Justice
Inspector of Custodial Services

Full House: The growth of the inmate population in NSW

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Produced by Inspector of Custodial Services

Level 13, 10 Spring Street
Sydney NSW 2000

P: 02 8061 9331
W: www.custodialinspector.justice.nsw.gov.au

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Foreword

Throughout 2014 the growth of the inmate population and consequent overcrowding in NSW correctional centres attracted political, public and media comment. The growth has continued into 2015.

This was of concern to my office, and of particular interest and disquiet was the impact of this overcrowding on the conditions under which inmates were being held and in which staff of the Justice Health and Forensic Mental Health Network (JH&FMHN) and Corrective Services NSW (CSNSW) worked.

This is the focus of the report which follows.

The risks inherent in prison overcrowding are well documented, but in NSW these latent risks are exacerbated by a range of other factors. These include: inadequate bedspace and the dysfunctional geographical configuration of the estate as a result of the poverty of earlier estate planning; extensive inmate accommodation in 19th-century facilities; a significant number of facilities assessed as "not effectively contributing to business objectives"; the institutionalisation of 'doubling up' as both a response to inmate population growth and as a design practice; excessive inmate movements around the estate; inefficient legacy staffing arrangements; budget pressures and savings targets, which have resulted in inmates being locked down at 2.30pm in the afternoons or on weekends; facilities and services which have not kept pace with the growth of the inmate population; and program provision to address offender behaviour which falls well short of requirements. All of this potentially compromises the achievements of CSNSW to date in realising the goals of NSW 2021.

During the inspection I was struck by the impact of budget pressures on the key people in the correctional system – the General Managers (GMs) of correctional centres. This has occurred at a time when CSNSW has the lowest operating and capital cost per prisoner per day of any Australian correctional jurisdiction, notwithstanding the absence of facility economies of scale that Queensland Corrective Services, for example, can exploit. It became obvious during the inspection that budget management (or even micro-management) was the major preoccupation of GMs to an extent which may be encouraging an unhealthy perception of roles and priorities. In making this observation, I am mindful of the 2013 Francis Inquiry into the Mid Staffordshire NHS Foundation Trust scandal in the United Kingdom (UK), which concluded that the Trust was "preoccupied with cost cutting, targets and processes and which lost sight of [their] fundamental responsibility to provide safe care". This should not be permitted to happen in CSNSW.

Overcrowding and the factors which exacerbate its effects sit in a NSW correctional environment of almost continual operational or organisational review and change since 2000. Changes emerging from one review have not been bedded down before those arising from following reviews have overtaken them. The impact of this has been reflected in the CSNSW results of the People Matter Employee Survey 2014, which documents the poor morale of agency staff. Aspects of this have previously been brought to the attention of the NSW Parliament in the Inspector of Custodial Services Report No.1 The Invisibility of Correctional Officer Work.

The inspection concludes that, as a result of overcrowding, quality of life in the NSW custodial setting for both inmates and staff is diminished. At the time of finalising this report (February 2015) the extent of overcrowding was quite clear: the inmate population had risen to 11,399. There is extensive doubling up of inmates in cells; the reinstatement of tripling up in cells; an essential buffer stock of beds is being used; demountable cells are being constructed; old facilities are being reopened; and inmates are being housed for long periods in court cells.

This erosion of the quality of life is not to be taken lightly in the volatile custodial setting. The risk that arises from overcrowding and resource shortages was made quite explicit by Her Majesty's Chief Inspector of Prisons during a BBC interview in 2014:

What's happening is that, because of staff shortages, men are spending 23 hours a day, two or three to a cell with a shared toilet, locked up in this heat [and] that's causing huge tensions…This isn't the fault of the operational staff on the ground or the managers. This is because the demands on the system completely outstrip the resources to meet them…Prisoners, staff and the public are at risk because of it.

While it is acknowledged that the circumstances in the UK are not (yet) those of NSW, there is no shortage of warnings of the potential consequences of the risks facing CSNSW. In a 2008 analysis of prison riots, researchers from the University of Western Australia and Griffith University identified that one of the pre-conditions leading to prison riots is new and increased demands on prison administrators from external sources without an increase in resources.

Inmates and staff in NSW correctional centres are under significant stress, and prudent policy makers would recognise that even small additional pressures can make the difference between conditions that are uncomfortable and those that are intolerable. This will need to be acknowledged when smoking in correctional centres is banned from August 2015.

Where the state treats inmates in a way that denies them a modicum of dignity and humanity it should not be surprised if they respond accordingly, with individual acts of non-compliant behaviour escalating into collective disorder, such as riots. NSW has seen the impact of such policy settings before and the risks that follow. Increasing the punitive nature of the custodial experience was a deliberate feature of correctional policy in NSW in 1989, and it resulted in entirely predictable prison disturbances.

But many have now forgotten what a prison riot looks like, or understand its costs and consequences.

J. R. Paget
Inspector of Custodial Services
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Acknowledgements

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In this endeavour, the following people are acknowledged for their expert advice and assistance: Ms Jennifer Turner, Official Visitor Coordinator; Official Visitors at the Metropolitan Remand and Reception Centre; Official Visitors at Parklea Correctional Centre; Official Visitor at the Metropolitan Special Programs Centre; and Official Visitors at the Silverwater Women's Correctional Centre.

The Inspector acknowledges the contribution of inmates to this report.

Acknowledgement is also extended to the staff of Corrective Services NSW, GEO and the Justice Health and Forensic Mental Health Network, who supported this inspection and whose professionalism is holding up a system under great strain.

Glossary of terms

AVL	Audio Visual Link
BOCSAR	NSW Bureau of Crime Statistics and Research
Buy-up	Items that inmates can purchase using their own money
CC	Correctional Centre
CESU	Court Escort Security Unit
CPT	European Committee for the Prevention of Torture
CORE	CUBIT Outreach (Program for low risk sex offenders)
CSC	Correctional Service of Canada
CSI	Corrective Services Industries
CSNSW	Corrective Services NSW
CUBIT	Custody-Based Intensive Treatment (Program for moderate-to-high risk sex offenders)
Darcy Unit	Specialist area for intake and assessment of fresh custody remand inmates
EPRD	Earliest Possible Release Date
FTE	Full Time Equivalent
GEO	The GEO Group Australia Pty Ltd
GM	General Manager
GP	General Practitioner
ICRC	International Committee for the Red Cross
ICT	Information and Communications Technology
IDATP	Intensive Drug and Alcohol Treatment Program
IFP	Interview for Placement
Inspector	Inspector of Custodial Services
JH&FMHN	Justice Health & Forensic Mental Health Network
LBH	Long Bay Hospital
LSI-R	Level of Service Inventory-Revised
MHSU	Mental Health Screening Unit
MOU	Memorandum of Understanding
MRRC	Metropolitan Remand and Reception Centre (Silverwater)
MSPC	Metropolitan Special Programs Centre (Long Bay)

MSPC 2 ..... Specifically refers to Area 2 within the Metropolitan Special Programs Centre

OICS ..... Office of the Inspector of Custodial Services (Western Australia)

OMCG ..... Outlaw Motorcycle Gang

OS&P ..... Offender Services and Programs

PIP ..... Prison Infrastructure Plan

PRLA ..... Protection Limited Association

PRNA ..... Protection Non Association

RIT ..... Risk Intervention Team

ROGS ..... Report on Government Services

SIRO ..... Senior Inspection/Research Officer

SMAP ..... Special Management Area Placement

The Act ..... *Inspector of Custodial Services Act 2012*

TOR ..... Terms of Reference

UN ..... United Nations

VOR ..... Variable Operational Routine

VOTP ..... Violent Offenders Therapeutic Program

Executive summary

This first inspection by the office of the Inspector was undertaken in response to a rapid rise in the prison population in NSW in 2014. While long-term trends show a consistent rise in the number of people being incarcerated, this number peaked at 11,021 in May 2014, giving rise to significant overcrowding.

NSW has the lowest number of hours out-of-cell each day for inmates, and this, combined with overcrowding, presents significant risks to the correctional system. Confining two or three inmates to cells designed for one or two for prolonged periods, where they shower, eat and defecate, inevitably raises tensions in an already volatile population. The experience in other jurisdictions has been that this potentially increases the risk of assault, self-harm and suicide and more general prison disorder.

Rehabilitation outcomes are also compromised when inmate numbers are increased without a commensurate increase in appropriate resources. Overcrowding limits opportunities for parole because access to required programs is constrained. Reduced access to work and limited contact with families contribute to the creation of an unproductive environment.

While it is difficult to define 'overcrowding', for the purposes of this inspection the term has been used to define a situation where a centre is holding a number of inmates that exceeds the original capacity that the centre was designed to accommodate. In NSW, 21 of 44 correctional centres are currently operating over design capacity.

Prison overcrowding has the potential to negatively impact on all aspects of custodial life, from the initial reception of an inmate through to their transition back into the community upon release. Accordingly, this inspection examined the impact of overcrowding as it relates to three key areas:

- Security and safety;
- Health and wellbeing;
- Resources and services.

This inspection examined three metropolitan centres: Parklea Correctional Centre (the second largest centre in NSW and a privately operated centre), the Metropolitan Remand and Reception Centre (the largest centre in NSW which receives over 40 percent of all new receptions to the correctional system), and the Metropolitan Special Programs Centre Area 2 (which accommodates a variety of inmate groups and offers a range of therapeutic programs). In July 2014, these centres were operating at a level of between 4.5 to 71 percent over their design capacity.

Context

In NSW, the existing prison infrastructure and resources are inadequate to support the correctional population. The situation faced by CSNSW today has mainly developed through inadequate capital asset planning and inappropriate geographic distribution of correctional centres over the past two decades. The effects of these factors are magnified by significant budget constraints. In order to respond to these circumstances and the risks they present, and to deal with the growing gap between design capacity and bedspace demand, CSNSW has implemented several strategies.

These strategies have involved developing a long-term asset management plan, reducing the recommended 5–15 percent of buffer stock, doubling up the number of inmates in a cell, re-commissioning old correctional facilities, and introducing the remand bed placement practice to allow for the transfer of remand inmates to and from regional areas to create bed vacancies in metropolitan Sydney.

Security and safety

NSW is the state with the fewest hours out-of-cell for its inmates, and is well below the national average of ten hours per day. The average number of hours out-of-cells has in fact dropped from 11.4 hours per day in 2010–11 to 8.2 hours per day in 2013–14. This means that there are up to 16 hours a day in which the inmates have no access to fresh air, programs, recreation activities, or contact with their families. This average applies to both convicted and unconvicted persons.

Ensuring the security and safety of inmates is integral to the way in which inmates are allocated to a centre and a bed. This allocation is also impacted by the 'flow' of inmates through the correctional system. The flow of inmates through the system is an important factor in overcrowding and is particularly affected by the remand and short-term inmates who churn through the criminal justice system, giving rise to higher costs and risks due to significantly increased inmate movements.

The inspection found that there is a systematic issue in the delays in transferring detainees from court cells into correctional centres, leading to unacceptable lengths of stay in court cell custody. When remand correctional centres lack the bed capacity in reception and induction units to absorb transfers, people on remand may be held longer in court cells that are not designed or serviced for prolonged stays.

There are also instances where inmates experience a prolonged stay in induction units, for example at the Metropolitan Reception and Remand Centre (MRRC). This inspection found that the mental health 'step-down' function that is also undertaken at the MRRC compromises the ability of the facility to fulfil its primary remand function.

A key finding of this inspection was that the classification and placement of inmates is compromised by the need to manage bedspace. This is illustrated by the increase over the past three years in the number of inmates being held in centres that do not match their security classification, as there is no appropriate bed available. Placing inmates in a mismatched facility exposes them to an environment that they should not be in, and at increased cost to the system. This also challenges the integrity of the inmate classification system.

Currently over 82 percent of inmates are placed in a centre outside their home region, making the maintenance of family and community ties extremely difficult. This situation is exacerbated by the remand bed placement practice, which transfers inmates to and from regional areas to maintain essential bed vacancies in the metropolitan area. While understandable, given the limited options available to CSNSW, this response to metropolitan bed shortages is expensive, disruptive to court preparation and does little to reduce inmate tension.

Across all the centres examined, despite the increase in inmate numbers, there was no equivalent increase in specialist cells to cater for those who require segregation, special management or intensive observation. Crowding in a centre reduces the ability of correctional administrators to provide separate accommodation areas to those groups who require special management. While correctional administrators manage the duty of care risks for these special management cohorts, some current separation practices are inefficient and reduce quality of life for inmates.

Health and wellbeing

The inmate population has a much poorer health profile than that of the general population. Over the course of this inspection, we became aware that, while extra beds have been installed, corresponding health infrastructure and services have not been increased proportionally.

The increase in inmate numbers places increased pressure on the health system, leading to longer waiting times and, in some cases, resulting in the health needs of inmates not being met. This situation was strongly reflected in feedback from inmates, who identified a lack of health care as the single biggest issue at all centres, and was particularly so at Parklea CC.

The ratios of nursing staff to inmates in correctional centres has decreased from 4.5 FTE per 100 inmates in 2011 to 4.0 FTE per 100 inmates in 2014. Similarly, the ratio of FTE clinical staff (including doctors) has also decreased from 4.9 FTE per 100 inmates to 4.5 FTE per 100 inmates for the same period. This decrease in staff numbers has undoubtedly affected waitlist times and, at present, the average time an inmate will wait to see a General Practitioner (GP) is over one month. The Inspector notes with concern the already long waiting lists to obtain mental health care, which are compounded by the increase in the mental health needs of inmates and the difficulty in filling mental health nursing positions.

Timetabling of correctional centres also has a significant impact on the delivery of health care. The lunchtime lockdown that is in place at all centres means that although the Justice Health and Forensic Mental Health Network (JH&FMHN) staff are onsite, they are unable to see inmates. This is a noteworthy disconnect. General lockdowns, largely due to custodial staff shortages, also result in appointments for inmates being cancelled and rebooked. This not only has time and cost implications, but may also be detrimental to inmate health.

JH&FMHN and GEO staffing issues also frequently result in delays of processing inmates when returning from court to Parklea CC at the end of the day. The Inspector heard that it is common for inmates to be sitting in a holding cell for 3–4 hours before they are returned to their cell.

The physical and emotional wellbeing of inmates may also be compromised when they are locked in close confinement with others in cells that were not designed to hold that number of inmates. Multiple occupants in a cell erode already limited privacy and increase the likelihood of low-level assaults and tensions.

Access to resources and services

This inspection found access to resources and services has not been commensurate with the increase in the inmate population and this has the potential to compromise quality of life for inmates and undermine rehabilitation outcomes.

Shared amenities are often at a premium in correctional centres and this is particularly relevant to telephones. As the main means of family contact, it is essential that inmates are able to access telephones on an equitable basis. The inspection found that, in some areas, there is only one telephone shared by 48 inmates. Having such limited access to an important service creates a commodity and increases the likelihood of standovers and assaults.

Family contact is essential to the wellbeing of inmates and this can be compromised by inadequate facilities for visits. At Parklea CC the visits space is not sufficient to allow different groups of inmates to have visits at the same time, disadvantaging some special management inmates. None of the centres inspected utilised family video conferencing to facilitate access to family.

Across all centres inspected, the inspection found that shared amenities for inmates were strained. Access to shade in yards and seats in communal indoor and outdoor areas were observed to be inadequate. Access to ovals was systematically interrupted for prolonged periods due to maintenance and staffing issues.

A key finding of this inspection was that the frequency and capacity of programs offered to inmates needs to be reviewed. There is a systemic inability of inmates to complete the programs they are required to do in order to be considered for parole at the earliest possible date. This inability to ensure inmates complete relevant courses on time means they are held for unnecessary lengths of time in the correctional system, at financial cost.

The Inspector notes that CSNSW delivered Drug and Alcohol programs, which met only 51 percent of the assessed need in 2013–14. Aggression and Violence programs met only 27 percent of the need. This concern extends to educational and vocational training, where only one-third of eligible inmates are participating in their chosen courses. This can have a significant effect on the rehabilitative outcomes for inmates and is of concern.

This situation is likely to be worsened from 2015 when changes to the NSW Government's Smart and Skilled program, which governs vocational training in NSW, will no longer recognise inmates as disadvantaged learners. This policy change will result in considerably fewer inmates accessing vocational training courses.

In a similar manner to the effect on JH&FMHN staff, Offender Services and Programs (OS&P) staff are also affected by lockdowns in the correctional centres, reducing their ability to deliver programs effectively.

Providing inmates with work while they are in prison is an important part of rehabilitation, and creates a productive prison environment, but jobs have decreased over the past three years. Despite the growth of the inmate population, there has been a 10 percent decrease in work opportunities.

Overcrowding in prisons taxes the existing infrastructure, leading to increased repair and maintenance costs. In 2012, CSNSW conducted an audit of its cells, which revealed that, of 7,920 cells, 2,381 were non-compliant with CSNSW Facility Standards. This situation is aggravated by the need to use all available beds, notwithstanding the need for some to be taken offline as part of a scheduled maintenance program. This is a concerning situation that needs to be rectified.

One option that has been utilised to respond to the increasing population is to refurbish old prison stock. It should be noted, however, that while this provides much needed beds in the short term, the refurbished centre may have nothing in its design features in common with the operational philosophy and objectives of the agency.

This was a challenging inspection for the office; overall, the inspection found heightened areas of risk in the correctional centres that were visited, which were also indicative of wider system issues. These need to be addressed in order to ensure that CSNSW and JH&FMHN are meeting both their objectives and those of NSW 2021.

The Inspector is cognisant of the fact that CSNSW is under considerable budget pressure and is endeavouring to find a way of managing these risks and constraints in a complex and volatile environment.

In this report, this office has made some 47 recommendations. CSNSW and JH&FMHN have been provided with the opportunity to comment on the detail and recommendations contained in this report. The Minister for Justice has been provided with a similar opportunity for comment as required under the Inspector of Custodial Services Act 2012. The comments received have been considered when finalising this report.

Recommendations

The Inspector will review progress against these recommendations and include this as part of the annual reporting mechanisms to NSW Parliament.

Recommendation 1:

The Inspector recommends that CSNSW conducts a review of its classification system to reduce its complexity.

Recommendation 2:

The Inspector recommends that the risk-avoidance practice of placing most remand inmates into maximum-security centres be reviewed. A risk-management approach that would assess individual risk levels of remand inmates in determining placement should be implemented.

Recommendation 3:

The Inspector recommends that future estate planning should include consideration of increased numbers of smaller, self-contained accommodation wings within centres, each with its own facilities.

Recommendation 4:

The Inspector recommends that CSNSW minimises the practice of holding inmates with different separation requirements at a centre.

Recommendation 5:

The Inspector recommends that CSNSW staffing is adequate to ensure the intelligence function is not compromised.

Recommendation 6:

The Inspector recommends that CSNSW narrows Interview for Placement (IFP) criteria to reduce the use of these alerts.

Recommendation 7:

The Inspector recommends that CSNSW conducts a review on the use of Risk Intervention Team (RIT) alerts across the correctional system.

Recommendation 8:

The Inspector recommends that CSNSW ensures inmate induction is structured and meaningful and is made available to every inmate upon reception into Darcy Unit at the Metropolitan Remand and Reception Centre.

Recommendation 9:

The Inspector recommends that CSNSW increases the hours out-of-cell to match the national averages defined in the Productivity Commission Report on Government Services 2015.

Recommendation 10:

The Inspector recommends that JH&FMHN prioritise staffing all positions in their approved establishment.

Recommendation 11:

The Inspector recommends that JH&FMHN ensure a standardised ratio of clinic staff to inmates across all like centres.

Recommendation 12:

The Inspector recommends that GEO and JH&FMHN ensure that the satellite clinics at Parklea CC are utilised to their full potential.

Recommendation 13:

The Inspector recommends that CSNSW relocates the mental health step-down functions currently undertaken at the MRRC to elsewhere in the estate to give primacy to the remand function.

Recommendation 14:

The Inspector recommends that CSNSW and JH&FMHN work together to implement processes which allow for the distribution of 'over the counter' medications by nurses when it is required.

Recommendation 15:

The Inspector recommends that CSNSW and JH&FMHN ensure that when an inmate is too sick to work, they are issued with a medical certificate as a matter of priority so their wages are not affected.

Recommendation 16:

The Inspector recommends that JH&FMHN and CSNSW work together to allow the clinics to continue to operate during lunchtime lockdowns in order to maximise the number of inmates who can be treated.

Recommendation 17:

The Inspector recommends that GEO work with JH&FMHN to ensure that inmates are returned to their cell within 60 minutes of arriving back at Parklea CC from court.

Recommendation 18:

The Inspector recommends that CSNSW reduce the number and extent of lockdowns due to staff shortages.

Recommendation 19:

The Inspector recommends that CSNSW and JH&FMHN work together to develop policies and procedures that improve inmates' access to health services when there are staff shortages and lockdowns.

Recommendation 20:

The Inspector recommends that CSNSW and JH&FMHN work together to develop strategies to reduce the number of medical escorts.

Recommendation 21:

The Inspector recommends that, during periods out-of-cell, CSNSW and GEO ensure simultaneous access to cells and yards to enable some periods of privacy in-cell.

Recommendation 22:

The Inspector recommends that CSNSW includes in their Facility Standards the provision of a standard ratio of one handset to 20 inmates in all accommodation areas.

