

CHAPTER 8: ACCOUNTABILITY AND MONITORING

There are a number of mechanisms for ensuring the corrections system is accountable and open to scrutiny. These relate to the organisation itself as well as to specific issues of concern to prisoners.

Kennedy discussed 'prisoner grievance procedures', recommending that formal procedures be developed and a number of these have been implemented. In addition, in the period since Kennedy reported, a number of external monitoring agencies have been established which either set standards for the operation of organisations.

External monitoring agencies

ISSUES

- . Status of the Commission under the *Criminal Justice Act*
- . The Corrective Services Investigation Unit
- . Impact of the *Judicial Review Act* and the *Freedom of Information Act*
- . The Ombudsman
- . Community Corrections Boards
- . Official Visitors
- . Inspectors
- . Community Advisory Committees
- . Prisoner Liaison Committees
- . The Chaplaincy
- . Appointment procedures for monitoring bodies appointed by the Commission
- . Codification of prisoners' rights.

Status of the Commission under the *Criminal Justice Act*

The Criminal Justice Commission was established as part of the implementation of the Fitzgerald reforms with a range of statutory duties related to the administration of criminal justice. Part of the CJC's mandate is to investigate instances of official corruption and misconduct, not only in the Queensland Police Service but throughout each agency defined as a 'unit of public administration'.

Kennedy was concerned at allegations of corruption within the corrections system and recommended the establishment of a Police Liaison Unit. A Corrective Services Investigation Unit (CSIU), staffed by police officers and attached to the Commission, was subsequently established to detect criminal activity concerning both staff and offenders. However, in practice, the Unit's activities have focussed almost entirely on criminal offences rather than official misconduct.

Although the QCSC is an integral part of the administration of criminal justice in the State, the jurisdiction of the CJC in relation to the QCSC is limited. Although the CJC may investigate allegations of 'criminal wrongdoing' by QCSC officers, it is unable to pursue issues of official misconduct which did not constitute criminal behaviour. The CJC's role in investigating official misconduct is limited to employees of a 'unit of public administration', the statutory definition of which excludes the QCSC.

In its recent consideration of the *Criminal Justice Act* the Government has decided not to identify the QCSC as a unit of public administration. Strategies are required for the CSIU to fulfil its intended role.

FINDINGS

- . The focus of the CSIU has been on criminal offences rather than official misconduct.
- . The *Criminal Justice Act* excludes the QCSC from the official misconduct provisions.
- . Strategies may be necessary to enable CSIU to fulfil the original, broader brief envisaged by Kennedy.

RECOMMENDATION

65. The QCSC and Queensland Police Service, in consultation, devise strategies whereby the Corrective Services Investigation Unit may investigate official misconduct as well as criminal activity within the QCSC.

Corrective Services Investigation Unit (CSIU)

This Brisbane-based Unit now comprises ten police officers, the salaries and allowances of whom are paid for by the Queensland Police Service, and two administrative staff whose

salary costs are met by the QCSC. The QCSC also pays for administrative overheads, vehicles, extradition of prisoners, travel allowance, and overtime and weekend allowances. The annual cost of this service to the QCSC is \$400,000.

The work of the CSIU has been largely limited to investigation of alleged offences and major incidents in correctional centres, with little focus on official corruption. In centres outside Brisbane, CSIU only deals with major offences, and matters such as deaths in custody and escapes. Local police provide an initial response for these incidents, and investigate less serious offences. A number of QCSC staff stated that there were often significant delays in investigation of offences, with detrimental effects on prisoner reclassification and parole decisions, and in the issue of warrants, creating operational difficulties in dealing with escapees. The devolution of some of these matters to local police, particularly outside the Brisbane area, seems justified. However, until 1988 this had been the case, and Kennedy recommended the CSIU in part to overcome problems which had been experienced with local police.

Currently, there is some duplication of the intelligence function performed by CSIU as the QCSC has a centrally located security and intelligence adviser and specialist positions in most correctional centres. It is argued by QCSC that it is necessary to maintain both these functions and that the interchange of information between them acts as a useful reinforcement.

FINDINGS

- . The CSIU is considerably bigger than the unit proposed by Kennedy.
- . The primary focus of the CSIU has been the investigation of alleged offences and major incidents.
- . Delays in CSIU finalising investigations and issuing warrants have created operational difficulties within QCSC.
- . There is potential for some duplication of the criminal intelligence function between CSIU and QCSC.

RECOMMENDATIONS

66. By 30 June 1994, the Director-General of Corrective Services and the Police Commissioner:

- . clarify the respective roles of Corrective Services Investigations Unit and the Security and Intelligence Unit within QCSC, and establish protocols for the exchange of criminal intelligence information; and
- . negotiate a service agreement by which local police will, where feasible, investigate alleged offences in correctional centres, thereby allowing the Corrective Services Investigations Unit to focus on criminal intelligence gathering and the investigation of major incidents.

Impact of the Judicial Review Act 1991 and the Freedom of Information Act 1992

These pieces of legislation relate to the extent of public scrutiny to which Corrective Services, as an organisation, should be exposed. It is clear that the Kennedy reform agenda was based on the need to reform all aspects of the prison and community corrections systems. He particularly emphasised the need for openness and fair treatment.

