

Stripped of our dignity

A human rights review of policies,
procedures, and practices in relation to
strip searches of women in Queensland prisons

September 2023



Queensland
Human Rights
Commission

Commissioner
Scott McDougall

Deputy Commissioner
Neroli Holmes

Review Team

Principal Policy Officer: Heather Corkhill

Senior Lawyer: Bree Callanan

Aboriginal and Torres Strait Islander Legal Graduate: Taylia Snell

Editor: Helen Bannerman

Senior Communications Officer: Kate Marsh

Engagement and prison visits team: Bree Callanan, Heather Corkhill, Taylia Snell, Claudia Diaz Amayo, Victoria Bell-Locke, Toni McGregor.

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“When you come into jail, they strip you physically but they strip you of your self-respect, of your people, of your identity... then over time you have to build yourself up, build up your self-confidence, self-esteem, self-worth until you’re delivered back into the world. Hopefully you’ve got enough self to be able to function.”

Commissioner's foreword

Strip searches of women are conducted regularly and routinely in Queensland prisons – but should they be?

This Review of strip search policies, procedures, and practices in Queensland women's prisons is the first major review of its kind conducted under the *Human Rights Act 2019* (Qld) by the Queensland Human Rights Commission.

During the Review, it became evident that strip searches are not only ineffective, but also inflict serious harm. When conducted in ways that are inconsistent and disproportionate to risk, strip searches severely limit the human rights of prisoners as well as their children and families.

Strip searches do not achieve their intended purpose. They have an absurdly low rate of contraband detection – successful in 0.01 to 0.015% of searches - making them ineffective at improving prison safety and security.

The demeaning and dehumanising nature of strip searches undermines the dignity and self-esteem of prisoners and their opportunity for rehabilitation – starkly illustrated by the words of one prisoner who spoke with the Review team in April 2023, from which the title of this report is drawn:

“You are stripped of everything. They don't just strip your clothes; they strip away your dignity.”

Almost 90% of women prisoners are survivors of child sexual abuse or domestic or physical violence. For many women, strip searches echo these traumas.

The damage is not just in the immediate experience of a strip search, but what women in prison will do to avoid having one. Women told us they don't have visits with their family and children, avoid or delay seeking medical treatment, and choose not to attend their court matters in person.

Most strip searches are conducted routinely, in the absence of reasonable suspicion and without individual risk assessments. Inconsistencies in strip searching methods, the lack of information provided to prisoners, and failure to respect a prisoner's privacy when staff members use surveillance and body worn cameras during searches were of concern to the Review.

To ensure consistent, proportionate, and respectful search methods for prisoners, the Review recommends that clear, comprehensive policies and procedures that incorporate human rights considerations be developed.

If the Queensland Government is serious about addressing harm inflicted on all women, including the growing population of women in its prisons, it must make a substantial investment in alternative technologies. Body scanners and saliva swab testing present viable alternatives to strip searches and urine drug tests. These advancements in technology not only protect the human rights and dignity of prisoners but also contribute to a safer and more effective prison system.

Although the recommendations in our report do not rely on changes to the law, the Queensland Government should conduct a comprehensive review of the overarching legislation to reflect the changes in policy and practice recommended in the Review.

This Review presents an opportunity for a productive ongoing engagement with Queensland Corrective Services (QCS) to work collaboratively towards a common goal of prison reform for women. I commend QCS on their transparent and cooperative approach to this Review and for their support and assistance with providing access to information and facilitating site visits for my team.

I am grateful for the trust bestowed upon us by women in prisons, as they shared their stories and experiences with my team. It is through their generous contributions, along with the invaluable insights provided by QCS staff members and stakeholders, that this report has come to fruition. Without the willingness of many individuals and organisations to share their experiences and perspectives, this comprehensive examination of strip searches in Queensland prisons would not have been possible.

Scott McDougall
Queensland Human Rights Commissioner



Introduction

Introduction

About us

The Queensland Human Rights Commission is an independent statutory body established under the *Anti-Discrimination Act 1991* (Qld) and has functions under that Act and the *Human Rights Act 2019* (Qld) (Human Rights Act). The Commission conducted this review under its review function in the Human Rights Act.¹

Background

The Women's Safety and Justice Taskforce (the Taskforce) was established as an independent, consultative taskforce by the Queensland Government to examine:

- coercive control and review the need for a specific offence of commit domestic violence
- the experience of women across the criminal justice system.²

In 2022, the Taskforce delivered its second *Hear her voice* report which focuses on the experiences of women and girls across the criminal justice system. In that report, the Taskforce recommended that:

The Queensland Human Rights Commission exercise its functions under section 61(c) of the Human Rights Act 2019 (Qld) to review policies, procedures and practices relating to the use of strip searches on women in Queensland correctional facilities in relation to their compatibility with human rights and provide advice to Queensland Corrective Services about how compatibility could be improved.³

In establishing the need for the review by the Queensland Human Rights Commission (the Commission), the Taskforce found:

- women are not always treated with respect and dignity in prison
- the practice of strip searching is highly distressing, violating and triggering for many women
- strip searches may arguably amount to a form of torture, cruel, inhuman or degrading treatment under the Human Rights Act 2019 (Qld)
- alternative technology should be implemented, such as body scanners
- trauma-informed practice should be widespread.⁴

¹ *Human Rights Act 2019* (Qld) s 61(c).

² Taskforce on Coercive Control and Women's Experience in the Criminal Justice System, 'Terms of Reference' (1 April 2021) 1.

³ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 1, 2022) 32, Recommendation 137.

⁴ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022) 622.

One woman who experienced strip searches in prison told the Taskforce:

'On my first day at prison I was strip searched, and this happened numerous times within my imprisonment. The process of strip searching and urine testing is traumatic, I felt violated. I did not want people to see my body, but I was made to do it. It felt like I was being sexually assaulted – take your clothes off, do it now or else. I felt sick every time I was searched. How much lower can you be made to feel?'

A related recommendation of the Taskforce was:

Queensland Corrective Services immediately move to introduce the widespread use of non-invasive screening technology to end the practice of strip searches in all women's correctional facilities. During the implementation of non-invasive screening technology, Queensland Corrective Services will implement policies, procedures and practices for strip searches of women that are trauma-informed and compatible to the greatest extent possible with women's human rights, in accordance with the advice received from the Queensland Human Rights Commission.⁵

In summary, the Taskforce considered that while alternative technology should replace the practice of strip searching, this will take time and resources. In the interim, the Taskforce considered that Queensland Corrective Services (QCS) should review and update its policies, procedures, and practices in accordance with the advice provided by the Commission in this report.

Purpose

As recommended by the Taskforce, this report reviews the human rights compatibility of QCS policies, procedures, and practices in relation to strip searches of women in Queensland prisons, with the aim of ensuring searches of prisoners are conducted in a way that is compatible with human rights under the Human Rights Act, to the greatest extent possible.

Jurisdiction

Under the Human Rights Act, the Commission has the function 'to review public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights'.⁶ QCS (and the prisons it manages) is a public entity under the Human Rights Act with obligations to:

- a) act and make decisions in a way that is compatible with human rights; and
- b) give proper consideration to human rights when making a decision.⁷

A decision or action is compatible with human rights if it does not limit any human rights or limits a human right only to the extent that is reasonably and demonstrably justifiable.⁸

⁵ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 1, 2022) 31, Recommendation 136.

⁶ *Human Rights Act 2019* (Qld) s 61(c).

⁷ *Human Rights Act 2019* (Qld) s 58(1).

⁸ *Human Rights Act 2019* (Qld) ss 8,13.

The Commission also has functions to 'promote an understanding and acceptance, and the public discussion of, human rights and the Act';⁹ 'make information about human rights available to the community';¹⁰ and 'provide education about human rights' and the Act.¹¹

Publishing this report will:

- contribute to the ongoing dialogue about human rights and the Human Rights Act, and how it relates to people in closed environments
- enhance understanding of public entities about their obligations to act and make decisions in way that is compatible with human rights, including when developing and reviewing policies, procedures, and practices.

Limitations

The scope of this Review is limited to the Taskforce's recommendation that the Commission undertake a review and provide advice to QCS about improving compatibility with the Human Rights Act of the practice of strip searching of women in Queensland prisons.

This report does not cover the use of:

- body (cavity) searches on women¹²
- strip searches of women and girls outside QCS settings, for example, in youth detention or in watch houses¹³
- strip searches of men.¹⁴

In the course of the Review, we identified drug testing using urine samples is so closely linked to the use of strip searches it fell within the scope of our review and should be closely considered.

What is a human rights review?

A review for human rights compatibility is different to an inquiry or investigation of an issue. We conducted this Review by undertaking site visits and consultations, conducting research, and reviewing and evaluating policies, procedures, and practices. We heard about issues from the perspective of stakeholders, particularly women in prison, but did not investigate or inquire into allegations, receive or test evidence, or make findings about potential breaches of human rights. Such an approach is not within the Commission's jurisdiction and may be contrary to the purpose of the Review.

⁹ *Human Rights Act 2019* (Qld) s 61(d).

¹⁰ *Human Rights Act 2019* (Qld) s 61(e).

¹¹ *Human Rights Act 2019* (Qld) s 61(f).

¹² Although not a focus of the Review, we heard that these searches performed by health practitioners (under *Corrective Services Act 2006* s 39) rarely occur, but when they do, they are extremely traumatic for women who experience them.

¹³ We note that watch houses are under the jurisdiction of the Queensland Police Service and not QCS. We heard consistently from prisoners and legal and service provider stakeholders that a systemic review of the policies, procedures, and practices in relation to strip searching people in detention in police watch houses should be conducted. In many cases prisoners told us that strip searches conducted in watch houses were more invasive, inhumane, and degrading than those conducted by QCS staff. The Commission intends to engage with stakeholders to determine which agency is best placed to conduct a separate review on this topic.

¹⁴ While this report focuses on the human rights of women, to some extent the advice and recommendations also apply to men in prison.

In this report we focus on providing guidance to Queensland Corrective Services on how to improve policies, procedures, and practices to ensure a more human rights compatible and trauma-informed approach is implemented.

Discrimination and sexual harassment

Some of circumstances described in this report may fall under the Anti-Discrimination Act as well as the Human Rights Act. We have assessed policies, procedures, and practices through the framework of the Human Rights Act and referred to right to equality and non-discrimination, where applicable.¹⁵ By not explicitly discussing the Anti-Discrimination Act, we do not negate the possibility that the allegations described could also constitute instances of discrimination or sexual harassment.

Legislative changes

The scope of the Review does not include an evaluation of the Corrective Services Act and the Corrective Services Regulation for human rights compatibility, and we consider that a further legislative review may be necessary in light of the issues raised in this report. However, the recommendations in this report do not rely on legislative change to precede their full implementation.

Our approach

The Review gathered information through consultations, prison site visits, and research.

Stakeholder input

Information about the Review was disseminated through the Commission's website, regular bulletins for stakeholders, and consultative groups with human rights advocates and academics. An option to contact the Review team by email to contribute or seek information was available through the website. QCS staff members were given the opportunity to contribute to the Review during our visits to prisons and through the Together Union.

Collaboration with Queensland Corrective Services

The Review team communicated and met with QCS regularly throughout the Review. The focus of these meetings was to obtain relevant documents, arrange prison visits, deliver updates on the progress of the Review – including sharing learnings or insights – and seek clarity on issues.

Consistent with our obligation to afford procedural fairness, we provided QCS with an opportunity to respond to our draft report over a three-week period in August 2023. Minor inaccuracies have been rectified, some terminology has been updated and the report has been improved to clarify some issues, in response to the submissions provided by QCS on 31 August 2023.

¹⁵ *Human Rights Act 2019* (Qld) s 15.

Consultations and roundtables

Between March and June 2023, we consulted with legal stakeholders, service provider stakeholders, and interstate prison inspectorates. During this period, we also met with the Queensland Ombudsman Inspector of Detention Services unit and prison services in two other jurisdictions (Tasmania and Victoria).

Our consultation process included meetings with:

- Queensland Ombudsman
- Legal Aid Queensland
- Queensland Indigenous Family Violence Legal Service
- Throughcare Program (Aboriginal and Torres Strait Islander Legal Service)
- Sisters Inside Inc (Brisbane)
- Sisters Inside Inc (Townsville)
- Prisoners' Legal Service
- Equality Australia
- First Nations Women's Legal Service North Queensland
- Queensland Advocacy for Inclusion
- First Nations Women's Legal Service NQ Inc
- Sisters for Change (Australian Red Cross)
- Elders for Change
- Islamic Women's Association of Queensland
- Inspector of Custodial Services New South Wales
- Office of the Custodial Inspector Tasmania
- ACT Inspector of Correctional Services
- Corrections Victoria
- General Manager - Mary Hutchinson Women's Prison Service.

In addition, we held two roundtable discussions with official visitors and Together Union delegates, who were also given an opportunity to privately contact us to provide further details.

Prison site visits

In April and May 2023, we conducted site visits to all five women's prisons operating in Queensland¹⁶ and spoke with:

- five Prisoner Advisory Committees (PACs)¹⁷
- approximately 60 prisoners in a private setting – in a PAC, one-on-one, or in a small group
- approximately 20 staff members – either one-on-one or in small groups.

¹⁶ They are: Brisbane Women's Correctional Centre, Townsville Correctional Centre, Southern Queensland Correctional Centre, Helana Jones Centre, Numinbah Correctional Centre.

¹⁷ While Helana Jones does not have a Prisoner Advisory Committee, a house meeting was called with all prisoners in attendance, and the Review team gave details about the Review. We received initial feedback in the group setting prior to speaking with prisoners individually or in small groups.

Prior to our visits, QCS displayed posters in the prisons to advise prisoners and staff members of the opportunity to confidentially meet with the Review team during our site visits. The loudspeaker was used to advise prisoners they could come and meet with us when visits were underway.

Prison management in each location provided us with a facility tour to observe locations where strip searches occur, including reception, visits area, and Safety and Detention Units. This allowed us to observe the built environment, ask questions, and clarify current practices.

In each location we held consultation meetings with PACs, which varied in number from 3 prisoners to around 15 prisoners.

Following PAC meetings, we held informal interviews in locations where prisoners or staff members could approach us and talk with us privately – this could be in a private interview room or an open area, but away from other prisoners and staff members. We were able to conduct these interviews in a confidential setting without the presence of others. At times we also approached staff members and prisoners and initiated short conversations about strip searching.

Privacy of consultation process

To ensure free, open, and honest discussions we determined participants in the consultation process needed to be able to contribute anonymously. Prisoners, staff members, and official visitors who participated in interviews or roundtables were assured conversations were private and confidential, and the information they provided would only be used in a de-identified way for the purpose of this report and related publications. To eliminate, or at least greatly reduce, the possibility of prisoners or staff members being re-identified, we have not published the name of any person, the prison where we spoke with them, or whether it was a discussion in a Prisoner Advisory Committee meeting, an interview, or roundtable.

For this reason, information and quotes in this report when provided by prisoners, staff members, and official visitors do not have a corresponding footnote reference attributing the source. To further assure the right to privacy of participants, we have chosen not to include examples where, because of the specific nature of the factual scenario, it would be easy to identify the individuals involved.

Information and data requests

For the purpose of this Review, we requested and received the following information:¹⁸

- information from the search register maintained by each prison for a one-week period chosen at random by the Commission, including the name of the prison, location within the site (e.g. 'reception') and reason for the search
- Custodial Operations Practice Directives relevant to the Review, Search Direction (under section 35 of the Corrective Services Act), and local instructions
- QCS Interim Women's Strategy 2023-25.

¹⁸ Under the *Human Rights Act 2019* (Qld) s 98, the commissioner may ask a Queensland public entity to supply information that is necessary to prepare a human rights report.

We also obtained de-identified complaints records from the Queensland Ombudsman and the official visitor complaints database where the complaint was about strip searching and had been made in the last 5 years.

Research and analysis

The Review team undertook research to identify and analyse previous inquiries and investigation reports, academic research, relevant human rights law, minimum standards, commentary, and case law. A full reading list is available at the end of this report.

Terminology

What is a strip search?

The Corrective Services Act refers to a ‘search requiring the removal of clothing’ which means a search in which the prisoner removes garments during the course of the search, but in which direct contact is not made with the prisoner.¹⁹

Strip searches involve a visual inspection of all parts of a person’s body, including the breast and genital regions, but are different from a more intrusive search, such as a body cavity search.²⁰

When the Act was introduced the government’s rationale provided for providing powers to prisons to conduct searches involving the removal of clothing was to ‘ensure the security and good order of corrective services facilities and the safety of the persons therein’ and, in particular, to keep illegal drugs out of prisons for the health and welfare of prisoners.²¹

¹⁹ *Corrective Services Act 2006* (Qld) sch 4 Dictionary (definition of ‘search requiring the removal of clothing’).

²⁰ Under the *Corrective Services Act 2006* (Qld) s 39, body searches may only be completed with by two health practitioners and in limited circumstances.

²¹ Explanatory Notes, *Corrective Services Bill 2019* (Qld) 58.

Abbreviations

the Anti-Discrimination Act	<i>Anti-Discrimination Act 1991 (Qld)</i>
the <i>Bangkok Rules</i>	United Nations General Assembly, <i>United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)</i> , UN Doc A/Res/65/457 (21 December 2010).
the Commission	Queensland Human Rights Commission
COPDs	Custodial Operations Practice Directives are intended to provide a consistent framework to direct staff undertaking their duties. ²² We refer to COPDs in this report in shorthand e.g. COPD – Prisoner Search, COPD – Substance Testing.
the Corrective Services Act	<i>Corrective Services Act 2006 (Qld)</i>
the Corrective Services Regulation	<i>Corrective Services Regulation 2017 (Qld)</i>
the Human Rights Act	<i>Human Rights Act 2019 (Qld)</i>
the <i>Mandela Rules</i>	United Nations General Assembly, <i>United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)</i> , UN Doc A/Res/70/175 (17 December 2015).
QCS	Queensland Corrective Services
the Review	Referring to the current review of policies, procedures, and practices for human rights compatibility as recommended by the Women's Safety and Justice Taskforce in the report <i>Hear her voice: Report two – Women and girls' experiences across the criminal justice system</i> .
the Review team	A small team of Queensland Human Rights Commission staff who conducted the review, including prison visits, consultations and writing the report.
the Taskforce	Women's Safety and Justice Taskforce

²² Queensland Corrective Services, 'Procedures' (Web Page, 8 June 2022) <<https://corrections.qld.gov.au/documents/procedures/>>.

Glossary

body scanning

We use the term 'body scanning' to refer to the security measure whereby prisoners are scanned by a machine that can detect objects concealed by a prisoner without them having to remove all of their clothes. We use 'body scanning' as an umbrella term to refer to both 'scanning searches' and 'imaging searches' under the *Corrective Services Act 2006* (Qld) definitions in Schedule 4.

Imaging searches use ionising or non-ionising radiation, whereas scanning searches involve a search where a person does not remove their clothes, but an apparatus may come into contact with the person, e.g. an electronic apparatus that a person is required to pass through.

The legislative basis for the use of scanning searches or imaging searches is provided by *Corrective Services Act 2006* (Qld) section 175A. Under this provision, prisoners can only be required to remove outer garments, minimal physical contact should occur during the search and the search method should cause minimal embarrassment.

body worn camera

A body worn camera is a small portable, wearable camera worn by Queensland Corrective Service Officers that records audio and video footage of interactions with prisoners. Body worn cameras are manually turned on and off by the operator.

cavity search

We use the term 'cavity search' to refer to a body search conducted by a medical officer in section 39 *Corrective Services Act 2006* (Qld).

contraband

The term in common use in prisons for items that are detected and seized from prisoners. In the *Corrective Services Act 2006* (Qld) and *Corrective Services Regulation 2017* (Qld) these are referred to as a 'prohibited thing', which prisoners must not make, possess, conceal or knowingly consume (section 123 *Corrective Services Act*). Items may include weapons, items to assist escape, keys or keycards, cutting implements, kitchen utensils, drugs, money or credit cards, phones and cigarettes. [See s19 *Corrective Services Regulation* for a full list].

corrective services officer

We use either the term 'corrective services officer' or 'staff member' to refer to people working at Queensland Corrective Services (QCS) as both of these terms appear in the *Corrective Services Act 2006* (Qld).

Detention Unit

We use the term 'Detention Unit' to refer to the designated area within a prison containing single cells, where prisoners have restricted privileges and increased supervision and where prisoners are typically held following disciplinary breaches.²³ Prisoners and staff members also use the term 'DU' to describe this unit and this may be reflected in some direct quotes included in the report.

²³ We note that placement of a prisoner in the Detention Unit is not the only outcome of a disciplinary breach.

dry cell	A 'dry cell' is a term we heard in prisons that refers to a room that prisoners are placed in when they are suspected of having or ingesting contraband, or are non-compliant with searches to check for contraband. A dry cell is under constant monitoring and lacks any plumbing facilities such as a shower or toilet, so contraband cannot be disposed of by a prisoner. We note that this term is not used in any Queensland Corrective Services operational policy documents.
First Nations or Aboriginal and Torres Strait Islander	<p>The terms 'First Nations' and 'Aboriginal and Torres Strait Islander' are used interchangeably in this report to refer to the Aboriginal peoples and Torres Strait Islander peoples of Australia.</p> <p>We understand that some Aboriginal peoples and Torres Strait Islander peoples are not comfortable with some of these words. Only respect is meant when these words are used.</p>
high security	<p>Prisoners are automatically placed in high security upon being admitted to prison, and may later progress to a low security setting.</p> <p>The high security prisons are Southern Queensland Correctional Centre, Brisbane Women's Correctional Centre and Townsville Women's Correctional Centre.</p>
legal stakeholders	We use the term 'legal stakeholders' to refer to the groups we consulted with who have a direct interest or involvement in the legal matters regarding prisoners.
local instructions	Local instructions are instructions that only apply to one prison, or to a group of prisons, and should only be developed when identified that a statewide Custodial Operations Practice Directive does not account for a specific need or practice at a local level. The reasons for creating a separate local instruction may be because of geographical reasons or to address a local, individual need.
low security	<p>Low security prisons provide prisons with increased responsibility and fewer restrictions. Only eligible prisoners can request to move to a low security prison.</p> <p>Low security facilities are the Numinbah Correctional Centre and the prison farm at Townsville Women's Correctional Centre, and the Helana Jones Centre, which is a low security community corrections centre.</p>
officer in charge	A supervisor in a high security facility or a duty officer in a low security prison.
pat down search	We use the term 'pat down search' to refer to a personal search under section 34 <i>Corrective Services Act 2006</i> (Qld). This a clothed search where a prisoner is patted down to check for concealed items.

prisoner	We use term 'prisoner' consistent with the terminology in the <i>Corrective Services Act 2006</i> (Qld) and in particular Part 2 Div 3 which describes the search of 'prisoners'.
reception	We use the term of 'reception' to explain the area in which prisoners enter through when arriving to the prison. The reception is where prisoners are assessed upon being admitted to the prison and is the area where most searches of prisoners occur.
residential	We use the term 'residential' to identify a section within the prison. Prisoners are generally placed in residential units when they have demonstrated stable behaviour as this area is less restricted.
routine searches	Strip searches required to be performed in particular circumstances (e.g. an external transfer) as authorised by the Search Direction under <i>Corrective Services Act 2006</i> (Qld) section 35, and unless there are exceptional circumstances for the particular prisoner which mean that the search is unnecessary.
Safety Unit	<p>We use the term 'Safety Unit' to refer to the designated area within a prison containing single cells, where prisoners on a safety order have restricted privileges and increased supervision and where prisoners are typically held when on safety orders. Safety Units are located at Brisbane Women's Correctional Centre, Southern Queensland Correctional Centre and Townsville Women's Correctional Centre. Another name for a Safety Unit is 'S4' and it may be referred to as such in this report.</p> <p>Under <i>Corrective Services Act 2006</i> (Qld) section 53, a safety order may be made when:</p> <ul style="list-style-type: none"> • a doctor or psychologist reasonably believes that the prisoner is at risk of self-harm or suicide, or at risk of harming others or being harmed by someone else • the chief executive believes there is risk of the prisoner harming or being harmed by someone else • it is necessary for the safety or good order of the prison.
Search Direction	The <i>Corrective Services Act</i> authorises the chief executive to give a written direction for a removal of clothing search to be conducted at times stated in the direction, unless the chief executive reasonably considers it unnecessary for the search to be carried out on the prisoner because of the prisoner's exceptional circumstances. We use the term 'Search Direction' to refer to the most recent written direction under section 35 of the <i>Corrective Services Act</i> , signed by the Commissioner on 26 October 2021.
secure	Prisoners in high security will often start in the 'secure' units and then progress through to residential units. The QCS Practice Directives A-Z guide to the Custodial Operations Practice Directives describes 'secure' as 'a prison with a perimeter fence, or other security measures, that are designed to prevent the escape of a prisoner.'

service provider stakeholders	We use the term ‘service provider stakeholders’ to refer to the groups we consulted with who are involved in delivering various services to prisoners, such as counselling, education, rehabilitation or healthcare.
strip search	<p>We use the term ‘strip search’ to refer to searches requiring the removal of clothing of prisoners on the chief executive’s direction in <i>Corrective Services Act 2006</i> (Qld) sections 35 – 38.</p> <p>We note that ‘strip search’ is the terminology used by the Women’s Safety and Justice Taskforce in recommending the Commission conducts this Review, and is the language of human rights law guidance and a term in common usage in prisons and in the community.</p> <p>Removal of clothing or ‘ROC’ search is the terminology used consistently across QCS and ‘strip search’ is not the language used within the organisation to refer to the search.</p>
search register	The register maintained as required by <i>Corrective Services Act 2006</i> (Qld) section 40, referred to as QCS as the removal of clothing search register.
targeted search	Strip searches undertaken where there is a reasonable suspicion that the prisoner has a prohibited thing concealed on the prisoner’s person. The legislative basis for a targeted search is <i>Corrective Services Act 2006</i> (Qld) section 37.
trans and gender diverse	<p>We recognise that not all prisoners incarcerated in the binary prison system identify with one gender or the other, or might be placed in a prison that does not align with their gender identity.</p> <p>We use the term ‘trans and gender diverse’ to refer to people whose gender identity is different from the sex which was assigned to them at birth.</p> <p>In its guide to terminology in the Custodial Operations Practice Directives, QCS defines a transgender prisoner to include those who, whether or not receiving hormone treatment, lives socially as a member of a gender different to that registered at birth, or a person who has commenced or is undergoing a medical or surgical procedure to alter gender characteristics.</p>
urine testing	<p>We use the term ‘urine testing’ or ‘drug testing’ to refer to the process where prisoners are required to provide a sample of their urine as part of drug testing protocols.</p> <p>The process of urine testing is prescribed by the <i>Corrective Services Act 2006</i> sections 41-43.</p>
wanding search	A ‘wanding search’ is a search conducted where a handheld metal detector wand is used to scan a prisoner or visitor for concealed metal objects.
women	We interpret the term ‘women’ as including those who were assigned female at birth, and those who identify as women, including transgender women.



Recommendations

Recommendations

Recommendation 1:

Update practice directives to incorporate human rights considerations

- 1.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search to incorporate human rights considerations throughout.
- 1.2 The practice directives should be amended to include:
 - a statement explaining the rationale for searching prisoners and that strip searches should not be the primary means of detecting contraband or ensuring safety and security of prisoners
 - an acknowledgement that strip searches are a serious limitation on human rights, advising that staff members have a legal obligation to make decisions and act compatibly with human rights in relation to strip searches
 - a reference specifically to the right to protection from cruel, inhuman or degrading treatment.

Recommendation 2:

Create a clear ‘exceptional circumstances’ search exemption process

- 2.1 Queensland Corrective Services should amend the Direction for a Search Requiring a Removal of Clothing (the Direction) and the Custodial Operations Practice Directives to:
 - provide a clear process for determining if a prisoner has exceptional circumstances to establish that a search under the Direction is unnecessary under *Corrective Services Act 2006* (Qld) section 35(3)
 - clearly delegate responsibility for making these decisions at an appropriate level.

Recommendation 3:

Cease all routine strip searches after a prisoner is in secure custody of the prison

- 3.1 Queensland Corrective Services should immediately cease all routine strip searches occurring under section 35 of the *Corrective Services Act 2006* (Qld) except for when a prisoner is received into custody for the first time.

- 3.2 Queensland Corrective Services should amend the written direction under the *Corrective Services Act 2006* (Qld) section 35 (the Direction for a Search Requiring a Removal of Clothing) to direct that the only instance in which a strip search must occur is when a prisoner is received into custody for the first time, and where:

- a scanning search is unavailable; and
- the prisoner does not have ‘exceptional circumstances’ to exempt them from a search under section 35(3) of the *Corrective Services Act 2006* (Qld).

Recommendation 4: Only conduct targeted strip searches as a last resort to respond to an identified risk following an individual risk assessment

- 4.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:
 - direct that strip searches should occur only where there is reasonable suspicion of an identified risk following an individual risk assessment, and only as a last resort when other alternatives are not reasonably available, including body scanners
 - clarify that staff members must not conduct targeted searches for the purpose of anything other than detecting and seizing a ‘prohibited thing’ as defined by the *Corrective Services Regulation 2017* (Qld). The list of prohibited things should be included as an appendix in the Custodial Operations Practice Directives – Prisoner Search for easy access
 - confirm that strip searches should not occur where a prisoner is being placed into a Detention or Safety Unit for their own safety following a physical or sexual assault by another prisoner.

Recommendation 5: Incorporate trauma-informed approach in policy and training

- 5.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search to:
 - refer to the traumatic impact of strip searching on many female prisoners, and the need to take a trauma-informed approach by applying the least intrusive

search necessary to address an identified risk

- clarify that comments by a corrective services officer about a prisoner's body or tattoos should only be made during a search if there are exceptional circumstances relating to the prisoner's health and safety.

5.2 The ongoing trauma-informed training being introduced by Queensland Corrective Services as recommended the Women's Safety and Justice Taskforce (Recommendation 139) should:

- incorporate strip searching practices
- address how the decision to conduct a search should be made
- address how the search process can be more trauma-informed and meet the individual needs of prisoners.

Recommendation 6: Modify approach to strip searching for prisoners who are menstruating

6.1 Queensland Corrective Services should move instructions regarding menstruation from local instructions to the Custodial Operations Practice Directives – Prisoner Search.

6.2 The Custodial Operations Practice Directives – Prisoner Search should state explicitly that a prisoner should:

- never be required to remove their tampon during a strip search or drug test
- only be required to remove their sanitary pad where a reasonable suspicion exists, based on intelligence, indicating that the person is using the pad to conceal contraband.

Recommendation 7: Reform the drug testing process

7.1 Queensland Corrective Services should develop a comprehensive policy addressing 'reasonable excuse' for failing to provide a urine sample. The policy should provide clearly:

- that a 'reasonable excuse' can encompass psychological or emotional experiences or mental health diagnosis
- what evidentiary requirements are necessary to establish a 'reasonable excuse'

- how authority is delegated for determining the validity of a 'reasonable excuse'
- how a prisoner can challenge a decision not to accept a prisoner's excuse as reasonable
- that if an officer in charge reasonably believes that a prisoner has a 'reasonable excuse' for why they cannot provide a sample, this is sufficient.

7.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Substance Testing and Custodial Operations Practice Directives – Collecting a Urinalysis Sample to state that:

- female prisoners be permitted to clean their genital area with toilet paper immediately after providing a urine sample
- prisoners be permitted up to 2 hours to provide a urine sample
- consequences for failing to provide a sample or returning a positive sample should not interfere with a prisoner having visits with their children.

7.3 Queensland Corrective Services should replace urine drug testing with saliva testing for prisoners who have not had any drug-related disciplinary breaches in the past 24 months prior to the test and who are not subject to intelligence indicating they are currently using drugs. The COPD – Substance Testing should be amended to reflect this requirement.

7.4 Until saliva tests are introduced:

- no random drug testing should occur in either high or low security settings
- body scans or pat down searches should replace all strip searches prior to urine tests.

Recommendation 8: Conduct individual risk assessments for strip searching before and after personal visits

8.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and the Direction for a Search Requiring the Removal of Clothing to clarify that strip searches should not occur before personal contact visits and state that strip searches after personal contact visits should only occur:

- in situations involving reasonable suspicion
- after an individual risk assessment, and
- where no other alternative is reasonably available, including body scanners.

Recommendation 9: Clarify there should be no strip searches before or after professional visits

- 9.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to state that prisoners are not to be strip searched before or after professional visits. Professional visitors include, but are not limited to, lawyers, counsellors, and religious visitors.

Recommendation 10: Cease strip searching when a prisoner is travelling to and from court

- 10.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to state that:
- prisoners should not be searched prior to leaving prison for a court appearance
 - prisoners returning to prison from court should be given a pat down search only, unless there is a reasonable suspicion of an identified risk, following an individual risk assessment.

Recommendation 11: Remove barriers to accessing medical care

- 11.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and Search Direction to:
- clarify that prisoners should not be routinely strip searched when they are leaving or returning to prison following medical treatment
 - state that prisoners who have returned from surgery fall under the category of ‘exceptional circumstances’ to exempt a search
 - state that following a surgical procedure, search methods should be modified as necessary to meet the individual needs and circumstances of the prisoner
 - confirm that prisoners placed in a cell in the Detention Unit or Safety Unit should only be strip searched where there is no less intrusive alternative available, and where an individual risk assessment has

deemed that the risk of harm to the prisoner outweighs the risk of trauma from the strip search.

Recommendation 12: Consider prisoner characteristics when determining whether and how to conduct a strip search

- 12.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to advise that, when considering whether and how to search a prisoner, corrective services officers must conduct an assessment which includes consideration of the prisoner’s gender, age, mental health, religion, language and culture, whether they have a disability, are pregnant, breastfeeding or have children with them in custody.

Recommendation 13: Enhance recognition of Aboriginal and Torres Strait Islander rights and cultural safety

- 13.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to refer specifically to the distinct cultural rights held by Aboriginal and Torres Strait Islander people and the need for corrective services officers to take these into consideration when deciding whether to conduct a search, or in determining the process to follow when conducting a strip search.
- 13.2 Trauma-informed training (as referred to in Recommendation 4.2 in this report) should specifically address respecting cultural sensitivities during a strip search. This training should include an understanding of how the background or cultural practices of First Nations women can exacerbate the trauma of a strip search.

Recommendation 14: Modify process to accommodate pregnant or breastfeeding prisoners

- 14.1 Queensland Corrective Services should remove all instructions in relation to pregnant and breastfeeding prisoners from local instructions and include this information in the Custodial Operations Practice Directives – Prisoner Search.
- 14.2 The Custodial Operations Practice Directives – Prisoner Search should advise that:
- prisoners attending antenatal appointments should not be strip searched as this constitutes ‘exceptional

circumstances' to exempt a prisoner from a search under the Search Direction

- prisoners returning to prison following a birth, miscarriage, or termination should not be strip searched as this constitutes 'exceptional circumstances' to exempt a prisoner from a search under the Search Direction
- prisoners in their third trimester are not to be strip searched unless the situation involves a reasonable suspicion of an identified risk following an individualised risk assessment
- corrective services officers must take into account the individual, physical and emotional needs of pregnant or lactating prisoners when conducting searches. Corrective services officers should accommodate reasonable requests for modifications to the search process, such as allowing additional time, allowing a prisoner to sit for the search, or providing additional sanitary wear, including breast pads
- corrective services officers should allow breastfeeding prisoners to take their shirts off but leave their bra on for the duration of the search. Prisoners could still be required to pull the bra away from their skin to show that there are no prohibited items concealed between the skin and the clothing.

Recommendation 15: Address the needs of prisoners with children in their care

- 15.1 Queensland Corrective Services should move instructions regarding searches of prisoners with children in their care from local instructions to the Custodial Operations Practice Directives – Prisoner Search.
- 15.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Female Prisoners and Children to:
- contain information about strip searches involving children in custody
 - explain the principle of best interests of the child and how it relates to searches occurring in the presence of a child, and refer to the *Human Rights Act 2019* (Qld)
 - state that prisoners with children residing with them in prison should only be subject

to a scanning search or pat down search while they have their child in their care

- make it clear that strip searches of a prisoner should never occur in the presence of a child, even where an internal carer is not available.

- 15.3 The Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Female Prisoners and Children should be cross referenced with each other to ensure consistency.

Recommendation 16: Make reasonable accommodations for prisoners with disability and older prisoners

- 16.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:
- outline requirements to make reasonable accommodations for older prisoners and prisoners with disability, which may include physical, cognitive or psychosocial disability
 - explain the need to communicate with the prisoner to identify what adjustments are required to modify the search process where necessary. This information should be included in prisoner case notes, and these should be periodically reviewed to ensure they remain appropriate and up to date
 - allow for searches to be modified because the prisoner may be unable to perform the 'standard' procedure. Modifications may include, but are not limited to, having handrails in the areas where strip searches are conducted and a chair for the prisoner to sit on during the search
 - advise that where a prisoner is unable to undress themselves, a pat down search or scanning search should be performed instead.

Recommendation 17: Search trans or gender diverse prisoners based on their preference

- 17.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Transgender Prisoners and the Custodial Operations Practice Directives – Prisoner Search to state that prisoners who identify as trans or gender diverse should be given the option of whether to be searched

(including strip searches, pat down searches, urine testing) by male or female corrective services officers, and that preference should be noted in the person's case notes.

- 17.2 Queensland Corrective Services should provide staff members with training on competency to work with LGBTIQ+ prisoners including their obligations under the *Human Rights Act 2019* (Qld) and state and federal discrimination legislation.

Recommendation 18: Clarify practice for searching prisoners who wear religious headwear

- 18.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search should:
- confirm that searching religious headwear and/or asking a person to remove their religious headwear during a search should only occur where there is reasonable suspicion of an identified risk
 - emphasise that at no times should male officers be present or able to see a prisoner who has been asked to remove their headwear
 - include that a person should be given access to a mirror to refix their headwear in private after the search.

Recommendation 19: Take steps to address vicarious trauma and evaluate psychosocial hazards

- 19.1 Queensland Corrective Services should provide vicarious trauma training tailored to the unique environment and challenges faced by staff members in women's prisons, with a specific focus on addressing the impact of strip searching.
- 19.2 Queensland Corrective Services should conduct a comprehensive evaluation of psychosocial workplace risks for corrective services officers. The methodology for this evaluation should include anonymous surveys and feedback from staff members to assess the extent of harm and psychological impacts of the job, specifically addressing vicarious trauma and burnout.

Recommendation 20: Provide more detailed information and guidance to prisoners

- 20.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to make it clear

that prior to conducting a strip search, a corrective services officer should clearly explain to the prisoner:

- the purpose and reasons for the search
- the processes and what will happen during the search
- what they will ask the prisoner to do during the search.

- 20.2 Queensland Corrective Services should display clear signage containing this information in areas where strip searches occur. These signs should also include information about prisoners' rights during the search and complaint mechanisms and be available in multiple languages.

Recommendation 21: Create a clear, consistent and less invasive search method

- 21.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:
- contain a detailed step-by-step process of the strip searching procedure as outlined in Appendix C of this report
 - state that strip searches should not require the removal of underwear as a standard practice, unless intelligence is available or reasonable suspicion has arisen prior to or during the search to indicate that contraband is concealed in the underwear. Where underwear is required to be removed, the corrective services officer should explain the reason to the prisoner and document the justification for this decision.
- 21.2 Queensland Corrective Services should develop specific training programs for staff members that focus on conducting strip searches of women. This training should address the unique needs, sensitivities, and trauma-informed approaches required when conducting strip searches of female prisoners.

Recommendation 22: Do not use force when strip searching a prisoner

- 22.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Use of Force to:
- state that use of force should never be used during strip searches, and that if a

situation escalates, corrective services officers should immediately withdraw for their own safety and the safety of the prisoner

- formalise through policy the existing practice of talking with the prisoner about the reasons for the search and how it will proceed and placing the prisoner in a dry cell on observation until they are ready to be searched
- permit pat down searches instead of strip searches where it is more likely to lead to compliance and the situation is low risk
- clarify that disciplinary breaches for refusing to consent or delaying consent for a search should not limit a prisoner's ability to have personal contact visits with their children.

