



JUSTICE BEHIND BARS

Date: 11 April 2018

Our Ref: HB

Crime and Corruption Commission
GPO Box 3123
Brisbane Qld 4001

By email: TaskforceFlaxton@ccc.qld.gov.au

Dear Sir/Madam

RE: Taskforce Flaxton – Submission on corruption risks in Queensland Corrective Services facilities

We refer to the above and to correspondence from the Crime and Corruption Commission (CCC) dated 27 March 2018 inviting Prisoners' Legal Service (PLS) to provide written submissions on corruption risks in Queensland Corrective Services (QCS) facilities. Thank you for providing us with the opportunity to provide submissions on this important issue.

What follows is a brief summary of our experience with some of the focus areas flagged by the Taskforce Issues Paper. Our submissions will focus on a culture of excessive force that we believe has developed as a result of increasing strain placed on QCS resources and lack of access to appropriate services in custody. We will also identify deficiencies that we consider exist in relation to internal and external investigation processes for corruption complaints within QCS facilities.

We do not intend to provide a detailed submission about corruption in QCS facilities. A written submission that adequately addresses our concerns and experiences would require significantly more time and resources. Instead, we have summarised our key concerns without providing specific case examples. PLS would appreciate the opportunity to meet with members of the Taskforce to discuss in greater detail the problems identified below, including by providing confidential case studies which illustrate the patterns we have identified that are relevant to this enquiry.

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A free service providing assistance to prisoners with parole applications, prison law matters and financial counselling

1. Overview

PLS is an independent community legal centre that provides legal advice and assistance to prisoners on matters relating to their incarceration, including parole, detention in solitary confinement and complaints regarding the prison system. PLS practices primarily in administrative law and does not assist prisoners with criminal law matters.

The concerns presented to us by our clients are wide-ranging. There are, however, some consistent themes and particular issues that are more common than others. PLS considers the most pressing problems within QCS facilities that are being investigated by Taskforce Flaxton are:

- The very high levels of violence in prison, including the use of excessive force by correctional officers; and
- Alleged deficiencies and corruption in investigative processes surrounding violence in prison.

2. Violence in prison

PLS is deeply concerned about the entrenched levels of violence that occur within QCS facilities. This violence is perpetrated by both prisoners and correctional staff.

2.1 Prisoner on prisoner assaults

PLS believes there are currently inadequate steps taken by QCS to prevent prisoner on prisoner assaults. In 2016-2017, PLS provided 149 advices to prisoners about commencing personal injury claims against QCS. Prisoners frequently seek our advice about pursuing claims against QCS for failing in their duty of care to provide them with a safe environment. A common complaint is that prisoners inform correctional staff they are unsafe however inadequate steps are taken to protect them and they are subsequently seriously assaulted by other prisoners. PLS believes this problem is compounded by the limited legal accountability for QCS when prisoners are seriously assaulted by other prisoners.

Due to the nature of the prison environment, prisoners are often reluctant to make criminal complaints about their experiences as victims of violence from other prisoners, due to fear of ramifications. Further, there are a number of barriers which prevent prisoners from commencing civil claims against QCS when they experience violence in prison.

It is the experience of PLS that personal injury firms will rarely represent prisoners in negligence claims against QCS because it is not economically viable for them to act. Typically, it is considered that prisoners will receive limited compensation because they have difficulty demonstrating future economic loss. Victim trust provisions within the *Corrective Services Act 2006* provide a further disincentive for both firms and prisoners to commence personal injury

proceedings against QCS as compensation must first be placed in a victim trust fund where various entities can make claims before any remainder is distributed.¹ In addition, provisions within the *Public Trustee Act 1978* require that prisoners serving sentences of 3 years or more cannot commence personal injury proceedings without first obtaining consent from the Public Trustee.²

For these reasons, very few civil claims are pursued against QCS for prisoner on prisoner assaults. The consequence is that QCS experience limited liability for the extreme levels of violence prisoners are subject to and hence, are less likely to take steps to address this problem. PLS considers that significant changes should be made to both the *Corrective Services Act 2006* and *Public Trustee Act 1978* to provide a meaningful avenue for prisoners to pursue civil claims against QCS where they experience violence in prison.

2.2 Excessive use of force by correctional officers

PLS believes there is a culture of excessive force adopted by correctional officers, particularly when working with prisoners who are placed in solitary confinement, in detention units and maximum security units. PLS agrees with the conclusions of the Commission's Issues Paper in that one of the reasons for the rise in complaints of assault and excessive force stem largely from the growing prison population and the strain this has placed on staff, prisoners and infrastructure.

However, it is also our experience that prisoners with cognitive and psycho-social disability are more likely to experience placement in solitary confinement and excessive use of force by correctional staff. Many of our clients have commented they had never experienced use of force by correctional staff until they were placed in solitary confinement.