The QCSC has been criticised as reluctant to release documents and information to which people are entitled under the FOI Act and, particularly, for:

- . not responding to requests within statutory time limits;
- . incorrectly relying on exemptions; and
- . refusing applications at the first instance and the internal review stage, as a matter of course, causing applicants to rely on appeals to the Information Commissioner.

An analysis of the QCSC's response to FOI applications processed between proclamation of the Act in November 1992 and 30 June 1993 was conducted to assess these criticisms. By 30 June this year, the QCSC had determined 189 applications of the 245 received, representing a 77 per cent determination rate. It represented the highest number of delays of any government agency. These problems are a result, in part, of the nature of the prisoner population and the type of requests put in but also an underestimate of the number of staff members (the FOI officer and an administrative assistant) needed to process FOI applications.

In addition, the *Judicial Review Act 1991*, which came into effect on 1 June 1992, provides a requirement for public officials to give reasons for administrative decisions upon request by a person aggrieved by a decision, and for a streamlined system of judicial review of administrative decisions to which the Act applies.

Mechanisms for reviews of administrative decisions under the *Judicial Review Act* have not been used widely within the QCSC. Many staff seemed unaware of the Act and its implications for their work. Although both judicial review and FOI are now included as part of the pre-service, seniors' and management development programs, initial training appears to have been patchy and ad hoc.

Ten applications for judicial review have been made in relation to QCSC decisions, all by offenders. The majority of matters relate to refusal to grant parole or remission. Of the ten applications, four were successful, two unsuccessful and four are unresolved. Although numbers are too small to draw any firm conclusions, the high rate of successful applications to date may warrant a closer examination of administrative decision-making processes, particularly the recording of reasons for decisions.

A community legal organisation expressed the view that the judicial review legislation has been 'a godsend' in that it provides a means by which prisoners can enforce their rights. One example of this is an application for judicial review by a prisoner who had been refused remission on grounds found by the court to be irrelevant to the statutory criteria for decision-making.

Some QCSC officers have noted that the reforms to judicial review could make the day to day management of prisons more difficult as information from prisoners about matters such as predatory behaviour or anticipated disturbances is often communicated cryptically, for fear of retribution. Consequent decisions, such as those to transfer a prisoner, are thus made on the basis of 'hunches' or guesswork and not on the basis of substantive reasons which would withstand the scrutiny of judicial review.

Concern has also been expressed that the officers and staff at all levels of the QCSC do not understand or appreciate their duties under judicial review. For example, it appears that the Board has not always recorded its reasons for decisions. However, the PSMC understands the Board has recently tightened up the process.

FINDINGS

- . The QCSC response to the large volume of FOI requests it receives has been slow.
- . The number of staff allocated to the processing of FOI requests appears to have been inadequate.
- . Some staff lack adequate knowledge or understanding of the *Judicial Review Act*.
- . The QCSC has tightened up its decision recording processes to overcome previous deficiencies in administrative decision-making.
- . The value of the judicial review procedure outweighs the operational difficulties it may cause from time to time.

RECOMMENDATIONS

67. By 28 February 1994, the Director (Corporate Services) review the adequacy of staff resources required to process FOI applications within statutory time frames.

The Ombudsman

Prisoners and staff are able to make complaints to the Ombudsman. The number of complaints has risen steadily from 149 in 1989-90 to 281 in 1992-93, with prisoner complaints predominating. These complaints have generally focussed on the same issues, such as involuntary transfers between centres, interference with mail, visiting arrangements, missing personal property, access to facilities and education, calculations of release dates and withdrawal of privileges. In the 1992-93 Annual Report, the Ombudsman commented on problems of staffing levels and the related issues of security, prisoner property, transfers, case management and standard of facilities.

It was argued to the Review that the involvement of the Ombudsman in corrective services was unnecessary in the light of judicial review and, in relation to community corrections board decisions, the community basis of the community corrections boards.

However, there was a contrary view that Ombudsman intervention was of value and that there was a need for a specific Prison Ombudsman. In its Report on Review of the

Preservation and Enhancement of Individuals' Rights and Freedoms, EARC recommended that a Prison Ombudsman be appointed as a part of the Parliamentary Commissioner's office to safeguard the rights of prisoners in an impartial and independent manner.

Community Corrections Boards

The Queensland Community Corrections Board and regional community corrections boards make decisions on applications from prisoners to be granted parole, home detention and certain forms of pre-release leave for periods in excess of seven days, such as release to work. The Queensland Board comprises a President and Deputy President both drawn from the legal profession, the Director-General (ex-officio) and five other members at least one of whom must be an Aborigine and one a medical practitioner or a psychologist. At least two are required to be women. The composition of regional corrections boards is similar: a President and Deputy President both from the legal profession; an officer of the Commission; and four other members, one of whom is to be an Aborigine and one a medical practitioner. One member must be a woman.