Recommendation 23: Improve prisoner privacy when using surveillance and body worn cameras

23.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:

- require that searches should occur out of view of surveillance cameras if reasonably practicable
- require that male officers remove themselves completely from a room in which a monitoring system is located when a surveillance camera is pointed at a place where a strip search is occurring
- state that any female officers monitoring a device where a strip search is occurring should either turn off the screen or move

the image feed so it is not the primary image displayed on the device.

23.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Safety and Security Equipment: Body Worn Cameras to:

- clarify that to not 'activate' a body worn camera during a strip search means neither turning on the video function nor the audio function
- remove the reference to a 'use of force incident' arising during a strip search as well as the authority for such an incident to be recorded.

Recommendation 24: Implement recommendations in 6 months and monitor and evaluate outcomes in 24 months

24.1 Queensland Corrective Services should implement the recommendations in this report before March 2024.

24.2 Queensland Corrective Services should commission an independent review of the implementation of this report to occur concurrently with the planned evaluation of body scanning technology in 2025.

24.3 The Queensland Government monitoring and evaluation plan to measure and monitor outcomes achieved across the criminal justice system following the Women's Safety and Justice Taskforce *Hear her voice* reports should include an evaluation of the extent to which the advice and recommendations in this report have been incorporated into policies, procedures, and practices.

Profile of women in Queensland prisons

While women are imprisoned less than men, the imprisonment rate is rapidly growing. In particular, the rate of incarceration of Aboriginal and Torres Strait Islander peoples is increasing at concerning rates. Most female prisoners are either on remand or have been sentenced to imprisonment for a few months for a non-violent offence. Drug offences are making up an increasing proportion of the imprisonment sentences for women.

Most female prisoners have experienced serious physical, psychological and sexual abuse and trauma and many were involved as children in the child protection system. The majority of female prisoners have mental health disorders and a large proportion have chronic health conditions and disabilities. Most women are parents of one or more children prior to entering into custody.

Queensland female prisoners:

- Proportionally, Queensland has more women in prison compared with other states and territories.²⁴
- The imprisonment rate is growing twice as fast for women compared with men.²⁵

Sentenced prisoners:

- The number of women receiving an imprisonment sentence increased by 339% over 12 years.²⁶
- The most common offences leading to a sentence of imprisonment were non-violent offences: stealing, breach of bail and drug possession.²⁷
- Drug offenders make up 22% of Queensland female prison population,²⁸ and drug offences are the largest contributor to the growing prison population.²⁹
- The highest proportion of sentences were under 6 months, and the average imprisonment sentence was 11.3 months.³⁰

Remanded prisoners:

- Rising numbers of women are on remand in custody, meaning they have not been convicted of a crime and have not been granted bail: there was a 14% rise in the remand rate for female prisoners over 9 years.³¹

²⁴ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022) vi.

²⁵ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 30, 38.

²⁶ Queensland Sentencing Advisory Council, *Engendering Justice: The Sentencing of Women and Girls in Queensland* (Report, August 2022) iii.

²⁷ Queensland Sentencing Advisory Council, *Engendering Justice: The Sentencing of Women and Girls in Queensland* (Report, August 2022) 60.

²⁸ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 206.

²⁹ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 206.

³⁰ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism*: (Final Report, Vol 1, 2020) 40.

³¹ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 40.

History of abuse and trauma:

- 52% of female prisoners have been subject to a child protection order or have been previously hospitalised for a mental health disorder.³²
- 87% of women prisoners have been victims of child sex abuse, physical violence or domestic violence, 66% of whom have been victims to all three types of abuse.³³

Health:

- 65% of female prisoners had a history of a mental health condition.³⁴
- 25% of prisoners have a chronic health condition that affects everyday activities including education or employment.³⁵
- Fewer female prisoners than males reported they had been able to readily see a GP or nurse while in prison.³⁶
- Around 19% of women are diagnosed with a health condition while in prison.³⁷
- About 1 in 3 prisoners require medical assistance outside of the prison during their incarceration.³⁸

Parental status and pregnancy:

- More than 54% of female prisoners are parents with one or more dependent child.³⁹
- Almost 1 in 50 prisoners entering prison is pregnant.⁴⁰

Aboriginal and Torres Strait Islander prisoners:

- Around 40% of women in Queensland prisons are Aboriginal or Torres Strait Islander.⁴¹
- The imprisonment rate for Aboriginal or Torres Strait Islander women is 11 times that of non-Indigenous prisoners.⁴²
- 35% of First Nations female prisoners are on remand.⁴³
- 80% of First Nations female prisoners have dependent children.⁴⁴
- 46% of First Nations female prisoners have had a history of a mental health hospital admission.⁴⁵

³² Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 58, 62.

³³ Queensland Corrective Services, *Interim Women's Strategy 2023-2025: Women in Our Custody and Care* (24 April 2023) 10 and Queensland Corrective Services, 'Improving Outcomes for Incarcerated Women' (Web Page, 6 March 2019) <<https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/>>.

³⁴ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 27.

³⁵ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 78.

³⁶ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 120.

³⁷ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 124.

³⁸ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 140.

³⁹ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 14.

⁴⁰ Australian Institute of Health and Welfare, *The health of Australia's Prisoners 2018* (30 May 2019) 72.

⁴¹ Queensland Corrective Services, *Interim Women's Strategy 2023-2025: Women in Our Custody and Care* (24 April 2023), 10.

⁴² Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 401.

⁴³ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 310.

⁴⁴ Human Rights Law Centre and Change the Record, *Over-represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over Imprisonment* (May 2017) 13, citing Juanita Sherwood and Sacha Kendall, 'Reframing Space by Building Relationships: Community Collaborative Participatory Action Research with Aboriginal Mothers in Prison' (2013) 46 *Contemporary Nurse: A Journal for the Australian Nursing Profession* 83, 85.

⁴⁵ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, Vol 1, 2020) 410.

Women in Queensland prisons

imprisonment rate growing **twice as fast** as for men



more than **54%** of women in prison are parents with one or more dependant child

339% increase in 12 years of number sentenced to imprisonment



almost 90% have experienced domestic violence, physical violence or child sexual assault



two thirds have survived all three



25% have a chronic health condition affecting everyday activities



40% are Aboriginal or Torres Strait Islander

Aboriginal and Torres Strait Islander women are imprisoned at **11 times** the rate of non-Indigenous women



almost **1 in 50** women entering prison is pregnant

over half of sentences are **less than 6 months** and the average term is 11.3 months





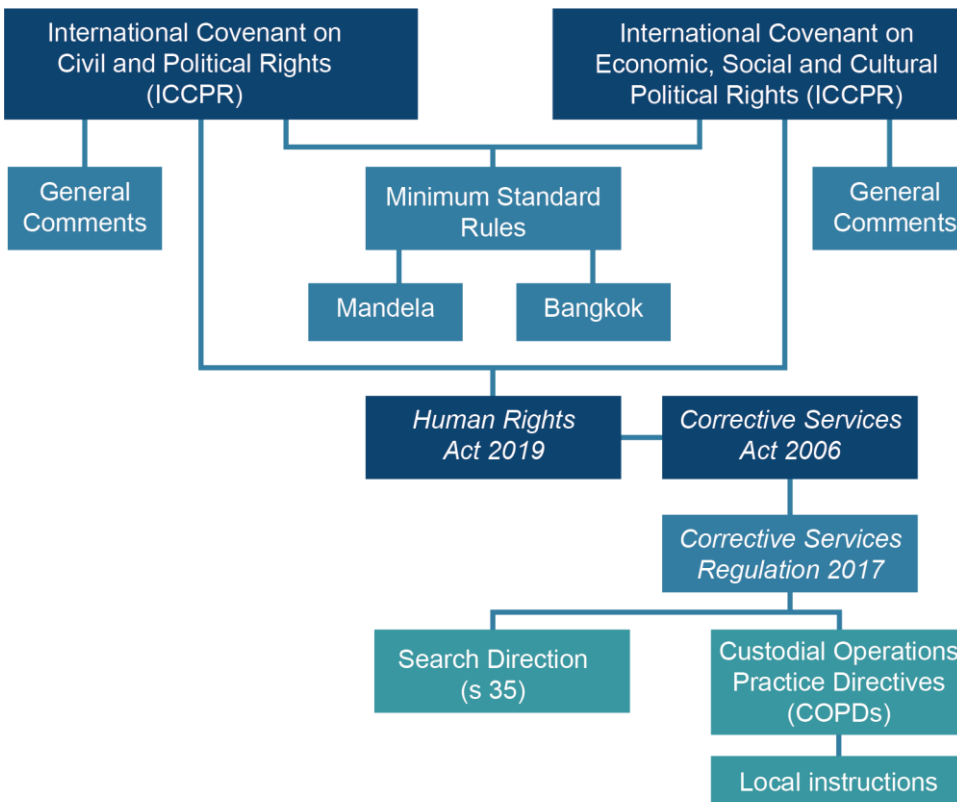
Key considerations

Key considerations

In this section we outline the legal and policy framework for the operation of prisons in Queensland and describe the information sources we considered in this Review.

Human rights legislation and policy framework

Queensland Corrective Services (QCS) and the prisons it manages are governed by a legal framework which includes legislation, regulations, policies, procedures, and guidelines informed by case law and guiding international treaties. As public entities, prisons and corrective services officers must act compatibly with human rights and give proper consideration to human rights when making decisions. The diagram below sets out the international human rights standards and legislative framework within which we worked to develop advice and recommendations to QCS.



The rights protected in the Queensland Human Rights Act are based on rights in the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Social Economic and Cultural Rights* (ICESCR). Rules adopted by the United Nations, including the *Mandela Rules* and *Bangkok Rules*, have been developed to assist with applying human rights in the context of prisons and other detention settings. Under Queensland’s Human Rights Act laws and regulations, including the *Corrective Services Act 2006* (Qld) (Corrective Services Act) and *Corrective Services Regulation 2017* (Qld), must be interpreted in a way that is compatible with human rights to the extent possible that is consistent with their

purpose,⁴⁶ and public entities including Queensland Corrective Services must make decisions and act compatibly with human rights.⁴⁷ Under the Human Rights Act, international law relevant to a human right may be considered in interpreting the human rights protected in Queensland.⁴⁸

The relevant provisions of the legislation and regulation are set out in Appendix A to this report on page 151.

The key policy documents relevant to this report are the Custodial Operations Practice Directives (COPDs) and the Direction for a Search Requiring the Removal of Clothing of Prisoners authorised under the Corrective Services Act (Search Direction).⁴⁹ The COPDs refer to Local Instructions – Removal of Clothing Searches, which are instructions that apply only to one prison, or a group of prisons.

While policies and procedures are easy to find, practices are not so fixed, and can vary from location to location. We have endeavoured to capture current practice and show where it differs from written policy, procedures, and legislative requirements.

Queensland Corrective Services strategic policies

QCS strategic policies show a commitment to gender and trauma-informed practice.

The Women's Safety and Justice Taskforce (the Taskforce) report *Hear her voice*⁵⁰ referred to a Women's Estate Blueprint and QCS Women's Strategy 2022-2025, which at the time of *Hear her voice* were under development. The Taskforce considered the draft strategy represented a 'significant, positive change in QCS's approach to women in custody.'⁵¹

QCS provided the Review with a copy of the QCS Interim Women's Strategy 2023-2025, which states 'QCS has a vision that includes embedding gender-centric, person-centred, culturally safe, and trauma informed programs and services'.⁵² Consistent with the *Hear her voice* Recommendation 136, the strategy confirms:

QCS will end the practice of removal of clothing searches for women in custody.

The Strategy also refers to an upcoming trial of body scanner technology at Brisbane Women's Correctional Centre in 2023-24, and pending the outcome of the trial, confirms QCS plans the widespread rollout of this technology across the state.

⁴⁶ *Human Rights Act 2019* (Qld) s 48(1).

⁴⁷ *Human Rights Act 2019* (Qld) s 58.

⁴⁸ *Human Rights Act 2019* (Qld) s 48(3). Noting that this must be done with caution. See *Momcilovic v The Queen* [2011] HCA 34.

⁴⁹ *Corrective Services Act 2006* (Qld) s 35.

⁵⁰ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022) 428.

⁵¹ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022) 428.

⁵² Queensland Corrective Services, *Interim Women's Strategy 2023-2025: Women in Our Custody and Care* (24 April 2023) 16.

Practice directives, local instructions, and Search Direction

Under the Corrective Services Act, the QCS Commissioner must create administrative procedures to facilitate the 'effective and efficient management of corrective services', and these must be published on the Queensland Corrective Services website, unless they may pose a risk to security or good order or safety or the effective management of prisoners.⁵³

The administrative procedures required under the legislation are referred to by QCS as Custodial Operations Practice Directives (COPDs). The Review considered the following COPDs for this Review:

- Prisoner Search
- Reception Process
- Substance Testing
- Collecting a Urinalysis Sample
- Transgender Prisoners
- Use of Restraint or Carriages of Weapons
- Religious Visitors
- Female Prisoners and Children
- Visitors Search
- Safety and Security Equipment: Body Worn Cameras
- Use of Force
- Prisoners of Concern
- Admission and Induction.

We used the Practice Directives Definitions A-Z Listing Dictionary to assist us with interpreting the COPDs.⁵⁴

The Review considered the following local instructions:

- Removal of Clothing Searches: Southern Queensland Correctional Centre (1 July 2021)
- Removal of Clothing Searches: Townsville Women's Correctional Centre (including low custody) (19 March 2018)
- Removal of Clothing Searches: Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps.

The Review also considered the Direction for a Search Requiring the Removal of Clothing of Prisoners, which directs prisoners be searched in accordance with a schedule of searches.⁵⁵

⁵³ *Corrective Services Act 2006* (Qld) s 265.

⁵⁴ Queensland Corrective Services, Practice Direction, *Practice Directives Definitions A-Z Listing Dictionary*, Ver 05, June 2023.

⁵⁵ Queensland Corrective Services, *Direction for a Search Requiring the Removal of Clothing of Prisoners*, Ver 1, November 2021.

Protected human rights

The Review has analysed relevant policies, procedures, and practices for compatibility with the Human Rights Act.

Like all individuals, prisoners are protected under the Human Rights Act in Queensland.

As public entities, when prisons and prison staff members limit a prisoner's human rights these restrictions must be:

- lawful (e.g. made or authorised under a law)
- reasonable and justified, and
- the least restrictive on rights as is possible in the circumstances.⁵⁶

Cutting a person off from the outside world is already a form of punishment and so the prison system should not worsen the suffering that naturally comes from being deprived of liberty, unless there are valid reasons.⁵⁷

The Human Rights Act states that international law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting the Act.⁵⁸

The key rights that are limited when women experience strip searches in prison are:

- **Recognition and equality before the law:**⁵⁹ Women experience disproportionately negative effects from strip searches compared to men because of their statistically higher chances of being victims of violence, including sexual violence. Many women experience further degradation when compared with men, such as if they are menstruating when being strip searched or through the invasive process of providing a urine sample.

Prisoners who experience marginalisation because of their race, gender identity, pregnancy, parental status, disability, or cultural and religious background may be disproportionately affected.⁶⁰

Positive measures and special accommodations to prevent discrimination, such as through separate and different policies, procedures, and practices for female prisoners, are not discrimination for the purposes of the Human Rights Act.⁶¹

- **Humane treatment when deprived of liberty:**⁶² This right requires that persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.⁶³ The right creates a positive obligation on public entities to treat persons in detention with humanity and

⁵⁶ *Human Rights Act 2019* (Qld) ss 8, 13.

⁵⁷ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/Res/70/175 (17 December 2015), rule 3.

⁵⁸ *Human Rights Act 2019* (Qld) s 48(3). Noting that this must be done with caution. See *Momcilovic v The Queen* [2011] HCA 34.

⁵⁹ *Human Rights Act 2019* (Qld) s 15.

⁶⁰ See also: Experiences of marginalised prisoners on page 92.

⁶¹ *Human Rights Act 2019* (Qld) s 15(5).

⁶² *Human Rights Act 2019* (Qld) s 30.

⁶³ *Human Rights Act 2019* (Qld) s 30.

respect for dignity. It complements the prohibition on torture and cruel, inhuman or degrading treatment.⁶⁴

Strip searches may limit this right, particularly when they are done on a routine basis and in the absence of an individualised risk assessment.⁶⁵

- **Protection from torture and cruel, inhuman or degrading treatment:**⁶⁶ Compared to humane treatment when deprived of liberty, this right is a general protection for all people against the worst forms of conduct towards any person (imprisoned or not).⁶⁷ In order for this right to be limited, treatment must be of such a nature that it can manifest in bodily injury or physical or mental suffering.⁶⁸

As strip searching causes severe emotional pain or suffering for some women, the practice can limit prisoners' rights to protection from cruel and inhuman treatment.⁶⁹ Strip searches may amount to degrading treatment as they can arouse feelings of fear, anguish or inferiority, particularly for women.⁷⁰

- **Right to privacy:** Strip searches are a serious intrusion into privacy and bodily autonomy which may be a breach of human rights when conducted in an unlawful or arbitrary manner.⁷¹ Interference will be arbitrary where it is capricious, or has resulted from conduct which is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.⁷²

Generally, these four rights will be limited in all situations in which a strip search is conducted. We will discuss other protected human rights in the context of particular circumstances, such as cultural rights and the rights of children and families. See also – *Appendix B* in this report on page 157 for a list of human rights that QCS staff members should consider when strip searching a female prisoner.

Proportionate limitation of rights

QCS must properly consider human rights when making decisions about how to treat a prisoner, and must make decisions or take actions involving a prisoner that are compatible with their human rights.⁷³ This includes the decision about whether to conduct a strip search, as well as the process or method of the strip search itself.

While human rights may be limited to meet a legitimate purpose, such as keeping other prisoners and staff members safe, prisons can only limit human rights where they can show that taking a particular action will actually meet the stated purpose.⁷⁴ In addition, QCS must consider whether there are any less restrictive and reasonably available ways to achieve the purpose of safety and security of the prison.⁷⁵ The Corrective Services Act and Corrective Services Regulation must be

⁶⁴ *Human Rights Act 2019* (Qld) s 17.

⁶⁵ *Reekie v Attorney-General* [2012] NZHC 1867; *Van der Ven v the Netherlands* [2003] ECHR 62.

⁶⁶ *Human Rights Act 2019* (Qld) s 17.

⁶⁷ *Castles v Secretary to the Department of Justice* (2010) 28 VR 141, [2010] VSC 310 [99]; *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273 [180].

⁶⁸ *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273 [190].

⁶⁹ *Human Rights Act 2019* (Qld) s 17(b). See also: Explanatory Notes, Human Rights Bill 2018, 19.

⁷⁰ See the cases of *Wainwright v The United Kingdom* [2006] ECHR 807; and *Ireland v The United Kingdom* [1978] ECHR 1.

⁷¹ *Human Rights Act 2019* (Qld) s 25.

⁷² *Thompson v Minogue* [2021] VSCA 358 [221].

⁷³ *Human Rights Act 2019* (Qld) s 58(1).

⁷⁴ *Human Rights Act 2019* (Qld) s 13(2)(c).

⁷⁵ *Human Rights Act 2019* (Qld) s 13(2)(d).

interpreted in a way that is compatible with human rights, to the extent possible that is consistent with the purpose of those laws.⁷⁶

For a policy, practice or procedure to be human rights compatible, prisons must strike the right balance between preserving the fundamental rights of prisoners and meeting the safety and security needs of the prison, staff members, and other prisoners.⁷⁷

International human rights guidance

To evaluate Queensland Corrective Services' policies, procedures, and practices in relation to strip searching of women, we have had regard to international human rights standards regarding the treatment of prisoners, including principles, guidance, commentary, and case law.

In summary, international human rights instruments and guidelines in relation to prisons indicate strip searches of women should be:

- undertaken only if absolutely necessary and only when alternatives, including scanning searches, aren't available
- respectful of dignity and privacy
- proportionate and conducted in accordance with the law
- not done to harass or intimidate the prisoner
- recorded in detail in a register
- conducted by women who are appropriately trained and in accordance with established procedures
- in the case of trans and gender diverse prisoners, conducted by trained staff members of the gender the prisoner chooses, unless an emergency situation arises.

General rules

The revised *United Nations Standard Minimum Rules for the Treatment of Prisoners*, adopted by the UN General Assembly in 2015 (known as the *Mandela Rules*) are rules for the treatment of people in detention. The *Mandela Rules*, which can be relied on to interpret human rights under the Human Rights Act,⁷⁸ represent the 'universally acknowledged blueprint for prison management in the 21st century,'⁷⁹ and outline minimum prison conditions all persons detained by the state should expect. Rules 50, 51 and 52 require:

- Taking into account the need to ensure security in the prison, searches should only be conducted in a manner that is proportionate, legal and necessary, and 'respectful of the inherent human dignity and privacy of the individual being searched.' (Rule 50)

⁷⁶ *Human Rights Act 2019* (Qld) s 48(1).

⁷⁷ *Human Rights Act 2019* (Qld) s 13(2)(g).

⁷⁸ See *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273 for a discussion of the application of the Mandela Rules.

⁷⁹ United Nations Office on Drugs and Crime, 'The Nelson Mandela Rules' (Web Page) <<https://www.unodc.org/unodc/justice-and-prison-reform/nelsonmandelarules.html>>

- Searches should not be used to harass, intimidate or unnecessarily intrude on privacy, and records should be kept of the searches, the reason for the searches, who conducted them, and the results of the search. (Rule 51)
- Strip searches should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff members of the same sex as the prisoner. (Rule 52)

Rules in relation to women

The *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (known as the *Bangkok Rules*) are specific human rights rules for women adopted by the United Nations General Assembly in 2010. The *Bangkok Rules* set out human rights obligations towards female prisoners and require:

- Effective measures be taken to ensure women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff members who have been properly trained in appropriate searching methods and in accordance with established procedures. (Rule 19)
- Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches. (Rule 20)
- Prison staff members shall demonstrate competence, professionalism and sensitivity and shall preserve respect and dignity when searching both children in prison with their mother and children visiting prisoners. (Rule 21)

Commentary on Australian prisons

While periodically reviewing Australia's compliance with the *International Covenant on Civil and Political Rights*, the United Nations Human Rights Committee raised a specific concern about reports of the conditions in Australian prison environments, including the use of routine strip searches. The Committee recommended Australia take steps to ensure people deprived of liberty are treated with humanity and respect for the inherent dignity of the prison population.⁸⁰

Previous investigations, inquiries and research

The Review has considered previous reports that focus on strip searching women in prisons. For many years investigations, inquiries, and systemic reviews in Queensland and other Australian and international jurisdictions have scrutinised the effectiveness of strip searches, highlighted the negative effects of routine searches on prisoners, and recommended alternatives to decrease the number of strip searches conducted on female prisoners. A full list of sources is available in the Reading list at the end of this report on page 162.

⁸⁰ United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Australia, UN Doc CCPR/C/AUS/CO/6 (1 December 2017).


Cross-jurisdictional comparison of policies, procedures, and practices

A comparison of strip search policies, procedures, and practices from all Australian states and territories,⁸¹ Canada, New Zealand, and the United Kingdom was undertaken by the Review. We also considered the *Guiding principles for corrections in Australia* which constitute outcomes or goals to be achieved by correctional services.⁸²

While our full analysis is too voluminous to include, we refer in this report to less restrictive alternatives identified through the cross-jurisdictional analysis and discussions with interstate prisons or prison inspectorates.

⁸¹ We did not obtain the relevant policies, procedures, and practices from Northern Territory or South Australia as they are not publicly available; our power to compel production of information only applies in Queensland, and the resources involved in retrieving these through right to information requests outweighed the potential benefit.

⁸² Corrective Services Administrators Council, *Guiding Principles for Corrections in Australia* (revised 2018), principle 2.3.12.



Do strip searches
improve safety and
security?

Do strip searches improve safety and security?

In this section we examine the rationale for strip searching and evaluate whether strip searches are necessary to meet the legitimate purpose of maintaining a safe, orderly, and secure prison environment. We explore the available evidence regarding the efficacy of strip searches to detect and control contraband and consider whether the circumstances in which routine searches are currently occurring in prisons are reasonable and justifiable.

Effectiveness of strip searches

Strip searching is a contraband control method to prevent drugs entering prisons,⁸³ and to prevent prisoners obtaining other items that may lead to a person harming themselves or others.⁸⁴

While strip searching is an entrenched practice in most prisons in Australia and overseas, there is no convincing evidence base for the use of strip searches.

Detecting and seizing contraband

Research studies, investigations, inquiries, and academic literature spanning the last 20 years have contested the effectiveness of strip searching to achieve the legitimate purpose of preventing harm to prisoners and staff members.⁸⁵ All available evidence indicates strip searches rarely find dangerous or prohibited items.

The Commission's 2006 *Women in prison* report included strip search data obtained by Sisters Inside, an advocacy group for women prisoners. Of 41,728 strip searches conducted in the Brisbane Women's Correctional Centre between 1999 and 2002, only two resulted in the detection of significant contraband,⁸⁶ which equates to a rate of 0.005% of searches. At the time, however, the Commission understood drugs were entering the prison despite a 'rigorous strip searching regime' in place.⁸⁷

The 2019 *Women in prison* report recorded a higher rate of seized items as a result of searches. During a randomly selected week in 2017, 282 removal of clothing strip

⁸³ Explanatory Notes, Corrective Services Bill 2006 (Qld) 59-60.

⁸⁴ For the list of prohibited things, see Corrective Services Regulation 2017 (Qld) s 19, extracted in Appendix A of this report on page 151.

⁸⁵ Debbie Kilroy, 'Strip-Searching: Stop the State's Sexual Assault of Women in Prison', (2003) 12 *Journal of Prisoners on Prisons*, 30; Human Rights Law Centre, *Total Control: ending the routine strip searching of women in Victoria's prisons* (2017); Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (2017); Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019); Women in Prison Advocacy Network (WIPAN), *Ceremonies of Degradation: Strip-searching in Women's Prisons* (2015); Jude McCulloch and Amanda George, 'Naked Power: Strip Searching in Women's Prisons' (2008) *The Violence of Incarceration*, 107-123; Home Office(UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007).; ACT Inspector of Correctional Services, *Report of a review of a critical incident: Use of force to conduct a strip search at the Alexander Maconochie Centre on 11 January 2021*, (2021), Appendix 3.

⁸⁶ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 71. We note that the DCS (Department of Corrective Services) at the time argued that this overlooked the deterrent effect of strip searching.

⁸⁷ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 72.

searches were conducted in secure women's facilities and six items were detected, though the report does not specify the nature of the items found.⁸⁸

For the purposes of this Review, data was requested from the Queensland Corrective Services (QCS) search register⁸⁹ for a one-week period in February 2023. Although this sample size was limited and the timeframe was short, no searches resulted in the detection of contraband. We conclude from the data received from QCS data that:

- Out of 264 searches conducted in one week, only two were targeted searches based on reasonable suspicion, while the remaining 262 were routine searches as per the Search Direction, for example where a person is being escorted to a medical appointment, to court, or after seeing a visitor.
- Most searches (204) were performed in the reception area on arrival into custody, while 28 searches took place before visits. The remainder of the searches were primarily conducted when individuals were entering Detention Units, Safety Units, or the holding cells in low security.
- The search register noted the detection of items on only one occasion during a targeted search in a residential area. However, the items found, namely 'tweezers and pencils', would not be considered contraband for prisoners in a residential unit.⁹⁰

The Review collected longer-term data from various sources, from which we calculated the contraband detection rate from strip searching to be 0.01% or even lower.

- The Human Rights Law Centre (HRLC) reviewed six months of Victorian strip search register entries from two women's prisons in 2017, which revealed that out of over 6,200 strip searches, six items were found. These included tobacco or nicotine products, a small quantity of gum, and one unidentified object. One search was recorded as 'inconclusive'. From this data, the HRLC estimated out of 12,400 searches, 14 items would be detected (0.01%).⁹¹
- Information obtained by Sisters Inside showed women in Queensland prisons were strip searched 16,258 times in 2017. Contraband was recorded in fewer than 200 instances, which accounts for 0.01% of searches. In support of these findings, separate data recorded for reception and visits showed minimal contraband finds, none of which were significant.⁹²
- According to data obtained by ABC News, of the 796 strip searches of women conducted at ACT's Alexander Maconochie Centre between October 2019 and June 2021, only 0.015% detected contraband. First Nations women accounted for more than half of the prisoners searched.⁹³
- A 2019 report by the Office of the Inspector of Custodial Services in Western Australia found that of 869,000 strip searches since 2014, 571

⁸⁸ Queensland Human Rights Commission, *Women in Prison 2019: A Human Rights Consultation Report* (2019), 126–7.

⁸⁹ This register is required by the *Corrective Services Act 2006* (Qld) s 40.

⁹⁰ We were unable to identify how these items met the statutory definition of a 'prohibited thing' under the *Corrective Services Regulation 2017* (Qld) s 19.

⁹¹ Human Rights Law Centre, *Total Control: ending the routine strip searching of women in Victoria's prisons* (2017), 11.

⁹² Sisters Inside Inc, *Submission to the Discussion Paper 2, Women's Safety and Justice Taskforce*, Queensland (2021), 8.

⁹³ Jake Evans, *'Indigenous women strip-searched twice as often inside Canberra's jail in recent months'*, ABC News (2 July 2021).

items were found, which means only one in every 1,500 strip searches detected contraband (0.006%).⁹⁴ This research encompassed the largest dataset collected in Australia over an extended duration, and it revealed the least effective rate for strip searches of those reports we have examined.

When asked about the frequency of finding contraband, most corrective services officers we spoke with could only recall one or two instances over the course of years. Some staff members described finding items, such as a bobby pin hidden behind an ear, that did not require a person to remove all of their clothing for it to be easily detected.

Many corrective services officers perceive strip searches as an unpleasant but necessary part of their work. Some staff members hold serious concerns that if strip searches were eliminated there would be an increase in the smuggling of drugs, weapons, and other contraband.

Other staff members told us strip searches are outdated and ineffective in achieving their intended purpose of ensuring safety and managing risks. They claim if items are secreted, they are often not found during strip searches but rather through intelligence-based methods or when prisoners are asked to produce the items.

Advocacy groups such as Sisters Inside and Queensland Advocacy for Inclusion strongly oppose the use of strip searches and question their justified use based on available data. Sisters Inside considered if the available evidence was scrutinised in any other context, the practice would be considered a 'fundamental failure' and immediately discontinued.⁹⁵ The Throughcare Program delivered by the Aboriginal and Torres Strait Islander Legal Service (ATSILS) advocated, at minimum, for individual risk assessments to be conducted rather than a blanket approach to strip searches.⁹⁶

First Nations Legal Service North Queensland highlighted the ineffectiveness and degrading nature of visual searches of women, particularly when women can insert drugs into their bodies which will not be detected through strip searching.⁹⁷

⁹⁴ Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019).

⁹⁵ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

⁹⁶ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

⁹⁷ First Nations Women's Legal Service Queensland consultation, 16 May 2023.

Speaking with prisoners it became clear prisoners are aware of how to hide items to avoid detection during routine searches and more emphasis is needed on the use of scanning technology to effectively identify contraband. Prisoners mentioned techniques such as 'banking' items in body cavities, which makes them difficult to discover through traditional strip searches.

'If you've banked it's not coming out whether you squat or cough or put a mirror there for whatever, but yeah if you x-ray then maybe you'll see what's in store... a scanner would pick up heaps more stuff. It does show up everything, so it could be a one up for them and a one down for us if that was the case.'

Another practice mentioned is 'cheeking' in which items are concealed between the buttocks to evade detection.

'We call it cheeking out. So rather than sticking something inside, you will stick it between the bum cheeks. So girls will keep stuff there. So that if they do a search, they'll get through without being seen.'

A review of strip searching in the United Kingdom observed prisoners would be able to secrete drugs internally, or alternatively hide drugs in the prison grounds on arrival and retrieve them later.⁹⁸ In summary, there are many ways to avoid detection and frequent strip searches are an ineffective tool to identify contraband.

Several prisoners contest the seriousness of items recorded in the register as contraband, citing examples such as 'buy up' items like lollies, coffee, or sugar packets being found on women being moved from residential into isolation in the Safety or Detention Unit to make the stay there 'a bit more comfortable'. This correlates with the evidence collected by Sisters Inside in their 2017 data request. Sisters Inside reported 'harmless' items such as hair clips, clothing, or tattoos were noted down as contraband in the search register. Some entries reportedly listed 'suspicious behaviour' or 'non-compliant actions' without specifying any prohibited items.⁹⁹

Deterrence

Some staff members believe strip searches deter or prevent contraband smuggling as the fear of being strip searched may dissuade prisoners from bringing prohibited items, such as drugs or weapons, into prisons. Corrective services officers we spoke with provided anecdotal examples of a deterrent effect, such as when an increase in prisoner searches after visits was perceived to be responsible for a decrease in drug use in the following weeks.

The Western Australian Inspector of Custodial Services compared strip search frequency with the rates of drug detection and found no evidence of any relationship between the two. The Inspector further reported they found no increase in contraband in locations where strip searching had ceased. On the contrary, when there was a peak of positive findings in targeted drug tests, there was a decrease in the amount of contraband found during searches.¹⁰⁰

⁹⁸ Home Office (UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007) 31.

⁹⁹ Sisters Inside, Submission to the Discussion Paper 2, Women's Safety and Justice Taskforce, Queensland (2021), 8.

¹⁰⁰ Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019), 8–9.

Prisons that have significantly reduced strip searching have experienced positive effects on the overall prison environment. A 2003 pilot program by Corrections Victoria aimed at reducing strip searches¹⁰¹ led to a decline in self-harm, assaults, positive urine tests (40% reduction), and contraband seizures (50% reduction).¹⁰² Similarly, the 2007 *Corston Report* in the United Kingdom recommended reducing strip searches to the 'absolute minimum compatible with security' and piloting scanning machines as an alternative method.¹⁰³ This led to an 18-month pilot program across five prison sites which did not result in any increase in contraband being smuggled into prisons.¹⁰⁴

Corrections Victoria has recently taken steps to reduce the use of strip searches in favour of body scanners. In discussions with the Review team, Corrections Victoria acknowledged the cost-benefit analysis did not support the continued use of strip searches, especially for prisons aiming to operate in a trauma-informed manner.¹⁰⁵ Through the introduction of scanning technology, swab testing, and intelligence-led strip searches, Corrections Victoria announced a significant reduction of 20,000 searches over 18 months.¹⁰⁶

This process has involved major cultural change for staff members. Corrections Victoria acknowledged staff members were initially hesitant to reduce the number of searches or adopt alternative technologies, as doing so essentially implies a task they had completed hundreds or thousands of times throughout their whole career, was in effect unnecessary.¹⁰⁷

A 2014 Queensland Ombudsman investigation found excessive strip searches of women before and after receiving section 8 medication to prevent drug diversion led to zero detections of any medication diversion over many months. The Ombudsman considered the legislation in Queensland does not authorise searches to occur in a 'blanket and ongoing manner simply for deterrent effect.'¹⁰⁸

All available evidence indicates strip searches fail to achieve their intended purpose of detecting and confiscating contraband from prisoners. Empirical evidence on the deterrent effect of strip searches is limited. While anecdotal accounts suggest strip searches may contribute to reducing contraband within prison settings, there is no data supporting this claim, and prisons that have reduced the use of strip searches have not found a consequential increase in contraband entering prisons.

¹⁰¹ The searches conducted were reduced from 21,000 to 14,000 over two years. The program focused on reducing routine searches and on using targeted searches along with less frequent but random searches.

¹⁰² Human Rights Law Centre, *Total Control: ending the routine strip searching of women in Victoria's prisons* (2017) 7, referring to Department of Justice (Victoria), *Piloting a Way Forward: The Women's Prisons Region Strip Search Pilot – An Evaluation of the First 12 Months* (2004).

¹⁰³ Home Office (UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007) 5, 35.

¹⁰⁴ Human Rights Law Centre in *Total Control: ending the routine strip searching of women in Victoria's prisons* (2017), 24, based on correspondence received from Operational Security Group, Her Majesty's Prison and Probation Service, 15 and 18 August 2017.

¹⁰⁵ Corrections Victoria consultation, 5 May 2023.

¹⁰⁶ Member for Mill Park District, Lily D'Ambrosio, 'New gatehouse to boost security and keep people safe' (Media Release, 15 January 2020).

¹⁰⁷ Corrections Victoria consultation, 5 May 2023.

¹⁰⁸ Queensland Ombudsman, *The Strip Searching of Female Prisoners Report: An investigation into the strip search practices at Townsville Women's Correctional Centre* (2014), 16.

Current policy, procedure or practice

In Queensland, legislation and corresponding policies and procedures¹⁰⁹ authorise strip searches of prisoners in three situations:

1. **Routine** searches in accordance with the Direction for a Search Requiring a Removal of Clothing, stating the situations in which searches *must* occur, unless it is deemed unnecessary¹¹⁰ because of the prisoner's exceptional circumstances.¹¹¹
2. **Targeted** searches based on reasonable suspicion the prisoner has a prohibited thing.¹¹²
3. Searches that are **generally** considered necessary for security and good order of the prison or safe custody and welfare of prisoners, in response to a specific incident.¹¹³

These searches may be preceded by a less invasive search.¹¹⁴

While the powers under the legislation are broad, on our reading of the legislation and Explanatory Notes, the Corrective Services Act does not authorise searches to be conducted for a general 'deterrent' effect. Particularly when interpreted compatibly with human rights,¹¹⁵ the law only permits routine searching in certain specific circumstances (and requires consideration of exceptional circumstances of a particular prisoner),¹¹⁶ or if there is reasonable suspicion,¹¹⁷ or at least the necessity to ensure security, good order, or safety and welfare of prisoners.¹¹⁸

Human rights considerations

At the beginning of the directive, the COPD – Prisoner Search refers to human rights and confirms officers must give proper consideration to human rights, including, but not limited to:

- a) the right to equal and effective protection against discrimination
- b) the prisoner's right to privacy
- c) the person's cultural rights
- d) the person's right to be treated with humanity and respect¹¹⁹

¹⁰⁹ Queensland Corrective Services, *Direction for a Search Requiring the Removal of Clothing of Prisoners*, Ver 1, 2 November 2021; Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 2 [1.0–2.0].

¹¹⁰ The legislation provides one example of an exceptional circumstance where a pregnant prisoner returns to the prison from an escorted antenatal visit and the corrective services officers who escorted the prisoner advises that the prisoner did not have a likely opportunity to obtain a prohibited thing.

¹¹¹ Under section 35(1) of the *Corrective Services Act 2006* (Qld), the chief executive may give a written direction requiring removal of clothing searches at the times stated in the direction. The written direction under this section is called the Direction for a Search Requiring a Removal of Clothing of Prisoners, which contains a list of searches that must occur in particular situations.

¹¹² *Corrective Services Act 2006* (Qld) s 37.

¹¹³ *Corrective Services Act 2006* (Qld) s 36. In investigating strip search practices in 2014, the Queensland Ombudsman interpreted this provision as being confined to responses to a particular incident, for example, a knife going missing from a kitchen, rather than authorising blanket searches for an indefinite period. Refer to - Queensland Ombudsman, *The Strip Searching of Female Prisoners Report: An investigation into the strip search practices at Townsville Women's Correctional Centre* (2014), 12–13.

¹¹⁴ *Corrective Services Act 2006* (Qld) ss 35(4), 36(2), 37(2).

¹¹⁵ *Human Rights Act 2019* (Qld) s 48.

¹¹⁶ *Corrective Services Act 2006* (Qld) s 35(3).

¹¹⁷ *Corrective Services Act 2006* (Qld) s 37.

¹¹⁸ *Corrective Services Act 2006* (Qld) s 36.

¹¹⁹ While not entirely clear, this may be a reference to section 30 of the *Human Rights Act 2019* (Qld), the right to humane treatment when deprived of liberty.

- e) protection of families and children; and
- f) freedom of expression, that is the right to hold an opinion without interference.

