1982
(SECOND SESSION)

PARLIAMENT OF NEW SOUTH WALES

REPORT

OF THE

ASSISTANT OMBUDSMAN

OF NEW SOUTH WALES

UNDER SECTION 27 OF THE OMBUDSMAN
ACT, 1974, CONCERNING ASSAULT ON
MARIA JASON AT MULAWA TRAINING
AND DETENTION CENTRE FOR WOMEN

Ordered to be printed, 21 October, 1982

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982
REPORT OF THE
ASSISTANT OMBUDSMAN

UNDER SECTION 27 OF THE OMBUDSMAN ACT, 1974
CONCERNING ASSAULT ON MARIA JASON AT
MULAWA TRAINING AND DETENTION CENTRE
FOR WOMEN

ALLEGED ASSAULT ON MARIA JASON

In February, 1982, this Office received information that an assault had been
committed by one or more prison officers on Maria Jason, then an inmate of Mulawa
Training and Detention Centre, and that this assault had been inadequately investigated
and dealt with by the Department of Corrective Services.

Accordingly, this Office conducted an investigation and prepared a Report on
the matter under section 26 of the Ombudsman Act.

The final Report was provided to the Minister for Corrective Services on
1st June, 1982, and was issued in accordance with section 26 of the Ombudsman Act
on 9th June, 1982.

A copy of that Report is attached as a schedule to this Report.

The Report concluded that wrong conduct had occurred in that the assault had
not been adequately investigated and dealt with by officers of the Department of
Corrective Services and the major recommendations were as follows:

(1) That charges of assault be laid forthwith against Principal Prison Officer
    N. P. James and Principal Prison Officer S. Patterson, and that these
    officers be suspended from their duties, with pay, pending the finalization
    of proceedings.

(2) That the Director of Establishments, Mr J. McTaggart, be charged with
    "Neglect of Duty".

(3) That Mr Woodham and Mr Tandy of the Department's Establishments
    Division be reprimanded, and be given suitable instruction as to the
    responsibilities of the Establishments Division in the investigation of
    assaults before being assigned to further investigations.

(4) That the Department of Corrective Services give urgent consideration
    to the establishment of an independent inquiry to investigate conditions
    at Mulawa.

No charges have, to date, been laid in accordance with the recommendations,
and on 4th June, 1982, I was advised by the Minister for Corrective Services that he did
not intend to comment further on the Report except to say that he had appointed Mr
K. P. Anderson, the Deputy Chief Superintendent Magistrate, to inquire into "all aspects
of the alleged assault, and the conduct of prison officers at this centre".
REPORT UNDER SECTION 26 OF THE OMBUDSMAN ACT

ALLEGED ASSAULT ON MARIA JASON

The Complaint

In February, this Office received information that an assault had been committed by a prison officer on an inmate of Mulawa Training and Detention Centre, Maria Jason, and that the action being taken by the Department of Corrective Services to investigate and deal with the incident appeared to be inadequate.

No immediate action was taken by this Office, to allow the Department full opportunity to take appropriate measures. However, when no action had been taken by 26th March, 1982, the Office sought and, on 23rd April, 1982, obtained, the Department's file on the matter in order to undertake an investigation in accordance with section 13 of the Ombudsman Act.

The Reporting of the Incident

The incident involved an allegation that on 27th December, 1981, an inmate of Mulawa, Maria Jason, was assaulted by two prison officers—Principal Prison Officer M. P. James and Principal Prison Officer S. Patterson. At the time of the alleged assault Principal Prison Officer James was the senior officer in charge of the institution.

The alleged assault was witnessed by two other prison officers—Prison Officer H. M. Potts and Prison Officer (1st Class) P. C. Connors. Neither prison officer reported the incident at the time, or logged it in the appropriate log book. Ms Connors later explained her failure to report or log the incident as follows:

"It's not logged, the incident, because Mrs James and Miss Patterson would have persecuted me as I have seen them do to other officers."

