases, the purpose for which a SPA form is created is not apparent from the form itself.

There are different record-keeping requirements for each of the three categories of SPA forms, though these do not appear to be in written procedures.

As I have mentioned, the Public Records Act requires public authorities to have regard to standards and guidelines made by the State Archivist.[43] Principle 6 of *Information Standard 40* requires that records must be created, maintained and managed systematically.[44]

It would therefore be good record-keeping practice to ensure that the purpose for which a SPA form is created can be easily identified from the form.

This would also facilitate any reviews of procedures by the Internal Audit Branch, the Office of the Chief Inspector or my Office.

I therefore make the following recommendation:

Recommendation 13

The chief executive develop and implement procedures and guidelines to ensure that the information entered in a SPA form is sufficient to clearly show the purpose for which the form was created, namely, to record:

- the outcome of a security classification and/or placement review
- the transfer of a prisoner, at the prisoner's request, to another centre in circumstances unrelated to a review
- the transfer of a prisoner to another centre to facilitate a medical appointment, court appearance or leave of absence.

[42] For example, when transferring a prisoner at his or her request.
[43] Section 7, Public Records Act.
[44] Queensland State Archivist (Queensland Government, Chief Information Office, Department of Public Works) *Information Standard 40: Recordkeeping* [accessed at http://www.qgcio.qld.gov.au/qgcio/architectureandstandards/informationstandards/current/Pages/Recordkeeping.aspx on 19 March 2009].

Chapter 8: Internal audit

The Department of Community Safety's Internal Audit Branch, the QCS Offender Management and Services Directorate and the Office of the Chief Inspector may all review SPAs.

8.1 Internal Audit Branch

The Department of Community Safety has an Internal Audit Branch. Under s.36 of the *Financial Administration and Audit Act 1977* the Director-General, as the accountable officer, must establish and maintain an adequate internal audit function. Prior to the machinery of government changes on 26 March 2009, QCS was itself a department. According to QCS' then Internal Audit Charter:[45]

> Internal audit activity covers all aspects of the agency's operations and encompasses the review and appraisal of the efficiency and effectiveness of the agency's systems and operations and the quality of performance in carrying out assigned responsibilities. This includes:
> …
> - Ascertain the extent of compliance with law … procedures …

A senior QCS officer confirmed that Internal Audit could review compliance with the procedures relating to SPAs, if such a review was included in its work program.

8.2 QCS' Offender Management and Services Directorate

The then Acting Director-General advised on 3 October 2008 that the Offender Management and Services Directorate can look at SPAs to monitor their quality, decide what training is necessary and deliver that training.

8.3 Office of the Chief Inspector

The Chief Inspector may review the operations of a centre to decide whether prisoners are being dealt with fairly and reasonably in accordance with QCS' *Healthy Prisons Handbook*.[46]

The Chief Inspector must provide reports and recommendations to the chief executive (Director-General), but the chief executive is not required to implement any recommendations.[47]

8.4 Review by Office of Chief Inspector

The focus of the Office of Chief Inspector is the impact of QCS' practices and procedures on prisoners and given my concerns expressed in this report about QCS' practices and procedures for security classification, placement and transfer decisions.

[45] Queensland Corrective Services (June 2008) *Internal Audit Charter.*
[46] Queensland Corrective Services (November 2007) *Healthy Prisons Handbook* [accessed at http://www.dcs.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Healthy%20prisons%20handbook.pdf on 19 March 2009].
[47] Section 305 of the Act; the Act is silent as to what the Director-General may do in response to a report or recommendation.

Therefore, in my proposed report, I made the following proposed recommendation 14:

> The Chief Inspector undertake a review, by 31 December 2010, to assess the extent of compliance by delegates with the department's procedures and guidelines for the security classification, placement and transfer of prisoners.

The chief executive, Mr Jim McGowan, Director-General of the Department of Community Safety responded:

> That the proposed recommendation be amended to read:
>
> *'The Director-General ask the Chief Inspector to consider undertaking a review to assess the extent of compliance by delegates with the department's procedures and guidelines for the security classification, placement and transfer of prisoners, at a time the Chief Inspector considers suitable.'*
>
> It is not considered appropriate for the Director-General to bind the Chief Inspector to specified action and timeframes, in the way expressed in the proposed recommendation as drafted.

