

**Implementing OPCAT in Victoria: report and inspection  
of the Dame Phyllis Frost Centre**

**November 2017**

**Ordered to be published  
Victorian government printer  
Session 2014-17  
P.P. No. 351**

**The Victorian Ombudsman respectfully acknowledges the Traditional Owners of the lands throughout Victoria and pays respect to them, their culture and their Elders past, present and future.**

# Letter to the Legislative Council and the Legislative Assembly

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To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*.

A handwritten signature in black ink, appearing to read 'Deborah Glass', with a stylized flourish at the end.

Deborah Glass OBE

**Ombudsman**

29 November 2017

# Contents

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<b>Foreword</b>	<b>4</b>	<b>Humane treatment</b>	<b>50</b>
<b>Executive summary</b>	<b>6</b>	Use of force and mechanical restraints	50
Implementing OPCAT in Victoria	6	Separation	51
Pilot inspection at the Dame Phyllis Frost Centre	9	Strip searches	57
<b>Background</b>	<b>15</b>	<b>Protective measures</b>	<b>61</b>
Why we investigated	17	Record-keeping – use of force and restraint	61
What we did	19	Safety	62
About this report	20	Contraband	65
<b>Part One: Implementing OPCAT in Victoria</b>	<b>21</b>	Remand prisoners	65
<b>Detention in Victoria</b>	<b>22</b>	Protection prisoners	66
What is detention?	22	Women in separation	67
When can people be detained in Victoria?	23	Access to information	67
Where are people detained in Victoria?	24	Complaints	68
<b>Monitoring detention – what happens now?</b>	<b>26</b>	Disciplinary proceedings	68
Who monitors places of detention in Victoria?	26	<b>Health and wellbeing</b>	<b>70</b>
Are Victoria’s monitoring schemes OPCAT-compliant?	33	Health screening	70
<b>Implementing OPCAT – what needs to happen?</b>	<b>36</b>	Primary health	71
Who should conduct OPCAT inspections?	36	Mental health	74
What legislative changes are needed?	36	Dental services	75
What resourcing changes are needed?	38	Pharmacy	77
What operational changes are needed?	40	Mothers and children	78
<b>Part Two: Pilot inspection at the Dame Phyllis Frost Centre (12-18 July 2017)</b>	<b>41</b>	Health and wellbeing programs	78
<b>About the Dame Phyllis Frost Centre</b>	<b>42</b>	Health privacy	79
About the women	44	Governance	79
<b>Inspection methodology</b>	<b>45</b>	<b>Material conditions</b>	<b>80</b>
Consulting other inspection bodies	45	Clothing and hygiene	80
Inspection tools	45	Accommodation	80
Announcing the inspection	46	Food	81
The inspection team	46	Property	82
Addressing gaps in representation	46	<b>Purposeful activity</b>	<b>84</b>
Intelligence-gathering	47	Contact with family and friends	84
The inspection week	47	Contact with the outside world	86
Triangulation of evidence	48	Recreation and exercise	88
The following chapters	49	Work	88
		Education	88
		Programs	89
		Case management and transition	89

<b>Diversity</b>	<b>91</b>
Aboriginal and Torres Strait Islander women	91
Culturally and linguistically diverse women	93
Religion	94
Women with a disability	94
Mothers and children	96
Transgender, gender diverse and intersex people	97
<b>Staffing</b>	<b>98</b>
Gender balance	98
Staff training	99
Culture and morale	100
Prisoner perceptions	100
<b>Recommendations</b>	<b>102</b>
<b>Appendix one: Prisoner survey</b>	<b>107</b>
<b>Appendix two: Staff survey</b>	<b>119</b>
<b>Appendix three: Aide memoire 3 (health and wellbeing)</b>	<b>128</b>

# Foreword

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*"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones."*

- Nelson Rolihlahla Mandela

Many people may be wondering why they should be concerned with a United Nations treaty about the prevention of torture – something that may happen elsewhere, but surely not in Victoria? Or indeed why Victoria should need to gear up for Australia's formal ratification of that UN treaty by ensuring independent inspections of our closed environments – prisons, youth justice centres, secure psychiatric institutions – anywhere where people can be lawfully detained against their will.

But Australia has declared the intention to ratify the Optional Protocol to the Convention Against Torture – known as OPCAT – by the end of this year. It will join 84 other countries around the world including New Zealand and the United Kingdom, where independent inspections are nothing new.

OPCAT carries with it important obligations, most of which will fall to the individual states who have responsibility for the various closed environments that are intended to keep our community safe.

I began this investigation in March to ensure that Victoria is prepared to respond to our international obligations – not only to set out the landscape of closed environments and the agencies that oversee them, but also to understand what it will take, in practical terms, to comply with the treaty.

Although independent agencies – including my office – have been visiting closed environments for many years, none in Victoria have previously carried out an inspection to OPCAT's rigorous standards.

We therefore included in our work an inspection of the Dame Phyllis Frost Centre (DPFC) – the state's main women's prison – as far as possible to the standards required. It involved 12 of my staff over seven days in July, preceded by work to develop inspection standards, and followed by extensive analysis of what we found.

It is never easy to be exposed to independent inspection, and I must acknowledge with thanks the active cooperation of management at DPFC, who ensured that my officers had full access to prisoners, staff and facilities, and engaged constructively with my staff about the issues we encountered.

Overall we found positive initiatives but an ageing and crowded facility, where prisoner numbers have grown 65 per cent in the last five years and remand prisoners have more than doubled over the same period. While a major expansion is underway, the strains were evident during our inspection, with the physical conditions of some of the units notably bleak.

Some practices used to maintain order in prisons pose a high risk of torture or degrading treatment if used improperly: these include the use of force and restraint, prolonged solitary confinement and strip searches. International standards regarding treatment of prisoners – the Nelson Mandela Rules – emphasise that these practices should be a last resort. We were therefore concerned about the high incidence of force and restraint at DPFC, including reports of pregnant women being handcuffed when attending external medical appointments.

