

**AGREEMENT BETWEEN**  
**THE CHIEF EXECUTIVE**  
**OF THE**  
**DEPARTMENT OF CORRECTIONS**  
**AND**  
**THE CHIEF OMBUDSMAN**

**2009**

## **AGREEMENT BETWEEN**

**Barry Matthews** or whoever is for the time being the Chief Executive of the Department of Corrections, (herein called “the Chief Executive”)

AND

**Beverley Wakem** or whoever is for the time being Chief Ombudsman, (herein called “the Chief Ombudsman”)

## **STATUTORY AUTHORITY**

1. This Agreement is made under section 160 of the Corrections Act 2004, and replaces the former Agreement between the Chief Executive of the Department of Corrections and the Chief Ombudsman dated 21 December 2005.

## **BACKGROUND**

2. The Department of Corrections was established as a Government Department by State Sector Order 1995/28 with effect from 1 October 1995.
3. The Office of the Ombudsmen was established in 1962 by way of the Parliamentary Commissioner (Ombudsman) Act 1962. The Ombudsmen are appointed as Officers of Parliament and Commissioners for Investigations under the Ombudsmen Act 1975.
4. Section 160 of the Corrections Act 2004 provides:

### **“160 Protocol between chief executive and Chief Ombudsman”**

- (1) *The chief executive must enter into an agreement with the Chief Ombudsman about—*
  - (a) *the access to complainants and the places where complainants are required to attend, work, or live, to be given to the ombudsmen;*
  - (b) *access to records relevant to the resolution of those complaints;*
  - (c) *the assistance to be provided by the chief executive to the ombudsmen;*

(d) *any other matter that the Chief Ombudsman and the chief executive agree should be included in a protocol.*

(2) *Subsection (1) does not limit the powers of the ombudsmen under the Ombudsmen Act 1975.”*

5. In addition to the requirements of section 160, this Agreement:
  - (a) Recognises the relationship that exists in the roles of both agencies and establishes agreement on how the agencies will work together in the interest of achieving legislative objectives;
  - (b) Confirms the relationship between the parties is based on a spirit of goodwill and cooperation;
  - (c) Records the normal procedures intended to be followed in relation to the subject matter of this Agreement, and without limiting:
    - (i) the powers of an Ombudsman under the Ombudsmen Act 1975;
    - (ii) the powers of an Inspector of Corrections under the Corrections Act 2004; and
    - (iii) the powers of the Chief Executive of the Department of Corrections under the Corrections Act 2004 and the State Sector Act 1988.
6. In 2007 the Government requested that the Ombudsmen enhance their presence in the prison sector by directly investigating all deaths in custody and selected serious incidents. The Ombudsmen agreed to extend their activities as requested, contingent on the Department maintaining an effective 2<sup>nd</sup> tier complaints resolution mechanism outside prisons. The Ombudsmen have been granted additional resources to allow a progressive implementation.
7. The Ombudsmen are designated as a “*National Preventive Mechanism*” under the Crimes of Torture Act 1989. For the avoidance of doubt, the powers, functions and duties of the Ombudsmen under that Act stand wholly outside this Agreement.

#### **TERM, REVIEW AND VARIATION**

8. This Agreement will commence on execution by the parties and will remain in force until terminated by agreement of the parties.
9. This Agreement will be reviewed once every two years or as otherwise agreed by the parties.

10. This Agreement can only be varied by written agreement between the parties.

## INTERPRETATION

11. In this Agreement:

**“Area Manager”** means a manager responsible for a Community Probation and Psychological Services service area;

**“Chief Executive”** means the Chief Executive of the Department of Corrections;

**“Chief Ombudsman”** means an Ombudsman appointed as Chief Ombudsman under section 3(4) of the Ombudsmen Act 1975;

**“Death in Custody”** means the death of any prisoner occurring while in the legal custody of the Chief Executive;

**“Department”** means the Department of Corrections;

**“Departmental staff”** means any person employed by the Chief Executive of the Department and includes a person engaged under a contract for services;

**“Inspector of Corrections”** means a person appointed as an inspector of corrections under section 28 of the Corrections Act 2004;

**“Ombudsman”** means any Ombudsman appointed under section 3(2) or section 7 or section 8 of the Ombudsmen Act 1975, and includes:

- (i) officers and employees appointed by the Chief Ombudsman under section 11 of the Act; and
- (ii) persons holding delegated authority under section 28(1) of the Act.

