



CRIME AND CORRUPTION COMMISSION

TRANSCRIPT OF INVESTIGATIVE HEARING

10 CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,
FORTITUDE VALLEY WITH RESPECT TO

File No: CO-18-0360

TASKFORCE FLAXTON
HEARING NO: 18/0003

20 DAY 2 – TUESDAY 15 MAY 2018
(DURATION: 1 HR 4 MINS)

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LEGEND

30 PO Presiding Officer – ALAN MACSPORRAN QC
CA Counsel Assisting – GLEN RICE QC
INST Instructing – AMANDA BRIDGEMAN
HRO Hearing Room Orderly – ISABELLA PATTON
W Witness – PHIL CLARKE
LR Legal Representative – N/A

- PO Thank you, Mr RICE.
- CA Commissioner, there have been two other witnesses scheduled for this afternoon: Mr CLARKE, the Ombudsman; and Ms GREENWOOD, a representative of ATSILS. Mr ZHOUAND has kindly agreed to stand down for the time being, if we can interpose those two witnesses.
- 10 PO Certainly. Thank you.
- CA I call Phillip CLARKE.
- PO Mr CLARKE, do you prefer an oath or an affirmation?
- W An oath is fine, Commissioner.
- HRO Please take the Bible in your right hand and repeat after me.
- 20 W The evidence which I shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help me God.
- CA Sir, is your name Phillip CLARKE?
- W It is indeed.
- CA And you occupy the position of Queensland Ombudsman?
- W I do.
- 30 CA You have been given a notice, have you not, to attend this inquiry today?
- W I have.
- CA Can I show you a copy of this, and can you tell me if it is a copy of the notice you received?
- W It is.
- 40 CA I tender that attendance notice.
- PO Exhibit 26.
- ADMITTED AND MARKED EXHIBIT 26
- CA You also sent a letter to the Chairperson in response to an invitation to make submission?
- W I did.
- 50 CA Can I show you this. Is that a copy?
- W Yes, that is the letter.
- CA I tender that letter of 13 April.
- PO Exhibit 27.

ADMITTED AND MARKED EXHIBIT 27

- CA For how long have you been Queensland Ombudsman, Mr CLARKE?
- W Since January 2011.
- CA You had previous positions in leadership positions, can I say, in various departments prior to that?
- 10 W Indeed, I did.
- CA They include Justice and Attorney-General?
- W Justice, yes.
- CA Local Government?
- W Department of Local Government, yes.
- 20 CA You had a role in Emergency Services, I think, before that?
- W For a short period, I did, yes.
- CA You spent a longer period in the Department of Education and Training?
- W Yes, indeed.
- CA You have some tertiary qualifications, I think?
- 30 W I do.
- CA Master of Regional Science from the University of Queensland?
- W That's correct.
- CA Diploma of Teaching, Griffith University?
- W Yes.
- 40 CA And Bachelor of Applied Science from QUT?
- W That is correct.
- CA Your function is governed by the Ombudsman Act; am I right?
- W That's correct.
- CA Would you mind giving us an overview of your function?
- 50 W The Ombudsman Office is part of the administrative review and integrity system for Queensland Government. It has been in existence since 1974 and has two principal objects under the Act. One is to provide citizens with a way to have decisions and actions of public sector agencies investigated and reviewed, and the second object is to assist agencies to improve their public administration and decision making.

The Act also sets out, of course, the powers I have to undertake those investigations, consider complaints, et cetera. They are quite extensive powers, particularly the Part 4 powers under the Act, which are roughly equivalent to a judicial inquiry. It also states those things which I do not have jurisdiction to oversight. I can go into the jurisdiction, if you wish.

10 CA Could we give that a function? We will focus towards Queensland Corrective Services.

W Queensland Corrective Services is an agency for the purposes of the Ombudsman Act, and therefore I have jurisdiction to investigate the actions and decisions of Queensland Corrective Services. It is particularly important because some decisions of Queensland Corrective Services are not otherwise reviewable.

CA Queensland Corrective Services has two of its correctional centres operated by private contractors.

20 W Yes.

CA What jurisdiction do you have over them?

W I have jurisdiction over both of those centres through the contractual arrangements that have been established for their providing services to the department. Essentially, they are treated exactly the same as publicly owned and operated correctional centres, from my point of view.

30 CA Could you tell us in practical terms how that kind of external oversight that you've described generally is implemented?

W There are a number of different dimensions to it. First of all, as with any other agency, we take complaints about corrective services facilities and assess/investigate those matters as a complaint or on my own initiative, essentially the same as I would do across other public sector agencies.

40 Peculiar to corrective services, we also have our investigations or visiting program which is undertaken as part of the administrative improvement - that is the second object under the Act, the administrative improvement function that we have. In undertaking those visits and inspections, my officers do not use specific powers under the Ombudsman Act, compulsory powers, for example, to acquire documents, et cetera. We have a very high level of cooperation with correctional facilities, and information we request is generally provided in a very timely way.