The directive also states human rights can be limited if: allowed by law; the limitation is reasonable; the limitation can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom; and further confirms rights should only be limited to an extent that is reasonably and demonstrably justified.¹²⁰

The COPD – Prisoner Search fails to mention a key human right that is limited by strip searching – the right to protection from cruel, inhuman or degrading treatment.¹²¹ [See also – *Protected human rights* on page 34.] A failure to identify all relevant rights risks QCS being found to have not discharged their obligation to give proper consideration to human rights.¹²²

To improve decision-making, we suggest the list of rights required to be considered by staff members should be expanded, and that relevant rights should be referred to in the appropriate situation – for instance, searches involving women with children in custody should refer to the right of children to protection that is needed by them and is in their best interests. We have developed a list of situations or prisoner characteristics that should prompt staff members to give proper consideration to specific human rights. Refer to Appendix B – *Human rights to consider when strip searching a female prisoner* on page 157.

Strip searches significantly limit the human rights of prisoners and staff members. [See also – *What are the impacts and consequences of strip searching?* on page 58.]

Human rights can be limited to meet a legitimate purpose, which includes the detection and control of dangerous items to reduce the risk to prisoners and staff members and improve the overall safety and security of a prison.¹²³ Generally, the onus is on a public entity to demonstrate how a limitation on human rights is reasonable and proportionate.¹²⁴ Given the limited evidence base to prove that strip searches regularly achieve this purpose, and the question as to whether ‘deterrence’ is a lawful basis for routine strip searching, the Review considers current strip searching practices in women’s prisons may not be compatible with human rights.¹²⁵

Alternative approaches

Queensland Corrective Services has stated a commitment to implementing evidence-informed practices and gender-responsive and trauma-informed approaches to corrective services, and to reducing the negative impacts of imprisonment on women and their families.¹²⁶ In alignment with these goals, QCS has an obligation to identify whether the legitimate purpose of controlling prohibited

¹²⁰ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 1.

¹²¹ *Human Rights Act 2019* (Qld) ss 17(b)–(c).

¹²² *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273.

¹²³ *Human Rights Act 2019* s 13(1). A public entity must weigh up the relationship between the limitation on rights and the purpose, including whether the limitation helps to achieve the purpose.

¹²⁴ *Owen-D’Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273 [129].

¹²⁵ *Human Rights Act 2019* (Qld) ss 13(c)–(d).

¹²⁶ Queensland Corrective Services, Interim Women’s Strategy 2023-2025: *Women in Our Custody and Care* (24 April 2023) 7–8.

items in prisons can be achieved in more than one way, and whether other options have less impact on the human rights of prisoners, their children and families.¹²⁷

Body scanners and saliva swab testing are less restrictive alternatives that can entirely replace, or at least minimise, the use of strip searching. Body scanners are used in comparable jurisdictions as a primary way to detect contraband. These scanners create an image of a person's body without a person having to remove their clothing. Saliva swab tests, also known as oral fluid tests, are drug screening tools that are easy to administer, quick and non-invasive when compared with the current drug testing regime which involves strip searching and producing a urine sample. [See also – *Drug testing* on page 71.] Both options are shown to be effective, as evidenced by their use in other Australian jurisdictions. We examine the use of these alternatives in detail in the section entitled *What alternative approaches are available?* on page 142.

In Victoria, relevant policies include a statement that strip searches should not be relied on as a primary means of detecting contraband. The General Manager must consider which specific type of search is the least intrusive and would help mitigate an identified risk. The policy emphasises the use of alternative searches such as pat down and scanning searches, and states these less intrusive forms of search not only enhance safety and security but also serve as alternatives to strip searching and promote trauma-informed practices.¹²⁸

In the Australian Capital Territory, relevant law and policy do not allow strip searches to occur on a routine basis. Strip searches can only be conducted when there is reasonable suspicion the prisoner has a prohibited thing, or an item that may be used to intimidate someone, commit an offence or disciplinary breach and create a risk to personal safety, security or good order. Strip searches *may* occur on admission into prison.¹²⁹ The search policy states strip searches should not occur when a detainee has been in the control or immediate supervision of a staff member or otherwise not had an opportunity to obtain a dangerous item.¹³⁰ Searches between prisons should only occur if there is reasonable suspicion to justify them, and all searches must be the least intrusive kind of search reasonable and necessary, taking into account the human rights of the prisoner.¹³¹

The England and Wales policies also centre on making individual risk assessments and prisoners in the Women's Estate¹³² must not be strip searched on a routine basis.¹³³

Strip searches of women in Western Australian prisons must be conducted on an individual risk assessment, when items cannot be or have not been discovered by a less invasive search. Routine searches in Western Australian prisons are only conducted upon receiving a person into custody, and no other searches are considered 'routine'. Where a chain of custody has been unbroken during a transfer, no strip search occurs. Searches of women, in particular, can only be carried out as a last resort based on intelligence, indications by a drug dog, or for safety and security purposes. Considerations must be given to the personal attributes of the

¹²⁷ Explanatory Notes, Human Rights Bill 2018 (Qld) 17.

¹²⁸ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022 [3.4]–[3.7].

¹²⁹ *Corrections Management Act 2007* (ACT) ss 70, 113A, 113B, 113C.

¹³⁰ ACT Corrective Services, *Policies and Operating Procedures: Custodial Operations, Searching*, Ver 2, January 2022, 11 [8.8–8.17].

¹³¹ ACT Corrective Services, *Operating Procedure: Strip Search*, S4.11, February 2022 [1.3].

¹³² Referring to the prisons that are specifically designed for women offenders.

¹³³ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, July 2023, 14 [4.6.2], 27 [4.10.2].

prisoner including health, welfare, and circumstances including their mental health and trauma.¹³⁴

The Commission's position

The Commission considers that:

- There is compelling evidence strip searches have little or no beneficial effect on detecting and seizing prohibited items, or act as a deterrent to bringing in contraband.
- Policies and procedures aimed at actively reducing reliance on strip searching, particularly when coupled with the use of body scanning technology, have improved the safety and security of prisons in other jurisdictions.
- The COPD – Prisoner Search should make it clear that staff members have an obligation to make decisions and take actions in a way that is compatible with the prisoner's human rights. Searches should always be reasonable, necessary, and proportionate to the risk.
- Human rights considerations should be integrated throughout the whole document rather than only referring to human rights at the beginning. Appendix B on page 157 of this report provides a guide to QCS about which human rights are most likely to be engaged depending on prisoner characteristics or the particular circumstances.
- Unless human rights considerations are integrated throughout the whole document, staff members are unlikely to grasp the importance of having to weigh up human rights in every instance that a decision is being made about whether to strip search a prisoner, or in the actions taken when conducting the search.
- The commitment made in the QCS Interim Women's Strategy to ending the practice of strip searches is appropriate and should be prioritised accordingly.

Recommendation 1: Update practice directives to incorporate human rights considerations

- 1.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search to incorporate human rights considerations throughout.
- 1.2 The practice directives should be amended to include:
 - a statement explaining the rationale for searching prisoners and that strip searches should not be the primary means of detecting contraband or ensuring safety and security of prisoners

¹³⁴ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 15 [7.3], 16 [7.5.2].

- an acknowledgement that strip searches are a serious limitation on human rights, advising that staff members have a legal obligation to make decisions and act compatibly with human rights in relation to strip searches
- a reference specifically to the right to protection from cruel, inhuman or degrading treatment.

Routine and targeted searches

From analysis of data collected on Queensland prisons, it became evident the majority of searches conducted in prisons are routine searches,¹³⁵ not searches resulting from a reasonable suspicion of prohibited items.¹³⁶ The frequency of routine searches varies based on a prisoner's security classification and place of incarceration.

The situations in which a prisoner **must** be searched on a routine basis under the Search Direction are:

Situation	High security prison	Low security prison
Immediately on being received into custody at a high security facility	X	
Prior to external transfer or leave of absence and then on return	X	X
On entry for inter-facility contact	X	
Entering health centre, Safety Unit or S4 accommodation unit at Brisbane Women's Correctional Centre	X	**
When the prisoner is subject to a safety order and is placed in the relevant accommodation	X	
When the prisoner is identified as being at risk of self-harm or suicide	X	
Before the prisoner begins a period of separate confinement	X	X
Before the prisoner is transferred or removed under Ch 2, P2, Div 7 of the Corrective Services Act (including to a work camp to another prison on health institution, to court and into custody of police)	X	
After a contact visit with a personal visitor	X	
Before the prisoner is required to provide a test sample of urine	X	X

** While not reflected in the Search Direction we heard there is a routine practice of strip searching any prisoner placed in the holding cell at Numinbah Correctional Centre.

¹³⁵ Corrective Services Act 2006 (Qld) s 35.

¹³⁶ Corrective Services Act 2006 (Qld) s 37.

Local instructions for Townsville Correctional Centre vary the Search Direction by stating prisoners going back and forth from the low security part of the prison (the prison farm) for activities such as medical appointments or community service should not be routinely searched.¹³⁷ A similar local instruction for prisons in the Brisbane region says transfers from low to high security when the facilities are 'associated' should not lead to a search.¹³⁸

In general, the lower the security setting in which the prisoner is located, the less frequent the number of strip searches.¹³⁹ Prisoners in Helana Jones Centre, a small low security prison in Brisbane, are only searched onsite prior to a urine test, and one random test occurs every week.

However, as prisoners do not enter directly into a low security setting to start with, even low security prisoners will have been strip searched on reception and may be searched on other occasions such as transfers between prisons, attending external medical appointments, or attending court.

Unnecessary or disproportionate searches

Prisoners, legal stakeholders, and service provider stakeholders¹⁴⁰ expressed frustration that some searches conducted on a routine basis are 'pointless', 'unnecessary', 'excessive' or 'overkill'.

An example of this is where searches are conducted despite a prisoner remaining in a secure chain of custody. A low security prisoner transferred to high security for the day for a medical appointment described the following scenario:

'We're there for medical appointments and we're strip searched. We didn't go back into mainstream, we didn't have contact with anybody. We then get shuffled into a room where one of the guards from here or officers from there stood with us the entire time. We went and saw the doctor, waited for the other girls to be done - with the officer there the whole time watching us. And as we leave we have to be stripped searched again.'

However, some prisoners told us they had been in the same scenario of being externally transferred for a medical appointment under constant supervision, and no strip search occurred at all. The perception among some prisoners was the decision whether to conduct strip searches largely depended on the individual practice of the manager or staff member on duty.

[See also – *Medical care* on page 88.]

The Inspector of Custodial Services in Western Australia examined the issue of doubling up on searches, such as on departure and arrival between secure facilities, and found there was no reasonable justification for the practice. The Inspector considered searching prisoners twice in quick succession increased the chance of serious escalation and risk to staff members, and provided an example of which a

¹³⁷ Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Townsville Women's Correctional Centre* (including low custody), Ver: 03, 19 March 2018.

¹³⁸ Queensland Corrective Services, *Local Instruction - Removal of Clothing Services: Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre* (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps), Ver 03, April 2014.

¹³⁹ Queensland Corrective Services, *Direction for a search requiring the removal of clothing of prisoners*, Ver 1, 2 November 2021, 2–3.

¹⁴⁰ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023; Sisters Inside Inc consultation (Brisbane), 26 April 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023; First Nations Women's Legal Service NQ Inc consultation, 16 May 2023; Queensland Advocacy for Inclusion consultation, 4 April 2023.

prisoner became non-compliant and tried to bite staff members while his clothes were forcibly removed.¹⁴¹

Through an information request, the Review obtained a summary of a complaint made to an official visitor by a prisoner who, along with others, was subjected to routine strip searches every time she left and re-entered a Safety Unit. The prisoner said this experience was humiliating and traumatic for the women in her unit, especially for those prisoners with histories of abuse. The searches seemed to occur because of insufficient staff members, as an escorting officer was not available to remain with the prisoner for the entire duration of their visit to the medical centre or for a legal visit. The official visitor substantiated the complaint and recommended resourcing issues be addressed, and new and proven technologies for screening prisoners be provided.

Individual risk assessments

Some staff members and prisoners believe that, although searches are necessary in certain situations, Queensland Corrective Services (QCS) should provide greater emphasis on assessing individual risk in many situations when routine searching now occurs. Strip searching a prisoner every time they are placed in a Detention or Safety Unit was given as an example of unnecessary or inappropriate searching.

Some women with no history of behavioural or mental health issues are placed in isolation to protect them from other prisoners. There is nothing to indicate these women are at risk of hurting themselves or others, and therefore no demonstrated risk that justifies a strip search. Strip searching women in these circumstances could also be a disincentive to women at risk reporting their concerns, reducing the safety and security of the prison in general.

An example of this situation was given in a complaint to an official visitor, where a transgender prisoner who had been recently sexually assaulted by another prisoner was subjected to a traumatic strip search by several male staff members after being moved to the Safety Unit for her own protection. [See also – *Trans and gender diverse prisoners* on page 107.] Another example came from the low security Numinbah Correctional Centre, where we heard that women would not disclose that they felt unsafe from other prisoners because they would be moved into the single holding cell, preceded by a routine strip search.

Several corrective services officers said they thought that strip searches were most effective when conducted under reasonable suspicion. One staff member we spoke with was in favour of moving to a process of only searching based on 'reasonable suspicion', but also considered that 'reasonable suspicion' needs to be more clearly defined for staff members. Another staff member we spoke with thought searches should be reduced to only entering or leaving prison, and there is no need when they are in a 'sterile area'. Other staff members thought that because of the perceived 'deterrent' effect of strip searches, ending routine strip searches prior to a full rollout of body scanners would place staff members or prisoners at risk of being harmed by weapons or syringes. [See also – *Effectiveness of searches* on page 40.]

Another issue raised with the Review was that strip searches occur where there is no actual risk of harm to anyone. We heard searches were occurring to locate items

¹⁴¹ Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019), 20–21.

not on the prohibited items list, or to find out if a prisoner has any fresh tattoos.¹⁴² Prisoners said they were subjected to strip searches as punishment for minor infringements, such as sharing coffee sachets with other prisoners, which is not permitted. We heard about entire units or workplaces being strip searched when one person was found to have a fresh tattoo, or when insignificant items such as salt and sugar packets went missing from a kitchen.

Current policy, procedure or practice

As described in the previous section, *Effectiveness of searches – current policy, procedure and practice* on page 45, searches occur on a routine or targeted basis or where generally considered to be necessary.

In addition to the mandatory searches set out in a schedule in the Search Direction, a search can be conducted ‘at any time’ to ensure the security and good order of the prison, such as when prisoners leave the workshop or kitchen.¹⁴³

Prisoners entering or leaving a visits area *may* be subjected to a search that involves removing their clothing, and a strip search is required immediately before a prisoner exits a prison for an external transfer, and immediately on their return to prison after an external transfer.¹⁴⁴

While the legislation permits a person to not be searched in a routine situation when there are ‘exceptional circumstances’,¹⁴⁵ the Search Direction contains a mandatory schedule of searches and does not refer to this aspect of the legislation, which requires the Direction to be read alongside the legislation or COPD – Prisoner Search for an accurate picture of the legislative requirements.

We were unable to identify a process or procedure for decision making about assessing ‘exceptional circumstances’ in any of the documents available to the Review. The COPD – Prisoner Search indicates that an ‘exceptional circumstances’ decision may only be made at a high level by the Chief Superintendent, General Manager or Superintendent, or Deputy General Manager. As this decision does not appear to be delegated to individual corrective services officers or officers in charge,¹⁴⁶ it is unclear how often in practice a staff member would ask for and obtain the authority to excuse a prisoner from a routine search.

Human rights considerations

Blanket rules arbitrarily applied to all prisoners in the absence of individual risk assessments can lead to decision making that is incompatible with human rights and result in treatment that limits human rights for some, if not all, prisoners.

Most of the situations set out in the Search Direction where a person *must* be searched unless there are exceptional circumstances, limit several human rights. For a list of rights that are limited by strip searches in specific situations see Appendix B on page 157 of this report.

¹⁴² *Corrective Services Regulation 2017* (Qld) s 19 does not contain tattoos and they are not a ‘prohibited thing’ for the purpose of conducting a search under *Corrective Services Act 2006* (Qld) s 37.

¹⁴³ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 5 [10].

¹⁴⁴ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [10].

¹⁴⁵ *Corrective Services Act 2006* (Qld) s 35.

¹⁴⁶ ‘Officers in charge’ are called supervisors in high security or duty officers in low security, as defined in Queensland Corrective Services, *Practice Directives Definitions A-Z Listing Dictionary*, Ver 5, 6 June 2023.

Routine strip searches will be incompatible with a prisoner's human rights where they are conducted unlawfully, or where the search will not achieve its purpose, or is disproportionate to the risk. The likelihood that a search will be incompatible with a prisoner's human rights is compounded by the limited evidence base for the overall effectiveness of the practice.

Searches to find minor items (such as sugar packets) would not be lawful as the target is not a prohibited item¹⁴⁷ and does not meet the threshold to justify a general search,¹⁴⁸ and so is incompatible with human rights. A search of a whole unit because one prisoner has a fresh tattoo is unlikely to be compatible with human rights as this is a disproportionate response.¹⁴⁹ We understand that tattoos are a health issue in prisons and should be strongly discouraged, but the focus should be on targeted searches to find tattooing devices, rather than looking for tattoos on women's bodies.¹⁵⁰

Where individual risk assessments are conducted, fewer restrictions of human rights will result and the decisions and actions taken are more likely to be compatible with the Human Rights Act. In a New Zealand case it was found that routine strip searches of a male prisoner without considering the necessity for each search violated his right to humane treatment.¹⁵¹

Factors to consider relevant to determining the necessity of a strip search may include, for example, the likelihood of whether a prohibited item may be otherwise detected through a scanning, wand or pat down search, whether the prisoner was in the supervision of staff members, the extent of contact with other prisoners, and the individual's history, such as whether they have a prior record of concealing items.

Alternative approaches

As discussed in the previous section *Effectiveness of searches – Alternative approaches* on page 46, other comparable jurisdictions have restricted the use of strip searches to situations involving reasonable suspicion based on intelligence, or have minimised their use for female prisoners to only the most high-risk situations, such as where prisoners are entering custody for the first time.

The New South Wales Prisoner Inspector of Custodial Services has recommended the practice of routine strip searches of women cease, a risk-based approach be considered, and technology used as an alternative.¹⁵² We understand that, at the time of writing, all custodial settings in New South Wales have body scanners installed.

¹⁴⁷ *Corrective Services Act 2006* (Qld) s 37: A targeted search must occur only based on the reasonable suspicion that a person has a prohibited thing, which is prescribed under *Corrective Services Regulation 2017* (Qld) s 19.

¹⁴⁸ *Corrective Services Act 2006* (Qld) s 36: A search can be conducted where necessary for security or good order of the facility or the safe custody and welfare of prisoners.

¹⁴⁹ See also, *Certain Children (No 1)* [2016] VSC 796 [169]; *Certain Children (No 2)* [2017] VSC 251 which found that the treatment of children collectively amounted to cruel, inhuman and degrading treatment.

¹⁵⁰ Under *Corrective Services Regulation 2017* (Qld) s 19, while a tattooing device is a prohibited thing justifying a search based on reasonable suspicion under *Corrective Services Act 2006* (Qld) s 37, the tattoos themselves are not prohibited things under the Regulation.

¹⁵¹ *Reekie v Attorney-General* [2012] NZHC 1867.

¹⁵² Inspector of Custodial Services (NSW), *Women on Remand* (2020) 52 [5.1.1].

The Commission's position

The Commission considers that:

- While safety and security of the prison is a legitimate purpose to be achieved, strip searches, particularly when done on a routine basis in the absence of an individual risk assessment, are a disproportionate limitation on prisoners' human rights.
- The Search Direction contains an extensive list of situations for the use of mandatory, routine strip searches, which may result in actions and decisions that are incompatible with human rights, particularly considering the lack of an evidence base for the effectiveness of strip searches to fulfil their intended purpose.
- Body scanners may replace or significantly minimise the use of strip searches. During the transition period in which body scanners are being installed and staff members are being trained on their operation, all routine searches should cease except for when a prisoner is first received into custody. Some targeted strip searches may need to continue until such time as body scanners are available, after which point, we consider that strip searches should be prohibited entirely or authorised only in exceptional circumstances.
- Until body scanners are available, QCS should limit the use of strip searches to only the most high-risk situation: when a prisoner enters prison for the first time. For clarity, this would not include strip searching women who are being transferred between prisons during their period of incarceration as they will have remained in the secure custody of the State. This would align Queensland's policies, procedures, and practices with the more trauma-informed approach of Western Australia to searches of female prisoners.
- The legislation anticipates that exceptions to routine searches under section 35 will be made on a case-by-case basis. In practice these decisions to not conduct a search under the Search Direction need to be made by staff members working closely with the prisoners day-to-day. We consider the authority to make a decision on 'exceptional circumstances' may need to be delegated to a lower level than the Chief Superintendent, General Manager or Superintendent or Deputy General Manager for this to work effectively in practice.
- An alternative framing in the legislation could be that strip searches should only occur in exceptional circumstances, and legislative change should be considered after scanners have been implemented to update the overall approach. To be clear, our recommendations do not rely on any legislative changes to precede their implementation.
- When a prisoner is being placed in isolation for their own protection, after being a victim of a physical or sexual assault, no strip search should occur. The chance of triggering a response to a known and recent trauma should be an overwhelming reason not to conduct a search and fall into the category of 'exceptional circumstances.'

- Staff members should be instructed not to conduct searches for the purpose of finding items that fall outside the schedule of prohibited items.¹⁵³ Such searches may be unlawful.

Recommendation 2: Create a clear ‘exceptional circumstances’ search exemption process

- 2.1 Queensland Corrective Services should amend the Direction for a Search Requiring a Removal of Clothing (the Direction) and the Custodial Operations Practice Directives to:
- provide a clear process for determining if a prisoner has exceptional circumstances to establish that a search under the Direction is unnecessary under *Corrective Services Act 2006* (Qld) s 35(3)
 - clearly delegate responsibility for making these decisions at an appropriate level.

Recommendation 3: Cease all routine strip searches after a prisoner is in secure custody of the prison


- 3.1 Queensland Corrective Services should immediately cease all routine strip searches occurring under section 35 of the *Corrective Services Act 2006* (Qld) except for when a prisoner is received into custody for the first time.
- 3.2 Queensland Corrective Services should amend the written direction under the *Corrective Services Act 2006* (Qld) section 35 (the Direction for a Search Requiring a Removal of Clothing) to direct that the only instance in which a strip search must occur is when a prisoner is received into custody for the first time, and where:
- a scanning search is unavailable, and
 - the prisoner does not have ‘exceptional circumstances’ to exempt them from a search under section 35(3) of the *Corrective Services Act 2006* (Qld).

Recommendation 4: Only conduct targeted strip searches as a last resort to respond to an identified risk following an individual risk assessment

- 4.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:
- direct that strip searches should occur only where there is reasonable suspicion of an identified risk following an individual risk assessment, and only as a last resort when other alternatives are not reasonably available, including body scanners

¹⁵ *Corrective Services Regulation 2017* (Qld) s 19.

- clarify that staff members must not conduct targeted searches for the purpose of anything other than detecting and seizing a 'prohibited thing' as defined by the *Corrective Services Regulation 2017* (Qld). The list of prohibited things should be included as an appendix in the Custodial Operations Practice Directives – Prisoner Search for easy access
- confirm that strip searches should not occur where a prisoner is being placed into a Detention or Safety Unit for their own safety following a physical or sexual assault by another prisoner.



What are the
impacts and
consequences of
strip searches?

What are the impacts and consequences of strip searches?

Impact and consequences for prisoners

In this section we discuss the effects on women from strip searching and drug testing in prison. We explore the various consequences that arise from strip searching including psychological and emotional harm to female prisoners. We discuss how strip searches deter prisoners from receiving personal and professional visits, appearing in person in court, and obtaining medical care, and how women who experience marginalisation due to their personal characteristics are particularly affected by strip searches.

Psychological and emotional harm

Previous reviews, investigations and inquiries have extensively examined the traumatic impact of strip searches and the negative effects on a person's self-esteem, dignity, and overall well-being.¹⁵⁴ Because of their nature and impact, strip searches have been likened by some commentators to being sexually assaulted.¹⁵⁵ The Commission's 2006 *Women in prison* report described the effects of strip searching as follows:

Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating experience for any human being, male or female. Even if a strip-search is conducted in a totally professional and impersonal manner, the humiliation is compounded by the fact that prisoners then have to be supervised and relate on a daily basis with prison officers who have observed them in a naked and vulnerable state. In our western society where public nakedness is far removed from the accepted norm, this immediately reduces the dignity of any relationship between the prison guard and prisoner.¹⁵⁶

The traumatic nature of strip searching and the negative effects on women was the main issue raised by prisoners, staff members, and legal and service providers in their consultations with the Review team. What we heard from prisoners closely mirrored what the Commission reported in 2006 – that women felt strip searches

¹⁵⁴ Queensland Ombudsman, *The Strip Searching of Female Prisoners Report: An investigation into the Strip Search Practices at Townsville Women's Correctional Centre* (2014); Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006); Queensland Human Rights Commission, *Women in Prison 2019: A Human Rights Consultation Report* (2019) 126-7, 143; Human Rights Law Centre, *Total Control: Ending the Routine Strip Searching of Women in Victoria's Prisons* (2017); Victorian Ombudsman, *Implementing OPCAT in Victoria: Report and Inspection of the Dame Phyllis Frost Centre* (2017); *Office of the Inspector of Custodial Services (WA), Strip Searching Practices in Western Australian Prisons* (2019); Women in Prison Advocacy Network (WIPAN), *Ceremonies of Degradation: Strip-searching in Women's Prisons* (2015); Home Office (UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007); ACT Inspector of Correctional Services, *Report of a Review of a Critical Incident: Use of Force to Conduct a Strip Search at the Alexander Maconochie Centre on 11 January 2021* (2021).

¹⁵⁵ Cathy Periera, 'Strip Searching as Sexual Assault', *Hecate* (2001) 27, 187–196; Jessica Hutchinson, "'It's Sexual Assault. It's Barbaric': Strip Searching in Women's Prisons as State-Inflicted Sexual Assault' 35(2), *Feminist Inquiry in Social Work*, 160-176; Debbie Kilroy, 'Strip-Searching: Stop the State's Sexual Assault of Women in Prison', *Journal of Prisoners on Prisons*, 12 (2003); Women in Prison Advocacy Network (WIPAN), *Ceremonies of Degradation: Strip-searching in Women's Prisons* (2015) 12, 16; Sisters Inside Inc consultation (Brisbane), 26 April 2023; First Nations Women's Legal Service NQ Inc consultation, 16 May 2023.

¹⁵⁶ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 72.

diminished their self-esteem, made them feel vulnerable and worthless, and compromised their rehabilitation.¹⁵⁷

Emotional impact

Prisoners said they experience varying degrees of trauma and loss of dignity during strip searches, with first-time prisoners finding the process particularly overwhelming and dehumanising.

'There's no thought to the fact that I'm a human being, and this is my first time here and it is so overwhelming... There's no humanity about it... there's certainly no compassion... the feeling is that they don't view you as human – just another scumbag, but they don't know you know or your story.'

The words commonly used by prisoners to describe the strip search process included: lack of dignity, trauma, inhumane, lacking compassion, overwhelming, loss of self-esteem, shame, fear, discomfort, humiliation, invasive, violation, and punishment.

'When you come into jail, they strip you physically but they strip you of your self-respect, of your people, of your identity... then over time you have to build yourself up, build up your self-confidence, self-esteem, self-worth until you're delivered back into the world. Hopefully you've got enough self to be able to function.'

Legal Aid Queensland clients described their experience of strip searches as, 'it felt like being raped' and 'my dignity has just gone out of the window'.

Over time, women can become desensitised to strip searches. Some prisoners saw strip searches as a 'normal part of being in jail' or 'to be expected' and 'not particularly invasive'. We heard statements like 'it's uncomfortable at first but you get used to it'. Older prisoners compared current practices to more invasive past practices (e.g. 'squat and cough') and considered that they had it better now. However, even women who did not disclose significant trauma still experienced embarrassment, discomfort, or humiliation during certain strip searches, such as those conducted during menstruation. [See also – *Menstruating prisoners* on page 67.]

Trauma and retraumatising prisoners

Around 87% of female prisoners have been victims of sexual, physical, or emotional abuse, 66% of whom have been subject to all three types of abuse.¹⁵⁸ Most prisoners can be described as both victims and offenders,¹⁵⁹ and for women who have experienced these abuses, strip searches are an 'unwelcome reminder' of this victimisation.¹⁶⁰

¹⁵⁷ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 73.

¹⁵⁸ Queensland Corrective Services, 'Improving Outcomes for Incarcerated Women', (Web page) <<https://corrections.qld.gov.au/improving-outcomes-for-incarcerated-women/>>.

¹⁵⁹ Home Office (UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007), 3, 17.

¹⁶⁰ Home Office (UK), *A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007), 5, 31.

'A good proportion of women have had some sort of domestic abuse. All of this adds up to why we are here in the first place.'

Many prisoners we spoke with told us that strip searches triggered past trauma, especially for women who had experienced rape, sexual abuse during childhood, or sexual violence in domestic relationships. Being subjected to repeated strip searches was retraumatising and echoed and exacerbated the existing trauma that many incarcerated women experienced on the outside. [See also – *Profile of women in prison* on page 27.]

'So many women are traumatised, you know, we've had horrible traumatic histories you know, with sexual abuse as a major part and then we go on to be officially abused...'

For some prisoners, a single strip search was the cause of an ongoing trauma response. We spoke with a prisoner who raised a serious allegation that eight years ago she was taken to an isolated section of the prison and told to strip off by a manager who did not conduct searches as part of their usual duties. At first the prisoner told us that she resisted because she had not been given any reason for the search and she knew it was occurring outside of usual protocols, including the need to have at least two female officers present. However, because of the isolated location she feared for her life and complied with the request. The prisoner expressed that the incident affected her emotionally and mentally, causing ongoing trauma, flashbacks, and suicidal thoughts that continue now.

Body image and self-confidence

Strip searches exacerbated body image issues for female prisoners. Instances were described by prisoners where women with larger bodies were asked to lift their breasts or folds of skin, causing humiliation and vulnerability. We also heard from a woman who wore incontinence pads that she felt shame and embarrassment about her body during searches.

Having to expose their body aggravated a lack of body confidence for some women, leading to negative and intrusive thoughts. For example, one prisoner told us:

'It doesn't matter how strong a woman you are. When you're in that situation, you're very vulnerable and really the level of confidence is lost... I mean, some people have confidence in their body but a lot of women don't. It brings it to the surface, and then you understand that it's pretty much traumatic. Basically, you feel depressed for the rest of the day, definitely. And then it might take you, you know, a week or so to get over that fact. And like I said, if you're not on any medication, you might need some.'

Prisoners shared their experiences of feeling uncomfortable and humiliated during strip searches because of comments made by staff members about their body or tattoos. One prisoner disclosed that comments about her tattoos made her feel as though her body was under 'intense scrutiny.'

Corrective services officers acknowledged that commenting on a woman's body or tattoos should be avoided except for exceptional circumstances (e.g. a fresh tattoo suspected of being obtained in prison, or injuries that might indicate assault). However, staff members believed if comments were made about tattoos, they were

likely to be the result of staff members being nervous and trying to build rapport with a prisoner during an uncomfortable interaction.

The presence of male officers

Current legislation¹⁶¹ and the COPD – Prisoner Search require that corrective services officers who carry out strip searches must be the same sex as the prisoner being searched.¹⁶² The Corrective Services Regulation specifies that only the persons carrying out the search should be present.¹⁶³ However, we were told of instances where male staff members were present or nearby during strip searches, exacerbating the distress of the women being searched, particularly women with histories of sexual or domestic abuse perpetrated by men.

Prisoners expressed distress that men are often close by or may be able to see the search on camera, particularly in the Detention Unit. [See also – *Surveillance and cameras* on page 136.]

We heard about situations where female officers were the only ones in the room with a prisoner, but they could hear the voices of male officers nearby, just outside the door. Some prisoners told us of instances when female officers had initially been present, but if a prisoner was non-compliant, male officers would come in, including when the prisoner was in a state of undress:

'If we resist, it's not a female who comes in.'

[See also – *Non-compliant prisoners* on page 131.]

Prisoners told us that ensuring there are no male staff members anywhere in the vicinity of the searches, or where there are cameras, would reduce the trauma for women.

Loss of bodily autonomy and agency

'It feels like we're obligated to them now... Yeah like they own us.'

Prisoners expressed concerns about some staff members judging and sexualising their bodies during strip searches, describing a loss of bodily autonomy leading to a sense of being 'owned' by the system.

'They remind you that they're the ones in control and even your body, basically they own all of you.'

Sisters Inside highlighted the parallels between strip searches and patterns of violence and abuse experienced by many incarcerated women and emphasised the need to address state violence as part of the broader effort to end violence against women.¹⁶⁴

Queensland Advocacy for Inclusion expressed similar concerns that strip searching mirrors the power dynamics in violent and abusive relationships. Given the disproportionate number of prisoners who have experienced sexual abuse in

¹⁶¹ *Corrective Services Act 2006* (Qld) s 38(2).

¹⁶² *Corrective Services Regulation 2017* (Qld) ss 9(1)–(2).

¹⁶³ *Corrective Services Regulation 2017* (Qld) s 9(1).

¹⁶⁴ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

institutions as children, repeating these actions in the prison environment is a 'dangerous pattern' to replicate.¹⁶⁵

For many prisoners, strip searches are perceived as an additional punishment used to control or 'demean' a prisoner.¹⁶⁶ A prisoner who provides peer support to others told us:

'The girls feel downgraded. I've spent a lot of time with a lot of girls who need to be picked up. Going through something like that is a kick in the guts. It's enough trauma they have to put up with.'

Responding to trauma

Many staff members we spoke with acknowledged the humiliating and traumatising nature of strip searches and recognised that strip searches can be degrading, especially for first timers, and women who have a history of trauma.

'No one likes doing it... I hated it from day one. For first timers it's humiliating and traumatising. We know that a lot of women have a history of trauma in prison.'

However, a small number of staff members we spoke with rejected the notion that strip searches were undignified and some even suggested that women may exaggerate their trauma to avoid strip searches.

While recognising the potential for trauma caused by strip searches, some staff members felt they would be able to identify when a person was being triggered and respond appropriately. This could include taking approaches such as swapping out with another officer, slowing down the process and engaging in light conversation with the prisoner, or saying things like, 'I don't like doing this either' and 'let's just get this over with.' These staff members believed that by moderating their approach, they could minimise the negative effects on individual women.

However, the Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) expressed scepticism about staff members' ability to identify women experiencing negative effects. They highlighted that many women become adept at masking trauma as a coping mechanism and survival strategy, making it difficult for staff members to assess the impact of strip searches. It was noted that not all women have disclosed their past sexual abuse to anyone.¹⁶⁷

When prisoners were asked about disclosing past trauma or their negative feelings about strip searches to corrective services officers, there were mixed views. Some prisoners felt that certain staff members lacked empathy and understanding about the impact of strip searches. They recounted instances where staff members made dismissive remarks like, 'Well, this is jail. What do you expect?'. Prisoners often described the process as 'rushed' or 'hurried' which made them feel worse during the search.¹⁶⁸ [See also – *Search method* on page 125.]

¹⁶⁵ Queensland Advocacy for Inclusion consultation, 4 April 2023.

¹⁶⁶ See also - Women in Prison Advocacy Network (WIPAN), 'Ceremonies of Degradation: Strip-searching in Women's Prisons' (2015) 11.

¹⁶⁷ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

¹⁶⁸ *Corrective Services Act 2006* (Qld) s 38(4)(c): The legislative requirement for corrective services officers to carry out the search 'as quickly as reasonably practicable' aims to minimise the time a

On the other hand, some prisoners had positive experiences with corrective services officers, describing their approach as 'professional' or 'respectful.' Staff members who primarily or exclusively worked in women's environments were considered more gender-responsive in their approach. Staff members and prisoners alike stressed the need to slow down the process for women who had experienced past trauma as a way to minimise the harm. One prisoner mentioned that if a person was a known victim of violence, staff members would be 'more patient and gentle' with them. Many prisoners told us that searches were less invasive and staff members were more courteous and understanding compared with their experiences in police watch houses.

Several staff members indicated their desire for additional training on trauma-informed approaches. Legal stakeholders, including Queensland Indigenous Family Violence Legal Service (QIFVLS), agreed that training in trauma-informed practice should be a key priority. QIFVLS emphasised the importance of educating corrective services officers about the traumatic circumstances faced by women and girls, and highlighted the need to shift the paradigm away from retribution.¹⁶⁹

Rehabilitation efforts

Prisoners, staff members, and other stakeholders¹⁷⁰ considered that strip searches compromised rehabilitation and reintegration, particularly for women who have experienced unhealthy relationships where power was misused.

One staff member told us that:

'It's counterproductive to everything else we're gonna do. We're trying to create better versions of humanity when they leave than when they came in and if we're dehumanising them by doing this stuff purely because a piece of paper says so - then we're not doing that.'

The Sisters for Change program running workshops on sexual violence in Townsville Women's Correctional Centre told us strip searches are particularly detrimental to women who are learning to negotiate and set boundaries around their body, learning that their body is their own, and discovering their ability to say 'no'.¹⁷¹

Similarly, Matilda Alexander, Chief Executive Officer of Queensland Advocacy for Inclusion told us:

'For women who are particularly vulnerable, who have already had lifelong experiences of loss of bodily autonomy, loss of sexual autonomy, loss of consent around their bodies, what it does is reinforce that messaging, reinforce that trauma, and make it much less likely that the woman is going to be able to say no, in the future, if her bodily autonomy is threatened post-release, because it's just reinforced that it's your body but you don't have the right to say "no".'¹⁷²

person is naked in front of a staff member. However, rushing the process seems to have an inverse effect, causing additional distress for many prisoners.

¹⁶⁹ Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

¹⁷⁰ Legal Aid Queensland consultation, 21 April 2023; Queensland Advocacy for Inclusion consultation, 4 April 2023.

¹⁷¹ Sisters for Change (Australian Red Cross) consultation, 16 May 2023.

¹⁷² Queensland Advocacy for Inclusion consultation, 4 April 2023.

Current policy, procedure or practice

A stated aim of the legislation and policy regarding strip searches is to minimise the loss of dignity for prisoners.¹⁷³ A search should be conducted by a minimum of two officers, not exceeding the number necessary for the search. Strip searches must be performed by officers of the same sex as the prisoner. The legislation emphasises the importance of causing minimum embarrassment, preserving dignity, conducting the search promptly, and allowing prisoners to dress immediately after the search.¹⁷⁴

The COPD – Prisoner Search states that prisoners should be allowed to remain partially clothed but only ‘if reasonably practicable.’ For example, they may be permitted to dress their upper body before removing clothes from the lower part.

However, the legislation and policy do not differentiate between the approach to strip searches for men, women, or gender-diverse prisoners.¹⁷⁵ Despite the well-known impact of trauma on women caused by domestic and sexual violence, no specific accommodations are made based on the gender of the prisoner, aside from requiring the development of local instructions to address individual needs, such as in relation to menstruation and pregnancy.¹⁷⁶

The COPD – Prisoner Search does not explicitly mention the need for trauma-informed practices during strip searches. Recent strategic policies refer to the need to implement competency-based, trauma-informed, gender-responsive, and culturally safe training and practices, but this has not yet been translated into practice directives.¹⁷⁷

Human rights considerations

United Nations commentary and minimum standards¹⁷⁸ regarding the right to privacy¹⁷⁹ state that effective measures should be in place to ensure searches are carried out in a manner consistent with the dignity of the person who is being searched. This includes raising awareness of prison staff members about the times that women may feel particular distress, and where sensitivity and provision of supports is necessary.¹⁸⁰

The *Bangkok Rules* recognise that women prisoners should be treated as individuals with unique needs, backgrounds, and circumstances. Their personal histories, including experiences of trauma, abuse, or violence, should be taken into account in their rehabilitation and reintegration efforts.¹⁸¹

As strip searches can cause serious distress, including severe psychological and emotional harm, and undermine prisoner rehabilitation, they are likely to limit the

¹⁷³ Explanatory Notes, Corrective Services Bill 2006 (Qld) 9: these provisions ‘assist in the preservation of a prisoner’s dignity’.

¹⁷⁴ Corrective Services Act 2006 (Qld) s 38.