Recommendation 23:

The Inspector recommends CSNSW ensures compliance with this Standard as a matter of priority. Where additional phones will be installed in yards, care needs to be taken to ensure the location of these do not compromise the privacy of users.

Recommendation 24:

The Inspector recommends CSNSW ensures that every yard has some shade, and seating is sufficient to provide for 50 percent of the inmate population.

Recommendation 25:

The Inspector recommends that CSNSW and GEO ensure consistent access to ovals for all inmates. If maintenance of ovals is scheduled to occur for protracted periods, compensatory measures should be in place to facilitate exercise for inmates.

Recommendation 26:

The Inspector recommends where CSNSW and GEO have installed exercise aids and equipment, these should be maintained in good working order or replaced.

Recommendation 27:

The Inspector recommends that CSNSW ensures that centre libraries operate according to standard library practice and the Australian Library and Information Association's Australian Prison Libraries: Minimum Standard Guidelines, 1990.

Recommendation 28:

The Inspector recommends that GEO provides alternative space for legal visits outside the secure perimeter at Parklea CC.

Recommendation 29:

The Inspector recommends that CSNSW reviews and fully implements the family video conferencing policy. As part of this review process, CSNSW should explore how family video conferencing can be made readily available from visitors' private computers.

Recommendation 30:

The Inspector recommends that the CSNSW long-term assets-management plan should ensure that the location of future correctional centres matches inmates' home regions.

Recommendation 31:

The Inspector recommends that CSNSW improves program accessibility to reduce the number of inmates exceeding their Earliest Possible Release Date (EPRD) due to lack of access to programs.

Recommendation 32:

The Inspector recommends that CSNSW investigates rates of attrition in the aggression and violence programs offered across the estate.

Recommendation 33:

The Inspector recommends that CSNSW develops short-term drop-in and drop-out programs for remandees.

Recommendation 34:

The Inspector recommends that the EQUIPS program model makes adequate program provision for inmates with short sentences.

Recommendation 35:

The Inspector recommends that CSNSW ensures that contact hours of OS&P in custodial settings are not compromised by accessibility of OS&P staff or operational routine.

Recommendation 36:

The Inspector recommends that CSNSW increases program participation of inmates in drug and alcohol, aggression and violence programs to address the unmet need.

Recommendation 37:

The Inspector recommends that CSNSW prioritises custodial staffing for OS&P areas to ensure that OS&P staff can consult with inmates in their area rather than in the accommodation units.

Recommendation 38:

The Inspector recommends that CSNSW implements a receipt procedure for inmate requests and referrals.

Recommendation 39:

The Inspector recommends that CSNSW measures the unmet demand for education and puts in place strategies to increase education participation rates of eligible inmates.

Recommendation 40:

The Inspector recommends that CSNSW places a high priority on facilitating continued access of inmates to apprenticeships and traineeships.

Recommendation 41:

The Inspector recommends that CSNSW ensures the cells in all new facilities are constructed with conduits for in-cell technology.

Recommendation 42:

The Inspector recommends that Corrective Services Industries increases work opportunities to recover those lost over the past three years.

Recommendation 43:

The Inspector recommends that CSNSW simplifies the custodial officer staff structure to promote clarity of roles, responsibilities and accountabilities.

Recommendation 44:

The Inspector recommends that CSNSW sets a maintenance budget of 2.5 percent of building asset replacement cost.

Recommendation 45:

The Inspector recommends that CSNSW updates evacuation plans for centres where the inmate population exceeds design capacity of that centre.

Recommendation 46:

The Inspector recommends that CSNSW introduces a measure to define a decent accommodation capacity limit.

Recommendation 47:

In the interim, the Inspector recommends that when the number of inmates exceeds 95 percent of the current operating capacity, this should be reported to NSW Parliament.

1. Introduction

1.1. This is the second report produced by the Inspector of Custodial Services since the establishment of the office in October 2013. The office was established by the Inspector of Custodial Services Act 2012 ('the Act') with the purpose of providing independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice.

1.2. This report summarises key findings of inspections undertaken at three Corrective Services New South Wales (CSNSW) correctional centres in the Sydney Metropolitan region during September–October 2014.

1.3. The principal functions as set out in Section 6 of the Act of the Inspector include:

a. to inspect each adult custodial centre at least once every five years;
b. to examine and review any custodial service at any time;
c. to report to Parliament on each such inspection, examination or review;
d. to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if, in the Inspector's opinion, it is in the interest of any person or in the public interest to do so.

1.4. Under the legislation, the Inspector has the remit to inspect over 100 custodial facilities across NSW. These include 31 public and two privately operated prisons. Three prisons are exclusively for women. There are 13 centres that are exclusively maximum-security environments or host a maximum-security unit. There are, in addition, over 80 court and cell complexes which fall within the Inspector's remit.

1.5. In addition to the purpose and powers of the Inspector as detailed in the legislation, the Inspector also has a responsibility to ensure that ethical and correct practice is observed across the custodial environment in NSW. These values focus on 'what matters' in the custodial settings and are documented in the office's Inspection Standards.

1 NSW Inspector of Custodial Services, *Inspection Standards for Adult Custodial Services in New South Wales 2014*.

2. Overview of inspection

Background

2.1 Prison overcrowding in NSW correctional centres was a topical issue throughout 2014, particularly when the inmate population reached its highest number of 11,021 in May.[2] It remains an issue of serious concern because of the multiple risks that overcrowding presents to the prison system. This rapid inmate population growth presented a challenge for CSNSW as the agency responsible for the care and custody of the highest number of inmates recorded. This growth has also placed pressures on the Justice Health and Forensic Mental Health Network (JH&FMHN), the agency responsible for inmate health care.

2.2. Custodial settings are high-risk environments. This is reflected in the prominent place risk management has in inmate management and in correctional system governance arrangements.[3] The risks and impacts of overcrowding in custodial settings have been examined in other Australian jurisdictions by state agencies such as the South Australian Coroner, Victorian Ombudsman, Victorian Auditor-General, a Western Australian judicial inquiry, and the Western Australian Inspector of Custodial Services.[4]

2.3. A risk analysis was undertaken by the Inspector of Custodial Services to identify and assess the different types of risks and impacts that may be felt throughout the system as a result of overcrowding. This risk analysis surveyed risks to duty of care, institutional climate, physical facilities, security and safety, access to resources and services, and the health and wellbeing of inmates and staff.

2.4. The risk analysis makes it clear that when the number of inmates expands faster than centre and system capacity, the resulting overcrowding can compromise access to resources, programs and services, and adversely impact on both inmates and staff. Following this initial desk-based analysis of overcrowding in the NSW correctional system, the Inspector determined that this was an appropriate area for examination under the Act.

2 Corrective Services NSW, *Offender Population Report*, 22 June 2014.

3 Cunneen, C., et al. *Penal Culture and Hyperincarceration: The Revival of the Prison. Farnham*, United Kingodom: Ashgate, 2013, p.67-90.

4 See: Coroner of South Australia, *Finding of Inquest: Marshall Freeland Carter,* 2000; Victorian Ombudsman and Office of Police Integrity, *Conditions for Persons in Custody: Report of Ombudsman Victoria and Office of Police Integrity*, July 2006; Victorian Ombudsman, *Investigation into Prisoner Access to Health Care*, August 2011; Victorian Ombudsman, *Investigation into Deaths and Self-harm in Custody*, March 2014; Victorian Auditor General, *Prison Capacity Planning: Victoria Auditor General's Report*, November 2012; Parliament of Western Australia, *Inquiry into the Management of Offenders in Custody and in the Community*, Hon. Dennis Mahoney, AO QC, Special Inquirer, Parl. Paper 1100, Legislative Assembly, 23 November 2005; Western Australian Office of the Inspector of Custodial Services, *Directed Review of the Management of Offenders in Custody by the Office of the Inspector of Custodial Services*, Report No. 30, November 2005.

Objective

2.5 The objective of this inspection is to assess the potential risks and impacts of the growth of the prison inmate population on correctional centres, staff and inmates. In particular, this inspection:

- explores how the correctional system is impacted by growth in the inmate population;
- highlights what plans, policies and procedures have been impacted at the system and correctional centre level;
- examines operational approaches to managing the impact of the growth;
- captures key learnings and practices;
- makes appropriate recommendations.

2.6 Prison overcrowding has the potential to negatively impact on all aspects of custodial life – from the initial reception of remandees entering custody through to their transition into the community on release. In assessing the impact of the growth of the prison population on both inmates and staff, this inspection examined three key areas:

- security and safety;
- health and wellbeing;
- resources and services.

2.7 Specific indicators were identified within each of these areas as relevant to understanding the potential impact of the growth of the population in the NSW correctional system. These included, but were not limited to, concerns around access to health and mental health care, education, recreation and work, as well as spatial considerations, capacity issues, workforce planning, and the extent to which the placement of inmates is driven by bedspace management, rather than by case management.

2.8 Terms of Reference (TOR) were developed and provided to CSNSW and JH&FMHN for comment. This TOR formed the framework for the inspection.[5]

Methodology

Selection of centres

2.9 Inspection was conducted across multiple correctional centres to provide a broader evidence base to allow for comparison. After consultation with CSNSW, the following centres were selected for this inspection:

- Parklea Correctional Centre (Parklea CC) is the second largest centre in NSW, with a daily average inmate population of over 800 inmates. Parklea CC accommodates maximum-security inmates and holds the second largest remand population, with approximately 50 percent of inmates on remand. It also accommodates a small proportion (9 percent) of minimum-security work-release inmates. Parklea CC has been privately operated by the GEO Group Australia Pty Ltd since 1 November 2009.

[5] Refer to Annex 1: NSW Inspector of Custodial Services, *Terms of Reference: The Potential Impacts of the Growth of the Inmate Population on Correctional Centres*, August 2014.

- Metropolitan Remand and Reception Centre (MRRC) is the largest centre in NSW with a daily average population of over 900 inmates. The MRRC provides only maximum-security accommodation. It has the largest number and proportion of remand inmates in the state. The MRRC is the main reception centre for NSW, receiving over 40 percent of all new receptions into the correctional system (receptions from NSW police and courts). It also holds a large number of inmates with mental health issues.
- Metropolitan Special Programs Centre (MSPC) - Area 2 accommodates all classifications of inmates. MSPC Area 2 is one of three areas at the MSPC, each providing therapeutic programs. MSPC 2 provides a range of therapeutic programs which are part of statewide strategies to address specific behavioural issues of violent offenders and sexual offenders. It also houses transit inmates for medical appointments and inmates with intellectual disabilities. MSPC 2 has a well-developed industries capability, giving inmates the opportunity to participate in a range of Corrective Service Industry (CSI) commercial business units.

2.10 Initial data analysis showed that, in July 2014, Parklea CC was operating at 51 percent over its design capacity and MSPC 2 was operating at approximately 71 percent over its design capacity. While the MRRC appeared to be operating only at a moderate (4.5 percent) level over its design capacity, it is a high-risk operation due to the substantial turnover of inmates, inadequate facilities, the diverse and high needs of inmates, and the complex interplay of the remand and mental health support functions.

2.11 These three centres were selected for this inspection as they demonstrate the complex operational profile of correctional centres and the unique challenges associated with managing them, particularly in the current operating environment of an increased inmate population.

2.12 The majority of inmates at MRRC and Parklea CC are on remand, that is, they are awaiting sentencing. CSNSW considers new receptions to represent a high risk as they require careful assessment, monitoring and management. New receptions often present with acute mental health concerns, as well as drug, alcohol and withdrawal issues.

2.13 Remand inmates require an efficient custodial transport logistics system. This system must be capable of providing frequent and often long-haul transport of inmates safely and securely between courts and correctional centres. The capacity of the transport fleet and its utilisation must be integrated with the capacities of the dispatching, transit and receiving centres.

2.14 Initially, Silverwater Women's CC was to be included in this inspection as a designated women's centre, however, while nationally the number of female prisoners is growing at a faster rate than male prisoners, this rate is not reflected in NSW.[6] Female inmates as a percentage of those in full-time custody have moved from 6.8 percent in 2005 to 6.9 percent in 2013.[7]

[6] Australian Bureau of Statistics, *Women prisoners increasing at a faster rate than men*, December 2012, http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4517.0Media+Release12012, viewed 25 November 2014.

[7] Corrective Services NSW, Corporate Research, Evaluation & Statistics, *Facts & Figures*, Editions August 2005 – March 2013

2.15 Further, the crude imprisonment rate of female prisoners in NSW has dropped from 27.5 (per 100 000) in 2009–10 to 24.9 in 2013–14.[8] Importantly, the Inspector visited Silverwater Women's CC to assess the relevance of the centre to this inspection. The overcrowding on which this inspection is focussed did not feature at the Silverwater Women's CC nor at the other two designated female centres at the time of the inspection. Nevertheless, it will be essential for CSNSW to monitor service provision for women in custody to ensure pressures in the total system do not lead to a reduction in the quality of care for women.

Inspection team

2.16. The inspection team consisted of the Inspector and two Senior Inspection/Research Officers (SIROs). The Inspection team worked collaboratively with CSNSW and JH&FMHN Executives and the General Managers of the selected correctional centres throughout the inspection process. Data and document requests were made to JH&FMHN and CSNSW on an ongoing basis.

2.17. The inspection team was supported by Official Visitors of the selected correctional centres in the planning and onsite phases. Official Visitors accompanied the SIROs on the inspection of physical facilities and were present during inmate focus group discussions to take any queries from inmates.

2.18. The inspection team utilised a variety of methods to capture the required information to guide the inspection and to inform this report. These are outlined briefly below.

- *Desk-based research and data analysis* was conducted with input from CSNSW and JH&FMHN.
- *A pre-inspection pilot survey* was conducted at Parklea CC. The survey was administered by the SIROs and an Official Visitor. 139 sample (of 330 targeted) inmates were surveyed from a cross-section of the inmate population. This survey aimed to test survey methodology in correctional settings and to provide a baseline for understanding the basic concerns of inmates at Parklea.
- *Onsite inspections* were undertaken at each of the selected centres in September and October 2014. Inspection Plans detailed the schedule for the three-day onsite visits.
- *Semi-structured interviews* were held with management at each centre. These were conducted in a one-on-one discussion with the Inspector and canvassed a range of topics at a management level.
- Separate *focus group discussions* were held with frontline staff from all areas of the centre, including custodial and health staff, and Offender Services and Programs (OS&P) staff.
- *Focus group discussions* were held with inmates at each centre, including inmate delegates, protection inmates, inmate workers and Indigenous inmates. Inmates were randomly selected by the inspection team. Participation in focus groups was informed and voluntary. Discussions were held in a comfortable space without officers present.
- *Ad hoc discussions* were conducted with staff and inmates as the inspection team conducted walk-arounds in the yards and units of the centres. This method allowed for people to provide their opinions in a more informal manner.
- *Further information collection* was conducted through meetings with divisional managers at CSNSW and JH&FMHN in order to corroborate evidence gathered or to fill identified gaps.

[8] Productivity Commission, Report on Government Services 2015, January 2015, Table 8A.25

2.19. Following the writing of the report, it was issued to CSNSW and JH&FMHN for their comment. In accordance with Section 14 of the Act, the Inspector provided the Minister of Justice with a draft and a reasonable opportunity to make submissions in relation to the draft report.

Research limitations

2.20 While every effort was made to devise a realistic and implementable research plan for the inspection, the inspection process encountered some limitations.

2.21 Not all requested data was able to be obtained from CSNSW and JH&FMHN. This is due to some gaps in historical data and the extraction capabilities of databases. Such constraints are unavoidable when working with such complex and varied data. As a result, some intended analysis was conducted in a modified manner to accommodate these data issues.

2.22 The team mitigated resource constraints by identifying the most essential and relevant areas for inquiry and focusing on these for the purposes of this report. Where issues or areas were identified as potentially worthy of future inquiry, they have been noted for consideration for inclusion in the inspection schedule of the office.

Overcrowding

What is overcrowding?

2.23 Understanding overcrowding in the correctional system is difficult because there is no precise definition of overcrowding and no agreed standard on the space which should be provided for each inmate. In addition, when quantitative measures are used in isolation to assess crowding they convey little about the impact that overcrowding has on the inmates' quality of life and the consequent impact on staff.

2.24 'Crowding', at its most basic, refers to the point at which the number of inmates in a centre exceeds that centre's stated capacity. The Victorian Ombudsman noted in her report, *Investigation into deaths and self-harm in custody*, that:

> *In simple terms overcrowding occurs when custodial facilities exceed the maximum number of people they were originally designed or built to hold, and where there is no corresponding growth in the supporting infrastructure.*[9]

2.25 Correctional systems in other jurisdictions have differing definitions that they use to describe overcrowding. In the UK, Her Majesty's Prison Service defines overcrowding as occurring when a prison contains more prisoners than the establishment's "Certified Normal Accommodation"[10]; the definition in California refers to a "maximum safe and reasonable capacity", which refers to the "maximum number of inmates who can safely and reasonably be housed in the prison system".[11] This definition considers capacity of housing units according to inmate custody levels, staffing levels and the physical infrastructure of housing units.

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[9] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, March 2014, p.27.

[10] Ministry of Justice, *Costs per place and costs per prisoner: National Offender Management Service Annual Report and Accounts 2012-13 Management Information Addendum*, London, 17 October 2013; Her Majesty's Inspectorate of Prisons, Expectations: Criteria for assessing the treatment of prisoners and conditions in prisons, Version 4, 2012.

[11] United States Supreme Court, *Brown, Governor of California, et al. v. Plata et al. Appeal from the United States District Courts for the Eastern and Northern Districts of California no. 09-1233*., May 23, 2011.

2.26 There is not, however, a straightforward way of measuring overcrowding because there is no universal agreement about how much space prisoners should have or the facilities to which they should have access. International standards state that each prisoner must have enough space, although definitions of adequacy vary from country to country and depend on, among other factors, how much time prisoners spend in their cells. The *UN Standard Minimum Rules* do state that all cells and dormitories must have adequate heating, lighting and ventilation.

2.27 In order to judge at what point the number of inmates exceeds the capacity of the correctional centre, there are three commonly accepted definitions of overcrowding: rated capacity, operating capacity and design capacity. Professor Richard Harding, inaugural Inspector of Custodial Services in WA, defines them as follows:

- *Rated capacity* is the number of beds or inmates authorised by correctional administrators to be assigned to a prison. This is a flexible figure.
- *Operating capacity* is the number of beds or prisoners that can be accommodated consistent with the maintenance of programs and services. This too, is an elastic figure which can easily be expanded.
- *Design capacity* is the number of beds or prisoners that the prison was originally built with the intention of holding.[12]

2.28 Design capacity as expressed above is relatively clear, but that clarity is challenged by the Productivity Commission definition which allows for the inclusion of any newly built accommodation.[13] Significantly, the definition of design capacity in the *National Corrections Advisory Group Data Collection Manual 2013–14* appears to exclude 'doubling up'.

2.29 CSNSW considers operating capacity to be determined by the physical limitations of correctional centres, that is, the number and size of the cells and units and the associated agreed staffing levels to manage the inmate population and ensure the security of the centre.

2.30 Operating capacity is elastic because it can be altered by the centre's management plan. When the population of a centre grows, a centre can install more beds into existing cells, thereby increasing the 'operating capacity' of a centre without increasing resources and services. This is illustrated by the International Centre for Prison Studies, which observes, "…countries can decide and sometimes change the designated capacity of a prison. By moving a bunk bed into a cell the capacity doubles and 100 percent overcrowding disappears!"[14]

2.31 A critical problem with the operating capacity measurement is that it is premised on the notion that cells are used primarily as sleeping accommodation and inmates spend most of the day outside their cells, engaged in purposeful activity. In NSW, though, increased lockdowns have meant that inmates are in their cells for extended periods each day, not just for sleeping, but also for eating, reading, showering and recreation.

2.32 In addition to standard living accommodation, correctional centres also need to provide specialised accommodation such as protection areas, separation and segregation cells at a level that complements the increases in beds in accommodation units.[15]

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[12] Ministry of Justice, Costs per place and costs per prisoner: National Offender Management Service Annual Report and Accounts 2012–13 Management Information Addendum, London, 17 October 2013; Her Majesty's Inspectorate of Prisons, Expectations: Criteria for assessing the treatment of prisoners and conditions in prisons, Version 4, 2012.

[13] United States Supreme Court, Brown, Governor of California, et al. v. Plata et al. Appeal from the United States District Courts for the Eastern and Northern Districts of California no. 09–1233., May 23, 2011.

[14] Harding, R., 'Prison overcrowding: Correctional policies and political constraints', Australian & New Zealand Journal of Criminology, Vol. 20 No. 1, 1987, p. 16–32.

[15] NSW Department of Police and Justice, Annual Report, 2013–14, p. 80.

2.33 An inspection conducted in 2010 by the Western Australian Office of the Inspector of Custodial Services (WA OICS) into Casuarina Prison highlights the difference between design capacity and operational capacity:

> *The operational capacity includes all bunk beds or other beds that have been installed to accommodate increased numbers (but not the mattresses on the floors that are found in some prisons). Thus, while Casuarina was operating just below its full operational capacity, it was in fact very overcrowded. Around 80 percent of its prisoners were living in cells at double their design capacity.*[16]

2.34 In short, the elasticity of operational capacity allows overcrowding to be made opaque to inquiry. The Inspector acknowledges that design capacity is not also without definitional problems.