50 So those two things. We visit each and every - the plan is to visit each and every correctional facility annually, at least annually, and generally we would achieve that; most years we would achieve that. Occasionally there are circumstances, for one reason or another, why that isn't achieved, but it is unusual for it not to be achieved.

CA You have also published a number of reports directly related to the performance of Queensland Corrective Services. We will come to those a bit later, perhaps, but which function do they fall under?

W They would fall under the investigative function, and the powers under

the Ombudsman Act to investigate complaints and/or on my own initiative would be the basis for the preparation of those reports.

CA Can we start with complaints, then.

W Yes.

CA By what means do prisoners, for example, make complaints to your office?

10

W They can make complaints by a number of channels, but principally the two main ways that they come to us are either in writing, where a prisoner will write directly to my office, and that is a privileged communication, or they can do it through the prisoner phone link, a free and confidential telephone service which comes straight to my office. They would be the two principal ways that a prisoner would make a complaint directly. And then, thirdly, third parties on behalf of prisoners will often make complaints to the office as well.

20 CA You mentioned the telephone method.

W Yes.

CA Do you know to what extent prisoners have ready access to a telephone facility to make complaint across the various centres?

W I am reasonably confident that that continues to be available to prisoners on a regular basis.

30 CA Have your visits, for example, revealed anything to the contrary?

W Yes, they haven't revealed anything to the contrary. From time to time, we find that the prisoner phone link service - for example, the phone lists may be out of date, those sorts of things, but they are somewhat - they are now, these days, unusual findings from a visits program. My officers will usually test the prisoner phone link telephones to make sure that they can get through to our office, and sometimes they will test it for other agencies as well, so that we are assured, for each of those visits, that that telephone link works to my office.

40

We are also aware that through questioning of prisoners, discussions with prisoners in the visits, and with the PACs, the prisoner advisory committees, as well, the telephone service is well regarded and is generally reliably available.

CA Is it confidentially available, do you know?

W It is a confidential service, yes. I have not-

50 CA You have confidence in that?

W Yes.

CA That when they speak to your officers, they can do so privately?

W They do, directly to my office. It is not filtered and it is not recorded.

- CA Do you know if the fact of their making a complaint to your office is noted within the facility?
- W No, I can't comment on that, I'm sorry. I must say it is not something I have had any adverse comment about.
- CA Perhaps that's revealing.
- 10 W Yes.
- CA Which is the preferred method - the telephone or correspondence?
- W I think from a prisoner's point of view, I'd generally say that the prisoner phone link, the telephone service, would be the most often used and thereby perhaps infer that it's the preferred style of contact.
- CA Are you able to give us some idea of the volume of complaints?
- 20 W Of complaints in total?
- CA Yes.
- W Across all of the facilities in Queensland, it has been relatively consistent across the last three years. If I add correctional facility complaints, or QCS complaints, and parole complaints together, it's between about 800 and 900 complaints per year. Various centres have different proportions of that, depending upon their scale and some other dimensions of the correctional facility, for example, whether it is a remand centre, et cetera.
- 30 CA I don't want you to reveal more than you should, but are you able to tell us, in general terms, some of the topics which are recurring?
- W The range of topics about which we are contacted is very wide ranging. It ranges, at the most simple, to lost property and a range of other quite straightforward matters, and it can range all the way up to allegations of corrupt conduct, excessive use of force, complaints about decisions in regard to transfer of prisoners, so very significant decisions in terms of the life of a prisoner, are the two extremes of those types of complaints we get.
- 40 W I have to say that in proportion, if I could describe it that way, the very serious complaints are necessarily a relatively small proportion of the complaints we get. We do get a great many complaints about the day-to-day lives of prisoners.
- CA What limiting criterion is there under the Act for your reception of and action on complaints?
- 50 W There are a number of limitations under section 23 of the Act, which relate to the timeliness of complaints and a number of other criteria. However, in regard to taking prisoner complaints, the biggest filter, if I could describe it that way, through which complaints pass is whether or not they have already been raised with the general manager of a facility. If they haven't, we would generally ask the prisoner to do that before

we intervene. That is purely a matter of capacity across the system. My jurisdiction is very wide, as we have already discussed, and the capacity of my office to undertake investigations of all complaints brought to the office, irrespective of the agency with which we deal, is limited by the scale of the office, by the size of my office.

CA Prisoners have various means of making complaint, don't they, not only to your office?

10 W Yes, they do.

CA The body that you spoke about obviously choose to complain to your office. Do you accept that they might be influenced in doing so by the fact that you are an external oversight body?

W Yes. I think the office has a very high reputation for its independence and I think that does give people some confidence that an external body will hear and deal with their complaint in the circumstances.

20 CA Do you find that it represents any disincentive to complaints being made to your office that a proportion of them find their way going back to the centre, when that may not have been the prisoner's choice in the first place?