Indeed, it appears that the incident primarily came to light because of a third prison officer, Prison Officer D. Howell, who had previously been acquainted with Maria Jason. Ms Howell stated that she approached Ms Connors and asked her whether she would be prepared to make a written report on the matter. Ms Connors refused to do so, but indicated that she would be prepared to give a verbal account of what had happened to Superintendent Hassan from the Establishments Division of the Department's Head Office, and Ms Howell theretofor contacted Mr Hassan and arranged this. It appears that information was also passed to the Establishments Division by Mr Bob Downes, a union official for the prison officers, but it is not clear from the file how this information came into Mr Downes' possession.

It is cause for the gravest possible concern that information on the alleged assault may never have come to light were it not for the fact that Maria Jason had a personal friend among the prison officers in the institution.

The Incident

Statements were taken from Ms Connors on 31st December, 1981, and from Ms Potts on 4th January, 1982. Ms Connors stated that the incident occurred after Maria Jason, then a prisoner held in the Observation Section at Mulawa, was given a shower. A Departmental notice required that this be done with three officers. Ms Connors alleged that Maria Jason had her shower without trouble, but that when she finished Ms Connors, who was standing outside the shower room, heard Ms James say to her:

"I've got all day Jason, but you haven't."

Her statement continued:

"Then heard a noise—Mrs James said she's on the toilet—Mrs James finished a cigarette. I passed a remark to Mrs James—that I could see the adrenalin building up in her (meaning Mrs James), Mrs James didn't reply—just grinned at me. Mrs James entered the showers to remove Jason. I didn't have clear vision of the shower, but I saw Mrs James dragging and kicking Maria Jason till she got her in her cell."
This Office is not satisfied that these steps are adequate to deal with the issues raised by the Report for the following reasons:

(1) The question of whether a prima facie case of assault exists against Officers James and Patterson has now been the subject of investigation and/or report by Superintendent Hassan and Principal Prison Officer Murphy of the Department’s Establishments Division; by Superintendent Woodham and Assistant Superintendent Tandy of the same Division; by Mr. P. Lyons, then the Department’s legal officer, by the Director of Establishments Mr. J. McTaggart; and by this Office. It is the view of this Office that no further purpose is likely to be served by additional investigation as the statements already taken do disclose a prima facie case against Officers James and Patterson sufficient to justify the laying of charges, and it is proper that the question now be determined by an appropriate tribunal without further delay.

(2) No steps have been taken to deal with the wrong conduct of senior officers in the Department’s Establishments Division.

(3) The designation of Mr Anderson requests him to inquire into and report to the Minister for Corrective Services upon:

- "Whether any act or omission in relation to (i) or arising out of, the matters listed hereunder, on the part or parts of any person or persons in authority at the said Training and Detention Centre constitutes a breach of duty by the said persons in authority or any of them.
  - An allegation that prisoner Maria Jaxon was assaulted by prison officers at the Mulawa Training and Detention Centre on 27th December, 1981.
  - The investigation into the said assault on Maria Jaxon by officers of the Department of Corrective Services."

It is apparent that these terms of reference do not permit Mr Anderson to undertake an independent inquiry into the conditions at Mulawa. Mr Anderson has confirmed to me that he also takes this view of his terms of reference.

It is the view of this Office, as stated in the Report, that such an inquiry is needed.

Indeed, this view is shared by Superintendent Woodham and Assistant Superintendent Tandy of the Establishments Division. In their report on the incident they refer to repeated claims made to them by members of staff at Mulawa that a faction fight is in progress at the goal, and to the fears held by both sides that:

- ... certain officers in each faction are capable of and to use terms quoted to us: ‘Verbal the opposition’ and ‘set officers up’...

It was mentioned to us (by five prisoners on a hunger strike), that the officers are fighting between themselves and the prisoners are taking sides.

The prisoners informed us of such allegations as homosexual relationships and personality clashes between officers that affect the smooth running of the institution.

They informed us of certain details about officers’ private lives that inmates should not be aware of. Whether this information is true or false we do not know.”

The Report described the situation that currently exists at Mulawa as “impossible”, and recommended that an independent inquiry be instituted to allow all staff members to come forward and give information without the fear of civil action who has investigated and had been involved with decision making at Mulawa.”

