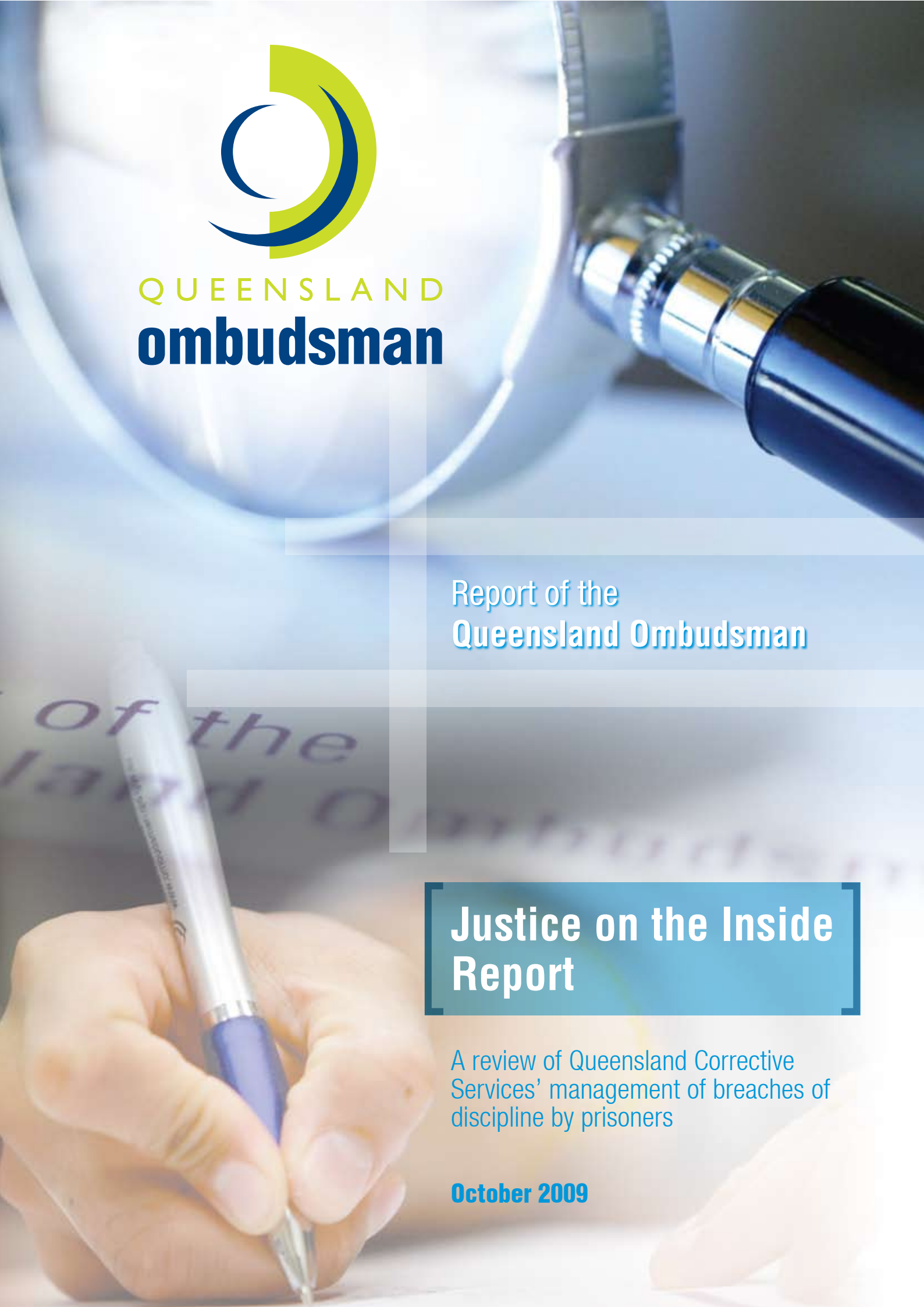


QUEENSLAND
ombudsman

Report of the
Queensland Ombudsman

Justice on the Inside Report

A review of Queensland Corrective Services' management of breaches of discipline by prisoners

October 2009

Report of the Queensland Ombudsman

Justice on the inside

A review of Queensland Corrective Services' management
of breaches of discipline by prisoners

October 2009

ISBN 978-0-9805824-8-2

Queensland Ombudsman
Level 17, 53 Albert Street
Brisbane Qld 4000

GPO Box 3314
Brisbane Qld 4001

Tel: 3005 7000
Fax: 3005 7067
Email: ombudsman@ombudsman.qld.gov.au
Web: www.ombudsman.qld.gov.au

Level 17, 53 Albert Street, Brisbane QLD 4000
GPO Box 3314 Brisbane QLD 4001

QUEENSLAND ombudsman

28 October 2009

The Honourable John Mickel MP
Speaker
Parliament House
George Street
BRISBANE Q 4000

Dear Mr Mickel

In accordance with s.52 of the *Ombudsman Act 2001*, I hereby furnish to you my report, *Justice on the inside: A review of Queensland Corrective Services' management of breaches of discipline by prisoners.*

Yours faithfully

David Bevan
Queensland Ombudsman

Enc.

Table of Contents

Dictionary and abbreviations

centre	Corrective services facility, also known as a prison, prison farm or prison work camp
chief executive	The chief executive of Queensland Corrective Services (QCS) for the purpose of the *Corrective Services Act 2006*; since machinery of government changes commenced on 26 March 2009, the chief executive is now the Director-General of the Department of Community Safety and not the Commissioner, QCS
Circumstances form	Administrative form – Circumstances Leading to Initiation of a Breach, that is, a form to be completed by the referring officer after deciding to initiate proceedings for a breach (see *Procedure – Breaches of Discipline)*
CSIU	Corrective Services Investigation Unit
custodial officer	A QCS officer other than a supervisor, manager or senior officer
deciding officer	An officer who determines an alleged breach under s.116 of the *Corrective Services Act 2006*
Department of Community Safety	A Queensland Government department, established on 26 March 2009
Form 23	Form 23 – Breach of discipline, that is, a form to be completed by the referring officer after deciding to initiate proceedings for a breach (see *Procedure – Breaches of Discipline)*
IOMS	Integrated Offender Management System – QCS' electronic case management system for prisoners
manager	A QCS officer more senior than a supervisor but less senior than a senior officer
officer	A QCS officer
Officer's Report	A report that the referring officer completes after deciding to initiate a breach (see *Procedure – Breaches of Discipline)*

Procedure – Breaches of Discipline	QCS' procedure for initiating, hearing and reviewing breaches of discipline by prisoners. Version 5 commenced on 19 June 2009. Version 5 is not significantly different from version 3, the version applicable to the period covered by our review (1.1.08 to 30.6.08). On 4 September 2009, shortly before this report went to print, QCS made amendments to the procedure that partially implemented some recommendations in a proposed report on this investigation provided to the Director-General for his comment. These recent amendments are referred to where appropriate throughout this report under the heading 'My comment'.
QCS	Queensland Corrective Services (prior to 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
QCS officer	A corrective services officer under the *Corrective Services Act 2006*
referring officer	An officer who starts proceedings against a prisoner for a breach of discipline
reviewing officer	An officer who reviews an alleged breach under s.119 of the *Corrective Services Act 2006*
senior officer	A QCS officer more senior than a manager
supervisor	A QCS officer more senior than a custodial officer but less senior than a manager.

Executive Summary

Queensland Corrective Services (QCS) 'is responsible for managing Queensland's 11 publicly run and two private correctional centres, which incorporate a variety of high and low security facilities'.[1]

Until 26 March 2009, QCS was a department of the Queensland Government. On that date, as a result of machinery of government changes, QCS became part of the Department of Community Safety.

The statutory framework for the discipline system for prisoners is provided in the *Corrective Services Act 2006* in chapter 3, part 1, which is titled 'Breaches of discipline by prisoners'.

Own initiative investigation

Under the *Ombudsman Act 2001*, the Ombudsman is an officer of the Parliament[2] authorised to investigate the administrative actions of agencies on complaint or on the Ombudsman's own initiative and to provide a report, with recommendations, to the principal officer of the agency.[3] The term 'agency' is defined in the Act to include a department, a public authority and a local government.[4]

I decided to conduct an own initiative investigation into the practices and procedures of QCS about breaches of discipline ('breach') proceedings because of the significant impact breach decisions can have on prisoners' access to privileges and on their progression through the prison system. I was also mindful of the limited access prisoners have to independent review of those decisions. A fair and effective discipline system is also vital to the proper management of a prisoner.

The principal objectives of the investigation were to:

- determine the extent to which officers are complying with the breach practices and procedures, and relevant legislation
- determine the adequacy of these practices and procedures
- identify and recommend improvements to practices and procedures
- if appropriate, recommend amendment to legislation to enhance the disciplinary system.

The investigation was conducted by, among other things, reviewing a sample of 200 minor and major breach proceedings (including the videotapes of hearings for major breaches) and holding discussions with groups of QCS officers and prisoners at three centres. One of those centres, Arthur Gorrie Correctional Centre, is operated by a private service provider (referred to in the Corrective Services Act as 'an engaged service provider').

My investigators also met with senior QCS officers to clarify issues raised during the investigation.

[1] QCS (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].
[2] Section 11(b), Ombudsman Act.
[3] Sections 6, 7(1) and 12, Ombudsman Act.
[4] Section 12, Ombudsman Act.

The outcome

As a result of my investigation, I formed the opinion that in a significant number of cases:

- conduct which should have been dealt with as a minor breach had been dealt with as a major breach
- conduct had been classified as a minor breach and a penalty imposed without a hearing having taken place
- a penalty had been imposed for conduct without breach proceedings having been taken.

I considered that some of the factors that had contributed to these administrative deficiencies were:

- the unnecessary complexity of the administrative process for breach proceedings
- lack of regular refresher training for officers on how to conduct breach proceedings
- lack of effective systems for monitoring compliance by QCS officers with official procedures.

Based on my investigation, I also consider that, in some cases:

- the penalty imposed for a breach was inconsistent with penalties imposed for similar breaches
- prisoners were not given sufficient particulars of the alleged breach
- the breach hearings were conducted unfairly
- officers failed to record adequate reasons for breach decisions
- videotapes of major breach hearings at one centre had been erased, contrary to the *Public Records Act 2002*
- there were breaks in the videotaping of major breach hearings and reviews, without explanation for why the break occurred
- breach proceedings were not initiated for positive drug tests, although such breaches are easy to establish in most circumstances.

I have made 39 recommendations to improve QCS' practices and procedures for breach of discipline proceedings. In many instances, I have recommended that QCS address the maladministration I have identified by:

- amending the relevant procedure
- providing additional training to officers, and
- ongoing monitoring of compliance with the legislation and procedures.

I have also recommended that the Chief Inspector of Prisons undertake a review, by 31 March 2011, of breach proceedings to further assess compliance with legislation and procedures.

Preliminary response of QCS

To ensure that I complied with my obligation to give the chief executive an opportunity to comment on my investigation,[5] I sent him a copy of my proposed

[5] Section 26, Ombudsman Act.

report and invited his response. He provided his response by letters dated 30 June 2009 and 29 July 2009, which I have referred to in my report as QCS' response.

The QCS' response made no comment on the opinions contained in my proposed report, but commented on all of my recommendations in the proposed report. I have referred to those comments at relevant parts of my report and taken the response into account in finalising my report as well as my opinions and recommendations.

QCS' response to several of my recommendations was that the deficiencies I had identified in the practice of its officers are adequately addressed by its Entry Level Training Program, in some instances in conjunction with refresher training. I consider that my investigation clearly shows that, to date, training has not been sufficient, by itself, to ensure officers comply with the law and procedures governing breach proceedings. Further training and other measures are needed, such as clearer procedures and an ongoing program to monitor compliance.

QCS' response only suggested one amendment to my recommendations, which I have made.[6] In many cases, it was unclear whether QCS had undertaken to implement my recommendation or not. However, shortly before this report went to print, QCS made amendments to the *Procedure – Breaches of Discipline* that partially implemented some recommendations in my proposed report. I will seek a clear response from the Director-General as to which of the remaining recommendations he accepts, partially accepts or rejects and, in the latter case, his reasons for rejecting any recommendation.

Engaged service providers

I am authorised to review the administrative actions of engaged service providers as they perform functions on behalf of QCS.[7]

Furthermore, under the Corrective Services Act,[8] the Ombudsman Act applies to an engaged service provider as if it were an agency, and the person in charge of the centre is taken to be the principal officer of the agency.

In addition to Arthur Gorrie Correctional Centre, Borallon Correctional Centre is also run by an engaged service provider. To the extent that my recommendations apply to engaged service providers, I expect that the chief executive will liaise with those service providers to ensure that they also implement my recommendations.

Public report

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.[9] 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

[6] See recommendation 1 at 3.4.
[7] Section 10(c), Ombudsman Act and s.273(4), Corrective Services Act.
[8] Section 273(4), Corrective Services Act.
[9] Section 52, Ombudsman Act.

- 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 breaches of discipline.

As a result of my investigation, I have formed the following opinions and made the following recommendations.

Opinions

Opinion 1

In a significant number of the cases examined during my investigation at one centre, QCS officers took disciplinary action against prisoners without complying with the hearing requirements in s.116 of the Corrective Services Act. This constitutes, in each case, administrative action that is contrary to law and/or unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

Opinion 2

At one centre, QCS officers withdrew privileges from prisoners on some occasions without initiating formal breach proceedings under chapter 3, part 1 of the Corrective Services Act. This constitutes, in each case, administrative action that is contrary to law and/or unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

Opinion 3

The process and associated records for initiating and dealing with minor and major breaches involve unnecessary duplication of effort for officers and are likely to contribute in a significant number of cases to:

- minor breach proceedings not being initiated when they should be, or
- prisoner conduct which should be dealt with as a minor breach being dealt with as a major breach.

Opinion 4

In some of the cases examined during my investigation, the penalty imposed on a prisoner for a disciplinary breach was significantly higher than the penalty imposed on other prisoners for similar breaches. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 5

In a significant number of the cases examined during my investigation, QCS officers failed to record in the Form 23 and Circumstances form sufficient details of the alleged misconduct to enable prisoners to understand the grounds for the breach proceedings. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 6

In all of the cases examined during my investigation, QCS officers failed to record any reasons for decisions to deal with the alleged misconduct of prisoners as a minor or major breach. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 7

In a significant number of the cases examined during my investigation, QCS officers failed to record and/or give to prisoners adequate reasons for breach decisions and review decisions. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 8

The period for which QCS retains videotapes of major breach proceedings and major breach review proceedings is inappropriately short having regard to their importance as an accountability measure. This constitutes administrative action that is unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.

Opinion 9

QCS officers at Arthur Gorrie Correctional Centre disposed of the video records of a significant number of major breach hearings in contravention of s.13 of the Public Records Act. This constitutes, in each case, administrative action that is contrary to law and wrong for the purposes of s.49(2)(a) and (g) of the Ombudsman Act.

Opinion 10

The orders made by the deciding officers in the two minor breach cases identified in my investigation that the prisoners' privileges be forfeited for longer than 24 hours constitute, in each case, administrative action that is contrary to law and unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

Recommendations

Recommendation 1

The chief executive take steps to have s.19 of the Corrective Services Regulation 2006 amended to make it clear that telephone calls between prisoners and the Ombudsman's Office are not ‘privileges’ under that section.

Recommendation 2

The chief executive review the major breach the subject of case study 2 to determine whether the direction the prisoner allegedly contravened was unlawful as it amounted to informal punishment involving a loss of privileges (using electronic media or an entertainment device).

Recommendation 3

The chief executive provide training to QCS officers on compliance with the hearing requirements in s.116 of the Corrective Services Act.

Recommendation 4

The chief executive take steps to ensure that the practice of withdrawing privileges from prisoners without formal breach proceedings under chapter 3, part 1 of the Corrective Services Act ceases immediately.

Recommendation 5

The chief executive simplify the process and associated records for initiating and dealing with minor and major breaches to avoid duplication of effort and, for that purpose:

(a) ensure that templates of the three forms needed to commence breach proceedings are available in electronic form in IOMS
(b) review the information required to be inserted on the forms to avoid duplication (for example, details of the determination and review should be recorded in the IOMS breach record and not also in the Form 23)
(c) consider if it is practicable to combine the three forms into one electronic form in IOMS
(d) investigate if the breach register under s.120 of Corrective Services Act can be held electronically in IOMS
(e) investigate if the functionality of IOMS can be enhanced to avoid the need to enter the same information more than once (for example, so that the entry of information to populate the IOMS incident record also populates relevant fields of the IOMS breach record).

Recommendation 6

The chief executive ensure that officers who conduct breach proceedings have received adequate refresher training on the process to be followed.

Recommendation 7

The chief executive take the following actions to achieve an acceptable level of consistency in the penalties imposed on prisoners for disciplinary breaches throughout the state:

(a) amend the *Procedure – Breaches of Discipline* to provide guidance to deciding officers and reviewing officers on the range of penalties appropriate for different types of breaches
(b) provide relevant training to officers
(c) regularly monitor consistency in penalties.

Recommendation 8

The chief executive minimise the risk that breach proceedings are tainted by actual bias or a perception of bias, by:

(a) amending the *Procedure – Breaches of Discipline* to provide appropriate guidance to officers
(b) providing relevant training to officers
(c) regularly monitoring the records (including video records) of breach proceedings.

Recommendation 9

The chief executive ensure that deciding officers comply with the rules of procedural fairness, by:

(a) amending the *Procedure – Breaches of Discipline* to require that, if the prisoner has not been given the Form 23 and/or Circumstances form within a reasonable time before the hearing, the deciding officer give the prisoner a reasonable opportunity to read the information to be relied on and, where necessary, suspend the hearing for that purpose
(b) providing relevant training to officers.

Recommendation 10

The chief executive ensure that prisoners are given access to adequate information about the breach of discipline process by providing relevant training to officers on the requirement in the *Procedure – Breaches of Discipline* to advise prisoners in writing of how to obtain a copy of relevant legislation prior to a breach hearing.

Recommendation 11

The chief executive take the following actions to ensure that officers charge prisoners with a breach of s.6(j) of the Corrective Services Regulation (contrary to the security and good order of a corrective services facility) only where the conduct involved does not fall into a more specific category of misconduct in that section:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 12

The chief executive take the following actions to ensure that officers conducting disciplinary hearings assess the language and comprehension skills of the prisoner and ensure that the prisoner understands the proceedings:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance by reviewing videotapes of major breach proceedings.

Recommendation 13

The chief executive take the following actions to ensure that officers invite prisoners to make separate submissions in their defence and on any 'mitigating circumstances' and ensure that the prisoner understands their right to make those submissions:

(a) provide relevant training to officers
(b) regularly monitor compliance by reviewing videotapes of major breach proceedings.

Recommendation 14

The chief executive take the following actions to ensure deciding officers comply with the requirement in s.116(3) of the Corrective Services Act to fairly consider whether a prisoner's request to call a witness from within the centre is both reasonable and practicable and, if not, whether the witness's evidence can be given in writing or another form:

(a) provide relevant training to deciding officers
(b) regularly monitor compliance by reviewing videotapes of major breach proceedings.

Recommendation 15

Brisbane Women's Correctional Centre remove the notation on its Circumstances form about a prisoner's right to request a witness for the purpose of breach proceedings.

Recommendation 16

The chief executive take the following actions to ensure that deciding officers make no comment that would influence the prisoner's decision on whether to seek a review of a breach decision:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance by reviewing videotapes of major breach proceedings.

Recommendation 17

The chief executive take the following actions to ensure that officers who start proceedings against a prisoner for a breach of discipline record adequate reasons for the decision to deal with the conduct as a minor or major breach:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 18

The chief executive take the following actions to ensure that deciding officers and reviewing officers record adequate reasons for their decisions and provide those reasons to prisoners:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 19

The chief executive amend the *Retention and Disposal Schedule* (with the approval of the State Archivist) to require that the records contained in videotapes of major breach proceedings and major breach review proceedings be retained for a period consistent with their importance as an accountability measure.

Recommendation 20

The chief executive take the following actions to ensure that the videotapes of all major breach hearings and major breach review hearings are retained in accordance with QCS' *Retention and Disposal Schedule*:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 21

The chief executive take the following actions to ensure officers comply with the requirement in s.117(1) and s.119(6) of the Corrective Services Act to videotape all major breach proceedings including reviews:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 22

The chief executive take the following actions to ensure officers not interrupt the videotaping of the proceedings without explaining on camera the purpose of the interruption:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 23

The chief executive take the following actions to ensure that, where the Corrective Services Investigation Unit advises that conduct of a prisoner that may be prosecuted as an offence will not be prosecuted, officers decide whether to initiate breach proceedings for the conduct and, if so, decide the breach within the time specified in s.116(2)(a) of the Corrective Services Act:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 24

The chief executive take the following actions to ensure that where a deciding officer considers that an officer has failed to follow the correct procedure in taking or dealing with a urine specimen, the deciding officer properly record that failure and explain in the reasons for the decision the relevance of that failure to the decision:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 25

The chief executive take the following actions to ensure that any penalties officers impose on prisoners for minor or major breaches comply with the range of penalties in the Corrective Services Act:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 26

The chief executive take the following actions to ensure that, where deciding officers order forfeiture of privileges for a major or minor breach, they specify the privileges to be forfeited:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 27

The IOMS menu option 'Not Guilty – Reprimand' be changed to 'Guilty – Reprimand'.

