



QUEENSLAND CORRECTIVE SERVICES COMMISSION

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LEGAL, CONSTITUTIONAL AND ADMINISTRATIVE REVIEW COMMITTEE

Our Ref: LCARC Submission Carol (76745)

13 November 1997

Mr Neil Laurie
Research Director
Legal, Constitutional & Administrative Review Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Laurie

Enclosed is a submission from the Queensland Corrective Services Commission (QCSC) in response to the Committee's request in relation to the preservation and enhancement of individuals' rights and freedoms and most particularly the proposal for a Bill of Rights in Queensland.

The submission has been prepared following a review of the LCARC Issues Paper No 3, containing the features and rights incorporated in the former Electoral and Administrative Review Commission's (EARC) Report.

Should you require any clarification please contact Alison Hunter, Director, Planning Research and Offender Policy (telephone 32277085 or facsimile 32276633).

Yours faithfully

BARRY APSEY
Director-General

SUBMISSION

BILL OF RIGHTS - QUEENSLAND

INTRODUCTION

The Queensland Corrective Services Commission has reviewed Issues Paper No 3, distributed by the Legal, Constitutional and Administrative Review Committee (LCARC), containing background material and the features and rights of a proposed Bill of Rights for Queensland developed by the former Electoral and Administrative Review Committee (EARC).

The review of the Issues Paper has been undertaken from the perspective of the correctional system, not as an application to the whole community, with the focus on the impact of the proposed rights on the functions and responsibilities of the Commission under the terms of the relevant Corrective Services legislation.

ISSUES

The rights contained in the proposed Bill which impact on the responsibilities and functions of the Commission can be identified within three (3) major areas:

- the limitations on rights attendant to a custodial sentence;
- the rights which are overridden by a higher responsibility; and
- the rights which are restricted/limited by other authorities, yet accompany the detainment.

Limitations attendant to Custody

The primary right affected by detainment of the individual is 'loss of liberty'. 'Loss of liberty' is sanctioned by the laws of society as a penalty for breach of those laws. Forfeiture of this right is therefore consequential upon the individual's behaviour and outside of the control of the Commission, yet is managed by the Commission.

Associated rights affected by detainment are those rights which form a sub category of 'the right to privacy', such as searching of the person and the person's property, seizure of the person's property and interception of correspondence and other forms of communication. Limitations are placed on these rights in accordance with the Commission's responsibility to ensure the security and management of the prison.

All prisoners are subject to search of the person and their property as part of the management regime of a Centre in accordance with governing legislation (such as Sections 47 and 48 of the *Corrective Services Act 1998*) and operational policy.

Further, telephonic and written communication are monitored for security reasons and property assessed as contraband is confiscated.

In addition, 'freedom of movement' and 'freedom of association' are restricted for ex-prisoners whilst they are subject to a community-based supervision order, such as a parole order.

Higher Obligation/Responsibility

The Commission has an overriding obligation/responsibility under a 'duty of care' to ensure the safe custody and welfare of the prisoners. This 'duty of care' will have a significant impact on the proposed right, 'to refuse medical treatment'. In all cases where a prisoner may be dangerously ill, the Commission is obliged to provide the best possible treatment to ensure that an individual's health and life are preserved. In addition, the Commission can not permit a situation, such as a hunger strike, to proceed to a life endangering state.

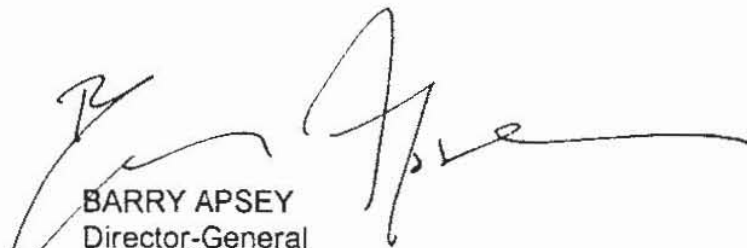
Restrictions/Limitations by other Authorities

The most obvious right affected by detainment, but not determined by the Commission, is the right 'to vote'. The parameters regarding voting are determined by the Electoral Commission and are restricted in respect of certain categories of prisoner. A similar situation is evident in the determination of eligibility of prisoners regarding access to certain educational assistance/courses, decisions taken by the Department of Education.

SUMMARY

The Queensland Corrective Services Commission, whilst supportive of the concept of a *Bill of Rights* for Queensland, is unable to facilitate certain rights as proposed whilst performing the functions and responsibilities of the Commission.

These issues are raised in an attempt to heighten awareness of the impact of the proposed individual rights on the operation of the QCSC and to ensure their acknowledgment and consideration in future deliberations regarding the introduction of such a Bill.



BARRY APSEY
Director-General
12/11/1997