¹⁷⁵ See also - Trans and gender diverse prisoners on page 107.

¹⁷⁶ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11.1].

¹⁷⁷ Queensland Corrective Services, Interim Women’s Strategy 2023-2025: *Women in Our Custody and Care* (24 April 2023).

¹⁷⁸ United Nations Human Rights Committee, General Comment No.16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 32nd sess (8 April 1988); United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 19.

¹⁷⁹ *International Covenant on Civil and Political Rights*, UN Doc A/RES/2200(XXI) (16 December 1966) art 17, reflected in *Human Rights Act 2019* (Qld) s 25.

¹⁸⁰ United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with the Commentary (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) 33, rule 13.

¹⁸¹ United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with the Commentary (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) 29–30, rule 12.

right to humane treatment when deprived of liberty.¹⁸² The European Court of Human Rights found that routine strip searches of a prisoner in the absence of a convincing security need ‘diminished his dignity and led to feelings of anguish and inferiority capable of humiliating and debasing him.’ The Court decided that the strip searching regime along with other harsh security measures amounted to inhuman or degrading treatment in violation of Article 3 of the *European Convention on Human Rights*.¹⁸³

A strip search may also amount to inhuman or degrading treatment for the purposes of section 17 of the Human Rights Act.¹⁸⁴ For this right to be engaged, pain or suffering must be severe but need not be intentionally inflicted.¹⁸⁵ Strip searching limits prisoners’ rights to protection from *cruel or inhuman* treatment because of the demonstrable harm it can cause for some women.¹⁸⁶ Strip searches are also likely to limit the right not to be subjected to *degrading* treatment,¹⁸⁷ which is focussed less on the severity of suffering but rather on humiliation and damage to self-esteem, and it is a subjective test.¹⁸⁸ Based on the accounts of prisoners, humiliation is a nearly universal experience of women during strip searches.

Legislation and policies have attempted to mitigate some of the harm to prisoners, and thereby reduce the limitation on human rights, by creating requirements such as being searched by someone of the same sex, or being partially clothed throughout the search. However, it is evident that they fall short in adequately addressing the specific needs and trauma-impact for female prisoners.¹⁸⁹

Alternative approaches

Policies in other jurisdictions cite the importance of considering the trauma of prisoners when making decisions and taking actions regarding the use of strip searches.

For instance, the United Kingdom Searching Policy Framework acknowledges the existence of trauma as an impact and consequence of strip searching.¹⁹⁰ Western Australian policy requires consideration of the health and welfare of prisoners and the potential for trauma, confirming that searches are to be used only as a ‘last resort’.¹⁹¹ Victorian policy refers to implementing trauma-informed practices through using the least intrusive search to address an identified risk.¹⁹²

¹⁸² *Human Rights Act 2019* (Qld) s 30.

¹⁸³ *Van der Ven v. the Netherlands* (50901/99), 61 – 63.

¹⁸⁴ *Human Rights Act 2019* (Qld) s 17.

¹⁸⁵ Explanatory Notes, Corrective Services Bill 2006 (Qld) 19.

¹⁸⁶ *Human Rights Act 2019* (Qld) s 17(b).

¹⁸⁷ *Human Rights Act 2019* (Qld) s 17(b).

¹⁸⁸ Explanatory Notes, Corrective Services Bill 2006 (Qld) 19.

¹⁸⁹ *Van der Ven v Netherlands* [2003] ECHR 62, 61–63.

¹⁹⁰ His Majesty’s Prison and Probation Service, Prison and Probation Policy Framework, *Searching Policy Framework*, July 2023, 59–62 [6.5].

¹⁹¹ Department of Corrective Services Western Australia, Commissioner’s Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 14 [7.5].

¹⁹² Department of Corrective Services Western Australia, Commissioner’s Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 2 [3.6].

The Commission's position

The Commission considers that:

- Although legislation and policies aim to preserve dignity during strip searches and many staff members take steps to reduce the trauma experienced by women, the Review repeatedly heard that strip searches continue to be traumatic, dehumanising, and counterproductive to rehabilitation.
- To genuinely work towards a gender-responsive and trauma-informed approach to prisoner management, strip searches must cease. While transitioning away from strip searches, Queensland Corrective Services (QCS) should take active steps to minimise the harm from strip searches that still occur.
- To ensure corrective services officers are aware of the gravity of a decision to strip search a prisoner, the COPD – Prisoner Search should explain that women who have experienced sexual or domestic violence or abuse may experience disproportionately negative effects from strip searching, including re-triggering past trauma. The COPD – Prisoner Search should refer specifically to the need to take a trauma-informed approach.
- Comments or remarks about a prisoner's body or tattoos should be avoided, unless exceptional circumstances relating to the prisoner's own health or safety exist, such as signs of self-harm or injury from another prisoner which require staff members to ask questions or intervene.
- As recommended by the Women's Safety and Justice Taskforce, ongoing trauma-informed training should be available to corrective services officers including practical guidance about managing women who have been victims of violence.¹⁹³ This training should include specific information about the profile of women in prison, how trauma may manifest or be triggered by strip searching, and how to respond or make reasonable accommodations to searches to address the individual needs of prisoners.
- The training should include information about the need for male staff members to remove themselves from the vicinity where strip searches are conducted, as their presence may trigger a trauma response, and how to manage these interactions safely and respectfully.

¹⁹³ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 1, 2022) 32, Recommendation 139.

Recommendation 5: Incorporate trauma-informed approach in policy and training

5.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search to:

- refer to the traumatic impact of strip searching on many female prisoners, and the need to take a trauma-informed approach by applying the least intrusive search necessary to address an identified risk
- clarify that comments by a corrective services officer about a prisoner's body or tattoos should only be made during a search if there are exceptional circumstances relating to the prisoner's health and safety.

5.2 The ongoing trauma-informed training being introduced by Queensland Corrective Services as recommended the Women's Safety and Justice Taskforce (Recommendation 139) should:

- incorporate strip searching practices
- address how the decision to conduct a search should be made, and
- address how the search process can be more trauma-informed and meet the individual needs of prisoners.

Menstruating prisoners

Many prisoners and some staff members expressed concern about the humiliating and degrading nature of strip searches when a prisoner is menstruating. Actions such as removing or inserting tampons in front of staff members or shaking out underwear containing a pad were particularly degrading experiences leading to distress and feelings of violation.

'I remember one woman when I came back from [redacted] to [redacted], there was a lady in my group, and she was having a period and she was an older lady so she was using pads. And she was so distraught. Because she still had to do it. And she had to take her underwear off with a dirty pad... humiliating, humiliating.'

In 2006 the Commission reported that women in prison were generally not required to remove tampons during strip searches, except where there was a reasonable suspicion that the prisoner was hiding a prohibited item.¹⁹⁴ However, during our recent prison visits, it became clear that many high and low security prisoners were being asked to remove tampons during routine searches.

'There has been times that if they're doing strips on you and if they see your tampon string hanging out that they ask you to take that out... that's beyond humiliation.'

¹⁹⁴ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 70.

While some prisoners, especially in higher security settings, reported that removing a tampon was a routine practice, others expressed shock, feeling debased, and a deep sense of violation when it happened to them. Women shared their experiences, including having to hand over tampons or pads to officers rather than placing them directly in the bin. One woman described having to reinsert a fresh tampon in the presence of staff members.

'Well, I was on a visit on Saturday. I was aware that one of the girls had their periods, they got them to take the tampon out. And there was blood and stuff everywhere and it was disgusting. Totally traumatic... And, yeah, as if anything could have gone up there anyway, during the visit, you know what I mean?'

Some women described the practice of having to 'shake out' their underwear, even if it contained a soiled pad.

'I don't use pads, but I know some women here only use pads and we have to take out our underwear to our knees and shake them out.'

One prisoner described a recent incident where she had been told to remove her tampon while totally naked prior to being transferred from a high to a low security prison. She had been in prison for some time and did not usually find strip searches disturbing, but this incident left her feeling violated and concerned for others:

'I just don't want that to happen to me again. And I've been in jail a lot. What if it was someone that was their first time? I don't think they would have handled it as well as I did. Yeah. If it was some fragile girl, I don't think that they would have handled it like I did... I think, what the hell am I gonna hide up behind my tampon coming here?'

Hygiene concerns associated with the current practice were raised, such as instances where blood spilled onto the floor or clothing after sanitary products were removed. One woman shared her embarrassment when asked to pull out her tampon which caused her hand to be soiled with blood. She said that she was not allowed to clean her hands before being asked to open her mouth and lift her lips to show her teeth.

Many prisoners questioned the necessity of removing tampons during strip searches, and questioned the purpose when the search is not internal. They pointed out that even if an item were concealed in a cavity, removing the tampon would not reveal it.

One prisoner we spoke with felt so strongly that the practice should not happen she refused to remove her tampon on many occasions during a 5-year sentence:

'So they've said, take your tampon out. I refuse. And I refused heaps of times during my last sentence, and I got breached every single time. My punishment was always 7 days in the DU.¹⁹⁵ During that sentence I got about 20 breaches. I'd applied for parole three times and didn't get it because every time the breaches were raised as a reason not to give me parole. I felt like my

¹⁹⁵ Here the prisoner is referring to the Detention Unit.

behaviour was better when I had less of that monitoring and management because the more they antagonised me, the more I antagonised them.'

Among staff members, responses regarding the practice and necessity of pad or tampon removal varied. While some considered it as an established and expected practice, others expressed discomfort and refused to comply with such requirements, even when they believed it was the proper procedure:

'I can't. Look, I know it's probably part of the policies and procedures. It's just something I myself am extremely uncomfortable with. I'm not going to have a female sit there and do that, changing their pad...'

Details received by the Review of a 2019 complaint to an official visitor concerned a situation where a prisoner was required to remove her tampon during a search. The official visitor did not make any recommendations following the complaint and concluded that the procedure had been followed correctly.

Current policy, procedure or practice

The COPD – Prisoner Search requires general managers to develop a local instruction that addresses the individual needs of female prisoners, including considerations related to their menstrual cycle.¹⁹⁶

Local instructions for women's prisons all contain identical content requiring that:¹⁹⁷

- Removal of clothing searches should only occur when sanitary items are readily available in the searching location (tampons, sanitary pads, and sanitary bags/bins).
- At the beginning of the search, prisoners must be given the opportunity to dispose of their sanitary item using the provided bags/bins.
- The dignity of the prisoner must be maintained throughout the search process.
- After the search is completed, prisoners should be provided with fresh sanitary items to apply privately. This application of the fresh item is not considered part of the search procedure.

According to COPD – Collecting a Urinalysis Sample, tampons are not required to be removed during strip searches prior to a drug test.¹⁹⁸

Human rights considerations

Prisoners who experience menstruation undergo a more debasing and traumatic strip search process which limits their right to equality before the law.¹⁹⁹

¹⁹⁶ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11.1].

¹⁹⁷ Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Southern Queensland Correctional Centre*, Ver: 01, 1 July 2021; Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Townsville Women's Correctional Centre* (including low custody), Ver: 03, 19 March 2018; Queensland Corrective Services, *Local Instruction - Removal of Clothing Services: Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre* (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps), Ver 03, April 2014.

¹⁹⁸ Queensland Corrective Services, Practice Direction, *Appendix: Collecting a Urinalysis Sample (ST1)*, Ver 3, October 2022, 2.

¹⁹⁹ *Human Rights Act 2019* (Qld) s 15.

The *Bangkok Rules* recognise that women prisoners have distinct needs related to healthcare, hygiene, privacy and safety, which must be adequately addressed by gender-responsive policies and services.²⁰⁰

Alternative approaches

In Victoria,²⁰¹ Western Australia,²⁰² New Zealand,²⁰³ and in England and Wales,²⁰⁴ corrections policies specifically state that prisoners should not be required to remove a tampon during a search.

The Commission's position

The Commission considers that:

- Strip searching when a prisoner is menstruating exacerbates the humiliation, degradation, and anxiety associated with the trauma that strip searches may ordinarily induce.
- Requiring a prisoner to remove a tampon or asking them to shake out their underwear containing a pad during a search debases and humiliates the prisoner and robs them of all dignity. This practice is not proportionate to any risk to prisoners or staff members, and is 'inhuman or degrading treatment' for the purposes of the Human Rights Act.
- Regular review and updating of instructions that detail procedures for menstruating prisoners has been lacking. Separating this information from the COPDs (in local instructions) may have resulted in less frequent review and scrutiny of their contents. This is evidenced by some documents having not been updated for several years.²⁰⁵
- Holding information about gender-responsive treatment separately from the frequently accessed and publicly available COPDs may make them less accessible to staff members. Separate instructions appear unnecessary as the wording is identical for each women's prison in relation to menstruation.
- The ambiguous wording of the local instructions could be seen to authorise the actions that have been described to the Review, such as requiring a tampon or pad to be removed during routine strip searches. This creates inconsistency with the drug testing policy that explicitly states tampons do not need to be removed.

²⁰⁰ United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc A/Res/65/457 (21 December 2010) rule 5: Provision of sanitary items and safe disposal of blood-stained articles is of particular importance.

²⁰¹ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 4 [5.1.6].

²⁰² Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 29 [8.5.14].

²⁰³ Ara Poutama Aotearoa Department of Corrections, Custodial Practice Manual, *Strip Searching a Female Prisoner*, October 2020, 2.

²⁰⁴ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 27 [4.10.4].

²⁰⁵ For example, the local instruction for Brisbane region prisons was from 2014. See: *Local Instruction - Removal of Clothing Services: Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps*, Ver 03, April 2014.

Recommendation 6: Modify approach to strip searching for prisoners who are menstruating

- 6.1 Queensland Corrective Services should move instructions regarding menstruation from local instructions to the Custodial Operations Practice Directives – Prisoner Search.
- 6.2 The Custodial Operations Practice Directives – Prisoner Search should state explicitly that a prisoner should:
- never be required to remove their tampon during a strip search or drug test
 - only be required to remove their sanitary pad where a reasonable suspicion exists, based on intelligence, indicating that the person is using the pad to conceal contraband.

Drug testing

Drug offences are the largest contributor to the growing rate of female incarceration in Queensland. In August 2019 drug offenders made up 22.4% of Queensland's female prison population, which is an increase of 219% between 2012 and 2018.²⁰⁶

Queensland Corrective Services (QCS) takes a 'tough on drugs' approach with the aim of eradicating drug use in the prison population. Urine samples are used to test for drug use, which provides a presumptive result. If the presumptive result is positive, the sample is sent away for further analysis.²⁰⁷ Strip searches are mandatory for all prisoners, whether low or high security,²⁰⁸ before any urine test, whether targeted or random. Numerous prisoners and stakeholders raised concerns about the traumatic impact the urine testing process has on prisoners, particularly women with a history of trauma.²⁰⁹ The Review team heard accounts of prisoners being unable to urinate on request or while being observed, and so unable to provide a urine sample.²¹⁰ One of the reasons for this inability was the trauma caused by the whole process, which incorporates a strip search. Some prisoners told us they asked to do a blood test when they were unable to provide a urine sample but had been refused.

'Girls that have proper issues, people that struggle with actual trauma, have asked for blood to be taken...she'll pay for it and that. They said 'no fuck off, no fuck off', she can't supply because it's so bad, and then she gets breached and loses her parole.'

We heard from prisoners that the process of urine testing for drugs is undignified and embarrassing and exacerbates the trauma they already experience from the strip search required before giving a urine sample. Prisoners experience serious humiliation when removing sanitary products, getting into a sterile gown, urinating in a female urinal ('the hat')²¹¹ and transferring the urine into a sample cup – all while being watched. Prisoners also found it degrading that they were not permitted to use

²⁰⁶ Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) 222.

²⁰⁷ Queensland Corrective Services, Practice Direction, *Collecting a Urinalysis Sample (ST1)*, Ver 3, October 2022, 7.

²⁰⁸ See also - Routine and targeted searches on page 49.

²⁰⁹ Elders for Change consultation, 16 May 2023; Prisoners' Legal Service consultation, 17 April 2023.

²¹⁰ Prisoners' Legal Service consultation, 17 April 2023; Sisters Inside Inc consultation (Townsville), 16 May 2023.

²¹¹ The hat is a cardboard device that fits over a toilet bowl. Women sit above the bowl and urinate directly into the hat. It is referred to as 'the hat' because it is shaped similarly to a cowboy hat.

toilet paper after producing a sample or put their clothing back on until after handing over the sample cup. Inconsistencies in procedure and instructions during the urine testing process were reported, with conflicting information about where women were allowed to put their hands (e.g. hold them above their waist, or against the wall) and what prisoners are allowed to touch. Some prisoners felt there was no uniform way to conduct a drug test with rules being 'made up on the spot'. This inconsistency added to the confusion and stress experienced by prisoners.

Prisoners raised concerns about unhygienic aspects of the urine testing process, including standing in other prisoners' urine with bare feet and the restriction on not using toilet paper until after the sample is handed to the corrective services officer. This restriction means that urine or menstrual blood may run down the prisoner's legs while they are transferring the sample from the hat to the sample cup. We heard that allowing the use of toilet paper after urination would be a simple change that would go a significant way to maintaining a woman's dignity.

'It's a hygiene issue, because you do one (a urine test) and then there's, you know, five or six other women that come in and there's is pee on the floor...you're standing in it barefoot, you know, because you can't wear shoes, obviously...it's just disgusting.'

We understand that drug testing accuracy could be compromised if the process leaves room for a prisoner to tamper with a sample, such as by replacing it with another cup of urine or diluting the sample. However, prisoners do not have advance notice of urine testing, which leaves little opportunity for tampering with the sample. The urine sample cup tests for four different types of adulterants.²¹² The likelihood that allowing women to use toilet paper after urinating will increase the risk of undetected tampering with samples is low.

'You pick your cup, you tell them the expiry date, you pick your gown, and once you've got all of them sorted, you go and wash your hands. You then come back and then the ROC starts and that's when you go from head to toe. You then put your gown on and then you perform the UT. You are not allowed to wipe yourself, so you pee, stand up and grab the hat and you tip the urine into the cup while you still have piss running down your leg. It's horrible.'

One safeguard against tampering used in other jurisdictions involves introducing a bluing agent to the toilet water to visually indicate if the sample has been contaminated with water from the toilet.²¹³

Concerns were repeatedly raised about the fairness of the process and strict one hour time limit in which to produce a urine sample, which does not consider the connection between trauma, strip searches, and urinating in front of others.

Failure to provide a urine sample within an hour results in an automatic positive test result and the consequence is a recorded disciplinary breach, which has an impact on access to visits, programs, employment opportunities, and gym facilities. We witnessed the significant impact that a restriction on privileges has on women in the prison environment. One woman described her panic at being unable to urinate and thought, 'I'm going back to secure; I've lost everything.' Prisoners face difficulty

²¹² Queensland Corrective Services, Practice Direction, *Collecting a Urinalysis Sample (ST1)*, Ver 3, October 2022, 6.

²¹³ His Majesty's Prison and Probation Service (UK), Prison Service Order 3601, *Mandatory Drug Testing*, issue 250, August 2022, 47 [6.5]; General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

obtaining parole if they have disciplinary breaches, but these may have been incurred because of positive test results following an inability to provide a sample.

Despite policy guidelines allowing for prisoners to provide a 'reasonable excuse' as to why they cannot provide a urine sample, we heard from prisoners and stakeholders that it was challenging in practice to provide a reasonable excuse and to have associated breaches removed from a prisoner's record, even when medical evidence was presented to demonstrate the link between a prisoner's post-traumatic stress disorder and their failure to provide a sample.²¹⁴ Legal Aid Queensland expressed concern about the long-lasting impact of trauma on former prisoners' ability to provide urine samples, even outside the prison setting, such as for parole or child safety purposes.²¹⁵

The COPD – Substance Testing makes it clear that breach proceedings should only be commenced once confirmatory testing is received.²¹⁶ However, Sisters for Change raised concerns that disciplinary consequences were occurring as a result of presumptive positive drug testing before laboratory confirmation was received. Where subsequent analysis revealed a false positive, women had already experienced adverse consequences for something they didn't do.²¹⁷

Widespread aversion to urine testing was evident among staff members, with some viewing it as archaic and felt it undermined their efforts to interact with prisoners in a trauma-informed way. Urine testing and strip searching were identified by some staff members as two of the practices that lead to burnout and vicarious trauma in staff members. The testing is resource intensive and places pressure and extra work on female staff members in women's prisons. [See also – *Impact and consequences for corrective services officers* on page 115.]

An alternative to urine testing used in some comparable jurisdictions is saliva swab testing, which tests for the presence of various drugs in a prisoner's system through a swab placed in their mouth. Saliva swab testing is a non-invasive and relatively quick and simple way to perform a drug test. Replacing urine testing with saliva swab testing was strongly supported by prisoners, staff members, and stakeholders.²¹⁸ Some prisoners were perplexed that saliva swab testing was not used given the efficiency and reduced tampering risk. Staff members supported swab testing provided it was effective in detecting common prison drugs, like buprenorphine and methadone. The positives of saliva testing identified by staff members were: being difficult to tamper with, minimising routine strip searches, and reducing the risk of staff members being assaulted with bodily fluids.

Current policy, procedure or practice

Under the Corrective Services Act, the chief executive has the authority to direct prisoners to provide urine samples and can give instructions on how the sample should be collected.²¹⁹ Drug testing is currently conducted through providing a urine sample.

Random drug testing occurs only if the prison does not have wastewater testing. Currently, the Helana Jones Centre, a small low security prison in Brisbane, is the

²¹⁴ Prisoners' Legal Service consultation, 17 April 2023.

²¹⁵ Legal Aid Queensland consultation, 21 April 2023.

²¹⁶ Queensland Corrective Services, Practice Direction, *Substance Testing (ST)*, Ver 3.2, May 2022, 8 [11].

²¹⁷ Sisters for Change consultation, 16 May 2023.

²¹⁸ Elders for Change consultation, 16 May 2023; Sisters for Change consultation, 16 May 2023; First Nations Women's Legal Service consultation, 16 May 2023.

²¹⁹ *Corrective Services Act 2006* (Qld) ss 41–43.

only women's prison without wastewater testing. With limited exceptions, prisoners are supervised by two corrective services officers of the same sex as the prisoner while they provide the sample.²²⁰

Prisoners must be informed of the testing process and consequences of failing to comply. A prisoner must be provided with a clean, dry toilet. While under supervision, prisoners must urinate into a female urinal fitted over the toilet bowl, keeping their hands above the waist and away from their genital area. Prisoners then stand and pour the sample from the female urinal into the sample cup, close the lid and provide the sample cup to the staff member. The sample cup tests for different signs of tampering. Cleaning of the genital area or using toilet paper is strictly prohibited until after the sample cup is provided to the staff member.²²¹

If a prisoner cannot provide an immediate sample, they are given one hour and 500ml of water.²²² Failing to provide a sample without a reasonable excuse, or refusing to do so, is treated the same as a positive result.²²³ A positive sample results in a disciplinary breach²²⁴ with significant consequences, including changes in security classification,²²⁵ imposing conditions on visitors, and loss of employment.²²⁶ Presumptive positive samples require confirmation testing at a laboratory before disciplinary action can be taken and a breach process should not be started until a formal result is known.²²⁷

Human rights considerations

In *Thompson v Minogue*,²²⁸ the Victorian Court of Appeal found the urine testing in general was compatible with human rights but ruled that strip searches conducted before random urine tests were a severe limitation on rights and unnecessary to prevent interference with a sample. While this case specifically addressed strip searches before *random* urine testing, similar concerns arise when a prisoner is targeted for a drug test based on wastewater testing results, rather than intelligence or other indications. The issues identified by the Court included the manner in which the strip searches were conducted and that the prison authorities could not demonstrate how automatic full strip searches were necessary to prevent interference with urine samples.²²⁹

The right to privacy and reputation under the Human Rights Act encompasses personal autonomy and dignity and the right not to have your privacy 'arbitrarily interfered with'. Urine testing and mandatory strip searches before urine tests limit bodily privacy.²³⁰ The Court in *Thompson v Minogue* held that arbitrary interference with privacy is one which is 'capricious or has resulted from conduct which is unpredictable, unjust, or unreasonable in the sense of not being proportionate to a legitimate aim sought'.²³¹

²²⁰ *Corrective Services Regulation 2017* (Qld) ss 11(1)–(3).

²²¹ Queensland Corrective Services, Practice Direction, *Appendix: Collecting a Urinalysis Sample (ST1)*, Ver 3, October 2022, 1–4.

²²² Queensland Corrective Services, Practice Direction, *Appendix: Collecting a Urinalysis Sample (ST1)*, Ver 3, October 2022, 3.

²²³ *Corrective Services Act 2006* (Qld) s 43(4).

²²⁴ *Corrective Services Regulation 2017* (Qld) ss 5(f), (t). This includes failure to provide a sample, see *Corrective Services Act 2006* (Qld) s 43(4)(b).

²²⁵ However, the particular circumstances of the prisoner and their needs should be considered, see *Corrective Services Act 2006* (Qld) s 43(3).

²²⁶ Queensland Corrective Services, Practice Direction, *Substance Testing (ST)*, Ver 3.2, May 2022, 9 [13].

²²⁷ Queensland Corrective Services, Practice Direction, *Substance Testing (ST)*, Ver 3.2, May 2022, 8 [11].

²²⁸ *Thompson v Minogue* [2021] VSCA 358.

²²⁹ *Thompson v Minogue* [2021] VSCA 358 [351]–[356]

²³⁰ *Human Rights Act 2019* (Qld) s 25.

²³¹ *Thompson v Minogue* [2021] VSCA 358 [221].

The Explanatory Notes to the Human Rights Act state that arbitrary interference with privacy extends to interferences which are 'lawful, but unreasonable, unnecessary and disproportionate'.²³² Limitations on a prisoner's human rights will not be justified when not proportionate to the aim of protecting the prison and prisoners' safety through drug screening, or when less restrictive alternatives are available.

Treatment of a person is considered degrading if it instils fear, anguish, inferiority, or debasement.²³³ Strip searches that are followed by close monitoring of urination are generally traumatic and degrading, especially for victims of sexual or physical violence. The current process of drug testing is therefore likely to unreasonably limit a prisoner's right to protection from treatment that is cruel, inhuman or degrading, and their right to humane treatment when deprived of liberty.²³⁴

The urine testing process must be non-discriminatory, and not treat certain prisoners or groups differently. Due to their anatomy, women undergo a different, less hygienic, and more degrading urine testing process than men, thereby limiting their right to recognition and equality before the law.²³⁵

A positive drug test or failure to provide a sample lead to a loss of privileges and being returned to a higher security level. This affects a prisoner's ability to have visits from children, family, and friends, which limits the right to protection of families and children.²³⁶ Both the *Bangkok Rules* and *Mandela Rules* state that sanctions for women should not include a prohibition on family contact,²³⁷ and restrictions should only be imposed for a limited time as strictly necessary for security and good order.²³⁸ Encouraging and facilitating women prisoners' contact with their families and applying visiting rules flexibly recognises the importance of maintaining family links for female prisoners.²³⁹

Alternative approaches

We heard suggestions from prisoners, stakeholders, staff members, and other jurisdictions that would improve the drug testing process and make it less traumatic for prisoners. One was that a strip search should not be mandatory before providing a urine sample, unless there is reason to believe that the prisoner will tamper with the sample. This would align Queensland practice with other comparable jurisdictions, such as Victoria, ACT, New Zealand, England and Wales. Ideally, with the introduction of body scanners, no prisoner will be required to be strip searched before giving a urine sample.

In *Thompson v Minogue*, the Court found the practice of strip searching was incompatible with the right to privacy because the prison authorities could provide no evidence of how alternative methods to a full strip search had been considered and their effectiveness assessed. The Court of Appeal noted that less invasive

²³² Explanatory Notes, Human Rights Bill 2018 (Qld) 22.

²³³ *DG v Ireland* (2002) 35 EHRR 33, cited in *Certain Children v Minister for Families and Children* (2016) 51 VR 473 [162], quoted with approval in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, [2021] QSC 273 [177].

²³⁴ *Human Rights Act 2019* (Qld) ss 17, 30.

²³⁵ *Human Rights Act 2019* (Qld) s 15.

²³⁶ *Human Rights Act 2019* (Qld) s 26.

²³⁷ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/229 (21 December 2010) rule 23.

²³⁸ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 42.

²³⁹ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 26; United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with Their Commentary (2009) 35, rule 26.

alternatives to strip searching appeared to exist, including low-dose x-ray body scans.²⁴⁰

The Corrective Services Act states that prisoners who fail to provide a sample will not be breached if they provide a 'reasonable excuse'.²⁴¹ At present, a reasonable excuse can only be substantiated with appropriate and relevant evidence, for example the existence of a medical condition.²⁴²

For the provision of the Act that exempts prisoners from disciplinary action based on a 'reasonable excuse' to operate as intended, corrective services officers would need further training and take a more flexible approach, including recognising that a reasonable excuse can include where a prisoner has a non-physical condition, such as a psychological or emotional response to the testing procedure. In Victoria prisoners may be placed in a sterile room to provide a urine sample in private, if there is medical evidence from a doctor or psychologist or the General Manager is satisfied that they are unable to provide a sample under supervision.²⁴³ A strip search is still required before this process takes place, but this could be replaced with a body scan on the introduction of body scanners. Any policy should also recognise the practical difficulty for a prisoner to obtain medical evidence to support their 'reasonable excuse' while in prison.

A more dignified and trauma-informed urine testing process would better protect a prisoner's right to privacy, give protection from degrading treatment, and reinforce the right to humane treatment when deprived of liberty. Other jurisdictions, such as New South Wales and Tasmania, allow prisoners to urinate directly into the sample cup,²⁴⁴ and prisons in other jurisdictions also provide for a greater degree of modesty. For example, in South Australia a prisoner is provided with the collection cup and allowed to provide a sample in private,²⁴⁵ and in the ACT a prisoner is still within the sight of two corrective services officers but must be given 'reasonable privacy' and their genitals must not be directly observed.²⁴⁶ In Tasmania, once a sample has been produced a prisoner can place their sample cup on the ground in view of the supervising staff members, clean her genitals and dress and then provide the sample cup to the supervising staff members.²⁴⁷ This is more dignified and hygienic for prisoners, while ensuring that the sample is not tampered with.

Many comparable jurisdictions allow more than one hour for a sample to be provided, with two hours given in New South Wales and the ACT, three in Victoria, Tasmania and New Zealand, and five hours in England and Wales.²⁴⁸ These longer timeframes better accommodate women's different backgrounds, histories, ages, and situations.

²⁴⁰ *Thompson v Minogue* [2021] VSCA 358 [353].

²⁴¹ *Corrective Services Act 2006* (Qld) s 43.

²⁴² Queensland Corrective Services, *Practice Directives Definitions A-Z Listing Dictionary*, Ver 5, 6 June 2023.

²⁴³ Corrections Victoria, Commissioner's Requirements, *Drug Testing and Category IDU A*, Ver 5, October 2021, 4 [5.4.1]–[5.4.3].

²⁴⁴ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023; Corrective Services NSW, Custodial Operations Policy and Procedures, *Testing inmates for drug use*, ver 1.7, November 2018, 12 [4.5].

²⁴⁵ *Corrective Services Regulation 2016* (SA) s 38F.

²⁴⁶ Corrections Management (Drug Testing (Urine)) Operating Procedure 2022 (ACT) 3, 6.13–6.14.

²⁴⁷ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

²⁴⁸ His Majesty's Prison and Probation Service (UK), Prison Service Order 3601, *Mandatory Drug Testing*, issue 250, August 2022, 55 [6.51]; Corrective Services NSW, Custodial Operations Policy and Procedures, *Testing inmates for drug use*, ver 1.7, November 2018, 14 [6.1]; Corrections Victoria, Commissioner's Requirements, *Drug Testing and Category IDU A*, Ver 5, October 2021, 4 [5.4.1]; Ara Poutama Aotearoa Department of Corrections, Prison Operations Manual: Security, *S.07 Drug and Alcohol Testing* (Web Page) <https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Security/S.07-Drug-and-alcohol-testing>; Corrections Management (Drug Testing (Urine)) Operating Procedure 2022 (ACT) 3 [7.1]; General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

Saliva drug testing is a popular concept with staff members, prisoners, and stakeholders.²⁴⁹ Saliva swab testing has been successfully implemented in Victoria where it has replaced urine testing for prisoners who are not under suspicion of using illicit substances and have not used drugs, or had drug-related incidents or intelligence in the last five years.²⁵⁰ South Australian legislation prescribes that a urine sample only be taken if a sample of oral fluid *cannot* be taken.²⁵¹ The use of saliva swab testing as an initial test for drugs is discussed in more detail below in *What alternative approaches are available?* on page 142 of this report.

The Commission's position

The Commission considers that:

- Many prisoners consider the drug testing process to be degrading and traumatising, particularly prisoners with a history of sexual or physical abuse. Corrective services officers should recognise that past trauma and the compulsory strip search before a drug test makes urine testing more difficult for many women.
- Legislation and policy allow prisoners to provide a 'reasonable excuse' for being unable to give a urine sample, but it is difficult to do so in practice. Confusion exists for prisoners and staff members about what constitutes a reasonable excuse.
- Queensland Corrective Services should amend the COPD – Substance Testing to clearly state that 'reasonable excuse' can include psychological or emotional conditions and experiences. The policy should include: a non-exhaustive list of reasonable excuse examples; who can make the decision; the evidentiary level required; and the process to challenge a decision.
- It should be sufficient if an officer in charge considers the excuse reasonable, even in the absence of further medical or psychological evidence, given the difficulty for a prisoner to obtain a diagnosis or medical evidence in prison.
- Prisoners should not be strip searched before a urine test, except where intelligence to indicate that the prisoner will attempt to tamper with the sample is received. Many other comparable jurisdictions do not require a strip search before a urine test.
- The purpose of a strip search prior to a urine test is to prevent tampering with a sample. This purpose can be adequately achieved by a pat down search, particularly given that urine tests are supervised and the sample cup tests for signs of tampering.
- Upon introduction of body scanners, prisoners could be scanned prior to a urine test, where needed, and not be required to undertake a strip search or pat down search.
- Women should be informed about the urine testing procedure prior to the test and talked through the process. The need to provide prisoners with timely and detailed information, particularly when this involves limitations on

²⁴⁹ Sisters Inside Inc consultation (Townsville), 16 May 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

²⁵⁰ Corrections Victoria consultation, 5 May 2023; Corrections Victoria, Commissioner's Requirements, *Drug Testing and Category IDU A*, Ver 5, October 2021, 2 [5.2].

²⁵¹ *Corrective Services Regulation 2016 (SA)* s 38D.

their rights, is discussed further in *Information and guidance* on page 121 of this report.

- Requiring women to urinate into a female urinal and pour the urine into a sample cup is unnecessarily burdensome and degrading as is the prohibition on women cleaning their genital area until the sample cup is handed to the staff members. These steps make the urine testing process more embarrassing and unhygienic for women than for men and are disproportionate to the risk that a sample will be tampered with undetected during this time.
- Prisoners should be allowed two hours to provide a urine sample before it is considered a failure to provide. This better aligns Queensland with the time given in other comparable jurisdictions.
- Women should be permitted to urinate directly into the sample cup, place the cup on the ground in the view of corrective services officers, use toilet paper, seal the sample and give it to staff members.
- Disciplinary sanctions, such as placement in a higher security classification or loss of employment, should not be imposed until confirmatory testing results are received.
- Queensland Corrective Services should immediately inquire into replacing urine testing with saliva swab testing for prisoners who have no drug-related incidents in the previous 24 months, or who are not subject to intelligence indicating that they are currently using drugs. Saliva testing is significantly less traumatic and prevents positive tests being recorded for women who cannot urinate while supervised.
- If introduced, Queensland Corrective Services should monitor the frequency of swab tests to ensure drug testing is not unnecessarily increased due to the efficiency of saliva testing.

Recommendation 7: Reform the drug testing process

7.1 Queensland Corrective Services should develop a comprehensive policy addressing 'reasonable excuse' for failing to provide a urine sample. The policy should provide clearly:

- that a 'reasonable excuse' can encompass psychological or emotional experiences or mental health diagnosis
- what evidentiary requirements are necessary to establish a 'reasonable excuse'
- how authority is delegated for determining the validity of a 'reasonable excuse'
- how a prisoner can challenge a decision not to accept a prisoner's excuse as reasonable
- that if an officer in charge reasonably believes that a prisoner has a 'reasonable excuse' for why they cannot provide a sample, this is sufficient.

7.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Substance Testing and Custodial Operations Practice Directives – Collecting a Urinalysis Sample to state that:

- female prisoners be permitted to clean their genital area with toilet paper immediately after providing a urine sample
- prisoners be permitted up to 2 hours to provide a urine sample
- consequences for failing to provide a sample or returning a positive sample should not interfere with a prisoner having visits with their children.

7.3 Queensland Corrective Services should replace urine drug testing with saliva testing for prisoners who have not had any drug-related disciplinary breaches in the past 24 months prior to the test and who are not subject to intelligence indicating they are currently using drugs. The COPD – Substance Testing should be amended to reflect this requirement.

7.4 Until saliva tests are introduced:

- no random drug testing should occur in either high or low security settings
- body scans or pat down searches should replace all strip searches prior to urine tests.

Personal and family visits

During the Review, we heard that many prisoners are deterred from maintaining in-person contact with family and friends, receiving professional visitors.

Throughout our discussions with stakeholders, a recurring concern was raised about the practice of strip searching women after contact visits, or both before *and* after contact visits. This practice resulted in prisoners being reluctant to have contact visits with their loved ones, as they did not want to be repeatedly strip searched.²⁵² In search register records the Review obtained from Queensland Corrective Services the visits areas in prisons were the second most common location for routine searches after those occurring in the reception areas.

Due to the trauma associated with being strip searched before and after contact visits, we heard from some prisoners that they opted to have non-contact visits (also known as ‘box visits’) or virtual visits, rather than see their loved ones in person. We were told by some prisoners that they refused contact visits altogether to avoid the risk of triggering past trauma or because of body confidence issues, as they knew they would be strip searched before and after.

‘My family used to come weekly. I just said to him, you know, we’ll just make it monthly or every six weeks, only for the fact just to cut down that strip search.’

²⁵² Sisters Inside Inc consultation (Brisbane), 26 April 2023; Sisters Inside Inc consultation (Townsville), 16 May 2023; Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023; Legal Aid Queensland consultation, 21 April 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023; Elders for Change consultation, 16 May 2023.

The decision whether to have contact visits ultimately depends on personal experiences and the individual prisoner. While some prisoners expressed a desire for family not to visit, some considered the strip search was worth undergoing. As one prisoner said, 'The joy of having visits from loved ones outweighs any negative experiences.'

Sisters Inside noted that during 2017, women were strip searched after visits on 3,376 occasions, and the only contraband found was three cotton buds and a non-prison-issued singlet.²⁵³ The premise that strip searches detect contraband passed to prisoners during visits has been discredited by the Victorian Ombudsman. A 2017 report found that of the 148 items seized in 2016-17 in Victorian prisons, only four were seized after a visit, and only one of these was a drug (a blood pressure tablet). The Victorian Ombudsman concluded that the rationale for strip searches after visits is not evidence-based, and that contraband is probably not entering through visitors.²⁵⁴

We were told by Sisters Inside that some women can be subjected to multiple strip searches a day if they have a group of visitors attend, which can be common for women from remote Aboriginal communities. This can occur, for instance when four visitors have come to see the prisoner, as the limit of visitors is two at a time. Consequently, the prisoner is then strip searched before and after each pair of visitors.²⁵⁵

Legal Aid Queensland also raised concerns about prisoners being strip searched before and after visits. They were aware that prisoners were avoiding visits from family, as they did not want to go through the experience of being strip searched.²⁵⁶ Legal Aid Queensland has suggested that strip searches should not occur as frequently as they do, and corrective services officers who decide whether to proceed with a search should have regard to the security level of the prisoner and who the visitor is.²⁵⁷

The Queensland Family Violence Legal Service highlighted that visits with family are critical for rehabilitation and successful reintegration into society, and these efforts may be undermined when women will not attend visits due to fear of being searched.²⁵⁸ Legal Aid Queensland pointed out that the rights of children and family of prisoners also need to be taken into consideration. When prisoners avoid visits due to the fear of being strip searched, this can have a detrimental impact on the prisoner's relationship with their children and family, and limit the protected rights of families and children under the Human Rights Act.²⁵⁹

Current policy, procedure or practice

The COPD – Prisoner Search Direction requires that prisoners in a high security prison *must* be strip searched after the prisoner has a contact visit with a personal visitor²⁶⁰ and all prisoners entering or leaving a visits area *may* be strip searched.²⁶¹

²⁵³ Sisters Inside, Submission to the Women's Safety and Justice Taskforce, *Women and Girls' Experience of the Criminal 'Justice' System*, 8.

