

**INQUIRY INTO ISSUES RELATING TO THE OPERATIONS  
AND MANAGEMENT OF THE DEPARTMENT OF  
CORRECTIVE SERVICES**

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**Date Received:** 13/02/2006

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**Subject:**

**Summary**

Our Ref: BS/RC  
Your Ref:

13 FEB 2006

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2 February 2006

Hon Amanda Fazio MLC  
Committee Chair  
General Purpose Standing Committee No. 3  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Committee Chair

**RE: INQUIRY INTO ISSUES RELATING TO THE OPERATIONS  
AND MANAGEMENT OF THE DEPARTMENT OF CORRECTIVE  
SERVICES**

Thank you for letter dated 16 December 2005 inviting submissions to The Legislative Council General Purpose Standing Committee No 3 inquiry into issues relating to the operations and management of the Department of Corrective Services (DCS). I refer to a telephone conversation between Mr Sandland of my office and Michael Phillips in which an extension was granted to 3 February 2006.

In relation to the terms of reference I advise as follows.

**The operation and management of Corrective Services Industries (CSI).**

The Legal Aid Commission is not in a position to comment on this area of operations of DCS except to say that the provision of employment to persons in custody is encouraged because of its beneficial effects in relation to the rehabilitation of those undertaking such employment.

**The management of high risk prisoners by the Department of Corrective Services with regard to:**

**a. Access and contact by non-correctional persons including their security screening.**

This issue is of some interest to the Legal Aid Commission as it is relevant to access by Commission staff, solicitors and barristers acting on assignment for the Commission and by professionals such as

psychiatrists and psychologists who are retained to provide reports in relation to case preparation.

I understand from the terms of reference that this issue is restricted to high risk prisoners. Inmates are classified on their entry to the prison system and can then work their way through the various classification levels during the course of their sentence. An inmate may fall into the high risk category because they are a serious offender as defined by Section 3 of the Crimes (Administration of Sentences) Act 1999. High risk prisoners may also include inmates in the Witness Protection Unit at Long Bay and prisoners with a maximum security classification.

The Legal Aid Commission does not have an issue with access to high risk prisoners in the Specialist units at Goulburn or Long Bay. The security surrounding such visits is greater than that applied elsewhere in the prison system, but it is understood that such security is required, not only to ensure the safety of the inmate but also the visitor.

The Commission has however raised concerns with DCS about the adequacy of visiting facilities at some gaols including gaols which contain maximum security prisoners. For instance, at Parklea Correctional Centre there is limited access to appropriate visiting facilities for protection prisoners. This is an issue which has been raised with DCS and appropriate action is being considered.

**b. The effectiveness of the High Risk Management Unit (HMRU) at Goulburn Gaol.**

The Commission is not able to comment on this topic. The effectiveness of HMRU is presumably measured according to criteria formulated by DCS relating to security, escapes and minimisation of critical incidents such as assaults and/or incidents of self harm. There is however a need to maintain a balance between the aims of containment and minimisation of risk and a humane environment for high risk prisoners.

**c. The objectivity of the prisoner classification system.**

As indicated above, prisoner classification is dependent firstly on whether the inmate is a serious offender. For all other inmates, they are classified according to a classification instrument. This is a means of allocating a numerical figure to factors such as the severity of the crime, the use of weapons, frequency of institutional misconduct and program compliance etc. These are a combination of both objective and subjective factors.

There is a system of internal review of prisoner classification. Officers of the Legal Aid Commission employed in the Prisoners Legal Service have assisted inmates in making submissions to the Commissioner challenging a security classification.

The only other means of seeking to challenge a prisoner classification is to seek judicial review of the administrative decision relating to classification. Such a challenge may be available if the decision was patently unfair or if there has been a departure from the proper administrative process. This is remedy outside the means of most prisoners and is not one which would often attract a grant of aid.

A fairness issue in classification can arise in relation to prisoners convicted of sexual or violent offences. Rehabilitation programs are available but only on the basis that the inmate accepts guilt for the offence for which he or she was sentenced. Participation in these programs is seen as a pre-parole testing period. Inmates who do not participate in these programs will have difficulty securing release to parole as they will not be able to show the Parole Board that they are ready for release by having participated in work, education or day leave.

These are issues which impact on the objectivity of the prisoner classification system and the implications for parole flowing from it.

#### **d. Staffing levels and over-crowding.**

The Legal Aid Commission is not aware of any specific staffing or overcrowding issues in relation to high risk prisoners. However, staff of the Commission have received complaints from prisoners of being subjected to lockdowns because of staff shortages, staff training or because of industrial action relating to prison officers. A lockdown results in prisoners being confined to their cells. Apart from the obvious impact on the prisoners, it interferes with prison routines and programs including important aspects of prisoners' rehabilitation such as education and work programs.

Further, the result of lockdowns and industrial action is that professionals such as Commission lawyers and private practitioners are denied access to their clients. Apart from the inconvenience to the practitioner and client, it adds to the cost of conducting their client's cases and may lead to inefficiency in the system generally as a delay in obtaining instructions may result in a subsequent adjournment of the prisoner's pending court proceedings.

The Commission is also aware of cutbacks in available visiting times at the major remand centre in NSW (MRRC). It is understood that these cutbacks are cost related. Cutting back on staff costs by reducing visiting hours may achieve savings within the prison system, but it will have cost implications elsewhere in the criminal justice system.

The Legal Aid Commission supports the appropriate funding of the Department of Corrective Services so that sufficient staff levels can be maintained to guarantee access to clients and appropriate conditions for inmates.

**The inter-state transfer of Offenders and Parolees with regard to:**

**a. Communication and agreement between Authorities.**

Interstate transfer of interstate prisoners is available under the Prisoners (Interstate Transfer) Act 1982 on two grounds, namely welfare (section 7) or according to law (Section 12). Such transfers relate to a prisoner who is subject to an arrest warrant in another state. The procedure requires the approval of the Attorneys General of each state. The negotiation between the respective states is a process that can take up to 6 months. The inmate is simply advised of the decision. Inmates are seldom, if ever, given reasons for a refusal. It would assist in the transparency of the process, if reasons were given and if there was a procedure available to review the decision.

**b. Ministerial sign-off under the Acts and informal arrangements made between jurisdictions.**

Interstate transfer of parolees occurs under the Parole Orders (Transfer) Act 1983. Under Section 5, the minister makes a request for the transfer of a parole order to another state. If the reciprocal Minister accepts, the parole order is registered as parole order of that state. In the past, the authority to make such decisions was delegated to probation and parole officer level and supervision was first transferred for 3 months and thereafter, if the parolee was complying with the order, it was registered. Once registered, the laws of the transferee state apply to the parole order as if it was a parole order imposed by that state (Section 9). The transfer must be in the interest of the parolee and he or she must consent to the transfer (Section 7). This is a procedure which has worked effectively to allow the transfer of parolees in appropriate cases.

It is understood that the decision-making power of the Minister under this legislation has been pushed back up to Commissioner level. The Legal Aid Commission supports the continuation of the reciprocal arrangements for exchange of parolees in appropriate cases at whatever level such decisions are made.

Yours faithfully



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DIRECTOR CRIMINAL LAW  
LEGAL AID COMMISSION OF NSW