2.35 It is essential that if the original bed capacity increases, the capacity of the correctional centre to offer other services and resources also increases at a similar rate, or else the deficiencies will be felt throughout the system and system objectives will be compromised. It is for these reasons that the Inspector of Custodial Services decided to use design capacity as a measure for assessing levels of crowding in the NSW prison system.

[16] Western Australian Office of the Inspector of Custodial Services, *Report of an Announced Inspection of Casuarina Prison*, September 2010, p.iii.

2.36 The table below (provided by CSNSW in July 2014) demonstrates the difference between design capacity and current operational capacity in correctional centres in NSW. Note that the data in this table may not be entirely accurate as records of changes to correctional centre infrastructure over time – in some cases, for more than a 100-year period – are not complete.

Correctional centre (CC)	Build year	Design capacity	Current operational capacity (beds)
Bathurst CC	1888	336	635
Bathurst PDC – Minimum Security	1998	24	24
Brewarrina (Yetta Dhinnakkal) Centre	2000	40	30
Broken Hill CC	1892	24	49
Broken Hill PDC – X Wing	1997	28	28
Broken Hill Female	2004	12	12
Cessnock CC	1972	464	495
Cessnock CC – New section	2012	250	267
Cooma CC		160	160
Dawn de Loas CC Areas 1& 2	1990	392	580
Dillwynia CC (Windsor)	2004	200	219
Emu Plains CC	1994	200	201
Glen Innes CC	1996	168	168
Goulburn CC	1885	321	399
Goulburn – X Wing – Unit 5	1961	111	111
Goulburn – X Wing – MPU	1989	68	68
Grafton CC	1893	175	72
Grafton CC	1893	175	72
Grafton PDC		20	0
High Risk Management CC Goulburn	2001	75	75
Ivanhoe (Warakirri) Centre	1999	40	35
John Morony CC – 1 (Windsor)	1991	300	288
Junee CC	1992	650	853
Kariong Juvenile CC (Gosford)	1991	44	44
Lithgow CC	1990	335	430
Long Bay Hospital	2007/08	91	91
Long Bay Hospital 2 (12 & 13 Wings)		310	310
Long Bay – MSPC Area 1	1909	228	300
Long Bay – MSPC – Area 2	1909	172	294

Correctional centre (CC)	Build year	Design capacity	Current operational capacity (beds)
Long Bay – MSPC – Area 3	1909	207	381
Special Purpose Centre	1988	60	60
Mannus CC (Tumbarumba)	1927	164	164
Metropolitan Remand & Reception Centre (MRRC)	1997	874	961
Mid North Coast CC (Kempsey)	2004	468	532
Oberon CC	1930	130	130
Outer Metropolitan Multi-Purpose CC	2000	300	300
Parklea CC	1992	323	620
Parklea CC – PDC – Work Release	2000	40	40
Parklea CC – Area 5	2001/02	222	222
Silverwater Women's CC	2008	228	241
South Coast CC (Nowra)	2010	579	596
St Heliers CC (Muswellbrook)	1989	256	286
Tamworth CC	1881	34	64
Tamworth – Minimum Security	1996	15	25
Wellington CC	2007	456	594
Totals		9,594	11,454

Buffer capacity

2.37 The lack of clarity around the definition of overcrowding is exacerbated by the need for spare or 'buffer' capacity, both within a correctional centre and within the system as a whole.

2.38 The reasons why correctional agencies require buffer capacity is documented in the 2013 report of the NSW Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Service NSW Facilities. It advises that the factors which are taken into account when determining spare capacity needs include:

- catering for inmate transfers;
- providing special purpose accommodation;
- providing separate facilities for male and female inmates;
- providing separate facilities for different classifications;
- to manage short-term fluctuations in the size of the inmate population;
- to avoid the need for hot-bedding.[17]

[17] New South Wales Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, *Inquiry into the closure or downsizing of Corrective Services NSW Facilities*, June 2013, p.6.

2.39 The report also notes that, not including special purpose accommodation, CSNSW is utilising over 90 percent of this space and that it is ideal to maintain a spare capacity of at least 5 percent as a buffer to ensure the efficient and effective management of the inmate population.

2.40 Professional corrective practice normally seeks to ensure a 5–15 percent buffer between the inmate population and system capacity to cater for inmate movements and the needs of discrete cohorts.[18] It also recognises that overcrowding undermines inmate access to programs and services and has a toxic impact on the correctional centre 'climate' in which staff are expected to work.[19]

2.41 This is supported by the Auditor General of Canada, who comments that the Correctional Service of Canada (CSC) has generally maintained more cells in operation than it has offenders in custody. This surplus allows for repairs and maintenance and enables the separation of incompatible groups, for the safety and security of both inmates and staff.[20]

2.42 The CSC standard for spare prison capacity is that maximum-security prisons should operate with 10 percent spare capacity and medium security prisons with 5 percent spare capacity.[21]

2.43 The Productivity Commission notes that the design capacity utilisation of CSNSW in 2013–2014 is 109.4 percent, compared to a national average of 104.4 percent. In October 2014, NSW had an operational vacancy rate in the system of only 3 percent, which is less than the 5 percent referred to by the CSNSW Commissioner in his evidence before the Select Committee, and which is required for the efficient and effective management of the inmate population.[23,24]

2.44 Six centres are operating at full capacity and there are high numbers of inmates waiting for a bed to be transferred to Goulburn CC, Mid North Coast CC, Cessnock CC, Junee CC, Wellington CC and South Coast CC.[25]

2.45 The Productivity Commission made the point that "percentages close to but not exceeding 100 percent indicate better performance towards achieving efficient resource management".[26] This is an over-simplistic approach to managing the complex needs of the correctional system. Efficiency indicators are difficult to interpret in isolation and need to be considered in conjunction with effectiveness indicators. A high utilisation percentage, for example, can adversely impact on effectiveness indicators such as assaults.[27]

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[18] The Australian Institute of Criminology, the Council of Europe and the American Correctional Association have recommended a utilisation rate of 85-95 percent in the industrialised world.

[19] Wener, R.F., *The Environmental Psychology of Prisons and Jails: Creating Human Spaces in Secure Settings.* Cambridge: Cambridge University Press, 2012, p.137-155.

[20] Auditor General of Canada, *Report of the Auditor General of Canada: Chapter 4 – Expanding the Capacity of Penitentiaries – Correctional Service Canada*, 2014, p.3.

[21] Auditor General of Canada, *Report of the Auditor General of Canada: Chapter 4 – Expanding the Capacity of Penitentiaries – Correctional Service Canada*, 2014, p.6.

[22] Productivity Commission, *Report on Government Services 2015*, January 2015.

[23] Corrective Services NSW, *Offender Population Report*, 7 October 2014.

[24] New South Wales Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, *Inquiry into the closure or downsizing of Corrective Services NSW Facilities*, June 2013, p.6.

[25] Corrective Services NSW, *Offender Population Report*, 7 October 2014.

[26] Productivity Commission, *Report on Government Services 2014*, January 2014, p.31.

[27] Productivity Commission, *Report on Government Services 2015*, January 2015, p.8.27.

2.46 The limitations of efficiency and effectiveness measures to illuminate the nature of the correctional experience for both inmates and staff is reflected in the application of other resources, such as 'Measuring the Quality of Prison Life' and 'Staff Quality of Life'.[28] These are questionnaires designed to measure 'what matters' most to prisoners and staff. They endeavour to illuminate the real measures of prison life that Key Performance Indicators are incapable of capturing and communicating.

Cell size

2.47 Quantitative examinations of overcrowding consider occupancy levels in terms of social and spatial density, however, there are no international or national norms on standard minimum cell size. Nevertheless, appropriate standards for cell sizes can be derived from international instruments that refer to prisoners, reports of the European Committee Against Torture (CPT), the decisions of the European Court of Human Rights and domestic guidelines.

The starting point for a consideration of appropriate cell size is the United Nations *Standard Minimum Rules for Treatment of Prisoners 1955*. Rule 9 (1):

> *Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.*

2.48 The table below sets out some standards that are used internationally and domestically. The lack of consistency reflects, in part, differences between minimum acceptable standards and desirable standards.

Jurisdiction	Cell Size
UK[29]	5.5m^2 for a single wet cell (no double up capacity) 7.4m^2 for a single wet cell (with double up capacity)
Canada[30]	7m^2 for a single wet cell 6.5m^2 for a single dry cell
New Zealand[31]	8.6 – 8.8m^2 for a single cell 12.8m^2 for a double cell
European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – European standards[32]	9m^2 for a single cell 10m^2 for a double cell (desirable standards)
International Committee of the Red Cross (ICRC)[33] – suggested minimum international standards	5.4m^2 for a single cell

[28] See Liebling, A. *Prisons and Their Moral Performance: A Study of Values, Quality and Prison Life*. Oxford: Oxford University Press, 2009.

[29] PSI 17/2012 *Certified Prisoner Accommodation*, 18 April 2012

[30] Correctional Service of Canada, *Commissioner's Directive 550*, 2013/02/05

[31] These are the dimensions of cells in the newly constructed Wiri Prison, Auckland

[32] Committee for the Prevention of Torture, *Comments of the CPT on the draft of the revised European Prison Rules and the draft commentary, CPT (2005)* 17, 2005; Murdoch, J., *The treatment of prisoners European standards*. Strasbourg; Council of Europe, 2006, p.214.

[33] International Committee for the Red Cross, *Water, Sanitation, Hygiene and Habitat in Prison, 2013 and Supplementary Guidelines*, 2012.

2.49 The domestic approach to cell floor space is expressed in the *Australian Standard Guidelines for Corrections in Australia Revised 2012* which recommends:

> *Cells or rooms that are designed for single or multiple occupancy, should be consistent with the standards relating to size, light, ventilation etc., as set out in the* Standard Guidelines for Prison Facilities in Australia and New Zealand (1990) *or as later modified.*[34]

2.50 These facilities guidelines state that a single person cell should have a minimum floor space of 8.75m^2 and a double person cell 12.75m^2.[35] The more recent Corrections Victoria *Cell and Fire Safety Guidelines* advise that a minimum cell size should be 8.75m^2 and that a two bed cell should be 12.2m^2.[36]

2.51 CSNSWs *Facility Assets Correctional Standards* advises the floor space of a single cell (dry or without hydraulic fittings) is 7.5m^2. For a standard single cell the standard is 8.2m^2. For a dual cell the standard is 12.7m^2. The average cell size in NSW is 8.71m^2 over a range from 3.3m^2 to 32.0m^2 for multiple occupancy cells.

2.52 It is the view of the Inspector that the cell size standards detailed in the *Standard Guidelines for Prison Facilities in Australia* and *New Zealand* and in the Corrections Victoria *Cell and Fire Safety Guidelines* are appropriate and should inform capital asset management planning and be reflected in operational practice.

2.53 Clearly, these floor space standards cannot be considered in isolation from other environmental and operational factors. This is recognised by the ICRC and by the United Nations Office on Drugs and Crime which observes that cell size minimum depends on how much time the prisoners actually spend in the cells.[37] This is a key issue in NSW where inmates have limited hours out-of-cell time.

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[34] *Standard Guidelines for Corrections in Australia Revised*, 2012, http://www.aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2012.pdf, viewed 1 July 2014.

[35] Victoria Office of Corrections, *Standard Guidelines for Prison Facilities in Australia and New Zealand*, 1990.

[36] Corrections Victoria, *Cell and Fire Safety Guidelines, Rev.06b*, 2013, p.25.

[37] United Nations Office of Drugs and Crime, *The Prison System*, 2006, p.11.

3. Context

3.1 Since 2012, NSW has experienced a rapid rise in the inmate population reaching a record high in May 2014 of 11,021.[38] Between late September 2012 and March 2014 the prison population rose by 13 percent. Long-term patterns in the prison population show a consistent upward trend over the last three decades which is likely to continue unless there is a significant change within the criminal justice system.[39]

3.2 A number of elements of criminal justice system policy and practice are identified as commonly impacting on prison population including:

- police activity;
- criminal justice policies;
- changes to legislation;
- crime rates;
- court activity;
- severity of sentences, including the influence of guidelines judgments;
- low uptakes of alternatives to imprisonment;
- breach of justice procedures.[40]

3.3 Prison population is basically a function of the rate of arrival and the length of stay. [41] According to the NSW Bureau of Crime Statistics and Research (BOCSAR) and CSNSW analysis, the key factors for the recent rise in the NSW prison population appear to be a higher rate of arrest for serious crimes and an increase in the proportion of convicted offenders given a prison sentence.[42]

Current capacity

3.4 At the time of this report being finalised in February 2015, the inmate population had risen to 11,022, but the available bedspace was only 10,960. There were 11,022 inmates and an operating capacity of only 10,960 beds in the NSW correctional system.

3.5 In 2012 CSNSW conducted a stocktake of all correctional facilities, which assessed that there were 7,920 cells providing an operational capacity of 10,667 beds. The closures or downsizing of several correctional centres in 2011–2012 has depleted capacity. The reasons for these closures or downsizing were complex and included the decrease in full-time inmate population beginning in 2009, the opening of new stock that created what were, at the time, surplus beds, and the expectation that correctional operations would become more efficient.

3.6 In addition to the number of cells that are available for use, it is essential to assess cell condition and utility as this will determine how many can actually be used and for what purpose. Understanding the quality of cells, including examining their age, condition and ability to support humane confinement, is discussed more fully at paragraph 6.81.

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[38] Corrective Services NSW, *Offender Population Report*, 22 June 2014.

[39] Corrective Services NSW, *A General Overview of Prison Population Trends Research Note 2014/006*, 2014.

[40] NSW Parliament, Legislative Council, *Select Committee on the Increase in Prisoner Population: Final Report*, 2001, p.34.

[41] Weatherburn, D., et al., 'Why is the NSW prison population growing?', *Crime and Justice Statistics*, Issue Paper No. 95, April 2014.

[42] Weatherburn, D., et al., 'Why is the NSW prison population growing?', *Crime and Justice Statistics*, Issue Paper No. 95, April 2014.

Main issues

3.7 In NSW, the existing prison infrastructure and resources are inadequate to support the correctional population. This situation will be exacerbated if the increase in the inmate population continues. This problem has developed over time and is due to many causes, born both in the policy and operational domains.

3.8 The Inspector notes that CSNSW has, at any time, long-, medium- and short-term approaches to bed management. The doubling up of cells is a short-to-medium-term option and old facilities are generally re-commissioned as a medium-term solution. Long-term options include commissioning new facilities.

3.9 The result is an institutionalised practice of double-bunking in the NSW prison system. The scope of CSNSW response to the growth of the prison population has seen up to three inmates temporarily housed in cells originally designed to accommodate a single person, exceeding standards in capacity utilisation rates, and the re-commissioning of old facilities.

3.10 In addition to the fundamental need to match bedspace demand with capacity, while maintaining sufficient buffer stock, there are other issues that impact on the correctional system's capacity to respond to population growth. Key elements of the policy and operational context which limit or influence CSNSW responses are outlined below.

Capital asset planning

3.11 The Inspector acknowledges that there have been two new gaols and approximately 1875 new beds opened over the past decade, however the capital program has not been sufficient to manage the consistent upward trend in the prison population.[43]

3.12 The inadequacy of long-term capital planning for the prison estate was noted in CSNSW evidence to the NSW Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities.[44] The use of double-bunking in NSW correctional centres is not only a reaction to unanticipated increases in the inmate population applied to old facilities, but has also been a design consideration in the construction of new facilities for the past two decades. New facilities have generally provided two-thirds two-out cells and one-third single cells. As a result, CSNSW has a history of double-bunking in response to inmate population growth.

3.13 This practice has limited the flexibility of CSNSW to respond humanely to rapid increases in the inmate population.

[43] This was noted in CSNSW evidence to the NSW Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities. See New South Wales Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, *Inquiry into the closure or downsizing of Corrective Services NSW Facilities*, June 2013, p.7.

[44] New South Wales Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, *Inquiry into the closure or downsizing of Corrective Services NSW Facilities*, June 2013, p.7.

Forecasting growth

3.14 While forecasting growth of the prison population is difficult, the lack of an accurate projection has contributed to inefficient planning over the past decade. In 2001, the NSW Legislative Council Select Committee underestimated planning for population growth: "With current beds said to be 8,105, the expanded works program will see the capacity of the NSW prison population close to 10,000 by 2015."[45] In November 2014, the population stood at 10,500.[46]

3.15 One of the reasons that forecasting prison population growth is difficult is because growth is impacted by changes in the criminal justice system policy settings. The population has fluctuated by plus or minus 6 percent in decade-long cycles of fluctuations around a persistent underlying increase.[47] For example, when prison remissions were abolished in response to a crisis over law and order in NSW in 1989, the NSW prison population rose by 47 percent in the space of four years.[48] The introduction of mandatory minimum terms in NSW had similar effects.[49]

Budget constraints

3.16 The financial performance of CSNSW has been scrutinised on a regular basis over the past ten years through a number of government committees and oversight agencies.[50] This included the NSW Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, which found in its 2012 Final Report that the CSNSW Net Cost of Services was growing in an unsustainable way. CSNSW advised that budget overspends between 2007/08 and 2010/11 were mainly driven by staffing costs associated with increased correctional centre capacity, which had not been offset by the closure of older, less efficient facilities.[51]

3.17 Despite predicable population growth at an annual average of 3 percent since 1982, the NSW prison estate has suffered from inadequate investment, which has left NSW with an estate of 32 centres and little opportunity to achieve economies of scale. The Productivity Commission noted the impact of a lack of economies of scale and the geographic distribution of correctional centres on correctional system costs.[52]

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[45] New South Wales Parliament Legislative Council Select Committee on the Increase in Prisoner Population, *Select Committee on the Increase in Prisoner Population Final Report*, November 2001, p.10.

[46] Corrective Services NSW, *Offender Population Report*, November 2014.

[47] Corrective Services NSW, *A General Overview of Prison Population Trends Research Note 2014/006*, 2014.

[48] Gorta, A., & Eyland, S., 'Truth in sentencing: impact of the Sentencing Act 1989: Report 1', *Research Publication New South Wales Department of Corrective Services*, No. 22. 1990.

[49] Poletti,P., & Donnelly,H., *The impact of the standard non-parole period sentencing scheme on sentencing patterns in New South Wales*, Judicial Commission of New South Wales Monograph Series, No. 33, May 2010.

[50] As examined in the 2005 NSW Legislative Assembly Public Accounts Committee report Value for Money from NSW Correctional Centres, the 2006 Auditor General's Performance Audit *Prisoner Rehabilitation*, the NSW Legislative Council General Purpose Standing Committee 2009 report of the *Inquiry into the privatisation of prisons and prison-related services*. CSNSW financial performance also received extensive media coverage in 2008-2009 on alleged excessive overtime. In 2009-2010, as part of the then government's *Better Services and Value Plan*, NSW Treasury commissioned a number of independent reports on the financial and operational management of CSNSW.

[51] New South Wales Parliament Legislative Council Select Committee on the Closure or Downsizing of Corrective Services NSW Facilities, *Inquiry into the closure or downsizing of Corrective Services NSW Facilities*, June 2013, p.8.

[52] Productivity Commission, *Report on Government Services 2009*, January 2009, p 823.

3.18 The impact of historically inadequate estate planning is exacerbated by the current and anticipated difficult financial position of CSNSW. Significantly, these financial constraints are being experienced at a time when the Productivity Commission reports that the total net operating expenditure and capital costs per prisoner per day in NSW is the lowest of any Australian correctional jurisdiction.[53] In addition, the real net operating expenditure per prisoner per day since 2010–11 has been consistently below the national average.[54]

Geographic distribution of correctional centres, cells and system requirements

3.19 Over the past 15 years, all new correctional centres were constructed in regional areas of NSW. This has resulted in approximately 60 percent of the correctional infrastructure being located in regional areas, while over 60 percent of inmates come from the metropolitan area.

3.20 Over the period 2012–13, 67 percent of receptions came from the Sydney Metropolitan area and from around the coastal areas of Newcastle and Wollongong, but only 41 percent of the operational beds are in the metropolitan area. From July 2013 to April 2014, there were 157,044 inmate movements throughout the state, and this high number is significantly attributable to the geographic dispersion of centres.

Security classification

3.21 In addition to centres being located in areas of the state further from where they are needed, there is a significant mismatch between the types of centres and beds available and the classification profile and programmatic needs of the inmates.

3.22 The inmate security classification breakdown shows that 17.3 percent of inmates are classified as maximum security, 24.1 percent as medium security, 54.5 percent as minimum security and 4.2 percent are unclassified.[55] In contrast, only approximately 36 percent of beds are minimum security, resulting in a shortfall of appropriate places for inmates to be housed. This assumes that inmates are actually properly classified.

3.23 The complexity of the current inmate classification system, as discussed at paragraph 4.15 of this report, has contributed to this mismatch.

CSNSW response to the growth of the prison population

3.24 CSNSW is endeavouring to manage unusually heightened risks arising from the combined impact of a growing, complex population and inadequate infrastructure. CSNSW manages these risks in accordance with actions detailed in its Risk Register.