The Queensland Board deals with applications from prisoners sentenced to more than five years' imprisonment and leave of absence applications from persons serving life imprisonment. It is also empowered to undertake reviews of parole applications rejected by regional boards on three or more occasions. In practice, this function is rarely undertaken. As six months must usually elapse before a further parole application can be made after a refusal, most prisoners are released on remission before they are eligible to seek a review of this kind. The Queensland Board may also deal with applications from prisoners residing in areas where no regional board exists, although it has not been necessary to exercise this power since the establishment of the regional boards.

Regional community corrections boards deal with applications from prisoners sentenced to less than five years' imprisonment, and also reviews applications which must be dealt with by the Queensland Board so that recommendations may be made to that board as required by the legislation.

During the 1992-93 year, the total cost of the Queensland and regional boards' operations was \$590,153. Most of these costs were incurred to meet salaries of Secretaries and administrative officers and member allowances, but boards also have limited funds for purposes such as purchase of psychiatric reports.

ISSUES

- . Workload of community corrections boards
- . Operations of community corrections boards

Workload of community corrections boards

The workload of community corrections boards varies across the State. Where workloads have been particularly heavy, this has led to considerable delays in hearing cases in some instances. The workload of community corrections boards during the 1992-93 year has been assessed by the Review. Most boards meet at approximately three weekly intervals, with the exception of the Far North Queensland Board which met about monthly, and the average time taken for each meeting is between four and five hours.

The Review found that the Queensland Board and the West Moreton Community Corrections Board had the heaviest workloads, each averaging about 80 cases per meeting. The Brisbane Community Corrections Board also had a considerable workload of 60 - 70 cases per meeting. The Far North Queensland, North Queensland and Central Queensland Boards have workloads ranging from nine to 17 cases per meeting. In the case of the North Queensland and Central Queensland Boards, increases in workloads have been noted as a consequence of involuntary transfers.

Although the Far North Queensland, North Queensland and Central Queensland Boards have fewer cases, meeting times are similar to those of the southern boards because these boards require personal appearances by prisoners in virtually all cases. Although this increases the time for consideration of individual cases, it has been argued that the quality of decision making is improved and that the process advantages applicants (especially many Aboriginal offenders) who may not be able to articulate their case in writing.

Strategies for workload management

Analysis of the workloads of community corrections boards has led to the clear conclusion that strategies to address unacceptably high workloads of the Queensland Board and the two Brisbane-based regional boards need to be introduced. A range of strategies was developed by the Review.

Extend jurisdiction of regional boards

The National Prison Censuses conducted by the Australian Institute of Criminology during 1982-1991 were examined by the Review to see if there would be any significant impact on the workload of the Queensland Community Corrections Board if they were only required to deal with cases where prisoners had received in excess of 10 years' imprisonment. Although 1991 figures were the latest available, it was estimated that the annual workload of the Queensland Board would be reduced by the number of applications made by some 149 prisoners. As a significant number of these prisoners could lodge multiple applications, workload reduction could be considerable.

Establish additional regional boards

Two major options for reducing workloads of regional community corrections boards were considered. The first option is to create two additional community corrections boards in south-east Queensland. The model developed by the Review is based on potential workloads from particular correctional centres. It is suggested that the arrangement could be that the four community corrections boards could deal with cases arising from :

1. Wacol correctional centre
2. Moreton, Sir David Longland, Arthur Gorrie and Borallon correctional centres
3. Brisbane Women's and Numinbah correctional centres, and all Brisbane-based community corrections centres
4. Palen Creek correctional centre and all applicants on WORC program in south-east Queensland.

Administrative support to these boards would also require reconsideration.

Dispense with review requirement for Queensland Board cases

Parole applications made by prisoners serving more than five years' imprisonment may only be determined by the Queensland Board. Each of these applications is first forwarded to the relevant regional board which considers it and makes a recommendation to the Queensland Board. This process adds significantly to the work of regional boards as these cases can

constitute almost 20 per cent of total cases. In the view of many regional board members, this process merely delays the determination of applications and imposes additional work.

The apparent rationale for including this legislative requirement was that prisoners have a right of appearance before regional boards but not before the Queensland Board. Prisoner interviews before the regional board could thus be taped and forwarded to the Queensland Board for its consideration. It is doubtful whether such a position is sustainable since the introduction of the *Judicial Review Act* with its emphasis on proper processes for administrative decision-making.

This problem could be reasonably addressed by establishing a right of appearance before the Queensland Board by an agent of the prisoner, and providing for a further discretionary power for the President of the Queensland Board to order that a prisoner personally appear before the Board in a particular case. Although cost implications may arise from the need to provide some support to agents to travel to board meetings, these may be less than the potential cost to QCSC of a high number of successful judicial review applications.

Even if this option were implemented, however, there would still be a need to provide for an additional regional community corrections board.

Operations of community corrections boards

. Remuneration

Board members are paid for each meeting they attend and for each 'special assignment' they undertake in connection with board duties, such as attendance at a community corrections board conference or associated administrative duties. Payment is not provided for meeting preparation which can involve more than 10 hours' reading.

The President of the Queensland Board is entitled to a daily meeting rate of \$540, and a special assignment rate of \$450. Members of the Queensland Board are entitled to \$450 and \$370 respectively. The President of each regional board is entitled to a daily meeting rate of \$370 per meeting and a special assignment rate of \$310. Members are entitled to \$310 and \$260 respectively.

