

PRISONERS' LEGAL SERVICE INC.

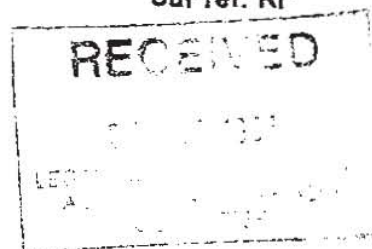
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PL DX 5162
WEST END QLD 4101
Telephone: (07) 3846 3384
Toll Free: 1800 813 940
Fax: (07) 3844 2703

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Mr Gary Fenlon MLA
Chair
Legal, Constitutional and Administrative Review Committee
Parliament House
George St
Brisbane Q 4000



Spec 14

Dear Mr Fenlon,

Re: Strategic Review of the Queensland Ombudsman

Thank you for the opportunity to comment on the recommendations contained in the above report by Professor Wiltshire. We congratulate the Committee and Professor Wiltshire on the report, which we believe contains important recommendations which, if implemented, would contribute greatly to improving administrative decision-making and accountability in Queensland.

The Prisoners Legal Service (PLS) provides legal information, advice and assistance to prisoners and their families on matters relating to incarceration. We are primarily an administrative law practice and we deal with corrective services administrators, and the people affected by their decisions, on a daily basis. We deal with matters such as prisoner transfers, security classifications, parole, remission of sentence, disciplinary procedures, rehabilitation programs and visits. We also respond to allegations of official corruption which are made against prison officers and administrators and assist those making these complaints to access investigative agencies.

The PLS has now operated for more than 12 years and in those years the issue of accountability in the administration of corrective services has been the number one issue of concern to ourselves and all the other community stakeholders with whom we work - without exception.

Inadequacies in the accountability and transparency of Queensland prison administration (the "Out of Sight, Out of Mind" syndrome) have been identified by every major review of corrections which has occurred during these 12 years, from the 1988 Kennedy Review, through the Public Sector Management Commission Review of 1993 to the recently announced Peach Review of 1998-9. The system still wrestles with this fundamental problem. We believe that an effective Ombudsman could be an important part of the solution.

We note the comments in the Report, at page 62, regarding the challenge for public sector accountability posed by corporatisation and the split between purchasers and providers of government services. The corporatisation of Corrective Services in 1997 has added further difficulty for prisoners and their advocates in "pinpointing government accountability". At present the task feels somewhat hopeless - like attempting to locate a needle in a haystack. A robust and proactive Ombudsman is essential if this accountability puzzle is ever to be solved. Clients and their advocates, particularly where the clients are prisoners, simply do not have the clout to insist that the buck should stop with someone, somewhere, and to name that person or body.

We are a small organisation (1.5 professional staff and 1 administrator). Whilst we would have liked to have made a more extensive submission on Professor Wiltshire's report we have been able only to make some general points on several of the recommendations. We would be happy to provide more detail in any of these areas should the Committee request us to do so.

R.1. The PLCAR should engage in a more substantial scrutiny of Annual Reports and any other reports of the Ombudsman each year, particularly regarding the quality of public administration in the State and any major systemic issues which are raised. Such scrutiny and the results of discussions on these matters with the Ombudsman should form a significant component of a report of the PLCAR to Parliament.

PLS strongly agrees with this recommendation. Political decision-making in the area of corrective services could benefit massively from the information that the Ombudsman's office could provide, independent of the QLD Corrective Services Commission (QCSC), regarding systemic issues of concern. In such a politically sensitive area as prison management it is vital that the political process is as informed as possible. Information from a disinterested, dispassionate source, such as the Ombudsman's office, could vastly improve this situation in QLD.

R.8. There should be a concerted drive to make the community and government agencies more aware of the role, including powers, and limitation on powers, of the Queensland Ombudsman. This should ideally include:

- (a) New brochures more appealing in presentation and written in simpler language.**
- (b) An Ombudsman Home Page on the internet.**
- (c) Information Kits for State and local government departments and agencies outlining the procedures and criteria used by the Ombudsman; an ideal internal review mechanism for agencies for their own complaints; a model internal investigatory process on receipt of contact about a complaint from the**

Ombudsman; components of a client services charter which would meet the requirements of the Ombudsman.