Recommendation 28

The chief executive amend the *Procedure – Breaches of Discipline* to include the requirement that, where an officer makes an order that a prisoner pay restitution, the officer:

(a) not make the order as a penalty, or part of the penalty, for a minor or major breach, and
(b) advise the prisoner that the order is separately authorised under the Corrective Services Act and is in addition to any penalty imposed for the relevant breach.

Recommendation 29

The chief executive take the following actions to ensure compliance with the amendment to the *Procedure – Breaches of Discipline* recommended in recommendation 28:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 30

The chief executive take the following actions to ensure that prisoners are not transferred from the residential to the secure section of a centre on being convicted of a breach of discipline unless the circumstances of the breach warrant transfer:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 31

The chief executive take action to ensure prisoners are made aware of the *Procedure – Breaches of Discipline to residential accommodation* and the circumstances in which prisoners may be internally transferred to more strictly supervised accommodation within a centre if convicted of a breach of discipline, including by inserting relevant information in the *Prisoner Information Booklet*.

Recommendation 32

The chief executive cause IOMS processes to be amended to ensure that where a breach is cancelled a record is made in IOMS that:

(a) remains on the user interface, and
(b) identifies the breach (including the date it was alleged to have been committed and the relevant section of the Corrective Services Regulation), the fact that the breach has been cancelled and the reasons for cancellation.

Recommendation 33

The chief executive take the following actions to ensure officers comply with the requirement in the *Procedure – Breaches of Discipline* to attach the relevant forms to the IOMS breach record:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 34

The chief executive take the following actions to ensure that for each breach, the incident report number (if applicable), breach register number and all relevant videotape numbers are recorded in the IOMS breach record:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 35

The IOMS menu option 'Breach dismissed' be replaced with three menu options to the effect 'Out-of-time', 'Did not proceed to hearing (other than out-of-time)' and 'Not guilty'.

Recommendation 36

The chief executive take the following actions to ensure that officers comply with the requirement in s.114(2)(a) of the Corrective Services Act, to tell a prisoner that an act or omission that could be dealt with as an offence is to be referred to the Commissioner of Police:

(a) amend the *Procedure – Breaches of Discipline* to refer to the requirement and to require officers to make and keep a record of that communication
(b) provide relevant training to officers
(c) regularly monitor compliance.

Recommendation 37

The Chief Inspector undertake a review, by 31 March 2011, to assess the extent of compliance by officers with the *Corrective Services Act 2006* and with QCS' *Procedure – Breaches of Discipline*.

Recommendation 38

The chief executive provide a copy of the Chief Inspector's report (referred to in recommendation 37) to the Ombudsman within 14 days of receiving the report.

Recommendation 39

The chief executive amend the *Prisoner Information Booklet* to include:

(a) each of the breaches of discipline set out in s.6 of the Corrective Services Regulation
(b) the information about breaches of discipline set out in ss.113 to 121 of the Corrective Services Act
(c) the definition of 'privileges' in s.119 of the Regulation
(d) an explanation of the term 'offence' as used in the Act.

Chapter 1: Introduction

1.1 Corrections in Queensland

The purpose of corrective services is stated in the *Corrective Services Act 2006* (the Corrective Services Act) as being 'community safety and crime prevention through the humane containment of prisoners'. The Act also recognises that 'every member of society has certain basic human entitlements, and that, for this reason, a prisoner's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded'.[10]

Queensland Corrective Services (QCS) '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'.[11]

Fair and effective disciplinary systems must be established and maintained for both prisoners and their custodians to ensure the smooth running of prisons. In Queensland, the statutory framework for the discipline system for prisoners is provided in the Corrective Services Act in chapter 3, part 1, which is titled 'Breaches of discipline by prisoners'. The relevant sections of the Act are set out in chapter 3 of my report.

A decision that a prisoner has committed a breach of discipline may have significant consequences, such as reducing the prisoner's chances of receiving a lower security classification, being transferred to another centre with less supervision, or being granted parole.

QCS officers have significant powers under the Queensland system to deal with both minor and major disciplinary breaches. The Queensland system no longer provides for visiting magistrates to deal with major breaches as is the case in New South Wales, South Australia, Western Australia and New Zealand. Therefore, it is vital that QCS officers comply with proper procedures in dealing with disciplinary breaches.

1.2 Jurisdiction

Under the *Ombudsman Act 2001* (the Ombudsman Act), the Ombudsman is an officer of the Parliament[12] whose functions include investigating the administrative actions of Queensland public sector agencies. The term 'agency' is defined in the Act to include a department, a public authority and a local government.[13]

Until 26 March 2009, QCS was a department of the Queensland Government. On that date, as a result of machinery of government changes, QCS became part of the Department of Community Safety.

Under the Ombudsman Act, I have authority to:

[10] Section 3(2), Corrective Services Act.
[11] QCS (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].
[12] Section 11(b), Ombudsman Act.
[13] Section 12, Ombudsman Act.

- investigate the administrative actions of 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.[14]

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.

1.2.1 Engaged service providers

Two correctional centres in Queensland are operated by private service providers (referred to in the Corrective Services Act as engaged service providers). I am authorised to review the practices and procedures of engaged service providers because the Ombudsman Act defines administrative action to include 'an administrative action taken for, or in the performance of functions conferred on, an agency, by an entity that is not an agency'.[15]

More specifically, the Corrective Services Act[16] provides that the Ombudsman Act applies to an engaged service provider as if the provider were an agency. I expect that the chief executive will liaise with the two service providers to ensure that they also implement my recommendations.

1.3 Own initiative investigation

I decided to conduct an own initiative investigation into the practices and procedures of QCS because of the significant impact breach decisions can have on prisoners and the limited access they have to independent review of those decisions.

My investigation included breach decisions made by an engaged service provider operating a private corrective services centre.

The principal objectives of the investigation were to:

- determine the extent to which officers are complying with the breach practices and procedures, and relevant legislation
- determine the adequacy of these practices and procedures
- identify and recommend improvements to practices and procedures
- if appropriate, recommend amendment to legislation to enhance the disciplinary system.

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

- consider the relevant legislation

[14] Sections 6, 7(1) and 12, Ombudsman Act.
[15] Section 10(c), Ombudsman Act.
[16] Section 273(4), Corrective Services Act.

- review the practices and procedures for disciplinary proceedings and for dealing with complaints about those proceedings
- conduct research into policies and practices in other jurisdictions
- review a sample of the files relating to minor and major disciplinary proceedings (including videotapes of hearings for major breaches) conducted during a specified period at three centres
- hold discussions with groups of QCS officers and prisoners at those centres
- interview senior officers to clarify issues raised from the review of files and practices and procedures.

The investigation focussed on:

- the adequacy of documentation and other records
- how the disciplinary proceedings were conducted, including fairness of the proceedings, adherence to the law and procedures, and adequacy of evidence
- the range and consistency of penalties imposed
- the outcome of any internal reviews of decisions
- avenues of redress available to offenders dissatisfied with the outcome of such proceedings.

As part of the investigation, my investigators reviewed a sample of 200 minor and major breach proceedings conducted during the period 1 January 2008 to 30 June 2008 at Wolston Correctional Centre (Wolston), Brisbane Women's Correctional Centre (Women's) and Arthur Gorrie Correctional Centre (Arthur Gorrie). The sample comprised 71 minor breaches and 129 major breaches.

Their review involved inspection of:

- electronic records in QCS' Integrated Offender Management System (IOMS) relating to the 200 breach proceedings
- IOMS records of 61 reviews of major breaches and one review of a minor breach
- 145 available[17] videotapes of the major breach hearings and review hearings
- breach registers at each of the centres
- the hard copy offender files for the prisoners available at the centres.[18]

Not all of the sample was chosen randomly as would be the case if the sole purpose of the audit were to gather statistics. The sample was selected in light of the main purpose of the investigation, namely, to identify administrative deficiencies. Therefore, my investigators selected cases where:

- breaches arose out of seemingly similar circumstances but were characterised as major in some cases and minor in others
- the penalties for breaches of the same regulation and dealt with at the same level were markedly different
- prisoners had positive urine tests for prohibited drugs but no disciplinary action was taken
- the conduct appeared to be trivial but was the subject of disciplinary action
- review hearings were conducted.

[17] As I discuss at 11.1.2, some of the videotapes were not available as they had been lost or discarded.
[18] As the offender files follow the prisoner, some were not available at the sample centres as the prisoner had been transferred to another centre or discharged from custody.

My audit was conducted primarily as a performance audit, which has a qualitative and subjective aspect.[19] Given the type of audit conducted, there was no need for the sample to be 'random' or 'representative'. This is appropriate and also makes the report more useful.

[19] 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].

Chapter 2: About the Ombudsman and investigations

2.1 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 is not required to hold a hearing for the investigation; and
>
> (c) may obtain information from the persons, and in the way, the ombudsman considers appropriate; and
>
> (d) may make the inquiries the ombudsman considers appropriate.

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

2.2 Standard of proof and sufficiency of evidence

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.[20] These include whether the administrative actions investigated are unlawful, unreasonable, unjust, or otherwise wrong.[21]

Although the Ombudsman is not bound by the rules of evidence,[22] the question of the sufficiency of information to support an opinion of the Ombudsman requires some assessment of weight and reliability.

The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true.

Although the civil standard of proof does not apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.[23]

[20] Section 50, Ombudsman Act.
[21] Section 49(2), Ombudsman Act.
[22] Section 25(2), Ombudsman Act.
[23] See *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 282, and see also the discussion in Creyke, R and McMillan, J (2009) *Control of Government Action – Text, cases and commentary, 2nd edition*, LexisNexis Butterworths, Australia at 12.2.20.

2.3 Procedural fairness or natural justice

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

The Ombudsman must also comply with these rules when conducting an investigation.[24] Further, the Ombudsman Act provides that, if at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the report is made.[25]

In order to satisfy this obligation, I provided my proposed report to the chief executive of QCS (Mr Jim McGowan, Director-General, Department of Community Safety) and invited his response, which he provided in his letters dated 30 June 2009 and 29 July 2009.

I refer to his response as QCS' 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. The person's defence must be fairly stated in the report if the Ombudsman still proposes to make the comment.

I issued a notice of adverse comment to the General Manager of Arthur Gorrie and another to the General Manager of Women's, as those centres were referred to in the proposed report in terms that may be considered adverse to them.

Women's response formed part of QCS' response.

I received a separate response from the private service provider for Arthur Gorrie. I refer to Arthur Gorrie's response where appropriate throughout this report. The private service provider for Arthur Gorrie also wished to point out that:

> … during the period referred to in the proposed report, the Centre was undergoing numerous changes as part of a remediation plan with substantial changes to management as well as to practices and procedures. These actions have all been satisfactorily concluded and have also been subjected to monitoring by QCS. The new processes and Centre management in place, with their substantial experience within the Queensland correctional system, will ensure the Centre fulfils all of its statutory obligations in the future.

2.4 Preliminary response of agency

QCS' response to my proposed report did not make any comment or submission on my proposed opinions but commented on all of my proposed recommendations. I have reproduced QCS' comments where appropriate throughout this report.

QCS considered that 14 proposed recommendations were 'training issues', even though I believe my proposed report clearly indicated that additional training was only

[24] Section 25(2), Ombudsman Act.
[25] Section 26(3), Ombudsman Act.

one of the measures QCS needed to take to address the deficiencies I had identified. QCS' response to several of my recommendations was that it considers its Entry Level Training Program is adequate to address the recommendations in conjunction with refresher training. My comment about that response is that my investigation clearly shows that, to date, training has not been sufficient, by itself, to ensure officers comply with the law and procedures relevant to breach proceedings. Further training and other measures are needed, such as clearer procedures and an ongoing program for monitoring compliance by QCS officers with those procedures.

QCS' comments on about half of my proposed recommendations did not clearly indicate whether it was likely to accept or reject the recommendation if it appeared in this report. However, shortly before this report went to print, QCS made amendments to the *Procedure – Breaches of Discipline* that implemented or partially implemented some recommendations in my proposed report. I will seek a clear response from the Director-General as to which recommendations he accepts or rejects and, in the latter case, his reasons for rejecting any recommendation.

After considering the response, I have expressed 10 opinions and made 39 recommendations for the improvement of practices and procedures about breach proceedings.

One of my recommendations is that the Chief Inspector of Prisons conduct a further review of the breach of discipline system to assess officers' compliance with QCS' procedures (see recommendation 37).

2.5 De-identification

This report is about my review of the practices and procedures of the QCS in relation to breach proceedings. Therefore, it is not necessary to identify individuals or particular centres connected with my investigation and so my report:

- refers to general position descriptions, namely, custodial officers, supervisors, managers, senior officers, referring officers, deciding officers and reviewing officers[26]
- does not contain other information that could be used to identify any officer or prisoner unless the information is critical to a purpose of this report
- refers to Centres Green, White and Blue in appropriate places.

[26] These terms are defined in the dictionary and in chapter 3 in this report.

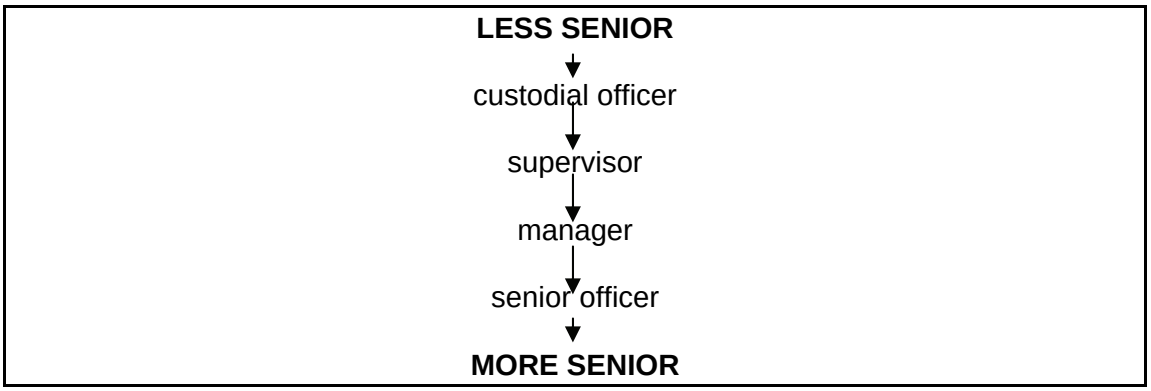
Chapter 3: Corrective services legislation and QCS policies

3.1 Decision to initiate breach

Chapter 3, part 1 of the Corrective Services Act prescribes the procedure for dealing with 'breaches of discipline'. Section 6 of the Corrective Services Regulation 2006 (Corrective Services Regulation) prescribes 21 acts and omissions that are breaches of discipline. Some examples are:

- contravening a lawful direction of a QCS officer
- using abusive, indecent, insulting, obscene, offensive or threatening language in someone else's presence
- acting in a way contrary to the security and good order of a centre
- wilfully damaging or destroying any property that is part of a corrective services centre, or other property of the state in the centre
- giving a positive urine test sample or being taken to have given a positive test sample.[27]

Throughout my report, I use the generic term 'officer' in referring to QCS officers except where it is necessary to be more specific to reflect that one officer is more senior to another. In the latter cases, I refer to the following terms in order of seniority:



In other places it is necessary to use the following terms used in the Corrective Services Act:[28]

- 'deciding officer' – an officer who conducts an original breach hearing
- 'reviewing officer' – an officer who conducts a review hearing.

I also use 'referring officer' to refer to an officer who initiates breach proceedings.

The Corrective Services Act specifies that an officer need not start breach of discipline proceedings if the officer considers that proceedings should not be commenced having regard to:

- the trivial nature of the breach; or

[27] Under Schedule 4 of the Corrective Services Act, 'positive test sample' means a test sample that shows a prisoner has used a substance that is a prohibited thing.
[28] Section 116, Corrective Services Act.

- the circumstances surrounding the commission of the breach; or
- the prisoner's previous conduct.[29]

The *Procedure – Breaches of Discipline*[30] requires that where appropriate, attempts are made to resolve the conflict informally before resorting to formal processes.

If an officer wishes to start breach of discipline proceedings against a prisoner, the officer must first decide whether the breach should be categorised as 'major' or 'minor'. To decide this, the officer should have regard to the same three matters that appear at the bullet points above[31] as well as to the following considerations specified in the *Procedure – Breaches of Discipline*:

- the seriousness of the conduct
- the effect of the conduct on good order
- whether there were any witnesses
- whether the conduct was intentional or accidental
- whether the commission of the breach is likely to create tension
- the mood of the prisoners
- whether the prisoner is aware of the rules
- whether the prisoner's behavioural standards complied with the centre's requirements
- the past performance of the prisoner
- other.

The decision to deal with the prisoner for a breach of discipline must be recorded in the breach register,[32] a paper-based register containing details of breach proceedings. The supervisor must sign the breach register, to ensure he or she is aware of the breach proceedings.[33]

3.2 Lead-up to hearing

The officer observing or becoming aware of the breach of discipline should then inform the prisoner that the matter will be dealt with either as a minor or major breach of discipline.[34] The officer should also immediately, or as soon as practicable, create the following electronic documents in IOMS:

- Form 23 – Breach of discipline (Form 23)
- Administrative form – Circumstances Leading to Initiation of a Breach (Circumstances form)
- A full and comprehensive officer's report[35] (Officer's Report).

[29] Section 113(4), Corrective Services Act.
[30] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[31] Section 113(4), Corrective Services Act.
[32] Section 120(a), Corrective Services Act.
[33] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[34] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[35] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].

A printout from IOMS of the Form 23 and Circumstances form should be given to the prisoner by the officer as soon as possible and before the breach hearing.[36]

A deciding officer must then conduct a hearing to decide whether the breach was committed.[37] The times within which that decision must be made are:

- if the breach could have been dealt with as an offence, as soon as possible but within 14 days after the chief executive receives advice from the Corrective Services Investigation Unit[38] (CSIU) that it will not be prosecuted
- if the breach is minor, within 24 hours of the breach
- if the breach is major, as soon as possible but within 14 days of the breach.[39]

3.3 Hearing

The deciding officer must tell the prisoner of any evidence supporting the alleged breach and give the prisoner a reasonable opportunity to make submissions in the prisoner's defence, for example, by attending the hearing and questioning any witness called by QCS or calling a person within the centre to give evidence in the prisoner's defence.[40] The deciding officer must also give the prisoner a reasonable opportunity to make submissions in mitigation of punishment.[41]

3.4 Penalties

If the deciding officer is satisfied (on the balance of probabilities, for a minor breach, and beyond reasonable doubt, for a major breach[42]) that the prisoner has committed a breach of discipline, the officer may impose a punishment.

For a minor breach, the deciding officer may:

- reprimand the prisoner
- order that privileges be forfeited for 24 hours commencing from when the prisoner is advised of the decision
- order that the prisoner undergo separate confinement of not more than seven days.[43]

However, separate confinement may be ordered for a minor breach of discipline only if the prisoner has habitually committed minor breaches of discipline and, on the occasion of the breach immediately preceding the alleged current breach, was given a warning (which has been recorded in the breach register[44]) that the next breach could result in the prisoner being separately confined.[45]

[36] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[37] Section 116(1), Corrective Services Act.
[38] An arm of the Queensland Police Service (QPS); see QCS *Intelligence and Investigations Division* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Investigations.pdf on 24 March 2009].
[39] Section 116(2), Corrective Services Act.
[40] Section 116(3)(a) and (b), Corrective Services Act.
[41] Section 116(3)(c), Corrective Services Act.
[42] Section 118(1), Corrective Services Act.
[43] Sections 118(1) and (2) and 121, Corrective Services Act.
[44] Section 120(b), Corrective Services Act.
[45] Section 118(3), Corrective Services Act.

'Privileges' means:[46]

- participating in an activity, course or program
- making or receiving phone calls, other than phone calls to or from the prisoner's lawyer
- associating with a particular prisoner or group of prisoners
- using electronic media or an entertainment device
- using a musical instrument
- using library facilities
- buying anything other than essential toiletries, writing materials and stamps
- accessing the prisoner's property
- receiving a contact visit.

The definition of 'privileges' implies that a prisoner's right to make telephone calls to my Office is a privilege that can be lost. 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:[47]

> 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. …

My proposed report contained the following recommendation:

> **Proposed recommendation 1**
>
> The chief executive take steps to have s.19 of the Corrective Services Regulation 2006 amended to make it clear that telephone calls between prisoners and my Office and between prisoners and official visitors are not 'privileges' under that section.

QCS response

> In accordance with section 3.2 of the Agency procedure entitled Telephone and Video Conference Calls for Offenders, prisoners are not permitted to contact Official Visitors by telephone.
>
> The recommendation is not supported in relation to Official Visitor contact, however in relation to contact between a prisoner and the Ombudsman's office, should this recommendation be included in the final report provided by the Ombudsman's Office, the Agency will give consideration to amending the Corrective Services Regulation 2006 to add the Queensland Ombudsman.

My comment

Section 50(1) of the Corrective Services Act provides that a prisoner may, at the prisoner's own expense, phone approved persons at approved telephone numbers.

[46] Corrective Services Act, schedule 4 definition of 'privileges' and s.19, Corrective Services Regulation.
[47] Queensland Parliament (2006) *Explanatory Notes Corrective Services Bill 2006* [accessed at http://www.legislation.qld.gov.au/Bills/51PDF/2006/CorrectiveB06Exp.pdf on 20 April 2009].