The current basis of payment was introduced in August this year, prior to which payments were made according to the length of each meeting. This has effectively reduced levels of

payment quite substantially as, for example, members of regional boards received an average of \$400 per meeting previously. Members argued that the new rates of remuneration were insufficient given the amount of preparation time required for each meeting, the levels of professional expertise and personal commitment brought to these positions and the impact of their decisions on the prisoner and the community.

. **Right of appearance**

The issue of agents having a right of appearance before the Queensland Board has been discussed previously. In addition to this, a number of people raised the issue of assistance being provided to persons appearing before regional boards and whether there should be a right of appearance for non-legal 'advocates' who could assist a prisoner present his or her case.

. **Meeting venues**

Some venues for holding meetings were considered unsuitable, particularly for prisoner security arrangements. The Brisbane Board meets in the central office of QCSC, which necessitates any prisoners requesting an appearance to be brought into the city. Prisoners from Sir David Longland and Moreton correctional centres who are brought to Wacol correctional centre for appearances before the West Moreton Board remain in prison vans while waiting to appear. Currently, prisoners at Townsville correctional centre sit under a tree outside the administration block waiting to appear or for decisions. The administration block is not within a secure area, although this will be addressed after the redevelopment of Townsville correctional centre.

. **Aboriginal representation**

Although boards are required to have an Aboriginal representative, it was noted that there had been some considerable delays in filling vacancies of these representatives on particular boards. It was also suggested that further consideration should be given to increasing Aboriginal representation in areas where high numbers of applications were received from Aboriginal prisoners. The Far North Queensland Board was cited as an example, as Aborigines comprise some 60 percent of the prison population.

. Reasons for refusal

Section 174 of the *Corrective Services Act* requires reasons for refusal of parole to be provided to the applicant in writing. It was suggested that the written reasons often provide little guidance to prisoners about the expectations of the Board which would need to be met before an application would be considered favourably.

. Presumptive parole

Discussions have recently been held with community corrections boards on the possibility of introducing 'presumptive parole'. This option, which involves community corrections boards only dealing with matters where the QCSC actively opposes parole or any other decision sought, has been seen as a method of reducing workloads to acceptable levels. This concept was strongly rejected by board members at the recent Community Corrections Board Conference. Their reasons for rejection included that:

- . such a system is open to abuse if an inmate is not 'in favour' and provides a 'fertile breeding ground' for corruption;
- . the proposal defeats the purpose of having a community-based decision making process for release of inmates into community;
- . such a system could lead to inconsistent decision making as boards would still be expected to deal with home detention and release to work applications; and
- . the proposal would only achieve a transfer of decision-making to prison officials as a decision would still need to be made whether to oppose an application.

FINDINGS

- . The workloads of the Queensland Community Corrections Board and the Brisbane and West Moreton Regional Community Corrections Boards are unacceptably high.
- . The workload of the Queensland Community Corrections Board would be reduced by extending the jurisdiction of regional boards to deal with applications from prisoners serving up to 10 years' imprisonment.

. The workload of regional community corrections boards would be reduced by dispensing with the requirement to review cases only able to be determined by the Queensland Board and by the establishment of one or more additional regional boards.

. The remuneration levels for presidents and members of all boards require review.

. The current requirement to have one Aboriginal member of a community corrections board may not be adequate where particularly high numbers of applications are from Aboriginal prisoners.

. The concept of presumptive parole is not supported by community corrections boards.

RECOMMENDATIONS

68. The Director (Community Corrections) in consultation with the President, Queensland Community Corrections Board, develop strategies to address high workloads of community corrections boards and prepare a report to the Minister for Police and Minister for Corrective Services by 30 June, 1994.

69. By 30 April, 1994 the Director (Community Corrections) in consultation with DEVETIR evaluate the appropriateness of remuneration rates for Presidents and members of community corrections boards.

Official Visitors

Under the Act, at least two official visitors, one of whom must be a barrister or a solicitor, are appointed by the Commission to each custodial and each community corrections centre. The duties of official visitors are to hear complaints by offenders, provide the QCSC with a report of any investigations conducted by the official visitor and perform such other duties as prescribed or directed by the QCSC.

Kennedy 'totally endorsed' and recommended the appointment of official visitors, who were to be independent of the Commission. 'They will have the power to question and probe, to make up their own minds on the fairness of the system and the appropriateness of decisions. ... Official visitors will be a part of the new system of openness to public scrutiny'. (Final p 52)

Role of Official Visitors

It appears that the role of official visitors is becoming confused and is not clearly understood by the organisation, prisoners and some official visitors themselves.

In addition to their grievance investigation role, the QCSC Annual Report 1991-92 stresses that official visitors provide independent monitoring of the performance of centres and ensure administrative decisions made within centres are open to independent review. The role of official visitors has also been described, in ministerial correspondence, as 'to deal with legal inquiries'. The QCSC Annual Report 1991-92 adds that official visitors are being called upon, with increasing frequency, to act in an independent, impartial capacity in roles such as mediators and advisers, and as monitors during the involuntary transfers at sending and receiving centres.

