



# Women in Prison

A report by the Anti-Discrimination  
Commission Queensland

**March 2006**

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**ISBN:** 0-9580054-4-3

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## 1 Preface

In June 2004, the Anti-Discrimination Commission Queensland (ADCQ) received a submission from the advocacy group for female prisoners, Sisters Inside Inc, entitled *Submission of Sisters Inside to the Anti Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland*. Of concern to Sisters Inside Inc was the treatment of female prisoners generally, in particular Indigenous women and women with disabilities within the Queensland corrections system.

Given the wide range of matters raised by Sisters Inside Inc and that women prisoners, despite their increasing numbers, have generally not accessed the complaint process, the ADCQ decided to conduct a review. The review sought to research and consult on the treatment of women in Queensland prisons on the basis of gender, race and disability, rather than dealing with individual complaints. In conducting this research and consultation the ADCQ has relied upon sections 235 and 236 of the Queensland *Anti-Discrimination Act 1991* (ADA) which sets out its functions and powers.

The ADCQ has the functions of undertaking research to promote the purposes of the ADA, to consult with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the ADA and to promote an understanding and acceptance, and the public discussion of human rights in Queensland.

The Queensland Department of Corrective Services (DCS) on behalf of the Queensland Government is required to provide corrective services, with the goal and purpose of:

community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.<sup>1</sup>

The focus of the ADCQ's research and consultation review ('the review') has been to understand the extent to which the DCS has achieved that goal and purpose in relation to all female offenders, and whether the means of achieving that goal is done in a non-discriminatory manner in accordance with the provisions of the ADA.

The ADCQ has used several sources of information to prepare this report of the review. A range of relevant stakeholders was notified of the review in writing. The ADCQ placed a public notice in the *Courier-Mail* on 7 August 2004, inviting interested persons to lodge submissions with the ADCQ on matters they considered important to the review. Relevant material was published on the ADCQ website, including a copy of the submission made by Sisters Inside Inc<sup>2</sup>.

The DCS provided the ADCQ with a detailed submission on issues raised by the review on 10 September 2004, 8 October 2004, 9 August and 14 December 2005 respectively. Sisters Inside Inc provided further submissions on 10 and 20 September 2004 and on 13 December 2005.

The ADCQ wrote to official visitors, chaplains, elders, respected persons and spiritual healers<sup>3</sup> at each of the correctional facilities for women to inform them of the review and request their views on issues that it covered. The ADCQ also wrote to each of the external psychiatric

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<sup>1</sup> *Corrective Services Act 2000* (Qld) s 3.

<sup>2</sup> <http://www.adcq.qld.gov.au>

<sup>3</sup> Appointed pursuant to *Corrective Services Act 2000* (Qld), Parts 6-7.

specialists and psychologists who provide mental health services to women in prison. Letters were sent via the General Manager of each female prison to both corrective services' staff and prisoners informing them of the review and inviting their input through submissions and/or private meetings with ADCQ representatives.

The ADCQ received 32 written submissions from individuals and organisations, and met individually with a number of stakeholders and experts.

ADCQ representatives conducted a series of closed session round table meetings and took the opportunity to walk and talk with female prisoners at:

- Brisbane Women's Correctional Centre (BWCC) on 28 September, 12 and 25 October 2004 and 27 January 2005;
- Numinbah Correctional Centre (NCC) on 7 October 2004;
- Helana Jones Community Correctional Centre (HJCCC) on 31 November 2004;
- Townsville Women's Correctional Centre (TWCC) on 16 December 2004; and
- Warwick Women's Work Camp (WWWC) on 25 January 2005.

The ADCQ held talks with the General Manager of each of the women's prisons at the time of our visits, and met for round table discussions with groups of ex-prisoners on 19 and 20 October 2004.

The ADCQ met with:

- the Honourable Judy Spence, Minister for Police and Corrective Services;
- Mr Frank Rocket, the Director General of the DCS; and
- key DCS staff including:
  - Mr Michael Airton - Offender Assessment and Services Executive Director;
  - Ms Lidia Pennington - General Manager, Custodial Operations;
  - Dr Tony Falconer - Director of Health and Medical Services;
  - Mr Peter Bottomley - Director of Ethical Standards;
  - Mr Andrew Brown - Acting Director Legal Services;
  - Mr Dimitri Petinakis - Project Director of *Managing Growth in Prison Numbers*; and
  - Mr Forbes Smith - recently appointed Chief Inspector of Prisons.

The information we have gathered through submissions, meetings and round table discussions is qualitative rather than quantitative. Although excellent research already exists in this field, a great deal still needs to be done. We have used existing research as a background when analysing our own views. We acknowledge our debt for the high calibre work that has occurred to date.

## 1.2 Acknowledgements

The ADCQ would like to acknowledge the assistance we have received from the DCS, Sisters Inside Inc, the round table participants and those individuals and organisations that took the time to prepare submissions or to meet with the ADCQ. We wish to thank the General Manager of each of the prisons we visited, and their staff for welcoming us into their facilities and ensuring everything possible was done to accommodate us.

The ADCQ also acknowledges the invaluable assistance provided by Ms Donna Meiklejohn, and Associate Professor Justin Malbon (Griffith University School of Law) in preparing this report.

Finally, we owe our sincere thanks to the women who spoke to us in closed meetings, of their experiences, often when they were still separated from their homes and families by incarceration. Many wanted to be interviewed in the hope of improving the situation for other women who may be entering the Queensland correctional system in the future.





## 2 Executive Summary and Recommendations

In August 2004, the Anti-Discrimination Commission Queensland (ADCQ) began a broad review of the treatment of women prisoners in Queensland. Significantly, the focus of the review was on the prison system and its impact on women prisoners.

Since the ADCQ began this review, the Queensland Department of Corrective Services (DCS) has implemented significant improvements in a number of policies and procedures affecting women prisoners.

The challenge in 2006 and beyond is for the DCS to continue this work. While these recent changes (and some proposed changes) have benefited or will benefit women prisoners, this Report has identified that the legislation, as well as many other policies and practices, need to take account of the specific circumstances of women prisoners.

What are these specific circumstances?

Women prisoners are victims as well as offenders. Very few are serious violent offenders. They pose little risk to public safety. Many are single parents with dependent children. More than half have been diagnosed with a specific mental illness. Significant numbers have been drug users, and more than 40% have been victims of non-consensual sexual activity, often as young girls.

This Report is timely. The DCS has advised that it will be preparing new legislation in 2006 as part of its review of the *Corrective Services Act 2000*. The new legislation must address the matters raised in this Report.

The Report has also identified particular practices that may discriminate against some women prisoners. Having identified potential discriminatory practices, the Report recommends that the DCS addresses them. As well, individual women prisoners have a statutory right to lodge a complaint with the ADCQ and seek to prove unlawful discrimination.

This Report makes 68 recommendations. While each is important and demands serious attention from the Department of Corrective Services, the Queensland Government and others, the main issues are:

- 1. There are legitimate concerns that classification instruments and procedures may result in over-classification of women prisoners.** Proposed new legislation, policy and procedures need to ensure that the classification tool accurately measures the security risk of women prisoners, but does not discriminate against women, including various minority groups. The ADCQ is of the view that the present classification system has the potential to discriminate against women prisoners generally, but particularly against prisoners who are Indigenous and those with a mental illness.
- 2. Children's needs are inadequately addressed.** The Queensland Government explicitly acknowledges that the best interests of children are paramount, but this is not reflected in sentencing decisions affecting women, or in the treatment of women and their children in prison. Legislative reform is recommended to ensure the best interests of children are considered, both in sentencing and in the prison system.
- 3. Mental health issues are often ignored.** Many women with mental illness are inappropriately detained in prison while their mental health needs are left unattended.

Women prisoners have a much higher rate of mental health problems than men prisoners, but their needs are not presently addressed. A significant increase in resources is necessary if women with mental illness are to be properly dealt with within the correctional system. Proposed changes to crisis support units, including a reduction in strip-searching, are welcomed, but address only part of this problem. Much more is needed.

- 4. Indigenous women are especially at risk of discrimination in prison.** The prison system does not adequately attend to the unique needs of Indigenous women, despite providing a wide range of programs that cater for specific needs of female Indigenous prisoners. Consideration of alternatives to prison, including healing lodges and better post-release and transitional support services, is a critical step to avoid high rates of re-offending.

Some recommendations will ensure a more effective prison system, for both men and women. They are:

- increased training for all corrective services' staff about unlawful discrimination and sexual harassment, mental health issues, Indigenous issues, and non-discriminatory dealing with prisoners from culturally and linguistically diverse communities;
- the creation of an independent, statutory office of Chief Inspector of Prisons, which reports directly to Parliament to ensure independence from the DCS and builds an organisational culture that values genuine, critical reflection about the purposes stated in the *Corrective Services Act 2000*.

Many of this Report's recommendations require changes to legislation, policy and practice. They also require proper resources so they can be implemented by the DCS for practical effect and positive outcomes.

Such significant change also needs to be transparent and documented in a way that is readily available to the public. This Report recommends that the DCS publicly reports on implementation in its 2005-06 and 2006-07 Annual Reports.

On-going effective community engagement with all relevant stakeholders such as advocacy organisations and community groups will ensure that issues of women prisoners are heard.

Finally, the ADCQ is committed to ensuring that Queensland has a non-discriminatory and effective correctional system, which meets the needs of women prisoners in Queensland, and accordingly is committed to working with the DCS, relevant advocacy and community groups, other accountability agencies of government and women prisoners themselves to achieve that end.

## **RECOMMENDATIONS: Executive summary**

### **Recommendation No. i**

That the Department of Corrective Services address matters raised in the *Report on the Review into Women in Prison* in their current review of the *Corrective Services Act 2000*.

**Recommendation No. ii**

That the Department of Corrective Services, as a matter of priority, identify and take appropriate action to address possible discrimination against women prisoners raised in this Report.

**Recommendation No. iii**

That the Department of Corrective Services include in its annual reports for 2005-06 and 2006-07 its progress on recommendations made in this Report.

## Consolidated list of recommendations

### General recommendations:

#### Executive summary

- i: That the Department of Corrective Services address matters raised in the *Report on the Review into Women in Prison* in their current review of the *Corrective Services Act 2000*.
- ii: That the Department of Corrective Services, as a matter of priority, identify and take appropriate action to address possible discrimination against women prisoners raised in this Report.
- iii: That the Department of Corrective Services include in its annual reports for 2005-06 and 2006-07 its progress on recommendations made in this Report.

### Specific recommendations:

#### Custodial infrastructure and classification

- 1: That the Department of Corrective Services, when planning for any future custodial infrastructure for women, gives the highest priority to developing smaller facilities based upon community living, with prison regimes and practices that encourage positive and supportive interaction between staff and residents and the greater community.
- 2: That the Department of Corrective Services:
  - develops classification instruments based on the specific characteristics of men and women; and
  - draws up a schedule for testing the reliability and validity of classification instruments, for all prisoners including those from Indigenous or other minority groups.

The DCS should publicly release the reports of such research.
- 3: That corrective services legislation states that female prisoners be classified at the lowest level of security necessary to ensure the good order and security of prisons and the security of the community.
- 4: That proposed legislation changes ensure:
  - female prisoners on remand be classified in the same way as other female prisoners; and
  - long term remand prisoners be assessed under the Offender Risk/Needs Inventory and not be deprived of necessary programs and training.

- 5: That women prisoners be placed in the least restrictive environment possible and, in particular, the highest priority be given to the interests of children in determining the placement of their mothers serving full-time sentences.
- 6: That the Department of Corrective Services researches and analyses the elements that contribute to the success of the Warwick Women's Work Camp model and apply those principles to any new facilities that are developed for women.
- 7: That women residents of the Numinbah Correctional Centre who require hospital or dental treatment not be transferred and housed in the secure S1 facility in Brisbane Women's Correctional Centre, and not be subjected to mandatory strip-searching. In accessing medical or dental treatment, they should not be housed in any facility other than open classification accommodation.
- 8: That the Department of Corrective Services reviews its written and oral information provided to prisoners upon reception and throughout their sentence to ensure they better understand the classification and Offender Risk/Needs Inventory assessment processes, the sentence management process and other issues including conditional and community release.

#### **Low security facilities**

- 9: That the Department of Corrective Services prioritises the establishment of its proposed new work camps for women in North Queensland and South-East Queensland.
- 10: That alternatives to the Numinbah Correctional Centre and Townsville Correctional Centre be developed for housing low security female prisoners as soon as possible. Such alternatives should accord women the appropriate and usual security levels for open classification prisoners and should be entirely separate from institutions for male offenders. The facilities should be designed to meet the needs of female prisoners.
- 11: That the Department of Corrective Services, as a matter of highest priority, ensures that at least one existing low security facility for women be made fully accessible for prisoners with physical disabilities, and that this also be a high priority for all other existing low security facilities for women.
- 12: That the Department of Corrective Services provides the necessary, and possibly additional, support services for women with mental health or intellectual disabilities to have the same opportunity to be accommodated in low security facilities as women without those disabilities.
- 13: That the Department of Corrective Services ensures any new correctional facilities are designed and constructed to be fully accessible for people with a disability.

### **Conditional release**

- 14:** That the Department of Corrective Services provides statistical information annually on women who are released at the earliest possible release date (either as conditional release or post-prison community-based release), and the number and percentage of such women who are Indigenous offenders be reported.
- 15:** That the Department of Corrective Services takes steps to address potential systemic discrimination issues within the control of the prison authorities, such as valid classification assessments; access to culturally appropriate programs; and development of viable release plans, which may prevent Indigenous women being granted conditional release and post- prison community-based release at the same rate as non-Indigenous women.
- 16:** That the Department of Corrective Services evaluates the progress of women with mental health and intellectual disabilities through each stage of the prison regime to identify and take steps to address issues of potential indirect and systemic discrimination.
- 17:** That the Department of Corrective Services develops specific programs for Indigenous women to provide opportunities and support for community release.
- 18:** That the independent justice strategy reviews associated with the Queensland Aboriginal and Torres Strait Islander Justice Agreement be provided with relevant statistics to examine the development, implementation and evaluation of the success of conditional release programs for Indigenous women.

### **Strip-searches**

- 19:** 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.
- 20:** That alternative accommodation arrangements need to be made as a matter of highest priority for those women who are classified as low security but who are accommodated in high security facilities. These women are undergoing an unreasonable and unacceptable number of routine strip-searches.
- 21:** That the Department of Corrective Services continues to review and reduce the number of routine strip-searches performed on women in the crisis support units. Further, that a new directive be issued to reflect current practice of reducing the number of strip searches in crisis support units.
- 22:** That the Department of Corrective Services reviews and amends its policies and practices to ensure that female prisoners are not being treated less favourably than male prisoners, in having to undergo numerous strip- searches during inter-prison visits.

### **Rehabilitation and social reintegration**

- 23:** That the Department of Corrective Services recognises and ensures that its responsibility for the rehabilitation of offenders within its care be given a similar effort in policy and resourcing as its responsibility to ensure community safety.
- 24:** That particular program needs of female prisoners be assessed and analysed independently of those for men to ensure that appropriate courses are designed and developed for them.
- 25:** That programs be critically evaluated on a regular basis to determine the effect they are having on offending behaviour and whether they are assisting women to reintegrate successfully into the community.
- 26:** That the current proposal by the Department of Corrective Services that resources be put into developing and delivering programs at the optimal time to benefit prisoners in their rehabilitation, be implemented and evaluated as a high priority.
- 27:** That a systemic recognition and provision for the special needs of prisoners with intellectual, cognitive or learning impairments occur to ensure these prisoners can successfully access core programs.
- 28:** That women in prison for fewer than 12 months and women on remand for lengthy periods benefit from participating in core programs. As a component of its responsibility to rehabilitate offenders, the Department of Corrective Services must be sufficiently funded to provide core program resources to short term offenders.

### **Vocational and educational training**

- 29:** That any College of Technical and Further Education or other certificates awarded to a female prisoner for the completion of a course not have the prison's address recorded on the certificate.
- 30:** That prison authorities develop and provide a systemic approach to recognising and providing for the vocational education and training of prisoners with intellectual disabilities.

### **Work and industry opportunities**

- 31:** That the Department of Corrective Services takes steps to ensure that the scope for prison industries to provide for rehabilitative services through job-skilling for women is realised.
- 32:** That the Department of Corrective Services reviews its policy on bonus payments to ensure that, in determining who should be paid bonuses, unlawful direct or indirect discrimination under the *Anti-Discrimination Act 1991* does not occur.

## **Drug and substance abuse**

- 33:** That the Queensland Government and Department of Justice and Attorney-General increase the areas in which the Drug Court operates, to ensure that the sentencing options available to it apply to all eligible female offenders across all state postcodes.
- 34:** That access to substance abuse programs while in prison be extended to short term and remandee female prisoners wherever possible. Such programs need to be specifically designed for women and should address the needs of Indigenous women.

## **Mental health issues**

- 35:** That more and improved community sentencing options be developed and supported by the Department of Corrective Services, to ensure there are properly resourced pathways to divert offenders with mental health issues from the prison system, when this is an appropriate sentencing option.
- 36:** That the Queensland Government addresses the systemic issues in the provision of its overall services (including health, housing, police and justice) to persons with mental illness with a view to reducing the over-representation of women with mental illness in state prisons.
- 37:** That there be an enhancement of services for the identification and treatment of mental illness for women in custody including:
- rehabilitation and treatment programs for all women prisoners with a mental health issue. This should account for the complex needs of some prisoners, including varying levels of cognitive capacity and the ability to provide informed consent to participation;
  - increased access to intensive care facilities for acutely mentally unwell prisoners, by improving psychiatric services generally, including the opening of additional beds in secure psychiatric medical facilities. The detention of such prisoners in the crisis support units of women's prisons is inappropriate.
  - additional support for counselling and therapeutic approaches to assist female prisoners with mental illness.
  - identifying alternative and cost-effective ways of treating personality disorders.
- 38:** That the Department of Corrective Services puts a greater emphasis on developing and strengthening protective factors within women's prisons to mitigate against self-harm and suicide. The proposed legislative amendments should detail that a distressed prisoner should be placed in a crisis support unit as a last resort, and only occur if the woman is a risk to other prisoners or staff. Prisoners should not be secluded if they do not pose a risk to others. Individual care plans should specify the measures required to manage the risk of self-harm and suicide safely, including removal to a specialist mental health facility if required.



- 39:** That a higher level of resources and a multi-disciplinary approach be used to address substance abuse, mental health and sexual assault issues of women prisoners. In particular, a multi-disciplinary approach should make use of non-prison-based and community-based organisations with particular expertise in the areas of substance abuse, mental health and sexual assault.
- 40:** That all prison staff receive mandatory training on the identification and provision of appropriate responses to prisoners experiencing mental health problems. These skills need to be developed and maintained.
- 41:** That the establishment and adequate resourcing of step down accommodation facilities be put in place for women with mental illness on their release from prison.

#### **Other health issues**

- 42:** That mobile breast screening services be provided within the prison facility on a regular basis to prisoners who are of the age group where routine screening is recommended best practice.

#### **Custody issues**

- 43:** That male prison officers not be assigned responsibility to conduct regular observations of women in observation units or inspections of women at night.

#### **Aboriginal and Torres Strait Islander women**

- 44:** That the Department of Corrective Services researches, considers and implements strategies that aim to reduce potential systemic discrimination against Indigenous women in the corrections system.
- 45:** That the Department of Corrective Services investigates models for programs and facilities that address the unique needs of Indigenous women prisoners, and in particular when designing and building new facilities for female prisoners in North Queensland.
- 46:** That the Department of Corrective Services increases the employment of Indigenous female staff in women's prisons to assist in addressing ongoing issues of rehabilitation and recidivism of Indigenous prisoners.
- 47:** That the Department of Corrective Services researches the effectiveness of introducing Indigenous healing programs for Indigenous female prisoners in Queensland.

#### **Young women in prison**

- 48:** That the Queensland Government immediately legislates to ensure that the age at which a child reaches adulthood for the purposes of the criminal law in Queensland be 18 years.
- 49:** That it is not in the best interests of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection unit of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

### **Culturally and linguistically diverse prisoners**

- 50:** That prison authorities routinely access telephone interpreting services for prisoners who are not confident in the English language, for the reception process and any discussion involving their case management, health or other issues of significance.
- 51:** That prison authorities make all reasonable efforts to ensure programs are accessible to prisoners from non-English speaking backgrounds.
- 52:** That prison authorities take all reasonable steps to ensure literature and reading material is provided to prisoners in their own language.
- 53:** That prison authorities take reasonable steps to cater for the dietary requirements of inmates from different cultural backgrounds without cost to the prisoner.
- 54:** That prison authorities take reasonable steps to accommodate the differing needs and religious observances of prisoners from culturally diverse backgrounds.

### **Women prisoners who are mothers of dependent children**

- 55:** That the Queensland Government considers alternatives to custody including home detention, periodic detention and community service orders for women with dependent children.
- 56:** That the Commission for Children and Young People and Child Guardian undertakes research to identify the impact on children of women in incarceration.
- 57:** That section 9 of the *Penalties and Sentences Act 1991* be amended to include the principle that the best interests of the child be a factor to be considered when sentencing a person with a dependent child.
- 58:** That prisons which accommodate dependent children with their mothers provide adequate living and play space and organised activities for those children, in accordance with community standards.
- 59:** That the Department of Corrective Services expands and further develops mothers and children's units, in which imprisoned mothers may be accommodated with their children. These should be separate facilities, which are family-friendly and staffed by specially trained corrections officers.
- 60:** That the Department of Corrective Services reviews the policy of family contact for women prisoners of dependent children, including the use of free video conferencing and facilitation of family visits.
- 61:** That women with children who are leaving prison be provided with transitional assistance after release from prison, particularly in securing appropriate accommodation, financial support and employment, and in accessing health and welfare services.

### **Transgender female prisoners**

- 62:** That corrective authorities should operate on the presumption that transgender prisoners ought to be accommodated in facilities which are appropriate to their gender identification. This presumption should be subject to an option of these prisoners being placed in either a male or a female prison if they have legitimate safety concerns about being placed in a prison of their self-identification.
- 63:** That all medical needs of transgender prisoners be addressed while they are in prison including provision of hormone treatment and necessary physical and psychological support services.
- 64:** That transgender prisoners have a choice about being placed 'in protection' if they decide this is the safest environment, and they should suffer no disadvantage of entitlements from this choice.

### **Accountability of prisons**

- 65:** That all corrective services staff receive mandatory training and information about unlawful discrimination and sexual harassment, Indigenous issues and dealing with people from culturally and linguistically diverse communities.
- 66:** That research and statistics produced by the Department of Corrective Services on offenders in the corrective services system includes the following data: gender, race, disability and the impact on dependent children of incarcerated parents.
- 67:** That legislation be enacted to ensure that the Office of Chief Inspector of Prisons has the power to bring independent scrutiny to the standards and operational practices of correctional services throughout Queensland. This jurisdiction should also extend to juvenile detention centres. The legislation must ensure that:
- the Office is properly independent of the Department of Corrective Services and the Department of Communities;
  - the Office is answerable to and reports directly to Parliament.

The government must ensure that the Office is adequately resourced to perform its role.

### **Independent scrutiny**

- 68:** That the Human Rights and Equal Opportunity Commission conducts a review into how the justice and prison systems across Australia are dealing with women with mental health issues.



### 3 Background to Review

In Queensland, female prisoners are a small proportion of the prison population. Like the rest of Australia, the vast majority of the prisoner population is male. Because there has always been a small number of female prisoners in the correctional system, the theory and philosophy of corrections, the models of prisons and the practice of prison and prisoner management have been developed to contain a predominantly male population.

At 30 June 2005, 4996 men and 361 women were held in custody in Queensland.<sup>4</sup> In contrast to men, very few of these 361 women are serious violent offenders, and generally, they pose little risk to public safety.<sup>5</sup> Many of them are single parents with dependent children. They are a disproportionately disadvantaged population with high levels of poverty, low levels of educational attainment and poor employment histories.

A history of sexual and physical abuse and violence is common among female prisoners. Compared to male prisoners, female prisoners are much more likely to have sought help for mental or emotional problems prior to incarceration and more female prisoners have drug dependencies at that time. Unlike male prisoners who may express their anger and frustration through riots, escapes or violence to others, women prisoners rarely pose a security risk to others. They are far more likely to self-harm.

Efforts have been made over the past 18 years to improve the management of female prisoners. Until 1988, all women prisoners were incarcerated in Brisbane. Women were first imprisoned at the Townsville Correctional Centre in 1988 in an effort to locate North Queensland women closer to their homes. In the same year some women were permitted to have their young children with them in custody.

Open custody centres were established for women in Townsville in 1995 and at Numinbah in South East Queensland two years later. The Women's Community Custody (WCC) program began at the Helana Jones Community Corrections Centre (HJCCC) in 1989 and the Warwick Women's Work Camp (WWWC) was established in 1995. A new Brisbane Women's Correctional Centre (BWCC) was built to replace the old Boggo Road women's prison in 1999.

#### Prison reviews - history

The Queensland Government has commissioned a number of reviews in the past two decades that have led to improvements in the state's prison system. The Kennedy Review<sup>6</sup> into corrective services in Queensland in 1988 resulted in extensive changes to the system including new legislation, a new organisational structure and the creation of a series of new policies and procedures. Significant improvements were made to the correctional system as a consequence of the Kennedy Review's far-reaching recommendations. A much greater emphasis was placed on rehabilitation and corrections, and options for diversion from custody, with the introduction of a process of graduated release of prisoners.

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<sup>4</sup> Queensland Department of Corrective Services *Annual Report 2004-05* (2005).

<sup>5</sup> Only 5% of women prisoners are serious violent offenders as defined in the *Penalties and Sentences Act 1992*, according to Queensland Department of Corrective Services *Submission to Women in Prison Review*, (10 September 2004) 4.

<sup>6</sup> J J Kennedy, *Commission of Review into Corrective Services in Queensland: Final Report* (1988).

A review committee consisting of Queensland Corrective Services Commission staff and a number of women prisoners was established in 1992 to give effect to the 'special needs status' afforded to women prisoners in 1992 by the Queensland Corrective Services Commission. The report of that committee<sup>7</sup> was completed in 1993, and a number of the recommendations of the review have been implemented over the period 1994-1997.

A further review in 1999<sup>8</sup> resulted in the enactment of the *Corrective Services Act 2000* (Qld) (CSA).

Progress has been made in attempting to recognise and address the special needs of women and Indigenous prisoners in the last decade, much of it through the work of dedicated women's and Aboriginal and Torres Strait Islander policy units within the DCS bureaucracy. Those units have contributed valuable research and prompted policy changes within the DCS to start addressing the special needs of female prisoners and Indigenous prisoners<sup>9</sup>.

In 2003 the DCS adopted the *Addressing the needs of female offenders - Policy and Action Plan 2003-2008*<sup>10</sup> which recognises:

... that the experience of female offenders in the criminal justice system is vastly different from that of their male counterparts. The differences between male and female criminality are profound and female offenders present with distinct psychological, health and socio-economic characteristics. Female offenders are recognised in their own right and correctional responses will be based on their identified needs.

The policy document articulates the policy principles that guide the DCS in the management of female prisoners. The principles include requiring measures for ensuring that:

- female offenders gain access programs, services, options and opportunities responsive to their needs;
- female offenders are managed with respect and regard for their dignity, in a way which facilitates self-responsibility;
- female offenders are provided with rehabilitative and culturally sensitive environments that acknowledge women's needs and their life experiences and which accord with assessed risks and needs;
- staff are recruited and trained to meet the unique requirements of correctional facilities for female offenders;
- the design, administration and operation of correctional services are informed by empirical evidence regarding effective outcomes for female offenders;

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<sup>7</sup> Queensland Corrective Services Commission *Report of the Womens Policy Review* (1993).

<sup>8</sup> Frank Peach, *Corrections in the Balance: a Review of Corrective Services in Queensland* (1999).

<sup>9</sup> It is of concern that the recent *Business Model Review* of the Department of Corrective Services has recommended the abolition of these units.

<sup>10</sup> Queensland Department of Corrective Services, *Addressing the Needs of Female Offenders Policy and Action Plan 2003-2008* (2003).

- correctional services encourage individual female offenders to maintain and develop their role as mothers and/or primary care givers and acknowledge the centrality of their connections with family and significant others;
- correctional services foster personal responsibility by offering meaningful choices and maximising the individual's control over physical environments and circumstances.

The DCS has taken a number of proactive steps to recognise the special needs of women. Young children are allowed to stay with their mothers in certain circumstances; special escort procedures have been developed for pregnant or nursing prisoners; and a target of 70% of female staff has been set for female prisons.<sup>11</sup> Female prisoners can participate in community custody programs that are not open to male prisoners convicted of certain offences.<sup>12</sup> There are no maximum security facilities for female offenders, and DCS procedures state that women prisoners should not be classified maximum security.<sup>13</sup> Prison facilities for women are given a higher level of access to forensic mental health services than facilities for men.<sup>14</sup> Methadone, which is not broadly available to male prisoners, may be provided to female prisoners, with pregnant women receiving priority.

In spite of the solid work that has occurred and the dedicated effort of many officers of the DCS, many of the foundations of the correctional system remain unchanged, hindering the capacity of a system designed for men to recognise or adapt to offenders with special needs.

While the CSA explicitly states that it recognises the special needs of some offenders by taking into account an offender's age, gender, race and disabilities,<sup>15</sup> the majority of the DCS directives and policies do not differentiate between male and female prisoners or mention prisoners with special needs.

The Queensland correctional system, like the majority of correctional facilities throughout the world, has been designed for a large, more homogenous and high risk male population. For the most part, it is a system that allows little flexibility and dedicates relatively few resources to accommodate the special needs of prisoners who are among the minority groups in the prison population.

### **Prison review – current**

At present the DCS is seeking to incorporate changes which will positively impact on women prisoners. These reforms include a new policy on rehabilitation and revised programs and services framework.

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<sup>11</sup> In 2004, women custodial officers comprised the following percentages of the custodial corrections officers workforce at the prisons for women: BWCC 53.5%; TWCC 83.33%; Numinbah Women's Correctional Centre 66.6%; Helana Jones/Warwick 66.6%.

<sup>12</sup> See *Corrective Services Act 2000* (Qld) s 57(e).

<sup>13</sup> Each prisoner must receive a classification level as set out in *Corrective Services Act 2000* (Qld) s 12(2). Those levels are maximum security, high security, medium security, low security and open security. See also the Department of Corrective Services *Maximum Security Orders Procedures*.

<sup>14</sup> DCS *Submission to Women in Prison Review* (10 September 2004) above n 5, 7.

<sup>15</sup> CSA s 3.

The program aims to be:

responsive to the needs of individual offenders, including Indigenous and special needs offenders, enabling matching between needs and programs/services.<sup>16</sup>

The development of specific policies to recognise the special needs of certain groups of prisoners is an important first step in creating a system that equitably deals with those needs. These proposed new programs need to be implemented proactively and strategically. They need to be monitored, measured and evaluated to determine whether or not special needs are being accommodated in an equitable way. The evaluation must include an assessment of additional effort and resources required to implement any new program.

In several key areas, Queensland spends significantly less on the running of its prisons than other Australian states. For instance, Queensland has the highest ratio of offenders to operational staff (37.2) in Australia. The lowest is ACT (25.2). In the area of community corrections, offender staff ratios range from 26.6 offenders per staff member in Queensland to 16.4 in WA in 2003-04.<sup>17</sup> While the level of funding on Queensland prisons and corrections services affects all prisoners in Queensland to some degree, lower levels of spending can be argued to have a greater impact on prisoners with a higher level of needs.

The sharp increase in the numbers of women in prison in recent years poses serious challenges for policy makers, administrators and staff involved in the daily management of the prisons. When planning for anticipated growth in prisoner numbers over the next few decades, politicians, policy makers and justice system administrators must reconsider the ways in which females and minority groups are dealt with by the legal and correctional systems. A failure to adequately address the needs of women, and minority groups of prisoners may contravene Australia's international human rights obligations, and may also constitute breaches of the ADA. New models and approaches need to be considered and implemented to ensure the lauded recognition of different needs of minority groups is fully realised in legislation, policy and procedures.

Against this backdrop, this review looks at how the prison system presently treats women in Queensland prisons. The ADCQ in conducting the review did not examine any individual complaints of discrimination made by women currently in or who have been in prison.

The review examined the underpinnings of the correctional system, the prison infrastructure, the classification system, the opportunities for rehabilitation, women prisoners' health and safety needs, and how the needs of particular minority groups of women prisoners are addressed.

In conducting the research and consultations to inform this report, the primary objective of the ADCQ has been to promote the principles of equality of opportunity and protection from unfair

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<sup>16</sup> Department of Corrective Services Submission 14 December 2005, 6.

