

Media Release

21 August 2024

NSW Ombudsman's special report *Investigation into inmate discipline in NSW correctional centres*, tabled in Parliament today

The NSW Ombudsman has tabled a special report titled *Investigation into inmate discipline in NSW correctional centres* in Parliament today.

The report follows an investigation involving a systemic examination of how inmate discipline is managed across all correctional centres. The inmate disciplinary system deals with inmates who are alleged to have committed a 'correctional centre offence' while in custody.

The investigation carried out a trend analysis of the more than 57,000 inmate discipline charges determined between 2018 and 2023, and conducted an in-depth review of a sample of over 350 individual determinations.

In addition to the immediate penalties that can be imposed, including reprimand, withdrawal of privileges (such as visits), and confinement in cell, a finding of guilt can negatively affect an inmate in other ways. For example, an inmate's disciplinary record can affect decisions about security classification, impacting the inmate's placement and treatment, as well as parole decisions, which can ultimately affect the time the inmate will spend in custody.

The NSW Ombudsman's investigation found a systemic failure across all correctional centres to follow the requirements of the legislation and the relevant policies in relation to inmate discipline.

"In many cases, the systemic failure we investigated is leading to unjust outcomes and potentially unlawful decisions," said NSW Ombudsman, Mr Paul Miller.

"This is compounded by the fact that inmates currently have no external review rights on a disciplinary determination other than the theoretical possibility of applying to the Supreme Court for judicial review, while internal reviews are limited in scope, legally uncertain and largely inaccessible."

The NSW Ombudsman has recommended a comprehensive review of the inmate discipline system in NSW, including legislative change, to improve its fairness and effectiveness.

"Reform should include the introduction of legislated internal and external appeal rights in respect to both findings and penalties, as well as the strengthening of current processes to ensure they comply with legislation," said Mr Miller.

"There is also a need for the development of a comprehensive and continuous quality assurance program to underpin correct and consistent decision-making."

In its in-depth reviews of determinations the NSW Ombudsman found issues, including:

- Inmates being convicted of offences in circumstances where it was clearly not open to the decision-maker to have found the offence proven beyond reasonable doubt, as required by legislation.
- Inmates with intellectual disability or difficulty understanding English not always being given support to ensure a fair inquiry into their charges, as required by legislation.

- Referrals to drug intervention programs for inmates who are charged with drug offences, not always being made, contrary to the requirements of policy.
- Inmate behaviour being dealt with through the disciplinary process in circumstances where the behaviour warranted mental health support (or would have been more appropriately dealt with through mental health support).
- Inmates being required to pay compensation for damage caused to property in excess of the maximum amount of compensation that can lawfully be imposed.
- Young Aboriginal inmates being penalised by being confined to a cell alone, despite the policy stating this should not happen, and it being contrary to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Other vulnerable inmates also being confined to a cell alone, where records suggest that risk factors for confinement were not appropriately assessed.
- Insufficient regard being paid to the policy requirement that withdrawal of phone calls and contact visits should be considered as a penalty of last resort.

Corrective Services NSW (CSNSW) has been asked to respond formally to the NSW Ombudsman's recommendations within two months. The report tabled today notes that CSNSW has advised the NSW Ombudsman it is committed to taking steps to improve the system, and has commenced its review of the inmate discipline system.

The NSW Ombudsman also tabled a separate report today – *Investigation into actions taken against bystander inmates following an incident at Clarence Correctional Centre*. The report concerns an investigation into actions taken by the operator of Clarence Correctional Centre (Serco) against inmates, following an incident at the centre in September 2023.

The incident involved the assault of an officer by an inmate, which was witnessed through a glass window by a number of other inmates. The assault was reported to be referred to Police, to be dealt with as a criminal matter, as is appropriate.

Some inmates who observed the incident were separately charged with correctional centre offences (including inciting and participating in a riot), found guilty and had penalties imposed. Some of those inmates then complained to the NSW Ombudsman about unfairness.

The NSW Ombudsman found that procedural requirements designed to ensure a fair inquiry had not been followed, and that inmates were found guilty despite relevant evidence (including CCTV footage) not supporting such findings.

The NSW Ombudsman also found that 'behaviour management contracts' were imposed on some inmates inappropriately, and the conditions of those contracts were unreasonable and oppressive.

In its report the NSW Ombudsman has made recommendations that the affected bystander inmates receive written apologies, and the findings against them be noted as unsound and to be disregarded.

Other recommendations include that relevant staff at Clarence receive refresher training on incident management, inmate discipline, the use of segregation and behaviour management contracts.

The implementation of recommendations made in both reports will be monitored by the NSW Ombudsman.

The reports are available at www.ombo.nsw.gov.au.

For further comment, contact:

media@ombo.nsw.gov.au or 0487 461 593