I agree that is it desirable that the Chief Inspector has a high degree of operational independence. However, under the Corrective Services Act the chief executive appoints inspectors and may appoint a chief inspector. There is nothing in the Corrective Services Act to indicate that the chief executive cannot direct the Chief Inspector to undertake a particular review. In circumstances where such a direction is made for the purposes of implementing the Ombudsman's recommendation, I do not consider that the direction jeopardises the Chief Inspector's operational independence. Therefore, I do not agree with the Director-General's submission on this recommendation.

Recommendation 14

The Chief Inspector undertake a review, by 31 December 2010, to assess the extent of compliance by delegates with QCS' procedures and guidelines for the security classification, placement and transfer of prisoners.

Recommendation 15

The chief executive provide a copy of the Chief Inspector's report to the Ombudsman's Office within 14 days of receiving the report.

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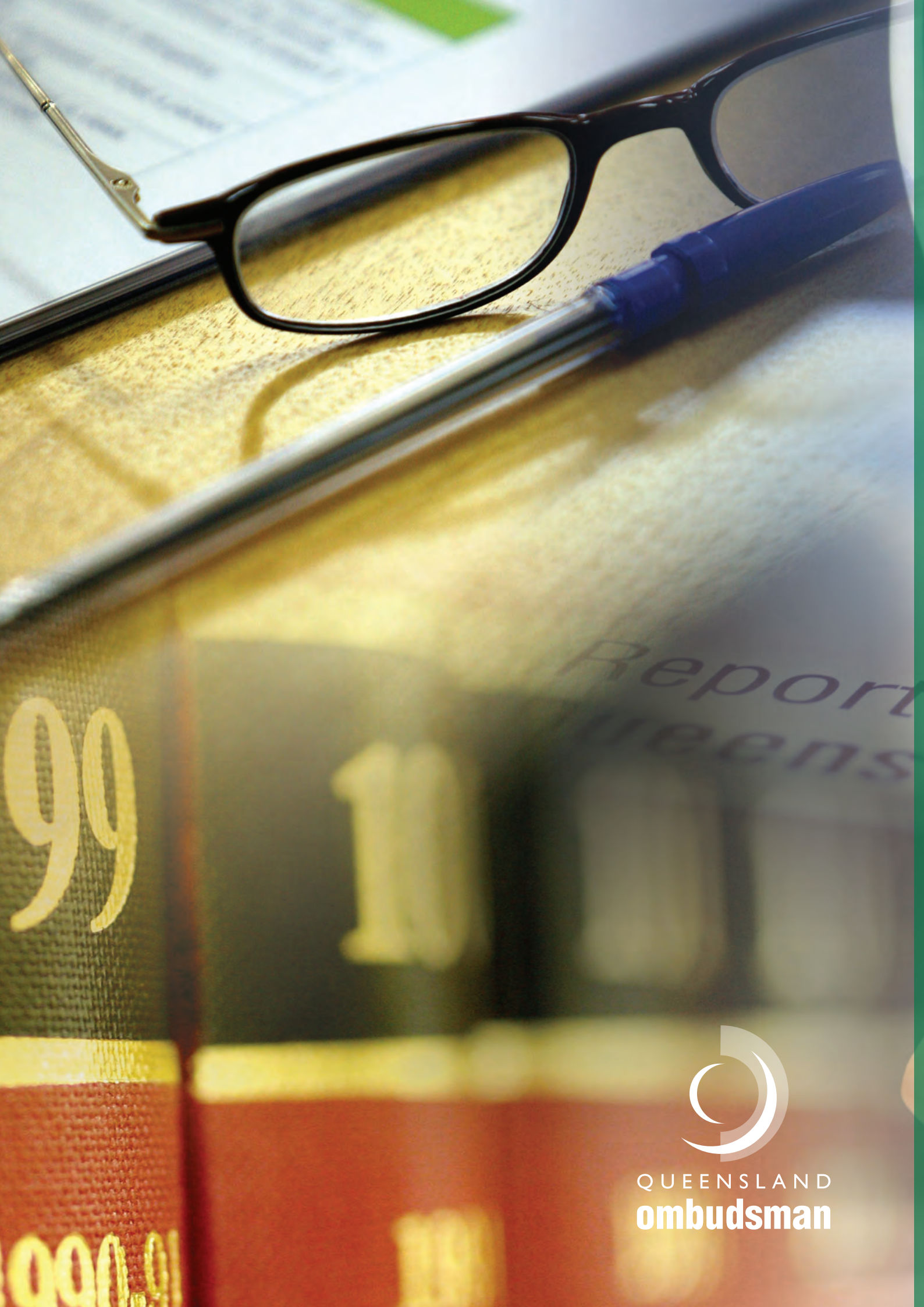

QUEENSLAND
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