PLS believes there is currently limited recognition of the connection between prisoners' disabilities and their challenging behaviours. This can result in conflict between prisoners and correctional staff quickly escalating and force being used which could have been avoided were more appropriate communication methods adopted. The Prison Mental Health Service is available for those who meet the eligibility criteria, however it is chronically under-resourced and operates independently of QCS staff who make decisions about when to use force against a prisoner. There is no equivalent service for prisoners with cognitive disability.³ While there are QCS psychologists working within correctional centres, they often lack access to the tools required to identify cognitive disability. PLS considers there are significant numbers of prisoners with undiagnosed cognitive disability which impacts their behaviour and ability to comply with rules and directions. This, in turn, results in these particularly vulnerable

¹ Part 12B of the *Corrective Services Act 2006* (Qld).

² Part 7 of the *Public Trustee Act 1978* (Qld).

³ The Prison Mental Health Service can only work with prisoners with mental illness who meet their eligibility criteria. They cannot work with prisoners with cognitive disability (unless the prisoner also has a diagnosed mental illness which meets the criteria for the prison mental health service).

prisoners experiencing high numbers of incidents with correctional officers and being subject to use of force more frequently than prisoners without disability.

PLS believes there needs to be a significant increase in medical services available to prisoners, including additional funding for mental health services and more vigorous screening for all types of disability on entry into custody. PLS also considers the introduction of services for prisoners with cognitive disability is required to ensure that appropriate planning can be made by correctional staff to work with these prisoners appropriately in view of their special needs.

3. Flaws in the investigative processes

PLS considers there are systemic problems with how misconduct and corruption complaints are currently investigated. The result is a lack of effective and impartial oversight which increases the likelihood of incidents of excessive use of force given the absence of an effective deterrent.

3.1 Internal Review Processes

As identified in the Taskforce Issues Paper, internal agencies with oversight of QCS facilities include the Intelligence and Investigations Branch, the Ethical Standards Unit and the Office of the Chief Inspector. PLS has two primary concerns with the way in which internal accountability mechanisms operate. First, their investigations often merely confirm the statements of the relevant correctional staff without substantial investigation. Second, their perceived or actual lack of independence limits the likelihood that prisoners will engage with them.

For example, PLS is aware of cases where the Intelligence and Investigations Branch narrow the scope of investigations about use of force into whether the prisoner should be charged, without consideration of whether the use of force was authorised by correctional staff. Further, it is the experience of PLS that reports written by bodies such as the Official Visitor and the Ethical Standards Branch often replicate the statements made by correctional staff and largely ignore prisoner testimony.

Irrespective of the standard of investigations, there is a strong perception amongst prisoners that these agencies not independent. This results in many prisoners believing they are a futile or even unsafe means by which to resolve their complaints.

3.2 External Review Processes

The CCC and the Queensland Ombudsman are the two external review agencies available to prisoners for corruption complaints within QCS facilities. Both agencies generally require that prisoners raise their complaints with QCS in the first instance. This raises obvious concerns

about reprisals and lack of independence as outlined above. Correctional officers can make prisoners lives difficult without obviously breaking any rules. One example of such behaviour that we have observed following prisoners making complaints is correctional officers regularly demanding strip searches without any clear cause. We are also aware of cases where prisoners have been assaulted by other prisoners on instruction from correctional officers after the prisoner has made a complaint. PLS considers there are currently no meaningful protections for prisoners who wish to report wrongdoing of correctional staff.

PLS is also concerned about the way in which information is obtained by external agencies placing prisoners at risk. For example, we are aware of cases where written complaints to the Ombudsman, made through the 'blue letter' system, have not reached their destination and instead been provided to the General Manager of the prison concerned. We are also aware of CCC investigations where officers attend the prison to personally interview the prisoner who made the complaint. This method of collecting information places the prisoner at risk because staff and prisoners can reasonably guess the prisoner is a potential complainant or witness.


4. Conclusion

PLS is very concerned about the very levels of violence in prison and in particular, the use of excessive force by correctional officers against the most vulnerable members of the prison population. We also consider there are significant deficiencies in the investigation processes available to address violence in prison. We hope to be provided the opportunity to speak with Taskforce Flaxton in person about these concerns so that we can provide specific examples.

PLS also believes that it is vital for this Taskforce to hear from prisoners as a primary stakeholder impacted by corruption risks in Queensland Corrective Services. We would appreciate information about whether the CCC intends to interview prisoners as part of this investigation, and if so, what protections will be implemented to ensure that participants are not the victims of reprisals.

Thank you for your consideration of this submission.

Yours faithfully



Peter Lyons
Director / Principal Solicitor
Prisoners' Legal Service Inc.