Section 3 of the *Procedure – Telephone and video-conference calls for offenders*[48] provides:

> Offenders accommodated in high and low security corrective services facilities must use the Prisoner Telephone System (PTS) to make calls.
> …
> Offenders enrolling on the PTS must submit a written application listing a maximum of 10 telephone numbers to be included on an auto dial list.
> …
> Offenders must not be listed [sic] on an offender's application-
> …
> e. an official visitor ...

Neither the chief executive's response nor the procedure explains why prisoners cannot telephone Official Visitors. However, it is my understanding that Official Visitors perform their functions part-time and are not issued with official phones. It is likely that most Official Visitors would be opposed to giving their private numbers to prisoners.

One option would be for QCS to issue mobile phones to Official Visitors. However, this may lead to their part-time role becoming full-time. I understand that each Official Visitor visits the relevant centre once or twice a month and is paid per visit. The scheme does not envisage prisoners being able to contact Official Visitors more frequently. Therefore, I have limited my recommendation to calls by prisoners to my Office.

In my view, prohibiting prisoners from contacting my Office to make a complaint is inconsistent with the chief executive's obligation under the Ombudsman Act,[49] as the custodian of prisoners, to ensure all necessary steps are taken to facilitate the making of a complaint.

Recommendation 1

The chief executive take steps to have s.19 of the Corrective Services Regulation 2006 amended to make it clear that telephone calls between prisoners and the Ombudsman's Office are not 'privileges' under that section.

For a major breach, the deciding officer may:

- reprimand the prisoner
- order that privileges be forfeited for seven days commencing from when the prisoner is advised of the decision
- order that the prisoner undergo separate confinement of not more than seven days.[50]

A hearing for a major breach must be videotaped.[51]

[48] QCS (29 June 2009 – Version 5) *Procedure – Telephone and Video-conference Calls for Offenders* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmpropristelvidserv.shtml on 2 July 2009].
[49] Section 20(6), Ombudsman Act.
[50] Section 118(1) and (2), Corrective Services Act.
[51] Section 117(1), Corrective Services Act.

In determining the punishment for a major or minor breach, consideration should be given to the following factors:

- severity of the contravention
- any mitigating circumstances
- history of contraventions.[52]

The deciding officer must complete a *Determination Question Sheet*.[53]

A decision that a prisoner has committed a breach of discipline must be entered in the breach register.[54]

3.5 Notification of review right

Immediately after making the decision, the deciding officer must tell the prisoner the decision, that the prisoner may have the decision reviewed and how the prisoner may have the decision reviewed.[55]

If the prisoner wants to have the decision reviewed, the prisoner must tell the deciding officer immediately after being told the decision.[56]

3.6 Review of decision

A review must be conducted by an officer (reviewing officer) who holds a more senior classification than the deciding officer.[57] A review is by way of rehearing, unaffected by the decision, on the material before the deciding officer and any further evidence allowed by the reviewing officer.[58] It must be carried out as soon as practicable after the prisoner tells the deciding officer that the prisoner wants the decision reviewed.[59]

The prisoner may be present at the review hearing and make submissions in the prisoner's defence or in mitigation of punishment.[60]

A reviewing officer is required to take all relevant factors into consideration, including:

- severity of the contravention
- any mitigating circumstances
- history of contraventions
- further evidence as allowed by the reviewing officer
- further investigation to ensure reasonably equitable consequences.[61]

[52] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[53] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].
[54] Section 120(b), Corrective Services Act.
[55] Section 118(4), Corrective Services Act.
[56] Section 118(5), Corrective Services Act.
[57] Section 119(1), Corrective Services Act.
[58] Section 119(2)(a), Corrective Services Act.
[59] Section 119(2)(b), Corrective Services Act.
[60] Section 119(3), Corrective Services Act.
[61] QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].

For a major breach of discipline, the review hearing must be videotaped.[62]

Immediately after making the review decision, the reviewing officer must tell the prisoner of the decision.[63] Details of each review must be entered in the breach register.[64] The review decision is not subject to appeal or further review under the Corrective Services Act.[65] However, decisions can be reviewed under the *Judicial Review Act 1991*.

3.7 Other avenues of review

QCS does not accept complaints from prisoners about decisions relating to breaches of discipline as part of its complaints management system, because they have a separate statutory right of review against those decisions.[66] However, prisoners with a complaint about a breach of discipline procedure can write to the General Manager of their centre or to the Regional Manager (Probation and Parole) or to the Director, Ethical Standards Branch in the QCS.[67]

A prisoner may request a statement of reasons for the decision under the Judicial Review Act.[68] A prisoner may also, on certain grounds,[69] apply for judicial review of a breach determination.[70] However, few prisoners would have the ability or the resources to make a request for a statement of reasons or an application for judicial review without assistance. Although the Prisoners' Legal Service, a community legal service, provides advice to, and acts for, prisoners in some cases, its resources are limited and it receives many more requests for assistance from prisoners than it can approve.[71]

A prisoner's only other avenues of redress for complaints about breach of discipline decisions are the Ombudsman[72] or an Official Visitor.[73]

3.8 Effect of breach determinations

As well as resulting in the loss of privileges or a period of separate confinement, breach determinations can affect a prisoner's chances of receiving a lower security classification, being transferred to another centre with less supervision and being granted parole at an earlier time.

For those reasons and also because of the limited availability of external review, it is important that officers act fairly and comply with QCS' procedures in conducting breach proceedings and reviews.

---

[62] Section 119(6), Corrective Services Act.
[63] Section 119(8), Corrective Services Act.
[64] Section 120(c), Corrective Services Act.
[65] Section 119(9), Corrective Services Act.
[66] QCS (5 June 2008 – Version 1) *Policy – Complaints Management*.
[67] QCS (February 2007) *Complaints Management System – Fact sheet – A Guide for Offenders in Custodial or Community Corrections* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Complaints_Management/documents/Complaints_Fact_Sheet_Offenders.pdf on 19 March 2009].
[68] Section 32, Judicial Review Act.
[69] Section 20(2), Judicial Review Act.
[70] Section 20, Judicial Review Act.
[71] www.plsqld.com.
[72] Section 18(1)(a), Ombudsman Act.
[73] Section 289, Corrective Services Act.

Chapter 4: Use of minor breaches

4.1 Issue

During the first half of 2008, Centre Green did not initiate any minor breach proceedings but initiated 156 proceedings for major breaches. At Centre White, only 7.5% (6 of 80) of breach proceedings were minor. One of the issues we investigated was why there were so few minor breaches at these centres.

At Centre Blue, as I discuss below, my investigators noticed when reviewing the records for minor breaches at that centre that, in some cases, prisoners were being punished for minor breaches without a hearing being held.

4.2 General investigation

Some officers at two centres who took part in the focus groups thought custodial officers were unlikely to initiate minor breach proceedings because they are responsible for hearing minor breaches whereas a major breach is heard by a supervisor. Therefore, initiating a minor breach would cause extra work for a custodial officer.

Furthermore, some supervisors said that custodial officers were unfamiliar with the paperwork required to initiate a minor or major breach. My investigators saw an illustration of this at the centre where a custodial officer unsuccessfully tried to show them how to generate the paperwork for a minor breach. The officer's excuse was to the effect, 'I haven't done one for so long'.

These opinions were supported by comments from the officers at Centre Blue, which had heard the most minor breaches. Specifically, they reported that a new role of supervisor had been created and those supervisors had recently commenced hearing minor breaches. They confirmed that before that change, custodial officers were responsible for hearing minor breaches and few minor breaches were initiated.

In addition, there was obvious confusion at one centre about whether custodial officers or supervisors were responsible for hearing minor breaches. The custodial officers my investigators spoke to at that centre believed the supervisors heard minor breaches, while a supervisor believed that custodial officers were required to hear them. A senior officer confirmed that supervisors hear minor breaches.

4.3 Minor conduct dealt with as major breach

As mentioned above, Centre Green did not initiate any minor breach proceedings in the first half of 2008 but initiated 156 major breaches. My review of the major breaches initiated at that centre in the first half of 2008 considered whether some of them would have been more appropriately characterised as minor breaches. Case studies 1 and 2, which relate to that centre, appear to fall into that category.

An officer at Centre Green told my investigators that there used to be an informal method of punishment for minor infringements, which another officer called ‘man management’. However, the officer said that the practice had stopped after a prisoner complained about it to my Office in about late 2007. Despite this assertion, my investigators identified such a case at that centre during our review (see case study 2).

Case study 1

A prisoner was charged with a major breach for conduct contrary to the good order of the centre (under s.6(j) of the Corrective Services Regulation). According to the Officer's Report, the prisoner called the Officers' Station on the intercom for no reason except to abuse and threaten staff because of alleged discriminatory behaviour.

The prisoner received two days in separate confinement.

Case study 2

A prisoner was charged with a major breach for contravening a lawful direction of an officer (under s.6(a) of the Corrective Services Regulation). The referring officer said the prisoner was wearing headphones during muster (head-count). The referring officer said that he asked the prisoner to remove them, which the prisoner initially did but then put them back on. The referring officer said that after muster, he asked the prisoner to hand his television in for a day for disobeying a direction during muster. The prisoner allegedly refused to hand in his television and used abusive language.

The prisoner received five days loss of television privileges. This was his first breach.

My other concern with these proceedings is that the direction the prisoner allegedly contravened may have been unlawful as it amounted to informal punishment involving a loss of privileges (using electronic media or an entertainment device). I further discuss the imposition of penalties without taking breach proceedings at 4.5.

My review of the classification of breaches at the other two centres supported the view that similar conduct to that described in case studies 1 and 2 would most likely have been classified as a minor breach at those centres.

Specifically, my investigators compared the classification of breaches at Centre Green in the first half of 2008, with the classification of similar conduct at Centre Blue. At Centre Blue in the first half of 2008:

- 23.5% of breaches for offensive language were dealt with as minor breaches
- 78.9% of breaches for contravening directions were dealt with as minor breaches
- 25.4% of breaches for conduct contrary to the good order of the centre were dealt with as minor breaches.

My comparison of breaches at the two centres indicated that about a quarter of the breaches dealt with as major breaches at Centre Green would have been dealt with as minor breaches at Centre Blue.

Recommendation 2

The chief executive review the major breach the subject of case study 2 to determine whether the direction the prisoner allegedly contravened was unlawful as it amounted to informal punishment involving a loss of privileges (using electronic media or an entertainment device).

4.4 Minor breach without hearing

At Centre Blue, it appeared prisoners had been breached without a hearing taking place in at least 17% (11 of 65) of the minor breaches my investigators reviewed at that centre. I say 'at least' because for some breach proceedings, insufficient information was recorded to allow my investigators to determine whether a hearing took place.

Opinion 1

In a significant number of the cases examined during my investigation at one centre, QCS officers took disciplinary action against prisoners without complying with the hearing requirements in s.116 of the Corrective Services Act. This constitutes, in each case, administrative action that is contrary to law and/or unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

Recommendation 3

The chief executive provide training to QCS officers on compliance with the hearing requirements in s.116 of the Corrective Services Act.

QCS response

> As part of Entry Level Training, the QCS Academy allocates a full day (8 hours) to breaches of discipline. All aspects of breaches are covered.
>
> Further, individual centres develop a training calendar based on identified needs, which are identified by the centre's Staff Development Officer.
>
> All General Managers will be requested to review training in relation to breaches in general and hearing requirements for possible inclusion in training calendars, in cases where the centre is not compliant.

My comment

The Entry Level Training runs for 10 weeks. My investigators reviewed the synopsis/lesson plan for the breaches of discipline module of that training. Of the eight hours allocated to breaches of discipline, 20 minutes are allocated to teaching the students who the 'deciding officer' is, what they must do and what they may do. Then, 120 minutes are allocated to group preparation and presentation of a mock minor breach hearing. There is also a module called Interpersonal Skills (allocated 16 hours), which a senior officer suggested also provided students with skills they could apply during breach hearings. Late in the training, students occupy a disused centre for one morning and simulate being QCS officers in charge of prisoners. A senior officer advised that a mock breach hearing occurs during this morning.

However, a considerable time may elapse before graduating QCS officers apply the knowledge and skills learned in the Entry Level Training. Based on this and the findings of my investigation, I consider there is a need for regular refresher training at each of the three centres my investigators visited. I consider it highly likely that officers at all centres in Queensland require further training on how to conduct breach of discipline proceedings. Therefore, the QCS' commitment to request General Managers to review training for 'possible inclusion in training calendars, in cases where the centre is not compliant' is not a satisfactory response.

4.5 Penalty without formal minor breach proceedings

At Centre White, both officers (including a senior officer) and prisoners confirmed that punishment for minor misconduct without formal breach proceedings sometimes occurred there. For example, back chat, insubordinate comments or boisterous behaviour could be punished by prohibiting telephone calls or access to television for a period. This practice is both unauthorised and unjust and is likely to give rise to arbitrary and inconsistent decisions.

Opinion 2

At one centre, QCS officers withdrew privileges from prisoners on some occasions without initiating formal breach proceedings under chapter 3, part 1 of the Corrective Services Act. This constitutes, in each case, administrative action that is contrary to law and/or unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

Recommendation 4

The chief executive take steps to ensure that the practice of withdrawing privileges from prisoners without formal breach proceedings under chapter 3, part 1 of the Corrective Services Act ceases immediately.

QCS response

Privileges may be removed from a prisoner in accordance with Section 118 of the *Corrective Services Act 2006*.

In addition, privileges may be removed from a prisoner under an Intensive Management Plan, in accordance with the Agency procedure entitled Intensive Management.

It is not clear in the Ombudsman's Report as to whether prisoners in the example provided were under an Intensive Management Plan at the time of the loss of privileges.

If centres are found to be removing privileges from prisoners outside of either of these processes, upon the final report being provided by the Ombudsman's Office, the Custodial Operations Directorate proposes to develop a communications strategy to rectify the situation.

My comment

In relation to QCS' reference to the loss of privileges under an Intensive Management Plan, I note that the *Procedure – Intensive Management*[74] provides that:

This procedure may be used to develop a management plan for an offender-

a. for support and/or observation after discharge from a maximum security unit, health centre or assessed as no longer requiring an at-risk management plan;
b. alleged to have recently perpetrated a sexual assault; or
c. who exhibits continuous, significant or adverse behaviours (eg uncontrolled violent behaviour, predatory behaviour).

[74] QCS (15 August 2008 – Version 3) *Procedure – Intensive Management* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprointensmgtplan.shtml on 2 July 2009].

The conduct in the examples I have described resulted directly in privileges being lost. It was clear that the officers and prisoners my investigators spoke to were not referring to the loss of privileges in the context of an intensive management plan.

The QCS response refers to the Custodial Operations Directorate proposing 'to develop a communications strategy to rectify the situation'. If this strategy relates to the circulation to officers of a direction that this practice must cease immediately, then I am satisfied with the response.

4.6 Summary

My investigation indicated that, in some cases, conduct that should have been dealt with as a minor breach was:

- dealt with as a major breach, or
- characterised as a minor breach and penalties imposed without a hearing taking place, or
- not the subject of breach proceedings but a penalty was imposed anyway.

These inconsistent practices are likely to have led to inconsistencies in penalties from centre to centre, an issue I discuss in chapter 7.

My investigation also indicated that the two most likely causes of these inconsistent practices were the complexity of the discipline process and lack of training about that process, which I will now discuss in more detail.

Chapter 5: Complexity of discipline process

Custodial officers, supervisors and senior officers at all three centres complained that the paperwork and associated process involved in initiating and closing a breach were unnecessarily burdensome.

5.1 Paperwork and process

An officer initiating a minor or major breach (referring officer) must create a new breach record on IOMS and then complete three forms, a Form 23, a Circumstances form and an Officer's Report. At Women's, the referring officer must also contact the Manager of 'Residential' to get a 'BW' number, that is, an identifying number that must be recorded on the Officer's Report.

The referring officer must then electronically 'attach' the forms to the IOMS breach record, a process the officers said they found unjustifiably time consuming.

The officer then must get the approval of a supervisor (or manager, depending on the centre) for the breach to proceed. This involves the officer forwarding the IOMS breach entry to the supervisor for approval. The request for approval appears on the IOMS task list for the relevant officer. However, some referring officers reported that some of those officers did not routinely look at the task list. This was a problem for them, especially for minor breaches that must be heard within 24 hours.

Once approved, the Form 23 and Circumstances form must be printed out and given to the prisoner as soon as possible prior to the hearing.

At one centre, a Breach Preamble template (script for the hearing) also had to be completed before the hearing with details such as the prisoner's name and the regulation breached.

After the breach is heard, the officer must have the IOMS record signed-off by a manager.

In addition, officers must enter certain details in the breach register.[75]

Also, a recent amended version of the *Procedure – Breaches of Discipline*[76] added a requirement that the supervisor sign the breach register at the end of each shift. The stated purpose of that new requirement is to ensure that the supervisors are aware of new 'breaches' to be dealt with.

The process is even more complex if the conduct qualifies as an incident that must first be referred to the CSIU for investigation (that is, a possible criminal offence). Before generating a breach record on IOMS, the officer must generate an incident record on IOMS, which includes some of the same information required for a breach record and breach forms. The incident record is electronically forwarded to CSIU for investigation. CSIU may decline to prosecute and refer the conduct back to the

[75] Section 121, Corrective Services Act.
[76] QCS (14 August 2008 – Version 4) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 24 March 2009].

intelligence section of the centre. That section then passes the referral to the relevant custodial section to initiate the breach proceedings.[77]

5.2 Officer concerns

The officers my investigators spoke to had the following concerns about the process and associated paperwork:

- The Circumstances form and the Officer's Report could not be generated by simply clicking icons in IOMS. They considered this to be unreasonable and questioned why templates for all three forms could not be available in IOMS (one officer suggested that the three forms could be combined into one form, accessible by clicking on the one icon in IOMS, which would make the process far simpler).
- At one centre, there were limited printers, which was an obstacle to getting the paperwork to the prisoner.
- In some areas there was more than one manager (for example, a day manager and a night manager), so officers would email more than one manager in an attempt to get approvals quicker; however, this led to uncertainty about who was responsible for the approval.
- Most officers did not find the breach register useful (the same information is on IOMS) and considered the requirement to write entries in the register redundant.
- When matters are returned from the CSIU, it is difficult to find an officer willing to initiate the breach proceedings because officers believe the breach paper-trail is unnecessarily burdensome.
- A breach takes around 30 to 45 minutes to prepare, and officers have to enter the same information two or more times when they complete the incident record (where relevant), breach record, breach forms and breach register.

5.3 Breach register

The Explanatory Notes for the Corrective Services Bill 2006 provide that:[78]

> Clause 120 aids official scrutiny of the disciplinary breach process by requiring the chief executive to keep a disciplinary breach register …
>
> This provision is intended to aid official scrutiny of the process, for example by … the ombudsman.

However, the centres now routinely use IOMS as their central record-keeping system for prisoners, including details of breach allegations, breach hearings and review hearings. Therefore, I think there is a strong argument for enhancing the functionality of IOMS:

- to simplify the process relating to disciplinary breaches, including records creation and retention, and
- to create an electronic disciplinary breach register.

[77] If that is what is decided by an officer at the centre.
[78] Queensland Parliament (2006) *Explanatory Notes Corrective Services Bill 2006* [accessed at http://www.legislation.qld.gov.au/Bills/51PDF/2006/CorrectiveB06Exp.pdf on 20 April 2009].

Opinion 3

The process and associated records for initiating and dealing with minor and major breaches involve unnecessary duplication of effort for officers and are likely to contribute in a significant number of cases to:

- minor breach proceedings not being initiated when they should be, or
- prisoner conduct which should be dealt with as a minor breach being dealt with as a major breach.

Recommendation 5

The chief executive simplify the process and associated records for initiating and dealing with minor and major breaches to avoid duplication of effort and, for that purpose:

(a) ensure that templates of the three forms needed to commence breach proceedings are available in electronic form in IOMS
(b) review the information required to be inserted on the forms to avoid duplication (for example, details of the determination and review should be recorded in the IOMS breach record and not also in the Form 23)
(c) consider if it is practicable to combine the three forms into one electronic form in IOMS
(d) investigate if the breach register under s.120 of Corrective Services Act can be held electronically in IOMS
(e) investigate if the functionality of IOMS can be enhanced to avoid the need to enter the same information more than once (for example, so that the entry of information to populate the IOMS incident record also populates relevant fields of the IOMS breach record).

QCS response and my comment

In responding to my proposed report, QCS advised in relation to recommendation 5 (a), (b), (c) and (e) that 'the IOMS system can support the changes following a system upgrade'.

I infer from QCS' response to this recommendation that it will implement the recommended changes to IOMS now that the system is able to support them following the upgrade.

In relation to recommendation 5(d), QCS advised:

> … a breach log exists in IOMS that identifies the date of the breach, the status of the breach, the offender involved, the regulation breached, the classification of the breach, the referring officer and the hearing date if applicable.
>
> All aspects of s.120 of the Act are covered in the IOMS breach log, however an IOMS upgrade is required, as some text is being cut off in the breach details contained within the log. An IOMS upgrade will occur.

On 4 September 2009, QCS amended the Form 23:

- to incorporate administrative form – Circumstances Leading to Initiation of a Breach – Version 4;
- to incorporate administrative form – Example Determination Question Sheet – Version 3; and
- as a result these administrative forms are redundant and are revoked.[79]

The 4 September 2009 amendment goes some way to implementing the recommendation.