3.25 The CSNSW Risk Register identifies correctional centre overcrowding as a risk. The current controls identified for this risk include an increase in community-based sentencing, monitoring of inmate population trends, adherence to CSNSW policies and procedures, and compliance with relevant legislation. Additional risk mitigation strategies comprise monitoring of inmate population and trends, and Assistant Commissioner's and Director's meetings. The control and mitigation strategies outlined in the Risk Register highlight the limited real options that CSNSW – which is downstream from the police and courts – has in responding to prison crowding.

3.26 CSNSW has implemented several strategies in order to meet its challenges and address the gap between design capacity and bedspace demand.

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[53] Productivity Commission, *Report on Government Services 2015*, January 2015, Table 8A.7.

[54] Productivity Commission, *Report on Government Services 2015*, January 2015, Table 8A.9.

[55] Corrective Services NSW, Corporate Research, Evaluation & Statistics, *Facts & Figures*, March 2013.

Development of a long term asset management plan

3.27 In 2014 CSNSW developed a Prison Infrastructure Plan (PIP).[56] This plan seeks to address the major operational issues outlined above. It specifically identifies asset strategies which will configure the custodial estate to more effectively respond to operational demands and system objectives.

3.28 This is a most important initiative, and its effectiveness will be determined by the extent to which PIP is funded, and whether the facilities are constructed to the specifications detailed in PIP.

Sacrifice all or part of the 5-15 percent buffer stock of cells

3.29 Buffer stock is usually required for movements and the management of discrete cohorts. The Productivity Commission, in its 2015 Report on Government Services (ROGS), noted that CSNSW capacity utilisation is 109.4 percent.[57]

Doubling up on the number of inmates in cells.

3.30 This is a longstanding and thoroughly institutionalised practice in CSNSW and is not simply a response to recent growth of the inmate population. This is not only a practice but also a design principle in pursuit of reduced construction costs. The Inspector acknowledges that there are circumstances in which limited double-ups have a role to play in minimising the risk of self-harm and suicide, as well as reducing isolation.

3.31 In April 2012 CSNSW applied to continue its exemption from Clause 46 of the *Public Health Regulations 2012*, which applied boarding accommodation standards to correctional centre accommodation. The use of legislation to regulate the size of a prison cell is unique to NSW. While guidelines, standards and recommendations apply, no other Australian correctional jurisdiction is required to meet a legislated minimum cell size. The legislation, which was intended to address health concerns in a different sector, is applied by default to prisons.

3.32 Part of this process involved CSNSW conducting a risk assessment of the adverse health effects of multi-occupancy cells. CSNSW analysis of the generic risk factors associated with long-term multiple occupancy of sleeping accommodation assesses the risk level as being low to medium.

3.33 In August 2014 the NSW Minister for Health signed an order exempting CSNSW from standard sleeping accommodation provisions, which lapses on 1 September 2015, unless earlier revoked. The order exempts CSNSW from the minimum floor area requirements under the condition that a series of enhanced public health measures are introduced by CSNSW in collaboration with JH&FMHN and Health Protection NSW.

3.34 As of August 2014, three centres were using single or double cells to accommodate three inmates: Dillwynia CC, MRRC and Grafton CC. The inmates in three-out cells were rotated every 14–28 days in order to meet Public Health Regulations that required such floor space ratios to be temporary.

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[56] The Prison Infrastructure Plan is Cabinet in Confidence and the Inspector has not viewed the document.

[57] Productivity Commission, *Report on Government Services 2015*, January 2015, Table 8A.23.

3.35 While CSNSW recognised that this arrangement did not meet Public Health Regulations, the provision of additional beds was seen as necessary to meet an unprecedented increase in the inmate population, which peaked in May. The Inspector acknowledges that CSNSW recognises that triple-occupancy cell arrangements are not sustainable and was used only where there were no alternative accommodation arrangements. That CSNSW was ever forced into the position of tripling up, albeit temporarily, reinforces the Inspector's observations on the poverty of earlier estate planning.

Re-commission previously decommissioned correctional facilities as part of the effort to increase capacity

3.36 CSNSW has recently recommissioned MSPC Area 1 at the Long Bay Correctional Complex at a cost of approximately $5 million for refurbishment (plus an additional $1.5–$2 million for asbestos remediation). This facility will have the ability to house 300 inmates. However, the actual number of inmates who will be accommodated at the centre will be much lower due to the need to manage discrete cohorts. While this is a reasonable immediate response to the growth of the inmate population and the limited options available for CSNSW, there are other issues associated with recommissioning old facilities, which are discussed later in this report (see paragraph 6.82).

Shortage of remand beds

3.37 At the time of this inspection, there is a shortage of 1000 male remand beds in the metropolitan area. CSNSW has addressed this deficit in metropolitan remand beds through the remand bed placement practice whereby remand inmates are transferred, or 'hot-bedded', to and from the metropolitan area to enable essential bed vacancies in the metropolitan area in order to facilitate court attendance, albeit at considerable financial and human cost to the system.

Budget response

3.38 CSNSW faces a significant current budget shortfall and a continuing budget gap in the immediate future.

3.39 This projected budget gap assumes current inmate numbers remain in the range 10,000 to 10,600 (average 10,300). The validity of this assumption is doubtful. BOCSAR estimates that if the current trend in inmate numbers continues, the NSW prison population will rise by another 17 percent (that is, to about 12,500 inmates) by March 2015.[58]

3.40 Seventy percent of public sector prison budgets in NSW are consumed by staff costs, reflecting, in part, the higher custodial base salaries than in other Australian jurisdictions and in the private sector.[59] Consequently, the response to budget pressures will almost always be directed primarily at staffing levels and deployments, which impact most obviously on inmate regimes and notably on time out-of-cell. This has an adverse impact not only on inmates but also on staff.

[58] NSW Bureau of Crime Statistics and Research, *Why is the NSW prison population growing?*, Crime and Justice Statistics Bureau Brief, April 2014.

[59] NSW Legislative Council General Purpose Standing Committee No.3, *Inquiry into the privatisation of prisons and prison-related services*, Report No. 21, June 2009, p.76-78.

4. Security and safety

4.1 The security and safety of both inmates and staff is paramount to the management of a correctional centre. When a centre becomes overcrowded it places extra strain on both human and physical resources, which can result in heightened security risks. These risks pertain to the way inmates are allocated to a correctional centre and to a bed, and the way the flow of inmates through the system is managed.

4.2 Where the increase in prison capacity is achieved by simply 'doubling up', there is rarely a commensurate increase in capacity for specialist cells, such as segregation, special management or observation cells, or mental health screening units, which exacerbates the already high duty-of-care risks in the custodial setting.[60]

4.3 A fundamental area of concern arises when hours out-of-cell are reduced at the same time as numbers of inmates are increased. This can exacerbate existing tensions among inmates and lead to physical risks such as assault or an increased likelihood of psychological suffering.

4.4 This chapter will discuss these risks and the evidence that was found during inspection.

Placement

4.5 A significant impact of crowding is that classification and placement are compromised by the need to manage bedspace.

4.6 The way in which bedspaces are currently allocated and managed in CSNSW creates a substantial number of inmate movements throughout the state at considerable economic and productivity cost to the correctional system, and a disadvantage to the maintenance of inmates' family contact. The latter is acknowledged as being important to inmate rehabilitation.

4.7 Correctly placing inmates in centres that match their security classification and individual needs is a complex process and one that is carefully monitored on an ongoing basis by CSNSW. This inspection found that the number of inmates being held in a centre that does not match their security classification has increased since 2011.

4.8 Many inmates are placed in prisons that do not match their classification status or their rehabilitation needs to address offending behaviour. Both minimum and medium security sentenced and remand inmates are frequently housed in maximum-security centres, placing unnecessary impediments on their movements and access to programs and education, at an increased cost to the system.

4.9 In 2011 there were 1,144 medium security inmates held in maximum-security centres; by 2014 this had increased to 1,880 medium security inmates being held in a maximum-security centre.

4.10 This disparity between classification and available beds is demonstrated by the fact that approximately 54.5 percent of the inmate population is classified as minimum security but only 36 percent of the beds are minimum security. Resolution of this disparity is not assisted by the complexity of the inmate classification system.

[60] See *New South Wales v Bujdoso* (2005) HCA 76 (42).

4.11 The mismatch between inmate and facility classification does not assist in the creation of the appropriate environments necessary to encourage inmates to address their offending behaviour, and has the potential to undermine the recidivism reduction targets set in *NSW 2021*.[61]

4.12 This increase in inmates placed in centres that do not match their classification must be understood within the operational challenges of bedspace management outlined below. Although there are a defined number of beds in each centre, placement considerations mean that this is a notional figure and the physical number of beds is not an accurate reflection of the ways in which they can be used. This was explained by the NSW Legislative Council Report into operations and management of CSNSW when it stated:

> *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 (e.g. 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.*[62]

4.13 An example of inmates being housed in areas not compatible with the security classification is seen at MSPC 2, 3 and 4 Wings, where conditions for minimum-security inmates are not comparable to those normally associated with low security facilities. Inmates are locked in their cells at 2.30pm on weekends, which restricts access to recreation and visits. The physical environment also does not reflect a minimum-security setting, with inmates secured behind a masonry perimeter with razor wire in a manner similar to that which might be found in a maximum-security centre.

4.14 In managing inmates in custodial settings, incentives for good behaviour sit alongside sanctions for unacceptable behaviour. There are various forms of incentive and earned privilege schemes, including one-out (single) cells and increased access to other services. The capacity of the correctional system to provide such incentives to inmates is seriously compromised under conditions of overcrowding that result in the normalisation of double-bunking and inmate placement being driven by bed vacancies rather than case management of an individual.

Recommendation 1: The Inspector recommends that CSNSW conduct a review of its classification system to reduce its complexity.

'A bed is not a bed': The complexity of the inmate population and bedspace management

4.15 Upon entry to the correctional system, each inmate is assigned a security classification and their bed placement is determined. Many factors are taken into account during this process, including considerations around whether the inmate requires or requests protection, is a member of a recognised criminal gang, has particular mental health or other health needs, or is required to complete a specified program, to name just a few. There are a number of bed placement categories including protection non-associations (PRNA), Special Management Area Placements (SMAPs), protection limited-association (PRLA), segregation and mainstream. These placements provide for the safety and security of special management cohorts such as sex offenders or members of Outlaw Motorcycle Gangs (OMCGs).

[61] See Harding, R., 'Rehabilitation and prison social climate: Do "What Works" rehabilitation programs work better in prisons that have a positive social climate?' *Australian & New Zealand Journal of Criminology*, Vol. 47, 2014.

[62] NSW Parliament Legislative Council General Purpose Standing Committee No.3. *Issues relating to the operations and management of the Department of Corrective Services*, June 2006, p.93.

4.16 Crowding reduces the ability of correctional administrators to provide discrete accommodation to special management cohorts. Crowding in the correctional system makes the separation of inmates more difficult to manage, as there is often not the physical space available to keep them apart, giving rise to duty-of-care risks. The rotation of available communal space may result in one or more groups having limited access to recreation or programs. Where inmate population growth exceeds the design capacity of a centre, the impact is felt more in maximum-security settings which inevitably include diverse inmate cohorts, including violent offenders, or inmates whose behaviour in custody has resulted in higher security classifications.

4.17 The difficulty in separating cohorts is demonstrated at the MRRC, where two separate categories of protection inmates (SMAPs and PRLA) are accommodated in a single area. The two cohorts require separate structured days/different regimes to ensure they do not mix with each other, which results in substantially reduced hours out-of-cell for each group. The amount of time inmates have to access communal indoor spaces within the accommodation areas and yards is halved to accommodate the two groups and usage of these communal spaces is rotated. The two separate inmate groups are let go from cells on rotation for two hours in the morning and again for one hour in the afternoon, providing a total of three hours out-of-cell per day for each group.

4.18 At the peak of the inmate population in May 2014, Area 3 of Parklea CC accommodated inmates participating in the Violent Offenders Therapeutic Program (VOTP) alongside 'fresh custody' remand inmates. Placing newly remanded inmates (who are unconvicted) in units with violent offenders presents some obvious security risks, such as increased standovers and assaults, as well as risks to an individual's psychological wellbeing. This practice is also in direct contravention of the Inspection Standards, which state that remand inmates should always be managed as a separate group from sentenced inmates, unless they state in writing that they have no objection.[63]

4.19 The NSW Law Reform Commission noted that, in 2012, 55 percent of inmates remanded in custody were released unconvicted. Of these, approximately 66 percent spent less than one month in custody, with 29.5 percent of inmates spending one day in custody and 40.3 percent between two and seven days.[64] In 2013–14 this number was 53.9 percent. It is clearly inconsistent to house such low-threat, transient populations in expensive high-security accommodation. Best practice would see these remandees housed separately, away from sources of criminal acculturation and risks to their health and wellbeing.

Recommendation 2: The Inspector recommends that the risk-avoidance practice of placing most remand inmates into maximum security centres be reviewed. A risk management approach that would assess individual risk levels of remand inmates in determining placement should be implemented.

4.20 While it is understood that accommodating separate cohorts in the same area is unavoidable when the growth of the inmate population reduces spare capacity for special management beds, three out-of-cell hours per day is not considered sufficient under the NSW Inspector of Custodial Service's Inspection Standards.

[63] See Inspection Standard 9.1, NSW Inspector of Custodial Services Inspections Standards, *Inspection Standards for Adult Custodial Services in New South Wales*, 2014.

[64] NSW Law Reform Commission, ***Bail***, Report 133, April 2012.

Recommendation 3: The Inspector recommends that future estate planning should include consideration of increased numbers of smaller, self-contained accommodation wings within centres, each with its own facilities.

Recommendation 4: The Inspector recommends that CSNSW minimise the practice of holding inmates with different separation requirements at a centre.

4.21 Across all three centres examined during this inspection, the number of segregation cells has not kept pace with the increase in operational capacity. Where the increase in operational bed capacity has been achieved by doubling up in cells, there has been no corresponding increase in capacity for specialist cells such as segregation, special management or observation cells. For example, Parklea CC was originally designed with 20 segregation cells and currently contains 18 although the operational capacity has nearly doubled its original design capacity.

4.22 The need for dedicated cell space for the cohorts that require a segregation capability is recognised by the Correctional Service of Canada, which has specified that segregation cells should be 2.5–5 percent of the centre's capacity.[65] There is no such metric in CSNSW.[66]

4.23 The risks in managing the duty of care to these inmates is heightened through a lack of appropriate one-out cell accommodation. Where there are not enough segregation cells, then an inmate on a segregation order is placed in a cell in another part of the centre. For example, at MSPC 2 there are limited alternative options other than to place segregated inmates in one-out cells in the developmentally disabled accommodation area, which is arguably inappropriate.

4.24 Over the past three years the number of inmates placed in a centre outside their home region has increased slightly and now sits at approximately 82.2 percent of the inmate population. Such placement is determined by factors such as those discussed above, but has the potential for negative effects, particularly around allowing family links and support to be maintained. The Inspection Standards and the Royal Commission into Aboriginal Deaths in Custody recommendation on which it draws specify that inmates should be placed at a correctional centre as close as possible to their family and community of interest.[67]

4.25 Another factor contributing to the high numbers of inmates placed outside their home region is the remand bed placement practice. Under this practice, inmates are transferred to regional correctional centres if they do not have a court date set within the next two weeks. This is a useful tool for the management of limited metropolitan bedspace as it enables manoeuvrability of beds, but the frequency of movement and the short-term nature of the stays means it is expensive, disruptive to court preparation and does little to reduce inmate tension. This is poor practice for managing remand inmates.

4.26 It would also, however, seem to disadvantage those remand inmates who are not from the metropolitan area, by placing them further away from their home location. It will also result in all sentenced inmates being housed outside the Sydney metropolitan area for the duration of their sentence, with the exception of those inmates participating in therapeutic programs operated by Sydney metropolitan centres.

[65] Auditor General of Canada, *Report of the Auditor General of Canada: Chapter 4 – Expanding the Capacity of Penitentiaries – Correctional Service Canada*, 2014, p.8.

[66] The *Standard Guidelines for Corrections Australia* does not provide a metric for segregation capacity.

[67] See Recommendation 168 of Royal Commission into Aboriginal Deaths in Custody, National Report, Australian Government Publishing Service, 1991, p.69; Inspection Standard 13, NSW Inspector of Custodial Services Inspections Standards, *Inspection Standards for Adult Custodial Services in New South Wales*, 2014

4.27 CSNSW is planning to reconfigure operations of the Sydney metropolitan centres to allow remand inmates to be held in a centre as close as possible to the court in which they are to appear. All inmates who are remanded to Sydney metropolitan courts will remain in the metropolitan area while their court matters are finalised, and those attending regional courts will remain in the regional area closest to the court they are required to attend.

Movements

4.28 Structuring the movement of inmates around the criminal justice system, as well as within individual centres, is complex and heavily reliant on staffing resources. The growth of the inmate population has impacted on movements between correctional centres, as well as on internal movements within centres.

4.29 In 2011–12 there were 134,823 inmate movements undertaken by the Court Escort Security Unit (CESU) between all 33 correctional centres and over 80 court and cell complexes. This rose to 147,445 in 2012–13 and to 157,044 in 2013–14. The budget for the CESU unit has increased from $31.5 million in 2011–12 to $56 million in 2014–15.

4.30 In 2014, 25 percent of the budget for movements has been spent on movements for remand bed placements. For the period January–June 2014 there were 1,862 remand inmates moved from metropolitan to country centres and 1,335 remand inmates moved from country to metropolitan centres. This response to metropolitan remand bed shortages has contributed to an increase in custodial transport movements from 15,735 per month in July 2013 to 17,117 in April 2014, and a total over that financial year of 157,044 movements, each of which carries risks and has significant costs.[68]

4.31 This significant increase in inmate movements and attendant costs has taken place at a time (2010–11) when 49 percent of all court matters were dealt with by video conferencing. By September 2014 this figure had risen to 58 percent. CSNSW aims to have 75 percent of court appearances being conducted by Audio Visual Link (AVL) by 2016. As court appearances are the largest component of inmate movements it is essential that CSNSW attains the AVL target.

4.32 The lack of spare or 'buffer' beds often results in inmates being moved to, and accommodated in, centres according to space available, rather than being based on the most appropriate allocation for the inmate according to their risk or case management needs. This is not only expensive, but has the potential to undermine the rehabilitation goals of the system. For example, 39 percent of inmates participating in the Getting SMART Alcohol and Other Drugs program failed to complete the program due to transfers and release from custody.[69]

[68] Corrective Services NSW, *Custodial Movements Report*, April 2014.

[69] Corrective Services NSW, *Evaluation of the Getting SMART program Research Publication No. 53*, 2013.

4.33 The table below shows a total of 203 inmates in Parklea CC who had been classified and were waiting for vacancies at their centre of classification at the time of inspection.

Centre of classification	No.
Bathurst	4
Broken Hill	1
Cooma	1
Dawn de Loas	4
Goulburn	10
Junee	112
Lithgow	7
Mannus	1
Metropolitan Special Programs Centre	2
Mid North Coast	17
St Heliers	4
Oberon	1
Outer Metropolitan Multi-Purpose Correctional Centre	1
South Coast	17
Wellington	21

4.34 At the estate level, as of October 2014, a number of correctional centres have a high number of inmates awaiting bed vacancies, including a total of 303 inmates awaiting bed vacancies at Junee; 101 at Wellington; 118 at South Coast; 99 at Mid North Coast; 85 at Cessnock; and 72 at Goulburn.

4.35 The growth of the inmate population combined with the complexity of inmates also places additional pressure on movements of inmates within a centre. For example, at Parklea CC, each inmate movement, or group of inmates, requires an escorting officer as the street ways are not under video surveillance, but human resources for escorting movements has not been commensurate with the population growth. Inmates returning to Parklea CC from court appearances are often held in holding cells for up to three hours before returning to their cell due to resourcing constraints for escorted movements. This issue is discussed in more detail at paragraph 5.46.

4.36 At Parklea CC the industries workforce was originally drawn from a single area. With the growth of special management cohorts of inmates within Parklea CC, equity of access to work for different inmates has been provided. However, managing work placements has resulted in complex internal inmate movements and attendant security risks.

Variable Operational Routine

4.37 CSNSW policy allows centre General Managers to implement a Variable Operational Routine (VOR) when short-staffed. This means that the standard daily routine of a centre may be altered if there are not enough staff on a particular shift. When the VOR is implemented, correctional officers may be 'stripped' from specific posts, meaning that they are required to work in an area of higher need for that shift. The impact of this is frequently felt by areas such as the library, programs or recreation.

4.38 The inspection team noted that intelligence positions are stripped at MRRC (and elsewhere) and considers the stripping of such posts unwise, given the unrelenting probing and periodic breaching of institutional security by inmates. The significant increase in contraband finds over the period January to May 2014 and the recent increase in OMCG inmates requires continuity of intelligence activities and resources. In November 2014 there were 309 members of 18 OMCGs in custody.

Recommendation 5: The Inspector recommends that CSNSW staffing is adequate to ensure the intelligence function is not compromised.

