General Purpose Standing Committee No 3

Issues relating to the operations and management of the Department of Corrective Services

Tabled according to Standing Order 231

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Terms of Reference

That General Purpose Standing Committee No. 3 inquire into and report on issues relating to the following areas of the operations and management of the Department of Corrective Services and other relevant agencies:

1. The operations and management of Corrective Services Industries (CSI) with regard to:
   (a) The observance of the Charter to avoid unfair competition through the use of prisoner labour to compete with existing businesses
   (b) Claims that curtain manufacture by CSI is replicating work previously done by other NSW businesses and costing jobs
   (c) Other businesses that may be unfairly disadvantaged by CSI.

2. The management of high risk prisoners by the Department of Corrective Services with regard to:
   (a) Access and contact by non-correctional persons including their security screening
   (b) The effectiveness of the High Risk Management Unit (HRMU) at Goulburn Gaol
   (c) The objectivity of the prisoner classification system
   (d) Staffing levels and over-crowding.

3. The inter-state transfer of Offenders and Parolees with regard to:
   (a) Communication and agreement between Authorities
   (b) Ministerial sign-off under the Acts and informal arrangements made between jurisdictions.

These terms of reference were self-referred by the Committee on 23 November 2005.

Committee membership

The Hon Amanda Fazio MLC	Australian Labor Party	*Chair*
The Hon Greg Pearce MLC	Liberal Party	*Deputy Chair*
The Hon Peter Breen MLC*	Independent	
The Hon Dr Arthur Chesterfield-Evans MLC**	Australian Democrats	
The Hon Charlie Lynn MLC	Liberal Party	
The Hon Eddie Obeid MLC	Australian Labor Party	
The Hon Ian West MLC	Australian Labor Party	

* The Hon Peter Breen MLC joined the Australian Labor Party on 5 May 2006 thereby ceasing his membership of the Committee.

** The Hon Dr Arthur Chesterfield-Evans MLC substituted for the Hon Jon Jenkins MLC for the duration of the Inquiry from 5 December 2005.

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Chair's foreword

I am pleased to present the report of the Committee's Inquiry into issues relating to the operations and management of the Department of Corrective Services.

The Committee heard evidence from witnesses over four days of public hearings and also undertook a site visit and inspection of the High Risk Management Unit at Goulburn Gaol.

I would like to thank the Commissioner of Corrective Services and his staff for their cooperation in the conduct of the Inquiry and for facilitating the visit to the HRMU.

The Committee examined three discrete areas during the conduct of this Inquiry being: the operations and management of Corrective Services Industries; the management of high risk prisoners by the Department of Corrective Services; and the inter-state transfer of offenders and parolees.

In respect of Corrective Services Industries, the Committee has recommended that they take additional measures to increase public awareness and understanding of its role and function with regard to competition with existing businesses and the complaint resolution processes.

Regarding the prisoner classification system and the related security designations used by the Department to manage high risk offenders, the Committee has recommended that the Department produce user-friendly information regarding security classification and associated designations.

The Committee notes that NSW correctional centres are in line with the national average in terms of prisoner time spent out of cells and offender to staff ratios. The evidence presented to the Committee does not indicate that there is a systemic problem with staffing levels and over-crowding in NSW prisons.

The Committee has also recommended that the Department continue consultation with the Legal Aid Commission, and consult with the NSW Law Society and the NSW Bar Association, to determine the extent of difficulties experienced by legal representatives caused by restrictions on visiting hours at NSW correctional centres, and to develop appropriate solutions.

I thank the individuals and organisations who provided submissions and gave evidence at the hearings for their assistance and ongoing concern regarding these issues.

Finally, I would like to thank the staff of the Committee Secretariat for their assistance and professionalism.

I commend this report to the Government.

Hon Amanda Fazio MLC
Chair

Executive summary

Introduction (Chapter One)

General Purpose Standing Committee No 3 adopted the terms of reference for this Inquiry on 23 November 2005. The Committee called for public submissions by way of advertisements in metropolitan and regional newspapers in early December 2005. The Committee also wrote to interested stakeholders requesting submissions. In total, the Committee received 28 submissions. The Committee held four public hearings in December 2005 and March and April 2006.

Corrective Services Industries (Chapter Two)

The Committee examined a complaint that Corrective Services Industries (CSI) has competed unfairly with an Australian curtain manufacturer trading as World of Curtains. The Committee received evidence from the proprietor of World of Curtains, Departmental representatives and from members of the Corrective Services Industries Consultative Council. The Committee recommends that CSI take additional measures to increase public awareness and understanding of its role and function with regard to competition with existing businesses.

The objectivity of the prisoner classification system (Chapter Three)

The Committee inquired into the management of high risk prisoners by the Department of Corrective Services with a respect to a number of issues, including the objectivity of the prisoner classification system. For the purposes of this Inquiry, the Committee defined high risk prisoners to be maximum security prisoners, prisoners classified as escape risks, prisoners designated high security and extreme high security prisoners, prisoners who are 'serious offenders' for the purposes of the *Crimes (Administration of Sentences) Act 1999* (NSW), and prisoners on segregated and protective custody. The Committee examined the prisoner classification system and the related security designations used by the Department to manage high risk offenders. The Committee recommends that the Department produce user-friendly information regarding security classification and associated designations. The Committee also recommends that the Department investigate the merits and feasibility of a rehabilitation program for sex offenders in denial of their offence.

The effectiveness of the High Risk Management Unit (HRMU) at Goulburn Correctional Centre (Chapter Four)

The Committee examined the effectiveness of the HRMU. The HRMU was purpose built to house the state's most dangerous prisoners. The Committee received evidence that the HRMU has been effective in reducing violent assaults and other correctional centre offences by inmates housed there. The Committee received complaints that the HRMU may breach international human rights standards. However, the Committee considers that the evidence received in the course of this Inquiry does not support those claims.

Staffing level and over-crowding (Chapter Five)

The Committee inquired into staffing levels and over-crowding in the NSW correctional system. Although the Committee received some evidence of isolated issues in respect of crowding, the Committee found that the Department has sufficient capacity to meet the future needs of NSW. The Department currently has a sufficient number of spare beds and is developing additional capacity to

cope with continuing growth in the NSW prison population. The Committee notes that NSW correctional centres are in line with the national average in terms of prisoner time spent out of cells and offender to staff ratios. The evidence presented to the Committee does not indicate that there is a systemic problem with staffing levels and over-crowding in NSW prisons.

Access and contact by non-correctional persons (Chapter Six)

Access and contact issues in respect of the prisoners classified as AA or 5 and for prisoners housed in the HRMU are discussed in Chapters Three and Four respectively. The Committee also received evidence regarding access and security issues for prison chaplains, visitors wearing items of cultural and/or religious significance, support workers for intellectually disabled prisoners and legal representatives. The Committee found that the evidence does not disclose any deficiencies with respect to the Department's security screening of prison chaplains. The Committee recommends that the Department continue to work towards appropriate access arrangements for the other three groups mentioned above.

Interstate transfer of parolees and offenders (Chapter Seven)

The Committee examined the operation of the parole and prisoner transfer schemes. With respect to parole transfers, the Committee received evidence of significant changes introduced in NSW in August 2005 designed to make the scheme more formal. The Committee received evidence that these changes may have some adverse impacts on parolees. However, the Committee is satisfied that further changes to the scheme proposed by an interstate working party chaired by Commissioner Woodham will substantially reduce the prospect of any parolee spending longer in custody as a result of the August 2005 changes. The Committee notes that since August 2005 the Government has a policy that no child sex offenders due to be paroled are accepted on transfer to NSW. The Committee recommends that the Attorney General and Minister for Justice review the operation of the prisoner transfer scheme to identify any delays in the scheme.

Summary of recommendations

Recommendation 1 **25**

That the Department of Corrective Services and Corrective Services Industries, in consultation with the Correctional Industries Consultative Council, develop and publish a guide to the operation of Corrective Services Industries with regard to the avoidance of unfair competition with existing businesses, including:

- the obligations of CSI with regard to the avoidance of unfair competition with existing businesses, and
- comprehensive information about the complaint resolution process.

Recommendation 2 **26**

That, in order to assist industry groups, businesses and the wider community to better understand the role and operations of Corrective Services Industries, Corrective Services Industries list on its webpage all current and future Corrective Services Industries publications and make them available to download from the webpage free of charge.

Recommendation 3 **46**

That the Department of Corrective Services produce information outlining the key aspects of the security classification system, the high security and extreme high security designations, and segregated and protective custody, for both serious offenders and prisoners other than serious offenders, and that the Department publish this information on its website and otherwise make the information available to members of the public.

Recommendation 4 **59**

That the Minister for Justice review the application of the AA/5 classification to remandees.

Recommendation 5 **61**

That the Department of Corrective Services investigate the merits and feasibility of implementing a rehabilitation program for sex offenders who are in denial of their offence.

Recommendation 6 **78**

That, in order to better inform the public as to the link between High Risk Management Unit (HRMU) correctional philosophy and improvements in the behaviour of HRMU inmates, the Department of Corrective Services publish a paper on its study of assaults and other correctional centre offences committed by HRMU inmates upon completion of the study.

Recommendation 7 **87**

That the Commissioner of Corrective Services ensure that segregated custody directions are issued in respect of all prisoners housed in the High Risk Management Unit at Goulburn Correctional Centre who do not have association privileges.

Recommendation 8 **90**

That the Department of Corrective Services and Justice Health monitor their practices in respect of the referral of mentally ill persons to the High Risk Management Unit at Goulburn Correctional Centre, and the release of mentally ill persons from the High Risk Management Unit to other facilities within the correctional system.

Acronyms

CCAC	Civil Chaplaincies Advisory Committee
CICC	Correctional Industries Consultative Council
CJSN	Criminal Justice Support Network
CSI	Corrective Services Industries
HRMU	High Risk Management Unit
HSIMC	High Security Inmate Management Committee
ICCPR	International Covenant on Civil and Political Rights
IDRS	Intellectual Disability Rights Service Inc
MHRT	Mental Health Review Tribunal
MRRC	Metropolitan Remand and Reception Centre
SORC	Serious Offenders Review Council

Chapter 1 Introduction

This Chapter provides an overview of the Inquiry process, including the methods used by the Committee to encourage participation by members of the public, interested organisations and government agencies. It also includes an outline of the report contents.

Terms of reference

1.1 The terms of reference for this inquiry were adopted by General Purpose Standing Committee No 3 (the Committee) on 23 November 2005, under the Committee's powers to make a self-reference. The terms of reference cover three distinct areas of corrections-related operations: the administration of Corrective Services Industries (CSI), particularly in relation to curtain manufacture; the management of high risk prisoners, including those in the High Risk Management Unit (HRMU) in Goulburn, and the interstate transfer of offenders and parolees. The terms of reference are reproduced on page iv.

Conduct of Inquiry

Submissions

1.2 The Committee called for submissions through advertisements in *The Sydney Morning Herald* and *The Daily Telegraph,* and in relevant local newspapers in those areas in which Corrective Services Industries work-sites are located. The advertisements were placed in the first week of December. The Committee also sought submissions by writing directly to relevant individuals and organisations. A total of 28 submissions were received and a list of submission makers is provided at **Appendix 1.**

1.3 A small number of submissions were received from prisoners who complained to the Committee that they are unable to proceed to the lowest classification levels because they are not Australian citizens. As the terms of reference relate to high security prisoners, the Committee was unable to investigate this matter and suggested that these individuals raise their concerns with the Minister for Justice, the Hon Tony Kelly MLC.

Public hearings

1.4 The Committee held four public hearings in Sydney on 8 December 2005, 27 March 2006, 3 April 2006 and 6 April 2006, involving witnesses representing government agencies, advocacy and community organisations and legal services. A list of witnesses is set out in **Appendix 2**. Transcripts of all public hearings are available on the Committee's website. The list of documents tabled at the public hearings is provided at **Appendix 3.**

1.5 The Committee thanks all the individuals, agencies and non-government organisations who contributed to this Inquiry either by making a submission or by appearing at a public hearing.

Site visit

1.6 The Committee conducted a site visit to the HRMU in Goulburn on 23 March 2006. A report of the site visit can be found at **Appendix 5.** The Committee thanks the Department for facilitating this visit.

Report structure

1.7 **Chapter 2** addresses the first term of reference, concerning the operation and management of Corrective Services Industries (CSI). It examines the mechanisms in place to ensure that CSI avoids unfair competition with existing businesses through the use of prison labour. It also considers claims that curtain manufacture by CSI is replicating work previously done by other NSW businesses.

1.8 **Chapters 3 to 6** address the second term of reference relating to the management of high risk prisoners by the Department.

1.9 In **Chapter 3,** the Committee defines its understanding of the term 'high risk' for the purposes of this report, and examines the objectivity of the prisoner classification system. The Committee discusses concerns that the classification system allows too great a discretion to the Commissioner of Corrective Services, and lacks a review mechanism. The Committee also considered complaints regarding the new AA/5 classification, including that the AA/5 classification breaches Australia's international human rights obligations, particularly in regards to remandees. The Committee also discusses access to rehabilitation programs for sex offenders who are in denial of their offence, and claims that the classification system is complex and difficult to understand. The security classification scales are included at **Appendix 4.**

1.10 **Chapter 4** concerns the effectiveness of the HRMU. The Committee considers claims by some Inquiry participants that conditions within the HRMU breach Australia's international human rights obligations. The Committee also examines the segregation of prisoners within the HRMU and the referral of prisoners, particularly prisoners suffering from a mental illness, to the HRMU. The Committee considers the analysis by the Department of assaults and other correctional centre offences committed by persons housed in the HRMU.

1.11 In **Chapter 5** the Committee considers issues associated with staffing levels and claims of over-crowding in NSW correctional centres. The Committee provides background information in relation to these issues. The Committee notes issues raised by some Inquiry participants regarding access to rehabilitation programs, inmate conditions and visitor access to prisoners.

1.12 **Chapter 6** examines a number of issues relating to access and contact arrangements for non-correctional persons. Access and contact issues specific to prisoners classified as AA/5 and prisoners housed in the HRMU are discussed in Chapters 3 and 4 respectively. Chapter 6 examines access and contact issues for prison chaplains, visitors wearing clothing of cultural and religious significance, support workers for intellectually disabled prisoners and legal representatives.

1.13 **Chapter 7** addresses the third term of reference regarding the interstate transfer of offenders and parolees. The Committee considers recent changes to both the parolee and prisoner transfer schemes. In respect of parolees, the Committee considers recent changes designed to formalise the transfer system. The Committee also discusses the ban on the parole transfer of child sex offenders. In respect of prisoners, the Committee considers recent changes to the transfer scheme in relation to 'welfare' transfers, and discusses claims of delays for 'trial' transfers.

1.14 **Appendix 6** contains the minutes of the Committee's meetings in respect of this Inquiry.

Chapter 2 Corrective Services Industries

This chapter addresses the first term of reference, concerning the operation and management of Corrective Services Industries (CSI). It discusses the mechanisms in place to ensure that CSI avoids unfair competition with existing businesses through the use of prison labour and examines the claim that curtain manufacture by CSI is replicating work previously done by other NSW businesses.

Overview

2.1 The terms of reference require the Committee to examine CSI's observance of the 'Charter to avoid unfair competition through the use of prison labour to compete with existing businesses'. Information presented to the Committee during the Inquiry referred to a number of mechanisms put in place by the Department of Corrective Services (the Department) and CSI to ensure that CSI competes fairly with existing businesses, although a specific Charter was not identified.

2.2 The terms of reference also direct the Committee to examine claims regarding curtain manufacture by CSI. Evidence regarding this issue was received from the owner of the business that claimed to be affected, representatives of the Department and two union representatives on the Correctional Industries Consultative Council (CICC). The Committee examines the evidence presented to it with regard to the curtain manufacturer's complaint, with reference to the mechanisms in place to ensure that CSI competes fairly with existing businesses.

2.3 The terms of reference also require the Committee to examine 'other businesses that may be unfairly disadvantaged by CSI', however, no evidence was received in this regard. Several Inquiry participants indicated that they were not aware of any complaints regarding CSI and unfair competition. For example, the Minister for Small Business, the Hon David Campbell MP, advised that he has not received any representations on the issue of unfair competition by CSI.[1] Similarly, the NSW Ombudsman stated 'I have not received any complaints about these matters'.[2] Australian Business Limited also noted that it '[was] not aware of other businesses that are unfairly disadvantaged by Corrective Services Industries.'[3]

2.4 The Committee approached peak disability groups for comments on these matters but did not receive any evidence in this regard.

1 Submission 6, The Hon David Campbell MP, Minister for Small Business and Minister for Regional Development, p1

2 Submission 8, NSW Ombudsman, p1

3 Submission 19, Australian Business Limited, p2

Corrective Services Industries[4]

2.5 CSI utilises prison labour to produce goods for sale in commercial markets and for the Department itself on a 'self-sufficiency' basis. CSI is a government business enterprise operating within the Department of Corrective Services. In terms of the Department's organisational structure, CSI is referred to as a division of the Department and falls within the responsibility of the Assistant Commissioner, Offender Management, Mr Luke Grant.[5]

2.6 There are approximately 100 commercial based Correctional Industry Business Units operating throughout correctional centres in NSW. These Business Units are structured through eight business divisions, which include Cormet, Corfurn, Cortex, Corcover, Gencor, Agricor, Correctprint and Private Sector Operations.

2.7 Through its Business Units, 'CSI manufactures a broad range of materials including metal, timber, electronic and textile based products. It also undertakes upholstery, printing, laundering and recycling, among other services.'[6] The Commissioner of Corrective Services, Mr Ron Woodham noted in his evidence that '… the diversity of the CSI operations reflects the commitment to minimise the impact of inmates' work activities on any industry'.[7]

2.8 The Department informed the Committee that the value of CSI sales for 2004/05 was $42.7 million and that inmate wages made up $4.1 million, or 9.6% of the total sales income.[8] In 2004/05, CSI contributed $12.4 million to the Department, which represents 2% of the Department's annual income.[9]

2.9 With regard to the number of inmates employed by CSI, Commissioner Woodham advised the Committee that:

> CSI employs 5,600 inmates out of a total of 9,200 in different business units in 31 correctional centres across the State. This equates to a 78 per cent employment rate, which compares more than favourably with the national key performance indicator of 65 per cent.[10]

2.10 The Department advised that the average weekly wage for inmates in CSI commercial industries is $34 per week, while in service positions it is $27 per week.[11] Payments are made

4 For further information about CSI and its history see: *CSI in Focus, the NSW Corrective Services Industries magazine*, NSW Corrective Services Industries, 2004

5 www.csi.nsw.gov.au/csi/ (accessed 15 May 2006) and Department of Corrective Services, *Annual Report 2004-05*, p5

6 Commissioner Ron Woodham, Department of Corrective Services, Evidence, 8 December 2005, p3

7 Commissioner Woodham, Evidence, 8 December 2005, p3

8 Answers to questions on notice taken during evidence 8 December 2005, Commissioner Ron Woodham, Department of Corrective Services, Question 6, p4

9 Department of Corrective Services, *Annual Report 2004-05*, p11

10 Commissioner Woodham, Evidence, 8 December 2005, p13

11 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, p24

'… strictly in accordance with the principles and parameters of the CSI Inmate Wage System Policy document.'[12]

2.11 The Committee was informed that CSI has several objectives, or functions. For example, the engagement of inmates in CSI activities is said to contribute to the maintenance of a safe prison environment by reducing boredom levels among inmates. In this regard, Commissioner Woodham stated:

> CSI also has an integral part to play in the efficient management of correctional centres by creating meaningful activity, because I can assure you that boredom creates problems, particularly at the heavy end of running a correctional department: it breeds contempt and that, in the past, has been a contributor to some of the disturbances. Keeping them occupied is very, very important.[13]

2.12 CSI activities are also designed to enhance the employment prospects of inmates. Prisoners who have participated in CSI activities are said to be more likely to find employment when they are released from prison than those who have not. In turn, ex-prisoners who find employment are less likely to re-offend.

2.13 The Committee was also advised that, through participation in CSI work, prisoners are able to contribute a certain degree of restitution both to victims of crime and to the state. In this regard, Assistant Commissioner Luke Grant noted:

> … we regard CSI as an opportunity for meeting our objectives in relation to restitution, because through the work in custody people can offset some of the cost of their incarceration, which is significant, and they can make contributions to things by earning money in gaol—to victims' funds and also to very specific initiatives of the department to support the victims groups. In addition to that, CSI does contribute in some small way to the Department's general budgetary issues.[14]

2.14 CSI is monitored by the Correctional Industries Consultative Council (CICC), '… which aims to ensure that CSI operates in an ethical and transparent manner'.[15] The role of the CICC is examined later in this Chapter.

CSI and competition with existing businesses

2.15 Assistant Commissioner Grant advised the Committee that, in order to ensure that outside businesses are not being adversely effected by CSI, '[a] whole series of very elaborate processes are in put place'.[16] He noted the commitment of CSI to these processes and advised that he believed them to be 'very effective':

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12 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, p24

13 Commissioner Woodham, Evidence, 8 December 2005, p13

14 Mr Luke Grant, Assistant Commissioner, Offender Management, Department of Corrective Services, Evidence, 8 December 2005, p9

15 Commissioner Woodham, Evidence, 8 December 2005, p3

16 Mr Grant, Evidence, 8 December 2005, p7

> I believe the systems we have in place are very effective. We take them very seriously and we are very committed to them. It causes some disadvantage to us as well because it conflicts to some degree with our aspirations to provide inmates with work opportunities that reflect work opportunities in the community. … I have a lot of confidence in the system.[17]

2.16 The Committee notes at the outset of this discussion that it appears that the 'Charter' referred to in the terms of reference may be a reference to the *CSI Policy Manual*, or sections within it, although this was not made clear during the Inquiry. For example, one of the union representatives on the CICC, Mr Barry Tubner, Secretary of the Textile Clothing and Footwear Union of Australia and Representative of Unions NSW, who gave evidence to the Committee, referred to a 'charter' in the context of the role of the CICC:

> From Mr Hogan's statement you could hear that I was in contact with him because I am concerned. It is part of our charter to make sure that people are not adversely affected.[18]

2.17 The Committee also notes that the CICC's 2002-2003 Annual Report states that the CICC has 'provided an enhanced CICC Charter expressed through section 4.5 of the CSI policy manual.'[19]

CSI Policy Manual

2.18 The Department provided the Committee with a copy of the *CSI Policy Manual*, which is a collection of 62 policies, dating variously from June 1995 to November 2005.[20] The policies cover the complex operations of CSI, including pricing, marketing, the negotiation of contracts, complaint handling and the CICC.

2.19 In relation to unfair competition, Assistant Commissioner Grant referred, in particular, to CSI's pricing and costing policies:

> The mechanisms for ensuring that we do not compete unfairly with other external agencies are quite complex and they involve a very well detailed pricing and a very well detailed costing policy. So the costs associated with manufacture, and so on, of things created inside the custodial environment cannot be underrepresented so we can undercut other agencies. That mechanism is very clearly established.[21]

2.20 Commissioner Woodham advised that the responsibility for complying with the pricing and costing policies rests with the manager of industries at each correctional centre:

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17 Assistant Commissioner Grant, Evidence, 8 December 2005, p8

18 Mr Barry Tubner, Unions NSW Representative, Correctional Industries Consultative Council, Evidence, 27 March 2006, p14

19 *Correctional Industries Consultative Council of NSW Annual Report 2002-2003*, contained as Appendix 5 to the *Department of Corrective Services Annual Report 2002-2003*, pp98-99

20 Answers to questions on notice taken during evidence 8 December 2005, Commissioner Woodham: NSW Corrective Services Industries, *CSI Policy Manual*

21 Assistant Commissioner Grant, Evidence, 8 December 2005, p8

> In addition to this, the manager of industries at each correctional centre is responsible for ensuring that they comply with the standard costing and pricing policy, which have been designed to prevent products being sold at or below cost. This was achieved by a Corrective Services Industries review of competitive issues and production efficiencies in correctional industries. The results of the review are contained in a document titled "Corrective Services Industries and Competitive Neutrality", which was released to the public in March 2004.[22]

2.21 The document referred to by the Commissioner in the quote above - *CSI & Competitive Neutrality* - was also provided to the Committee.[23] The document reports on the fifth review undertaken to test the notion that, through its use of prison labour, CSI is at a competitive advantage to private businesses. The foreword to the document outlines the purpose of the review as follows:

> CSI business development endeavours, in order to generate inmate work activity, are undertaken in a manner which seeks to have both a sensible and sensitive approach upon the broad market place. These endeavours take place through the CSI Marketing policy and a costing and pricing approach which, while reflecting the peculiarities of a correctional environment, reflect commercial principles in operation. Each of those elements are monitored by the Correctional Industries Consultative Council …
>
> It is this issue which is the subject of this publication, the fifth independent review of issues which affect the commercial operation of correctional industries. Previous studies were conducted in 1993, 1995, 1999 and 2001. The studies are intended to test in particular, the notion that occasionally is suggested i.e. that because inmates are paid low labour input rates, relative to community standards, correction industry programs operate at a commercial advantage which disadvantages other businesses. In this regard, both the existing and previous studies have sought to profile the peculiar operating parameters of NSW correctional industry programs in nullifying commercial advantage. [24]

2.22 The study concluded that in overall terms, provided that costing and pricing policies are applied, CSI does not operate at a competitive advantage:

> … The study indicates that in broad terms correctional industry programs in NSW operate at a level of commercial inefficiency between 3.8 to 12 times inefficient relative to operations within the private sector. The study emphasises the importance of CSI continuing to apply the approved costing and pricing policies and in these circumstances confirms that in overall terms, CSI programs do not operate at a competitive advantage.[25]

2.23 The study found that the benefit of using prison labour is offset by several factors to create an overall disadvantage:

> Accordingly it was the conclusion of this study that any commercial benefit arising from relatively low inmate wage rates, is more than offset by the:

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22 Commissioner Woodham, Evidence, 8 December 2005, 14

23 Tabled document, NSW Corrective Services Industries, *CSI & Competitive Neutrality*, March 2004

24 Tabled document, *CSI & Competitive Neutrality*, Foreword

25 Tabled document, *CSI & Competitive Neutrality*, Foreword

- effect of low inmate productivity;
- costs of employing excessive numbers of inmates in correctional industries; and
- fact that inmates do not work for the full shift for which they are paid.[26]

Standard Guidelines for Corrections in Australia

2.24 The Committee notes that the *Standard Guidelines for Corrections in Australia, Revised 2004* contains a clause referring to prison industry and competition, which states that '[i]ndustry within prisons should be consistent with the National Code of Practice on Prison Industries and National Competition Policy'.[27]

2.25 The *National Competition Policy* is a set of reforms, drawn up in 1995, 'designed to enable and encourage competition to improve the wellbeing of Australians'.[28] Assistant Commissioner Grant advised the Committee that the Department has been 'very responsive' to national competition policy:

> The Department was very responsive in the first instance to the Federal Government strategy in 1995, looking at competition. The National Competition Council engaged in discussions with the Department around that time and in 1997 the Council of Australian Governments Committee made some agreement in relation to the types of processes that would operate in the correctional industries sector. New South Wales was a leader in those discussions with other States in establishing a protocol, a set of expectations, about how industries would operate.[29]

2.26 The Committee did not obtain a copy, or determine the origin, of the *National Code of Practice on Prison Industries*, which does not appear to be a publicly available document. It is therefore unclear which aspects of the code that industry within prisons should be consistent with.

2.27 The Committee notes, however, that as discussed in paragraph 4.53, Commissioner Woodham indicated that the Department viewed the *Standard Guidelines for Corrections in Australia* as a statement of intent rather than a set of 'absolute standards'.

Correctional Industries Consultative Council

2.28 The Committee notes that the main mechanism by which the activities of CSI are monitored with regard to unfair competition with private businesses is the Correctional Industries Consultative Council (CICC).

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26 Tabled document, *CSI & Competitive Neutrality*, Executive Summary, p2

27 *Standard Guidelines for Corrections in Australia*, Revised 2004, para 4.1, p25. The *Standard Guidelines for Corrections in Australia* are described in paragraphs 4.80-4.81.

28 National Competition Council website: www.ncc.gov.au/articleZone.asp?articleZoneID=267 (accessed 12 May 2006)

29 Assistant Commissioner Grant, Evidence, 8 December 2005, pp7-8

2.29 The CICC is an administratively established body comprised of representatives of business and trade unions, CSI representatives, a community representative and Department of Corrective Services staff who act as *ex-officio* members.[30] Members of the CICC are appointed by the Minister for Justice.[31] The business and trade union members currently include representatives of Australian Business Limited, the Australian Industry Group and Unions NSW. A member of the Committee strongly suggested that the CICC explore the possibility of including a representative of disability groups in its membership.

2.30 The role of the CICC is to '… to monitor the development and operation of correctional industry programs to ensure that they function sensibly and sensitively in parallel with private sector businesses.'[32] CICC '… ensures that correctional industries programs do not adversely impact upon other businesses and in particular community employment.'[33]

2.31 One of the methods by which the CICC assures itself that CSI is following due process with regard to competition with existing businesses is through the examination of the Industry Impact Statements that are required to be produced by the proponent of a proposed business activity. The statement must address the potential impact CSI may have on an industry in which it proposes to commence operations. Industry Impact Statements are discussed in more detail at paragraphs 2.36 to 2.39

2.32 The CICC is also required to assess and investigate claims that CSI has adversely affected local businesses through its operations. CSI's complaint handling mechanisms and the role of the CICC is discussed at paragraphs 2.40 to 2.45.[34]

2.33 The CICC must report to the Minister on the operations of CSI and on the outcome of any representations or claims made to the CICC.[35]

2.34 Assistant Commissioner Grant expressed support for the effectiveness of the CICC process, with particular reference to its role in reviewing Industry Impact Statements:

> … we have the Correctional Industries Consultative Council process which also is something that was led by New South Wales. It is a very effective process. It has very broad representation, including unions, who have a specific interest in the loss of jobs of individual workers and also Australian industry representatives, who were very concerned about loss of industry. Through that process it is a requirement that prior to engaging in any type of business the proponent of this business activity provides us with an industry impact statement that provides an overview of the possibilities of loss of earnings, loss of jobs, and so on, associated with that industry. That Council takes

30 *Correctional Industries Consultative Council of NSW Annual Report 2004-2005*, contained as Appendix 24 to the *Department of Corrective Services Annual Report 2004-2005*, p133

31 Commissioner Woodham, Evidence, 8 December 2005, p3

32 *Correctional Industries Consultative Council of NSW Annual Report 2004-2005*, contained as Appendix 24 to the *Department of Corrective Services Annual Report 2004-2005*, p133

33 *Correctional Industries Consultative Council of NSW Annual Report 2004-2005*, contained as Appendix 24 to the *Department of Corrective Services Annual Report 2004-2005*, p133

34 *Correctional Industries Consultative Council of NSW Annual Report 2004-2005*, contained as Appendix 24 to the *Department of Corrective Services Annual Report 2004-2005*, p133

35 Tabled document, *CSI & Competitive Neutrality*, p1

> that responsibility very seriously and has regard and lots of vigorous discussion about the benefits or otherwise of particular employment opportunities for inmates.[36]

2.35 Assistant Commissioner Grant also advised the Committee that NSW is the only Australian jurisdiction to have established a body such as the CICC:

> We are totally committed to not putting people out of business because of inmate labour. If there was any capacity for that argument to be sustained we would immediately withdraw from the market involved. We take it so seriously that we have established the Correctional Industries Consultative Council. We are the only jurisdiction in Australia that has such a function, where we have community members, unions and manufacturers' representatives to protect Australian business. Because of this process issues may not even come to the table. We very rarely put forward projects that we think can cause problems for people in the community.[37]

Industry Impact Statement

2.36 The *CSI Policy Manual* requires that, in the case of 'major business development proposals, embracing private sector involvement', an Industry Impact Statement must be provided to the CICC.[38] The CICC is required to monitor and report on Industry Impact Statements at six month intervals.[39]

2.37 The manual stipulates the form the Industry Impact Statement must take and identifies 24 information fields, including the impact of the proposed business on competitors and whether it involves import replacement.[40] The proponent of the business activity or a CSI representative must ensure all fields are completed.[41]

2.38 The Committee notes that it appears that over the past few years the CICC has reviewed and improved the form of the Industry Impact Statement. In this regard, the CICC's 2002-2003 Annual Report states that the CICC has 'modified the form of the industry impact statement which accompanies submissions for new/renewed correctional industry programs.'[42] In addition, the CICC's 2004-2005 Annual Report states that events during the year included 'improvements to the CSI Policy Manual Section 4.5 which deals with Industry Impact Statements.'[43]

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36 Assistant Commissioner Grant, Evidence, 8 December 2005, p8

37 Assistant Commissioner Grant, Evidence, 3 April 2006, p34

38 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 9(iv)

39 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 9(v)

40 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 11

41 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 11

42 *Correctional Industries Consultative Council of NSW Annual Report 2002-2003*, contained as Appendix 5 to the *Department of Corrective Services Annual Report 2002-2003*, pp98-99

43 *Correctional Industries Consultative Council of NSW Annual Report 2004-2005*, contained as Appendix 24 to the *Department of Corrective Services Annual Report 2004-2005*, p133

2.39 In its submission to the Inquiry, Australian Business Limited expressed particular support for the use of Industry Impact Statements:

> In particular, Australian Business Limited supports the use of Industry Impact Statements to evaluate and monitor the impact of CSI on local businesses and communities. Australian Business Limited is also satisfied that the onus to complete and update impact statements should rest with the industry and local manufacturers affected. The existence of templates to assist businesses complete an industry impact statement is appreciated. Australian Business Limited understands that the impact statements are reviewed every six months to ensure that no existing local business is being disadvantaged.[44]

Complaint handling

2.40 With regard to complaints, the *CSI Policy Manual* sets out, within the policy relating to the role and functions of the CICC, a Grievance Handling Mechanism. The policy states that all complaints regarding CSI's 'interface with other businesses' are to be 'referred to the Director, CSI or privately managed institutions for consideration and direct response.'[45]

2.41 The policy also states that every effort is to be made to resolve issues through direct contact involving the Chairperson of the CICC, the Director of CSI or privately managed institutions and the complainant. In addition, all complaints are to be reported to the CICC at its next meeting and the CICC is required to review all complaints and make recommendations in relation to any specific findings of its review.[46]

2.42 The policy also stipulates that 'an appeal process direct to the Commissioner or Minister is available to complainants who are not satisfied with [the] outcomes' of the CICC complaint resolution steps.[47]

2.43 With regard to the number of complaints received by the CICC, Mr Tubner, a union representative on the CICC, advised the Committee that he was aware of five complaints having been received by the CICC (although he did not indicate over what time period).[48]

2.44 In addition, Mr Chris Christodoulou, a Unions NSW representative on the CICC, noted that the CICC does not receive many complaints and partly attributed this to the CICC's informal processes for dealing with issues as they arise:

> We do not have a lot, but we deal with issues before they become problematic. Myself and Barry in particular will knock back a lot of proposals, hence no-one gets to complain that they have industries competing against them. For example, in the latest papers there is a proposal for CSI to take over the laundry work of Calvary Health in Newcastle. When I saw that proposal, the first thing I would have done was contact the union associated with that, which is Health Services Union, which is a bit unaware

44 Submission 19, p1

45 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 10(i)

46 NSW Corrective Services Industries, *CSI Policy Manual,* Section 4.5, para 9(viii) and para 10

47 NSW Corrective Services Industries, *CSI Policy Manual*, Section 4.5, para 10(iv)

48 Mr Tubner, Evidence, 27 March 2006, p12

> that the Department of Health was going to contract out that work and give it to CSI. That effectively would have meant a number of employees at Calvary Health would lose their job as a consequence. We will oppose that at the next committee meeting. A number of issues come up that we proactively oppose at the beginning.[49]

2.45 The Department provided the Committee with a number of brochures concerning CSI including one titled *CSI & Community Businesses*, which discusses the interaction between CSI work programs, and private businesses and employment and contains the following information regarding complaints:

> The Director, CSI is responsible for developing a positive rapport between CSI and the private sector and is available to discuss and resolve concerns of the community in relation to CSI operations. To provide independent review of CSI operations the Correctional Industries Consultative Council of NSW (CICC) … monitors the development and operation of CSI to ensure that CSI meshes sensibly and sensitively with other businesses. Where the Director, CSI is unable to resolve concerns about CSI operations, the CICC receives representations from individuals or organisations. The Correctional Industries Consultative Council of NSW takes a proactive approach to the resolution of any representations. Representations may be addressed in writing to the Chairman, CICC …[50]

Curtain manufacture complaint

2.46 A claim was brought before the Committee that CSI's involvement in curtain manufacture has had a significant negative impact on World of Curtains Manufacturing Pty Ltd (World of Curtains), to the extent that several staff have been made redundant and the company has experienced a substantial loss of profits. The Department and CSI has denied that the downturn in the fortunes of World of Curtains is a result of CSI competing unfairly.

The complaint

2.47 World of Curtains, based in Weston, manufactures curtains from fabric supplied by its customers. Mr Greg Hogan, the Owner and Manager of World of Curtains, described his business as follows:

> The business World of Curtains Manufacturing Pty Ltd was set up approximately 15 years eight months ago, in July 1990. Since that date we have been manufacturing ready-made curtains, which is 99 per cent of our work. We come under the Textile, Clothing and Footwear Union of Australia and the Clothing Trades award. The business activity is spreading, cutting, sewing and machining of curtains, and packing and dispatch. The basic characteristics of the business are that it is a high volume business with very low margins and an extremely low customer base, which is very unusual. I have had only about two or three customers at any one time over that 15-year period, so it is very small.[51]

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49 Mr Chris Christodoulou, Unions NSW Representative, Correctional Industries Consultative Council, Evidence, 27 March 2006, p12

50 NSW Corrective Services Industries, *CSI & Community Businesses*, February 2004

51 Mr Greg Hogan, Manager, World of Curtains Manufacturing Pty Ltd, Evidence, 27 March 2006, p1

2.48 Mr Hogan has claimed that, as a result of CSI commencing the manufacture of curtains in 2003 for World of Curtains' main customer, Wilson Fabrics, his company suffered a substantial reduction in profits and he has been forced to reduce his employees from 15 full-time to four part-time employees. Mr Hogan claims he was mislead by both Wilson Fabrics and CSI as to the nature of the curtains to be manufactured by CSI and wrongly reassured that his business would not be affected.

2.49 The timeline of events, as described by Mr Hogan, can be summarised as follows:

- For many years World of Curtains' main customer had been Wilson Fabrics, representing 85-95% of its work and $500,000 per year in income. Wilson Fabrics is a division of Bruck Textiles.
- In March 2003 Mr Hogan became aware that Wilson Fabrics had made an application to have curtains manufactured by CSI from its fabric.
- Soon after Mr Hogan raised his concerns, about the impact on World of Curtains of CSI manufacturing curtains for Wilson Fabrics, with a union representative on the CICC and the then Director of CSI, Mr Wayne Ruckley.
- Mr Hogan was reassured by members of Wilson Fabrics' senior management that the curtains to be made by CSI were a cheap line to compete with imports only and that manufacturing within CSI would have no effect on World of Curtains.
- CSI started to manufacture curtains for Wilson Fabrics that are very similar in appearance and price as the curtains formerly made by World of Curtains for Wilson Fabrics.
- By August 2003 Wilson Fabrics' orders with World of Curtains declined significantly and the production mix changed. Mr Hogan continued to be reassured by Wilson Fabrics that CSI was only making an import replacement product, which would have no effect on ongoing business.
- By 2004 World of Curtain's income had halved and by 2005 the company had been 'wiped out'. At the end of 2002, World of Curtains had 15 full-time employees and by March 2006 the company had only four part-time employees.
- Further contact by Mr Hogan with the union representative on the CICC precipitated a review by CICC in March 2005.
- A second review was conducted by CICC in May 2005 after Mr Hogan questioned the findings of the first review.[52]

2.50 Mr Hogan indicated that dealing with the Department in relation to the complaint has been a long and exhausting process:

> It has taken three years and every opportunity has been given to the Department to review what it is doing. We have absolutely exhausted ourselves, which you will see

[52] Mr Hogan presented oral evidence to the Committee on 27 March 2006 and tabled a six page document regarding his complaint with the Committee, the bulk of which remains confidential at Mr Hogan's request.

> from the transcripts over the last three years, to a point where the business has had it financially, it is in debt, and it is all because of Corrective Services.[53]

2.51 With regard to CSI's impact on competition within the curtain manufacturing market, Mr Hogan stated:

> CSI have taken on the manufacture of ready-made curtains without due consideration of the impact this would have on existing suppliers within the market. It appears that initial concerns expressed to CSI were dismissed. If this were investigated initially, they would have concluded that there would be inevitable job losses within the Australian textile industry. … In my opinion as owner and manager of World of Curtains, over the past fifteen years I have gained a sound knowledge of the ready-made curtain market, even with limited retail contact. I am well aware of the threat of imports on the entire Australian manufacturing industry, though I cannot accept the fact that Australian manufacturing jobs are being lost to Corrective Services Industries, due to price-cutting under the scheme of providing offenders with work readiness certification. Australian workers and tax payers not only fund CSI, but carry the additional cost of supporting workers who lose their jobs to the Corrective Services Industries.[54]

CSI's response to the complaint

2.52 The evidence presented during the Inquiry indicates that the crux of CSI's response to Mr Hogan's complaint is that, due to the state of the curtain manufacturing market, at the time Wilson Fabrics made its application to CSI it was faced with the choice of either sending its material offshore to be made into curtains, or using CSI, because World of Curtains could no longer offer competitive prices. In other words, the choice that Wilson Fabrics faced was not between using *World of Curtains* or CSI, but between using an *offshore manufacturer* or CSI. Therefore, regardless of whether CSI was involved, Wilson Fabrics would no longer be using World of Curtains to manufacture its curtains to the same extent that it had been doing.