<sup>17</sup> SCRGSP (Steering Committee for the Review of Government Service Provision) *Report on Government Services 2005* (2005) 7.28. The Productivity Commission states that 'a high offender to staff ratio suggests better performance towards achieving efficient resource management, however efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A low ratio may, for example, represent more intensive levels of supervision and program provision, commensurate with the risk and offence-related needs of the particular offender population aimed at producing greater efficiencies in the longer term.'



discrimination. The ADCQ also seeks to ascertain means of improving services and conditions for women prisoners generally, and minority groups of female prisoners in particular.

The human rights of individuals and groups, other than women prisoners, including male prisoners and victims of crime are not addressed in this report. Having said this, we acknowledge that these groups have human rights of equal importance, suffer disadvantage and have concerns and needs that are not being recognised.

**Individual complaints may be referred to the Human Rights and Equal Opportunity Commission**

To ensure that the review and complaint management processes are perceived to be separate and fair, the Queensland Anti-Discrimination Commissioner may refer complaints that may arise out of issues connected with this review to the Human Rights and Equal Opportunity Commission.



## 4 Human rights and prisons - an overview

A prison sentence deprives a prisoner of his or her right to liberty. It should not deprive a prisoner of other rights. A basic human rights principle is that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the person. The legal framework that protects the human rights of prisoners is a combination of State and Commonwealth laws based on a number of international human rights instruments Australia has signed, acceded to or ratified.

### 4.1 Australian Law

#### The *Corrective Services Act 2000 (Qld) (CSA)*

The purpose of corrective services is set out in section 3 of the CSA. Section 3 states:

#### 3. Purpose

- (1) The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.
- (2) This Act recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded.
- (3) This Act also recognises –
  - (a) the need to respect an offender's dignity; and
  - (b) the special needs of some offenders by taking into account –
    - (i) an offender's age, gender or race; and
    - (ii) any disability an offender has; and
  - (c) the culturally specific needs of Aboriginal and Torres Strait Islander offenders.

While some important basic human rights principles are stated in the CSA, including the special needs of women prisoners, the critical issue is whether these principles are recognised and applied in practice on a daily basis by all persons responsible for making policy, devising programs, and administering the prison system. These persons include staff and others who work directly with prisoners and those who supervise or interact with them.

One of the greatest challenges for administrators of any large institutional entity is identifying and eliminating or reducing the impact of systemic and indirect discrimination. Systemic discrimination is the creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is often the result of seemingly neutral legislation, policies, procedures, practices or organisational structures.<sup>18</sup>

In addition to recognising that every prisoner has basic human entitlements, the CSA also makes review and complaint mechanisms available to prisoners.<sup>19</sup> Some provisions allow for

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<sup>18</sup>Such terms or policies may constitute one of the elements of indirect discrimination as defined, see ADA s 11.

<sup>19</sup>CSA ss 4, 22, 53(3), 88(4), 109.

prison visitors and external scrutiny to occur within prisons.<sup>20</sup> The Ombudsman has authority to hear and investigate complaints, and the Prisoners Legal Service and Legal Aid lawyers can be contacted by prisoners. A new Chief Inspector of Prisons has also been appointed by the DCS.<sup>21</sup> While these processes may help individual prisoners deal with specific issues and grievances, they rarely examine the wider components of the prison system, including policies and practices that may result in systemic or indirect discrimination against particular groups within the prison system.

### Laws prohibiting discrimination

Queensland enacted the ADA which, as well as prohibiting discrimination on the basis of sex, race and impairment, also prohibits discrimination on the grounds of religious belief or activity, age, gender identity, and sexuality. The Commonwealth enacted the *Sex Discrimination Act 1984*, the *Racial Discrimination Act 1975*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004* and the *Human Rights and Equal Opportunity Commission Act 1986*. The Commonwealth legislation prohibits discrimination on the basis of a number of attributes including sex, race, disability and age. Women prisoners in Queensland are covered by these laws, although none specifically refers to prisoners or their rights.<sup>22</sup> The international conventions and declarations outlined in 4.2 are the primary basis for the principles contained in State and Commonwealth legislation prohibiting discrimination.

If a woman in prison feels she has been discriminated against on the basis of any of the attributes covered by either State or Commonwealth legislation, she has a right to make a complaint to either the ADCQ (under the ADA) or the Human Rights and Equal Opportunity Commission (under Commonwealth legislation). Once the complaint is accepted under the relevant Act, the respective Commissions will generally conciliate the complaint. If conciliation is unsuccessful, the complainant can proceed to a public hearing before the Queensland Anti-Discrimination Tribunal (under Queensland legislation) or the Federal Magistrates Court (under Commonwealth legislation). If the complainant is successful, the Tribunal or Court can make a range of orders, such as requiring the respondent to refrain from further acts of discrimination, or awarding compensation.<sup>23</sup> While most complaints are made by individuals, a group of prisoners may also make a joint complaint if it covers the same or similar issues.<sup>24</sup>

Apart from dealing with complaints of discrimination made by individual prisoners, the ADCQ and the Human Rights and Equal Opportunity Commission can, in some situations, examine issues of systemic discrimination.<sup>25</sup>

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<sup>20</sup> CSA ss 211 - 216.

<sup>21</sup> DCS above n 4.

<sup>22</sup> Except for the *Human Rights and Equal Opportunity Act 1986* (Cth) which relates to discrimination on the basis of a person's criminal record. See *Human Rights and Equal Opportunity Regulations* (Cth) s 4(a)(iii).

<sup>23</sup> See ADA s 209.

<sup>24</sup> See *'NC' v Queensland Corrective Services Commission* [1977] QADT 22 (Unreported, Member Keim, 30 September 1997).

<sup>25</sup> ADA s155, 235; *Human Rights and Equal Opportunity Commission Act 1986* (Cth) s11; *Racial Discrimination Act 1975* (Cth) s 20; *Sex Discrimination Act 1984* (Cth) s 48; *Disability Discrimination Act 1992* (Cth) s 67.

## 4.2 International law

An extensive body of international human rights law has led to the development of standards aimed at protecting prisoners from human rights abuses perpetrated by the State. Australia has acceded to a number of these standards and has made commitments to ensure they are observed. Various laws prohibiting discrimination discussed in 4.1 and enacted by the Queensland and Commonwealth governments, fulfil some of the commitments Australia has made to protect human rights.

Australia has agreed to abide by the following instruments:

- *International Covenant on Civil and Political Rights (ICCPR)*;  
Article 10 of ICCPR contains a right for all persons deprived of liberty to be treated with humanity and with respect for the inherent dignity of the human person.
- *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)*.
- *Universal Declaration of Human Rights*;
- *International Covenant on Economic, Social and Cultural Rights*;
- *International Convention on the Elimination of All Forms of Racial Discrimination*;
- *Convention on the Elimination of All Forms of Discrimination against Women*;
- *Convention on the Rights of the Child*; and,
- *Declaration on the Rights of Disabled Persons*.

Another significant international standard is the *UN Standard Minimum Rules for the Treatment of Prisoners* (Standard Minimum Rules). These rules though not a legally binding document in Australia, provide clear guidelines for the state and prison authorities on the minimum standards of compliance with international human rights law in Australia. The Standard Minimum Rules have been relied upon to interpret and apply Article 10 of the ICCPR.<sup>26</sup>

Australia has also produced the *Standard Guidelines for Corrections in Australia* based on the UN Standard Minimum Rules.

The guidelines are not binding on Australian states, but:

are intended to show the spirit in which correctional programs should be administered and the goals towards which administrators should aim.<sup>27</sup>

As Australia has acceded to international standards, it has an obligation to respect them and to ensure they are put into effect. Once all remedies have been exhausted at a domestic level (including the right to make complaints under the Queensland ADA, and the Commonwealth

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<sup>26</sup> See Camille Giffard, 'International Human Rights Law Applicable to Prisoners' in David Brown and Meredith Wilkie (eds), *Prisoners as Citizens: Human Rights in Australian Prisons* (2002).

<sup>27</sup> *Standard Guidelines for Corrections in Australia* (revised, 2004) 6.

Age, Race, Sex and Disability Discrimination Acts), complainants may take their case to one of the UN human rights committees responsible for the relevant convention or standard.<sup>28</sup>

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<sup>28</sup> Some who have utilized the processes have been critical of their effectiveness, and have concluded that there are limits to the remedies under international law for violations of prisoners' human rights. See Craig Minogue 'An insider's view: human rights and excursions from the flat lands' and John Rynne 'Protection of prisoners' rights in Australian private prisons', in David Brown and Meredith Wilkie (eds) *Prisoners as citizens: human rights in Australian prisons* (2002).

## 5 Women in prison in Queensland

### 5.1 Profile of women in prison in Queensland: who are they?

Women in prison are rarely considered by the greater population or given much media coverage. They are a small group of women whose existence and lives are largely invisible. Who they are, where they come from, and their lives prior to incarceration have been of little interest to others including most politicians, policy makers and prison administrators.

Because of their relatively small numbers and their invisibility within society, the needs and interests of women prisoners have only very recently started to be researched and considered. While the differing needs of male and female prisoners are receiving some formal recognition, addressing those differences in a correctional system primarily designed for men has been a slow process.

If the differences between female and male prisoners have been largely ignored by prison administrators until recently, then so have the unique needs of subgroups within both female and male prison populations. The needs and differences of Indigenous prisoners, prisoners with disabilities and particularly those with mental health or intellectual disabilities, and those from culturally and linguistically diverse backgrounds are frequently forgotten or ignored in the design, administration and daily routines of the prison system.

The ADA requires that state government administrators, including the administrators of Queensland prisons, act to ensure they do not unlawfully discriminate by treating a prisoner less favourably than another prisoner on the basis of the prisoner's sex, relationship status, pregnancy, parental status, age, race, impairment religious belief, lawful sexual activity, gender identity, sexuality, or family responsibilities.<sup>29</sup> The ADA prohibits both direct and indirect discrimination.<sup>30</sup> Inflexible systems that do not adequately consider the differing needs of subgroups of prisoners may amount to indirect discrimination.<sup>31</sup>

### 5.2 The number of women in Queensland prisons

Three-hundred and sixty-one female prisoners were being held in secure and open custody in Queensland on 30 June 2005<sup>32</sup>. In Queensland, as in all Australian jurisdictions, the percentage of female offenders is low compared to the number of males. During the year 2004-05, women constituted just 6.7% of the total prison population in Queensland.

Incarceration is only one of many sentencing options available to the courts. Non-custodial sentencing, including community-based orders or fines, are more common penalties for both men and women.

Once sentenced to a term of imprisonment, prisoners are assigned a security classification, which in part determines where they may be detained. At 30 June 2005, 4235 men and 278

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<sup>29</sup> See ADA s 6-7.

<sup>30</sup> See ADA s 10-11.

<sup>31</sup> Individuals who have been subjected to unlawful discrimination may seek redress and be compensated by utilising the complaint processes contained within the ADA.

<sup>32</sup> DCS above n 4, 45, table 3.

women were held in high security facilities, while 761 men and 83 women were detained in low security facilities in Queensland.<sup>33</sup>

**Table 1: Prisoners by security classification as at 30 June 2005**

Security classification	Male			Female			Total
	Indigenous	Non Indigenous	Total	Indigenous	Non Indigenous	Total	
<b>High security facilities</b>							
High	459	1375	1834	40	80	120	1954
Medium	466	1210	1676	27	71	98	1774
Low	46	218	264	5	16	21	285
Open	72	243	315	5	17	22	337
Unclassified	42	104	146	6	11	17	163
Total high security	1085	3150	4235	83	195	278	4513
<b>Low security facilities</b>							
Low	3	25	28	5	6	11	39
Open	148	585	733	8	64	72	805
Total low security	151	610	761	13	70	83	844
Total	1236	3760	4996	96	265	361	5357

Source: Department of Corrective Services *Annual Report 2004-05* Table 4 page 45

Seventy-eight percent of female prisoners were detained in a secure facility, meaning a prison with a perimeter fence designed to prevent escape.<sup>34</sup> The remaining women were held in a low security facility. By way of comparison, 85% of male prisoners were held in a secure facility.

Queensland has one of the lowest levels of open custody facilities in Australia. The DCS has identified that in 2003-2004, the average daily proportion of prisoners accommodated in open custody in Queensland was 16.4% compared to a national average of 27.3%.<sup>35</sup>

Between 1998 and 2003, the female prison population in Queensland grew by about 20%. Across Australia, the number of female prisoners increased at a much higher rate than male prisoners.<sup>36</sup>

There are significant differences in offending patterns between male and female offenders. The major offences for which women are in prison are theft, in particular fraud and misappropriation (35.2%), homicide (16.01%), assault (18.8%) and drug offences (10%), with a small number of

<sup>33</sup> Ibid, table 4.

<sup>34</sup> Maximum security classification only applies to male prisoners, and maximum security facilities are contained only within high security facilities for men. The number of maximum security male prisoners is not identified in this table.

<sup>35</sup> Queensland Department of Corrective Services, 'Prisoner classification consultation paper' *Legislation Review: Corrective Services Act 2000*, October 2004.

<sup>36</sup> See Commonwealth Office of the Status of Women, 'The health and wellbeing of women in prison: the profile of female prisoners' (2003) 7 *Focus on Women*; Queensland Department of Corrective Services. Women's Policy Unit, *Profile of Female Offenders* (2000).



women imprisoned for sex offences. Fewer women than men are convicted of violent offences and women prisoners on average serve less time in custodial centres than their male counterparts.

### 5.3 Characteristics of women prisoners in Queensland

#### Social Condition

Females entering prison commonly have combined disadvantages. These include low levels of education, limited employment skills and opportunities, poor housing, inadequate income and often backgrounds of childhood trauma and abuse. Many female offenders have never been employed, and more than half were unemployed at the time of incarceration. Most had left school by Grade 10 and had significantly lower literacy levels than the average Australian population.<sup>37</sup>

#### Age

The majority of female prisoners are between the ages of 20 and 39 (74%).

**Table 2: Prisoners by Indigenous status, age group and gender as at 30 June 2005**

Age	Male			Female			Total	
	Indigenous	Non Indigenous	Total	Indigenous	Non Indigenous	Total	Total	% of total
17	15	14	29	1	-	1	30	1%
18-19	91	113	204	6	2	8	212	4%
20-24	286	566	852	20	44	64	916	17%
25-29	282	687	969	17	45	62	1031	19%
30-34	209	679	888	19	43	62	950	18%
35-39	160	510	670	16	48	64	734	14%
40-44	111	407	518	8	36	44	562	10%
45-49	49	300	349	7	16	23	372	7%
50-54	20	169	189	2	16	18	207	4%
55+	13	315	328	-	15	15	343	6%
<b>Total</b>	<b>1236</b>	<b>3760</b>	<b>4996</b>	<b>96</b>	<b>265</b>	<b>361</b>	<b>5357</b>	<b>100%</b>

Source: Department of Corrective Services *Annual Report 2004-05* Table 3 page 45

The age profile of women in prison has implications for their health and well-being.

Unlike other state jurisdictions, in Queensland 17 year olds are held in adult prisons. Young women in the prison system can be more vulnerable than older women and have special needs.

The majority of women in prison are of child bearing age. Many are mothers and are often the primary or sole carer of children when they are imprisoned. Women prisoners' relationship with their children is a major issue for their health and well-being.

<sup>37</sup> Queensland Department of Corrective Services Women's Policy Unit, above n 36, 22-24.

Older women also have specific health, psychological and emotional needs. Adapting to the rigorous physical environment of prison can present difficulties, as can adjusting to and coping with the institutional regimes of incarceration.

### Prisoners as mothers

A major issue for female prisoners is their role and responsibilities as mothers. There are very few Australian studies about the position and experiences of children with imprisoned parents, and a dearth of formal statistical evidence of children in custody.<sup>38</sup> The precise number of women in prison who are mothers, and the number of their dependent children, is unknown. In some situations, it has been reported that inmate mothers are sometimes reluctant to divulge the existence of children they may have for fear of losing them into care.<sup>39</sup>

A 1995 study found that more than 85% of female prisoners were mothers of young children and, prior to prison, were more often than not the heads of single households.<sup>40</sup> The social impacts of a young child with their primary care giving parent in prison should be of critical concern to government policy makers working in justice and child protection, and women's prison administrators.

### Country of birth

Most women in Queensland prisons are born in Australia and the majority are white. There is a disproportionate number of Indigenous women in prison (see discussion below). In addition to Indigenous women, there is a small number of women in prison who come from a diversity of ethnic backgrounds. These women vary in their ability to speak English, which can impact on their ability to access and participate in prison programs, and understand and negotiate institutional regimes and requirements. It can also result in social isolation within prison as these women often lack family and the support networks available to others.

**Table 3: Ethnic background of female offenders in secure and open custody as at 30 June 1999**

Ethnic background of offender	Female	
	Number	Percentage
Africa (inc. Libya, Egypt)	0	0.00%
Canada	0	0.00%
East Europe	3	1.10%
Greece	1	0.36%
Italy	2	0.73%
Lebanon	0	0.00%
New Zealand	17	6.23%
Other Americas	1	0.36%
Other Asia	6	2.20%
Other Indo China	0	0.00%
Other Middle East	0	0.00%
Other Oceania	1	0.36%

<sup>38</sup> Ibid 25.

<sup>39</sup> J Woodrow, 'Mothers Inside, Children Outside', in Roger Shaw(ed) *Prisoners Children* (1992).

<sup>40</sup> M A Farrell, *A comparative policy study of incarcerated mothers and their young children in Queensland, NSW, Victoria and England* (PhD, 1995) above n 36, 25.

Other West Europe	4	1.47%
Papua New Guinea	2	0.73%
Torres Strait Islander	2	0.73%
Tribal Aboriginal	11	4.03%
UK and Ireland	6	2.20%
Urban Aboriginal/Islander	59	21.62%
USA	0	0.00%
Vietnam	4	1.47%
White Australian	148	54.21%
Yugoslavia	3	1.10%
Unknown/Not stated/ Not applicable	3	1.10%
<b>TOTAL</b>	<b>273</b>	<b>100%</b>

Source: Department of Corrective Services Women's Policy Unit 2000 *Profile of Female Offenders* Table 1.10 page 8.

### Indigenous women

Indigenous women (and Indigenous people in general) have an unacceptably high risk of being imprisoned in Queensland. Aboriginal and Torres Strait Islander people represent less than 3% of the general population, yet make up 24.8% of the total prisoner population. At 30 June 2005, 26.58% of female prisoners in Queensland were Indigenous. In 2005 the percentage of Indigenous women in prison in Queensland was higher than the number of Indigenous men.<sup>41</sup> These figures are consistent with the Indigenous imprisonment rates in 2004.

**Table 4: Summary of prisoners as at 30 June 2004 by Aboriginality**

Custody type	Indigenous Males	% all males	Indigenous Females	% all females	Total Indigenous	% all prisoners
Secure custody	980	23.7%	86	29.0%	1066	24.1%
Open custody	107	19.1%	13	31.0%	120	19.9%
Community custody	19	8.0%	0	0.0%	19	7.2%
<b>Total</b>	<b>1106</b>	<b>22.4%</b>	<b>99</b>	<b>27.8%</b>	<b>1205</b>	<b>22.7%</b>

Source: Department of Corrective Services *Annual Report 2003-04* Table 2 page 39

In the decade since the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), Queensland has recorded an increase in prison numbers of 116%.<sup>42</sup> During this time, incarceration rates for women have increased at a more rapid rate than men. The increase in imprisonment of Indigenous women has been greater over the period compared with other women<sup>43</sup>. In Queensland, the growth of Indigenous female offenders in secure and open custody over the five year period from 1994-1999 was 204% compared to 173% for all female offenders over the same period.<sup>44</sup>

<sup>41</sup> DCS above n 4, 45.

<sup>42</sup> Australian Bureau of Statistics, *Prisoners in Australia: Summary of Findings* (2002).

<sup>43</sup> Margaret Cameron, 'Women prisoners and correctional programs' (2001) 194 *Australian Institute of Criminology: trends and issues*, 1.

<sup>44</sup> Queensland Department of Corrective Services, Aboriginal and Torres Strait Islander Women's Policy Unit, *Options for Diversion from secure custody for Indigenous Female Offenders* (2002) 8.

Indigenous women are often in prison for relatively shorter sentences than non-Indigenous women. Recidivism statistics suggest that Indigenous women are at greater risk of returning to prison. In 1999, 53.3% of non-Indigenous women in prison in Queensland had been in prison before compared to 62.9% of Indigenous women.<sup>45</sup>

Indigenous women are vulnerable to similar health and well-being issues as other female prisoners in addition to having different cultural needs. As a disadvantaged minority group, Indigenous women almost universally have been subjected to social and economic hardship. Often they are imprisoned a long way from their homes and families, particularly women from north and central Queensland.

### **Physical and mental health**

Many women entering prison have a history of poor physical and mental health. The DCS conducted a health survey of female prisoners in 2002.<sup>46</sup> That survey found that:

- the three major issues pertaining to the health of women in prisons were drug abuse, mental health and childhood sexual abuse;
- 57.1% of women reported having been diagnosed with a specific mental illness, the most common being depression. 9% of female prisoners had been admitted to a psychiatric hospital and 17% had been prescribed counselling or treatment. Women prisoners have a much higher incidence of mental health problems than male prisoners<sup>47</sup>;
- more than a third of women consumed alcohol at hazardous or harmful levels prior to incarceration, with harmful drinking highest among Indigenous women from north Queensland;
- half the women had a history of injecting drug use and 40% tested antibody positive to hepatitis C;
- poor nutrition, low levels of exercise, unprotected sex, unplanned pregnancies, drug use and needle sharing were issues impacting on the health of many of the women entering the prison system.

### **Intellectual disability**

Little research has been done on women in prison with intellectual disability or other forms of cognitive or learning disability. Both Australian and overseas studies report over-representation of offenders with intellectual disability.<sup>48</sup> Australian research into the percentage of prisoners who have an intellectual disability varies. Victorian research estimates 3-4% of the prison

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<sup>45</sup> National Prison Census 1999 (ABS) unit record file quoted in Aboriginal and Torres Strait Islander Social Justice Commissioner, *Report 2002* (2003).

<sup>46</sup> B A Hockings et al, *Queensland Women Prisoners' Health Survey* (2002).

<sup>47</sup> DCS Profile of female offenders, above n 36, 17 – 18.

<sup>48</sup> New South Wales Law Reform Commission, *People with an Intellectual Disability and the Criminal Justice System* (1996).

population has an IQ below 69,<sup>49</sup> however, another study involving ex-prisoners in New South Wales indicates that nearly 30% had an intellectual disability.<sup>50</sup> The prevalence of intellectual disability in the general population is estimated to be 2-3%.

Women prisoners with intellectual disability are more likely than non-prisoners of similar socio-economic backgrounds to have concurrent problems such as alcohol or illicit drug abuse, self-harm and suicide, poor mental and physical health, and low levels of education.<sup>51</sup>

Some research indicates that women prisoners with intellectual disabilities are more likely than their male counterparts to have a psychiatric diagnosis.<sup>52</sup>

## Abuse

Many female prisoners have a history of sexual or physical abuse.

The Queensland Women Prisoners' Health Survey found that:

- 42.5% of women reported being the victim of non-consensual sexual activity before the age of 16;
- 37.7% reported having been physically or emotionally abused before the age of 16; and
- 36.5% experienced actual or attempted intercourse on one or more occasions before the age of 10.<sup>53</sup>

The likelihood of having been sexually abused is much higher for women prisoners than for other women. In a representative population survey, 8.8% of Queensland women aged 18 years or more have reported being the victim of rape or sexual assault.<sup>54</sup>

## 5.4 Corrective services facilities for women in Queensland

Queensland has four facilities for female prisoners. Historically female prisoners constitute a very small percentage of the total Queensland prison population (about 7%). Three of these facilities for women are located in South East Queensland with the fourth in Townsville. In contrast, there are 17 facilities for men located throughout the state. The following maps show the location of facilities for men and women in Queensland.

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<sup>49</sup> Commonwealth Office of the Status of Women 'The health and wellbeing of women in prison: issues impacting on health and wellbeing' (2003) 8 *Focus on Women*, 4.

<sup>50</sup> K Lewis and Susan C Hayes 'Intellectual functioning of women ex prisoners' (1998) 30(1) *Australian Journal of Forensic Sciences*.

<sup>51</sup> Susan C Hayes *Hayes Ability Screening Index (HASI) manual* (2000).

<sup>52</sup> Susan C Hayes and D McIlwain *The Prevalence of Intellectual Disability in the NSW Prison Population: an empirical study* (1988).

<sup>53</sup> B A Hockings et al, above n 46, 52-53.

<sup>54</sup> *Ibid*, 54.

## MALE CORRECTIONAL FACILITIES



**Note:** Work camps for men are located at 11 regional locations (not marked on map).<sup>55</sup>

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<sup>55</sup> DCS above n 4, 40.

## FEMALE CORRECTIONAL FACILITIES



**Note:** One work camp for women prisoners is located at Warwick showgrounds.

Of the facilities available to women in August 2004, 14% are exclusively low or open custody<sup>56</sup> compared to 10.2% for male prisoners.<sup>57</sup>

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<sup>56</sup> DCS *Submission to Women in Prison Review* (10 September 2004), table 2.

<sup>57</sup> *Ibid.*

## Brisbane Women's Correctional Centre

The largest of the facilities for women is Brisbane Women's Correctional Centre (BWCC). This is a secure prison facility with a capacity to accommodate 270 women. Located on the outer western fringe of Brisbane, it is approximately 2.5 kilometres from the suburban train station of Wacol.<sup>58</sup>

BWCC was opened in 1999 replacing the old over-crowded women's prison at Boggo Road, Dutton Park in central Brisbane. The physical structures of BWCC are modern and contemporary, and have been purpose built as a women's prison. It contains a medical unit, an educational unit and library, a gymnasium, administration buildings, a visitors' area, and a number of large workshops that house prison industries. The BWCC perimeter is secured with high level security fences and razor wire.

BWCC is a prison for women who have been sentenced to a period of imprisonment after a full criminal hearing before a judge or magistrate. BWCC also accommodates women on remand, who are being held in custody until their trial, but are yet to be found guilty of a crime. Aside from the Townsville Correctional Centre, the BWCC is where all female prisoners are first sent when convicted.

Under federal legislation, BWCC at the time of commencement of the ADCQ's review into women in prison accommodated a number of women on behalf of the Commonwealth who were being detained or due to be deported as illegal immigrants.<sup>59</sup>

BWCC houses both mainstream and protected prisoners. About 10% of the total prison population are protected prisoners who are separated from other prisoners for a variety of reasons. These women are housed in another secure facility that is effectively a prison within a prison.

Like all other facilities for women, the BWCC houses female prisoners as young as 17 years. Children under the age of five often reside with their mothers who are serving time.

BWCC provides several types of accommodation for women prisoners:

- Secure 6 (or S6) accommodation consists of four dormitory style units. Sixteen prisoners are housed in two of the units with 24 prisoners in each of the other two. The block has a protection unit containing 24 beds for inmates who need protection because of the nature of their crime, difficulties with other prisoners or their status as protected witnesses.
- Secure 1 (or S1) is a block of four units. Three of these contain six smaller units each housing six prisoners. All newly-arrived prisoners and immigration detainees are initially placed in Secure 1 unless they are assessed as requiring additional protection for their own safety. Women inmates, who are housed in S1 or S6, are allowed limited private

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<sup>58</sup> A free shuttle bus service which is available to visitors to the facility runs 4 days a week.

<sup>59</sup> For example Cornelia Rau was held in BWCC as an immigration detainee for 6 months in 2004. Since the handing down of the *Palmer Report* in July 2005 the Minister for Corrective Services has stated that immigration detainees would no longer be held in Queensland prisons. (see Section 9.3.2 for details of Cornelia Rau and the Palmer Inquiry.)



property, wear prison issued clothing, and are provided with plated meals that are prepared in the main kitchen of the facility.

- A crisis support unit (known as CSU or S4) is a secure facility within S1. It provides low hazard containment for the protection and promotion of the health of prisoners identified as having intent to suicide or self-harm, or to harm others.<sup>60</sup> The CSU consists of a number of segregated cells surrounding a modest central common area, with a small caged exercise yard adjacent to the unit. The unit features a padded cell with restraining devices. The CSU is discussed in detail later in this report.
- The other main accommodation in BWCC is residential housing units for 118 inmates. The units are clustered four to a block and house six prisoners per unit. Campus style, they consist of a communal living area, a separate cell for each inmate and access to a shared bathroom, kitchen and laundry. The individual cells in residential are larger than those in secure and inmates are permitted to have more private property than those in secure accommodation. Residents do their own cooking and share cleaning responsibilities.
- A number of the residential units also accommodate a total of eight inmates who have their baby or young child residing with them in prison. Whether or not a young child resides with their mother, is determined by the person in charge of the prison facility, based on what is in the best interests of the child.<sup>61</sup> If the decision maker believes it is warranted, the decision as to where the child resides can be varied during the time the mother is in prison. Children who are five years or more are not permitted to reside in prison, as the facilities are deemed to be unsuitable for their needs. The children sleep in their mother's cell, which is large enough to accommodate a child's cot or bed. There is a small fenced playground with some climbing equipment adjoining the units, which is accessible during the day. Mothers and children also have access to a formal playgroup with skilled external facilitators attending once a week.
- The prison has a detention unit (DU) that is separate from other accommodation in the prison. The DU is used for segregating prisoners for breaches of BWCC discipline<sup>62</sup> or where a special treatment order has been made for the safety of a prisoner or for the security or good order of the facility.<sup>63</sup> The DU consists of four separate confinement cells and two special treatment cells, all of which are minimally furnished with adjacent toilet and showering facilities. The unit does not have a corrective services officer present at all times unless a prisoner is on observation.

Depending on their behaviour, prisoners usually progress from S1 to S6 and then to residential. However, again depending on behaviour, a prisoner may go directly to residential from S1 or spend the entire time in prison in one or other of the secure units.

The BWCC has a range of work options and programs for inmates. These are discussed in greater detail elsewhere in this report.

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<sup>60</sup> DCS *Submission to Women in Prison Review* (10 September 2004), 19.

<sup>61</sup> Queensland Department of Corrective Services, 'Accommodation of Children' *Department of Corrective Services Procedure – prisoner Services* (Version 02, 5 September 2002).

<sup>62</sup> CSA s 91.

<sup>63</sup> CSA s 38.

### **Helana Jones Community Correctional Centre/Warwick Women's Work Camp**

The HJCCC, an open classification facility for women only, is located at Albion, in inner city Brisbane. The HJCCC opened in 1989, and has a capacity for 38 women, as well as children. The facility consists of a hostel and a house.

The HJCCC hostel accommodates 30 women and regularly has up to six children, sometimes ten, placed with their mothers. The house accommodates eight women. HJCCC accommodates women serving both short and longer term sentences. Women are usually placed at HJCCC after serving time in BWCC or the Numinbah Correctional Centre. HJCCC has a range of work and programs for women, which are discussed in more detail elsewhere in this report.

Women residing in the HJCCC hostel may work outside the facility or may have work responsibilities within it. Women living at the hostel with children aged less than five years are eligible to receive childcare and family welfare benefits. A portion of this money is paid to the hostel to cover living expenses and the remainder is held in trust for the benefit of the child. Children residing at the centre sleep in the same room as their mother. The centre has a fenced play area with several pieces of playground equipment.

The HJCCC house is solely used for up to eight women who are on release-to-work. These women are in paid employment, working for normal wages, a portion of which is paid in rent to the centre. These women are issued with a pass to leave HJCCC and travel to work. Women residing in the house have fewer restrictions than those in the hostel and are able to access weekend leave. They do their own cooking and their daily routines are similar to life outside a correctional institution.

Up to 13 women (without children) residing in the hostel may also live and work at the Warwick Women's Work Camp. This facility, which opened in 1995 within the Warwick Showground, has two residential buildings, one with dormitory sleeping accommodation, kitchen, dining and living areas, and the other consisting of single room donga with an adjoining open air covered living space. Women usually travel to and stay at Warwick for nine days, then return to the HJCCC facility in Albion for five days. At Warwick, women are engaged in a range of community-based activities including building restoration and painting, landscape maintenance and mowing, rodeo and other work.

### **Numinbah Correctional Centre**

Numinbah Correctional Centre (NCC) is located in the Numinbah Valley in the Gold Coast hinterland, 100 kilometres south of Brisbane. NCC is an open custody prison for both men and women, situated on an 1800 acre reserve, much of which is a working dairy farm. NCC was built as a correctional centre for male prisoners in 1939 with the addition of a women's annex in 1998 adjacent to the men's accommodation. Male and female inmates share a number of facilities including the reception and visitors' area, and medical room.

The facility accommodates as many as 104 men in huts, demountables and two houses. Up to 25 female offenders can stay in the women's annex, which has 24 individual rooms each containing two beds and a separate kitchen facility. Unlike the men's areas of the facility, which are totally unfenced, the women's annex is surrounded by a high electric fence erected for the

'safety and well-being of the women inside.'<sup>64</sup> The gates to the women's area remain open during daylight hours, but are shut when the electric fence is activated from 8pm to 6am. Men and women at NCC are confined to designated areas and do not mix.