We were also concerned about the routine practice of strip searching the women before and after contact visits. Although intended to prevent contraband entering the prison, it does not appear to be effective in doing so: none of the items seized during the searches conducted the previous year involved illicit drugs, which plainly, were entering the prison by other means.

Yet this humiliating, degrading and undignified practice persists, described by some women prisoners as a form of sexual assault. It should not be forgotten that many women prisoners are victims of sexual abuse, for whom strip searching has the potential to inflict further trauma. We concluded that the routine practice of strip searching women at DPFC was not a reasonable or justified limitation under the Charter of their right to privacy, to protection from cruel, inhuman or degrading treatment and to humane treatment when deprived of liberty.

While it is encouraging that all but one of my recommendations have been accepted, I am disappointed that the department has not accepted that this practice should stop unless justified by intelligence and risk. The claim that the women simply “undress” prior to visits is at best misguided: they do so in the presence of two guards wearing latex gloves, consistent with a strip search.

In OPCAT inspections, we seek to improve and prevent, and the results of the inspection demonstrate why OPCAT is important to all of us. Inspections help to ensure the effectiveness of prisons in promoting rehabilitation, which in turn reduces recidivism and increases community safety. They can identify pressure points within a prison which if left unchecked, can result in riots.

Yes, it will cost money to ensure the State has properly resourced bodies to carry out inspections, and to implement their recommendations. But it costs far more to deal with the consequences of ill-treatment – which could be a huge bill for damage or compensation, or a Royal Commission – than setting up regular monitoring to prevent it and drive improvements.

The ratification of OPCAT is an important symbol of Australia’s commitment to human rights. Its implementation, through setting up, resourcing or empowering independent agencies, is equally important in ensuring that commitment is not merely symbolic.

Deborah Glass

**Ombudsman**

# Executive summary

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1. This report considers the practical implications of implementing the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in Victoria. It sets out:
  - practical changes needed to implement the OPCAT protocol
  - the results of a pilot OPCAT-style inspection at Victoria's main women's prison, the Dame Phyllis Frost Centre (DPFC).
2. OPCAT is an international human rights treaty that aims to prevent abuse of people in detention by opening places where people are deprived of liberty – prisons, police cells, psychiatric hospitals and so on – to regular independent inspections by:
  - a United Nations (UN) committee of international experts
  - local inspection bodies called National Preventative Mechanisms (NPMs).
3. In February 2017, the Commonwealth Government announced that Australia will ratify OPCAT by the end of 2017.
4. In Victoria, this means the Victorian Government will need to open places of detention to the UN committee from 2018. The Victorian Government will have three years to 'designate' or appoint one or more local NPMs to conduct regular inspections.
5. Implementing OPCAT will require changes. While Victoria already has human rights laws and monitoring bodies, OPCAT will introduce more rigorous standards for inspecting places of detention.
6. On 31 March 2017, the Ombudsman notified the Attorney-General, the Minister for Corrections and the Secretary of the Department of Justice and Regulation of her intention to conduct an 'own motion' investigation into the conditions in a custodial facility, with a view to contributing to the debate about OPCAT's implementation in Victoria.
7. The investigation mapped places of detention in Victoria, how they are monitored, and what needs to change to implement OPCAT.
8. The investigation also tested how OPCAT inspections work in practice by conducting a pilot inspection at DPFC using OPCAT standards where possible.

## Implementing OPCAT in Victoria

### Which places need to be inspected under OPCAT?

9. For most people, the word 'detention' conjures images of prisons, police cells or youth detention centres.
10. OPCAT's definition is broader. It requires regular inspections of any place under the jurisdiction or control of the state where persons are or may be deprived of liberty, 'either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'. It defines 'deprivation of liberty' as:
  - any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.



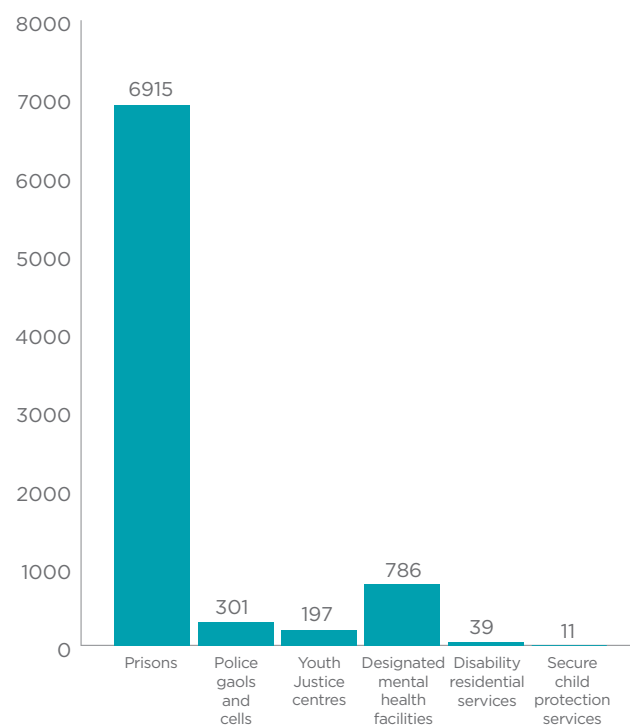
11. Other countries that have implemented OPCAT, such as New Zealand and the United Kingdom, also inspect:
  - secure health and disability facilities, and secure accommodation for children and young people
  - places where people are detained temporarily, such as prison transport vehicles or court cells.
12. Some countries also inspect care facilities such as aged care homes where residents are not legally detained, but are not free to leave because of locked doors or other restraints. This is sometimes called ‘de facto detention’. While these facilities are not traditionally seen as places of detention, they may fall within the definition of ‘deprivation of liberty’ for OPCAT purposes.