2.53 Assistant Commissioner Grant informed the Committee that Wilson Fabrics had advised the Department of the history of curtain manufacture getting more expensive, to the point that if CSI couldn't make the curtains then Wilson Fabrics would have to go offshore:

> The significant issue in relation to curtain manufacture is that a number of companies were working for Wilson's curtains doing a cut, make and trim activity and producing curtains in the community. My understanding, based upon the advice provided to us by Wilson's, is that those companies stopped making those curtains some time around 2001. The person who was selling the fabric could not continue to sell those curtains at the cost that they were able to provide them for and as a result those fabrics were removed from sale. This fabric, the new range of Ishatar, is a more expensive, high-quality fabric. The advice that we have received from Wilson's curtains is that if Corrective Services Industries were not producing here then no other cut, make and trim operation could produce it for a competitive price and therefore their only option

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53 Mr Hogan, Evidence, 27 March 2006, p2

54 Tabled document, *World of Curtains: Transcript of Greg Hogan 2003-2005*, Mr Greg Hogan, 27 March 2006 (partially confidential), p4

> would be to take this off shore. I appreciate the significant problems that World of Curtains has encountered in doing business and that it has lost business.[55]

2.54 In addition, a union representative on the CICC, Mr Christodoulou, recalled that ' … the proposal from Wilson's was that they would actually go offshore to produce these curtains, had they been unable to do them in the prisons industry.'[56]

2.55 CSI also put forward the argument that the curtains it manufactured were in fact different from those manufactured by World of Curtains. Both of these arguments are discussed in more detail below.

Personal guarantees that World of Curtains would not be affected

2.56 Mr Hogan advised the Committee that he raised his concerns about the impact on his company of CSI manufacturing curtains for Wilson Fabrics with members of the CICC and senior management of Wilson Fabrics and that he received several assurances that his business would not be negatively affected. For example, Mr Hogan stated:

> … concerns of CSI undercutting World of Curtains manufacturing prices were raised from the date of their manufacturing application. Although continually reassured by Wilson Fabrics/Bruck Textiles, World of Curtains has suffered greatly from the effects of CSI's manufacture.[57]

2.57 Mr Hogan provided further detail about the assurances he received, as follows:

> The following day I had a phone call from John Torrens, the General Manager of the customer, Wilsons, and he gave his pledge to me. He said, "I have always been upfront with you. What I am saying to you now is we are going to weave a couple of cheap lines because Wilson's Fabrics and Bruck are unique in that they still manufacture product in Australia." They have textile weaving mills in Wangaratta Victoria. They are the only ones left. So, the product is Australian made. He said to me, "I have always been upfront with you. We are going to weave a couple of basic lines and manufacture inside Corrective Services to compete against what other wholesalers are doing."[58]

2.58 Mr Hogan's claim regarding the personal assurances he received was supported by Mr Tubner, who noted that a personal guarantee was given by the 'two heads' of Wilson Fabrics during a meeting with representatives of Wilson Fabrics and CSI:

> A second impact statement was produced and there was also a meeting between myself, Joseph Brender, and Brucks, Alan Williamson, and Wayne Ruckley, where there were personal guarantees given along with the second impact statement that there would be no adverse effect on either Gummerson's or the World of Curtains. There was actually a personal guarantee by the two heads of that company that there would be no impact. It was on the basis of that personal commitment that the CICC

55 Assistant Commissioner Grant, Evidence, 3 April 2006, pp33-34

56 Mr Christodoulou, Evidence, 27 March 2006, p11

57 Tabled document, Mr Hogan, 27 March 2006 (partially confidential), p4

58 Mr Hogan, Evidence, 27 March 2006, p2

> and the second impact statement, which was accurate, that we would go ahead with the trial.[59]

2.59 Mr Tubner also noted that the guarantee given to Mr Hogan could not be kept:

> … it appears that the commitment that Alan Williamson and Joseph Brender gave to World of Curtains either could not be kept because time had changed or it was never going to be kept. I cannot get inside his head.[60]

The curtains

2.60 Samples of curtains made by World of Curtains and CSI were shown to the Committee by both Assistant Commissioner Grant and by Mr Hogan during their evidence.

2.61 Mr Hogan presented two curtains to the Committee and asserted that one was made by his company and the other was made by CSI and that both were made from material supplied by Wilson Fabrics.[61] The Committee notes that the curtains were similar shades of green, with identical packaging and that Mr Hogan advised they had the same price.[62]

2.62 Departmental representatives argued that the curtains made by World of Curtains and CSI were not in fact identical, pointing to differences in the weight of the fabric. In this regard Assistant Commissioner Grant stated:

> Whilst I understand that the curtains look superficially the same, our advice from the company that manufactures both of those curtains is that in fact they are different. I do not know whether you took them out of the packaging to examine them. If I might have the indulgence of the Committee, Madam Chair, I brought along two samples of curtains that look ostensibly the same. They are both from the Ishatar range. I am sure that if you look at them you would say that, other than some slight colour variations, they are the same. …
>
> This is the curtain that is currently manufactured—cut, make and trim—by Corrective Services Industries at Long Bay in the Ishatar range. If you hold it up to the light and look at the back of it, which I cannot do effectively here, you will notice that it is a 100 per cent block out curtain. The other curtain, which looks superficially the same, is called a one-pass fabric. This is not capable of withstanding and blocking out light to 100 per cent.[63]

2.63 The Committee notes that, whether or not the curtains are the same is irrelevant if the claim made by CSI and Wilson Fabrics, that the curtains are not import replacements within the meaning of the term used by CSI, is made out. This point was made by Assistant Commissioner Grant, after having showed the Committee two sets of curtains and asserting that they were different:

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59 Mr Tubner, Evidence, 27 March 2006, p10

60 Mr Tubner, Evidence, 27 March 2006, p12

61 Mr Hogan, Evidence, 27 March 2006, pp4-5

62 Mr Hogan, Evidence, 27 March 2006, p4

63 Assistant Commissioner Grant, Evidence, 3 April 2006, p33

> Having said that, I believe that this is a bit of an irrelevance, whether Corrective Services Industries is engaging in import or other replacement.'[64]

Import replacement

2.64 In the evidence the Committee received regarding the curtain manufacture complaint much was made of the point that CSI is supposed to be engaged only in 'import replacement' and the implications of this for Mr Hogan's complaint.

2.65 It is clear that Mr Hogan placed great reliance on his understanding that CSI was only permitted to be involved in import replacement activities and that he initially felt reassured that his business would not be affected because he was told that CSI and Wilson Fabrics would only be involved in import replacement.

2.66 In turn the Department's response to Mr Hogan's claim is based upon the point that in manufacturing curtains for Wilson Fabrics it was indeed undertaking import replacement work and that in doing so it was not competing unfairly with World of Curtains.

2.67 It is apparent then, that in order to understand the complexities of Mr Hogan's complaint, a clear understanding of what exactly is meant by 'import replacement' and how it fits into the framework to avoid unfair competition and CSI's obligations in this regard, is required. Unfortunately the Committee was not presented with sufficient information to clarify this issue.

2.68 Only two brief references were made by Departmental witnesses to import replacement. In this regard, Assistant Commissioner Grant stated that 'Generally it is import replacement work that we do'[65] and Commissioner Woodham advised that:

> CSI focuses its business activities on self-sufficiency or internal supply, *import replacement* and private sector partnerships, which are assisting in providing work in areas where there is a shortage in the community.[66]

2.69 While there seems to be a widely held belief that CSI is obliged only to undertake import replacement, it was not made clear to the Committee exactly how import replacements fit into CSI's practices to avoid unfair competition. The only material presented to the Committee that refers to import replacement is the *CSI Policy Manual* which, in its Marketing Policy, states that 'in seeking to minimise the impact of Corrective Services Industries on other businesses' several 'broad market parameters prevail in relation to business development', including:

> An emphasis upon accessing import replacement or off shore manufacturing prevention market strategies.[67]

2.70 The Committee also notes that Mr Tubner indicated that the definition of import replacement was a 'sticking point' for the CICC:

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64 Assistant Commissioner Grant, Evidence, 3 April 2006, p33

65 Assistant Commissioner Grant, Evidence, 8 December 2005, p16

66 Commissioner Woodham, Evidence, 8 December 2005, p13 (emphasis added)

67 NSW Corrective Services Industries, *CSI Policy Manual*, Section 4.1, Marketing Policy, p2

> For us, and this is always our biggest sticking point on the committee, if you close down a factory in Australia and start making the product in Fiji, and two weeks later close down the Fiji factory and come back to Australia to make the same produce in the prisons, it is import replacement. There is nothing Barry or Chris can do about it. There should be more than that, but as far as the term "import replacement" is concerned, Chris and I like the self-sufficiency angle. We are really keen on the prisons being able to make a product they can use within the prison rather than directly going out and competing against what is left of the manufacturing industry. The largest single employer in New South Wales in the clothing industry is New South Wales prisons—they are the largest employer in New South Wales.[68]

2.71 In addition, Mr Christodoulou described the idea that CSI is only involved in import replacement as a 'myth':

> Having said that, I think I want to dispel one thing. I think it is a bit of a myth to say that the only work CSI does is import replacement. Clearly if you look through the work that they do, there is a range of services that they provide and businesses that they operate for the private sector that are not strictly import replacement but some of those business activities actually are in areas that can enhance the prisoners' skill, training and education. To that extent there needs to be a balance in terms of whether you take on those businesses to provide the prisoners with the extra skill and education. We always do that having regard to the impact that that might have on outside employment.[69]

Involvement of the CICC

2.72 Mr Hogan's evidence indicates that at least one member of the CICC, Mr Tubner, was involved in the matter from the time Wilson Fabrics made its application to CSI. In this regard, Mr Hogan stated:

> At that stage we raised big concerns about the application. The Secretary of the Textile, Clothing and Footwear Union of Australia, Barry Tubner rang me and said, "Is Wilson Fabrics your main customer?" I said, "Yes." He said, "What if I tell you they have made application to manufacture ready-made curtains inside the prison system?" I was absolutely devastated at the time. I said to him, "Head it off. Do something about it." He contacted Wayne Ruckley, the Chief Executive Officer of Corrective Services Industries at the time, and spoke to him and said if the application was to proceed and Corrective Services started making ready-made curtains, businesses such as World of Curtains, at Weston, and Gummerson Fabrics, who were already manufacturing ready-made curtains, would be severely handicapped and affected.[70]

2.73 Mr Tubner indicated that it was appropriate for him to make such communications as a member of the CICC:

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68 Mr Tubner, Evidence, 27 March 2006, p12

69 Mr Christodoulou, Evidence, 27 March 2006, p9

70 Mr Hogan, Evidence, 27 March 2006, p2

> From Mr Hogan's statement you could hear that I was in contact with him because I am concerned. It is part of our charter to make sure that people are not adversely affected. We take it seriously.[71]

2.74 Apart from the contact between Mr Hogan and individual members of the CICC, it was not made clear to the Committee what processes were followed by the CICC in terms of its role to monitor CSI activities with regard to unfair competition and in relation to Mr Hogan's subsequent complaint.

2.75 It does appear, however, that an Industry Impact Statement was produced, meetings were held between Wilson Fabrics and representatives of CSI and CICC regarding the application and that the CICC discussed the approval process for the curtain manufacture by CSI during at least one of its meetings.[72]

2.76 It is also clear that Mr Hogan's complaint precipitated two reviews by CICC. In this regard, Assistant Commissioner Grant advised the Committee that CICC conducted two reviews into the impact of its curtain manufacture operations on private businesses:

> The Correctional Industries Consultative Council made two inquiries into this whole issue of curtain manufacture, specifically about the Long Bay operation. Part of that was to consider, which is the primary purpose of the Consultative Council, whether or not any business or any employment was being affected by the operations of Corrective Services Industries.[73]

2.77 Mr Hogan advised that the first review involved a meeting between himself and the Business Development Manager of CSI, Mr Rob Steer, to '… discuss concerns of part time employment and job losses at World of Curtains, resulting from the under cutting of manufacturing prices by CSI.'[74] The Committee was not informed of the outcome of the first review, however, Mr Hogan advised that the second review resulted from him questioning the findings of the first.[75]

2.78 The second review was conducted by Mr Patrick Donovan who, Assistant Commissioner Grant advised, was chosen because of his membership on the CICC and his experience in the industry:

> We chose a person on the Council to do that because they are a person very well experienced in business and also because they are on the Council to stand up for the interests of manufacturers.[76]

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71 Mr Tubner, Evidence, 27 March 2006, p14

72 Tabled document, Patrick Donovan, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, June 2005, p2

73 Assistant Commissioner Grant, Evidence, 8 December 2005, p5

74 Tabled document, Mr Hogan, 27 March 2006 (partially confidential), p3

75 Tabled document, Mr Hogan, 27 March 2006 (partially confidential), p3

76 Assistant Commissioner Grant, Evidence, 8 December 2005, p3

2.79 A draft copy of the report of the second review was provided to the Committee by Assistant Commissioner Grant.[77] The report states that Mr Donovan inquired into '… the impact of curtain making at the Long Bay Correctional Centre in terms of impact on business previously held by World of Curtains, Gummersons and other such manufacturers.'[78] The report concluded that the key reason for the loss of business experienced by World of Curtains is the impact of imports:

> The key factor impacting on loss of business at World of Curtains is the dramatic increase in imports from Pakistan, China and India. This had had a profound impact on the industry with companies such as Charles Parsons, who previously had curtains made for them by World of Curtains, discontinuing local production and relying fully on imported made-up product. Similar comments apply to business held by World of Curtains with Grace Bros/Myer. Major competitors of Wilson, including Filagree Caprice and AAA Fabric are importing.[79]

2.80 The report also concluded that if CSI discontinued making curtains the 'high cost of other external makers would make the project uneconomic' and that the result would be a 'reversion to imports' which would in turn result in a 'loss of at least 50 jobs in the fabric production area at Bruck', which is Wilson Fabrics' parent company.[80]

2.81 The report also noted that Wilson Fabrics still had some ongoing orders with World of Curtains for 'ranges less price sensitive'.[81]

2.82 Mr Tubner expressed his support for CICC's second review and emphasised the 'bottom line' that if the work was not being undertaken by CSI it would not go to World of Curtains, because it could not compete with the cheaper imports:

> Although I disagree with the first one conducted by Rob Steer, I support the second one by Pat Donovan, but both reports come back with the bottom line for us; that is, the issue that if they took the work out of the prisons, would it go to World of Curtains? The answer is no. It would not go there, it would go to imports because the cost of making them in prisons, regardless of what the prison industry says, is cheaper than what it cost Greg Hogan to make.[82]

2.83 Assistant Commissioner Grant also noted the report's conclusion that if CSI were not making the curtains the business would go off-shore and that this is what is meant by import replacement:

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77 Tabled document, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, p1

78 Tabled document, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, p1

79 Tabled document, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, p1

80 Tabled document, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, p2

81 Tabled document, *Draft Confidential Report into an enquiry into curtain making operations within the Textile Division of Corrective Services Industries at Long Bay Correctional Centre*, p3

82 Mr Tubner, Evidence, 27 March 2006, p13

> They did a review and, as you saw, the person who completed the review formed the conclusion, which has been formed over and over again—I believe it was stated in the evidence last week by the Labor Council—that if Corrective Services Industries was not making these curtains the business would not be carried on elsewhere in Australia because the business would be off shore. That is what we mean by import replacement. If you look at our outputs—that was also in the report—you will see that in the period since we commenced manufacture in 2003 our average production rate has not increased. We have not increased our productivity, yet another company is saying that it has lost work because of what has been given to us. That is just not true. We did not increase our production as another company was losing production.[83]

2.84 Australian Business Limited expressed support for the handling of the curtain issue by CSI and the CICC and the finding of the second review:

> The CICC has investigated these claims and found that, contrary to media and some political comments, CSI is adhering to the Charter and manufacturing curtains that do not compete with local businesses. Australian Business Limited supports this finding. To expand this particular instance, however, the CSI used its import replacement model to facilitate the production of a material that – although identical in name – was a heavier fabric more suitable for the end customer. [84]

2.85 Australian Business Limited also highlighted the problems faced by the curtain manufacturing market with regard to imports:

> Australian Business Limited supports the objectives of the import replacement model because it means CSI does not directly compete with local businesses. That said, the curtain manufacturing industry is currently facing the problems being addressed by many Australian manufacturers and other industries: the presence of highly-competitive imports in the Australian market.
>
> Many issues in the Australian economy – including Government red-tape, labour costs and even the current value of the Australian dollar – impact businesses and creates burdens which limit the ability of businesses to keep pace with new global innovations. While the CSI may have an apparent advantage to keep pace with global innovations given its focus on import replacement, the CSI factors this into its pricing model and accordingly sets a competitive rate to match local industry.[85]

2.86 The Committee was not informed whether Mr Hogan sought a review of the complaint from the Commissioner or the Minister (see paragraph 2.42, or whether Mr Hogan was even advised of the possibility of review.

Committee comment

2.87 The Committee expresses its support for the role of CSI within NSW Corrections. Through engagement in CSI activities prisoners are kept busy and acquire employment skills,

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83 Assistant Commissioner Grant, Evidence, 3 April 2006, p34

84 Submission 19, p2

85 Submission 19, p2

correctional facilities are subsequently safer for prisoners and correctional staff, and victims of crime and the state receive restitution.

2.88 The benefits of prisoners working within correctional industries must not, however, be derived at the expense of existing businesses and, in particular, employment within the community. It is clear that this principle is well entrenched within CSI's operations and that CSI has processes and procedures in place that are designed to limit any negative effects its engagement in any particular industry may have on existing businesses.

2.89 The role of the CICC in this framework is important and its strength lies in the inclusion of union and community representatives within its membership. The Committee encourages the CICC to continue to monitor the operation of correctional industries in NSW to ensure they do not unreasonably impact upon other Australian businesses.

2.90 The Committee notes that the only evidence presented to it in relation to CSI's observance of 'the Charter to avoid unfair competition' concerned the curtain manufacture complaint. No other claims were made of businesses being unfairly disadvantaged by CSI.

2.91 The Committee notes that the CICC initiated two reviews into the complaint made by the owner of World of Curtains, Mr Hogan. The second, seemingly more substantial review, concluded that the key reason for the loss of business experienced by World of Curtains was the impact of imports and, by implication, not CSI's involvement in curtain manufacturing.

2.92 No evidence was presented to the Committee to suggest that the second review undertaken on behalf of the CICC was not conducted adequately. The Committee makes no conclusions regarding Mr Hogan's complaint.

2.93 As discussed at paragraphs 2.56-2.59, Mr Hogan was assured by members of Wilson Fabrics' senior management, in the presence of CSI representatives, that his business would not suffer any negative effect as a result of CSI manufacturing curtains for Wilson's. Further, Mr Hogan appears to have been advised that he would not suffer any negative effects *because* CSI was only involved in import replacement.

2.94 These assurances seem to have been integral to Mr Hogan's understanding of CSI's obligations in relation to existing businesses, particularly with regard to import replacements, and his consequent expectations regarding the future viability of his business.

2.95 The evidence presented by the Department and the conclusions of the second review conducted on behalf of CICC indicate that Mr Hogan may, understandably, have been labouring under some misapprehensions in relation to the concept of 'import replacement' and its place within CSI's competition framework.

2.96 As described at paragraphs 2.40-2.42, a complaint mechanism is contained in the CICC section of the *CSI Policy Manual*, however, the Committee notes that the complaint process is not described in any detail. The Committee also notes that a search of CSI's website does not reveal any information regarding the CSI and CICC complaint mechanism. Nor is the brochure referred to in paragraph 2.45, which contains brief information regarding the complaint process, identified or made available on the website.

2.97 The Committee therefore recommends that CSI, in consultation with the CICC, review its complaint handling processes with a view to implementing improvements where identified and develop a guide outlining the complaint process. Such a guide would benefit all parties to a complaint to understand the process and the potential outcomes. The guide should include detailed information regarding how to make a complaint, the various steps in the complaint resolution process, including time frames, and the availability of a review by the Commissioner or the Minister. The guide should be made readily available to members of the public, including on the CSI website.

2.98 It is clear that there is a need for the creation of user friendly information about the role of CSI in relation to the avoidance of unfair competition with existing businesses and the complaints mechanism.

2.99 The causal link between CSI undertaking work in a particular industry and the negative impact on an existing businesses that is necessary to establish that CSI has competed unfairly, needs to be made clear. Such information would assist business owners, such as Mr Hogan, to understand when they might have a legitimate complaint and enable them to avoid false expectations.

2.100 The Committee therefore recommends that the Department and CSI, in consultation with the CICC, develop and publish a guide to the operation of CSI with regard to the avoidance of unfair competition with existing businesses, including CSI's obligations with regard to the avoidance of unfair competition with existing businesses and the complaints mechanism.

Recommendation 1

That the Department of Corrective Services and Corrective Services Industries, in consultation with the Correctional Industries Consultative Council, develop and publish a guide to the operation of Corrective Services Industries with regard to the avoidance of unfair competition with existing businesses, including:

- the obligations of CSI with regard to the avoidance of unfair competition with existing businesses, and
- comprehensive information about the complaint resolution process.

2.101 It appears to the Committee that it would assist the successful interface between CSI and private business in general if more information about CSI's role in relation to unfair competition and private business were made publicly available and readily accessible.

2.102 The Department provided the Committee with a number of brochures on CSI's activities and objectives, including the brochures referred to at paragraphs 2.21 and 2.45. The Committee notes that while these publications can be obtained from CSI free of charge by calling its customer service line, their existence is not advertised on the CSI website nor can they be downloaded.

2.103 The Committee believes that making these and any other relevant CSI publications (including the guide the Committee has recommended be developed) electronically available would assist

the dissemination of the information they contain to industry and union groups, businesses and the wider community. The Committee therefore recommends that CSI index and publish on its website all relevant current and future brochures and material that may assist industry groups, businesses and the wider community to better understand the role and operations of CSI.

Recommendation 2

That, in order to assist industry groups, businesses and the wider community to better understand the role and operations of Corrective Services Industries, Corrective Services Industries list on its webpage all current and future Corrective Services Industries publications and make them available to download from the webpage free of charge.

Chapter 3 High risk prisoners: the objectivity of the prisoner classification system

In this chapter the Committee considers a number of issues concerning the prisoner classification system and the related security designations used by the Department of Corrective Services to manage 'high risk' prisoners. The Committee defines its understanding of the term 'high risk'; considers claims that the classification system is too complex and in respect of the new AA/5 classification may breach international human rights standards; and considers the relationship between security classification and access to rehabilitation programs for sex offenders.

Overview

3.1 The terms of reference direct the Committee to inquire into the management of high risk prisoners by the Department with respect to a number of issues including the 'objectivity' of the prisoner classification system.

3.2 During this Inquiry the following issues were raised relating to the prisoner classification system:

- The complexity of the classification system
- The transparency and accountability of the classification system, particularly in respect of the width of the discretion allowed to the Commissioner to make classification decisions under the legislation and the lack of any formal review process
- Potential human rights violations associated with the new Category AA/5, or terrorist, classification
- The link between the classification system and access to rehabilitation programs for sex offenders.

3.3 In this Chapter the Committee first defines the term 'high risk'. The Committee then provides background information regarding the security *classification* system and the range of additional security *designations* relevant to the management of high risk prisoners. Whilst security classification is distinct from the additional security designations, it is not possible to understand the management of high risk offenders by the Department without considering classification and designations together. The Committee also outlines the range of internal and external mechanisms available for the review of decisions made by the Commissioner and considers the issues raised by Inquiry participants noted above.

3.4 Some of the issues discussed in this Chapter overlap with those discussed in Chapter Four (HRMU). For example, the general issue of the ability to review decisions made by the Commissioner is relevant to the lack of a binding right of appeal against a decision by the Commissioner to assign a prisoner to the HRMU.

Definition of 'high risk' prisoners

3.5 The terms of reference adopted by the Committee refer to 'high risk' prisoners. This description of 'high risk' does not readily fit with the terminology used by the Department.

3.6 The Committee notes that the term 'high risk' is not used in the relevant sentencing legislation in connection with the classification of prisoners. Rather, the term 'high risk' is used by corrections administrators in a variety of contexts to serve a number of different ends, as noted by Mr Luke Grant, Assistant Commissioner, Offender Management:

> The term "high risk" is used in a lot of different ways in our environment. We talk about people who are at high risk of harming themselves, a high risk to others and people who are at high risk of reoffending. Each of those categories are taken into consideration at various points in the way you develop a plan and how you are going to manage them.[86]

3.7 For example, the Department assesses risk of reoffending when determining access to prison programs.[87]

3.8 Commissioner Woodham also referred to the range of contexts in which the Department uses the term 'high risk', including risk of reoffending and risk of escape:

> "High risk" means different things in different contexts. An inmate may pose a high risk of self-harm; or a high risk of harm from others; or a high risk of reoffending; or a high risk of escaping; or a high risk of violent behaviour towards staff and/or other inmates. All these types of high risk have different meanings and different criteria.[88]

3.9 In relation to this Inquiry, Commissioner Woodham advised the Committee that the Department considers 'high risk' to mean 'high security.'[89]

3.10 The Committee notes that the term 'high risk' is used by the Department in a variety of settings. In considering issues relating to security classification, the Committee understands 'high risk' prisoners to include:

- Maximum security prisoners i.e. prisoners classified 'AA', 'A1', 'A2', '5' or '4'
- Prisoners classified 'E1' or 'E2' (i.e. escape risk prisoners)
- Prisoners deemed to be 'serious offenders'
- Prisoners designated high security or extreme high security
- Prisoners on segregated and protective custody directions.

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86 Mr Luke Grant, Assistant Commissioner, Offender Management, Department of Corrective Services, Evidence, 3 April 2006, 32

87 Mr Grant, Evidence, 3 April 2006, 32

88 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Ron Woodham, Department of Corrective Services, Question 1, p1

89 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, p1

The prisoner classification system

3.11 In this section the Committee provides background information regarding the prisoner classification system, including the purpose of a prisoner classification system, the legislative basis for the NSW prisoner classification system, the distribution of inmates across the classification scale and related issues.

Purpose of a classification system

3.12 The Crimes (Administration of Sentences) Regulation 2001 (NSW) requires the Commissioner to classify all inmates into categories 'for the purposes of security and the provision of appropriate development programs.'[90]

3.13 As Commissioner Woodham indicated, an effective classification system is fundamental to the security of a correctional system: 'The security of a prison system is not barb, tape and towers: It is the classification system. If you get that right you are as good as you are ever going to be.'[91]

3.14 Commissioner Woodham identified a link between the effectiveness of a prisoner classification system and reducing assault and escape rates within a correctional centre:

> But when you look at [assault rates in] 2001-02 at 22.56, it has come down each year even though the prison population has risen. That is a combination of a lot of things. In my opinion we assess the prisoners a lot better when they first time in. We classify them into the right areas, which is another reason why the escape rate is down ... We believe we are very close to the mark. We are fairly happy and proud of the figures that we have here, and it is very encouraging for me to be in charge of a prison system of the size of this, to look at the statistics for a year and to find that no officer, not one of my staff, was seriously assaulted.[92]

3.15 The Committee was advised that the security classification system also relates to the eventual eligibility of prisoners for release on parole after the expiration of their non-parole period. A prisoner who does not progress to the lowest level of the classification system (C3 for men/1 for women) will be ineligible for any form of unescorted leave. A prisoner who has not completed unescorted day release will have difficulty obtaining parole at the expiration of their non-parole period. As Mr Hutchins, Solicitor in Charge of the Prisoners Legal Service, Legal Aid Commission of NSW, stated, slow progress through the classification system may result in a longer custodial sentence:

> … certainly with Parole Board matters we are quite often making submissions for an inmate's classification to be lowered because we know that when they appear at the Parole Board—or now the Parole Authority—if they have not achieved the C3

90 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 22 and cl 23

91 Commissioner Ron Woodham, Department of Corrective Services, Evidence, 8 December 2005, p15

92 Commissioner Woodham, Evidence, 8 December 2005, p15

> classification and had approximately six months of unescorted leave from gaol their chances of obtaining parole are virtually nil.[93]

The NSW prisoner classification system

3.16 Section 232 of the *Crimes (Administration of Sentences) Act 1999* (NSW) vests a broad power to manage correctional centres and offenders in the Commissioner of Corrective Services, subject to the overall control of the Minister. In addition, clauses 22 and 23 of the Crimes (Administration of Sentences) Regulation 2001 (NSW) require the Commissioner to classify male and female prisoners according to classification scales contained in those respective clauses.

3.17 Each classification refers to the level of surveillance and security appropriate to prisoners so classified. For men, the classification scale runs from AA to C3. A classification is for maximum-security inmates, B classification relates to medium-security inmates, and C classification relates to minimum-security inmates. For women, the scale runs from 5 to 1, with 5 being the highest classification and 1 being the lowest. Classifications 5 and 4 are maximum-security classifications, 3 is for medium-security and 2 and 1 are minimum-security classifications.

3.18 For males, the classification scale includes sub-classifications i.e. AA, A1, A2, C1, C2, and C3. The female classification scale does not include sub-classifications.

3.19 Unlike all other classifications, the AA, 5 and A1 classifications also refer to particular types of risks associated with prisoners so classified. An AA/5 prisoner poses a special risk to national security, whilst a category A1 prisoner poses a special risk to 'good order and security.'[94] There is also an E classification for prisoners considered to be escape risks. The classification scales as set out in the Regulation are included at Appendix 4.

3.20 Commissioner Woodham advised the Committee that persons on remand are generally subject to the same classification scale as convicted prisoners:

> Remand prisoners are ***generally*** subject to the same classification procedures as convicted prisoners. However it must be appreciated that one of the factors taken into account in classification is the length of the inmate's sentence – which of course is unknown in the case of remand prisoners.[95]

3.21 However, remand inmates have limited access to the lowest classification levels:

> The only classifications that don't apply to unsentenced inmates are C2 and C3 for males, and category 1 for females. All other classifications may apply. The only remand inmates classified C1 or Category 2 are those subject to charges for which the maximum sentence is 3 years or less; and those granted bail of less than $5,000 whose

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93 Mr Will Hutchins, Solicitor in Charge, Prisoners Legal Service, Legal Aid Commission of NSW, Evidence, 27 March 2006, p18

94 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 22 and cl 23

95 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 5, p4

> bail conditions are unsatisfied (i.e., they haven't been able to find somebody to post bail for them).[96]

The Commissioner's discretion as to classification

3.22 The Regulation vests a wide-ranging discretion in the Commissioner to determine the classification of all NSW prisoners, as noted by Judge Moss QC, Chair of the Serious Offenders Review Council (SORC):

> Regulations 22 and 23 of the regulation provide for security classification for all inmates and the basis of that classification is "the opinion of the Commissioner of Corrective Services". In other words, classification of prisoners is a matter at the complete discretion of the Commissioner.[97]

3.23 Commissioner Woodham informed the Committee that he prefers to 'err on the side of public safety' when making classification decisions.[98]

3.24 The Committee is aware that the Commissioner has delegated some of his power to make decisions regarding the classification of prisoners to nominated officers within the Department. These officers make classification decisions on the advice of a prisoner's Case Manager and Case Management Review Co-ordinator.

3.25 Commissioner Woodham advised the Committee of changes to the Department's classification procedures as a result of amendments effected by the Crimes (Administration of Sentences) Amendment Regulation 2005 (NSW). Under the new arrangements classification decisions are made by Managers and Deputy Managers, Classification and Placement:

> The effect of this amendment is that I have delegated the classification decision to Managers and Deputy Managers, Classification and Placement. In making their decision, these officers consider advice provided by the inmate's case manager and the Classification and Case Management Review Coordinator and, in the case of classification reviews, the General Manager, Manager of Security and the Manager, Offender Services and Programs, at the inmate's correctional centre.[99]

3.26 Prior to the current arrangements being put in place, prisoner classification decisions were made by case management *committees* or *teams*:

> The amended procedures result from amendments made by the *Crimes (Administration of Sentences) Amendment Regulation 2005* by which the Commissioner nominates departmental officers to be involved in the classification and preparation and review of case management plans for inmates instead of case management teams and case

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96 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 5, p4

97 Judge Peter Moss QC, Chair, Serious Offenders Review Council, Evidence, 6 April 2006, p3

98 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 8, p6

99 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, p2

management committees (since the Commissioner's power of delegation is restricted to individuals, not groups).[100]

Distribution of inmates across the classification scale

3.27 Commissioner Woodham provided the following snapshot of the distribution of prisoners across the classification scale in 2004-2005:

> Based on the prison population on the first day of each month (excluding inmates on the witness protection program), the average number of each classification in 2004-2005 was:

Classification	Number of inmates 2004-2005
Men	
AA	The first AA inmates were classified in April 2005. There were only 2 AA inmates in 2004-2005
A1	29
A2 sentenced	567
A2 unsentenced	891
Women	
Category 5	nil
Category 4 sentenced	17
Category 4 unsentenced	22[101]

3.28 Commissioner Woodham advised the Committee of the distribution of all prisoners across the maximum, medium and minimum security classifications as at 30 June 2005:

- 1,716 maximum security inmates (19.2%)
- 2,009 medium security inmates (22.4%)
- 4,892 minimum security inmates (54.7%)
- 331 unclassified inmates (3.7%).[102]

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100 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, p2

101 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 2, p3 [style altered]

102 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 2, p3 [style altered]

3.29 The average total of all maximum security inmates throughout the correctional system (excluding the Special Purpose Centre) on the first day of each month in 2004-2005 was 1,583.[103]

Objective and subjective factors in the classification of prisoners

3.30 The Committee understands that prisoners are classified with reference to a document referred to as a 'classification instrument' which sets out the factors that must be taken into account when determining a classification. These factors are both objective and subjective. Mr Sandland, Director, Criminal Law for the Legal Aid Commission of NSW, stated that the 'classification instrument':

> … is a means of awarding points according to various aspects of their background, the offence and their conduct whilst in custody. Some of those criteria are objective. There is no doubt about that. Some of those criteria, however, in relation to their conduct whilst in custody or alleged misconduct, for instance, or, alternatively, their compliance with programs can have a subjective element to them. So at the end of the day both in relation to initial classification and classification as they move through their sentence, there is a combination of both objective and subjective elements in this instrument that they apply in order to award points to a prisoner.[104]

3.31 The Legal Aid Commission advised the Committee that factors included in the classification instrument include 'the severity of the crime, the use of weapons, frequency of institutional misconduct and program compliance etc.'[105]

Inmate Classification and Case Management Procedures Manual

3.32 The Department has a detailed Operations Procedures Manual regarding most aspects of its operations which contains the Inmate Classification and Case Management Procedure Manual. The Inmate Classification and Case Management Procedure Manual contains details of the delegations of discretion made by the Commissioner and sets out various procedures including procedures regarding the case management of prisoners and for the initial reception of prisoners into custody.

3.33 The Department provided the Committee with a copy of the Operations Procedures Manual but requested that it not be published. The Committee agreed to that request. It is sufficient to note that, although the legislation vests a wide discretion in the Commissioner or his delegate to make classification decisions, the exercise of that discretion is subject to detailed Departmental policies contained in the Inmate Classification and Case Management Procedure Manual.

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103 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 2, p3

104 Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission, Evidence, 27 March 2006, p18

105 Submission 21, Legal Aid Commission of NSW, p2

Additional security designations relevant to the management of high risk prisoners

3.34 The prisoner classification system interacts with a number of other security designations relevant to the management of high risk prisoners. The additional security designations are 'serious offender', high security prisoner and extreme high security prisoner and prisoners on segregated and protective custody.

Link between prisoner classification scale and additional security designations

3.35 The Committee was advised that, whilst all prisoners are subject to the prisoner classification system (including prisoners awaiting trial, or remandees), some prisoners may also be subject to one or more of the additional security designations. Mr Hutchins explained how the different classifications and designations might overlap in practice:

> An inmate who, for example, might be maximum security A could clearly possibly fall into the category of being a high-risk security inmate. They would go hand in hand. But you have to understand that it is a separate classification system of A, B and C. Someone being a serious offender is also separate. A serious offender will have one of these classifications. A serious offender will ultimately work their way down to the minimum security of a C classification. Generally, an inmate will have to work their way through the A, B or C classification before they become eligible for parole.[106]

Serious offenders

3.36 A 'serious offender' is defined by the *Crimes (Administration of Sentences) Act 1999* (NSW) as:

- an offender who is serving a sentence for life, or
- an offender who is serving a sentence for which a non-parole period has been set in accordance with Schedule 1 to the *Crimes (Sentencing Procedure) Act 1999*, or
- an offender who is serving a sentence (or one of a series of sentences of imprisonment) where the term of the sentence (or the combined terms of all of the sentences in the series) is such that the offender will not become eligible for release from custody, including release on parole, until he or she has spent at least 12 years in custody, or
- an offender who is for the time being required to be managed as a serious offender in accordance with a decision of the sentencing court, the Parole Authority or the Commissioner, or
- an offender who has been convicted of murder and who is subject to a sentence in respect of the conviction, or

[106] Mr Hutchins, Evidence, 27 March 2006, p18

- an offender who belongs to a class of persons prescribed by the regulations to be serious offenders for the purposes of this definition.[107]

3.37 Category AA and Category 5 prisoners are 'serious offenders' within the meaning of the Act.[108]

3.38 Serious offenders, other than prisoners who are serious offenders only because they are classified AA/5, remain serious offenders for the duration of their sentence, irrespective of their security classification. Prisoners who are serious offenders only because they are classified as AA/5 cease to be serious offenders when they cease to hold that classification.

3.39 As at 31 December 2004, the last year for which the Committee has detailed statistics, there were 628 'serious offenders', or 7.07% of the prison population. Of these prisoners, 438 were serving sentences for murder (69.7% of all serious offenders). 22 serious offenders were women, 19 of whom were serving a sentence for murder, and three for serious drug importation offences. 65 serious offenders were Aboriginal (10.35%).[109]

3.40 As at 6 April 2006 there were 661 serious offenders in NSW prisons, of whom, approximately 400 were classified maximum-security; 126 were classified as medium-security and 134 were classified minimum-security.[110]

3.41 Serious offenders are managed by the Commissioner on the advice of the Serious Offenders Review Council (SORC).[111] As Judge Moss QC, Chair of the SORC stated, the primary function of the SORC 'is to advise the Commissioner of Corrective Services as to the classification and placement of and suitable rehabilitative programs for serious offenders.'[112] The SORC also has a range of powers and functions in respect of high security and extreme high security prisoners, prisoners classified as 'E' and prisoners on segregated and protective custody. These functions are discussed below in the context of the Committee's discussion of each of those categories of offenders.

3.42 The Act directs the SORC, when exercising its functions in respect of a serious offender, to have regard to a number of factors, including the 'public interest.' In considering the 'public interest' the SORC must look first to the protection of the public, which is paramount. The SORC may also have regard to other factors including the nature and circumstances of the offence and the offender's conduct whilst in custody.[113]

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107 *Crimes (Administration of Sentences) Act 1999* (NSW), s3

108 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 22(3) and cl 23(3)

109 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, Schedule 1, pp12-15

110 Judge Moss QC, Evidence, 6 April 2006, p3

111 The Serious Offenders Review Council is constituted by section 195 the *Crimes (Administration of Sentences) Act 1999* (NSW). Section 195 of the Act provides that the Council shall consist of between eight and 14 members, including three judicial officers and two departmental officers, with the balance of members being 'persons who reflect as closely as possible the composition of the community at large, appointed by the Governor'.