**“Prison(s)”** means a corrections prison as defined in the Corrections Act 2004, and includes, where appropriate, all prison services;

**“Prison Manager”** means a person appointed or engaged as the manager of a prison under section 11 of the Corrections Act 2004 and includes, in relation to any site within a prison declared by the Chief Executive to be a discrete site for the purposes of the Corrections Act 2004, the person (if any) appointed or engaged by the Chief Executive to exercise the powers and perform the functions of the prison manager in relation to that site;

**“Regional Manager”** means a manager responsible for Prison Services or Community Probation and Psychological Services geographic region;

**“Serious Incident or matter”** means an incident or matter notified to an Ombudsman by the Department, or of which an Ombudsman becomes aware by another means, that an Ombudsman determines is sufficiently serious to warrant investigation by the Ombudsman;

**“Unit Manager”** means a manager responsible for a custodial unit within a prison;

**“Visit”**, unless the context otherwise requires, includes any visit an Ombudsman may make in the performance of his or her statutory functions, powers or duties or under this Agreement.

## GENERAL PRINCIPLES

12. The Chief Executive and the Chief Ombudsman mutually acknowledge:
  - (a) This Agreement is subject to the Ombudsmen Act 1975, the Corrections Act 2004, and the Corrections Regulations 2005.
  - (b) The Department will strive to settle every complaint concerning the administration of prisons, community work centres and probation offices direct with the complainant and at the lowest possible level of the organisation. This means that generally a complainant will be expected, in the first instance, to pursue a complaint at least to Unit Manager or Area Manager level, using the Department’s internal complaints processes. This may extend to the option of utilising the functions of an Inspector of Corrections.
  - (c) The Chief Ombudsman will ensure that complainants are made aware of the expectation that they will first utilise the Department’s internal complaints processes to attempt a resolution, and actively encourage them to do so. Both parties acknowledge, however, that there will be occasions where an Ombudsman’s intervention will be appropriate without prior recourse to those processes.
  - (d) An Ombudsman may communicate with a complainant in such a manner as the Ombudsman considers appropriate, and all such communications shall be private to the Ombudsman and the complainant. The Ombudsman may provide such information to the Department as he/she considers appropriate for the purposes of resolving the complaint.
  - (e) Where advice of a death in custody, or potential serious incident or matter, is provided orally between the parties, the Chief Executive and the Chief Ombudsman shall each ensure that a written record of the relevant conversation is made and agreed.

- (f) Where an Ombudsman decides to undertake an investigation, the Ombudsman will notify the Chief Executive in accordance with section 18 of the Ombudsmen Act 1975. However, this does not apply to a minor enquiry that does not require substantial follow-up.
- (g) During the currency of any investigation that has been notified to the Chief Executive, the Ombudsman will consult the Chief Executive as the Ombudsman considers appropriate. The Ombudsman will give the Chief Executive an opportunity to respond to his or her proposed conclusions prior to finalising his or her report on the investigation.
- (h) An Ombudsman may elect not to investigate any matter, or to discontinue an investigation. The Ombudsmen retain their rights to re-commence any investigation.
- (i) If the Department initiates its own investigation, and if requested by an Ombudsman, the Department will advise the Ombudsman of the outcome of its investigation and any matter related to the investigation.
- (j) Any death in custody that is not directly investigated by an Ombudsman as envisaged by paragraph 6, by reason of the progressive implementation of this Agreement or other reason, will be investigated by an Inspector of Corrections. However, the Department will permit an Ombudsman to monitor the Inspector's investigation, and for this purpose the Ombudsman may:
  - (i) be present at all stages of the investigation;
  - (ii) participate in any interview by the Inspector;
  - (iii) have access to all information held by the Department;
  - (iv) may propose issues for the Inspector's attention.

For the avoidance of doubt, it is accepted by both parties that such an investigation will be that of the Inspector and the Department, and the Inspector and the Department will be entitled to pursue the investigation as they think fit.

- (k) Monitoring the operation of this Agreement and the resolution of issues and disputes arising between the parties in relation to the interpretation or performance of this Agreement is the responsibility of the Agency Representatives specified in Appendix 1.