### Where are people detained in Victoria?

13. Identifying all places of detention in Victoria is not an easy task.
14. Victoria has over 50 laws allowing people to be detained. They include criminal laws, public health laws, mental health laws, disability laws and child protection laws. Some of these laws are silent about where people can be detained.
15. Data from authorities shows that most people in state detention in Victoria are held in the state’s prisons.
16. Other significant places of detention in Victoria are:
  - police gaols
  - youth justice facilities
  - ‘designated mental health facilities’ where people with severe mental illness can be detained for compulsory treatment or assessment
  - disability facilities where people with an intellectual disability may be detained in some circumstances
  - secure child protection facilities.

17. People may also be detained temporarily in facilities such as police or court cells or prison transport vehicles.
18. The Victorian Government has also announced plans for two facilities for serious sex offenders and serious violent offenders subject to supervision orders following release from prison. In some cases, the conditions in those orders may amount to deprivation of liberty for the purposes of OPCAT.
19. The number of care facilities where people experience ‘de facto detention’ are particularly difficult to identify. The investigation team heard anecdotally that locked doors and other restraints on residents’ freedom of movement are common. However, without examining each case, it is difficult to determine exactly how many meet the threshold for ‘deprivation of liberty’ under OPCAT.

Figure 1: Number of people detained under Victorian law, by major places of detention (as at 1 March 2017)



Sources: Department of Justice and Regulation; Victoria Police; Department of Health and Human Services. Note that the data for people in designated mental health facilities under the *Mental Health Act 2014* (Vic) was current at 2 June 2017, not 1 March 2017.

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## How OPCAT-compliant are current monitoring arrangements in Victoria?

20. Victoria has a complex network of at least 13 bodies that already monitor conditions and treatment of people in detention, however none currently meet OPCAT standards.
21. OPCAT NPMs are expected to have:
  - functional independence
  - necessary resources to carry out OPCAT inspections
  - a mandate to make regular preventive visits, including unannounced visits
  - ability to access information about the number of places of detention, the number of people detained in those places, and their treatment and conditions
  - ability to access all places of detention and speak privately with detainees
  - ability to make recommendations about the treatment and conditions of people in detention, and engage in dialogue with authorities about their implementation
  - ability to publish annual reports.
22. The Victorian Ombudsman's pilot OPCAT-style inspection at DPFC shows that the investigative powers of the Ombudsman and other bodies can be successfully adapted to OPCAT inspections.
23. However, the Ombudsman and other investigation bodies do not have a legislative mandate to conduct OPCAT-style inspections in Victoria, or funding to conduct them in the long term.

24. Other monitoring bodies rely heavily on volunteers, or operate within government departments and do not satisfy OPCAT's requirements for independence. Some focus on resolving or investigating individual complaints or specific issues, compared with OPCAT's focus on preventing abuses.

## What needs to change?

25. The Victorian Government will need to decide which body or bodies to designate as its NPMs. It could create a new body for OPCAT inspections, or it could appoint one or more existing monitoring bodies.
26. Many countries have designated ombudsman institutions, either to perform as NPM/s on their own or with the assistance of other bodies. The United Kingdom and New Zealand appointed multiple bodies when they implemented OPCAT.
27. Whichever model the Victorian Government chooses, there will need to be legislative, funding and operational changes.
28. There should be legislation to give NPMs a clear mandate and unrestricted powers to carry out OPCAT inspections. NPMs and other monitoring bodies should also have legislative authority to share information so they can work collaboratively in the interest of human rights.
29. NPMs also need funding to inspect places of detention. They are expected to build multi-disciplinary inspection teams that balance gender and reflect the cultural make-up of the country. Aboriginal and Torres Strait Islander representation will be particularly important in Victoria, given that community's overrepresentation in the criminal justice system.
30. The Victorian Ombudsman's pilot OPCAT-style inspection is estimated to have cost at least \$105,000. Conducting multiple, regular inspections across all places of detention will add up to a significant cost for NPMs over time.

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## Pilot inspection at the Dame Phyllis Frost Centre

31. The Victorian Ombudsman's pilot OPCAT-style inspection at DPFC took place over seven days in July 2017.
32. The aim of the inspection, consistent with OPCAT's purpose, was to identify risks that increase the potential for torture and other cruel, inhuman or degrading treatment at the prison, and protective safeguards that reduce those risks.
33. The inspection team spoke extensively with staff and women; observed the prison's operations; conducted focus groups with Aboriginal and Torres Strait Islander women and the other main cultural group at the prison; and surveyed staff and women about conditions.
34. To ensure the inspection met OPCAT standards where possible, the Victorian Ombudsman:
  - consulted inspection bodies in Australia and overseas
  - researched material about detention monitoring
  - consulted civil society organisations, experts and other monitoring bodies
  - analysed extensive documentation
  - assembled an inspection team of 12 officers. They included a contracted clinical psychologist, the New Zealand Ombudsman's Chief Inspector and officers with backgrounds in nursing, law, criminal justice and human rights.
35. Overall, the inspection team found a facility undergoing significant change. The number of women at the prison is growing and construction of new facilities is ongoing. The prison has also been moving from a traditional model of operation, where women are placed in different areas of the prison according to their behaviour, to a model where women are placed according to their needs.
36. The inspection highlighted some areas that need to be addressed to ensure DPFC meets local and international human rights laws.

### Humane treatment

37. The inspection team looked at practices that are used to maintain order and security in prisons but involve a high risk of cruel, inhuman or degrading treatment if used improperly. They include use of force and restraint, separation (or solitary confinement) of prisoners and strip searches.
38. The inspection team identified a relatively high use of force and restraint at DPFC compared with other prisons in Victoria.
39. This poses a particular risk for pregnant women, of whom there were eight at the time of the inspection. The prison is working on a policy regarding use of force against pregnant women.
40. The inspection team was also concerned by separation practices at the prison.
41. Conditions in Swan 2, the prison's management unit, are bleak:
  - Women are locked in their cells for at least 22-23 hours a day and the inspection team found evidence some women do not always receive their daily entitlement to fresh air.
  - There is little privacy for women in observation cells. CCTV monitors in the unit office are visible to staff and visitors. On one occasion the team observed a tradesman sitting behind a desk in front of the monitors, from where he had a full view of a naked woman in an observation cell using the toilet.