In their draft role statement, which it is anticipated will be submitted for the ratification of the QCSC Board in December, the official visitors have identified additional goals to those articulated by Kennedy or the legislation. These include the role of adviser to the QCSC on the *Corrective Services Act* and Regulations and contributor to the wider public scrutiny and education about corrections.

It is also noted that the 'Standard Guidelines for Corrections in Australia' require that a system of accredited community representatives be established to inspect and observe prison facilities and programs (Guideline 3.2). These representatives must visit prisons regularly and prisoners and staff must have access to them.

Prisoners and prisoner interest groups advised the Review that prisoners have little faith in the official visitor system, as they identify official visitors with the centre management, and consider them ineffective, uninterested in their duties, not sufficiently available and having 'no teeth'. However, it was also noted that prisoners and the community generally may not properly understand the powers and role of official visitors.

Reporting mechanisms

Official visitors are required by the *Corrective Services Act* to report to the QCSC. It is uncertain, therefore, whether they are permitted to raise matters directly with the Minister. They submit a report sheet monthly to the Welfare Section providing brief details of each complaint, and its outcome, raised during that month. A summary of the types of complaints

raised with official visitors is compiled by the QCSC Welfare Section and submitted to the Board on a regular basis. This process has been criticised as being a 'diluted and sanitised' form of communication. Some official visitors were concerned as to how many of the issues raised by them actually reach the Board.

In New South Wales (where, of course, there is no equivalent of the Board) official visitors report to the Minister's office. These reports are coordinated by the Ministerial Liaison Unit and a quarterly report is forwarded to the Minister.

Some Queensland official visitors complained of receiving insufficient active response by central office to complaints and requests for information. The Review was informed that the former general manager of one centre did not publicise official visitor visit times.

Training for Official Visitors

There has been a call for proper training of official visitors, especially in relevant legal and legislative matters, both upon induction and on an ongoing basis. Training and induction procedures for official visitors are currently somewhat ad hoc. All new appointees are provided with copies of the legislation, Commission's Rules, the QCSC Strategic Plan and the draft Official Visitors Handbook (which is in the process of being finalised). They are expected to become familiar with the legislation, rules, policies and procedures which pertain to their role. They are generally taken on a tour of the centre to which they have been appointed. Yearly official visitor conferences are also held.

Concern has also been expressed regarding the workload expected of official visitors who are part-time appointments often with demanding commitments. Particular concern has been raised in relation to the appointment, in some instances, of one official visitor to a number of different centres.

FINDINGS

- . The official visitor system is a significant component of the external accountability of the corrective services system.
- . Full official visitors reports do not go to the Board.
- . Official visitors receive inadequate training.

RECOMMENDATIONS

70. Once established the QCSC Board Support Unit review, by 30 September 1994, the induction procedures for official visitors.
71. Official visitors' reports be submitted directly to the Board, through the QCSC Board Support Unit.

Inspectors

Under the Act, the Commission may appoint inspectors, who may but need not be public servants, to inquire into 'any matter relating to corrective services'. In practice, the power to appoint inspectors has been delegated to the Director-General and Deputy Director-General. An inspector is required to provide a written report on the inquiry undertaken.

Concerns were voiced to the Review that the Commission was essentially reporting to itself in areas where external monitoring would be more appropriate. This problem is exacerbated by the lack of clarity in the Act between the Board and the Commission. Issues related to the appointment of inspectors are discussed later in this section.

An analysis of a sample of 26 instruments of appointment for inspectors confirms some of these concerns. In 25 of these cases, a QCSC officer was appointed as an inspector. In one case, the appointment was made by an officer without lawful delegation. The matters most frequently investigated included escapes and abscondings (9), deaths of prisoners (7) and serious incidents in correctional centres (4). Other matters included those involving allegations of official misconduct and staff or operational performance issues. Of the other matters, those involving staff or operational performance issues would be more appropriately dealt with through staff disciplinary and grievance procedures, or operational audit procedures.

. Report on Escapes from the Moreton Correctional Centre, 9 July 1991

Eight high security prisoners escaped from the Moreton correctional centre on 9 July 1991. Because of the serious nature of the escape, the Board of the QCSC appointed two independent inspectors (a police superintendent and a management consultant) and a senior

official of the Commission to investigate the incident. A final, confidential report was considered by the Board on 24 July 1991.

This confidential report has recently attracted media attention. There have been allegations that the Director-General sought to improperly influence the inquiry, that sections of the report critical of senior management were toned down, and that the four officers made redundant were denied natural justice.

This case illustrates the sometimes confused accountability between the Board and the Director-General and perceptions of 'sanitised' reporting. The QCSC Board has countered media allegations by affirming that due process was observed and that the Director-General played no role in its decisions. Specifically the Board has stressed that its decisions were not limited to the report alone. Its decision-making process included analysing all of the evidence (including transcripts of inspectors' interviews), the inspectors' reports, personally meeting with the inspectors, and considering the responses by officers called upon to explain their conduct. This exhaustive process was undertaken by a board of eight people appointed as community representatives.

Outcomes of the Board's deliberations were:

- . disciplinary action taken against the Director-General by way of reprimand;
- . a change to the organisational structure of the Commission;
- . no formal disciplinary action was warranted against the nine officers asked to explain their conduct as a result of the Inspectors' Report.