112 Judge Moss QC, Evidence, 6 April 2006, p2

113 *Crimes (Administration of Sentences) Act 1999* (NSW), s 198(3)

3.43 The SORC is constituted by legislation rather by administrative decision of the Department and as such is independent of the Department. Nevertheless, the relationship between the SORC and the Department is necessarily close:

> From its inception, the Council acknowledged that although not bound by Departmental policies, it would nevertheless generally be guided by them, departing from them only when it considered the particular circumstances justified such a course of action.[114]

3.44 The Committee was advised that, although the SORC is dependent on officers of the Department for information and advice, the SORC does have an independent capacity to inform itself as to matters within its jurisdiction. Judge Moss QC stated that the SORC has opportunities to observe and consider serious offenders that are not available to the Commissioner personally:

> As I say, we personally interview these prisoners twice a year and those notes are preserved and they appear in our minutes and they are later sent to the parole authority. We can learn a great deal from those interviews. In addition, often once they get close to parole, when we interview them, the parole officer is sitting in, so we get the benefit of what the parole officer knows and what the parole officer knows, which we do not know, is in particular what their post-release plans are and how valid they are, so we get some information there. Also we get to know the senior gaol staff. They sit in often. We always confer with them at the start of the interviews, so we get their personal views and often they are very experienced people. So we do have additional information. We also have psychological reports, psychiatric reports; we have discharge summaries from the sex offender program; discharge summaries from the violent offender program.[115]

3.45 Judge Moss QC stated that it would be highly unusual for the SORC to make a recommendation at variance with the strongly expressed views of senior custodial officers.[116] Nevertheless, Judge Moss QC advised that differences of opinion between the SORC and the Commissioner do arise from time to time:

> We do have significant differences of opinion as to classification and placement from time to time, but for as long as the legislation provides that he is to have the sole discretion then that is the way it must be and it would be surprising if there were not differences from time to time. I mean we see the relevant serious offenders twice a year … Then we put up our recommendations, but not all of those get through.[117]

3.46 The Committee was advised that in any given year the SORC will make over 2,600 recommendations as to the classification and management of serious offenders. Of these, the Commissioner will reject approximately 200.[118] Commissioner Woodham stated that most

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114 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p6 (original emphasis)

115 Judge Moss QC, Evidence, 6 April 2006, p5

116 Judge Moss QC, Evidence, 6 April 2006, p6

117 Judge Moss QC, Evidence, 6 April 2006, p4

118 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 8, p6

instances in which he disagreed with the SORC were related to time-frames rather than 'outright rejection of the recommendation.'[119] In this respect, Commissioner Woodham advised the Committee that:

> The most common reason for not approving a recommendation of the Council was that the serious offender still had too long to serve in their sentence to justify a reduction in classification. In that respect, I would say that most times I do not follow a SORC recommendation my decision relates to the timeframe rather than an outright rejection of the recommendation.[120]

High security and extreme high security prisoners

3.47 The Crimes (Administration of Sentences) Regulation 2001 (NSW) provides that:

- *High security prisoners* are prisoners who, in the opinion of the Commissioner pose a 'danger to other people' or a 'threat to good order and security', and
- *Extreme high security prisoners* are prisoners who, in the opinion of the Commissioner, pose 'an extreme danger to other people' or 'an extreme threat to good order and security'.[121]

3.48 The Committee was advised that, as at 6 April 2006 there were 72 extreme high security prisoners and 31 high security prisoners in NSW correctional facilities. Of the extreme high security prisoners:

- 28 are in the HRMU at Goulburn
- 18 are unsentenced, including a number of 'AA' inmates who have been charged with terrorist offences
- 69 are male and 3 are female.[122]

3.49 The Committee notes that the designation of a prisoner as high security or extreme high security is within the discretion of the Commissioner. Commissioner Woodham advised the Committee that he considers a range of factors when designating a prisoner as a high security or extreme high security prisoner, including a record of violence or attempted escape or a record of corrupt conduct.[123]

3.50 The Committee understands that prisoners designated as high security and extreme high security inmates are subject to a number of additional security requirements regarding

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119 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 8, p6

120 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 8, p6

121 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 25

122 Judge Moss QC, Evidence, 6 April 2006, p2

123 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 1, pp1-2

clothing, visitors and movement. The SORC has described the practical consequences of classification as an extreme high security or a high security inmate as follows:

> In practice, the main consequence of being designated an Extreme High Security inmate are that the inmate is moved to different cells on a regular basis, must wear distinctive clothing on days when the inmate is permitted visitors, and the latter themselves are subject to special security measures. Such an inmate is also subject to stringent security arrangements when it is necessary to move the inmate, e.g. from prison to a courtroom.
>
> The only practical consequence in the case of designation as High Security inmate, is that additional security measures may be employed when such an inmate is moved from the gaol to another place. In some Centres the inmate may be denied access to certain locations within the Centre by reason of his designation and as a result may be unable to participate in some programs conducted at those locations.[124]

3.51 The Committee was advised by Judge Moss QC that, whilst the consequences of designation as a high security inmate are relatively minor, the consequences of extreme high security designation are quite onerous:

> High security does not make much difference. As I understand it, it just means that they may not have access to an oval for exercise or, if there is a particular program in a low security area, they might not have access to that program, but extreme high security inmates are a very different story. All sorts of very strict procedures apply to the extreme highs. For example, on visits they have to wear very distinctive clothing; their visitors are scrutinised; I think their mail is scrutinised; they are moved from cell to cell frequently and on any movement, whether it is to court, to another gaol or a hospital, stringent provisions come in not only as to the number of security personnel who must be present but as to restraints - physical restraints - placed on the extreme high security inmate.[125]

3.52 The High Security Inmate Management Committee (HSIMC) is a sub-committee of the Serious Offenders Management Committee.[126] The HSIMC advises the Commissioner in respect of the classification and management of high security and extreme high-security prisoners. The HSIMC meets every six weeks and considers the designation of each high security or extreme high security inmate 'regularly.'[127] Senior officers of the Department attend HSIMC meetings for the purposes of advising the Committee but do not have the right to vote.[128]

3.53 In 2004 the HSIMC made approximately 1,900 recommendations to the Commissioner. These recommendations related to the following issues: designation, placement, security rating,

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124 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p8

125 Judge Moss QC, Evidence, 6 April 2006, p9

126 SORC is empowered to create a Serious Offenders Management Committee and may delegate to the Committee such of its functions as it determines appropriate. The Management Committee is in turn empowered to appoint sub-committees to assist it in the exercise of its functions; *Crimes (Administration of Sentences) Act 1999* (NSW), s 206(1) and 207(1)

127 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, pp7-8

128 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p7

application of sanctions (extreme high security inmates only) and the imposition of ankle cuff directions (extreme high security inmates only).[129]

3.54 As noted by the SORC, if the HSIMC recommends that a prisoner be designated as a high security or extreme high security prisoner, the Commissioner may only act upon such a recommendation if:

> … there is material on which he can decide that an inmate constitutes either an extreme or high danger to other people or an extreme or high threat to good order and security.[130]

3.55 Commissioner Woodham stated that 'In 2004-2005 I did not reject any recommendations made by the HSIMC in regard to the designation of inmates as either Extreme High Security or High Security.'[131]

Segregated and protective custody

3.56 The *Crimes (Administration of Sentences) Act 1999* (NSW) establishes a regime for the lawful segregation of inmates and for the protective custody of inmates.[132] Broadly, a prisoner may be placed on segregated custody for the protection of other persons or to maintain the security and good order of a correctional centre, whilst a prisoner may be placed on protective custody for their own protection.[133]

3.57 The effect of a protected custody direction is the same as that of a segregated custody direction. In both cases the prisoner is held 'a) in isolation from all other inmates, or (b) in association only with such other inmates as the Commissioner … may determine.'[134]

3.58 The Committee understands that prisoners may request to be placed on protective custody or that they may be placed on protective custody against their wishes where the Department is of the view that their personal safety is threatened, as noted by Judge Moss QC:

> There are, of course, many prisoners who are on protection, some of them - hundreds of them - put themselves on protection, which causes problems because of non-access to programs while you are on protection, but some others are put on protection against their wishes because the authorities take the view that they have to be protected.[135]

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129 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 9, p7

130 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p8

131 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 9, p7

132 *Crimes (Administration of Sentences) Act 1999* (NSW), Pt II, Div 2

133 Sections 11 and 12 of the *Crimes (Administration of Sentences) Act 1999* (NSW) relate to segregated and protective custody respectively.

134 *Crimes (Administration of Sentences) Act 1999* (NSW), s 12(1)

135 Judge Moss QC, Evidence, 6 April 2006, p8

3.59 The Committee was advised that, under previous sentencing legislation prisoners who were placed on segregation were entitled to a remission in their sentence. However, this is no longer the case, as described by Mr Hutchins:

> Once upon a time—back in what I call the "old days"—I think you would get some remission for being on segregation. That is not the case today. If you spent three months in segregation, for example—I cannot remember what the formula was—it used to be something in the order of one day in segregation might give you three days off your sentence. [136]

3.60 The Committee was informed that the conditions of segregated and protective custody are particularly onerous. For example, Mr Hutchins described conditions in segregated and protective custody as 'horrendous'[137], and stated that prisoners in segregation have reduced access to their lawyer and to prison programs:

> Of course, while you are in segregation you have much less access to your lawyer and, more significantly, you have no access to programs. You are just hibernating in there for the length of time you are there. It is incredibly emotionally destructive.[138]

3.61 Inmates held on segregated or protective custody are entitled to a binding review of their placement by the SORC, as is currently provided for by the Act, as discussed at paragraph 3.73.

Internal and external review of decisions made by the Commissioner and his delegates

3.62 The Committee notes that security classifications for all offenders are routinely reviewed on the initiative of the Department/SORC (in relation to serious offenders) every six months.[139] The Department/SORC also routinely review high security and extreme high security designations and segregated and protective custody directions.

3.63 In this section the Committee provides an overview of the range of mechanisms by which prisoners can initiate a review of their security classification or designation. Most of these mechanisms are external to the Department, however some are internal. Some of the options are binding on the Commissioner, and others are non-binding i.e. they are merely advisory, and may be accepted or rejected by the Commissioner in exercise of his discretion as to security classification and designation.

3.64 This information is provided by way of background to the Committee's discussion of complaints made by Inquiry participants regarding the classification system discussed at paragraph 3.87.

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136 Mr Hutchins, Evidence, 27 March 2006, p17

137 Mr Hutchins, Evidence, 27 March 2006, p17

138 Mr Hutchins, Evidence, 27 March 2006, p17

139 In respect of serious offenders, see Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, pp8-9. In respect of prisoners other than serious offenders, see Mr Budgen, Evidence, 27 March 2006, p32

Internal review of classification decisions

3.65 Commissioner Woodham advised that the Department operates an internal, non-binding review process for prisoners other than serious offenders who wish to have their security classification changed:

> An inmate who is not a serious offender can seek review of a decision of a Manager or Deputy Manager, Classification and Placement, by making a written application within 14 days of being notified of the decision … The people involved in making the first decision are not involved in making the second decision.[140]

3.66 Review is only available where a prisoner can provide relevant and substantiated information that was not available to the original decision-maker, as noted by Commissioner Woodham:

> The application must detail reasons for the requested review and must include new and relevant substantiated information additional to information the decision-maker had when making the decision and which, on balance, would most likely have altered the decision. Dissatisfaction with the decision is not in itself a ground for review. [141]

3.67 The Legal Aid Commission advised that internal review is conducted by way of written submissions to the Inmate Classification Branch or to the Commissioner:

> Internal review of classification is done by a written submission to Inmate Classification or to the Commissioner. The inmate can do this on an Inmate Application form or by letter. From time to time, our Prisoners Legal Service makes a written submission to the Commissioner requesting that the last decision refusing to lower classification be reviewed.[142]

3.68 An issue relevant to the effectiveness of the Department's internal review mechanism is the amount of information available to prisoners who wish to seek a review of their classification. This issue is discussed at paragraph 3.103.

External review of security classification and designation decisions

3.69 There are a number of external review and oversight mechanisms available for prisoners who are dissatisfied with their security classification or other designation. These mechanisms are:

- Judicial review in the Supreme Court
- Complaint to the Ombudsman
- Complaint to an Official Visitor
- Binding review of segregated and protective custody directions by the SORC

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140 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, pp8-9

141 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, p8

142 Answers to questions on notice taken during evidence 27 March 2006, Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission of NSW, Question 1, p1

- Non-binding review of all classifications for serious offenders by the SORC
- Non-binding review of E, or escape, classification by the Escape Review Committee of the SORC
- Ad hoc and non-binding review of high security and extreme high security designation by the High Security Inmate Management Committee of the SORC

Judicial review of administrative decisions of the Commissioner

3.70 Classification and security designation decisions by the Commissioner are administrative decisions made in the exercise of power granted to the Commissioner by the Act. As such, they are subject to judicial review by the Supreme Court. The Legal Aid Commission noted that 'a challenge may be available if the decision was patently unfair or if there has been a departure from the proper administrative process.'[143] The practical limitations of judicial review as an effective means to challenge decisions of the Commissioner are discussed at paragraph 3.95.

Complaint to the Ombudsman

3.71 The NSW Ombudsman is empowered to receive complaints from prisoners regarding their security classification. However, as noted by the Ombudsman, Mr Bruce Barbour, in his submission to the Inquiry, the Ombudsman does not have a general power to scrutinise the operations of the Department:

> … unlike our oversight functions relating to the NSW Police, child protection and community services, we do not have any general powers to keep under scrutiny the operations of the Department of Corrective Services. You may be aware that the former Inspector General of Corrective Services did have specific functions of 'investigating the operation of the Department' and 'assessing the effectiveness of the procedures of the Department'. None of those functions were specifically passed on to the Ombudsman when the Office of Inspector General was closed. We only received a modest budgetary enhancement to deal with the increase in complaints that occurred following the closure of that office.[144]

Complaint to an Official Visitor

3.72 The *Crimes (Administration of Sentences) Act 1999* (NSW) requires the Minister to appoint an 'official visitor' for each NSW correctional centre.[145] Officers of the Department are not eligible for appointment as official visitors. Official visitors are required to visit correctional centres and receive complaints from staff and prisoners, and to report on such visits to the Minister.[146] Category 'AA' and '5' inmates are excluded from the jurisdiction of the Official Visitor by the Crimes (Administration of Sentences) Regulation 2001 (NSW).[147] This issue is discussed at paragraph 3.147.

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143 Submission 21, p3

144 Submission 8, NSW Ombudsman, p2

145 *Crimes (Administration of Sentences) Act 1999* (NSW), s 228

146 *Crimes (Administration of Sentences) Act 1999* (NSW), s 228

147 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 154(3)

Review of segregated and protective custody directions by the SORC

3.73 Prisoners subject to a segregated or protective custody direction may seek a review of that direction from the SORC, whether or not they are 'serious offender' for the purposes of the Act.[148] The decision of the SORC is binding on the Commissioner.

3.74 Mr Hutchins advised that, in his experience, there is usually a successful outcome for the prisoner as a result of such a review by the SORC:

> … certainly with the hearings that we have run there is usually some successful resolution: either the order is revoked by the hearing committee or at least they will make suggestions about the progression of that inmate so that the order can be revoked in, say, another month or two months. But in some cases an order is confirmed.[149]

3.75 As noted at paragraph 3.58, prisoners may be placed on protective custody against their wishes. Mr Hutchins provided an example of a case in which the SORC discharged a protective custody direction in circumstances where the prisoner had been held on protective custody without their consent for three months:

> One inmate who I did a review for at the MRRC had been in segregation for three months for breaking up a fight. He was an Asian inmate and they decided to place him in segregation because they heard that there was a threat against his life as a result of breaking up the fight. He maintained at all times, "I'm not scared of going back to the main gaol; please let me back to the main gaol". They did not do that and kept him in segregation for 23 hours a day. When we had a review hearing fortunately the SORC thought it was ridiculous that the order be continued because there was no further evidence from the initial incident to suggest that this inmate was at risk. Yet he was kept in those conditions for three months—he spoke very limited English—and then was released back into the main gaol.[150]

Review of classification for serious offenders by the SORC

3.76 Commissioner Woodham advised the Committee that serious offenders may initiate a non-binding review of their security classification by the SORC:

> A serious offender may make representation to the SORC Assessment Committee on its visit to the correctional centre, or write to the Executive Officer and Registrar of SORC if he or she wishes particular consideration to be given by the Council to classification and placement and/or case plan requirements.[151]

3.77 As is the case for internal review of security classification by non-serious offenders, serious offenders may only seek a review of their classification in limited circumstances. In this respect, Commissioner Woodham stated that:

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148 *Crimes (Administration of Sentences) Act 1999* (NSW), s 19

149 Mr Hutchins, Evidence, 27 March 2006, pp16-17

150 Mr Hutchins, Evidence, 27 March 2006, p17

151 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, p9

> A serious offender may not seek a review of a decision of the Commissioner unless he can present new and relevant substantiated information that was not available at the time the initial proposal of the assessment committee was discussed with the inmate. Dissatisfaction with a decision of the Commissioner is not in itself a ground for review.[152]

3.78 An issue relevant to the effectiveness of this review mechanism is the amount of information available to serious offenders who wish to seek a review of their classification. This issue is discussed at paragraph 3.103.

Review of escape classification by the Escape Review Committee of the SORC

3.79 The Escape Review Committee of the SORC meets twice monthly to 'deal with applications on behalf of inmates (not confined to Serious Offenders) who have been classified as escapees within the meaning of the Regulation.'[153] The Commissioner may not remove an E classification except on the advice of the Escape Review Committee, however the Commissioner is not bound to remove an escape classification if advised to do so by the Escape Review Committee.[154] In order for Escape Risk Committee to recommend that an E classification be removed it must be satisfied, on the material before it, that there are 'special circumstances for so doing.'[155]

3.80 A prisoner may be classified as E1 or E2 if they have committed an escape offence 'whether or not he or she is prosecuted or convicted in respect of the offence.'[156] The SORC drew attention to the difficulties arising if a prisoner classified as E has not been convicted of the escape offence forming the basis of their E classification in its 2004 *Annual Report*:

> The perceived difficulty arises in circumstances where the relevant Inmate has not been convicted of an escape offence, but it is nevertheless asserted that his conduct brings him within the definition of escape offence. There is no provision as to how such an assertion is to be tested, nor as to the procedure by which the alleged conduct may be 'found' to be an escape offence. *This unsatisfactory state of affairs was also pointed out in the Council's 2001, 2002 and 2003 reports.*[157]

3.81 Judge Moss QC stated that the definition of an escape risk in the Regulation is 'peculiar':

> They simply have to be seen to commit an escape offence. It does not require an escape; it does not require a conviction. It is a rather peculiar definition.[158]

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152 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, p9

153 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p8

154 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p8

155 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p9

156 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 24

157 Serious Offenders Review Council, *Annual Report for the Year Ended December 2004*, p9 (original emphasis)

158 Judge Moss QC, Evidence, 6 April 2006, p8

Ad hoc review of high security and extreme high security designations by the High Security Inmate Management Committee of the SORC

3.82 The Committee understands that there is no formal mechanism by which a prisoner can initiate an internal review of designation as a high security or extreme high security prisoner. However, Judge Moss QC advised the Committee that the HSIMC does entertain, on an ad hoc basis, representations from prisoners and their solicitors that their designation be reconsidered.[159]

Issues raised by Inquiry participants

3.83 As noted at paragraph 3.2, Inquiry participants raised a number of issues in respect of the prisoner classification system. In this section the Committee considers each of these issues in turn.

Claims that the classification system is complex and confusing

3.84 One Inquiry participant stated that the overlapping use of security classifications with other security designations may become confusing. In this respect, Mr Hutchins of the Legal Aid Commission stated:

> Firstly, there is again a problem with terminology. You must distinguish classification from the other topics that we have mentioned, such as serious offenders and high-risk protection. They are not actually classifications, although it is commonly said that someone might be classified as a high-risk security inmate. But that is really just a tag or a label. The classifications relate to an inmate in the male category being an A for maximum security, a B for medium security or a C for minimum. There is a similar system for females but for some reason Corrective Services call it categories 1, 2, 3 and 4—just to add a bit of confusion to the system.[160]

3.85 Mr Hutchins also suggested that the use of concepts such as 'risk', 'segregation' and 'protection', whether by the Department or by this Committee as part of this Inquiry, may cause confusion amongst persons outside the Department:

> To a person who is outside the gaol system, and even me who has a lot to do with it, this whole area of segregation and high-risk protection is an extremely confusing area and a lot of terms cross over. Sometimes it is very difficult to understand exactly what is meant—whether it is this Committee talking about high risk, or whether it is Corrective Services talking about high risk.[161]

Committee comment

3.86 The Committee agrees that, at least for people who do not work in corrections, the prisoner classification system and associated security designations can be complex and confusing. The

159 Email from Judge Peter Moss QC to Principal Council Officer, 9 May 2006

160 Mr Hutchins, Evidence, 27 March 2006, p18

161 Mr Hutchins, Evidence, 27 March 2006, p16

Committee therefore recommends that the Department of Corrective Services produce information outlining the key aspects of the security classification system, the high security and extreme high security designations, and segregated and protective custody, for both serious offenders and prisoners other than serious offenders, and that the Department publish this information on its website and otherwise make the information available to members of the public.

Recommendation 3

That the Department of Corrective Services produce information outlining the key aspects of the security classification system, the high security and extreme high security designations, and segregated and protective custody, for both serious offenders and prisoners other than serious offenders, and that the Department publish this information on its website and otherwise make the information available to members of the public.

Transparency and accountability in the security classification and associated security designation systems

3.87 In this section the Committee considers complaints that the NSW classification system provides the Commissioner with too wide a discretion, lacks transparency and lacks a formal review mechanism binding on the Commissioner. Complaints particular to the AA/5 classification are considered in the next section.

Complaints regarding the width of the Commissioner's discretion

3.88 The Committee has been advised that the Commissioner, in his role as a decisions maker, has rejected a relatively low rate of recommendations on classification from SORC (200 out of 2600 in any given year) and in 2004-2005 did not reject any recommendations from the HSIMC in respect of designation as a high security or extreme high security prisoner. However evidence was received concerning the width of the Commissioner's discretion on these matters.

3.89 Mr Peter Bugden, Principal Solicitor for the Coalition of Aboriginal Legal Services, stated that the Commissioner had an effective 'veto' over classifications decisions and that this was the subject of great complaint to Aboriginal Legal Services:

> … the Commissioner has a right to veto any improvement in the classification that someone has, and does use it on a regular basis … that veto is used and it is a source of great complaint to the Aboriginal Legal Services that it takes place.[162]

3.90 The Ombudsman submitted to the Committee that he receives complaints by prisoners that some classification decisions lack objectivity:

> I receive many complaints from inmates about decisions made about their individual classification, and naturally some of them claim a lack of objectivity in the process. I

[162] Mr Bugden, Evidence, 27 March 2006, p32

> am aware of recent amendments the department has made to the classification procedures and will assess their adequacy in light of any complaints made to me.[163]

3.91 However, the Ombudsman was not able to provide particulars of complaints that the classification system lacks objectivity.

Complaints that the classification system lacks transparency

3.92 Ms Pauline Wright, Vice-President of the NSW Council for Civil Liberties, stated that the lack of transparency in the classification process rendered it impossible to state how objective the process is:

> If it is objective, there is no real way of knowing that that is the case. I think you heard from a witness earlier that in reviewing a classification one does not know all the evidence on which it was based. There is no transparency in that process and that is something that concerns us. If one wanted to challenge a classification, one would not have the ability to do so on any proper ground. Indeed, there is no real review process in place as far as I am aware.[164]

Absence of binding review mechanism

3.93 The NSW Council for Civil Liberties argued that the Commissioner's discretion as to classification ought to be subject to review. In this regard, Ms Wright stated that:

> If the Commissioner is to be given this sort of power—and one can see that that may be appropriate—the capacity to make that decision should be subject to a review, and the Commissioner's exercise of that power ought to be transparent and subject to review.[165]

3.94 Mr Hutchins submitted that the internal classification review system is effectively subject to the discretion of the Commissioner: 'If he decides no, basically that is the end of the story.'[166]

3.95 The Committee notes that the effectiveness of judicial review of decisions of the Commissioner is diminished, because, as noted by the Legal Aid Commission of NSW, judicial review is 'outside the means of most prisoners and … not one which would often attract a grant of aid.'[167]

3.96 The Commission also submitted that 'the case law shows that there is a reluctance of courts to interfere in prison administrative decisions.'[168] Further, the Commission submitted that the

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163 Submission 8, p2

164 Ms Pauline Wright, Vice-President, NSW Council for Civil Liberties, Evidence, 27 March 2006, p23

165 Ms Wright, Evidence, 27 March 2006, p26

166 Mr Hutchins, Evidence, 27 March 2006, p16

167 Submission 21, p3

168 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 1, p1

internal review process 'is not transparent and there is no formal appeal from classification decisions.'[169]

Suggested expansion of the role of the Serious Offenders Review Council

3.97 The Committee did not receive any evidence of workable solutions to the problems identified by Inquiry participants discussed above. The only direct evidence on this point came from Judge Moss QC, who was asked by a Committee member whether it would be possible to expand the role of the SORC to enable it to make binding decisions regarding the classification of prisoners. Judge Moss QC stated that it would not be possible for the SORC 'to be both a recommending body and a review body, we would have to lose one or the other.'[170] Judge Moss QC also queried whether the judgement of the SORC would be any better than the judgement of the Commissioner:

> … query where we get the expertise over and above the expertise that the Commissioner has. I could not tell you, Mr Breen, that I am satisfied that our judgment is any better than the Commissioner's judgment.[171]

Committee comment

3.98 The Committee agrees with Commissioner Woodham's assessment that an effective security classification system is integral to the good management of a correctional centre. It is in everyone's interest, therefore, that prisoners be properly classified and that, where appropriate, additional security designations be made.

3.99 Decisions regarding classification, designation as a high security or extreme high security prisoner, and segregated and protected custody are within the discretion of the Commissioner. Although unlimited in most respects, the Commissioner's discretion is in practice subject to a range of factors. The practical limitations on the exercise of the Commissioner's discretion include the following:

- The size of the prison population requires the Commissioner to delegate his powers with respect to general classification decisions to officers within the Department who have the benefit of advice from case management officers assigned to particular prisoners.
- The Department has prepared a detailed Inmate Classification and Case Management Procedures Manual.
- In respect of serious offenders, the Commissioner is advised by the Serious Offenders Review Council.
- In respect of high security and extreme high security prisoners, the Commissioner is advised by the High Security Inmate Management Committee.

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169 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 1, p1

170 Judge Moss QC, Evidence, 6 April 2006, p5

171 Judge Moss QC, Evidence, 6 April 2006, p5

- In respect of E classified prisoners, the Commissioner is advised by the Escape Review Committee.

3.100 Further, prisoners subject to segregated and protective custody directions can obtain a binding review of those directions on application to the SORC.

3.101 Nevertheless, some Inquiry participants argued that the classification system operates unfairly in that it allows too great a discretion to the Commissioner and lacks transparency and a binding review mechanism. These criticisms were expressed at a general level, and the Committee did not receive evidence of particular instances in which it was alleged that classification decisions had been made inappropriately.

3.102 Further, the Committee did not receive evidence of any alternative to the current system in which the Commissioner has a wide discretion as to the classification and designation of prisoners. Accordingly, the Committee makes no recommendation that the discretion of the Commissioner be reduced in relation to security classifications or to the other range of designations discussed in this report.

3.103 The Committee has therefore focussed on reforms directed to improving the internal review mechanism already in place within the Department. As noted at paragraph 3.66, prisoners may seek an internal, non-binding review of their security classification if they are able to make out 'new and relevant substantiated information additional to information the decision-maker had when making the decision and which, on balance, would most likely have altered the decision.'[172]

3.104 The Committee considers that the internal review mechanism would work more effectively if prisoners have access to the reasons of the Commissioner or his delegate and if prisoners were aware of the material relied upon by the Commissioner or his delegate in coming to a decision.

3.105 However, the size of the prison population and the large number of classification decisions required to be made in any one year imposes a limit on the capacity of the Commissioner to provide reasons and to identify materials. The Committee therefore considers that the resources of the Department should be concentrated on those cases where the consequences of a classification decision are most severe.

Criticisms of Category AA and Category 5 classifications

3.106 In October 2004 the Government gazetted the Crimes (Administration of Sentences) Amendment (Category AA Inmates) Regulation 2004 (NSW).[173] The Regulation amended the prisoner classification system by creating the new Category AA and Category 5 classifications for males and females respectively.

3.107 The classifications provides that AA/5 inmates are:

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172 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 12, p8

173 The regulation introducing the AA and 5 classifications was subject of an unsuccessful disallowance motion in the House on 11 November 2004; Legislative Council, New South Wales, *Hansard*, 11 November 2004, p12649

> … the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.[174]

3.108 In this section the Committee provides background information concerning the rationale for the AA/5 classification, documents the conditions associated with AA/5 classification, and considers claims made by the NSW Council for Civil Liberties that the AA/5 classification infringes the human rights of persons so classified.

Rationale for AA/5 classification

3.109 The rationale for the AA/5 classification largely relates to the threat of terrorism to Australia. Persons charged with terrorist offences are regarded as representing a new and special risk to the security of the state, justifying a special security rating within the correctional system. The then Justice Minister, the Hon John Hatzistergos MLC, told the House on 11 November 2004:

> The number of terrorist inmates in custody is likely to continue to rise, and the threat posed by these inmates and others who share their sympathies is very real. There are two main dangers. The first is that if adequate security is not maintained they will continue to plan and co-ordinate terrorist activities from inside prison. The second is that they will recruit fellow inmates to their insidious cause. The overseas experience is quite chilling. The FBI has identified prisoners as one of the top three highest risk groups for terrorist recruitment activities. An Al-Qaeda training manual, found by Manchester Metropolitan Police in a raid, instructed operatives, if incarcerated, to establish programs and try to recruit candidates who are disenchanted with their country's policies.[175]

Application of AA/5 classification

3.110 The Committee notes that discussion of the AA/5 classification generally relates to persons charged with or convicted of terrorism offences. The Committee also notes that there seems to be a widespread perception that the AA/5 classification is for these prisoners only, and for all of these prisoners. However, not all persons charged with or convicted of terrorist offences will be classified as AA, and not all persons classified as AA will be persons charged with or convicted of terrorism offences. In this regard, the Minister stated:

> I want to make it quite clear also that it is expected that this classification will be applied to a very small number of inmates. Further, it will not necessarily be confined to inmates who are being held for terrorism-related offences. For many of them, the high risk maximum security A classification will be used, and that will be sufficient. But there may be circumstances in which individuals may be charged with other

174 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 22 and cl 23

175 The Hon John Hatzistergos MLC, Legislative Council, New South Wales, *Hansard*, 11 November 2004, p12652

> offences and, because of their circumstances and in particular their express sympathies and other issues, it is appropriate that they have AA classification.[176]

3.111 Commissioner Woodham advised the Committee of the processes for initial assessment of persons charged with terrorist offences:

> When such inmates are received into custody a risk assessment will commence using co-operative national resources to determine the level of threat posed by each inmate. They will be housed only at designated centres. The security risk assessment processing incorporates accommodation and association issues. All escorts will require a security risk assessment and preparation of operational orders outlining the escort methodology and the level of security and restraining.[177]

3.112 The Department aims to complete an initial security risk assessment within 48 hours, and a full security risk assessment within two weeks.[178] Prisoners are subject to a segregated custody direction for the duration of the security risk assessment, and are housed in single cell accommodation during this period.[179] The security risk assessment forms the basis of a recommendation to Commissioner Woodham by the Assistant Commissioner, Security and Intelligence, and the Chief Superintendent Office as to classification and placement.[180]

3.113 Mr Brian Kelly, Acting Assistant Commissioner, Security and Intelligence indicated that the Department has access to intelligence information from a range of government agencies and that the Department considers this information when advising the Commissioner as to the classification of inmates as AA/5. Mr Kelly, in relation to particular remandees referred to by a Committee member, indicated that this process can take some time:

> Since their reception the department has continually assessed their level of risk as information has become available from relevant law enforcement agencies. This has been a fairly slow process as the information has filtered through various layers of different agencies, both State and Federal. [181]

3.114 Commissioner Woodham advised that only two prisoners were classified as AA/5 in 2004-2005.[182] He also advised that, as at 3 April 2006, no female prisoner had been classified as 5[183],

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176 The Hon John Hatzistergos MLC, Legislative Council, New South Wales, *Hansard*, 11 November 2004, p12653

177 Commissioner Woodham, Evidence, 8 December 2005, p39

178 Tabled document, Department of Corrective Services, *Commissioner's Instruction No 13/2005: Category AA and Category 5 Inmates' Management Regime*, p6

179 Tabled document, *Commissioner's Instruction No 13/2005: Category AA and Category 5 Inmates' Management Regime*, p6

180 Tabled document, *Commissioner's Instruction No 13/2005: Category AA and Category 5 Inmates' Management Regime*, p6

181 Mr Brian Kelly, Acting Assistant Commissioner, Security and Intelligence, Department of Corrective Services, Evidence, 3 April 2006, p36

182 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 2, p3

183 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 2, p3

although he was at that date considering the placement of a female remandee charged with terrorist offences.[184]

3.115 The Committee notes that most of the evidence received by it in relation to the AA/5 classification relates to male inmates. The Committee has therefore concentrated its discussion on AA inmates, although the issues raised relate equally to female prisoners classified as 5.

3.116 The Committee also notes that persons charged with, or convicted of, terrorist offences in countries other than Australia and who are subsequently transferred to Australia may also be subject to an AA/5 classification.[185]

Special measures in respect of prisoners classified AA/5

3.117 The Committee was informed that the Department has developed special policies regarding the treatment of prisoners classified AA/5. The Department has developed a 'Category AA and Category 5 Management Regime' which forms section 23 of the Department's Operations Procedures Manual. In addition, Commissioner Woodham provided detailed evidence regarding aspects of the AA management regime at the public hearing on 8 December 2005.

3.118 The Committee was advised that persons classified AA/5 are not necessarily placed in the High Risk Management Unit (HRMU) at Goulburn Correctional Centre. The Executive Placement Group determines the initial placement with the concurrence of Commissioner Woodham.[186] However, as noted above, the Regulation provides that all prisoners classified as AA/5 must 'at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.'[187]

3.119 On reception into the custody of the Department persons are initially placed in a high security facility in isolation from other inmates. Commissioner Woodham advised the Committee that the movement of AA/5 classified inmates is subject to special precautions:

> When escorting category AA prisoners, or category 5 inmates for females, the security risk assessment and operational orders are to be prepared by the general manager of security and investigations. Security unit and hostage response officers are to conduct the escort, and the inmates are escorted in handcuffs with a security belt attached to their handcuffs and ankle cuffs, and in orange overalls.[188]

3.120 AA/5 inmates wear orange overalls 'during visits and whenever deemed necessary for reasons of security by the senior assistant commissioner of security intelligence.'[189]

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184 Commissioner Woodham, Evidence, 3 April 2006, p38

185 Tabled document, *Commissioner's Instruction No 13/2005: Category AA and Category 5 Inmates' Management Regime*, p6

186 Tabled document, *Commissioner's Instruction No 13/2005: Category AA and Category 5 Inmates' Management Regime*, p6

187 Crimes (Administration of Sentences) Regulation 2001 (NSW), cl 22

188 Commissioner Woodham, Evidence, 8 December 2005, p39

189 Commissioner Woodham, Evidence, 8 December 2005, p40

3.121 Commissioner Woodham also noted that contact by non-custodial persons, including legal representatives, is tightly controlled. For example, all telephone calls to and from AA/5 inmates, except calls to legal representatives and exempt bodies, are monitored and logged.[190] Visitors to AA/5 prisoners are subject to approval by the Department based on criminal history checks. All visitors must be vetted and approved by the Department.[191] In addition, visitors are photographed and subject to bio-metric testing, and all visits are supervised by officers of the Department via closed-circuit television.[192] All visits are 'non-contact' visits unless approved by the Commissioner.[193] Visits to AA/5 classified inmates occur outside normal visiting hours and in isolation from other visits. As far as practicable, only one AA/5 inmate may have a visitor at any one time.[194]

3.122 AA/5 inmates are excluded from the jurisdiction of the Official Visitor. The then Justice Minister, the Hon John Hatzistergos MLC, advised the House on 11 November 2004 that the Official Visitors had been excluded from AA/5 inmates because it was considered dangerous for an Official Visitor to meet with an AA/5 inmate alone:

> One of the things we uncovered in study tours undertaken by the New South Wales Department of Corrective Services and Corrections Victoria was the need at all times for these inmates to be approached by two persons, not one individual. For safety and security reasons it is not appropriate than an official visitor acting alone take up their issues because of the potential of that person being subjected to threats or other pressure by the inmate. It is more appropriate that any complaints by this specific group of inmates that would ordinarily go to the official visitor be taken up by the New South Wales Ombudsman.[195]

3.123 Commissioner Woodham advised the Committee that legal visitors are also subject to review by the Department for the purposes of confirming the identity and bona fides of the legal representative:

> Relevant law enforcement agencies must be advised of the identities of the nominated legal representatives. We have already had an incident in which a legal visit was not what it was supposed to be. All visits must be booked in advance.[196]

3.124 Commissioner Woodham also advised the Committee that all correspondence with AA/5 classified inmates, except correspondence with exempt persons or bodies, is subject to search by the Department: 'Where practical, the mail must be opened, inspected, read, copied, and registered. We copy every piece of correspondence to and from inmates, and we catalogue it as well.'[197]

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190 Commissioner Woodham, Evidence, 8 December 2005, pp39-40

191 Commissioner Woodham, Evidence, 8 December 2005, p40

192 Commissioner Woodham, Evidence, 8 December 2005, p40

193 Commissioner Woodham, Evidence, 8 December 2005, p40

194 Commissioner Woodham, Evidence, 8 December 2005, p40

195 The Hon John Hatzistergos MLC, Legislative Council, New South Wales, *Hansard*, 11 November 2004, pp12653-12654

196 Commissioner Woodham, Evidence, 8 December 2005, p40

197 Commissioner Woodham, Evidence, 8 December 2005, p40

3.125 The Department also closely regulates the associations of AA/5 inmates with other prisoners:

> As far as associations are concerned, as part of the security risk assessment process used for classifying inmates to category AA and category 5, the risk assessment team will make recommendations regarding possible risk factors for inmate associations. Category AA and category 5 inmates' requests for inmate associations must include comments from unit staff, the centre intelligence officer, the principal correctional officer or senior assistant superintendent, and the risk assessment team. All inmate association requests must the submitted and approved by the centre manager. Approved associations will be reviewed as required on the basis of security, the behaviour of the inmate involved, and information or intelligence.[198]

Criticism of the AA/5 classification

3.126 The NSW Council for Civil Liberties raised a number of objections to the AA/5 classification which are examined in this section of the Chapter:

- The classification operates by offence rather than risk, and therefore fails to take account of individual cases
- Prosecutors and police may be left open to accusations that they have charged an inmate with terrorist offences improperly i.e. so that the person charged will be subject to the onerous conditions associated with AA/5 classification
- AA/5 classification breaches international human rights standards, particularly in respect of persons on remand
- There is no review mechanism for the Commissioner's decision to classify a prisoner as AA/5
- The Commissioner of Corrective Services is not the competent authority to make decisions regarding perceived risks to national security.

3.127 Judge Moss QC, Chair of the SORC, also suggested that the Regulation establishing the AA/5 classification may be *ultra vires* (invalid) in respect of remandees.