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- There is little meaningful interaction between staff and women. Several women who had been held in Swan 2 described self-harming in the unit because they felt it was the only way to get staff to engage with them.
  - The inspection team noted instances where use of force and restraint appeared unnecessary or excessive.
  - There appear to be limited opportunities to engage women in addressing the circumstances that led to their separation. During the inspection, one woman was released directly from Swan 2 into the community.
42. At the time of the inspection, there were several women who had been held in Swan 2 for more than 12 months.
43. The inspection team does not question that the women in long term management have highly complex needs and behaviours, which are extremely challenging for the prison and staff. It also recognises that the prison has a duty of care to protect staff and other women at the prison from these behaviours.
44. Long-term separation in an environment like Swan 2 may, however, amount to treatment that is cruel, inhuman or degrading. It is also incompatible with the Nelson Mandela Rules – the main international standards for treatment of prisoners.
45. The inspection team was also concerned by DPFC's practice of routinely strip searching women before and after contact visits with family and friends.
46. DPFC routinely strip searches all women after contact visits with family and friends. DPFC policy does not allow the prison to routinely strip search women before visits, but the inspection team observed officers taking women into a room and watching the women undress to change into the overalls worn during visits. The prison stated this is not a strip search and women 'are merely undressed to put their overalls on'. The practice observed by the inspection team was consistent with the definition of 'strip search' in the *Corrections Regulations 2009* (Vic) and is concerning regardless.
47. The United Kingdom moved to a targeted, intelligence-based approach to strip searching after a 2007 report described regular strip searching of women as 'wholly unacceptable'.
48. The inspection team was told that DPFC's practice is intended to prevent contraband drugs entering the prison. A review of DPFC's records identified that only four of 148 contraband items seized in 2016-17 were found in the visits centre. Only one of those involved drugs – half a blood pressure tablet. Drugs and contraband are clearly entering the prison through other means.
49. The inspection team considers that the routine strip searching of women before and after visits is inconsistent with the Nelson Mandela Rules, the *Corrections Regulations 2009* (Vic) and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

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## Protective measures

50. The inspection team also looked at safeguards at DPFC that help protect women from torture or cruel, inhuman or degrading treatment or punishment.
51. DPFC has a series of safeguards in place. However, there is room for improvement:
  - Registers that record use of force and restraint are not always completed by staff.
  - Remand women are accorded some rights under international standards, but do not appear to be offered the option of wearing their own clothes. There is minimal separation of women on remand and sentenced prisoners, and separation will be difficult to achieve when the number of remand women is so high.
  - DPFC produces some good publications for women about prison procedures and their rights, but distribution is unclear or inconsistent. The inspection team spoke to many women who were not aware of their rights or services at the prison. Many said they get information from other prisoners.
  - DPFC has systems in place for women to raise concerns about their conditions and treatment. Women gave mixed feedback, however, about how confident they were about complaining. Some said staff had tried to stop them complaining.
  - The inspection team heard anecdotally that prisoners facing internal disciplinary hearings are often not aware of their rights, and there can be significant variation in penalties depending on which officer hears the matter.
52. The inspection team also looked at steps DPFC is taking to ensure the safety of women in the prison.
53. Women gave mixed responses to questions about whether they felt safe at DPFC in response to the inspection team's survey.
54. Women and staff both reported that it was easy to get illegal drugs into the prison.
55. Some women also reported abuse, threats or intimidation by staff or other prisoners. Only a third of women who responded to the survey said they had reported such incidents. Few were satisfied with the prison's response.

## Health and wellbeing

56. The most common issue raised by women during the inspection was problems with health services. Women repeatedly told the inspection team they were waiting weeks and sometimes months to see a doctor.
57. Denying access to adequate medical treatment can, depending on the circumstances, amount to cruel, inhuman or degrading treatment. According to international standards, prisoners should receive the same standard of health care that is available in the community.
58. While the inspection team found a good range of services at DPFC, these are clearly under strain. The rising number of women, particularly remand women, is putting pressure on services. Women have to see a nurse to access common over-the-counter medications. The facilities in the prison's medical centre and mental health unit are not fit for purpose (the mental health unit is scheduled to be replaced in 2018).

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59. The contracted health service provider also faces competing demands. It must medically assess all women within 24 hours of their arrival at the prison, while also catering for the needs of remand and sentenced women within the prison. Women arrive at the prison at short notice throughout the day and into the evening, meaning appointments for other women are cancelled and rescheduled.
60. These problems are compounded by poor communication:
- Women are not informed of medical appointments in advance because so many appointments need to be cancelled and rescheduled. Women are meant to be called to the medical centre for appointments, but many women said they never hear about appointments.
  - The right of women on remand to emergency dental services is not well understood. The inspection team heard stories of women on remand with swollen faces and bleeding mouths who had not been able to see the dentist.
  - Women reported that prescriptions for important medication expire without warning.
61. The inspection team also observed problems with privacy, with instances of medical staff discussing sensitive health information in the presence or hearing of staff or other prisoners.

### **Material conditions**

62. Adequate material conditions – clothing, shelter and food – are also essential to the humane and dignified treatment of people deprived of liberty.
63. The inspection team found reasonably good conditions at DPFC, albeit with some room for improvement.
64. Accommodation at the prison ranges from units from the prison’s original 1996 build through to new modern units. Most units meet minimum international standards for lighting, ventilation and hygiene, but there were substandard and unhygienic conditions in some older units, as well as inadequate heating in parts of the prison.
65. The standard and range of food for prisoners is also good. For prisoners living in cells, meal delivery times need to be improved. The inspection team observed evening meals being delivered as early as 2.30pm.
66. Prisoners in cottage accommodation get a weekly food allowance to order food and are expected to budget. The price of food had increased significantly in the week before the inspection, but the prison is considering an increase to the weekly food allowance for these women.