W If there are circumstances by which the prisoner submits to us that it's unreasonable to send them back to the centre because of any circumstance or they are fearful of the consequences of making a complaint, then we will very much take that into consideration about whether we deal with the matter directly ourselves or perhaps we might refer it in to the department, QCS itself, formerly the Department of Justice and Attorney-General, by another means outside of the centre, so we get a greater level of confidence that those issues that are of concern to the prisoner will be much more adequately dealt with. For example, it might be sent to an Ethical Standards Unit within a department. Those sorts of alternatives might be chosen.

30

CA So in practical terms, if a prisoner telephones you or notifies you by mail of a complaint, it is not apparent whether they have taken it up with the centre in the first instance?

40 W Yes.

CA Is that your first response, to advise them to do so?

W Our first response would be to ask them if there is a reason why we shouldn't do that, and if there is not a reason why we shouldn't do that, yes, we would request them to raise the matter. One of the requirements, of course, of the department, both the former Department of Justice and Attorney-General and now Corrective Services, is that they do have a properly functioning complaints management system.

50

Now, the discretion open to me under the Ombudsman Act largely allows me to operate in the space of referring matters to an agency, and that referral is not a referral power under the Act; it is an administrative decision of my office, and it's the alternative to declining to investigate the matter outright.

CA You mentioned that Ethical Standards Unit is one possible avenue of referral.

W One, yes.

CA Are there others?

10 W It can be referred just directly to the chief executive of the agency, with a specific request that it be dealt with through the Ethical Standards Unit, or without that request, so it can be dealt with otherwise by a senior officer in the department rather than going to Ethical Standards. Largely, that discretion would sit then with the chief executive of the agency if I've sent it there.

20 W If the matter has particular issues or particular concerns associated with it, they would typically be raised with the chief executive as part of that referrals process, for example, the confidentiality of a prisoner - those types of things.

CA I just want to ask you for your view as to whether there are, in your experience, disincentives that you are aware of that prisoners may feel to making a complaint?

W It is not really an awareness; I have to say that. We have statements made from time to time in discussions with prisoner advisory committees, in our visiting program, that prisoners are reluctant to make complaints from time to time.

30 CA Of any kind or to you?

W I'd have to say it's more general, of any kind. That would be the comment I'd have.

40 W I think if it was a question of the prisoner's concern about the confidentiality of a matter, my strong sense is they would be more confident with the external body than the internal processes within a correctional facility. However, that is a sense that I hold rather than having evidence to that fact.

CA Beyond what you describe, which is just a sense, and perhaps comments that may be made to you from time to time, do you have anything more concrete on which to base any view as to whether there is under-reporting of maladministration?

50 W As part of the visiting program, we have a number of structures around visiting programs. These are checklists and run sheets, et cetera, that we use to make sure that we cover off key areas within the visiting process. One of those key areas, as I have alluded to, is discussions with the prisoner advisory committees.

If we have discussions with prisoner advisory committees and there is a relatively, say, low history of complaints from a particular centre, we tend to informally correlate those things. For example, if we have a low number of complaints from a facility, and yet when we talk to PACs we get a very high level of dissatisfaction, then that doesn't correlate very

well. I have to say in general terms the correlation is quite reasonable across the visiting program. That is not an absolute measure, but it is one of the ways we get confidence that the avenues available to prisoners to report and to make complaints are available, they're actively available. But I cannot, in all honesty, put a reliable percentage on whether I think it is a half of complaints that get reported or two-thirds or a third, or otherwise.

10 CA For what it's worth, do you know whether any particular centre or centres are over-represented, as it were, in terms of volumes of complaint, or perhaps under-represented?

W I haven't done the analysis by factor, if I could say that, but it's reasonably apparent that the larger centres, of course, are going to generate more complaints. That's a natural expectation and correlation.

20 At some centres where they have different types of prisoners, for example, a high proportion of remand prisoners, you might get an increasing proportion of complaints. Across the board, that analysis is probably possible on the data that I have, but the data itself is subject to certain limitations of its capacity to be analysed. The analysis we have done recently about patterns of complaints coming from the visiting program, et cetera, gives indicative patterns, but they are not such that you can put reliable proportions against them.

CA On the footing that a complaint is accepted in your office, can you describe the management process from there?

30 W Yes, I can. A complaint in the office that is accepted for investigation will, first, go through what we call a merits assessment process. That merits assessment process is generally undertaken on the papers, so either the written submission, a transcript of the telephone call or at least notes from the telephone call, revision of documents if we have requested documents from the centre or from the department, and then we will look at those papers and determine whether the complaint itself has sufficient merit to proceed or whether it is something we can informally resolve by discussions with a corrective facility.

40 Many of the lifestyle-type complaints I alluded to earlier are resolved in that way. We get a lot of resolution over the telephone with correctional facilities on the basis of questioning the facility itself, asking them to either review a decision or look at the circumstances, et cetera. So we do get high levels of informal resolution.

50 If a matter proceeds into a longer investigation - and if I could give you an indicative flavour for complaints proceeding, across all of the complaints received last financial year, we received about 7,000 complaints right across the jurisdiction. About 1,200 of those cases proceeded to investigation and about 200 will have had some sort of rectification of the outcome of the investigation.