In my proposed report, I suggested that QCS investigate whether IOMS could be developed to flag for supervisors/managers that a breach is waiting for pre-hearing approval or for after-hearing approval to close. In response, the QCS submitted:

> … there is a current process in place through notifications to the supervisor and manager roles. The flags in IOMS are designed to identify elements of offender management, not to identify work flow for staff.

As this suggestion was made to address a problem reported at one centre only in obtaining those approvals, I do not think it necessary to make a formal recommendation. However, I suggest that QCS regularly reinforce with officers responsible for giving approvals the importance of regularly checking their IOMS task list.

[79] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].

Chapter 6: Training

At the Corrective Services Academy (as mentioned at 4.4 in this report) and in Arthur Gorrie's Pre Service Custodial Training Program, officers receive training about how to deal with breaches, particularly the records they need to complete. The documents provided about these programs suggest that the main focus is on the process for initiating and closing breaches rather than the manner in which a breach hearing or review should be conducted.

Officers can practise (during training time or spare time) initiating breach records on a training version of IOMS. Some junior officers believe the training version would be more useful if it allowed them to simulate the whole process, which it does not allow as all entries in the training version are deleted daily.

However, neither QCS' officers nor Arthur Gorrie's officers receive regular training in how to conduct breach hearings, unless the centre's staff development officer (also known as the training coordinator) arranges it. My investigators were informed that this did not occur often at the centres they visited.

As a considerable time may elapse after initial training before an officer is required to act as a deciding officer, refresher training about the process and records involved in dealing with a breach should be provided. This should also help overcome the reluctance of custodial officers to conduct minor breach proceedings.

Recommendation 6

The chief executive ensure that officers who conduct breach proceedings have received adequate refresher training on the process to be followed.

Response of private service provider for Arthur Gorrie

> The facts [in the Ombudsman's proposed report] are fairly stated.
>
> The Centre has since taken steps to reinforce with annual refresher training, the training provided during the Pre Service Custodial Training Program regarding breaches, particularly the records officers must complete.
>
> This refresher training is directed at all correctional officers and line managers at the Centre and is also included in the annual training plan for the Centre.

QCS response

> Refer response to Recommendation [3].

QCS' response also confirms that the General Manager of Arthur Gorrie had responded separately and repeated the General Manager's response.

My comment

I am satisfied that the response of the General Manager, Arthur Gorrie, appropriately addresses my recommendation. However, my comments in my proposed report may have given the General Manager the impression that I would like training to particularly focus on the records officers need to complete. My recommendation is

that refresher training should be provided on all aspects of breach of discipline proceedings.

In relation to the QCS' response, I reiterate the comments I made about its response to recommendation 3.

Chapter 7: Consistency and bias

7.1 Consistency of penalties

There was a wide variance within and between centres in the penalties imposed for some similar breaches.[80]

Case study 3

At Centre Blue, the referring officer heard another officer call out to the prisoner to get off the exercise yard. The referring officer went up to the prisoner and directed that he move on. The prisoner called the officer 'f***ing scum' and then walked away.

The prisoner was charged with a major breach for abusive language (s.6(h) of the Corrective Services Regulation) and received five days in separate confinement. This was his first breach.

Case study 4

Also at Centre Blue, an officer directed a prisoner to stop lifting makeshift weights (made with water-filled bottles). The prisoner responded by telling the officer to 'f*** off' because he was not his unit officer.

The prisoner was charged with a minor breach for abusive language (s.6(h) of the Corrective Services Regulation) and received 24 hours loss of association, even though he had been warned previously for using similar language to officers.

In other instances, the variance may have been explained (at least in part) by the deciding officer taking into account the prisoner's breach history or the seriousness of the conduct the subject of the breach. However, my investigators were unable to confirm this because adequate reasons for penalty decisions were not recorded for any of the breaches they reviewed, as I will discuss later.

Another reason for the variance in some instances may have been that, as discussed in chapter 4, prisoner conduct which should be dealt with as a minor breach is either not being officially dealt with at all or is being dealt with as a major breach.

It is a fundamental element of good discretionary decision-making that decisions ought to be generally consistent for like cases. This does not mean that the decision-maker must make identical decisions for all cases of a particular type. The decision-maker should always have regard to the particular circumstances of a case that distinguish it from other cases of the same type,[81] such as whether the prisoner has committed similar or other breaches of discipline.

From the information gathered in the focus groups and interviews, it appeared that the primary reason for the lack of consistency in penalties was the lack of adequate

[80] There were also some breaches that were dismissed; however, it was not recorded whether they were dismissed due to the merits of the case, or for some other reason, such as the expiry of the time allowed for conducting the hearing.

[81] Queensland Ombudsman (2007) *Good Decision-making Guide – Good Decisions Make Good Sense* [accessed at http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/Good%20Decision-Making%20Guide.pdf on 30 April 2009]; and NSW Ombudsman (March 2004) *Discretionary Powers – Public Sector Agencies Fact Sheet no. 4* [accessed at http://www.ombo.nsw.gov.au/publication/PDF/factsheets/Discretionary%20Powers.pdf on 30 April 2009].

guidance or other mechanisms to encourage consistency (such as training or periodic monitoring of the range of penalties).

7.1.1 Written penalty guidelines

One centre had issued penalty guidelines, although several officers my investigators spoke to in the centre appeared unaware of them.[82] Another centre had done some work on drafting penalty guidelines, but they had not been introduced. Some officers said they believed written penalty guidelines would assist to encourage consistency while one senior officer contended that penalty guidelines would be a 'fetter' impacting upon the discretion of the deciding officer's decision-making powers.

That particular officer appears to misunderstand what constitutes a fetter on the discretion of a decision-maker. The distinction has been explained judicially as follows:[83]

> There is a distinction between an unlawful policy which creates a fetter purporting to limit the range of discretion conferred by a statute, and a lawful policy which leaves the range of discretion intact while guiding the exercise of the power.

Properly drafted guidelines are an appropriate way to encourage consistency in decision-making, particularly where there are multiple decision-makers both within and across centres.

7.1.2 Level of officer hearing breach

In each of the centres, major breaches are heard by supervisors[84] and (if requested by prisoners) reviewed by managers. For major breaches, officers pointed to the small number of supervisors (between two and six depending on the centre) as a factor promoting consistency. However, the officers confirmed, when speaking with my investigators during a focus group, there was no formal information sharing about penalties imposed.

One senior officer considered that breaches are heard 'too low down the food chain'. That officer favoured a more senior person, such as a manager, hearing the breaches. Two other supervisors also independently made the same suggestion at different focus group meetings.

7.1.3 Conclusion

In my opinion, having breaches heard by a smaller pool of more senior officers and having written penalty guidelines[85] would significantly improve consistency of penalties. However, this may not be practicable for minor breaches, which have to be finalised within 24 hours, although, as reported at 4.2, one centre has recently created a new role of 'supervisor' and one of the functions of the supervisor is to hear minor breaches.

---

[82] A senior officer provided my investigators with a copy of some guidelines and advised they had been disseminated to supervisors in each Unit. However, neither the supervisor nor the manager we spoke to was aware of them.
[83] Brennan J in *Re Drake And Minister For Immigration And Ethnic Affairs (No 2)* 2 ALD 634, 641.
[84] See the definitions in the Dictionary and abbreviations and chapter 3 in this report of supervisor, manager, custodial officer and senior officer. Briefly, throughout this report, where relevant, I refer to a simple hierarchy beginning with custodial officers, then supervisors, then managers, then senior officers.
[85] Keeping in mind that any policy (including guidelines) are merely a guide and should be departed from if compliance with the policy would produce an absurd result.

Opinion 4

In some of the cases examined during my investigation, the penalty imposed on a prisoner for a disciplinary breach was significantly higher than the penalty imposed on other prisoners for similar breaches. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

Recommendation 7

The chief executive take the following actions to achieve an acceptable level of consistency in the penalties imposed on prisoners for disciplinary breaches throughout the state:

(a) amend the *Procedure – Breaches of Discipline* to provide guidance to deciding officers and reviewing officers on the range of penalties appropriate for different types of breaches
(b) provide relevant training to officers
(c) regularly monitor consistency in penalties.

QCS response

In response to a recommendation in my proposed report that QCS provide guidance and training to officers to achieve more consistent penalties and review whether breaches should be heard by more senior officers, the QCS submitted:

> It is considered that this matter is more appropriately addressed through training of officers, as outlined in Recommendation [3] rather than requiring that breaches be heard by more senior officers.
>
> General Managers will be instructed to put a process in place to ensure any inconsistencies are monitored and addressed. The Custodial Operations Directorate will be tasked to develop guidelines.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to add 'the newly developed appendix – Breach Penalty Guidelines – Version 1'.[86]

My comment

In relation to my recommendation for further training, QCS refers back to its response to recommendation 3. However, I have already commented[87] that QCS' response does not adequately address that recommendation.

In relation to my recommendation that the Procedure be amended, I note that the Breach Penalty Guidelines[88] in the 4 September 2009 amendment do not differentiate between suggested penalties for minor and major breaches of the same section of the Corrective Services Regulation. I also note that none of the suggested

[86] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].
[87] At 4.4 of this report.
[88] QCS (4 September 2009) *Appendix – Breach Penalty Guidelines* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappbreachguide.doc on 14 September 2009].

penalties is for a loss of privileges of 24 hours or less, meaning that the Breach Penalty Guidelines do not provide any guidance for suggested penalties for the majority of minor breaches.

7.2 Bias

Breach determinations or reviews will be tainted by bias if a 'fair-minded lay observer might reasonably apprehend that the officer might not bring an impartial mind to the resolution of the question ...'[89]

Case study 5

In one major breach hearing where a prisoner was charged with using abusive language, the officer commenced the proceedings with the words 'I am going to find you guilty, how do you plead'.

In 21% of the cases my investigators reviewed that involved minor breaches, the deciding officer was also the complainant (for example, the officer who was verbally abused or whose direction was disobeyed). In other words, the deciding officer was also the referring officer.

Equally disturbing, one deciding officer said that once the referring officer put his or her report in writing and signed the report, the officer could not 'retract' any of the information and so they accepted that information as 'factual' and would rely on it rather than the prisoner's submissions.

Other officers agreed that if an officer went to the trouble of putting the allegation in writing it was more likely the allegation was true.

Some supervisors said that when hearing the breaches, if they knew the referring officer, they could gauge the credibility of the Officer's Report. If the supervisor knew the officer to write accurate reports, he or she could go on to decide the breach without making further inquiries of the officer. If further inquiries of the officer were necessary, some officers reported they would do this either during the hearing or by suspending the hearing to make inquiries and then resuming the inquiry.

In some of the cases my investigators examined, the deciding officer appeared to be strongly influenced by his or her own perception and observations of the prisoner.

An allegation against a prisoner should be dealt with only on the basis of the evidence before the deciding officer in relation to the alleged breach.

[89] *Ebner v Official Trustee in Bankruptcy; Clenae Pty Ltd v Australia and New Zealand Banking Group Ltd* (2000) 205 CLR 337 at 343.

Case study 6

Prisoner 1 was breached under s.6(j) of the Corrective Services Regulation, namely for conduct contrary to the good order and security of the centre. It was alleged that prisoner 1 struck prisoner 2 without provocation. In the hearing, prisoner 1 claimed that she had struck prisoner 2 in retaliation for being spat at. The following extract shows how the deciding officer (O) responded to this claim:

O: There's been a lot of instances of you creating a bit of havoc … for a long time now. You're not well liked are you? Would you agree with that?
P: I'm not here to be liked … I'm sorry.
O: Would you agree that you're not well liked?
P: I'm not sure, I do have my friends in the Unit. If they don't like me, fine. I'm not here to win any awards for likeness. I'm here to do my time.
O: Well you're not … but it helps to get on though doesn't it? In general life it helps to have friends.
P: I do have friends in here.
O: Mmm..that's debatable.
P: Okay.

The deciding officer's decision was *'OK my determination – I'm going to show some leniency here due to the evidence that you've given – 6 days* [separate confinement]*'.*

It is important that referring officers not include irrelevant, prejudicial comments in their reports that could affect the deciding officer's impartiality, as happened in the following case study.

Case study 7

The referring officer's report about an alleged breach for failing to follow a direction included:

His behaviour is continually pushing the boundaries even though he likes to portray himself as innocent and victimised. He is heavily involved in drugs in the unit and has proudly displayed his arm with fresh track marks to [officer].

In one case my investigators examined involving proceedings for a major breach, the videotape was recording before the prisoner was called into the hearing. One officer could be heard to say something to the effect of *'I reckon five days … f… him'*. It was not clear whether the officer making the comment was the deciding officer or the officer operating the camera. In either case the comment was inappropriate and gave rise to at least a perception of bias.

As mentioned at 7.1.2, one senior officer and two supervisors considered that to overcome bias, breaches should be heard by a senior officer such as a manager, or a person or panel independent from the centre.

It is unlikely that this would be practicable for minor breaches, which have to be dealt with in 24 hours, but it may have merit for major breaches.

Recommendation 8

The chief executive minimise the risk that breach proceedings are tainted by actual bias or a perception of bias, by:

(a) amending the *Procedure – Breaches of Discipline* to provide appropriate guidance to officers
(b) providing relevant training to officers
(c) regularly monitoring the records (including video records) of breach proceedings.

QCS response

In responding to a recommendation in my proposed report that the chief executive provide guidance and training for officers to minimise the risk that breach proceedings are tainted by actual bias or by a perception of bias, the QCS stated:

> As this is also a training issue, refer response to Recommendation [3] and Recommendation [7].

My comment

QCS' response to recommendation 3 in my proposed report related to QCS providing training and I have already commented on the inadequacy of that response.[90] QCS' response to recommendation 7 related to it providing training and monitoring and addressing any inconsistencies in penalties.

I agree that both training and an appropriate system for monitoring the records relating to breach proceedings are appropriate but I also consider that QCS should amend the *Procedure – Breaches of Discipline* to provide written guidance to officers on this issue.

[90] See 4.4 of this report.

Chapter 8: Notice

8.1 Notice of allegations

The requirement that a prisoner the subject of breach proceedings be given reasonable notice of the alleged breach is contained in s.9 of the *Procedure – Breaches of Discipline*.

In *Renton v Bradbury,* Muir J held that:[91]

> … it seems to me that the rules which expressly confer upon prisoners the right to be informed of an intention to transfer and to make submissions to the sentence management team concerning any such proposed transfer, give rise to a legitimate expectation that they will be followed.

Although that case related to transfer decisions, in my view the principle also applies to breach proceedings in respect of which the *Procedure – Breaches of Discipline* prescribes the relevant rules, including that prisoners be given notice of alleged breaches. Therefore, the procedure gives rise to a legitimate expectation that appropriate notice will be given.

It follows that a prisoner should not be taken by surprise by any allegation made at the hearing.

Form 23 requires the referring officer to specify in it the regulation breached and the 'breach details'. The Circumstances form gives additional guidance for the referring officer, requiring the referring officer to provide 'a brief description of the circumstances leading to the initiation of the breach process for the information of the prisoner being breached'.[92] In at least[93] 39.5% of the cases my investigators examined, the referring officers did not record sufficient details of the alleged misconduct on the Form 23 and Circumstances form for prisoners to understand the grounds for the breach proceedings.

Case study 8

A prisoner was charged with a breach under s.6(h) of the Corrective Services Regulation for using bad language. The phrase 'Using abusive, insulting, obscene, offensive or threatening language' was repeated on both the Form 23 and Circumstances form without elaboration of the circumstances of the breach.

[91] *Renton v Bradbury & Anor* [2001] QSC 176, Muir J at paragraph 42.
[92] QCS (14 August 2008 – Version 4) *Administrative Form – Circumstances Leading to Initiation of a Breach* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmfrmbrchwhy.doc on 24 March 2009].
[93] In some cases, the forms were not electronically attached to the IOMS breach records so my investigators could not determine whether the prisoner received sufficient information on the forms.

Case study 9

In the case of another prisoner charged with a breach under s.6(h) of the Corrective Services Regulation for using bad language, the same phrase 'Using abusive, insulting, obscene, offensive or threatening language' was also used on the Form 23. The Circumstances form merely referred to an 'incident' between the prisoner and the officer in the presence of another officer. The Circumstances form did not explain the language that was used and whether the officer regarded it as abusive, insulting, obscene, offensive or threatening.

Our review also showed that the date the prisoner received the Form 23 and the Circumstances form was not routinely recorded. Furthermore, some officers conceded that prisoners sometimes get the forms late, or not until the hearing.

The approach of the deciding officers where a prisoner has not received the forms varied as did their approach where the forms contained mistakes. One officer said that at the hearing, the prisoner would be asked if they had received the forms. If the answer was ‘no’, the breach would be dismissed. Another officer referred to the fact that there were two standards of proof for breach hearings (balance of probabilities for minor breaches and beyond reasonable doubt for major breaches). He then said that if the prisoner had not received the forms, he would decide whether to proceed with the hearing (after having the prisoner read the forms). His implication was that he would be more likely to dismiss matters involving major breaches because of the higher standard of proof applicable.

Opinion 5

In a significant number of the cases examined during my investigation, QCS officers failed to record in the Form 23 and Circumstances form sufficient details of the alleged misconduct to enable prisoners to understand the grounds for the breach proceedings. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

My proposed report contained the following recommendation:

> **Proposed recommendation 8**
>
> If, before the hearing commences, the prisoner has not been given the Form 23 and/or Circumstances form, the deciding officer give the prisoner a reasonable opportunity to read the information to be relied on and, where necessary, suspend the hearing for that purpose.

QCS response

In accordance with Section 9 of the Breach of Discipline procedure:

A print-out from IOMS of the Form 23 – Breach of Discipline and administrative form – Circumstances Leading to Initiation of a Breach must be given to the prisoner by the officer observing or becoming aware of the breach of discipline as soon as possible and before the breach hearing. This formally commences the breach process.

The date and time that a copy of the Form 23 – Breach of Discipline and administrative form – Circumstances Leading to Initiation of a Breach were given to the prisoner must be documented on the administrative form and provided to the prisoner in the presence of another officer.

> If this recommendation is to remain in the final report, any issues with prisoners not being given sufficient time to review the Form 23 and/or Circumstances form, can be addressed by the Custodial Operations Directorate by amending Section 9 of Breach of Discipline procedure.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to require that prisoners 'be given sufficient time to read and understand all documents and if required to prepare a response in their defence on any mitigating circumstances'.[94]

My comment

I have amended the recommendation I was proposing to make after considering the QCS' response and the 4 September 2009 amendment, which partially implements my recommendation. I have also recommended that officers be provided with appropriate training on this issue.

Recommendation 9

The chief executive ensure that deciding officers comply with the rules of procedural fairness, by:

(a) amending the *Procedure – Breaches of Discipline* to require that, if the prisoner has not been given the Form 23 and/or Circumstances form within a reasonable time before the hearing, the deciding officer give the prisoner a reasonable opportunity to read the information to be relied on and, where necessary, suspend the hearing for that purpose
(b) providing relevant training to officers.

8.2 Notice of procedure

QCS' procedures only require centres to inform prisoners about the breach process when they are initially received into the prison system (that is, at the first centre they are accommodated in).[95] However, my investigators' review found that some placement centres (that is, centres that do not initially receive prisoners into the prison system) also explain the breaches process during induction. In all the induction material my investigators examined for the three centres, the breaches process was explained in basic terms and did not sufficiently summarise ss.113 to 121 of the Corrective Services Act and s.6 of the Corrective Services Regulation.

My investigators also examined whether prisoners were being given a reasonable opportunity to familiarise themselves with those sections of the Act and Regulation after being provided with the forms and before the hearing commenced. As mentioned earlier, that timeframe is less than 24 hours for minor breaches and less than seven days for major breaches.

[94] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].
[95] QCS (23 December 2008 – Version 3) *Procedure – Induction* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmproinduct.shtml on 24 March 2009].

My investigators' inquiries revealed that there are two main ways in which prisoners obtain access to relevant legislation, namely:

- prisoners apply for approval to attend the prison library, or
- prisoners obtain printouts or copies of legislation through officers in the unit where they are accommodated.

Prisoners told my investigators of delays in some centres of several days in processing applications to attend the library. As one prisoner pointed out, this is a significant problem if a prisoner wishes to conduct research to defend a breach proceeding, particularly minor breaches that have to be dealt with in 24 hours.

Another prisoner told my investigators that his experience was that when prisoners are accommodated in the Detention Unit leading up to a breach hearing, they are not able to read the forms, much less attend the library or access printouts of legislation.

I consider it would be desirable if prisoners were aware that they could reliably obtain printouts of ss.113 to 121 of the Corrective Services Act and s.6 of the Corrective Services Regulation through officers in the Unit where they are accommodated in the lead up to a breach hearing. However, my investigators found that at one centre, there were not enough printers to allow officers to easily obtain those printouts.

My proposed report contained the following recommendation:

> **Proposed recommendation 9**
>
> The chief executive develop and implement a procedure that ensures that, at the time prisoners receive the breach forms, they are:
>
> (a) provided with a copy of ss.113 to 21 of the Corrective Services Act and s.6 of the Corrective Services Regulation (the legislation); or
> (b) advised in writing of the method by which they may reliably obtain a copy of the legislation prior to the breach hearing.