### **Purposeful activity**

67. The inspection team also looked at women’s ability to maintain contact with family and friends, and to engage in purposeful activity such as exercise, work and education. These activities are important to the wellbeing of prisoners, as well as their chances of successful reintegration into the community on release.

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68. DPFC assists women to maintain contact with family through personal visits, telephone calls and mail.
  69. The inspection team heard some reports of delays with processing mail and telephone requests, again likely to be a result of increased prisoner numbers and strain on resources.
  70. The cost of telephone calls is also a barrier for women who are from interstate or overseas, for whom this may be the only way to speak with their children or other family members. DPFC has been piloting a Skype program which has the potential to address these issues.
  71. The inspection team was also concerned that the prison sometimes removes women's telephone privileges as a punishment for internal disciplinary offences, arguably breaching international standards and the Charter.
  72. The inspection team found a good range of work, education and programs at DPFC, designed to address disadvantage and other issues that cause offending. Again, the impact of the growth in prisoner numbers at DPFC was evident, with reports of waiting lists for programs and cramped conditions in education facilities.
  73. The inspection team found that DPFC caters well to the needs of different religions. It has also begun training officers on how to engage with transgender prisoners. Women participating in DPFC's Mothers and Children program, which allows women to have their pre-school age children live with them, were also generally happy with the program.
  74. The inspection team found that DPFC caters well to the needs of different religions. It has also begun training officers on how to engage with transgender prisoners. Women participating in DPFC's Mothers and Children program, which allows women to have their pre-school age children live with them, were also generally happy with the program.
  75. Aboriginal and Torres Strait Islander women, who are overrepresented at DPFC, have access to a well-respected Aboriginal Wellbeing Officer, a dedicated area known as the 'Healing Space' within the prison, and some tailored programs and education.
  76. The inspection team heard that cultural awareness amongst staff, including health staff, could still be improved. It also found that no Aboriginal women have been accepted into the prison's Mothers and Children program in the past few years.
  77. At the time of the inspection, there were also 36 women from culturally and linguistically diverse backgrounds who needed an interpreter to communicate with English speakers. These women presented as particularly isolated.
  78. The prison now employs two multicultural liaison officers. It is meant to arrange interpreters for women when they first arrive and go through the prison's reception process, and for medical appointments. However, the prison does not routinely translate written information into community languages and women often rely on other prisoners to help with day to day information and communication.

## Diversity

73. Some groups of women at DPFC are at greater risk in prison. Addressing their needs is an important way to reduce the risk of cruel, inhuman or degrading treatment.



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79. Assistance for women with a disability also needs to be improved. There is inadequate screening of women for cognitive impairment, such as acquired brain injury. Staff learn on the job about how to deal with the communication and behavioural challenges associated with these impairments.
80. There are no systems in place to assist women with a disability who need help with basic personal care. They currently rely on staff or other prisoners to volunteer help, putting both women and staff at risk of injury and abuse.

### Staffing

81. While the inspection team was primarily concerned with conditions for detainees at DPFC, it also looked at conditions for staff at the prison. Maintaining a professional, well-trained and well-supported workforce is a key way to reduce the risk of cruel, inhuman or degrading treatment.
82. Staff at DPFC work in a challenging environment. They need to balance safety and security with the needs of a diverse group of women. They work in ageing and sometimes cramped facilities, in a workplace undergoing considerable change.
83. Not surprisingly, the inspection team identified problems with staff morale.
84. The women themselves provided mixed feedback about their experience with staff. There were reports of poor conduct by particular officers, while women mentioned other officers they found fair or helpful.
85. At the time of the inspection, women made up 52 per cent of the workforce at DPFC. By international standards, this is a low percentage for a women's prison.
86. There is also scope to increase support for staff to deal with the complex needs of women at the prison. While new custodial officers attend a 42-day training course and have access to regular training, there are training gaps in areas such as working with prisoners with mental health conditions or cognitive disability.

### Recommendations

87. The Ombudsman has made 19 recommendations to reduce the risk of cruel, inhuman and degrading treatment at DPFC, and to strengthen the prison's protective safeguards.
88. They include:
- work on strategies to minimise the use of force
  - considering options for replacing the Swan 2 management unit
  - immediately ceasing the practice of routinely strip searching women before and after contact visits, and strengthening alternative ways to detect contraband
  - considering evidence in this report about health services to ensure they are adequate to meet women's needs
  - funding the roll out of a screening tool for cognitive disability
  - training custodial officers about issues such as working with women with mental health conditions or personality disorders, and Aboriginal and Torres Strait Islander women.
89. The Department of Justice and Regulation has accepted all of the recommendations, with the exception of the recommendation regarding strip searching. The department said it 'does not consider that its current practice with respect to observation and supervision of women changing into overalls before contact visits amounts to "strip searching".' It also said that it is of the view that its current practices are compliant with the Charter.



# Background

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90. In 1984 the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The CAT aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world, and requires states to take effective measures to prevent torture within their jurisdiction.<sup>1</sup> Australia became a signatory to the CAT in 1985 and ratified it in 1989.
91. In 2002 the UN adopted OPCAT.<sup>2</sup> OPCAT supplements the CAT and aims to prevent abuse of people in detention by opening places where people are deprived of liberty – prisons, police cells, psychiatric hospitals and so on – to regular inspection visits by:
  - an international committee
  - local inspection bodies known as National Preventative Mechanisms (or NPMs) (for more detail, see next page).
92. OPCAT recognises that places of detention are usually hidden from public view, and people in them are particularly vulnerable to torture and other cruel, inhuman and degrading treatment.
93. OPCAT inspections help:
  - individual detainees by protecting their human rights
  - detention authorities, by providing early warnings about poor practices that could lead to abuses and helping them manage that risk.
94. In February 2017, the Commonwealth Government announced that Australia will ratify OPCAT by the end of 2017.
95. Under Australia's federal system, the Commonwealth Government will be responsible for implementing OPCAT inspections in areas of its responsibility, such as immigration detention. The states and territories will be responsible for implementing visits in places of detention they administer, such as prisons and psychiatric hospitals.
96. The Commonwealth Government has announced that it will fund the Commonwealth Ombudsman to coordinate Australia's network of inspectorates.
97. In Victoria, the international committee will be free to visit places of detention from 2018. The Victorian Government will have three years to choose which body or bodies to appoint, or 'designate', as its local NPM/s.