I don't believe corrections is particularly different from the general flavour of complaints across the whole of the public sector. So if a matter proceeds into longer investigation, then we may interview parties. We may seek corroborating evidence from other sources. We conduct, essentially, a comprehensive investigation and make a decision about

how to proceed.

CA The complainant, presumably, is notified of the progress of any complaint that you accept?

W Yes, correct.

CA Is that done by mail?

10 W In regard to prisoners, it's likely to be done by mail unless they contact us through the phone link, because we have no way of phoning them directly.

CA Is that privileged mail?

W It's privileged mail, yes.

CA Is it marked in some way to indicate that?

20 W It is confidential. When it is sent to the prisoner, it is marked "confidential", yes.

CA Does the correspondence indicate by what is on the envelope that it emanates from your office?

W Yes, it does.

CA So although the content is privileged, in the processing of mail received at the centre, it would be noted that a certain prisoner is receiving correspondence from the Ombudsman?

30

W I guess that could be the case. I think the external identification of the mail makes it easier for it to be properly handled in the privileged mail process as well.

CA Is that why it is done?

W It's one of - well, it's not particularly - all of our complainants are dealt with confidentially, not just prisoners.

40 CA Your function is limited, is it not, to the making of recommendations?

W Yes. Ombudsmen - their jurisdiction right across the world is generally limited to the making of recommendations. That has its advantages, and there would be some who would argue it has its difficulties as well.

Within the Ombudsman Act, there are also escalation opportunities for me. For example, if I make a recommendation to a chief executive that is not actioned in a reasonable way to my satisfaction, I have processes to escalate it to the premier and ultimately to the floor of the parliament, if I wish to.

50

CA So there is potential for political redress, I suppose?

W There is potential for, essentially, highlighting the failure of the agency to deal satisfactorily with that recommendation, yes.

- CA Let's focus on corrective services. If you make a recommendation and it pertains to an aspect of corrective services that needs some improvement, how have you found the implementation of any recommendations that you have made?
- W Generally, as I noted earlier, we have a very positive relationship with Queensland Corrective Services and, I might say, generally across the public sector. For example, in regard to one of those major reports you alluded to earlier, there are sometimes significant restrictions on agencies being able to make the changes, the recommendations, whether that is down to resources or other complicating factors, but I generally find that recommendations accepted by chief executives of agencies are accepted in good faith and they make a significant attempt to try to implement those recommendations.
- CA Turning to the visits, you described that earlier. You aim to do that annually?
- W We aim to do each centre at least once annually, yes.
- CA Do you have a particular objective in mind in undertaking those visits?
- W It is really to review the systems and processes that apply - the administration of the centre. Our focus is on administration. So going to the centre, as I alluded to earlier, we have a number of instruments that we use to guide our investigations. They have been built up over the years. They focus, for example, on segregation, breach hearings, quality of support for prisoners, access to prisoners, good-quality decision making. Generally, it is an all-encompassing visit to look at the administration of the facility.
- Now, it is necessarily done by a sampling process. For example, in regard to breach hearings, my office has access to the IOMS system, and through that access to the IOMS system, we draw a sample of breach hearings prior to going to the centre. We view any video material that is available for that breach hearing, look at those breach hearings, and then if we have concerns about them, we'd raise it as part of the visit.
- So we sample the administrative processes and then look at a whole range of records, in particular, registers, including the removal of clothing register. If there are prisoners in segregation, we will look and make sure they have the necessary approvals to be separated, whether that is a safety order or some other form of order, that that is being done appropriately and that it has been authorised appropriately according to delegation. So we are trying to make sure that the centre itself is administered properly and thoroughly according to the law, in the first instance, but also local policies and procedures and departmental policies and procedures.
- CA You would be aware of the existence and function of the Office of the Chief Inspector of Prisons.
- W Yes, I would.
- CA What does your style of inquiry on your visits add to that function?
- W We receive the Chief Inspector's reports as part of the intelligence

we receive prior to undertaking a visit, so it certainly does inform us in our independent oversight role. It certainly does inform us of any recent and/or recurring issues in that particular centre, so we are able to target it to the centre, if I could use that language. We are very appreciative of that and we have had that opportunity for - I believe, all of my time as Ombudsman, we have had access to Chief Inspector reports.

10 The difference between our approaches - the Chief Inspector's role is an internal review particularly around risk and best practice, is the way that I summarise it, whereas our review is very much an external review of the agency, making sure of its systems, processes, et cetera. There may well be significant overlap between those two things, I admit that. It is the independence of the office, I think, that we rely upon to give credence to our visits.

CA Will that lose some of its force if there is an independent Chief Inspectorate established, as has been mooted, you would probably be aware?

20 W I think unless there are specific changes to the Ombudsman Act, it would not be dissimilar to other changes that government has made over time - for example, the establishment of the Health Ombudsman's Office. The Health Ombudsman has a specific jurisdiction to deal with health complaints, but the Health Ombudsman's Office is in jurisdiction to me, and I get complaints about the Health Ombudsman's handling of complaints, so to speak. So I would anticipate, unless the government chooses to make an independent inspectorate out of jurisdiction to me for specific reasons, that those circumstances may be quite similar.