This Office concurs with the views of Superintendent Woodham and Assistant Superintendent Tandy that serious problems exist at Mulawa which require urgent independent investigation. It is a matter of concern that the terms of reference provided to Mr Anderson do not permit such an inquiry to be made.

For these reasons, I am of the view that sufficient steps have not been taken in response to the Report prepared by this Office. Accordingly, this Report is submitted to the Premier for presentation to Parliament in accordance with section 27 of the Ombudsman Act.

SUSAN ARMSTRONG, Assistant Ombudsman,
for the Ombudsman.

September, 1982.
It is relevant to note in relation to the incident that Maria Jason is a person of slight build and no more than average height. Mr. James is approximately five feet eleven inches and of solid build; and Miss Patterson is approximately five feet three inches and of average build.

The Investigation

It is clear that there is an absolute and irreconcilable conflict between the version proposed by Ms. Connors (backed to some extent by Ms. Potts) and that proposed by Mr. James and Ms. Patterson. If Ms. Connors’ statement is accepted, both Mr. James and Ms. Patterson would appear to be guilty of assaulting Maria Jason; if their alternative version is accepted it would appear that they acted in reasonable self defence and no assault occurred.

It is apparent that there are very few occasions indeed where a prison officer witness makes a statement alleging an assault on the part of other prison officers. For this reason alone I would expect that the matter would have been given very serious consideration. This is particularly so in light of the fact that the allegations were made against two senior officers by two relatively junior officers. It might be expected that junior officers proposing to follow a career in an institution would think very carefully before making allegations against senior officers under whom they are to serve; particularly when there is little opportunity for them to transfer to another institution, as is the case with female prison officers.

When preliminary statements had been taken from the parties concerned, the matter was passed to the Department’s legal officer, Mr. P. Lyon for report. On 7th January, 1982, he reported that in his view the investigation disclosed a prima facie case of assault against Prison Officers James and Patterson. He pointed out that Ms. Connors’ statement was corroborated by a medical examination of Maria Jason made on 31st December, 1981, which found bruising to her upper arm, elbow, and knee (the value of this medical examination is further considered below). He further stated that the seriousness of the matter was heightened because evidence suggested that Maria Jason was, at the time, mentally ill, or at least mentally disturbed, and that the responsibility of the Department to protect prisoners from assaults by officers was particularly strong in the case of prisoners unable to properly put their view because of their mental condition. He recommended that—

1. Officers Connors and Potts be re-interviewed and detailed statements be obtained from them in relation to the incident.

2. That Officers James and Patterson be re-interviewed and the specific allegations of assault be put to them.

3. That the prisoner Jason be seen by a psychiatrist as to her mental state.

4. That the prisoner Jason be interviewed and the specific allegation be put to her. Because of the prisoner’s attitude towards the Department, consideration be given to approaching an independent person such as a Chamber Magistrate to make such interview with the prisoner, and advise her of her rights.

5. That regardless of the prisoner Jason’s mental condition that Officers James and Patterson be charged with assault.

On the same day the Chairman of the Correction Services Commission, Mr. V. Dalton, noted his agreement with those recommendations. Accordingly, the file was passed to the Director of Establishments, Mr. J. McTaggart, who assigned the matter to Superintendent R. Woodham and Principal Prison Officer P. Murphy “for attention as recommended”.

Superintendent Woodham and Assistant Superintendent Tandy, both senior officers in the Establishments Division, took further statements from the officers concerned between 17th January and 27th January, 1982. These essentially confirmed the statements made previously as described above. They did not specifically interview Maria Jason on the matter, but quoted in their Report from an interview with her by Detective Sergeant Whitemore as follows:

“Due to her violence whilst in custody an instruction has been given by the Acting Superintendent that she is only to be moved by not less than three prison officers. Towards the end of the interview the inmate appeared reticent and indicated she wanted to make up for her previous behaviour which would indicate that she herself has caused trouble in the hospital by having resisted and assaulted prison officers on at least two previous occasions which have been recorded. The inmate strenuously refused to sign any document or to have any written record made of our conversation and when this was suggested to her she again commenced to retreat within herself.”
Mrs James had Jason on the floor—Mrs James was kneeling either on her or over her. She was on the floor with her and saying to Jason 'I'll kill you you cunt'. I then saw Miss Patterson enter the cell to kick Jason and Patterson said 'Let go of her you bastard', addressing the remark to Jason. They then left the cell. Jason made a move towards the door. I closed and locked it.