QCS response

In responding to this proposed recommendation, QCS submitted that:

> Amendment to Breaches of Discipline procedure and associated forms will ensure that prisoners are aware of and have access to relevant sections of the Act and Regulations.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to require 'that a prisoner must be advised in writing how they can obtain a copy of the legislation prior to the breach hearing'.[96]

My comment

The 4 September 2009 amendment implements the recommendation in my proposed report so I have not repeated it here. However, after considering the issue further, I have decided to recommend that QCS provide training to its officers on this issue.

[96] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].

Recommendation 10

The chief executive ensure that prisoners are given access to adequate information about the breach of discipline process by providing relevant training to officers on the requirement in the *Procedure – Breaches of Discipline* to advise prisoners in writing of how to obtain a copy of relevant legislation prior to a breach hearing.

8.3 Categories in s.6 of the Corrective Services Regulation

Forty-two percent of all breaches recorded at Arthur Gorrie, Women's and Wolston between 1 January 2008 and 30 June 2008 were categorised as 'contrary to the security and good order of a corrective services facility'. That breach ground has been used in corrective services legislation in many jurisdictions. It is intended as a catch-all for conduct that is deserving of punishment but not 'caught' by any of the other more specific breach grounds.[97]

Examples of conduct that appear to have been correctly categorised under the 'good order' breach ground are:

- wandering in areas where not authorised to be
- fighting
- attempting to divert medication
- smoking in unauthorised areas
- subversiveness (for example, using an officer's telephone PIN[98] to make telephone calls).

Examples of conduct that was categorised under the 'good order' breach ground but would have been more appropriately categorised under a more specific breach ground are:

- not following instructions – more appropriately categorised as 'contravening a lawful direction of a QCS officer'[99]
- destroying property – more appropriately categorised as 'wilfully damaging' or 'intentionally damaging another prisoner's property'[100]
- possessing something not authorised to possess – more appropriately categorised as 'possessing or concealing something not expressly or impliedly approved as something the prisoner may possess'[101]
- bad language – more appropriately categorised as 'using abusive, indecent, insulting, obscene, offensive or threatening language in someone else's presence'[102]
- failure to supply a test sample – which is deemed to be a positive sample under s.43(4) of the Corrective Services Act, and is therefore more appropriately characterised as 'giving a positive test sample or being taken, under section 43(4) of the Act, to have given a positive test sample'.[103]

[97] O'Shea, B, President of Law Institute Victoria (7 May 2003) Submission to Prison Discipline Review [accessed at https://www.liv.asn.au/members/sections/submissions/20030507_20/20030603pris.pdf on 25 March 2009].
[98] Personal identification number.
[99] Under s.6(a), Corrective Services Regulation.
[100] Under s.6(n), 6(o), 6(p), 6(q) and 6(r), Corrective Services Regulation.
[101] Under s.6(d), Corrective Services Regulation.
[102] Under s.6(h), Corrective Services Regulation.
[103] Under s.6(t), Corrective Services Regulation.

Prisoners were critical of what they saw as officers' regular and convenient use of the justification 'for the security and good order of the centre' in the breaches process and in daily prison life. Some officers also admitted that it was convenient to categorise a breach as contrary to the security and good order of the centre, as most misconduct would fall within that description.

It is important that breaches are categorised under the most appropriate breach ground, to add rigour and credibility to the disciplinary process.

Recommendation 11

The chief executive take the following actions to ensure that officers charge prisoners with a breach of s.6(j) of the Corrective Services Regulation (contrary to the security and good order of a corrective services facility) only where the conduct involved does not fall into a more specific category of misconduct in that section:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

QCS response

In responding to a recommendation in my proposed report that an appropriate procedure be issued and training provided, QCS submitted:

> This is a training issue – refer response to Recommendation [3].

My comment

I refer back to my comment on QCS' response to recommendation [3] which does not adequately address my recommendation. I also consider there is a need for an amendment to the *Procedure – Breaches of Discipline* to require officers to particularise a specific category of misconduct wherever practicable and, after considering the issue further, I believe an appropriate system for monitoring compliance should also be implemented.

Chapter 9: Fair hearing

9.1 Conduct of hearings

The requirement that a prisoner the subject of breach proceedings be given a fair hearing is contained in s.116(3) of the Corrective Services Act. What is fair in the particular circumstances will depend, among other things, on the language and comprehension skills of the prisoner.[104] The videotapes of major breach proceedings viewed during my investigators' audit revealed that many of the prisoners had less than average comprehension skills. Some of these prisoners also had difficulty understanding the English language.

In some cases, officers used language during hearings that appeared to be too complex for the prisoner's level of English.

Case study 10

The videotapes of some of the major breach proceedings showed that some prisoners were confused about the meaning of the words 'as read' in the commonly asked question 'Do you accept the evidence as read?' Some prisoners would eventually answer 'yes' when it appeared clear to my investigators that they did not in fact agree with what had been read to them from the Officer's Report. A better approach would be to say 'Is the information I have read out to you correct?' or 'Do you agree with what I have read to you?'[105]

Case study 11

A prisoner was charged with a major breach for using the intercom system to abuse a QCS officer who had woken him up by giving an order to prisoners over the system. The prisoner's first language was probably not English. He indicated several times that he did not understand certain matters. The deciding officer appeared aggressive towards him and did not appear to help him. The videotape shows that, at one point, the video recorder was turned off without any explanation being recorded and when it was turned back on, the prisoner can be seen to be crying.[106]

My investigators separately investigated why the prisoner cried and the investigation did not establish misconduct on the part of any officer. However, turning off the recorder without explanation undermines the purpose of recording the proceedings – that is, as a safeguard to ensuring that the proceedings were conducted appropriately.

[104] Queensland Ombudsman (2007) *Good Decision-making Guide – Good Decisions Make Good Sense* [accessed at http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/Good%20Decision-Making%20Guide.pdf on 30 April 2009]; and NSW Ombudsman (June 2005) *Natural Justice/Procedural Fairness – Public Sector Agencies Fact Sheet no. 14* [accessed at http://www.ombo.nsw.gov.au/publication/PDF/factsheets/FS_PublicSector_14_Natural_Justice.pdf on 30 April 2009].

[105] Section 116(7), Corrective Services Act.

[106] The other concern I have about this case study is the unexplained break in the videotaping of the proceedings. I will discuss this issue separately in chapter 11.

My proposed report contained the following recommendation:

> **Proposed recommendation 11**
>
> The chief executive develop and implement a procedure that requires an officer conducting a disciplinary hearing to assess the language and comprehension skills of the prisoner and ensure that the prisoner understands the proceedings.

QCS response

> Should a prisoner who is non-English speaking be breached, they may be provided with access to an interpreter.
>
> It is understood that most QCS officers apply common sense when conducting breaches and ensuring use of appropriate language and terminology.
>
> However, the Agency considers that this matter may be better addressed through training – see Recommendation [3] and [7].

My comment

I refer back to my comment on QCS' response to recommendation 3 which does not adequately address my recommendation.

I am aware that the training referred to by QCS is the Entry Level Training Program and that this program includes a module on interpersonal skills. However, I have reservations about the adequacy of the training having regard to the administrative deficiencies I have identified.

Although I agree that additional training is required, I believe that there is a need for an amendment to the *Procedure – Breaches of Discipline* to require officers to particularise a specific category of misconduct wherever practicable.

I have amended my recommendation accordingly.

Recommendation 12

The chief executive take the following actions to ensure that officers conducting disciplinary hearings assess the language and comprehension skills of the prisoner and ensure that the prisoner understands the proceedings:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance by reviewing videotapes of major breach proceedings.

9.2 Reasonable opportunity

The Corrective Services Act requires that the prisoner receive a reasonable opportunity to put their defence, examine witnesses and put to the deciding officer any mitigating circumstances.[107]

[107] Section 116(3), Corrective Services Act.

9.2.1 Defence and mitigating circumstances submission

In many cases my investigators examined, the deciding officer invited the prisoner to make a submission but did not explain that the prisoner could make a submission in defence and a separate submission about mitigating circumstances. Instead, the officer said words to the effect 'Do you have anything to say for yourself?'

In my opinion, as well as demonstrating compliance with s.116(3) of the Corrective Services Act, it would be good administrative practice for officers to ask the two questions separately, so that prisoners understand that they also have the opportunity to say something to support a reduction in penalty.

One senior officer pointed out that, if prisoners were asked whether they had any submissions about 'mitigating circumstances', many of them would not understand the question. However, the question could be simplified, for example:

> 'I have found you guilty. Is there anything you want to say about the penalty I should give you?'

or

> 'I'm thinking of giving you seven days separate confinement. Can you think of any reason I should give you a lighter penalty?'

My proposed report contained the following recommendation:

> **Proposed recommendation 12**
>
> The chief executive develop and implement a procedure to ensure that officers invite prisoners to make separate submissions in their defence and on any 'mitigating circumstances' and ensure that the prisoner understands their right to make those submissions, including by using plain English language.

QCS response

> The Custodial Operations Directorate will give consideration to amending the Administrative Form – Example Determination Question Sheet, which is an appendix to the Breaches of Discipline procedure, to simplify the language in relation to 'mitigating circumstances'.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to require 'that the deciding officer hearing the breach must give the prisoner the opportunity to make separate submissions in their defence on any mitigating circumstances and that the language used ensure that the prisoner understand their rights to make submissions'.[108]

My comment

The 4 September 2009 amendment implements proposed recommendation 12 and there is no need for me to repeat the recommendation in this report. However, after considering the issue further, I have decided that further training and a system for monitoring compliance are also required.

[108] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].

Recommendation 13

The chief executive take the following actions to ensure that officers invite prisoners to make separate submissions in their defence and on any 'mitigating circumstances' and ensure that the prisoner understands their right to make those submissions:

(a) provide relevant training to officers
(b) regularly monitor compliance by reviewing videotapes of major breach proceedings.

9.2.2 Witnesses

In a few cases,[109] prisoners asked to call witnesses but the hearing officer either did not respond to the request or denied the request without considering whether the evidence could have been given in writing or another form.

In my opinion, as well as being a requirement of s.116(3) of the Corrective Services Act, it is good administrative practice for the deciding officer to properly consider a prisoner's request to call a witness from within the centre and, if it is not practicable in the circumstances to approve the request, consider whether the evidence may be given in writing or another form, and advise the prisoner of the decision and reasons.

Recommendation 14

The chief executive take the following actions to ensure deciding officers comply with the requirement in s.116(3) of the Corrective Services Act to fairly consider whether a prisoner's request to call a witness from within the centre is both reasonable and practicable and, if not, whether the witness's evidence can be given in writing or another form:

(a) provide relevant training to deciding officers
(b) regularly monitor compliance by reviewing videotapes of major breach proceedings.

QCS response

In response to a recommendation in my proposed report that training be provided on this issue, QCS submitted:

> This will be addressed through training as suggested – refer Recommendation [3].

My comment

I refer back to my comment on QCS' response to recommendation 3 which does not adequately address my recommendation. After considering the issue further, I also believe an appropriate system for monitoring compliance should be implemented.

[109] That my investigators are aware of, as some of the videotapes of major breaches were not available for review and minor breaches are not videotaped – see chapter 11.

9.2.3 Circumstances form at Women's

The version of the Circumstances form often used at Women's includes an additional note:

> You have the right to request a witness to support your case however the determining officer may insist that your evidence be given in writing.

One senior officer advised us that this information is from the Corrective Services Act. It appears the note arose from a misinterpretation of s.116(3)(b)(ii).[110] In my view, while not intended, that note could reasonably be construed by prisoners as requiring them to give their own evidence in writing if they request a witness.

My proposed report contained the following recommendation:

> **Proposed recommendation 14**
>
> Brisbane Women's Correctional Centre amend the note on its Circumstances form to read 'You may request to call a person from within the centre to give evidence in your defence but, if you do, the deciding officer may order that the person's evidence be given in writing or in another form.'

QCS response

> The Brisbane Women's Correctional Centre has been instructed to remove the notation on the Circumstances form. This will provide consistency with other centres.

My comment

I agree with the actions taken by QCS and I have amended my recommendation accordingly.

Recommendation 15

Brisbane Women's Correctional Centre remove the notation on its Circumstances form about a prisoner's right to request a witness for the purpose of breach proceedings.

9.3 Review advice

Immediately after making a decision that a breach of discipline has been established, the deciding officer must tell the prisoner that the prisoner may have the decision reviewed and how this will happen.[111] In one of the major breach proceedings my investigators examined, the deciding officer made a comment that discouraged the prisoner from seeking a review.

[110] This provision gives a prisoner the right to call a person within the prison to give evidence in the prisoner's defence unless the deciding officer considers the evidence may be given in writing or another form.
[111] Section 118(4), Corrective Services Act.

Case study 12

The deciding officer found the prisoner guilty of a major breach for contravening a lawful direction (smoking during a break in a class after the prisoner had been told not to) and ordered that the prisoner undertake four days of separate confinement. The following exchange then took place between the prisoner and the deciding officer:

O: Do you wish to review?
P: Um, is it going to get me anywhere?
O: No.
P: Well then, what's the point?
O: OK … so … As of 9:30 OK?

That concluded the breach hearing.

Although my investigators only identified one such case, any comments from a deciding officer that tend to discourage the prisoner from exercising the right of review are inappropriate.

My proposed report contained the following recommendation:

> **Proposed recommendation 15**
>
> The chief executive include in the training I recommend in recommendation [6] training for deciding officers on the information they should give prisoners about their right to have a disciplinary decision reviewed and on the need to make no comment that would influence the prisoner's decision on whether to seek a review.

QCS response

> Refer Recommendation [3].

My comment

I refer back to my comment on QCS' response to recommendation 3 which does not adequately address my recommendation. After considering the issue further, I also consider that an appropriate amendment should be made to the *Procedure – Breaches of Discipline* and that compliance with the amended *Procedure – Breaches of Discipline* should be monitored by regularly reviewing videotapes of major breach proceedings.

Recommendation 16

The chief executive take the following actions to ensure that deciding officers make no comment that would influence the prisoner's decision on whether to seek a review of a breach decision:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance by reviewing videotapes of major breach proceedings.

Chapter 10: Reasons

10.1 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 2008*, 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*,[112] 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,*[113] 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

[112] 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].

[113] 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 respect of breach decisions made in Queensland prisons, this means the records of those decisions must be detailed enough for:

- internal and external review bodies[114] to properly review those decisions
- prisoners to decide whether there are grounds for challenging those decisions.

10.2 What are reasons?

To meaningfully and accurately communicate decisions, it is critical that officers:

- are clear on the decision and reasons
- make good records of the decision and the reasons.

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.[115]

The New South Wales Ombudsman, in a publication *Good Conduct and Administrative Practice*, advises that reasons should include:[116]

- 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.

10.3 Reasons for level of breach

My investigators' audit revealed that, in every case they reviewed, the referring officer failed to record adequate reasons for the decision to deal with the alleged conduct as a minor or major breach. My investigators noted a few cases where the breach

[114] Relevantly, the Department of Community Safety's Internal Audit Branch, QCS' Offender Management and Services Directorate, the Office of the Chief Inspector (including Official Visitors), the Office of the Queensland Ombudsman and the Crime and Misconduct Commission.
[115] Queensland Ombudsman, *Good Decisions Training Workbook*.
[116] New South Wales Ombudsman (May 2006 – 2nd edition) *Good Conduct and Administrative Practice – Guidelines for State and Local Government*, Sydney.

paperwork recorded that the prisoner had been warned about the same conduct on previous occasions (a relevant consideration in deciding the level of breach), but this was not specified as a reason for the choice of level of breach.

In my view, officers are obliged to record these reasons in accordance with s.7 of the Public Records Act. It is also highly desirable that officers record these reasons:

- to demonstrate accountability in exercising the discretionary decision about the choice of level of breach
- to address (in part) the concern I identified in chapter 4 about the under-utilisation of minor breaches.

Opinion 6

In all of the cases examined during my investigation, QCS officers failed to record any reasons for decisions to deal with the alleged misconduct of prisoners as a minor or major breach. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

My proposed report contained the following recommendation.

> **Proposed recommendation 17**
>
> The chief executive develop and implement a procedure requiring that officers who start proceedings against a prisoner for a breach of discipline record adequate reasons for the decision to deal with the conduct as a minor or major breach.

QCS response

> [QCS quoted s.7 of the Public Records Act]
>
> The current Section 7 of the procedure does not comply with s.7(1)(a) of the Public Records Act. QCS agrees that the officers reasoning for determining the level of breach in line with Section 7 of the procedure should be documented, making the process more transparent.
>
> Amendment of Form 23 and procedure will occur.

My comment

Having given further consideration to this issue, I am still of the view that an appropriate procedure should be developed but I also consider that appropriate training should be provided to relevant officers on the issue and that officers' compliance with the requirement is regularly monitored. I have amended my recommendation accordingly.

Recommendation 17

The chief executive take the following actions to ensure that officers who start proceedings against a prisoner for a breach of discipline record adequate reasons for the decision to deal with the conduct as a minor or major breach:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

10.4 Reasons for breach decisions

Bearing in mind that the videotapes of some major breaches were not available, my audit of the records of the 200 breaches and 62 reviews identified:

- only three cases where deciding officers or reviewing officers recorded adequate reasons for their decisions about whether the prisoner was guilty or innocent
- only six cases where deciding officers or reviewing officers recorded adequate reasons for the type and level of penalty imposed.[117]

My investigators also examined 10 cases where the penalty was increased on review. In each case, the reviewing officer had failed to record proper reasons for the increase.

10.4.1 Recording reasons

At two of the centres, officers regularly used the Determination Question Sheet (or a variation of it)[118] to record certain questions asked of prisoners during the hearing and their answers.

Some officers suggested that the reasons for the determination could be ascertained from reading the completed sheet. I disagree. The sheet will not normally indicate whether the deciding officer accepted or rejected the prisoner's answers or the weight given to particular answers. The deciding officers must record adequate reasons, as described in 10.2.

10.4.2 Giving reasons

The New South Wales Ombudsman provides this explanation in *Good Conduct and Administrative Practice* of the importance of giving reasons for decisions:[119]

> **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.
>
> …

[117] In a few cases other than those six, the officer told the prisoner the penalty being given was lenient in light of the prisoner's guilty plea or some other mitigating factor.
[118] Namely, Wolston Correctional Centre *Major Breach – Breach Preamble – Manager*, Wolston Correctional Centre *Major Breach – Breach Preamble – Supervisor*, Wolston Correctional Centre *Minor Breach – Breach Preamble – Correctional Officer* and Wolston Correctional Centre *Minor Breach – Breach Preamble – Supervisor*.
[119] New South Wales Ombudsman (May 2006 – 2nd edition) *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 both breach and review decisions is conducive to the good order of the prison as it is likely to reduce prisoner tension and volatility. People, whether they are prisoners or law abiding members of the community, will understandably feel aggrieved if they think they are the subject of an inconsistent, arbitrary or unjust decision.

Further, a prisoner found guilty of a breach cannot meaningfully decide whether to exercise the right to request a review of the decision if the prisoner does not know the reasons for the decision.[120] I also note that, although a review decision is not subject to appeal or further review under the Corrective Services Act, it can be reviewed by internal or external review bodies[121] and the recording of proper reasons for decisions will make their job easier.

Therefore, in normal circumstances, I consider it is fair and reasonable[122] as well as good administrative practice for officers to record reasons for breach decisions and review decisions and to provide those reasons to the prisoner.

Opinion 7

In a significant number of the cases examined during my investigation, QCS officers failed to record and/or give to prisoners adequate reasons for breach decisions and review decisions. This constitutes, in each case, administrative action that is unreasonable and/or unjust for the purposes of s.49(2)(b) of the Ombudsman Act.

[120] For example, the prisoner would not know whether inappropriate or inaccurate information formed the basis of the decision, or whether special circumstances were adequately taken into account.
[121] The Department of Community Safety's Internal Audit Branch, QCS' Offender Management and Services Directorate, the Office of the Chief Inspector (including Official Visitors), the Office of the Queensland Ombudsman and the Crime and Misconduct Commission.
[122] As required by s.49 of the Ombudsman Act and s.100(2) of the Public Service Act.

My proposed report contained the following recommendation:

> **Proposed recommendation 18**
>
> The chief executive develop and implement a procedure to require that deciding officers and reviewing officers record adequate reasons for their decisions and provide those reasons to prisoners.

QCS response

> The administrative form Determination Question Sheet, which is an appendix to the Breaches of Discipline procedure, requires the officer alleging the breach to provide a brief description of the circumstances leading to the initiation of the breach process for the information of the prisoner being breached.
>
> The Agency does not consider any further action is warranted other than ensuring this is included in training.

My comment

The QCS' response does not adequately address my recommendation. It also contains information which I believe is incorrect, in particular, the reference to the 'officer alleging the breach' having to fill out the Determination Question Sheet. It is my understanding that the sheet is filled out by the deciding officer not the referring officer. The latter is required to fill out the Circumstances form.

My recommendation is directed to ensuring that deciding officers and reviewing officers record and give to prisoners adequate reasons for decisions. I have commented at 10.4.1 that the Determination Question Sheet is inadequate for use in recording reasons.

In my view, the first step towards ensuring that officers record and give appropriate reasons for decisions is to amend the discipline procedure. However, I agree with QCS that it would also be a good idea to provide specific training to officers to reinforce this requirement. I have amended my recommendation accordingly. I also consider that there should be appropriate monitoring of compliance with this requirement.