(d) A short quarterly newsletter, from the Ombudsman's Office directed primarily at state departments and agencies and local governments providing regular information about systemic issues occurring in the public sector, new legislative or procedural arrangements introduced by government affecting the operations of the Ombudsman, and other items related to administrative review which have relevance for the Ombudsman and government administrators in general.

(e) An informative annual report which, each year, reiterated the role and powers of the Ombudsman, and highlighted any systemic trends in the public sector giving rise to complaints to the Ombudsman.

(f) More lectures and papers given by staff of the Office to professional groups and seminars dealing with public sector issues, to make them more aware of the Ombudsman's role and powers.

R.8. State and local governments should establish formal contact officers for Ombudsman complaints, such officers to form a network whereby the Ombudsman can move to establish joint training seminars, advice on systemic issues and causes arising from complaints, client service charters, changes to policy, legislation and practice. The Ombudsman's Office should be on line to all of these contact officers.

R.30. Potential synergies should be explored between the numerous appeal bodies in Queensland in relation to commonality of training, research, library resources, and joint seminars to keep abreast of developments in the public sector in Queensland and elsewhere.

Professor Wiltshire's report refers, at page 60, to the proliferation of avenues for complaint regarding Corrective Services. The availability of information which explains the role of the Ombudsman, distinguishing it from the role of internal review officers, official visitors and prisoner advocacy groups such as PLS, would be of great assistance in this regard.

Initiatives such as seminars and forums for all involved in the abovementioned roles, would also assist to reduce duplication and clarify the "jurisdiction" of the various complaints bodies.

R.13. More frequent use should be made of the "Own Motion" /investigations. The Office should constantly identify areas where complaints are clearly stemming from basic systemic causes in sufficient numbers to warrant a research program conducted with the cooperation of the agency/ies

concerned to identify the cause, propose new approaches, and change the pattern of administration in the area concerned. The team leader should be chosen for his/her expertise in the area involved but every effort should be made to give the maximum number of staff the opportunity to be part of such an investigation over the medium term. The research capacity to cope with this additional research function should be provided by an enhancement of the resources of the Office, especially on-line facilities.

PLS' experience indicates that a great number of complaints or problems which prisoners and their families raise reflect systemic issues in prison administration. Some common complaints (such as lost property, prisoner transfers, remissions and breach procedure) have been constantly raised with PLS over the 12 years of our existence. We acknowledge that some of these problems may be recurring simply because of the nature of incarceration, but we submit that many of them could be addressed and ameliorated by the introduction of better systems of administration.

The QLD Prison system has undergone cyclical crises in recent years, and several extensive reviews have been commissioned to identify and suggest strategies to address the problems. What is needed, however, is an ongoing and constant impetus for reform. The Ombudsman's Office could provide this impetus, via the above recommendation.

R.24. The Ombudsman should review the visits procedures, especially the correctional centres visits, to ensure that the maximum effort is directed to resolving complaints on the spot.

We note the comments regarding visits to correctional centres made at page 54 of the Report.

We are pleased that it has not been recommended that visits to correctional centres be reduced. The Ombudsman's profile in correctional centres is actually quite high as a result of these visits - both with prisoners and with prison officers, staff and management. The regular presence of the Ombudsman in QLD prisons is a very important reminder to all involved that the system is subject to public scrutiny. We would submit that these visits should also be conducted to Community Corrections Centres, for the same reason.

However, it is probably true that there is a rather unrealistic perception amongst prisoners about what the Ombudsman can do. We submit that the primary reason for the overestimation of the role, resources and power of the Ombudsman is the paucity of meaningful internal avenues for review within Corrective Services and the limitations on the current Official Visitors system and limited access to independent legal and advocacy services.

We submit that this resistance, in Corrective Services, to providing proper and adequate appeal mechanisms to prisoners and their families, is also the reason that

the development of report cards and breach codes (referred to at page 28 of the Report) has resulted in an increase in complaints, rather than the decrease which occurred in relation to other agencies.

PLS also experiences problems as a result of the massive number of grievances from prisoners. Some of this, as mentioned above, is simply because these people are incarcerated and therefore profoundly affected by administrative decision-making in every facet of their lives. However, this does not provide a full explanation for the sheer numbers of repetitive complaints, many of them quite serious and involving significant loss of liberty.

The implementation of **Recommendation 13** and the involvement of the Ombudsman in the development of meaningful internal review procedures for the QCSC would, we believe, reduce the massive numbers of repetitive complaints currently being handled both by the Ombudsman and PLS.