Mrs James and Miss Patterson then left Rose Scott (Hospital).

I returned to Jason's cell door. She was laying on her stomach on her bed. She only had a pyjama top on, and I could clearly see the marks on her buttocks, the back of her thighs. Mrs Potts who was present at the showers then said to me 'Did you see where Pinto kicked her? I said 'No, but I could see the boot going in'.

Mrs Potts replied 'Pinto kicked her right between the legs'.

In answer to the question:

At any time was the prisoner fighting or resisting the officers?

Mrs Connors answered as follows:

CONNORS: The only time I saw Jason offer any resistance was when Mrs James had her on the floor in the cell. That's when Nobby (James) had her on the floor . . .

HASSAN: Are you saying that Jason did not retaliate at any time when she was in the shower until she was in the cell.

CONNORS: I never saw her offer any resistance.

In her statements, Ms Potts claimed that she was unable to remember, or did not know, several important aspects of the incident, including whether she heard voices from the bathroom, whether an officer entered the shower block out of her sight; and whether Maria Jason was resisting either Mrs James or Miss Patterson or was struggling in any way.

As much of the incident occurred within her sight, and as the first statement from her was taken only one week after the incident, there are lapses in memory or observation are difficult to explain. It may be that they are genuine, but the inference is also open that Ms Potts was fearful of making direct allegations against two officers who were both her superiors in rank, and one of whom was the officer-in-charge of the institution at the time. However, on two significant items she supports specific aspects of Miss Connors' statement:

(1) She states that Ms Patterson's foot came in contact with Maria Jason's body, although in her statement she says that this occurred while Ms Patterson was pushing Maria Jason with her foot to get her into the cell. (In her statement, Ms Patterson denies that at any time her foot came into contact with Maria Jason's body.)

(2) She agreed that she did say to Ms Connors, referring to Miss Patterson, that "She kicked her right between the legs", meaning the inside tops of her legs.

Statements were also taken from Officers James and Patterson. Ms James claimed, in essence, that after her shower, Maria Jason crouched down between the toilet bowl and the shower recess wall, and that in standing up she raised her right hand in a way which Ms James considered was open to the interpretation of being an attack on her. Ms James then pulled her out of the recess by her hand, whereupon Maria Jason threw herself on the floor and began kicking at Ms James' legs, making contact on several occasions. It is common ground that this incident occurred out of the sight of Ms Connors and Ms Potts. Ms James states that she then took hold of Maria Jason's ankles while Ms Patterson took hold of her wrists, and they attempted to carry her down the corridor (where Ms Connors and Ms Potts were standing) and into her cell. She claims that Maria Jason was struggling all the time, and managed to break loose at the cell door. This led to an altercation in the cell involving herself, Ms Patterson and the prisoner, in which she claims that the prisoner kicked her in the stomach, and grabbed her by the hair, trying to bang her head up and down on the floor. She stated that Ms Patterson tried to pull her loose.

Ms Patterson in general supported the version of events given by Ms James. She confirmed that in carrying the prisoner along the corridor she had held of her wrists, and stated that the prisoner's body at this time never made contact with the floor. She stated that at no time throughout the incident did her feet ever make contact with Maria Jason's body, and that she never at any time made a kicking motion with her foot.
1. Conflict of Evidence

Paragraphs A3–5 of the Report read as follows:

"Mrs Connor states she saw Mrs James dragging prisoner Jason on the floor by the upper half of her body kicking the prisoner as she dragged her.

This is totally denied by Mrs N. James and Miss S. Patterson. Both these officers stated that Miss Patterson had held of the prisoner's arms and Mrs James had hold of the prisoner's legs.

Mrs Potts cannot recall who had hold of the prisoner in the corridor.