30 CA Do you take complaints from prisoners during your visits to the centres?

W In recent times, we focus on directing prisoners to make their complaints either via the prisoner phone link or to us in writing. If the complaint is, as I've said, somewhat of a lifestyle complaint from the prisoner or it comes to our attention through the PAC, our exit visits with the general manager from those inspections or visits gives us an opportunity to also raise some of those matters, and we can deal with them informally during the period of the inspection. In other words, they will not proceed outside the inspection itself.

40 CA Do the prison visits that you make result in some kind of report that is made available?

W Each one results in me writing to the chief executive of the department about the outcomes of that inspection. As I said before, the inspections regime is undertaken as part of the administrative improvement object under the Act, and I don't use formal powers. For me to be able to form opinions and make recommendations, I would actually have to move into the investigation space and use powers under the Act.

50 The outcome of those inspections is typically by letter to the chief executive, where we will make commentary about the elements of the inspection, those which we found satisfactory, those which we found less than satisfactory, and if there is a recommendation to change something or review something, it would generally be an informal recommendation, although from time to time recommendations are made through that

process, but it is essentially in there. As I said, they are not formal recommendations under the Ombudsman Act. They are an administrative improvement approach.

- CA The centres are very wide in terms of their operations. You, on the other hand, perhaps have finite resources. Do you go to the annual prison visits with a particular focus in mind, such as, "This year we are going to focus on a particular agenda", or is there some standard methodology that applies every time you go somewhere?
- 10 W We generally have a relatively standard agenda as well as thematic issues that arise from time to time. At the moment, the most significant thematic issue is overcrowding. In addition, we are also looking at what is called ramping, in the vernacular, in prisons, which is the searching process they use for contraband. Both of those things are significant issues in terms of themes of current inspections and have been - well, overcrowding has been a theme for some years now.
- CA Is it a theme of complaint?
- 20 W There are significant proportions of complaints which relate to overcrowding or issues that arise from overcrowding, yes.
- CA Can you give us some idea of the implications of overcrowding as they are conveyed to you by way of complaint?
- W Typically, the sorts of complaints that would come as a result of that would be access to services or programs. It might be access to medical services. There may not simply be enough medical staff to provide the services or there may not be enough opportunity to get access to those services because of the overcrowding. Or, indeed, there may be difficulty in providing the overcrowded volume of prisoners with access to a range of other programs, including drug and alcohol programs, antisocial behaviour programs, and a whole range of others, as well as access to facilities like gymnasiums, ovals, et cetera, for prisoners to get some sort of meaningful recreation time.
- 30
- W As overcrowding becomes more and more significant, and I think it is fair to say it is becoming more and more significant over time, we also see there is an intersection between that and out-of-cell time. There seems to be a reduction - I cannot put a number against it, but there seems to be a relatively significant pattern of reduction in out-of-cell time, whether it is through lockdowns of facilities for various reasons or just simply the overcrowding itself is making it more difficult.
- 40
- CA Is that a matter that you observe by inspection or on report by complaint, or both?
- W Both, I'd say.
- 50 CA Do you get any sense of any heightened safety concerns for staff arising from the overcrowding?
- W Through the inspections program, yes. We get commentary from staff that some of the explanation that arises from, for example, lockdowns and reductions in out-of-cell time for prisoners, certain practices for dealing

with prisoners, is as a result of there being significant overcrowding. Therefore, whether it is a temporary staffing issue, a staff reduction in numbers for some reason at a particular facility, or whether it arises from just the overall number of prisoners in a facility and being able to deal with that number of prisoners in a facility that is designed for a much smaller population, just the physical space that is available, the circulation space, creates more of a complex and difficult dynamic, if I can describe it that way. Correctional facility staff are necessarily required to deal with that, and that does present its challenges.

10

CA Are any observations made to you concerning staffing levels in an environment of increased populations?

W Yes. As part of the inspections regime, we do get observations and, indeed, specific commentary about inadequacy of staffing levels in some circumstances. Those comments have been made around the adequacy of medical staff, for example.

20

There has been commentary around the availability of program staff sufficient to deliver programs. And there has been perhaps less so - or more general, is perhaps the best way to say it, more generalised commentary around the staffing levels for corrections staff, correctional officers themselves.

CA Did I understand you correctly earlier to say that circumstances of segregation is one area of interest on your visits?

W Yes, it is.

30

CA Does that involve any review of the number and circumstances in which safety orders are made?

W Unless we became aware of a circumstance that there was some unusual pattern in the making of safety orders, we probably wouldn't draw that conclusion. What we do is go through detention units, make sure we visit detention units, and the like, make sure the orders are properly made, that they're available to the prisoner against whom the order stands, so the prisoner understands the safety order and the reason why they are being detained separately, and we make sure there are no gaps in the process, so it is properly made by a delegated officer, there is not some gap in time if you have back-to-back orders, for example, and just make sure that that process in and of itself is at least robust in terms of the recording of the decisions and the proper making of those decisions.