However, the Board decided to exercise the Commission's option to terminate the services of four senior managers. Full entitlements were paid to these officers under the terms of their contracts. While this was a legally valid option available to the Board, the managers concerned argue that they have been deemed 'guilty by association' notwithstanding the absence of formal disciplinary charges being laid. Furthermore, secrecy provisions contained in the *Corrective Services (Administration) Act* expressly prohibit them from publicly commenting on Commission matters.

FINDINGS

- . Inspectors are appointed by senior QCSC employees.

- . Most inspectors have been QCSC employees.
- . Inspectors' reports are an appropriate response to major incidents, but their use to investigate allegations of official misconduct and staff or operational performance issues is inappropriate.

RECOMMENDATION

- 72. Inspectors be appointed only to investigate major incidents involving the death or serious injury of a staff member or prisoner, escapes and abscondings or attempts, and riots.**

Community Advisory Committees

In a positive initiative, Community Advisory Committees (CACs) were first established some three years ago, and are in place for each QCSC correctional centre and for the WORC scheme. CACs do not exist at either of the contract managed centres.

It is QCSC policy that CACs also be formed in each of the five community corrections regions. This has not happened in practice for reasons including the existence of other community consultative mechanisms to which QCSC staff contribute and the impracticality of having one committee for an entire region. These reasons are appropriate, but there may need to be mechanisms to allow regional managers to ensure that community involvement is maintained at an appropriate level.

QCSC guidelines were published in August 1993 to regularise appointments already made and to enhance uniformity of practice and purpose. The objectives of the committee, which may comprise between four and nine people, are to improve links between the local community and community corrections staff or correctional centres and to provide community input into the running and management of centre and community programs.

Before these guidelines were developed, a number of centres had produced their own. For this reason, there is considerable variation in the structure and functions of the CACs. A couple of committees largely comprise eminent community members with no direct experience in corrections. These committees are more oriented to 'selling' QCSC policies and local initiatives to the community than providing an opportunity for community members to influence the delivery of correctional services. Although there is a place for this function,

it could be achieved through other consultative mechanisms, and seems at odds with the stated objectives for such committees. In a number of areas, people from community agencies who regularly provide services to offenders felt excluded from the opportunity to make constructive comments on centre management issues.

Members of CACs are appointed by the Commission Board on recommendation by the Director-General, having first received submissions from general managers. Appointments are for up to two years.

FINDINGS

- . Community Advisory Committees are not established in either of the contract-managed correctional centres.
- . The policy to form Community Advisory Committees for each region of community corrections has not been implemented for appropriate reasons.
- . There is considerable variation in the structure and functions of the CACs.
- . The appointment process for CACs is more stringent than for official visitors and inspectors.

RECOMMENDATIONS

73. The establishment of Community Advisory Committees become a contract requirement for all contract-managed correctional centres.
74. By 30 September 1994, the Director (Community Corrections) develop mechanisms to ensure that community consultation is maintained at an appropriate level and Community Advisory Committees for each region of community corrections not be established.
75. By 30 September 1994, the Director (Custodial Corrections) redraft guidelines for Community Advisory Committees to provide that appointments be made administratively, and to ensure that the composition of committees reflect the primary objective of providing community input to correctional centre management.

Prisoner Liaison Committees

All centres, except Palen Creek, have prisoner representatives or committees. The focus, structure and number of representatives or committees vary from centre to centre. For example, Brisbane Women's correctional centre has seven prisoner committees, most of which focus on some particular aspect of the centre's operations (such as health and safety, activities, medical and health, industries, and complaints and suggestions). Prisoner committees or representatives may also be concerned with:

- activities or interests (such as sports groups, toastmasters, arts and crafts);
- cultural issues, particularly with respect to ATSI prisoners; or
- representation of the interests of particular inmates (such young offenders or long-term inmates) or particular sections of a prison.

One group at least, the Queensland Indeterminate Sentenced Prisoners Association, is a statewide organisation and represents prisoners with indeterminate sentences collectively.

The formation of prisoner committees has been specifically included as part of the QCSC's initiatives to establish community advisory committees to facilitate the contact between community advisory committees and prisoners. Such contact is identified as desirable for the operations of community advisory committees. However, some instances of General managers discouraging the formation of prisoner committees have been reported to the Review.

Prisoner committees can function as a communication channel between centre management and prisoners and as a mechanism for the resolution of grievances. These functions are recognised by the QCSC which proposed that prisoner liaison committees be used to discuss prisoner problems with a centre's management at first instance. Matters which cannot be resolved in that way may then be referred to the centre's community advisory committee. Neither the community advisory committee nor the prisoner liaison committee is to have decision-making powers.

The Review is concerned that reference of prisoner problems to a community advisory committee may not always be appropriate and suggests that such problems also be able to be referred to an official visitor at the option of the individual prisoner or the prisoner liaison committee raising the particular problem.

FINDING

Prisoner liaison committees have important functions to serve as a communication channel between prisoners and centre management and as a mechanism for the resolution of prisoner grievances.