²⁵⁴ Victorian Ombudsman, Implementing OPCAT in Victoria: *Report and Inspection of the Dame Phyllis Frost Centre*, November 2017, 59 [419–420].

²⁵⁵ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

²⁵⁶ Legal Aid Queensland consultation, 21 April 2023.

²⁵⁷ Legal Aid Queensland consultation, 21 April 2023.

²⁵⁸ Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

²⁵⁹ Legal Aid Queensland consultation, 21 April 2023.

²⁶⁰ Queensland Corrective Services, *Direction for a search requiring the removal of clothing of prisoners*, Ver 1, 2 November 2021, 2.

The Search Direction does not require that prisoners be searched before having a contact visit, regardless of the security classification of the prisoner. The Search Direction only requires searches *after* having a contact visit with a personal visitor in high security prisons.²⁶² However, the Review team were advised by prisoners and staff members of occasions on which strip searches had occurred after a contact visit in a low security prison as an attempt to deter the introduction of contraband.

In practice, most prisoners seemed to be searched only following a contact visit and occasionally before a contact visit.

Human rights considerations

Under the Human Rights Act, a prisoner and their family members, including children, are 'entitled to be protected by society and the State' because of the status of the family as the fundamental unit in society.²⁶³ Strip searching prisoners after every personal visit, regardless of who the visit is with, or the prisoner's individual risk profile, could unreasonably limit a prisoner's right to privacy and right to family.²⁶⁴ This is particularly true for Aboriginal women and Torres Strait Islander women who hold specific cultural rights to 'enjoy, maintain, control, protect and develop their kinship ties'.²⁶⁵

Every child has the right to protection that is needed by the child and is in the child's best interests. Limiting a child's in-person contact with their mother in person is not in a child's best interests. If a strip search is not a proportionate response to the risk posed by an individual prisoner, this could amount to a limitation on the right to protection of families and children under the Human Rights Act.²⁶⁶

The *Mandela Rules* allows for prisoners under necessary supervision, to communicate with their family and friends at regular intervals by receiving visits.²⁶⁷ Receiving visits includes facilitating personal contact visits. Further, the *Bangkok Rules* state that prisoners' contact with their families should be 'encouraged and facilitated by all reasonable means' and 'Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes'.²⁶⁸ Visits should take place in an environment that encourages a positive visiting experience and extended contact with children should be encouraged.²⁶⁹

Alternative approaches

Comparable jurisdictions do not require female prisoners to be routinely strip searched before and/or after personal contact visits. In Western Australia, a prisoner is not routinely strip searched in any circumstance and a strip search should only

²⁶¹ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11].

²⁶² Queensland Corrective Services, *Direction for a search requiring the removal of clothing of prisoners*, Ver 1, 2 November 2021, 3.

²⁶³ *Human Rights Act 2019* (Qld) s 26(1).

²⁶⁴ *Human Rights Act 2019* (Qld) ss 25–26.

²⁶⁵ *Human Rights Act 2019* (Qld) s 28(2)(c).

²⁶⁶ *Human Rights Act 2019* (Qld) s 26.

²⁶⁷ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015), rule 58.

²⁶⁸ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010), rule 26.

²⁶⁹ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010), rule 28.

occur as a last resort based on intelligence, an indication by a drug dog, or for safety and security.²⁷⁰

In the ACT, prisoners are only required to be strip searched where there are reasonable grounds for suspicion or where a less intrusive search is not available.²⁷¹

In Victoria²⁷² and New South Wales,²⁷³ prisoners are required to, or may be, body scanned following personal contact visits. With the introduction of technology, body scans should replace all strip searches after personal contact visits. [See also – *what alternative approaches are available?* on page 142.]

Scanning technology is a less invasive alternative, and body scanners should be installed in visits areas as a priority. We understand that Southern Queensland Correctional Centre has a Body Orifice Security Scanner (B.O.S.S) chair in the visits area, with the intention that prisoners will be scanned after visits rather than strip searched. However, we heard from prisoners that this device is only operational or used occasionally and prisoners are still being strip searched before and/or after visits.

The Commission's position

The Commission considers that:

- Requiring prisoners to undergo a strip search either before or after, or both before and after personal contact visits deters prisoners from seeing their family and friends. Maintaining contact with their support network while in custody is vital to a prisoner's rehabilitation and reintegration.
- In particular, a prisoner's connection with her children should be encouraged and maintained to preserve the rights of the child.
- The *Bangkok Rules* emphasise the importance for female prisoners of maintaining family connections. Prison administrations should be flexible when applying strip searching policies for visits to women prisoners, to reduce the harmful impact on a prisoner of separation from family and children.
- Strip searches after personal contact visits should not be routine, particularly as prisoners are under constant observation during visits. Strip searches following personal contact visits should only occur where there is a reasonable suspicion that a prisoner is concealing contraband and where a less intrusive search is deemed insufficient.
- Prisoners should not be strip searched before having a contact visit. This is not required by the Search Direction but the wording of the COPD – Prisoner Search leaves it open to occur. Requiring a prisoner to be strip searched before a visit is a disproportionate response to the risk. The Review heard of no situations where prisoners would seek to smuggle items out of prisons. On the rare occasion there is reasonable suspicion that a prisoner is seeking to smuggle contraband out of prison, it may be

²⁷⁰ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 16 [7.5.3].

²⁷¹ ACT Corrective Services, Policies and Operating Procedures: Custodial Operations, *Searching*, Ver 2, January 2022, 11 [8.8].

²⁷² Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 2 [3.8].

²⁷³ Corrective Services NSW, Custodial Operations Policy and Procedures, *Body Scanning*, Ver 4.1, Jan 2023.

reasonable to conduct a strip search if other search options, such as a pat down search, are considered insufficient.

Recommendation 8: Individual risk assessments for strip searching before and after personal visits

8.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and the Direction for a Search Requiring the Removal of Clothing to clarify that strip searches should not occur before personal contact visits and state that strip searches after personal contact visits should only occur:

- in situations involving reasonable suspicion;
- after an individual risk assessment; and
- where no other alternative is reasonably available, including body scanners.

Professional visits and court attendance

In this section we examine the effect of strip searches on prisoners who access professional services or attend court. The Review was told that having to undergo a strip search before or after professional visits or court attendance deters prisoners from accessing vital services and appearing at court in person, which may result in delays in the prisoner's legal matters and a detrimental effect on their rehabilitation.

While not appearing to occur routinely, we heard from some prisoners and legal stakeholders of instances where prisoners were strip searched before and after professional visits.²⁷⁴ Legal Aid Queensland stressed that strip searches before or after legal visits deter and discourage prisoners from seeking legal assistance and raised concerns about natural justice and prisoners' access to justice.

Sisters Inside told us about an occasion on which a prisoner was strip searched after a visit with a Sisters Inside anti-violence counsellor. Sisters Inside found this particularly galling, given a large part of the anti-violence program is focused on coping with sexual violence²⁷⁵ and the women see strip searching as a form of violence against them. It is counterproductive to the therapeutic nature of the program and the prisoner's rehabilitation if, following opening up to a counsellor, they are then made to strip and are placed in a vulnerable state.

Strip searches prior to or following professional visits do not appear to be occurring routinely. We heard from many prisoners that they had never been strip searched before or after a professional visit and staff members we spoke to advised us that professional visits should not trigger a strip search.

While there were not any concerns raised by prisoners about being strip searched before or after meeting with 'religious visitors',²⁷⁶ we consider that further clarity could be provided in relation to this issue in the relevant directives.

²⁷⁴ Legal Aid Queensland consultation, 21 April 2023.

²⁷⁵ Sisters Inside Inc consultation (Townsville), 16 May 2023.

²⁷⁶ A religious visitor is a person who visits a prison to provide religious services or instructions for prisoners. Queensland Corrective Services, Practice Direction, *Practice Directives Definitions A-Z Listing Dictionary*, Ver 05, June 2023, 21.

Current policy, procedure or practice

All prisoners entering and leaving a visits area may be subject to a strip search.²⁷⁷ While not necessarily requiring a strip search, this policy does not clearly prohibit strip searches following professional visits. In practice, we understand that it is not routine for prisoners to be strip searched following professional visits, however we did hear of instances where this did occur as described above.

Practice directives confirm that prisoners should be able to practice their religious beliefs, as far as practicable, within the constraints of a prison environment. Religious visitors are permitted to attend upon a prisoner, however policy does not prohibit strip searches following religious visits.²⁷⁸

Human rights considerations

The *Mandela Rules* state that prisoners should be provided with adequate opportunity, time, and facilities to be visited, communicate, and consult with their legal representatives. This should occur without delay, interception, or censorship. We heard strip searching after legal visits deterred prisoners from having visits with their lawyers, and effectively created a barrier to accessing legal services which may expedite their matter.²⁷⁹

Prisoners have the right to access health services including counselling services.²⁸⁰ The *Bangkok Rules* prescribe that mental health care and rehabilitation programs be made available for women prisoners, and that prison authorities should recognise that women prisoners from differing religious and cultural backgrounds have unique needs and face multiple forms of discrimination in their access to gender and culturally relevant programs and services.²⁸¹ Prisoners already face significant hurdles to access services while in prison, and having to undergo strip searches in order to access the services creates a further barrier to access. Searches could further traumatise and trigger women if they are conducted after receiving counselling services and undermine the therapeutic benefit of the service.

Prisoners have the right to freedom of thought, conscience, religion and belief, and to demonstrate their religion in worship, observance, practice and teaching, and must not be restrained in a way that limits this freedom.²⁸² Contact visits for religious purposes are part of the prisoner's religious practice. If strip searching were to prevent prisoners from receiving visitors associated with their religion, this may limit their freedom to demonstrate and practice their religion.

Alternative approaches

In Victoria, prisoners are not to be searched following a professional visit, unless there are exceptional circumstances or safety concerns.²⁸³

²⁷⁷ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11].

²⁷⁸ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Community Engagement: Religious Visitors*, Ver 04, 25 March 2021, 3.

²⁷⁹ United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, UN Doc A/RES/70/175 (17 December 2015), rule 61.

²⁸⁰ Human Rights Act 2019 (Qld) s 37.

²⁸¹ United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc A/Res/65/457 (21 December 2010) rule 12.

²⁸² *Human Rights Act 2019* (Qld) s 20.

²⁸³ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 6 [5.3.2].

The Commission's position

The Commission considers that:

- The Review has not heard from any stakeholders that contraband is coming into prisons through professional visits. The risk associated with prisoners attending professional visits is extremely low. Professional visitors are required to go through an approval process with Queensland Corrective Services (QCS) in which their qualifications and credentials are verified. Professional visitors are also required to pass through metal detectors and have their identity confirmed through a fingerprint scanner before a visit with a prisoner. In these circumstances, the risk of a professional visitor providing a prisoner with contraband thereby necessitating a strip search is extremely low.
- The Commission considers any potential risk is significantly outweighed by the negative impact of deterring prisoners from seeking legal advice or other professional assistance.
- The language in the COPD – Prisoner Search is ambiguous. The current language permits strip searches when a prisoner leaves a 'visits area'. This could be interpreted to include a legal or professional visits area. The COPD – Prisoner Search should be amended to make clear this section refers to personal contact visits only.
- While the Review team is not aware of any prisoner or stakeholder concerns about visits associated with religious practice and observance, it should be made clear strip searches should not occur before or after a religious visit.
- Prior to incarceration, many women experience physical and sexual abuse. A female prisoner's need for special programs to address their trauma should be recognised and access to counselling and psychosocial support should be readily available. Prison authorities should take steps to ensure women can access rehabilitation and support, particularly given the low risk posed by professional visitors who run anti-violence and sexual assault programs.²⁸⁴

Recommendation 9: Clarify there should be no strip searches before or after professional visits

- 9.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to state that prisoners are not to be strip searched before or after professional visits. Professional visitors include, but are not limited to, lawyers, counsellors, and religious visitors.

²⁸⁴ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 12.

Going to court

We heard from prisoners and stakeholders that prisoners are avoiding attending court in person because they are required to be strip searched at least twice in order to do this. Instead, they opt to attend court by video link.²⁸⁵ Legal and service provider stakeholders confirmed that women regularly refuse to attend court and instead request to appear by video link.²⁸⁶

The Throughcare program (ATSILS) expressed concern that women were strip searched multiple times when attending court. When a prisoner refuses to attend court, this can cause issues with progressing their matter. A prisoner refusing to appear in person can frustrate the Magistrate or Judge, who may be unaware that prisoners are subjected to repeated strip searches in order to appear in court. Repeated strip searches may also cause a prisoner to 'kick off', which reduces safety for other prisoners and staff members.²⁸⁷

Legal Aid Queensland highlighted that when prisoners go to court, they are in custody the entire time, with very little access to any opportunity to obtain drugs or other contraband – barring prisoners who are in the dock with other defendants who are not in custody, which is rare. They noted that research indicates if prisoners attend court in person, they are more likely to receive a better result and a reluctance to appear in person at court can impact a prisoner's right to a fair hearing.²⁸⁸

While we were told by staff members and some prisoners that prisoners are strip searched on two occasions – when leaving and returning to the prison – we heard from other stakeholders and prisoners that more searches may occur. Sisters Inside said that prisoners are often strip searched before leaving the prison, on arrival at the courthouse/watch house, when attending court, after the matter was heard, and again on return to the prison (five times in all).²⁸⁹ Because of the frequency of strip searches, Sisters Inside expressed that it 'takes courage' for a woman to opt for in-person attendance at court.

Current policy, procedure or practice

The COPD – Prisoner Search states that prisoners should be strip searched immediately prior to exiting the prison for an external transfer and immediately prior to returning to the prison following an external transfer.²⁹⁰ Strip searches before the prisoner is transferred or removed from court under Corrective Services Act section 69 are also listed as mandatory searches in the Search Direction schedule.²⁹¹ Therefore, the current policy position is for prisoners to be strip searched before and after attending court.

²⁸⁵ The use of video link facilities between a prison and the court is authorised by Justices Act 1886 (Qld) s 178C.

²⁸⁶ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

²⁸⁷ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

²⁸⁸ Legal Aid Queensland consultation, 21 April 2023.

²⁸⁹ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

²⁹⁰ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11].

²⁹¹ Queensland Corrective Services, *Direction for a search requiring the removal of clothing of prisoners*, Ver 1, 2 November 2021.

Human rights considerations

All people, including prisoners, have a right ‘to be tried in person and to defend themselves personally or through legal assistance’.²⁹² We heard that the policy of strip searching a prisoner before and after they return from court may dissuade them from attending court in person, limiting the prisoner’s rights in criminal proceedings.²⁹³

The chances of a prisoner taking contraband to a court appearance or acquiring it in the course of travelling to and from a court appearance is low. The effect of strip searches conducted to ward against this outcome is not proportionate to the risk posed.

Alternative approaches

A less restrictive alternative would be for prisoners not to be strip searched when leaving the prison and only strip searched upon returning if they have not been in the secure custody of the State (including Queensland Police Service custody) for the duration of the transfer.

With the introduction of body scanners, prisoners could be scanned when they return to prison.

The Commission’s position

The Commission considers that:

- Prisoners are being deterred from or refusing to attend court in person because of the strip searches they may be subjected to. Prisoners have the right to appear at court in person and defend themselves. Barriers should not be put in place which unreasonably deter a prisoner from appearing at court in person.
- Failure to appear at court in person could unnecessarily delay a prisoner’s legal matters, which negatively impacts not only the prisoner, but victims and the State.
- Where prisoners are in the secure custody of the State for the duration of the time they are absent from the prison, this should not trigger a routine strip search. This includes situations where a prisoner is in a prison van with other prisoners who are also in the secure custody of the state.
- When prisoners are taken to court, they are generally kept in single cells and are unlikely to have contact with other prisoners or members of the public. Prisoners are regularly monitored by corrective services officers including through surveillance cameras. The risk of a prisoner gaining access to contraband while being transported to and from court is low, if they are in the unbroken custody of the State and kept separate from prisoners from other prisons.
- Strip searching a prisoner multiple times in order for them to attend court is disproportionate to the risk posed by the prisoner in that situation.

²⁹² *Human Rights Act 2019* (Qld) s 32(2)(d).

²⁹³ *Human Rights Act 2019* (Qld) s 32.

Recommendation 10: Cease strip searching when a prisoner is travelling to and from court

10.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to state that:

- prisoners should not be searched prior to leaving prison for a court appearance
- prisoners returning to prison from court should be given a pat down search only, unless there is a reasonable suspicion of an identified risk, following an individual risk assessment.

Medical care

We heard from prisoners, especially low security women, that strip searching was a major deterrent from seeking medical care, including mental health treatment.

Prisoners are a population group with chronic and complex health needs, with higher rates than the general population of mental health conditions, physical and communicable diseases, and drug use.²⁹⁴ A large proportion of prisoners will require health services only available outside of the prison. Around 1 in 3 prisoners will need to attend a medical appointment, 1 in 8 will attend an emergency department, and 1 in 10 will be admitted to a general or psychiatric hospital during their time in prison.²⁹⁵

In 2006, the Commission's *Women in Prison* report²⁹⁶ raised the issue of prisoners in Numinbah Correctional Centre being transferred to Brisbane Women's Correctional Centre (BWCC) for medical treatment. It was reported prisoners were required to undergo mandatory strip searching on arrival to BWCC, and as a result many would refuse medical treatment. The Commission commented at the time that this may be direct discrimination on the basis of impairment, since women who had a medical condition were treated less favourably than others without any health concerns.²⁹⁷

According to prisoners, insufficient or inadequate support is available to women who experience mental health issues or are going through drug withdrawal on first entering into prison. We heard that some prisoners experiencing suicidal thoughts were reluctant to speak up, as they feared being immediately moved into the Safety Unit and strip searched on entry.

'Well, I know women that have been suicidal. Wanting to hurt themselves but won't say anything because they don't want to go through the whole process of being strip searched and then tucked into the Safety Unit.'

Prisoners who are classified as low security are subjected to fewer strip searches while in the low security environment, and are reluctant to raise mental health issues, for fear of being sent to a high security facility (where they will be strip searched) for an assessment.

²⁹⁴ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019), 4 [1].

²⁹⁵ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 140–141 [16.3].

²⁹⁶ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006) 52 [6.3.1].

²⁹⁷ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006) 52–53 [6.3.1].

'You know, we don't even mention mental health in here, because we know that will get you sent back to prison for an assessment, which then that whole process is going to happen including a strip search and things like that.'

Prisoners told us that using routine strip searches for people attending medical appointments or the hospital under escort was disproportionate to the risk posed, unnecessary, and may contribute to people avoiding care.

The Review heard from some high security prisoners that they do not consider it reasonable to strip search them on return to the prison after a medical appointment. They emphasised they are handcuffed and do not have the chance to obtain contraband as they are placed in a room with a camera and are escorted at all times.

'When you go to a hospital on escort, they strip you on the way and then they strip you again on the way back, but you're in handcuffs and you've got an officer sitting on each side of you at the hospital like there's no way that you're going to be doing anything in handcuffs with an officer beside ya. So don't see why they need to strip you on the way there. And then again, on the way back.'

Low security prisoners considered they should be 'entrusted not to be doing the wrong thing', as they had already been categorised as low risk for drug use and self-harm. Many of the prisoners classified as low security regularly go into the community to access programs and services and so could not understand the lack of trust implied by strip searches when they are seeking health treatment.

As also discussed in *Routine and targeted searches* on page 49 of this report, low security prisoners are particularly at risk of delaying or avoiding medical treatment, as they are subjected to two strip searches in short succession. Low security prisons generally have limited medical facilities available for the prisoners, so they are required to be transported to high security prisons to receive treatment. We heard these prisoners were being strip searched as soon as they arrived at the high security prison, despite not having contact with the general prison population and despite having been escorted and under the supervision of corrective services officers at all times. However, one low security prisoner mentioned she was only pat searched on returning from an external hospital, as the officer that had searched her was with her the whole day. The prisoner said that she does not understand why that cannot be standard practice.

We heard of instances where prisoners were made to undergo a strip search after having surgery, including a person who was strip searched following a hysterectomy. Prisoners expressed that being strip searched when they were in pain and experiencing discomfort made the experience more distressing. A low security prisoner told us that she felt unable to advocate for herself following a skin cancer treatment:

'I was taken from the farm to the hospital. So I was low custody. But on return to the prison, I was put back into the main centre because of my medical needs and I had to undergo a removal of clothing search. So I was 24 hours post-operative, flat out standing up. It was just awful.'

Staff members at one prison told us they routinely strip search prisoners before and after a medical appointment. But a staff member from a different prison said that women are not strip searched when they leave, unless there is a reasonable suspicion from the supervisor on duty, but they are always strip searched upon returning to the prison.

Current policy, procedure or practice

The COPD – Prisoner Search states a strip search is required immediately prior to the exit of a prisoner from a prison for the purposes of an external transfer and immediately upon the prisoner’s return to the prison after an external transfer.²⁹⁸

In practice, women are strip searched on leaving and returning to the prison, although as discussed above, there appears to be some inconsistency in approach. Prisoners are also strip searched on entering the Safety Unit prior to putting on a gown.

Human rights considerations

Prisoners have the right to access health services without discrimination. This right is the same for people who are not in prison.²⁹⁹ Prisoners have the right to the same standard of healthcare as they would have were they not in prison.³⁰⁰ The process of searching prisoners prior to and on return to prison limits the right of prisoners to receive health care on an equal basis.³⁰¹

The *Mandela Rules* state that a physician or, where applicable, other qualified health-care professionals shall have daily access to all sick prisoners, all prisoners who complain of physical or mental issues or injury and any prisoner to whom their attention is specially directed.³⁰²

The *Bangkok Rules* state that prisons are to have individualised, trauma-informed and comprehensive mental health care and rehabilitation programs for women with mental-health care needs.³⁰³ Prisons are required to develop and implement strategies in consultation with healthcare and social welfare services to prevent suicide and self-harm among women prisoners. Providing appropriate, gender-specific, and specialised support to women at risk should be part of a comprehensive policy of mental health care in women’s prisons.³⁰⁴

Alternative approaches

The Commission previously recommended alternative options could be considered for prisoners classified as low security who require medical appointments, including sourcing service providers close to the prison.³⁰⁵

²⁹⁸ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11].

²⁹⁹ *Human Rights Act 2019* (Qld) s 37.

³⁰⁰ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 24.

³⁰¹ *Human Rights Act 2019* (Qld) s 37.

³⁰² United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015), rule 31.

³⁰³ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 12.

³⁰⁴ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 16.

³⁰⁵ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006) 53.

In Western Australia, prisoners should not be strip searched when transferring between prisons, such as for the purpose of medical appointments, as long as the chain of custody remains unbroken.³⁰⁶ Women prisoners must not be subject to routine strip searches once received into custody, including not being routinely strip searched prior to being placed in an observation or medical observation cell.³⁰⁷ Any searches of women must be subject to consideration of the health, welfare and mental health and trauma of the particular prisoner.³⁰⁸

Similarly in the ACT, prisoners should not be subjected to strip searches on a routine basis, which would include being transferred for a medical appointment or being moved into a Detention or Safety Unit.³⁰⁹

The Commission's position

The Commission considers that:

- Prisoners are entitled to the same standard of health care as a person who is not in prison.
- Strip searching prisoners before and after a medical appointment discourages prisoners from seeking the medical care that they are entitled to, in particular low security prisoners. Consequently, current practice leaves prisoners at risk of physical and psychological harm.
- As high security prisoners are escorted (and sometimes handcuffed) during a medical transfer, and low security prisoners have already been assessed as being at low risk generally, strip searching a prisoner in these circumstances is disproportionate to any risk. Strip searching people twice in a single day for a medical appointment seriously increases the risk of trauma.
- We recognise that prisoners being moved to a single cell in a Safety Unit or Detention Unit after being assessed as at risk of suicide or self-harm is a challenging situation for Queensland Corrective Services to manage. It requires weighing up the risk of trauma caused by the strip search against the harm that could be done if an item went undetected.
- The mere placement of a prisoner into the Safety Unit or Detention Unit should not automatically trigger a strip search in all cases, and an individual risk assessment should take place to weigh up the risks. See also – *Routine and targeted searches* on page 49 of this report.
- Post-operative prisoners may still be recovering from the procedure and experiencing pain and discomfort, which must be taken into consideration when requiring them to be strip searched. Such a situation should be deemed to be an exceptional circumstance for the purpose of being exempted from a search under the Search Direction.

³⁰⁶ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 15 [7.3.4].

³⁰⁷ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 16 [7.5.3].

³⁰⁸ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 16-17 [7.5.5]–[7.5.6].

³⁰⁹ ACT Corrective Services, Policies and Operating Procedures: Custodial Operations, *Searching*, Ver 2, January 2022, 11, [8.8], [8.11].

- Where a targeted search is deemed necessary for a prisoner returning from a medical appointment, including post-surgery, staff members should make individualised adjustments to accommodate the situation of each prisoner. The adjustments may include the use of handrails, chairs, or placing the prisoner into a separate cell until they are well enough to be searched.

Recommendation 11: Remove barriers to accessing medical care

11.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and Search Direction to:

- clarify that prisoners should not be routinely strip searched when they are leaving or returning to prison following medical treatment
- state that prisoners who have returned from surgery fall under the category of 'exceptional circumstances' to exempt a search
- state that following a surgical procedure, search methods should be modified as necessary to meet the individual needs and circumstances of the prisoner
- confirm that prisoners placed in a cell in the Detention Unit or Safety Unit should only be strip searched where there is no less intrusive alternative available, and where an individual risk assessment has deemed that the risk of harm to the prisoner outweighs the risk of trauma from the strip search.

Experiences of marginalised prisoners

This section focuses on specific cohorts in prison who experience persistent and intersectional disadvantage and how strip searches affect these women.

The Review recommends all routine strip searches of women in prison should cease aside from when a prisoner first enters custody of the prison and no body scanners are available - See *Recommendation 3*. Here we examine further considerations and accommodations that could be made for women from marginalised groups when subjected to targeted searches.

The Commission's position:

The Commission considers that:

- To ensure compatibility with human rights, prisoners should be treated as individuals based on their specific attributes and needs.
- The COPD – Prisoner Search does not sufficiently address the disproportionate impact of strip searches on marginalised prisoners.

Recommendation 12: Consider prisoner characteristics when determining whether and how to conduct a strip search

12.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to advise that, when considering whether and how to search a prisoner, corrective services officers must conduct an assessment which includes consideration of the prisoner’s gender, age, mental health, religion, language and culture, whether they have a disability, are pregnant, breastfeeding or have children with them in custody.

Aboriginal and Torres Strait Islander prisoners

Aboriginal and Torres Strait Islander prisoners are significantly over-represented in prisons and the rates of imprisonment of Aboriginal and Torres Strait Islander women are the fastest growing of any cohort.³¹⁰ In April 2022, 42.9% of women in Queensland correctional facilities were First Nations peoples.³¹¹ This issue is not confined to Queensland. Between October 2020 to April 2021, 208 strip searches were conducted on female prisoners at the Alexander Maconochie Centre in the ACT, of which 121 searches were of Aboriginal women who made up 44% of the prison population.³¹²

Many incarcerated Aboriginal and Torres Strait Islander people from remote communities are detained in prisons in Brisbane or Townsville, far away from home and family. Relocating First Nations prisoners away from familiar surroundings may cause a significant culture shock when they are removed from their homes, unable to use their language, and disconnected from cultural practices. This affects their sense of identity and compounds the challenges they face in the prison system. During our consultations with prisoners and stakeholders, we heard of significant cultural differences between First Nations prisoners and non-Indigenous staff members and how being strip searched can deeply affect First Nations women.

Elders for Change spoke about the existence of men’s and women’s business within Aboriginal and Torres Strait Islander cultures, and how this should be recognised and respected.³¹³ A woman’s body is considered a sacred part of women’s business in Aboriginal lore and culture. Requiring a First Nations woman to expose her body can cause shame and guilt.³¹⁴

Legal and service provider stakeholders emphasised that strip searching can bring up past trauma and intergenerational trauma experienced by First Nations women. Sisters Inside considers that strip searching perpetuates violence against Aboriginal women and girls by re-triggering the trauma that they have experienced outside of prison.³¹⁵

³¹⁰ Women’s Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls’ Experiences of the Criminal Justice System* (Volume 2, 2022) 406.

³¹¹ Queensland Corrective Services Interim Women’s Strategy 2023-2025, *Women in Our Custody and Care* (24 April 2023) 19.

³¹² Dani Larkin, ‘Excessive Strip-searching Shows Discrimination Against Aboriginal Women’, *The Conversation* (20 July 2021, online) <<https://theconversation.com/excessive-strip-searching-shines-light-on-discrimination-of-aboriginal-women-in-the-criminal-justice-system-163969>>.

³¹³ Elders for Change consultation, 16 May 2023; Sisters for Change (Australian Red Cross) consultation, 16 May 2023.

³¹⁴ Dani Larkin, ‘Excessive Strip-searching Shows Discrimination Against Aboriginal Women’, *The Conversation* (20 July 2021, online) <<https://theconversation.com/excessive-strip-searching-shines-light-on-discrimination-of-aboriginal-women-in-the-criminal-justice-system-163969>>.

³¹⁵ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

Reflecting the impacts of intergenerational trauma caused by institutional abuse, Elders for Change told us that many First Nations women grew up covering their bodies as much as possible. Layers of clothing were used by women living on missions as a way to ward off sexual abuse or violence perpetrated on them, and these practices have been passed down from generation to generation of women.³¹⁶ Coming into prison and being told to remove their clothes can be extremely triggering for First Nations women, particularly women from remote communities.

Significant communication barriers exist for many First Nations prisoners who come from remote communities and whose first language is not English.³¹⁷ The language barrier, coupled with cultural differences, makes understanding the process of a strip search more difficult. Where prisoners from remote communities are already vulnerable, confusion about what will happen to them and what they are expected to do during the strip search process can be especially upsetting and triggering.

'There are some girls that have come from a mission that have lived in that culture their whole lives, and then they walk into this...it's just a normal strip search but they don't know that...they think they have done something wrong, but it's just protocol.'

We heard from some First Nations prisoners that they perceive strip searches as insensitive and violent, as well as contrary to their cultural teachings. Many women believed non-Indigenous corrective services officers lacked cultural awareness and understanding and they should be more conscious of these cultural differences. One First Nations woman described the 'power disparity' she felt when two white guards ordered her to urinate.

Given that the number of Aboriginal and Torres Strait Islander women in prison has increased by 120% in the last decade, the need for cultural awareness and sensitivity has become crucial to the role of corrective services officers.³¹⁸

Some staff members we spoke with acknowledged the over-representation of First Nations women in Queensland prisons, and many told us that they try to be as culturally sensitive and accommodating as possible. One staff member told us that when a First Nations prisoner preferred to have a First Nations person present in the room with them when they first came into custody, corrective services officers actively facilitated this so the prisoner was more comfortable during the search. We appreciate that on many occasions there will not be a First Nations female staff member available to take on this role.

Current policy, procedure or practice

The Review could not locate any policies or procedures specifically designed to support First Nations women during a strip search.

However, the COPD – Prisoners of Concern states that corrective services officers should provide professional, accessible and equitable services to prisoners who are from non-English speaking backgrounds and Aboriginal and Torres Strait Islander peoples.³¹⁹

³¹⁶ Elders for Change consultation, 16 May 2023; Sisters for Change (Australian Red Cross) consultation, 16 May 2023.

³¹⁷ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

³¹⁸ Queensland Government Statistician's Office, *Justice Report, Queensland, 2020-21* (2021), 113.

³¹⁹ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Prisoners of Concern*, Ver 06, 4 July 2023, 8 [11.1].

Human rights considerations

First Nations people hold distinct cultural rights and have the right to maintain their beliefs, languages, and kinship ties. These rights continue when a First Nations woman is in prison and should be upheld as far as possible.³²⁰ Aboriginal and Torres Strait Islander prisoners also have the right to equal treatment without discrimination. When prisons fail to adjust standard processes to meet the cultural needs of individual prisoners, this may amount to indirect discrimination on the basis of race.³²¹

The *Bangkok Rules* require prison authorities to recognise that female prisoners from different cultural and religious backgrounds have distinct needs and may face multiple forms of discrimination in their access to gender and culturally relevant programs and services. Prisons should provide programs and services that address these needs, developed in consultation with prisoners themselves.³²²

Alternative approaches

The Review was unable to identify any examples of good practice in other jurisdictions in which the cultural rights of Aboriginal and Torres Strait Islander people were required to be considered the process of conducting searches on prisoners.

When strip searches of First Nations prisoners are conducted, exercising cultural awareness and sensitivity is essential. Informing prisoners about what will happen to them prior to and during a search and displaying culturally appropriate posters in areas where prisoners are searched may assist First Nations prisoners cope better with the process. [See also *Information and Guidance* on page 121 of this report.]

The Commission's position

The Commission considers that:

- Aboriginal and Torres Strait Islander women are significantly over-represented in Queensland prisons, and incarceration has detrimental and ongoing effects on the prisoner, their children, and their families.
- If cultural practices are not respected and encouraged in prison, incarceration can result in loss of culture and disconnection from heritage for Aboriginal and Torres Strait Islander women.
- The culture and practices of First Nations people differ from community to community as well as from non-Indigenous populations. Acknowledgement and respect for culture is needed for staff members who interact with First Nations prisoners.
- Women from remote Aboriginal and Torres Strait Islander communities are particularly disadvantaged by the lack of information when they enter prison prior to being strip searched. Women find themselves in an unfamiliar environment without any explanation in their own language of what will happen to them. For more information on this issue, see *Information and guidance* on page 121 of this report.

³²⁰ *Human Rights Act 2019* (Qld) s 28.

³²¹ *Human Rights Act 2019* (Qld) s 15.

³²² United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 54.

- Support is essential for First Nations women entering prison for the first time, particularly from remote communities. When conducting a strip search, additional time should be taken to ensure that prisoners understand what is happening.
- Corrective services officers must acknowledge and respect the concepts of 'women's business' and 'men's business' in First Nations cultures, and recognise how strip searching affects First Nations women in this context. Corrective services officers should be aware that Aboriginal and Torres Strait Islander prisoners may feel additional shame or fear during a strip search because of cultural issues, and this may manifest as non-compliance.
- Trauma-informed approaches and training must specifically address the cultural sensitivities of Aboriginal and Torres Strait Islander women and the impact of strip searches on this cohort.

Recommendation 13: Enhance recognition of Aboriginal and Torres Strait Islander rights and cultural safety

13.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to refer specifically to the distinct cultural rights held by Aboriginal and Torres Strait Islander people and the need for corrective services officers to take these into consideration when deciding whether to conduct a search, or in determining the process to follow when conducting a strip search.

13.2 Trauma-informed training (as referred to in Recommendation 4.2 in this report) should specifically address respecting cultural sensitivities during a strip search. This training should include an understanding of how the background or cultural practices of First Nations women can exacerbate the trauma of a strip search.

Pregnant or breastfeeding prisoners

The Review team was made aware that pregnant or lactating prisoners had been strip searched during their pregnancies in high security settings.

One prisoner shared with us that she was strip searched throughout her pregnancy, including while in her third trimester, the only exception being when she was transported to hospital to deliver her baby. After the birth, however, she was strip searched on returning to prison.

Another prisoner was still being strip searched when 20 weeks pregnant and found the continual strip searching distressing:

'Twice I've got urine tested and three times they wrecked my room, they found nothing... I don't know why they aren't leaving me alone'.

Another woman shared her frustration and stress over being subjected to urine testing and strip searches during her pregnancy without a clear explanation. This caused confusion about the purpose of these invasive procedures being conducted while she was in a vulnerable state.

While the introduction of body scanners to replace strip searching was generally supported, some prisoners raised concerns about whether body scanners can be safely used on pregnant women.

We heard from corrective services officers that there has to be ‘a fair bit of evidence’ for pregnant women to be strip searched or urine tested, particularly in the third trimester.

‘There’s no way we want to be putting a pregnant woman through that. Because the person who takes her for that urine test might have to be the person that is the escorting officer for the birth’.

To address these issues, Legal Aid Queensland suggested training be provided to staff members about how pregnancy affects women, particularly the increased frequency of needing to go to the toilet. Concerns were raised that as pregnant women have to use the bathroom more often, this causes suspicion that the prisoner is concealing something and can be used as a basis to require searches.³²³

Current policy, procedure or practice

Corrective services officers have the discretion to forgo a routine strip search as set out in the directive where a prisoner has ‘exceptional circumstances’. A legislative example is provided of a pregnant prisoner returning to a secure facility from an escorted antenatal visit.³²⁴ Where it is determined to conduct a strip search, the corrective services officer should consider whether the part of the search that involves the prisoner leaning forward to allow ‘for a more thorough search for contraband’ is necessary in the case of a pregnant prisoner.³²⁵

There are various local instructions relating to pregnant prisoners in prison.

Local instructions for the Brisbane region, Townsville, and Southern Queensland Correctional Centre state:³²⁶

- Women confirmed as being in their third trimester of pregnancy are not required to participate in a routine removal of clothing search upon return to a high security facility from a medical appointment unless there is a reasonable suspicion that the prisoner has a prohibited thing concealed on their person.³²⁷
- Searches of women in the third trimester in the above circumstances must also be approved by a manager, and the reasons for suspicion must be recorded.

In practice, we were told by prisoners that strip searches were occurring while women were pregnant on a routine basis, regardless of how far the pregnancy had progressed.

³²³ Legal Aid Queensland consultation, 21 April 2023.

³²⁴ *Corrective Services Act 2006* (Qld) s 35.

³²⁵ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7 [11.4].

³²⁶ Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Southern Queensland Correctional Centre*, Ver: 01, 1 July 2021; Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Townsville Women’s Correctional Centre* (including low custody), Ver: 03, 19 March 2018; Queensland Corrective Services, *Local Instruction – Removal of Clothing Searches: Brisbane Women’s Correctional Centre, Townsville Women’s Correctional Centre* (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps), Ver 03, April 2014.

³²⁷ *Corrective Services Act 2006* (Qld) s 35(3).

Human rights considerations

Under the Anti-Discrimination Act and the Human Rights Act, pregnancy and breastfeeding are protected attributes.³²⁸ Prisoners who are pregnant or breastfeeding have the right to equal and effective protection against discrimination. Special measures may be necessary to meet the needs of pregnant and lactating prisoners.³²⁹

The *Bangkok Rules* require that prisons 'shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children'³³⁰ and should take into account the gender-specific needs of women prisoners, including pregnant women.

The *Mandela Rules* state that in women's prisons there should be 'special accommodation for all necessary prenatal and postnatal care and treatment.'³³¹

Prisoners who are breastfeeding or lactating should be entitled to receive special accommodation that extends to making modifications for strip searches, such as providing the prisoner with breast pads to use whilst they are lactating.

Prisoners also have the right to maintain bodily integrity and not have their privacy arbitrarily interfered with, especially at a time when their body is changing through the effects of pregnancy and breastfeeding. Some women may suffer from body dysmorphia due to the changes their bodies undergo while pregnant and post-pregnancy and may be particularly sensitive or distressed by strip searches.

Alternative approaches

In England and Wales, staff members are required to consider medical evidence prior to searching a pregnant prisoner, a prisoner who has just given birth, experienced a termination, or miscarried. Extra time may be allocated for the search to allow the prisoner to sit during the search and staff members are to be mindful of additional stresses during pregnancy.³³²

In New Zealand, any decision affecting pregnant women in prison must be fair and reasonable in the circumstance.³³³

In Victoria, pregnant women are safely scanned using millimetre wave body scanners which may be used as an alternative to strip searching. Corrective services officers in Victoria have an obligation to conduct the least intrusive form of search that would address an identified risk.³³⁴

The Commission's position

The Commission considers that:

- As previously discussed in *Menstruating prisoners* on page 67 of this report, keeping instructions about gender-responsive care for women in separate

³²⁸ *Anti-Discrimination Act 1991* (Qld) ss 7(a), (e). See also definition of 'discrimination' in *Human Rights Act 2019* (Qld).