Claims that the AA/5 classification operates according to offence rather than risk

3.128 The NSW Council for Civil Liberties argued that the AA/5 classification operates by offence charged rather than the risk posed by a particular prisoner:

> It amounts to inmate classification *by offence charged*, rather than by *risk assessment* on a case-by-case basis. There is no rational reason why all terrorist suspects or offenders necessarily represent an *actual* risk to the general prison population or staff.[199]

3.129 Ms Pauline Wright, Vice President of the NSW Council for Civil Liberties, stated that the AA/5 classification operates as a blanket category for terrorist suspects and may therefore operate unjustly in some cases:

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198 Commissioner Woodham, Evidence, 8 December 2005, p40

199 Submission 14, NSW Council for Civil Liberties, p6 (original emphasis)

> As you would be aware, there are different levels of seriousness of terrorism offences. Some of them, of course, are extremely serious and others are very much less so. It may be that a person is charged with having indirectly financed a terrorist organisation by having been reckless as to where their money went. That would be far less serious than being involved in a plot to blow up a train in Sydney. There are degrees of difference in terrorist offences. In that sense there should not be a blanket AA categorisation of all terrorist suspects. We have concerns that once blanket categorisations occur inequities apply to individuals being charged.[200]

3.130 As noted at paragraph 3.107, the Regulation provides that AA/5 inmates are to be housed in 'special facilities'. The Council for Civil Liberties submitted that this requirement was irrational:

> There is also no rational reason why they need to be detained in 'special facilities'. The UN Human Rights Committee has made it very clear that this kind of confinement is only to be used in 'exceptional circumstances'.[201]

3.131 The Council for Civil Liberties also submitted that the conditions associated with AA/5 classification are disproportionate and a violation of fundamental civil rights:

> These conditions are not rationally connected to any legitimate aim. They are disproportionate. As such, **the automatic classification of terrorist suspects and offenders as Category AA inmates is arbitrary and a violation of fundamental civil rights**.[202]

Claims that the AA/5 classification may be used improperly

3.132 The Council for Civil Liberties also argued that the AA/5 classification may leave police and prosecutors open to accusations of corruption because of the possibility that a person may be charged with terrorist offences so that he/she will be subject to more onerous conditions whilst imprisoned:

> Furthermore, this inmate classification-by-offence exposes independent organisations outside the Department of Corrective Services to accusations of corruption. For example, the DPP and police are open to accusations that they have charged someone with a terrorist offence in order to ensure that person is classified as a "Category AA" inmate.[203]

Application of AA/5 classification to persons on remand

3.133 As noted at paragraph 3.110, persons on remand as well as persons serving custodial sentences may be classified as AA/5. It should be noted that such remandees have either had bail refused by the Court or have not been able to comply with the conditions of bail. In that regard, Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission of NSW, stated that:

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200 Ms Wright, Evidence, 27 March 2006, p23

201 Submission 14, p6

202 Submission 14, p6 (original emphasis)

203 Submission 14, p7

> The fact that someone who is on remand and who still has the presumption of innocence would be held outside the normal remand population may be an area of concern if the conditions in which they were held were significantly more onerous than that relating to the general remand population.[204]

3.134 Mr Michael Walton, Convenor of the Criminal Justice Sub-Committee of the NSW Council for Civil Liberties, expressed grave concern that persons on remand could be classified as AA/5:

> Perhaps one of the Council's gravest concerns is that remand inmates are being given this category. Under any fair system remand inmates ought to be presumed innocent.[205]

3.135 The Council submitted that, under international law, a state may only discriminate against remand inmates on the basis of a perceived risk to national security in the event of a declared 'public emergency', and where the state has notified the United Nations of such an emergency. The Council submitted that, on that basis, the AA/5 classification is in breach of international law:

> In international law, **national security is not a legitimate ground upon which to discriminate against remand inmates**. Such discrimination is only permitted under the *International Covenant on Civil and Political Rights* in a time of proclaimed public emergency 'which threatens the life of the nation' and which has been officially notified to the UN Secretary-General. These pre-conditions have not been met and therefore NSW is in violation of Australia's international human rights obligations.[206]

3.136 Specifically, the Council submitted that the classification of remandees as AA/5 was in breach of Article 4 of the *International Covenant on Civil and Political Rights* (ICCPR).[207]

3.137 The Council also submitted that the classification of remandees as AA/5 was a breach of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Rules).*[208] The status of the *UN Rules* in international and Australian law is discussed in detail in Chapter Four. For the purposes of this Chapter it is sufficient to note that **the *UN Rules* are guidelines only, and are not binding on Australia.**

3.138 The Committee also notes the suggestion of Judge Moss QC that the regulation establishing the AA/5 rating may be invalid in so far as it applies to remandees:

> As members would be aware, the definition of serious offender in section 3 paragraph (f) of the legislation and the recently amended clause 22 of the regulation dealing with AA inmates were apparently intended to bring the AA remand inmates within the definition of serious offender. When I became aware of this, which was some time after the regulation was amended, I looked closely at the amendments and formed the

204 Mr Sandland, Evidence, 27 March 2006, p15

205 Mr Michael Walton, Convenor, Criminal Justice Sub-Committee, NSW Council for Civil Liberties, Evidence, 27 March 2006, p24

206 Submission 14, p5 (original emphasis)

207 Submission 14, p5

208 Submission 14, p5

> opinion that a question arose as to whether the amended regulation was ineffective, in which case the AA remandees would not be serious offenders because they would not be caught within the definition in the Act. I am still of the opinion that that issue is a live issue.[209]

Claims that the Commissioner is not the appropriate authority to assess risks to national security

3.139 The Council for Civil Liberties expressed the view that the Commissioner of Corrective Services is not the appropriate authority to assess the risk posed by a particular prisoner to national security:

> The Commissioner of Corrective Services is *not* a court of law. He is not a judicial officer. He is an administrator. He is not the appropriate person to decide who is and who is not a terrorist. Nor is the Commissioner the competent authority to decide who is and who is not a 'special risk to national security'.[210]

Absence of review mechanism

3.140 The Council for Civil Liberties argued that, given the onerous conditions associated with AA/5 classification, persons so classified should be able to seek a review of their classification:

> Also as a matter of policy, the grounds on which the Commissioner of Corrective Services may execute his discretion to classify an inmate as a Category AA or Category 5 inmate are extremely disturbing. This decision is *not* reviewable in a court of law. Given the oppressive conditions under which Category AA inmates are treated, this is grossly inappropriate.[211]

3.141 Mr Walton also expressed concern that the Commissioner's discretion to classify a prisoner as AA/5 is not subject to any effective right of review:

> I guess the Council's concern more generally in relation to classification of inmates is that there appears to be no effective means of review. For example, someone classified AA does not necessarily have any recourse either to the New South Wales Ombudsman for review, to the best of my understanding, or to a magistrate or the courts generally.[212]

3.142 Mr Will Hutchins of the Legal Aid Commission of NSW drew attention to the difficulty in obtaining an effective review of the Commissioner's decision to classify a prisoner as AA/5, noting that AA/5 prisoners are excluded from the jurisdiction of the Official Visitor:

> I have a copy of a page from a Corrective Services bulletin that was published in December 2004 that mentions the introduction of this new classification system. One part in it that concerns me states:

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209 Judge Moss QC, Evidence, 6 April 2006, p3

210 Submission 14, p6 (original emphasis)

211 Submission 14, p6 (original emphasis)

212 Mr Walton, Evidence, 27 March 2006, p26

> 'The amending regulation also excludes official visitors from dealing with a complaint from a category AA or category 5 inmate.'
>
> So it certainly appears that they are given this classification and then they are incarcerated in conditions that make it extremely difficult for them to voice any type of complaint about it.[213]

Committee comment

3.143 The Committee notes the argument made by the Council for Civil Liberties that the AA/5 classifications operate according to offence rather than to risk and may therefore cause some injustice in individual cases. The Committee notes that, technically, this is not the case. Although the AA/5 classifications refer to prisoners who 'represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities)', the classification of a prisoner as AA/5 is within the discretion of the Commissioner.

3.144 As such, the AA/5 classifications do not amount to classification by offence, as opposed to risk. As noted above, not all persons charged with or convicted of terrorist offences will be classified as AA/5. Rather, such prisoners are subject to a security risk assessment by the Department and such assessment forms the basis of a recommendation to the Commissioner as to the classification of those persons. The Committee does not consider that the AA/5 classification prevents the Commissioner from taking account of individual cases.

3.145 One Inquiry participant expressed the view that the Commissioner of Corrective Services is not the competent authority to make decisions regarding perceived risks to national security. However, the Committee notes that the Commissioner has access to intelligence information from a range of state and federal agencies. It is apparent that the Commissioner will form a view as to the classification of prisoners as AA/5 on the advice of relevant security agencies. The Committee is therefore satisfied that the Commissioner of Corrective Services is the competent authority to make decisions regarding AA/5 classification.

3.146 The Committee also notes concerns that the AA/5 classification is not subject to any formal review mechanism. The general issue of the reviewability of classification decisions is discussed at 3.101 above.

3.147 As noted at paragraph 3.122, prisoners classified AA/5 are excluded from access to the Official Visitor. The Committee notes that Official Visitors are excluded from AA/5 inmates because it is thought to be dangerous for an Official Visitor to meet with an AA/5 inmate alone.

3.148 The remaining question involves the application of the AA/5 classification to persons on remand. The Committee did not receive sufficient evidence regarding the interpretation of Article 4 of the ICCPR to enable it to express a view as to its application to the AA/5 classification. The Committee therefore recommends that the Minister for Justice review the application of the AA/5 classification to remandees.

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213 Mr Hutchins, Evidence, 27 March 2006, p16

Recommendation 4

That the Minister for Justice review the application of the AA/5 classification to remandees.

Link between the classification system and access to rehabilitation programs for sex offenders

3.149 The progression of sex offenders to the lower levels of the prisoner classification system is dependent on those offenders completing appropriate rehabilitation programs offered by the Department. However, some Inquiry participants raised concerns regarding the efficacy of the programs, and the fairness of the requirement that sex offenders complete such programs when other offenders are not required to do so.

Link between completion of rehabilitation programs and release on parole

3.150 As noted at paragraph 3.15, eligibility for unescorted day leave depends on progression to the lowest classification i.e. C3 for males/1 for females. In turn, successful completion of unescorted day leave is a relevant factor for release on parole.

3.151 Mr Will Hutchins, Solicitor in Charge of the Prisoners Legal Service, Legal Aid Commission of NSW, stated that for sex offenders, progression to the lowest classification is dependent on them addressing their offending behaviour by completing rehabilitation programs:

> The way that is used to test that with sex offenders is whether they have done a course to objectively assist in their rehabilitation. If they have not done a course the recommendations that go to the board by probation parole and that the authority adopt is that they are at high risk of reoffending if they have not done a course.[214]

3.152 Lack of access to rehabilitation programs can therefore impact, indirectly, on the length of a custodial sentence.

3.153 Mr Hutchins also advised that only sex offenders and persons who have committed violent crimes are subject to the requirement to address their offending behaviour by way of a rehabilitation course

> If you are an armed bank robber you can still get parole at the earliest eligible date, even though you might say "I never did that armed robbery. It wasn't me. It was somebody else." But that does not affect their chance of getting parole or lowering their classification but it works that way with sex offenders and with violent offenders who are also in this category of having to do a program.[215]

214 Mr Hutchins, Evidence, 27 March 2006, p19

215 Mr Hutchins, Evidence, 27 March 2006, p19

Efficacy of rehabilitation programs

3.154 Two Inquiry participants expressed concerns about the efficacy of sex offender rehabilitation. Mr Hutchins referred to high drop-out rates in the Custody Based Intensive Treatment Program (CUBIT).[216] Mr Howard Brown, President of the Victims of Crime Assistance League, questioned the efficacy of four of the five sex offender programs offered by the Department, noting that CUBIT is the most rigorous and 'worthwhile' of the five.[217]

Exclusion of sex offenders who deny their guilt

3.155 Mr Hutchins argued that sex offenders who are in denial of their offence should not be automatically excluded from the rehabilitation programs:

> These programs are based on programs that are done by Canada Corrections and I understand that part of its program includes people who are in denial of the offence. It seems unfair to me that deniers, as we call them, cannot have a program as well.[218]

3.156 Mr Hutchins further suggested that the exclusion of 'deniers' from rehabilitation programs may operate unfairly where there is a doubt as to the guilt of the person in question:

> … I would have to say from time to time I see cases—and I would have to say this is rare—where you do feel a strong view that they are not guilty and they are punished for maintaining their stand of "not guilty" of not being considered as eligible for parole at the earliest opportunity and not being considered for minimum security classification. I just feel in that sense it can work a bit of an unfairness because that does not apply to any other inmates in the systems.[219]

Committee comment

3.157 The Committee considers that the requirement that sex offenders complete an appropriate rehabilitation program before being allowed on unescorted day leave is in the public interest and should not only be retained but expanded. The Committee considers that persons in denial of their offence may derive some benefit from appropriately tailored rehabilitation programs. The Committee notes the evidence of Mr Hutchins that such programs are available in other jurisdictions. The Committee recommends that the Department investigate the merits and feasibility of implementing a rehabilitation program for sex offenders who are in denial of their offence.

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216 Mr Hutchins, Evidence, 27 March 2006, p19

217 Mr Howard Brown, President, Victims of Crime Assistance League, Evidence, 3 April 2006, p16

218 Mr Hutchins, Evidence, 27 March 2006, p19

219 Mr Hutchins, Evidence, 27 March 2006, p19

Recommendation 5

That the Department of Corrective Services investigate the merits and feasibility of implementing a rehabilitation program for sex offenders who are in denial of their offence.

Chapter 4 The High Risk Management Unit, Goulburn Correctional Centre

The terms of reference direct the Committee to inquire into the management of high risk prisoners by the Department of Corrective Services with respect to a number of issues, including 'the effectiveness of the High Risk Management Unit' (HRMU) at Goulburn Correctional Centre. In this Chapter the Committee provides background information about the HRMU. The Committee then considers the HRMU correctional philosophy, alleged human rights breaches, the segregation of prisoners within the HRMU and the assignment of prisoners, particularly mentally ill prisoners, to the HRMU.

Overview

4.1 The HRMU, also known as the 'Supermax', is located within the Goulburn Correctional Centre. The HRMU was constructed at a cost of $25.188 million and opened in June 2001.[220] Then Premier, the Hon Bob Carr MP, stated at the opening of the HRMU, that it would house:

> … the worst [inmates] in the NSW prison system … these are the psychopaths, the career criminals, the violent standover man, the paranoid inmates and gang leaders.[221]

4.2 Security arrangements for the HRMU, in terms of both the physical security of the HRMU complex and the day-to-day regime of the prisoners housed there, are strict. The Committee witnessed the former during its inspection of the HRMU on 23 March 2006, and received evidence regarding the latter from Inquiry participants.

4.3 In the course of this Inquiry the Committee received complaints that:

- The HRMU breaches relevant international human rights instruments, particularly in relation to access to natural light and fresh air.
- The HRMU operates as a de facto segregation unit outside the safeguards of relevant legislation.
- Some prisoners have been inappropriately assigned to the HRMU.

4.4 The Department of Corrective Services strongly contested these claims. The Department asserted that the HRMU complies with relevant Australian guidelines for corrections. The Department also contended that the HRMU has been extremely effective in reducing assault rates within the NSW correctional system. The Department contended that by isolating highly dangerous prisoners and subjecting them to a level of detailed supervision and case management, it had succeeded in reducing assault rates in the facilities from which those inmates had been removed.

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220 Legislative Council, New South Wales, *Questions and Answers, No 38*, 22 October 2002, question 295, p471

221 The Hon Bob Carr MP, Premier, 'Premier Carr Opens the New HRMU in Goulburn Gaol – The Most Secure in the Southern Hemisphere', *Media Release*, 1 June 2001

4.5 In this Chapter the Committee provides background information regarding the HRMU before considering the complaints raised by Inquiry participants and noted at paragraph 4.3.

Conduct of Inquiry in respect of HRMU

4.6 In this section the Committee discusses two features of the conduct of the Inquiry in relation to the HRMU: the Committee's site visit to the HRMU on 23 March 2006, and the role of HRMU prisoners in the Inquiry.

Committee site visit to the HRMU

4.7 The Committee undertook an inspection of the HRMU on 23 March 2006. During the visit the Committee observed that the cells in the HRMU are one-person cells with a separate 'day-room' at the front and an open air caged yard at the rear.

4.8 Some day-rooms are shared, allowing for a degree of association between inmates during the day. Inmates without association privileges have access to their own day-room. There is a running track and two basketball courts within the HRMU facility. Prisoners have access to the courts and track depending on their location on the HRMU hierarchy of sanctions and privileges, discussed at paragraph 4.25.

4.9 Prisoners are allowed out of their cells for approximately five and a half hours a day between 9 am and 2:30 pm.[222] During this time the front and rear doors of the cells are open to allow prisoners access to the day room and rear yard.[223] Outside of these periods prisoners have access to natural light through a narrow window in their cell, approximately 10cm in width, running the vertical length of the rear door, and access to forced or ventilated air.

4.10 The Committee notes that the HRMU is a stand-alone facility with its own 'custodial roster, security perimeter, visiting area, clinic facilities and staff amenities.'[224] All visitors to the HRMU are subject to search both on entry to Goulburn Correctional Centre and on entry to the Unit. Committee members were subject to search during the site visit.

4.11 The Committee notes that the HRMU has capacity for 75 inmates in single-bed cells and is currently approximately half-full.[225] Although the HRMU has capacity to house both male and female inmates, to date the HRMU has only housed male inmates.[226]

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222 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p11

223 Mr Chris Linton, Clinical Director, High Risk Management Unit, Evidence, 27 March 2006, p53

224 Department of Corrective Services, *High Risk Management Unit (HRMU) Management Plan*, July 2005, p9

225 Commissioner Ron Woodham, Department of Corrective Services, Evidence, 8 December 2005, p38

226 Commissioner Woodham, Evidence, 8 December 2005, p39

Role of HRMU inmates in this Inquiry

4.12 The Committee did not have the opportunity to meet with inmates housed in the HRMU as part of this Inquiry, nor were any submissions received from HRMU inmates. However, interested groups such as the NSW Council for Civil Liberties and Justice Action raised issues on behalf of prisoners.

Background

4.13 In this section the Committee provides background information regarding the operations of the HRMU, including referral to and release from, and behaviour management strategies within, the HRMU.

The HRMU in context: Grafton and Katingal

4.14 Several Inquiry participants, including Commissioner Woodham, referred to the former correctional facilities at Grafton and Katingal in their evidence regarding the HRMU. The Committee notes the following information regarding Grafton and Katingal by way of background information only.

4.15 From 1943 to 1976 prisoners classified by the Department as 'recalcitrant and intractable' were housed in a specially modified facility at Grafton Gaol. In 1978 the Nagle Royal Commission into New South Wales Prisons (the Royal Commission) described the 33 years in which the facility operated as 'one of the most sordid and shameful episodes in NSW penal history.'[227] The Royal Commission described the regime in place at Grafton as being one built on 'brutality and savagery.'[228] While departmental officers condoned the regime as being the only possible way of maintaining order amongst 'intractable' prisoners, the Royal Commission described this view as 'contrary to all concepts of humanity, and is not in accord with penal philosophy or practice.'[229]

4.16 The Katingal Special Security Unit was constructed at Malabar to replace the Grafton facility.[230] Katingal became operational in 1975 and was closed in 1978. Katingal was built to securely house the state's most dangerous prisoners. The Royal Commission noted that Katingal was a qualified success in fulfilling this aim (there had been one escape), but nevertheless recommended that Katingal be closed. Underlying this recommendation was the view that the most dangerous prisoners should be dispersed throughout the corrections system rather than concentrated in one place.[231] The Royal Commission also found that:

227 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, Volumes I, II, and III, 1978, NSW Government Printer, p108

228 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p116

229 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p119

230 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p122 and p125

231 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p134

> … the cost of Katingal is too high in human terms. It was ill-conceived in the first place, was surrounded by secrecy and defensiveness at a time when public discussion should have been encouraged. Its inmates are now suffering the consequences.[232]

4.17 Much of the criticism of Katingal related to the physical structure of the building. Katingal had no external windows, meaning that prisoners only had access to artificial light and air. The design was also such that 'inmates are isolated, not only from the general prison community, but from most other prisoners in Katingal.'[233]

4.18 The Royal Commission also criticised the disciplinary program utilised at Katingal, which included a scaled system of rewards or privileges. Depending on behaviour, a prisoner was able to access, on a three stage system, items such as books, newspapers, cell furnishing, Minties and potato chips. The right to association with other inmates was also dependent upon the prisoner's position on the scale.[234] The Royal Commission also severely criticised the lack of any prison labour program for Katingal inmates.[235]

4.19 During his evidence Commissioner Woodham noted the deficiencies of the Katingal facility and the need to ensure that the Department did not make the same mistakes when constructing the HRMU:

> Katingal was a nightmare. The best thing that could happen is to knock it down. It was a nightmare for staff to work in there. It was a nightmare for the inmates to be in there. There was nothing but disturbances and problems for the entire life of that facility. As a matter of fact, I took the architects through there as we were designing the Supermax to make sure that they never ever make the mistake again of doing anything like it. It has no external security. They broke into it. They broke out of it. They broke the unbreakable glass. They sawed the unsawable bars … There was no physical contact between staff and the inmates. If you go to the Supermax gaol, it has been designed deliberately so that every day every inmate in every cell has to be talked to and have contact with people. It is a whole different regime. There is natural light.[236]

4.20 Commissioner Woodham stated that: 'everything that was not in Katingal we made sure we put into the Supermax gaol, which was deliberately designed as a long-term housing unit.'[237] In this respect, Commissioner Woodham also noted that:

> It was a deliberate intention of mine, when we built the HRMU, that we would not duplicate the electronic zoo that was constructed at Katingal, where staff had no physical contact with inmates, and sometimes at all. In the HRMU, staff have to have personal contact with the inmates virtually every time they open the cell. You cannot open them electronically and let all the doors fly open like you see in American

232 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p133

233 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p133

234 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p129

235 J Nagle, *Report of the Royal Commission into New South Wales Prisons*, 1978, p132

236 Commissioner Woodham, Evidence, 8 December 2005, p36

237 Commissioner Woodham, Evidence, 8 December 2005, p36

> movies. They have to go through each individual door, unlock it, talk to the prisoner and make sure they are okay.[238]

HRMU correctional philosophy

4.21 In considering underlying corrections practice at the HRMU the Committee has had regard to the objectives of the Department in constructing and operating the HRMU. In this respect, Mr Chris Linton, HRMU Clinical Director, advised the Committee that the primary goals of the HRMU are security related and include the minimisation of violence within the correctional system:

> The primary goals of the HRMU are security related, and the unit achieves its security objectives very well. It should also be made clear that the unit is not primarily a therapeutic unit, although it does have therapeutic aspects. As I said before, it relates to one part of the statewide violence prevention framework that aims to reduce violence within the prison system. The HRMU can be viewed as part of a pathway for some violent offenders through the system, linking them to later programs addressing their offending behaviour … Inmates are offered the opportunity to participate in a range of programs that might assist them in meeting their rehabilitative goals and assist in the preparation for participation in further intervention programs after they leave the HRMU.[239]

4.22 The Committee notes that the HRMU Management Plan, which was provided to the Committee by the Department, describes the basic philosophy of corrections within the HRMU as one based on 'offender management':

> The underpinning philosophy of the HRMU is the safe, secure and humane management of all inmates placed in the Unit while maximising their prospects of progression to mainstream correctional management … The HRMU is the first Unit of its kind in Australia in which the primary focus is on offender management with specific consideration to behaviours and attitudes.[240]

4.23 Central to an 'offender management' approach to corrections is the interaction between staff and prisoners. In this regard, the HRMU Management Plan states:

> At the core of the HRMU philosophy lies the quality of interaction between staff and inmates. This interaction is carried out in a structured and prescribed way and always involves at least two members of staff per inmate. It occurs within the parameters of dynamic security and focused case management in which inmate behaviour and attitudes are constantly monitored.[241]

4.24 The HRMU Management Plan indicates that the Department produces a behaviour management plan for each HRMU inmate 'which includes written, verbal and physical interventions to manage inmate behaviour.'[242]

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238 Commissioner Woodham, Evidence, 3 April 2006, p37

239 Mr Linton, Evidence, 27 March 2006, pp59-60

240 Department of Corrective Services, *HRMU Management Plan*, July 2005, p6

241 Department of Corrective Services, *HRMU Management Plan*, July 2005, p7

242 Department of Corrective Services, *HRMU Management Plan*, July 2005, p7

The hierarchy of sanctions and privileges

4.25 A key component of the HRMU inmate management regime is the hierarchy of sanctions and privileges. The hierarchy is a scaled system of rewards and punishments through which prisoners can progress by exhibiting improvement in their behaviour. The hierarchy consists of three 'stages' each comprising a number of increments or 'levels.'[243] Two additional 'stages' (stages 4 and 5) are available for inmates transitioning out of the HRMU.[244]

4.26 Underlying the use of the hierarchy is the view that some prisoners are more responsive to tangible rewards than social reinforcement, as explained by Mr Linton:

> While some research suggests that behaviour of adults can be modified through the use of social reinforcers such as praise and encouragement, which we use at the HRMU, some inmates do not necessarily respond to that kind of reinforcement and are much more motivated by tangible rewards. The system is based around tangible rewards as well as those social reinforcers.[245]

4.27 Commissioner Woodham advised the Committee that, upon reception to the HRMU, prisoners are subject to an initial assessment process and do not have access to any of the privileges available on the hierarchy:

> In the first 14 days they are in there—when they are getting reassessed after coming in there we make sure that they should be there—they do not get anything, not a thing. They do not take any of their own personal property in there, for the obvious reason. Every single thing that they have in there is given to them by us. They cannot get anything brought in from anyone else. But over a period of time they can associate with somebody.[246]

4.28 Mr Linton described some of the key features of the hierarchy of sanctions and privileges to the Committee, including the use of case plans to manage the progression of inmates to the higher levels of the hierarchy based on their achievement of agreed behavioural goals or targets. In this respect, Mr Linton advised the Committee that:

> Case plans are developed for each inmate and that is done with their involvement. That identifies goals to be achieved. They might be something simple such as the absence of intimidation and abuse towards staff for a period of time. An inmate's movement through the hierarchy is based on their participation in achieving the objectives that are specified in the case plan.[247]

4.29 Mr Linton described the kinds of privileges available across various levels of the hierarchy, including both material possessions and association privileges:

> The hierarchy has a number of stages comprising three levels. At each stage and level an inmate has access to greater levels of privileges in a number of areas. That includes,

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243 Department of Corrective Services, *HRMU Management Plan*, July 2005, p18

244 Department of Corrective Services, *HRMU Management Plan*, July 2005, p18

245 Mr Linton, Evidence*,* 27 March 2006, p57

246 Commissioner Woodham, Evidence*,* 8 December 2005, p39

247 Mr Linton, Evidence, 27 March 2006, p56

> for example, associations with other inmates, food buy-ups, the number of books, articles, newspapers, magazines and tapes able to be kept in their cells, and access to departmental property such as radios, walkmans, jugs, fridges, microwaves and televisions.[248]

4.30 Mr Linton advised the Committee of the distribution of HRMU inmates across the hierarchy as at 26 March 2006, the most recent date for which the Committee has figures:

> As of yesterday one inmate was on stage zero of the program, 12 on stage 1, six on stage 2, and 16 on stage 3 of the hierarchy. That is likely to over-represent the typical number of inmates on stage 1 of the program as there has been an unusually high number of recent receptions to the centre and they all start on stage 1 after they finish the assessment stage.[249]

4.31 The Committee was advised by Mr Linton that, of the 16 prisoners on stage 3, 11 were on stage 3, level 3, entitling them to use of the running track.[250] Mr Linton later advised that 18 prisoners had access to the basketball courts.[251] Decisions regarding the movement of a prisoner through the hierarchy are made by the prisoner's case management team.[252]

4.32 One of the most significant privileges regulated by the hierarchy is the right to associate with other prisoners. In regards to association, Mr Linton stated that the hierarchy:

> … includes the range of associations that are available to other inmates. An inmate on a higher level of the program can nominate whom he would like to associate with. That is subject to a security review. Not all inmates are able to associate with inmates that they nominate.[253]

4.33 Commissioner Woodham advised the Committee that the Department uses association privileges for HRMU inmates as a reward for good behaviour, and indicated that there are stages of the hierarchy on which prisoners have no association privileges:

> … a lot of the association depends on their behaviour, as the reward … When they get to the stage where they can associate with someone else, we pick that person and we rotate take them around so they do not keep associating with the same person.[254]

4.34 Commissioner Woodham also advised that the Department rotates the prisoners with whom prisoners may associate in order to minimise the risk of inmates conspiring together to escape or assault staff:

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248 Mr Linton, Evidence, 27 March 2006, p57

249 Mr Linton, Evidence, 27 March 2006, p57

250 Mr Linton, Evidence, 27 March 2006, p61

251 Answers to questions on notice taken during evidence 27 March 2006, Mr Chris Linton, Clinical Director, High Risk Management Unit, Question 3, p2

252 Mr Linton, Evidence, 27 March 2006, p56

253 Mr Linton, Evidence, 27 March 2006, p57

254 Commissioner Woodham, Evidence, 3 April 2006, pp29-30

> If you know anything about maximum security gaols and how escapes and assaults are planned, just leave some of these heavies together for long periods of time. By mixing them up and moving them around, keeping them on the move, it is fairly hard to put a detailed plan together where certain individuals are going to back one another up to do something.[255]

4.35 Mr Brian Kelly, Acting Assistant Commissioner, Security and Intelligence, informed the Committee that inmates can elect up to four other inmates with whom to associate, subject to the approval of the Department, and with the proviso that only two inmates may associate at any one time:

> In managing those inmates we allow them to elect what other inmates they would like to associate with. When you say that they associate with only one other inmate, that is only one other inmate at any one particular time, but they can associate, in any period of time, with four other inmates. There will only be two together in any particular period or any particular yard, if you like.[256]

4.36 Association privileges are further discussed in relation to the segregation of inmates at paragraph 4.117.

Assignment to HRMU: the referral process

4.37 Prisoners can be assigned to the HRMU from other correctional centres or can be housed in the HRMU whilst on remand. The HRMU Management Plan states that 'placement in the HRMU follows a standardised referral process or Commissioner's direction.'[257] The referral process is designed to ensure that only inmates who pose a security risk, based on a set of identified factors, are accepted into the HRMU:

> The referral process ensures that only inmates who have been identified as posing a security risk, or meet certain established indicators with regard to the safety and security of a correctional centre, are referred to, or placed in, the HRMU.[258]

4.38 The Department considers the following factors when considering the placement of a prisoner in the HRMU:

- Escape risk beyond the management capacity of secure correctional centres
- High public interest due to extremely serious criminal activities
- Organising or perpetrating serious criminal activity whilst in custody
- Extreme level of planned and strategic violence.[259]

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255 Commissioner Woodham, Evidence, 3 April 2006, p30

256 Mr Brian Kelly, Acting Assistant Commissioner, Security and Intelligence, Department of Corrective Services, Evidence, 3 April 2006, p30. See also *HRMU Management Plan*, p3

257 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

258 Department of Corrective Services, *HRMU Management Plan*, July 2005, p12

259 Department of Corrective Services, *HRMU Management Plan*, July 2005, p12

4.39 Prisoners are referred to the HRMU by a referral committee comprising the general manager of the facility from which they are referred and other senior staff including intelligence staff.[260] Referrals are then reviewed by the HRMU Referral Review Committee, comprising the General Manager, the Manager of Security and the Clinical Director of the HRMU.[261] The HRMU Management Plan indicates that 'the Commissioner or [his] appointed delegate may override the referral process.'[262] However, the Committee did not receive evidence of the circumstances in which the Commissioner or his delegate would take such action.

4.40 All persons assigned to the HRMU are classified as A1 or AA, regardless of their classification at the referring institution.[263] A1 and AA classifications are maximum security classifications. The security classification scales are included at Appendix 4 and discussed in detail in Chapter Three.

4.41 Inmates have no right of appeal of a decision to assign them to the HRMU.[264] The general issue of the reviewability of decisions made by the Commissioner or his delegates is discussed in Chapter 3.

Types of prisoners assigned to the HRMU

4.42 The Committee notes that persons on remand, as well as prisoners who have already been sentenced, are eligible for assignment to the HRMU.[265] The HRMU Management Plan states that the HRMU is designed to safely and securely hold inmates:

> … who have been assessed as posing a high risk to the safety of the community, correctional centre staff and/or other correctional centre inmates or [who] present a serious threat to the security and good order of a correctional centre and a serious threat of escape.[266]

4.43 Prisoners assigned to the HRMU are commonly:

- Severely anti-social and too violent to be housed in the regular correctional facilities
- Severely paranoid and unable to participate in programs requiring participation with others
- Angry and impulsive and use violence as a means to an end
- Covertly linked to criminal and/or security threat groups.[267]

260 Department of Corrective Services, *HRMU Management Plan*, July 2005, p12

261 Department of Corrective Services, *HRMU Management Plan*, July 2005, pp12-13

262 Department of Corrective Services, *HRMU Management Plan*, July 2005, p6

263 Department of Corrective Services, *HRMU Management Plan*, July 2005, p9

264 Commissioner Woodham, Evidence, 8 December 2005, p35

265 Legislative Council, New South Wales, *Questions and Answers, No 86*, 7 December 2004, question 1817, p2531

266 Department of Corrective Services, *HRMU Management Plan*, July 2005, p6

267 Department of Corrective Services, *HRMU Management Plan*, July 2005, p9

4.44 Commissioner Woodham provided the following examples of inmates assigned to the HRMU:

> … [inmates who] attempt to escape or escape; introduction of contraband that threatens the security of a prison. We have got a person in there that is convicted of—it is not just intelligence—smuggling a mobile phone into a gaol and conspiring with others to murder witnesses in his trial.[268]

4.45 Mr Kelly highlighted the large number of life sentences being served by prisoners housed in the HRMU, and the large number of HRMU inmates with murder convictions, as at 3 April 2006:

> Of the 36 inmates, six are unsentenced. The other 30 are serving a total of 622 years with 23 natural life sentences. There are 21 inmates who have been convicted of murder and that relates to 42 murders. Of those inmates eight are serving natural life sentences and five are facing terrorist charges.[269]

Assessment of prisoners on arrival at HRMU

4.46 Prisoners assigned to the HRMU are assessed upon entry to 'identify an inmate's individual risk factors in relation to their criminal and/or violent behaviour as well as to establish the level of risk an inmate may pose to the safety and security of the staff and the HRMU itself.'[270] The assessment process is designed to identify issues regarding 'anger, impulsivity, psychopathy, hostility, criminal attitudes, interpersonal behaviour and substance abuse.'[271] This information forms the basis of case management of HRMU inmates. The assessment phase includes a mental health status examination and suicide risk assessment.[272]

4.47 Initial assessment takes place in Unit 7 of the HRMU. Whilst in Unit 7 for initial assessment, prisoners are subject of a segregated custody direction.[273] The Committee was informed that, while initial assessment is usually complete within two weeks[274] it is possible that a prisoner may stay in Unit 7 for a considerable period of time. The segregation of inmates within the HRMU was raised as a matter of concern during the Inquiry and is discussed at paragraphs 4.98 to 4.121.

4.48 Subsequent to assessment, prisoners are moved to Unit 8 or 9. Mr Linton advised the Committee that conditions in Unit 7 are more restrictive than those in Units 8 or 9:

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268 Commissioner Woodham, Evidence, 8 December 2005, p34

269 Mr Kelly, Evidence, 3 April 2006, p30

270 Department of Corrective Services, *HRMU Management Plan*, July 2005, p14

271 Department of Corrective Services, *HRMU Management Plan*, July 2005, p14

272 Department of Corrective Services, *HRMU Management Plan*, July 2005, p14

273 Answers to questions on notice taken during evidence 27 March 2006, Mr Linton, Question 2, p2

274 Mr Linton, Evidence, 27 March 2006, p59

> There is a difference between unit 7 and units 8 and 9. Unit 7 gives the opportunity for a greater level of security for staff and for inmates within the unit. Units 8 and 9 are less restrictive in that sense.[275]

Release from HRMU

4.49 There is no fixed length to a prisoner's term in the HRMU. The HRMU Management Plan foreshadows that 'some inmates who are placed at the HRMU will remain there for a considerable time or, in some cases, for the duration of their custodial sentence dependent upon the level of security risk they may pose or any significant change to the assessed security risk.'[276] The Committee notes that during 2004-2005, 14 prisoners were discharged from HRMU.[277]

4.50 Commissioner Woodham noted that, although some prisoners will remain in the HRMU for the rest of their lives, for others there is the possibility of release:

> They get assessed; even when they go into that program they have 14 days of reassessment to make sure that the intelligence is strong enough or their actions are to the degree that warrants that type of management regime. Some of them go back out straightaway and others are retained there, but there is always a possibility of an exit strategy from that program. There are some there that will die there, but there are some that will exit the program and, as I said, there are seven now on their way out.[278]

4.51 The decision to release a prisoner from the HRMU is made by the HRMU Case Management Committee.[279] The HRMU Management Plan indicates that inmates on long term placement in the HRMU are also generally subject to consideration by the High Security Inmate Management Committee and the Commissioner.[280] In considering the release of a prisoner from the HRMU the Department considers 'the degree to which the individual inmate is able to achieve demonstrable changes in his attitudes and behaviour.'[281] Where prisoners are released directly from the HRMU into the public, the Department works to devise 'throughcare strategies' specific to that person.[282]

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275 Mr Linton, Evidence, 27 March 2006, p56

276 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

277 Department of Corrective Services, *Annual Report 2004-2005*, p18

278 Commissioner Woodham, Evidence, 8 December 2005, p36

279 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8. The HRMU Case Management Committee consists of the Assistant Director, Classification, HRMU General Manager and Clinical Director, and General Manager, Goulburn Correctional Centre.

280 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

281 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

282 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

Staffing at HRMU

4.52 As noted at paragraph 4.23, central to an 'offender management' approach to corrections is the level and quality of interaction between inmates and staff. The Department acknowledges that staffing issues are critical to the successful operation of the HRMU: 'The success of the HRMU and the consistent high level of security are dependent on the effective communication and co-operation between all staff.'[283]

4.53 Because of its particular population, the HRMU presents special challenges, as well as significant risks, to Departmental staff:

> Staff must perform their duties in an environment in which inmates, by reputation, are manipulative, combative or threatening. Staff must work together and be able to rely on each other to a greater degree than in most correctional settings … Failure to properly restrain or manage an inmate, for example, or to perform a thorough search can lead to disastrous results.[284]

4.54 Officers assigned to the HRMU receive special training in areas such as security, anti-corruption techniques, case management and inmate assessment in a course lasting five days.[285] In this, regard the HRMU Management Plan states:

> Staff is trained in appropriate communication and conflict management skills to enable them to interact with inmates who can demonstrate overt and covert dangerous behaviours (sic). Staff at the HRMU must be skilled and experienced in maintaining a level of security commensurate to the overall HRMU requirements.[286]

4.55 HRMU custodial staff undertake duties integral to the success of the behaviour management system 'observing, monitoring and documenting inmates' behaviours and [they] provide opportunities for inmates to practice skills learnt and to achieve their target behaviours.'[287]

4.56 In addition to HRMU custodial officers, the Department has allocated a number of non-custodial staff to the HRMU, including a clinical director, psychologist, counsellors, and a part-time literacy and numeracy teacher.[288] HRMU inmates also have access to the Department's regular specialist medical services.[289]

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283 Department of Corrective Services, *HRMU Management Plan*, July 2005, p21

284 Department of Corrective Services, *HRMU Management Plan*, July 2005, p24

285 Department of Corrective Services, *HRMU Management Plan*, July 2005, p24. See also Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 14, p10

286 Department of Corrective Services, *HRMU Management Plan*, July 2005, p21

287 Department of Corrective Services, *HRMU Management Plan*, July 2005, p22

288 Department of Corrective Services, *HRMU Management Plan*, July 2005, p23

289 Department of Corrective Services, *HRMU Management Plan*, July 2005, p23

Effect of HRMU on assault rates in the NSW correctional system

4.57 As noted at paragraph 4.4, during this Inquiry the Department argued that the effectiveness of the HRMU was evident in a decrease in assault rates by prisoners housed in the HRMU. Commissioner Woodham advised the Committee that the preliminary results of a study conducted by the Department indicate that the level of violent assaults committed by prisoners housed in the HRMU is substantially lower than would be expected based on the case history of those inmates:

> The analysis relates only to officially recorded correctional centre offences. It does not include externally adjudicated charges or the main offences for which inmates have been imprisoned. The analysis suggests that the number of violent offences committed by inmates in the HRMU are substantially lower than would be expected based on the inmates history of violent correctional centre offences prior to entry to the HRMU. [290]

4.58 Commissioner Woodham advised the Committee that since the opening of the HRMU in 2001 'there have been two minor inmate-on-inmate assaults and one inmate-on-officer assault.'[291]

4.59 Commissioner Woodham advised the Committee that the preliminary results of the study also indicated a fall in the number of correctional offences committed by HRMU inmates:

> A similar analysis of all other correctional centre offences taken as a group suggests similar conclusions: that is, that inmates commit far fewer correctional centre offences in the HRMU than would be expected based on the history of committing correctional centre offences prior to entry to the HRMU.[292]

4.60 Commissioner Woodham expressed the view that assault rates and other offences are lower in the HRMU because of the intensive interaction between correctional staff and inmates. In that respect, Commissioner Woodham stated:

> Program involvement by inmates is higher in the HRMU because of its focused case management approach. These same inmates would in all probability be housed in segregated custody units if they were in the mainstream correctional system. Their jail offence history tells us that they would be involved in assaults, standover, drugs, and planning escapes and therefore it would be necessary to place them into segregation. In segregated custody they would not get the intensive programs aimed at addressing their offending behaviour.[293]

4.61 Commissioner Woodham also expressed the view that, if not for the HRMU, there would be a higher assault rate in other correctional centres:

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290 Commissioner Woodham, Evidence, 3 April 2006, p37

291 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 18, p13

292 Commissioner Woodham, Evidence, 3 April 2006, p37

293 Commissioner Woodham, Evidence, 3 April 2006, p37

> There would also be a higher number of incidents in the mainstream correctional environment, which undermines our duty of care to provide safe custody for the other inmates. I think the HRMU is very effective in many ways.[294]

Avenues for complaints by prisoners

4.62 Prisoners housed in the HRMU have a number of avenues for complaint regarding the conditions within the HRMU. In this regard, Mr Luke Grant, Assistant Commissioner, Offender Management, referred to the Serious Offenders Review Council, the Ombudsman and the Corrective Services support line as mechanisms by which HRMU inmates can lodge complaints:

> The Serious Offenders Review Council is always able to respond to inquiries, letters and submissions made to it when members of the council meet inmates in person in relation to their classification and to place them before the Commissioner. The Ombudsman's Office operates with all classification of inmate anywhere, to take complaints, as does the Corrective Services support line, which is a telephone line that enables inmates to make complaints of all classifications across the system about the circumstances in which they are being managed.[295]

4.63 The HRMU Management Plan indicates that the official visitor has access to the HRMU.[296] However, the Committee notes that prisoners classified 'AA' or '5' i.e. prisoners who pose a special risk to national security, are excluded from the jurisdiction of the Official Visitor, wherever they are housed. This issue is discussed in Chapter Three at paragraph 3.72.

4.64 The Committee was advised that staff from the Ombudsman's office visit the HRMU at least twice a year to interview staff and inmates, to 'inspect any records relevant to current complaints, and observe the physical conditions of the accommodation.'[297] The Ombudsman stated in his submission that complaints received by him from prisoners housed in the HRMU were in some respects typical of complaints received from NSW prisoners in general:

> Inmates from the HRMU also complain about similar issues to all other inmates, such as food, property, visits, phone calls, but clearly the strict regimen under which they live can have the effect of increasing the frequency of such complaints, as I noted in my recent annual report.[298]

4.65 In his *Annual Report* for 2004-2005 the Ombudsman gave the following examples of complaints received by him from HRMU inmates and which were substantiated by the Ombudsman:

- Two prisoners were illegally segregated

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294 Commissioner Woodham, Evidence, 3 April 2006, p37. See also Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 15, p11

295 Mr Luke Grant, Assistant Commissioner, Offender Management, Department of Corrective Services, Evidence, 3 April 2006, p29

296 Department of Corrective Services, *HRMU Management Plan*, July 2005, p8

297 Submission 8, NSW Ombudsman, p2

298 Submission 8, p1

- An inmate was prevented from making a legal telephone call
- An inmate was denied an electric razor even though his doctor had recommended that he use one to alleviate a medical condition
- An inmate was prevented from associating with another inmate on the basis of an unsubstantiated allegation that had not been put to the inmate
- The Department wrongfully confiscated correspondence from an HRMU inmate to family members advising on business transactions.[299]

4.66 The Committee notes that the segregation of prisoners within the HRMU was raised as an issue of concern during the Inquiry and is discussed at 4.98 below.

