



QUEENSLAND
ombudsman

Report of the
Queensland Ombudsman

Executive Summary

**The Classification and
Movement of Prisoners
Report**

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

July 2009

EXECUTIVE SUMMARY

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

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

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

Previous investigation

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

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

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

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

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

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

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

Own initiative investigation

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

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

The principal objectives of the investigation were to:

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

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

¹ Sections 17 and 71, Corrective Services Act.

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

Procedural fairness

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

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

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

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

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

Response of agency

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

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

Public report

The Ombudsman Act provides that, if the Ombudsman considers it appropriate, the Ombudsman may present a report to the Speaker for tabling in the Assembly on a matter arising out of a performance of the Ombudsman's functions.² I have

²Section 52, Ombudsman Act.

decided to report to Parliament on my investigation for the following reasons:

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

Opinions

Opinion 1

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

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

Opinion 2

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

Opinion 3

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

Recommendations

Recommendation 1

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

Recommendation 2

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

Recommendation 3

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

Recommendation 4

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

Recommendation 5

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

Recommendation 6

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

Recommendation 7

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

Recommendation 8

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

Recommendation 9

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

Recommendation 10

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

Recommendation 11

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

Recommendation 12

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

Recommendation 13

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

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

Recommendation 14

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

Recommendation 15

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



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