## CHIEF EXECUTIVE'S RESPONSIBILITIES

13. The Chief Executive agrees as follows:

### Access

- (a) To permit the Ombudsmen to conduct regular visits to prisons for the purpose of conducting interviews with prisoners who have expressed a wish to the Prison Manager to be interviewed by an Ombudsman, and with any member of the prison staff.
- (b) To ensure that each Prison Manager, on receiving not less than five working days notice of an Ombudsman's visit to a prison under paragraph 13(a), will, at least two days prior to such visit, place notices about the visit in each Unit in order that prisoners may request interviews.
- (c) In the case of a visit under paragraph 13(a), to ensure that Prison Managers provide the Ombudsman on arrival with a list of prisoners and any staff of whom they are aware, who wish to be interviewed.
- (d) To permit an Ombudsman to visit any prison or part of a prison at any time, to interview prisoners and staff for the purposes of particular investigations, or whenever an Ombudsman considers it necessary. This is subject to any necessary restriction imposed for the good order of the prison by the Prison Manager.
- (e) If required by the Ombudsman, to ensure that suitable access and interview facilities are provided to the Ombudsman for the purpose of interviewing staff, prisoners, and offenders under non-custodial sentences or orders or post-release conditions.
- (f) To provide the Ombudsmen with read-only access to the Department's computerised Integrated Offender Management System (IOMS) and all other records for the purposes of conducting enquiries and investigations in accordance with the statutory functions of the Ombudsmen and this Agreement. For the avoidance of doubt, the Chief Ombudsman iterates that the Ombudsmen will not browse information on IOMs other than for the purposes of specific enquiries and investigations undertaken under their statutory powers or this Agreement.
- (g) To ensure that the information on IOMs is current and correct as far as is reasonably possible. In the event that the IOMs system has to be shut down for maintenance, or should otherwise not be used or treated as accurate, to ensure that the Ombudsman is advised accordingly through [notification@ombudsmen.parliament.nz](mailto:notification@ombudsmen.parliament.nz).

### **Information and Reporting**

- (h) To ensure each prisoner on arriving at a prison is provided with a copy of the Office of the Ombudsmen's pamphlet prepared for prisoners.
- (i) To ensure the Chief Ombudsman is notified immediately following confirmation of any death in custody.
- (j) To ensure the Chief Ombudsman is notified of other serious incidents at the first available opportunity, and, at the latest, within one working day.

For the purposes of this paragraph "serious incident" means any incident of a nature potentially affecting the fair, safe, secure and humane treatment of prisoners, including, but not limited to, the incidents specified in Appendix 2.

- (k) To consult with the Chief Ombudsman in the development of a common range of incident categories and outcomes that may be used by both agencies for reporting purposes.
- (l) To provide the Chief Ombudsman with monthly audit records showing which Ombudsmen and staff accessed which prisoner records through IOMs.

### **Assistance**

- (m) To ensure that a Prison Manager (or appropriate senior staff member) is available, if required by an Ombudsman, to brief the Ombudsman orally at the beginning of each visit on matters that may be raised during that visit, and such other matters concerning the prison and its staff or prisoners about which the prison management believes the Ombudsman should be informed.
- (n) To ensure that the Prison Manager (or equivalent) will assist the Ombudsman in the Ombudsman's functions by facilitating his or her interview of any prisoner, staff or other person in the prison, and any requested visit to any part of the prison.
- (o) To ensure an Ombudsman's correspondence is responded to as soon as reasonably practicable, and in any case not later than 20 working days after receipt of the correspondence. If a substantive reply cannot be provided before then, to advise the Ombudsman when this will be provided, and why it cannot be provided within the 20 working day period.

- (p) To ensure an Ombudsman's minor queries, made by email, or telephone are responded to as soon as reasonably practicable, and not later than 2 working days after receipt of the email or telephone request. For the purposes of this paragraph a "minor query" means a query that is not an investigation notified to the Chief Executive of the Department under section 18 of the Ombudsmen Act 1975 and does not require substantial follow-up.
- (q) Where an Ombudsman addresses correspondence "Personal for the attention of the Chief Executive", the correspondence will be passed to the Chief Executive for consideration and response under his signature. The reference to Ombudsman in this paragraph refers only to an Ombudsman holding a warrant from the Governor-General and not to any staff of the Office of the Ombudsmen.

## **CHIEF OMBUDSMAN'S RESPONSIBILITIES**

14. The Chief Ombudsman agrees as follows:

### **Giving of Notice and other Information**

- (a) Save for urgent visits conducted under paragraph 13(d) or for other special reason, as far as reasonably practicable to give not less than five working days notice of a visit to the relevant Prison Manager.
- (b) In addition to the notice required to be given to the Chief Executive pursuant to section 18 of the Ombudsmen Act 1975 of the intention to commence an investigation, also to inform the relevant Regional Manager (where appropriate) of the investigation and its outcome.
- (c) Subject to section 21 of the Ombudsmen Act 1975, to provide to the Chief Executive, no later than 15 working days after 31 March, 30 June, 30 September and 31 December of each year the following information in respect of the preceding three month period:
  - (i) the number of formal and informal complaints and enquiries received, separately and in the aggregate;
  - (ii) the incident category of each complaint or enquiry (using the list of categories agreed in consultation with the Department);