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<sup>1</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) ('Convention Against Torture').

<sup>2</sup> *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*, opened for signature 4 February 2003, 2375 UNTS 273 (entered into force 22 June 2006) ('OPCAT').

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## What is OPCAT?

OPCAT is an international human rights treaty that aims to *prevent* abuse of people in detention.

It does this by requiring states to open their places of detention to regular, independent inspections by:

- a United Nations (UN) committee called the Subcommittee on the Prevention of Torture, made up of 25 international experts
- local inspection bodies called National Preventative Mechanisms (NPMs).

OPCAT inspections do not investigate individual instances of abuse. Instead, they look at laws, systems and conditions in places of detention and identify risks that could lead to torture or cruel, inhuman or degrading treatment or punishment. They aim to address these risks before they lead to problems.

OPCAT and the UN Subcommittee<sup>3</sup> set standards for NPMs to ensure that inspections are rigorous. NPMs must:

- be independent
- have 'necessary resources' to carry out their role
- be able to make regular preventative visits, including unannounced visits

- be able to access information about the number of places of detention, the number of people detained in those places, and their treatment and conditions
- have the freedom to decide where to visit, and who to speak with
- be able to access all places of detention and speak privately with detainees
- have required capabilities and professional knowledge, including legal and health expertise
- be able to make recommendations about the treatment and conditions of people in detention, and engage with authorities about their implementation
- be able to report on their work.

NPMs are also expected to:

- maintain contact with the UN Subcommittee, civil society groups and experts
- submit proposals and observations regarding legislation and policies.

OPCAT has been ratified by 84 countries, including the United Kingdom, New Zealand and most of Europe.

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<sup>3</sup> United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventative mechanisms*, 12th sess, UN Doc CAT/OP/12/5 (9 December 2010) ('UNSPT Guidelines on NPMs').

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## Why we investigated

98. OPCAT will require changes in Victoria.
99. It is true that Victoria already has laws to safeguard the rights of people in detention. They include the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter). The Charter enshrines rights to humane treatment for people deprived of liberty and to protection from torture and cruel, inhuman or degrading treatment. It also enshrines specific rights for children and young people, including the right to be segregated from adults in detention and treated in a way that is appropriate to their age.<sup>4</sup>
100. Victoria also has many monitoring agencies, including the Victorian Ombudsman, that try to ensure these rights are protected.
101. OPCAT, however, will introduce more rigorous standards for monitoring places of detention.
102. Commonwealth, state and territory governments began discussing models for implementing OPCAT earlier this year. The Australian Human Rights Commission has also been consulting civil society organisations and will provide advice to the Commonwealth Government about how OPCAT should be implemented.
103. Existing oversight bodies like the Ombudsman can contribute to these discussions by highlighting the practical issues involved.
104. The Victorian Ombudsman:
- Has been visiting prisons regularly to take complaints or monitor conditions for almost 30 years. Officers have also visited youth justice centres, ‘secure welfare services’ for young people in the child protection system and the Thomas Embling Hospital, Victoria’s secure forensic mental health hospital.
  - Has conducted multiple investigations into conditions in detention and treatment of detainees.<sup>5</sup>
  - Receives complaints that authorities have acted incompatibly with human rights in the Charter, and can investigate those complaints.<sup>6</sup>
  - Has a statutory monitoring role in relation to people in preventative detention under Victoria’s terrorism laws.<sup>7</sup>
105. On 31 March 2017, the Ombudsman notified the Attorney-General, the Minister for Corrections and the Secretary of the Department of Justice and Regulation of her intention to conduct an ‘own motion’ investigation into the conditions in a custodial facility, with a view to contributing to the debate about OPCAT’s implementation in Victoria.
106. The investigation was undertaken pursuant to section 16A of the *Ombudsman Act 1973* (Vic), which provides that the Ombudsman may conduct an own motion investigation into any administrative action taken by or in an ‘authority’. The definition of ‘authority’ includes a department such as the Department of Justice and Regulation.<sup>8</sup>

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<sup>4</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 10, 22, 23. The Charter is supplemented by other legislation setting out rights for specific groups of detainees. One example is the *Corrections Act 1986* (Vic) s 47, which sets out basic rights of prisoners, such as access to adequate food and clothing and reasonable medical care.

<sup>5</sup> See, for example, Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* (2017) and other investigation reports at <[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)>.

<sup>6</sup> *Ombudsman Act 1973* (Vic) s 13(2).

<sup>7</sup> *Terrorism (Community Protection) Act 2003* (Vic) ss 13F, 13P.

<sup>8</sup> *Ombudsman Act 1973* (Vic) s 2 (definition of ‘authority’).

## What is torture and cruel, inhuman or degrading treatment or punishment?

The word 'torture' has a specific meaning in international law. To amount to torture, an act must:

- involve severe pain and suffering (physical or mental)
- be intentional
- be for a prohibited purpose, for example to obtain information or a confession
- be inflicted by or at the instigation of, or with the consent or acquiescence of, a public official or person acting in an official capacity.<sup>9</sup>

The term 'cruel, inhuman or degrading treatment or punishment' includes acts that fall short of torture, but still involve a minimum level of physical or mental suffering.