Women can be transferred to NCC from BWCC and Townsville Correctional Centre, to serve both short and long term sentences. At NCC, they have access to a number of programs, training and work opportunities that are discussed in more detail elsewhere in this report.

### **Townsville Women's Unit**

Townsville Correctional Centre (TCC) is a secure facility for men and women, who are held in separate quarters. The Townsville women's unit, which started receiving prisoners in 1988, can house 40 women in secure custody, and 35 women in the residential unit. Initially it had a low/open classification although it now houses medium classification prisoners as well. Children under the age of five can be accommodated with their mothers in all units. At the time of the ADCQ's visit to the facility, there were 49 women in the secure unit (including 24 Indigenous women), and 29 women (including 13 Indigenous women) and three babies in the residential unit.

The TCC women's unit is separated from the men's by an 8-10 metre wide road between two chain wire fences. Hessian material has been attached to large areas of one fence in an attempt to create a visual barrier between the men's and women's units. In spite of this, both visual and aural contact still occurs between the men's side of the prison and the tailor shop in the women's section of the facility.

The women's unit at TCC comprises three residential areas.

The secure women's unit accommodates up to 32 female prisoners with another 24 at the adjacent Julbu unit. Each unit can hold a maximum of 56 women with high, medium, low and open classifications. All women prisoners coming into TCC are at first held in the secure unit, so they can be observed for behavioural and possible addiction assessment. Women progress from the secure unit to the Julbu unit as a reward for appropriate behaviour.

Cells in the secure unit are small and cramped with a shower and basin and bunk beds for two women. There is an open plan living/dining area adjoining the cells. Prisoners have access to an outdoor area, which they share with women who are housed in the Julbu huts. None of the living areas or bedrooms used by prisoners is air-conditioned. During the ADCQ visit, this part of the facility was very hot and cramped, and apart from the Julbu huts, appeared to be run down and worn out.

There are four Julbu huts built in a square, each housing six women, 24 women in total. Inmates have their own reasonably sized bedrooms. Each hut contains two showers and toilets as well as a kitchen so the women can cook their own meals.

While children are allowed to reside with their mother in both the secure and Julbu areas, there are no other facilities for them, such as play equipment, in this part of the women's unit.

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<sup>64</sup> Quoting from notes provided by Manager of Centre to ADCQ at time of our visit.

The residential women's unit consists of six original old Queensland style houses that have been renovated and extended to accommodate 35 prisoners and their young children. The women do their own cooking in the kitchens within each house. Although built as an open classification facility, due to overcrowding, women who are classified as open/low and medium/secure can now be accommodated in this area of the prison. This has resulted in the construction of a high chain wire electric fence around the perimeter. Open classification women residing in this unit are not strip-searched after returning from a shopping trip or other external visit.<sup>65</sup> However, all female prisoners are strip-searched when entering the secure unit.

Children may reside here during weekend visits with their mothers. A commercial outdoor play gym and slide for children is adjacent to the gazebo and BBQ area in a large garden with shady trees.

Programs and work opportunities available to women in the TCC are discussed elsewhere in this report.

Since the ADCQ visited TCC in December 2004, a new General Manager has made a number of changes to improve conditions for female prisoners. These changes are aimed at eliminating a number of sources of obvious direct discrimination on the basis of sex between female and male prisoners, although the women's access to recreational facilities such as open space on the oval is still inferior to their male counterparts.

In December 2005 the DCS advised the ADCQ that it will be constructing a new women's prison in Townsville. The project has a planned completion date of December 2007. One hundred and fifty beds will be constructed as stage one with a capacity to expand to 200 beds over time. Accommodation will be in both cell and residential style accommodation. The new prison will replace the current infrastructure for women in Townsville.<sup>66</sup> The DCS also advises that the new centre will allow for prisoners' children up to preschool age to be accommodated onsite in two special mothers' units. The visiting area contains a special kindergarten/crèche room. The facility will provide new resources such as program areas, meeting places and court video conferencing capabilities.

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<sup>65</sup> Since the ADCQ representatives visited the facility in December 2004, the new General Manager allows open classification women prisoners to go shopping with their children for food accompanied by a prison officer.

<sup>66</sup> DCS *Submission to Women in Prison Review* (14 December 2005) 9.

## 6 Human rights and the corrective service systems

This report describes current legislation, policy and procedures. The DCS has advised that in 2006 amendments to the CSA will change the way prisoners are managed in custody and released into the community. As well, a number of program initiatives and changes in practices have already happened or are proposed. These changes have been highlighted and commented on, where relevant in this report. The DCS is urged to consider comments and recommendations in this report when implementing the new legislation and changes to policy and procedures.

### 6.1 The classification system

#### 6.1.1 The *Corrective Services Act 2000 (Queensland) (CSA)*

Prisoners' classification levels have a direct impact on their quality of life. It affects which prison they are placed in, their level of supervision and privileges, and directly impacts on critical decisions such as when they may be granted early release. The validity of the classification process should be of serious concern for all prisoners, and persons involved in administering prisons.

Like many other jurisdictions, under the CSA in Queensland, prison authorities are required to assign a classification to a prisoner.<sup>67</sup> The Act sets out five levels of classification: maximum, high, medium, low and open security. While the Act does not expressly state the purpose of the classification of a prisoner, the DCS says:

- the purpose of a security classification is to signify the prisoners' institutional security risk;
- identify the prisoner's level of escape risk on escort; and
- assist in identifying the most suitable placement options for the prisoner.<sup>68</sup>

The DCS further states that:

- the classification system ensures prisoners who are a high risk, due to their likelihood of attempting to escape, the risk they pose within a correctional services facility and their likelihood of re-offending, are accommodated in a secure facility with appropriate levels of supervision; and that
- prisoners who are assessed as being unlikely to escape, who present a low risk within the corrective services' facility and pose little or no risk to the community can be accommodated in facilities with less security and supervision.<sup>69</sup>

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<sup>67</sup> CSA s 12.

<sup>68</sup> DCS *Submission to Women in Prison Review* (10 September 2004) 10.

<sup>69</sup> 'Prisoner classification consultation paper' above n 35, 9.

The CSA presently sets out 12 factors to be taken into account in deciding a prisoner's classification,<sup>70</sup> however, at the time of writing this report, the DCS is reviewing the Act and re-examining the classification system.<sup>71</sup> The factors include:

- the risk of the prisoner to the community; (s12(3)(a));
- the nature of the offence for which the prisoner has been charged or convicted (s12(3)(b));
- the period of imprisonment the prisoner is serving; (s12(3)(c));
- whether the prisoner has any outstanding charges and the nature of the charges; (s12(3)(d));
- the prisoner's criminal history; (s12(3)(e));
- the prisoner's escape history (if any); (s12(3)(f));
- the prisoner's demonstrated attitude towards the sentence being served; (s12(3)(g));
- the likelihood of the prisoner being deported or extradited, and the prisoner's demonstrated attitude towards the deportation or extradition; (s12(3)(h));
- the prisoner's previous conduct in a corrective services' facility including whether a prisoner has committed an offence or breach of discipline or returned a positive test sample; (s12(3)(i));
- the prisoner's previous conduct while subject to a community-based order or a post-prison community-based order; (s12(3)(j));
- the prisoner's medical history (including psychological or psychiatric history) (s12(3)(k)); and
- the likely influence of the prisoner's family relationships; (s12(3)(l)).

While the classification system under the CSA is the same for men and women, current DCS policy is that no female prisoners are classified as maximum security<sup>72</sup> and all women on remand are classified as high security (CSA s12 (1)).

All women, upon being sentenced and entering prison, are initially housed in the secure area of either BWCC or TCC until they are assessed. An initial security classification must be completed within 14 days of admission, and prisoners serving more than 12 months must be further assessed under the Offender Risk/Needs Inventory (ORNI)<sup>73</sup> within 21 days of admission.<sup>74</sup> Prisoners have a right to seek a reconsideration of their security classification if it has been changed, within seven days of the date of that change.<sup>75</sup> After the initial classification has been

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<sup>70</sup> CSA s 12(4).

<sup>71</sup> DCS *Submission to Women in Prison Review* (14 December 2005) 8.

<sup>72</sup> Queensland Department of Corrective Services, 'Maximum Security orders' *Department of Corrective Services Procedures – Offender Management* version 00 (23 July 2004).

<sup>73</sup> The ORNI is discussed in detail at 6.2.2 below.

<sup>74</sup> Queensland - Department of Corrective Services 'Assessment' *Department of Corrective Services Procedures – Offender Management* version 02 (28 May 2003).

<sup>75</sup> *Corrective Services Regulation 2001* (Qld) s 4.

assigned the CSA requires that a prisoner's classification be reviewed at intervals of six months or less.<sup>76</sup>

In December 2005 the DCS advised that:

Some of the major changes proposed in the new legislation, though not gender specific, should benefit women prisoners due to their general profile of serving short sentences and being a lower security risk.

Further, the DCS states:

It is proposed that the new legislation will change the way that prisoners are classified and that there will be fewer classification levels. The new classification system will be guided by the principle that a prisoner's security classification indicates the most suitable placement of a prisoner and the level of security and supervision a prisoner requires.<sup>77</sup>

Simplification of the classification system is a positive step forward. However, the critical issue is how classification levels are determined. If not done properly, there is a risk that offenders will be sent to facilities with higher than necessary levels of security, which are costly and provide restricted access to correctional programs and activities. Conversely, dangerous offenders might be assigned to lower security facilities with all the implied risks to correctional workers and fellow inmates.

Two basic tests, one for validity, and another for reliability, would determine whether or not the approach in allocating classifications is fair and based on legitimate assessments. The first test would verify that the assessment tool measures what it is intended to measure. The second test would reveal if different users operated the same tool in the same way and came up with consistent results.

The Auditor General of Canada and the Canadian Public Accounts Committee have both recognised the vital importance of the integrity of the classification instruments for classifying prisoners. It is incumbent on those administering and overseeing the Queensland prison system to ensure similar levels of accountability.

### **6.1.2 Existing process of classifying a prisoner**

Generally, a prisoner's initial security classification is determined and allocated by a sentence management corrections officer (A04 level) at the reception centre of the prison after sentencing. The corrective services officer responsible for making the initial recommendation or classification receives on-the-job training in the methodology of classification.

Depending on the length of sentence, the officer may not have full authority to determine a classification, but may only have power to make a classification or recommendation, which requires final approval by the General Manager. The ADCQ has been informed that the General Manager changes the classification recommendation in about 6% of cases. The Executive Director of Custodial Operations reviews the classification of prisoners sentenced to a term greater than 10 years. The ADCQ has also been informed that with prisoners serving sentences of two years or more, classifications are automatically checked and verified by the DCS Office of

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<sup>76</sup> CSA s 12(4).

<sup>77</sup> DCS Submission to Women in Prison Report (14 December 2005) 8.

Sentence Management to ensure consistency, the absence of facility-based bias and appropriateness to the prisoner's circumstances.

The ADCQ is advised that the classification documentation is recorded electronically, and that the text field presently on the DCS information system predates the CSA.

Therefore, the factors presently set out in section 12 of the CSA are not fully reflected in classification documentation in the computer system. The ADCQ has been provided with documentation used by the Sentence Management Officer in making a classification recommendation.<sup>78</sup> These documents set out guidelines for officers on how to gather information or weigh the factors set out in section 12(3) of the CSA.

In meetings with corrective services officers, the ADCQ was told that the determination of a prisoner's classification level is done in the following manner:

- the officer looks at the prisoner's convictions;
- the officer works through the 12 factors set out in section 12(3) of the CSA. Information is gathered from a range of sources. No score or weighting is assigned to any of these 12 individual factors;
- the guidelines for outstanding charges are considered;
- the correctional officer balances all the aforementioned information, and considers it holistically to determine or recommend a classification level.

The ADCQ is of the view that section 12(3) of the CSA includes factors that may pertain to some minority groups of women (and men) possessing attributes (covered by the ADA) to a greater degree than women (or men) without these attributes. This view has been confirmed by the ADCQ's assessment of the DCS classification guidelines document.

This potential discriminatory effect should be identified and eliminated in the proposed legislative amendments, and associated guidelines and procedures.

The ADCQ has concerns about the assessment process for the following minority groups:

#### **1 Women with mental health or intellectual disabilities**

Women with mental health issues or intellectual disabilities are a unique category within section 12(3)(k) of the CSA, which refers to the medical, psychological and psychiatric history of the prisoner. Even when such a prisoner is assessed suitable for open classification, the classification guidelines state:

Prisoners who are assessed as suitable for an open classification, but on the advice of the medical, psychological or psychiatric staff, require medical and support services which are unavailable in open custody, should be classified as low security and remain in secure custody.

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<sup>78</sup> Queensland Department of Corrective Services, above n 73; DCS 'Review' *DCS Procedure – Offender Management* (version 02) 24 January 2003; DCS *Classification* guidelines; DCS Form – *Initial Security Assessment* Guidelines (version 02).



This is *prima facie* direct discrimination on the basis of disability. The DCS may be able to argue an exemption, but the critical question **that would need to be determined separately in each case** would be whether the provision of the necessary medical and support services in an open classification facility would constitute an unjustifiable hardship on DCS. The current guideline does not provide for this.

## **2 Women from culturally and linguistically diverse backgrounds**

Women from culturally and linguistically diverse backgrounds are more likely to fall under section 12(3)(h) of the CSA. The classification guidelines state generally that a number of these prisoners are ‘unacceptable for progression.’ This may be argued to be *prima facie* discrimination on the basis of race.

## **3 Indigenous women**

Indigenous women, who have a higher recidivism rate than non-Indigenous women, may more frequently fall under classification criteria that result in higher level classifications than other female inmates due to sections 12(3) (e) and (i) of the CSA.<sup>79</sup>

The ADCQ is strongly of the view that classification levels must be supported by research and evidence that is both reliable and relevant. Discriminatory decisions can result from unjustified and unfair assumptions being made about the risk levels of individuals from certain minority groups, which are based on criteria that are unreliable.

The classification system has a significant impact upon the day-to-day life of a prisoner. It is therefore of critical importance that the system be managed and operated in a way that maintains high standards of credibility, consistency and accountability. Otherwise the system risks encouraging or tolerating corrupt and incompetent practices. It also risks officers making unlawful assessments based on ill-informed or unarticulated prejudices about gender, race, disability or religious belief.

In spite of our examination and understanding of the existing classification process and assessment criteria, the ADCQ is not confident that the present system has integrity in measuring the prisoner’s likelihood of escape and re-offending, the impact on the community, or the risk the prisoner poses within the corrective services facility.

While some research has been done on how to correctly predict a prisoner’s risk to the community (upon which the ORNI is based), very little has been done on measuring correctional or institutional risk. Given the important consequences that can flow from a prisoner’s classification, the present method of risk assessment appears to be highly subjective, with few levels of quality control to ensure consistency of decision making among officers.

The ADCQ is concerned that there is a strong possibility of systemic discrimination occurring in the classification of female prisoners, particularly, those who are Indigenous. This view is based on:

- a greater proportion of Indigenous women compared with non-Indigenous women who receive high level classifications;

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<sup>79</sup> Discussed more fully at 6.1.4 below.

- likely inadequacies and inconsistencies of the on-the-job training of officers performing the risk measuring role; and
- the lack of research justifying the integrity of the risk measuring tool, especially for women and prisoners from minority groups.

The ADCQ urges the DCS to undertake research on the cultural relevance and validity of its existing classification and reclassification tools. Such tools should take into account the structural factors that may result in systemic discrimination against women, particularly Indigenous women, culturally and linguistically diverse women, and women with mental health issues.

‘Human rights law requires that assessment tools be responsive to the populations to which they are applied and properly crafted to meet the purpose that they were intended to serve.’

(Canadian Human Rights Commission 2003)

### 6.1.3 Classification and the custodial infrastructure

There are a number of compelling arguments for classifying women prisoners at the lowest level necessary for ensuring the good order and security of prisons, and community safety. The most compelling argument is the psychological and social health of the prisoner, but also the rehabilitation of offenders is also more likely to be facilitated where prisoners have higher levels of responsibility and self control.

Until recently all women prisoners in Queensland were kept in high security prisons and intermingled at all security levels. This was due to the very low numbers of women in the state’s prisons. Only in the last decade have efforts been made to provide open security facilities for women.

Queensland’s use of open custody facilities is one of the lowest in Australia. Of the beds allocated to female prisoners, 25.6% were low/open classification beds. Male prisoners had 17.6% of their beds in low/open custody.<sup>80</sup> This compares to a national average of 27.3% of all prisoners (male and female) across Australia.<sup>81</sup>

The DCS makes it very clear that the present classification system does not directly relate to placement decisions, and the classification system does not match the available custodial infrastructure.<sup>82</sup> There are only five prisons in the state that accommodate women, and the largest of these, BWCC and TCC, are secure facilities.

A prisoner’s classification level does not necessarily reflect the type of facility in which she will be accommodated. Prisoners classified as high, medium or low in BWCC and TCC are all held in secure facilities with similar security measures and levels of supervision. Therefore, many female prisoners with low risk profiles are being accommodated in secure facilities with inappropriately high levels of security and supervision. Not only is this an inefficient use of resources, it results in them being placed behind high barbed wire or electrified fences, and

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<sup>80</sup> DCS *Submission to Women in Prison Review*, (14 December 2005) 2.

<sup>81</sup> ‘Prisoner classification consultation paper’ above n 35.

<sup>82</sup> *Ibid* 14 – 17.

being subjected to a heavy presence of uniformed officers, the risk of placement in solitary confinement as a punishment, rigidly enforced rules, lack of independence in day-to-day living, and a sharp demarcation between staff and inmates.

Institutionalisation of women prisoners to this level does not assist in their rehabilitation. It does not adequately prepare them with the necessary skills to live independently, especially where the issues that could lead to re-offending have been addressed.

The DCS has recently raised the issue as to whether there are benefits in aligning the classification system with the types of correctional centres.<sup>83</sup> It has been suggested that a prisoner with a secure classification would be accommodated in a secure custody facility, whereas an open custody prisoner would be managed in **any** custody facility, including an open custody facility, to suit the prisoner's management and risk needs. The ADCQ is most concerned that the DCS considers this an appropriate management strategy of prisoners, particularly female prisoners.

The keeping of open classification prisoners in a secure facility is not best practice. All efforts should be made to ensure the open classification prisoners are accommodated and remain in open facilities, even when they are in need of medical or other services.

Rather than aligning prison classification with infrastructure, an emphasis should be placed on all women's correctional facilities being situated and designed to enhance community interaction, with an aim of successfully returning the prisoner to the community. Female prisoners should be located as close as possible to their homes and families. Only a very small minority of women prisoners are seriously violent or predatory. The majority of women prisoners can be appropriately managed in facilities that are based on community living, with prison regimes and practices to encourage positive supportive interaction between staff and residents. The highest priority should be given to the interests of children in determining the placement of mothers serving full-time sentences.

DCS has already developed a modest but highly effective and innovative model that could be expanded and made available to many more female prisoners. The Warwick Women's Work Camp appears to have achieved commendable results in rehabilitating women prisoners with the assistance of dedicated and talented staff who manage programs and activities that promote self-esteem, personal skills including living and inter-personal skills, teamwork, and a variety of job skills. The combined efforts of the women in performing a range of community work in this medium sized rural centre, appear to be highly valued, worthwhile, and appreciated within the Warwick community.<sup>84</sup>

In December 2005 the DCS advised ADCQ that:

in principle support has been given to the establishment of a women's camp in North Queensland and an additional camp in South East Queensland.

The successful elements of the WWWC model could be analysed and developed to fit a broader range of women prisoners, including those less physically able or who have children residing with them in prison.

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<sup>83</sup> Ibid 15.

<sup>84</sup> DCS *Submission to Women in Prison Review* (14 December 2005) 11.

### 6.1.4 Indigenous prisoners and the security classification system

It has been asserted that Aboriginal women are disproportionately classified as high security prisoners, and that the majority of Aboriginal women in prison are kept in the high security prisons.<sup>85</sup>

Both male and female Indigenous prisoners generally have a higher security classification than non-Indigenous offenders.

**Table 5: Prisoners by security classification as at 30 June 2005**

Security classification	Male				Female				Total		
	Indigenous		Non-Indigenous		Indigenous		Non-Indigenous				
<b>High security facilities</b>											
High	459	25%	1375	74.9%	1834	40	33%	80	66.6%	120	1954
Medium	466	27%	1210	72%	1676	27	27.5%	71	71.4%	98	1774
Low	46	17.4%	218	82.5%	264	5	23.8%	16	76%	21	285
Open	72	22.8%	243	77%	315	5	22.7%	17	77%	22	337
Unclassified	42	28.7%	104	71%	146	6	35%	11	64%	17	163
Total high security	1085	25.6%	3150	74.3%	4235	83	29.8%	195	70%	278	4513
<b>Low security facilities</b>											
Low	3	10.7%	25	89%	28	5	45%	6	54%	11	39
Open	148	20%	585	79%	733	8	11%	64	88%	72	805
Total low security	151	19.8%	610	80%	761	13	15.6%	70	84%	83	844
Total	1236	24.7%	3760	75.2%	4996	96	26.5%	265	73.4%	361	5357

Source: Department of Corrective Services *Annual Report 2004-05* Table 4 page 45

In June 2005, Indigenous women constituted 33% of all female inmates classified as high security in Queensland, 27.5% of all those classified as medium security, 23.8% of those classified as low security and 22.7% classified as open security, while being held in high security facilities. Indigenous women constituted just 15.6% of those in low security facilities. At the same time, Indigenous women represented 26.5% of the total female prison population. Similar statistics for the period 2003-04 confirm that this is a recurrent pattern,<sup>86</sup> and that Indigenous women are more likely to be held in secure custody, and are over-represented at higher classification levels.

The ADCQ acknowledges that the nature of the offence and the length of the sentence are factors to be considered in determining classification, and that the types of offences, for which Indigenous women are incarcerated, have a distinctly different profile from those of non-Indigenous women. The ADCQ is concerned, however, that a large proportion of Indigenous female prisoners are classified as high security, with few classified at the lower levels.

The ADCQ and other observers have noted that many offences committed by Indigenous women, especially those living in remote Indigenous communities in Far North Queensland, occur in dysfunctional domestic situations that can be fraught with violence towards women and

<sup>85</sup> Sisters Inside Inc, *Submission to Women in Prison Review* (June 2004).

<sup>86</sup>In June 2004, 36% of high security, 30% of medium security, 12% of low security and 21% of open security prisoners female prisoners being held in a secure prison were Indigenous. At the same date, Indigenous women comprised 27.85% of the total female prison population. At the same date no Indigenous women were held in community custody, when 27 non-Indigenous women were being held in community custody. DCS *Annual Report 2003-04*.

children. Women who commit violent crimes in these situations, often may have been long term victims of violence from male members of their households. Once these women are removed from those situations of domestic violence, they pose an extremely low level risk of escaping or re-offending.

While the risk of self-harm may be high and warrant careful management and supervision within a correctional facility, the weighting given to the type of offence and length of sentence for Indigenous prisoners, could result in an unjustifiable classification when assessing the likelihood of escape or re-offending. The integrity of the classification system for Indigenous women must be able to be justified against credible research to show that accurate and reliable measures are being used. To date, the integrity of the current classification system as a measuring tool has not been demonstrated to the ADCQ.

### **6.1.5 Remand inmates**

Women on remand may spend a considerable period of time in prison waiting for the case against them to proceed to a final hearing by the appropriate court. Some of these women may eventually be found not guilty of the offence for which they have been charged. It is unacceptable that any woman must automatically be classified and managed as a high security prisoner, if this assessment based on all the usual criteria is not warranted. Remand prisoners are not assessed under the ORNI, and do not get access to programs or training. This is detrimental for any prisoners who may be held in custody on remand for a significant period of time.

In December 2005 the DCS advised the ADCQ:

that new legislation proposed for 2006 will allow unsentenced prisoners who are remanded in custody to be classified according to the security risk they pose.<sup>87</sup>

The ADCQ supports this important positive change in the management of remand prisoners.

### **6.1.6 Classification and access to transfers, community work orders, release to work, home detention and parole**

A prisoner's classification is also considered in any request to transfer from one facility to another or for deciding which prisoners will be granted supervised community release such as release-to-work, home detention or parole. The classification decision therefore impacts on a range of other critical decisions concerning a prisoner while incarcerated. The integrity of the classification system as a measure of risk, and the reliability and consistency of its application as a measuring tool, are extremely important issues for a prisoner.

## **6.2 Prisoner management**

### **6.2.1 Sentence management plans/case management process**

The initial intake assessment process determines a prisoner's risk and security classification and forms the basis for developing a sentence management plan with programs to deal with the risk and needs identified for the individual. The DCS states that:

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<sup>87</sup> DCS, *Submission to Women in Prison Review* (14 December 2005) 8.

sentence planning is designed to ensure that the management of prisoners' sentences is individualised, planned in accordance with assessment outcomes, prioritises and targets intervention based on assessed risks and needs and enables offenders to achieve individual goals within agreed time frames.

A case management process applies to each prisoner serving a sentence of more than twelve months, and for those prisoners serving less than twelve months who are identified as having special needs. They may, for example, be at risk, intellectually disabled, or have limited English skills. The DCS states that:

the purpose of the case management process is to ensure that individual risk/needs identified in sentence plans are addressed by assigning responsibilities for the implementation of specific intervention and management strategies.

### **6.2.2 Offender Risk/Needs Inventory (ORNI)**

In Queensland, in addition to classification criteria outlined in section 12 of the CSA, a further assessment process is undertaken on prisoners who are being imprisoned for periods longer than 12 months. These prisoners are also assessed via a standardised tool to assess risks and needs known as the Offender Risk/Needs Inventory or ORNI. The stated purpose of the ORNI is to:

assign a level of community risk based on criminogenic factors which best practice methods have identified as general predictors of re-offending.

Completion of this assessment determines the risk level of a prisoner as low, medium, high or extreme. A range of matters is considered to determine this risk including educational level, employment history, reliance upon government assistance, and the prisoner's housing background.

The ORNI is also used to identify the interventions and programs to be provided to those prisoners who are assessed as being medium to high risk. Depending on their needs assessment, educational, vocational, self-development and other programs are aimed at reducing a prisoner's risk of re-offending in the community. Depending on the level of risk assessed, access to various programs or training will be offered to prisoners in an order of priority. For instance, for medium and high risk prisoners, offender behaviour and literacy programs are first priority. Vocational and educational training is available only when all priority programs are completed.

ORNI assessments do not differentiate between male and female prisoners. Concerns have been expressed that these assessments are based on the characteristics of male offenders because the large majority of prisoners are men. The DCS has stated that the Queensland tool is standardised but not rigid in its application, and that individual circumstances and the needs of each offender are taken into account. The DCS asserts the particular needs of female prisoners will be identified and programs allocated accordingly.

Given the differences in profiles between male and female prisoners, and the types of offences they have committed, it seems questionable that the criminogenic factors and their weighting would be exactly the same for males and females. With the benefit of further research into women in prison, it is now becoming much clearer that the issues surrounding criminality in men need to be considered differently from those of women. Factors such as physical, mental and

sexual abuse, severity of the current offence and employment history may need to be considered differently when dealing with female offenders.

This issue has been the subject of close scrutiny in other jurisdictions. Both the accuracy of what this type of tool is intending to measure and its reliability has been questioned, particularly in relation to female prisoners.<sup>88</sup>

The DCS is very clear that the process of security classification of prisoners, and the assessment of their risks and needs to make rehabilitation recommendations using the ORNI are completely separate processes. According to the DCS, the security classification process is not directly related to the ORNI.<sup>89</sup>

Women's groups, including Sisters Inside Inc, have criticised the use of the ORNI, arguing that the process converts disadvantage into risk, and that women prisoners with a high level of disadvantage will attract a higher security classification. In particular, Aboriginal women, culturally and linguistically diverse women and women with disabilities have a much greater chance of being assessed at a higher risk level than other prisoners. The ADCQ has noted already that the process of assigning classifications to prisoners under section 12 of the CSA is a valid concern.<sup>90</sup>

The ADCQ accepts the DCS assurance that the ORNI assessment is undertaken primarily to determine **rehabilitation program** recommendations for prisoners assessed as having a high risk of re-offending/community risk, and that its purpose is not to determine classification levels of prisoners.

The ORNI is a tool used to identify criminogenic needs, to assess the risk factors of a person re-offending, with a view to building a sentence management plan and to target interventions. Prisoners who receive a high ORNI assessment are likely to receive a higher level of intense interventions and programs, while those assessed at the lower level may receive a different level of intervention. The DCS has explained that the aim is to target programs and resources to prisoners who most need them.

The ADCQ has been advised that the DCS has worked with experts from various institutions, including the Universities of Central Queensland and South Australia to examine the ORNI assessment tool both in relation to Indigenous prisoners and for use in community corrections. More recently, the ADCQ has been told that the DCS has embarked on an evaluation of the ORNI in association with the University of Queensland. The purpose of this evaluation 'is to determine whether the ORNI is a valid tool for predicting recidivism risk as well as its use for the identification of intervention needs. The evaluation will also consider such factors as gender and race in relation to the validity of the tool.'<sup>91</sup> The DCS states the evaluation report will be completed in the first half of 2006. The ADCQ is encouraged that the DCS is undertaking

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<sup>88</sup> Auditor General of Canada, 'Chapter 4: Correctional Services Canada - Reintegration of Women Offenders' *Report of the Auditor General of Canada* (April 2003); C M Webster and A N Doob, 'Classification without validity or equity: an empirical examination of the custody rating scale for federally sentenced women offenders In Canada' *Canadian Journal of Criminology and Criminal Justice* (2004) 46(4); K Hannah-Moffat and M Shaw, *Taking Risks: Incorporating gender and culture into the classification and assessment of federally sentenced women in Canada* (March 2001).

<sup>89</sup> DCS, *Submission to Women in Prison Review* (10 September 2004) 10 – 12.

<sup>90</sup> See 6.1.2 above.

<sup>91</sup> DCS *Submission to Women in Prison Review* (14 December 2005) 7.

research into the validity and effectiveness of its assessment tools, and will await the results of that research. The ADCQ urges the DCS to adopt a similar research approach to the tools it uses for assessing classification levels of all prisoners. In particular, research needs to be undertaken on the validity of using the same tools and methodology for male and female prisoners, and those from minority groups.<sup>92</sup>

The use of the ORNI to assess a prisoner's needs and risks goes further than determining the types of programs and interventions that are desirable for a particular prisoner. A prisoner's classification level is always considered to determine eligibility for parole. A parole board will also look carefully at the programs and interventions that prisoners have undertaken and completed as a part of their ORNI assessment. If a prisoner has received a high ORNI assessment, it is likely she will be expected to have completed more programs than a prisoner with a low ORNI assessment. If a parole board observes that a prisoner has not completed the recommended programs and interventions, parole may be refused.

This raises two important issues. The first is the validity of the ORNI assessment for a particular prisoner. If the assessment is based on invalid criteria resulting in a high assessment, which demands a high number of programs and interventions, it may take considerable time for a prisoner to complete. In fact, the prisoner may not have completed the programs by the time she is eligible to apply for parole. A prisoner may therefore be unfairly refused parole owing to inaccurate assessments in both the classification and the ORNI assessments.

Secondly, the ADCQ was repeatedly told by prisoners in all women's prisons visited that they sometimes had to wait for considerable periods of time for programs to become available, even though they were mandatory.<sup>93</sup> Such delays would consequently diminish a prisoner's likelihood of being granted parole.

In December 2005 the DCS advised the ADCQ that a new Offender Programs and Services Reform Agenda due to be completed by June 2006 has been embarked upon 'that once completed will mean the Department will be better able to deliver programs and services offenders need, when they need them.'

These issues are of major concern to the ADCQ and must be the subject of investigation and independent research to restore confidence among all stakeholders in the fundamental systems being used by the DCS to manage prisons and those inside them.

### **6.3 Consultations with women in prison - security classification**

#### **6.3.1 Transfers of open security prisoners to secure facilities for medical treatment**

An issue that gives rise to concern is the practice of the DCS in dealing with female inmates of the NCC (an open security facility) who require medical treatment. Any female prisoner requiring hospitalisation or dental treatment is required to be transferred back to the Brisbane Women's Correctional Centre. Instead of remaining in low security accommodation, the women are housed in S1, one of the most secure and restrictive options within that facility. They also undergo mandatory strip-searching on arrival at BWCC. At times, transport back to Numinbah after treatment is not immediately available and the woman has to remain in S1 at BWCC for a number of days.

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<sup>92</sup> Auditor General of Canada, above n 88.

<sup>93</sup> DCS *Submission to Women in Prison Review* (14 December 2005).



The ADCQ was told that a number of women at Numinbah had refused medical treatment because of their concerns about the secure area at BWCC, and compulsory strip-searching.