- (iii) the category of each complainant (prisoner, offender under non-custodial sentence or post-release conditions, staff member, prisoner advocate);
  - (iv) the outcomes of complaints and enquiries;
  - (v) the number of prison visits made;
  - (vi) the number of investigations commenced into deaths in custody, and serious incidents as described in paragraph 12(f);
  - (vii) the number of interviews held with offenders on home detention, community work offenders, parolees, offenders under post-release conditions orders, offenders under supervision and offenders under extended supervision.
- (d) To ensure access to IOMS is restricted to the Ombudsmen personally, and those of their staff who are directly engaged on investigations of the Department under the Ombudsmen Act and this Agreement.
  - (e) To provide the Chief Executive with after-hours contact details for all staff who have delegated authority under section 28 of the Ombudsmen Act 1975 to exercise an Ombudsman's powers in relation to this Agreement, and to keep those details up to date.
  - (f) Subject to the Ombudsmen Act, immediately to notify the Department through an Inspector of Corrections and/or the relevant Prison Manager (as may be appropriate) on becoming aware through non-departmental channels of a serious incident or allegation that the Ombudsman believes to require immediate action or investigation by the Department. In particular, this paragraph relates to matters affecting the fair, safe, secure and humane treatment of offenders.
  - (g) To supply the Department with adequate copies of the Office of the Ombudsmen's pamphlet prepared for prisoners.

### **Visits**

- (h) For the purpose of complying with section 13(a), an Ombudsman will visit each prison on average 5 times each year.
- (i) To ensure Ombudsmen office staff required to visit prisons are provided with appropriate identification authorised by the Chief Ombudsman.

**SIGNATORIES**

**Signed** by the **Chief Executive** of  
the **Department of Corrections**

)  
)  
) \_\_\_\_\_

Signature

Barry Matthews  
Name

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Designation

**Signed** by the **Chief Ombudsman**

)  
) \_\_\_\_\_

Signature

Beverley Wakem  
Name

\_\_\_\_\_  
Date

In the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Designation

## **Appendix 1 – Agency Representatives**

### **Office of the Ombudsmen**

Assistant Ombudsman responsible for Prisons, for the time being Quenten Ford

Address:

Office of the Ombudsmen  
Solnet House  
70 The Terrace  
PO Box 10152  
Wellington 6143

Telephone: (04) 473 9533      Mobile 027 470 0082  
Facsimile: (04) 471 2254  
Email: [quenten.ford@ombudsmen.parliament.nz](mailto:quenten.ford@ombudsmen.parliament.nz)

### **Department of Corrections**

General Manager, Office of the Chief Executive, for the time being Mike Martelli

Address:

The Department of Corrections  
Mayfair House  
44-52 The Terrace  
Private Box 1206  
Wellington 6140

Telephone: (04) 474 8842      Mobile 021 839 989  
Facsimile: (04) 460 3212  
Email: [mike.martelli@corrections.govt.nz](mailto:mike.martelli@corrections.govt.nz)

## Appendix 2 – Serious Incidents Notification - Requirements

TIME CODE	TYPE AND TIMING OF REPORTS
A	<ul style="list-style-type: none"> <li>➤ Immediate notification by telephone</li> <li>➤ Provision of a Notification of Incident form to <a href="mailto:notification@ombudsmen.parliament.nz">notification@ombudsmen.parliament.nz</a> within 2 hours of the incident being advised Head Office Department of Corrections (if within office hours), or (if outside office hours) by 10am on the next business day.</li> </ul>
B	<ul style="list-style-type: none"> <li>➤ Provision of a Notification of Incident form to <a href="mailto:notification@ombudsmen.parliament.nz">notification@ombudsmen.parliament.nz</a> within one working day of the incident being advised to Head Office, Department of Corrections</li> </ul>

CATEGORY	TIMECODE
Escape	B
Death of a prisoner	A
Self harm	B
Assault by prisoner on prisoner	B
Assault by prisoner on staff	B
Assault by prisoner on other person	B
Hospitalisation or outside medical attention	B
Wrongful release	B
Wrongful detention	A
Hunger strike	B
Hostage taking	A
Disorder, event with the potential for disorder	B
Fire or arson	B
Use of force	B
Assault by staff on prisoner	B
Assault by staff on other person	B
Other serious or potentially serious incident	B