The European Court of Human Rights has stated that assessment of whether an act involves the minimum level of severity:

depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.<sup>10</sup>

The following cases are some examples of treatment that Victorian and international courts have found to involve cruel, inhuman or degrading treatment or punishment:

- Detention of young people in harsh conditions including, amongst other things, long periods of solitary confinement in cells formerly used for high security adult prisoners and threats by staff against young people.<sup>11</sup>
- A disability home worker dragging a resident, who had fallen and was unable to stand up, across a carpeted hallway, causing bruising and grazing.<sup>12</sup>
- Handcuffing of a prisoner suffering from Hodgkin's lymphoma during medical treatment at a hospital.<sup>13</sup>
- Inadequate medical care for a female prisoner who was withdrawing from heroin, leading to vomiting, serious weight loss, dehydration and eventual admission to hospital.<sup>14</sup>
- Arrangements for repeated strip searching of a high-risk male prisoner that were not duly based on security needs or to prevent disorder or crime.<sup>15</sup>

<sup>9</sup> *Convention Against Torture*, above n 1, art 1.

<sup>10</sup> *Ireland v United Kingdom* (European Court of Human Rights, Application No 5310/71, 18 January 1978) [162].

<sup>11</sup> *Certain Children v Minister for Families and Children* [2016] VSC 796 (21 December 2016) [169].

<sup>12</sup> *Davies v State of Victoria* [2012] VSC 343 (15 August 2012) [56].

<sup>13</sup> *R (on the application of Graham) v Secretary of State for Justice* [2007] All ER (D) 383 (Nov).

<sup>14</sup> *McGlinchey v United Kingdom* (European Court of Human Rights, Application No 50390/99, 29 April 2003).

<sup>15</sup> *El Shennawy v France* (European Court of Human Rights, Application No 51246/08, 20 January 2011).

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## What we did

107. The investigation scoped the number and types of places of detention in Victoria and how they are monitored currently. It compared these arrangements against OPCAT standards, and considered changes needed to implement OPCAT in Victoria.
108. The investigation also included a pilot inspection of Victoria's main women's prison, the Dame Phyllis Frost Centre (DPFC), using OPCAT standards where possible. This allowed the investigation to test how OPCAT inspections might work in practice in Victoria.
109. The investigation:
- Reviewed Victorian laws authorising detention.
  - Conducted research and obtained data from authorities about the number of people in detention in Victoria, and where they are detained.
  - Met with other Victorian oversight agencies, namely the Victorian Equal Opportunity and Human Rights Commission (VEOHRC), the Commission for Children and Young People (CCYP), the Office of the Public Advocate (OPA), the Independent Broad-based Anti-corruption Commission (IBAC), the Office of the Chief Psychiatrist, the Justice Assurance and Review Office (JARO), independent prison visitors and the offices of the Health Complaints Commissioner and the Mental Health Complaints Commissioner.
  - Examined the way OPCAT has been implemented in other countries, particularly in New Zealand and the United Kingdom.
- Spoke with other offices that conduct independent inspections, such as the New Zealand Ombudsman, the Commonwealth Ombudsman, the Tasmanian Custodial Inspector and Western Australia's Office of the Inspector of Custodial Services.
  - Sent a staff member to accompany the Commonwealth Ombudsman's office on one of its inspections of immigration detention facilities, as an observer.
  - Sought submissions from the public.
  - Formally interviewed a senior program officer at Corrections Victoria.
  - Spoke with experts and non-government organisations. These included Professor Bronwyn Naylor from RMIT University, who has published extensively on issues concerning human rights and places of detention, and the Association for the Prevention of Torture (APT), the key international organisation promoting OPCAT implementation globally.
110. The Ombudsman met with the Secretary of the Department of Justice and Regulation before the investigation started, and Ombudsman staff met with Department of Justice and Regulation officials as the investigation progressed. They also participated in the Australian Human Rights Commission's consultations.
111. The investigation was greatly assisted by support and advice from the New Zealand Ombudsman, who has been conducting OPCAT inspections for almost 10 years. The New Zealand Ombudsman seconded his Chief Inspector to the Victorian Ombudsman to assist the pilot inspection.

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## About this report

112. The first part of this report looks at detention in Victoria, who monitors conditions in detention at present, and the practical changes needed to implement OPCAT.
113. The second part focuses on the pilot inspection at DPFC. As well as providing insight into the process for OPCAT inspections, the inspection highlighted some areas that need to be addressed to ensure the prison meets local and international human rights standards. Once OPCAT is implemented, Victorian detention authorities will find themselves measured against these standards more regularly.
114. Under section 25A(3) of the Ombudsman Act, any individual who is identifiable, or may be identifiable from the information in this report, is not the subject of any adverse comment or opinion. They are identified in this report as:
- the Ombudsman is satisfied that it is necessary or desirable to do so in the public interest, and
  - the Ombudsman is satisfied that identifying those persons will not cause unreasonable damage to the person's reputation, safety or wellbeing.
115. It is hoped this report will contribute to the debate about OPCAT's implementation, and ensure that Victoria is well placed when OPCAT is implemented.

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**Part One:**  
**Implementing OPCAT in Victoria**

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# Detention in Victoria

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## What is detention?