Returning open classification prisoners to this rigid security regime simply because they require medical treatment is a detrimental and regressive step when rehabilitation and reintegration are among the primary aims of the correctional system. It could be argued that this is direct discrimination on the basis of impairment, in that the women at Numinbah with medical or dental health issues are being treated less favourably than other women at the facility with no health issues. The women are being moved from an open prison facility to a secure prison facility, and undergoing mandatory strip-searching because of their medical condition. The ADCQ believes there are a number of alternative options that could readily be put into place to change the way these medical issues for women in the Numinbah facility are handled. Options could include sourcing medical treatment from service providers closer to the Numinbah facility, or accommodating the women at the Helana Jones facility rather than at the BWCC.

### **6.3.2 Lack of facilities for women**

Women prisoners in Queensland expressed strong concerns about how few options were available for them to progress through the prison system, taking into account their classification, and particularly compared to the opportunities for men.

Some of the issues raised were:

- women serving less than two years imprisonment with low classifications may frequently serve their entire sentence in the secure facility of BWCC. Some expressed the view that women needed a dedicated open security facility for short term offenders, particularly women who were in prison for fine defaults. They referred to the Palen Creek facility for men;
- there is a bottleneck in getting from Wacol (BWCC) to Helana Jones;
- women are held up at Wacol as there is no where else to put them;
- long term women prisoners were kept in secure custody in BWCC for extremely long periods, and if eventually moved to an open facility such as Numinbah, they had no opportunity to access leave of absence entitlements which would prepare them for reintegration into the community;
- lifers are stuck for so long doing absolutely nothing;
- the classification system doesn't apply to women; the system only has maximum and open.

### **6.3.3 On the types of facilities available**

On Warwick Work camp, prisoners said:

- I feel like I belong now - I can mow... whipper-snip...cook... it's like a big family, I got confidence;

- I gained self confidence and self respect at Warwick. They need 10 more places like Warwick;
- They could have a Warwick in the suburbs.

#### **6.3.4 On understanding the classification system and consistency in decision making about classification**

Many women expressed concerns about having difficulties in understanding the system, how it works, and the inconsistencies they felt occurred in determining classification.

Some of the matters consistently raised were:

- the inconsistencies in the system, that policies are disjointed and being interpreted idiosyncratically depending on the officer concerned;
- the need for a better structured system where prisoners can experience, whenever possible, a clear progression through their sentence that assists and facilitates rehabilitation;
- the changing of the rules all the time is very demoralising;
- you keep getting near the goalposts then the goalposts keep changing;
- there is no consistency in sentence management;
- nothing is explained to you, they need a better induction process at the beginning. Someone needs to explain the system to you.

#### **RECOMMENDATIONS: Custodial infrastructure and classification**

##### **Recommendation No. 1**

That the Department of Corrective Services, when planning for any future custodial infrastructure for women, gives the highest priority to developing smaller facilities based upon community living, with prison regimes and practices that encourage positive and supportive interaction between staff and residents and the greater community.

**Recommendation No. 2**

That the Department of Corrective Services:

- develops classification instruments based on the specific characteristics of men and women; and
- draws up a schedule for testing the reliability and validity of classification instruments, for all prisoners including those from Indigenous or other minority groups.

The DCS should publicly release the reports of such research.

**Recommendation No. 3**

That corrective services legislation states that female prisoners be classified at the lowest level of security necessary to ensure the good order and security of prisons and the security of the community.

**Recommendation No. 4**

That proposed legislation changes ensure:

- female prisoners on remand be classified in the same way as other female prisoners; and
- long term remand prisoners be assessed under the Offender Risk/Needs Inventory and not be deprived of necessary programs and training.

**Recommendation No. 5**

That women prisoners be placed in the least restrictive environment possible and, in particular, the highest priority be given to the interests of children in determining the placement of their mothers serving full-time sentences.

**Recommendation No. 6**

That the Department of Corrective Services researches and analyses the elements that contribute to the success of the Warwick Women's Work Camp model and apply those principles to any new facilities that are developed for women.

### **Recommendation No. 7**

That women residents of the Numinbah Correctional Centre who require hospital or dental treatment not be transferred and housed in the secure S1 facility in Brisbane Women's Correctional Centre, and not be subjected to mandatory strip-searching. In accessing medical or dental treatment, they should not be housed in any facility other than open classification accommodation.

### **Recommendation No. 8**

That the Department of Corrective Services reviews its written and oral information provided to prisoners upon reception and throughout their sentence to ensure they better understand the classification and Offender Risk/Needs Inventory assessment processes, the sentence management process and other issues including conditional and community release.

## **6.4 Low security facilities**

Queensland's use of open custody facilities is one of the lowest in Australia. In 2002-2003, the average daily proportion of prisoners accommodated in open custody in Queensland was 16.4% compared to the national average of 27.3%.<sup>94</sup> This low use of open custody facilities has been recognised as a concern within the DCS, and the ADCQ notes the recent DCS administrative direction which aims to reverse this trend.<sup>95</sup>

The DCS states:

the effect of the administrative direction will be that those prisoners who are serving a period of imprisonment of less than two years and are convicted of non violent, minor violent or non sexual offences are to be immediately considered for placement in open security facilities.<sup>96</sup>

While the directive applies to both male and female prisoners, the DCS submits that the overall impact may be greater for female offenders as, generally, their types of offences carry a lower penalty than those for which males are convicted.

If a prisoner refuses to transfer to an open or community facility, the new DCS directive allows the person in charge to consider restricting privileges, limiting employment or returning the prisoner to secure accommodation. Due to the very small number of low security facilities and options for women, this directive may present a greater problem for female prisoners as opposed to male. For example, some women may not wish to go to NCC from BWCC for reasons such as remoteness from family and difficulty of access for family visits.

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<sup>94</sup> DCS, above n 35, 17.

<sup>95</sup> Queensland Department of Corrective Services *Administrative Direction No. 03/04* (12/9/04).

<sup>96</sup> Information provided by DCS to ADCQ WIP review on 8/10/04.

### 6.4.1 Percentage of low security beds available for female and male prisoners

At 30 August 2004, out of the total number of low security beds available in Queensland, 23% of beds for female prisoners were in open security facilities, compared to 15% for males. At the time, DCS figures showed that facilities with a low security capacity were not filled for either males or females (Tables 6 and 7). Similar figures continue in December 2005. On 12 December 2005 of the beds allocated to female prisoners, 25.6% were low/open custody beds. This compared to male prisoners who had 17.6% low/open custody beds.<sup>97</sup>

**Table 6: Distribution of male prisoners by centre and classification**

	Capacity	High	Medium	Low	Open	Unclassified	Total
Arthur Gorrie (secure)	710	636	46	4	10	45	741
Borallon (secure)	492	1	285	145	46	0	477
Capricornia (secure)	402	127	162	24	24	13	350
Lotus Glen (secure)	396	198	169	8	18	42	435
Maryborough (secure)	500	92	70	4	23	5	194
Sir David Longland (secure)	324	198	106	15	19	3	341
Townsville (secure)	359	165	153	18	21	12	369
Wolston (secure)	600	192	265	100	29	1	587
Woodford (secure)	988	263	318	31	30	3	645
Capricornia – Farm (low/open)	96	0	0	0	75	0	75
Darling Downs (low/open)	140	0	0	0	126	0	126
Lotus Glen – farm (low/open)	100	0	0	0	96	0	96
Numinbah Male Unit (low/open)	104	0	0	0	98	0	98
Palen Creek (low/open)	170	0	0	0	132	0	132
Townsville Male Farm (low/open)	60	0	0	0	44	0	44
Aurukun (low/open)	10	0	0	0	0	0	0
Baa's Yard (low/open)	15	0	0	0	0	0	0
Ozcare (low/open)	51	0	6	7	34	0	47

<sup>97</sup> DCS *Submission to Women in Prison Review*, (14 December 2005) 2.

West Brisbane (low/open)	65	0	2	22	50	0	74
WORC (low/open)	22	0	0	0	122	0	122
<b>Total</b>	<b>5604</b>	<b>1872</b>	<b>1582</b>	<b>378</b>	<b>997</b>	<b>124</b>	<b>4953</b>

Source: Department of Corrective Services figures as at 30 August 2004

**Table 7: Distribution of female prisoners by centre and classification**

	Capacity	High	Medium	Low	Open	Unclassified	Total
Brisbane Women's (secure)	270	91	83	17	22	15	228
Numinbah Women's Unit (low/open)	25	-	-	0	18	-	18
Townsville Women's Unit (secure)	40	27	16	-	9	1	53
Townsville Female Farm (low/open)	35	-	9	1	23	-	33
The Helana Jones Community Corrections Centre/Warwick Women's Work Camp (low/open)	34	-	1	-	27	-	28
<b>Total</b>	<b>404</b>	<b>118</b>	<b>109</b>	<b>18</b>	<b>99</b>	<b>16</b>	<b>360</b>

Source: Department of Corrective Services figures as at 30 August 2004

#### 6.4.2 Location of low security beds for female and male prisoners

Throughout Queensland, low security beds in low or open security facilities are available in eight locations for male prisoners (not including the WORCs), and only three locations for female prisoners (including WWWC). Low security beds in low security facilities for male prisoners are located in South East Queensland at Darling Downs, Numinbah, Palen Creek, Ozcare and West Brisbane; in Central Queensland at Rockhampton; in North Queensland at Townsville; in Far North Queensland at Mareeba, and until recently, at Maconochie Lodge and two Indigenous placement centres at Aurukun.<sup>98</sup>

By contrast, low security beds for female prisoners are located in South East Queensland at Numinbah, and in Brisbane City at Albion, (with a work camp located at Warwick) and in Townsville.

Men from those regions may be placed in the low and secure facility of Capricornia at Rockhampton, and at the low and secure Lotus Glen facility at Mareeba. Males can also be accommodated in the secure facility at Maryborough. In addition, until recently, male prisoners

<sup>98</sup> The ADQC has been advised that Baa's Yard and Aurukun have recently ceased operations.

from certain Indigenous communities on Cape York, in some instances, had the opportunity to be accommodated at the low security outstations at Aurukun and Baa's Yard. This same opportunity is not available to women from those regions. Also, male prisoners have access to 11 work camps at regional locations across Queensland while women only have access to one work camp at Warwick.

The ability to maintain strong relationships with their children and family is made considerably more difficult for women prisoners who may be incarcerated vast distances from their families.<sup>99</sup>

It is important that DCS develops appropriate ways for women prisoners from remote locations to effectively maintain contact with their families and children. These may include free video links and facilitating family visits.<sup>100</sup>

In December 2005 the DCS advised it has given in-principle support to:

expand the program by establishing a women's camp in northern Queensland;

and:

the establishment of an additional women's camp in South-East Queensland when funding becomes available.<sup>101</sup>

The ADCQ supports an expansion of the work camp model. These camps should be established as soon as possible in both northern Queensland and South-East Queensland. Failure to provide equal access to the types of facilities is likely to constitute sex discrimination.

#### **6.4.3 Discrimination issues with low security custodial infrastructure for women**

##### **Numinbah Correctional Centre (NCC)**

Numinbah women's unit has the capacity to accommodate 25 women in a low security prison environment. The physical amenities of the unit are described earlier in this report. The facility also has the capacity to house 104 low security male prisoners who represent the majority of inmates at Numinbah.

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* states:

Men and women so far as possible be detained in separate institutions: in an institution which receives both men and women the whole of the premises allocated to men and women shall be entirely separate.<sup>102</sup>

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<sup>99</sup> See 10.4 below for further discussion of mothers with dependent children.

<sup>100</sup> This is a particular concern for Indigenous prisoners from remote locations. Indirect discrimination could be argued to be occurring by requiring such prisoners to be incarcerated so far from their homes and families. Such prisoners should be entitled to special measures (RDA s 8) or welfare measures (ADA s 104) to assist in dealing with this disadvantage.

<sup>101</sup> Submission to Review into Women in Prison, 14 December 2005.

<sup>102</sup> United Nations *Standard Minimum Rules for the Treatment of Prisoners*, at 8(a).

Paragraph 53 states:

In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution, and that male staff should only enter the part of the institution set aside for women when accompanied by a female officer.

There are a number of issues of concern regarding the way in which women prisoners are accommodated and managed at Numinbah compared to male inmates.

A major concern is that while Numinbah is classified as an open facility for women, the physical reality is that the women's section is surrounded by a high chain wire electric fence. The gates to the women's facility are open during daylight hours, but are shut when the electric fence is activated from 8pm to 6am. The purpose of the fence is not to contain the women prisoners, but to protect them from male prisoners in an adjoining unit.

In addition, female prisoners are much more restricted in where they are permitted to go at any given time, and how they are supervised when allowed in areas that are normally out of bounds.

Women prisoners are permitted to be in the women's unit and the tennis court adjacent to the unit, and with prior approval, can go to the administration area and to a tool shed. However, a guard must always accompany a female prisoner if she is required to be in another part of the facility. If the guard is a male, two women prisoners must be present.

By contrast, more areas of the facility are available to men, including the oval from 3pm to 7.30pm. Male prisoners do not have to be accompanied by a guard when required or permitted to be in other parts of the facility.

While it may be argued that it is necessary to impose these restrictions on women to protect them from male prisoners, it also has the potential to discriminate against female prisoners on the basis of their sex. Their treatment is less favourable than the men's treatment because they are:

- confined behind an electrified fence;
- restricted to a much smaller area of the facility; and
- required to be accompanied by a guard in many areas.

The increased risk to the safety of the women because they are housed adjacent to the men, means that any benefits from being classified as a low security prisoner and accommodated in an open security facility, are being subjugated to the needs of the larger number of male prisoners.

The *Standard Minimum Rules* state that 'open institutions by the very fact that they provide no physical security against escape but rely on the self discipline of the inmates, provide the conditions most favourable to rehabilitation of carefully selected prisoners.'<sup>103</sup> This objective is being compromised for the women prisoners at Numinbah.

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<sup>103</sup> Ibid 63(2).



The conversion of the Numinbah detention facility for the use of female inmates appears to have been done with insufficient attention paid to its appropriateness for women. Alternative low security facilities, which are suitable and safe, need to be developed for women as soon as possible.

### **Townsville Correctional Centre (TCC)**

In the TCC, there is a minimum security farm for men, free of electric fences, in which male prisoners have some freedom of movement. By contrast, there is no farm for low security female prisoners who are housed in the former warders' houses.

Because of the overcrowding issue in the Townsville women's facility, female inmates with low classifications share with others who have higher classifications. These higher classifications necessitated the construction of an electric fence around the accommodation. The lesser freedom of movement for low security females in comparison to low security males may discriminate against women prisoners.

### **Helana Jones Community Correction Centre**

Women with young children under the age of five are accommodated at HJCCC. While there is an outside play area, amenities for children over the age of two are extremely limited. The only indoor play area is a TV room that is used by all women in the centre. Children's television viewing clashes with centre rules, which only allow the TV to be watched in the evening. The limited space for children to play indoors must be shared with all adult residents of the centre. Parenting of young children in such crowded conditions is a very difficult task, which is made more difficult because the women's parenting styles and skills are constantly under close scrutiny by both staff and other inmates.

HJCCC also lacks exercise facilities for the women. There is one exercise bike available to the 24 women residing at the centre and no facilities for any other type of exercise. It is not even possible to walk around the grounds because of the layout and limited space.

#### **6.4.4 Availability of low security beds for prisoners with a disability**

The ADA prohibits both direct and indirect discrimination on the basis of impairment, in a number of areas of public life including the provision of goods and services, accommodation and the administration of state government programs. However, it is not unlawful to discriminate on the basis of impairment if the supply of special services and facilities to enable the person with the impairment to participate in those areas of activity, imposes an unjustifiable hardship on the service provider.<sup>104</sup>

The ADA applies to the DCS in its dealing with prisoners with impairments. Impairment is broadly defined and includes loss of bodily functions; malfunction, malformation or disfigurement of part of the body; a condition or malfunction that results in a person learning more slowly than a person without the condition or malfunction; a condition or disease that impairs a person's thought processes, perception of reality, emotions or judgement or results in disturbed

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<sup>104</sup> See ADA ss 7, 9 – 11, 46, 51, 83, 92, 101.

behaviour; the presence in the body of organisms capable of causing illness or disease, and reliance on a guide dog, wheelchair or other remedial device.<sup>105</sup>

Unfortunately, a number of the older facilities for both males and females are unable to accommodate prisoners in wheelchairs and are not designed to be generally accessible for people with particular physical disabilities. All low security facilities for women in Queensland are problematic for women with certain disabilities.

The Numinbah Women's Unit cannot be accessed by a person in a wheelchair, and because of the steep topography between its buildings and facilities and the relative remoteness of its location, it is unsuitable for any women with serious health or mobility problems.

ADCQ understands that the Store Street residence attached to the HJCCC has been modified to accommodate residents with certain disabilities though generally HJCCC is not a fully accessible facility for persons with a disability.

The physical environment and the activities performed at the Warwick Women's Work Camp means it is only suitable for women in relatively good health who are capable of performing reasonably demanding physical work.

The low security area of Townsville Women's Correction Centre also has limitations for persons with certain disabilities, and cannot be considered a fully accessible facility.

None of the aforementioned low or open security prisons for women appeared to be easily able to accommodate a person with intellectual or mental health disabilities, who may require more support than prisoners without these conditions.

Because of these access and support issues, it would appear that female prisoners with certain physical, mental health or intellectual disabilities are much less likely to be located in one of the low security facilities compared to women without a disability. This appears to discriminate against female prisoners with certain disabilities, who, because of those disabilities, have to be held at the BWCC or the secure area of TWCC for the duration of their sentence.

## **RECOMMENDATIONS: Low security facilities**

### **Recommendation No. 9**

That the Department of Corrective Services prioritises the establishment of its proposed new work camps for women in North Queensland and South-East Queensland.

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<sup>105</sup> ADA s 4.

**Recommendation No. 10**

That alternatives to the Numinbah Correctional Centre and Townsville Correctional Centre be developed for housing low security female prisoners as soon as possible. Such alternatives should accord women the appropriate and usual security levels for open classification prisoners and should be entirely separate from institutions for male offenders. The facilities should be designed to meet the needs of female prisoners.

**Recommendation No. 11**

That the Department of Corrective Services, as a matter of highest priority, ensures that at least one existing low security facility for women be made fully accessible for prisoners with physical disabilities, and that this also be a high priority for all other existing low security facilities for women.

**Recommendation No. 12**

That the Department of Corrective Services provides the necessary, and possibly additional, support services for women with mental health or intellectual disabilities to have the same opportunity to be accommodated in low security facilities as women without those disabilities.

**Recommendation No. 13**

That the Department of Corrective Services ensures any new correctional facilities are designed and constructed to be fully accessible for people with a disability.

**6.5 Conditional release and post-prison community-based release (PPCBR)**

**6.5.1 Conditional release**

Presently, certain prisoners who have been imprisoned for two years or less are eligible to be conditionally released after they have served two thirds of their term. The two factors that must be satisfied before a conditional release order is granted are that the prisoner's release does not pose an unacceptable risk to the community and the prisoner has been of good conduct and industry. The CSA sets out a number of criteria to determine a prisoner's risk to the community, and whether a prisoner has been of good conduct or industry.<sup>106</sup>

Women prisoners on average serve less time in custodial centres than their male counterparts. The vast majority of female prisoners are serving sentences of less than two years. Because of

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<sup>106</sup> CSA ss 76-78.

the limited space available in low security facilities, many women, including those serving short sentences for less serious offences, remain in secure custody until their release.

It has been suggested that Indigenous female prisoners are less likely to be granted conditional release than non-Indigenous female prisoners. DCS figures for June 2005 confirm this to be the case. The ADCQ requested figures from the DCS for a period of three years. Of the 282 non-Indigenous prisoners, who were eligible for conditional release during this period because they had served two thirds of their sentence, 80 women (28.37%) were not granted release. Of the 178 Indigenous women who had served two thirds of their sentence during this period, 69 women (38.76%) were not granted release.<sup>107</sup> No reasons have been given to the ADCQ by the DCS to explain the significant variance in the percentage of Indigenous and non-Indigenous women granted conditional release. In the absence of credible explanations for this variance, this must raise concern that Indigenous women may be experiencing indirect or systemic discrimination in the way their sentences are managed.

In December 2005 the DCS advised the ADCQ that new legislation proposed to be enacted in 2006:

will establish parole as the only form of early release from custody. Release mechanisms such as remission, conditional release and community-based release orders will no longer be available to prisoners. Release to work and home detention will be replaced by parole with conditions, for example conditions relating to employment, program attendance and place of residence.

Further, the DCS states:

a significant change to present prisoner release procedures is that a prisoner serving imprisonment of three years or less who is not a serious violent offender or sex offender, will be released at parole at a time fixed by the sentencing court (court ordered parole). The prisoner will be required to spend the balance of her or his sentence under supervision in the community.

The DCS states this change:

will benefit many women prisoners because the majority are sentenced to three years or less and very few are serving sentences for sex offences or have been declared serious violent offenders. The majority of women prisoners will therefore have a fixed release date before the end of their period of imprisonment.

The DCS:

believes this will also ensure equity of access to supervised release for Aboriginal and Torres Strait Islander women who have historically had low participation rates in supervised release.<sup>108</sup>

While this proposed change to the law will benefit Indigenous women serving sentences of less than three years, it will not impact on Indigenous women serving longer sentences. The terms of eligibility for parole for women serving sentences of more than three years need to be closely scrutinised and analysed to ensure that those terms are not the basis of indirect discrimination against Indigenous women.

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<sup>107</sup> Figure provided to the ADCQ by DCS on 9 August 2005.

<sup>108</sup> DCS *Submission to Women in Prison Review* (14 December 2005).

Note: One of the key supporting outcomes of the Queensland Aboriginal and Torres Strait Islander Justice Agreement *Action Plan 2000-2001* is the effective rehabilitation and reintegration into the community of Aboriginal and Torres Strait Islander (ATSI) offenders. The rate at which ATSI offenders are participating in release-to-work, home detention and parole is a key performance measure.

### **6.5.2 Post-prison community-based release (release-to-work, home detention, parole)**

The Queensland Community Corrections Board (QCCB) and the regional Community Corrections Boards are authorised under the CSA to make PPCBR orders. These independent statutory bodies report to the Minister of Police and Corrective Services, not to DCS.

A PPCBR order granted by a corrections board means that an eligible prisoner is released into the community under approved conditions. Prisoners become eligible to be considered for PPCBR after serving a certain period of their term of imprisonment.<sup>109</sup>

The boards have discretion to grant PPCBR orders to determine the most appropriate form for the prisoner's release, that is, whether it should be a fully or partially staged process of release-to-work, or home detention before final release on parole.

The Minister for Corrective Services may make guidelines about the policy to be followed by the QCCB. The QCCB, in consultation with the Chief Executive of the DCS, may issue guidelines to community corrections boards. The Minister's guidelines state that ordinarily, a prisoner should achieve a low or open security classification prior to approval for PPCBR release.<sup>110</sup> Further, it is recommended that prisoners serving eight years or more should spend at least nine months in an open custody environment.

Prisoners' classifications, and in some situations, the appropriateness of the facility in which they are held are primary issues for community corrections boards to consider before approving PPCBRs. As identified earlier in this report, problems that stem from the integrity and reliability of a prisoner's classification, which is based on the system's measurement of that prisoner's risk levels, will impact on all future decisions that are fully or partially based on it.<sup>111</sup> If women are being over-classified as a result of ill-researched or unsubstantiated risk weightings, their eligibility for PPCBR may be adversely affected.

It is therefore imperative that any classification instrument be demonstrated to be a reliable and accurate indicator of risk, based on the specific characteristics of female prisoners.

### **6.5.3 Indigenous women and post-prison community-based release orders**

It has been suggested that Indigenous women are granted PPCBR orders at a slower rate than non-Indigenous women. DCS figures for June 2005 confirm this is the case. The ADCQ requested that the DCS provide figures for a three year period. Of the 105 non-Indigenous women seeking PPCBR during this time, 54 women (51.43%) were unsuccessful. Of the 13 Indigenous women seeking PPCBR in the same period, eight women (61.54%) were refused PPCBR. The DCS has failed to explain this significant variance between Indigenous and non-

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<sup>109</sup> CSA s 135.

<sup>110</sup> Tony Grady *Ministerial Guidelines to the Queensland Community Corrections Board* (November 2002) para 2.3.

<sup>111</sup> See 6.1.2 and 6.1.6 above.

Indigenous women. In the absence of credible explanations, the variance in granting PPCBR may indicate indirect or systemic discrimination against Indigenous women.

The advocacy group Sisters Inside Inc has stated that Indigenous women have unique problems in seeking and being granted PPCBR. It has been asserted that they often cannot return to their homes for a variety of reasons including the nature of the offence or complex relationships among victims and offenders in small isolated communities. These communities are often unwilling to accept offenders back after their release from prison. As a consequence, Indigenous women have greater difficulty in developing viable release plans that can be favourably considered by community corrections boards. The DCS has been criticised for not developing plans or proposals to allow the conditional supported release of Indigenous women into their communities.

The DCS states that it attempts to ensure Aboriginal and Torres Strait Islander prisoners maintain community contacts during their imprisonment. This is done by developing and sustaining links through community justice groups and other community organisations. While this is commendable and should be continued, specific efforts or programs must be developed for Indigenous women to give them an opportunity for conditional supported release. While this release may not be to their community of origin, it should be an environment that can viably support an Indigenous woman in the reintegration phase of her sentence. Indigenous women should not be denied opportunities for PPCBR because of a lack of opportunities for early release into their community of origin.

It is recommended that future justice strategy reviews associated with the Queensland Aboriginal and Torres Strait Islander Justice Agreement independently review any such programs, to assess their success at rehabilitating and reintegrating Indigenous women exiting prisons.

#### **6.5.4 Women with intellectual or mental health disabilities and conditional release and PPCBR**

It has been suggested by Sisters Inside Inc that women with mental health disabilities are less likely to obtain conditional or PPCBR because they generally have a higher security classification. The ADCQ has not been able to gather any statistical evidence that can verify this claim. The DCS has advised the ADCQ that it does not collect statistics on intellectual and mental health disabilities, although it addresses each case on an individual basis on reception. As discussed previously in this report, the same issues regarding the reliability and integrity of the classification system apply to women with mental health or intellectual disabilities.<sup>112</sup>

It is of concern to the ADCQ that the DCS does not gather statistics on women with intellectual or mental health disabilities in any systematic manner. Any failure to identify and evaluate systemic issues may be impacting on this significant group of prisoners. It appears highly unlikely that prison authorities and officers are making sure that reasonable adjustments and accommodations are routinely being put into place to assist these prisoners in managing the daily routines of prison. Failure to take such steps may indicate indirect discrimination on the basis of impairment.

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<sup>112</sup> Ibid.

### 6.5.5 Consultation with women in prison - conditional release and PPCBR

- Women long-termers have to spend too long at BWCC or at Numinbah – it's very difficult to reintegrate into the community, they get no leave of absence (LOA).
- Warwick women spend their time at the weekend at Albion, they get no LOA.
- Numinbah has no reintegration programs.
- Work release women can't get these packages (Numinbah inmate)
- Women who can't get access to programs are not eligible to move to the next stage.
- It's a catch 22, you can't do programs because they are too full, then you can't get parole.
- There needs to be more places for parolees - men have more access and places to go.
- Women need advance warning of when they are getting out, women are sometimes told the morning they are going, which is not enough time to organise what is going to happen when they get out.
- If you have no family or friends, you are put out of prison with a plastic bag of possessions - out the front gate!
- LOA has been rolled back over the years - the men's muck-ups impact upon the women.

### RECOMMENDATIONS: Conditional release

#### Recommendation No. 14

That the Department of Corrective Services provides statistical information annually on women who are released at the earliest possible release date (either as conditional release or post-prison community-based release), and the number and percentage of such women who are Indigenous offenders be reported.

#### Recommendation No. 15

That the Department of Corrective Services takes steps to address potential systemic discrimination issues within the control of the prison authorities, such as valid classification assessments; access to culturally appropriate programs; and development of viable release plans, which may prevent Indigenous women being granted conditional release and post-prison community-based release at the same rate as non-Indigenous women.

#### Recommendation No. 16

That the Department of Corrective Services evaluates the progress of women with mental health and intellectual disabilities through each stage of the prison regime to identify and take steps to address issues of potential indirect and systemic discrimination.

**Recommendation No. 17**

That the Department of Corrective Services develops specific programs for Indigenous women to provide opportunities and support for community release.

**Recommendation No. 18**

That the independent justice strategy reviews associated with the Queensland Aboriginal and Torres Strait Islander Justice Agreement be provided with relevant statistics to examine the development, implementation and evaluation of the success of conditional release programs for Indigenous women.



## 7 Strip-Searching

### 7.1 Power to conduct strip-searches

The ADCQ understands that both male and female prisoners are subjected to the same regime of strip-searching and that there is no difference between male and female prisoners in the procedures for strip-searching and the occasions or frequency of when it occurs.

The CSA permits officers to search prisoners in a number of ways and in a variety of circumstances. The searches are listed as scanning, personal, strip, and body<sup>113</sup>.

The CSA states that a strip-search means:

a search in which a prisoner removes all garments during the course of the search, but in which direct contact is not made with the prisoner.

Routine strip-searches of female prisoners are conducted each day in the secure facilities of BWCC and the TWCC, pursuant to a written directive issued by the Chief Executive of the DCS.<sup>114</sup> The directive states that strip-searches must occur when the prisoner:

- enters the prison, a crisis support unit or health centre under a crisis support order;
- is identified as being *at risk* under the suicide prevention procedures;
- begins to receive special treatment under a special treatment order;
- is about to begin separate confinement;
- is about to be transferred or removed from the prison;
- has had a contact visit with a personal visitor; and,
- is about to provide a test sample of urine<sup>115</sup>.

The person in charge of the prison has discretion to forego a strip-search as set out in the directive, if, because of the prisoner's exceptional circumstances, the person in charge considers a strip-search unnecessary.<sup>116</sup>

In addition, the person in charge of a prison can order a strip-search if there is a reasonable suspicion that a prisoner in any facility is hiding a prohibited item<sup>117</sup> or a belief that strip-searching is necessary for the security and good order of the prison, or safe custody and welfare of the prisoners.<sup>118</sup>

The CSA states that a strip-search must be carried out by at least two corrective services officers of the same gender as the prisoner. Searching officers are required to ensure, as far as reasonably practicable, that the way in which the prisoner is searched causes minimum embarrassment.

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<sup>113</sup> Schedule 2 of the CSA sets out the definition of each of these types of searches.

<sup>114</sup> CSA s 26A(1).

<sup>115</sup> Queensland Department of Corrective Services, *Directions to Persons in Charge of Secure Facilities for Strip-searching of Prisoners* (1 July 2001).

<sup>116</sup> The example given in the CSA is when a pregnant prisoner returns to a secure facility from an escorted antenatal visit – CSA s 26A(3).

<sup>117</sup> CSA s 27.

<sup>118</sup> CSA s 26A(4).

Officers must take reasonable care to protect the prisoner's dignity, and carry out the search as quickly as reasonably practicable, and allow the prisoner to dress as soon as the search is finished.<sup>119</sup> The person in charge of the prison must establish a register that records the details of each strip or body search, including the names of the persons present, and details of anything seized from the prisoner.

The process of a strip-search is that:

- the search is done in two steps known as a 'top and tail';
- prisoners strip the top half of their body;
- the top half of their body is searched;
- prisoners replace their clothing; and
- the process is repeated for the lower half of the body.

The ADCQ has been advised by the DCS that official search procedure does not require a prisoner to squat when they are strip-searched. However, some female prisoners gave details of occasions when they had been asked to squat at the time of a search.

As a general rule, a woman who is menstruating, is not routinely required to remove a tampon during a search, but may be requested to do so if a prison officer has a reasonable suspicion the prisoner is hiding a prohibited item.

A body or cavity search is only permitted to be performed by a doctor in the presence of a nurse, at least one of whom must be the same gender as the prisoner. A strip-search can only be conducted within the view of a security camera if the person viewing the monitor is of the same gender as the prisoner. There are limitations on who may view a recording of a prisoner being strip-searched.

Routine strip-searches are not generally performed on women in low or open security prisons, unless a prison officer has a reasonable suspicion a prisoner is hiding a prohibited item. In low and open facilities, women are able to have contact visits without being routinely strip-searched after each visit.

### **Inter-prison visits and strip-searches**

A woman prisoner will be required to undergo four strip-searches if she is visiting a prisoner in another prison facility and returning to the BWCC or the secure area of the TWCC. It has been reported to the ADCQ that female prisoners are permitted to visit male prisons, but that male prisoners do not visit female prisoners in female prisons.

The ADCQ has been advised by the DCS that the reason for this is that visiting facilities at the male prisons are more amenable to inter-prison visits than those at female prisons. Whatever the reason for the practice, this does mean that women visiting a male prisoner will be subjected to four routine strip-searches, where the male prisoner being visited is only subjected to one. This could be the basis of a complaint of discrimination by a female prisoner who may be able to establish that she is being treated less favourably on the basis of her sex than male prisoners, in the same or similar circumstances.