40

CA There is a designated process in the *Corrective Services Act* concerning the making of safety orders.

W Yes.

50

CA Is it compliance with the process that you are looking for?

W Generally process, yes.

CA The other aspect of it is the quality of reasons for the making of a safety order.

- W Yes.
- CA Is that something you overview?
- W It's not something we would generally look at, I believe, in the visiting program, unless something is brought to our attention as part of that program, whether it is through a complaint, contact with an officer, or something. Those types of review of an individual decision would generally fall into our complaints space rather than the inspections regime.
- 10 CA Do you get complaints, for example, about the making of safety orders and the fact that they were made and they shouldn't have been made, that type of complaint?
- W I'm not aware of large numbers, no. That's not to say there aren't some, because I am not aware of every complaint that comes into the office, but it's not something I am aware of.
- 20 CA The other mechanism - perhaps there are several, but it occurs to me that another mechanism by which segregation is achieved is the breach process?
- W Yes.
- CA That perhaps takes us to the report function, because in the sequence of a number of reports your office has prepared, there was a 2009 one centred on the conduct of breaches?
- 30 W Yes.
- CA Could I just ask you about that. I know that precedes your time, but what was the trigger to make that a thematic review that was undertaken?
- W I believe at the time the then Ombudsman, David BEVAN, received complaints about the breach process, sufficient to raise the issue to be a theme, a relatively common occurrence, and therefore decided on his own initiative to investigate the handling of breach proceedings within a correctional facility.
- 40 CA There were a number of adverse findings, I think, made arising from that investigation?
- W Yes.
- CA Quite a number of recommendations were made for improvement?
- W Yes.
- 50 CA What was the follow-through on the recommendations that were made for improvement to the processing of breaches?
- W I can't talk to the follow-through on the original report, which, as you said, pre-dated my time. But the recent experience, certainly in the visits program, in the oversight work that we do by visiting correctional facilities - as I said, we choose a small sample of breach proceedings prior

to undertaking a visit. We view those breach proceedings, and if there are any deficiencies in those breach proceedings, we bring them to the attention of the management or we might choose to follow it up more specifically. In fact, if a small sample of breach proceedings were to demonstrate an issue, we would then draw a bigger sample, for example, and see whether that is actually leading to some more systemic flaw in the breach process.

10 I have to say, in acknowledgement of QCS, that those officers who were in my office in 2009 and are there now and still participating in the oversight visits - their observation to me is that breach proceedings are now handled far more successfully than they were at the time of the 2009 report.

CA Do you still nonetheless get complaints on that subject, about the conduct of breaches?

W I don't think we get a large number of complaints, but from time to time we do observe failures in the breach process.

20

CA Because they are conducted at officer level, aren't they?

W They are conducted at officer level, depending on the respective facility. For example, in one recent inspection, we did see some issues in regards to the practice of conduct of the breach proceeding, in particular, the capacity of the subject prisoner to be able to call a witness in that process on his own behalf and then the way that the prisoner was directed, or not, to the capacity to have that decision reviewed.

30

So there are failings. I am not saying that the breach process is perfect. My observation is that it has generally vastly improved over the last series of years, generally due to the infrastructure support that is now provided to officers through the COPD, the procedures directive, and, indeed, quite a lot of meeting infrastructure, the checklists and scripts, et cetera, to assist officers to conduct each breach hearing in a proper way.

CA You mentioned the existence of a practice directive. Do you know how recently that directive was devised and implemented?

40

W I must admit, I don't know the date on that.

CA Presumably there wasn't such a thing in 2009?

W I think there were directives in 2009, but they were nowhere near as detailed and as comprehensive as those which exist today.

CA You have had occasion, since the formulation of what now serves as the practice directive, to observe its quality?

50

W Yes.

CA And you are satisfied that, provided it is adhered to, it will result in a procedurally fair proceeding?

W Yes, I generally hold that view. I don't think there are - based upon my understanding, there is not a systemic issue with breach proceedings.

There may be local issues which arise from time to time, but I've not yet seen evidence that there is an ongoing systemic issue with the conduct of breach proceedings, or at least the system for the conduct of breach proceedings.

CA In this chronological sequence, another of the public reports, which again pre-dates your office, is to do with the classification and movement of prisoners in 2009.

10 W Yes.

CA What was the trigger for that, do you know?

W Again, I think it was complaints that the Ombudsman had received about the decisions and, in particular, the lack of understanding by people for the decisions, in other words, the reasons and the clarity for some of the decisions that were made. So the Ombudsman at the time decided to investigate that matter.

20 CA Was it, again, a matter of process, so that the process is observed and reasons are given with sufficient clarity so that people can understand rather than the reasons for the decision that has been made?

W Again, I can't really comment on the original investigation. My understanding of the failures, if I could call them that, or the weaknesses in the classification system was that it largely revolved around two key aspects. One was the failure to give reasons for the decision so that the prisoner could actually understand why the decision was being made and the evidence that was being relied upon to make that decision, and then, secondly, a failure to actually advise prisoners of any capacity to have the chief executive review those decisions.