Recommendation 18

The chief executive take the following actions to ensure that deciding officers and reviewing officers record adequate reasons for their decisions and provide those reasons to prisoners:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Chapter 11: Videos of hearings

11.1 Failure to retain all videotapes

11.1.1 Public Records Act and Disposal Schedule

Section 117(1) of the Corrective Services Act requires that consideration of a major breach of discipline must be videotaped. Section 119(6) of the Act requires that the review hearing for a major breach of discipline must be videotaped.

Section 13 of the Public Records Act provides:

> A person must not dispose of a public record unless the record is disposed of under—
>
> (a) an authority given by the [Queensland State] archivist; or
> (b) other legal authority, justification or excuse.
>
> Maximum penalty—165 penalty units.

Videotapes of major breach hearings and major breach review hearings are public records.[123]

QCS' *Retention and Disposal Schedule* (Schedule) (being an authority given by the archivist under s.13 of the Public Records Act) is published on QCS' website.[124] The Schedule states at section 9.5 (Breaches), 'See section 1.5 Investigations for audiovisual records of major breaches of discipline and reviews (interviews) of major breaches of discipline.' Section 1.5 has the following heading:

> Investigations
>
> *The activity of investigating critical and significant incidents involving offenders*

Critical incidents, as defined in section 1.5, include events such as:

- death of a person in a corrective services facility
- use of lethal force
- major assault in a corrective services facility
- hostage taking in a corrective services facility
- major disturbance in a corrective services facility
- major security breach/incident in a corrective services facility
- escape/attempted escape from a corrective services facility.

Significant incidents, as defined in section 1.5, include events such as:

- attempted suicide in a corrective services facility requiring transportation to hospital
- drug overdose in a corrective services facility requiring transportation to hospital

[123] See s.6 and the definition of 'record' in the dictionary in schedule 2 to the *Public Records Act 2002*.
[124] Queensland Corrective Services (5 February 2008 – Version 1.0) *Queensland Corrective Services Retention and Disposal Schedule QDAN 683 v1.0* [accessed at http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683.shtml and http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683_9.shtml#Offender%20Records on 24 March 2009].

- sexual assault in a corrective services facility
- offender under a Community Work, Probation or Parole Order charged with major or serious violent offence (e.g. under *Penalties and Sentences Act 1992*)
- breach of unescorted leave of absence
- discharge in error
- preparation for escape
- destruction/damage of property in a corrective services facility (where the security or good order of the facility may be at risk)
- finds of prohibited things in a corrective services facility of quantities that pose a risk to the good order or security of the facility.

The list of 'critical incidents' and 'significant incidents' is repeated in the Glossary to the Schedule.

Surprisingly, none of the major breaches my investigators examined was a critical or significant incident as defined in section 1.5 of the Schedule or in the Glossary.

We asked QCS for its interpretation of the length of time the Schedule requires major breach videotapes to be retained. QCS asserts that such videotapes may be disposed of after one month, based on its interpretation of section 8.1.2 of the Schedule, which states:

8.1.2	**Audiovisual Recordings** Audio and video recordings (digital or analogue) used to monitor: • perimeter activities; • activities of an offender or group of offenders; • any contact between offenders and others; that are not required for investigative purposes.	Temporary	Retain for 1 month after recording.

In my opinion, it is by no means clear that this section applies to videotapes of major breach proceedings so as to authorise their disposal after one month. It seems both incongruous and inappropriate that these videotapes, which are important records for accountability purposes, can be destroyed after such a short time.

I use the word ‘incongruous’ because other records relating to such breaches must be retained for much longer periods, in most cases, 10 or 20 years depending on the offences for which the prisoner has been imprisoned.[125] I think there is a sound argument for retaining these videotapes for the same period as other records of the proceedings to which they relate.

QCS advised that the period for retention of major breach videotapes is under review. The review provides a timely opportunity to amend the Schedule to require that videotapes of major breach proceedings and major breach review proceedings be retained for a substantial period, appropriate to their importance, by which I mean a period of years rather than months.

[125] See chapter 14 of this report.

Opinion 8

The period for which QCS retains videotapes of major breach proceedings and major breach review proceedings is inappropriately short having regard to their importance as an accountability measure. This constitutes administrative action that is unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.

Recommendation 19

The chief executive amend the *Retention and Disposal Schedule* (with the approval of the State Archivist) to require that the records contained in videotapes of major breach proceedings and major breach review proceedings be retained for a period consistent with their importance as an accountability measure.

11.1.2 What my investigation found

At Arthur Gorrie, there were no videotapes for about 55% of the 64 major breach hearings my investigators audited. Officers at that centre advised that during the relevant period, the hard drive of the digital video camera being used to tape the hearings and reviews became virtually full.[126] According to one officer, it was not possible to download the files on the camera's hard drive onto Arthur Gorrie's server, as space for files on the server was limited. The camera continued to be used for videotaping hearings and reviews. Either the files on the camera's hard drive were deleted by someone to make space for new files, or new files were saved onto the camera's hard drive over old files.

My investigators received advice that Arthur Gorrie's server has since been upgraded to include extra space for files.[127] Arthur Gorrie's General Manager has advised:

> Correctional Supervisors and Area Managers responsible for hearing breaches have been instructed that all breach hearings must be videotaped. This process is monitored daily through the integrated offender services morning briefings.
>
> In addition, a process has been implemented to ensure all breach hearing video recordings are saved in a secure location on the local network and copies will be backed up on disk. The disks will be archived in the Contract Compliance Manager's office.
>
> A monthly reconciliation of all video recordings will be conducted and results provided to the Operations Manager. Should anomalies be identified the Operations Manager will address each instance and advise the General Manager accordingly.

It appears that at least some of the records on these videotapes have been disposed of contrary to s.13 of the Public Records Act even if one accepts QCS' view that these records can be disposed of after one month. This is a serious breach because, as I have discussed above, the main reason for the requirement to videotape hearings is to ensure accountability of the officers conducting breach proceedings and reviews.[128] Destruction or disposal of the videotapes undermines that process.

[126] Only 200 MB free space, not enough memory to store the video files from the video camera's hard drive while maintaining a suitable level of function for Arthur Gorrie's computing network.
[127] As at December 2008, about 70GB free space.
[128] The Explanatory Notes to the Corrective Services Bill 2006 and the Minister's second reading speech about the Corrective Services Bill are both silent as to the intention of the requirement to videotape major breach proceedings.

Opinion 9

QCS officers at Arthur Gorrie Correctional Centre disposed of the video records of a significant number of major breach hearings in contravention of s.13 of the Public Records Act. This constitutes, in each case, administrative action that is contrary to law and wrong for the purposes of s.49(2)(a) and (g) of the Ombudsman Act.

My proposed report contained the following recommendation:

> **Proposed recommendation 19**
>
> The chief executive:
>
> (a) take measures to ensure that all major breach hearings and major breach review hearings are videotaped and that the videotapes are retained permanently
> (b) ensure that videotapes of these hearings are regularly audited to assess compliance with the requirement.

Response of private service provider for Arthur Gorrie:

> The facts in [your proposed report] are fairly stated.
>
> Whilst the breaches were videotaped, during the period referred to in the proposed report the available space in the computer server provided by QCS to the Centre was limited and, as a result, it was not possible to download in full all of the video recordings used to record breach hearings.
>
> Consequently, either the files in the camera were deleted to create space for new files, or new files were inadvertently saved over old files.
>
> In either case, it was inadvertence that caused the files not be permanently retained rather than deliberate intent to delete the files by anyone involved.
>
> As previously reported to you, the Centre has since taken steps to ensure all breach hearings are videotaped and retained in accordance with legislative requirements.
>
> The Centre has also introduced monthly reconciliation audits to ensure the steps undertaken are properly being adhered to.

QCS response

> Currently, centres may review video recordings when a prisoner seeks a review of the breach. However, all video recordings must be archived in accordance with the Libraries Act 1988[129] and disposed of in accordance with the Breach of Discipline appendix – Retention and Disposal Schedule.
>
> Accordingly, these are available for regular audit by the Internal Audit Branch.
>
> …
>
> This recommendation was provided directly to the General Manager, Arthur Gorrie Correctional Centre for response. It is noted that a response to this matter was provided by the Managing Director, GEO to the Ombudsman's Office in correspondence dated 18 June 2009.

[129] I assume the reference to the *Libraries Act 1988* is meant to be a reference to the *Public Records Act 2002*.

My comment

In light of QCS' response, I have amended my proposed recommendation.

Recommendation 20

The chief executive take the following actions to ensure that the videotapes of all major breach hearings and major breach review hearings are retained in accordance with QCS' *Retention and Disposal Schedule*:

(a) provide relevant training to officers
(b) regularly monitor compliance.

My investigators could not locate two other videotapes relating to two major breach hearings from one of the other centres. They may have been able to do so had the videotape number been recorded in the IOMS record for the case, an issue that I discuss at 14.3.

11.2 Videotaping part of hearing only

In at least[130] 10% of the videotapes my investigators audited, it appeared that:

- conversations between the officer and the prisoner about the breach had occurred before the video camera was turned on, or
- the camera was turned off in the course of a hearing, and conversations occurred then.

Case study 13

A prisoner claimed that:

- his urine sample was taken in a way that did not follow the procedure
- an officer came to his breach hearing and said that the sample was taken in a way that didn't exactly follow the procedure
- the deciding officer had turned off the tape and said words to the effect that he was 'leaning towards meeting you halfway with 4 days DU (meaning separate confinement in the Detention Unit) rather than the usual 7'.

My investigators reviewed the videotape of the hearing and noted there was an unexplained break in the taping, which was consistent with the prisoner's story.

[130] I say 'at least' because, as explained at 11.1.2, a large number of the videotapes of major breach proceedings at one centre had been erased.

Case study 14

During the review, it became clear that there were significant differences between the referring officer's version of events and the prisoner's. The reviewing officer asked for the tape to be turned off so that an 'off the record discussion' could occur between the prisoner and the referring officer.

My investigators inferred that the discussion was about the differences in the versions of events. When the camera commenced recording again, the reviewing officer simply confirmed the original decision.

Section.117(1) of the Corrective Services Act states:

> The consideration of a major breach of discipline must be videotaped.

Therefore, there is no authority for a deciding officer or reviewing officer to turn off the camera during proceedings to allow informal or 'off the record' discussions to take place with the prisoner if those discussions are relevant to a consideration of the breach.

If the proposed off-camera discussion is not relevant to the consideration of the breach, the deciding officer or reviewing officer should postpone the discussion until proceedings have been completed or, if this is not practicable, explain on camera why the videotaping of proceedings is to be interrupted.

My investigation was focussed on systemic issues. Therefore, I have not investigated individual cases where the videotaped proceedings were interrupted without explanation except in one instance (see 9.1 and case study 11). However, I make the comment that unexplained interruptions will almost inevitably give rise to suspicions about the propriety of the process – for example, that taping was interrupted while the prisoner was subjected to some form of duress or to avoid some embarrassing disclosure about an officer's conduct being recorded.

My proposed report contained the following recommendation:

> **Proposed recommendation 20**
>
> The chief executive ensure that officers:
>
> (a) comply with the requirement in s.117(1) and s.119(6) of the Corrective Services Act to videotape all major breach proceedings including reviews, and
> (b) not interrupt the videotaping of the proceedings without explaining on camera the purpose of the interruption.

QCS response

> If this recommendation remains in the final report, the Custodial Operations Directorate will address this through procedural amendment.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to require that when a breach is being videotaped 'there must be no interruption of the

video recording. If interruption occurs an explanation is to be given on camera as to the reason for the interruption'.[131]

My comment

The 4 September 2009 amendment partially implements the recommendation I was proposing to make. However, I also consider that both issues should be the subject of relevant training and regular monitoring for compliance. I have decided to make separate recommendations about the requirement to videotape all major breach proceedings and videotaping the reasons for interruptions because of their importance to accountable and transparent processes.

Recommendation 21

The chief executive take the following actions to ensure officers comply with the requirement in s.117(1) and s.119(6) of the Corrective Services Act to videotape all major breach proceedings including reviews:

(a) provide relevant training to officers
(b) regularly monitor compliance.

Recommendation 22

The chief executive take the following actions to ensure officers not interrupt the videotaping of the proceedings without explaining on camera the purpose of the interruption:

(a) provide relevant training to officers
(b) regularly monitor compliance.

In recommendation 21, I have not recommended that the *Procedure – Breaches of Discipline* be amended to include the requirement to videotape major breaches and reviews of major breaches as this is clearly set out in the Corrective Services Act.

[131] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].

Chapter 12: Drugs breaches

12.1 Failure to take action for positive test

The chief executive must refer conduct that could be an offence to the Commissioner of Police for investigation.[132] In practice, the referral is to the CSIU. If it advises that the matter will not be prosecuted,[133] a QCS officer may initiate breach proceedings. A decision as to whether the prisoner is guilty of the breach must be made at the latest within 14 days after the chief executive receives the advice from CSIU.[134]

I have limited my consideration of breach proceedings initiated in those circumstances to breaches under s.6(t) of the Corrective Services Regulation, namely, giving a positive test sample or being taken, under s.43(4) of the Corrective Services Act, to have given a positive test sample.[135]

Between 1 January 2008 and 30 June 2008, there were at least[136] 81 breaches under s.6(t) of the Corrective Services Regulation for the three centres. It appeared that 17% of these breaches may not have been heard because they were out of time or were believed to have been out of time. The IOMS record for each of these breaches included the notation 'breach dismissed', 'breach expired' or 'out of time', or had no information recorded in the determination section of the IOMS breach record and had no other indication of why the breach had not been established.

An explanation given by one officer (at least for some of these cases) was that, when dealing with conduct that the Commissioner of Police has advised will not be prosecuted as an offence, some QCS officers are confused about the period in which major breach proceedings must be finalised. The Corrective Services Act requires that the decision be made as soon as practicable, but within 14 days, **after** the chief executive **receives the Commissioner's advice**.[137] Apparently, some officers are unaware of the requirement or are misinterpreting it by calculating the period from the time the conduct occurred. According to this officer, the result is that some breaches are wrongly closed off as being out of time.

Another supervisor said that, where the CSIU has advised it will not prosecute in respect of certain conduct, it is difficult to find an officer willing to initiate a breach because the process of generating the required paperwork was time consuming.

None of the above reasons provided by officers for failing to take action for positive urine breaches amounts to a satisfactory excuse. Such breaches should normally be easily proved and involve conduct that has a significant impact on the security and good order of centres.

[132] Section 114, Corrective Services Act.
[133] Section 113(3), Corrective Services Act.
[134] Section 116(2)(a), Corrective Services Act.
[135] See ss.114 and 123, Corrective Services Act.
[136] I say 'at least' because some breaches that ought to have been recorded under s.6(t) (particularly about failure to supply a urine sample) were recorded under some other ground.
[137] Section 116(2)(a), Corrective Services Act.

My proposed report contained the following recommendation:

> **Proposed recommendation 21**
>
> The chief executive provide training and written guidance for officers to ensure that they are aware of s.116(2)(a) of the Corrective Services Act (particularly, the time within which a breach for conduct that CSIU has advised it will not prosecute must be decided).

QCS response

> Refer response to Recommendation [3].

My comment

After considering the QCS' response, I have decided that there would be no purpose in QCS providing further written guidance to officers on this issue as the period in which breach proceedings must be finalised in such cases is clearly set out in s.116(2)(a) of the Corrective Services Act. However, I remain of the view that there is a clear need for further training for relevant officers. Consistent with my other recommendations, I also consider that compliance should be regularly monitored. I have amended my recommendation accordingly.

Recommendation 23

The chief executive take the following actions to ensure that, where the Corrective Services Investigation Unit advises that conduct of a prisoner that may be prosecuted as an offence will not be prosecuted, officers decide whether to initiate breach proceedings for the conduct and, if so, decide the breach within the time specified in s.116(2)(a) of the Corrective Services Act:

(a) provide relevant training to officers
(b) regularly monitor compliance.

12.2 Urine sample procedure

Most of the prisoners my investigators spoke to told them that sometimes officers failed to follow correct procedures when taking urine tests and that this failure was ignored in the breach hearings. These prisoners wrongly believe that any procedural breach in taking a urine specimen automatically prevents any action being taken for the breach.

Positive urine tests are categorised as major breaches under the Corrective Services Act.[138] To decide that a major breach has occurred, the deciding officer must be satisfied beyond reasonable doubt.[139]

Whether an officer's failure to follow correct procedure in taking a urine specimen will render the test results invalid will depend on the seriousness of the failure. A deciding officer hearing a breach is not bound by the rules of evidence[140] and a minor technical procedural breach will not prevent the officer finding the breach proved.

[138] Section 113(5), Corrective Services Act.
[139] Section 118(1), Corrective Services Act.
[140] Section 118(1)(b), Corrective Services Act.

However, a serious breach that could have affected the results' validity may well be sufficient to give rise to a reasonable doubt in the mind of the deciding officer.

It is important in the interests of accountability and transparency that the deciding officer record any procedural failure in such cases and its relevance to the decision.

My proposed report contained the following recommendation:

> **Proposed recommendation 23**
>
> Where a deciding officer considers that an officer has failed to follow the correct procedure in taking or dealing with a urine specimen, the deciding officer properly record that failure and explain in their reasons for the decision the relevance of that failure to their decision.

QCS response

> If this recommendation is contained in the final report provided by the Ombudsman's Office, consideration will be given to amending the Form 23 to incorporate reference to this. However, it should be noted that the Form 23 deals with all breach matters, not just positive urinalysis breaches.

My comment

After considering QCS' response, I do not agree that an amendment to Form 23 is an appropriate response to my proposed recommendation. What is needed is a clear statement of this requirement in the *Procedure – Breaches of Discipline*. However, I have no objection to Form 23 being amended to include a section for recording reasons for decisions. In an appropriate case involving a breach for giving a positive drug test, those reasons could include the relevance of an officer's failure to follow correct urinalysis procedures to the deciding officer's decision.

I have amended my recommendation accordingly. I also consider that this issue should be the subject of appropriate training and monitoring for compliance. I have included these activities in my recommendations also.

Recommendation 24

The chief executive take the following actions to ensure that where a deciding officer considers that an officer has failed to follow the correct procedure in taking or dealing with a urine specimen, the deciding officer properly record that failure and explain in the reasons for the decision the relevance of that failure to the decision:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

Chapter 13: Penalties

The penalties that may be imposed under the Corrective Services Act[141] for a breach of discipline are:

- for a major breach, a reprimand, loss of privileges for up to seven days and separate confinement for up to seven days
- for a minor breach, a reprimand, loss of privileges for up to 24 hours and, in specified circumstances,[142] separate confinement for up to 24 hours.

13.1 Forfeiture of privileges

My investigators' audit revealed two cases where the deciding officer had ordered for a minor breach that the prisoner's privileges be forfeited for longer than 24 hours, in one case for two days (where the prisoner lost the privilege of association with other prisoners by being confined to the prisoner's unit) and in the other for seven days (where the prisoner lost the privilege of television in the prisoner's cell). Although these cases represented only 2.8% of the minor breach cases audited, any instance of exceeding power in a closed prison environment is serious.

Opinion 10

The orders made by the deciding officers in the two minor breach cases identified in my investigation that the prisoners' privileges be forfeited for longer than 24 hours constitute, in each case, administrative action that is contrary to law and unjust for the purposes of s.49(2)(a) and (b) of the Ombudsman Act.

My proposed report contained the following recommendation:

> **Proposed recommendation 24**
>
> The chief executive provide training and written guidance for officers to ensure that any penalties they impose on prisoners for minor or major breaches comply with the range of penalties in the Corrective Services Act.

QCS response

> Refer to response to Recommendation [3].

My comment

I reiterate my concerns about QCS' response to recommendation 3. I also consider that compliance with penalties provided for in the Corrective Services Act should be the subject of regular monitoring.

[141] Section 118(2), Corrective Services Act.
[142] Section 118(3), Corrective Services Act.

Recommendation 25

The chief executive take the following actions to ensure that any penalties officers impose on prisoners for minor or major breaches comply with the range of penalties in the Corrective Services Act:

(a) provide relevant training to officers
(b) regularly monitor compliance.

In 19.7% of minor breaches my investigators audited, where the penalty imposed was 'loss of privileges', the deciding officer had not specified which privileges had been lost. Deciding officers should specify the privileges to be forfeited as a matter of course, otherwise the prisoner and other officers will not know the effect of the order.

My proposed report contained the following recommendation:

> **Proposed recommendation 25**
>
> The chief executive provide training and written guidance for officers to ensure that where deciding officers order forfeiture of privileges for a major or minor breach they specify the privileges to be forfeited.

QCS response

> Refer to response to Recommendation [3].

My comment

I reiterate my concerns about QCS' response to recommendation 3. As well as training, the issue should be addressed by amending the *Procedures – Breaches of Discipline* and by regularly monitoring compliance.

Recommendation 26

The chief executive take the following actions to ensure that, where deciding officers order forfeiture of privileges for a major or minor breach, they specify the privileges to be forfeited:

(a) amend the *Procedure – Breaches of Discipline* to include that requirement
(b) provide relevant training to officers
(c) regularly monitor compliance.

13.2 Loss of association

Separate confinement may be ordered for a minor breach of discipline only if:

> … the prisoner has habitually committed minor breaches of discipline and, on the occasion of the breach immediately preceding the alleged current breach, was warned that the next breach could result in the prisoner being separately confined.[143]

[143] Section 118(3), Corrective Services Act.