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<sup>119</sup> CSA s 27(a).

## **Crisis support units and strip-searches**

Crisis support units (CSU) and detention units (DU) of women's prisons are designated as sterile areas. Until late 2005 a routine day for a prisoner in the CSU in BWCC would entail:

- 7.30am let out of cell, strip-searched, breakfast;
- 11.00am strip-searched, locked down in cell;
- 12.15pm strip-searched, lunch;
- 4.00pm strip-searched, locked down in cell;
- 5.10pm strip-searched, dinner;
- 6.10pm strip-searched, locked down in cell.

Any prisoner who has to leave for any reason will be strip-searched on exit and re-entry, including re-entering their cell after being in the shared areas such as the yard. For instance, if a prisoner goes to the educational unit or to the health centre, she will be searched on return to the CSU or the DU. This means women in these units can be subjected to repeated strip-searching in a routine day.

If a woman is detained in the padded cell within the CSU, she is generally held in a totally naked state, and has no clothing on at all.

In December 2005, the DCS advised the ADCQ that in relation to the CSU:

routine strip-searches no longer occur during either the lunch time meal relief lock-away or the evening meal relief lock-away. This alteration in routine strip-search practice will effectively reduce the number of routine strip-searches conducted in the CSU at BWCC by approximately 40-50%.

### **7.2 Rationale for strip-searches**

The rationale for conducting prisoner searches of any kind is that they are:

an important and necessary measure for ensuring the security of corrective services facilities and the safety of the community, staff, visitors and prisoners.

The major objective of conducting searches is to prevent the entry of illicit drugs and other prohibited items, including equipment that could be used to escape from prison, or used for self or other types of harm.<sup>120</sup>

The women prisoners' advocacy group Sisters Inside Inc has questioned the effectiveness of strip-searches, and argues that out of the 41,728 strip-searches that were conducted in a three year period from 1999 to 2002 in the BWCC, only two searches discovered any significant contraband. Sisters Inside Inc has also observed that illegal drugs are still available in the prison. The DCS says that such arguments ignore the deterrent effect of strip-searching.

The ADCQ has not enquired how drugs enter prison. It is apparent that drugs are entering and being used in secure prisons in spite of the rigorous strip-searching regime currently imposed by

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<sup>120</sup> Queensland Department of Corrective Services 'Searches consultation paper' *Legislation Review: Corrective Services Act 2000*, (October 2004) 8.

prison authorities.<sup>121</sup> If there is any evidence that drugs are entering prisons through means other than prisoners and their visitors, prison authorities must consider the need for more frequent and rigorous searches of staff and other persons entering prisons.<sup>122</sup>

The justification for the high number of strip-searches of women prisoners in CSUs or DUs is the need to maintain them as sterile areas. There is a high level of concern by prison authorities that prisoners in these units do not have any opportunity to acquire objects that could be used to harm themselves. The ADCQ has been told of instances where a staple from a magazine, a flake of paint, and a prisoner's toenail have been used as implements to self-harm.

Physical self-harm by any prisoner ought to be of high concern to prison authorities who have a legal duty of care to each prisoner in custody. Prisoners experiencing higher than usual levels of stress or a mental health or other crisis, are very vulnerable to self-harm, especially within the first few hours of entering custody.<sup>123</sup> Even so, suicides still occur in prison causing much grief and stress to families, loved ones and associates of the person concerned.

### **7.3 Effect of strip-searching on women in prison**

The *Queensland Women Prisoners' Health Survey* indicates that a high number of female prisoners report sexual abuse prior to the age of 16 years (37%). An even higher number reported some form of non-consensual sexual activity (42.5%). In a number of cases, the abuse occurred before the age of 10 years (35%). More than a third of these abused women were subject to multiple episodes of attempted or completed intercourse before the age of 10. Among the women who had been sexually abused, the abuse continued in some cases for more than five years.<sup>124</sup>

By contrast in the greater population, 8.8% of Queensland women aged 18 or more report being the victim of rape or sexual assault.

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.

However, for a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatise women who have already been greatly traumatised by childhood or adult sexual abuse. The vast majority of

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<sup>121</sup> Corrective Services figures show that in 2003-2004 there was an average positive drug test of 4.6% across all prisons in Queensland. DCS, above n 4.

<sup>122</sup> *Corrective Services Act 20000* (Qld) ss 96, 126, 130. The DCS states that the CSA provides the power to conduct general or scanning searches of officers and a police investigation can be invoked if the General Manager reasonably suspects a corrective services officer has introduced a prohibited item into the prison.

<sup>123</sup> Deaths in custody have been the focus of the 1991 *Royal Commission into Aboriginal Deaths in Custody*, and prison authorities now go to great lengths to ensure that prisoners are physically safe from self-harm while in custody. Two deaths by suicide have occurred in TWCC since 1999.

<sup>124</sup> B A Hockings et al, above n 46.

female prisoners who spoke to the ADCQ said strip-searching diminished their self-esteem as human beings and greatly emphasised feelings of vulnerability and worthlessness. Strip-searching can greatly undermine the best attempts being made by prison authorities to rehabilitate women prisoners, through programs and counselling to rebuild self-esteem, cognitive and assertiveness skills.<sup>125</sup>

A number of women, including those serving long sentences, told the ADCQ they elected not to have contact visits at all because of their strong objections to being strip-searched. This is almost an impossible choice for women with children, who, in their attempts to maintain their relationships with their families, must have contact visits.

Many prisoners, even those with a low or open security classification, are subjected to routine searches simply because they are being held in a secure prison. If these women were placed in the least restrictive environment possible, that is, with only low and open security prisoners housed in low or open security prisons, then those women would be subjected to fewer strip-searches than is currently the case.

It may be argued that strip-searching is justifiable to prevent women in CSUs and DUs from self-harming. However, the ADCQ queries whether the impact of strip-searching on the women involved outweighs the unsubstantiated benefits, in light of the following:

- the women prisoners' mental health,
- their ability to recover from a mental health crisis, or
- the possibility of effective rehabilitation as a person with reasonable self-esteem when they are released into the community.

Prisons have an extremely limited ability to provide a therapeutic setting or treatment for prisoners with acute or chronic mental health problems. Repeated strip-searching of an ill or disturbed person is by no means best practice or optimal treatment for such prisoners. As outlined in 7.1 above, the DCS has recently advised the ADCQ that it has reduced the number of strip-searches performed on women in the BWCC crisis support unit. The ADCQ still has serious concerns about the number of strip-searches conducted on prisoners being held in CSU, particularly where individual prisoners are being held in CSU for lengthy periods.<sup>126</sup>

#### **7.4 Strip-searching and the ADA**

Human rights protection is reflected in Queensland laws such as the ADA, which prohibits indirect discrimination in certain circumstances.<sup>127</sup>

According to the Act, indirect discrimination occurs when an unreasonable condition, requirement or practice (known as a term) is imposed on a person with an attribute as defined by the Act, when more people without the attribute are able to comply with the term.

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<sup>125</sup> A small number of women said they accepted strip-searching was a reality of prison life, and some accepted that in their view, it was an unfortunate necessity for strip-searches to occur.

<sup>126</sup> One women ex-prisoner spoken to by the ADCQ claimed to have been held in the CSU for a period of 6 months. During this period she would have been subjected to a minimum of 1095 strip-searches.

<sup>127</sup> ADA s 11.

A term being imposed by prison authorities is that prisoners in a secure facility, who wish to have contact visits, must be subjected to a strip-search after that visit. It could be argued that a higher proportion of female prisoners compared to male prisoners (particularly those women who have been subjected to sexual assault) are not as readily able to comply with the term.<sup>128</sup> The critical question which then arises is whether or not such a term is reasonable.

While the use of certain drugs continues to be illegal in Queensland, and certain prisoners are at high risk of self-harm, or pose a serious escape risk, it could be argued that the use of strip-searching is reasonable and justified, if no other forms of searching are as effective.

However, if an individual prisoner is assessed as having a low risk of escape or self-harm, routine mandatory strip-searching may not be reasonable.

Such low risk prisoners should not be accommodated in facilities where routine strip-searching is mandatory. At present these women are unjustifiably subjected to a high level of routine strip-searching solely due to the fact that they are accommodated in a secure prison.

Women prisoners accommodated in the crisis support unit are subjected to a far higher number of strip-searches than all other prisoners. It has been a term or requirement of the prison authorities that a strip-search is conducted on every female prisoner in CSU each time she leaves or re-enters her cell after being in another part of the unit or prison.<sup>129</sup> This means that women in these units have been routinely searched six times a day even when they have not left the crisis support unit.

There is an argument that this may be direct discrimination on the basis that many of these women are suffering a mental health impairment.

Though a number of exemptions may be raised by prison authorities to defend such an allegation,<sup>130</sup> this frequency of searching may also be indirect discrimination under the ADA. This is because women who are suffering from a mental health illness or impairment are much less likely to cope with frequent strip-searching, than women who are not suffering from a similar impairment. The critical question is whether or not, in all the circumstances, this requirement is reasonable.

The ADCQ is of the view there could still be a further substantial reduction in the number of strip-searches to which women in the CSU are subjected. Considering the very high levels of supervision these women are given within the unit (but outside their individual cells) a less intrusive search could be conducted on their return.

The ADCQ suggests that strip-searching may not always be necessary if women have gone to other areas of the prison where they have received constant supervision. Other less intrusive searches could, in some circumstances, replace strip-searching.<sup>131</sup>

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<sup>128</sup> See *Beu v PR Exhibitions Pty Ltd* [1997] QADT 13 (Unreported, Member Holmes, 12 May 1997).

<sup>129</sup> See discussion about recent changes to number of strip-searches in 7.1 above.

<sup>130</sup> ADA exemptions include *inter alia* public health (s107), workplace health and safety (s108), and acts done in compliance with legislation (s106).

<sup>131</sup> The ADCQ was advised by the DCS that a review had occurred on the frequency of strip-searches in the CSU and the searches have been reduced up to 40- 50%. See 7.1 above.

Any argument that a strip-search may be reasonable in all circumstances, is predicated upon there being no equally effective viable alternative. If there are, or there comes into existence, less intrusive and humiliating but equally effective and viable alternatives that could replace strip-searches, any argument that strip-searching is reasonable in the circumstances would be nullified.

It has been suggested to the ADCQ that an alternative to strip-searching may include new technologies such as body scanning machines. The ADCQ understands these technologies are now being used in prison and detention facilities in Europe, and other jurisdictions. The DCS should fully and comprehensively examine whether such a device could safely be used in Queensland given the frequency of searches in secure prisons. If such devices are found to be effective and safe for regular use, they should immediately be made available to prisoners required to undergo a strip-search.

Other alternatives to routine strip-searching, which have been suggested to the ADCQ, are the use of full body suits or overalls worn by the prisoner during contact visits; the use of 'pat down' searches mixed with targeted strip-searching if there is a reasonable belief it is warranted; and the use of random strip-searching. Wherever possible, the objective of prison authorities should be the use of less intrusive and humiliating alternatives to routine strip-searching.

### **Recent changes to strip-searching in CSUs**

Since the commencement of the ADCQ's review into women in prison, the DCS has advised that it has reviewed strip-searching practices in the CSU at BWCC, which has resulted in a reduction in strip-searches.<sup>132</sup> As far as the ADCQ is aware no amendment has been made to the directive on strip-searching issued by the Chief Executive to reflect this change of practice. The last directive was issued on 10 April 2003. While the ADCQ commends DCS for reducing the number of strip-searches in the CSU at BWCC, it is still concerned that this change can be reversed at any time, and does not constitute a permanent department wide directive. The level of strip-searching does not appear to have changed at TWCC CSU. The change in the level of strip-searching conducted in the CSU seems to be highly discretionary depending on the management approach of influential staff at any given time. The ADCQ would be most concerned if a future change in management resulted in an increase in strip-searching. Strip-searching of distressed and vulnerable women should always be reduced to the minimum levels necessary, and this should be clearly stated in directives and instructions to staff working in the CSUs.

### **RECOMMENDATIONS: Strip-searches**

#### **Recommendation No. 19**

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.

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<sup>132</sup> Ibid.

**Recommendation No. 20**

That alternative accommodation arrangements need to be made as a matter of highest priority for those women who are classified as low security but who are accommodated in high security facilities. These women are undergoing an unreasonable and unacceptable number of routine strip-searches.

**Recommendation No. 21**

That the Department of Corrective Services continues to review and reduce the number of routine strip-searches performed on women in the crisis support units. Further, that a new directive be issued to reflect current practice of reducing the number of strip-searches in crisis support units.

**Recommendation No. 22**

That the Department of Corrective Services reviews and amends its policies and practices to ensure that female prisoners are not being treated less favourably than male prisoners, in having to undergo numerous strip-searches during inter-prison visits.



## 8 Rehabilitation and social reintegration - activities and programs

Being deprived of one's liberty is a severe form of punishment. It has long been recognised that, aside from community safety or punishment, one of the major roles of prisons is to provide prisoners with opportunities for rehabilitation.<sup>133</sup> The concept of rehabilitation is that the time spent in prison can be used as an opportunity to provide prisoners with programs and activities to develop skills and resources that will assist them to live in society successfully when they return to life outside, without committing further breaches of the criminal law.

Prison can also provide an opportunity for a prisoner to attain some skills and capacity to earn a living. Work performed in prison wherever possible should link to work possibilities outside. Prisons need to develop partnerships with civil society and educational organisations in the community to increase the opportunities available to prisoners.

### 8.1 Access to programs and services

Advocates for women prisoners have asserted that these programs and services are not comparable in quantity, quality, or variety to those provided to male prisoners. They argue that the small numbers of women prisoners have been a justification for the failure to focus on their particular needs.

#### 8.1.1 Core programs

During their incarceration, prisoners may be offered and encouraged to attend a variety of core programs. As discussed in paragraph 6.2.2, women serving a sentence of longer than 12 months are assessed via the standardised tool, the ORNI, to determine their needs and their risk of re-offending, before being referred to programs designed to address them. Offenders serving fewer than 12 months and prisoners on remand do not generally have access to core programs.

The ADCQ has been informed that key programs offered in male and female prisons are *Violence Intervention*, *Anger Management*, *Drug and Alcohol* (substance abuse and relapse prevention), *Cognitive Skills*, and *Transitions* (reintegration) programs. In male prisons, the *Sex Offender Program* is also available. *Ending Offending* and *Ending Family Violence* are programs specifically for Indigenous prisoners. All programs are delivered by corrective services staff. *Narcotics Anonymous*, *Alcoholics Anonymous* and *Gamblers Anonymous* and the *M&B Parenting* programs are also delivered in prisons.

The DCS has advised the ADCQ that it develops programs specific to women's needs or modifies existing programs when there is a sound basis to believe that male and female prisoners' programming needs differ. In particular, the DCS said it is developing modules for the *Transitions* (reintegration) program specifically to meet the needs of female prisoners; developing an anger management program for female prisoners; and is reviewing the need for a cognitive skills program for Indigenous women.

A recent *Business Model Review* into the DCS found that staff in all custodial prisons have repeatedly reported feeling powerless to deliver appropriate programs to offenders at the right time, to meet the high demands of prisoners for progression through the various security levels

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<sup>133</sup> Section 3 of the CSA states that the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.

of custody.<sup>134</sup> The ADCQ found that prisoners also felt programs were not being delivered to them at the appropriate time while they were serving their sentence of imprisonment. Women repeatedly told the ADCQ they believed their limited access to programs was preventing them from being eligible for early release, and slowing down their ability to move to the next stage of their sentence (i.e. a lower classification and eligibility for conditional or community release or parole)

‘It’s a catch 22, you can’t do programs, they are too full, you can’t get parole.’

Other concerns expressed to the ADCQ about programs were:

- longer term prisoners said they were being asked to do the programs twice, as ‘it looked good for parole’;
- due to program schedules, women who worked while in prison only had very limited time (6 hours a week) to do programs that would benefit them. They expressed a desire to access programs as well as continue to work;
- a number of women were reluctant to start programs due to limited educational opportunities; they feel embarrassed when it becomes obvious they may have difficulty with reading or writing;
- further programs and constructive activities such as self-esteem activities and self-help programs would benefit some women in relieving boredom while they were in prison, rehabilitating them and providing strategies for coping when released from prison;
- women serving fewer than 12 months would also like to access these programs, especially in addressing substance abuse issues.

The *Business Model Review* identified the need to evaluate the outcomes of the programs, to determine their impact on offender behaviour or recidivism.

The ADCQ has not reviewed comprehensively the core programs being delivered in prison to critique their suitability for female prisoners. Any DCS review or evaluation needs to examine carefully and critically the suitability and effectiveness of the existing core programs for female prisoners.

Adapting specially developed male courses for female inmates is unlikely to address, satisfactorily, the needs of women prisoners, given their differing offending behaviour, their life and significant physical, psychological, social, vocational, health and educational needs. To be effective, programs need to be specifically developed to address women’s needs and build their capacity to integrate into the community when they leave prison.

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<sup>134</sup> Queensland Department of Corrective Services, *Business Model Review* (July 2004) 53. The DCS has recently advised that a new Offender Programs and Services Reform Agenda due to be completed by June 2006 has been embarked upon ‘that once completed will mean the Department will be better able to deliver programs and services offenders need, when they need them.’ Submission to Women in Prison Review, 14 December 2005.

The ADCQ is also concerned about the suitability of these core programs for prisoners with intellectual, cognitive or learning disabilities. Often these disabilities are not recognised or properly identified by prison authorities. Even if they are recognised, there does not appear to be a systematic approach to cope with these prisoners' special needs. Prisoners with such disabilities are less likely to engage in programs because they are not tailored for people with intellectual disabilities, and this, in turn, affects their chance of conditional or community release (parole). The ADCQ has not been provided with any information or indication by the DCS on the way core programs are adapted for or delivered to prisoners with these disabilities.

Given the relatively high incidence of intellectual disability among women prisoners, estimated to be as high as 30% compared to 2-3% in the general population,<sup>135</sup> a systemic approach to provide for their needs must be put in place by prison authorities. Neglecting the needs of these prisoners may be discrimination on the basis of impairment.

In December 2005, the DCS advised the ADCQ that a component of its *Offender Programs and Services Reform Agenda* commenced in July 2005 (due for completion in June 2006), is the *Program Improvement project*. As part of this project the DCS is phasing out the *Cognitive Skills* and *Anger Management* programs and replacing them with a general offending program called *Making Choices*. The DCS advises: 'recognising that women offenders differ somewhat from men in terms of intervention needs, a version of the program, specially adapted for women by NZ Corrections has been adopted by the Department... and its implementation is planned for early 2006.'

The DCS also advises it has 'appointed a project officer to revise the *Transitions* program to better meet the needs of women, including Indigenous and special needs offenders.' It states that 'this program offers participants an opportunity to address needs including accommodation issues, health issues (including mental health and substance abuse issues), education and training and basic money management skills.' Implementation of the program is due in 2006 in both the BWCC and TWCC.<sup>136</sup>

The ADCQ welcomes the DCS's recognition of the different intervention needs of female and male prisoners in relation to these two important programs, and urges the DCS to critically examine all its programs to ensure they are meeting the particular needs of women, including Indigenous women and those with intellectual, cognitive or learning disabilities.

## **RECOMMENDATIONS: Rehabilitation and social reintegration**

### **Recommendation No. 23**

That the Department of Corrective Services recognises and ensures that its responsibility for the rehabilitation of offenders within its care be given a similar effort in policy and resourcing as its responsibility to ensure community safety.

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<sup>135</sup> See n 52 above.

<sup>136</sup> DCS, *Submission to Women in Prison Review* (14 December 2005).

**Recommendation No. 24**

That particular program needs of female prisoners be assessed and analysed independently of those for men to ensure that appropriate courses are designed and developed for them.

**Recommendation No. 25**

That programs be critically evaluated on a regular basis to determine the effect they are having on offending behaviour and whether they are assisting women to reintegrate successfully into the community.

**Recommendation No. 26**

That the current proposal by the Department of Corrective Services that resources be put into developing and delivering programs at the optimal time to benefit prisoners in their rehabilitation, be implemented and evaluated as a high priority.

**Recommendation No. 27**

That a systemic recognition and provision for the special needs of prisoners with intellectual, cognitive or learning impairments occur to ensure these prisoners can successfully access core programs.

**Recommendation No. 28**

That women in prison for fewer than 12 months and women on remand for lengthy periods benefit from participating in core programs. As a component of its responsibility to rehabilitate offenders, the Department of Corrective Services must be sufficiently funded to provide core program resources to short term offenders.

**8.1.2 Vocational and education programs**

Many women entering prison have had a limited education, lower levels of literacy than the general Australian population, and a poor employment history. Men entering prison are similarly economically and socially disadvantaged.<sup>137</sup> Access to accredited education and training is an important element of providing programs and opportunities that address the risk of offending, maximise the chances of successful reintegration into the community, and reduce the risks of re-offending. Across Australia, Tasmania reported the highest proportion of eligible prisoners

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<sup>137</sup> DCS, *Profile of female offenders* above n 36, 19.

undertaking accredited education or training courses in 2003-04 (56.5%) and Queensland reported the lowest (28.5%). However, Queensland reports the highest proportion in higher education (3.1%).<sup>138</sup>

DCS data provided to the ADCQ for 2003/2004 and 2005/2006 indicated that women had a higher proportional participation in vocational activities than men. A total of 10.37% of all annual curriculum hours available to Queensland prisoners in 2003/04 were allocated to women prisoners. DCS data for 2004/05 shows 78.2% of women were enrolled in vocational education and training (VET) compared with 52.6% of male prisoners.<sup>139</sup> Of the prisoners enrolled in VET in 2003/2004, 10% were women. (At 30 June 2004 women represented 7.4% of the total prison population in Queensland.) The data show that women prisoners in both 2003/4 and 2004/5 also have a proportionally a greater enrolment level for literacy and numeracy programs than men.

The DCS in partnership with the Department of Employment and Training provides vocational and educational training to prisoners in Queensland prisons. A unit within the DCS consults and negotiates with each prison to establish the training needs and requirements for the prisoners. The resources available to the DCS for vocational education and training are then allocated between the prisons.

Various courses are provided to prisoners including literacy and numeracy skills, Aboriginal and Torres Strait Islander studies, arts, automotive, business, engineering, first aid including a course in cardiopulmonary resuscitation, forklift driving, furnishing, horticulture, hospitality, industrial cleaning, information technology, beauty therapy, hairdressing, visual arts and workplace health and safety.

At the Numinbah prison farm, courses such as bobcat operation, paving, horticulture, concreting, small engines and basic car maintenance, and chain sawing are offered. A problem for the women prisoners at Numinbah was the requirement for five women to be willing to do a course before it was offered. Due to the low numbers of female inmates at Numinbah, it was sometimes difficult to get enough women to run a course. A woman located at Numinbah for more than a year will have completed all the TAFE courses on offer there within that year. Women expressed their concern, that unlike the male prisoners, they were not given the same opportunities to use and practise their skills.

Former prisoners were concerned that their TAFE and other certificates showing they had completed certain courses, had the prison's address printed on them. The women felt this jeopardised their chances of employment and suggested that the prison address should not be part of the certificate.

A number of women spoke of their desire to obtain trade certificates and undertake apprenticeships. Many women were keen to receive training that would help them to find employment upon release. The ADCQ notes that the *Business Model Review* suggests a far greater integration of VET with industries taking place across state prisons, and increased

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<sup>138</sup> See SCRGSP report, above n 17, 7-21. The 'education' rate is defined as the number of prisoners participating in accredited education and training courses under the Australian Qualifications Framework as a percentage of those eligible to participate. This measure does not include programs such as drug and alcohol, psychological or personal development courses.

<sup>139</sup> DCS *Submission to Women in Prison Review* 914 December 2005) 4.

utilisation of the services provided by Adult Education.<sup>140</sup> The ADCQ strongly agrees with these views and recommends that a far greater focus be given to rehabilitation of women prisoners through education and training.

Again, there does not appear to be any evidence that the needs of prisoners with intellectual impairment are being recognised or provided for by prison authorities in the area of VET.

### **RECOMMENDATIONS: Vocational and educational training**

#### **Recommendation No. 29**

That any College of Technical and Further Education or other certificates awarded to a female prisoner for the completion of a course not have the prison's address recorded on the certificate.

#### **Recommendation No. 30**

That prison authorities develop and provide a systemic approach to recognising and providing for the vocational education and training of prisoners with intellectual disabilities.

### **8.1.3 Secondary and tertiary education opportunities**

Some prisoners are given opportunities to complete their secondary education in prison. The DCS figures for 2003/2004 show that 122 women (or 25% of all prisoners both male and female, undertaking secondary studies) and 487 men were involved in secondary education through schools of distance education. In 2004/2005, 27.7% of all female prisoners (99) were undertaking secondary studies compared to 7.9% of all male prisoners (394).

Tertiary education can be delivered in prisons, but only to prisoners who volunteer for the programs and are eligible. Prisoners must find the funding themselves to participate in tertiary education. In 2003/2004, 73 women (or 22% of all prisoners both male and female who undertook tertiary study) and 263 men were enrolled in tertiary study. In 2004/2005 19.5% of female prisoners (70) were enrolled in tertiary study compared with 6.1% of male prisoners (302).<sup>141</sup>

It is of concern to the ADCQ that women prisoners felt that some prisons discouraged them from studying on a full-time basis. They told the ADCQ that some prison officers displayed resentment towards prisoners who were studying full-time.

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<sup>140</sup> DCS above n 134, 55.

<sup>141</sup> DCS *Submission to Women in Prison Review*, (10 September 2004) Attachment 22 and (14 December 2005) 4-5.

## 8.2 Other services

At various times, most prisoners are given access to a range of recreational facilities and activities. These may include art and craft classes (painting, leatherwork, paper making, sketching, screen-printing, batik, murals etc) and materials, fitness instruction, dance classes and the opportunity to exercise in a gymnasium or other recreational areas.

BWCC has gymnasium and tennis facilities that women are permitted to access at certain times.

At Numinbah, women have access to a tennis court and an oval at various times, although it is clear that male prisoners have much greater access to outdoor recreational activities. As discussed, the restricted movement of open classification women prisoners compared to men is inconsistent with the United Nations *Standard Minimum Rules*.<sup>142</sup> The ADCQ has recommended that alternative low security facilities for women need to be provided as soon as possible.<sup>143</sup>

The opportunities for women prisoners to participate in physical recreational activities at HJCCC are very limited. There is no gymnasium or outdoor area suitable for physical recreation other than for children. This is a serious deficiency in the facilities at HJCCC, which needs to be addressed. If women cannot be provided with physical recreational opportunities onsite at HJCCC, easy access to offsite facilities must be arranged as a matter of priority. Women need to be given opportunities to use these facilities at the same level of frequency as male inmates at other open security prisons who have access to onsite facilities.

At TWCC, women can play volleyball and do aerobics. Unlike the male prisoners, they are not permitted to access the oval. Again, this raises possible discrimination on the basis of sex. Female inmates in Townsville should be given a similar level of opportunity and quality of recreational facilities to those available to male prisoners.

## 8.3 Work and industry opportunities

### 8.3.1 Human rights issues associated with work

Advocates for women prisoners have raised a number of issues concerning labour in prison including:

- the levels of compulsion and coercion to perform work while in prison, and whether this is a breach of human rights;
- the rates and levels of pay and entitlements of prisoners who perform work in prison;
- the differing opportunities for work and the rates of pay for male and female prisoners in Queensland.

The issues of compulsion or coercion to perform work while in prison, the imposition of penalties and withdrawal of privileges for not working, and the rates of pay for prisoners who work all raise

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<sup>142</sup> See 4.2 and 6.4.4 above.

<sup>143</sup> Recommendation No10.

complex issues. Under international human rights instruments, most work in prison is not prohibited forced labour.<sup>144</sup>

The *Basic Rules for the Treatment of Prisoners* requires conditions to be created:

enabling prisoners to undertake meaningful remunerated employment which will facilitate their integration into the country's labour market and permit them to contribute to their own financial support and to that of their families.<sup>145</sup>

Remunerated work performed under humane and safe conditions, which provides vocational and training opportunities for prisoners for the purpose of preparing them for a normal working life on their release, is generally seen as a responsibility of prison authorities. The issue of pay rates was raised by a number of women prisoners during this review. Their predominant concern was the lack of work availability in prison and limited types of employment on offer.

The issues outlined in the first two dot points above are beyond the scope of this review. They are issues that apply across all prisons in Australia and to all prisoners, both male and female. As this report has focused only on women in prisons in Queensland, the ADCQ will confine its review of work and prison industries in Queensland.

### **8.3.2 Work available in Queensland prisons.**

The work available to both male and female prisoners in Queensland falls into several categories. One type of work focuses on service tasks within the prison that enable it to function. This is performed by prisoners and includes catering, landscaping, maintenance, cleaning, laundry and other tasks.

The second type of work is in prison industries. This work is designed to give prisoners transferable skills that will help them get a job when they are released. These are activities undertaken on a commercial basis and range from small craft based industries such as manufacturing soft toys and cushion covers through to production of rural produce via activities including dairying and cropping. In some prisons, work is the result of service agreements between individual prison industries and local contractors and businesses. Work arising from these types of agreements can range from light industry and assembly through to ferrous metal work, spray painting and powder coating. Industries are expected to reduce the operating costs of prisons through the sale of goods and services to external parties.<sup>146</sup>

A third type of work opportunity is for low or open classification prisoners to perform community service, or take normal employment outside the prison.

The *Business Model Review* identified prison industries as being an area of the DCS that requires reform. The review said it could be argued that the DCS views rehabilitation as secondary in nature to the primary security driver, and came to the view that 'the role of

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<sup>144</sup> See *International Covenant on Civil and Political Rights*, Article 8; *Forced Labour Convention*, ILO Convention No.29 (28 June 1930) 2(2)(c); *Abolition of Forced Labour Convention*, ILO Convention No.105 (25 June 1957) 1; *Standard Minimum Rules for the Treatment of Prisoners*, 71-73.

<sup>145</sup> *Basic Principles for the Treatment of Prisoners*, GA Res 45/111 (14 December 1990) principle 8.

<sup>146</sup> DCS, above n 134, 82.



industries within corrections is being afforded secondary status despite the pivotal role it plays.<sup>147</sup>

Even though industries could provide a vital form of rehabilitation and a respite from boredom endured by prisoners, the *Business Model Review* found that 'such is the limited scope of prison industries to engage on a commercial basis that industry managers might be accused of taking whatever suitable activities they can get.' The review said the existing industries policy framework is highly restrictive of potential activities and that Queensland has adopted the most restrictive model of permitting commercial work within Australian prisons, with no review of the framework having been undertaken for many years.<sup>148</sup>

### 8.3.3 Work available to women prisoners

At the BWCC, TWCC, NCC AND HJCCC facilities, a certain number of women are assigned 'service' work such as cooking, cleaning, gardening, and laundry. Within the residential units at the Warwick Work Camp, women perform service work on a rostered basis.

The industry work available at BWCC, at the time of the ADCQ's visit, included sewing trampoline and mattress covers, soft toy making (for Indigenous prisoners), woodwork and welding of trampoline frames.

The industry work performed by women at Numinbah included textiles (sewing), packaging plastic forks into plastic bags for sale at large chain stores, and calf rearing. Community service work from Numinbah was available to two women at a number of locations. Men were assigned 13 of the community service work placements. No release-to-work opportunities were available to Numinbah women. Women also performed some of the essential service roles at Numinbah such as managing the sewerage facility.

The only commercial industry operating at TWCC at the time of the ADCQ's visit was work in the tailor shop, sewing surgical gowns.

The HJCCC, at any given time, can have up to eight women on release-to-work who are in paid employment for normal wages. Women in HJCCC may also perform community work for groups such as Meals on Wheels and charity organisations. Women, who are assigned to the Warwick Work Camp from HJCCC, perform a range of community work, which includes mowing, gardening, painting buildings, restoration, rodeo work, cleaning and other work for local charities.<sup>149</sup>

At July 2004, DCS figures show that 23.3% of women in BWCC were employed in commercial activities and 26.9% in prison services such as cooking and cleaning. At TWCC 24.5% of women were employed in commercial activities and 33.9% in prison services.<sup>150</sup>

Participation in commercial activities in the male facilities ranged from 10.2% (Capricornia) to 55% (Maryborough). It is clear that the precise nature of industry opportunities varies from

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<sup>147</sup> Ibid 82.

<sup>148</sup> Ibid 82.

<sup>149</sup> Note: the project work performed in Warwick district is determined by a committee of representatives from the local community, who, after considering applications for projects from local groups, determines which work should be performed by the work camp.