RECOMMENDATION

76. The establishment and fostering of prisoner liaison committees by centre management be included as a duty of all General managers and as a contract condition for all contract managed custodial centres.

Chaplaincy Services

The Kennedy Report recognised the value chaplains played in overall operations of the prisons at that time and recommended that the importance of chaplains be recognised through the following:

- . the creation of a full-time position of chaplain in each of the major prisons;
- . the position to be on a non-renewable maximum five year contract;
- . a salary equivalent to a professional staff member be paid;
- . proper offices and resources be made available;
- . policy and procedures be developed and put in place for the position;
- . the chaplain be appointed as a correctional officer under the relevant legislation.

The recommendation for a full-time chaplain was not accepted by the major churches or religious organisations whose principal ministry was prisoners. This resulted in the establishment of a chaplaincy team, comprising a member of each of these groups, in each of the major correctional centres. Team members are appointed by the Commission upon nomination by the church or organisation and recommendation of the State Chaplaincy Board.

The State Chaplaincy Board is the peak policy determining body for the operation of chaplaincy teams in the centres and is appointed by the QCSC on nomination of the major churches or organisations.

The Chaplaincy Board and chaplaincy teams operate on a voluntary basis, with the QCSC providing grants to meet out-of-pocket expenses. The QCSC also makes a grant to each of the major church or organisation groups to offset the cost of providing the service to each centre.

The Review supports the stress Kennedy placed on the importance of chaplaincy services to prisoners and staff within correctional centres and report that the team concept is working effectively and efficiently in all major centres. However, certain aspects of the Kennedy recommendations have not yet been met, particularly in relation to facilities and funding.

Few centres have a dedicated chapel and in one centre the chapel cannot be used because there are insufficient staff to supervise any services or programs conducted there. In addition, office accommodation is not available in all centres. The cost of maintaining chaplaincy services in correctional centres is greater than the grants made by the QCSC and the service providers are struggling to maintain the level of service envisaged by the organisation and expected by the prisoners and staff.

FINDINGS

- . Chaplaincy services to the major correctional centres are important to prisoners and staff and are being maintained at a high level.
- . The level of funding provided to churches and organisations involved in provision of chaplaincy services does not meet the actual cost of services provided.
- . Centre facilities for chaplaincy services do not always meet the recommendations of the Kennedy Report.

RECOMMENDATION

77. The QCSC review the level of funding to major church groups and organisations providing chaplaincy services to correctional centres prior to the finalisation of the 1994-95 budget.

Appointment procedures for monitoring bodies established by the Commission

. Official Visitors and Inspectors

Sections 22 and 27 of the *Corrective Services Act* respectively provide for the appointment of official visitors and inspectors. In both cases, the Act provides for appointments to be made by 'the Commission', with official visitors appointed for 3 years and inspectors for the period specified in the instrument of appointment. The delegation to make appointments to both positions has been given to senior QCSC employees.

Official visitors are appointed after Commission staff or board members have approached individuals to ascertain their interest and availability. This method of recruitment was the source of some criticism to the Review. It was suggested that this makes appointments too dependent on personal networks of staff and board members, and that local advertising seeking expressions of interest for appointment to the position would be preferable. It was also proposed that recommendations for selection could be undertaken by a local panel or consultative process comprising community and QCSC representatives, and these recommendations be forwarded to the Commission Board to make the appointments. There is a strong view within community groups that these appointment powers should not be delegated by the Board.

Inspectors have to be appointed in situations where quick responses are required. Despite this, there was concern that the power to appoint inspectors should not be delegated by the Board because of its importance as an accountability mechanism. Rather, it was considered that strategies should be developed to allow appointments to be effected expeditiously, perhaps by the Chairperson initially with later ratification by the Board.

Inspectors have almost always been Commission employees. This was criticised as offending against principles of independent inquiry, and the greater use of external inspectors was urged. It was suggested that, given the seriousness of incidents to which the appointment of inspectors is a response, the appointment of at least two inspectors is warranted in each case, of whom only one should be a Commission employee. This would not necessarily incur substantial additional cost as officers with appropriate expertise from other public sector agencies, such as the Queensland Police Service, could be seconded.

. Community Corrections Boards

Community corrections board members are appointed by Governor in Council on advice from the Minister and the QCSC Board. This was universally regarded as appropriate.

Some concerns were expressed at the method of recruitment for regional boards. The processes whereby some people in the community became aware of vacancies on boards, and were subsequently appointed, were variously described by community members as 'opaque', 'unclear' or 'secret'. This issue emerged during the review because of the re-appointment of existing members to a further three year term. Again it was considered that members should be recommended after positions had been advertised and a merit process used to determine nominations for appointment.

FINDINGS

- . Official visitors and inspectors provide an important accountability mechanism.
- . It is inappropriate for appointments to these positions to be made by QCSC employees.
- . The perceived effectiveness of official visitors is diminished by unclear recruitment and selection processes.
- . There is an over-reliance on the use of QCSC staff to perform the duties of an inspector.
- . The process for recruitment and nomination of regional community corrections board members is unclear.