30 CA Classification is of major importance to a prisoner's daily life; am I right?

W Indeed.

CA And the prisoner's progress through the corrective system?

40 W Yes.

CA In the current environment of overcrowding, can you comment on whether altered security classifications in favour of a prisoner are able to be implemented?

W It's quite apparent that overcrowding has an impact upon the capacity to move prisoners from one facility to another or between classifications within a facility.

50 CA Are reclassifications nonetheless made but, in some instances, not able to be acted on, or are they not made for that reason?

W I have a sense that's the case, but I can't give you specific examples. I would have to look at the matters that we have in detail to be able to provide that response.

I do have complaints, for example, in the office recently where the

decision has been made to transfer a prisoner between facilities, and the principal reason for that was overcrowding, availability of space in the facility from which they were sent.

CA On that same or similar subject of overcrowding, you prepared a report in 2013 concerning Brisbane Women's?

W Yes.

10 CA But that was not made public?

W No.

CA Was there some reason for that at the time, by contrast with your 2016 report?

20 W At the time I prepared that report, I presented it to the then Commissioner, Commissioner MORRISON, and met with her to discuss my concerns. She, at the time, gave me considerable confidence that she understood the challenges associated with overcrowding and that she had a series of strategies that she was preparing to put into place that would have a positive impact on overcrowding. So from that point of view, I was prepared to not make the report public at the time, provided the Commissioner undertook those programs.

CA Is making a report public one form of the kind of escalation that you spoke about before?

30 W Indeed it is, yes.

CA That is what happened in 2016; am I right?

W Yes. I was not satisfied, ultimately, that the outcome for Brisbane Women's was sufficient. Indeed, the overcrowding got worse between 2013 and 2016, so I then decided to publish a report in the parliament.

CA Do you accept the limitations that exist on a downstream agency, like corrective services, on what can be done for overcrowding?

40 W Yes, I do, and I believe I made that statement in the 2016 report, that there are limitations on corrections and, in many ways, they are very much the agency charged with responding to the issues rather than the agency responsible for the issues. For example, changes to sentencing rules, changes to the availability of alternative programs, changes to a whole range of things in the criminal justice system can have impacts upon overcrowding and create greater numbers of prisoners. However, at the same time, I think corrections does have a number of levers that they can use.

50 CA What are they, Mr CLARKE?

W I think, in particular, things like - I talked before about the availability of programs to assist prisoners to move back into the broader community and in fact influence the likelihood of reoffending, for example; the support given to prisoners in difficult family situations so that they are then likely to have the supports, the family supports, et cetera, to

reintegrate back into the community with a lesser likelihood of offending; the capacity to do drug and alcohol type programs. There are those programs for prisoners who have been sentenced and who are moving back into the community. You then have the very large proportion of prisoners who are detained on remand in centres and whether in fact there is a capacity to have alternative arrangements, through corrections, for oversight of persons on remand, or persons who are bailed, in fact, as an alternative to remand, before they proceed to court and ultimately get their matter determined.

10

Those types of programs, given the proportion of prisoners in certain facilities where there are high remand numbers of prisoners and large numbers of prisoners who are there for breaching parole, in my view, is ground that corrective services should investigate to try to manage its own demand for prisoners.

CA

Is it in that way, in terms of demand reduction, that things like the quality of accommodation can be improved? I say that because you saw in 2015-2016 on visiting - the photographs are in the report, and so forth, that are rather unsavoury, if one may say, about the way women are accommodated.

20

W

Yes.

CA

Unless population can be reduced, is there action that corrective services could take to improve the quality of accommodation, that is to say, quality of life?

30

W

Apart from the obvious answer, which is a building program, to build more facilities, which is a very expensive exercise and is not currently government policy. We did make recommendations about trying to improve the humanity and privacy in association with doubled-up cells, particularly around use of showers and toilets. We did make recommendations about access to programs, making sure that prisoners have proper access to their medical treatment when they need it, that prisoners have access to proper education programs so they get the opportunity to maximise the benefit, if I could call it that, or maximise their time in prison for their own benefit.

40

The availability of programs is also influenced by overcrowding, because the infrastructure available to support the programs - and that's assuming that there would be sufficient funds to run those programs - is under such pressure that the actual capacity to run the programs in centres that are under such pressure is just physically limited.

50

Part of the recommendations about reducing overcrowding is about being able to run programs in a more reasonable way. But as you said, you pre-empted your question with the statement "if overcrowding continues". If overcrowding continues, I think the circumstance is going to get worse if overcrowding gets worse.

But it is very, very difficult to see how programs can have an impact on demand, can have an impact on either recidivism rates for prisoners or other aspects in the remand space, without some serious additional resourcing and the capacity of the centres to be able to focus on working with other agencies, notably the Department of Justice and

Attorney-General, as a network of agencies in the criminal justice space to try to reduce demand. I think reducing demand is the only real alternative to building more infrastructure, in my view.