Where separate confinement is ordered, the order must contain directions about the extent to which the prisoner is to receive privileges while in confinement.[144]

In at least 36.6% of the minor breaches my investigators audited, the penalty imposed was the locking down of a prisoner in his or her cell for 24 hours. This penalty was sometimes recorded on IOMS as 'loss of association' and sometimes as 'separate confinement'.

Officers are required to record in the Disciplinary Breach Register each decision that a prisoner has committed a breach of discipline, including whether the prisoner was warned that the next breach could result in the prisoner being separately confined.[145]

My investigators did not find any record in the register that such a warning had been given so as to allow separate confinement to be ordered for a subsequent minor breach. However, orders had been made that prisoners be locked in their cells for 24 hours.

'Separate confinement' is defined in the schedule 4 dictionary of the Corrective Services Act as 'the separation of a prisoner from other prisoners'. Under the Corrective Services Regulation, associating with a particular prisoner or group of prisoners is defined as a privilege.[146]

The officers and prisoners agreed that locking a prisoner in their cell was different from separate confinement. To them, separate confinement involved having the prisoner do time in the Detention Unit under conditions that are less comfortable than normal containment. One senior officer pointed out that being locked in a cell was not separate confinement because the prisoner may converse with prisoners and officers through the door of the cell. Another officer pointed out that prisoners can still pass items to each other under the door of the cell.

This interpretation is supported to some extent by the Corrective Services Regulation, which appears to contemplate that a prisoner's separate confinement accommodation will be different from his or her usual accommodation.[147]

Whether an order that a prisoner be confined to his or her cell constitutes separate confinement will depend on the location of the prisoner's cell. If the order results in the prisoner being cut off from all human contact, then it is the same as an order for separate confinement and the rules relating to separate confinement will apply.

13.3 Reprimand

One of the menu options in the determination section of an IOMS breach record is 'Not Guilty – Reprimand'. However, if the prisoner is not guilty, there is clearly no basis for issuing a reprimand.

Recommendation 27

The IOMS menu option 'Not Guilty – Reprimand' be changed to 'Guilty – Reprimand'.

[144] Section 121(1)(c), Corrective Services Act.
[145] Section 118(3), Corrective Services Act.
[146] Corrective Services Act schedule 4 definition of 'privileges' and s.19 of Corrective Services Regulation.
[147] In particular, s.5(b), Corrective Services Regulation, which requires the prisoner to be given the same type of mattress, sheets, blankets and pillow as the prisoner would have were the prisoner not in separate confinement.

QCS response

QCS agreed to implement this recommendation.

13.4 Restitution

In almost 10% of the minor breach cases my investigators audited, the penalty imposed was recorded as 'restitution'. Officers do not have any power to order restitution as a penalty under the Corrective Services Act. However, the Act provides that:[148]

> … the chief executive may deduct an amount from a prisoner's account …:
> …
> (c) to reimburse the chief executive for the cost of replacing or repairing any property the prisoner wilfully damaged or destroyed during the commission of—
> (i) an offence against this Act or a breach of discipline; or
> (ii) an offence for which the prisoner is convicted, if the reimbursement is in accordance with a court order under the *Penalties and Sentences Act 1992* …

Therefore, although a prisoner can be ordered to reimburse the chief executive, such an order should not be confused with a penalty for a breach. A deciding officer who finds a prisoner guilty of a disciplinary breach and imposes a penalty can also order the prisoner to pay restitution to the chief executive as long as the officer has the necessary delegation.

To prevent confusion, prisoners ordered to pay restitution should be advised that the order is separately authorised under the Corrective Services Act and is in addition to any penalty imposed for the relevant breach.

My proposed report contained the following recommendation:

> **Proposed recommendation 27**
>
> The chief executive provide training and written guidance for officers to ensure that where they make an order that a prisoner pay restitution:
>
> (a) they do not make the order as the penalty, or part of the penalty, for a minor or major breach
> (b) they advise the prisoner that the order is separately authorised under the Corrective Services Act and is in addition to any penalty imposed for the relevant breach.

QCS response

> Refer response to Recommendation [3].

My comment

I reiterate my concerns about QCS' response to recommendation 3. After further considering the issue, I consider that it should be addressed by providing training,

[148] Section 314, Corrective Services Act.

amending the *Procedure – Breaches of Discipline* and monitoring officers' compliance with the amended procedure.

Recommendation 28

The chief executive amend the *Procedure – Breaches of Discipline* to include the requirement that, where an officer makes an order that a prisoner pay restitution, the officer:

(a) not make the order as a penalty, or part of the penalty, for a minor or major breach, and
(b) advise the prisoner that the order is separately authorised under the Corrective Services Act and is in addition to any penalty imposed for the relevant breach.

Recommendation 29

The chief executive take the following actions to ensure compliance with the amendment to the *Procedure – Breaches of Discipline* recommended in recommendation 28:

(a) provide relevant training to officers
(b) regularly monitor compliance.

I note that on 13 June 2009, the *Procedure – Breaches of Discipline* was amended to include the following reference to the provision of the Corrective Services Act setting out penalties that may be imposed for breaches of discipline:

> Refer CSA s 118

I do not consider that this amendment to the *Procedure – Breaches of Discipline* gives sufficient guidance to QCS officers on the issue the subject of recommendations 28 and 29.

13.5 Internal transfer

Some prisoners complained that in some cases, in addition to the penalty ordered at the breach hearing, the prisoner had been transferred within the centre. They felt they were being punished twice.

A senior officer at one centre advised that where prisoners held in residential accommodation are breached, they automatically return to secure accommodation for a minimum of four weeks. Similarly, if they are breached while held in secure accommodation, they are sent back to the unit dedicated to intensive management of difficult prisoners. Therefore, a breach sets back the prisoner's progress through the centre. There was also a similar practice at one of the other two centres.

The same senior officer advised that ordinarily, if a prisoner is convicted of a breach for the first time and is transferred internally, that transfer may be taken into account, and no further punishment ordered. The position would be different if subsequent breaches occurred.

None of the officers was able to refer my investigators to any written procedures on the topic. However, my investigators identified *Procedure – Movement of prisoners from secure to residential accommodation,*[149] which states:

> Prisoners may be returned to secure for reasons including, but not limited to –
>
> a. unacceptable behaviour; or
> b. a breach of discipline; or
> c. failure to adhere to OMP *[Offender Management Plan]* requirements.

Also, the *Procedure – Brisbane Women's – Offender Internal Transfer*[150] states:

> k. Offenders who display negative or noncompliant behaviour will not be permitted to remain in residential.

There is a clear need for the manager of a centre to be able to accommodate prisoners in different areas of a centre, according to their behaviour. However, it seems to me that automatically transferring a prisoner convicted of a breach, regardless of its seriousness, from the residential section to the secure section of a centre amounts to an additional penalty. Therefore, such orders should not be made automatically on conviction for a breach, however minor, but should be made based on the circumstances of each case.

My proposed report contained the following recommendation:

> **Proposed recommendation 28**
>
> The chief executive:
>
> (a) amend the *Procedure – Movement of prisoners from secure to residential accommodation* to make it clear that prisoners are not to be automatically transferred from the residential to the secure section of a centre on being convicted of a breach of discipline but only if the circumstances of the breach warrant transfer
> (b) provide training for officers on the Procedure.

QCS response

> This section refers to concerns that a prisoner is automatically moved from residential to secure accommodation upon receipt of a breach of discipline.
>
> Residential accommodation within a correctional centre is an open environment with less supervision than a secure unit.
>
> Prisoners are only accommodated in a residential area if the Agency is confident they can be managed safely in that environment and do not pose a risk to other prisoners, staff and the security and good order of the facility.
>
> It should be noted that no automatic movement from residential to secure accommodation occurs as a result of a breach of discipline. QCS' offender management practices are based upon an assessment of individual circumstances.

[149] QCS (15 August 2008 – Version 02) *Procedure – Movement of Prisoners from Secure to Residential Accommodation*.
[150] QCS (13 February 2007 – Version 01) *Procedure – Brisbane Women's – Offender Internal Transfer*.

> However, it is often the case that prisoners who are residing in residential accommodation, and receive a breach of discipline, will be moved to secure accommodation.
>
> Any movement from residential to secure accommodation is based upon the Agency's assessment of the offender's risk as opposed to a penalty associated with a breach of discipline.
>
> Residential accommodation is integral to the management of offenders within secure correctional centres and is not a privilege.

On 4 September 2009, QCS amended the *Procedure – Breaches of Discipline* to direct that 'prisoners are not to be automatically transferred from a residential accommodation to secure accommodation area once a breach is initiated. That if a breach is considered minor that the prisoner may continue to reside in the residential accommodation area'.[151]

My comment

QCS' response is inconsistent with the understanding of a number of officers and prisoners my investigators talked to, that a breach of discipline in residential accommodation resulted in an automatic transfer to secure accommodation.

Although the 4 September 2009 amendment partly implements my proposed recommendation, I remain of the view that training on the issue should also be provided to relevant officers. I also consider that compliance with the relevant procedure should be regularly monitored. I have amended my recommendation accordingly.

Recommendation 30

The chief executive take the following actions to ensure that prisoners are not transferred from the residential to the secure section of a centre on being convicted of a breach of discipline unless the circumstances of the breach warrant transfer:

(a) provide relevant training to officers
(b) regularly monitor compliance.

At Women's, mothers are housed in residential accommodation with their small children. Officers at that centre explained that the centre is reluctant to breach mothers (instead, recording case notes about their conduct) because, if convicted of a breach, they will be transferred from residential to secure accommodation where they will be separated from their children.

The amendment of the relevant procedure and the training I have recommended should ensure that mothers who commit a breach of discipline will not be transferred to secure accommodation unless the circumstances of the breach warrant that action based on an assessment of risk.

[151] QCS (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009].

Recommendation 31

The chief executive take action to ensure prisoners are made aware of the *Procedure – Breaches of Discipline to residential accommodation* and the circumstances in which prisoners may be internally transferred to more strictly supervised accommodation within a centre if convicted of a breach of discipline, including by inserting relevant information in the *Prisoner Information Booklet*.

QCS response

QCS advised that its response to proposed recommendation 28 also covered this recommendation but did not indicate if it would implement recommendation 31.

My comment

For the reasons I have given in my comment on QCS' response to proposed recommendation 28, I remain of the view that recommendation 31 is soundly based.

Chapter 14: Record-keeping

14.1 No IOMS record

QCS' *Retention and Disposal Schedule* determines the retention period for any breach record. Breach records are defined as a category of 'offender records' in the Schedule.[152] The retention period for offender records depends on many considerations. For example:

- offender records for notorious and high profile offenders must be retained permanently
- offender records where the offender was convicted of indictable offences must be retained for 20 years after the last action (in most cases)
- offender records where the offender was convicted of summary offences must be retained for 10 years after the last action (in most cases).

On 3 February 2009, my investigators found that there no longer appeared to be any record on IOMS of two breach records from one centre that had existed on IOMS in August 2008 (and were still there in late 2008 when my investigators audited the sample breaches).

A senior officer at that centre advised that when an officer is determining a breach, a cancellation button is available. He also advised that, in relation to the first of the two cancelled breaches, the deciding officer had used the button to cancel the breach because the time had expired for hearing it. He also advised that, in the second case, a manager used the cancellation button after deciding that the conduct did not constitute a breach. The senior officer advised that those officers were not aware that, as a result of their using the cancellation button, all entries relating to the breach would be automatically removed from the IOMS user interface after a certain period had elapsed.

In response to my proposed report, QCS advised that although information about cancelled breaches is not available on the user interface, it is stored in the audit logs for the system, and at this point in time is not deleted.

QCS also confirmed in its response that 'all changes to data in IOMS requires authorisation by a more experienced and senior member of staff'.

I remain concerned that cancelling a breach on IOMS eventually leads to all records of the breach being deleted from the user interface, even though the records can be retrieved from the audit logs. I therefore make the following recommendation:

[152] Queensland Corrective Services (5 February 2008 – Version 1.0) *Queensland Corrective Services Retention and Disposal Schedule QDAN 683 v1.0* [accessed at http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683.shtml and http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683_9.shtml#Offender%20Records on 24 March 2009].

Recommendation 32

The chief executive cause IOMS processes to be amended to ensure that where a breach is cancelled a record is made in IOMS that:

(a) remains on the user interface, and
(b) identifies the breach (including the date it was alleged to have been committed and the relevant section of the Corrective Services Regulation), the fact that the breach has been cancelled and the reasons for cancellation.

QCS response

In response to the issues contained in this recommendation, QCS confirmed that:

> A cancelled record is maintained in IOMS, but after a period of time, it no longer appears on the user interface.
>
> This information, however, remains in the IOMS database and can be accessed if required at any stage. When cancelling documents in IOMS, a reason is also required.

QCS also stated:

> QCS will investigate how changes to IOMS might occur to satisfy this recommendation.

14.2 Electronic forms

Thirty-two percent of the cases my investigators audited did not have the three forms (Form 23, Circumstances form and Officer Report) attached electronically, contrary to the *Procedure – Breaches of Discipline*.[153]

It is important the forms are attached because:

- they are the source of the majority of information about the breach
- the original forms (or copies) are not routinely filed on the hard copy offender files, as my investigators noted during their audit.

My proposed report contained the following recommendation:

> **Proposed recommendation 32**
>
> The chief executive take steps to ensure that for each breach, the forms required to be attached to the IOMS breach record by the *Procedure – Breaches of Discipline*, are attached.

QCS response

> This is a training issue – refer to Recommendation [3].

[153] Heading 8, '*Commencing the breach process*', in QCS (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009].

My comment

I reiterate my concerns about QCS' response to recommendation 3. As well as providing training, QCS should regularly monitor these records to ensure officers are complying with the *Procedure – Breaches of Discipline*. I have amended my recommendation accordingly.

Recommendation 33

The chief executive take the following actions to ensure officers comply with the requirement in the *Procedure – Breaches of Discipline* to attach the relevant forms to the IOMS breach record:

(a) provide relevant training to officers
(b) regularly monitor compliance.

14.3 Incident report no., breach register no. and/or videotape no.

The *Procedure – Breaches of Discipline* requires officers to record in IOMS the breach register number, the incident report number (if applicable) and the videotape number (if applicable). In 75.6% of the cases my investigators audited, the IOMS records did not contain all of the required identifying numbers.

It is important that these details are recorded to allow records relating to the breach (particularly the videotape) to be located easily. My investigators experienced considerable difficulty in locating videotapes where the videotape number had not been recorded in IOMS. If the review hearing is videotaped on a different tape from the original hearing, that videotape number ought to be recorded also, for ease of location.

My proposed report contained the following recommendation:

> **Proposed recommendation 33**
>
> The chief executive ensure that for each breach, the incident report number (if applicable), breach register number and all relevant videotape numbers are recorded in the IOMS breach record in compliance with the *Procedure – Breaches of Discipline*.

QCS response

> This is a training issue – refer to Recommendation [3].

My comment

I reiterate my concerns about QCS' response to recommendation 3. As well as providing training, QCS should regularly monitor records to ensure officers are complying with the *Procedure – Breaches of Discipline*. I have amended my recommendation accordingly.

Recommendation 34

The chief executive take the following actions to ensure that for each breach, the incident report number (if applicable), breach register number and all relevant videotape numbers are recorded in the IOMS breach record:

(a) provide relevant training to officers
(b) regularly monitor compliance.

14.4 'Breach dismissed'

Officers advised that the IOMS menu option 'Breach dismissed' in the breach entry is applied where the breach is out of time, where there was not sufficient information to establish the breach or where the prisoner raised a reasonable explanation for the relevant conduct.

This practice does not allow internal and external review bodies[154] to determine the proportion of breaches:

- that did not proceed to hearing because of the expiry of the time limit for a hearing under the Corrective Services Act or for some other reason; or
- where the decision at the hearing was that the prisoner was not guilty.

Recommendation 35

The IOMS menu option 'Breach dismissed' be replaced with three menu options to the effect 'Out-of-time', 'Did not proceed to hearing (other than out-of-time)' and 'Not guilty'.

QCS response

QCS agreed to implement this recommendation in its response to my proposed report.

14.5 Informing prisoner of referral

During my investigators' review, they did not find any record of any prisoner being told that an incident was going to be referred to the CSIU for investigation, despite this being required by s.114(2)(a) of the Corrective Services Act.

Prisoners reported that officers never tell them that the matter has gone to CSIU and the first they know of it is when they are breached.

Officers should make a record where a prisoner is told that a matter is to be referred to the Commissioner of Police as evidence of compliance with s.114(2)(a) of the Corrective Services Act. It is also an activity of sufficient significance to be caught by the obligation in s.7 of the Public Records Act.

[154] The Department of Community Safety's Internal Audit Branch, QCS' Offender Management and Services Directorate, the Office of the Chief Inspector (including Official Visitors), the Office of the Queensland Ombudsman and the Crime and Misconduct Commission.

My proposed report contained the following recommendation:

> **Proposed recommendation 35**
>
> Where a prisoner's act or omission could be dealt with as an offence, the chief executive (or delegate) ensure that officers:
>
> (a) comply with the requirement in s.114(2)(a) of the Corrective Services Act to tell the prisoner that the matter is to be referred to the Commissioner of Police; and
> (b) ensure that a record is made of that communication.

QCS response

> It is a legislative requirement under section 114(2) of the *Corrective Services Act 2006* to advise a prisoner that a matter is to be referred to the Commissioner of Police.
>
> The Custodial Operations Directorate will consider the matter as a training issue – refer Recommendation [3].

My comment

Again, I consider that training is only one measure that should be taken to address this administrative deficiency. Other measures include amending the *Procedure – Breaches of Discipline*, which presently makes no reference to this requirement of the Act, and to monitor compliance through a regular monitoring program. I have amended my recommendation accordingly.

Recommendation 36

The chief executive take the following actions to ensure that officers comply with the requirement in s.114(2)(a) of the Corrective Services Act, to tell a prisoner that an act or omission that could be dealt with as an offence is to be referred to the Commissioner of Police:

(a) amend the *Procedure – Breaches of Discipline* to refer to the requirement and to require officers to make and keep a record of that communication
(b) provide relevant training to officers
(c) regularly monitor compliance.

Chapter 15: Monitoring compliance

Many of my recommendations refer to the chief executive monitoring compliance with various legislative provisions and administrative procedures. In the first instance, the monitoring of compliance is the responsibility of the relevant supervisor/manager or senior officer.

At a broader level, both the Internal Audit Branch of the Department of Community Safety and the Office of the Chief Inspector have the authority to review breach records and monitor compliance.

15.1 Internal Audit Branch

As a result of the machinery of government changes on 26 March 2009, QCS no longer has its own internal audit unit. As mentioned, QCS is now part of the Department of Community Safety which has an Internal Audit Unit to perform the internal control function as required by s.61 of the *Financial Accountability Act 2009*. According to the Department of Community Safety's Internal Audit Unit *Charter*:[155]

> The Internal Audit Unit will:
>
> (a) undertake regular, management oriented appraisals of operations and activities within the agency including, but not restricted to, providing assurance as to the reliability of financial, administrative, operational and communications systems, the adequacy of the internal control structure and the protection of assets and resources;
>
> (b) provide independent and confidential advice on remedial action to improve organisational effectiveness, efficiency and economy; and
>
> (c) facilitate progress reports regarding remedial action taken by line management on recommendations reported and accepted by the Accountable Officer for the agency.

It would appear from the *Charter* that the Internal Audit Unit could review compliance by QCS officers with the procedure relating to breach proceedings, if such a review was included in its work program.

15.2 Office of the Chief Inspector

The Chief Inspector may review the operations of a centre to determine whether prisoners are being dealt with fairly and reasonably in accordance with QCS' *Healthy Prisons Handbook*.[156]

The Chief Inspector must provide reports and recommendations to the chief executive,[157] but the chief executive is not required to implement any recommendations.

[155] Department of Community Safety (15 June 2009) *Internal Audit Charter.*
[156] QCS (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].
[157] Section 305 of the Corrective Services Act is silent as to what the chief executive may do in response to a report or recommendation.

15.3 Review by Office of Chief Inspector

My investigation has revealed significant deficiencies in QCS' administrative processes for dealing with breaches of discipline as well as significant non-compliance by officers with QCS' procedures and the Corrective Services Act.

The recommendations I have made should help QCS to address many of the deficiencies and reduce non-compliance. However, my Office does not have the resources to regularly check QCS' progress in improving its administrative practice.

As the focus of the Office of Chief Inspector is the impact of QCS' practices and procedures on prisoners, I consider the Chief Inspector to be the appropriate official to monitor, at least initially, the extent to which officers comply with the procedures, including procedures amended in accordance with my recommendations to effectively address the deficiencies I have identified. I say 'initially' because, in the longer term, the monitoring of compliance with some aspects of the *Procedure – Breaches of Discipline* may more appropriately be undertaken by internal audit.

Recommendation 37

The Chief Inspector undertake a review, by 31 March 2011, to assess the extent of compliance by officers with the *Corrective Services Act 2006* and with QCS' *Procedure – Breaches of Discipline*.

QCS response

In responding to my proposed report, QCS accepted this recommendation.

Recommendation 38

The chief executive provide a copy of the Chief Inspector's report (referred to in recommendation 37) to the Ombudsman within 14 days of receiving the report.