Review of HRMU by the Department of Corrective Services

4.67 The HRMU Management Plan indicates that the Department of Corrective Services has established a frame-work for the ongoing evaluation of the HRMU. The Department will assess the HRMU against several criteria including achievement of security objectives, the effectiveness of referral, assessment, placement and exit procedures, compliance with statutory care and management requirements and the safety and well-being of staff and inmates.[300] The Committee was advised by the Department that this review is currently underway.[301]

Committee comment

4.68 The Committee notes that the aims of the HRMU are primarily security related. HRMU correctional philosophy is directed towards the management of inmate behaviour, and in particular, to the minimisation of violence within the correctional system. The preliminary results of the Department's analysis of assault rates and correctional centre offences by HRMU inmates indicate that the HRMU has been a success in this regard.

4.69 The Committee also notes that, although the HRMU is a unique facility, it would be a mistake to consider it in isolation from the larger correctional system. The HRMU is part of the Department's state-wide violence prevention strategy. As Mr Linton noted, the HRMU is a 'pathway' for violent offenders to other programs offered by the Department to assist them to address their offending behaviour. The Committee considers that it is appropriate that the primary focus of HRMU corrections philosophy should be on behaviour management in order to prepare violent inmates for participation in mainstream programs. Inmates who demonstrate success in changing their behaviour and attitudes are eligible for release into the mainstream prison population.

4.70 The Committee considers that community understanding of the aims and underlying philosophy of the HRMU may be furthered by the publication of the Department's analysis of assaults and other correctional centre offences committed by HRMU inmates. The Committee

299 NSW Ombudsman, *Annual Report, 2004-2005*, pp112-113

300 Department of Corrective Services, *HRMU Management Plan*, July 2005, p25

301 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 15, p10

notes that the preliminary results of the study tend to indicate that the HRMU correctional philosophy is having a measurable impact on the behaviour of HRMU inmates. The Committee recommends that the Department publish a paper on its analysis when the study has been completed.

Recommendation 6

That, in order to better inform the public as to the link between High Risk Management Unit (HRMU) correctional philosophy and improvements in the behaviour of HRMU inmates, the Department of Corrective Services publish a paper on its study of assaults and other correctional centre offences committed by HRMU inmates upon completion of the study.

Issues raised by Inquiry participants

4.71 In this section the Committee considers the following complaints made by Inquiry participants in respect of the HRMU:

- The HRMU breaches relevant international human rights instruments, particularly in relation to access to natural light and fresh air.
- The HRMU operates as a de facto segregation unit outside of the safeguards of the relevant legislation.
- Prisoners have been inappropriately assigned to the HRMU.

Complaints that the HRMU breaches international human rights guidelines

4.72 In this section the Committee considers complaints that conditions within the HRMU are in breach of international human rights guidelines regarding the incarceration of prisoners, specifically, that prisoners housed in the HRMU lack sufficient access to natural light and fresh air.

4.73 Before discussing these complaints in detail the Committee briefly discusses the relevant international guidelines, the status of those guidelines in Australian law and the interpretation of the guidelines by corrections agencies in Australia.

International Covenant on Civil and Political Rights and United Nations Standard Minimum Rules for the Treatment of Prisoners

4.74 Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR) and is bound by its provisions. Articles relevant to the treatment of prisoners are Articles 7 and 10(1). Article 7 of the ICCPR provides that:

> No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

4.75 Article 10(1) provides that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

4.76 The Committee notes that the *UN Rules* were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Geneva in 1955, and approved by the United Nations Economic and Social Council by resolutions of that body in 1957 and 1977.

4.77 The NSW Council for Civil Liberties submitted that Article 10(1) should be interpreted in light of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (*UN Rules*).[302]

4.78 The Committee further notes that the *UN Rules* are more akin to a set of guidelines than an inflexible code of conduct for corrections administrators. Clause 1 of the *UN Rules* states that they 'seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.'[303]

4.79 It follows that, although the *UN Rules* are a valuable guide to the treatment of persons in custody, they do not give rise to any obligations in international law. As the Supreme Court of South Australia noted in the 1999 case of *Collins v The State of South Australia*:

> The Minimum Rules are not a convention, treaty or covenant. They do not impose obligations on signatories. They merely declare principles. Consequently there are no obligations in International Law arising from them.[304]

Revised Standard Guidelines for Corrections in Australia

4.80 The *Revised Standard Guidelines for Corrections in Australia* (*Guidelines for Corrections*) grew out of a conference hosted by the Australian Institute of Criminology in 1976 at which it was resolved by interested parties, including corrections administrators, to form a working party to prepare a set of minimum guidelines for the treatment of prisoners in Australia.[305] The *Guidelines for Corrections* are expressed to be:

> … outcomes or goals to be achieved by correctional services rather than a set of absolute standards or laws to be enforced. They represent a statement of national intent, around which each Australian State and Territory jurisdiction must continue to develop its own range of relevant legislative, policy and performance standards that can be expected to be amended from time to time to reflect 'best practice' and community demands at the state and territory level.[306]

4.81 The *Guidelines for Corrections* are based on the *UN Rules*, but contain additions and departures from those *Rules*. The first edition of the *Guidelines for Corrections* was published in 1978. The *Guidelines* have been updated several times, the last update occurring in 2004. NSW agreed at

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302 Submission 14, NSW Council for Civil Liberties, p3

303 UN, *Standard Minimum Rules for the Treatment of Prisoners*, cl 1

304 *Collins v The State of South Australia* [1999] SASC 257 at [22]

305 Australian Law Reform Commission, *Sentencing of Federal Offenders*, Interim Report 15, 1980, Canberra, p146

306 Australian Conference of Corrections Administrators, *Standard Guidelines for Corrections in Australia*, 2004 edition, p2

the Conference of Corrections Ministers in July 2004 to facilitate a further update of the *Guidelines for Corrections* in 2007.[307]

Response of the Department to the UN Rules and the Guidelines for Corrections

4.82 In short, the view taken by the Department and expressed during this Inquiry is that neither the *UN Rules* nor the *Guidelines for Corrections* are binding on the Department, but that, of the two documents, the *Guidelines for Corrections* is the better guide to corrections practice in NSW.

4.83 Commissioner Woodham expressed the view that the *UN Rules* were never intended to describe a penal system in detail:

> I don't think the UN Standard Minimum Rules were ever intended to describe a modern penal system in detail, but to capture the then general consensus of contemporary thought about the most essential elements of the most adequate system of incarceration. It was not intended that all of the rules would be applicable to all countries at all times.[308]

4.84 Commissioner Woodham also argued that the *UN Rules* are out of date: 'to my knowledge the *UN Rules* were formulated in 1955 and revised in 1977, but not since. But the world has not stood still since then.'[309]

4.85 Commissioner Woodham described the *Guidelines for Corrections* in Australia as a statement of intent rather than a set of 'absolute standards':

> … an aspirational document whose principles represent a statement of intent rather than a set of absolute standards or laws to be enforced - guiding principles intended to show the spirit in which correctional programs should be administered and the goals to which administrators should aim.[310]

4.86 However, the Commissioner also expressed the view that the *Guidelines for Corrections* are more up to date, more comprehensive and better suited to local conditions than the *UN Rules*:

> The Preface to the Guidelines notes that first edition was based on the UN Minimum Rules and the Council of Europe Standard Minimum Rules; however the 1986 revised edition included guidelines for community-based corrections, and the 1992 revised edition included material that reflected the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Guidelines were again updated in 1996. The Australian Standard Guidelines are therefore much more comprehensive

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307 Saxby, M, 'Standard Guidelines for Corrections in Australia', *Australian Journal of Correctional Staff Development*, August 2005, vol 1, no 1, www.csa.nsw.gov.au/AJCSD.vol1.no.1.MS.htm (accessed 14 February 2006)

308 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p11

309 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p11

310 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p12

> than the UN Minimum Rules, and more relevant to local conditions and particular circumstances.[311]

Allegations that the HRMU breaches UN Rules

4.87 The Council for Civil Liberties asserted that 'conditions in the HRMU amount to cruel and inhuman treatment' within the meaning of Article 7 of the *ICCPR*.'[312] The Council also submitted that the conditions within the HRMU breached Article 10(1) of the ICCPR.[313] The Council raised a number of concerns to support these claims, but the issue most strongly pressed, by both the Council and by Justice Action, was that prisoners housed in the HRMU have insufficient access to natural light and fresh air.

4.88 The Committee notes that Clause 11 of the *UN Rules* provides that:

> In all places where prisoners are required to live or work,
>
> (a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
>
> (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

Department of Corrective Services response to allegations that the HRMU breaches international human rights guidelines

4.89 As noted at paragraph 4.82, the Department takes the view that the *Guidelines for Corrections*, rather than the *UN Rules*, are the most appropriate guide to corrections practice in NSW. In response to complaints regarding access to natural light and air for HRMU prisoners, Commissioner Woodham argued that the HRMU complies with the *Guidelines for Corrections*:

> The HRMU ventilation exceeds current building codes for ventilation by a significant degree; and is consistent with the Australian Standard Guidelines. In relation to natural light: Committee members would have seen that each HRMU cell has a window to the external yard, which meets the required standard. Often, these windows are covered over by the inmates themselves.[314]

4.90 Mr Linton advised the Committee that prisoners housed in the HRMU have access to natural light and air while the door to the caged yard at the rear of their cell is open for approximately five hours every day:

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311 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p12

312 Submission 14, p3

313 Submission 14, p3

314 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 16, p12

> In terms of access to light, every cell has natural light in it. In terms of access to outside areas, inmates have access to outside areas, where they are open to the fresh air for approximately five hours a day.[315]

4.91 Mr Linton pointed out that many prisoners choose to cover the window at the rear of their cells to block out day-light.[316]

4.92 The Committee notes that for the remaining 19 hours of the day prisoners must remain indoors, and while indoors, have access to ventilated air only. Commissioner Woodham argued that the ventilation system in use in the HRMU provides sufficient 'fresh' air to prisoners, and referred to tests conducted by the Department to support this claim:

> Much has been made about the ventilation system in the HRMU and the alleged lack of fresh air. I think there is much misinformation there as well. Goulburn is an area that experiences extreme weather conditions. The design of the facility indicated the need for a mechanical ventilation system. The heating ventilation and airconditioning [HVAC] system is in line with the relevant building codes and the Australian and New Zealand Standards of Ventilation systems. The HRMU has also been tested by a mechanical engineer and also by an environment health officer. When testing the carbon dioxide levels in the cells they were rated as normal 405 ppm, whatever that means, and not much different from the outside air of 309 ppm, which indicates that the amount of fresh air exchange is good. The percentage of outside airflow was also measured and recorded as 24.4 per cent, which is considered well above the minimum specified in the standard.[317]

4.93 Commissioner Woodham also submitted that conditions within the HRMU are 'humane':

> The inmates are managed under a strict regime with high levels of supervision, but the conditions are humane and they are treated fairly. If the conditions were as dire as some allege, it is my considered opinion that the inmates would react to that. This is not the case. They would have known you were there the other day. There is no way they would not have been kicking doors, singing out and screaming if they wanted to bring attention to themselves or their plight.[318]

Committee comment

4.94 The Committee notes complaints received during this Inquiry that conditions at the HRMU are in breach of Articles 7 and 10(1) of the *International Covenant on Civil and Political Rights*. These Articles, although binding on Australia, contain broad statements of principle rather than detailed directions to corrections administrators. One Inquiry participant submitted that the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (*UN Rules*) are a valuable guide to interpreting the ICCPR. However, the Committee notes the *UN Rules* are a guide to corrections best practice as at 1957. As noted by the Commissioner at paragraph 4.84, the world has not stood still since then. It would be incorrect to suggest that the Department is in breach of international law merely because conditions within the HRMU differ from the *UN Rules*.

315 Mr Linton, Evidence, 3 April 2006, p53

316 Mr Linton, Evidence, 3 April 2006, p53

317 Commissioner Woodham, Evidence, 3 April 2006, p29

318 Commissioner Woodham, Evidence, 3 April 2006, p37

4.95 The evidence received by the Committee in this Inquiry does not bear out any finding that conditions within the HRMU breach Australia's international human rights obligations. Rather, the evidence suggests that the Department is aware of the importance of access to light and air for prisoners. The Department has gone to considerable lengths to ensure that the ventilation system in use at the HRMU is suitable for the climactic conditions of Goulburn and delivers sufficient fresh air to inmates. Further, the physical design of the HRMU is such that prisoners have unrestricted access to natural light and air whilst the caged yard at the rear of their cells is open, generally for five and a half hours a day.

4.96 Committee members were able to observe conditions within the HRMU during the site visit noted at paragraph 4.7. The Committee notes that conditions within the HRMU are significantly more humane than those at the former Katingal facility.

4.97 The Committee makes the observation that the concerns raised in relation to human rights at the HRMU appear to have been magnified by the high security in place at the Unit, and a perceived lack of openness on the part of the Department in providing information about the operations of the HRMU. However, the Committee notes that the Department demonstrated a degree of pride in the Unit and was eager to demonstrate its merits to the Committee. The Department also provided detailed information regarding the operations of the HRMU, which has been published in this report. The Committee is hopeful that the publication of this information will go some way to dispelling community concerns.

Segregation of prisoners and the HRMU

4.98 In this section the Committee considers:

- The legal basis for segregation in NSW correctional centres
- The segregation of prisoners within the HRMU for initial assessment
- Complaints that the HRMU operates as a de facto segregation unit outside the provisions of Part 2, Division 2 of the *Crimes (Administration of Sentences) Act 1999* (NSW).

Lawful segregation under the Crimes (Administration of Sentences) Act 1999 (NSW)

4.99 Section 12 of the *Crimes (Administration of Sentences) Act 1999* (NSW) provides that 'An inmate subject to a segregated or protective custody direction is to be detained':

> (a) in isolation from all other inmates, or
>
> (b) in association only with such other inmates as the Commissioner (or the governor of the correctional centre in the exercise of the Commissioner's functions under section 10 or 11) may determine.

4.100 Judge Peter Moss QC, Chair of the Serious Offenders Review Council (SORC), advised the Committee that 'segregation is simply the removal of an inmate from contact with all other inmates.'[319]

[319] Judge Peter Moss QC, Chair, Serious Offenders Review Council, Evidence, 6 April 2006, p4

4.101 The Committee notes that Inquiry participants used the phrases segregated custody 'direction' and segregation 'order' interchangeably. The Committee has referred to segregated custody 'directions', as this is the term used in the Act.

4.102 For the purposes of this Chapter, the Committee notes that Part 2, Division 2 of the *Crimes (Administration of Sentences) Act 1999* (NSW) provides the Commissioner with a discretion to segregate a prisoner on the grounds of security, safety and the good order of a correctional centre. The Act requires the Commissioner to review a segregation custody direction within three weeks of the direction being made and every three months thereafter. Further, a prisoner who is the subject of a segregated custody direction may apply to the SORC for a review of the direction. The SORC is empowered to discharge a segregated custody direction in the face of opposition from the Commissioner.

4.103 The legislative basis of the segregation of inmates is discussed in more detail in Chapter Three at paragraph 3.56 in the context of the prisoner classification system.

Segregation for the purposes of initial assessment in Unit 7

4.104 As outlined at paragraphs 4.46 to 4.47, upon initial reception at the HRMU prisoners are housed in isolation from other prisoners in Unit 7 while the Department conducts an initial assessment. Prisoners are placed on segregated custody directions for the duration of their initial stay in Unit 7.[320] Initial assessment is usually complete within two weeks. Mr Linton advised the Committee that it was not necessary for inmates to remain on segregated custody for the entire period of their assessment, and that some aspects of the assessment could be conducted in Units 8 and 9:

> … [an] inmates' movement from the segregation area of the unit would not be delayed routinely on the basis that not all assessments had been conducted. It is not essential, for example, that an inmate remain segregated for the purposes of conducting an assessment of their educational needs and achievements. They would be moved to another unit and that assessment could happen later.[321]

4.105 Mr Linton advised the Committee that prisoners housed in the HRMU are also placed on segregated custody directions when transported outside of the HRMU, such as for a court appearance. The direction is revoked on return to the HRMU.[322]

4.106 Segregated custody directions for initial assessment and for travel outside the HRMU together make up the majority of segregation directions issued in respect of HRMU inmates. A minority of directions are issued in respect of 'incidents involving inmates.'[323] Mr Linton advised that, as at 28 April 2006, 14 of the inmates then housed in the HRMU had been subject of a total of 20 segregated custody directions based on 'incidents in the HRMU'.[324]

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320 Department of Corrective Services, *HRMU Management Plan*, July 2005, p12

321 Mr Linton, Evidence, 27 March 2006, p59

322 Answers to questions on notice taken during evidence 27 March 2006, Mr Linton, Question 2, p1

323 Answers to questions on notice taken during evidence 27 March 2006, Mr Linton, Question 2, pp1-2

324 Answers to questions on notice taken during evidence 27 March 2006, Mr Linton, Question 2, p2

4.107 Mr Linton advised the Committee that HRMU inmates on segregated custody directions in Unit 7 are able to speak to other HRMU inmates from the caged yard at the rear of their cell. In response to a question as to whether prisoners in segregated custody in the HRMU were able to see any other person, Mr Linton stated 'All that [segregation] requires is a physical separation between an inmate and other inmates. It does not stop inmates conversing relatively freely in their rear yards.'[325]

4.108 Mr Linton also pointed out that prisoners on segregation in Unit 7 have regular contact with custodial staff:

> Even if an inmate is in unit 7 on a segregated custody order he is still seen regularly by offender services and program staff. By regularly I mean daily, not necessarily for a sit-down interview but certainly for a consideration of whether the inmate has any particular concerns at the time—does something need to be addressed, is there something urgent on the outside that needs attending to, those kinds of welfare-related issues.[326]

4.109 The Committee received evidence from Mr Kelly regarding one instance where prisoners were held on segregation directions in Unit 7 of the HRMU for significantly longer than two weeks. The prisoners in question are AA classified remandees.[327] Mr Kelly stated that it was necessary to hold these prisoners on segregation for an extended period of time because information regarding the prisoners only became available slowly from various law enforcement agencies:

> They were placed in segregated capacity on the recommendation of the general manager of the HRMU who considered information provided to him, and who observed them following their reception into the Goulburn Correctional Centre … Since their reception the department has continually assessed their level of risk as information has become available from relevant law enforcement agencies. This has been a fairly slow process as the information has filtered through various layers of different agencies, both State and Federal. [328]

4.110 Mr Kelly advised the Committee that the five AA inmates in question had refused to co-operate with the Department on legal advice and as a result had progressed slowly through the hierarchy of sanctions and privileges.[329] Mr Kelly further advised the Committee that the segregated custody directions in respect of these inmates were revoked on 21 February 2006 and that the prisoners have since been allowed to associate with other prisoners within the HRMU.[330]

Complaints that the HRMU operates as a de facto segregation unit

4.111 As noted by Judge Moss QC, prisoners are not considered to be segregated merely because they have been assigned to the HRMU:

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325 Mr Linton, Evidence, 27 March 2006, p58

326 Mr Linton, Evidence, 27 March 2006, p58

327 Mr Kelly, Evidence, 3 April 2006, pp35-36

328 Mr Kelly, Evidence, 3 April 2006, p36

329 Mr Kelly, Evidence, 3 April 2006, p36

330 Mr Kelly, Evidence, 3 April 2006, pp35-36

> … there is segregation within the HRMU, that is, inmates are not regarded as segregated simply because they go to the HRMU because, as I understand it, they do mix. They might not mix with all the inmates in there, but they mix with some. There is still a procedure where one can be segregated within the HRMU.[331]

4.112 However, Justice Action submitted that the HRMU operates as a de facto segregation unit outside of the requirements of the *Crimes (Administration of Sentences) Act 1999* (NSW):

> Like Katingal before it, the Department maintains that the HRMU is not part of its segregation programme, placing the HRMU prisoners outside the safeguards offered by the *Crimes (Administration of Sentences) Act*.[332]

4.113 In support of this submission Justice Action cited a letter of complaint signed by prisoners housed in the HRMU and dated 19 November 2003 in which it was alleged that conditions in the HRMU approximate segregated custody:

> We are being housed in a segregation type environment and yet we are being told that we are not in segregation but on normal discipline status … it is causing us inmates in the HRMU a lot of stress and frustrations, anger and the feeling of injustice on a daily basis over the continual depriving of quite a lot of day to day necessities which normal discipline inmates have access to.[333]

4.114 The Committee notes that Justice Action did not elaborate in its submission on which aspects of the HRMU program approximate segregation.

4.115 As noted at paragraph 4.65, the NSW Ombudsman has conducted an investigation into allegations that two prisoners housed in the HRMU were unlawfully segregated. In the course of his investigation the Ombudsman found that:

> … the structure of the HRMU and some aspects of [the HRMU] program meant that some inmates could effectively be held in segregated conditions without a segregation order – thereby denying them the statutory right of review associated with such orders.[334]

4.116 Both instances involved prisoners being housed in Unit 7 in segregated conditions without a segregated custody direction.[335] As a result of the investigation by the Ombudsman the Commissioner agreed that 'segregation orders should be made for any inmate who is not allowed to associate with other inmates on a daily basis.'[336]

4.117 As noted at paragraph 4.32, association privileges for inmates in the HRMU are regulated by the hierarchy of sanctions and privileges. The hierarchy is a graded scale of rewards and punishments through which inmates can progress depending on their behaviour. The Committee notes that one of the 'rewards' featured in the hierarchy is the right to associate

331 Judge Moss QC, Evidence, 6 April 2006, p9

332 Submission 28, Justice Action, p24

333 Submission 28, p25

334 NSW Ombudsman, *Annual Report 2004-2005*, p112

335 NSW Ombudsman, *Annual Report 2004-2005*, pp111-112

336 NSW Ombudsman, *Annual Report 2004-2005*, p112

with other prisoners, and that not all stages and/or levels of the hierarchy include association privileges.

Committee comment

4.118 As noted by Judge Moss QC, segregation involves the physical separation of an inmate from all other inmates. The Committee notes that prisoners are placed on segregated custody directions for the duration of their initial assessment upon reception into the HRMU and when travelling outside the HRMU for court appearances.

4.119 The Committee also notes that, other than during initial assessment, the association of HRMU inmates is regulated by the hierarchy of sanctions of privileges. Prisoners on some levels of the hierarchy do not have association privileges. It is clear that prisoners who do not have association privileges are segregated within the meaning of section 12 of the Act.

4.120 The Committee notes the recommendation of the Ombudsman that any prisoner denied daily association privileges should be placed on a segregated custody direction. The advantages of this course of action are:

- There would be no doubt as to the lawfulness of the segregation of the prisoner in question
- The prisoner would have the right to seek a review of the segregated custody direction.

4.121 The Committee notes that the Commissioner has agreed to adopt the Ombudsman's recommendation. The Committee recommends that the Commissioner ensure that segregated custody directions are issued in respect of all prisoners housed in the HRMU who do not have association privileges.

Recommendation 7

That the Commissioner of Corrective Services ensure that segregated custody directions are issued in respect of all prisoners housed in the High Risk Management Unit at Goulburn Correctional Centre who do not have association privileges.

Complaints regarding referral of prisoners to the HRMU

4.122 In this section the Committee considers complaints that some prisoners have been inappropriately assigned to the HRMU. The HRMU referral process is discussed at paragraph 4.37. The Committee also notes an issue raised by Judge Moss QC regarding disagreement between the Mental Health Review Tribunal and the Commissioner of Corrective Services/SORC regarding the management of forensic patients.

4.123 The question arises as to whether the HRMU is a suitable facility at which to house mentally ill persons. As noted above at paragraph 4.21, the primary aim of the HRMU is security related, rather than therapeutic. However, Mr Linton stated that the HRMU has processes in places to monitor ongoing mental health concerns of inmates and is able to care for mentally ill prisoners:

> The ability of the unit to identify and provide appropriate treatment for inmates with ongoing mental health concerns is of very high standard, and a consistently high standard. There are a number of factors that would go into that high standard of care. There is formal training for HRMU officers and non-custodial staff with a specific focus on mental health and the management of inmates with mental health problems. The backgrounds of the counselling support officers mean that they are able to screen for mental health concerns. That occurs at the initial assessment stage, and mental status observations are also made routinely throughout the inmate's stay in the unit. The high levels of contact with both custodial and non-custodial staff ensure that if an inmate was displaying symptoms of mental illness these would be identified and appropriate treatments or interventions would be accessed.[337]

4.124 In evidence to the Committee on 27 March 2006 Mr Linton estimated that, as at that date, two or three HRMU inmates were suffering from a mental illness.[338]

4.125 Mr Linton also stated that the Department works closely with Justice Health to meet the mental health needs of HRMU inmates:

> The department works in collaboration with Justice Health to ensure that inmates with mental health concerns are identified and treated appropriately. The level of co-operation between the two agencies is of an excellent standard. The HRMU shares services addressing these needs with the Justice Health clinic in the main gaol at Goulburn. Services provided by Justice Health to the HRMU include the fortnightly availability of a psychiatrist; every other week tele-psychiatry services are available; a mental health nurse is available daily; and a registered nurse visits daily to dispense medication as required.[339]

4.126 The Committee was advised that the Department's general protocols for the identification and management of prisoners at risk of suicide and self-harm also apply within the HRMU. In this respect, Mr Linton stated:

> The protocols for the management or self-harm and suicide risk for inmates assigned to the HRMU are the same as for inmates assigned elsewhere in the correctional system. Suicide and self-harm prevention is the responsibility of all staff as part of their duty of care; however Risk Intervention Teams (RITs) convene in response to crises to formulate a RIT Management Plan for at-risk inmates, taking into account the inmate's presentation and needs and the resources available to the correctional centre.When an at-risk inmate transfers from the HRMU, HRMU staff liaise routinely with staff at receiving centres to ensure that relevant information is provided. In the case of inmates discharged to Long Bay Hospital, periodic checks on the inmate's progress are made.[340]

337 Mr Linton, Evidence, 27 March 2006, p60

338 Mr Linton, Evidence, 27 March 2006, p60

339 Mr Linton, Evidence, 27 March 2006, p60

340 Answers to questions on notice taken during evidence 27 March 2006, Mr Linton, Question 1, p4

Conflict between the Mental Health Review Tribunal and the Commissioner for Corrective Services/SORC

4.127 The Committee was advised of difficulties regarding the operation of the *Mental Health Act 1990* (NSW) in respect of prisoners who are also serious offenders for the purposes of the *Crimes (Administration of Sentences) Act 1999* (NSW).

4.128 Judge Moss QC referred to difficulties in resolving differences between the Mental Health Review Tribunal (MHRT) and the Commissioner as to the management of forensic patients:

> … there just does not seem to be one body that can make a decision. The Commissioner is taking one view, which I do not think is unreasonable, and the Mental Health Review Tribunal is taking a view, and I do not think that is unreasonable, but it needs someone to be able to make a decision between the two of them and to take responsibility for that decision if anything goes wrong.[341]

4.129 Further, Judge Moss QC advised the Committee that the Mental Health Review Tribunal (MHRT) and the SORC share jurisdiction in respect of forensic patients who are also serious offenders:

> We share jurisdiction. When someone is declared a forensic patient we share jurisdiction - and not very happily, I might say. I don't mean that we are unhappy about it, I mean the legislation does not actually make for smooth running, but the Mental Health Review Tribunal has a role to play, a review every six months, et cetera, but we still have to look after these mentally damaged serious offenders, interview them, try to do something with them. Often there are no programs for them because they are incapable of undertaking programs.[342]

4.130 Judge Moss QC advised the Committee of one example where the MHRT and the Commissioner had differed as to the placement of a prisoner:

> For example, there is a notorious prisoner out at Silverwater and for months and months - it must be 12 months - the Mental Health Review Tribunal has been trying to get this inmate to some high-powered mental hospital up on the central coast. They have had meetings - I gave evidence before one of them - but that prisoner is still sitting out at Silverwater because the Commissioner has one jurisdiction and one brief and the Mental Health Review Tribunal has a completely different brief.[343]

4.131 While the example cited by Judge Moss QC relates to Silverwater Correctional Centre, the Committee notes that the problem of shared jurisdiction between the MHRT and the Commissioner of Corrective Services and the Serious Offenders Review Council is a systemic problem that could impact on a prisoner housed at the HRMU.

4.132 Judge Moss QC advised the Committee that he was aware of actions undertaken to resolve these issues but was unable to identify with precision the agencies or authorities involved:

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341 Judge Moss QC, Evidence, 6 April 2006, p10

342 Judge Moss QC, Evidence, 6 April 2006, p7

343 Judge Moss QC, Evidence, 6 April 2006, p10

> I have an idea that a committee has been set up, whether in this place or some other place, but essentially the Mental Health Review Tribunal was making recommendations or wanting to make recommendations that were outside its jurisdiction. Particularly it wanted to reduce classification and, of course, that is up to the Commissioner. They got terribly frustrated, I know, but I think something has been done about that in terms of an inquiry or recommendations or something.[344]

4.133 As noted at paragraph 4.125, the Department works with Justice Health to promote the mental health of HRMU inmates. The Committee understands that Justice Health is responsible for the development and management of an integrated forensic mental health service across NSW in both custodial and non-custodial settings. The Statewide Forensic Mental Health Directorate of Justice Health processes recommendations from the Mental Health Review Tribunal concerning persons who are forensic patients within the terms of the *Mental Health Act (1990)* NSW.[345]

Committee comment

4.134 The Committee suggests that the Department review its practices in respect of the referral of mentally ill persons to the HRMU, and the release of mentally ill persons from the HRMU to other facilities within the correctional system.

4.135 Further, the Committee notes evidence received from Judge Moss QC of deficiencies in the legislation governing the relationship between the Mental Health Review Tribunal and the Commissioner of Corrective Services and the Serious Offenders Review Council. This issue impacts on mentally ill prisoners assigned to the HRMU.

Recommendation 8

That the Department of Corrective Services and Justice Health monitor their practices in respect of the referral of mentally ill persons to the High Risk Management Unit at Goulburn Correctional Centre, and the release of mentally ill persons from the High Risk Management Unit to other facilities within the correctional system.

344 Judge Moss QC, Evidence, 6 April 2006, p10

345 Justice Health, *Annual Report 2004-2005*, p25

Chapter 5 Staffing levels and over-crowding

The terms of reference direct the Committee to inquire into the management of 'high risk' prisoners with respect to a number of issues, including staffing and over-crowding in NSW correctional centres. Although the evidence received by the Committee relates to over-crowding and staffing levels in general, these issues equally affect high risk prisoners. In this Chapter the Committee provides a statistical background in relation to staffing levels and prison population.

Background

Snapshot of prison population

5.1 The NSW Department of Corrective Services currently holds around 9,000 persons in full-time custody at any one time.[346] As at 26 June 2005, the Department held 628 women in full-time custody, out of a total of 9,010 prisoners.[347] As at 30 June 2005, there were 1,555 male Indigenous persons in full-time custody in NSW (18.7% of the male inmate population), and 177 female Indigenous persons in full-time custody (29.6% of the total female prison population).[348]

5.2 In 2004-2005 the average daily population of persons in full-time custody increased by 6%.[349] The NSW prison population has been growing at an average of 400 inmates a year, 'equating to one correctional centre every year', for the last seven years and is expected to reach 10,000 inmates by 2010.[350]

5.3 The growth in the NSW prison population is part of a national trend. The Australian Bureau of Statistics notes:

> Between 2004 and 2005, there was an increase in the number of prisoners in all states and territories except South Australia and the Australian Capital Territory. Tasmania had the highest proportionate increase (23%) followed by Northern Territory (14%)

346 Department of Corrective Services, *Annual Report Highlights 2004-2005*, p2, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a01_highlights.pdf (accessed 2 May 2006)

347 Department of Corrective Services, *Annual Report, 2004-2005*, p142, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

348 Department of Corrective Services, *Annual Report, 2004-2005*, p21, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

349 Department of Corrective Services, *Annual Report, 2004-2005*, p71, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

350 Department of Corrective Services, *Annual Report, 2004-2005*, p9, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

> and Western Australia (10%). South Australia and the Australian Capital Territory both declined by 1%.[351]

5.4 The rate of imprisonment is also increasing in most states and across Australia as a whole:

> … the Australian imprisonment rate was 163 prisoners per 100,000 adult population, representing an increase of 3% on the rate of 157 prisoners per 100,000 adult population in 2004. Most states and territories recorded an increase in imprisonment rates between 2004 and 2005. The largest imprisonment rate increases were in Tasmania (22%), the Northern Territory (12%), and Western Australia (8%). The Australian Capital Territory, South Australia and Queensland recorded decreases in imprisonment rates (each 2% or less).[352]

5.5 The 2005 NSW Inmate Census found that, as at 30 June 2005, 1,895 (21.2%) of inmates in full-time custody in NSW correctional centres were born overseas, with 1,454 (16.2%) having been born in a non-English speaking country.[353]

NSW correctional centres

5.6 The Department operates 30 correctional centres across NSW. The continuing growth in the prison population is driving a large capital works program. The 2005-2006 budget allocated $164 million of the Department's $928 million budget to its capital works program, an increase of 14% on the previous financial year.[354]

5.7 In 2004-2005 the Department opened the Mid-North Coast Correctional Centre (500 beds) and the Dillwynia Correctional Centre (200 beds). Both centres were close to reaching full capacity by 30 June 2005.[355] There are plans to increase the capacities of the Lithgow and Cessnock Correctional Centres by 250 beds each, and to build a 500-bed centre at Wellington by 2007.[356] The NSW Government announced in October 2005 that a new 500-bed

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351 Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2005*, p4, www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/0D2231601F85888BCA2570D8001B8DDB/$File/45170_2005.pdf (accessed 24 January 2006)

352 Australian Bureau of Statistics, *4517.0 - Prisoners in Australia, 2005*, p4, www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/0D2231601F85888BCA2570D8001B8DDB/$File/45170_2005.pdf (accessed 24 January 2006)

353 Department of Corrective Services, *NSW Inmate Census 2005*, p19, www.dcs.nsw.gov.au/information/research_and_statistics/statistical_publication/sp027.pdf (accessed 2 May 2005)

354 Department of Corrective Services, *Annual Report, 2004-2005*, p71, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

355 Department of Corrective Services, *Annual Report, 2004-2005*, p71, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

356 Department of Corrective Services, *Annual Report, 2004-2005*, p9, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

correctional centre, modelled on the Kempsey and Wellington facilities, will be built in the vicinity of Kiama, on the NSW South Coast.[357]

Over-crowding

5.8 Several Inquiry participants described NSW correctional centres as being over-crowded. The Committee notes that there are different methods of measuring prison capacity, namely prison design utilisation levels and the number of vacant operational beds. The Committee has focussed on the capacity of NSW correctional centres in light of the number of operational beds as this gives a clearer picture of the situation in respect of prisoner accommodation.

5.9 The Committee asked the Department to comment on the issue of over-crowding in NSW prisons. The Department informed the Committee that 'the number of operational beds currently available is sufficient to meet the demands of the inmate population' and pointed to the additional beds due to become available once the correctional centre at Wellington is opened.[358] In answers to questions on notice, the Department advised the Committee that:

> On 19 March 2006, there were 9,110 inmates in correctional centres and 9,536 operational beds. On paper, therefore, there were 426 spare beds in correctional centres; but this figure should not be taken at face value since inmates of various classifications and sub-groups (eg protection, segregation etc) have to be matched to spare beds in their classifications.
>
> 'Operational' beds do not include beds that are "off-line" because they are being refurbished or otherwise currently unused for a variety of reasons.
>
> In addition to the 426 beds that are currently available for inmate placement, there are more than 600 beds that are currently off-line across the State ... Should the inmate population increase more beds can be brought online as required.[359]

5.10 The Committee notes that the terms of reference direct it to examine over-crowding with respect to high risk prisoners. The term 'high risk' is defined in Chapter Three. For present purposes, the Committee notes that high risk prisoners include maximum security prisoners.

5.11 While the Committee did not receive information specifically concerning high risk prisoners and over-crowding, the Committee notes that in 2005-2006 to 5 March 2006, the average population of maximum security correctional centres in NSW was approximately 3,000, representing an average occupancy rate of 94%.[360]

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357 The Hon Morris Iemma, MP, Premier, Legislative Assembly, *Hansard*, 19 October 2005, p18923

358 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Ron Woodham, Department of Corrective Services, Question 21, p16

359 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 21, p16

360 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 22, p16. This figure excludes beds subject to refurbishment.

Staffing levels in NSW prisons

5.12 The Department has approximately 6,000 full-time equivalent staff, including approximately:

- 4,160 operational staff in correctional facilities and courts.
- 1,055 administrative, management and other staff in correctional facilities and regional offices.
- 560 operational staff engaged in community supervision of persons on probation and parole.[361]

5.13 The Department advised the Committee that 'with regard to staffing levels – the Department's attrition rate has not varied significantly for a long time, and recruitment is sufficient to overcome attrition and to staff new correctional centres.'[362]

5.14 In 2004-2005 the Department introduced the Way Forward workplace reforms to provide benchmarking of public facilities against private sector-operated facilities. The workplace reforms implemented 'flexible rostering and efficient staff deployment strategies.'[363] The Department claims that the Way Forward provides benefits including reducing costs and increasing staff and inmate safety and security.[364]

Offender to staff ratio

5.15 The offender to staff ratio provides a snapshot measure of the number of staff relative to the daily average number of offenders. According to the 2006 *Report on Government Services*, the offender to all staff ratio for NSW in 2004-2005 was 21.8 offenders for every full-time staff member.[365] The ratio for operational staff who directly supervise offenders in NSW was 29.5 offenders for every full-time staff member.[366]

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361 Department of Corrective Services, *Annual Report, 2004-2005*, p103

362 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 25, p18

363 Department of Corrective Services, *Annual Report 2004-2005*, p9, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

364 Department of Corrective Services, *Annual Report 2004-2005*, p9, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

365 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, January 2006, Productivity Commission, Table 7A.21, www.pc.gov.au/gsp/reports/rogs/2006/justice/attachment07.xls (accessed 3 May 2006)

366 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, January 2006, Productivity Commission, Table 7A.21, www.pc.gov.au/gsp/reports/rogs/2006/justice/attachment07.xls (accessed 3 May 2006)

5.16 The national daily average offender to all staff ratio was 21 offenders for every full-time corrections staff member. For operational staff the national average ratio was 29.7 offenders for every full-time staff member.[367]

Impact on inmate access to rehabilitation programs

5.17 The Committee heard concerns indicating that staff shortages and over-crowding can result in inmates being unable to complete rehabilitation programs and courses. For example, the NSW Public Defenders Office submitted that an inmate's rehabilitation may be affected by the physical conditions in which they are housed:

> As for overcrowding, it is clear that rehabilitation – with all the benefits that it brings to the community just as much to the offender – is harder when it is attempted in trying or unsatisfactory physical conditions.[368]

5.18 Mr Peter Bugden, Principal Solicitor with the Coalition of Aboriginal Legal Services, pointed to the effects of staff shortages on prisoners' access to programs and the impact this could have on their chances of getting parole:

> … they are the very people who need to do the courses provided by the Department of Corrective Services more than anyone else, for example the anger management and think again courses. As happens with other gaols, very often when there are staff shortages they are the very first things that get the chop. That impacts on the people at Goulburn to the extent that when they come up for parole, although they have volunteered to do courses they have not completed them, and that has an effect on whether they get parole. That occurs in other gaols that have courses.[369]

Impact on visitor access

5.19 The NSW Ombudsman observed that over-crowding in prisons has the effect of impeding inmates' access to visitors by reducing the time they have to spend with their visitors and making visits difficult to arrange:

> I also receive complaints indicating that inmate population sizes at some centres cause problems, such as visitors complaining about insufficient times being available for booked visits and difficulties in booking visits. For instance the restructure of Parklea in late 2005 increased the inmate population substantially, placing a strain on many things such as visits, access to phones and availability of one-out cells.[370]

5.20 One submission maker informed the Committee that visits to her partner at the Metropolitan Remand and Reception Centre (MRRC) were affected by delays:

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367 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, January 2006, Productivity Commission, p7.23, www.pc.gov.au/gsp/reports/rogs/2006/justice/chapter07.pdf (accessed 3 May 2006)

368 Submission 26, NSW Public Defenders Office, p2

369 Mr Peter Bugden, Principal Solicitor, Coalition of Aboriginal Legal Services, Evidence, 27 March 2006, p35

370 Submission 8, NSW Ombudsman, p2

> Although I was in the reception area and had taken a ticket before 1.30 for each visit at no time did the visit start on time. On one occasion myself and [another visitor] were left sitting in the visiting area, with the other prisoners & their visitors, for half an hour.[371]

Inmate conditions

5.21 The Committee notes that not all correctional centre inmates have their own cells. The Department informed the Committee that some cells and living areas in modern correctional centres are designed to hold more than one occupant, with some cells or rooms accommodating up to four inmates.[372] The Committee notes that it is not always appropriate to house prisoners in single cells. For example, the Royal Commission into Aboriginal Deaths in Custody recommended that Aboriginal prisoners should not be housed in single cells on the basis that Aboriginal prisoners housed alone were at greater risk of self harm than Aboriginal prisoners who were housed together.[373]

5.22 The Committee received evidence from a person formerly held at the MRRC of over-crowding in that facility leading to cramped and uncomfortable conditions. [374]

Lockdowns

5.23 Some Inquiry participants identified lockdowns in NSW prisons as being caused by staff shortages. The term 'lockdown' describes a restriction in the movement of prisoners within a prison. The Department advised that 'a lockdown does not necessarily mean that inmates are confined to their cells. Most lockdowns are partial lockdowns, restricted to a single wing or the fewest number of wings as is necessary.'[375]

5.24 The NSW Ombudsman advised the Committee that his office receives frequent complaints regarding lockdowns and observed that complainants claim that inadequate staffing causes lockdowns. The Ombudsman stated that complaints indicated that lockdowns can impact on inmate access to specialist staff. [376]

5.25 The Committee also received evidence from the Legal Aid Commission that lockdowns are caused by staffing factors, with the effect of inhibiting inmate access to education and work programs:

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371 Submission 16, Ms Marie Koen, p2

372 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 23, p17

373 Royal Commission into Aboriginal Deaths in Custody, *National Report*, Volume 5, Recommendation 144

374 Submission 15, Mr David Turbit (partially confidential), pp2-3

375 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 24, p17

376 Submission 8, p2

> … staff of the Commission have received complaints from prisoners of being subjected to lockdowns because of staff shortages, staff training or because of industrial action relating to prison officers. A lockdown results in prisoners being confined to their cells. Apart from the obvious impact on the prisoners, it interferes with prison routines and programs including important aspects of prisoners' rehabilitation such as education and work programs.[377]

5.26 The Department informed the Committee that "Inmates are not advised the reason for a lockdown – they merely assume it is due to lack of staff, and complain to the Ombudsman accordingly."[378] The Department advised that staff shortages are not the sole reason for lockdowns, which can occur for the following reasons:

- emergencies
- disturbances
- search and security exercises
- on-site staff training
- staff union meetings
- temporary staff shortages.[379]

Time spent out of cells

5.27 The Department reports that the average daily time spent out of cells for NSW prisoners in 2004-2005, including irregular lockdowns, was:

- Open: 11.1 hours
- Secure: 8.66 hours
- Total: 9.81 hours.[380]

5.28 The national average for time spent out of cells in 2004-2005 was 10.7 hours a day.[381]

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377 Submission 21, p3

378 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 25, p18

379 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 25, p18

380 Department of Corrective Services, *Annual Report, 2004-2005*, p137, www.dcs.nsw.gov.au/Information/Annual_Reports/Annual_Report_2004-2005/a00_complete_report.pdf (accessed 2 May 2006)

381 Steering Committee for the Review of Government Service Provision, *Report on Government Services 2006*, January 2006, Productivity Commission, p7.14. This figure excludes Victoria. www.pc.gov.au/gsp/reports/rogs/2006/justice/chapter07.pdf (accessed 3 May 2006)

Committee comment

5.29 The Committee heard from several Inquiry participants expressing concerns about staffing levels and over-crowding in NSW prisons. However, the Committee received evidence from the Department indicating that there are approximately 400 spare beds, and 600 'offline' beds in some correctional centres that are either being refurbished or are unused for other reasons. The Department advised the Committee that offline beds could be brought online to accommodate an increase in prisoner numbers. There are also 1,500 additional beds planned for existing and yet to be constructed correctional centres over the next three years.