CA You reported on those things as far as Brisbane Women's is concerned in September 2016. It is now some time since then.

W Yes.

10 CA Can you inform us about the implementation of such recommendations as you made then?

W I currently have a request in to the Commissioner for an update on all those recommendations.

20 At the time of the report, or much more closely to the time of the report, I was advised that there were significant additional resources available to the department to provide more program support, to try to support prisoners to reintegrate back into the community, in particular, to deal with breaches of parole, so that the amount of reoffending that was being experienced in association with prisoners at Brisbane Women's was being directly targeted through that program. I think it was half a million dollars and flowing on to be \$1 million in a subsequent year, so not insignificant amounts of money. But that is the most significant change that has been made that I'm aware of to date. I am looking forward to the Commissioner's further update shortly.

30 CA I am not pre-empting anything, but just as a matter of process, if you continue to be dissatisfied with the measures that are taken, having escalated the matter to a public report in 2016, is there any further avenue open to you?

W The only avenue open to me now is to report to the parliament about implementation of those recommendations. That's in regard to that specific report. That is still available to me.

40 Alternatively, I could establish terms of reference for another investigation either at another facility, across the whole system or basically decide to look at the challenges of overcrowding in another way. That's currently not something I have in mind.

CA The two reports on overcrowding that have been done both concern Brisbane Women's. Was there some reason that centre was chosen initially?

W It's the most overcrowded facility in Queensland.

CA It's not the only one, though, is it?

50 W No, it's not.

CA Some others, at least, are badly crowded?

W Yes, some others are badly overcrowded, that's correct. Brisbane Women's is about 60 or 70 per cent overcrowded at the moment.

- CA Do you see any utility in your doing anything similar with respect to any other centre?
- W Not immediately, no, unless there was some specific set of issues that arose, for example, around the treatment of indigenous prisoners. There might be some issue there. But, yes, if the point you make is that we have already made a substantial report about the issues of overcrowding, and the responses to date are unlikely, in my view, to get us back to the situation where overcrowding is not an issue, I think my latest understanding of the current state is about 8,500 prisoners, or thereabouts, even with the additional bunk-beds and other infrastructure that is being proposed, there will still be at least a couple of thousand prisoners above built capacity, and that is likely to get worse until there are changes to either presentencing or post-parole decisions to try to work on demand.
- 10
- CA For completeness, I will just make mention of the 2014 report that you did on strip searching of female prisoners in Townsville.
- W Yes.
- 20
- CA What was the trigger for that?
- W Complaint on behalf of prisoners, women prisoners, in Townsville Women's Correctional Centre.
- CA Could you remind us of the circumstances of that strip searching scenario?
- W The circumstances, in very brief summary, were that women receiving a certain type of drug, an S8 drug, were being strip searched, in the first instance, before and after receiving each treatment, each incident of medication, and after a period of time, after they were receiving. We basically worked out that it affected about 18 prisoners. Over time, those 18 prisoners had been subject to around - well, the estimate was 1,000 strip searches to receive their medication over a 10-month period.
- 30
- CA At least some were being medicated twice a day?
- W Some were being medicated - again, it is an estimate because some of the paperwork associated with the searches wasn't particularly accurate, but there were prisoners who were being strip searched several times a day to receive their medication, yes.
- 40
- CA Did that cease upon your report or prior to your report?
- W As soon as we started doing the investigation, as soon as we notified the department that I was investigating the matter, the process stopped.
- CA For how long had it been under way?
- 50
- W I believe it was about 10 months.
- CA So that scenario was in existence for that time frame in that centre, and if there had been no complaint, the 10-month duration of it before your action would rather suggest that it would have continued without that complaint?

W It may have. It may have. It depends on other factors, I guess. At the end of the day, it's certainly possible that it could have proceeded for a substantially more significant period of time, for example, until the Chief Inspectors had inspected the facility. It was an extremely unfortunate set of circumstances that continued for too long.

10 CA Was it part of your focus that a high proportion of women enter the corrective services system having been traumatised, sexually traumatised, or suffering some other trauma which happens to be exacerbated by this kind of strip searching?

20 W Yes. I found in the circumstances of that particular investigation, it was very possible, and may even have been likely, that the women who were subject to that strip searching regime - numbers of them made comments to the effect that it was dehumanising, it reminded them of a trauma they experienced elsewhere in their life, and, indeed, the practicalities of it were that it simply didn't achieve what it set out to achieve. It was looking for contraband drugs and simply didn't find them over a lengthy period of time, and continued without finding them.

CA Do you know whether any was found?

W I believe the circumstance was that there was one instance where contraband drugs were found, but they weren't found through the strip searching process; they were found by a subsequent process.

CA That is the evidence, Mr Commissioner.

30 PO Thank you, Mr RICE. Mr MURDOCH, do you have anything?

LR No, thank you.

PO Mr SMITH, do you have anything?

LR No, no application.

PO Thank you.

40 Thank you very much, Mr CLARKE. You have been very helpful. You are excused.

END OF SESSION

50