



QUEENSLAND
ombudsman

Report of the
Queensland Ombudsman

Executive Summary

**Justice on the Inside
Report**

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

October 2009

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 Parliament² 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.

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 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.

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 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

⁵ Section 26, Ombudsman Act.

⁶ See recommendation 1 at 3.4.

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
- 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.

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.

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.



QUEENSLAND
ombudsman

© Queensland Ombudsman, 2009

Apart from any fair dealing for purposes related to the functions of the Ombudsman or the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part of this document may be reproduced by any process without permission. Inquiries should be made to the publishers, Queensland Ombudsman.

Queensland Ombudsman
Level 17, 53 Albert Street
Brisbane QLD 4000

GPO Box 3314
Brisbane QLD 4001

Tel: (07) 3005 7000
Free call: 1800 068 908 (outside Brisbane)
Fax: (07) 3005 7067
Email: ombudsman@ombudsman.qld.gov.au
Web: www.ombudsman.qld.gov.au