5.30 Inquiry participants advised the Committee of their concerns that staff cuts and shortages could compromise prisoners' access to rehabilitation programs and result in prisoners being confined to their cells. The Committee notes the Department's advice that lockdowns are not solely due to staffing levels. The Committee also notes that NSW correctional centres are in line with the national average in terms of prisoner time spent out of cells and offender to staff ratios. The evidence presented to the Committee does not indicate that there is a systemic problem with staffing levels and over-crowding in NSW prisons.

Chapter 6 High risk prisoners: access and contact by non-correctional staff

The terms of reference direct the Committee to inquire into the management of high risk prisoners with respect to access and contact by non-correctional staff, including their security screening. In this Chapter the Committee considers issues regarding access and security arrangements for prison chaplains, visitors wearing clothing of cultural and/or religious significance, persons providing support for prisoners with an intellectual disability, and legal representatives.

Overview

6.1 In this Chapter the Committee considers issues raised by Inquiry participants in regards to access and/or security arrangements for the following groups:

- Prison chaplains
- Visitors wearing clothing of cultural and/or religious significance
- Visitors providing support for prisoners with an intellectual disability
- Legal representatives.

6.2 Access and contact issues specific to prisoners classified as AA/5 and prisoners housed in the HRMU are discussed in Chapters Three and Four respectively.

Access and security issues regarding prison chaplains

6.3 In this section the Committee discusses the role of the Civil Chaplaincies Advisory Committee (CCAC) in the process of selecting and vetting chaplains and notes evidence received by the Committee during the Inquiry regarding the exclusion of an assistant chaplain from NSW correctional centres in 2005.

6.4 Rev Harry Herbert, Secretary to the CACC, advised the Committee that the CCAC is an interfaith organisation that acts as the intermediary in providing chaplains to the Department of Corrective Services and other government departments:

> The Civil Chaplaincies Advisory Committee, which has been in existence for more than 40 years, is an important committee that represents nearly all of the Christian churches together with the Jewish, Buddhist and Islamic faiths. It acts as the intermediary in organising chaplaincy services with the Department of Corrective Services, Department of Health and the Department of Juvenile Justice, and any other government department which may from time to time appoint chaplains.[382]

6.5 Sister Pauline Staunton, a member and administrator of the CCAC, advised the Committee of the security checks conducted by the CACC, in conjunction with the Department, prior to the appointment of a new chaplain:

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382 Rev Harry Herbert, Secretary, Civil Chaplaincies Advisory Committee, Evidence, 3 April 2006, p19

> All intended chaplains are required to have a criminal record inquiry completed and returned with a "clear" or "no trace" result as a hard copy, either directly from the CIG, which is the Corrections Intelligence Group, or returned by the regional superintendent and signed to that effect. That must happen before any chaplain is endorsed and then accredited by the commissioner. They are endorsed by the Civil Chaplaincies Advisory Committee and accreditation is sought from the Commissioner of Corrective Services.[383]

6.6 Sister Staunton advised that assistant chaplains are subject to the same level of security checks as chaplains.[384]

6.7 Sister Staunton said she was only aware of one instance where a potential chaplain has been rejected by the Commissioner on the basis of the results of a criminal record check:

> I only know of one case when someone was rejected. He had been employed as a chaplain at Junee and Junee obviously did not do the appropriate criminal record check on this man. When he was to be appointed to the mid North Coast correctional centre we did a criminal record inquiry on him and there was a flag against his name. The commissioner immediately made the decision not to appoint him.[385]

6.8 The CCAC conducts follow up criminal record checks in respect of chaplains every two years. In that respect, Sister Staunton advised the Committee that:

> Criminal record inquiries are renewed each two years for chaplains and yearly for other visitors. The applicant fills in the current form—the annexure 15.7, New South Wales Corrective Services Authority—to carry out a criminal record inquiry. The signature is witnessed by a departmental employee, the chaplain or the administrator. The form is returned with a photocopy of the driver's licence and passport, showing photo and signatures. These are checked against the signature on the form. The form is sent to the regional superintendent at Long Bay for authorisation and for a check to be carried out. He forwards it to CIG and then the result is returned to the administrator.[386]

6.9 Rev Herbert advised the Committee that a person with a previous criminal conviction would not necessarily be excluded from working as a chaplain in NSW correctional centres, but that the Commissioner would treat each case on an individual basis:

> … that of itself—a previous criminal offence—does not normally mean that the Commissioner would not, giving it due consideration, accept a person as a chaplain. It has occurred in the past that people with a criminal record have served as chaplains because their criminality is well in the past. It is the very strong view of our committee that that ought to continue. A person should not be excluded from chaplaincy simply because way in the past they had some criminal conviction.[387]

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383 Sr Pauline Staunton, Administrator, Civil Chaplaincies Advisory Committee, Evidence, 3 April 2006, p23

384 Sr Staunton, Evidence, 3 April 2006, p24

385 Sr Staunton, Evidence, 3 April 2006, p24

386 Sr Staunton, Evidence, 3 April 2006, p23

387 Rev Herbert, Evidence, 3 April 2006, p24

6.10 Rev Rod Moore, a member of the CCAC, advised the Committee that prison chaplains are subject to the same security screenings on entry to correctional centres as all other non-custodial staff.[388] Sister Staunton advised the Committee that in some correctional centres chaplains are subject to electronic screening every time they enter the centre, and that chaplains, like other visitors, may also be physically searched:

> In some centres electronic screening takes place each time a person enters the centre. All staff are now required to carry with them a plastic bag so that what is in the bag can be seen. If something is detected a more thorough search is undertaken. Chaplains and others may be subject to a physical search.[389]

6.11 The Committee notes that the exclusion by the Commissioner in July 2005 of a Muslim assistant chaplain accredited by the CCAC from attending NSW correctional centres was raised during this Inquiry.

6.12 Commissioner Woodham advised the Committee that while the volume of intelligence produced by the Department was too great for him to review each and every report, Departmental intelligence officers would advise him 'If somebody was a terrorist trying to visit somebody in gaol who was a terrorist ...'.[390]

6.13 Commissioner Woodham advised the Committee that the Department had sought information regarding the person concerned from US intelligence agencies in January 2005:

> I am informed that the police intelligence unit attached to my department sought information from the USA around January this year, and around 8 February they provided information to our intelligence group.[391]

6.14 The Commissioner advised that he excluded the chaplain concerned from NSW correctional centres on 6 July 2005.[392]

6.15 The Committee notes that, with regards to the role of the CCAC, Sister Staunton advised that the initial criminal record check requested by the CCAC in respect of the person concerned had produced a clear result, but that a 'trace' was returned when the CCAC requested a second criminal record check:

> The first criminal record inquiry that was carried out on him came back with a clear result. But I noted on the first form that he said that there was no criminal record against him. When we did the second check sometime later when he was to be appointed as a full-time chaplain that is when the trace came back. You would have to ask CIG how it got through.[393]

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388 Rev Rod Moore, Corrective Services Chaplaincy Co-ordinator, Civil Chaplaincies Advisory Committee, Evidence, 3 April 2006, p 25

389 Sr Staunton, Evidence, 3 April 2006, p25

390 Commissioner Ron Woodham, Department of Corrective Services, Evidence, 8 December 2005, pp29-31

391 Commissioner Woodham, Evidence, 8 December 2005, p28

392 Commissioner Woodham, Evidence, 8 December 2005, p28

393 Sr Staunton, Evidence, 3 April 2006, pp23-24

Committee comment

6.16 The Committee notes that the evidence received by it in respect of the security screening of prison chaplains indicates that the CCAC is dependent on the Department to conduct security checks on its behalf in respect of potential chaplains. The Committee does not recommend any changes to the practices of the CCAC.

6.17 Further, the Committee notes the exclusion of a Muslim assistant chaplain by the Commissioner in 2005. The information received during this Inquiry regarding that incident does not indicate any deficiencies in the processes of the Department or the CCAC. The evidence from the CCAC was favourable in this regard.

Visitors wearing clothing of cultural and/or religious significance

6.18 In the course of this Inquiry the Chairperson of the Community Relations Commission, Mr Stepan Kerkyasharian AM, raised the issue of the cultural sensitivity of security searches of visitors to correctional facilities wearing items of cultural and/or religious significance, specifically turbans and hijabs. In this respect, Mr Kerkyasharian AM asserted that:

> It is important that security screenings are sensitive to the searching of Muslim women head dresses (hijab) and Sikh men wearing turbans. As there are no formal rule and regulations regarding the search of head dresses, the Department needs to explore this issue further.[394]

6.19 Subsequent to Mr Kerkyasharian AM's submissions, Commissioner Woodham advised the Committee that the Department is developing guidelines concerning searches of clothing and personal items of cultural or religious significance, and is consulting with the Community Relations Commission and ethnic communities as part of that process.[395] The Commissioner also noted that this issue has recently been investigated by the Ombudsman, but did not advise the Committee of the results of that investigation.[396]

6.20 Commissioner Woodham advised the Committee of current arrangements for the security screening of persons wearing turbans and hijabs, noting that persons wearing such items are initially subject to electronic screening:

> Visitors wearing turbans or hijabs can pass through electronic scanning machines or be sniffed by a dog without removing their headdress. If the electronic equipment or the dog makes a positive response or indication, and the visitor can satisfactorily explain the response or produces contraband, there is no need to investigate the headdress.[397]

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394 Submission 20, Community Relations Commission, p2

395 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Ron Woodham, Question 27, p19

396 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19

397 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19

6.21 However, a corrections officer who has reasonable grounds to suspect that a 'hat' is being used to smuggle contraband may direct the visitor to remove it:

> Under section 27G(1)(c) of the *Summary Offences Act 1988*, a correctional officer, in conducting a search of a visitor, may direct the visitor to "remove any hat, gloves, coat, jacket or shoes" if the officer suspects on reasonable grounds that the person possesses contraband.[398]

6.22 Commissioner Woodham advised the Committee that the Department considers turbans and hijabs to be 'hats' for the purposes of the *Summary Offences Act 1988* (NSW) but has regard to cultural issues when conducting searches of visitors wearing those items:

> … the Department views turbans and hijabs as "hats" prescribed by the legislation – but in view of their cultural significance, will only direct their removal as a last resort and will ensure that the removal takes place in private, away from other visitors and staff, and only in the presence of a correctional officer of the same gender as the person wearing the turban or hijab.[399]

6.23 Commissioner Woodham emphasised that the Department has no power to compel a person to forcibly remove a turban or hijab, and is required to call the police if a visitor does not assist voluntarily:

> If a person refuses to remove their turban or hijab, a correctional officer has **no** power to force the removal but may detain the person and call police to effect a strip search or may simply elect to refuse to allow the person to visit.[400]

6.24 Commissioner Woodham further advised the Committee that, in relation to hijabs, the removal of the veil is usually sufficient for the Department's purposes:

> In relation to hijabs, the removal of the veil may be sufficient for the Department's purposes. The removal of the veil may be sufficient to allow the comparison of a person's face with her photo identification.[401]

Committee comment

6.25 The Committee believes that searches of persons wearing clothing of religious or cultural significance should be conducted in the appropriate manner, consistent with the over-riding requirement of security. The Committee notes that the Department is in consultation with Community Relations Commission and representatives of persons from culturally and linguistically diverse backgrounds in respect of these issues. The Committee recommends that the Department continue to work towards the development of appropriate guidelines

398 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19

399 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19

400 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19 (original emphasis)

401 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 27, p19

regarding the security screening of persons wearing items of cultural and/or religious significance, and that it continue to consult with interested stakeholders on this issue.

Recommendation 9

That the Department of Corrective Services continue to work towards the development of guidelines regarding the security screening of persons wearing items of cultural and/or religious significance, and that it continue to consult with interested stakeholders on this issue.

Access issues for support workers for intellectually disabled prisoners

6.26 In this section the Committee considers access and security arrangements for persons providing support to prisoners with an intellectual disability. Although the issues discussed in this section are general issues, they apply equally to the management of high risk prisoners by the Department.

Issues raised by Intellectual Disability Rights Service

6.27 The Intellectual Disability Rights Service Inc (IDRS) advised the Committee that it has received funding from this year to conduct a pilot program called the Criminal Justice Support Network (CJSN). The CSJN 'provides direct support to reduce the disadvantages experienced due to a person's intellectual disability at Court and legal appointments.'[402] The CSJN recently completed a pilot project in conjunction with the Disability Services Unit of the Department of Corrective Services which was designed to identify barriers for prisoners with an intellectual disability and the skills required to support those prisoners.[403] The Committee was advised that the pilot project between the CJSN and the Disability Services Unit was funded by the Department of Ageing, Disability and Home Care.

6.28 The IDRS made submissions to the Inquiry based on the findings of the pilot project conducted by the CJSN and the Department and its experience representing clients in criminal matters.

6.29 IDRS submitted that persons supporting prisoners with an intellectual disability faced a number of difficulties in gaining access to those prisoners:

> We have found access and contact by non-correctional persons to be difficult. This is particularly due to inconsistencies between different correctional centres, different facilities at correctional centres and different corrections staff at Courts.[404]

6.30 The IDRS submitted that access problems for support workers were caused by the Department's security screening processes.[405] To solve this problem, the IDRS proposed that

402 Submission 24, Intellectual Disability Rights Service Inc, p2

403 Submission 24, p2

404 Submission 24, p2

the Department treat accredited support workers in the same way that it treats legal representatives:

> It would improve timely access to clients if designated support persons were able to be listed in the same manner as Legal Professionals; we have not encountered any problems with the security screening of IDRS legal staff when attending correctional centres.[406]

6.31 The IDRS also pointed to difficulties intellectually disabled persons may experience when appearing in court via audio visual links (AVLs), which make the role of a support person more vital:

> Whilst we recognise that AVLs have had a very positive effect in reducing the transportation of prisoners, it has come to our attention that people with an intellectual disability find AVLs to be a particularly confusing process which further alienates them from the Court process. As such, the role of the support person is even more vital. A person with an intellectual disability would find it difficult and confusing to understand that when they are in the AVL room looking at screens, they are actually appearing in Court. Clients, as well as trained support workers, have found it difficult when in an AVL room to ascertain who is speaking, what the outcome of the matter is and when the matter has finished.[407]

6.32 The IDRS also noted the important role played by support workers during court appearances for intellectually disabled prisoners:

> It is important that support persons have access to clients held in Court cells before and after their matter has been heard. A person with an intellectual disability will find it extremely difficult to understand what has happened with their matter in Court. It is imperative that the person with an intellectual disability understands the outcome of their matter prior to returning to gaol as it may take a number of days to gain access to the person at gaol in order to explain the outcome of their matter.[408]

6.33 The IDRS submitted that the Department does not have a consistent policy in respect of the provision of support for intellectually disabled prisoners during court appearances, and that some support workers have been prevented from sitting with or close to prisoners in need of support. [409]

6.34 Further, the IDRS submitted that the Department's practices in respect of access for support workers to court cells are inconsistent:

> CJSN has found the process of accessing clients in Court cells to be inconsistent. At times, it is the legal representative who will be able to facilitate the support person's access and at other times it is the Justice Health worker. The grant of access varies enormously depending upon the officers at the Court. It is also more difficult if the

405 Submission 24, p2

406 Submission 24, p2

407 Submission 24, p3

408 Submission 24, p3

409 Submission 24, p4

person has been refused bail by the Police the night before as no established contact has been made with their legal representative or the DSU to assist in access.[410]

6.35 The IDRS submitted that intellectually disabled prisoners would benefit if the Department adopted consistent practices regarding access for support workers during court appearances and regarding access to court cells.[411]

Committee comment

6.36 The Committee notes the evidence received from the Intellectual Disability Rights Service regarding the provision of support for prisoners with an intellectual disability. The Committee considers that, wherever possible, access barriers for persons providing a support role for prisoners with an intellectual disability should be removed or minimised.

6.37 The Committee notes that the IDRS, through the Community Justice Support Network, has recently collaborated with the Disability Services Unit of the Department to identify barriers to access for support workers. The Committee did not receive sufficient evidence to make recommendations in respect of particular security and access arrangements for support workers.

6.38 The Committee recommends, however, that the Department of Corrective Services and the Department of Ageing, Disability and Home Care investigate extending the pilot project between the Community Justice Support Network and the Disability Services Unit to identify solutions to the problems identified by the initial pilot project and noted in this report.

Recommendation 10

That the Department of Corrective Services and the Department of Ageing, Disability and Home Care investigate extending the pilot project between the Community Justice Support Network and the Disability Services Unit to identify possible solutions to barriers to access for persons providing support to intellectually disabled prisoners.

Access by legal representatives

6.39 In this section the Committee discusses evidence received from the Legal Aid Commission regarding access by legal representatives to clients held in custody in correctional centres.

6.40 The Commission submitted that visiting facilities provided by the Department at some correctional facilities fail to meet basic requirements relating to 'safety, confidentiality and an environment where instructions can be taken with the benefit of a room, a desk and chair.'[412] The Commission submitted that these difficulties are sometimes the result of the design of the

410 Submission 24, pp3-4

411 Submission 24, p4

412 Answers to questions on notice taken during evidence 27 March 2006, Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission of NSW, Question 3, p2

older correctional centres 'which were not purpose built for [legal interview] facilities.'[413] The Commission noted that facilities for legal interviews tend to be better in the newer correctional centres.[414]

6.41 The Commission advised the Committee of ongoing discussions between it and the Department regarding the adequacy of visiting facilities for prisoners on protective and segregated custody at Parklea Correctional Centre:

> … at Parklea Correctional Centre there is limited access to appropriate visiting facilities for protection prisoners. This is an issue which has been raised with DCS and appropriate action is being considered.[415]

6.42 In its response to questions on notice the Commission advised the Committee that the Department 'is looking to rectify this situation and it is hoped that there will be a solution by way of interview booths being constructed in this wing in the near future.'[416] However, the Commission stated that 'interview facilities for prisoners in segregation at Parklea are not regarded as adequate.'[417]

6.43 The Commission also submitted that access for legal representatives is constrained by 'restrictive' visiting hours in most correctional centres.[418] By way of contrast, the Commission noted that visiting hours at the Metropolitan Remand and Reception Centre, which allows visits from 8:30 am to 6:30 pm, are acceptable in that legal representatives are able to visit inmates after court appearances.

Committee comment

6.44 The Committee notes the concerns raised by the Legal Aid Commission regarding visiting facilities for prisoners in segregated custody at the Parklea Correctional Centre. The Committee notes evidence received from the Commission that it remains in dialogue with the Department on this issue, and that the Department has recently resolved issues relating to prisoners on protective custody at the same facility. The Committee recommends that the Department continue to work towards the provision of suitable facilities for legal visits for prisoners on protective custody at Parklea.

6.45 The Committee also notes evidence received from the Legal Aid Commission regarding restrictive visiting hours at most NSW correctional facilities. The Committee did not receive

413 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 3, p2

414 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 3, p2

415 Submission 21, Legal Aid Commission of NSW, p2

416 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 3, p2

417 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 3, p2

418 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 3, p2

sufficient evidence to express a view on this issue. However, the Committee recommends that the Department continue to consult with the Legal Aid Commission, and consult with the NSW Law Society and the NSW Bar Association, to determine if difficulties are experienced by legal representatives caused by restrictions on visiting hours at NSW correctional centres, and to develop appropriate solutions.

Recommendation 11

That the Department of Corrective Services continue to work towards the provision of suitable facilities for legal visits for prisoners on protective custody at Parklea Correctional Centre.

Recommendation 12

That the Department of Corrective Services continue consultation with the Legal Aid Commission, and consult with the NSW Law Society and the NSW Bar Association, to determine the extent of difficulties experienced by legal representatives caused by restrictions on visiting hours at NSW correctional centres, and to develop appropriate solutions.

Chapter 7 The interstate transfer of parolees and offenders

The terms of reference for this Inquiry direct the Committee to inquire into the interstate transfer of offenders and parolees with particular regard to 'communication and agreement between Authorities' and 'Ministerial sign-off under the Acts and informal arrangements between jurisdictions.' Separate schemes exist for the transfer of parolees and prisoners. In this Chapter the Committee considers significant recent changes to the parole transfer scheme, and minor amendments to the prisoner transfer scheme.

The interstate transfer of parolees

7.1 Arrangements for the interstate transfer of parolees have recently been subject to significant changes designed to make the transfer process more rigorous. Further changes are proposed.

7.2 In this section the Committee:

- Provides background information regarding the 'informal' and 'formal' parole transfer processes used by all jurisdictions until August 2005
- Discusses the changes made to the scheme in August 2005, and which are currently in place in NSW
- Notes further proposals for reform of the scheme
- Considers the issues raised by Inquiry participants in connection with parole transfer.

Background information

Rationale for the parole transfer system

7.3 Each Australian state, as well as the Australian Capital Territory and the Northern Territory, participates in a reciprocal parole transfer scheme whereby persons who have served their custodial sentence in one jurisdiction may seek permission to live in another jurisdiction whilst on parole. The scheme was introduced in 1983 and is underpinned by reciprocal *Parole Orders (Transfer) Acts* in each jurisdiction.

7.4 The scheme promotes the individual welfare of parolees and serves the broader public interest by encouraging the successful integration of parolees back into the community. To the extent that the interstate transfer system contributes to the rehabilitation of parolees, the community benefits by way of reduced recidivism rates. As the NSW State Parole Authority stated:

> … the combination of strong family/community support and the availability of supervision and program support via the Probation and Parole Service is the best combination to protect the community and to assist the offender. The ability to

> facilitate appropriate supervision arrangements in other States is therefore intrinsic to the overall protection of the community.[419]

Overview of the parole transfer system until August 2005 and subsequent changes

7.5 Until August 2005, suitable parolees were able to physically relocate to another jurisdiction on an 'informal' basis prior to the formal transfer of their parole order to that jurisdiction i.e. before the Minister or his or her delegate had approved the transfer. Recent changes to the scheme require the Minister (or his or her delegate), and his or her interstate counterpart to approve a transfer prior to the physical relocation of a parolee to another jurisdiction.

7.6 These changes followed extensive media coverage of the parole transfer of a person convicted of child sex offences to NSW from Western Australia in August 2005. Referring to that incident, Commissioner Woodham stated:

> This bloke was sent over to us with the parole officers in the State that sent him saying that he should not get parole. This fellow was sent to us before the Parole Board could even assess his compliance or otherwise with the sex offender program he did in gaol in the other State. Why wouldn't we send him back! He came over here with a parole order that was not even signed. We had to get him to sign it in this State, and he was released from another State. We just cannot allow that to happen. Whether he stays in gaol longer or not, it is not my worry.[420]

7.7 The NSW Council for Civil Liberties summarised the changes introduced unilaterally by NSW after August 2005 in the following terms:

> Under the existing legislation, the informal or temporary transfer arrangements meant that parolees were transferred first (once it was agreed between the interstate authorities that transfer was appropriate) and the formal order was made later. Under the new regime the parolee must wait until formal order is made before being transferred. Everything must be approved before any parolee is moved.[421]

7.8 Further, following the incident noted above the Minister for Justice delegated his power under the *Parole Orders (Transfer) Act 1983* (NSW) to determine transfer applications to the Commissioner of Corrective Services, Commissioner Woodham.[422] NSW also ceased to accept the parole transfer of child sex offenders.[423]

Developments in other jurisdictions and fragmentation of the national scheme

7.9 The Committee understands that NSW was not the only jurisdiction to experience difficulties with the informal system of parole transfers. In this regard, Commissioner Woodham stated that:

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419 Submission 7, NSW State Parole Authority, p2

420 Commissioner Ron Woodham, Department of Corrective Services, Evidence, 8 December 2005, pp24-25

421 Submission 14, NSW Council for Civil Liberties, p10

422 The Hon Tony Kelly MLC, Minister for Justice, Legislative Council, *Hansard*, 13 September 2005, p17558

423 Commissioner Woodham, Evidence, 8 December 2005, p26

> Of course, every State had an issue with it. Queensland had an issue with it when we sent Russell Cox to them and they did not know about it. Victoria had an issue with it when a sex offender was sent to them by Western Australia that blew up politically. Then we have the same experience here.[424]

7.10 By late 2005 the national parole transfer scheme had fragmented. The Western Australian Minister for Justice provided evidence of the different practices of various jurisdictions as at late 2005:

> Recently, the Department has received written advice from several jurisdictions regarding changes in policy and procedure for inter-state transfer of Parolees (sic). Tasmania, New South Wales, Queensland and South Australia have advised that they will no longer entertain informal transfer. The effect of this change in policy is that a Western Australian parolee applying to transfer to these jurisdictions must secure approval for registration before arrival. In addition, New South Wales will not accept transfer of parole for sex offenders.[425]

7.11 The Minister also noted that 'informal transfers continue to operate between Western Australia and two other jurisdictions, namely Northern Territory and Victoria.'[426]

The parole transfer scheme prior to August 2005

7.12 In this section the Committee considers the operation of the parole transfer scheme prior to August 2005.

Overview

7.13 Prior to August 2005 Australian correctional authorities conducted a two-stage process for the transfer of parolees between jurisdictions involving an 'informal' stage followed by a 'formal' stage. The central feature of the two-stage system was that a parolee could physically relocate to another jurisdiction prior to the formal transfer of their parole order to that jurisdiction. In this respect the Western Australian Minister for Justice advised that:

> The usual practice for inter-state transfer of parolees was that a parole order would be registered in an inter-state jurisdiction after the parolee had been supervised by the relevant inter-state authority for sometime. The registration of the parole order is referred to as 'formal transfer' and the supervision prior to registration as 'informal transfer'.[427]

7.14 The effect of the formal transfer of the parole order was to render it a parole order of the receiving jurisdiction, thus bringing the parolee within the jurisdiction of the parole board or authority in that jurisdiction.

7.15 The general time frame for the parole order to be formally transferred was three months after the informal transfer of the parolee, as noted by the Legal Aid Commission of NSW:

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424 Commissioner Woodham, Evidence, 3 April 2006, p28

425 Submission 12, The Hon John D'Orazio MLA, Minister for Justice, Western Australia, p2

426 Submission 12, p3

427 Submission 12, p2

> In the past, the authority to make such [transfer] decisions was delegated to probation and parole officer level and supervision was first transferred for 3 months and thereafter, if the parolee was complying with the order, it was registered. Once registered, the laws of the transferee state apply to the parole order as if it was a parole order imposed by that state … This is a procedure which has worked effectively to allow the transfer of parolees in appropriate cases.[428]

Informal parole transfer

7.16 Whilst the physical relocation and transfer of the supervision of a parolee was referred to as an 'informal' transfer, corrections administrators had in fact developed protocols regarding the execution of an informal transfer. The Committee received evidence that the informal parole transfer scheme has been the subject of continuing discussion and agreement between corrections administrators since the early 1980s. In this respect Ms Catriona McComish, Senior Assistant Commissioner, Community Offender Services, stated:

> There have been arrangements in place across the jurisdictions since the Act was passed in the early 1980s in regard to the transfer of parolees across Australian States and Territories. So efforts have been made to develop some consistency of practice across the jurisdictions in terms of the transfer of the supervision, prior to the transfer of the order.[429]

7.17 The Committee did not receive detailed evidence of the origins of the informal transfer system. However, the Committee was advised by the Western Australian Minister for Justice that the last substantive change to the informal transfer arrangements occurred in 1999:

> In April 1999, an agreement regarding inter-state transfer of Parolees was reached between all States and Territories in which the following resolutions were adopted:
>
> - As soon as it is established that a parolee has moved inter-state permanently, a formal transfer of parole order to the relevant state will be requested.
> - The inter-state authority will respond promptly to the request but may allow a three month assessment of the suitability of the relocation if that is deemed necessary.
> - In cases deemed to be high risk, the formal transfer process should be completed as soon as possible.
> - The above principles are to be adhered to in order to assist all jurisdictions in meeting the requirements of the legislation and avoid some of the quite serious problems and confusion that have resulted as a consequence of two jurisdictions sharing responsibility for an individual parolee.[430]

7.18 However, it appears that the process for executing a transfer was not entirely uniform across all the states and territories, as noted by Ms McComish:

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428 Submission 21, Legal Aid Commission of NSW, p4

429 Ms Catriona McComish, Senior Assistant Commissioner, Community Offender Services, Department of Corrective Services, Evidence, 8 December 2005, p19

430 Submission 12, p2

> The States have different protocols and guidelines around the level of supervision and the assessment that is done. But there are indeed, in New South Wales, requirements in terms of the level of supervision and also, as I said, the reporting up the chain of command in regard to a serious offender who might be coming into the community.[431]

7.19 Ms McComish stated that the approval process for an informal transfer included both an exchange of documentation and a physical inspection by the receiving parole authority of the proposed living arrangements:

> It is a complex process, of course, in terms of the transfer of the supervision. The agreement that has been referred to, that existed across the jurisdictions for the transfer of the supervision prior to the transfer of the parole order, was that there would be an exchange of documentation and that there would be approval by the district manager of the receiving office, because they would have to do a home visit assessment.[432]

7.20 Ms McComish advised the Committee that, under the informal scheme, corrections administrators had also developed protocols specific to sex offenders:

> In the case of a serious offender or— and it was named—a sex offender, particularly a child sex offender, then there are specific guidelines in terms of actually informing up the chain of command, in terms of prior to the person arriving on the doorstep of the district office and, indeed, having appropriate supervision of the case management of that person in the community. [433]

7.21 Commissioner Woodham advised that temporary and trial transfers were permitted under the pre-August 2005 scheme, including for child sex offenders: '[s]ome of them would have come across on temporary transfers earlier and then been confirmed.'[434] The NSW State Parole Authority advised that the purpose of trial transfers was to enable the receiving jurisdiction to assess the compliance of a transferee with the terms of their parole order before agreeing to a formal transfer:

> It is not uncommon for certain States to initiate a 'trial' supervision period to assess the commitment and level of compliance demonstrated by the offender to the requirements of his/her order, before agreeing to the formal transfer of that parole order to their State.[435]

7.22 Further, as the NSW Parole Authority noted, not every informal transfer progressed to formal transfer, particularly where the transfer was for a short period before the expiration of the parolee's sentence:

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431 Ms McComish, Evidence, 8 December 2005, p22

432 Ms McComish, Evidence, 8 December 2005, p22

433 Ms McComish, Evidence, 8 December 2005, p22

434 Commissioner Woodham, Evidence, 8 December 2005, p25

435 Submission 7, p2

> In other cases where there is a very short period remaining until the full time sentence expires, supervision arrangements have been made without seeking the formal transfer of the order. [436]

Formal parole transfer

7.23 As noted at paragraph 7.3, the formal transfer of parole orders between Australian jurisdictions is governed by reciprocal legislation enacted in the early 1980's in all Australian states and territories. In New South Wales the relevant legislation is the *Parole Orders (Transfer) Act 1983* (NSW) (the Act). The Act was directed towards the rehabilitation of prisoners by allowing them to live in communities with which they had been associated, or where they had found work. The Act received bipartisan support in the Parliament.

7.24 The Act:

- Creates a process for the transfer of parolees upon the application of the relevant Minister to his or her interstate counterpart,[437] and
- Defines the criteria by which applications for transfer of parolees are to be determined.[438]

7.25 The steps required to effect a formal transfer of a parole order from NSW to another jurisdiction are contained in sections 5 and 6 of the Act.

7.26 In short, the Act provides for the exchange of information between authorities and sign-off by the Minister or his or her delegate in both the sending and receiving jurisdiction before a parole order may be registered in the receiving jurisdiction.

7.27 The Act requires the sending jurisdiction to provide the following documents to the receiving jurisdiction:

> … all documents that were before the body making the parole order, details of convictions, sentences of imprisonment, minimum terms of imprisonment, periods of imprisonment served, class of prisoner, remissions earned and other grants of parole.[439]

7.28 In determining whether to request the transfer of a parolee to another state or to approve the transfer of a parolee to NSW, the Minister shall have regard to whether, in 'the interests of the person to whom the parole order relates, it is desirable that the parole order be so registered.'[440]

7.29 Once the transfer is approved by the Minister (or his or her delegate) in each jurisdiction, the parole order is registered in the receiving jurisdiction.[441] The legal effect of a transfer is that

436 Submission 7, p2

437 *Parole Orders (Transfer) Act 1983* (NSW), s 6

438 *Parole Orders (Transfer) Act 1983* (NSW), s 7

439 *Parole Orders (Transfer) Act 1983* (NSW), s 6(1)(d)

440 *Parole Orders (Transfer) Act 1983* (NSW), s 7(2)(a)

441 *Parole Orders (Transfer) Act 1983* (NSW), s 8

the parolee ceases to be subject to the parole authority of the jurisdiction in which they served their custodial sentence, and becomes subject to the parole authority of the jurisdiction to which they have been transferred.[442] If the parole order is rescinded or revoked, the parolee is liable to imprisonment in the jurisdiction to which they have been transferred, rather than their original jurisdiction.[443]

The NSW State Parole Authority

7.30 The NSW State Parole Authority has a role in the transfer of parolees from NSW only in so far as it is the releasing body for NSW prisoners onto parole. A prospective parole transferee from NSW to another jurisdiction must first obtain release on parole through the ordinary channels available to prisoners before making an application to the NSW Minister for Justice, or his/her delegate, for interstate transfer.

7.31 In determining the release on parole of a prisoner who wishes to transfer to another jurisdiction the Parole Authority will consider the suitability of the proposed supervision and accommodation arrangements in the receiving jurisdiction, as noted by Mr Pike:

> If an inmate from New South Wales wanted to return to Victoria, for instance, to live with their family, then in determining whether or not to grant parole, we have regard to the suitability of the proposals, what their living arrangements are, and that would have an impact on whether or not we grant parole. [444]

7.32 Mr Pike advised the Committee that, under the present arrangements, the Parole Authority would not grant parole to a prisoner wishing to transfer interstate until the necessary administrative arrangements and approvals had occurred as between the corrections administrators of NSW and the receiving jurisdiction:

> But at the present moment we would not grant parole until the transfer has been approved as we understand that there needs to be an administrative approval between the States.[445]

7.33 The Parole Authority is involved in interstate transfer to NSW only if a parolee breaches the conditions of their parole order.[446]

Current parole transfer arrangements

7.34 NSW ceased accepting or requesting informal parole transfers in August 2005. From that time all proposed parole transfers to or from NSW are to be formally approved by the Commissioner prior to the physical relocation of the parolee.

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442 *Parole Orders (Transfer) Act 1983* (NSW), s 9

443 *Parole Orders (Transfer) Act 1983* (NSW), s 9(4)

444 Mr Ian Pike, Chairperson, NSW State Parole Authority, Evidence, 3 April 2006, p8

445 Mr Pike, Evidence, 3 April 2006, p8

446 Submission 7, p1

Outline of current arrangements

7.35 Commissioner Woodham advised the Committee that the present parole transfer arrangements consist of eight steps:

- The parolee applies to his supervising Probation and Parole Officer for interstate transfer, providing all details of his intended interstate arrangements: address, employer (if any), sponsor/family support etc.
- Provided the parolee's compliance with parole conditions to date has been satisfactory, the Probation and Parole District Manager refers the request to the Director, Sentence Administration, who is the Registrar for the purposes of the *Parole Orders (Transfer) Act 1983*.
- The Director, Sentence Administration forwards the application to the interstate parole authority; and advises the interstate authority of the parolee's sentence and all parole conditions.
- The interstate parole authority visits the proposed address and interviews the sponsor. The authority ascertains that the sponsor is aware of the parolee's offence(s), and that the sponsor agrees to the parolee residing with the sponsor; and assesses the suitability of the both the sponsor and the proposed accommodation in light of the parolee's offence and parole conditions
- The interstate authority reports back to the Director, Sentence Administration, whether it will accept the transfer. There may be a delay depending on forwarding information to the relevant decision-maker
- The Director, Sentence Administration, forwards the interstate authority's response to the relevant Regional Director, Probation and Parole.
- The Regional Director forwards the application to the Commissioner, together with a recommendation to approve or not approve the transfer
- The Commissioner approves or declines the transfer.[447]

7.36 The Committee was advised by Commissioner Woodham that these steps take a minimum of six to eight weeks to complete, but may take longer in some cases:

> This depends on the circumstances of each particular case. A parolee should allow a minimum of 6-8 weeks for the entire process, from application to decision … If a home visit finds accommodation unsuitable, and the sponsor proposes to find different and more suitable accommodation, that will require an additional home visit and extend the process.[448]

7.37 Commissioner Woodham stated that the Department currently commences the parole transfer process three months prior to parolee's the release date:

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447 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Ron Woodham, Question 31, p21

448 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 31, p21

> Now if someone is coming up for parole we start that process at least three months prior to the release date so everyone knows, including the Parole Board, exactly what has been agreed to prior to any transfer occurring.[449]

Number of transfer applications approved and rejected under the current arrangements

7.38 Commissioner Woodham advised the Committee that between 1 July 2004 and 31 October 2005 there were 496 parole transfers from or to NSW, comprising:

- 221 transfers to NSW
- 275 transfers from NSW.[450]

7.39 Ms McComish advised that these numbers do not represent a significant burden on the resources of the NSW Probation and Parole Service:

> They are not substantial figures in terms of caseload, no. In this State of New South Wales we have between 4,000 and 5,000 people under parole supervision, so when we are looking at numbers of hundreds, 100 or 200 coming in on transfers, it is not a huge imposition in terms of caseload.[451]

7.40 The Committee was advised that since August 2005, when the informal transfer system was abandoned, until 31 March 2006:

- 36 parolees were transferred to NSW from other jurisdictions
- 37 parolees were transferred from NSW to other jurisdictions.[452]

7.41 In the same period, Commissioner Woodham, acting as delegate of the Minister under the Act:

- Rejected 18 applications for transfer to NSW
- Rejected 8 applications for transfer from NSW.[453]

7.42 Commissioner Woodham also advised the Committee that, in determining applications for transfer to NSW, he applies a broad 'public interest' test incorporating a range of factors including the parolee's criminal history and the level of support available for the parolee in NSW:

> We want to make sure that when any parolee who transfers here, the public interest has been taken into account in granting him or her parole – so we want to look at all the other factors involved, such as the offender's criminal history, the likelihood of

449 Commissioner Woodham, Evidence, 8 December 2005, p24

450 Commissioner Woodham, Evidence, 8 December 2005, p21

451 Ms McComish, Evidence, 8 December 2005, p22

452 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 29, p20

453 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 30, p20

> him being able to adapt to normal community life, whether he has addressed his offending behaviour whilst in custody, the level of support available to him on release or transfer, etc – all the things that the NSW State Parole Authority takes into account as a matter of course.[454]

7.43 Commissioner Woodham advised the Committee that although he acts on the advice of the Probation and Parole Service he occasionally rejects the advice provided to him:

> Most of the above rejections occurred on the recommendation of the Probation and Parole Service, however on some occasions I rejected the application contrary to the advice of the Probation and Parole Service.[455]

Further proposed reforms to the parole transfer scheme

7.44 Commissioner Woodham advised the Committee on 8 December 2005 that the Corrective Services Administrators Conference had formed a working party in late 2005 to review the parole transfer scheme.[456] In answers to questions on notice Commissioner Woodham advised the Committee that the working party had met on 28 February 2006 and agreed on a set of recommendations regarding changes to the parole transfer scheme. The Committee was advised that the recommendations were to be put to the Administrators Conference in May 2006. If approved by the Administrators Conference, the recommendations will go to a Conference of Corrections Ministers later this year.[457]

7.45 Commissioner Woodham advised the Committee that the working party resolved to adopt standard guidelines for the transfer of parolees between jurisdictions incorporating a structured, formal approval process prior to the physical relocation of a parolee to the receiving jurisdiction:

> In relation to the standard guidelines for transfer of parolees between jurisdictions, we resolved … that all transfer of parolees between States will require a structured formal approval process which provides for the registration of the parole order in the receiving jurisdiction prior to relocation of the parolee across State boundaries. [458]

7.46 The Committee notes that the working party has adopted the key element of the reforms introduced by NSW after August 2005 i.e. the requirement for formal approval of the transfer of a parole order by the Minister or his or her delegate prior to the physical relocation of a parolee.