³²⁹ *Human Rights Act 2019* (Qld) s 15(5).

³³⁰ United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with the Commentary (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 42.

³³¹ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 28.

³³² His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 66 [6.9.1].

³³³ Ara Poutama Aotearoa Department of Corrections, Prisoner Operations Manual, M.04.02 *Pregnant women in prison*.

³³⁴ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 2 [3.8].

local instructions may result in the information being less available and accessed infrequently by staff members.

- The COPD – Prisoner Search should be amended to prohibit prisoners being searched in their third trimester of pregnancy.
- Pregnant women may be strip searched more often than other women because of frequent medical appointments. See also – *Medical care* on page 88 of this report.
- Prisoners whose pregnancy is classed as high-risk should not be routinely strip searched at all during their pregnancy, as this may cause significant stress for the prisoner.
- Prisoners should not be strip searched while in labour, following a termination of pregnancy, or a miscarriage. These are emotional times for a woman and strip searches cause additional distress to a prisoner who is already in a vulnerable state.
- Prisoners should not be strip searched when returning to prison after giving birth, except for exceptional circumstances, such as an identified risk based on intelligence. Following the physical and emotional demands of childbirth, prisoners may be experiencing anxiety, depression, and pain.
- Staff members should be sensitive to the needs of breastfeeding women during strip searches. These prisoners may feel self-conscious due to bodily changes caused by lactation, pregnancy, and childbirth, and experience heightened humiliation from a strip search. As with menstruation products, breast pads and other requirements should be readily available for lactating prisoners.

Recommendation 14: Modify process to accommodate pregnant or breastfeeding prisoners

14.1 Queensland Corrective Services should remove all instructions relating to pregnant and breastfeeding prisoners from local instructions and include this information in the Custodial Operations Practice Directives – Prisoner Search.

14.2 The Custodial Operations Practice Directives – Prisoner Search should advise that:

- prisoners attending antenatal appointments should not be strip searched as this constitutes 'exceptional circumstances' to exempt a prisoner from a search under the Search Direction.
- prisoners returning to prison following a birth, miscarriage, or termination should not be strip searched as this constitutes 'exceptional circumstances' to exempt a prisoner from a search under the Search Direction.
- prisoners in their third trimester are not to be strip searched unless the situation involves a reasonable suspicion of an identified risk following an individualised risk assessment.
- corrective services officers must take into account the individual, physical and emotional needs of pregnant or lactating prisoners

when conducting searches. Corrective services officers should accommodate reasonable requests for modifications to the search process, such as allowing additional time, allowing a prisoner to sit for the search, or providing additional sanitary wear, including breast pads.

- corrective services officers should allow breastfeeding prisoners to take their shirts off but leave their bra on for the duration of the search. Prisoners could still be required to pull the bra away from their skin to show that there are no prohibited items concealed between the skin and the clothing.

Prisoners with children in custody

The Corrective Services Act allows a female prisoner to apply to have their child accommodated with them during their period of imprisonment.³³⁵ While prisoners are permitted to apply, it is not guaranteed they will be approved to have children in their custody.

One prisoner spoke about a distressing situation in which she was strip searched in the presence of her young child with a disability. The prisoner was required to be routinely strip searched according to the Search Direction on transfer between a low and high security prison. She had recently been transferred to the high security prison and did not have an internal carer nominated yet. Corrective services officers provided her with two options: leave her child unattended in the hallway, or be strip searched in front of the child. She chose to be strip searched in front of the child. She told us that:

'I felt like I was getting punished, and I felt like the situation should have been read a bit better. And coming in with a child I probably wasn't going to be a threat to security. And I shouldn't have been stripped.... So any change of environment is really, really traumatic for my child... Their suggestion was, tell her it's like going to the doctors which I also find extremely inappropriate because you shouldn't give people in those roles the power to see you naked.'

We spoke to staff members who were unsure what to do if a child is present when a prisoner is required to be strip searched according to the schedule in the Search Direction. One approach mentioned was to remove the child but still keep them within sight of the mother.

Current policy, procedure or practice

Children living with their mother in prison are never subjected to a strip search under the Corrective Services Act.³³⁶

Local instructions for women's prisons state that prisoners who have children in their presence are not required to participate in a removal of clothing search upon returning to a high security facility from a medical appointment unless reasonable suspicion exists. To facilitate a required search, the child is to remain in the care of

³³⁵ *Corrective Services Act 2006* (Qld) s 29

³³⁶ *Corrective Services Act 2006* (Qld) s 32(2) reflected in Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directive, Female Prisoners and Children*, Ver 04, 22 May 2023, 14 [16].

the 'the internal carer' in the accommodation area until the search is complete and the prisoner is permitted to leave the area.³³⁷

Prisoners must nominate internal carers and these nominees must be assessed and approved by Queensland Corrective Services (QCS) staff members, including a counsellor/case officer.³³⁸

Human rights considerations

Under the Human Rights Act, every child has the right, without discrimination, to protection that is needed by the child, and is in the child's best interests.³³⁹ Children may be in an unfamiliar setting while in their mother's care in prison and are around people they may have never met. To protect the best interests of the child, they should not be present at traumatic events such as strip searches.

Alternative approaches

A more human rights-centred approach would be for a prisoner whose child resides with them not to be routinely strip searched, as the harm that may be inflicted on a child as a result of being present at a search is likely to outweigh any potential benefits of the search.

The Commission's position

The Commission considers that:

- The policy regarding prisoners with children residing with them in prison should not be set out in local instructions. Instead, instructions should be included in the COPD – Prisoner Search and/or in the COPD – Female Prisoners and Children, and the procedure should be consistent across all women's prisons in Queensland.
- When making decisions regarding searches of women with children, the best interests and protection of the child from witnessing a traumatic event must take precedence.
- Strip searches of women prisoners with children who reside with them should only occur in situations where it is absolutely necessary and proportionate in the circumstances. Having a child in a prisoner's care will, in almost all cases, amount to exceptional circumstances that will justify not requiring a search under the Search Direction.
- Staff members should hold off conducting a strip search until an internal carer has the child in their care.
- Corrective services officers in women's prisons should be provided with training on their obligations to protect the best interests of children who reside with their mothers in prison. This training should provide staff members with an understanding of how to interact with prisoners who have

³³⁷ Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Southern Queensland Correctional Centre*, Ver: 01, 1 July 2021; Queensland Corrective Services, *Local Instruction – Removal of clothing Searches: Townsville Women's Correctional Centre* (including low custody), Ver: 03, 19 March 2018; Queensland Corrective Services, *Local Instruction - Removal of Clothing Services: Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre* (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps), Ver 03, April 2014.

³³⁸ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directive, Female Prisoners and Children*, Ver 04, 22 May 2023, 13 [8.10].

³³⁹ *Human Rights Act 2019* (Qld) s 26.

their children residing with them and how to approach the mother in a sensitive way if they are required to be strip searched.

Recommendation 15: Address the needs of prisoners with children in their care

15.1 Queensland Corrective Services should move instructions regarding searches of prisoners with children in their care from local instructions to the Custodial Operations Practice Directives – Prisoner Search.

15.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Female Prisoners and Children to:

- contain information about strip searches involving children in custody
- explain the principle of best interests of the child and how it relates to searches occurring in the presence of a child, and refer to the *Human Rights Act 2019* (Qld)
- state that prisoners with children residing with them in prison should only be subject to a scanning search or pat down search while they have their child in their care
- make it clear that strip searches of a prisoner should never occur in the presence of a child, even where an internal carer is not available.

15.3 The Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Female Prisoners and Children should be cross referenced with each other to ensure consistency.

Prisoners with disability and older prisoners

People with disability³⁴⁰ are over-represented in the criminal justice system, comprising at least 29% of Australia's prison population, despite being only 18% of the general population.³⁴¹ The rates of psychosocial disability are even higher – around 2 in 3 women in prison have a history of a mental health condition.³⁴²

Throughout our discussions, numerous stakeholders raised concerns about the impact of strip searches on prisoners with disabilities, including psychosocial disabilities. Of particular concern was the effect on women who have a history of sexual assault within institutional care environments. The intersection of strip searches and the traumatic experiences these women have endured creates additional distress.

Legal Aid Queensland expressed that for physical and other psychosocial disabilities there should be a better level of understanding and training around how to search prisoners while retaining the prisoner's dignity. Staff members should be encouraged to 'take a step back' and consider whether a search is actually necessary as a first step.³⁴³

We heard that staff members receive insufficient training with accommodations that may be required during strip searches for prisoners with physical disabilities, people with mobility issues, and older prisoners. When asked what accommodations staff members would make for people with disabilities during searches, many indicated that they would do their best to accommodate women's needs but some indicated uncertainty how to accommodate people with disability.

'I guess if they are in a wheelchair and they can't use their legs, we can't. How do you carry out a search?'

We were told by a staff member about an instance where a prisoner was in a wheelchair in the medical unit. The prisoner would experience dizziness and was known to fall occasionally. To mitigate the risk of causing injury to both staff members and prisoners, the staff member would pat down the prisoner in front of a camera and have another staff member observe on a monitoring device. While this example may represent a less invasive and safer approach when compared with strip searching a prisoner with mobility issues, practices should be system-wide and not reliant on individual initiative and experience.

Of particular concern to the Review was an example provided by Queensland Advocacy for Inclusion and Legal Aid Queensland in which, because of the uncertainty about how to conduct a search of a person with a physical disability, a prisoner was denied the opportunity to receive personal visitors. We were told that because corrective services officers were prohibited from touching the prisoner during the search or helping her remove her clothes, they were unable to perform the strip searches that were mandated after a personal visit.³⁴⁴

³⁴⁰ Queensland Corrective Services (QCS) have not provided a definition of disability in the COPDs. However, the Disability Royal Commission defines 'people with disability' as people with any kind of impairment, whether existing at birth or acquired through illness, accident or the ageing process, including cognitive impairment and physical, sensory, intellectual and psychosocial disability. Refer to - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Interim Report*, October 2020, 557.

³⁴¹ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (30 May 2019) 77.

³⁴² Australian Institute of Health and Welfare, *The Health of Australia's Prisoners' 2018* (30 May 2019) 27–28.

³⁴³ Legal Aid Queensland consultation, 21 April 2023.

³⁴⁴ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 8 [11.4].

As previously discussed in *Psychological and emotional harm* on page 58 of this report, women experience trauma and re-traumatisation from the practice of strip searching, which is compounded if they have existing mental health conditions.

Current policy, procedure or practice

Limited guidance is available to staff members who need to modify searches to meet the individual needs of prisoners with disability. The COPD – Prisoner Search provides that in determining whether to ask the prisoner to lean forward, the corrective service officer should consider whether it is ‘reasonably necessary to carry out the search’ as well as the age, mobility of prisoner, whether they are ‘infirm’, or have a disability to prevent them from leaning forward.³⁴⁵

The recently implemented COPD – Prisoners of Concern provides direction for staff members to manage prisoners with vulnerabilities in accordance with their individual risk and needs.³⁴⁶ Prisoners can be identified as a Prisoner of Concern either on reception into the prison or at any point within a custodial period; however the prisoner is unable to personally initiate the process of registering as a Prisoner of Concern. The prisoners are assessed by the senior psychologist and correctional supervisor who identify if they require more oversight and monitoring, after which the prisoner is placed on the centre’s Prisoners of Concern register. Prisoners of Concern may require management strategies, including regular contact with a nominated staff member, and the prisoner may be provided with specialised accommodation relating to their specific vulnerability.³⁴⁷

The Corrective Services Act recognises the special needs of offenders, including any disability an offender has.³⁴⁸ The regulations relevant to searches state that the officer must comply with the administrative procedures for searches made under section 265 of the Corrective Services Act, which in turn must take into account the ‘special needs’ of offenders.³⁴⁹ It follows then that the COPDs, which are administrative procedures, must take into account the ‘special needs’ of prisoners whose disability may prevent them from participating in a strip search or who may be disproportionately affected by the strip search as a result of their disability, unless accommodations are made. To meet legislative intention, the COPDs should provide sufficient guidance to staff members so that accommodations are consistently implemented.

Under the legislation, the chief executive may reasonably consider it unnecessary for the strip search to occur because of the prisoner’s exceptional circumstances.³⁵⁰ There is opportunity to better meet the needs of prisoners with disability and older prisoners by providing more guidance on when this exception to strip searching may apply in these circumstances.

³⁴⁵ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7–8 [11.4].

³⁴⁶ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Prisoners of Concern*, Ver 06, 4 July 2023, 3 [3].

³⁴⁷ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Prisoners of Concern*, Ver 06, 4 July 2023, 5 [4.2].

³⁴⁸ *Corrective Services Act 2006* (Qld) s 3.

³⁴⁹ *Corrective Services Regulation 2017* (Qld) s 9(5); *Corrective Services Act 2006* (Qld) s 265(2).

³⁵⁰ *Corrective Services Act 2006* (Qld) s 35. See also - Effectiveness of searches – Current policy, procedure or practice on page 45.

Human rights considerations

When strip searching prisoners with a disability, staff members must properly consider the rights of prisoners to recognition as a person and the right to enjoy their human rights without discrimination.³⁵¹

If a person cannot participate in a strip search due to disability, then they may not be permitted to engage in personal visits with their families or participate in rehabilitation programs. Prisoners with disability may be therefore unable to enjoy their rights to families and children, privacy, and humane treatment when deprived of liberty on an equal basis with people who do not have a disability.

Similarly, a prisoner's disability, particularly cognitive and psychosocial disability, may mean that limitations on their other human rights as a result of strip searching (such as the right to be protected from cruel, inhuman or degrading treatment, the right to privacy, and the right to humane treatment when deprived of liberty) are more keenly felt and require greater justification to be compatible with human rights.³⁵²

Reasonable accommodations to support a person with disability being searched may include:

- providing the prisoner with a seat or handrail if they have mobility issues
- allowing sufficient additional time for the prisoner to comply with instructions
- providing instructions in a way that the prisoner is able to understand providing exceptions to strip searching in circumstances where the risk is low.

Alternative approaches

Tasmanian prisons make modifications for prisoners by taking into consideration their particular disability or injury. When making these modifications for prisoners, they must ensure that the person's dignity is maintained and care taken to avoid aggravating the person's conditions.³⁵³

In England and Wales, the search policy acknowledges that normal routine searching procedures may need to be varied according to the disability of the person. Staff members make an assessment that considers multiple factors such as the level/nature of the physical disability of the individual, their size and weight etc. They are also required to consider healthcare advice prior to conducting the strip search.³⁵⁴

The prison may consider a voluntary agreement based on the particular needs of the prisoner due to their disability. A voluntary agreement is drawn up by local management and advice sought from a medical professional in recognition that searching processes may be difficult for the prisoner to undertake and follow.³⁵⁵ The prisoner must not be coerced into signing the agreement.³⁵⁶ When determining the

³⁵¹ *Human Rights Act 2019* (Qld) s 15.

³⁵² *Human Rights Act 2019* (Qld) ss 17, 25, 30.

³⁵³ General Manager - Mary Hutchinson Women's Prison, Director's Standing Orders, *Searching*, Ver 4, November 2022, 9 [8.5.1].

³⁵⁴ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 64 [6.8.1].

³⁵⁵ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 66 [6.8.10].

³⁵⁶ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 63 [6.7.6].

individual searching arrangements, a consultative approach should be adopted, and, where appropriate, advice sought from medical professionals and those involved in the prisoner's care, who must also take into account the wishes of the prisoner.³⁵⁷

The England and Wales policy also acknowledges that elderly prisoners and prisoners with disabilities who may have trouble standing for long or understanding the process must be given time, have processes clearly explained to them, and be allowed to sit down when needed during the search.³⁵⁸

In the ACT, a disability liaison officer works within the prison and provides advice and guidance on understanding people's disabilities, how a prisoner's disability may affect compliance with strip searches, and what modifications are appropriate to make. The officer case notes the advice on the prisoner's file so that other staff members are aware of the adjustments that are required when requesting the prisoner to undergo a strip search.³⁵⁹

The Commission's position

The Commission considers that:

- Prisoners who have a disability or are elderly may be more susceptible to accidents while being strip searched, which could result in physical harm to the prisoner and staff members conducting the search.
- Prisoners with psychosocial disabilities are more susceptible to mental health harm as a result of being strip searched because strip searching may trigger previous traumatic events. [See also - *Psychological and emotional harm* on page 58 of this report.]
- The COPDs should be more explicit in the accommodations that must be made for people with disability, including physical, cognitive, and psychosocial in the context of strip searching. This should include consideration of the person's disability, expert health or disability advice (if appropriate), and prisoner input. The accommodations required should be recorded for easy access and consistent implementation and be subject to review to take account of the changing nature of disability and a person's needs.
- While accommodations vary from person to person, they do not need to be complex. Corrective services officers should have access to guidance, either in the COPDs or from specialised staff members, on the types of accommodation that might be appropriate for an individual prisoner. This could include providing a prisoner with a chair or handrail if they have mobility issues, allowing sufficient additional time for the prisoner to comply with instructions, or providing instructions in a way that the prisoner is able to understand.
- Where a prisoner is unable to undress themselves, this would constitute exceptional circumstances to exempt a prisoner from a search under the Search Direction, and a pat down search or scanning search should be conducted instead.

³⁵⁷ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 63 [6.7.8].

³⁵⁸ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 65 [6.8.1].

³⁵⁹ ACT Government, ACT Corrective Services Disability Framework Consultation Summary, 2022, 40.

- The need to consider reasonable accommodations or alternatives to strip searching increases where the person's inability to participate in a strip search significantly impacts on their other human rights, such as the right to families and children, or the right to humane treatment when deprived of liberty.

Recommendation 16: Make reasonable accommodations for prisoners with disability and older prisoners

16.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:

- outline requirements to make reasonable accommodations for older prisoners and prisoners with disability, which may include physical, cognitive or psychosocial disability.
- explain the need to communicate with the prisoner to identify what adjustments are required to modify the search process where necessary. This information should be included in prisoner case notes, and these should be periodically reviewed to ensure they remain appropriate and up to date.
- allow for searches to be modified because the prisoner may be unable to perform the 'standard' procedure. Modifications may include, but are not limited to, having handrails in the areas where strip searches are conducted and a chair for the prisoner to sit on during the search.
- advise that where a prisoner is unable to undress themselves, a pat down search or scanning search should be performed instead.

Trans and gender diverse prisoners

Legal stakeholders³⁶⁰ expressed concern about the lack of clear guidance on conducting safe and equitable strip searches for trans and gender diverse prisoners. They considered that this lack of clarity can lead to violations of privacy and distress for trans and gender diverse prisoners.

We understand from consultations with staff members that, while the policies are not clear on the expectations for searching trans and gender diverse prisoners, the practice is that prisoners are searched by a person of the same sex as the sex the prisoner was assigned at birth, rather than the prisoner's identified gender. We heard of one exception involving a transgender woman who had gender affirming treatment on both the top and bottom halves of her body. According to staff members, adjustments have been made for trans men assigned to women's prisons, by allowing a pat down of the chest area rather than a full strip search.

Trans and gender diverse prisoners may not be able to readily access gender affirming treatment, such as hormones or surgery, while in prison and not all trans and gender diverse people seek out or require these treatments. But for prisoners who have had medical interventions, strip searches performed by staff members not

³⁶⁰ Legal Aid Queensland consultation, 21 April 2023; Queensland Advocacy for Inclusion consultation, 4 April 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

of their identified sex may be particularly confronting. For example, trans women who have had top surgery feel particular discomfort and distress being searched by male officers.³⁶¹

Complaints about strip searching practices made to official visitors, which were obtained by the Review through an information request to Queensland Corrective Services, reveal the discriminatory treatment faced by trans women assigned to men's prisons. Five complaints have been filed by trans women in the last five years in which they describe their experiences of inequitable and degrading practices.

These complaints demonstrate the negative impact on the sense of identity of trans and gender diverse prisoners. One woman reported feeling uncomfortable when male staff members were involved in her searches, which she consistently refused to engage in. Another woman complained that three male officers had searched her in her cell and that the staff members displayed a lack of understanding of the emotional toll their behaviour had on her.

A recent complaint to an official visitor from a transgender woman who was sexually assaulted by another prisoner while assigned to a men's prison raised serious concerns for this Review. After reporting the assault, she was sent to the Safety Unit and was subsequently subjected to a search by multiple male staff members. This search was traumatic for her given the assault, and she believed that being moved to the Safety Unit was unnecessary. The official visitor substantiated the complaint and recommended that QCS review the COPD – Transgender Prisoners, and emphasised the importance of exercising sensitivity when conducting searches on people who have experienced sexual assault. The recommendation also suggested the option for prisoners to nominate the sex of staff members involved in their searches.

Equality Australia was consulted by the Review because of their specialist knowledge of the treatment of trans and gender diverse people in detention settings. Equality Australia considered that the purpose of having searches performed by staff members of the same sex, as reflected in United Nations minimum standards and domestic legislation, is not to 'match sex characteristics', but to 'preserve the dignity of a person.' As strip searches are performed under compulsion, active steps to protect the privacy and dignity of the person being searched need to be taken.

Equality Australia suggested as the least restrictive option that there should be an opt-in right where a person who is trans or gender diverse can identify the staff member they want to conduct the search, and that this might mean different people for different parts of their body. At a minimum, Equality Australia considered that being able to choose the sex of the person conducting the search would be a significant improvement on current practice.

³⁶¹ Legal Aid Queensland consultation, 21 April 2023.

Current policy, procedure or practice

The legislation requires that searches must occur by corrective services officers of the 'same sex' but is silent as to whether this refers to sex or gender, and the law provides no specific guidance about how to safely and equitably search a trans or gender diverse prisoner.³⁶²

The COPD – Prisoner Search simply states that 'staff should be aware, and be prepared for the fact, that a transgender prisoner may not have the genitalia of the gender with which the prisoner identifies.'³⁶³ The COPD – Prisoner Search further states that decisions regarding LGBTIQ+ prisoners should be made on a case-by-case basis, taking into account relevant factors and the reasonableness of the actions being considered.³⁶⁴

While this wording is vague, the Review takes from it that variations to search procedures should occur on a case-by-case basis. In practice, staff members we spoke with stated unequivocally that searches were occurring based solely on the sex assigned at birth of the prisoner and/or whether they had had gender affirming surgery.

The COPD - Transgender Prisoners states that case notes may be developed for trans and gender diverse prisoners, but the focus of the practice directives is on institutional conduct, behaviour, engagement in activities, health changes, and interactions with staff and others. It makes no mention of guidance on how to search the person.³⁶⁵

The COPD - Transgender Prisoners acknowledges that LGBTIQ+ prisoners are a 'high-risk' group for experiencing sexual violence, and emphasises that where sexual assault occurs, the privacy and safety of victims and witnesses must be ensured.

Human rights considerations

Searching a trans or gender diverse prisoner based on their sex assigned at birth may amount to direct and indirect discrimination, and this practice is therefore unlikely to be compatible with the right to equality before the law, non-discrimination, and humane treatment when deprived of liberty under the Human Rights Act.³⁶⁶

The *Mandela Rules* state that a person should be able to self-identify as a particular gender in the prisoner file management system. The Rules state that precise information enabling determination of unique identity, respecting his or her self-perceived gender, shall be entered in the prisoner file management system upon admission of every prisoner.³⁶⁷

³⁶² We note that the *Births, Deaths and Marriages Registration Act 2023* (Qld), which at the time of writing has yet to commence, will alter the law generally in relation to the recognition of sex and gender, including in the prison setting.

³⁶³ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11.2].

³⁶⁴ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 6 [11.3].

³⁶⁵ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Transgender Prisoners*, Ver 6, February 2023, 6 [11].

³⁶⁶ *Human Rights Act 2019* (Qld) ss 15, 30.

³⁶⁷ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 7(a).

Recent clarification on the application the *Mandela Rules* to trans and gender diverse prisoners has been provided by the United Nations Office on Drugs and Crime in the following terms:

‘...Transgender people in prison should have the right to choose, on the basis of gender, which prison staff will search their bodies, except in emergency situations.’³⁶⁸

Developed by human rights experts in consultation with civil society, the *Yogyakarta Principles* (2006) and *Yogyakarta Principles plus 10* (2017) provide an authoritative statement on the human rights of people with diverse sexualities, gender identities, and people with variations of sex characteristics (LGTBIQ+ people). Principle 9 relates to the right to be treated humanely while in detention³⁶⁹ and states that places of detention should adopt and implement specific policies to combat violence and discrimination against LGBTIQ+ prisoners including in relation to ‘body or other searches’.³⁷⁰

Alternative approaches

When detained in a Queensland watch house, prisoners who identify as trans or gender diverse must be searched by staff members of the sex that the detainee prefers to conduct the search. The Queensland Police Service Operational Procedural Manual states that unless an immediate search is necessary, if a trans or gender diverse person requests to be searched by a person of a particular sex and they are available to do so, it should be conducted based on their preference.³⁷¹ The Procedural Manual also permits, where appropriate and reasonably practicable, either male officers or female officers to conduct the search or a ‘split search’ (male and female) depending on the area of the body to be searched.

The policies of ACT,³⁷² Victoria,³⁷³ and Tasmania³⁷⁴ allow prisoners to nominate a preference for the gender of the officer conducting the strip search. The Tasmanian and Victorian policies have as a starting point that the person should be searched based on their gender identity rather than sex assigned at birth, unless a preference is stated otherwise.

New South Wales requires strip searching and pat down searching of transgender prisoners to be done by an officer of the ‘same sex as the recognised sex of the inmate’. A prisoner who is transgender or who identifies as neither male or female can state a preference, and in the absence of an expressed preference the search will proceed based on where they are assigned (men’s or women’s prison).³⁷⁵

³⁶⁸ United Nations Office of Drugs and Crime, Technical Brief: Transgender People and HIV in Prisons and Other Closed Settings, 5 [6].

³⁶⁹ *Yogyakarta Principles Plus 10*: additional principles and State obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles (10 November 2017) 16 principle 9.

³⁷⁰ *Yogyakarta Principles Plus 10*: additional principles and State obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles (10 November 2017) 16 principle 9.

³⁷¹ Queensland Police Services, Operational Procedures Manual, *Custody*, Issue 94, 3 July 2023, 28 [16.10.4].

³⁷² ACT Corrective Services, Policies and operating procedures, *Reception and Management of Transgender and Intersex Prisoners Policy*, 3 [4.1–4.2].

³⁷³ Corrections Victoria, Commissioner’s Requirements, *Management of Prisoners who are Trans, Gender Diverse or Intersex*, 2.4.1, March 2021, 11 [6.13].

³⁷⁴ General Manager - Mary Hutchinson Women’s Prison, Director’s Standing Orders, *Transgender, Transsexual and Intersex Prisoners*, 2.15, May 2018, 7 [12.].

³⁷⁵ Corrective Services NSW, Custodial Operations Policy and Procedures, *Searching inmates*, Ver 1.9, September 2021, 6 [2].

Victorian and New South Wales policies³⁷⁶ consider the comfort level or sensitivities of officers and assign another officer if needed.

The Western Australian policy specifically mentions dual searches, where different officers conduct top and bottom searches,³⁷⁷ and the policy requires the preferred gender of the searching officer to be kept in the case management system, which must be checked prior to the search proceeding.

The Commission's position

The Commission considers that:

- Queensland Corrective Services (QCS) should implement a requirement that prior to a pat down or strip search, a trans or gender diverse prisoner must be asked their preferred sex for the corrective services officer who will conduct the search. This should be case noted to prevent this question being asked of the prisoner on every occasion.
- The Queensland Police currently have this process in their Operational Procedures Manual for trans and gender diverse people entering the watch house, and the current practice in prisons results in inconsistent treatment between different detention settings.
- The practice of strip searching based on the prisoner's preference is already in place in comparable jurisdictions, including Victoria, New South Wales, Tasmania, ACT, and Western Australia.
- Once stated, the prisoners' preference should be respected for all pat down searches, strip searches, and urine tests, except for an emergency situation.
- Trans and gender diverse prisoners should be able to choose officers of different sexes to conduct searches on the top and bottom halves of their body. For clarity, this should not become the default option based on a person's anatomical characteristics on the top and bottom halves of their body, but rather the preference expressed by the prisoner.
- The personal concerns of individual corrective services officers and the competency of the staff member to respectfully and sensitively search a trans or gender diverse prisoner should be taken into account when allocating responsibility for strip searches.
- QCS should increase corrective services officers' competency to work with LGBTIQ+ prisoners by delivering specific and tailored training on discrimination and human rights that incorporates the issue of conducting searches.
- A key issue outside the scope of this report is the placement of trans and gender diverse prisoners. Considering the serious and numerous complaints raised to the official visitor, the Commission advises the QCS to immediately review a blanket rule, which seems to have developed in practice, of placing trans and gender diverse prisoners into men's or women's prisons based solely on their sex characteristics.

³⁷⁶ Corrective Services NSW, Custodial Operations Policy and Procedures, *Searching inmates*, Ver 1.9, September 2021, 6 [2.2].

³⁷⁷ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Trans, Gender Diverse and Intersex Prisoners*, Ver 4, April 2022 5 [3.3.5].

Recommendation 17: Search trans or gender diverse prisoners based on their preference

- 17.1** Queensland Corrective Services should amend the Custodial Operations Practice Directives – Transgender Prisoners and the Custodial Operations Practice Directives – Prisoner Search to state that prisoners who identify as trans or gender diverse should be given the option of whether to be searched (including strip searches, pat down searches, urine testing) by male or female corrective services officers, and that preference should be noted in the person’s case notes.
- 17.2** Queensland Corrective Services should provide staff members with training on competency to work with LGBTIQ+ prisoners including their obligations under the *Human Rights Act 2019* (Qld) and state and federal discrimination legislation.

Prisoners with religious and cultural needs

During our consultations with prisoners and legal stakeholders,³⁷⁸ concerns were raised regarding the impact of strip searches on prisoners with religious backgrounds, particularly women with modesty requirements such as Muslim prisoners.

We were unable to locate any written policies or procedures on the issue of searching people with hijab, veils, turbans, or other headwear including wigs worn for religious reasons.

The Review consulted the Islamic Women's Association of Queensland on this point, who advised that, in principle, Muslim women should be allowed to maintain coverage from their navel to their knees. They confirmed that women, if asked, would remove their hijab or other headwear in the presence of other women, as religious exemptions would apply in such circumstances. However, it was emphasised that men should never be present or able to see prisoners while removing or without their headwear.

While our consultations focused on Muslim prisoners, cultural and religious considerations regarding religious headwear may also arise for prisoners of other faiths, such as Orthodox Jews and Sikhs.

When asked about current practice, staff members stated that they had not encountered any issues with prisoners they had searched. They explained they would complete all other steps in the search process first, and finally ask the prisoner to remove their headwear at the end.

‘I’ve literally had one of the Muslim ladies in our Safety Unit because of some self-harm suspicions. We made all the reasonable adjustments that we could for her. We still had to do our processes, of course, because if there was a suspicion that she had a blade, we would want to know it’s not up there.’

However, some staff members said that they did not require every prisoner to remove their headwear and treated it as a ‘risk-based’ decision.

³⁷⁸ Legal Aid Queensland consultation, 21 April 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

When the issue was raised with staff members, several individuals expressed a preference for specific guidance in a COPD to clarify expectations regarding strip searching prisoners and visitors in relation to religious headwear.

Current policy, procedure or practice

We were unable to locate any specific reference to the religious needs of prisoners including religious dress requirements, whether for male or female prisoners.

The COPD - Visitor Search states consideration must be given to 'any cultural rights including cultural headwear and the gender of the searching officer (in culturally sensitive situations)' but does not make clear what accommodations, if any, should be made for religious/cultural dress.³⁷⁹

Human rights considerations

The right to demonstrate religious beliefs and practices is protected under the Human Rights Act.³⁸⁰ Observances and practices may include wearing of distinctive clothing or head coverings.³⁸¹ The right is not absolute, and limitations on the right may be necessary to protect safety, order, or to safeguard the rights and freedoms of others.³⁸²

The Human Rights Act also recognises the right to enjoy culture and declare and practice religion as individuals, but also in community with others.³⁸³ This right applies to prisoners as well as free citizens.

The Review considers that, unless there is an identified risk, requiring every person to remove their religious headwear during a search is a disproportionate approach. Based on our consultations with staff members, we heard that individual risk assessments are already taking place in many cases involving prisoners with religious headwear. To ensure compatibility with human rights, this approach should be clearly set out in a policy applying to all prisoners.

Alternative approaches

The England and Wales policy does not require the removal of religious headwear for routine or random searches but a person will be asked to remove their headwear for a search based on suspicion or intelligence.³⁸⁴

Both the Western Australian and the England and Wales policies emphasise the importance of not allowing women to be seen by men when their headwear is removed, as this can cause serious offence and distress. Prisoners are required to

³⁷⁹ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directions (COPD): Visitors Search*, Ver: 04, 27 January 2022, 4 [7.3].

³⁸⁰ *Human Rights Act 2019* (Qld) s 20(1)(b) based on *International Covenant on Civil and Political Rights*, UN Doc A/RES/2200(XXI) (16 December 1966) art 18.

³⁸¹ United Nations Human Rights Committee, *General Comment No 22: Article 18 (Freedom of thought, conscience or religion)*, UN Doc CCPR/C/21/Rev.1/Add.4 (30 July 1993) [4].

³⁸² *International Covenant on Civil and Political Rights*, UN Doc A/RES/2200(XXI) (16 December 1966) art 13(3).

³⁸³ *Human Rights Act 2019* (Qld) s 27.

³⁸⁴ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 49 [4.33.20].

be given privacy and access to a mirror to re-fix their headwear.³⁸⁵ In these jurisdictions, a handheld metal detector is used to search the headwear.³⁸⁶

The Victorian policy requires that a prisoner must consent to the removal of their headwear prior to proceeding to a search, and that if the headwear needs to be searched, that this must be done in private.³⁸⁷

The Commission's position

The Commission considers that:

- A clearer position in the COPD – Prisoner Search on conducting searches on prisoners with cultural and religious needs would ensure that expectations for staff members are well-defined and that prisoners are treated equitably and consistently.
- Requiring a prisoner to remove their headwear and subjecting it to handling and search, unless there is an identified risk based on reasonable intelligence indicating the presence of concealed items, disproportionately limits a prisoner's right to privacy and right to manifest religious beliefs and practices. We consider that this advice should apply to all prisoners, regardless of gender.
- While outside the scope of this report, to ensure the privacy, dignity, and cultural and religious rights of visitors, and to prevent instances of indirect discrimination, we suggest that Queensland Corrective Services separately review the COPD - Visitor Search and consider setting out a procedure for managing a situation where a visitor is wearing religious headwear.

Recommendation 18: Clarify practice for searching prisoners who wear religious headwear

18.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search should:

- confirm that searching religious headwear and/or asking a person to remove their religious headwear during a search should only occur where there is reasonable suspicion of an identified risk
- emphasise that at no times should male officers be present or able to see a prisoner who had been asked to remove their headwear
- include that a person should be given access to a mirror to re-fix their headwear in private after the search.

³⁸⁵ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 49 [4.33.20]–[4.33.22]; Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 9 [3.5.2].

³⁸⁶ Department of Corrective Services Western Australia, Commissioner's Operating Policies and Procedures, *Searching*, Ver 5, May 2023, 9 [3.5.2].

³⁸⁷ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 3–4 and 7 [5.1.4], [5.1.7], [5.4.13].

Impact and consequences for corrective services officers

This section examines the impact of strip searching on corrective services officers. Staff members we spoke with held differing views on strip searches, with some considering them a ‘necessary evil’ while others found them dehumanising. Three main issues were identified: the physical safety of staff members during strip searches, the potential for vicarious trauma, and the effect on the rapport between staff members and prisoners.

The negative impact of strip searching on staff members has been acknowledged in reviews of prisons in other states. In 2003, a pilot program by Corrections Victoria significantly reduced strip searches and resulted in a decline in prisoner self-harm incidents and assaults on staff.³⁸⁸ Similarly, in three Western Australian facilities in which strip searching was reduced or eliminated, the relationships between detainees and staff improved, enhancing the overall safety of the facilities.³⁸⁹

Workplace safety

Staff members consistently expressed their dislike of strip searching, considering it to be one of the worst aspects of their job. We heard this is a sentiment shared by corrective services officers in other states as well.³⁹⁰ Some staff members saw strip searching as necessary to protect their own physical safety, particularly from needlestick injuries from syringes, and emphasised to the Review team that any changes to strip search practice or procedure needed to consider the impact it would have on their personal safety. Other staff members expressed dissatisfaction with the current strip search process, believing it dehumanised prisoners and undermined the potential for rehabilitation, contradictory to the goals of the prison system. We heard the repetitive nature and frequency of strip searches led to desensitisation among the female staff members working in women’s prisons.

Corrective services officers also raised the high-risk nature of conducting strip searches. Although there are two staff members present during searches, the small space and lack of restraints posed potential dangers, especially when prisoners arrived from the watch house or were in a heightened emotional state. Staff members were conscious of the risk of assault and said they tried to conduct strip searches in the most polite and professional way possible. Opinions among staff members varied regarding the level of risk associated with strip searches, with some considering it one of the most high-risk tasks they perform, while others viewed it as routine and a normal part of their duties because of the frequency with which searches occur.

A 2019 survey of corrective services officers in Western Australia reported that one in ten staff members who responded to the survey had been assaulted during a strip search. However, this was based on self-reporting and did not align with departmental data of reported assaults.³⁹¹ It was recognised by the Western Australia Inspector of Custodial Services that, while a prisoner has the responsibility

³⁸⁸ Human Rights Law Centre, *‘Total Control: Ending the routine strip searching of women in Victoria’s prisons’* (2017); Department of Justice and Regulation, Justice Health (Vic), *‘Correctional Suicide Prevention Framework: Working to Prevent Prisoner and Offender Suicides in Victorian Correctional Settings’* (2015) 28.

³⁸⁹ Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019), x, 13.

³⁹⁰ General Manager - Mary Hutchinson Women’s Prison consultation, 25 May 2023, Corrections Victoria consultation, 5 May 2023.

³⁹¹ Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019), 3.

not to assault a staff member, Corrective Services have a responsibility to reduce the opportunity for or triggers for staff assault.³⁹²

Vicarious trauma

Staff members acknowledged the uncomfortable and unpleasant nature of the current strip search procedure and the impact that it has on prisoners. The potential for vicarious trauma to develop among staff members who witness and hear traumatic events occurring was recognised. Staff members shared instances where they were profoundly affected by a strip search and expressed worries that new recruits were not sufficiently prepared to deal with the trauma they would face on the job. Previous vicarious trauma training was seen as ineffective and directed more towards male staff members in male prisons. Many staff members called for updated training that specifically addresses the vicarious trauma associated with strip searching women.

*'Vicarious trauma is massive in corrections. And I think it's more so in women's custody, a lot of other people will disagree. But in women's custody, we're listening to their stories, too ... I've heard some horrendous things and I've watched horrendous things. I've had to tell people that [redacted] has passed and we're dealing with all the fallout from that and mind you, she's still a drug target, and we still have to then go the next week and do this UT.'*³⁹³

'It's incomprehensible to say we care about their outcomes, but we're still going to do things to them rather than for them.'

Some female staff members also framed their concerns as a workplace inequality issue – men working in women's prisons do not have to conduct this unpleasant and potentially unsafe and traumatising work task. Given the challenging situations corrective services officers are exposed to during the course of their employment, one staff member expressed hope that removing or improving some of the more traumatic parts of their job would attract more female staff members who are genuinely interested in working in the women's system towards the rehabilitation of women.

Interactions with prisoners

Strip searching had a significant impact on the relationship between prisoners and corrective services officers from the prisoners' perspective. Even when conducted respectfully, prisoners felt embarrassed and uncomfortable when they encountered the same staff members later, knowing they had already seen them naked. This created a sense of awkwardness, making staff members relationships 'strange' and 'weird'. As one woman said:

'It's weird. Like, you wouldn't go into the community and see someone naked and then still walk past them.'

