

STATEMENT ON INVESTIGATION

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Error in holding a prisoner beyond their sentence release date and failure to advise the prisoner of the error



Essential Insights

When agencies make mistakes, particularly where individuals' rights are infringed, they should take action to remedy those errors. This includes amending processes or systems to ensure the mistake is not repeated and informing those who are impacted. It is not acceptable to place the burden on individuals whose rights have been infringed to identify the error and appropriate redress.

OWN INITIATIVE INVESTIGATION

The Ombudsman investigated an allegation that the Department for Correctional Services (**the department**) may have unlawfully detained a prisoner by holding the prisoner in custody several months beyond their sentence release date.

The information provided by the department indicated that:

- The prisoner was held several months in custody beyond their sentence release date.
- The prisoner was held in custody beyond their sentence release date due to a system error, which meant that prison staff were not prompted to release the prisoner when his sentence had expired. When the department identified the error, the prisoner was released that day.
- The department took five years to advise the prisoner that he was held beyond his sentence release date. The department only did so after the Ombudsman requested that it engage with the prisoner.
- The department's contact with the prisoner did not offer an apology or clearly explain that the prisoner may have had a legal basis to make a claim against the state. It

appeared to place the onus on the prisoner to seek compensation, despite the department being well aware of its mistake.

The Ombudsman's investigation considered the *Correctional Services Act 1982*, which requires prisoners to be released from the correctional institution they are being detained on the day their sentence expires.¹

The Ombudsman also had regard to international and national human rights standards relating to the treatment of prisoners. Notably, Article 9 of the International Covenant of Civil and Political Rights (**ICCPR**), which Australia is a signatory, addresses the right to security of the person and freedom from arbitrary detention.

Article 9 of the ICCPR states that:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

...

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

In response to the Ombudsman's provisional report, the department stated that it does not consider it had an obligation to meet the human rights standards under the ICCPR.

The Ombudsman acknowledged that, while ratified, the international instruments relied on in her investigation are not incorporated into domestic law and therefore do not form part of Australian law. However, an agency's failure to comply with human rights standards may amount to error under the Ombudsman Act.

In this investigation, the Ombudsman found that the department had engaged in error under the Ombudsman Act by acting in breach of section 38 of the *Correctional Services Act* and inconsistently with the standards detailed in Article 9 of the ICCPR by virtue of holding the prisoner several months beyond their sentence release date:

- while the department had an established process in place to support the release of prisoners, where matters of complexity arose, those established processes were insufficient.
- while the department took immediate action to release the prisoner upon identifying the error, the prisoner was held in prison for several months beyond their sentence ending.
- the investigation acknowledged that the prison where the incident occurred had already amended its processes to prevent similar errors occurring.

¹ Section 38 of the *Correctional Services Act 1982*

The investigation also considered the department's failure to immediately advise the prisoner that he was held beyond his sentence date.

It was determined that the failure to do so was inconsistent with human rights standards and the reasonable expectations of the community in regard to the state's treatment of prisoners. The Ombudsman considered that there is an expectation that state government agencies remedy mistakes when they have an impact on individuals.²

“South Australian government agencies are required to take accountability for errors when they have an impact on people. “

The department took five years to advise the prisoner he was held in error and only did so following engagement from the Ombudsman's office. It did not appear the department had any intention of advising the prisoner of its error until the Ombudsman requested it do so.

Further, the letter that was eventually provided to the prisoner did not offer an apology or inform the prisoner of their legal rights against the state. The Ombudsman did not consider this met the standard outlined in the ICCPR.

The Ombudsman considered the delay in advising the prisoner to be serious and unacceptable. The seriousness of the department's error was exacerbated by the fact that the department knew it had held the prisoner in error and failed to provide timely advice of this fact, offer an apology or make him aware of the compensation options available to him. The Ombudsman commented that this had the potential to impact the prisoner's ability to seek redress for the department's action.

The Ombudsman found that the department's failure to immediately advise the prisoner that they had been held in error was wrong, and therefore an error under the Ombudsman Act. The department acted inconsistently with the standards set by the ICCPR, which are standards that the community expects the South Australian government to apply to its treatment of prisoners.

KEY OUTCOMES FOLLOWING THE OMBUDSMAN'S INVESTIGATION

In response to the Ombudsman's investigation, the department acknowledged that it held the prisoner in custody beyond their sentence release date.

The Ombudsman made recommendations that the department:

1. Review the practices and systems across its correctional facilities to ensure similar errors that led to the prisoner being held beyond his release date do not occur again

² The Ombudsman had regard to Article 9 of the ICCPR which requires State Parties to make redress available to individuals whose rights have been impacted by arbitrary or unlawful detention. The Ombudsman also found the Commonwealth Ombudsman's 2025 report regarding about the Commonwealth Department for Home Affairs persuasive (see [Righting Wrongful Detention: Report on people wrongfully detained by the Department of Home Affairs](#) 1 July 2023 – 30 June 2024).

2. Formally implement a change to its procedures which requires that prisoners, who are held for longer than the end of their sentence date, be advised of this error, verbally and in writing, as soon as possible. It should also be made clear to the prisoner that they may be eligible for compensation.
3. Consider making an ex-gratia payment to the prisoner.

At the time of publication, the department has agreed to recommendations 1 and 2. It is still considering recommendation 3.