4.39 Although the inspection team was unable to obtain data on the number of times that specific posts were stripped at each centre, the VOR was implemented frequently across centres in NSW in 2014. For the first six months of 2014, MSPC 2 was locked down completely once and partially 56 times. These unscheduled lockdowns exacerbate already significant lock-in periods of inmates. MRRC was locked down completely three times and had 58 partial lockdowns for the same period.[70]

Flow

4.40 The examination of overcrowding in prisons usually tends to focus on the static inmate population, but the impact of the 'flow' of inmates through the system also plays a large role. This is affected by the remand and short-sentenced inmates who 'churn' through the criminal justice system, giving rise to high costs and accentuating the risks to the integrity of the reception, screening, and assessment and placement processes. In 2010–11, there were 28,900 total receptions in the NSW prison system.[71]

4.41 The inspection found systemic issues that delayed the transfer of inmates from court cells into correctional centres, leading to unacceptable lengths of stay in court cell custody. Court cells are not designed for long-term occupancy and are stark and intimidating places, particularly those built in the 19th century. The services and amenities offered to remandees are limited as court cells are not intended to be staffed to provide, for example, welfare services, which would be available at a correctional centre.

4.42 Those detained in court cells can be a volatile mix of persons with drug and alcohol dependency, persons needing to be separated from other inmates because of their alleged offences, 'first-timers', those at risk of self-harm, young people, women and the physically and mentally ill. Such vulnerable inmates have to be appropriately managed within the limited conditions of a court cell complex, presenting staff with complex duty of care considerations, especially when stays are prolonged.

[70] Corrective Services NSW response to the NSW Inspector of Custodial Services, 18 September 2014.

[71] Corrective Services NSW, Corporate Research, Evaluation & Statistics, *Facts & Figures*, March 2013.

4.43 Inmates may be held longer in court cells when remand correctional centres lack the bed capacity in reception and induction units to absorb transfers from court cells. Until May 2014 when the NSW inmate population peaked, people in custody at court cells could be made to wait in excess of 72 hours before being transferred to a correctional centre. This was seen at Surry Hills Cell Complex where 14.5 percent of total receptions between January–June 2014 stayed more than 72 hours before being transferred.

4.44 An example of this was two inmates who were assessed as requiring one-out cells for risk management, and were held at Surry Hills Cell Complex for 176 and 160 hours respectively until cells could be made available that could accommodate these inmates independently. In October 2014 one inmate stayed for 200 hours at Surry Hills before a Risk Intervention Team (RIT) bedspace became available at the MRRC.

4.45 Approximately 20 percent of receptions are on RIT alerts. An RIT alert is a correctional and health staff response for inmates at risk of self-harm who require increased assessment, observation and focussed case management. There are aspects of both risk avoidance and cost shifting in the RIT process, as other locations (for example, Amber Laurel CC) have limitations on the number of RITs that they can hold, at which point inmates on RIT alerts are transferred to Surry Hills.

4.46 Further cost and risk consequences which flow from excessive stays in Surry Hills are that welfare staff from the MRRC on overtime are required to service Surry Hills inmates. This happens approximately twice during the working week and on Sundays.

4.47 Notably, approximately 70 percent of inmates on RIT alerts arriving at the MRRC are cleared off the RIT list shortly after their arrival, which could suggest that inmates are being placed on an RIT more often than necessary.

4.48 The management of inmates at Surry Hills and at the MRRC is unnecessarily complex due to overuse of Interview for Placement (IFP) alerts, which is an assessment process designed to identify association issues. For example, at Surry Hills, approximately 30 percent of all receptions are given IFP alerts and all OMCG identified inmates are given an IFP. Each inmate who has been placed on an IFP is required to be managed separately in single-cell accommodation until they are interviewed and assessed for appropriate placement.

4.49 IFP cases therefore 'burn beds' in reception and induction areas at MRRC, which responds to 13–15 IFP cases per day. This can result in backlogged cases at Surry Hills, which is not equipped to manage inmates for extended periods.

Recommendation 6: The Inspector recommends that CSNSW narrows Interview for Placement criteria to reduce the use of these alerts.

Recommendation 7: The Inspector recommends that CSNSW conduct a review on the use of Risk Intervention Team alerts across the correctional system.

4.50 The Inspector notes that, although this bottleneck has recently been relieved, notably at Surry Hills by the fall in remandees, it is likely to become an issue again as the remand population increases.

4.51 Due to the flow of remand inmates into the MRRC and a limited number of cells in the reception area, it is not uncommon for an inmate to remain locked in the vehicle in the loading /unloading dock for a number of hours until a cell becomes available. This reflects a mismatch between vehicle fleet capacity and scheduling, and reception area accommodation capacity limits.

Recommendation 8: The Inspector recommends that CSNSW ensures inmate induction is structured and meaningful and is made available to every inmate upon reception into Darcy Unit at MRRC.

Hours out-of-cell

4.52 The number of hours out-of-cell an inmate receives each day is commonly regarded as one of several indicators of the quality of prison life. International instruments such as the *United Nations Standard Minimum Rules for the Treatment of Prisoners* hold that the number of hours out-of cell each day should be the maximum possible in order to allow for sufficient human interaction. Her Majesty's Inspectorate of Prisons in the UK specifies that inmates should be allowed ten hours out-of-cell per day.

4.53 NSW is the state with the lowest hours out-of-cell for its inmates, and is well below the national average of ten hours.[72] This falls well short of the ten hours out-of-cell benchmark which the Inspector supports.[73]

4.54 The average hours out-of-cell has dropped from 11.4 hours per day in 2010–2011 to 8.2 hours per day in 2013–2014.[74] This total average combines the number of hours from those minimum-security centres at 10.6 hours per day, and the hours of those medium and maximum-security centres, which have an average of 6.85 hours out-of-cell per day.

4.55 This state wide average shows that inmates are locked in their cells for an average of up to nearly 16 hours per day; time in which they have no access to fresh air, programs, recreation activities, or contact with their children and other family members. This average applies to both convicted and unconvicted persons.

Recommendation 9: The Inspector recommends that CSNSW increase the hours out-of-cell to match the national averages defined in the Productivity Commission Report on Government Services 2015.

4.56 The Inspector noted that, at the MRRC, a remand facility which houses unconvicted inmates, the average out-of-cell hours each day is only 5.5. Limited hours out-of-cell hinder the work of rehabilitation and education and in extreme cases may constitute inhumane treatment. The US Supreme Court noted in 2011 that "[lockdowns] further impede the effective delivery of care."

4.57 4.57. This sentiment was echoed by the Subcommittee on Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, which, on a recent visit to New Zealand, noted concern at the possible harmful effects of inmates held in similar strict regimes for many years, especially those held at maximum-security facilities. The Committee suggested that a combination of reduced activities and increased confinement for prolonged periods could constitute ill treatment.[77]

[72] Productivity Commission, *Report on Government Services 2015*, January 2015.

[73] See Expectation No. 3.1, Her Majesty's Inspectorate of Prisons, *Expectations: Criteria for assessing the treatment of prisoners and conditions in prisons*, Version 4, 2012.

[74] Productivity Commission, *Report on Government Services 2015*, January 2015.

[75] Corrective Services NSW response to the NSW Inspector of Custodial Services, received 28 August 2014

[76] *Brown, Governor of California, et al. v. Plata et al.* (2011) No. 09-1233.

[77] Subcommittee on Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment to New Zealand*, August 2014.

Case Study of Front End Flow: MRRC Darcy Unit

"Darcy unit is the busiest and most complex part of MRRC but is geographically the smallest."

Staff member, MRRC

The induction area 'Darcy Unit' in MRRC is a specialised area for intake and assessment of fresh custody remand inmates. At its maximum operating capacity, Darcy Unit can hold 256 inmates, which may include fresh custody remand inmates, non-association inmates, segregation inmates, inmates on RIT, and inmates on IFP, all of which require specific protection assessments or observation. Some of these inmates 'burn beds' as they require one-out cell accommodation for risk management until their assessment is complete.

Each inmate who has been placed on an IFP needs to be individually interviewed and assessed before they can be appropriately placed. On average there are 13–15 people each day on the IFP list. Inmates on RIT alerts are also placed in one-out cells where possible, until they are assessed. Darcy Unit has 13 RIT cells, of which two are one-outs and the rest are two-outs.

This complex mix of remand inmates means that, while there are a total of 256 beds in Darcy Unit, the number of beds that can be used is reduced if inmates require one-out arrangements. For example, there are 22 beds in Darcy Unit in 13 safe cells, however, this capacity can only accommodate 11 inmates requiring one-out cells.

Darcy Unit has developed 'self-sufficiency' in that its infrastructure has been developed to enable primary and mental health professionals and OS&P staff access to inmates *within* the unit. This is achieved by having adequate consulting rooms within the unit and means that the specialist staff are not reliant on having custodial staff available to move the inmates to their appointments.

The Inspector found that the processes and systems in place in Darcy Unit are working well, despite the considerable pressures on the unit to process significant numbers of inmates. The Mental Health Screening Unit (MHSU) is working at maximum capacity, however, and transfers out of Darcy Unit to other wings can be slowed down by access to mental health professionals.

Approximately 30 percent of fresh custody remand inmates are referred to mental health services for assessment. It is vital that the integrity of standards in the induction process is maintained to ensure that all inmates have been thoroughly screened and assessed before being transferred into other accommodation areas. The inspection team was informed that there are 25–40 inmates (on average) on the list waiting to be assessed by the Mental Health nurse who can see six patients (on average) per day.

When there is a lack of vacant bedspace in the MHSU or the Hamden mental health step-down unit, this can backflow and result in inmates experiencing a prolonged stay in Darcy. When the inspection team visited MRRC there were 13 inmates in Darcy waiting for beds in the MHSU. The Mental Health function of the MHSU and Hamden unit compromises the capacity of MRRC to fulfil its primary remand function.

Flow out of the MRRC can also be blocked for sentenced inmates waiting for bed vacancies, particularly in SMAP accommodation areas of other prisons. On 23 September 2014 there were 35 inmates waiting at the MRRC to be transferred to Junee, a centre designated to accept SMAP placements.

The inspection found that, although there is an induction DVD played to new inmates during their admission process, almost none of the inmates remembered seeing it or could relay its contents. There was a general feeling that there is not enough information given to fresh custody inmates and they are reliant on receiving information about the way the centre operates and what to expect on an informal basis from other inmates. The Inspection Standards recommend that formal induction processes offering a comprehensive introduction to the centre be offered to all inmates (Inspection Standard 16).

4.58 Where there are two or more occupants of a cell, this close confinement for prolonged periods is likely to have a range of negative effects, from reduced access to privacy to increased aggression and conflict among inmates. The Inspection Standards provides that multi-occupancy cells should offer privacy when toilets or showers are used. The inspection team did not observe this at any of the centres it visited, the impact of which is exacerbated by the excessive time for which inmates are confined to their cells. The high level of tension among cell occupants was noted by inmates during focus groups where they commented that this tension could lead to fights.

4.59 The Inspection Standards set out expectations for what practices should be implemented when overcrowding occurs in cells, including a reduction in the number of hours that inmates are locked in their cells, and the introduction of compensatory activities. It is expected that overcrowding should not, in any way, limit the inmate's access to the centre's activities or services.[79]

4.60 While the out-of-cell hours for the centres inspected have actually increased over the past three years, they still average only approximately seven hours per day, substantially less than what is considered acceptable.

4.61 When inmates are locked in their cells early, for example at MRRC where they are regularly locked in at 2.30 or 3.30pm, it means that they cannot access telephones after this time. This makes it impossible for fathers to speak to their school-age children or working partners. This inspection found that a hot dinner was served at lock-in, as early as 2.30–3.30pm in-cell. This practice is not consistent with the Inspection Standards, which state that evening meals should be served at a time consistent with community practice.[80]

4.62 Depending on what time the end of day lock-in is, it may give those inmates who work even less ability to utilise the out-of-cell hours. As they are out of their cells for work, when they return they may have only one hour to make phone calls, shower, exercise, socialise, submit inquiries, and complete any jobs they need to do. During a focus group, an inmate at Parklea CC commented, "For the privilege of working we feel like we lose our rights."[81] A working inmate at MRRC told the inspection team, "There is not enough time between finishing work and lock-in and it places pressures on the showers and phones."[82]

4.63 If CSNSW is to continue to provide inmates with only limited hours out-of-cell, there needs to be compensatory measures made available, including the application of in-cell technologies. These proposed measures are outlined in paragraph 6.58.

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78 See Inspection Standard 19.8, NSW Inspector of Custodial Services Inspections Standards, *Inspection Standards for Adult Custodial Services in New South Wales*, 2014.

79 See Inspection Standard 20, NSW Inspector of Custodial Services Inspections Standards, *Inspection Standards for Adult Custodial Services in New South Wales*, 2014.

80 See Inspection Standard 91.4, NSW Inspector of Custodial Services Inspections Standards, *Inspection Standards for Adult Custodial Services in New South Wales*, 2014.

81 Inmate Focus Group Discussion, Parklea CC, September 2014.

82 Inmate Focus Group Discussion, MRRC, September 2014.

Assaults

"If you put three strangers in a cell designed for two there is always going to be dramas."[83]

4.64 The number of prisoner-on-prisoner assaults has risen slightly over the past three years (up from a total of 923 assaults in 2011 to 1,222 in 2014; an increase of approximately 2 percent). The division of the types of assaults into serious, moderate and minor, and no injury, remains approximately the same. However, assaults are frequently underreported and assault data should not be read in isolation as it does not provide a complete picture of the climate within a centre or system.

4.65 The rates of inmate-on-officer assaults in NSW correctional centres appear low at 0.55 per 100 inmates and a rate of inmate-on-officer serious assault at 0.00 per 100 inmates.[84] However, it is important to examine assaults data in conjunction with 'use of force' analysis to build a more complete picture of the institutional climate.[85]

4.66 For example, at Parklea CC the inspection team was advised that use of force incidents increased by approximately 50 percent between 2011 and 2013 when the population over the same period rose by nearly 11 percent.

4.67 Several studies into prison conditions have reported links between increased prisoner numbers and increased violence involving both inmates and staff.[86] In a review of Corrections Victoria prison capacity planning, the Auditor-General advised that the increase in prisoner numbers and overcrowding within prisons has coincided with an increase in prisoner incidents over the past six years. The rate of serious incidents per prisoner, such as assaults, attempted suicides and self-mutilation, has almost doubled over this time.[87]

4.68 The risk of increased violence in the custodial setting under conditions of overcrowding is also made unequivocal in the 2014 report of the Victorian Ombudsman, who identified that prisoners in that jurisdiction are placed in overcrowded and at times substandard conditions leading to increased tensions and violence; as a result, the likelihood of prisoners being physically or sexually assaulted or self-harming, leading to deaths, is greater now than at any time in recent years. In addition, prison staff are at greater risk of being assaulted by prisoners as a consequence of overcrowding.[88]

4.69 There are also reasons why a strong correlation between these two variables may not be demonstrated. As was noted by a correctional officer during the inspection, when a centre institutes longer lock-in hours due to increased inmate numbers or staff shortages, this may have the effect of reducing incidents of aggression or assaults, as inmates are confined. However, longer lock-ins can compound low-intensity tensions between inmates and staff.

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[83] Inmate Focus Group Discussion, Parklea CC, September 2014.

[84] Productivity Commission, *Report on Government Services 2015*, January 2015, Table 8A.26.

[85] See NSW Ombudsman, *Managing Use of Force in Prisons: the Need for Better Policy and Practice*, July 2012.

[86] See, for example: Ross, S., Predicting major prison incidents, *Criminology Research Council Grant*, 12/87, May 1990; Haney,C., 'The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions', *Washington University of Law and Policy,* Vol, 22, Issue 1, 2006; Homel, R. & Thomson, C., Causes and prevention of violence in prisons, in O'Toole, S. & Eyland, S. (Eds.), *Corrections criminology*, Sydney, 2005.

[87] Victorian Auditor General, *Prison Capacity Planning*, November 2012.

[88] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, 2014.

5. Health and wellbeing

5.1 As well as impacting on bedspace capacity, the increasing inmate population has placed an additional burden on the health services provided in correctional centres. While extra beds are installed in prisons, corresponding health infrastructure and services have not been increased accordingly. The UN Special Rapporteur on Torture has noted the impact of overcrowding on health, stating, "overcrowding exacerbates the inability of the staff to provide adequate… health care for the detainees.'[89]

5.2 When inmate numbers are increased, this places increased pressure on the system and can lead to longer waiting times and, in some cases, may mean that individuals' health needs are not being met. Because the prison population is fundamentally unwell, with extensive health needs, the impact of overcrowding on health care must be considered a high risk.

5.3 This chapter will discuss the way the health and wellbeing needs of inmates are managed and the impact that increasing inmate numbers have on the health system.

Justice Health & Forensic Mental Health Network

5.4 The Justice Health and Forensic Mental Health Network (JH&FMHN) is responsible for providing health care to adults in the criminal justice system across four key areas: pre-custody, custody, inpatient and post-release. The care provided for adult inmates in custody includes screening, triage, treatment, monitoring in areas such as clinical and nursing services, primary health, mental health, population health, drug and alcohol, women's health and Aboriginal health.

5.5 Reflecting the efforts of JH&FMHN to respond to the poor health profile of the inmate population, the Productivity Commission reports that NSW inmate heath care costs represent 14.1 percent of total operating expenditure as documented in the Report on Government Services. In other Australian jurisdictions this ranges from 10.7 percent in South Australia to 2.9 percent in Queensland.[90]

5.6 Meeting the health needs of the inmate population is a significant challenge. Custodial health care is provided in a complex operating environment to inmates whose health profile is acknowledged to be worse than that of the general population. Levels of infectious diseases, mental illness, chronic respiratory and heart conditions, and drug and alcohol problems are much higher than in the community.[91]

5.7 There are many interrelating issues that impact on the way health services are able to deal effectively with the needs of inmates in correctional settings, including the number and type of JH&FMHN staff, the availability of appropriate infrastructure, and limited contact hours with inmates.

[89] Commission on Human Rights, *Visit by the Special Rapporteur on Torture to the Russian Federation*, E/CN.4/1995/34/Add. 1, November 1994.

[90] Correctional Services Administrators Conference, 4 December 2014, p.6.

[91] See: Inspector of Custodial Services, *The invisibility of correctional officer work*, May 2014, and NSW Justice Health, *Inmate Health Survey: Key Findings Report 2009*, 2010.

Number of staff

5.8 Over the period 1 July 2011 to 30 June 2014, the inmate population across NSW increased from 9,916 to 10,566, an increase of approximately 6 percent. JH&FMHN staff increases have not been proportional to the increase in the custodial population.

5.9 While there have been increases in staff directed to both frontline and support services, these increases have been across the range of JH&FMHN activities and have not been directed solely at custodial health. The ratios of nursing staff to inmates in correctional centres have decreased from 4.5 full-time equivalent (FTE) per 100 inmates (30 June 2011) to 4.0 FTE per 100 inmates (30 June 2014). Similarly, the ratio of FTE clinical staff (including doctors) has also decreased from 4.9 FTE per 100 inmates to 4.5 FTE for the same period.

5.10 This lack of staffing has been felt more acutely at some centres than others, for example at Parklea CC, where in 2001 there were 8.89 health staff to 100 inmates, and in 2014 there were 7.91 health staff to 100 inmates.

5.11 The health profile of inmates is becoming increasingly complex and now includes many more who have chronic conditions, are elderly, or have significant mental health issues, often as a result of drug use. It is essential that JH&FMHN is able to identify these trends and plan for suitable health professionals to respond to this demand.

5.12 During the inspection the team heard that JH&FMHN has some difficulty in filling certain health positions, thus exacerbating waiting list times. There is a community-wide shortage of mental health nurses, and this pattern is also evident in the correctional health environment, as these positions are the most difficult to fill when recruiting. The inspection team heard that, on occasion, a position is filled with an applicant who does not fulfil all the requirements; for example, a Registered Nurse may be employed to fill a Clinical Nurse specialist position on the condition that they train up to the required skill level. This is a pragmatic solution to a critical resource gap.

5.13 General Practitioners (GPs) are another position that proves difficult to resource, particularly in regional areas. Some of the centres in NSW do not have a regular GP appointed to provide adequate services. Many regional correctional centres do not have relief personnel to backfill GP posts during annual leave periods, further worsening waiting times. The reasons for this are largely around the difficult working environment and limited work hours, making the job appear unattractive to those who might otherwise apply. The Inspector acknowledges that while GP positions may be difficult to resource, JH&FMHN have in place a 24/7 on-call GP service available to all health centres.

5.14 JH&FMHN has employed Nurse Practitioners in this situation to assume greater responsibility to diagnose and medicate patients. The Inspector acknowledges that this is a reasonable response to a shortage of staff and to enhance a nurse-led model of care, but expects that JH&FMHN will continue to work toward filling GP positions at an appropriate level on an ongoing basis.

5.15 Attracting and retaining a professional workforce is a strategic priority for JH&FMHN. The agency has set out to strengthen and formalise relationships with a number of university partners to attract new graduates in the context of a competitive market with predicted shortages of speciality health professionals

5.16 The inspection team learnt that there is only one position for a 24-hour nurse at the Long Bay complex. JH&FMHN data suggests that there is insufficient service demand to warrant an additional nurse after-hours. In addition, JH&FMHN maintains an on-call service for health staff to assist with clinical and operational issues that arise outside of normal operating hours.

5.17 However, in light of the changing and increasingly intricate needs of this population, the situation requires close monitoring to ensure that the current clinical and operational arrangements meet the needs of the increasing numbers and the changing profile of inmates at the Long Bay complex.

Recommendation 10: The Inspector recommends that JH&FMHN prioritise staffing all positions in their approved establishment.