RECOMMENDATION

78. Provisions of the *Corrective Services Act* be amended to provide that:

- . recommendations for the appointment of members of community corrections boards be made by the Commission Board;

- **appointments as official visitors and recommendations for appointments to community corrections boards only be made after the vacancies are advertised and a merit-based selection process used; and**
- **a minimum of two inspectors, only one of whom may be a Commission employee or a member of the Corrective Services Investigation Unit, be appointed as necessary to investigate and report on major incidents in the corrections system.**

LEGISLATIVE ISSUES

Prisoners' rights

The question has been raised as to whether basic prisoners' rights should be enshrined in legislation. Kennedy also considered the issue of prisoners' rights. Concerned with ensuring that 'human dignity and the appropriate rights are afforded to prisoners', he recommended that the QCSC endorse minimum standard guidelines for prisoners.

Kennedy did not support an 'official statement of prisoner rights' on the basis that the adoption and meeting of standards and the procedures set in place in the then draft legislation, such as the official visitor system and the composition of the community-based board, were preferable to legally defined 'rights'. Kennedy also felt that a definition of prisoner rights would result in an overly legalistic environment for the resolution of grievances.

The QCSC has endorsed the Standard Guidelines for Corrections in Australia 1989 (Standard Guidelines) which apply to custodial and community corrections. These Guidelines were derived from the United Nations Standard Minimum Rules for the Treatment of Prisoners and are stated as not intended to be law but as guidance and to 'provide a base for protecting human rights in Corrections in Australia'. A national standards body, comprised of ministers responsible for corrections throughout Australia and New Zealand, has been established to regularly review the Standard Guidelines.

In addition to the Standard Guidelines, some prisoner rights are dealt with by the Corrective Services legislation, the Regulations or the Commission's Rules. For example, the *Corrective Services Act* provides that prisoners are to be informed of their entitlements and duties (s. 36) and there is to be separation of prisoners under 18 years of age (s. 38). Some

rights are qualified. For example, separate accommodation is to be provided for prisoners as far as is practicable (S.37). Fundamental entitlements such as to food and clothing receive no formal statement.

It has been argued that prisoners would not derive any greater protection from a codification of rights than exists under current legislation as any rights would have to be heavily qualified to enable proper administration of offenders and meet the requirements of order and discipline.

Victoria's *Corrections Act 1986* contains a statement of 15 prisoners' rights. Generally these rights are very basic and represent a far lower standard of care than is provided for in the Standard Guidelines and by current QCSC philosophy and operations. For example, a prisoner is entitled to be in the open air for at least an hour each day, weather permitting, and provided with food that is adequate 'to maintain the health and well-being of the prisoner'.

The articulation of prisoners rights has also been considered in the context of a Queensland Bill of Rights. The Electoral and Administrative Reform Commission, in its **Review of the Preservation and Enhancement of Individuals' Rights and Freedoms**, recommended that a Queensland Bill of Rights should contain a provision incorporating prisoners' rights, and that there be put into place general legislation governing the rights of prisoners which derive from relevant United Nations documents.

FINDINGS

- . The treatment of prisoners' rights by the Corrective Services legislation and Commission's Rules does not guarantee offenders' entitlements.
- . The Standard Guidelines for Corrections in Australia 1989 provide a comprehensive statement of both custodial and community corrections offenders rights.
- . The codification of prisoners' rights is being considered in the context of a possible Bill of Rights for Queensland.

Prisoners' offences and breaches of discipline

Under Section 93 of the *Corrective Services Act*, certain acts by prisoners constitute prisoner offences. These include escape, opposition to lawful authority and failure to give information. The penalty for these offences is a maximum of two years' imprisonment.

In addition, unlawful assembly, riot and mutiny are defined as crimes by Section 92 of the *Corrective Services Act*. Unlawful assembly carries a penalty of three years imprisonment while the penalties for riot and mutiny range from six years to life imprisonment depending on the circumstances of the commission of the crime. The Criminal Code also makes provision for unlawful assembly and riot providing, in general, lesser penalties.

The table below compares some similar Criminal Code and *Corrective Services Act* offences and their respective penalties.

Table 21: Penalty Comparisons

OFFENCE	CS ACT PENALTY	CODE PENALTY
Unlawful assembly	3 year	1 year
Riot	6 years	3 years (Note: Where rioters remain, after order to disperse - life)
Riot + damage property etc	Damage property - 10 years Damage property within a prison - life	Injure property - 7 years
Riot + destroy property etc	Destroy property - 10 years Destroy property within a prison - life	Demolish buildings etc - life

It has been suggested that offences in the *Corrective Services Act* which carry a penalty of three or more years' imprisonment should not be included in the *Corrective Services Act* and included in the Criminal Code because of the level of penalties which may be imposed; the need for consistency in general criminal law; and the need to rationalise offence provisions for matters such as escape.

The need for breaches of discipline to remain in the *Corrective Services Act* has not been disputed.

FINDING

- . There are anomalies between provisions of the *Corrective Services Act* and the Criminal Code.

RECOMMENDATION

79. In the review of the *Corrective Services Act* consideration be given to repealing elements of S.93 of the Act, specifically offences carrying a penalty of three years or more imprisonment, and inserting equivalent provisions in the Criminal Code.