<sup>150</sup> DCS, above n 134, Appendix 11.

centre to centre and that the women's facilities were on par with a number of male facilities in the rate of employment of prisoners in commercial activities. Male prisons offering many more industry employment opportunities include Maryborough (55%), Townsville Farm (42.2%), Lotus Glen Farm (39%), Wolston (38%), Palen Creek (37.3%) and Darling Downs (33.7%).

The ADCQ agrees with the finding of the *Business Model Review* that there needs to be a much greater emphasis on prison industries. It appears that the current scope for prison industries to provide rehabilitative services through job-skilling for women is not achieving what it should. It may be arguable that any work is better than no work, but the ADCQ is concerned about the quality of some of the work being offered to women as rehabilitation. For example, it is likely that there are few rehabilitative benefits being achieved through the Numinbah women performing the task of packing plastic forks into plastic bags.

### **8.3.4 Remuneration for work performed in prison**

Wage levels for work performed in prison are applied in accordance with the DCS remuneration procedure. This procedure covers the base rate remuneration that is paid to prisoners performing work at various levels. Each area of work has an approved employment profile that sets out the number of positions available in the area and the level of remuneration that applies.

In addition to the base rate remuneration, incentive bonuses may be paid to individuals or groups of prisoners based on the achievement of deadlines, additional productivity targets, punctuality requirements and conscientious attitude and behaviour. Incentive bonuses are recommended by the program supervisor. The person in charge of the facility or their delegate has absolute discretion whether or not to implement the recommendation of the program supervisor. Incentive bonuses are not normally paid to service workers, except where an industry is attached to the work area or the workers form an integral part of a team.

The ADCQ consistently heard concerns from female prisoners about differing pay rates for men and women. The DCS asserts that both male and female prisoners are subject to the same requirements and entitlements of remuneration for approved work activities. The DCS states that the current practice at BWCC is that bonuses up to 60% are payable, and that this rate is consistent with the nearby Wolston Correctional Centre and other male facilities.

The ADCQ has not found any clear instance where women have been paid a lower base rate of remuneration for performing the same work as men. However, there does seem to be clear instances of situations where women are systematically being paid bonuses at a lower rate than men for the same work. In none of the situations described to the ADCQ, did performance, punctuality or lack of conscientious behaviour appear to be an issue. Instances that were discussed with the ADCQ include:

- At Numinbah, the women took over the running of the sewerage treatment facility from the male prisoners for the entire prison. When men were running the facility, they were paid a 100% bonus. Women reported that when they took over, they were only being paid a 50% bonus.
- Also at Numinbah, the women reported that the task of running the calf shed was reassigned from male to female prisoners. Previously one man ran the calf shed and was paid a 100% bonus. Because of the Numinbah Correctional Centre protocol that a female prisoner must be accompanied by a guard outside the women's compound, and

the rule that a lone female prisoner is not allowed to be with a lone male prison officer, two women prisoners had to be assigned to run the calf shed. These women reported receiving a 25% bonus for this task. When the women took over the role, it was designated non-essential work, where previously it was determined to be essential work.

Both these instances of payment of lower levels of bonuses could be discrimination on the basis of sex.<sup>151</sup>

The ADCQ is concerned that the highly discretionary way bonuses are paid can inadvertently give rise to discrimination.<sup>152</sup> In determining bonuses, officers need to be aware of how discrimination can occur if rigor is not applied to the decision making process. The DCS should also carefully examine the availability of service and industry work to women with impairments including those with intellectual impairments. Such women should not be denied payments of bonuses through the imposition of terms that may be in breach of the ADA.<sup>153</sup>

### **RECOMMENDATIONS: Work and industry opportunities**

#### **Recommendation No. 31**

That the Department of Corrective Services takes steps to ensure that the scope for prison industries to provide for rehabilitative services through job-skilling for women is realised.

#### **Recommendation No. 32**

That the Department of Corrective Services reviews its policy on bonus payments to ensure that, in determining who should be paid bonuses, unlawful direct or indirect discrimination under the *Anti-Discrimination Act 1991* does not occur.

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<sup>151</sup> The situation in the calf shed is a prima facie instance of indirect discrimination.

<sup>152</sup> Under the ADA it is not necessary that the person who discriminates considers the treatment is less favourable and the person's motive for discriminating is irrelevant. See ADA, s 10.

<sup>153</sup> ADA s 11.



## 9 Safe and humane custody

### 9.1 Health care in prison

It is a fundamental human right of everyone, including prisoners

to the enjoyment of the highest attainable standard of physical and mental health.<sup>154</sup>

The state has a particular responsibility towards prisoners, as their loss of liberty means that the primary responsibility for their health then falls on the prison administration. Imprisonment itself can have a damaging effect on the physical and mental well-being of a prisoner. Not only do prison authorities have a responsibility to provide medical care, they must also:

establish conditions which promote the well-being of prisoners and staff. Prisoners should not leave prison in a worse condition than when they entered.<sup>155</sup>

Prisoners retain the right to medical care, which is at least the equivalent of that provided in the wider community.<sup>156</sup> The *Queensland Women Prisoners' Health Survey* found that women in prisons are a high need group for health services relative to women in the community. It stated:

there is a need for general health services to match community standards, and the need for additional services pertaining to issues more prevalent amongst female prisoners. Overall, the prison population requires over servicing in terms of community norms for health services.<sup>157</sup>

The survey identified that the three major issues pertaining to the health of women in prisons are drug abuse, mental health and childhood sexual abuse.

Although health care delivered to women prisoners generally matches community standards, some areas identified by the *Queensland Women Prisoners' Health Survey* are still not receiving appropriate servicing based on the very high health needs of a large proportion of female inmates. In particular, a much greater level of resourcing needs to focus on the three major issues identified by the survey, namely drug abuse, mental health, and childhood sexual abuse.

For many women these three health issues do not stand alone, but are related to and coincide with each other. To assist inmates to deal with these issues requires a multi-disciplinary approach involving psychiatrists, psychologists, mental health workers, social workers and counsellors. The multi-disciplinary approach should also include expertise from other non-prison based or community-based organisations with skills and expertise in these areas. This would provide a level of ongoing support during and after a woman leaves prison. In particular, groups with expertise in assisting and supporting women who have experienced sexual assault need to be a part of the team.

The ADCQ understands that this type of approach is already adopted to a limited extent by health services' teams at the prisons. It is used for prisoners assessed as being at risk of suicide, but only at a level to serve these patients/prisoners with high level acute issues. Longer

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<sup>154</sup> *International Covenant on Economic, Social and Cultural Rights*, GA Res 2200A (16 December 1966) article 12.

<sup>155</sup> Andrew Coyle, 'A human rights approach to prison management-handbook for prison staff' (2002) 49.

<sup>156</sup> *Basic Principles for the Treatment of Prisoners*, above n 145, principle 4.

<sup>157</sup> B A Hockings et al, above n 46, iii.

term ongoing support at a level of any significant assistance is not provided to prisoners who pose no risk of suicide.

The ADCQ appreciates that providing quality long term assistance to help women with a complex mix of problems may be a relatively expensive service, especially compared to services traditionally available to them. However the costs of providing such services do need to be weighed against the possible long term benefits. These include community safety issues such as reducing rates of re-offending, and the flow-on benefits for women who have primary caring responsibilities for children. Women who are in a better position to cope in their lives, generally have a greater ability to provide more secure and consistent parenting to their children. This results in long term benefits not only to their children but ultimately to the greater community.

## 9.2 Substance abuse

There is a need for greater access to substance abuse intervention programs for women in prison. Drug and substance abuse intervention programs can be considered to be one of the broad health care responsibilities of prison authorities for prisoners in their care. The ADCQ acknowledges that while it may be more difficult to rehabilitate a person in the prison environment (which is strong argument for diversion wherever possible), offender treatment, combined with employment and education programs can be effective aids to reduce behaviour that gives rise to re-offending. An adequate standard of medical care must look at all the health needs of a female prisoner, and give adequate resources to female prisoners to assist them with this important physical and mental health issue.

Women who are in prison for less than twelve months and remandees do not have access to core programs including substance abuse and relapse prevention. This is significant given that the average actual period served in prison by female prisoners is about two months.<sup>158</sup> Drug offences make up a larger proportion of offences committed by women in contrast to men. The reported patterns of illicit drug use upon reception into prison are consistently higher for female prisoners than male.<sup>159</sup> A high proportion of female offenders re-offend.<sup>160</sup> It is clear that many women, who would benefit from accessing drug and substance abuse programs, are failing to have this need addressed due to the relatively short period in prison.<sup>161</sup>

The lack of availability of programs to women serving short term sentences may be a form of indirect discrimination. Women, on average, serve shorter sentences than men, and most women serve sentences of less than 12 months. The requirement that a prisoner must be serving a sentence of a year or longer to be offered a substance abuse program, is one that proportionally fewer women are able to comply with than men. As well, a substantially higher number of female prisoners have substance abuse issues than men.

The ADCQ understands that the Drug Court programs, undertaken by offenders who have been diverted from custody to attend those programs, have had considerable success in reducing the recidivism rates.<sup>162</sup> Over the five year period it has been in operation, only 10 of the 150

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<sup>158</sup> DCS, above n 36, 14.

<sup>159</sup> Ibid 19.

<sup>160</sup> Ibid.

<sup>161</sup> Several women prisoners the ADCQ spoke to during the course of this review stated their desire for assistance with these issues while in prison even though they were serving short sentences.

<sup>162</sup> JAG magazine, Issue 4, December 2005, 3.

graduates have been convicted of further offences.<sup>163</sup> The Drug Court is operating in a limited number of postcode areas in Queensland. Offenders who are being tried and sentenced in postcode areas without a Drug Court, do not have the option of being diverted from custody and undertaking Drug Court programs. Some of these offenders will be sentenced to relatively short sentences, and will not be offered substance abuse programs while they are in prison. For many of these offenders who are women, substance abuse can be one of the key factors in their offending behaviour. If they receive a short term of imprisonment of less than twelve months this behaviour is not addressed. The Queensland Government and the Department of Justice and Attorney-General, are encouraged to increase the number of areas in which the Drug Court operates, to ensure that the sentencing options available to it apply to eligible female offenders across all state postcodes.

Substance abuse program interventions in the prison setting are important if the aim is to rehabilitate offenders and reduce the numbers of offenders re-entering prison. While the Drug Court diversionary programs are addressing some of these issues for women who have been diverted from prison, there is still a role for other programs in the prisons for women who are not eligible to appear before the Drug Court. Evaluation of programs in Canadian prisons shows that prisoners treated for drug abuse are less likely than untreated drug abusers to return to custody.<sup>164</sup> It is clear that many more female prisoners could benefit from drug and substance abuse programs than is presently the case. The government and correctional authorities need to address this critical unmet need.

There are a number of directions to consider in developing and implementing drug and substance abuse programs for women. In particular, it has been suggested that women's reasons for drug and substance abuse are different from men's and this should have implications for the design of programs.<sup>165</sup> There is an argument that programs should address underlying issues such as victimisation.<sup>166</sup> It has been suggested that women prisoners use drug and alcohol mostly for the purposes of 'numbing out' or as a coping mechanism more than for pleasure.<sup>167</sup> Programs need to be developed and delivered in a manner that adequately considers the needs of Aboriginal and Torres Strait Islander women. Failure to do so could give rise to complaints of indirect discrimination.

## **RECOMMENDATIONS: Drug and substance abuse**

### **Recommendation No. 33**

That the Queensland Government and Department of Justice and Attorney-General increase the areas in which the Drug Court operates, to ensure that the sentencing options available to it apply to all eligible female offenders across all state postcodes.

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<sup>163</sup> Ibid.

<sup>164</sup> C Dowden and K Blanchette *An investigation into the characteristics of substance - abusing women offenders: Risk, need and post release outcomes* (1999) 21.

<sup>165</sup> HM Inspectorate of Prisons for England and Wales, *Women in Prison: A Thematic Review* (1997). Para 11.37

<sup>166</sup> Ibid, paras 11.34 and 11.35. This includes histories of sexual and physical abuse, and spousal violence.

<sup>167</sup> Ibid, para 11.34.

### **Recommendation No. 34**

That access to substance abuse programs while in prison be extended to short term and remandee female prisoners wherever possible. Such programs need to be specifically designed for women and should address the needs of Indigenous women.

## **9.3 Mental health and prisons**

Female prisoners have a very high prevalence of mental illness in comparison with the general population. Almost two thirds of women reviewed in prison in the *Queensland Women Prisoners' Health Survey* reported having received treatment or assessment by a psychiatrist or a doctor for an emotional or mental problem.<sup>168</sup> By contrast, mental disorders affect 5.8% of the total Australian population. Depression, anxiety and substance dependence were the most common conditions reported by the survey.

Women prisoners have a much higher incidence of mental health problems, previous counselling or treatment and psychiatric admissions than male prisoners.<sup>169</sup>

Mental health problems contribute to women's offending and imprisonment can be extremely damaging both to the women, their children and other family members.

The treatment of prisoners with mental health issues has attracted a great deal of discussion in recent times on two levels.

### **9.3.1 Are people with mental health issues being inappropriately put into prisons?**

The first issue is the appropriateness of the prison system for people with mental health issues. The argument is that:

- a number of these prisoners, who would previously have been placed in mental health institutions, are now being incarcerated in prisons; and
- the deinstitutionalisation of people from mental health institutions, without providing the necessary or sufficient supports to help them live safely within the community, has led to their being reinstitutionalised in prisons.

It is clear from the health surveys conducted with prisoners that they have a greater level of mental health issues than the general population. This is particularly the case for female prisoners. Some people have their mental illness diagnosed, for the first time, while they are in custody, although most have had dealings with mental health services prior to their imprisonment. It is also apparent that there is a critical shortage of both in-patient and community-based mental health services in Queensland.

Whether the increase in the numbers of people being imprisoned with mental health issues is related to a decrease in services, or inadequacies in these services does appear to be a critical

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<sup>168</sup> B A Hockings et al, above n 46, 43.

<sup>169</sup> DCS, above n 36, 17.



issue that requires further research. Recent press reports seem to support the view that, on some occasions, judges believe they have to place mentally ill people into prison for their own safety because there are no other options available.<sup>170</sup>

There is no dispute that improved and integrated services for mental illness and substance abuse, as well as assistance in areas such as housing, social and disability support, would reduce the likelihood of people with mental illness coming into contact with the criminal justice system.

Prison officers in New South Wales have argued that a far greater number of prisoners with mental health problems should be being diverted from the prison system.<sup>171</sup> Queensland has a well developed set of processes for determining criminal responsibility and fitness for trial through the *Criminal Code* and the Mental Health Court under the *Mental Health Act 2000*. Now it also has a network of clinical forensic mental health workers at service locations throughout the state.

Even with these recent initiatives, the ADCQ believes that people with a mental illness are poorly dealt with at all stages of the criminal justice system, and that efforts to improve their situation have been piecemeal and fragmented. This is an issue that needs to be properly addressed by the entire justice system to ensure that systemic discrimination does not continue to occur for persons with mental health issues. The adequacy of the training and delivery of services by police, lawyers, court and judicial officers on how to recognise a person may be experiencing mental health problems, and being aware of the options for diversion from the justice system, are of critical importance. The same applies to the level of legal services that are available for persons with mental health issues. Inadequate or no legal representation can lead to the incarceration of persons in circumstances when imprisonment is not the appropriate sentencing option.<sup>172</sup>

While the justice and health systems must play important roles, the DCS has a major responsibility to ensure that there are adequate community corrections programs and options available to sentencing authorities to divert offenders with mental illness.

### **9.3.2 Adequacy of treatment of prisoners with mental health issues**

The second issue is the adequacy of appropriate services in prisons for prisoners with mental health issues. Providing effective best practice mental health services to a prisoner from the time of incarceration to the time of their discharge from the supervision of the correctional system, is the responsibility of the Queensland Government and all its relevant departments. The *National Standards for Mental Health Services in Australia* 'emphasise the need for multidisciplinary teams within one mental health service to ensure an integrated approach to in-patient care, crisis intervention, case management and rehabilitation, disability support, health promotion,

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<sup>170</sup> 'Despairing judge jails serial railway-station menace' *Courier Mail* (Brisbane) 28 July 2005.

<sup>171</sup> The NSW based Probation and Community Corrections Officers Association has recently made submissions about the value of community-based sentencing options for offenders with mental illness. 'Parole Officers want mentally ill prisoners released from jail' *Australian* (Sydney) 1 August 2005.

<sup>172</sup> Pilot projects such as the Disability Law Project funded by Legal Aid in the Advocacy and Support Centre at Toowoomba (where a criminal lawyer has been employed specifically to represent people with mental illness and intellectual disability), need to be permanently resourced and expanded.

developmental programs and functions.<sup>173</sup> A draft report dated October 2004 entitled *Report on the Improving the Provision of Prison Mental Health Services Across Queensland Project*<sup>174</sup> stated that the service delivered to Queensland prisoners with mental health issues was substantially below best practice. The draft report identified a number of issues about the level of service including:

- Debate between Queensland Government departments as to who had responsibility to address the multiple issues for prisoners with mental health issues, particularly for prisoners on remand or incarcerated for short periods. This included the poor links into housing, services, support and reintegration into the community.<sup>175</sup>
- Resources were primarily aimed at prisoners with major mental health disorders, and primarily consist of pharmacological treatment. Resources were not directed to prisoners who were not suffering from a mental health disorder that was not at a crisis stage. Therapy was not generally available or provided to prisoners with mental health disorders with the present level of resources.
- Due to the shortage of, or reluctance to admit prisoners to, in-patient beds within District Mental Health Services, inmates were being held in DU, CSU or in the care of other inmates for extended periods of time because they were acutely unwell and in-patient beds were not available. 'Current practices do not reflect the equivalence of treatment that underpins the principles of Forensic Mental Health in Queensland or nationally and may be in breach of human rights.'<sup>176</sup>
- Access to drug treatment and rehabilitation programs was not generally available in prisons, however limited methadone and buprenorphine maintenance programs were in place at some sites.
- There were currently no mental health services available for people suffering personality disorders in Queensland correctional centres.
- Crisis counselling was available to prisoners to prevent suicide or self-harm but ongoing therapy or counselling to address the causes were not usually available.
- There were no customised programs for people with mental illness or programs and services specific to the needs of people with intellectual disability.
- The prison environment was harsh and can be unsafe for those with an intellectual disability or a mental illness, that 'intimidation is not uncommon and physical and sexual assault do occur.'<sup>177</sup>

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<sup>173</sup> A. Chauvin, *Draft Report on the Improving the Provision of Prison Mental Health Services Across Queensland Project*, Community Forensic Mental Health Service, Brisbane, October 2004, p5 (unpublished report). The ADCQ has been advised by DCS that this draft report has not been released and there are no plans for its release.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid 7.

<sup>176</sup> Ibid, 29. An ex-prisoner spoken to by the ADCQ stated she was held initially in the DU for two weeks and then in the CSU in excess of six months whilst on remand.

<sup>177</sup> Ibid, 13.

The draft report concludes that there is significant room for improvement in the provision of prison mental health services, and has made a range of recommendations that could be implemented without further funding. The draft report also identified that there are program gaps for which no government department is taking responsibility for the provision or funding of critical services. The draft report has made a number of recommendations to improve the mental health services to prisoners which the ADCQ endorses and supports.<sup>178</sup> The draft report raises serious concerns that are consistent with matters that have come to the attention of the ADCQ. The ADCQ urges the government to act on those recommendations to ensure that the current level of inadequacy of mental health services provided to prisoners in Queensland does not continue.

In December 2005 the DCS advised the ADCQ that it made two major submissions to the 2005 *Queensland Health Systems Review* (known as the *Forster Inquiry*)<sup>179</sup> resulting in recommendations that:

- A review of current funding arrangements for mental health should occur with a view to improving mental health services for people in correctional and custodial settings.(7.16)
- Health care in correctional institutions be resourced adequately and Queensland Health and the DCS seek agreement on the best future delivery options (7.18)

The DCS states it is currently working with Queensland Health to implement the transfer of health care responsibility to Queensland Health. It states that as part of this process:

an appropriate resourcing model is being identified which will include the provision of psychiatrists, allied health workers, tele-based psychiatric services for remote locations and greater through care with the use of non-government organisations.

The DCS envisages 'that this will improve the standard of care to prisoners with mental illness.'<sup>180</sup>

The inadequacy of the existing prison mental health services in Queensland prisons was highlighted in the six month imprisonment of Cornelia Rau as an immigration detainee in the BWCC.

### **Findings of the Palmer Inquiry into the immigration detention of Cornelia Rau in relation to the BWCC**

The *Palmer Inquiry*<sup>181</sup> is highly critical of the level of effectiveness and speed of the systems and clinical pathways in the BWCC in identifying and dealing with a prisoner or detainee with a major personality disorder or major mental illness. The Inquiry considered:

it might be necessary, in the light of experience, to radically reorganise existing relationships, training and clinical pathways for the delivery of services in the Queensland mental health system. In particular, the Inquiry has in mind the need to advance preliminary observations of possible

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<sup>178</sup> Ibid, 91.

<sup>179</sup> *Queensland Health Systems Review Final Report*, (Forster Inquiry) September 2005.

<sup>180</sup> DCS, *Submission to Women in Prison Review* (14 December 2005) 10.

<sup>181</sup> *Inquiry into the circumstances of the Immigration Detention of Cornelia Rau* (Palmer Inquiry) (July 2005).

mental illness more speedily towards action for assessment and to look for practical ways in which clinical pathways will better ensure the continuity of care.<sup>182</sup>

The ADCQ does not believe that failures of the prison mental health services and systems to provide the appropriate care are unique to the Cornelia Rau case. The case illustrates some of the problems with the provision of mental health services in Queensland prisons. Her detention in the DU on four occasions may also be an illustration of the inappropriate treatment of a person displaying symptoms of being mentally unwell. Prison staff with low-level training and skills in dealing with people with mental illness, often fail to recognise manifestations of mental disorder and respond with restraint or disciplinary action.<sup>183</sup>

### **Assessment and treatment of women prisoners**

The ADCQ is of the view that procedures for detecting and treating mental illness in prisons for female prisoners are inadequate, and psychiatric services in female prisons do not adequately address the extent of need. This is particularly the case for female prisoners who have a high incidence of mental health issues compared to the general population and to male prisoners.

It is apparent that female prisoners experiencing mental health problems, but who have not been diagnosed with an acute psychiatric illness, rarely receive the level of treatment or rehabilitation they need. Those rehabilitation programs that are offered, do not adequately deal with female prisoners who also have a cognitive incapacity.

Female prisoners and Sisters Inside Inc have identified insufficient emphasis on counselling and therapeutic approaches to treatment of mental illness within the prison system. Given the background of trauma, abuse and deprivation experienced by many female prisoners, therapy could be a vital element of their treatment.

Further, women prisoners with personality disorders (DCS staff advised a significant proportion of female prisoners suffered from this condition) receive no assistance except for pharmacological interventions.

Given the large number of female prisoners with personality disorders and the difficulty and costliness of traditional treatments for this illness, the ADCQ recommends that DCS identify alternative and cost-effective ways of treating personality disorders.

It would appear that female prisoners with illnesses other than personality disorders, but who are perceived to be manipulative or thought to have a personality disorder, are not always being afforded the mental health assessment and treatment that is needed.<sup>184</sup>

It is also clear that the forensic unit at John Oxley, Wolston Park, is overcrowded and not generally available for women prisoners with serious mental illness who may benefit from its services. There is a shortage of mental health beds in the Queensland health system generally for security patients. Because of the inadequate capacity or the reluctance of relevant authorities to admit and treat acutely ill patients, it appears that, on more than a few occasions, women prisoners with acute mental illness may be being inappropriately detained and receiving inadequate treatment in either the CSU, DU or health units of the women's prisons. Prison staff

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<sup>182</sup> Ibid 129.

<sup>183</sup> ADA s 11.

<sup>184</sup> This was found to be the situation with Cornelia Rau in the Palmer Inquiry see above n 181 at 147.

are not trained to deal with acute mental illness, and the prison environment is not an appropriate setting to treat women with serious mental health issues.

### 9.3.3 Training of prison officers

The ADCQ understands that in the nine week initial training for new corrective services officers, they briefly touch on mental health issues. There is no primary component about mental health in their training and no routine maintenance or further development of corrective officers on mental health issues. It has been reported:

that staff in correctional centres express concern that behavioural problems, which would be recognised as manifestations of mental disorders by health professionals, are seen as recalcitrance by some corrective service officers, who respond with restraint and/or disciplinary action.<sup>185</sup>

It is important that custodial staff are trained to recognise and respond appropriately to mental illness so that human rights abuses do not occur through misjudgement, ignorance or prejudice.

### 9.3.4 Post-release planning and service provision

For female prisoners with mental health issues who are released directly from prison into the community, without parole, there appears to be a lack of post-release planning, rehabilitation programs, and referral to community-based social services. Further, there does not appear to be any well developed mechanism to adequately follow up female prisoners with mental illness after release.

## 9.4 Self-harm and suicide prevention in prisons

### 9.4.1 Introduction

Prisons collect individuals who are finding it difficult to cope, they collect excessive numbers of people with mental disorder, they collect individuals with weak social supports, they collect individuals who, by any objective test, do not have rosy prospects...Prisoners suffer the ultimate ignominy of banishment to an uncongenial institution...where friends cannot be chosen, and physical conditions are spartan. Above all the process of imprisonment separates them from everything familiar, including their social supports and loved ones, however unsatisfactory.... This collection of life events is sufficient in any individual to make him or her depressed. The depressive feeling may include a wish to die.<sup>186</sup>

Suicide is often associated with mental illness. But there is not always a corresponding illness associated with suicide or suicidal thoughts. The *Queensland Women Prisoners' Health Survey* found that half the women prisoners sampled, reported having thought about committing suicide, and 31.6% had attempted suicide at some time. Indigenous women were more likely to have thought about committing suicide, but the proportions of Indigenous and non-Indigenous women who had attempted suicide were comparable.<sup>187</sup> The survey found a significant association between having attempted suicide and self-harm, and more than a fifth of the women reported having harmed themselves. Slashing the wrists and stabbing were the most commonly reported form of self-harm. The major reason cited for committing self-harm was to relieve tension. Other

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<sup>185</sup> A.Chauvin, above n 173, 7.

<sup>186</sup> J Gunn, *Suicide in Scottish Prisons - a brief review* (unpublished report), (1996).

<sup>187</sup> B A Hockings et al, above n 46, 46.

reasons were to get help, make others listen to them, deal with personal problems, drug withdrawal, depression or the stresses of moving prisons.

The prevalence of self-harming behaviour is much higher in women prisoners than men.<sup>188</sup> Female prisoners who commit or attempt suicide, or practise self-harming behaviours are distressed and in need of help. The challenge for prison authorities is how to properly care for female prisoners to prevent self-harm and suicide.

#### **9.4.2 Crisis support units (CSU)**

##### **CSA requirements:**

Under the CSA, the person in charge of a prison may make a 'crisis support order'. Under this order, a prisoner is admitted to a CSU or health centre in the prison but only if a prison officer, doctor or psychologist advises the person in charge that they reasonably believe the prisoner may harm herself. An order can only be for five days if commenced on the advice of a prison officer, or for three months if commenced on the advice of a doctor or psychologist.

The order allows the prisoner to be segregated from other prisoners in the CSU, if it is reasonably necessary to reduce the risk of harming herself or someone else.<sup>189</sup> Consecutive crisis support orders can be made on the advice of a doctor or psychologist. Prisoners have a right to ask the person in charge of the prison to review orders that are longer than two months, by referring the order to a different doctor or psychologist. The person in charge of the prison must consider the recommendation made by that doctor or psychologist,<sup>190</sup> but is not bound to act on it.

In December 2005 the DCS advised the ADCQ that new corrective services legislation proposed to be introduced in 2006:

will replace existing crisis support orders and special treatment orders with a new separation order that will have an emphasis on keeping prisoners and staff safe within the custodial environment. Prisoners who are separated from the mainstream prisoner population will be accommodated according to their individual needs. There will be no requirement for these prisoners to be accommodated in crisis support units or health centres. It is also proposed that the new legislation will reduce the duration of orders that can be made for prisoners at risk of self-harm or who pose a risk to others due to a psychiatric condition from three months to one month and require regular medical examinations as well as mandatory reviews by official visitors.

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<sup>188</sup> DCS, above n 13, 18; P Camilleri, M McArthur and H Webb *Suicidal Behaviour in Prisons: A Literature Review* (March 1999) 18; S Kesteven, *Women who challenge; women offenders and mental health issues: A Nacro policy report* (April 2002) 27.

<sup>189</sup> CSA s 42.

<sup>190</sup> CSA s 44.

The DCS further states:

these changes should benefit women prisoners by removing the requirement to house a prisoner on a crisis support order in a crisis support unit, and by reducing the time a prisoner may be separated from other prisoners. This should reduce prisoners' feelings of isolation and should allow female prisoners to be accommodated according to their risks and needs while under an order.<sup>191</sup>

The ADCQ supports changes that reduce the time prisoners are in isolation. The DCS is urged to monitor the implementation of the changes and report on its effectiveness.<sup>192</sup>

### **Crisis support units in Queensland prisons for women**

Both the BWCC and the TWCC have crisis support units. The BWCC CSU can accommodate eight women, and the TWCC CSU can take six.

In BWCC, the CSU consists of a number of segregated cells surrounding a small central common area and an adjoining small caged-in exercise yard. The unit has a padded cell with restraining devices. The cells contain very little, a bed with a suicide proof mattress, and no personal property of any kind is allowed. The lights in the cells are on 24 hours a day, and while they are in the cells, women wear a suicide gown. Suicide gowns are loose cotton garments, similar to the gowns worn in operating theatres. They have fastenings down the back, which routinely 'gape' and provide little allowance for modesty or dignity as no underclothes are allowed to be worn beneath the gowns. Women who are detained in the padded cell in CSU are generally held in a totally naked state. Women are not permitted to use tampons while in the CSU. Occasionally women may be able to attend programs and employment. In other situations they may be confined for significant periods of time, and only exit the unit for a shower and exercise. While the prisoner has contact with corrective services officers, she may have limited or no access to other inmates for support or friendship. Each time a woman exits and re-enters her cell, she is strip-searched.<sup>193</sup>

Both the male and the female prisons share the CSU in Townsville. The units are staffed at a higher ratio than the rest of the prison.

The DCS states the purpose of the CSUs is to provide:

low hazard containment for the protection and promotion of the health of prisoners identified as having an intent to suicide or self-harm or harm others.

The 2002 *Queensland Women Prisoners' Health Survey* revealed that almost two thirds of female prisoners had received treatment or assessment by a psychiatrist or doctor for an emotional or mental problem, and 21% of those surveyed reported having self-harmed. The DCS has a responsibility and a duty to protect prisoners from self-harm. The DCS states that CSUs are one way of doing this.

The CSU in each prison is run separately from the health service. A prisoner in the CSU, who may need to see a medical practitioner, will generally be taken out of the unit to receive that service. (Note: Section 45 of the CSA states a doctor must examine a prisoner accommodated

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<sup>191</sup> DCS, *Submission to Women in Prison Review* (14 December 2005).

<sup>192</sup> See following paragraph which describes existing uses and conditions of the CSU in BWCC.

<sup>193</sup> See Chapter 7 above for detailed discussion of strip-searching.

in a crisis support unit as soon as practicable after the prisoner is admitted to the unit, and after that, at intervals that are to the greatest practicable extent, of not more than seven days.)

The use of isolation cells for suicidal or self-harming prisoners is a controversial issue. The creation of safe cells for distressed inmates was among the recommendations of the RCIADIC. The Royal Commission also recommended:

that Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention.<sup>194</sup>

The use of isolation cells for suicidal and 'at risk' prisoners has been condemned by a number of researchers.<sup>195</sup> It has been argued that the use of isolation cells for suicidal and 'at risk' prisoners is problematic, and in most cases, increases a woman's sense of social isolation and rejection. Prisoners' experiences, including women who had spent periods in the CSU, told the ADCQ that suicide proof cells need to be used sparingly and with great sensitivity. In a number of instances, it appears the experience of being in CSU, isolated from others, greatly heightened some women's levels of distress, and may have had the effect of increasing the desire to self-harm.

Women prisoners related their fear of showing any emotion that may be noticed by prison officers and result in them being put under observation and transferred to the CSU. A number stated they were afraid to cry even as part of a normal human response to being in an entirely abnormal and difficult environment such as prison. One particular older female prisoner, in prison for the first time reported:

on my first day, I was feeling sad, I was sitting in a cell where the lights didn't work.... they should have just let me have a little cry, I had sussed out the other people in the cell with me - I thought they were OK.

Instead she states, she was removed from the other prisoners, medicated with valium and placed in a padded cell for four days, on 15 minute observations.

There are inherent limits imposed by both the physical environment of such units, and the capacity of prison officers with limited or no specialist training to give empathetic support needed by women in states of acute crisis. It is questionable whether a CSU is the appropriate place for women who may just be showing perfectly normal human emotions, and sometimes cry or feel sad about their current situation. The proposed legislation changes to be introduced in 2006 should ensure that women, in circumstances like those described here, would not be automatically placed in CSU.