Recommendation 11: The Inspector recommends that JH&FMHN ensure a standardised ratio of clinic staff to inmates across all like centres.

Availability of health infrastructure

5.18 The infrastructure of different centres has a significant impact on the provision of health services to inmates. Where the prison capacity is achieved by simply 'doubling up', there is no commensurate increase in capacity for specialist cells, such as observation cells for at-risk individuals, holding cells in clinics for diverse inmate populations, and mental health screening units.

5.19 All centres visited during this inspection have a central clinic where the majority of health work is conducted. Parklea CC and MRRC also have satellite clinics, which are smaller clinics located closer to specific units or wings of the prison where inmates can be treated more easily.

5.20 The inspection found that the satellite clinics are working well at MRRC but are under-utilised at Parklea CC. The reasons given for the under-use of these clinics centred on staff feeling that they did not have adequate access to clinical files and other resources in the clinics and so were not able to work effectively. These clinics are an important part of delivering effective health care, especially in larger centres, and should be utilised to the full extent available.

Recommendation 12: The Inspector recommends that GEO and JH&FMHN ensure that the satellite clinics at Parklea Correctional Centre are utilised to their full potential.

5.21 Whether a centre has sufficient holding cell spaces to accommodate the separation of protection inmates in waiting areas also impacts on the capacity of JH&FMHN staff to deliver health services to inmates at the main clinic. At Parklea CC, there are not enough holding cells and as a result time is lost in returning an inmate to their cell before the next inmate is escorted to their consultation.

5.22 This is an issue that needs to be considered in current custodial staff resourcing, estate planning and centre (and specifically clinic) design, in light of the evolving health profile and diversity of the inmate population. JH&FMHN views on the economies and efficiencies of satellite clinics also need to be taken into account.

5.23 At the MRRC, staff highlighted the lack of appropriate consulting space, advising that there are occasions where the mental health nurse consults people in the communal area of the accommodation unit as there is no consultation room available. Similarly, nurses sometimes find it necessary to conduct their primary health care work at the officer desk in the accommodation area due to a lack of available space.

5.24 Fresh custodies are the most unpredictable inmates; they have some of the highest needs and show the most distress at a point in time when little is known about them. Time is needed to stabilise them, collect information, and work together with JH&FMHN. The initial reception process requires a mental health service to adequately assess people and ensure they receive the appropriate referrals and placements.

5.25 It is important that a remand facility such as the MRRC have an adequately staffed mental health unit, however, the additional function of a mental health step-down unit compromises the primary functions of the remand centre.

Recommendation 13: The Inspector recommends that CSNSW relocates the mental health step-down functions currently undertaken at the MRRC to elsewhere in the estate to give primacy to the remand function.

Access to health care

5.26 The 2012 Standard Guidelines for Corrections in Australia states that access to health services for inmates should be at a comparable level to that available in the general community.[92] Because of the complex, high needs of the prison population, this involves a much greater level of resources than would be used to service an equivalent section of the standard community. The high demand for a range of services makes it essential that health care is delivered according to need and acuity.

5.27 Access to primary and mental health care was identified by inmates at all the centres examined during this inspection as inadequate. Lack of access to physical health care and mental health services was felt to be particularly acute in Parklea CC, and this is consistent with waitlist data obtained from JH&FMHN.

[92] Department of Justice, WA, Corrective Services, NSW, Correctional Services, SA, Corrective Services, ACT, Department of Justice, Tasmania, Department of Justice, Victoria, and Department of Justice, NT, *Standard guidelines for corrections in Australia*, 2012.

5.28 In June 2014 the waitlist times for custodial health services demonstrates that, on average, an inmate will wait over one month to access a GP. The table below shows the average waitlist time at each of the centres examined for different medical services.

Waitlist for custodial health professional, by days (Jan –Jun 2014)	Parklea	MRRC	Silverwater Women's	LBH Area 2	MSPC 2	All Correctional Centres in NSW
Primary Health Nurse	49	25	20	16	62	28
P/Visiting Medical Officer	43	24	14	19	26	23
D&A Specialist	36	19	1	8	5	18
Psychiatrist	60	16	18	19	28	42
Mental Health Nurse	61	25	14	26	105	27
Average waitlist for admission to The Forensic Hospital	Average waiting time 99 days					

5.29 While the data above reflects the average waiting time for each service listed, it is important to understand it within the operational context and constraints as described below.

5.30 JH&FMHN explained that when a patient is first triaged by a nurse, they are allocated a priority on a scale of 1-5 according to need. This triage process is similar to that undertaken in a public hospital and aims to ensure that the most serious cases are treated as a matter of priority. Generally, emergencies are assessed and treated immediately, inmates allocated a priority 1 are treated within 1-3 days, and priority 2 are treated within 3-14 days. Priorities 3, 4 and 5 are those that are considered suitable for treatment outside this timeframe.

5.31 When the waiting list is divided into two sections, one for priority 1 and 2 (urgent) patients, and one for priority 3, 4 and 5 (non-urgent) patients, the wait list for the urgent stream becomes shorter.

5.32 JH&FMHN informed the inspection team that some of the waitlist data may be skewed by variations in the way data is recorded. They are currently implementing information management and data cleansing protocols to ensure that data collection processes are accurate and reliable.

5.33 The data relating to waitlist times was reflected in comments from JH&FMHN staff during focus groups, who felt that the model of care in remand centres focused on responding to acute cases and critical incidents and less effectively provides for the ongoing care of inmates. At both the MRRC and Parklea CC the inadequacy of chronic care services in response to the aging inmate population was brought to the attention of the Inspector.

5.34 In addition to providing acute care, there is a perception among staff that they spend a lot of time distributing medicine and prescriptions, sometimes at the cost of seeing patients. There is a very high level of prescription medication in the prison population (approximately 500 prescriptions are distributed on a daily basis at Parklea CC not including opioid substitutes) and the logistical effort and protocols involved in preparing and distributing these medications place a heavy burden on available staff resources.

5.35 A key concern of inmates that was heard during the inspection involved the waiting times to see a nurse when an inmate had a minor ailment that needed treating. The inspection heard of many cases where, for example, an inmate had a cold or a headache, and was informed that they needed to fill in a medical request form. Once they did this and returned it, it could be a matter of two weeks before they were seen by the nurse, by which time they no longer needed treating. Such minor ailments should be able to be treated immediately; this situation could be alleviated by allowing 'over the counter' medication such as paracetamol to be distributed more easily.

Recommendation 14: The Inspector recommends that CSNSW and JH&FMHN work together to implement processes which allow for the distribution of 'over the counter' medications by nurses when it is required.

5.36 Another concern involved the inability of inmates to see a doctor and receive a medical certificate when they are sick in their cell and unable to work. Inmates need to provide a medical certificate so as not to lose their pay, but often the time lag until they can obtain a certificate means that their pay has already been docked. Without a medical certificate they are also ineligible to receive the unemployment rate for the day they are sick. It is recognised that prioritising sick in-cell inmates may be at the expense of existing appointments.

Recommendation 15: The Inspector recommends that CSNSW and JH&FMHN ensure that when an inmate is too sick to work, they are issued with a medical certificate as a matter of priority so their wages are not affected.

5.37 In addition to the waitlist times to see a doctor or nurse, there is a disconnect between the shift times of JH&FMHN staff and custodial timetables. In most centres there is a lockdown during the lunchtime period, whish means that no patients can be seen during this time. This results in significantly fewer patients being seen each day than could be if patients were seen over lunch, and it it not an effective of efficient use of time.

Recommendation 16: The Inspector recommends that JH&FMHN and CSNSW work together to allow the clinics to continue to operate during lunchtime lockdowns in order to maximise the number of inmates who can be treated.

Mental health care

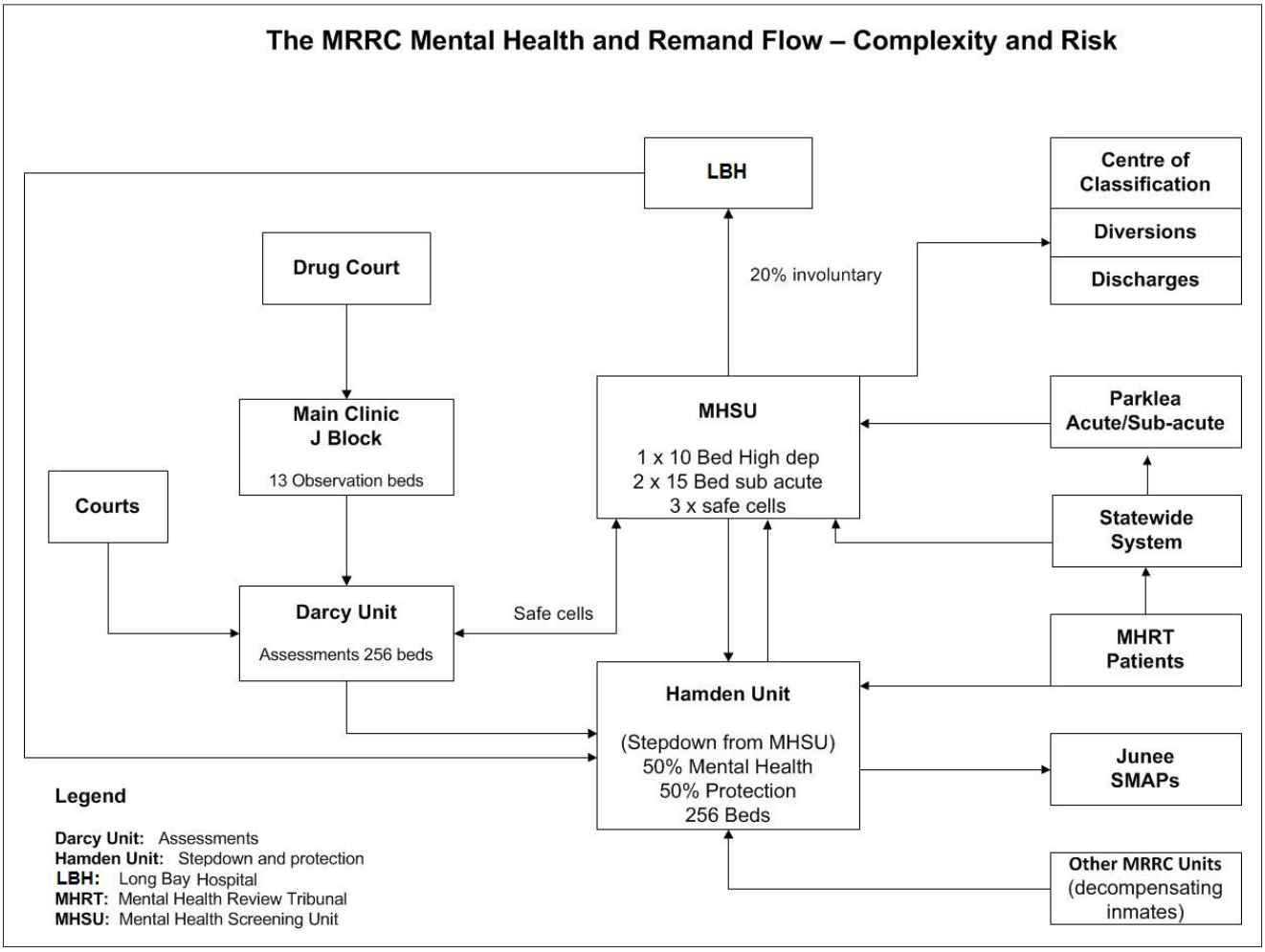
5.38 Mental health issues are increasing among prisoners. The proportion of inmates who report having been assessed or treated for a mental health problem has increased from 39 percent in 1996 to 49 percent in 2009.[93]

5.39 Ensuring mental wellbeing is an integral part of inmate health care. The Inspector notes with concern the long waiting lists for mental health care in custodial centres and this is exacerbated by the lack of mental health nurses, lack of appropriate consulting facilities, and the increasingly complex and multiple needs of the population.

5.40 As noted previously in this report, the system is struggling to keep pace with the mental health requirements of the inmates. At the time of the inspection there were 13 inmates in the reception unit of the MRRC waiting for a bed in the MHSU.

[93] NSW Justice Health, *Inmate Health Survey: Key Findings Report 2009*, 2010.

5.41 The diagram below illustrates the complexity of the flow of remandees with mental health problems in the wider system and in the MRRC in particular. It demonstrates the potential for blockages due to a lack of vacant beds in the front end (Darcy Unit) or a lack of vacant beds to place those who have been processed from Darcy Unit but require special placement in either mental health units or protection units in other correctional centres. This flow illustrates the complexity of the interface between managing remandees and serving the needs of inmates with mental health issues



Relationship between JH&FMHN and CSNSW

5.42 There is a complex and interdependent relationship between CSNSW and JH&FMHN. As one JH&FMHN staff member expressed, "We are the organisation within the organisation and we are very dependent on them [CSNSW]."

5.43 Access to inmates for the provision of health care is facilitated at the centre level by the development of cooperative relationships between JH&FMHN staff and correctional officers and, in some cases, is constrained by the operating routines of the correctional centres. While JH&FMHN staff shifts are organised at a local level within each centre, there are a number of considerations which may affect the actual number of contact hours that health professionals spend with inmates at a centre.

5.44 These considerations include the number of custodial staff who are on the shift, which affects the number of hours out-of-cell inmates receive; unscheduled lockdowns; and whether staff are available to escort inmates to main clinic areas from accommodation areas. This affects the number of patients who can be seen in any one shift.

5.45 The inspection team heard evidence that there can be delays in processing inmates both returning from court at the end of the day and those inmates being received as fresh custody and assessed for the first time.

5.46 There are frequent occasions where inmates remain in the holding cells for long periods of time in the Parklea CC reception area upon arrival at the centre. Sometimes the reason for this can be attributed to a lack of GEO staff to act as rovers and return the inmate to their cell, but often it is because JH&FMHN staff are not available to assess them.

5.47 It is Parklea CC policy that all incoming inmates – whether they are transits, court returns or fresh custodies – must be assessed by a JH&FMHN staff member. While for inmates returning from the day at court (providing they have not been sentenced), this may be a briefer assessment; for those arriving for the first time, it is an involved and time-consuming process.

5.48 The JH&FMHN staff afternoon shift starts at 2pm. Where an inmate transport vehicle delivers inmates to the reception area at about 3pm, JH&FMHN staff may not be able to attend to them until 4pm, and there could be a backlog of inmates to see if more arrive. The inspection team heard that it is common for inmates to be sitting in a holding cell for 3–4 hours before they are returned to their cell, sometimes as late as 10pm. In instances where an inmate is attending a long court trial and they are required to wake up and leave for court as early as 4am, this makes for an extremely long and stressful day.

5.49 This is an issue of concern for the affected inmates, and is not simply due to the delayed response of JH&FMHN in processing them. Each inmate needs to be escorted back to their cell after being cleared, and this is the responsibility of the roving custodial officers. If there are not enough rovers on the shift, then it necessarily takes longer to return inmates to their cells. At Parklea CC, this issue is mitigated somewhat by the custodial officers on reception duty also doing some roving duties and assisting by escorting inmates back on occasions where there are enough staff to do so.

5.50 The inspection team is concerned that the number of people being seen on their return from court is focussed more on risk avoidance than on risk management. This has resulted in operating procedures which warrant review.

Recommendation 17: The Inspector recommends that GEO work with JH&FMHN to ensure that inmates are returned to their cell within 60 minutes of arriving back at Parklea CC from court.

5.51 General lockdowns that occur as a result of staff shortages and the VOR being implemented also cause a significant disturbance to the health care access of inmates as appointments are cancelled and rebooked. This not only has time and cost implications but can also be detrimental to inmate health. The frequency of VORs has been discussed earlier in this report, but is noted here for the impact it has on the ability of JH&FMHN staff to provide effective treatment.

Recommendation 18: The Inspector recommends that CSNSW reduce the number and extent of lockdowns due to staff shortages.

Recommendation 19: The Inspector recommends that CSNSW and JH&FMHN work together to develop policies and procedures that improve inmates' access to health services when there are staff shortages and lockdowns.

5.52 It was observed that there is a lack of mutual understanding between custodial and health staff about the core functions and constraints under which each agency operates. For example, at the MRRC, some custodial staff had limited comprehension of the reasons for the ways in which JH&FMHN staff prepare and distribute medications. This disconnect makes it harder for both parties to perform their duties, for example, when JH&FMHN staff need to open a cell to attend to an inmate and there is not the required number of custodial officers available to assist.

5.53 The Inspector acknowledges that the relationship between JH&FMHN staff and custodial officers at many centres, specifically MSPC 2, appears to be working well and custodial staffing to support medical operations is generally prioritised, as well as clinic access during VORs.

Medical appointments

5.54 The inspection found that there are high cancellation rates of medical appointments across custodial health: 35 percent of external appointments and 43 percent of internal medical appointments were cancelled in the period January–June 2014.[94]

5.55 In 2014 up to 59 percent of internal medical appointment cancellations were due to operating constraints of CSNSW or JH&FMHN, and up to 49 percent of external medical appointments were also cancelled for these reasons.

5.56 Inmates often cancel their own appointments. Between January and June 2014, 41 percent of cancelled internal appointments and 51 percent of cancelled external appointments were cancelled by the inmate. A large part of the reason that many inmates chose to cancel their appointments is due to a fear that they will lose their bed in the centre they are in when they are transferred to LBH for their appointment. The insecurity of maintaining their current bed placement is a significant disincentive for inmates to undertake any non-essential medical appointments.

5.57 Under the contractual agreement between CSNSW and Parklea CC, CSNSW is responsible for the cost of hospital escorts for inmates. CSNSW is currently incurring costs of approximately $37,000 per month for hospital escorts from Parklea CC. The current conditions do not offer GEO any incentive to manage hospital escorts more effectively.

[94] Internal appointments include the outpatient department at the Long Bay Hospital.

Recommendation 20: The Inspector recommends that CSNSW and JH&FMHN work together to develop strategies to reduce the number of medical escorts.

Inmate wellbeing

5.58 The wellbeing of inmates relates not only to their physical health, but also their mental health and their psychological wellbeing. Psychological wellbeing is impacted by myriad factors, not least of which are the ability to exercise and socialise, a lack of privacy and exposure to fresh air and natural light, and the ability to be involved in activities. When overcrowding occurs in prisons all these elements are constrained.

5.59 The risks inherent in increasing the hours that inmates are locked in their cells have been documented earlier in this report. This increased and close confinement of what is often two or more inmates can compromise inmate wellbeing. Emotional wellbeing is eroded when privacy is reduced, which is the natural result of having multiple occupants in a cell. As one inmate reflected, "For 18 hours a day there is always somewhere there, your personal space is always crowded.'[95]

5.60 Physical wellbeing is also compromised when two inmates are placed in a cell designed for one. This increases the risk of incompatibility of inmates and consequent acts of low-level assaults and tensions. The risk of placing incompatible inmates together is evidenced by the deaths of Craig Behr in 2004, Lim Ward in 2003 and Andrew Parfitt in 2002 in NSW correctional centres. Further in-cell deaths at the hands of cell co-occupants are reported to have occurred in 2011, 2012 and 2013. CSNSW mitigates the risks of these incidents and climate tensions through the use of a range of risk-management instruments, such as cell-sharing risk assessments, which aim to ensure that inmates are placed with those whom they will be most compatible.

5.61 The inspection observed that some inmates receive substantially reduced access to open air and exercise. The Inspection Standards state that hours out-of-cell should facilitate access to recreation, services, work and programs, with at least one hour a day provided for open-air exercise.[96] This Standard is supported by the Victorian Ombudsman, who observes that the confinement of prisoners to their cells for up to 23 hours per day can have a detrimental effect on the mental health of some prisoners.[97]

5.62 Across all centres inspected, access to the oval had been impeded for extended periods for a variety of reasons, including maintenance and staff shortages. When there are staff shortages, it is common for the recreation officer posts to be stripped, which means that there is no one to supervise inmates on the oval or at the gym. At MSPC 2 the inmates had not had access to the oval for up to 18 months.

5.63 This stripping of officer posts that provide recreation activity is a real problem: a lack of structured activity can contribute to boredom, inactivity and subsequent risk of compromised wellbeing in inmates.

5.64 Privacy and dignity are important to an individual's sense of wellbeing and with doubling-up in cells there is no privacy. When there is a real or perceived lack of respect for the inmate's privacy and dignity this contributes to undermining their sense of personal worth.

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[95] Inmate Focus Group Discussion, Parklea, September 2014.

[96] See Inspection Standard 101, Inspector of Custodial Services, *Inspection Standards for Adult Custodial Services in New South Wales*, August 2014.

[97] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, 2014.

Recommendation 21: The Inspector recommends that during periods out-of-cell, CSNSW and GEO ensure simultaneous access to cells and yards to enable some periods of privacy in-cell.