4. Neither Mrs Connor or Mrs Potts had a clear view of what transpired in the bathroom or in Maria Jason's cell.

5. It is understandable that all officers' versions of what they saw differ, due to the time lapse since the incident”. (emphasis added)

A detailed statement was taken from Ms Connors three days after the incident. Statements were taken from Ms James, Ms Patterson and Ms Potts four days later. I find it absolutely astonishing that anyone would suggest that the officers who witnessed this incident could possibly have forgotten whether or not Ms James was dragging and kicking an unresisting prisoner and whether Ms Patterson also kicked her, in this time.

In my view the conflict in the evidence cannot be explained in any way other than that one or more of the officers concerned has not given an accurate account of the incident. To suggest that, after one week, they would have forgotten what occurred is simply laughable.

I am most concerned that the Director of Establishments has not seen fit to question this aspect of the Report, or at the very least to express some qualification in his support of it.

2. An Officer's Right of Self-Defence

In their report, Superintendent Woodham and Assistant Superintendent Tandy justify their recommendation that no further action be taken on the grounds that Ms James claims she interpreted Maria Jason's action in raising her arm at the outset as a possible attack. They then quote Rule 4 (c), which states: "Force can be used by a prison officer on a prisoner, to defend himself if attacked or threatened with attack, where he cannot otherwise protect himself from harm". The Report then proceeds:

“When we reflect on acceptable training techniques for an officer protecting himself or herself we are of the opinion no further action is necessary in this incident.

We mention that methods of protecting yourself accepted by this Department are kicking and breaking fingers, etc.”

The only comment which the Director of Establishments chooses to make on this astonishing assertion is:

“I hope that the reporting officers have been misquoted by the typist when they say that ‘methods of protecting yourself accepted by this Department are kicking and breaking fingers, etc.’”

The office of Mr McTaggart in the Department of Corrective Services is directly adjacent to the desks used by other Establishments Division officers, including officers Woodham and Tandy. Both these officers had signed the report as correct, and a number of corrections have been made—apparently by Superintendent Woodham—where typographical errors occurred elsewhere in the Report. In the absence of evidence to the contrary, I do not accept that this statement is a typographical error.

In my view, the Director of Establishments was seriously derelict in his duty by not confirming with the officers concerned whether or not the statement was an error. If my assumption that it is not an error in correct, it is my view that the Director of Establishments was derelict in his duty by—

1. not taking immediate steps to correct any misapprehension in the minds of his senior officers as to acceptable methods open to prison officers for protecting themselves; and

2. not taking immediate steps to ensure that the guidelines laid down for prison officers faced with this situation are clear and clearly understood. In the circumstances, it is vividly apparent that training techniques in this area are not at all "adequate".
From all of the foregoing this inmate would prove useless as a witness or exhibit. There is also an absolute lack of medical corroboration to any suggestion that excessive force was used against her.

They also obtained a written statement from Maria Jason, but while it appears to allege that she was ill-treated this could not be taken as a rational account of the incident and is not helpful in its investigation.

It is clear that Maria Jason is not a useful witness either way, but this is of little moment in view of the clear statements made by the two prison officers who witnessed the alleged assault.

The Report by Mr Woodham and Mr Tandy

It is my view that, once the further statements had been taken and the conflict of evidence made clear through the specific questions put to the four officers chiefly concerned, effect should have immediately been given to Mr Lyon's recommendation that charges of assault be laid against Officers James and Patterson. There was no apparent reason to doubt the credibility of Ms Connors and Ms Potton and indeed some weight may be lent to their allegations by the difficult position in which they were placed through their making statements against superior officers and by their initial reluctance to make them. The Department has a clear and heavy responsibility to protect prisoners against assaults by prison officers and I agree with Mr Lyon that this onus is particularly heavy where the prisoner is disadvantaged because of his or her mental condition.

The report of Mr Woodham and Mr Tandy, dated 16th February, 1982, recommends that no further action be taken in relation to charges against Officers James and Patterson. Two reasons are given for this recommendation:

1. That it cannot be proved that Ms James' version of what initially occurred in the shower room is incorrect; and
2. That the other officers did not see what initially happened in the shower room.

These reasons are entirely misconceived for two reasons. First, it is not the role of the Establishments Division to decide whether or not an assault in fact occurred, i.e., whether it preferred Mrs James' version of events to that of Ms Connors. This is a matter for the court or tribunal hearing any charges. The role of the Establishments Division is simply to decide whether or not sufficient evidence exists for charges to be laid.