The Commission's *Women in prison* 2006 report discussed how strip searching adversely affects the relationship between prisoners and staff members, as even if great efforts are made by staff members to remain professional and impersonal, prisoners know that staff members have seen them in a naked and vulnerable

³⁹² Office of the Inspector of Custodial Services (WA), *Strip searching practices in Western Australian prisons* (2019) 3.

³⁹³ The staff member refers here to 'urine testing'.

position.³⁹⁴ The same issues were mentioned in the Commission's 2019 follow-up report and are consistent with what the current Review team observed when speaking with prisoners and staff.³⁹⁵

Prisoners were aware of staff members' aversion to the strip search process. Some prisoners told us that this knowledge sometimes made the searches more manageable. Prisoners also recounted situations where some women, knowing the process was disliked by staff members, would intentionally attempt to make officers feel uncomfortable. Prisoners could cause discomfort to staff members, for example, by intentionally taking too long to get dressed or taking off all their clothes at once.

Staff members recognised that strip searching erodes trust between prisoners and staff members and was especially challenging for them if they had established a rapport with the prisoner or knew them well. This is particularly so where a staff member has to strip search one of the women she is responsible for case managing. Due to staffing levels, it is not always possible to avoid such a situation. We were told by some staff members that efforts to build rapport with prisoners and demonstrate care for their wellbeing are undermined when they have to conduct strip searches, which is counterproductive to the goal of rehabilitation.

Current policy, procedure or practice

We were unable to locate any reference to managing the impact of strip searching on staff members or managing vicarious trauma in current policies or procedures available to the Review. However, QCS has since advised that the QCS OVT Support Handbook dated August 2022 includes reference to vicarious trauma.

Human rights considerations

Strip searches have a significant impact on corrective services officers, both in terms of physical risk, such as the potential for assault, and mental well-being, including the risk of vicarious trauma. The right to security of a person under the Human Rights Act protects against intentional bodily or mental harm, and the State must take reasonable measures to protect a person's physical and mental security.³⁹⁶

The *Mandela Rules* emphasise the importance of ensuring the safety of all individuals, including staff, at all times.³⁹⁷ As a signatory to the *International Covenant on Economic, Social and Cultural Rights*, Australia has an obligation to recognise the right of every person to enjoy just and favourable working conditions, which encompasses safe and healthy working environments.³⁹⁸

Alternative approaches

In other jurisdictions, reducing strip searching has produced significant benefits for corrective services staff members. Victoria has successfully implemented measures to nearly eliminate strip searches in women's minimum security prisons in recognition of the negative impact the process has on both prisoners and staff.³⁹⁹

³⁹⁴ Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006), 72.

³⁹⁵ Queensland Human Rights Commission, *Women in Prison 2019: A Human Rights Consultation Report* (2019), 125.

³⁹⁶ *Human Rights Act 2019* (Qld) s 29.

³⁹⁷ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 1.

³⁹⁸ United Nations General Assembly, *International Covenant on Economic, Social and Cultural Rights*, res 2200A (XXI) (16 December 1966) art 7(b).

³⁹⁹ Corrections Victoria consultation, 5 May 2023.

Staff member feedback highlighted that existing training on vicarious trauma and conducting strip searches of women are inefficient and heavily skewed towards male staff members in male prisons. More comprehensive training on how to conduct strip searches and safe practices for managing vicarious trauma would better protect the physical and mental health of staff members and alleviate burnout to some extent.

Introducing saliva swab testing as a replacement for urine testing would enhance the staff members safety by reducing the need for unnecessary searches and the risk of staff members being exposed to bodily fluids. Using body scanners instead of strip searches would also assist with mitigating the risk of vicarious trauma for staff members, while preserving any therapeutic relationships or rapport developed between staff members and prisoners.


The Commission's position

The Commission considers that:

- Strip searches and witnessing the associated trauma is distressing for corrective services officers and highlights the need for additional support and training. The development of vicarious trauma is a real and significant risk for corrective services officers. Queensland Corrective Services (QCS) have a responsibility to take precautions to protect the mental and physical health of its staff members, including reducing the risk of vicarious trauma and burnout associated with the job.
- Some staff members perceive strip searching as a high-risk part of their job that involves close interactions with prisoners in potentially volatile and emotionally charged situations. This can create stress and anxiety for staff members, with adverse impacts on their mental health and job satisfaction. While a prisoner has the responsibility not to assault a staff member, QCS has a responsibility to reduce the opportunity for or triggers for staff member assault.
- QCS should provide vicarious trauma training to staff members, particularly focussed on the challenges faced in women's prisons, including during strip searching. To ensure this training is evidence-based and effective, QCS should outsource the development of this training to appropriate professionals.
- Strip searches undermine the rapport between staff members and prisoners, hindering the process of rehabilitation.
- Reducing the frequency of strip searches and introducing body scanners and saliva swab testing would reduce the development of vicarious trauma for staff members and encourage mutually respectful relationships between staff members and prisoners. The introduction of body scanners will ensure that prisoners can be efficiently checked for contraband and will reassure staff members that their personal safety is maintained.
- Staff members should be encouraged to debrief about upsetting or stressful situations without fear of negative repercussions and be encouraged to access the Employee Assistance Program.

Recommendation 19: Take steps to address vicarious trauma and evaluate psychosocial hazards

- 19.1** Queensland Corrective Services should provide vicarious trauma training tailored to the unique environment and challenges faced by staff members in women's prisons, with a specific focus on addressing the impact of strip searching.
- 19.2** Queensland Corrective Services should conduct a comprehensive evaluation of psychosocial workplace risks for corrective services officers. The methodology for this evaluation should include anonymous surveys and feedback from staff members to assess the extent of harm and psychological impacts of the job, specifically addressing vicarious trauma and burnout.



Are strip searches
being done
consistently and
proportionately?

Are strip searches being done consistently and proportionately?

In this section, we consider the consistency and proportionality of strip searches when weighed against the risk to prisoner and staff safety and the security and good order of the prison environment. We address the need for additional information and guidance for prisoners and staff members to ensure clarity and consistency. We also assess how the search method is carried out by staff, the protocols for managing non-compliant prisoners and the use of surveillance and cameras in the search process.

Information and guidance

Many prisoners expressed distress over the lack of information provided during strip searches, worsening an already traumatic experience. We heard that instructions were curt and only given after the search had commenced. Many prisoners emphasised it was important for them to receive information prior to the search about how the search would be conducted and the reasons for the search. While not eliminating the traumatic impact of the strip search, we heard understanding the process made it more bearable, with one prisoner explaining that knowing exactly what was coming allowed her to mentally prepare herself for it.

'Information is key, so you can know yourself when you're going into a stressful situation. If you're pre-warned, you can be prepared mentally, 'okay this is going to happen, it's okay', you can get ready for that process...'

We heard about challenges faced by prisoners navigating the prison system for the first time. On arrival at prison, many women were given no information about how strip searches would be conducted and either had it explained to them by other prisoners or learnt about the process as it was happening. One prisoner said that she was 'dumped in reception' with no information or guidance.

'So, all of a sudden you're in this world you have never been part of before; you are shuffled in like cattle, and then you have two women yelling at you to get your clothes off and it's just horrendous. You can't even imagine the trauma that causes in itself without the rest of the process that follows; it's awful.'

The confusion and distress from not being provided with adequate information is particularly acute in prisoners whose first language is not English. These prisoners find themselves in an unfamiliar environment where other prisoners and staff members may not speak their language. We heard from some prisoners that interpreters should be available on reception for prisoners who do not speak fluent English to explain the strip search process. While prisoners who have difficulty communicating in English are required to be provided with a translator,⁴⁰⁰ it is unclear whether the strip search procedure specifically is explained.

⁴⁰⁰ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Sentence Management: Admission and Induction*, Ver 5.1, June 2023, 4 [4.1].

'Also the non-English speaking people aren't sure of what's happening and how to cope with this scary situation. They know they're in prison away from their family...it's like, how do they identify with what has to happen without them getting manhandled or forced to do something that they're not comfortable with doing in the first place, but then getting in trouble for reacting or put in the DU or the Safety Unit because they're hysterically upset, because they don't know what is happening to them, not even a video to give them to watch in their language to be able to make them understand.'

Prisoners exhibited a lack of knowledge and understanding about the rules and expectations with regard to strip searches. Many were unaware of the consequences of refusing a strip search and had limited understanding of their rights or how to make a complaint. Fear of disciplinary breaches or repercussions deterred prisoners from asking questions or raising concerns during a strip search.

'You're told 'take your shirt off, now do this, now do that, but they don't tell you what your rights are.'

We heard strip searches often felt rushed, with staff ordering prisoners to 'hurry up'.⁴⁰¹ This hurried approach made some prisoners feel like they were 'tasks to be completed', rather than individuals going through a sensitive and potentially traumatic experience.⁴⁰² Receiving reassurance and periodic 'check-ins' from staff members during the search process was suggested by some prisoners to alleviate stress. Legal Aid Queensland was of the view that clear communication about what was required of a prisoner during the search process, and allowing sufficient time to comply, was necessary to minimise the stress experienced during a strip search.⁴⁰³ Many prisoners believed that some corrective services officers would slow down and explain the process if asked, but this depended on the individual staff member. Although most staff members we spoke with were willing to slow down, provide information, or reassure a prisoner if asked, they agreed there is no obligation to do this, and it would depend on the individual staff member and their workload.

To address these issues, prisoners and staff members suggested that on first entering prison, women should be given information outlining the strip search process, its purpose, the circumstances in which a strip search would be conducted, what prisoners would be asked to do, and what they would not be asked to do. This information could also be prominently displayed wherever strip searches occur. Accessible and clear information would assist with correct procedures being followed, enable prisoners to identify deviations in the process, and empower them to refuse actions that are not permitted by policy, such as squatting or lifting their breasts. For more information regarding strip search methods, see *Search method* in the next section of this report from page 125.

Staff members supported making additional information about strip searches available to prisoners through booklets, signs, or infographics. Many corrective services officers agreed that talking prisoners through the process was crucial for prisoners to understand why they are being searched and what was going to happen during the search before the search started. Staff members also considered

⁴⁰¹ We note that the need to conduct a search 'as quickly as reasonably practicable' is a legislative requirement under the *Corrective Services Act 2006* (Qld) s (4)(c). While intended to minimise embarrassment, a rushed process may be counterproductive for women experiencing trauma.

⁴⁰² Legal Aid Queensland consultation, 21 April 2023.

⁴⁰³ Legal Aid Queensland consultation, 21 April 2023.

that clear information and guidance protected them in case a complaint about their actions was raised by a prisoner.

Current policy, procedure or practice

Legislation and policy require that before conducting a strip search, a corrective services officer must tell the prisoner that they will be required to remove their clothing during the search and why it is necessary to remove their clothing.⁴⁰⁴

In practice, both staff members and prisoners advised us that the extent of information provided before and during a strip search depends on the corrective services officer conducting the search and how busy they are. For instance, at Brisbane Women's Correctional Centre there are three stalls in which prisoners must line up to be searched before visits and it can get busy and crowded in that environment.

Human rights considerations

The right to freedom of expression includes the right to receive information.⁴⁰⁵ Denying prisoners information about strip searching or an explanation prior to a search could unreasonably restrict the prisoner's freedom of expression. As the information sought relates to a prisoner's bodily autonomy, withholding information could also limit a prisoner's right to privacy and right to humane treatment when deprived of liberty.⁴⁰⁶

The *Bangkok Rules* acknowledge that women are particularly vulnerable during prison admission and require that they receive information about prison rules, regulations, and the prison regime in a language they understand.⁴⁰⁷ Similarly, the *Mandela Rules* require every prisoner to be provided with comprehensive information on admission to prison, including prison laws, their rights and obligations, and other necessary aspects for adapting to prison life.⁴⁰⁸ This information should be prominently displayed in the prison and available in the most commonly spoken languages. For prisoners who speak other languages, interpreters should be provided to ensure these prisoners understand the information.⁴⁰⁹

Alternative approaches

Prisoners should be provided with consistent and comprehensive information prior to, and during, strip searches.

An example comes from England and Wales, where staff members are required to model the principles of procedural justice when conducting a strip search by

⁴⁰⁴ *Corrective Services Act 2006* (Qld) s 38; Queensland Corrective Services, *Custodial Operations Practice Directive*, Prisoner Search, Version 3.1, 7 [1.4].

⁴⁰⁵ *Human Rights Act 2019* (Qld) s 21(2).

⁴⁰⁶ *Human Rights Act 2019* (Qld) s 25, 30.

⁴⁰⁷ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) rule 2.1; United Nations Office on Drugs and Crime, United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with Their Commentary (2009) 24, rule 2.1.

⁴⁰⁸ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 54.

⁴⁰⁹ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) rule 55.

explaining clearly what is happening and why it is happening. Staff members are expected to empathise with prisoners and demonstrate understanding.⁴¹⁰

Staff members at Mary Hutchinson women's prison in Tasmania are expected to provide a comprehensive explanation to prisoners before the strip search begins, outlining the purpose of the search and going through the process step by step.⁴¹¹

The Commission's position

The Commission considers that:

- Prisoners found the lack of information provided to them in advance about strip searching was upsetting and disempowering, and induced feelings of trepidation and fear.
- Women are particularly vulnerable on initial admission to prison and should be given comprehensive information about the prison regime, including strip searches.
- Being provided with comprehensive information allows prisoners to better prepare themselves for a strip search and lessen the fear associated with it. Some staff members we spoke with thought improved access to information for prisoners in advance of a strip search would reduce non-compliance and confusion during a search. A requirement for staff members to tell women, at a minimum, the reason for the search and what will happen would better protect a prisoners' right to freedom of expression. While this will not remove the inherently traumatic nature of strip searches, it can help allay anxiety and reduce the shock and fear associated with the process.
- To promote transparency and a respectful environment, corrective services officers should provide information verbally about the strip search process and what prisoners will and will not be asked to do. Prisoners should be given the opportunity to clarify or ask questions about the process.
- Signs should be developed containing this information and prominently displayed wherever strip searches occur. These should be written in simple language and use infographics and pictures. What women will not be asked to do (i.e. squat, cough, lift breasts) should be stated alongside information advising prisoners that if they are asked to do any of these things, they have the right to refuse without fear of negative consequences.
- Signs should clearly state a prisoner's rights during a search and provide information about how to make a complaint if the search is not conducted correctly.
- Information about strip searching should be available in multiple languages.
- Women who do not speak English as a first language are likely to experience feelings of fear and confusion on reception into prison. For prisoners who have difficulty communicating in English, the strip search process, including when a strip search will occur, should be explained to a prisoner in detail with the assistance of an interpreter. Assumptions should not be made that prisoners have received prior information from their lawyer, the watch house, or another source.

⁴¹⁰ His Majesty's Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching Policy Framework*, April 2023, 7 [1.6].

⁴¹¹ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

Recommendation 20: Provide more detailed information and guidance to prisoners

20.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to make it clear that prior to conducting a strip search, a corrective services officer should clearly explain to the prisoner:

- the purpose and reasons for the search
- the processes and what will happen during the search
- what they will ask the prisoner to do during the search.

20.2 Queensland Corrective Services should display clear signage containing this information in areas where strip searches occur. These signs should also include information about prisoners' rights during the search and complaint mechanisms and be available in multiple languages.

Search method

The Commission's 2019 *Women in prison* report highlighted the concerns of prisoners regarding inconsistent practices employed during strip searches.⁴¹² These concerns persist today, with inconsistency in strip searching methods being a common issue raised with the Review team. In our discussions with staff members, stakeholders, and prisoners, it became evident that strip searches vary across prisons and between staff members. This section reviews reported differences in search methods including practices that deviate from Queensland Corrective Service's (QCS) policies or legislation, vary between prisons, or differ among individual staff members.

Prisoners shared with us that staff members interpreted QCS policy differently, resulting in some strip searches being more invasive than others. This lack of consistency exacerbates the trauma experienced by women, as they remain uncertain about the level of invasiveness they will experience during their next strip search. Inconsistencies in search methods made some women feel targeted, angry, and upset.⁴¹³ Prisoners expressed a desire for consistent strip search practices to be uniformly applied to every person, every time.

'Sometimes it's just outrageous, the way that a strip search will be conducted ... you shouldn't be asked to walk around in a circle naked with your arms up, or, you know, squat naked with your legs apart.'

We heard from staff members that strip searches follow a specific procedure: asking women to place their legs shoulder width apart, requesting the removal of their top and bra first, checking and returning that clothing, then asking for the bottom half of their clothing to be removed. The prisoner is instructed to: kick their legs back at the knee while facing away from staff members, so the bottom of their feet can be

⁴¹² Queensland Human Rights Commission, *Women in Prison 2019: A Human Rights Consultation Report* (2019), 128.

⁴¹³ Sisters Inside Inc consultation (Townsville), 16 May 2023.

checked; run their fingers through their hair; and put their fingers in their mouth and open their lips to demonstrate nothing is concealed.

However, the Review team heard numerous accounts of strip searches deviating from this process. A recent complaint was made to an official visitor by a prisoner who had undergone five strip searches in two days and claimed she was asked to bend over excessively. In response, prison management defended the searches as standard for a prisoner transitioning from low to high security and noted the COPD permits staff members to tell the prisoner to stand with her legs apart and lean forward.

'Some girls were being made to bend over and open their - one girl was told to bend over, and this was at visits, and told to open her cheeks right up... she's an old lady. You can't do that, that's a no go, you know what I mean?'

Other instances were reported where women were asked to perform actions prohibited by policy, such as:

- squatting
- coughing
- lifting their breasts
- 'jump around in a circle'
- 'put my legs up and cough'
- 'squat down and walk like a crab'
- 'spread your cheeks'.

We also heard from women that they were told to:

- bend over at the hips
- bend over with their hands against the wall and significantly lift their legs up to the side
- lift their legs more than a bend at the knee so their feet could be checked
- stand with their legs wider than hip width
- place their forehead against a wall and put their hands behind their back
- lift up excess skin (this command was to heavier women). The humiliation and embarrassment experienced by women asked to do this was evident, and one woman said staff told her to 'lift your fat up'
- remove their pad and tampon (for more information on this see *Menstruating prisoners* on page 67 of this report).

Stakeholders also raised concerns about the continued use of outdated and degrading practices during strip searches. Sisters Inside reported that women are still being told to ‘squat and cough’ during searches.⁴¹⁴ Prisoners Legal Service told us they received complaints from women who have been searched with their clothing completely removed.⁴¹⁵ Legal Aid Queensland shared a situation in which a prisoner was required to expose their bottom half, lean against a wall, and show their anus.⁴¹⁶ Sisters Inside explained that some prisoners felt targeted and victimised when a strip search was conducted more invasively than it had been on the previous occasion.⁴¹⁷ It was surmised that the inconsistent search methods are attributable to the wide discretion given to staff members in conducting strip searches.⁴¹⁸

Some women were hesitant to discuss the inconsistencies in strip searches between staff members due to concerns that raising complaints would lead to more invasive practices becoming official policy. Prisoners recognised the need for policies to cover a wide range of situations, but felt policies were being applied incorrectly and should be revised.

‘I understand the policy has to cover a whole broad thing. It’s not just for us, I get that, but it just seems some allowances sort of need to be ... as to the way that I read that policy, it’s a lot more flexible in the way we feel it is being interpreted.’

Many prisoners emphasised the stress associated with the inconsistency of strip searches, and that consistent implementation of procedures for each search could help alleviate stress and anxiety.

‘I really think that when we get strip searched, there should be a sign of the procedure and how it’s done, just so, you know, everyone is on the same page. Consistency between officers as well.’

This could be achieved through detailed policies clearly outlining the steps to be taken during a strip search, and displaying these steps prominently in areas where strip searches occur. The use of signs and infographics to provide information and aid understanding is discussed in more detail in *Information and guidance* on page 121 of this report.

‘I think like the biggest thing for what we are talking about today is that they really need like a procedure sign ... of how a strip search should be conducted ... just like bullet point form or something quick and easy ... they should have something so we know and they know that it’s been done the right way.’

Inconsistencies in the search process were attributed, in part, to staff members receiving insufficient training and lacking clarity on proper procedures. Many staff members we spoke with expressed that existing strip search guidelines lacked clarity, and caused difficulty and confusion, especially for new recruits. They recommended revising the policy to provide clearer instructions with less room for individual interpretation, with one staff member describing the way searches were

⁴¹⁴ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

⁴¹⁵ Prisoners’ Legal Service consultation, 17 April 2023

⁴¹⁶ Legal Aid Queensland consultation, 21 April 2023.

⁴¹⁷ Sisters Inside Inc consultation (Townsville), 16 May 2023.

⁴¹⁸ Prisoners’ Legal Service consultation, 17 April 2023.

conducted as akin to a game of 'Chinese whispers'. Some staff members were uncertain about whether they were conducting searches correctly and viewed the current training on strip searching as unsatisfactory. A desire was expressed for clear guidelines and more comprehensive, trauma-informed training on how to conduct strip searches of women.

During discussions with prisoners, the distressing and inconsistent nature of strip searches conducted in watch houses were consistently raised. Although outside the scope of this Review, the traumatic experience of being strip searched in the watch house deterred prisoners from raising any concerns about practices during their time in prison, as they were simply relieved to no longer be in the watch house.

Current policy, procedure or practice

According to the COPD – Prisoner Search, strip searches are to adhere to practices contained in the Corrective Services Act and Corrective Services Regulations. Outdated practices, such as asking a prisoner to squat or lift their breasts, are explicitly prohibited.⁴¹⁹ Strip searches must be conducted using the 'top and tail' method, and prisoners should never be completely naked.⁴²⁰

During a strip search, a corrective services officer may instruct a prisoner to:⁴²¹

- hold their arms in the air
- stand with their legs apart
- lean forward, but only if reasonably necessary to conduct a more thorough search for contraband.⁴²²

A corrective services officer may also require a prisoner to:⁴²³

- run their fingers through their hair
- have their mouth and ears inspected
- lift each foot and wiggle their toes.

In practice, many staff members considered it appropriate and necessary to ask a prisoner to bend over at the hips with their arms against the wall or to lift their legs to the side. However, they emphasised that under no circumstances would a prisoner be asked to squat or cough during a strip search.

Human rights considerations

Limitations on human rights are exacerbated when searches are not conducted consistently, are more invasive than is permitted by policy, or than is required to achieve the purpose of the search. Instructing a prisoner to perform actions like squatting or lifting their breasts limits their right to privacy, right to humane treatment

⁴¹⁹ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7 [11.4].

⁴²⁰ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7, 8 [11.4].

⁴²¹ Corrective Services Regulation 2017 s 9(4); Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7 [11.4].

⁴²² Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 7–8 [11.4].

⁴²³ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 8 [11.4].

when deprived of liberty, and right to protection from degrading treatment.⁴²⁴ These limitations are unlikely to be justifiable when prohibited by policy.

To uphold the dignity of individuals being searched, the *Bangkok Rules* specify that searches be undertaken in a manner consistent with the dignity of the person being searched, with adherence to established procedures, and undertaken by adequately trained staff.⁴²⁵ Strip searches should never involve a prisoner being humiliated or entirely naked.⁴²⁶ Female corrective services staff should receive equal access to training as male staff,⁴²⁷ and all staff should be provided with training tailored to their duties that allows them the means to carry out their duties in a professional manner.⁴²⁸

Alternative approaches

To ensure the protection of a prisoner's human rights, strip searches should be conducted in the least invasive manner possible to achieve the purpose of the search. A prisoner should not be asked to do things that are not reasonably necessary or are disproportionate to achieving that purpose, including the risk posed by the prisoner.

In New South Wales a prisoner may only be told to bend over if a reasonable suspicion at the time of the search exists that the prisoner has something secreted in that part of her body. If a prisoner is asked to bend over during a search, a report must be submitted detailing why that type of search was conducted.⁴²⁹ In Tasmania female prisoners are required to face a wall and kick back one foot at a time at the knee to show the soles of their feet. There is no requirement for a prisoner to lift their legs higher or to bend over.⁴³⁰

Practices such as bending over, lifting legs high or standing wide apart are unnecessary and should be prohibited. By eliminating these practices, limitations on prisoners' rights would be reduced, their dignity would be better preserved, and the trauma inflicted would be lessened.

Routine searches do not occur for women prisoners in England and Wales. Where a strip search is determined to be necessary, two approaches are available depending on the scale of the risk. A Level 1 search allows women to keep their underwear on during the search. A Level 2 search involving a full removal of clothing can only be conducted where the reasons are explained to the prisoner and a justification is recorded in writing.⁴³¹ In conducting the risk assessment, consideration must be given to whether:

- there is intelligence or reasonable suspicion during Level 1 of the search that the individual has an item concealed within their underwear

⁴²⁴ *Human Rights Act 2019* ss 17, 25, 30.

⁴²⁵ United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc A/Res/65/457 (21 December 2010) 13, rule 19; United Nations General Assembly, *International Covenant on Civil and Political Rights*, res 2200A (XXI) (16 December 1966) art 17; United Nations Human Rights Committee, *General Comment No 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation*, 32nd sess (8 April 1988).

⁴²⁶ United Nations Office on Drugs and Crime, *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with Their Commentary* (2009) rule 32.

⁴²⁷ United Nations General Assembly *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* UN Doc A/Res/65/457 (21 December 2010) rule 32.

⁴²⁸ United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* UN Doc A/RES/70/175 (17 December 2015) rule 75.

⁴²⁹ Corrective Services NSW, *Custodial Operations Policy and Procedures, Searching inmates*, Ver 1.9, September 2021, 13 [4.2].

⁴³⁰ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

⁴³¹ His Majesty's Prison and Probation Service (UK), *Prison and Probation Policy Framework, Searching Policy Framework*, April 2023, 27 [4.10.2]–[4.10.3].

- there is intelligence or reasonable suspicion that the individual has an item concealed which has not been discovered during the Level 1 search
- items are found during the Level 1 search and there is intelligence or reasonable suspicion that further items are concealed.⁴³²

In addition, the policy from England and Wales specifically instructs corrective services officers to take a ‘trauma informed approach’. This is defined as an approach which allows the prisoner to feel safe, make choices and collaborate in the process as much as possible. Corrective services officers are required to:⁴³³

- explain clearly what they are going to do, before they do it, and make sure the prisoner understands
- take their time with the search
- avoid shouting, even if the prisoner is shouting at them, and
- keep a calm and reassuring manner, offering the prisoner the opportunity to ask questions about the next stage of the search process prior to it beginning.

The Commission’s position

The Commission considers that:

- Particular sensitivity should be exercised when searching women. A lack of consistency between strip searches exacerbates trauma as prisoners do not know what level of invasiveness to expect.
- To address the issue of inconsistency in conducting searches, steps should be clearly outlined in a detailed policy that leaves little room for individual discretion or interpretation, unless reasonable accommodations are being made to address individual needs. Displaying these steps prominently in areas where strip searches occur, as recommended above in *Information and guidance* on page 121 of this report, would encourage adherence and promote consistency, thereby lessening some of the stress and anxiety associated with searches.
- When a strip search is conducted, it should not be more invasive than is necessary, having regard to the risk determined by an individual risk assessment.
- Many of the invasive practices identified as occurring, such as a requirement for a prisoner to bend over or to stand with their legs further than hip width apart, are not necessary for the purpose of checking if a prisoner has contraband on her person. The purpose of a strip search is not to ascertain whether a prisoner has contraband concealed internally.
- During targeted searches, Queensland Corrective Services should implement a process similar to the approach in England and Wales of only requiring women to remove their underwear if there is reasonable intelligence to indicate that a prisoner has something concealed in the

⁴³² His Majesty’s Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching policy framework: Search Procedure Annex D*, April 2023, 1.

⁴³³ His Majesty’s Prison and Probation Service (UK), Prison and Probation Policy Framework, *Searching policy framework: Search Instructions Women’s Estate Annex 4*, April 2023, 2.

underwear. This would help preserve the woman's dignity compared with a search in which the woman's genitals are exposed.

- The COPD – Prisoner Search should be amended to specify that prisoners only need to bend their leg at the knee for the purposes of checking under their feet and between their toes.
- Inadequate training contributes to inconsistent implementation of policies by staff members. Specific training should be developed on the procedure of strip searching women specifically, as recommended above in *Psychological and emotional harm* on page 58 of this report. This training should address how the search process can be more trauma informed.

Recommendation 21: Create a clear, consistent and less invasive search method

21.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:

- contain a detailed step-by-step process of the strip searching procedure as outlined in Appendix C of this report.
- state that strip searches should not require the removal of underwear as a standard practice, unless intelligence is available or reasonable suspicion has arisen prior to or during the search to indicate that contraband is concealed in the underwear. Where underwear is required to be removed, the corrective services officer should explain the reason to the prisoner and document the justification for this decision.

21.2 Queensland Corrective Services should develop specific training programs for staff members that focus on conducting strip searches of women. This training should address the unique needs, sensitivities, and trauma-informed approaches required when conducting strip searches of female prisoners.

Non-compliant prisoners

This section examines the handling of non-compliant prisoners who refuse to undergo a strip search or resist during the search process. The use of force in a prison environment should be used sparingly. In line with the *Guiding Principles for Corrections in Australia*, corrective services officers should employ only the minimum necessary force and should be trained in de-escalation techniques.⁴³⁴

All staff members we spoke with stressed that, though permitted by policy, it was extremely rare for prisoners to be forcibly strip searched, and mentioned concerns for the safety of both the prisoner and corrective services staff members. We were told that when a prisoner becomes upset or aggressive during a strip search, staff members withdraw and do not continue the search. If they believe that exceptional circumstances necessitate a forced search, Chief Superintendent approval would be required. However, the COPD – Prisoner Search does not reflect this.

⁴³⁴ Corrective Services Administrators Council, *Guiding Principles for Corrections in Australia* (revised 2018), principle 3.1.14–3.1.15.

When a prisoner does not consent to or comply with a strip search, staff members advised the Review team that the usual process involves placing the prisoner in a dry cell under regular observation and ‘waiting them out’ until they eventually consent to the search. We heard this could be a lengthy process, with one prisoner being kept in a dry cell on constant observation for a month, until she eventually consented to be strip searched due to the discomfort of being continuously observed. This procedure for handling non-compliance largely aligned with what prisoners told us. Prisoners shared instances of being placed in dry cells or Detention Units if they refused to be strip searched. However, prisoners often told us that there is ‘no point saying no’ as refusing or questioning a staff members direction would constitute a disciplinary breach and affect their rights, visits, privileges, and prospects of parole. A disciplinary breach often includes restrictions on a prisoner’s ability to contact family and friends.⁴³⁵ These restrictions fail to recognise the importance of maintaining family links for female prisoners.⁴³⁶ Women who are in prison should be encouraged to maintain contact with their children and restrictions on visits as a disciplinary sanction should be avoided.

While we were not told that force was routinely used during strip searches, prisoners did tell us about occasions where force was used, including instances where force was used while the prisoner was naked or partially dressed. One prisoner made a complaint to an official visitor about being removed from her cell by corrective services officers and her gown was cut off in the presence of male officers. The official visitor considered this complaint but declined to make recommendations. We were told about occasions on which prisoners who resisted or became non-compliant were restrained while their clothes were cut or removed, and we heard from prisoners who had witnessed forced strip searches where males were nearby. One particularly concerning story was shared with the Review team about a woman with a history of sexual abuse who began to panic when she was left with four male staff members while waiting for female staff members to arrive. A prisoner who witnessed these events told us that:

‘She started like crying and she was like getting really hysterical... she was freaking out because she had been raped ... she was like, reliving her trauma ... all she wanted to do was turn around so she could see them ... she’s freaking out because she has males behind her. And then they’re screaming at her and she says, all she wants to do is to be able to see them ... they end up grabbing her and smashing her on the ground ... they hog carried her to the Detention Unit...she said like, all she wanted to do was be able to see... they weren’t taking into account that she had been raped and she had this really bad trauma ... they ended up taking her down there and stripped her anyway, stripped her naked and held her down... they stripped her because she was just freaking out’.

Current policy, procedure or practice

Corrective services officers have the authority to use necessary force, excluding lethal force, to ensure a prisoner’s compliance with orders, including to submit to a strip search.⁴³⁷ This is reflected in the COPD – Prisoner Search which, while

⁴³⁵ Jude McCulloch and Amanda George, *Naked Power: Strip Searching in Women’s Prisons* in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2008).

⁴³⁶ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) 15, 26.

⁴³⁷ *Corrective Services Act 2006* (Qld) s 143.

prohibiting physical contact with a prisoner while the prisoner is being searched, permits the use of reasonable force to compel compliance.⁴³⁸ A further reference to use of force is contained in the COPD – Safety and Security Equipment: Body Worn cameras, as discussed in the next section – *Surveillance and cameras* on page 136.

Local instructions for Townsville Correctional Centre and Southern Queensland Correctional Centre state that women who do not consent to a strip search should be placed under constant observation until they are compliant and do not present a risk to staff member safety. If force is deemed necessary to conduct the search, approval from the appropriate delegate must be obtained.⁴³⁹ The local instruction for the Brisbane region does not detail the procedure for when a prisoner is non-compliant during a strip search.⁴⁴⁰

Human rights considerations

Use of force during strip searches limits a prisoner's right to privacy, and in particular their right to bodily autonomy and dignity.⁴⁴¹ The manner in which a strip search is conducted could limit a prisoner's right to privacy where there are less restrictive alternatives available, such as the use of dry cells and observation.

As previously discussed, a significant number of women in prison have experienced sexual assault or domestic violence, making the forcible removal of their clothing particularly traumatic and triggering. Such strip searches would be likely to unreasonably limit a prisoner's right not to be treated in a cruel, inhuman or degrading way and their right to humane treatment when deprived of liberty.⁴⁴²

The *Mandela Rules* only permit the use of force in cases of self-defence, attempted escape, and active or passive resistance to a lawful order. The force used must be no more than is strictly necessary.⁴⁴³ The *Bangkok Rules* emphasise the need for prison staff to be sensitive to situations in which women may experience distress and provide appropriate support.⁴⁴⁴

Non-compliance with strip searches usually results in the loss of privileges, including receiving visits from children, family and friends, and the frequency of those visits, which limits the right to family.⁴⁴⁵ For further discussion on human rights engaged when visits are restricted, refer to *Drug testing – Human rights considerations* on page 74 of this report.

Alternative approaches

Many staff members said that alternatives to use of force for handling non-compliant prisoners are available. Either staff members can attempt to de-escalate the situation or wait longer and continue to observe the prisoner until they are ready for the search to continue.

⁴³⁸ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 8 [11.4].

⁴³⁹ Queensland Corrective Services, *Local Instruction: Removal of Clothing Services: Southern Queensland Correctional Centre*, Ver 1.0, July 2021; Queensland Corrective Services, *Local Instruction: Removal of Clothing Searches: Townsville Women's Correctional Centre (including low custody)*, Ver 3, March 2018.

⁴⁴⁰ Queensland Corrective Services, *Local Instruction - Removal of Clothing Services* (Brisbane Women's Correctional Centre, Townsville Women's Correctional Centre (including low custody), Numinbah Correctional Centre, Helana Jones Centre, Warwick and Bowen Work Camps), Ver 03, April 2014.

⁴⁴¹ *Human Rights Act 2019* (Qld) s 25.

⁴⁴² *Human Rights Act 2019* (Qld) ss 17, 30.

⁴⁴³ United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) 24–25, rule 82.

⁴⁴⁴ United Nations General Assembly, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), UN Doc A/Res/65/457 (21 December 2010) 12, rule 9.

⁴⁴⁵ *Human Rights Act 2019* (Qld) s 26.

The standard practice when a prisoner is non-compliant is to place them in a dry cell and keep them under observation until they consent to the search. This practice imposes fewer limitations on a prisoner's rights than a forced strip search. However, prior to segregating a non-compliant prisoner in a dry cell, attempts should be made to talk to the prisoner about the reason for the search, why they are refusing, and an individual risk assessment conducted.

Women's prisons in comparable jurisdictions reported a marked reduction in non-compliance with strip searches since introducing a policy that corrective services officers provide the prisoner with the reasons for the search, and the prisoner is talked through the procedure in advance.⁴⁴⁶

In 2021, the ACT Inspector of Correctional Services conducted an investigation into the use of force during a strip search of a female Aboriginal prisoner. As a result, recommendations were made to improve policy and better protect prisoners' rights. These recommendations include expediting the procurement of body scan technology and that corrective services officers explicitly consider a prisoner's human rights before conducting a planned use of force to carry out a strip search.⁴⁴⁷

If, for an emergency reason, a forced strip search does occur, male staff members should not be involved. Canadian policy states that a male staff member, will not, under any circumstances, even in an emergency, conduct or witness the strip search of a woman inmate. Rather, they are expected to contain the scene until female staff members arrive.⁴⁴⁸

The Commission's position

The Commission considers that:

- Many women in Queensland prisons have been victims of sexual and physical violence. To avoid retraumatising and triggering women, force should not be used during strip searches, particularly as less restrictive alternatives are available.
- A forced strip search should never occur due to non-compliance with the strip search process or for any other reason, unless there is a real and present risk to the prisoner. If a prisoner becomes non-compliant during a strip search, corrective services officers should withdraw.
- Providing comprehensive information and talking prisoners through the strip search process has been effective in reducing non-compliance among prisoners in comparable jurisdictions. [See also - *Information and guidance* on page 121.]
- Male officers should only be involved in restraining naked or partially clothed female prisoners if absolutely necessary after all attempts at de-escalation have failed and there is a clear and identifiable danger to the prisoner's or another person's safety if the prisoner is not immediately restrained. The COPD – Prisoner Search should be amended to make clear that if this occurs, male staff members are expected to contain the situation until female staff members arrive, but under no circumstances should they conduct a strip search themselves or remain in the area as witnesses.

⁴⁴⁶ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

⁴⁴⁷ ACT of Inspector of Correctional Services, *Report of a Critical Incident: Use of force to conduct a strip search at the Alexander Maconochie Centre on 11 January 2021* (2021), 4–5.

⁴⁴⁸ Correctional Service Canada, Commissioner's Directive, *Searching of Offenders*, December 2017.

- The introduction of body scanners as a replacement for strip searches is expected to significantly reduce non-compliance rates.
- When a prisoner refuses a strip search, the General Manager should decide whether to place the prisoner in a dry cell for observation or if a pat down search is sufficient. Human rights should be expressly considered in the making of this decision and this decision-making should be clearly documented. Pat down searches should be favoured where there is a low risk that the prisoner has contraband concealed.
- Disciplinary breaches resulting from refusing to comply with a strip search may lead to the loss of privileges, including contact visits with children and family. Restricting a woman's contact with her children is counterproductive to rehabilitation and should not be used as punishment.

Recommendation 22: Do not use force when strip searching a prisoner

22.1 Queensland Corrective Services should update the Custodial Operations Practice Directives – Prisoner Search and the Custodial Operations Practice Directives – Use of Force to:

- state that use of force should never be used during strip searches, and that if a situation escalates, corrective services officers should immediately withdraw for their own safety and the safety of the prisoner
- formalise through policy the existing practice of talking with the prisoner about the reasons for the search and how it will proceed and placing the prisoner in a dry cell on observation until they are ready to be searched
- permit pat down searches instead of strip searches where it is more likely to lead to compliance and the situation is low risk
- clarify that disciplinary breaches for refusing to consent or delaying consent for a search should not limit a prisoner's ability to have personal contact visits with their children.

Surveillance and cameras

The use of surveillance and cameras in prison environments can be useful to preserve evidence should a situation escalate. However, using video technology can raise serious privacy concerns for prisoners, and prisons must carefully balance these issues.

Surveillance and monitoring

During our prison site visits we observed the areas in which strip searches regularly occur, including rooms where urine tests are conducted, visits areas, reception areas, Detention Units, and Safety Units. Many locations had no surveillance cameras, but some areas had cameras installed and operating at the time of our site visit.

We observed there were surveillance cameras in the Detention and Safety Units in all three high security prisons – Brisbane Women’s Correctional Centre, Southern Queensland Correctional Centre, and Townsville Correctional Centre. At Numinbah Correctional Centre, cameras were installed in both locations where strip searches occur – the video conferencing room and the holding cell. The only place strip searches take place in Helana Jones centre is a bathroom, prior to urine testing, and this room did not contain a camera.