5.65 Overcrowding diminishes an already impoverished quality of life in prison. The Coroner's Court of South Australia commented on the living conditions of a deceased inmate in one of the jurisdiction's prisons:

> *…chronic over-crowding in South Australian prisons requires multiple occupation of cells. One only has to look at photographs of cell 302 to realise the miserable and over-crowded conditions in which these prisoners lived. The lack of privacy and hygiene involved in sharing toilet and hand-washing facilities in the cell. …[he] so disliked sleeping on the top bunk that he used to take his mattress and put it on the floor and sleep there next to the toilet bowl each night.*[98]

Self-harm

5.66 Custodial centres have a high duty of care to those incarcerated and it is accepted that overcrowding in prisons may lead to increased levels of self-harm among prisoners. In a 2005 capital investment planning document, the Western Australian Department of Justice (which then included Corrective Services) advised the growth of the prison population "has led to double-bunking and overcrowding, with a range of consequences for the prison system, including… increased incidence of self-harm, suicides and escapes…".[99]

5.67 The inspection found that the likelihood of inmates self-harming leading to minor or moderate injury is significantly greater now than at any time in recent years. Over the period 2010–11 to 2012–13, the rate of self-harm incidents has increased by over 10 percent.

5.68 While it is difficult to attribute the rise in self-harm incidents to a particular reason, it is likely that the overcrowding of correctional centres across this same time period, and its resultant loss of amenity and increase in tension, had an impact. Evidence from other jurisdictions indicates that there is a correlation between overcrowding and the levels of self-harm among inmates.

5.69 The Victorian Ombudsman found, in a review of prisons in 2012, that over the previous six years the increase in prisoner assaults and suicides had coincided with a significant growth in the population. In the face of overcrowding in the prison system, the report warned, a failure to ensure reciprocal growth in the medical services available to prisoners has the potential to negatively impact on the health care needs of all prisoners.[100]

5.70 This sentiment was echoed by the Western Australian Auditor General who observed that:

> *...prison life is not only difficult, it is potentially dangerous. Overcrowding, the relatively uncertain period of confinement and a lack of structured activity ...contributes to boredom, inactivity, and subsequent risk of suicide, self-harm and assault amongst remand prisoners.*[101]

5.71 Although in recent years the unnatural death rate in NSW has been marginally higher than the national average, this has decreased from 0.10 in 2010/11 to 0.04 in 2013/14. CSNSW and JH&FMHN deserve recognition for this outcome.[102]

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[98] Coroner of South Australia, *Finding of Inquest: Marshall Freeland Carter*, 2000.

[99] Mahoney, D, *Inquiry into the management of offenders in custody and in the community*, November 2005.

[100] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, 2014.

[101] Auditor General, *Public Sector Performance Report*, Western Australia, 1999.

[102] Department of Attorney General and Justice, *Annual Report 2012-13*, 2013.

6. Access to resources and services

6.1 Rehabilitation with the aim of reducing recidivism is one of the central aims of the correctional system, as per the goals of *NSW 2021*. This objective is supported through offering inmates a variety of educational and rehabilitative programs. Another reason for keeping people gainfully occupied is to reduce disturbances that could arise from boredom and inactivity.

6.2 Unless increases in the prison population are matched with increased resources, overcrowding reduces inmates' access to facilities and services that are already limited. This can lead to a reduction in access to, and increased competition for, shared amenities. It reduces contact with families and children and limits inmates' opportunities for work and programs.

6.3 The link between the rapid increase in the prison population and the reduction of access to resources and services has been drawn in other states in Australia and can have a negative impact on post-release outcomes.[103]

6.4 This chapter will discuss issues around access to resources and services for inmates and staff. It will also canvas the challenges and good practices that are evident in the way resources and services are managed in NSW.

Access to facilities

"I've got two little boys and I miss [calling them] before they go to school and I miss them when they get home from school"[104]

6.5 Telephones are one of the main ways for inmates to communicate with family outside the prison system. In most correctional centres, telephones are placed in each unit's communal living area, yard or work area and are able to be used by inmates during their time out-of-cell. Phone calls are time-limited and inmates decide among themselves the order in which they will use the phone.

6.6 Where there are not enough telephones to allow equal access among inmates to make phone calls, the telephones become a commodity. This has the potential to encourage negative behaviour, such as standovers and assaults.

6.7 The Inspector of Custodial Services' Inspection Standards set out a ratio of one phone to 20 inmates as a level appropriate to allow sufficient access.[105] Phone handset to inmate ratios for centres are often misleading as they do not illustrate that some accommodation areas are disproportionately disadvantaged in their access to telephones. In those centres that have had extra beds installed in the past five years, only a small number have also received an increase in the number of telephones, and none have been proportional to the population increase.

6.8 Furthermore, across the estate, lock-ins regularly occur between 2.30pm and 3.30pm thereby reducing inmates' ability to connect with families after school or work.

[103] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, 2014.

[104] Inmate Focus Group Discussion, Parklea, September 2014.

[105] See Inspection Standard 106, Inspector of Custodial Services, *Inspection Standards for Adult Custodial Services in New South Wales*, August 2014.

6.9 At Parklea CC, an inmate survey identified limited access to telephones as a key concern for inmates. During focus group discussions, inmates consistently acknowledged increased competition for access to a limited number of telephones. For example, in Area 1 and 2 accommodation units of Parklea CC there is one phone shared among 48 inmates. One inmate reflected on inmate conflict over telephones, "… it's serious when it comes to contacting family."[106] Inmates suggested that work provided an additional incentive, as inmates could access telephones in the industry area.

6.10 Custodial officers also emphasised that additional phones would reduce tensions and incidents related to phone usage. In April 2014, Parklea CC submitted a request to CSNSW for 12 additional telephones within inmate yards, common areas and for installation on the main oval; however, at the time of the inspection, the request has not yet been approved.

Recommendation 22: The Inspector recommends that CSNSW include in their Facility Standards the provision of a standard ratio of one handset to 20 inmates in all accommodation areas.

Recommendation 23: The Inspector recommends that CSNSW ensure compliance with this Standard as a matter of priority. Where additional phones will be installed in yards, care needs to be taken to ensure the location of these do not compromise the privacy of users.

6.11 Access to shade in yards and seats in communal indoor and outdoor areas were observed to be inadequate. The MRRC has divided yard space to enable separate cohorts of inmates to use discrete yard areas simultaneously, thereby increasing time outdoors for different cohorts, but this has resulted in severely reducing already limited yard space for inmates.

6.12 The Inspector has received multiple reports from the Official Visitors that describe similar constraints on shared amenities in yards of correctional centres that were not examined as part of this inspection. One example provided involved a main yard in a maximum-security facility:

> There are 60 inmates assigned to this yard. They are protection inmates. They have 42 m^2 of shelter in their yard. They have three tables under cover with 11 stools to sit on. In wet weather only 11 inmates can sit out of 60. Only about half of the inmates can sit at any one time in fine weather.
>
> There is one bubbler in the yard. There is no separate tap for hand washing. So when inmates use the toilet they must wash their hands in the same bubbler as the inmates use for drinking. There is one telephone and inmates wait up to 90 minutes to use it and often miss out.

6.13 At Parklea CC, there have been some efforts made to alleviate these conditions for inmates. In areas that had temporarily converted two-out cells into three-outs (thereby rapidly increasing the population of these accommodation units), additional outdoor seating has been installed. Management has ensured the operability of basketball rings, increased cleaning supplies and enabled greater access for inmates to common areas and cells at the same time to allow inmates some periods of privacy in-cell. However, these initiatives were not implemented consistently across all accommodation areas.

[106] Inmate Focus Group Discussion, Parklea, September 2014.

Recommendation 24: The Inspector recommends CSNSW ensures that every yard has some shade, and seating is sufficient to provide for 50 percent of the inmate population.

6.14 In all centres inspected, access to the oval was systematically interrupted for prolonged periods due to maintenance issues and post stripping. At MSPC 2 the oval has not been accessible for 18 months due to renovation work. At Parklea CC, working inmates commented that oval access is frequently cancelled and, on average, these inmates access the oval once every three weeks.

6.15 Due to scheduling conflicts in the structured day timetable, some inmates at Parklea CC were required to choose between attending buy-ups or using the oval. It is not feasible to expect that inmates would sacrifice buy-ups for other activities. Buy-ups are an integral part of the system of privileges where inmates are allowed to purchase items with money earned through working or money that is externally provided to them.

Recommendation 25: The Inspector recommends that CSNSW and GEO ensure consistent access to ovals for all inmates. If maintenance of ovals is scheduled to occur for protracted periods, compensatory measures should be in place to facilitate exercise for inmates.

Recommendation 26: The Inspector recommends where CSNSW and GEO have installed exercise aids and equipment, these should be maintained in good working order or replaced.

6.16 At Parklea CC and MRRC, the inspection team observed that some inmates' access to library facilities was through mobile carts in their accommodation area. One of the reasons for this is a lack of staff to escort inmates to the main library facility. These carts offered a limited range of materials and at Parklea CC the inspection team heard that stock was not frequently changed over. Inmates should have reasonable access to a library of recreational, educational, cultural and information resources.[107] There is also currently an unmet need for a range of religious and cultural texts, in particular, to provide alternative sources of information to narratives of radicalism.

Recommendation 27: The Inspector recommends that CSNSW ensure that centre libraries operate according to the *Australian Library and Information Association's Australian Prison Libraries: Minimum Standard Guidelines*, 1990.

Access to visits

6.17 Maintaining family ties is an important part of rehabilitation and ensures that inmates have appropriate and stable connections within the community when they are released. It also contributes to the creation of a benign institutional climate. Reduced family contact does little to reduce inmate stress or defuse centre tension.

[107] See Inspection Standard 124, Inspector of Custodial Services, *Inspection Standards for Adult Custodial Services in New South Wales*, August 2014.

6.18 US research has shown a positive relationship between inmates' visits and recidivism across short-sentenced inmates with a range of offences.[108] This is consistent with correctional experience, which recognises the role of social supports and resources for inmates during their imprisonment.

6.19 Accordingly, it is incumbent upon correctional centres to ensure that all inmates have equitable access to visits.

6.20 The growth of the inmate population combined with the diversity of the classification of inmates presents challenges for visits areas that are not designed to accommodate separate inmate cohorts simultaneously. At Parklea CC, visits cannot be facilitated for different cohorts concurrently as the infrastructure does not enable separate visit spaces.

6.21 Visiting hours are frequently truncated as different categories of inmates must be escorted to the visits area at the time of their visit; there is limited holding space to pre-position different inmates for their visits. This inevitably cuts into contact time for inmates and their visitors. For some special protection inmates, such as PRLA, there is no access to visits on the weekend as the centre cannot accommodate different cohorts at the same time.

6.22 Parklea CC has recognised the need to refurbish the visits and visits holding areas to accommodate different cohorts of inmates and enable legal visits to take place outside of the secure perimeter. Currently, legal visits at Parklea CC take place in the interior of the centre, which presents unnecessary security risks and requires an escort officer for movements of the legal representative. MRRC has a visit centre capable of hosting multiple categories of inmates and their visitors concurrently.

Recommendation 28: The Inspector recommends that GEO provides alternative space for legal visits outside the secure perimeter at Parklea CC.

6.23 Inmates at Parklea CC emphasised the limited duration of visits for those visitors travelling from outside of the region as a disincentive for families to visit. Currently, the visits policy permits two visits per week of one hour and inmates are not entitled to consecutive visits.

6.24 None of the centres inspected facilitated family video conferencing. The availability of family video contact is not widely known to inmates or staff and completely underused. Management emphasised the limited number of AVL booths and the prioritisation of AVL legal hearings and visits. Currently, family video contact is limited to five one-hour sessions per week. Considering that 82 percent of inmates are not in their home region, 20 sessions per month for centres that accommodate over 600 inmates is grossly inadequate.

Recommendation 29: The Inspector recommends that CSNSW review and fully implement the family video conferencing policy. As part of this review process, CSNSW should explore how family video conferencing can be made readily available from visitors' private computers.

[108] Mears, D.P. et al., 'Prison visitation and recidivism', *Justice Quarterly*, Vol. 29, No. 6, December 2012, p.910.

Recommendation 30: The Inspector recommends that the CSNSW long term assets management plan should ensure that the location of future correctional centres matches inmates' home regions.

Programs

6.25 One of the central objectives of the correctional system is to reduce recidivism by 5 percent by 2016.[109] To support this objective there are a variety of programs offered to inmates, both educational and rehabilitative. Educational programs are delivered by the CSNSW Adult Education and Vocational Training Institute as well as by TAFENSW. The rehabilitative programs include those aimed at treating a range of drug and alcohol disorders as well as the criminogenic needs of sexual and violent offenders. It is clearly important that adequate offence-focussed programs be available to inmates, as ex-inmates tend to re-offend in the same category of offence as their index offence.[110]

6.26 The CSNSW *Compendium of Correctional Programs* was revised in 2014 and a reviewed suite of programs commenced in September 2014. Some programs were discontinued or replaced and new programs called EQUIPS (dealing with issues of addiction, domestic abuse and aggression) were implemented.

6.27 Inmates eligible for referral are medium-to-high risk of recidivism as measured by the *Level of Service Inventory–Revised (LSI–R)*. OS&P staff, custodial staff or Community Corrections staff may refer inmates/offenders to programs, and inmates may self-refer.

6.28 The inspection found a systematic inability of OS&P to ensure that inmates have the opportunity to be released at the earliest possible time. Failure of inmates to complete programs in custody in advance of their Earliest Possible Release Date (EPRD) results in inmates being held in custody for potentially unnecessary periods of time at an excessive cost to the system, and to the rehabilitation endeavour.

6.29 In NSW, the Custody Based Intensive Treatment (CUBIT) program operates for moderate-to-high-risk sex offenders, and the CUBIT Outreach (CORE) program operates for low-risk sex offenders.

6.30 While program participation numbers and completion rates did not vary significantly between 2011–2014, as of October 2014, 25 percent of participants on the VOTP program had exceeded their EPRD, that is, their non-parole period had expired. Similarly, 56 percent of inmates participating in sex offender programs had exceeded their EPRD.

6.31 Inmates who have exceeded their EPRD can apply for a manifest injustice on completion of the mandatory program. This process takes approximately eight weeks. Exceeding EPRD can mean that inmates are being held in prison for unnecessary and costly lengths of time.

[109] See Goal 16: Prevent and reduce the level of crime; Goal 17, Prevent and reduce the level of re-offending; Goal 18: Improve community confidence in the criminal justice system, *NSW 2021*, http://www.nsw.gov.au/2021.

[110] Holmes, J., *Re-offending in NSW, BOCSAR Issue Paper No.56*., 2011, p.2.

6.32 At the time of this inspection, there are 63 inmates currently verified as eligible and suitable for the program and on the waitlist for VOTP, 127 for the sex offender programs, and 60 for the Intensive Drug and Alcohol Treatment Program (IDATP). The verified waiting list has taken into account factors such as time remaining on sentence, current placement and approved case plan. This list represents those who are in immediate need of entry into a program to meet parole conditions. The waiting list of unverified inmates, that is, those inmates who have been referred but not assessed, is much longer, with the CUBIT waiting list at 300.[111]

6.33 It is important to understand the reasons why inmates are commencing programs too late to be able to meet requirements for their EPRD, including the effectiveness of case management and inadequate timely access to programs. At MSPC 2, approximately 50 percent of inmates surveyed said they were unaware of their allocated case officer.

Recommendation 31: The Inspector recommends that CSNSW improves program accessibility to reduce the number of inmates exceeding their Earliest Possible Release Date due to lack of access to programs.

6.34 The inspection team noted that, since 2011, there has been a significant drop in the completion rate of the aggression and violence programs.

Recommendation 32: The Inspector recommends that CSNSW investigate rates of attrition in the aggression and violence programs offered across the estate.

6.35 At Parklea CC and MRRC there is extremely limited program provision for remand inmates. OS&P staff are primarily responding to welfare and psychological support needs. It is CSNSW policy that inmates on remand are unconvicted and therefore cannot access programs to address their offending behaviour until they have been sentenced. However, there are currently no short courses on substance abuse or life skills offered to remand inmates.

Recommendation 33: The Inspector recommends that CSNSW develop short-term drop-in and drop-out programs for remandees.

6.36 Short-sentenced inmates tend to be classified as low risk, and understandably scarce resources are usually directed by correctional authorities to meeting the needs of high and medium-to-high risk of re-offending inmates. A study conducted by the UK National Audit Office in 2010 determined that 75 percent of the cost of re-offending by ex-prisoners could be attributed to former short-sentenced prisoners. In the UK this cost amounted to $7–10 billion per annum.[112]

6.37 A 2006 report by the NSW Auditor-General observed that there are no offence-based programs for prisoners with sentences of six months or less. Yet short-sentence inmates account for more than half the prisoners released each year. This report also referred to research which suggested that, without targeted interventions, this group is 'churned' in and out of prison. This constantly destabilises housing, work, families and social links, which can increase their likelihood of reoffending. As sentences of less than six months do not include parole, this group will be released without community support or supervision.[113]

[111] Staff focus group, MSPC 2, October 2014.

[112] National Audit Office, *Managing offenders on short sentences*, March 2010.

[113] Auditor General, *Prisoner rehabilitation: Department of Corrective Services*, Sydney, May 2006.

6.38 At that time, CSNSW's response to the Audit Report detailed programs which were in fact offered to offenders serving less than six months. The Inspector is concerned with ensuring that the EQUIPS program model makes adequate program provision for inmates with short sentences.

Recommendation 34: The Inspector recommends that the EQUIPS program model makes adequate program provision for inmates with short sentences.

Accessibility of OS&P staff

6.39 CSNSW has endeavoured to move away from the traditional silos of disciplines in the programs environment. OS&P has recently implemented changes to the role of frontline Welfare Officers and Drug & Alcohol Workers, converting these roles into a broader Service and Programs Officer position, as part of a wider restructure to OS&P. These changes require OS&P staff to work across both community and custodial settings.

6.40 OS&P staff have a large geographic area to cover and a range of responsibilities, including consultation and assessments, providing crisis support, pre-release planning and making referrals to other agencies, all of which has the potential to reduce contact hours with inmates. For example, at MSPC 2, OS&P staff support community corrections in far western Sydney.

6.41 CSNSW has an establishment of 694 OS&P staff. Due to budget constraints during the OS&P restructure, 103, or 15 percent, of these positions have not been filled, although it is understood that these are not frontline positions. Nevertheless, CSNSW is only able to deliver Drug and Alcohol programs which meet 51 percent of the assessed need in 2013–14. Similarly, CSNSW is able to deliver Aggression and Violence programs to meet only 27 percent of the assessed need.

6.42 The effects of shortages of OS&P staff are exacerbated when lockdowns and post stripping reduces OS&P staff access to inmates. OS&P staff adapt their schedule to work in conjunction with the custodial timetable. At the MRRC, 13 of 30 operational periods each week are inaccessible due to lock-ins. This timetable does not include frequent, unscheduled lockdowns due to staff shortages, which further adversely impact on OS&P contact hours.

Recommendation 35: The Inspector recommends CSNSW ensure that contact hours of OS&P in custodial settings are not compromised by accessibility of OS&P staff or operational routine.

Recommendation 36: The Inspector recommends that CSNSW increase program participation of inmates in drug and alcohol, aggression, and violence programs to reduce the unmet need.

6.43 At Parklea CC, OS&P staff noted that, as the inmate profile has changed to include greater numbers of SMAPs, they have received a greater number of referrals to psychologists and welfare services. In 2014 Parklea CC OS&P staff had 150 referrals backlogged over a four-month period. OS&P staff also suggested that referral numbers to psychologists were high as they were being used to cover the shortfall in psychiatrists.

6.44 At Parklea CC and MRRC, OS&P staff suggested that a large percentage of their time was spent on multi-disciplinary assessment processes, such as reception and classification committees for fresh custody cases, thereby further reducing the face-to-face hours they were able to spend with inmates. For example, at the MRRC, 50 percent of available OS&P staff were committed to servicing institutional committees.

6.45 Access to OS&P services for inmates is dependent on sufficient infrastructure for consultation. For example, at MRRC, OS&P staff consultation rooms are located on the upper level of accommodation areas, which requires inmates to be escorted upstairs by custodial officers for consultations. Inmates are frequently unable to access OS&P staff due to custodial staffing shortages that do not prioritise posts in the OS&P area. This results in professional OS&P staff remaining idle during already limited contact hours. OS&P staff often compete for consultation rooms in accommodation areas, and expressed a reluctance to consult in the communal accommodation area for confidentiality and security reasons.

6.46 If the system is not enabling access for inmates to OS&P staff for rehabilitation, then it is moving in the direction of simply warehousing inmates.

Recommendation 37: The Inspector recommends that CSNSW prioritise custodial staffing for OS&P areas to ensure that OS&P staff can consult with inmates in their area rather than in the accommodation units.

6.47 At MSPC 2, inmates displayed an anxiety about and uncertainty for the referral system, as inmates did not receive an acknowledgement of lodgement of a referral or communication/ feedback when issues were resolved. Conversely, Parklea CC provides inmates with a receipt on lodgement of an inquiry. This receipted communication provides some formal accountability to the inmate that the inquiry has been registered in the referral system.

Recommendation 38: The Inspector recommends that CSNSW implement a receipt procedure for inmate requests and referrals.

6.48 During the inspection, the inspection team heard about the lack of clarity among management and staff on the primary role of the MSPC. It was not clear to staff if the prison was primarily a site of industries or a programs prison. As the estate is restructured it will be essential that staff and inmates understand the role and function of the individual centres and units, and limitations and opportunities that these specific functions provide.