I have no doubt that in the present case sufficient evidence did exist. Indeed, I would expect that, in those rare instances where clear evidence of an alleged assault is given by prison officers who witnessed the incident, the Department's normal practice should be to lay charges immediately unless compelling evidence was available to prison officers from reporting assaults which they may witness, particularly if those assaults are carried out by comparatively senior officers who have some degree of authority over the witnesses concerned.

Second, regardless of what occurred in the shower room, if Ms Connors statement is accepted, Ms James and Ms Patterson would still be guilty of an assault on Maria Jason. As pointed out in the Report a prison officer is "entitled to defend himself if attacked or threatened with attack, where he cannot otherwise protect himself from harm". However, Ms Connors states that she saw Ms James dragging and kicking Maria Jason from the shower recess to her cell and that at this stage Maria Jason made no resistance. She also states that, in the cell, Ms James was kneeling on or over Maria Jason when Ms Patterson entered the cell and kicked her. The rule quoted above would not justify this treatment of an unwilling prisoner regardless of any altercation which may have previously occurred in the shower room.

Other Deficiencies in the Report, and the Report of the Director of Establishments

It is my view that the investigation by Mr Woodham and Mr Tandy proceeded on a mistaken view as to their role and that, possibly as a result, their recommendation that no further action be taken was unreasonable in the circumstances to the extent that it amounted to wrong conduct under the Ombudsman Act. However, there are a number of other serious deficiencies in their report and in the comments made on it by their superior officer, the Director of Establishments Mr J. D. McTaggart.
This aspect is particularly serious when it is realized that the Establishments Division, which is staffed by very experienced and senior officers—many with the rank of Superintendent—is the section of the Department which is responsible for supervising the prison system generally and ensuring that adequate standards of conduct and conditions are maintained. If there is confusion among officers at this level it can be anticipated that the confusion among prison officers serving in the gaols will be far greater.

This Office, of course, acknowledges that in appropriate circumstances prison officers are entitled to use reasonable force to protect themselves and restrain violent prisoners. However, it is obviously important that prison officers be in no confusion about the criteria governing these situations. It is clearly wrong to suggest that any level of resistance by a prisoner would justify an officer, in self defence, kicking or breaking fingers. In this context it is also relevant to note again the disparity in physical size between Maria Jason and officers James and Paterson. This factor is not mentioned in the Report.

3. Medical Report on Maria Jason

The Establishments Division officer who initially took statements on the case, Superintendent Hasson, arranged to have Maria Jason medically examined when he learned that this had not been previously done and an examination was carried out on 31st December, four days after the incident. As previously mentioned, the examination disclosed bruises on her left upper arm, her right elbow, and her right knee. The doctor's report commented:

"The above are compatible with the patient needing to be physically restrained and their rate of fading is compatible with them being present since 27th December, 1981."

In recommending that no further action be taken, the report from Mr Tandy and Mr Woodham includes the following:

"Dr Dingle states on the medical file, we quote: 'The above are compatible with the patient needing to be physically restrained and the rate of fading is compatible with them being present since 27th December, 1981'. End of quote.

Dr Dingle is referring to three bruises, the only visible injuries on Maria Jason when she was medically examined on 31st December, 1981.

It has been mentioned to us that the doctor did not physically check Maria Jason's entire body on this date as she had a garment on when the examination took place.

We were also informed that inmate Jason hated men and force would probably have to be used to fully undress her before Dr Dingle.

Dr Dingle however, does record and we quote: 'The patient does not give any history verbally and does not appear distressed.'"

It is apparent from the Report that the medical examination was conducted while Maria Jason was clothed, and therefore could not check her in a way which would throw any light on whether she was assaulted. The injuries ascertained may be compatible with her being physically restrained, but they are equally compatible with an assault as alleged by Ms Connors.

I recommend that the Director of Establishments give consideration to whether there is a need to take steps to ensure that doctors conducting medical examinations in circumstances such as this are fully appraised of the possible implications and therefore conscious of the need to fully examine aspects which might be relevant. It is apparent that a medical examination of the type conducted had no probative value in proving or disproving any allegation of assault. It is most unfortunate that a proper examination, which might have provided evidence one way or the other, was not conducted.