7.47 Under the proposed further reforms to the scheme, each jurisdiction will determine the level at which the power to approve a transfer will be delegated, provided that the delegation is at

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454 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 30, p21

455 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 30, p20

456 Commissioner Woodham, Evidence, 8 December 2005, p18

457 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 28, p20

458 Commissioner Woodham, Evidence, 3 April 2006, pp27-28

higher level than probation and parole officer. Commissioner Woodham advised that in NSW the Minister's power to approve transfers will continue to be delegated to the Commissioner of Corrective Services:

> Approval for the registration of the parole order is to reside at a level higher than a probation and parole officer or community correctional officer. However, each jurisdiction will decide the appropriate level of authority at which this decision will be made. In New South Wales the level of delegation will reside with me.[459]

7.48 The working party also recommended several amendments to the *Parole Orders (Transfer) Acts*. The key change to the legislation proposed by the working party is to allow for the registration of parole orders in the receiving state earlier than is presently possible. In that respect, Commissioner Woodham advised that agreement was reached for identical amendments to the legislation in force in each jurisdiction to allow parole orders to be transferred and registered as soon as an offender is released from custody:

> In considering parole for an inmate, it is desirable to have the parole order registered in the State or Territory of proposed residence. The current legislation is limiting in failing to enable this process to occur in terms of parole orders that have yet to come into existence. Agreement was reached that it would be desirable for identical amendments to be passed by each jurisdiction in relation to the *Parole Orders (Transfer) Act 1983* to enable parole orders to be transferred and registered in the interstate jurisdiction as soon as the offender is released from custody. In short, that means that every jurisdiction agrees there should be a formal process.[460]

7.49 Commissioner Woodham advised the Committee that the working party had identified the situation of parolees resident in border areas as an issue that should be addressed as part of the further proposed reforms to the parole transfer scheme: '[t]here has to be a process on the State borders of people being able to cross the border.'[461] The terms of reference for the working party included the development of guidelines for short-term transfers:

> The terms of reference were to develop standard guidelines for the transfer of parolees between jurisdictions to consider how to deal with short-term interstate transfers, in particular for transient indigenous offenders—that was particularly concerning indigenous offenders at the top end between Western Australia and the Northern Territory—and to look at how to incorporate risk assessment processes for the termination of transfers.[462]

Issues raised by Inquiry participants in respect of reforms to the parole transfer scheme

7.50 The Committee received submissions from two Inquiry participants regarding the following possible adverse impacts of the August 2005 changes to the parole transfer scheme:

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459 Commissioner Woodham, Evidence, 3 April 2006, p28

460 Commissioner Woodham, Evidence, 3 April 2006, p28

461 Commissioner Woodham, Evidence, 3 April 2006, p28

462 Commissioner Woodham, Evidence, 3 April 2006, p27

- The changes will have an adverse impact on the successful reintegration of parolees into the community
- Some prisoners may spend longer in custody while they wait for their transfer to be formally approved
- The changes may have adverse impacts on parolees resident in border regions, such as Coolangatta/Tweed and Albury/Wodonga
- The changes may have an adverse impact on Indigenous parolees.

Adverse effects on rehabilitation of prisoners

7.51 As Mr Ian Pike, Chair of the NSW Parole Authority noted, the parole system is underpinned by the view that community safety is enhanced if prisoners are released on a supervised and phased program upon the expiry of their custodial sentence, rather than being released without supervision:

> … if parole is to operate as effectively as it should, and I think it is generally taken that parole is for the good of the community in having a phased, under supervision procedure to get an inmate back into the community, we would prefer to see them in an area where they did have that supervision and family support if it is available. If it is available it is a very good thing.[463]

7.52 One of the aims of the interstate transfer system is to facilitate the release on parole of parolees to the jurisdiction in Australia in which their chances of rehabilitation are greatest. In this respect, the Probation and Parole Officers' Association of NSW submitted that:

> It is a reality that inmates are released at the conclusion of their sentences and that they must reside somewhere. Research substantiates the long-held belief of practitioners that the prospects of successful reintegration are enhanced by the availability of community supports and stable accommodation. These factors, combined with supervision and focussed case management, contribute to a reduction in the likelihood of re-offence ... Community safety is enhanced when offenders are released subject to strict conditions in regard to which their compliance is monitored and failure to comply promptly reported.[464]

7.53 The Association submitted that the match between the needs of a particular parolee and the community into which they are released was more important than the jurisdiction into which a parolee is released:

> Ultimately, it is the match between this discrete offender with a package of needs, or supports, or monitoring, and the community to which it is proposed that he or she will be released. Those two poles are really much more important than whether it is in New South Wales, Victoria or Queensland. Unless we want to say, "We are going to avoid risk in New South Wales so the risk falls elsewhere in another State", I think we can only look at it in that very particularised way.[465]

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463 Mr Pike, Evidence, 3 April 2006, p5

464 Submission 22, Probation and Parole Officers' Association of NSW, pp2-3 (references omitted)

465 Mr Ken Studerus, President, Probation and Parole Officers' Association of NSW, Evidence, 27 March 2006, p40

7.54 The Association expressed concern that the recent changes to the scheme undermine the effective case management of parolees, hinder the reintegration of parolees back into the community and, ultimately, reduce community safety:

> Recent events in New South Wales have impacted adversely on the operation of transfer arrangements and jeopardised the positive working relationships which existed for many years. It is recognised that these events may have highlighted some inadequacies in the informal arrangements which had been observed, however the resultant restrictive practice complicates and undermines quality in case management, hinders reintegration of offenders into society and ultimately threatens community safety.[466]

7.55 In addition, Ms Moira Magrath, Secretary of the Probation and Parole Officers' Association, submitted that probation and parole officers working across different jurisdictions would find it more difficult to develop effective case management for parolees as a result of the recent changes:

> What we feel is lacking in the current situation are the previously existing informal arrangements … that allowed the people who were dealing directly with offenders, who were going to be supervising offenders and who were looking at the local situation, to engage in discussions about casework interventions and the appropriateness and suitability of certain accommodation and what have you. In the absence of the informal transfer and the stricter environment, casework strategies are difficult to establish at the time that the person is going to be released.[467]

Prisoners eligible for parole may spend longer periods in custody

7.56 As noted at paragraph 7.7, the main effect of recent changes to the transfer scheme is that parolees must wait until their parole order has been formally transferred to the receiving jurisdiction before they are able to physically relocate to that jurisdiction.

7.57 One Inquiry participant submitted that as a result of this change some prisoners would spend longer periods in custody while they wait for the formal transfer of their parole order. In this respect, the NSW Council for Civil Liberties submitted that:

> This means that prisoners who have been found suitable for release on parole will be incarcerated in gaol pending the formalisation of their transfer. They will therefore be in gaol for longer, which will increase prison populations, particularly in NSW, given the higher prison population in this State.[468]

7.58 Commissioner Woodham acknowledged that some parolees may spend longer periods in custody as a result of the reforms but suggested that the onus is on prisoners to make sure the necessary administrative processes are put in train early enough to ensure their prompt release:

> The new system for transfer of parole orders is much more rigorous than the old system. Of necessity, these matters take longer to process. The onus is on the

466 Submission 22, p2

467 Ms Moira Magrath, Secretary, Probation and Parole Officers' Association of NSW, Evidence, 27 March 2006, p40

468 Submission 14, NSW Council for Civil Liberties, p10

> offender to lodge his or her application for transfer at the appropriate time. If an offender wants to avoid a possible delay in release, the offender should lodge his or her application at the appropriate time.[469]

7.59 The Committee discusses the shared responsibility for the effective operation of the current parole transfer scheme at paragraph 7.78.

Transferees in the Albury/Wodonga and Tweed Heads/Coolangatta regions

7.60 As noted at paragraph 7.5, under the informal system previously in place parolees could be managed in the receiving jurisdiction without, or prior to, the formal transfer of their parole order to that jurisdiction. Parolees resident in one state could move across jurisdictional borders for work and family reasons without the necessarily being required to transfer their parole order to that jurisdiction.

7.61 Under the current system parolees must be supervised in the state in which their parole order is registered. This raises the issue of how to supervise parolees who regularly move back and forth across jurisdictional boundaries, such as parolees resident in border regions like Coolangatta/Tweed and Albury/Wodonga. As Ms Magrath stated, the management of this group of parolees 'is not as straightforward as saying, "You will just have to meet at the border and talk to your family there", as it just does not work that way.'[470]

7.62 The NSW State Parole Authority submitted that the reformed scheme should remain flexible enough to enable these parolees to be managed appropriately:

> … given the work/home/school scenarios that impact on offenders in the community, particularly in regions such as Albury/Wodonga and Tweed Heads/Coolangatta, the State Parole Authority would support a degree of flexibility, as identified above, in the development of any formal protocols between NSW and other States.[471]

7.63 Ms Magrath submitted that parolees resident in other parts of NSW who have close family relations in other states, such as members of the Aboriginal community at Toomelah, may have similar needs to parolees resident on state borders:

> People's lives are not demarcated in the way that State borders are. We often find that we have people living in Queanbeyan and working in Canberra, and even in those towns that do not appear to be border towns, such as the Moree area, where there is a large Aboriginal community at Toomelah, north of Moree. A lot of their links are in south-eastern Queensland.[472]

7.64 Ms Magrath submitted that these issues have 'been managed, largely with commonsense, for many years.'[473]

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469 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 32, p22

470 Ms Magrath, Evidence, 27 March 2006, p41

471 Submission 7, p2

472 Ms Magrath, Evidence, 27 March 2006, p41

473 Ms Magrath, Evidence, 27 March 2006, p41

7.65 The Committee notes the advice of Commissioner Woodham at paragraph 7.49 that the interstate working party chaired by him has taken note of this issue and is working towards guidelines for the supervision of this group of parolees.

Possible adverse impact on Indigenous parolees/prisoners

7.66 Since August 2005 all parole transfers from and to NSW have been on a formal, permanent basis. The Council for Civil Liberties submitted that the abolition of temporary parole transfers will adversely impact on Indigenous parolees because they are more likely to seek temporary transfer for family reasons than non-Indigenous parolees:

> One thing that is being introduced is the abolition of temporary transfers for any people, which will have an impact particularly on indigenous prisoners because their lifestyles are, in a sense, nomadic. Their families may not respect State boundaries. They might live on the border between New South Wales and Queensland, for instance. Their families may be travelling between those two areas. That means that the Aboriginal parolee cannot travel with their family, with their community networks. Again, it may be a de facto refusal for parole of those prisoners or a de facto refusal to allow those prisoners to be with their families therefore putting them at risk of reoffending or breaching their parole because they do not have their family support with them.[474]

7.67 The Council for Civil Liberties also submitted that, to the extent that the changes to the parole transfer scheme lead to an increase in the number of persons in prison, the changes will impact adversely on Indigenous prisoners due to the over-representation of Indigenous persons in the prison population:

> Further, because of the over-representation of indigenous people in prisons, any increase in the prison population will have a disproportionate impact upon indigenous people in gaols across Australia.[475]

Proposed solutions to difficulties associated with the formalisation of the parole transfer scheme

7.68 The Committee received evidence of several possible solutions to the problems associated with the formalisation of the parole transfer scheme, namely:

- Reinstatement of the informal transfer scheme, subject to additional safeguards
- Transfer of prisoners prior to release on parole pursuant to the reciprocal *Prisoners (Interstate Transfer) Acts* in force in each jurisdiction
- Amendments to the *Parole Orders (Transfer) Acts* to allow the transfer of parole orders at an earlier date, as recommended by Commissioner Woodham's working party and noted at paragraph 7.49.

474 Ms Pauline Wright, Vice President, NSW Council for Civil Liberties, Evidence, 27 March 2006, p26

475 Submission 14, p11

Reinstatement of the informal system subject to additional safeguards

7.69 The Probation and Parole Officers' Association of NSW submitted that the former informal transfer system should be reinstated, subject to the development of a more rigorous set of protocols to govern the administration of transfers:

> We are advocating for the return of the informal transfer as it previously existed, but with tighter controls so that there is consistency across the States and everybody is on the same page. That includes the quantum and nature of information change, the exchange of criminal histories, intelligence available regarding particular offenders.[476]

7.70 The Committee notes the advice of Commissioner Woodham that the working party chaired by him has been working towards standard national guidelines for the administration of parole transfers (paragraph 7.45).

Transfer of prisoners pursuant to the Prisoners (Interstate Transfer) Acts

7.71 The transfer of prisoners is discussed at paragraph 7.97. The Committee notes that a possible solution to the problems associated with changes to the parole transfer scheme would be to transfer prisoners under the reciprocal *Prisoners (Interstate Transfer) Acts* in place in each jurisdiction before they are eligible for release on parole. Prisoners transferred in this fashion would then be considered for release on parole directly into the jurisdiction to which they had already been transferred. The Committee understands that the Queensland Minister for Corrective Services put this proposal to the Corrective Services Administrators Conference in April 2005.[477]

Amendment to the Parole Orders (Transfer) Acts as recommended by Commissioner Woodham's working party

7.72 The further reforms to the parole transfer scheme recommended by the working party chaired by Commissioner Woodham are discussed at paragraph 7.44 to 7.50. In summary, the working party recommended that all parole transfers be conducted on a formal basis i.e. that no parolee be allowed to physically relocate to another jurisdiction prior to the approval of the transfer of their parole order by the Minister or his or her delegate in each jurisdiction. To ameliorate the impact of this requirement on parolees the working party recommended legislative changes to allow the transfer of a parole order earlier than is currently possible.

Committee comment

7.73 The Committee notes that the parole transfer scheme furthers the public interest in the successful reintegration of offenders into the community and, ultimately, the protection of the public. Under the parole transfer scheme in place prior to August 2005, parolees were able to physically relocate to the receiving jurisdiction prior to the formal approval of the transfer of their parole order by the relevant Ministers or their delegates. Under present arrangements

476 Ms Magrath, Evidence, 27 March 2006, p41

477 Submission 27, The Hon Judy Spence MP, Minister for Police and Corrective Services, Queensland, p1

parolees must wait for their parole orders to be formally transferred to the receiving jurisdiction before physically relocating to that jurisdiction.

7.74 As noted at paragraph 7.57, one criticism of the present parole transfer arrangements is that some prisoners may spend longer in custody while they wait for their parole orders to be transferred. The Committee considers that this may tend to frustrate the objects of the parole transfer scheme and should be avoided wherever possible, consistent with appropriate safeguards to ensure the protection of the community.

7.75 The Committee received evidence of several possible solutions to this problem. The Probation and Parole Officers' Association submitted that the informal transfer system should be reinstated, subject to additional safeguards. In view of the problems experienced by NSW and other states with the informal transfer system and noted at paragraphs 7.6 and 7.9, the Committee does not consider this proposal to be a viable solution.

7.76 An alternative suggestion raised in evidence was that potential parolees be transferred to the receiving jurisdiction pursuant to the reciprocal *Prisoners (Interstate Transfer) Acts* in force in each jurisdiction. The Committee considers that this may be a viable solution for some, but not all, prospective parolees. For example, a prisoner may not wish to serve their custodial sentence in another jurisdiction if that jurisdiction is perceived to have inferior facilities or programs. In addition, their application may be made late or be delayed, or may be refused. For these reasons, there will continue to be a need for a mechanism by which parole orders can be transferred between jurisdictions at the expiry, or subsequent to the expiry, of the non-parole period of a prisoner's sentence.

7.77 The Committee is satisfied that the reforms recommended by the working party chaired by Commissioner Woodham will reduce the prospect of any parolee spending longer in custody as a result of the formalisation of the transfer scheme. As noted at paragraph 0, the working party recommended that the *Parole Orders (Transfer) Acts* be amended to enable a parole order to be transferred earlier than is possible under current arrangements. The Committee was advised that these recommendations will go to a conference of corrections Ministers for consideration later this year. The Committee recommends that the Minister pursue the legislative changes proposed by the working party chaired by Commissioner Woodham with a view to obtaining reciprocal amendments in all jurisdictions.

7.78 The Committee notes the comment by Commissioner Woodham that the onus of bringing a parole transfer application at the appropriate time lies with the prospective parolee (paragraph 7.58). The Committee considers that responsibility for ensuring the parole transfer scheme works efficiently is shared between parolees, the relevant corrections agencies and the Ministers or their delegates. The Committee recommends that the Department of Corrective Services develop an information strategy to ensure that prospective parole transferees are made aware of the need to initiate the parole transfer process at least three months prior to their likely release date, and that the Department provide assistance to prospective parolees to enable them to make their applications in good time.

7.79 The Committee agrees with the Probation and Parole Officers' Association that a revised set of formal protocols should be negotiated between the various parties to the interstate transfer scheme. The Committee noted at paragraph 7.45 that the working party chaired by Commissioner Woodham has been working towards standard national guidelines for the

administration of the parole transfer scheme. The Committee recommends that the Department continue to work towards the adoption of such guidelines.

7.80 The Committee notes evidence received from the Probation and Parole Officers' Association that the formalisation of the parole transfer scheme may adversely impact on the ability of probation and parole officers to develop effective case management plans for parole transferees. The proposed further changes to the scheme, together with the standard guidelines being developed by the working party, may address these concerns. However, the Committee recommends that the Department monitor the impact of recent and proposed changes to the parole transfer scheme on the case management of parole transferees.

7.81 Further, the Committee notes the particular position of parolees who are required to travel across state and territory borders on a regular basis, including Indigenous parolees and parolees resident in border regions. The Committee notes the advice of Ms Magrath that these issues were handled in a commonsense fashion prior to August 2005. The Committee is of the view that this should continue. As noted at paragraph 7.49, the working party chaired by Commissioner Woodham is working towards standard guidelines to facilitate short-term transfers, particularly for Indigenous parolees. The Committee therefore recommends that the Department continue to work towards the adoption of standard national guidelines incorporating appropriate arrangements for the short term transfer of parolees required to move regularly across jurisdictional boundaries, including parolees resident in border regions and Indigenous parolees.

Recommendation 13

That the Department of Corrective Services develop an information strategy to ensure that prospective parole transferees are made aware of the need to initiate the parole transfer process at least three months prior to their likely release date, and that the Department provide assistance to prospective parolees to enable them to make their applications in good time.

Recommendation 14

That the Department of Corrective Services continue to work towards the adoption by all states and territories of standard national guidelines regarding the administration of the parole transfer system, and that the guidelines incorporate appropriate arrangements for the short term transfer of parolees required to move regularly across jurisdictional boundaries, including parolees resident in border regions and Indigenous parolees.

Recommendation 15

That the Department of Corrective Services monitor the impact of recent and proposed changes to the parole transfer scheme on the case management of parole transferees.

Ban on transfer of parolees convicted of child sex offences

7.82 Prior to August 2005, child sex offenders seeking interstate parole transfer were eligible to participate in the informal transfer process. Therefore child sex offenders assessed to be suitable for transfer could, like all other offenders, be physically relocated to or from NSW prior to approval being granted by the Minister or his or her delegate for the formal transfer of their parole order.

7.83 The government banned the transfer of child sex offenders to NSW in August 2005. While it was not made clear whether other states had, or intend to, put in place a similar ban, Commissioner Woodham acknowledged that child sex offenders would now find it more difficult to move between jurisdictions while on parole:

> I do not think you are going to find many, if any, States that are going to take anyone else's child sex offenders. There will definitely be a reduction in the movement of child sex offenders around Australia, in my opinion.[478]

7.84 Commissioner Woodham also advised that, in the period from the introduction of the ban to 3 April 2006, two child sex offenders had been refused permission to transfer from NSW, and that no child sex offenders had applied to transfer to NSW:

> Two child sex offenders have been formally refused permission to transfer their parole interstate from New South Wales to another State since August 2005. Child sex offender inmates have been advised that parole transfer applications will not be accepted. So I am unable to ascertain how many such offenders who previously would have lodged transfer applications have not done so.[479]

Criticisms of the ban on the parole transfer of child sex offenders

7.85 Two Inquiry participants criticised the ban on the parole transfer of child sex offenders on the bases that the ban:

- May affect community safety
- Adopts a blanket approach to the treatment of sex offenders and therefore fails to take account of individual cases
- May lead to an increase in the NSW prison population
- Is unjust to child sex offenders.

Impact on community safety

7.86 The Probation and Parole Officers' Association submitted that the ban may tend to diminish, rather than enhance, community safety in so far as some child sex offenders will be released without having had the benefit of a period of parole supervision:

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478 Commissioner Woodham, Evidence, 8 December 2005, p23

479 Commissioner Woodham, Evidence, 3 April 2006, p36

> Encouraging a 'not in my backyard' response actually may serve to **increase** the risk to the community as the sustainable case management which could have been implemented was abandoned. The subject community may now encounter the return of the offender, upon completion of his sentence, absent any restrictions at all.[480]

7.87 The Council for Civil Liberties submitted that the ban will tend to isolate those offenders from support networks in the community and would therefore increase the risk of those offenders reoffending:

> Where a child sex offender is incarcerated interstate and assessed as suitable for release on parole but their support base, family, connections to the community and work prospects are in NSW, it would clearly be preferable for them to be transferred for release on parole to NSW. If they were released within the state where they were incarcerated, they would have no community support and less chance of being monitored by family and friends, which would place them at a higher risk of re-offending. This would clearly be undesirable.[481]

7.88 In response to a suggestion that the ban on transfers of child sex offenders would preclude those prisoners from receiving the support of family members in their home state, Commissioner Woodham suggested that it would not be appropriate to parole child sex offenders close to or with their family.[482]

A uniform ban on sex offenders fails to take account of individual cases

7.89 The Probation and Parole Officers' Association argued that there should be no exclusions from the parole transfer scheme on the basis of the nature of the offence.[483] Mr Ken Studerus, President of the Association, argued that it is inappropriate to adopt a blanket approach to a particular category of offender rather than to consider each offender on an individual basis:

> I would be a little reluctant to advocate that we simply take a category, a broad category. It may be limited but within the category of sex offenders it is a fairly broad spread of offending types. The circumstances of those individuals may vary widely. Simply excluding them from the process and making them ineligible for transfer, or having some other harsh procedural remedy, could well be overkill for some people within those bounds. I think our approach would be rather to get down to the individual case and work to policies that will allow each case to be considered individually on its merits and with the most appropriate manager for each individual offender, whatever the category.[484]

7.90 The Council for Civil Liberties also submitted that parole transfers should be considered on an individual basis and that particular categories of offenders should not be excluded from the scheme. In this respect, the Council submitted that the parole transfer scheme:

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480 Submission 22, p3 (original emphasis)

481 Submission 14, p11

482 Commissioner Woodham, Evidence, 8 December 2005, p26

483 Submission 22, p3

484 Mr Studerus, Evidence, 27 March 2006, p42

> … ought not apply any differently again depending on the type of crime for which the person has been convicted. If there are good reasons to transfer a prisoner interstate that process ought not be blocked just because of the nature of their offence. Each case, as I say, should be assessed individually.[485]

7.91 The NSW State Parole Authority indicated that sex offenders should not be excluded from the parole transfer system, provided that appropriate supervision is put in place. In this respect, the Parole Authority submitted that it:

> … would support the introduction of formal protocols for the interstate transfer of all parolees including sex offenders subject to the development of suitable supervision arrangements in the receiving States.[486]

The ban may lead to an increase in the NSW prison population

7.92 The ban on the interstate transfer of child sex offender parolees was also criticised as being likely to lead to an increase in the number of people in New South Wales prisons. For example, the NSW Council for Civil Liberties submitted that: '[a]part from creating injustice for those people, this will also mean an increase in prison populations.'[487]

7.93 This observation was acknowledged by Commissioner Woodham, who stated that: '[w]hen you look at that, yes, some of them will stay in gaol longer. But in a case like that it is probably better to have them in gaol than out on the street.'[488]

7.94 The Committee notes that any increase in the prison population occurring because of the ban is likely to be small.

The ban is unjust to child sex offenders

7.95 The NSW Council for Civil Liberties submitted that the ban on the transfer on parole of child sex offenders was unjust for those offenders.[489] In this respect, the Council submitted that:

> In the case of child sex offenders, the banning of interstate transfers will mean that people who would otherwise have been suitable for release on parole in a state or territory other than the one in which they are incarcerated will have to serve the whole of their sentences inside gaol.[490]

Committee comment

7.96 As noted at paragraph 7.4, there is a significant public interest in the successful operation of the parole transfer scheme. The scheme promotes the reintegration of offenders into the community, the rehabilitation of prisoners and the safety of the community. The Committee

485 Ms Wright, Evidence, 27 March 2006, p21

486 Submission 7, p1

487 Submission 14, p11

488 Commissioner Woodham, Evidence, 8 December 2005, p25

489 Submission 14, p11

490 Submission 14, p11

considers that, as a general principle, parolees should be paroled in the location in which they are most likely to be rehabilitated and least likely to reoffend.

Interstate transfer of prisoners

7.97 Reciprocal *Prisoners (Interstate Transfer) Acts* permit the transfer of prisoners between jurisdictions for trial and welfare purposes. In this section the Committee provides background information regarding the operation of the prisoner transfer scheme and discusses issues raised by Inquiry participants in respect of the operation of scheme.

Transfers for trial purposes

7.98 Prisoners serving a custodial sentence for a crime committed in one jurisdiction may also be the subject of an outstanding arrest warrant for a crime allegedly committed in another jurisdiction. The *Prisoners (Interstate Transfer) Act 1982* (NSW) (the Act) provides a mechanism for the transfer of such prisoners to the jurisdiction of the outstanding arrest warrant for the purposes of standing trial. Such transfers may occur on the initiative of the prisoner concerned or on the initiative of the attorney general of the jurisdiction of the outstanding arrest warrant. In either case, the prisoner transfer process involves agreement by the attorney general of both jurisdictions followed by an order of the Local Court. The Act provides for a review by the Supreme Court of a decision of the Local Court within 14 days of the date of the Local Court's decision.[491]

7.99 The Hon Bob Debus MP, Attorney General, advised the Committee that the 'spirit' of the Act is that a prisoner should be able to deal with outstanding matters while still in custody, rather than having to wait until they are released to stand trial:

> The spirit and intention of the Act is that a prisoner should be able to have matters outstanding against him or her in another State dealt with rather than being required to await extradition at the conclusion of a sentence. Sections 12 and 19 outline the requirements, including the necessary consents and order of transfer required to effect the transfer of a prisoner.[492]

7.100 Mr Bugden, Principal Solicitor, Coalition of Aboriginal Legal Services, submitted that, in circumstances where a prisoner was facing other charges, whether in NSW or elsewhere, it was in that prisoner's interest and the public interest that those charges be dealt with expeditiously:

> They may receive a 12 months gaol sentence for stealing a car in New South Wales and if they can get all the other matters dealt with at the same time it would be to the community's benefit. It would be a benefit to the community to have the matters dealt with at a rapid rate. From the perspective of the clients and the family, they want to make a fresh start. It is quite difficult with those matters.[493]

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491 *Prisoners (Interstate Transfer) Act 1982* (NSW), s 16

492 Submission 25, The Hon Bob Debus MP, Attorney General, NSW, p1

493 Mr Peter Bugden, Principal Solicitor, Coalition of Aboriginal Legal Services, Evidence, 27 March 2006, p36

7.101 The Committee notes that the benefit of obtaining a transfer for trial purposes from a prisoner's point of view is that, if found guilty of the interstate offence, the prisoner may be able to serve their sentences concurrently. Prisoners unable to secure a transfer to deal with matters outstanding against them face the prospect of defending those matters after their release. If found guilty, such prisoners face the prospect of another term of imprisonment.[494]

7.102 The Attorney General outlined the administrative procedures of his Department in respect of trial transfers:

> … after my Department receives a request for a transfer for legal purposes, it will liaise with the relevant State to seek its consent to the transfer. It will also prepare a submission seeking my consent for the transfer. Once the necessary consents have been obtained, the Director of the Community Relations Division will prepare a certificate under section 13 of the Act. This certificate will be forwarded to the Department of Corrective Services who will then seek the order of transfer from a Local Court under section 14 of the Act.[495]

7.103 The Attorney-General also advised that '[t]he Attorney General's Department receives approximately 20 requests a year. It has not experienced any particular difficulties with the scheme. I understand that challenges [to a transfer decision] are rare.'[496]

Transfers for welfare purposes

7.104 Transfers for welfare purposes are administered by the Department of Corrective Services. Unlike transfers for trial purposes, welfare transfers do not require an order of the Local Court. The *Prisoners (Interstate Transfer) Act 1982* (NSW) allows persons serving custodial sentences to apply to the Minister for Justice to seek the consent of his or her interstate counterpart to the transfer of that prisoner on welfare grounds. The Act provides that the Minister 'shall' request the transfer of the prisoner if the Minister is of the opinion that the transfer is 'in the interests of the welfare' of the prisoner.[497] The decision of the Minister to grant or refuse a welfare transfer is not reviewable in any court.[498]

7.105 The *Prisoners (Interstate Transfer) Amendment Act 2005* (NSW) amends the *Prisoners (Interstate Transfer) Act 1982* by widening the discretion of the Minister to approve or reject transfer applications. The Act received the Royal Assent on 18 May 2005 but at the time of finalising this report is yet to be proclaimed.

7.106 When the amendments come into force, the Minister may consider, when determining an application for a transfer by a prisoner on 'welfare' grounds, the following factors:

- the welfare of the prisoner concerned
- the administration of justice in NSW or any other state

494 Mr Bugden, Evidence, 27 March 2006, p36

495 Submission 25, p1

496 Submission 25, p2

497 *Prisoners (Interstate Transfer) Act 1982* (NSW), s 7

498 *Prisoners (Interstate Transfer) Act 1982* (NSW), s 7(6)

- the security and good order of any prison in NSW or any other state
- the safe custody of the prisoner
- the protection of the community in NSW or any other state
- any other matter the Minister considers relevant.[499]

7.107 Commissioner Woodham advised the Committee that '[t]he amendments remove the limitation on the Minister's discretion in relation to transfer requests' and '[t]he likely impact of the changes will be that some inmates may find it harder to achieve an interstate transfer if the effect of that transfer would be that the public interest would not be served by their transfer.'[500] However, Commissioner Woodham further advised that '[t]he impact of these changes on the interstate transfer system cannot be assessed until after the changes have been in operation for a reasonable period of time.'[501]

Criticism of the present arrangements

7.108 A small number of Inquiry participants expressed the following concerns regarding the operation of the prisoner transfer scheme as follows:

- Delays in the administration of the scheme
- Absence of reasons for decisions by the Minister and Attorney General
- Lack of a binding review mechanism in respect of welfare transfers.

Delays in processing transfer applications

7.109 The Committee received evidence from Mr Peter Bugden, Principal Solicitor, Coalition of Aboriginal Legal Services, regarding delays in the administration of the prisoner transfer system:

> With our clients in New South Wales who have matters interstate, we do whatever we can to get those matters dealt with. However, for many years I know that they have finished a whole sentence in New South Wales and they are then taken to another State to face the local, district or supreme courts because those matters are outstanding. It has been a very difficult process to get the interstate matters on for many years. There was a change in the legislation only last year, but I cannot speak to how effective it is because it has not come across my desk. We have written many letters over the years to improve the situation. I am not an expert, but I understand that it requires two Attorneys General to agree to the transfer. There seems to be an inordinate delay in that taking place.[502]

499 *Prisoners (Interstate Transfer) Amendment Act 2005*, (NSW), Sch 1, cl 3

500 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 34, pp22-23

501 Answers to questions on notice taken during evidence 3 April 2006, Commissioner Woodham, Question 34, p23

502 Mr Bugden, Evidence, 27 March 2006, pp34-35

7.110 Mr Bugden also observed that 'It seems to be quicker when people are extradited to other countries rather than within Australia.'[503]

7.111 The Committee was informed that the process of completing a trial or welfare transfer can take up to six months. For example, the Legal Aid Commission of NSW submitted that 'The negotiation between the respective states is a process that can take up to 6 months.'[504] The Western Australian Minister for Justice advised the Committee that the Western Australian Department of Justice aims to make a determination on applications by prisoners applying to transfer either from or to Western Australia on trial or welfare grounds within three months of the receipt of application.[505]

7.112 The Legal Aid Commission of NSW submitted that the Act should be amended to impose a total time limit within which a decision should be made, for example, within 3 months.[506]

Failure to give reasons and lack of review mechanism in respect of welfare transfers

7.113 As noted at paragraph 7.98, transfer applications for trial purposes require the approval of the attorneys general of the sending and receiving jurisdiction. Once agreement has been reached the attorney general of the sending jurisdiction must apply for a transfer order from the Local Court. The decision of the Local Court is reviewable in the Supreme Court within 14 days. As noted at paragraph 7.104, transfers for welfare purposes require the approval of the Minister for Justice and his or her interstate counterpart, and are protected from review by a privative clause.

7.114 The Legal Aid Commission of NSW submitted, in respect of transfers for trial or for welfare purposes, that:

> The inmate is simply advised of the decision. Inmates are seldom, if ever, given reasons for a refusal. It would assist in the transparency of the process, if reasons were given and if there was a procedure available to review the decision.[507]

7.115 The Legal Aid Commission submitted that it would be difficult to formulate a review mechanism for interstate prisoner transfer applications because NSW cannot bind the other states by way of an appeal process.[508] However, the Commission suggested that the Act should be amended to require the Minister and the Attorney General to give written reasons to an inmate if consent for a transfer is refused.[509]

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503 Mr Bugden, Evidence*,* 27 March 2006, p35

504 Submission 21, p4

505 Submission 12, p1

506 Answers to questions on notice taken during evidence 27 March 2006, Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission of NSW, Question 5, p3

507 Submission 21, p4

508 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 5, p3

509 Answers to questions on notice taken during evidence 27 March 2006, Mr Sandland, Legal Aid Commission of NSW, Question 5, p3

Committee comment

7.116 The Committee notes the concerns raised by the Legal Aid Commission and by the Coalition of Aboriginal Legal Services regarding the operation of the prisoner transfer scheme. In particular, the Committee notes concerns regarding delays in the administration of transfers for trial purposes.

7.117 The Committee considers that the significant public interest in the speedy resolution of outstanding criminal charges as between different jurisdictions coincides with the interest of prisoners in dealing with those matters while still in custody, rather than when they are released. To the greatest practicable extent, the transfer of such prisoners should be expedited.

7.118 The Committee recommends that the Attorney General and the Minister for Justice monitor the operation of the prisoner transfer scheme to determine the extent of any delays in the scheme and to identify and assess proposals to reduce delays.

Recommendation 16

That the Attorney General and the Minister for Justice monitor the operation of the prisoner transfer scheme to determine the extent of any delays in the scheme and to identify and assess proposals to reduce delays.

Appendix 1 Submissions

No	Author
1	Mr Bob Haebich
2	Name suppressed
3	Ms Claudette Palmer
3a	Ms Claudette Palmer
4	Mr Bevin Keith Kempe
5	Confidential
6	The Hon David Campbell MP, Minister for Small Business and Minister for Regional Development
7	Mr Paul Byrnes, NSW State Parole Authority
8	Mr Bruce Barbour, NSW Ombudsman
9	Confidential
10	Confidential
11	Confidential
12	The Hon John D'Orazio MLA, Minister for Justice, Western Australia
13	Confidential
14	Mr Michael Walton, NSW Council for Civil Liberties
15	Mr David Turbit (partially confidential)
16	Ms Marie Koen
17	Confidential
18	Mr Vincent Virgona
19	Mr Paul Orton, Australian Business Ltd
20	Mr Stepan Kerkyasharian AM, Community Relations Commission
21	Mr Brian Sandland, Legal Aid Commission of NSW
21a	Mr Will Hutchins, Legal Aid Commission of NSW
22	Ms Moira Magrath, Probation and Parole Officers' Association of NSW Inc
23	Rev Harry J Herbert, Civil Chaplaincies Advisory Committee
24	Ms Meredith MacDonald, Intellectual Disability Rights Service
25	The Hon Bob Debus MP, Attorney General, NSW
26	Mr Peter Zahra SC, NSW Public Defenders
27	The Hon Judy Spence MP, Minister for Police and Corrective Services, Queensland
28	Mr Brett Collins, Justice Action

Appendix 2 Witnesses

Date	Name	Position and Organisation
Thursday 8 December 2005	Mr Ron Woodham	Commissioner, Department of Corrective Services
Public Hearing, Sydney	Mr Ian McLean	Senior Assistant Commissioner, Inmate and Custodial Services, Department of Corrective Services
	Mr David Luke Grant	Assistant Commissioner, Offender Management, Department of Corrective Services
	Ms Catriona McComish	Senior Assistant Commissioner, Community Offender Services, Department of Corrective Services
Monday 27 March 2006	Mr Greg Hogan	Manager, World of Curtains Manufacturing Pty Ltd
Public Hearing, Sydney	Mr Chris Christodoulou	Unions NSW representative on the Corrective Services Industries Consultative Council
	Mr Barry Tubner	Unions NSW representative on the Corrective Services Industries Consultative Council
	Mr Brian Sandland	Director, Criminal Law Division, Legal Aid Commission
	Mr Will Hutchins	Solicitor, Prisoners Legal Service, Legal Aid Commission
	Mr Michael Walton	Convenor, Criminal Justice Sub-committee, NSW Council for Civil Liberties
	Ms Pauline Wright	Vice President, NSW Council for Civil Liberties
	Mr Stepan Kerkyasharian AM	Chair, Community Relations Commission
	Mr Peter Bugden	Solicitor, Coalition of Aboriginal Legal Services
	Mr Ken Studerus	President, Probation and Parole Officers Association of NSW
	Ms Moira Magrath	Secretary, Probation and Parole Officers Association of NSW
	Mr Brett Collins	Managing Director & Spokesperson, Justice Action
	Mr Michael Strutt	Researcher and community activist, Justice Action
	Mr Chris Linton	Clinical Director, High Risk Management Unit, Goulburn Correctional Centre
Monday 3 April 2006	Mr Paul Byrnes	Director and Secretary, NSW State Parole Authority
Public Hearing, Sydney	Mr Ian Pike	Chairperson and senior judicial member, NSW State Parole Authority
	Mr Howard Brown	President, Victims of Crime Assistance League
	Rev Harry J Herbert	Secretary, Civil Chaplaincies Advisory Committee
	Sr Pauline Staunton	Administrator, Civil Chaplaincies Advisory Committee
	Rev Rod Moore	Co-ordinator, Prison Chaplaincy Service

Date	Name	Position and Organisation
3 April 2006 cont.	Mr Ron Woodham	Commissioner, Department of Corrective Services
	Mr Luke Grant	Assistant Commissioner, Offender Management, Department of Corrective Services
	Mr Brain Kelly	Acting Assistant Commissioner, Security and Intelligence, Department of Corrective Services
Thursday 6 April 2006 Public Hearing, Sydney	Judge Peter Moss QC	Chair, Serious Offenders Review Council

Appendix 3 Tabled documents

Thursday, 8 December 2005

Public hearing, Parliament House

1. Report into an enquiry into curtain making operations within the textile division of Corrective Services Industries at Long Bay Correctional Centre, *tabled by Assistant Commissioner Luke Grant*
2. CSI and Competitive Neutrality, *tabled by Commissioner Ron Woodham*
3. Commissioner's instruction No 13/2005 regarding Category AA and Category 5 Inmates' Management Regime, *tabled by Commissioner Ron Woodham*

Monday, 27 March 2006

Public hearing, Parliament House

4. World of Curtains: Transcript of Greg Hogan 2003-2005, *tabled by Mr Greg Hogan* (partially confidential)
5. Labour Council of New South Wales Prisoner Labour Policy, *tabled by Mr Barry Tubner*
6. From Prison Gangs to Corrective Industries: From Corrective Industries to Skilled Jobs to Employment on Release, *tabled by Mr Barry Tubner*
7. Offer of Hope, *tabled by Mr Brett Collins*
8. Breakout Design and Print (information brochure), *tabled by Mr Brett Collins*
9. 11th International Conference on Penal Abolition (information brochure), *tabled by Mr Brett Collins*
10. Just Us, September 2005, vol 2, issue 1, *tabled by Mr Brett Collins*

Monday, 3 April 2006

Public hearing, Parliament House

11. Presentation to the General Purpose Standing Committee No 3 inquiry into issues relating to the operations and management of the Department of Corrective Services, *tabled by Mr Ian Pike*

Appendix 4 Classification Scales

Crimes (Administration of Sentences) Regulation 2001 (NSW)

22 Classification of male inmates

(1) Each male inmate is to be classified in one of the following categories for the purposes of security and the provision of appropriate development programs:

Category AA, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category A1, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to good order and security and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category A2, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

Category B, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

Category C1, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

Category C2, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

Category C3, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

(2) Subject to clause 27, the Commissioner may at any time vary or revoke a classification under this clause.