In the Safety Unit and Detention Units in high security we were told by staff members that it is not possible to turn the cameras off. Prisoners confirmed they have asked for cameras to be switched off during searches and were told this is not allowed. Being observed on a surveillance camera was a serious concern for prisoners, in particular the perception that male officers had access to watch the monitoring devices while the strip search was in progress.

‘We need women, if it’s going to happen, we need women to do it and it needs to be not on cameras, because like the thing that I’ve heard the most after all these years now is women saying they are getting stripped on camera when males see that.’

Some high security prisoners who had experience being in the Safety Unit or Detention Unit told us they believed cameras are always turned on while they are being strip searched. We heard from numerous prisoners who were aware of male staff members having access to the monitoring systems while they were being searched. Some said they had seen male staff members sitting at the monitoring station during searches. Sisters Inside said that prisoners had reported to them that male officers made comments about women’s bodies after viewing them on a monitoring device.

Corrective services officers told us they take steps to safeguard the privacy of prisoners to ensure male officers do not view strip searches remotely. The strategies taken to manage this varied from location to location – some left the monitoring station unattended briefly, and swapped a male staff member with a female staff member at the monitoring station, or simply required male officers to turn away and stop looking at the screen. Female officers told us they would also toggle the primary camera to the view of another cell, which means the image of the woman being strip searched would be smaller on the screen.

Staff members in the Safety Unit explained there was an issue with leaving a monitoring station unattended, as they need to watch the prisoners at all times for their safety. As some cells do not have a call button to get help, staff members need to be diligently monitoring cells.

In Numinbah Correctional Centre we were advised by staff members that cameras are switched off entirely in the holding cell or video conferencing room when a male is in the duty office.

Body worn cameras

Staff members do not routinely wear body worn cameras, but staff members in the Detention Unit and Safety Unit had body worn cameras available for use during our site visits. We asked about how these cameras are used and heard about a wide variety of practices.

In one high security prison we heard body worn cameras were entirely switched off during strip searches. At another high security prison, we were told by staff members they turn off the video function on the body worn camera but keep the audio recording. In a third location we heard the behaviour of the prisoner dictates what they do and whether they decide to record video or audio or neither. If corrective services officers decide to record video, it will be generally pointed away from the woman being searched but would be pointed directly at the prisoner if the situation 'turns into an incident'.

In a 2019 report conducted by the University of Queensland which focused on body-worn cameras and CCTV in prisons, it was revealed that 12% of the correctional services officers surveyed stated they would use their body worn cameras during a strip search.⁴⁴⁹

Consent to being recorded

In the case of a critical incident, Queensland Corrective Services (QCS) may need to access camera footage, whether from body worn cameras or surveillance cameras, to investigate what occurred and preserve relevant video evidence.

While many prisoners thought cameras should be turned off completely when a strip search is being conducted, legal stakeholders pointed out that any evidence of a strip search that did not proceed lawfully or in accordance with policy would be lost if the cameras were off.⁴⁵⁰ Legal Aid Queensland commented that the approach of keeping video off but recording audio was also problematic because it may lead to unclear or easily misinterpreted evidence. Sisters Inside suggested it should be up to individual women if they would like the cameras on while they are being strip searched.⁴⁵¹

Current policy, procedure or practice

The Corrective Services Regulation states that a search requiring the removal of a prisoner's clothing must not be carried out in the presence of a person who is not conducting the search. Also, if a corrective services officer who is not the same sex as the prisoner being searched can view the image on a monitoring device, the

⁴⁴⁹ Emma Antrobus, Shannon Dodd and Michelle Sydes, *Cameras in Corrections: A report to Queensland Corrective Services* (Report, The University of Queensland, 1 July 2019) 28.

⁴⁵⁰ Queensland Advocacy for Inclusion consultation, 4 April 2023; Prisoners' Legal Service consultation, 17 April 2023.

⁴⁵¹ Sisters Inside Inc consultation (Brisbane), 26 April 2023.

corrective service officer conducting the search must ensure that the monitor is turned off during the search, or the officer must carry out the search out of view of the monitoring device.⁴⁵²

Under the Corrective Services Regulation recording must be kept 'securely' and only given to relevant persons.⁴⁵³

The COPD – Prisoner Search⁴⁵⁴ sets out Corrective Services Regulation requirements, and adds that a body worn camera must not be activated to record a search of a prisoner requiring the removal of clothing.

However, the COPD – Safety and Security Equipment: Body Worn Cameras (BWC) permits the body worn cameras to be used when there is a use of force incident.⁴⁵⁵ Staff may use audio, in particular where the prisoner may be 'elevated in their demeanour'. In those circumstances the officer with the body worn camera should position themselves outside the cell, or in such a way that the body worn camera does not film the search, but the audio function will record the interaction.⁴⁵⁶

As described above, practice was inconsistent depending on the location.

Human rights considerations

Prisoners have the right not to have their privacy arbitrarily interfered with.⁴⁵⁷ A prisoner's right to privacy is severely limited when they are made to undergo a strip search in front of a surveillance camera that is recording. They have the right to have the privacy of their body respected.

By strip searching a prisoner in front of a surveillance camera, corrective services officers are not treating a prisoner with humanity and dignity, which is a limitation on the prisoner's right to humane treatment when deprived of liberty.⁴⁵⁸ A further limitation of this right would occur if a staff member observed the prisoner being strip searched on camera and made comments and remarks to the prisoner or other staff members about this.

Alternative approaches

In New South Wales, video recording is only permitted when:⁴⁵⁹

- conducting a targeted search for contraband
- an inmate is non-compliant, or
- there is reasonable grounds for believing that an inmate may be aggressive towards staff.

⁴⁵² *Corrective Services Regulation 2017* (Qld) s 9.

⁴⁵³ *Corrective Services Regulation 2017* (Qld) s 10.

⁴⁵⁴ Queensland Corrective Services, Practice Direction, *Custodial Operations Practice Directives (COPD): Search: Prisoner Search*, Ver 3.1, March 2022, 8 [11.5].

⁴⁵⁵ Queensland Corrective Services, Practice Directions, *Custodial Operations Practice Directives (COPD): Safety and Security Equipment: Body Worn Cameras*, Ver 06, 17 March 2022, 5 [5.1].

⁴⁵⁶ Queensland Corrective Services, Practice Directions, *Custodial Operations Practice Directives (COPD): Safety and Security Equipment: Body Worn Cameras*, Ver 06, 17 March 2022, 6 [5.3].

⁴⁵⁷ *Human Rights Act 2019* (Qld) s 25.

⁴⁵⁸ *Human Rights Act 2019* (Qld) s 30.

⁴⁵⁹ Corrective Services NSW, Custodial Operations Policy and Procedures, *Searching inmates*, Ver 1.9, September 2021, 5 [1.3].

All strip searches are to be recorded by certain officers from the following units who are permitted to do so using body worn or hand-held video cameras:

- Immediate Action Team (IAT)
- Security Operations Group (SOG) Extreme High Security Escort Unit (EHSEU)
- Court Escort Security Unit (CESU).

The policy includes a note stating the focus of a hand-held video camera should, where practicable, be confined to the upper torso of male inmates, or the clothed parts of the body of female inmates.

Another less restrictive alternative operates in the ACT. The CCTV Policy states that the viewing of live or recorded CCTV is strictly limited to positions and circumstances that require this access. Staff must have a genuine reason for viewing the footage of a strip search.⁴⁶⁰

The Commission's position

The Commission considers that:

- Having surveillance cameras in areas where prisoners are strip searched is a serious limitation on the right to privacy, and the sense of being watched during a strip search can worsen a prisoner's feelings of trauma and humiliation.
- Accounts from corrective services officers and prisoners were contradictory about whether male officers could view a monitoring device when a prisoner was being strip searched. The Corrective Services Regulation and COPD – Prisoner search allows some flexibility and the device or monitoring system may be turned off, or kept going – but only in the presence of a female officer.
- In practice, this flexibility has led to a variety of methods to comply with the requirement: turning off the system, having the male officer leave the room, or simply having a male officer turn away from the screen.
- Male staff members remaining in the room where the monitoring device is located fosters a strong perception that women are being watched during the search, which exacerbates feelings of distress and humiliation.
- The Review understands that current overcrowding in women's prisons in Queensland makes it hard to move prisoners to an area that is out view of surveillance cameras, particularly if the prisoner is being placed in the Detention Unit or Safety Unit, which has fixed cameras in a confined area. If the prison has the facilities to move the prisoner to another area for the search, this is the preferred option. If this cannot be done, any male officer should remove themselves completely from the room where a monitoring system is active during a search.
- As is current practice in some locations, the COPD – Prisoner search should clarify that a female staff member at the monitoring station should either turn off the image from the cell where the search is occurring or, at a minimum, move the image of the person being searched so that it is not the

⁴⁶⁰ ACT Corrective Services, Policies and Operating Procedures: Custodial Operations, *Searching*, Ver 2, January 2022, 12 [8.16].

primary image displayed on the screen. Corrective service officers may need to concurrently monitor other prisoners, especially prisoners located in the Safety Unit, and cannot abandon monitoring of the security cameras which may put other prisoners at risk.

- The COPD – Safety and Security: Body Worn Cameras requires more clarity about what the word ‘activated’ means when referring to body worn cameras. The COPD should state that both audio and visual functions of a body worn camera are to be turned off during a strip search. Having audio turned on during a strip search but the video turned off may create incomplete or misleading evidence.
- As discussed under *Non-compliant prisoners* on page 131 of this report, use of force should never be used during a strip search, and staff members involved should withdraw if the situation escalates. Consistent with this advice, there should be no situations in which it is necessary to film or audio record a strip search which has escalated.
- Installing more cameras in Numinbah Correctional Centre may lead to a reduction in strip searches to detect suspected contraband.


Recommendation 23: Improve prisoner privacy when using surveillance and body worn cameras

23.1 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Prisoner Search to:

- require that searches should occur out of view of surveillance cameras if reasonably practicable
- require that male officers remove themselves completely from a room in which a monitoring system is located when a surveillance camera is pointed at a place where a strip search is occurring
- state that any female officers monitoring a device where a strip search is occurring should either turn off the screen or move the image feed so it is not the primary image displayed on the device.

23.2 Queensland Corrective Services should amend the Custodial Operations Practice Directives – Safety and Security Equipment: Body Worn Cameras to:

- clarify that to not ‘activate’ a body worn camera during a strip search means neither turning on the video function nor the audio function
- remove the reference to a ‘use of force incident’ arising during a strip search as well as the authority for such an incident to be recorded.



What alternative
approaches are
available?

What alternative approaches are available?

In this section, we explore what reasonably available and less intrusive alternatives are available to Queensland Corrective Services (QCS) that could minimise or entirely replace the use of strip searches and urine testing for drugs.

Scanning technology

In *Hear Her Voice*, the Taskforce recommended that QCS take immediate steps to introduce the widespread use of non-invasive screening technology in all women's prisons.⁴⁶¹

At the time of writing, QCS is preparing for a trial of body scanners in the Brisbane Women's Correctional Centre to take place between March and August 2024, with an evaluation of the outcomes of the trial to be completed between August and December 2024.

Non-invasive screening technology is either currently in use or its introduction is imminent in several comparable Australian jurisdictions, to significantly reduce or eliminate strip searching. Body scanners detect objects on or inside the bodies of prisoners without physical contact or the need for clothing to be removed, aside from outer layers. As well as preventing the trauma and adverse consequences to prisoners and staff members that arise from the practice of strip searching prisoners, body scanners detect concealed contraband that strip searches are likely to miss, enhancing safety for prisoners and staff members.

In 2006 and 2019, the Commission recommended that QCS implement new, non-invasive screening technology to replace routine strip searches in all women's prisons. In the 2006 *Women in prison* report, the Commission advised:

'(that) prison authorities, at all times, be aware of the development and use of any new technologies or less intrusive methods of search that can replace the need for routine strip searching in secure prisons. Any equally effective and viable but less intrusive and humiliating alternatives that are developed, should immediately replace routine strip searching.'⁴⁶²

The implementation of body scanning technology is in line with international human rights standards. The *Bangkok Rules* emphasise the need for alternative screening methods to replace strip searches to avoid the negative impact of searches on female prisoners. The *Bangkok Rules* make clear that if alternative searching technology is available, then it should be used instead of strip searching. As noted by Queensland Advocacy for Inclusion (QAI), Use of alternative search techniques in public settings, such as airports, is widespread in Australia and there should be no impediment to introducing this technology in prisons, particularly given the vulnerability of female prisoners. Queensland Advocacy for Inclusion considered that the cost of putting a scanner at each prison is not unreasonable compared with

⁴⁶¹ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022) 624, recommendation 136.

⁴⁶² Anti-Discrimination Commission Queensland, *Women in Prison: A Report by the Anti-Discrimination Commission Queensland* (2006) 10; Queensland Human Rights Commission, *Women in Prison 2019: A Human Rights Consultation Report* (2019) 125.

the personal cost of the loss of dignity for prisoners, taking account of the fact that strip searches are not proven to be effective.⁴⁶³

The introduction of body scanning technology received overwhelming support from prisoners, stakeholders, and staff members. Prisoners were enthusiastic about body scanners, especially for expediting searches and reducing strip searching. Particular benefits for prisoners with cultural or religious needs, as well as prisoners who have experienced trauma were highlighted. Many stakeholders we spoke with believed body scanners had the potential to eliminate the need for strip searching entirely.⁴⁶⁴ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) expressed support for body scanners, believing they would create a safer and less invasive environment for both prisoners and staff.⁴⁶⁵ They anticipated that the use of body scanners would improve relationships with staff members and contribute to better outcomes within the prison system.

Staff members viewed body scanners as safer, less intrusive, and more effective for locating contraband. This view is supported by research, with a 2019 review of body scanners at Washington Women's prison finding they reduced strip searches and significantly increased detection of contraband.⁴⁶⁶ Staff members stressed that more than one body scanner was needed to significantly reduce or eliminate strip searching, with visits, reception, and the Detention Unit nominated as busy locations. The practical difficulty of moving prisoners from one part of the prison to another before searches was used as justification for multiple scanners being installed in high security prisons.

Despite the significant support for body scanners, concerns were raised with the Review team. Some staff members raised concerns about the effectiveness of the technology, while exposure to radiation was raised as a concern by some prisoners and staff members. Some staff members raised privacy concerns about a colleague or superior seeing the inside of their body or anatomy, should staff members be required to be routinely body-scanned. Legal Aid Queensland expressed concerns that body scanners would lead to more frequent, and potentially arbitrary searches, and called for a reasonable suspicion to still be required before a prisoner can be body-scanned.⁴⁶⁷

Comparable jurisdictions have implemented, or are in the process of implementing, x-ray and millimetre wave body scanning technology to replace strip searches. In New South Wales prisoners are body-scanned in circumstances where strip searches would usually be routine and may be body-scanned at any other time where they would otherwise be strip searched, such as when a prisoner is suspected of carrying contraband.⁴⁶⁸ The ACT has introduced body scans as of April 2023 and Tasmania anticipates that body scanners will be operational in prison and remand centres by the end of 2023. The intention of these jurisdictions is to replace all, or the majority of, routine searches and searches on reception with body scans.

⁴⁶³ Queensland Advocacy for Inclusion consultation, 4 April 2023

⁴⁶⁴ Elders for Change (Australian Red Cross) consultation, 16 May 2023; Sisters for Change (Australian Red Cross) consultation, 16 May 2023; First Nations Women's Legal Service Queensland consultation, 16 May 2023; official visitors (Queensland Corrective Services) roundtable, 1 June 2023; Queensland Indigenous Family Violence Legal Service consultation, 11 May 2023.

⁴⁶⁵ Throughcare Program (Aboriginal and Torres Strait Islander Legal Service) consultation, 8 April 2023.

⁴⁶⁶ Department of Corrections, Washington State, *A Review of Full Body Scanners: An Alternative to Strip Searches of Incarcerated Individuals* (Report to the Legislature, December 2017) 3, 7.

⁴⁶⁷ Legal Aid Queensland consultation, 21 April 2023.

⁴⁶⁸ Corrective Services NSW, Custodial Operations Policy and Procedures, *Body Scanning*, Ver 4.1, Jan 2023, 13 [4.1].

Victorian prisons use a combination of millimetre wave and x-ray transmission scanners, with the latter found to be more effective and easier for staff to use.⁴⁶⁹ X-ray transmission body scanners can detect contraband concealed in clothing and internally. However, millimetre wave scanners have the advantage of being safe for pregnant women and people with medical implants.⁴⁷⁰ Both millimetre wave and x-ray transmission scans may be used as an alternative to a strip search where available and practicable to do so.⁴⁷¹

In Tasmania, x-ray transmission body scanners have been sourced but were not yet operational at the time of our Review. We heard that these scanners show morphology only and the body part of a person being scanned will only be able to be seen in detail if there is contraband concealed in that location.⁴⁷²

To prevent the use of body scanners being used in addition to strip searches, rather than instead of them, staff members' perception of the effectiveness of this technology will be a prime concern to be addressed. The New South Wales Inspector of Custodial Services found that a lack of confidence in the technology when body scanners were originally introduced in New South Wales led to women being strip searched and then scanned if something was suspected.⁴⁷³ Such an approach would constitute an arbitrary interference with a prisoners' privacy and would represent a significant and disproportionate limitation on human rights.

When body scanners are introduced, prisoners must be provided with information about the scanning process to ensure transparency and informed consent. Other jurisdictions have created videos to show prisoners on entry to prison, the scanning procedure, examples of the scan results, and specifically stating who can access these images.⁴⁷⁴ As discussed in *Information and guidance* in this report on page 121 of this report, prisoners must be provided with information about processes that directly affect them and their bodies. The Review recommends that Queensland Corrective Services develop a similar resource.

Compared to strip searching, body scanners are less invasive, minimise potential trauma, and protect prisoners' rights. Although not infallible, their purpose is to replace or significantly reduce the need for strip searching. Considering the ineffectiveness of strip searches in detecting contraband and the harm they cause to vulnerable prisoners, body scanners are a significant improvement and represent a positive step towards taking a more trauma-informed approach to the management of female prisoners.

⁴⁶⁹ Corrections Victoria consultation, 5 May 2023.

⁴⁷⁰ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 2 [3.8].

⁴⁷¹ Corrections Victoria, Commissioner's Requirements, *Strip Searches in Prisons*, Ver 9, November 2022, 2 [3.8].

⁴⁷² General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

⁴⁷³ Inspector of Custodial Services NSW consultation, 15 May 2023.

⁴⁷⁴ General Manager - Mary Hutchinson Women's Prison consultation, 25 May 2023.

Swab testing

As explored in detail in the *Drug testing* section of this report (on page 71) the drug testing process was identified as a significant contributor to unnecessary strip searches, which occur for the purpose of reducing the likelihood that a prisoner will have an opportunity to tamper with a urine sample. Replacing initial drug testing using urine samples with saliva swab testing was raised with the Review team by staff members, prisoners, and stakeholders.

Staff members expressed strong support for the implementation of saliva testing as an initial drug testing method, as it offers advantages over urine testing. Swab testing is quicker, providing instant results, and does not require prisoners to be separated from other prisoners or escorted across the prison to a place where urine testing is done. Staff members thought saliva testing would create a safer workplace, reduce the risk of assault with bodily fluids, minimise behavioural incidents, and free up staff resources. Staff members anticipated the adoption of saliva testing would reduce the vicarious trauma impact on themselves and minimise unnecessary strip searches, which were acknowledged as traumatic for prisoners. Staff members also felt that productivity would be improved because of reducing the time it takes to supervise a drug test; it can currently take up to one hour each of two staff members' time to wait for a prisoner to provide a urine sample.

Prisoners supported saliva swab testing as a way to minimise strip searches. Many prisoners also raised the benefit that this would have for women with a trauma background or prisoners who cannot urinate while supervised. It was seen as a significant improvement that saliva testing would practically eliminate 'positive' results caused by failure to provide a sample and, therefore, be a fairer, more equitable, and more effective way to test for drugs.

Some prisoners were concerned certain medication could cause false positive results from swab tests. To address this, staff members should ask prisoners about their prescribed medications, check this against prisoner records, and if a presumptive positive result is received seek further medical clarification if necessary.

The main concern raised by staff members was uncertainty about whether saliva swab testing could effectively test for common prison drugs such as buprenorphine and methadone. Victoria Corrections has successfully implemented saliva testing in women's prisons, and when this initiative was introduced, a test was developed at their request to detect buprenorphine and methadone, and we understand this is now widely available.⁴⁷⁵

When prisoners in Victoria are given a saliva swab test, they are tested for these drugs in addition to drugs such as cannabis and methamphetamine. Prisoners who are randomly selected for drug testing and have not had drug incidents or intelligence in the past five years are tested for drugs using a saliva swab test. A saliva swab test is indicative only, and in the case of a presumptive positive result, further urine testing may be required for additional analysis.⁴⁷⁶ However, the Victorian experience suggests that saliva swab testing has a shorter detection window than urine testing.

⁴⁷⁵ 'Saliva Detection Device DrugWipe 2S', *Pathtech* (Web Page, 2023) <https://www.pathtech.com.au/173_dash_S207G/Saliva-Detection-Device-DrugWipe-2S/pd.php>.

⁴⁷⁶ However, a strip search is not mandatory prior to this urine test. Corrections Victoria, Commissioner's Requirements, *Drug Testing and Category IDU A*, Ver 5, October 2021, 2 [5.2.3].

The implementation of saliva swab testing to replace most urine tests would significantly reduce the number of strip searches performed on prisoners, and reduce the traumatising effect on victims of sexual or domestic violence that is associated with the urine testing process, and remove a procedure that humiliates and strips prisoners subjected to it of their dignity.

We understand that this form of testing has a shorter detection window than urine testing. In this report we have recommended in Recommendation 6.3 that saliva swab testing replace initial urine testing for all prisoners who have not had a drug-related incident in the past 12 months and who are not the subject of direct intelligence indicating drug use.

The Review considers that the reasonable and proportionate use of saliva swab testing is compatible with human rights, as this option is significantly less invasive and appropriately balances the rights of prisoners against the risks posed to the prison environment from prisoner drug use.



Monitoring and evaluation

Implementation, monitoring and evaluation

Implementation of this report

Queensland Corrective Services will commence a body scanning trial at Brisbane Women's Correctional Centre (BWCC) between March and August 2024 with an evaluation to follow between August and December 2024, and a report prepared for government between January and June 2025.

For maximum efficiency, the advice and recommendations in this report should be implemented by Queensland Corrective Services before March 2024 prior to the commencement of the body scanner trial. This will allow for a comprehensive evaluation of changes to strip searching practices as whole when reporting to government in June 2025.

Follow-up review after changes implemented

We consider the most effective method of confirming that the advice and recommendations from this report have been effectively implemented would involve a follow-up review by an independent person or statutory authority. Because of the gaps identified between policies and practice in relation to strip searching, the follow-up review would not only require an analysis and comparison of previous and updated policies and procedures but should include site visits to speak with prisoners and staff members.

The review could compare the recent experiences of prisoners at BWCC, who will have been subject to new scanning searches, with experiences of prisoners in other low and high security prisons. This will create a sound evidence base to establish the need for scanners to be implemented in all Queensland prisons with the priority being women's prisons in the first instance.

Monitoring and evaluation plan

The Women's Safety and Justice Taskforce *Hear her voice* reports focused on monitoring and evaluating the implementation of its recommendations.⁴⁷⁷ In report 2, the Taskforce recommended that:

As part of the whole-of-government strategy for women and girls involved in the criminal justice system as accused persons and offenders (recommendation 93), the Queensland Government develop and implement a monitoring and evaluation plan to measure and monitor outcomes achieved across the criminal justice system. The monitoring and evaluation plan will:

⁴⁷⁷ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022), 733.

- track progress towards outcomes sought to be achieved through the implementation of the Taskforce's recommendations and across the system
- support the implementation of the whole-of-government strategy
- incorporate qualitative and quantitative measures, including the voices of women and girls who are accused persons and offenders to measure impacts and outcomes.⁴⁷⁸

The monitoring and evaluation plan as recommended by the Women's Safety and Justice Taskforce should specifically include consideration of the extent to which the advice and recommendations in this Review report have been implemented into policy and procedures, and whether the changes have translated into everyday practice in women's prisons.

Recommendation 24: Implement recommendations in 6 months and monitor and evaluate outcomes in 24 months

- 24.1** Queensland Corrective Services should implement the recommendations in this report before March 2024.
- 24.2** Queensland Corrective Services should commission an independent review of the implementation of this report to occur concurrently with the planned evaluation of body scanning technology in 2025.
- 24.3** The Queensland Government monitoring and evaluation plan to measure and monitor outcomes achieved across the criminal justice system following the Women's Safety and Justice Taskforce *Hear her voice* reports should include an evaluation of the extent to which the advice and recommendations in this report have been incorporated into policies, procedures, and practices.

⁴⁷⁸ Women's Safety and Justice Taskforce, *Hear Her Voice Report 2: Women and Girls' Experiences of the Criminal Justice System* (Volume 2, 2022), 733, recommendation 185.



Appendices

Appendix A: Corrective services legislation and regulation extracts

Corrective Services Act 2006 (Qld)

Section 35 Search requiring the removal of clothing of prisoners on chief executive's direction

(1) The chief executive may give a written direction to a corrective services officer for the carrying out of a search requiring the removal of clothing of prisoners as stated in the direction, including, for example, at the times stated in the direction.

(2) The search must be carried out as required under the direction.

(3) However, a direction under subsection (1) does not apply to a particular prisoner if the chief executive reasonably considers it unnecessary for the search to be carried out on the prisoner because of the prisoner's exceptional circumstances.

Example for subsection (3)—

A direction requires a search requiring the removal of clothing of a prisoner to be carried out when a prisoner enters a corrective services facility. A pregnant prisoner returns to the facility from an escorted antenatal visit and the corrective services officer who escorted the prisoner advises that the prisoner had no likely opportunity to obtain a prohibited thing while on the visit. The chief executive may consider it unnecessary for the search to be carried out on the prisoner.

(4) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

Section 36 Search requiring the removal of clothing of prisoners on chief executive's order—generally

(1) The chief executive may order a search requiring the removal of clothing of 1 or more prisoners if the chief executive is satisfied the search is necessary for either or both of the following—

(a) the security or good order of the corrective services facility;

(b) the safe custody and welfare of prisoners at the facility.

Example—

A knife is missing from the kitchen of a corrective services facility. The chief executive may be satisfied that a search requiring the removal of clothing of each prisoner who worked in the kitchen that day is necessary for the security or good order of the facility or for the safe custody and welfare of prisoners at the facility.

(2) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

Section 37 Search requiring the removal of clothing on reasonable suspicion

- (1) The chief executive may order a search requiring the removal of clothing of a prisoner if the chief executive reasonably suspects the prisoner has a prohibited thing concealed on the prisoner's person.
- (2) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

Section 38 Requirements for search requiring the removal of clothing

- (1) A search requiring the removal of clothing of a prisoner must be carried out by at least 2 corrective services officers, but by no more officers than are reasonably necessary to carry out the search.
- (2) Each corrective services officer carrying out the search must be of the same sex as the prisoner.
- (3) Before carrying out the search, one of the corrective services officers must tell the prisoner—
 - (a) that the prisoner will be required to remove the prisoner's clothing during the search; and
 - (b) why it is necessary to remove the clothing.
- (4) A corrective services officer carrying out the search—
 - (a) must ensure, as far as reasonably practicable, that the way in which the prisoner is searched causes minimal embarrassment to the prisoner; and
 - (b) must take reasonable care to protect the prisoner's dignity; and
 - (c) must carry out the search as quickly as reasonably practicable; and
 - (d) must allow the prisoner to dress as soon as the search is finished.
- (5) A corrective services officer carrying out the search must, if reasonably practicable, give the prisoner the opportunity to remain partly clothed during the search, including, for example, by allowing the prisoner to dress his or her upper body before being required to remove clothing from the lower part of the body.
- (6) If a corrective services officer seizes clothing because of the search, the officer must ensure the prisoner is left with, or given, reasonably appropriate clothing.
- (7) A regulation may prescribe other requirements and procedures for ensuring the effective carrying out of searches requiring the removal of clothing of prisoners.

Corrective Services Regulation 2017 (Qld)

Section 9 Requirements for search requiring the removal of clothing

(1) A search requiring the removal of a prisoner's clothing must not be carried out in the presence of a person who is not carrying out the search.

(2) Subsection (3) applies if a video camera or other device (*monitoring device*) monitors the area in which the prisoner is searched and a person viewing the image produced by the monitoring device is not a corrective services officer of the same sex as the prisoner.

(3) A corrective services officer carrying out the search must—

(a) ensure either or both of the following are turned off while the search is carried out—

- (i) the device on which the image is produced;
- (ii) the monitoring device; or

(b) carry out the search out of view of the monitoring device.

(4) A corrective services officer carrying out the search may require the prisoner to do any or all of the following—

- (a) hold the prisoner's arms in the air;
- (b) stand with prisoner's legs apart;
- (c) lean forward.

(5) When a corrective services officer is carrying out a search requiring the removal of a prisoner's clothing, the officer must comply with the administrative procedures for searches requiring the removal of clothing made under section 265 of the Act and published by the chief executive.

Note—

The document may be viewed on the department's website.

Section 10 Dealing with recording of search

(1) The chief executive must ensure that a recording made of a search under section 9 is kept securely.

(2) A person must not show a recording made of a search under section 9 to another person other than—

- (a) the prisoner or the prisoner's lawyer; or
- (b) a health practitioner treating the prisoner; or
- (c) a person responsible for deciding if a proceeding is to be started for a search offence; or
- (d) an officer of a law enforcement agency investigating a search offence; or
- (e) an officer of a law enforcement agency, lawyer, prosecutor or witness involved in a proceeding for a search offence; or

- (f) a court; or
- (g) the chief executive or a person directed by the chief executive to view the recording; or
- (h) the chief inspector; or
- (i) an official visitor; or
- (j) a commissioner of the Crime and Corruption Commission; or
- (k) the ombudsman; or
- (l) the inspector of detention services; or
- (m) a person to whom the prisoner has consented to the recording being given.

Maximum penalty—20 penalty units.

(3) In this section—

search offence means—

- (a) an offence involving something found during a search under section 9; or
- (b) an offence committed during a search under section 9.

Section 19 Prohibited things – Act section 123

(1) For section 123(1) of the Act, each of the following is a prohibited thing—

- (a) a weapon, replica of a weapon or other replica under the Weapons Act 1990;
- (b) an explosive or ammunition under the Explosives Act 1999;
- (c) a flammable substance;
- (d) anything capable of being used to scale a fence, wall, door or gate;

Examples—

grappling hook, ladder, rope

- (e) anything capable of cutting or spreading metal bars;
- (f) anything capable of damaging or destroying a fitting or fixture designed to detain prisoners;
- (g) a key, card, or other device capable of opening a mechanical or electronic lock;
- (h) soap or another substance containing an impression of a prohibited thing, including, for example, a key;
- (i) a knife, a saw, scissors or another cutting implement;
- (j) kitchen utensils or equipment or tools;

(k) a spirituous or fermented fluid or substance of an intoxicating nature;

(l) a drug or medicine;

(m) a syringe or other device capable of administering a drug;

(n) cash, a credit card, debit card, cheque or money order or another negotiable instrument;

(o) a document containing a person's credit card or debit card details;

(p) a form of identification, including, for example, false identification;

Example—

a passport, or a document that appears to be a passport

(q) anything capable of being used to alter a prisoner's appearance so that it significantly differs from the prisoner's appearance described in the record kept under section 10 of the Act;

Example—

a tattooing device

(r) a communication device;

Example—

a computer, modem, phone, radio, radio scanner or universal serial bus (commonly known as a 'usb')

(s) a device capable of enabling a prisoner to access information that could be a risk to the security of a corrective services facility;

(t) a computer game classified as an "R 18+" computer game under the Classification of Computer Games and Images Act 1995, an objectionable computer game under that Act, or a computer game that, if it were classified under that Act, would be classified as an "R 18+" computer game or an objectionable computer game;

(u) a film classified as an "R 18+" film under the Classification of Films Act 1991, an objectionable film under that Act, or a film that, if it were classified under that Act, would be classified as an "R 18+" film or an objectionable film;

(v) a prohibited publication under the Classification of Publications Act 1991;

(w) anything modified from its usual form to enable something to be concealed in it;

(x) anything that poses a risk to the security or good order of a corrective services facility, including, for example, a drawing, plan or photo of the facility;

(y) a smoking product under the Tobacco and Other Smoking Products Act 1998, section 25;

(z) a smokeless tobacco product under the Tobacco and Other Smoking Products Act 1998;

(zaa) a drone;

(zab) a device for remotely piloting, or otherwise controlling, a drone;

(za) any part of a thing mentioned in paragraphs (a) to (zab).

(2) In this section—

"drone" means a device that is—

(a) capable of flight; and

(b) remotely piloted or able to be programmed to autonomously fly a particular route; and

(c) not capable of transporting a person.

Appendix B: Human rights to consider when strip searching a female prisoner

All strip searches of women in prison generally limit the following human rights under the *Human Rights Act 2019* (Qld):

- right to equality and protection against discrimination – because the prisoner is a woman (section 15)
- right to protection from torture and cruel, inhuman or degrading treatment (section 17)
- right to humane treatment when deprived of liberty (section 30)
- right to privacy (section 25).

In the table below, we list additional human rights under the Human Rights Act that are likely be limited when a prisoner has a particular characteristic or in specific situations.

Prisoner characteristics or situation	Human rights limited by this action and Human Rights Act sections
<p>Search involving prisoners who are menstruating, pregnant, breastfeeding, have a disability or mental health condition, are Aboriginal or Torres Strait Islander, or are trans or gender diverse.</p> <p>See also: <i>Experiences of marginalised prisoners</i> on page 92 of this report.</p>	<p>Right to equality and non-discrimination (section 15)</p>
<p>Before and/or after visits with a personal visitor</p> <p>See also: <i>Visits and accessing court</i> on page 79 of this report.</p>	<p>Prisoner – right to protection of families (section 26(1)); right to privacy and family (section 25); cultural rights to maintain kinship ties (Aboriginal and Torres Strait Islander peoples) (section 28(2)(c))</p> <p>Child visitors – right to protection of families (section 26(1)); right to protection that is needed by the child, in their best interests (section 26(2)); cultural rights to maintain kinship ties (Aboriginal and Torres Strait Islander peoples) (section 28(2)(c))</p>
<p>Before and/or after visits with a professional visitor – lawyer</p> <p>See also: <i>Visits and accessing court</i> on page 83 of this report.</p>	<p>Rights in criminal proceedings (section 32)</p>

Before and/or after visits with a professional visitor – service provider/counsellor

Right to access health services without discrimination (section 37)

See also: *Visits and accessing court* on page 83 of this report.

Before and/or after visits – religious visitor

Cultural rights – generally (section 27); right to demonstrate religion (section 20(1)(b))

See also: *Visits and accessing court* on page 83 of this report.

Before and/or after visits to medical centre on site, a hospital, or an external medical appointment

Right to access health services without discrimination (section 37)

See also: *Medical care* on page 88 of this report.

Search involving prisoner with religious and cultural needs e.g. headwear.

Cultural rights – generally (section 27); right to demonstrate religion (section 20(1)(b))

See also: *Experiences of marginalised prisoners* on page 112 of this report.

Search involving prisoner with children in their care.

Child - right to protection that is needed by the child, in their best interests (section 26(2))

See also: *Experiences of marginalised prisoners* on page 100 of this report.

Before and/or after transfer to court for in person attendance.

Rights in criminal proceedings (section 32(2)(d))

See also: *Visits and accessing court* on page 86 of this report.

Appendix C: Recommended search method

Strip searches should not be used as a primary means of detecting contraband and should only be used where there is no less restrictive option available. Pat down searches, body scans, or wand searches should be preferred, unless these options are not reasonably available or will be insufficient to detect the prohibited item.

If a strip search must occur, it should be done in the least invasive way to address the relevant risk and must maintain the prisoner's dignity and privacy as much as possible.

The Commission recognises that strip searches of women prisoners are an inherently humiliating and traumatic process that will always limit a prisoner's rights. However, if, as a last resort, it is determined by Queensland Corrective Services that a strip search must occur, the Commission recommends the practice and procedure as outlined below be adopted to protect prisoners' rights as much as is possible.

Trauma-informed approach

Corrective services officers should take a trauma-informed and trauma responsive approach to strip searches. As far as possible the prisoner should feel safe, make their own choices, and cooperate in the process.

At all times, corrective services officers should maintain a calm and reassuring manner, avoid shouting, and provide the prisoner with the opportunity to ask questions.

Prior to the commencement of a strip search

1. Two corrective services officers of the same sex as the prisoner should carry out the search. The person in charge of the search (CSO1) should observe the prisoner from the front. The assisting corrective services officer (CSO2) should stand to the side, and observe the person in charge of the search.
2. CSO1 should start the search by:
 - identifying themselves and the CSO2 to the prisoner
 - telling the prisoner that they will be performing a strip search
 - explaining clearly to the prisoner the purpose of the strip search and the reason that they are being searched
 - asking the prisoner if they want an explanation of what the prisoner will be asked to do in advance of the search commencing. If the prisoner asks for an explanation, points 4 and 8 below should be explained to them.
 - asking the prisoner if they have any questions about how the search will be conducted.

3. CSO1 should ask the prisoner if they have anything that is not authorised that they wish to declare, or if there is anything that they want to tell the corrective services officers before commencement of the search.

If the prisoner has no questions or nothing to declare or tell the corrective services officer, the search can commence.

Search method

4. CSO1 should instruct the prisoner to:
 - empty their pockets and hand the contents to CSO1
 - put their hands out in front to allow their hands and fingers to be examined
 - take out any hair ties or clips and run their hands through their hair
 - rub their fingers behind each ear
 - open their mouth and lift their tongue, if necessary
 - remove their jumper or shirt, one layer at a time, and pass the garments to CSO1 to be checked
 - remove their bra and pass it to the CSO1 to be checked
 - hold their arms up and turn in a complete circle.
5. CSO1 should then return the prisoner's bra, shirt, and any other layers of clothing for the top half of their body and allow the prisoner sufficient time to dress.
6. CSO1 should then ask the prisoner if they are ready to continue the search. If the prisoner requests more time before continuing the search, reasonable further time should be permitted.
7. When the prisoner confirms they are ready to proceed with the search, CSO1 should ask the prisoner to remove their shoes and socks and pass them to CSO1 to be checked.
8. CSO1 should instruct the prisoner to:
 - turn with their back to CSO1 and bend each leg at the knee one at a time to show the soles of their feet and between the toes. Prisoners can be asked to wiggle their toes, if necessary.
 - face back towards CSO1
 - remove their shorts or underpants and pass them to CSO1 to be checked
 - If there is intelligence or a reasonable suspicion that a prisoner is concealing contraband in their underpants, ask the prisoner to remove their underpants and turn them inside out.
 - ask the prisoner to stand with their legs no wider than hip width apart

Sanitary napkins should only be removed where there is reasonable suspicion based on intelligence indicating that the person is using the pad to conceal contraband.

Prisoners should never be asked to remove tampons.

9. Ask the prisoner to step to one side to ensure nothing is stood on or that anything has been dropped during the search.
10. Return the prisoners shorts or pants (and underpants, if applicable)
11. Provide the prisoner with privacy to dress.

At no point should a prisoner ever be asked to:

- squat
- cough
- lift their breasts or excess skin
- raise their legs beyond bending at the knee to have their feet inspected
- spread their buttocks
- bend over
- stand with their legs wider than hip width apart
- remove a tampon.

Though a corrective services officer is authorised by law to tell a prisoner to lean forward during a strip search, the Commission's view is this should not occur when strip searching women. Women have indicated that leaning forward is the most humiliating and traumatic part of a strip search, and the instruction that was most prone to inconsistent application. An examination of a prisoner's vagina or anus is not the purpose of a strip search, therefore leaning forward is not a necessary part of the process. If a person is asked to lean to support themselves due to a disability or mobility issue, they should not be required to lean more than 45 degrees away from the wall.

Reading list

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