However, I am concerned that Mr Woodham and Mr Tandy make reference to the report in a context which indicates it was a factor in their decision to recommend against further action.

Similarly, while no interview was conducted with Maria Jason, the Report quotes from a file note prepared by Detective Sergeant Whitmore (quoted above), which states that she would be useless as a corroborative witness. Again, the implication is that this is a further reason for not proceeding.
It is not disputed that, because of her mental condition Maria Jason would not be a helpful witness. However, that is not to the point. The relevant witnesses are Officers Connors and Potts, and the fact that Maria Jason cannot be used to corroborate their evidence does not detract from its probative value.

It may be that these items were included in the Report simply to make it comprehensive and that no suggestion that they have probative value in themselves was intended. However, it is my view that it would be open to Officers Connors and Potts, or any other officer who might be in a similar situation, if they read the report, to draw an inference that evidence of the most tenuous probative value was being cited to justify that decision not to take further action on the matter. I consider it most unfortunate that Mr McTaggart's Report did not comment on his and make it clear precisely what evidence he relied on in accepting the recommendation that no charges be laid.

4. Criticism of Ms Connors and Ms Howell

The comments made above take on added significance in the light of other sections in the reports prepared first by Mr Tandy and Mr Woodham and secondly by Mr McTaggart. It is fair to say that, in both Reports, quite strong criticism is made of various actions taken by Ms Connors, Ms Potts and Ms Howell.

Mr McTaggart points out that Ms Howell's association with Maria Jason outside the institution—through sharing a house with her prior to her entry into prison—was "in defiance of Rule 10 if indeed Ms Jason had a record at such time and if Ms Howell was aware of it". This reference occurs in the third paragraph of Mr McTaggart's Report, before any mention is even made of the alleged assault.

A somewhat more detailed reference is made in the Report by Mr Tandy and Mr Woodham to Miss Howell's association with Maria Jason, and this concludes:

"Also the reason for Miss Howell pushing for this investigation is doubtful as to whether she did it because of her personal relationship with Maria Jason, or to right some possible wrong."

It is apparent that the Director of Establishments did not take the trouble to establish whether or not Maria Jason had a prior criminal record, or to ask Ms Howell whether or not she was aware of any such record.

In fact, Mr McTaggart was incorrect in suggesting that, under Rule 10, Ms Howell would have been wrong in associating with Maria Jason if she was aware that she had a "record". Rule 10 purports only to regulate dealings between prison officers and discharged prisoners—the possession of a criminal record is irrelevant.

At the time she shared a flat with Ms Howell, Maria Jason had never served a prison sentence. Thus there could be no question at all of Ms Howell's committing any breach of the prison rules through associating with her. I consider that it is absolutely disgraceful for the Director of Establishments to infer so prominently in his Report that Ms Howell might have committed a breach of prison rules without checking to see whether Maria Jason was at the relevant time a discharged prisoner and without affording Ms Howell any opportunity to comment on and explain any perceived breach.

In any event, Rule 10 was repealed on 10th February, 1982, and the rule enacted in substitution for it would allow the sharing of accommodation in this manner, even if Maria Jason had then been a discharged prisoner and Ms Howell was aware of this fact.

Similarly, in the Report prepared by Mr Woodham and Mr Tandy, again before any reference is made to the facts of the assault, criticism is expressed of Ms Connors as follows:

"Mrs Connors in our opinion has left much to be desired and we are of the opinion that for a person to be as concerned as to what she alleges happened on 27th December, 1981, and to wait two full days to report anything to anyone, is disgraceful.

Mrs Connors refused to submit a report in relation to the incident when directed to do so by Mr Hassan on 30th December, 1981."

"Mrs Connors in our opinion has left much to be desired and we are of the opinion that for a person to be as concerned as to what she alleges happened on 27th December, 1981, and to wait two full days to report anything to anyone, is disgraceful.

