

## **Attachment 3 – Suggestions about Complaints Handling**

### **1. Internal and external complaints-handling mechanisms need to be considered and 'designed in' to quarantining arrangements from the outset**

The right to complain about unlawful, unreasonable or unfair treatment at the hands of the State and its agencies is fundamental. This is certainly no less so when people are being held involuntarily.

However, a robust complaints mechanism also serves important practical purposes:

- If encouraged and responded to early, complaints can allow risks to be identified. This enables corrective action to address issues while they are relatively minor, helping to avoid major incidents. It has been reported, for example, that a recent decision by NSW Police to discontinue the use of a particular hotel for quarantine purposes arose in part from concerns identified as a result of an unusually large number of complaints about that hotel.
- An avenue of external complaint provides opportunities to identify other issues and risks that may not otherwise have surfaced, including the need for other supports or services (such as mental health or child protection supports).
- An external complaints-handler such as the Ombudsman can provide complainants with unbiased information and advice, including where appropriate an assurance that the actions of agencies are, in fact, consistent and reasonable in the circumstances. This can be particularly important in environments of detention where there may otherwise be distrust of those who are enforcing detention and where tensions can otherwise escalate quickly.
- Access to an independent and external complaints mechanism operates to enhance public confidence more generally in the regime and the associated actions of agencies. This may be even more important in circumstances where the urgency of Executive action is such that it has to take place in the absence of, or at least in advance of, usual avenues of democratic accountability such as broad Parliamentary or public debate.

### **2. The complaints-handling mechanisms to be adopted and applied should conform with the NSW Government's commitment to the Complaint Handling Improvement Principles (CHIP)**

In New South Wales, the CHIP principles developed by the NSW Ombudsman and the Department of Customer Service have been adopted by the Secretaries Board for application by all NSW Departments and agencies. The six principles are:

- Respect

- Information and accessibility
- Communication
- Ownership
- Timeliness
- Transparency

Details on the principles are available at:

[https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0005/58388/Complaint-handling-improvement-program-Commitments-implementation-review.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0005/58388/Complaint-handling-improvement-program-Commitments-implementation-review.pdf)

### **3. The right to complain to the Ombudsman is essential, but should not take the place of internal mechanisms**

As can be seen from the information in Attachment 1, we have received a number of complaints in relation to quarantine about matters that, it appears, could and should have been resolved quickly at the local level.

Complaints to an external body, such as the Ombudsman, should never – except perhaps in cases of extreme urgency – be the first point of contact for complainants.

Matters such as the general quality or variety of food, for example, are matters that would seem best dealt with through first tier (local complaint) and second tier (internal escalation or review) complaint mechanisms.

### **4. Internal complaints-handling mechanisms should be subject to monitoring by the relevant Ombudsman**

The function of monitoring or ‘keeping under scrutiny’ the internal complaints-handling systems of an agency or regime provides assurance that those internal complaints-handling systems are robust and functioning effectively.

It also enables the oversight body to gain insight into potential systemic issues that may be apparent from surveying patterns of complaints which might otherwise, when considered individually, appear relatively trivial. Presumably, this is one of the reasons that this Review is itself now looking at complaints experience.

### **5. Relevant independent oversight bodies should be briefed before the introduction of any new quarantining restriction if possible (and otherwise as soon as practicable after)**

We appreciate that the circumstances of the COVID 19 pandemic were urgent and extraordinary, and it is trite to observe that urgent and extraordinary actions were needed.

However, the fact of ‘crisis’ does not obviate the need for appropriate oversight. Moreover, the role of bodies such as the Ombudsman can and should be viewed positively.

Moreover, in circumstances where people have lost elements of substantive rights (such as liberty) other process rights (such as the right to complain) assume even greater importance. Ensuring that those held in quarantine are aware of, and have the ability to access, their right to complain to the Ombudsman does not detract in any way from the efficacy of the quarantine regime or its public health impact. Indeed, for the reasons outlined at paragraph (1) above, the right to complain can serve to improve the regime's efficacy and public health outcomes.

By briefing Ombudsman and other relevant oversight bodies in advance, they will be better able to perform their functions effectively, support the public health response, and do so with a clear understanding of how they can enhance, rather than get in the way of, the front-line response.

**6. Where oversight of a quarantine system would otherwise be fragmented, steps should be taken early to ensure co-ordination between relevant oversight bodies; alternatively consideration could be given to designating a single oversight body for that system**

The COVID 19 quarantining arrangements have involved a number of different agencies at Commonwealth and State levels, performing different functions at different times. It is obviously important that the conduct of *those* agencies be effectively co-ordinated to ensure a robust quarantining regime. Gaps between agencies are potential points of weakness.

Correspondingly, however, consideration also needs to be given to co-ordinating the oversight and external complaints-handling systems that overlay those agencies.

Fragmentation of oversight and external complaints-handling mechanisms occurs as a natural result of the federal structure, with Commonwealth agencies oversights by the Commonwealth Ombudsman and State agencies by the State Ombudsman.

However, fragmentation also occurs within jurisdictions. Different agencies within a State may be oversights by different oversight bodies. Agencies may also be oversights by different bodies in respect of different aspects of their functions and conduct.

In New South Wales, the NSW Ombudsman has well-established relationships with relevant counterparts, both here (eg., the Law Enforcement Conduct Commission) and in other jurisdictions (eg., the Commonwealth and Victorian Ombudsman). Co-ordination by way of information sharing and referral would not be difficult provided we are informed clearly and in advance what particular agencies are doing what.

If our suggestion in paragraph (5) above (that oversight agencies be briefed) were adopted, then all relevant oversight bodies could be briefed together, which would seem to be both expeditious and effective in terms of supporting the co-ordination of their efforts.

Alternatively, in the unusual circumstances of a public health emergency, consideration could be given to modifying the jurisdiction of one or more oversight bodies to ensure that a holistic approach can be taken. That is, without detracting from the jurisdiction of other specialist bodies, the Ombudsman (either State or Federal) could be given

responsibility for handling any complaints about any person performing functions under the quarantine orders.

This may be particularly useful in circumstances where the conduct of the agencies being oversighted cannot be easily distinguished and it would be artificial to do so.

#### **7. Any potential gaps in oversight should be identified, again from the outset**

The early briefing of independent oversight bodies would also enable any gaps in the oversight of external complaints avenues to be identified. In the case of quarantine arrangements, one potential area of uncertainty may be the oversight of private contractors (including security personnel).

If necessary, regulations or legislative amendments could be considered to the jurisdiction and functions of the Ombudsman or other relevant oversight bodies to ensure that issues such as outsourcing do not inadvertently result in any loss of transparency or accountability.