QCS response

In responding to my proposed report, QCS accepted this recommendation.

Chapter 16: Induction about breaches

At induction, prisoners are required to be given a copy of the *Prisoner Information Booklet* as well as:[158]

- sufficient information about rules and regulations to ensure that they understand the disciplinary process (for both minor and major breaches) and its consequences
- information about appeals against disciplinary decisions.

At present, the *Prisoner Information Booklet* includes only the following brief comment about breaches:[159]

> Section 6 of the *Corrective Services Regulation 2006* lists things that you must not do (eg disobey an officer, gamble or take medicine that is not yours).
>
> If you do any of the things listed in the Regulation, you have committed a breach of discipline. Breaches can be minor or major and can result in a reprimand, loss of privileges or separate confinement.
>
> If the breach is serious, it may be considered to be an offence to be dealt with by police.

Having regard to the significant effect that breaches can have on a prisoner's wellbeing and progression through the prison system, I believe prisoners should be given more detailed information about the breaches process in writing (or alternatively, on a videotape) that they may revisit after induction.

Firstly, the *Prisoner Information Booklet* should set out, in full, each of the breaches of discipline in s.6 of the Corrective Services Regulation. Examples of conduct that constitute a breach would also be a useful inclusion in the booklet.

Secondly, the breaches process and possible penalties should be described in the booklet, by setting out or accurately paraphrasing ss.113 to 121 of the Corrective Services Act.

Thirdly, the list of 'privileges' in s.119 of the Corrective Services Regulation should be set out in the booklet, as well as an explanation of what constitutes an offence.

[158] QCS (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]; and QCS (23 December 2008 – Version 3) *Procedure – Induction* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmproinduct.shtml on 24 March 2009].

[159] QCS (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].

Recommendation 39

The chief executive amend the *Prisoner Information Booklet* to include:

(a) each of the breaches of discipline set out in s.6 of the Corrective Services Regulation
(b) the information about breaches of discipline set out in ss.113 to 121 of the Corrective Services Act
(c) the definition of 'privileges' in s.119 of the Regulation
(d) an explanation of the term 'offence' as used in the Act.

QCS response

QCS agreed to implement this recommendation in its response to my proposed report.

Bibliography

ACT Human Rights Commission (July 2007) *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation* [accessed at http://www.hrc.act.gov.au/assets/docs/Corrections%20Audit%202007.pdf on 25 March 2009]

Anti-Discrimination Commission Queensland *Women in Prison: a Report by the Anti-Discrimination Commission Queensland* [accessed at http://www.adcq.qld.gov.au/Project-WIP/WIPreport_3.htm on 24 July 2008]

Australian Bureau of Statistics (19 June 2008) *Corrective Services Australia-March Quarter 2008*

Australian Capital Territory Ombudsman (July 2008) *ACT Corrective Services: Discipline Adjudications* [accessed at http://www.ombudsman.act.gov.au/act/publish.nsf/AttachmentsByTitle/investigationreport_20080715/$FILE/online_ACTCorrectServices_Discipline-adjudications_20080715.pdf on 24 March 2009]

Brisbane Women's (including Helena Jones) Correctional Centre *2008/2009 Operational Plan*

Brisbane Women's Correctional Centre (24 January 2008) *Prisoner Induction Checklist*

Brisbane Women's Correctional Centre (28 August 2006) *Administrative Form – Circumstances Leading to Initiation of a Breach*

Brisbane Women's Correctional Centre (January 2008) *Operational Guideline: Breaches and Determinations*

Brisbane Women's Correctional Centre (June 2008) *Prisoner Induction and Information Booklet*

Brisbane Women's Correctional Centre (May 2007) *Secure Six Unit Rules*

Brisbane Women's Correctional Centre (October 2007) *Secure 1 Prisoner Induction Information Booklet*

Brisbane Women's Correctional Centre (various dates) *4 bundles of documents*

Brisbane Women's Correctional Centre *Breaches of Discipline: Determination Question Sheet*

Brisbane Women's Correctional Centre *Induction Form: Receptions to Secure 1*

Brisbane Women's Correctional Centre *Induction of New Receptions*

Brisbane Women's Correctional Centre *Officer's Report*

Brisbane Women's Correctional Centre *Residential Induction Sheet*

Brisbane Women's Correctional centre, Document explaining process for initiating and completing breach entry on IOMS, with screen print illustrations

British Columbia Ombudsman *Fairness Checklist*, British Columbia, Canada [accessed at http://www.ombud.gov.bc.ca/about/fairness-checklist.htm on 19 March 2009]

Creyke, R and McMillan, J (2009) *Control of Government Action – Text, Cases and Commentary, 2nd edition*, LexisNexis Butterworths, Australia

Department of Community Safety (15 June 2009) *Internal Audit Charter.*

Department of Corrections, New Zealand *Corrections Act 2004* (commentary) [accessed at http://www.corrections.govt.nz/policy-and-legislation/corrections-act-2005.html on 25 March 2009]

Department of Corrections, New Zealand *Policy and Procedures Manual (A.07 Prisoner Discipline)* [accessed at http://www.corrections.govt.nz/policy-and-legislation/policy-and-procedures-manual/section-a/a07.html on 25 March 2009]

Department of Corrective Services (2 June 2005) *Integrated Offender Management Strategy* (PowerPoint presentation)

Department of Corrective Services (November 2004) *Prisoner Review and Complaint Mechanisms Consultation Paper*

Department of Corrective Services *Policy Framework – Explanatory Note* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Policies/Documents/policy_framework_note.doc on 24 March 2009]

Department of Corrective Services, Western Australia *Report on Operations – Mahoney Reform Program*

Dugan, J. (D.), Roche, V., Tucker, I. (June 2003) *The Prison Discipline Regime Review: Report to the Corrective Services Commissioner into Prison Discipline Provisions, Sanctions and Privileges*

Edney, R. (2001) Judicial deference to the expertise of correctional administrators: the implications for prisoners' rights, *Australian Journal of Human Rights*, 5 [accessed at www.austlii.edu.au/au/journals/AJHR/2001/5.html on 27 August 2008]

Field, C., Western Australia Ombudsman (27 August 2007) *Speech by Western Australia Ombudsman to the Integrity Coordinating Group (ICG) Forum*, Integrity Coordinating Group (ICG) Forum, Duxton Hotel, Perth [accessed at http://www.ombudsman.wa.gov.au/documents/speeches/070827_ICG.pdf on 19 March 2009]

GEO (15 January 2004 – Revision 1) *Prisoner Process Completion Form*

Government of Western Australia-Department of Justice, Corrective Services NSW, Correctional Services SA, Corrective Services ACT, Tasmania Department of Justice, Queensland Government-Department of Corrective Services, State Government Victoria-Department of Justice, Northern Territory Government-Department of Justice-NT Correctional Services (2004) *Revised Standard Guidelines for Corrections in Australia* [accessed at http://www.aic.gov.au/research/corrections/standards/aust-stand_2004.pdf on 10 March 2009]

Groves, M. (1996) Administrative segregation of prisoners: powers, principals of review and remedies, *Melbourne University Law Review*, 20, 639

Groves, M. (2002) Ombudsmen's jurisdiction in prisons, *Monash University Law Review*, 28(1), 181

Heaney, P., SM. for Ministry of Justice, Policy and Legislation Division (October 2000) *Report of the Review of Prisoner Disciplinary Procedures*

Kilroy, D. (2003) *The Silenced Few – NESB Women in Prison*

Mahoney, D., Hon, AO, QC. (November 2005) *Inquiry into the Management of Offenders in Custody and in the Community* [accessed at http://www.slp.wa.gov.au/publications/publications.nsf/DocByAgency/4E6CCB9EE555DE8E482570C20012DB68/$file/Management+of+Offenders+Inquiry.pdf on 25 March 2009]

Manitoba Ombudsman (March 2009) *Understanding Fairness – A Handbook on Fairness for Manitoba Municipal Leaders*, Winnipeg, Manitoba, Canada [accessed at www.ombudsman.mb.ca on 19 March 2009]

Matthews, B. (24 May 2004) Abu Ghraib one day, Queensland the next, *On Line Opinion* (e-journal) [accessed at http://www.onlineopinion.com.au/view.asp?article=2228&page=1 on 24 July 2008]

McMillan, J., Prof, Commonwealth Ombudsman (5-6 November 2004) *The Ombudsman and the Rule of Law*, Public Law Weekend, Canberra [accessed at http://www.ombudsman.gov.au/commonwealth/publish.nsf/AttachmentsByTitle/speeches_2004_03/$FILE/omb_rule_law-publaw-nov2004.pdf on 10 March 2009]

Moyle, P. (1995) Private prison research in Queensland, Australia : a case study of Borallon Correctional Centre, 1991, *British Journal of Criminology*, 35, 34 [accessed at http://bjc.oxfordjournals.org/cgi/content/abstract/35/1/34 on 30 July 2008]

New South Wales Ombudsman (July 2003) *Bad Faith, Bias and Breach of Duty – Public Sector Agencies Fact Sheet no. 2* [accessed at http://www.ombo.nsw.gov.au/publication/PDF/factsheets/Bad%20Faith_%20Bias%20and%20Breach%20of%20Duty.pdf on 30 April 2009]

New South Wales Ombudsman (June 2005) *Natural Justice/Procedural Fairness – Public Sector Agencies Fact Sheet no. 14* [accessed at http://www.ombo.nsw.gov.au/publication/PDF/factsheets/FS_PublicSector_14_Natural_Justice.pdf on 30 April 2009]

New South Wales Ombudsman (March 2004) *Discretionary Powers – Public Sector Agencies Fact Sheet no. 4* [accessed at http://www.ombo.nsw.gov.au/publication/PDF/factsheets/Discretionary%20Powers.pdf on 30 April 2009]

New South Wales Ombudsman (May 2006) *Good Conduct and Administrative Practice - Guidelines for State and Local Government*, 2nd edition, Sydney

Ombudsman Tasmania (June 2001) *Report on an Inquiry into Risdon Prison (Volume 2)* [accessed at http://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0018/50553/Risdon_Prison_Report.pdf on 25 March 2009]

Ombudsman Victoria (July 2006) *Conditions for Persons in Custody* [accessed at http://www.ombudsman.vic.gov.au/resources/documents/Conditions_for_persons_in_custody.pdf on 25 March 2009]

Ombudsman Western Australia (2000) *Report on Deaths in Prisons* [accessed at http://www.ombudsman.wa.gov.au/documents/reports/deathsinprisons/Appdx.pdf on 25 March 2009]

Ombudsman Western Australia (May 2006) *Own Motion Investigation into the Department of Corrective Services' Prisoner Grievance Process* [accessed at http://www.ombudsman.wa.gov.au/documents/reports/ownmotion.pdf on 24 March 2009]

O'Shea, B., President of Law Institute Victoria (7 May 2003) Submission to Prison Discipline Review [accessed at https://www.liv.asn.au/members/sections/submissions/20030507_20/20030603pris.pdf on 25 March 2009]

Prisoner's Legal Service (1 December 2006) *Breaches of Prison Discipline* [accessed at http://www.plsqld.com/factsheets/Breaches%20of%20prison%20discipline%20updated%20to%201%2012%2006.doc on 24 March 2009]

Prisoners' Legal Service Inc. (1 December 2006) *Complaints and Grievances (Fact Sheet 2)* [accessed at http://www.plsqld.com/factsheets/Complaints%20and%20Grievances%20updated%20to%201%2012%2006.doc on 19 March 2009]

Queensland Corrective Services (12 June 2008 – Version 1) *Appendix – Identified Drug Users Management Scheme – Prisoner Information Sheet*

Queensland Corrective Services (14 April 2008 – Version 1) *Policy – Recordkeeping Policy* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Support_Services/Documents/spspolrecordkeeping.doc on 19 March 2009]

Queensland Corrective Services (14 August 2008 – Version 4) *Administrative Form – Circumstances Leading to Initiation of a Breach* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmfrmbrchwhy.doc on 24 March 2009]

Queensland Corrective Services (14 August 2008 – Version 4) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 24 March 2009]

Queensland Corrective Services (14 January 2009) *Parole Boards* [accessed at http://www.correctiveservices.qld.gov.au/About_Us/Community_Corrections_Board/index.shtml on 24 March 2009]

Queensland Corrective Services (15 August 2008 – Version 02) *Procedure – Movement of Prisoners from Secure to Residential Accommodation*

Queensland Corrective Services (15 August 2008 – Version 3) *Procedure – Intensive Management* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprointensmgtplan.shtml on 2 July 2009]

Queensland Corrective Services (15 August 2008 – Version 5) *Procedure – Offender File Management (excluding Medical File)*

Queensland Corrective Services (15 August 2008 – Version 8) *Procedure – Substance Testing – Corrective Services Facilities*

Queensland Corrective Services (15 July 2008 – Version 2) *Procedure – Substance Testing Random – Corrective Services Facilities*

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]

Queensland Corrective Services (19 June 2009 – Version 5) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 17 August 2009]

Queensland Corrective Services (2006) *Drug Strategy 2006* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Policies/Documents/DrugStrategy.pdf on 24 April 2009]

Queensland Corrective Services (21 February 2007 – Version 3) *Procedure – Policy Instruments and Accountability Standards* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Support_Services/documents/spsproproman.shtml on 24 March 2009]

Queensland Corrective Services (23 December 2008 – Version 3) *Procedure – Induction* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmproinduct.shtml on 24 March 2009]

Queensland Corrective Services (24 November 2008 – Version 1) *Procedure – Arthur Gorrie – Induction*

Queensland Corrective Services (28 August 2006 – Version 1) *Administrative Form – Admission and Induction Checklist*

Queensland Corrective Services (28 August 2006 – Version 1) *Appendix – Offender File Content*

Queensland Corrective Services (28 August 2006 – Version 3) *Administrative Form – Example Determination Question Sheet* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmfrmbrchdetermeg.doc on 24 March 2009]

Queensland Corrective Services (28 August 2006 – Version 3) *Appendix – Definitions for Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappbrchdefin.doc on 24 March 2009]

Queensland Corrective Services (28 August 2006 – Version 3) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 28 July 2008]

Queensland Corrective Services (28 August 2006 – Version 4) *Appendix – Example of a Disciplinary Breach Register* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappbrchrgstreg.doc on 24 March 2009]

Queensland Corrective Services (28 August 2006) *Administrative Form – Acknowledgement Sheet* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Support_Services/Documents/spsfrmacknowlsheetf.doc on 19 March 2009]

Queensland Corrective Services (29 June 2009 – Version 5) *Procedure – Telephone and Video-conference Calls for Offenders* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmpropristelvidserv.shtml on 2 July 2009]

Queensland Corrective Services (4 September 2009) *Appendix – Breach Penalty Guidelines* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmappbreachguide.doc on 14 September 2009]

Queensland Corrective Services (4 September 2009) *Summary of Changes to Procedures* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Summary_of_changes.shtml on 14 September 2009]

Queensland Corrective Services (4 September 2009 – Version 6) *Procedure – Breaches of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Procedures/Offender_Management/documents/ofmprobrchdscpln.shtml on 14 September 2009]

Queensland Corrective Services (5 February 2008 – Version 1.0) *Queensland Corrective Services Retention and Disposal Schedule QDAN 683 v1.0* [accessed at http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683.shtml and http://www.correctiveservices.qld.gov.au/Resources/QDAN00683/QDAN00683_9.shtml#Offender%20Records on 24 March 2009]

Queensland Corrective Services (5 June 2008 – Version 1) *Policy – Complaints Management*

Queensland Corrective Services (6 March 2008 – Version 8) *Procedure – Incident Reporting*

Queensland Corrective Services (7 February 2007 – Version 1) *Accountability Standard – Induction*

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]

Queensland Corrective Services (December 2007) *Queensland Corrective Services – An Overview* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/QCSQueensland Corrective Services.pdf on 19 March 2009]

Queensland Corrective Services (February 2007) *Complaints Management System – Fact sheet – A Guide for Offenders in Custodial or Community Corrections* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Complaints_Management/documents/Complaints_Fact_Sheet_Offenders.pdf on 19 March 2009]

Queensland Corrective Services (Form 23 – Version 1, Corrective Services Act 2006 (s.113, 116 & 119) *Breach of Discipline* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Approved_Forms/F23Breach.doc on 19 March 2009]

Queensland Corrective Services (June 2005) *Business Model Review: Organisational Structure* [accessed at http://www.correctiveservices.qld.gov.au/About_Us/The_department/Key_Initiatives/BMR/BMROrgStructureNet.pdf on 24 March 2009]

Queensland Corrective Services (June 2008) *Internal Audit Charter*

Queensland Corrective Services (March 2006) *Department of Corrective Services Organisational Structure* [accessed at http://www.correctiveservices.qld.gov.au/About_Us/The_department/Key_Initiatives/BMR/OrgChartFINAL.pdf on 24 March 2009]

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]

Queensland Corrective Services *A Guide to the Corrective Services Act 2006*

Queensland Corrective Services Academy (February 2007 – Version 2) *COM 005 Interpersonal Skills (ELP)*

Queensland Corrective Services Academy (January 2008 – Version 3) *LAW 009 Breaches of Discipline*

Queensland Corrective Services Academy *COM 005 Interpersonal Skills* (PowerPoint presentation)

Queensland Corrective Services *Drug Strategy 2006: Tackling Drug Abuse and Addiction, Changing Lives in Queensland Prisons* [accessed at http://www.correctiveservices.qld.gov.au/Resources/Policies/Documents/DrugStrategy.pdf on 24 March 2009]

Queensland Corrective Services *Integrated Offender Management – Induction*

Queensland Corrective Services *Intelligence and Investigations Division* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Investigations.pdf on 24 March 2009]

Queensland Corrective Services IOMS processes *Add New Breach*, *Approve Breach*, *Enter Determination/Review Details*, *Close the Breach*

Queensland Corrective Services *Prison locations* [accessed at www.correctiveservices.qld.gov.au/Resources/Friends/locations.shtml on 19 August 2008]

Queensland Corrective Services *Probation and Parole* [accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Probation%20and%20Parole.pdf on 24 March 2009]

Queensland Corrective Services *Quick Step – Breaches: IOMS (flowchart)*

Queensland Ombudsman (2007) *Good Decision-making Guide – Good Decisions Make Good Sense* [accessed at http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Agency_Resources/Good%20Decision-Making%20Guide.pdf on 30 April 2009]

Queensland Ombudsman (March 2009) *Legal Perspective* [accessed at http://www.enewshost.com.au/incoming/ts.asp?ts=NjcxeGN4OTU2NnhjeDAA on 24 March 2009]

Queensland Ombudsman Good Decisions Training Workbook

Queensland Parliament (2006) *Explanatory Notes Corrective Services Bill 2006* [accessed at http://www.legislation.qld.gov.au/Bills/51PDF/2006/CorrectiveB06Exp.pdf on 20 April 2009]

Queensland Parole Boards *Annual Report 2007/08* [accessed at http://www.correctiveservices.qld.gov.au/About_Us/The_department/Probation_and_Parole/documents/QPB_AR_07-08_web.pdf on 24 March 2009]

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]

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]

The GEO Group, Inc. (20 March 2007 – Revision 1) *Arthur Gorrie Correctional Centre – Correctional Supervisors A Side Daily Compliance/Condition Report*

The GEO Group, Inc. (25 November 2008 – Version 00) *Lesson Plan Cover Sheet: Breaches of Discipline – IOMS*

The GEO Group, Inc. (25 November 2008 – Version 00) *Lesson Plan Cover Sheet: Breaches of Discipline – Legislation and Theory*

The GEO Group, Inc. (25 November 2008 – Version 00) *Lesson Plan Cover Sheet: Breaches of Discipline – Practical*

The GEO Group, Inc. (9 March 2007) *Induction Book – The Arthur Gorrie Correctional Centre*

The GEO Group, Inc. (November 2008) *Breaches of Discipline – IOMS* (PowerPoint presentation)

The GEO Group, Inc. (November 2008) *Breaches of Discipline – Legislation and Theory* (PowerPoint presentation)

The GEO Group, Inc. (November 2008) *Breaches of Discipline – Practical*

The GEO Group, Inc. (November 2008) *Custodial Pre Service Induction Program: Breaches of Discipline – Assessment: Participant*

The Ombudsman Victoria (30 June 2000) *Annual Report 27*

Walsh, T. (2006) The Corrective Services Act 2006 (Qld): an erosion of prisoners' human rights, *Bond Law Review*, 18.2, 143

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

Wolston Correctional Centre *Individual Induction*

Wolston Correctional Centre *Individual Induction Form Check List (12 months 1 day and over)*

Wolston Correctional Centre *Major Breach – Breach Preamble – Manager*

Wolston Correctional Centre *Major Breach – Breach Preamble – Supervisor*

Wolston Correctional Centre *Minor Breach – Breach Preamble – Correctional Officer*

Wolston Correctional Centre *Minor Breach – Breach Preamble – Supervisor*

Wolston Correctional Centre O*ffender File Check List*

Wolston Correctional Centre, Queensland Corrective Services (Version 3) *Induction of New Receptions into S8*

Wolston Correctional Centre *Questions for Prisoners Involved in Incidents*

Wolston Correctional Centre *Short Term Individual Induction Check List (less than 12 months)*

Woodford Correctional Centre *Reception Form*

Woodyatt, T. (15 May 2006) *The Crime of Punishment*, Forum on the *Corrective Services Bill 2006*

QUEENSLAND
ombudsman