(3) Male inmates who are classified in Category AA are prescribed to be serious offenders, as referred to in paragraph (f) of the definition of ***serious offender*** in section 3 (1) of the Act.

Crimes (Administration of Sentences) Regulation 2001 (NSW)

23 Classification of female inmates

(1) Each female inmate is to be classified in one of the following categories for the purposes of security and the provision of appropriate development programs:

Category 5, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to national security (for example, because of a perceived risk that they may engage in, or incite other persons to engage in, terrorist activities) and should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category 4, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment.

Category 3, being the category of inmates who, in the opinion of the Commissioner, should be confined by a physical barrier unless in the company of a correctional officer or some other person authorised by the Commissioner.

Category 2, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times but who need some level of supervision by a correctional officer or some other person authorised by the Commissioner.

Category 1, being the category of inmates who, in the opinion of the Commissioner, need not be confined by a physical barrier at all times and who need not be supervised.

(2) Subject to clause 27, the Commissioner may at any time vary or revoke a classification under this clause.

(3) Female inmates who are classified in Category 5 are prescribed to be serious offenders, as referred to in paragraph (f) of the definition of ***serious offender*** in section 3 (1) of the Act.

Crimes (Administration of Sentences) Regulation 2001 (NSW)

24 Escape-risk classifications

(1) Each inmate (male or female) who commits an escape offence in New South Wales or elsewhere (whether or not he or she is prosecuted or convicted in respect of the offence) is, for the first case plan following the commission of the offence, to be classified in one of the following categories:

Category E1, being the category of inmates who, in the opinion of the Commissioner, represent a special risk to security and should at all times be confined:

(a) in special facilities within a secure physical barrier that includes towers or electronic surveillance equipment, or

(b) by a secure physical barrier that includes towers, other highly secure perimeter structures or electronic surveillance equipment.

Category E2, being the category of inmates who, in the opinion of the Commissioner, should at all times be confined by a secure physical barrier.

(2) An inmate's classification under this clause overrides the inmate's classification under clause 22 or 23.

(3) Despite subclause (2), the Commissioner may determine that an inmate not be classified under this clause if the inmate was under the age of 18 years when the escape offence was committed.

(4) Subject to clause 27, the Commissioner may at any time vary or revoke a classification under this clause.

(5) In this clause, ***escape offence*** means an offence of escaping from lawful custody or an offence of attempting or conspiring to escape from lawful custody.

25 Designation of high security and extreme high security inmates

(1) The Commissioner may designate an inmate as a high security inmate if of the opinion that the inmate constitutes:

(a) a danger to other people, or

(b) a threat to good order and security.

(2) The Commissioner may designate an inmate as an extreme high security inmate if of the opinion that the inmate constitutes:

(a) an extreme danger to other people, or

(b) an extreme threat to good order and security.

(3) Subject to clause 27, the Commissioner may at any time vary or revoke a designation under this clause.

Appendix 5 Report of Committee site visit to the High Risk Management Unit

Committee site visit to the High Risk Management Unit, Goulburn Correctional Centre on 23 March 2006

The following Committee members attended the site visit: Ms Amanda Fazio (Chair), Mr Peter Breen, Dr Arthur Chesterfield Evans, Mr Charlie Lynn and Mr Ian West. The Committee was accompanied by the following Secretariat staff: Ms Beverly Duffy (A/Director), Dr Michael Phillips and Ms Victoria Pymm.

The Committee arrived at the Goulburn Correctional Centre at 11am where they were met by departmental officers including Senior Assistant Commissioner Ian McLean, Commander Don Rogers, Acting Assistant Commissioner, Security and Intelligence, Brian Kelly, the General Manager of the HRMU, Mr Mark Wilson and the Clinical Director of the HRMU, Mr Chris Linton. Commissioner Woodham, who had intended to attend the site visit, sent his apologies as he was required to attend to another matter at late notice.

Mr Mark Wilson provided the Committee with a brief powerpoint presentation on the HRMU. Mr Wilson informed the Committee, among other matters that:

- The HRMU's maximum capacity is 75 inmates, current population is 35 inmates.
- Prospective inmates are considered by a HRMU referral committee.
- The HRMU includes three distinct Units: Unit 7, Unit 8 and Unit 9 and has its own medical clinic.
- HRMU staff include the Clinical Director, one psychologist and three counsellors. An education officer offers literacy and numeracy skills training one day per week.
- The behaviour modification program in place in the HRMU is oversighted by the Clinical Director and requires inmates to pass through nine levels.

Senior Assistant Commissioner McLean and other officers accompanied the Committee on the tour of the HRMU. The Committee viewed:

- Units 7, 8 and 9, including individual cells in each unit
- the clinic
- videoconferencing facilities
- the 'safe' cell for prisoners at risk of self harm
- the exercise yard and basketball courts and
- the visitors section.

The visit concluded at approximately 1.45 pm.

Appendix 6 Minutes

Meeting No 27
Wednesday 23 November 2005
At Parliament House at 3:30 pm, Room 1108

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce
Mr Peter Breen
Mr Charlie Lynn
Mr Ian West
Mr Arthur Chesterfield-Evans (Jenkins)
Ms Penny Sharp (Obeid)

2. Substitute members

The Chair advised that she had been notified by the Government whip that Ms Sharp would be substituting for Mr Obeid for the purpose of the hearing.

The Chair advised that she had been notified by Mr Breen that Mr Chesterfield-Evans would be substituting for Mr Jenkins for the purposes of the meeting.

3. Confirmation of Minutes

Resolved, on the motion of Mr West, that Minutes Number 26 be confirmed.

4. Correspondence

The Chair noted the following correspondence received:

- Letter from Mr Peter Breen MLC, Mr Greg Pearce MLC and Mr Jon Jenkins MLC, requesting that the Committee meet to discuss a proposed inquiry into aspects of the operations and management of the Department of Corrective Services and other relevant agencies (16 November 2005).

5. Self reference – Department of Corrective Services

Resolved, on the motion of Mr West, that the proposed terms of reference be amended by:

- inserting the word '(CSI)' after the word 'Industries' in paragraph 1
- inserting the words 'the Department of' after the word 'by' in paragraph 2
- inserting the words 'High Risk Management Unit' after the word 'the' in sub-paragraph 2b
- deleting sub-paragraph 3c.

Resolved, on the motion of Mr Breen, that the Committee adopt the following terms of reference:

That General Purpose Standing Committee No. 3 inquire into and report on the following areas of the operations and management of the Department of Corrective Services and other relevant agencies:

1. The operation and management of Corrective Services Industries (CSI) with regard to:
   a. The observance of the Charter to avoid unfair competition through the use of prisoner labour to compete with existing businesses.
   b. Claims that curtain manufacture by CSI is replicating work previously done by other NSW businesses and costing jobs.
   c. Other businesses that may be unfairly disadvantaged by CSI.

2. The management of high risk prisoners by the Department of Corrective Services with regard to:
   a. Access and contact by non-correctional persons including their security screening.
   b. The effectiveness of the High Risk Management Unit (HRMU) at Goulburn Gaol.
   c. The objectivity of the prisoner classification system.
   d. Staffing levels and overcrowding.

3. The interstate transfer of Offenders and Parolees with regard to:
   a. Communication and agreement between Authorities.
   b. Ministerial sign-off under the Acts and informal arrangements made between jurisdictions.

Resolved, on the motion of Mr Pearce, that the closing date for receipt of submissions be 30 January 2006.

Resolved, on the motion of Mr Lynn, that the Committee advertise the inquiry and call for public submissions in The Sydney Morning Herald and The Daily Telegraph on 3 December 2005, and in relevant local newspapers in those areas in which Corrective Services Industries work-sites are located.

Resolved, on the motion of Mr Breen, that the Committee hold a public hearing on 8 December 2005 from 10 am to 1 pm; that the Commissioner and relevant senior officers of the Department of Corrective Services be invited to attend to give evidence; and that the time allocated to questions for each of the terms of reference be of approximately 1 hour's duration.

6. Adjournment

The Committee adjourned at 3:50 pm until 10:00 am on Wednesday 7 December 2005.

Beverley Duffy
A/Director

Meeting No 28
Wednesday 7 December 2005
At Parliament House at 10:05 am Room 814/815

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce (11:45 - 1:00 pm)
Mr Peter Breen
Mr Charlie Lynn
Mr Henry Tsang (West) (from 11.15 – 1.00 pm)
Ms Jan Burnswoods (Obeid)
Mr Michael Gallacher (Pearce from 10:00 - 11:30 am)

2. Substitute arrangements

The Chair advised that Ms Burnswoods would be substituting for Mr Obeid for the purposes of this meeting; and Mr Gallacher would be substituting for Mr Pearce from 10:00 - 11:30 am for the purposes of this meeting.

3. ...

4. ...

5. ...

6. Inquiry into Issues relating to the Operations and Management of the Department of Corrective Services

The Chair tabled two letters from the Commissioner for Corrective Services, Mr Ron Woodham, dated 6 and 7 December 2005, regarding a request to conduct the hearing scheduled for 8 December 2005 in private.

Resolved, on the motion of Ms Burnswoods: That the Secretariat convey to the Commissioner of the Department of Corrective Services that the Committee proposes to hear evidence regarding matters of a general nature in public, and that if specific questions arise regarding individual prisoners, certain security issues, or material that may be considered commercial in confidence, they be dealt with in camera.

7. Adjournment

The Committee adjourned at 1:05 pm until 10:00 am on 8 December 2005 (public hearing).

Stephen Frappell
Clerk to the Committee

Meeting No 29
Thursday 8 December 2005
At Parliament House at 10:04 am Room 814/815

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce
Mr Peter Breen
Mr Arthur Chesterfield-Evans (Jenkins)
Mr Donnelly (Obeid)
Mr Charlie Lynn
Mr Ian West

2. Substitute arrangements

The Chair advised that Mr Donnelly would be substituting for Mr Obeid for the purposes of the meeting, and that Mr Chesterfield-Evans would be substituting for Mr Jenkins for the duration of the inquiry.

3. Inquiry into issues relating to the operations and management of the Department of Corrective Services

The media and the public were admitted.

The Chair made a statement to Members regarding the broadcasting of proceedings.

The Chair advised that examination would commence with questions relating to the first and third terms of reference, followed by the second terms of reference, and that approximately one hour would be allocated to each of the terms of reference.

The Chair advised that if specific questions arose regarding individual prisoners, certain security issues, or material that may be considered commercial in confidence, the Committee would proceed to take evidence in camera.

The following witnesses from the Department of Corrective Services were sworn and admitted:

- Mr Ron Woodham, Commissioner of Corrective Services.
- Mr Ian McLean, Senior Assistant Commissioner, Inmate and Custodial Services.
- Ms Catriona McComish, Senior Assistant Commissioner, Community Offender Services.
- Mr Luke Grant, Senior Assistant Commissioner, Offender Management.

Mr Woodham made an opening statement.

Mr Grant tabled the following document:

- Report into an enquiry into curtain making operations within the textile division of Corrective Services Industries at Long Bay Correctional Centre.

Mr Woodham tabled the following documents:

- CSI and Competitive Neutrality
- Commissioner's instruction No 13/2005 regarding Category AA and Category 5 Inmates' Management Regime

Evidence concluded and the witnesses withdrew.

The media and the public withdrew.

4. Deliberative meeting

The Committee deliberated.

The Committee discussed possible adverse mentions in relation to two persons named during the hearing.

Mr Donnelly moved that: The names and identifying characteristics of the person named in respect of possible terrorist connections, and the officer of the Department of Corrective Services transferred from Parklea Correctional Centre, be suppressed from the transcript, and that the Committee consider whether to publish the transcript in full at a later date.

Question put.

The Committee divided.

Ayes: Mr Breen, Mr Chesterfield-Evans, Mr Donnelly, Ms Fazio, Mr West.
Noes: Mr Lynn, Mr Pearce.

Question resolved in the affirmative.

The Chair indicated that the Secretariat would distribute possible dates for a deliberative meeting of the Committee to be held after the close of submissions on 30 January 2006.

5. Adjournment

The Committee adjourned at 1:08pm.

Michael Phillips
Clerk to the Committee

Meeting No 30
Wednesday 15 February 2006
At Parliament House at 10:42 am Room 1153

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce (Deputy)
Dr Arthur Chesterfield-Evans (Jenkins)
Mr Charlie Lynn
Mr Edward Obeid (from 11:00am)
Mr Ian West

2. Apologies

The secretariat advised that Mr Breen had sent his apologies.

3. Confirmation of minutes

Resolved, on the motion of Mr Pearce, that Minutes Numbers 27 and 29 be confirmed.

4. Inquiry into issues relating to the operations and management of the Department of Corrective Services

4.1 Correspondence

The Chair noted the following items of correspondence

Sent

- Letter from the Committee Director to the Hon Tony Kelly MLC dated 30 November 2005 advising of the commencement of the inquiry and the conduct of the public hearing on 8 December 2005.
- Letter from Committee Director to Commissioner of Corrective Services dated 7 December 2005 regarding confidentiality of evidence to be given at public hearing.
- Letter to stakeholders inviting submissions dated 7 December 2005.
- Letters to Commissioner Woodham and Assistant Commissioners Grant, McComish and McLean dated 12 December 2005 regarding responses to questions taken on notice at public hearing held 8 December 2005 and correction of transcript of public hearing.
- Letter to Commissioner Woodham dated 18 January 2006 regarding publication of uncorrected transcript.

Received

- Email from Mr Jon Jenkins MLC to Committee and Secretariat dated 5 December 2005 advising of substitution of Dr Chesterfield-Evans MLC for Mr Jenkins for the purposes of the inquiry.
- Email from Sr Claudette Palmer dated 26 December 2005 suggesting the Committee call Ms Roseanne Catt as a witness at the public hearing.

- Letter from Commissioner Woodham dated 6 January 2005 containing answers to questions on notice and corrections to transcript of public hearing held 8 December 2005.
- Letter from Mr Ron Woodham to Committee Chair dated 30 January 2006 advising that the Department of Corrective Services will not be making a submission to the inquiry.

4.2 Documents tabled at the public hearing held 8 December 2005

Resolved, on the motion of Mr West: That the Committee publish all documents tabled at the public hearing held 8 December 2005.

4.3 Publication of answers to questions on notice

Resolved, on the motion of Dr Chesterfield-Evans: That the Committee publish the answers to questions on notice taken at the public hearing held 8 December 2005, including enclosures.

4.4 Publication of submissions

The Chair noted that Submissions 5, 9, 10, 11 and 17 are outside the terms of reference of the inquiry.

The Chair directed the secretariat to write to the authors of Submissions 5, 9, 10, 11 and 17 advising them that their submissions are outside the terms of reference and directing them to the relevant Minister.

Resolved, on the motion of Dr Chesterfield-Evans: That the Committee publish Submissions 1 to 21, excluding Submissions 2, 9, 10, 11, 13, 15 and 17.

Resolved, on the motion of Mr Lynn: That the Committee publish Submission No 2, whilst suppressing the name of the author.

Resolved, on the motion of Mr Pearce: That the Committee publish Submission No 15, whilst suppressing Annexure C thereto.

4.5 Proposed witnesses

The Committee considered the draft witness list.

Dr Chesterfield-Evans moved: That a witness with experience in restorative justice be invited to appear before the Committee.

The Committee deliberated.

Question put.

Ayes:
Dr Chesterfield-Evans

Noes:
Ms Fazio, Mr Lynn, Mr Obeid, Mr Pearce, Mr West

Question resolved in the negative.

The Committee agreed that the following persons be invited to appear as witnesses at public hearings on the following dates and for the following times:

Monday 27 March 2006 from 9:30 am to 4:30 pm

1. Corrective Services Industries

Name	**Organisation**	**Time**
Greg Hogan	Proprietor World of Curtains	30 minutes
Representative of Disability Services Organisation with employment services expertise		
Member	Unions NSW	30 minutes
Mr Paul Orton or representative	General Manager, Australian Business Ltd	

2. The management of high risk prisoners by the Department of Corrective Services

Name	**Organisation**	**Time**
Bruce Barbour	NSW Ombudsman	30 minutes
Stepan Kerkyasharian	Community Relations Commission	30 minutes
Trevor Christian and Peter Bugden	Coalition of Aboriginal Legal Services	30 minutes
Michael Walton	NSW Council for Civil Liberties	30 minutes
Representative	Public Service Association, Prison Officers Vocational Branch and Probation and Parole Branch	30 minutes
Brett Collins	Justice Action	30 minutes
Dr Eileen Baldry	UNSW, School of Social Work	
Representative	Prisoners Legal Service, Legal Aid Commission of NSW	30 minutes
Jack Walker	Official Visitor, Goulburn Correctional Centre (Appointed by the Minister for Health under the Mental Health Act)	30 minutes
Chris Linton	Clinical Director, HRMU	30 minutes
Dr Michael Head	University of Western Sydney, School of Law	30 minutes

Monday 3 April 2006 from 10 am to 1 pm

3. Parole transfers

Name	Organisation	Time
Ian Pike	Chair, Parole Authority	30 minutes
Paul Byrnes	Executive Director, Parole Authority	
Representative	Victims of Crime Assistance League	30 minutes
Representative	Community Restorative Centre	30 minutes

Department of Corrective Services

Name	Organisation	Time
Mr Ron Woodham	Department of Corrective Services	Balance of hearing
Mr Ian McLean		
Ms Catriona McComish		
Mr Luke Grant		

4.6 Site visit to HRMU on 23 March 2006

Resolved, on the motion of Mr Lynn: That the Committee attend the High Risk Management Unit at Goulburn on 23 March 2006 for a site-visit.

Mr Obeid moved: That under Standing Order 218, Ms Rhiannon not participate in the site-visit to the High Risk Management Unit on 23 March 2006.

The Committee deliberated.

Question put.

Ayes: Ms Fazio, Mr Lynn, Mr Obeid, Mr Pearce, Mr West

Noes: Dr Chesterfield-Evans

Question resolved in the affirmative.

4.7 Publication of transcript of public hearing of Committee on 8 December 2005.

Resolved, on the motion of Mr Obeid: That the names and identifying characteristics of the person named in respect of possible terrorist connections, and the officer of the Department of Corrective Services transferred from Parklea Correctional Centre, be suppressed from the transcript of evidence from the public hearing held 8 December 2005.

5. Adjournment

The Committee adjourned at 11:26 am until 11 am on 23 March 2006 at Goulburn Correctional Centre (site-visit to HRMU).

Michael Phillips
Clerk to the Committee

Meeting No 31
Thursday 23 March 2006
At High Risk Management Unit (HMRU), Goulburn Correctional Centre, at 11:00 am

1. Members Present

Ms Amanda Fazio (Chair)
Mr Peter Breen
Dr Arthur Chesterfield-Evans (Jenkins)
Mr Charlie Lynn
Mr Ian West

2. Apologies

Mr Pearce and Mr Obeid sent their apologies.

3. Site-visit to HRMU, Goulburn Correctional Centre

Mr Mark Wilson, General Manager of the HRMU, made a presentation to the Committee.

Mr Ian McLean, Senior Assistant Commissioner, Inmate and Custodial Services, and other officers of the Department conducted the Committee on a tour of the HRMU.

The Department hosted lunch for the Committee in the administration wing of Goulburn Correctional Centre.

The site-visit concluded at 1:45pm.

4. Adjournment

The Committee adjourned until 9:30 am on 27 March 2006 at the Jubilee Room, Parliament House (third public hearing).

Michael Phillips
Clerk to the Committee

Meeting No 32
Monday 27 March 2006
Jubilee Room, Parliament House at 9:30 am

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce (Deputy)
Mr Peter Breen
Mr Tony Catanzariti (Obeid)
Ms Lee Rhiannon (Chesterfield-Evans)
Mr Charlie Lynn
Mr Ian West

2. Substitutions

The Chair advised that Ms Rhiannon would be substituting for Mr Chesterfield-Evans and that Mr Catanzariti would be substituting for Mr Obeid.

3. Public hearing

The media, witnesses and the public were admitted.

The Chair made a brief opening statement.

Mr Greg Hogan, proprietor of the World of Curtains, was sworn and examined.

Mr Hogan tabled 'World of Curtains: Transcript of Greg Hogan 2003-2005'.

Evidence concluded and the witness withdrew.

Mr Barry Tubner and Mr Chris Christodoulou, Unions NSW representatives on the Corrective Services Industries Consultative Council, were sworn and examined.

Mr Tubner tabled two documents:

- 'Labour Council of New South Wales Prisoner Labour Policy'.
- 'From Prison Gangs to Corrective Industries: From Corrective Industries to Skilled Jobs to Employment on Release'.

Evidence concluded and the witnesses withdrew.

Mr Brian Sandland, Director, Criminal Law Division, Legal Aid Commission of NSW, and Mr Will Hutchins, Solicitor in Charge, Prisoners Legal Service, Legal Aid Commission of NSW, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Ms Pauline Wright, Vice-President, and Mr Michael Walton, Convenor of the Criminal Justice Sub-Committee, NSW Council for Civil Liberties, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Stepan Kerkyasharian, Chairperson and Chief Executive Officer, Community Relations Commission, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Peter Bugden, Principal Solicitor, Coaltion of Aboriginal Legal Services, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Pearce and Mr West departed at 12:45.

Mr Ken Studerus, President, and Ms Moira Magrath, Secretary, Probation and Parole Officers Association of NSW Inc, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Brett Collins and Mr Michael Strutt, Spokespersons, Justice Action, were sworn and examined.

Mr Collins tabled several documents:

- 'Offer of Hope'
- 'Breakout Design and Print' (information brochure)
- '11th International Conference on Penal Abolition' (information brochure)
- 'Just Us, September 2005, vol 2, issue 1'.

Evidence concluded and the witnesses withdrew.

Mr Lynn departed at 3pm.

Mr Chris Linton, Clinical Director, HRMU, was sworn and examined.

Evidence concluded and the witness withdrew.

4. Deliberative meeting

4.1 Confirmation of minutes

The Committee deferred consideration of minutes No 30.

4.2 Correspondence

The Chair noted the following items of correspondence.

Sent

- Letters to Mr Karl Gutieerez, Mr David De Santis, Mr Adam Paliwala, Mr Alejandra Toro Martinez and Ms Stephanie Jules advising that the recipients submissions were outside the terms of reference for the inquiry and directing them to the Hon Tony Kelly MLC, Minister for Justice.
- Letter to Commissioner Woodham dated 3 March 2006 confirming attendance of Department of Corrective Services witnesses on Monday 3 April 2006.
- Letter to Commissioner Woodham dated 22 March 2006 regarding questions for hearing on 27 April 2006
- Letter to Commissioner Woodham dated 22 March 2006 regarding questions for hearing on 3 April 2006

Received

- Letter from Mr Adam Blaxter Paliwala dated 22 February 2006 in response to Committee's advice that his submission was outside the terms of reference
- Letter dated 21 March 2006 regarding transcript of public hearing held 8 December 2005

4.3 Publication of submissions

Resolved, on the motion of Ms Rhiannon: That the Committee publish Submissions 22 to 28.

4.4 Publication of tabled documents

Resolved, on the motion of Ms Rhiannon: That the Committee publish the document tabled by Mr Hogan, with the exception of pages 2 and 3, which shall remain confidential to the Committee.

4.5 Additional questions on notice

Mr Breen tabled a set of proposed questions on notice to the Department of Corrective Services.

Resolved, on the motion of Mr Breen: That the Committee write to the Department enclosing additional questions on notice prior to the hearing on 3 April 2006, subject to a check by the secretariat to delete any questions already sent to the Department.

4.5 Inquiry timetable

The Chair noted the apologies of Judge Peter Moss QC who was unable to attend to give evidence due to illness.

The Committee agreed to hold a further public hearing during the lunch break on a sitting day in the week 3 to 7 April 2006. The Chair directed the secretariat to liaise with Judge Moss as to a suitable hearing date and to confirm arrangements for the hearing with the Chair.

Resolved, on the motion of Ms Rhiannon, that: The reporting date for the Committee's report be 6 June 2006.

5. ...

6. Adjournment

The Committee adjourned at 3:50 pm until Monday 3 April at 10:00 am in the Waratah Room (third public hearing).

Michael Phillips
Clerk to the Committee

Meeting No 33
Monday 3 April 2006
Waratah Room, Parliament House at 10:00 am

1. Members Present

Ms Amanda Fazio (Chair)
Mr Peter Breen
Dr Arthur Chesterfield-Evans
Mr Charlie Lynn
Mr Edward Obeid
Mr Ian West

2. Public hearing

The media, witnesses and the public were admitted.

The Chair made a brief opening statement.

Mr Ian Pike, Chair, and Mr Paul Byrnes, Secretary, NSW Parole Authority, were sworn and examined.

Mr Pike tabled the following document:

- 'Presentation to the General Purpose Standing Committee No 3 inquiry into issues relating to the operations and management of the Department of Corrective Services.'

Evidence concluded and the witnesses withdrew.

Mr Howard Brown, President, Victims of Crime Assistance League, was sworn and examined.

Reverend Harry Herbert, Secretary, Civil Chaplaincies Advisory Committee, Sister Pauline Staunton, Administrator, Civil Chaplaincies Advisory Committee and Rev Rod Moore, Co-ordinator, Prison Chaplaincy Service, were sworn and examined.

Evidence concluded and the witnesses withdrew.

3. Deliberative meeting

3.1 Minutes

Resolved, on the motion of Mr Obeid: That the resolution in draft Minutes No 30 regarding Ms Rhiannon's request to attend the site-visit to the HRMU be omitted, inserting instead: 'That under Standing Order 218, Ms Rhiannon not participate in the site-visit to the High Risk Management Unit on 23 March 2006.'

Resolved, on the motion of Mr West: That draft Minutes Nos 30 (as amended), 31 and 32 be confirmed.

3.2 Correspondence

The Chair tabled the following items of correspondence.

Sent

- Letter to Minister for Justice the Hon Tony Kelly MLC dated 24 March 2006 advising the Minister of the attendance of Department of Corrective Services witnesses at the public hearings of the Committee
- Letter to Commissioner Woodham dated 28 March 2006 thanking the Department for hospitality during site visit to HRMU
- Letter to Commissioner Woodham dated 28 March 2006 enclosing additional questions on notice

Received

- Email from Peter McGregor to GPSC3 secretariat dated 27 March 2006 regarding site visit to HRMU and conduct of inquiry
- Confidential email regarding the incarceration of Ivan Milat dated 28 March 2006.

3.3 Publication of tabled documents

Resolved, on the motion of Mr Lynn, that: The Committee publish the following document tabled at the hearing held 3 April 2006:

- 'Presentation to the General Purpose Standing Committee No 3 inquiry into issues relating to the operations and management of the Department of Corrective Services.'

3.4 Publication of responses to questions on notice

Resolved, on the motion of Mr Obeid: That the Committee publish the response to questions on notice dated 27 March 2006 from Michael Strutt on behalf of Justice Action.

3.5 Transcript of hearing held 8 December 2005

The Chair noted advice received from Google regarding removal of the uncorrected transcript of the hearing held 8 December 2005 from the internet.

Resolved, on the motion of Mr West: That the Committee write to the officer of the Department of Corrective Services named in the uncorrected transcript of the hearing held 8 December 2005 advising him of the steps taken by the Committee to remove the earlier version of the transcript from the internet.

3.6 Next hearing

The Chair noted that, as previously resolved, the Committee would hold an additional public hearing on Thursday 6 April from 1:15 pm to 2 pm in Room 814/815.

Mr West advised his apologies for the hearing on 6 April 2006.

4. Public hearing (continued)

The media, witnesses and the public were admitted.

Mr Ron Woodham, Commissioner of Corrective Services and Mr Luke Grant, Assistant Commissioner, Offender Management, Department of Corrective Services, were examined on their previous oaths.

Mr Brian Kelly, Acting Assistant Commissioner, Security and Intelligence, Department of Corrective Services, sworn and examined.

Commissioner Woodham agreed to provide the Committee with a copy of a video regarding the Katingal facility.

The witnesses agreed to take several questions on notice.

Evidence concluded and the witnesses withdrew.

5. Deliberative meeting

Resolved, on the motion of Mr West: That the name of the officer of the Department of Corrective Services referred to in respect of fraternisation allegations be suppressed from the transcript of the hearing held 3 April 2006.

6. Adjournment

The Committee adjourned at 1:25 pm until Thursday 6 April 2006 at 1:15 pm in Room 814/815.

Michael Phillips
Clerk to the Committee

Meeting No 34
Thursday 6 April 2006
Room 814/815, Parliament House at 1:15 pm

1. Members Present

Ms Amanda Fazio (Chair)
Mr Greg Pearce (Deputy)
Mr Peter Breen
Dr Arthur Chesterfield-Evans

2. Apologies

Mr Lynne, Mr Obeid, Mr West.

3. Public hearing

The media, witnesses and the public were admitted.

The Chair made a brief opening statement.

Judge Peter Moss QC, Chair of the Serious Offenders Review Council, sworn and examined.

Evidence concluded and the witness withdrew.

4. Deliberative meeting

4.1 Minutes

Resolved, on the motion of Mr Pearce: That the draft Minutes of meeting no 33 be confirmed.

4.2 Correspondence

The Chair tabled the following items of correspondence.

Sent

- Letter dated 3 April 2006 regarding publication of the uncorrected transcript of the hearing held 8 December 2005.

4.3 Publication of responses to questions on notice

Resolved, on the motion of Mr Pearce: That the Committee publish the response to questions on notice from the Department of Corrective Services dated 3 April 2006, including attachments with the exception of the Operations Manual.

4.4 HRMU evaluation report

Resolved, on the motion of Mr Breen: That the secretariat write to the Department of Corrective Services requesting a copy of the HRMU evaluation report referred to in the Department's response to questions on notice.

4.5 Inquiry timetable

Resolved, on the motion of Dr Chesterfield-Evans: That the Committee hold a deliberative meeting on Friday 26 May 2006 to consider the Chair's draft report.

5. Adjournment

The Committee adjourned at 2:06 pm *sine die*.

Michael Phillips
Clerk to the Committee

Meeting No 35 (Draft)
Friday 26 May 2006
Room 1108, Parliament House at 9:30 am

1. Members present

Ms Amanda Fazio (Chair)
Mr Greg Pearce (Deputy) (from 9:40 am)
Dr Arthur Chesterfield-Evans (from 9:35 am)
Mr Greg Donnelly (Obeid)
Mr Charlie Lynn
Mr Ian West

3. Composition of Committee

The Chair advised the Committee that the Clerk of the Parliaments had not received any nominations from the cross-bench to replace Mr Peter Breen who joined the Australian Labor Party on 5 May 2006 thereby ceasing his membership of the Committee.

4. Substitutions

Mr Donnelly substituted for Mr Obeid for the purposes of the meeting.

5. Minutes

Resolved, on the motion of Mr West: That draft Minutes Nos 28 and 34 be confirmed.

Resolved, on the motion of Mr West: That Minutes No 32 be amended by deleting the reference to correspondence dated 21 March 2006 and inserting 'Letter dated 21 March 2006 regarding the transcript of the public hearing held 8 December 2005.'

6. Correspondence

Resolved, on the motion of Mr Lynn: That the Committee note the following correspondence:

Sent

- Director to Commissioner Woodham, 7 April 2006, regarding HRMU evaluation report.
- Director to Commissioner Woodham, 5 May 2006, regarding additional questions.
- Principal Council Officer to Judge Moss QC, 9 May 2006, regarding review of High Security and Extreme High Security designations by the High Security Inmate Management Committee, and response.
- Principal Council Officer to an Officer of the Department of Corrective Services, 22 May 2006, regarding publication of transcript of hearing held 8 December 2005.

Received

- Answers to questions taken on notice during hearing 27 March 2006, Legal Aid Commission of NSW, 12 April 2006.
- Answers to questions taken on notice during hearing 27 March 2006, Mr Chris Linton, 28 April 2006.
- Answers to questions taken on notice during hearing 27 March 2006, NSW Council for Civil Liberties, 4 May 2006.
- Letter from Commissioner Woodham to Chair dated 23 May 2006.
- Fax from Commissioner Woodham to Chair dated 25 May 2006.
- Letter from Mr Peter Primrose to Chair advising of the substitution of Mr Donnelly for Mr Obeid for the purposes of the meeting on 26 May 2006.

Resolved, on the motion of Mr Donnelly: That the letter from Commissioner Woodham to the Chair dated 23 May 20006 and the fax from Commissioner Woodham to the Chair dated 25 May 2006 be confidential to the Committee.

7. Publication of supplementary submission

Resolved, on the motion of Mr Donnelly: That the Committee publish supplementary submission 21a received from the Legal Aid Commission of NSW.

8. Publication of answers to questions on notice

Resolved, on the motion of Mr West: That the Committee publish the following answers to questions on notice:

- Legal Aid Commission of NSW – taken during hearing 27 March 2006
- Mr Chris Linton (Clinical Director, HRMU) – taken during hearing 27 March 2006
- NSW Council for Civil Liberties – taken during hearing 27 March 2006.

9. Publication of part of the document tabled by Mr Greg Hogan on 27 March 2006

Resolved, on the motion of Dr Chesterfield-Evans: That, notwithstanding the Committee's previous resolution that pages 2 and 3 of the document tabled by Mr Hogan during his evidence on 27 March 2006 be kept confidential, the Committee's report into the Inquiry into issues relating to the management and operation of the Department of Corrective Services include the quote and citations from that document contained in paragraph 2.76 of the report.

10. Consideration of Chair's Draft Report

The Chair tabled her Draft Report which, having been circulated, was taken as having been read.

The Committee deliberated.

Chapter 1 read.

Resolved, on the motion of Mr Donnelly: That the last sentence of paragraph 1.4 be amended by deleting 'hearing' and inserting 'hearings.'

Resolved, on the motion of Mr West: That paragraph 1.9 be amended by deleting from the fourth sentence: 'the impact of E, or escape, classification on prisoners with an intellectual disability,'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.11 be amended by deleting the third sentence and inserting: 'The Committee notes issues raised by some Inquiry participants regarding access to rehabilitation programs, inmate conditions and visitor access to prisoners.'

Resolved, on the motion of Dr Chesterfield-Evans: That the Committee defer consideration of the adoption of Chapter 1 until after the remaining chapters have been considered and adopted.

Chapter 2 read.

Resolved, on the motion of Mr Donnelly: That paragraph 2.91 be amended by deleting the second sentence, and by deleting 'therefore' from the third sentence.

Resolved, on the motion of Dr Chesterfield-Evans, that the following new paragraph 2.4 be inserted: 'The Committee approached peak disability groups for comments on these matters but did not receive any evidence in this regard.'

Dr Chesterfield-Evans moved that the following new recommendation 3 be inserted: 'That the Correctional Industries Consultative Council explore the possibility of including a representative of disability groups in its membership.'

Question put.

The Committee divided.

Ayes: Dr Chesterfield-Evans

Noes: Mr Donnelly, Ms Fazio, Mr Lynn, Mr Pearce, Mr West

Question resolved in the negative.

Resolved, on the motion of Dr Chesterfield-Evans: That paragraph 2.28 be amended by adding the following additional sentence to the end of the paragraph: 'A member of the Committee strongly suggested that the CICC explore the possibility of including a representative of disability groups in its membership.'

Dr Chesterfield-Evans moved that the following new recommendation 3 be inserted: 'That prisoners involved in study should not be economically disadvantaged in comparison to those who work.'

Question put.

The Committee divided.

Ayes: Dr Chesterfield-Evans

Noes: Mr Donnelly, Ms Fazio, Mr Lynn, Mr Pearce, Mr West

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Donnelly: That the fourth bullet point in paragraph 3.2 be deleted.

Resolved, on the motion of Mr Donnelly: That paragraph 3.109 be amended by deleting from the second sentence the words 'are thought to represent' and inserting 'are regarded as representing'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.121 be amended by inserting after 'inmates' in the second sentence 'except calls to and from legal representatives and exempt bodies,'.

Resolved, on the motion of Mr Donnelly: That the last sentence of paragraph 3.146 be deleted.

Resolved, on the motion of Mr Donnelly: That paragraph 3.148 be amended by deleting the last sentence and inserting: 'The Committee therefore recommends that the Minister for Justice review the application of the AA/5 classification to remandees.'

Resolved, on the motion of Mr Donnelly: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Resolved, on the motion of Mr West: That the introduction to Chapter 4 be amended by deleting 'complaints raised by some Inquiry participants regarding' and inserting 'the'.

Resolved, on the motion of Mr West: That the first bullet point of paragraph 4.3 be deleted. Dr Chesterfield-Evans requested that his dissent be recorded.

Resolved, on the motion of Mr Pearce: That paragraph 4.131 be amended by deleting 'Commissioner/SORC' and inserting 'the Commissioner of Corrective Services and the Serious Offenders Review Council.'

Dr Chesterfield-Evans moved that the following new recommendation 9 be inserted: 'That the position of the Mental Health Review Tribunal should be clarified and the discretion of the Health Minister as to the implementation of its recommendations be ended.'

Question put.

The Committee divided.

Ayes: Dr Chesterfield-Evans

Noes: Mr Donnelly, Ms Fazio, Mr Lynn, Mr Pearce, Mr West

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Chapter 4, as amended, be adopted.

Resolved, on the motion of Mr Donnelly: That paragraph 5.14 be amended by deleting the first sentence and inserting 'In 2004-2005 the Department introduced the Way Forward workplace reforms to provide benchmarking of public facilities against private sector-operated facilities. The workplace reforms implemented flexible rostering and efficient staff deployment strategies.'

Dr Chesterfield-Evans moved that the following new recommendation 9 be inserted after paragraph 5.11: 'That the Committee believes that it should be government policy to try to lessen incarceration rates for the population and keep records of recidivism rates to lessen overcrowding and the need to build more prisons.'

Question put.

The Committee divided.

Ayes: Dr Chesterfield-Evans

Noes: Mr Donnelly, Ms Fazio, Mr Lynn, Mr Pearce, Mr West

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That Chapter 5, as amended, be adopted.

Chapter 6 read.

Resolved, on the motion of Mr West: That the third sentence of paragraph 6.45 be amended by inserting the words 'and consult with' after the word 'Commission', and inserting a comma after 'Association'.

Resolved, on the motion of Mr West: That recommendation 12 be amended by inserting the words 'and consult with' after the word 'Commission', and inserting a comma after 'Association'.

Resolved, on the motion of Mr West: That Chapter 6, as amended, be adopted.

Chapter 7 read.

Resolved, on the motion of Mr Donnelly: That the last sentence of paragraph 7.44 be deleted.

Resolved, on the motion of Mr Donnelly: That paragraph 7.48 be deleted.

Resolved, on the motion of Mr Donnelly: That the second sentence of paragraph 7.67 be deleted.

Resolved, on the motion of Mr West: That the last sentence of paragraph 7.98 be deleted.

Resolved, on the motion of Mr West: That Chapter 7, as amended, be adopted.

Resolved, on the motion of Dr Chesterfield-Evans: That Chapter 1, as amended, be adopted.

Resolved, on the motion of Mr Donnelly: That the executive summary be adopted.

Resolved, on the motion of Mr Lynn: That the Committee adopt the Chair's Draft Report (as amended) as the Report of the Committee.

Resolved, on the motion of Mr Pearce: That the secretariat be authorised to correct typographical and grammatical errors in the report prior to tabling.

Resolved, on the motion of Dr Chesterfield-Evans: That any Committee member who wishes to make a dissenting report should provide their dissenting report to the secretariat by 5pm on Monday 29 May 2006.

Resolved, on the motion of Mr Pearce: That the report as amended be the report of the Committee and be signed by the Chair and presented to the Clerk in accordance with Standing Orders 227(3) and 231 by 10am on Monday 5 June 2006.

11. Adjournment

The Committee adjourned at 10:25 am sine die.

Michael Phillips
Clerk to the Committee

Appendix 7 Dissenting statement

Dissenting statement – The Hon Dr Arthur Chesterfield-Evans MLC (Australian Democrats)

While it is not clear from the evidence that Corrective Services Industries (CSI) damaged 'World of Curtains' by unfair competition, there is anecdotal evidence that CSI, because it is willing to do work that is boring and repetitious, tends to compete with industries that employ people with physical and intellectual disabilities. The Committee did not receive evidence directly from these groups, so would not agree to my recommendation that there be consideration that a representative of the employers of people with disabilities on the Corrective Industries Consultative Committee.

Again, while looking at the role of CSI there has been evidence that inmates who study are worse off in terms of money for buy-ups than those who work. Yet the Committee did not want to take the recommendation of the prison advocates that prisoners who study should not be disadvantaged as opposed to those who work.

Evidence was also received that the position of the Mental Health Review Tribunal (MHRT) is difficult to integrate into the Department's prisoner classification system, and the Serious Offenders Review Tribunal which reviews it, as these two bodies look at what behaviour the prisoner displays. The MHRT might also have different regimes for punishment of mental health offenders if they were allowed to have any say! While this is in the final text, the Committee refused to accept my recommendation that the position of the MHRT be clarified and that the Health Minister lose his veto over its decisions. Clearly if the Tribunal recommends release of a prisoner on the basis that he or she did the crime while of unsound mind and that they are now sufficiently sane to be released, this is a judicial decision. Arguably, the Minister should not be able to reject it because of its political sensitivity. However, the Committee did not want this issue raised. It must be conceded that we had not had much evidence on these vital points, but that is a problem of narrow terms of reference.

The Committee was also unwilling to recommend that it should be government policy to try to lessen incarceration rates for the population and lessen the need to build more prisons. This was despite the fact that one of the terms of reference was looking at overcrowding in respect to high risk prisoners.