Education

6.49 Overall, the number of student contact hours increased in 2013–14, however, the participation figures dropped marginally from 36 percent in 2012–13 to 33 percent in 2013–14. Student contact hours delivered could have been greater had not some 16,040 teacher hours been lost in 2013–14 due to lockdowns, custodial post stripping and a hold on teacher recruitment action in 2013–14 due to the OS&P restructure. Nevertheless, the participating rate of eligible inmates is generally consistent with other states.[114]

6.50 Importantly, only one-third of inmates eligible for education and vocational training are participating in their chosen course. An issue of concern is the unmet demand for education. CSNSW was not able to identify the unmet demand for education.

[114] Productivity Commission, *Report on Government Services 2015*, January 2015, Table 8A.21.

Recommendation 39: The Inspector recommends that CSNSW measures the unmet demand for education and puts in place strategies to increase education participation rates of eligible inmates.

6.51 The inspection found that the completion rates of education courses at Parklea CC are very low. This is because Parklea CC has a high proportion of remand inmates who are transferred to another centre or released before they can complete their courses. The likelihood of an inmate from Parklea CC completing course commenced at Parklea CC at another centre will depend upon time to serve, the availability of that course elsewhere and the waiting list.

6.52 Vocational Training in CSNSW correctional centres is delivered under a Memorandum of Understanding (MOU) between CSNSW and TAFENSW. In the past, CSNSW has purchased training hours from TAFENSW under an internal government 'transfer rate', which recognises inmates as disadvantaged learners. In 2013–14, CSNSW paid TAFENSW $2.45 million under a Financial Addendum to the MOU to provide 16,793 hours of vocational training. The 2011–14 MOU has been extended to July 2015, although the Financial Addendum only commits funding until 31 December 2014.

6.53 From 2015 the NSW Government's Smart and Skilled program, which governs vocational training in NSW, will no longer recognise inmates as disadvantaged learners and therefore there is a likelihood that the purchase of training hours under the 'transfer rate' will not continue in 2015.

6.54 When the changes to the program are implemented, CSNSW will be required to pay for the estimated 82 percent of trainees who will not be deemed eligible for exemption. This is estimated in 2015 to amount to $490,000. In addition, the Smart and Skilled program does not attach subsidies to inmates training and working in sunset industries, such as printing. This change in policy does not recognise the added benefit of these industries as vehicles for much needed literacy and numeracy tuition.

Recommendation 40: The Inspector recommends that CSNSW place a high priority on facilitating continued access of inmates to apprenticeships and traineeships.

Technology

6.55 With the rise of blended learning technologies and Massive Open Online Courses, the question is not whether computers should play a substantial role in educating inmates, but is how best to facilitate their adoption and use.[115]

6.56 CSNSW has built a secure inmate computer network, the Offender Access to Computers system, which connects all correctional centres across the state to a central server to support access to education.

6.57 The inspection found that inmates in CSNSW centres have supervised access to computers in Education Centres and in some industries. While total inmate computers rose from 663 in 2006 to 1134 in 2010, access to these varies due to staff shortages and lockdown times.

[115] Davis, L. M., et al., *How effective is correctional education and where do we go from here? The results of a comprehensive evaluation*, RAND Corporation, 2014.

6.58 The South Coast CC at Nowra and the Cessnock CC maximum-security unit were constructed with in-cell conduits to support information and communications technology (ICT) installations, however, they are not currently being used.

6.59 The Inspector considers that the next steps are for inmates to also have controlled and supervised access to the internet to support education and training, and to have in-cell access to ICT, as supported by the European Prison Observatory.[116] It is acknowledged that there are security issues with inmates having access to computers. While security concerns cannot be dismissed lightly, the technology exists to control and monitor computer use.

6.60 Inmate self-management through service transactions using a touch-screen kiosk could facilitate access to program schedules, appointments, visits, buy-up orders, inmate account balances, classification and general enquiries. In this way, in-unit self-service kiosks and in-cell technology will give inmates a degree of control, and limited autonomy, over their lives which is absent at present, and which is the source of much inmate frustration.

6.61 To ensure that inmates' access to programs and services is better facilitated and to enable inmates to be prepared for their release, it is important to ensure that future facility designs include in-cell learning technology, and that current provisions are fully utilised.

Recommendation 41: The Inspector recommends that CSNSW ensures that the cells in all new facilities are constructed with conduits for in-cell technology.

Employment

6.62 Work plays a vital role in establishing a productive climate in any correctional centre. Work for inmates not only contributes to the security and safety of a centre by providing a structured day and substantial activity, but, importantly, equips inmates with foundation employability skills and work ethics for their release.

6.63 Inmates who meet certain criteria are eligible to participate in work programs during their time in custody.

6.64 Corrective Service Industries (CSI) is responsible for providing commercial and service jobs for inmates and offers a variety of jobs depending on where the inmate is located. The commercial business units' jobs include services, packaging and assembly, and textile production. Some of the jobs are linked with formal study so that inmates graduate with a certificate on completion of the course, for example, a TAFE Certificate in Workplace Hygiene (Food Handling).

6.65 In addition to commercial employment options with CSI, there are also service jobs, for instance when inmates are employed as 'sweepers' to maintain unit cleanliness, and maintenance tasks around the correctional centre. Employment provides positive outcomes for inmates, not only through giving them income to purchase buy-ups, but it also enables inmates to develop a work ethic and discipline and gain work experience and skills which they can draw upon post release.

[116] Creténtot, M. From National Practices to European Guidelines: Interesting Initiatives in Prisons Management, Rome, European Prison Observatory, 2013.

6.66 The number of jobs available has significantly decreased over the past three years. The decline in places combined with the growth of the inmate population has resulted in a 10 percent decrease in work opportunities. Three correctional centres were closed over this period, which contributed to the decrease in the number of jobs, but the positions were not reallocated to any other centre. However, for the centres inspected there was no significant difference in numbers of jobs from 2011–2014.

Type	30 June 2011	30 June 2014
CSI commercial jobs	3,644	3,145
CSI service jobs	3,152	2,976
Total jobs	6,796	6,121
Total inmates	9,916	10,566
% of inmates employed[117]	68.54%	57.96%

Recommendation 42: The Inspector recommends that CSI increases work opportunities to recover those lost over the past three years.

6.67 Maintaining a core workforce in a remand facility such as Parklea CC is difficult due to the absence of 'works holds' and the frequent 'churn' of inmates. The Inspector observed limited work opportunities at the MRRC and 'cottage' rather than commercial industry work at Parklea CC. As Parklea CC transitions to a full remand centre, it provides an opportunity for CSNSW to review the role, function and type of industries appropriate to a remand facility.

Staffing issues

6.68 Throughout the course of this inspection it was observed that the General Managers were under significant pressure managing their budgets in a manner which reconciled the competing demands with which they were confronted.

6.69 Substantial demands are placed on GMs, who are required to balance the security and control functions with rehabilitation functions and establish a climate of humanity and justice. They are required to lead staff, administer their centres, manage the delivery of 'services' in accordance with the centrally defined standards, and are subject to extensive scrutiny from oversight agencies.

6.70 There are a number of constraints on GMs, preventing them from responding effectively to the impacts of overcrowding. In particular, the sheer physical limitation of available facilities and the challenging industrial relations environment.

[117] Not all inmates are eligible or willing to work including: Inmates enrolled in full time education or other full time programs, remand inmates who choose not to work, hospital patients, aged prisoners, prisoner who's protection status prohibits access to work and people only incarcerated for a very short period of time, for example fine defaulters.

6.71 Prior to the implementation of the reforms ushered in by the Hamburger Review in 2012, CSNSW was a highly centralised organisation whose decision-making was frequently opaque. Since that time CSNSW has the implemented a 'Let the Leaders Lead' initiative which promotes the devolution of operational, financial and administrative responsibilities to General Managers. Currently, and in accordance with *NSW Blueprint for Corporate and Shared Services in the NSW Government 2010*, the Department of Justice, of which CSNSW is a constituent division, is developing Corporate and Shared Services structures and processes.

6.72 It will be important that the Justice cluster Corporate and Shared Services promotes the authority, real and apparent, of the General Managers and reinforces their capacities to manage the risks in a custodial environment of overcrowding.

6.73 The financial and operational constraints which exist within CSNSW are unlikely to abate, at least in the short term. If the agency is to successfully manage these risks there are particular aspects of the structure and workforce which warrant review. These include:

- Correctional centre cluster arrangements
  Under these arrangements there is not a dedicated General Manager for each correctional centre. This is particularly time inefficient for those General Managers with responsibility for several centres and places extra strain on those who are required to manage centres which require particular skills, knowledge and expertise.
- Correctional officer staffing structure
  The staffing structure is hierarchical and has excessive levels. Simplifying this structure would promote clarity of roles, responsibility and accountability, and improve responsiveness to the risks in custodial settings.
- Casual employees
  CSNSW currently employs 361 casual staff across the estate who do not own a particular position in a specific centre, but are placed where there is a demand. Casuals are also employed in the private sector, with GEO at Parklea CC having 65 casual employees. Across the system, there is a lack of mentoring and development of casuals. This issue is linked to the correctional officer staffing structure.

Recommendation 43: The Inspector recommends that CSNSW simplify the custodial officer staff structure to promote clarity of roles, responsibilities, and accountabilities.

Maintenance of facilities

6.74 When a prison is overcrowded, it taxes the existing infrastructure, leading to increased repair and maintenance costs. The United States Government Accountability Office has observed that the increased use of resources leads to increased wear and tear of toilets, showers, water, electricity and food service equipment, which in turn can shorten the life of such equipment.[118]

[118] United States Government Accountability Office, Bureau of Prisons: growing inmate crowding negatively affects inmates, staff, and infrastructure, GAO-12-743, 2012.

6.75 Where the inmate population exceeds the system specifications, shortages result. CSNSW has advised the Inspector that hot water systems in some correctional centres are inadequate to meet the needs of an increased inmate population. These inadequate systems are not upgraded until such time as they fail. The increased number of inmates accessing limited resources, such as hot water, can also create a source of competition and tension.[119] General maintenance needs to be performed to ensure facilities remain useable when they are highly trafficked areas, and areas that are vulnerable to vandalism.

6.76 Vandalism is a problem that increases as the inmate population grows. CSNSW has advised that vandalism is difficult to quantify as CSNSW contractual arrangements do not disaggregate maintenance into general wear and tear and vandalism costs. At the MRRC, approximately one toilet and one hand basin are destroyed each week through vandalism.

6.77 The funding that is required to maintain correctional facilities across NSW is significant. Annually, CSNSW receives approximately $37 million in minor capital funding and around $30 million in recurrent maintenance funding. The minor capital funding is utilised to upgrade the existing asset base to better enable service delivery. This is clearly important given that the Department of Attorney General and Justice *Prison Infrastructure Plan* classifies 11 (or 30 percent) of the state's correctional centres as "[An] asset not efficiently contributing to business objectives. Repurpose or upgrade. Review function of asset."[120]

6.78 Maintenance funding is used to maintain the asset base at its current condition and to minimise its deterioration. The maintenance funding received by CSNSW represents only 1.64 percent of the value of its total asset base ($2.2 billion), which is below the industry standard for maintaining a portfolio of assets.

6.79 This limited maintenance budget results in a backlog of deteriorated assets that require more substantial minor capital investment to keep them operating. Of the $35 million of minor capital projects that will be carried out in 2014–15, a further $80 million in minor capital projects assessed by CSNSW as necessary could not be funded.

6.80 This means that the maintenance backlog will continue to grow and that, in the meantime, more inmates will be housed in crowded and inadequate accommodation and staff will work in less serviceable facilities.

6.81 In addition to increasing wear and tear on facilities, by demanding all available bedspaces be made available operationally, the ability of asset managers to implement an effective maintenance program is impaired. A preventative and routine maintenance program would normally require some cells to be taken off-line and this becomes harder to achieve when all beds are needed.[121]

[119] Victorian Ombudsman, *Investigation into deaths and self-harm in custody*, 2014.

[120] NSW Department of Attorney General and Justice, *Prison Infrastructure Plan, 2013*

[121] United Kingdom House of Commons Public Accounts Committee, *National offender management service: maintenance of the prison estate in England and Wales*, June 2009.

Recommendation 44: The Inspector recommends that CSNSW set a maintenance budget of 2.5 percent of building asset replacement cost.

6.82 One option when the prison system is overcrowded is to create more beds by refurbishing old prison stock. This is an understandable response to overcrowding, but diverts funds away from routine maintenance to refurbishment projects. Such projects are usually expensive, due in part to the presence of hazardous materials, and are an inefficient use of scarce funds. The refurbishment of MSPC 1 reflects well on the responsiveness of CSNSW; it involves approximately $5 million spent on the refurbishment plus an additional $1.5–$2 million for asbestos remediation.

6.83 It should also be acknowledged, however, that the outcome from refurbishing old prison stock is simply refurbished old prison stock, which may have nothing in its design features in common with the operational philosophy and objectives of the agency.

6.84 There is no other state or territory in Australia where so many people, including the unconvicted, are incarcerated in 19th-century facilities as in NSW. NSW has some 975 beds in the MSPC, which was built in 1909; 471 beds at Bathurst CC (1888); 321 beds at Goulburn CC (1885); 34 beds at Tamworth CC (1881); 176 beds at Grafton CC (1893); and 160 beds at Cooma CC (1873).

6.85 When a correctional facility is built, it is usually certified by the local fire authority and approved as having a particular fire rating based on the design and capacity of the building and emergency plans; such approvals are rarely revisited by the fire authorities when overcrowding takes place.

6.86 The usual default response from CSNSW to this issue is to reduce the total cell fire loading, which means limiting the amount of property each inmate may have in a shared cell. This further reduces the quality of life in custody.

Recommendation 45: The Inspector recommends that CSNSW updates evacuation plans for centres where the inmate population exceeds design capacity of that centre.

6.87 In November–December 2012, CSNSW conducted an audit of all cells in NSW to determine how many were 'fit for purpose'. This audit revealed that of 7,920 cells, 2,381 were non-compliant with CSNSW Facility Standards. The audit also classified MSPC, Goulburn, Bathurst, Broken Hill, Cooma, Tamworth, Grafton, Silverwater Women's and Ivanhoe Correctional Centres as "[in need of a] repurpose or upgrade", and advised: "review function of asset".

6.88 This audit was a useful exercise for planning and maintenance, but did not provide a definite capacity management outcome. It would be useful to develop a measure that could be used to define decent and safe accommodation.

6.89 Such a measure would draw on *CSNSW Facilities Standards* as well as international standards and best practice norms, to determine both a limit and a baseline of a centre's capacity to house inmates in decent conditions. It would provide for a principled approach to estate capacity management to complement the pragmatic measure of operational capacity.

Recommendation 46: The Inspector recommends that CSNSW introduces a measure to define a decent accommodation capacity limit.

Recommendation 47: In the interim, the Inspector recommends that when the number of inmates exceeds 95 percent of the current operating capacity, this should be reported to NSW Parliament.

Annex 1

Terms of Reference

Justice
Inspector of Custodial Services

Title

The Potential Impacts of the Growth of the Inmate Population on Correctional Centres

Objective

This inspection will assess the potential impacts of the growth of the prison population on correctional centres.

This *Terms of Reference* defines the scope of the inspection. It outlines the agenda and structure of the inspection to ensure all stakeholders have a clear and common understanding and expectations of the inspection and outputs. This inspection will result in a consolidated inspection report on *The Potential Impacts of the Growth of the Inmate Population on Correctional Centres* to the NSW Parliament.

Introduction

Since 2012, NSW has experienced a rapid rise in the inmate population reaching a record high in May of 11 021.[122] Rapid inmate population growth carries risks.[123] If the number of inmates expands faster than centre capacity, the resulting overcrowding can compromise access to resources, programmes and services, and adversely impact on staff.

Definitions of overcrowding

There is not a simple way of measuring overcrowding because there is no universal agreement about how much space inmates should have. In addition, quantitative measures of overcrowding convey little about the *impact* of overcrowding.

Overcrowding (or crowding) occurs when custodial facilities exceed the maximum number of people they were originally designed or built to hold (*design capacity*), and where there is no corresponding growth in the supporting infrastructure and services.[124]

Where the growth of the inmate population is not supported by prison design capacity, overcrowding cannot be mitigated by camouflaging inadequate design capacity by tinkering with capacity definitions.

Some measures such as 'rated capacity' or 'operational capacity' are elastic and increase bed capacity according to demand. These capacity measures enable change to the design capacity of a prison by double-bunking in a cell, therefore increasing capacity and nominally reducing overcrowding. Some measures do not include double or triple bunks that are added to standard cells because these are considered temporary. Other measures do not include specialty cells such as segregation, medical or observation cells.

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[122] Corrective Services NSW, *Offender Population Report*, 22 June 2014, p.2.

[123] Prison population is a function of the rate of arrival (reception) and the length of stay. The key factors for the recent rise in the NSW prison population appear to be a higher rate of arrest for serious crimes and increase in the proportion of convicted offenders given a prison sentence (D.Weatherburn, et al., 'Why is the NSW prison population growing?', *Crime and Justice Statistics*, Issue paper no. 95, April 2014, www.bocsar.nsw.gov.au, (accessed 16 July 2014).

[124] This definition of overcrowding is used by the Victorian Ombudsman (Victorian Ombudsman, *Investigation into deaths and harm in custody*, March 2014, Victorian government printer, p.27).

'Spare capacity' is also required throughout the correctional system in order to meet operational, rehabilitative and program requirements. Prisons require spare capacity to provide for the transfer of inmates, special-purpose accommodation such as protection units, separate facilities for males and females and different security levels, and to manage short-term fluctuations in prisoner numbers.[125]

Lastly, operational definitions of density take into account 'social density', that is, the number of persons in a given area, as well as 'spatial density', that is, the amount of space apportioned to each individual.

Context

In June 2014 the NSW inmate population was at a record high. Between late September 2012 and March 2014 the prison population rose by 13 percent. This upward trend in the inmate population is expected to continue at a similar rate.[126] The increase in inmate population prompted discussion in the media about overcrowding in the prison system and the potential risks of this growth.

The current position is exacerbated by the fact that previously (and temporarily) falling incarceration rates resulted in the closure of three centres and the significant downsizing of the Correctional Services NSW (CSNSW) workforce.

The current growth in the prison population has seen the expansion of double-bunking and some triple-bunking installations to accommodate greater numbers of inmates. Simultaneously, CSNSWs response to budget pressures has resulted in reduced time out-of-cell for inmates and consequent limits on access to services. According to the Productivity Commission 2013, NSW has the lowest hours out-of-cell of any Australian correctional jurisdiction. It could reasonably be anticipated that further imposed budget savings targets, which do not take into account CSNSW discrete and comparative performance metrics, will inevitably heighten risk and potentially compromise the custodial 'climate' and its outcomes.

NSW has experienced the impact of similar policy settings in the late 1980s, where increasingly punitive responses resulted in entirely predictable prison disturbances.

Recently, there has been widespread media coverage of comments made by Her Majesty's Inspector of Prisons in the United Kingdom, who has described the correctional environment there, which exhibits elevated risks similar to those facing NSW, as a "political and policy failure".

Scope

Overcrowding has the potential to negatively impact on all aspects of custodial life – from the initial reception of detainees entering custody through to their transition into the community.

In assessing the impact of the growth of the prison population on both inmates and staff, this inspection will examine three key areas:

- access to resources and services
- health and wellbeing
- security and safety

[125] NSW Parliament Legislative Council, *The closure or downsizing of Corrective Services NSW facilitates*, June 2013, p.6.

[126] As advised by CSNSW, 10 July 2014.

Specific indicators have been identified within each of these areas as relevant to understanding the potential impact of growth of the population in the NSW correctional system. These include, but are not limited to, concerns around access to medical and mental health care, education, recreation and work, as well as spatial considerations, capacity issues such as workforce planning and industrial relations issues, and the extent to which the placement of inmates is driven by bedspace management rather than case management.

In assessing the current situation, the inspection will consider the immediate and ongoing response and strategies put in place by CSNSW to mitigate identified risks produced by the growth of the prison population.

Correctional centres for inspection

The inspection theme will be pursued across multiple centres to enable comparative analysis. The following centres have been selected for this inspection in consultation with CSNSW:

- Parklea Correctional Centre (15-19 September 2014)
- Metropolitan Remand and Reception Centre (22-26 September 2014)
- Metropolitan Special Programs Centre 2 (29 September – 3 October 2014)

In addition to inspecting these three centres, desk-based research and analysis of information from Long Bay Hospital and Silverwater Women's Correctional Centre will be conducted.

Methodology

Senior Inspection/Research Officers (SIROs) are the lead coordinators of the inspection and are charged with managing the inspection process from planning through to completion of the inspection report ready for tabling in Parliament in accordance with section 6(1)(d) of the *Inspector of Custodial Services Act 2012*.

The SIROs will work collaboratively with CSNSW Assistant Commissioner, Governance and Continuous Improvement and nominated centre liaisons to refine the inspection framework, design methodological tools and develop the inspection plan. Official Visitors will provide support to the inspection process as required.

The inspection framework will form the basis for the development of information collection tools

- data and document requests
- pre-site surveys
- semi-structured interviews
- focus group discussions

The Inspector and SIROs will undertake onsite inspection of the selected centres in September 2014. For each centre, the SIROs will develop an *Inspection Plan* in collaboration with the nominated centre liaison officers. The *Inspection Plan* will detail the itinerary of the onsite inspection, including scheduled meetings with identified staff and inmates.