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Queensland Ombudsman

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Professor Megan Davis and Ms Kathryn McMillan QC
Reviewers
Youth Detention Review
C/O Department of Justice and Attorney-General
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BRISBANE QLD 4001
By email: enquiries@youthdetentionreview.qld.gov.au

Dear Professor Davis and Ms McMillan

I refer to a recent discussion paper issued by The Independent Review of Youth Detention (the Review) seeking submissions around a number of issues. I am pleased to offer this submission to support the review's work, focused on issues three and four: *oversight of Queensland youth detention centres and oversight of Queensland prisons, limited to 17 year old prisoners* (collectively, youth detention oversight).

As noted in the discussion paper, the Queensland Ombudsman has jurisdiction in relation to administrative actions and decisions in the youth detention sphere. The Queensland Ombudsman, and the Office of the Queensland Ombudsman (OQO), was initially established in 1974 as an independent complaints investigative body for the broader Queensland public sector, including corrections and youth justice. The powers used in exercising this role are set out in the *Ombudsman Act 2001* (the Act) and include, if necessary, powers equivalent to a commission of inquiry (Part 4).

The agencies within the jurisdiction of the OQO relevant to youth detention include: all State government departments, including the respective corrections and youth justice inspectorates; statutory bodies (relevantly, Queensland Family and Child Commission, Office of the Public Guardian, Office of the Health Ombudsman) and bodies subject to s.10(c) of the Act, which allows bodies performing a function on behalf of an agency to be subject to certain oversight.

As an officer of the Queensland Parliament and having regard to provisions of the Ombudsman Act, I am confident that I have the powers to investigate and, where appropriate, report on complaints received by this Office about issues of maladministration. Additionally, I can investigate administrative actions and decisions on my own initiative or on a reference from the parliament.

Within OQO, specific procedures exist for the treatment of child-related complaints, including those from children and young people in youth detention. These procedures specifically target timely responses and assist complainants to direct the matter to the most appropriate agency for response, where this is not the OQO.

If appropriate, my investigation reports can be tabled in the parliament. As examples, I draw your attention to recent reports tabled about the administration of certain correctional centres and child safety complaints:

[http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Overcrowding_at Brisbane Women's Correctional Centre.pdf](http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Overcrowding_at_Brisbane_Women's_Correctional_Centre.pdf)

http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Management_of_child_safety_complaints.pdf

http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/the_strip_searching_of_female_prisoners_report.pdf.

In addition to the complaint investigative function, the OQO also has an administrative improvement function directed at improving the quality of decision-making and administrative practice in agencies. In furtherance of this function, and also to help facilitate our investigative function, the OQO undertakes an annual visits program to Queensland correctional centres and, more recently, youth detention centres. The visits program plans to visit all centres at least annually. Youth detention centres have been added to the visits program since the closure of the Commission for Children and Young People and Child Guardian (CCYPCG) in June 2014. Visits to individual correctional centres or youth detention centres follow a broadly similar plan, but are also informed by complaints and other information received from agencies through liaison arrangements or other channels, including the media. Relevant issues related to young people in adult correctional centres are followed up in visits to those centres.

Children in youth detention centres and young people in adult correctional centres have access to a free, confidential telephone service direct to the OQO to make complaints. They can also write to the OQO confidentially. These services do rely on children and young people accessing them, but access to each service, and its proper operation, is verified as part of visits to youth detention centres or correctional centres. It should be noted that this Office has only received a very small number of complaints in the youth detention area.

The OQO is the oversight agency for the *Public Interest Disclosure Act 2010* (PID Act). A review of the PID Act is currently underway by the OQO and is expected to report to the Attorney-General and Speaker by the end of 2016. Under the PID Act, all public sector employees are able to disclose maladministration in relation to the operation of correctional centres and youth detention centres to a proper authority. The OQO is a proper authority to receive such disclosures, which may be made anonymously. The PID Act provides protection to disclosers of inappropriate conduct, including corrupt conduct and maladministration, including protection from reprisal.

One aspect of the operation of the PID Act currently arising as part of the review is its application to non-employees, particularly contractors and volunteers. The extent to which volunteers operate within youth detention centres and correctional centres may be an issue related to the PID Act review. I expect to make recommendations to the Attorney-General and Speaker about this aspect of the PID Act in my report of the review.

There are two aspects of oversight of youth detention which I submit require further development.

Firstly, while there are at least four bodies with some role in oversight of youth detention, namely the Crime and Corruption Commission (CCC), Queensland Family and Child Commission (QFCC), Office of the Public Guardian (OPG) and the OQO, none of those bodies has a complete picture of the operation of youth detention and its potential failings.

The two complaints bodies (CCC and OQO) operate from within their respective complaints and investigation frameworks with neither having full visibility of particular issues across youth detention – as one deals with corrupt conduct and the other maladministration. This poses some challenges, particularly in relation to complaint issues that may potentially involve both corrupt conduct and maladministration (such as use of force).

The QFCC and OPG are not complaints bodies and have limited powers to undertake investigations of individual cases. I note however that the OPG has a strong advocacy role with certain children and young people in youth detention.

The net result of these different bodies with different, but at times overlapping responsibility and functions, makes a coordinated response to a particular issue within the youth detention sphere more difficult. Notwithstanding these challenges, the OQO will continue to work with the CCC, QFCC and OPG to maximise information sharing within the current legislative environment and to identify further opportunities for legislative reform to better share information to improve the investigation of individual matters and to identify systemic opportunities for improved practice.

Secondly, no independent body is currently charged with compiling a regular 'health of youth detention' type report which addresses a comprehensive performance and service delivery analysis, including publishing a regular (at least two yearly) statistical collection of young people in custody, their outcomes and life prospects from being detained in a youth detention centre and from accessing related services aimed at reintegration into family and community. Such a report should, in my view, address the inter-relationships between youth detention, child death and transition to adult offending and imprisonment. It should also capture and analyse a complete picture of the matters complained about by children, young people, their families and carers with a view to illuminating system failures and informing policy and practice. To at least some extent, this aspect of oversight was previously performed by the former CCYPCG.

Children and young people who enter youth detention are some of the most vulnerable in the community. Without regular, independent collection of data and reporting to the parliament, the community cannot have full confidence in the system of youth detention in Queensland.

Yours sincerely



Phil Clarke
Queensland Ombudsman