Mrs Connors refused to submit a report in relation to the incident when directed to do so by Mr Hassan on 30th December, 1981."
The Report makes no reference to the fact that both Ms Patterson and Ms James are senior in rank to Ms Connor, nor to the fact that Ms James was the officer in charge of Mulawa at the time of the incident. At no time does it make any acknowledgement of any possible reluctance which might be felt by junior officers in laying charges of assault against their superiors, particularly in a situation such as that at Mulawa where there is very little opportunity for an officer to obtain a transfer to another institution.

I consider that it is disgraceful that the Report criticizes Ms Connors and draws adverse inferences against Ms Howell on this basis. It is hard to draw any inference from the two Reports other than that Mr McTaggart, Mr Tandy and Mr Woodham consider a possible breach of an outdated rule by Ms Howell and an understandable reluctance on the part of Ms Connors to lodge an adverse report against two of her superior officers, to be matters at least as worthy of comment and investigation as a possible assault by two officers on a mentally disturbed prisoner.

It seems to me that an inference that the Director of Establishments or the Establishments Division was involved in some attempt to "cover up" the incident could be drawn by Officers Connors and Patt, or other prison officers considering whether or not they should report future assaults by fellow prison officers to which they are witness. This is particularly reprehensible because, in her statement three days after the incident, Ms Connors expressed her belief to the Establishments Division Officer conducting the interview that the matter would be properly dealt with now that it had come out into the open:

HAAMAN: I have noticed from the extract of the log book/incident book held in the hospital, that no mention is made of the incident. Could you explain that please.

CONNORS: It's not logged the incident, because Mrs James and Miss Patterson would have perused me as I have seen them do to other officers.

HAAMAN: If that is your fear—what do you expect is going to happen as a result of the information that you have given at this interview today.

CONNORS: I expect after this interview today of this incident will be reported to the Commission and be dealt with accordingly.

HAAMAN: Are you prepared to be interviewed by police if necessary?

CONNORS: I am.

I find it most disturbing that her faith in this has not been vindicated.

CONCLUSIONS AND RECOMMENDATIONS

As of the present date (May 4th, 1982), which is slightly more than four months after the date of the incident, no charges have been laid in this matter and no other steps taken to resolve it. I find this and the inadequate handling of the investigation, generally, to be wrong conduct within the terms of the Ombudsman Act.

I recommend that charges of assault be laid forthwith against Principal Prison Officer M. P. James and Principal Prison Officer S. Patterson. I further recommend that Officers James and Patterson be suspended, with pay, from further duties pending the finalization of the proceedings. I recommend that the Director of Establishments, Mr J. McTaggart, be charged with neglect of duty.

I recommend that Mr Woodham and Mr Tandy be reprimanded and that they be given suitable instruction in the responsibilities of the Establishments Division in the investigation of assaults before being assigned to further investigations.

Further Comments

The Report of Mr Woodham and Mr Tandy dealt with a number of other matters—notably Ms James' insertion of a note on the incident in the Deputy Superintendent's Journal on a date subsequent to that for which it is logged—which are not covered in this Report. No recommendation is made as to the proper course for the Department to take in dealing with those matters, although appropriate measures are plainly needed.
However, their Report does go on to express concern over the situation at Mulawa and particularly in relation to faction fights among staff members in which prisoners—wittingly or unwittingly—have on several occasions become involved.

This office has had some indirect knowledge of and involvement with recent incidents at Mulawa—including a hunger strike by a number of inmates—and has observed conditions and working arrangements there to the best of our ability.

The information which has come to our attention gives me cause for the gravest possible concern. I have no doubt that the situation and tension at Mulawa is greatly aggravated by problems which could be resolved through appropriate Departmental action. The distress and problems which this situation causes for inmates are exacerbated by the fact that, for practical purposes, Mulawa is the only women's prison in New South Wales.

I note that in their Report, Mr Woodham and Mr Tandy recommend the establishment of an independent inquiry to investigate conditions at Mulawa. While I have doubts as to the appropriateness of the Inquiry they propose, I agree that there is a need for such a step to be taken and recommend that the Department give it the most urgent consideration.

SUSAN ARMSTRONG,
Assistant Ombudsman for the Ombudsman.

9th June, 1982.

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MENDING

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