A range of strategies including formal suicide prevention programs, screening for risk, developing appropriate accommodation and psychological services has been focused on by prison authorities in an attempt to deal with the prevention of self-harm. Since the RCIADIC, the rates of suicide in Australian prisons have not decreased. Within the women's prisons in Queensland, the TWCC has had two female prisoners suicide in recent years.<sup>196</sup> A whole range of issues can impact on the incidence of self-harm in prison, but among the most important of

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<sup>194</sup> Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) recommendation 181 (3.334). Recommendations 150 (3.278) to 187 (3.358) deal with health and safety of persons in prison custody.

<sup>195</sup> P Camilleri, M McArthur and H Webb, above n 188, 27.

<sup>196</sup> TWCC on 10/9/99 and 1/06/02.



these, is the prison culture. Some experts suggest the emphasis should not be on suicide prevention, but on developing and strengthening protective factors. Factors that mitigate against self-harm are:

- family support and visits,
- constructive activity within the prison system,
- support from other prisoners,
- support from prison staff and probation officers,
- support from prison visitors and other services,
- having hopes and plans for the future,
- being in a system with excellent inter-departmental communication, and,
- staff who are professionally trained and valued by the system.<sup>197</sup>

It is clear to the ADCQ that, particularly in the TWCC and the BWCC, but also at other facilities for women prisoners, there should be a greater emphasis on developing and strengthening protective factors within the prison to mitigate against self-harm, instead of the current level of reliance on strategies such as CSUs. The use of CSUs should be a last resort, confined to prisoners who are a risk to other prisoners or to staff. The use of seclusion for prisoners liable to self-harm or suicide, but who do not pose a risk to others, should not be the primary approach by prison authorities. Rather, individual care plans should specify the measures required to manage the risk safely, including removing and treating the prisoner in a specialist mental health facility if necessary.

CSUs should only be used for situations that the name suggests, short term crisis situations. The placement of women in such units for prolonged periods is not an adequate long term response, and may breach an individual's human rights.<sup>198</sup> The ADCQ has been advised of a situation where a woman was held in the crisis support unit in excess of six months while on remand (she was also held in the DU for two weeks when first admitted to the prison when there was no room available in the CSU).

When women are in need of longer term care, the situation is not a 'crisis'. The women should be moved to a place where appropriate and adequate care can be given.

It is suggested a range of strategies, which may already have been considered and implemented by prison administrators at some level, needs to be given a greater emphasis and resourcing. Such strategies could include:

- Careful consideration by prison administrators of the active involvement of inmates to assist in suicide and self-harm prevention. Local Samaritans in the UK (an organisation similar to Lifeline in Australia) has helped put in place *Listener Schemes*, where some prisoners are carefully selected, trained and supported to befriend others experiencing distress or difficulties. Listeners had general maturity, knowledge of the system, status with prisoners and staff, and a genuine concern for their fellow prisoners. Fears that

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<sup>197</sup> Liebling, 'Suicide Amongst Women Prisoners', (1994) 33(1) *Howard Journal of Criminal Justice*, 1-9.

<sup>198</sup> A. Chauvin, above n 173.

Listeners would abuse their position were unfounded, and incidences of self-harm decreased significantly.<sup>199</sup>

- Allowing community mental health workers to visit and support self-help groups for prisoners on a regular weekly basis. Based on layman's cognitive behavioural therapy, the GROW program helps adults affected by mental illness and other emotional issues to learn and develop new habits and skills for coping and living.<sup>200</sup> Such groups provide a stepping stone into the wider community when prisoners are released.
- Reviewing the induction process to better support women who are in prison for the first time.

## **RECOMMENDATIONS: Mental health issues**

### **Recommendation No. 35**

That more and improved community sentencing options be developed and supported by the Department of Corrective Services, to ensure there are properly resourced pathways to divert offenders with mental health issues from the prison system, when this is an appropriate sentencing option.

### **Recommendation No. 36**

That the Queensland Government addresses the systemic issues in the provision of its overall services (including health, housing, police and justice) to persons with mental illness with a view to reducing the over-representation of women with mental illness in state prisons.

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<sup>199</sup> See B Davies 'The Swansea Listener Scheme: Views from the prisoner landings' (1994) 33(2) *Howard Journal of Criminal Justice*, 125, 136.

<sup>200</sup> GROW Queensland has already successfully provided such services in the past to the David Longland Correctional Facility, but resource restrictions forced GROW to close their prison groups.

**Recommendation No. 37**

That there be an enhancement of services for the identification and treatment of mental illness for women in custody including:

- rehabilitation and treatment programs for all women prisoners with a mental health issue. This should account for the complex needs of some prisoners, including varying levels of cognitive capacity and the ability to provide informed consent to participation;
- increased access to intensive care facilities for acutely mentally unwell prisoners, by improving psychiatric services generally, including the opening of additional beds in secure psychiatric medical facilities. The detention of such prisoners in the crisis support units of women's prisons is inappropriate.
- additional support for counselling and therapeutic approaches to assist female prisoners with mental illness.
- identifying alternative and cost-effective ways of treating personality disorders.

**Recommendation No. 38**

That the Department of Corrective Services puts a greater emphasis on developing and strengthening protective factors within women's prisons to mitigate against self-harm and suicide. The proposed legislative amendments should detail that a distressed prisoner should be placed in a crisis support unit as a last resort, and only occur if the woman is a risk to other prisoners or staff. Prisoners should not be secluded if they do not pose a risk to others. Individual care plans should specify the measures required to manage the risk of self-harm and suicide safely, including removal to a specialist mental health facility if required.

**Recommendation No. 39**

That a higher level of resources and a multi-disciplinary approach be used to address substance abuse, mental health and sexual assault issues of women prisoners. In particular, a multi-disciplinary approach should make use of non-prison-based and community-based organisations with particular expertise in the areas of substance abuse, mental health and sexual assault.

**Recommendation No. 40**

That all prison staff receive mandatory training on the identification and provision of appropriate responses to prisoners experiencing mental health problems. These skills need to be developed and maintained.

**Recommendation No. 41**

That the establishment and adequate resourcing of step down accommodation facilities be put in place for women with mental illness on their release from prison.

**9.5 Other health issues**

The ADCQ has been told that a number of issues could be addressed to improve the health service to women in prison. They are:

- Continuity of treatment. Several women raised issues about lack of continuity of treatment commenced prior to them entering the prison. In particular, one prisoner receiving specialist treatment for rheumatism reported wearing a splint on her hand as a result of an operation prior to her entering prison. While she was in prison, the splint on her hand fell apart and the operation 'was a waste of time.' The same prisoner reported having all medications prescribed by her medical specialist removed on her entry into prison. While some of these drugs were re-prescribed, others prescribed by her specialist were not. The prisoner said she felt her medical treatment was compromised while she was in prison.
- Some women have refused to go to hospital for medical treatment that cannot be delivered within the prison because they do not wish to be strip-searched on leaving and re-entering the prison complex. 'I would rather a seven day breach than submit to a strip-search.'
- Women at Numinbah prison have foregone medical treatment rather than be returned to the secure unit at BWCC and undergo routine strip-searching associated with going in and out of that unit.
- Women feel their medical issues are not always treated confidentially.
- No breast screening or mammograms are offered in prison, and again the concern about strip-searching prevents women from having these tests even when it would be appropriate care. The option of bringing these services into the prison on a periodic basis should be a straightforward solution, as mobile services are already provided throughout Queensland for similar services.

## RECOMMENDATION: Other health issues

### Recommendation No. 42

That mobile breast screening services be provided within the prison facility on a regular basis to prisoners who are of the age group where routine screening is recommended best practice.

## 9.6 Custody issues involving male prison officers in prisons for women

A number of women told the ADCQ they were concerned about privacy and other issues for female prisoners who are supervised by male prison officers. The concerns were:

- male officers who work night shift had responsibility for looking through the window of a cell when a women prisoner was asleep in her cell. With the hot Queensland climate, and non air-conditioned cells, women may on occasions not be fully covered when viewed by prison officers. The ADCQ agrees that it is inappropriate for male officers to be assigned this responsibility, and that night shift inspections should be conducted only by female officers;
- women who were placed in observation cells, particularly those in CSU cells, those in DU cells, and in the health centre, are all under observation by camera surveillance 24 hours a day. The women were concerned that male officers were assigned this responsibility, with no regard for a women's privacy. This concern was most acute when women were held in the padded cell at the CSU, as they were detained without clothing and were totally naked when held in this cell (almost all women in this situation would be being observed at the minimum every 15 minutes);
- certain specific allegations made to the ADCQ raising potentially unlawful conduct have been referred to the Crime and Misconduct Commission;
- allegations have been made to the ADCQ that due to a shortage of female officers, male officers have been involved in strip-searches in the CSU.

The *Standard Minimum Rules for the Treatment of Prisoners* states that women prisoners shall be attended and supervised only by women officers.<sup>201</sup> International instruments require women prisoners to be supervised by women staff, and if male staff are employed, they should never be in the sole control of women and there should always be a female member of staff present.<sup>202</sup> The ADCQ agrees that male officers should not be assigned the responsibility of conducting regular observations of women in observation units, or of conducting inspections of women at night. In particular, the ADCQ is of the view that male officers should not be working within the CSU in women's prisons.

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<sup>201</sup> *Standard Minimum Rules for the Treatment of Prisoners*, above n 102, Rule 53.

<sup>202</sup> A Coyle, above n 155.

**RECOMMENDATION: Custody issues**

**Recommendation No. 43**

That male prison officers not be assigned responsibility to conduct regular observations of women in observation units or inspections of women at night.

## 10 Groups with special needs

### 10.1 Aboriginal and Torres Strait Islander women

#### 10.1.1 Introduction

Prior to the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1988 to 1991, the issue of Indigenous women in prison received scant attention. Although 339 recommendations were made in the final RCIADIC report, none specifically related to the 11 Aboriginal women who died in custody during the investigation. Three of these women were from Queensland.

The RCIADIC recommended that the Aboriginal and Torres Strait Islander Commission (ATSIC) be given special responsibility and funding to monitor the implementation of adopted recommendations and report annually to both the Aboriginal and Torres Strait Islander and general communities. It is with some concern that this role no longer exists following the abolition of ATSIC on 30 June 2005.

Recently, a range of reports has provided a much clearer understanding of Indigenous women across Queensland. Reports specific to Queensland such as the *Aboriginal and Torres Strait Islander Women's Task Force on Violence Report 2000* and the *Cape York Justice Study*<sup>203</sup> have given a broad ranging analysis of the lives of Indigenous women, particularly women coming into contact with the justice system and the impact of incarceration on them, their children, families and communities.

The DCS has also produced a number of reports on Indigenous women prisoners.<sup>204</sup>

Statistics on Indigenous women prisoners are clear and paint a disturbing picture:

- Indigenous women have an unacceptably high risk of being imprisoned. At 30 June 2005, 26.5% of all female prisoners in Queensland were Indigenous, yet Indigenous people represent only 3% of the population.<sup>205</sup>
- In Queensland the growth of Indigenous female offenders in custody over the five year period from 1994-1999 was 204% compared to 173% for all female offenders.<sup>206</sup>
- Indigenous women have a higher rate of recidivism (62.93%) than non-Indigenous women (53.3%)<sup>207</sup>.
- Indigenous female prisoners are over-represented as secure custody prisoners. At 30 June 2004, 36% of high security, 30% of medium security, 12% of low security and 21% of the open security female prisoners were Indigenous. At the time, they represented 27.85% of the total female prisoner population.<sup>208</sup>

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<sup>203</sup> T Fitzgerald, (Ed) *Cape York Justice Study*, November 2001.

<sup>204</sup> DCS, above n 36; B A Hockings et al, above n 46; DCS, above n 44; Queensland Office of the Director of Public Prosecutions *Indigenous women within the criminal justice system* (September 1996).

<sup>205</sup> DCS, above n 4, 45.

<sup>206</sup> DCS, above n 36, 8.

<sup>207</sup> National Prison Census, above n 45.

<sup>208</sup> DCS *Annual report 2003-04* 39, Table 4.

- Indigenous women are significantly less likely to be granted conditional release or post-prison community-based release (release-to-work, home detention or parole) than non-Indigenous women prisoners (see 6.5.3 of this report.)
- Indigenous women are much more likely to be placed in a CSU or a DU than a non-Indigenous women (see 10.1.2 of this report)
- Indigenous women are more likely than non-Indigenous women, to be the victim of a violent crime.
- In 2002, Indigenous women represented 52.3% of women in prison in North Queensland (Townsville) and 15.3% in prison in South East Queensland.<sup>209</sup>
- 70% of violent offences, the most serious offence category, are attributed to Indigenous female offenders sentenced in North Queensland.<sup>210</sup>

It is important to note the diversity of Queensland's Indigenous women with respect to ATSI cultural differences and historical experiences and how these manifest during incarceration.

The diversity of life experiences of Aboriginal women living in suburban Brisbane, who have had close and direct contact with non-Indigenous people and institutions over a number of generations, is vastly different from Aboriginal women living in regional and country Queensland or isolated reserve communities on Cape York. Similarly, Torres Strait Islander women, born and living on mainland Queensland, have vastly different life experiences from those living in the Torres Strait.

This diversity of historical and lifestyle experience has an important bearing on how and why Aboriginal and Torres Strait Islander women prisoners come into contact with the judicial system and how they cope with incarceration. Aboriginal women, especially from isolated reserves and shire communities, who serve their sentence in Townsville or even Brisbane, (far removed from family, home and lifestyle where standard English is a second language at best), will cope differently with incarceration than Aboriginal women from suburban Brisbane.

'Each Indigenous woman's experience of prison is different and unique to her alone.'

An Indigenous woman's life experiences before prison and her outside support system will impact on her personal coping mechanisms within prison culture.<sup>211</sup>

The *Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report* noted the correlation between rapidly mounting incarceration rates and violence against Indigenous women living in isolated communities. Indigenous women from these communities make up a high proportion of the female prison population in Townsville, where they have been imprisoned for violent offences as a result of domestic violence.

There is little data to indicate the extent of illiteracy among Indigenous women prisoners, although there is anecdotal evidence to suggest that a high percentage of Indigenous women

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<sup>209</sup> B A Hockings et al, above n 46.

<sup>210</sup> Ibid 12.

<sup>211</sup> Debbie Kilroy, 'The White Wall Syndrome: an Indigenous framework for practice operating within the women's prison' (Paper presented at the Best Practice Interventions in Corrections for Indigenous People Conference, Adelaide, 13-15 October 1999) 6.



prisoners are functionally illiterate. Therefore, until they are able to access literacy programs they are limited in their capacity to benefit from other rehabilitation programs. The Australian Bureau of Statistics Survey 1996 on custodial corrections showed that Indigenous prisoners have substantially lower literacy levels compared with non-Indigenous prisoners and the general population. Indigenous women prisoners scored slightly better than Indigenous male prisoners, but scored substantially lower than non-Indigenous women.

### 10.1.2 Systemic discrimination in the prison system against Indigenous women

The DCS has taken steps to try to recognise and accommodate the specific needs of female Indigenous prisoners. The steps outlined to the ADCQ by the DCS include:

- encouraging links with community groups;
- establishing Aboriginal and Torres Strait Islander support officers in prisons;
- providing corrections services officers with cultural awareness training;
- encouraging the celebration of NAIDOC week.

The DCS also provides Indigenous female prisoners access to the following:

- Family Support Program;
- Aboriginal Elders Visitation Program;
- Aboriginal and Torres Strait Islander Cultural Interest Program;
- Aboriginal and Torres Strait Islanders Official Visitors;
- Aboriginal and Torres Strait Islander Chaplains;
- Aboriginal and Torres Strait Islander Sexual Health Program.<sup>212</sup>

While there are programs to address rehabilitation<sup>213</sup>, the current availability of programs specifically designed for Indigenous women in Queensland prisons is limited to the *Ending Offending* program, which was originally designed for Indigenous men. Indigenous women in TWCC are also able to access the *Ending Family Violence Program*.

Indigenous women prisoners in BWCC are granted leave of absence at a much higher rate than non-Indigenous women, mostly to attend funerals.<sup>214</sup>

However, even with the efforts outlined above to accommodate their special needs, the disproportional over-representation of Indigenous women in the prison system and the issues outlined below suggest systemic and possible indirect discrimination<sup>215</sup> against Indigenous women prisoners is occurring in the justice and correctional systems in Queensland.

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<sup>212</sup> DCS, *Submission to Women in Prison Review* (10 September 2004) 24.

<sup>213</sup> Rehabilitation Programs are discussed in Chapter 8 above.

<sup>214</sup> DCS, *Submission to Women in Prison Review* (10 September 2004) 24.

<sup>215</sup> See ADA s 11 for the meaning of indirect discrimination.

Systemic discrimination... is the creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is usually the result of seemingly neutral legislation, policies, procedures, practices or organisational structures. Systemic discrimination tends to be more difficult to detect.<sup>216</sup>

This report discusses the over-representation of Indigenous women at the high security classification level (see paragraph 6.1.4); the possible over-assessment of Indigenous women in the ORNI assessment process (para 6.2.2); the lower levels of access of Indigenous women to conditional and post-prison community-based release than non-Indigenous women (para 6.5.3); the potential indirect discrimination that may be occurring by imprisoning Indigenous women so far from their families (para 6.4.2); and the inadequacy of existing programs for Indigenous women that attempt to address and reduce the chances of re-offending, given the significantly higher recidivism rates of Indigenous women (paras 5.3 and 8.1).

Indigenous women have far less access to community custody facilities. There are no community custody facilities for women in the north of the state and access to community custody in South East Queensland is low for Indigenous female offenders. There are a number of community custody facilities for Indigenous males in the northern region.<sup>217</sup>

In addition to these matters, there is evidence that Indigenous women in some prisons are held in CSUs and in DUs at much higher rates than non-Indigenous women.

In the BWCC in 2003-2004, 26% of the women held in the CSU were Indigenous. During that period, they represented 19.2% of that prison's population. In TWCC, for two out of the three years from 2002 to 2004, the number of Indigenous women held in the CSU was 13% higher than the percentage of Indigenous prisoners in the total female prisoner population.

In the BWCC for the three year period from 2002-2004, Indigenous women were again significantly over-represented in the DU compared to non-Indigenous women.

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<sup>216</sup> Canada – Human Rights Commission, *Protecting their rights: a systemic review of woman rights in correctional centres for federally sentenced women* (2003) 15.

<sup>217</sup> DCS, above n 44, 25. In December 2005 the Department of Corrective Services advised the ADCQ that in principle support has been given to establishing a women's work camp in North Queensland, and that a strategy will be developed in 2006 to achieve this goal. DCS *Submission to Women in Prison Review* (14 December 2005) 11.

**Table 8: Representation of Indigenous women in the DU compared to non-Indigenous women**

CSU Data – BWCC				CSU Data – Townsville Women's			
Year	Number ATSI	% ATSI in unit	% ATSI Pris Pop	Year	Number ATSI	% ATSI in unit	% ATSI Pris Pop
2002	Not available			2002	36	73	59.6
2003	9	26	19.2	2003	29	74	61.4
2004	16	27	20.2	2004	32	41	62
DU Data				DU Data			
Year	Number ATSI	% ATSI in unit	% ATSI Pris Pop	Year	Number ATSI	% ATSI in unit	% ATSI Pris Pop
2002	39	32	19.7	2002	20	56	59.6
2003	33	26	19.2	2003	9	45	61.4
2004	35	28	20.2	2004	13	39	62

Source: Department of Corrective Services figures provided to ADCQ on 9 August 2005.

The DCS notes that for the calendar year to 4 August 2004, 12 incidents of 'offender on offender' assault involving female Aboriginal prisoners have taken place in BWCC, while no incidences of this type involved non-Indigenous offenders.

While the ADCQ certainly has regard to the DCS duty of care to ensure the safety of prisoners and staff, the disproportional representation of Indigenous women in both the CSUs and the DUs is of serious concern. This issue was highlighted by the RCIADIC recommendation that:

Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention.<sup>218</sup>

Under the *Queensland Aboriginal and Torres Strait Islander Agreement*,<sup>219</sup> the Queensland Government hopes to reduce by 50% the rate of ATSI peoples incarcerated by the state criminal justice system by the year 2011. However, if this target is to be reached, and the high recidivism rates of Indigenous women are to be reduced, much remains to be done to address the systemic issues within the justice and corrections systems that is still perpetuating such levels of inequality for Indigenous women.

### 10.1.3 Addressing Indigenous women's needs

Preventing discrimination requires addressing differences rather than treating all people the same. Indigenous women need equal opportunities to benefit from safe and secure custody, rehabilitation and reintegration back to their community. This requires the provision of correctional services that address their unique needs. A proactive approach is required by correctional services to look at new models and programs. Equality of outcomes for Indigenous women will not occur if they are simply expected to fit into and try to benefit from existing correctional services and programs that mostly have been developed for non-Indigenous male prisoners.

<sup>218</sup>See Australia Royal Commission into Aboriginal Deaths in Custody 1991, above n 194, recommendation 181.

<sup>219</sup> *Queensland Aboriginal and Torres Strait Islander Justice Agreement* (July 2001).

In addition, female prisoners ought to be provided at least an equal level of services as male prisoners. Indigenous and other women prisoners in North Queensland still do not have any access to community custody facilities in spite of this need being identified in 1992 in the *Report of the Women's Policy Review*.<sup>220</sup> The absence of a community custody facility in North Queensland is considered a major barrier to the diversion of Indigenous female prisoners from secure custody.<sup>221</sup> This is a *prima facie* instance of direct discrimination under the ADA on the basis of sex.<sup>222</sup> The DCS has advised the ADCQ that after a recent review by the DCS of the Women's Community Custody (WCC) program, it has given 'in principle support' to the establishment of a women's camp (WORC program) in northern Queensland and that an implementation strategy is to be developed in 2006. The ADCQ welcomes this announcement as a beginning in developing equality of access for Indigenous and non-Indigenous women to community custody opportunities as exist for men in North Queensland.

'the Cape York girls should have the same opportunities as the men. The boys have Baas Yard and Wathanin but the girls have to do their full-time.'<sup>223</sup>

In December 2005 the DCS advised that it is currently engaged in a Managing Growth in Prisoner Numbers Project. As part of the project the DCS is proposing to introduce a permanent community corrections service in certain high risk Indigenous communities. With the commencement of court-ordered parole on 1 July 2006, the DCS intends to establish a community corrections service in Doomadgee, Mornington Island, Normanton and Thursday Island. The ADCQ recognises this will be a significant improvement of the services for Indigenous offenders in these areas.

The issues of spiritual, emotional and physical healing and wellness are particularly important concepts for Indigenous female offenders. Attending to healing is critical. Emerging evidence from overseas, primarily from Canada and New Zealand, indicates that addressing the healing needs of individuals and communities has a positive impact on reducing the over-representation of Indigenous peoples in criminal justice processes. Healing has emerged as a significant process for empowering Indigenous communities and creating improved partnerships to address the legacy of family violence and abuse (including the legacies of past government processes, such as the residential school system in Canada, which Aboriginal people in Australia also experienced in the reserve dormitory system, and the removal of Aboriginal children from their families).<sup>224</sup>

New Zealand healing programs and the Canadian model of a *Healing Lodge*<sup>225</sup> for Indigenous female prisoners are approaches that must be given serious consideration by DCS in

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<sup>220</sup> Queensland Corrective Services Commission above n 7.

<sup>221</sup> DCS, above n 44, 4.

<sup>222</sup> See ADA, ss 7, 10, 46, 101.

<sup>223</sup> DCS, above n 44, 26. Baas Yard and Wathanin were community custody facilities located near Aurukun in Cape York. The facilities are no longer operating, and were only ever used for male prisoners.

<sup>224</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, *Report 2002*, 166.

<sup>225</sup> The *Okimaw Ochi Healing Lodge* in Canada provides a range of supportive programs to address a broad range of issues affecting Aboriginal Women's lives including Aboriginal women's roles as parents, their histories of abuse, their involvement with crime, their low skill and educational levels and poor work histories.

implementing its programs for Indigenous female offenders.<sup>226</sup> Indigenous healing programs have been developed in New South Wales with the DCS working in conjunction with the Yulawirri Nurai Indigenous Corporation. These Indigenous based programs aim to break the cycle of recidivism of Aboriginal prisoners in that state. The programs provide holistic case management by Indigenous specialists within the New South Wales Department of Corrective Services, and are supported by relevant Indigenous community organisations outside prison to enhance effective management and support of Aboriginal prisoners when they return from custody. Such programs warrant consideration for Indigenous female prisoners in Queensland.

The DCS has announced that construction of a new women's prison in Townsville is planned with a completion date in December 2007. DCS states that 150 beds will be constructed as stage one with a capacity to expand to 200 beds over time. Given that more than half of the female prisoner population in TWCC is Indigenous, the development of any new correctional facilities and services must address the unique requirements of Indigenous female prisoners in that region. While any new prison will undoubtedly offer better standards of accommodation and resources, the ADCQ has not been advised that the prison model being developed takes into account the special needs of the large population of Indigenous female prisoners in North Queensland. The ADCQ urges the DCS to ensure that a 'best practice' approach to working with Indigenous female prisoners is adhered to in developing this expensive new infrastructure.

Post-release and transitional support services for Indigenous women are critical steps in reducing re-offending. Stable post-release housing, employment and social connections are areas of practical assistance that need to be addressed at the time an Indigenous prisoner is released.<sup>227</sup> The ADCQ is of the view that much more needs to be done to assist Indigenous women with post-release and transitional support.

Although Indigenous staff comprised 4.2% of the workforce of the DCS<sup>228</sup>, at the time of the ADCQ's visits to BWCC, we were informed only one Indigenous female staff member was employed to work with the Indigenous prisoners. In TWCC, an Indigenous male staff member was employed to work with both male and female Indigenous prisoners. It is essential that Indigenous women prisoners are able to access Indigenous female staff at various levels of the correctional system, particularly for counselling, case management, program delivery and health services. The RCIADIC specifically recognised the need to employ Indigenous staff in prisons,<sup>229</sup> and the ADCQ urges the DCS to endeavour to increase the number of Indigenous staff working in women's prisons.

#### **10.1.4 Consultations with Indigenous female prisoners**

A number of issues of concern were raised by Indigenous women in their consultations with the ADCQ. Some of those issues are:

##### **Attendance at funerals**

RCIADIC recommended DCS give recognition to the social kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family, and

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<sup>226</sup> The ADCQ notes that there is apparent support for this concept by department staff and community groups. See DCS above n 44, 27.

<sup>227</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner. above n 224.

<sup>228</sup> DCS, above n 4, 1.

<sup>229</sup> See RCIADIC, above n 194, recommendations 174 and 178.

give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.<sup>230</sup> The ADCQ was informed that on a number of occasions this was not permitted by prison authorities. For example, an aunt of Aboriginal children killed in an accident was not allowed to attend their funeral 'because of (her) behaviour.' The woman was told she was not immediate family therefore not eligible.

Another example was:

Last year my eldest sister died. I was not allowed to attend the funeral because I was on remand. My family had money for me to attend.

### **NAIDOC celebrations.**

Indigenous women were concerned that non-Indigenous women were not permitted to participate in NAIDOC week. They felt the celebrations were all about reconciliation and that excluding non-Indigenous women caused division between them.

### **Elders' visits**

While BWCC has introduced the *Elders' Visit* Program, the ADCQ has been informed that the visits from Brisbane elders' groups and Cherbourg elders have decreased in recent times. This was of concern to Indigenous female prisoners.

### **Racism**

Indigenous women complained of some prison officers holding racist attitudes towards them:

I feel racism in prison as guards take the word of the white girls against us, and officers speak down to Aboriginal women from Aurukun and Kowanyama. Speak down to them like little kids or because they think they're stupid. They're not stupid.

### **Family contact**

Women in Townsville were concerned that video link ups that used to be free now have to be paid by the prisoner or her family, or that their community has to raise funds for link-ups to occur. The present cost was \$55 for a link to Cape communities, and \$100 for a link to Normanton. With very limited funds, the majority of prisoners do not access video link-ups.

### **Prison placement**

The issue of placement of Indigenous prisoners within the prison was raised:

All Aboriginal women are put into one block when there could be personal and family issues. Some Indigenous women don't want to be in an all Murri block.

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<sup>230</sup> Ibid, recommendation 171.

## **RECOMMENDATIONS: Aboriginal and Torres Strait Islander women**

### **Recommendation No. 44**

That the Department of Corrective Services researches, considers and implements strategies that aim to reduce potential systemic discrimination against Indigenous women in the corrections system.

### **Recommendation No. 45**

That the Department of Corrective Services investigates models for programs and facilities that address the unique needs of Indigenous women prisoners, and in particular when designing and building new facilities for female prisoners in North Queensland.

### **Recommendation No. 46**

That the Department of Corrective Services increases the employment of Indigenous female staff in women's prisons to assist in addressing ongoing issues of rehabilitation and recidivism of Indigenous prisoners.

### **Recommendation No. 47**

That the Department of Corrective Services researches the effectiveness of introducing Indigenous healing programs for Indigenous female prisoners in Queensland.

## **10.2 Young women in prison**

### **10.2.1 United Nations Convention on the Rights of the Child**

Seventeen year old children are currently treated as adults by the criminal law in Queensland. This means that 17 year old females sentenced to imprisonment or remanded in custody are incarcerated in adult prisons. As of 1 July 2005, Queensland is the only state or territory to continue to treat 17 year olds as adults in the criminal justice system.

The current Queensland practice is not consistent with the UN *Convention on the Rights of the Child* (CROC). One of the most fundamental principles in CROC is the 'best interest' principle contained in article 3. This is an over-arching principle that should be applied in interpreting all other principles in the convention.

### Article 3: The 'best interest' principle

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies, the best interests of the child shall be a primary consideration.

The principle means that the Queensland legislature and executive are required to make the best interests of the child a primary consideration when enacting any laws or implementing any policy relating to children in the justice system. Article 1 of CROC defines a child to be:

Every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

When article 3 is applied to article 1, it is apparent that the Queensland Government must make the best interests of the child a primary consideration before enacting any laws that narrow the definition of a child. The age of majority in Queensland and the rest of Australia is 18. The rights articulated in CROC are expected to apply to all children including 17 year olds. Any laws or executive acts in Queensland, which breach Australia's human rights obligations, will contravene those obligations.<sup>231</sup>

Recognising the vulnerability of young people and that many 17 year olds are still mentally and physically immature, it is in their best interests that they be dealt with by the juvenile justice system if they commit an offence. Placing 17 year olds into adult prisons exposes them to a potentially dangerous environment and the negative influences of 'seasoned, mature offenders'.<sup>232</sup>

The ADCQ's consultations with women in prison revealed that young women can be placed anywhere in female prisons, but that they are often put in the protection unit by prison authorities concerned for their safety. Unfortunately this action can stigmatise prisoners for the whole time they are in prison, as they may be thought to be an informer by other prisoners. Due to this stigmatisation, they may remain in the protection unit for the entire time they are in prison. Further, women in the protection unit are extremely restricted in their space, movement and activities compared to almost all other prisoners. Placing a young 17 year old female prisoner in this 'prison within a prison' is *prima facie* direct discrimination on the basis of her age.

The ADCQ was told that 17 year olds in prison often had no one to look after them; they were often frightened and very vulnerable to self-harm. The adult prison environment is clearly not in the best interests of 17 year old young people who have breached the law.

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<sup>231</sup> The breach will be attributed to the Commonwealth. Article 4 of the *Convention on the Rights of the Child* requires Australia to take all appropriate measures for the implementation of that Convention.

<sup>232</sup> See Judge Kerry O'Brien, President of the Children's Court of Queensland in *Children's Court of Queensland, 10<sup>th</sup> Annual Report 2002-2003*, 5.



## RECOMMENDATIONS: Young women in prison

### Recommendation No. 48

That the Queensland Government immediately legislates to ensure that the age at which a child reaches adulthood for the purposes of the criminal law in Queensland be 18 years.

### Recommendation No. 49

That it is not in the best interests of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection unit of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

## 10.3 Culturally and linguistically diverse prisoners

At 30 June 1999, approximately 10% of women prisoners in Queensland were not born in Australia. They came from diverse backgrounds where English was not a first language.<sup>233</sup> These women varied in their ability to speak English. This affected their understanding and negotiation of prison regimes and requirements and their access to programs. Some may have experienced intense social isolation in prison due to communication and cultural barriers, and because they lack family and other support networks.

### 10.3.1 Meeting needs

#### Communication

The reception and induction process is particularly difficult for these prisoners. The DCS advises that its brochure titled *Entering Prison: A guide for prisoners in Queensland's Correctional Centres* has been translated into ten languages. It informs prisoners that they can request assistance from interpreter services and contains information about the processes of reception, induction and classification, centre procedures, conduct, and prison entitlements. On-line interpreter services may be used in the induction process.