The big issue here is the provision of information by the QCSC and its service providers.

For example, prisoners who wish to appeal an emergency transfer are often not provided with the particulars of the allegations against them which lead to the transfer. The internal "appeal" process is therefore meaningless and is not taken seriously either by the prisoners or by prison administrators. **First recourse, therefore, is not to the internal appeal process but to independent legal advice or the ombudsman.**

The transfer appeal example is only one of many examples of prison appeals procedures which are not used because they simply don't mean anything. Other examples include appeals on security classification and reviews of disciplinary breach hearings.

In a multitude of other situations there is simply no official internal appeal mechanisms. Some examples of these include revocation of Home Detention and other community corrections orders, parole and remissions decisions, prisoner property disputes and access to educational, rehabilitative, employment and other programs. Informal appeals may sometimes be considered, although usually only where a legal representative becomes involved.

A better set of protocols between the various complaints bodies and community agencies would also reduce the time spent by the Ombudsman on prisoner complaints by facilitating appropriate referrals. This would be one way of dealing with some complaints "on the spot".

We also endorse the proposal that the duration of prison visits should be extended to allow sufficient time for Ombudsman Office staff to arrange for small matters to be "ironed out" by staff and management where possible.

We submit that there are a small but significant number of ongoing and serious administrative problems in Corrective Services (many of which we have mentioned above) which would benefit from a systemic approach, and a large number of much smaller individual problems which could be easily dealt with "on the spot".

R.28. The government should cease using the word "Ombudsman" in the title of other appeal bodies and mechanisms and should also discourage the private sector from so doing.

R.29. Parliament and the government should conduct an overall review of all of the administrative appeal mechanisms in Queensland with a view to streamlining, diminishing the complexity and cost of the administrative appeals machinery, and reducing the burden on the administration, whilst at the same time ensuring there is no net diminution of the rights of citizens to complain about administrative discretion. When new public sector developments occur which require an avenue of appeal from administrative discretion, the presumption should be in favour of incorporating the avenue into the functions of the Ombudsman's Office rather than creating a single purpose channel and new body to oversee it.

It has been suggested in the past that there is a need for a specialist merits review tribunal or Prison Ombudsman to address the glaring need for accountability and review mechanisms in QLD prisons. We agree that specialist and independent merits review mechanisms are required, although we believe this could potentially be achieved by a better resourced and more proactive Ombudsman's Office which has a specialist team in the Corrections area.

An important advantage of keeping Corrections as part of the QLD Ombudsman's brief, rather than establishing a separate office, is that it encourages the idea that the same standards of accountability and care in administrative decision-making should be maintained in this sector as in any other. Part of the reason that sloppiness in accountability processes develops in corrections is the, often unspoken, assumption that prisoners are not "clients", or even "citizens" and therefore not deserving of proper accountability mechanisms. On reflection it is clear that where liberty is at stake, even more care should be taken. This is not simply because a duty is owed to the prisoner to ensure that s/he is treated lawfully, but also because a duty is owed to the broader society that corrections policy contributes to a safer, and not a more dangerous, society.

PLS recently opposed the proposal for a merits review body which would be accountable to Cabinet on the basis that the model provided for insufficient independence from the Government of the day.

We note the comments made in Professor Wiltshire's report about the current model whereby the QLD Ombudsman is accountable to the Parliament and not the Executive. We endorse the recommendations which are directed towards strengthening this model through greater involvement by the PLCAR, especially as regards resourcing issues.

Timeliness

We wish to emphasise that timeliness is a more than usually important issue when dealing with prisoners because, in many cases, the complaint involves the deprivation of a citizen's liberty. If the complaint is not resolved in a timely manner the prisoner may serve a greater time in prison than they should have done, due to an administrative error.

One current example of this is the large number of remissions cases the PLS has referred to the Ombudsman's office early in 1998. A whole class of prisoners have complained that a decision that they should forfeit remission (ie 1/3 reduction) of their sentence has been made without due regard to the law. There is case law to support their argument. Failure to deal with these complaints in a timely manner may, if the complaints are finally upheld, result in citizens spending longer in prison than they should have according to law.

Once again, we thank the Committee for the opportunity to provide this response and look forward to hearing more regarding the review and implementation of the recommendations.

Yours faithfully,



Karen Fletcher
A/Coordinator
Prisoners Legal Service Inc