The DCS advises that telephone interpreter services are used on an 'as needs' basis by medical and counselling staff. Onsite interpreters are rarely used.

Many of these women are reluctant to ask prison staff for help and generally it seems prison staff rely on other women prisoners as interpreters when every day communication issues arise.

Best practice would have the prison authorities routinely accessing a telephone interpreter if they are discussing important issues with a prisoner, as soon as there is an indication that an inmate is not confident in English and comprehension skills. Such prisoners should have access to interpreters at the time of their incarceration, and throughout it, for discussions about their

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<sup>233</sup> DCS, above n 36, 8.

case management, health visits, and any other issues of particular significance.<sup>234</sup> Failing to provide an interpreter in such circumstances may constitute indirect discrimination under the ADA.<sup>235</sup>

Prison authorities and officers need to be aware that a prisoner's ability to converse in English does not necessarily mean she will understand the English spoken by prison staff, doctors or those managing her sentence plan. If there is any doubt about a prisoner's ability to communicate in and comprehend English, an interpreter should be engaged.

### **Accessing Programs**

The DCS advises that most female prisoners with limited English skills receive lessons through the centre's education program. Although they may have difficulty understanding, participating or completing other courses in prison, authorities ought to take reasonable steps to make these programs accessible to such women. Failure to do so may be indirect discrimination under the ADA.<sup>236</sup> No adverse consequences should arise from failing to complete a mandatory program when the prisoner's communication difficulties are a primary issue.

### **Access to reading material/ SBS Television**

Prisoners who are unable to read English, but wish to access reading material, should be given timely and reasonable assistance to obtain reading material in their own language. To be unreasonably denied reading material in one's own language may be indirect discrimination on the basis of race/ethnic background.<sup>237</sup> The ADCQ has been advised that at NCC the men but not the women have access to SBS television. The DCS should ensure equal television access to all prisoners at NCC.

### **Dietary needs and preferences**

The DCS advises that female prisoners can purchase Asian foods through the centre's buy-in facilities. The ADCQ was told by women at BWCC that foods considered basic essentials to some prisoners (such as soup noodles for a Japanese prisoner) were regarded as luxury items. Essential, basic, culturally appropriate foodstuffs should be provided to prisoners from non-western backgrounds, without extra cost to the prisoner.

### **Religion**

Chaplaincy services are to help female prisoners maintain their belief systems and religions, and to provide them with support and counsel in prison. These services appear to be more readily available to prisoners practising the Christian religion. Prison authorities must take all reasonable steps to provide for other religious beliefs and practices. Failure to do so may amount to discrimination on the basis of race, religion or ethnic background.

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<sup>234</sup> Queensland Government *Multicultural Policy 2004*.

<sup>235</sup> See ADA s 11. Expecting a prisoner without good English language skills to communicate with prison authorities on issues of significance without an interpreter may be an unreasonable term constituting indirect discrimination. Whether a term is reasonable depends on all the relevant circumstances of the case including the consequences of failing to provide an interpreter, the costs of providing an interpreter, and the financial circumstances of the DCS. ADA, s 11(c).

<sup>236</sup> See ADA, s 11, above n 235.

<sup>237</sup> Ibid.

Prison authorities must ensure that reasonable steps are taken to allow all prisoners, whatever their cultural or ethnic background, to practise and observe the tenets of their religion.

**RECOMMENDATIONS: Culturally and linguistically diverse prisoners**

**Recommendation No. 50**

That prison authorities routinely access telephone interpreting services for prisoners who are not confident in the English language, for the reception process and any discussion involving their case management, health or other issues of significance.

**Recommendation No. 51**

That prison authorities make all reasonable efforts to ensure programs are accessible to prisoners from non-English speaking backgrounds.

**Recommendation No. 52**

That prison authorities take all reasonable steps to ensure literature and reading material is provided to prisoners in their own language.

**Recommendation No. 53**

That prison authorities take reasonable steps to cater for the dietary requirements of inmates from different cultural backgrounds without cost to the prisoner.

**Recommendation No. 54**

That prison authorities take reasonable steps to accommodate the differing needs and religious observances of prisoners from culturally diverse backgrounds.

**10.4 Women prisoners who are mothers of dependent children**

Few Australian studies have investigated the position and experiences of children with imprisoned parents. Despite a lack of statistical evidence about children in custody,<sup>238</sup> it is estimated that up to 85% of female inmates in Australia are parents of dependent children and heads of single parent families.<sup>239</sup> The impact on children with supporting parents in prison is

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<sup>238</sup> DCS, *Profile of female offenders*, above n 36, 25.

<sup>239</sup> P W Eastaerl *The forgotten few: Overseas-born women in Australian prisons* (1992).

critical and should be further researched if female imprisonment rates continue to increase at the rates of the past two decades.<sup>240</sup> This research should be conducted by the Commission for Children and Young People and Child Guardian.

Under international law the United Nations *Convention on the Rights of the Child* states that:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.<sup>241</sup>

#### 10.4.1 Sentencing Issues for mothers with dependent children

Imprisonment should be the last resort for women with dependent children. Research shows that the early years of life are crucial for good health and other positive outcomes in later years, including the formation of secure emotional attachments with parents. The incarceration of a parent can significantly affect a child and lead to social, behavioural, emotional and psychological difficulties as well as physical and mental health problems.<sup>242</sup>

Section 9(2)(a) of the *Penalties and Sentences Act 1992 (Qld)* states that a sentence of imprisonment should be imposed as a last resort, and that a sentence which allows an offender to stay in the community is preferable. When considering a sentence a court is supposed to take into account any other relevant circumstance. However, no explicit reference is made in the *Penalties and Sentences Act* to considering the best interests of children who may be affected when an offender is sentenced.<sup>243</sup>

The case law on sentencing shows that:

Generally the hardship caused to an offender's children is not a circumstance to be taken into account. It may be taken into account where the degree of hardship that imprisonment will involve is exceptional or when the offender is the mother of young children, or where imprisonment will result in the children being deprived of parental care. In all cases, however, it depends on the gravity of the offence and the circumstances of the case.<sup>244</sup>

The principle has been affirmed by the Queensland Court of Appeal. In *R v D'Arrigo: Ex parte A-G(Qld)* (2004) QCA 399 the Chief Justice observed (at p6):

The balance of authority supports the view that while hardship to third parties because of the imprisonment of a family member may, if rarely, be a relevant consideration, it must not overwhelm others such as the need for deterrence, denunciation and punishment. See *Le & Le v R* (1996) 2 Qd R 516. Indeed the preponderance of authority is to the effect that this consideration may be brought to account only in exceptional or extreme circumstances. See *R v MP* (2004)

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<sup>240</sup> The number of female prisoners has increased annually by an average of 8% for the period 1983 to 2001. See Australian Institute of Criminology, *Australian Crime Facts and Figures 2002*.

<sup>241</sup> See Article 3 of the United Nations *Convention on the Rights of the Child* which was ratified by the Commonwealth of Australia on 17/12/1990, and entered into force on 16/1/91, and see also *Minister for State for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 128 ALR 353 where this principle was considered by the High Court of Australia.

<sup>242</sup> R. Woodward, *Families of Prisoners: Literature Review on issues and difficulties* Occasional Paper No 10, Australian Government Department of Family and Community Services, 7.

<sup>243</sup> *Penalties and Sentences Act 1992 (Qld)* s 9(2)(q).

<sup>244</sup> Western Australian Court of Criminal Appeal in *Stewart v The Queen* (1994) 72 A Crim R 17 at 21 per Franklin J.

QCA 170; *R v Boyle* (1987) 34 A Crim R 202; *Arnold v Trenergy* (1997) 118 NTR; and *R v Edwards* (1996) 90 A Crim R 516.

The ADCQ is concerned that case law on sentencing of parents of dependent children is not fully recognising the principle set out in Article 3 of the *Convention on the Rights of the Child* that the best interests of the child shall be a primary consideration of courts of law in all actions concerning children. The ADCQ argues that along with all other relevant considerations, the best interests of the child should **always** be considered by sentencing authorities when sentencing a parent with a dependent child, and that section 9(2) of the *Penalties and Sentences Act 1992* should be amended to reflect the principle outlined in Article 3 of the *Convention on the Rights of the Child*. The *Commonwealth Crimes Act 1914*, for instance, already contains a requirement that the court must take into account ‘the probable effect that any sentence or order under consideration would have on any of the person’s family or dependants.’<sup>245</sup>

There are alternatives to the practice of imprisoning mothers of young children. In Russia, mothers of young children, who are convicted of all but the most serious offences, are routinely given suspended sentences until the child reaches the age of 14. In Germany, women are housed under curfew with their children in units attached to prisons but outside the gates.<sup>246</sup> Alternative models need to be considered for women with dependent children.

#### 10.4.2 Children residing with their mothers in prison

If a mother of dependent children **must** be incarcerated, all attempts must be made to maintain the attachment bond between mother and child, particularly a child under five years. The needs of women who are primary care givers of children must be given recognition in the classification, placement and case management process.

The capacity for children younger than five years to reside with their mothers in prison has been discussed in Chapter 5. The BWCC, HJCCC and the TWCC all have a limited capacity for a number of young children and babies to reside with their mothers.<sup>247</sup> The decision on whether a child is permitted to be with his or her mother is primarily determined by what is in the best interests of the child, and the availability of space for mother and child to reside together.

A number of women told the ADCQ that they had not been permitted to keep their baby with them due to the lack of available space and amenities in the prison. Owing to the very low numbers of mothers’ and children’s units in BWCC (eight in total), this is probably not an uncommon scenario. The shortage of places for mothers and children within existing prisons, and concerns about the suitability of placing young children or babies with their mothers in prisons, particularly secure prisons with the inherent limitations of more rigid security regimes, suggest a need for purpose-built facilities that put the best interests of the child first.

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<sup>245</sup> *Crimes Act 1914* (Commonwealth) s 16A(2)(p).

<sup>246</sup> Fawcett Society, Commission on Women and the Criminal Justice System, *Women and the Criminal Justice System*, 60.

<sup>247</sup> BWCC can accommodate eight mothers and their children, Helana Jones has room for six children but at times has accommodated up to 10 children.

### 10.4.3 Children who do not reside with an imprisoned mother

For most children, the reality is that once their mother has been sentenced to a term of imprisonment, they will be physically separated from her while she is in prison. At the time of their incarceration, most mothers are single. For many children, their mother's imprisonment may precipitate a relocation of home and school, dislocated relationships, stigma and prejudice, and significant financial strain.

Because there are so few female prisons in Queensland, an inmate's incarceration will often be geographically isolated from her home and family.<sup>248</sup> The physical contact between mother and child, amount of telephone and correspondence access, and the nature and frequency of visits and home leave are all determined by the prison system.

Family visits are a lifeline for female prisoners who are mothers, and vital for maintaining a relationship of any kind with their children. However, family visits are entirely dependent on the practical assistance of a sympathetic adult, the agreement of the child's carer, location of the prison and available transport as well as money to cover transport and accommodation. For prisoners from very remote communities, including Indigenous women, the majority of contact may only occur through video conferences.<sup>249</sup>

The ADCQ has recommended a review of policy of family contact for women prisoners who are mothers of dependent children. This could include use of free video conferences and facilitation of family visits for prisoners from remote locations.<sup>250</sup>

Research findings on the long term effect of mother/infant separation and the effects of traumatic separation, show that separation has a long term and devastating effect on the child's emotional, physical and mental development. Other research into incarceration and forced separation effects on mothers, show that it is in the communities' best interest to maintain the mother/child bond, thus enhancing the child's developmental prospects and the mother's rehabilitation prospects.<sup>251</sup>

Most female offenders serve sentences of less than a year. The financial circumstances of a woman's family nearly always worsen during the custodial period, and many women become unemployed due to their incarceration.<sup>252</sup> This raises a critical policy question: Is the dysfunction caused to children and their families, and the breaking down of their support networks and routines when their mother is sent to prison, in their best interests?

The Queensland Government, with the assistance and cooperation of the judiciary, should develop alternatives to custodial settings for many female offenders serving relatively short sentences, particularly when they are the mothers of dependent children. These alternatives include home detention, periodic detention and community service orders. Alternative and improved sentencing options, which still hold female offenders accountable for their actions, should be implemented.

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<sup>248</sup> See discussion of this issue at 6.4.2 above.

<sup>249</sup> See discussion at paragraph 10.1.2 above.

<sup>250</sup> See recommendation No.59 .

<sup>251</sup> M Loy, 'A Study of the Mothers and Children's Program in the NSW Department of Corrective Services' (Paper presented at the Women in Corrections: Staff and Client's Conference, Adelaide, 31 October – 1 November 2000) 7.

<sup>252</sup> Australian Institute of Criminology, *National Prison Census* (1991).

Research shows that most mothers intend to reunite with their children upon release, and it is suggested that the strengthening and improving the interactions of a mother and her children should be a priority. Women with children who are leaving prison should be provided with transitional assistance after release from prison, particularly in securing appropriate accommodation, financial support, employment and in accessing health and welfare services.

**RECOMMENDATIONS: Women prisoners who are mothers of dependent children**

**Recommendation No. 55**

That the Queensland Government considers alternatives to custody including home detention, periodic detention and community service orders for women with dependent children.

**Recommendation No. 56**

That the Commission for Children and Young People and Child Guardian undertakes research to identify the impact on children of women in incarceration.

**Recommendation No. 57**

That section 9 of the *Penalties and Sentences Act 1991* be amended to include the principle that the best interests of the child be a factor to be considered when sentencing a person with a dependent child.

**Recommendation No. 58**

That prisons which accommodate dependent children with their mothers provide adequate living and play space and organised activities for those children, in accordance with community standards.

**Recommendation No. 59**

That the Department of Corrective Services expands and further develops mothers and children's units, in which imprisoned mothers may be accommodated with their children. These should be separate facilities, which are family-friendly and staffed by specially trained corrections officers.

### **Recommendation No. 60**

That the Department of Corrective Services reviews the policy of family contact for women prisoners of dependent children, including the use of free video conferencing and facilitation of family visits.

### **Recommendation No. 61**

That women with children who are leaving prison be provided with transitional assistance after release from prison, particularly in securing appropriate accommodation, financial support and employment, and in accessing health and welfare services.

## **10.5 Transgender female prisoners**

The ADA makes it unlawful to discriminate against a person on the basis of a person's gender identity.<sup>253</sup>

Gender identity in relation to a person means that the person identifies, or has identified as a member of the opposite sex by living or seeking to live, as a member of that sex; or is of indeterminate sex and seeks to live as a member of a particular sex.<sup>254</sup>

Transgender prisoners can be exposed to harm in several ways. They may receive inadequate and inconsistent medical treatment and encounter significantly higher risk of sexual assault while in prison. The high levels of social exclusion and discrimination that a transgender person may have experienced before incarceration is likely to continue within the prison environment. The privations of prison life can exacerbate the levels of vulnerability of a transsexual prisoner.<sup>255</sup>

Under the CSA, there are no provisions for the accommodation of transgender prisoners. Correctional authorities may take different approaches to placement such as:

- taking into account how a person gender-identifies;
- the sexual identity noted on the current birth certificate, and
- whether surgical intervention has occurred.

Another approach is that placement is determined on a case by case basis by assessing the risk to the prisoner and other inmates.

The ADA is clear. If transgender prisoners identify as the opposite sex, and live or seek to live as members of that sex, they cannot be treated less favourably or discriminated against because of their gender identity. This, of necessity, implies that the best practice approach for prison authorities is to presumptively place a transgender prisoner in the prison of his or her self-

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<sup>253</sup> ADA s 7 (m).

<sup>254</sup> ADA s 4.

<sup>255</sup> Richard Edney 'To Keep Me Safe From Harm' (2004) 9(2) *Deakin Law Review* (2004) 328.



identification.<sup>256</sup> However, transgender prisoners should have the option of being placed in either a male or a female prison, if they have legitimate safety concerns about being contained in a prison of their self-identification.

All the medical needs of transgender prisoners must be adequately addressed while they are in prison including provision or continuation of hormone treatment with necessary physical and psychological support services. Prisoners who may develop Gender Identity Disorder, but have no documented proof of their condition pre-incarceration, should not be denied treatment on this basis. Further, and in accordance with prison purchase policies, transgender prisoners should have access to material that preserves their human dignity, including waxing and shaving equipment, and underwear appropriate to the gender to which they identify.

The placement of transgender prisoners in protection units can be a problematic issue, as it does not always guarantee safety. Being placed 'in protection' means transgender prisoners endure more onerous conditions than other inmates. This is prima facie less favourable treatment that may amount to unlawful discrimination. However, transgender prisoners should have a choice of being placed, or remaining, 'in protection' if they decide this is the safest environment. They should suffer no disadvantage of entitlements from this choice.

### **RECOMMENDATIONS: Transgender female prisoners**

#### **Recommendation No. 62**

That corrective authorities should operate on the presumption that transgender prisoners ought to be accommodated in facilities which are appropriate to their gender identification. This presumption should be subject to an option of these prisoners being placed in either a male or a female prison if they have legitimate safety concerns about being placed in a prison of their self-identification.

#### **Recommendation No. 63**

That all medical needs of transgender prisoners be addressed while they are in prison including provision of hormone treatment and necessary physical and psychological support services.

#### **Recommendation No. 64**

That transgender prisoners have a choice about being placed 'in protection' if they decide this is the safest environment, and they should suffer no disadvantage of entitlements from this choice.

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<sup>256</sup>See Catherine Renshaw 'The Death of Catherine Moore: The Predicament of Transgender Prisoners' quoted in Richard Edney, above n 255.



## **11 Accountability of prisons**

Prisons are part of the State Government's service to the people of Queensland. The policies and practices of prison administration must always be developed with the aspiration of the best outcomes for all Queenslanders who are stakeholders in this important component of the justice system.

Prison management must operate within a clear ethical framework. When one group of people is given significant powers over another group, constraints must be put in place to ensure power is not abused. The ethical basis for running a prison service must come from the highest levels of management, and flow right through to the officers who supervise the daily routines of prisoners.

To ensure prisons are accountable and operate within an ethical framework, important mechanisms need to be developed and maintained.

### **11.1 Training of prison staff**

It is essential that prison staff are carefully selected, properly trained, supervised and supported. Prison work is demanding, and to perform the role of prison officer well requires skill and personal integrity. Officers need skills to deal with prisoners in an even-handed, humane and just manner.

The clear ethical framework that forms the basis of prison administration needs to be articulated clearly to all prison officers working in Queensland prisons. Part of the framework must be the performance of their work and the delivery of services in a manner that is not contrary to the requirements of the ADA. All staff need to be trained and supervised so that they do not unlawfully discriminate against or sexually harass prisoners and other staff within the prison. Training must also include cross-cultural and Indigenous issues and working with people from culturally and linguistically diverse backgrounds.

### **11.2 Researching and measuring success**

Virtually all prisoners will one day return to life in civil society. To attain best practice in corrections and prison policy and optimum outcomes for society, it is important that processes, programs and policies are properly evaluated and measured. Research is a vital component of ensuring the responsible spending of the scarce resources dedicated to corrective services.

Gender, race, disability and, whenever appropriate, the impacts on dependent children of incarcerated parents should be considered in all research and statistics on prisoners in the criminal justice system.

### **11.3 External monitoring body**

The safeguarding of human rights in a prison system is best served by a formal overseeing function to ensure compliance.

External monitoring bodies exist in other jurisdictions. In England, Wales and Scotland, the Chief Inspector of Prisons has a role that is independent of the prison service to provide the public, parliament and government with an objective and authoritative assessment of prison conditions. Western Australia has also created an Office of Chief Inspector, which falls within

the general portfolio responsibility of the Minister for Justice, and which is answerable directly to the Parliament.<sup>257</sup>

The core responsibility of the Chief Inspector is to carry out comprehensive inspections of all prisons. Inspections can be announced or unannounced. The role of the Inspector includes considering issues that are common to all or a number of prison establishments. In these jurisdictions the Chief Inspector is also empowered to conduct thematic reviews of prison services. In England and Wales recent thematic reports have been completed on women, young people and prisoners with mental health issues.

As a result of the recent *Business Model Review* conducted within the DCS, the DCS has recognised the need to strengthen its accountability measures and has created the new position of Chief Inspector. This position constitutes 'an independent inspectorial role, reporting directly to the Director-General on the performance of custodial centres in terms of operational effectiveness and its effects on prisoners.'<sup>258</sup>

The ADCQ has been advised by the Chief Inspector that he has two major responsibilities:

- to coordinate the official visitors' scheme; and
- to provide independent external scrutiny regarding the treatment of offenders, and the application of standards and operational practices within the State's custodial centres.

The Office of Chief Inspector is not yet recognised by the CSA, but the ADCQ has been informed by the present Chief Inspector that amendments due to be made to the CSA in 2006 will include provisions concerning the establishment of the office, its functions, responsibilities and powers. The present office holder has been appointed under contract for a period of three years, and is to be allocated a staff of six officers when the office is fully established.

At the present time, the Chief Inspector in an effort to ensure independence, states he plays no part in the management of the DCS except for the management of the Chief Inspector's office. All reports of the Chief Inspector are forwarded directly to the Director-General. No mechanism exists (apart from *Freedom of Information Act 1992* provisions) for reports to go beyond the Director-General. Since being appointed to the role, the Chief Inspector has conducted full 'announced' inspections of two prisons and conducted a number of 'incident inspections' under section 219 of the CSA.

The ADCQ is concerned that the present model for the Chief Inspector of Prisons is not sufficiently at arm's length from the DCS. The major concerns the ADCQ has with the role and office as it is presently conceived by the DCS is:

- The Office of Chief Inspector is not an office that is independent of the DCS;
- The Chief Inspector reports only to the Director-General of the DCS, and not to the Parliament or public via an annual report or by publication on a website;

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<sup>257</sup> *Inspector of Custodial Services Act 2003 (WA)*.

<sup>258</sup> DCS, above n 4.

- As contemplated by the *Business Model Review*, the Chief Inspector inspects custodial facilities only 'when directed by the Director-General'<sup>259</sup> and not of his or her own volition;
- The present allocation of six staff does not appear to be adequate for the workload of the office.<sup>260</sup>

The ADCQ recognises that there is a high level of commitment to the role of official Inspector by both the present Minister and Director-General of DCS. However, present levels of commitment are no guarantee that the Office will continue to receive support

To ensure that the Inspector's activities remain truly independent, and that in the public interest, the conduct of custodial and correctional operations in Queensland is transparent and fully accountable, a more robust model similar to that created in Western Australia should be legislated for in the proposed changes in 2006 to the CSA. The ADCQ can see great benefit in this Office also having a role in scrutinising juvenile detention centres, as is the case in Western Australia.

### **RECOMMENDATIONS: Accountability of prisons**

#### **Recommendation No. 65**

That all corrective services staff receive mandatory training and information about unlawful discrimination and sexual harassment, Indigenous issues and dealing with people from culturally and linguistically diverse communities.

#### **Recommendation No. 66**

That research and statistics produced by the Department of Corrective Services on offenders in the corrective services system includes the following data: gender, race, disability and the impact on dependent children of incarcerated parents.

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<sup>259</sup> DCS, above n 134, para 10.7, 75.

<sup>260</sup> The West Australian office of the Inspector of Custodial Services has a core staff of twelve.

**Recommendation No. 67**

That legislation be enacted to ensure that the Office of Chief Inspector of Prisons has the power to bring independent scrutiny to the standards and operational practices of correctional services throughout Queensland. This jurisdiction should also extend to juvenile detention centres. The legislation must ensure that:

- the Office is properly independent of the Department of Corrective Services and the Department of Communities;
- the Office is answerable to and reports directly to Parliament.

The government must ensure that the Office is adequately resourced to perform its role.

## 12 Independent scrutiny

It is clear that many of the issues for women prisoners, especially concerning mental health, occur nationally. For this reason the ADCQ has suggested that the Human Rights and Equal Opportunity Commission conduct a review into how the correctional and prison systems across Australia are dealing with women with mental health issues.

Ongoing effective community engagement with all relevant stakeholders will provide some of our most disempowered Queenslanders (women prisoners) with a voice. ADCQ urges DCS to work with community representatives and advocacy organisations to ensure that its programs, policies and legislation are continually developed in a fully informed way.

The ADCQ will continue to be available to work with the DCS, the community and advocate groups to ensure that legislation and practices meet the needs of women prisoners in Queensland.

### **RECOMMENDATION: Independent scrutiny**

#### **Recommendation No. 68**

That the Human Rights and Equal Opportunity Commission conducts a review into how the justice and prison systems across Australia are dealing with women with mental health issues.





## 13 Conclusions

This review has focused on women prisoners in Queensland. Our analysis has been based on the principles contained within the ADA, and international human rights principles that pertain to prisons and prisoners.

In conducting this review, it has become apparent that the Queensland Government, the DCS and the Department of Justice and Attorney-General need to reconsider the pathways for female offenders. There appears to be an over-reliance on the prison custodial system for dealing with women offenders. Many women in prison are both victims of crime and offenders. While figures indicate that crime has fallen significantly in the last few years, public perceptions are that it has increased, leading to pressure for more severe sentences.

The viability and integrity of the community corrections option of dealing with offenders has declined, meaning magistrates and judges have little faith in diverting offenders to those programs. Many women currently serving prison sentences would be better served in properly resourced and managed community corrections programs. Reducing the number of women in prison would assist in preventing the damage caused to children by the imprisonment of their mother.

The review has examined some of the basic components of the correctional system to see how the system as a whole deals with the special needs of women prisoners. This includes women from minority groups such as women with a disability, Indigenous women, young women aged under 18 years, culturally and linguistically diverse women, women with dependent children and transgender women. The particular components of the corrections system we specifically examined were the:

- classification system;
- prison infrastructure;
- conditional and community release;
- prison requirements such as strip-searching;
- opportunities for rehabilitation including educational programs, work and industry opportunities; and
- health and safety issues.

The correctional system rarely recognises or addresses the differences between male and female prisoners, and the differences between certain groups of offenders. While recognising the progress that has been made in addressing some of the needs of women prisoners over the past two decades, there is much more to be done before the correctional system is properly responsive to the needs of women prisoners and to minority groups of female prisoners.

There are valid and legitimate concerns that the classification system may be over-classifying women. The ORNI may be over-assessing their needs and risks, resulting in their imprisonment in a secure or other prison facility for unnecessarily longer periods than warranted. Only a responsive and properly validated risk assessment tool can properly guide the critical decision of classification. All stakeholders in the correctional system need to have a level of confidence in these critical processes that impact so significantly on where and how a prisoner is held, and when she may become eligible for conditional or community release.

There are also legitimate concerns about the high numbers of women prisoners in Queensland kept in secure custody prisons, even though they are classified as low security prisoners. There are also high numbers of low security male prisoners housed in high security facilities. Prisoners should be placed in the least restrictive environment possible. This is a critical issue as the DCS plans its future custodial infrastructure. The highest priority must be placed on the interests of dependent children of women prisoners in planning prison infrastructure and in placing women prisoners.

Significant changes need to be considered in how systems are designed and how policies and practices are implemented to ensure all prisoners have the opportunity to benefit from the rehabilitative purpose of the correctional system. At the present time rehabilitation appears to be a much lower order of priority than containment and supervision of female prisoners. The best outcomes for community and public safety will occur when prisoners are given effective opportunities to be rehabilitated and reintegrated as law abiding members of society.

In examining the health and safety needs of women prisoners, the review has concluded that the needs of women with mental health issues are poorly addressed by the present custodial system. These women are over-represented in prisons, and many ought to be diverted from custody. Women with mental health issues in prison may often be placed in crisis support units in prisons. This is inappropriate for women with acute mental health issues who should be treated in properly staffed forensic mental health facilities or in hospital. We believe there is an overuse of crisis support units in female prisons, and that other strategies ought to be put in place to ensure that the placement of a woman in a crisis support unit is a last resort and should only occur if a prisoner poses a risk to others.

The ability for women prisoners to access substance abuse programs while in prison needs to be enhanced. Due to the high health needs of women prisoners, a much higher level of resources and a multi-disciplinary approach needs to be dedicated to addressing substance abuse, mental health and sexual assault issues of women prisoners.

There are strong indicators that Indigenous women are being systemically discriminated against in the criminal justice and correctional systems, as both victims and offenders. The needs of Indigenous women prisoners must be given a higher priority given their over-representation in prisons. In particular, the needs of Indigenous women prisoners in North Queensland must be a high priority of the DCS when designing and building any new facilities for women in North Queensland.

A common thread throughout this review is the need for policies and services to be designed specifically for women. The DCS should access community representatives, experts and prison advocates to ensure its policies meet the needs of women prisoners. The criminal justice system must take new and possibly radical approaches and alternatives to the existing regime for female offenders. The system must recognise the links between violence against women, including sexual offending, child abuse and domestic violence. Most women prisoners are both victim and offender. A coherent and strategic approach must be taken by all government departments and agencies to ensure that these issues are not dealt with in isolation.

The scope of this review did not allow for an examination of the antecedents of discrimination and inequality. Our hope is, however, that this review will assist in changing the correctional system from within so as to better address the human rights of women prisoners.



## 14 Appendices

Appendix A: Bibliography

Appendix B: List of submissions received

Appendix C: List of prison visits and interviews

Appendix D: List of acronyms

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**APPENDIX 'B'****SUBMISSIONS RECEIVED**

A total of 32 submissions was received, representing a range of perspectives. For the purpose of confidentiality, identifying details have been removed.

Department of Corrective Services made submissions on 10 September 2004; 8 October 2004; 9 August 2005 and 14 December 2005

Sisters Inside Inc made submissions on June 2004; 10 September 2004; 20 September 2004 and 13 December 2005.

Reference	Submitted by
1	Academic
2	Private person
3	Academic
4	Community organisation (social worker)
5	Independent statutory authority
6	Independent statutory authority
7	Union
8	Private person
9	DCS staff
10	Community organisation
11	Community organisation (women)
12	Community organisation (youth)
13	DCS staff
14	Law firm
15	Sisters Inside submission
16	Former prisoner
17	Peak community organisation
18	Doctoral student
19	Peak community organisation (youth)
20	Former prisoner
21	Currently serving prisoner Brisbane Women's Correctional Centre
22	Currently serving prisoner Brisbane Women's Correctional Centre
23	Currently serving prisoner Brisbane Women's Correctional Centre
24	Currently serving prisoner Brisbane Women's Correctional Centre
25	Currently serving prisoner Brisbane Women's Correctional Centre
26	Former prisoner
27	Currently serving prisoner Brisbane Women's Correctional Centre
28	Community organisation (lgbti)
29	Peak community organisation (disability)
30	Community organisation (health)
31	Currently serving prisoner Brisbane Women's Correctional Centre
32	Private person



**PRISON VISITS AND INTERVIEWS**

Anti-Discrimination Commission Queensland representatives

- visited prisons
- held talks with the General Manager of each of the women's prisons
- met with the Honourable Judy Spence, Minister for Police and Corrective Services
- met with Mr Frank Rocket, the Director General of the DCS
- met with key DCS staff
- conducted closed session round table meetings
- and took the opportunity to walk and talk with female prisoners at:

<b>Date</b>	<b>Visited</b>
28 Sept 2004	Brisbane Women's Correctional Centre
7 October 2004	Nunimbah Correctional Centre
12 October 2004	Brisbane Women's Correctional Centre
19 October 2004	Ex-prisoner discussions
20 October 2004	Ex-prisoner discussions
25 October 2004	Brisbane Women's Correctional Centre
31 November 2004	Helana Jones Community Correctional Centre
16 December 2004	Townsville Correctional Centre
25 January 2005	Warwick Women's Work Camp
27 January 2005	Brisbane Women's Correctional Centre



**LIST OF ACRONYMS**

**ADA:** *Anti-Discrimination Act 1991*(Qld)

**ADCQ :** Anti-Discrimination Commission Queensland

**BWCC:** Brisbane Women's Correctional Centre

**CALD:** culturally and linguistically diverse communities

**CROC:** Convention on the Rights of the Child (United Nations)

**CSA:** *Corrective Services Act 2000* (Qld)

**CSU:** crisis support unit

**DCS:** Department of Corrective Services (Qld Government)

**DU:** detention unit

**TAFE:** Technical and Further Education

**HJCCC:** Helana Jones Community Correctional Centre

**HREOC:** Human Rights and Equal Opportunity Commission (Commonwealth Government)

**ICCPR :** International Covenant on Civil and Political Rights

**LOA:** leave of absence

**NAIDOC :** National Aborigines and Islanders Day Observance Committee

**NCC:** Numinbah Correctional Centre

**ORNI:** Offender Risk/Needs Inventory measuring tool

**PPCBR:** Post-prison community-based release

**RCIADIC:** Royal Commission into Aboriginal Deaths in Custody

**TCC :** Townsville Correctional Centre (TCC)

**TWCC:** Townsville Women's Correctional Centre

**WORC** site: work outreach camp

**WCC** site: women's community custody

**WWWC:** Warwick Women's Work Camp