116. For most people, the word ‘detention’ conjures images of prisons and police cells.
117. OPCAT has a much broader scope. It requires states to establish a system of regular visits to *any place* under the jurisdiction or control of the state where persons are or may be deprived of liberty, ‘either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence’.<sup>16</sup>
118. ‘Deprivation of liberty’ is defined as:
- any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.<sup>17</sup>
119. This definition extends to places where people are subject to civil detention, such as psychiatric hospitals.
120. It extends to private facilities that detain people at the ‘instigation of’ or with the ‘consent or acquiescence’ of the state, such as private prisons. The United Nations Subcommittee on the Prevention of Torture, which advises states about OPCAT’s implementation, has previously stated that it also includes places where people are detained in situations where the state exercises, or might be expected to exercise, a regulatory function.<sup>18</sup>
121. The definition also covers what is sometimes referred to as ‘de facto detention’. These are situations where a person is not subject to any detention order, but finds themselves effectively deprived of liberty under administrative or other arrangements. A typical example would be a nursing home or disability residence where residents are not free to leave because the doors are locked, or they would be restrained by staff, or they are only allowed to leave under close supervision.
122. Courts overseas have confirmed these situations can amount to deprivation of liberty for the purposes of human rights and other laws.<sup>19</sup>
123. Victorian courts have not yet considered whether these situations amount to deprivation of liberty for the purposes of the Charter.
124. However, in a 2006 case, the Supreme Court issued a writ of habeas corpus in relation to a woman in a nursing home who had expressed a wish to go home.<sup>20</sup>
125. In 2010, the Supreme Court also issued a writ of habeas corpus in relation to a woman living in a mental health community care unit who wanted to go home to live with her mother. The woman was not required to live in the unit under the conditions of her treatment order and could leave the unit during the day. However, her psychiatrist told her that she had return to the unit at night. The Court stated that this engaged her right to freedom of movement under the Charter, but did not determine if it involved a deprivation of liberty. The Court stated that:

The difference between a deprivation of liberty and a restriction on freedom of movement is one of degree or intensity, not one of nature and substance.<sup>21</sup>

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16 OPCAT, above n 2, art 4.1.

17 OPCAT, above n 2, art 4.2.

18 United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Ninth Annual Report*, UN Doc CAT/C/57/4 (22 March 2016) Annex para 3 (‘UNSPPT Ninth Annual Report’).

19 See, eg, *HL v United Kingdom* [2004] ECHR 471 (5 October 2004); *P v Cheshire West and Chester Council* [2014] UKSC 19 (19 March 2014).

20 *Skylass v Retirement Care Australia* [2006] VSC 409 (10 November 2006).

21 *Antunovic v Dawson* [2010] VSC 377 (25 August 2010) [73], quoting *Kracke v Mental Health Review Board* [2009] VCAT 646 (23 April 2009) [664].



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126. In its comments on a draft of this report, the Department of Health and Human Services (DHHS) said it does not consider that community care units would be regarded as places of de facto detention for OPCAT purposes. It noted that the 2010 case ‘appears to be an idiosyncratic case’ that is not replicated across those services.

127. For the purposes of OPCAT, the UN Subcommittee encourages a broad approach to the definition of detention, stating:

The preventive approach underpinning the Optional Protocol means that as extensive an interpretation as possible should be made in order to maximize the preventive impact of the work of the [NPM].<sup>22</sup>

## When can people be detained in Victoria?

128. Our investigation identified at least 50 Acts of Parliament in Victoria that allow people to be detained.

129. Most of these laws are directed at people suspected or convicted of criminal offences. They provide powers to:

- arrest people and take them into custody pending investigation
- detain people while authorities undertake searches or forensic procedures
- hold people on remand awaiting trial or sentencing
- imprison people convicted of offences
- detain people who are found unfit to stand trial or not guilty because of mental impairment.<sup>23</sup>

130. Victoria also has ‘preventative detention’ laws allowing courts to detain people to *prevent* certain crimes. The Supreme Court, for example, may order the detention of a person if satisfied they will engage in, or are preparing for, an imminent terrorist act.<sup>24</sup> The Court can order the detention of a person who has served a sentence for a serious sex offence if the person poses an unacceptable risk of further harm to the community.<sup>25</sup>

131. Victoria’s detention laws are not just confined to the criminal justice system. They also provide for civil detention in some circumstances, for example:

- compulsory treatment of people with a mental illness, intellectual disability or severe drug or alcohol dependence in some cases<sup>26</sup>
- to protect public health and safety, for example where a person has an infectious disease that poses a serious risk to public health<sup>27</sup>
- to detain a child where there is a substantial and immediate risk of harm to the child<sup>28</sup>
- to protect the administration of justice, for example where a witness fails to comply with a summons and needs to be detained to ensure they give evidence.<sup>29</sup>

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22 UNSPT Ninth Annual Report, above n 18, Annex para 2.

23 See, eg, *Crimes Act 1958* (Vic) ss 458-459, 464A, 464X, 464ZFA, 464ZFAA; *Sentencing Act 1991* (Vic) pt 3 div 2; *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic).

24 *Terrorism (Community Protection) Act 2003* (Vic).

25 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic). The Victorian Government has announced plans to create similar laws for serious violent offenders.

26 *Mental Health Act 2014* (Vic) pt 4; *Disability Act 1996* (Vic) pt 8; *Severe Drug Dependence Treatment Act 2010* (Vic).

27 *Public Health and Wellbeing Act 2008* (Vic) s 123.

28 *Children, Youth and Families Act 2005* (Vic) ss 173, 263.

29 See, eg, *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) ss 139, 141.

132. Some of these laws, such as laws allowing police to arrest suspected offenders, are used daily. Others, such as public health detention laws, are used rarely, if at all.
133. There are also laws in Victoria that authorise close supervision of certain people, or restrictions on their freedom of movement, that could involve deprivation of liberty in some cases. One example is supervision orders for serious sex offenders who have completed their sentences, requiring them to reside in specialist state facilities and be present at those facilities during certain hours.<sup>30</sup> Even though the legislation does not call this detention, it may amount to this in practice.

## Where are people detained in Victoria?

134. Identifying all places of detention in Victoria is no easy task. Some detention laws are silent about where people can be detained. A person detained under public health infectious disease laws, for example, might theoretically be confined to their own home.
135. For practical purposes, the Victorian Government and its NPM/s could be expected to focus OPCAT inspections on places of detention which hold the greatest number of people at greatest risk.
136. Data obtained by the investigation identified that Victoria's 15 adult prisons hold the great majority of people who are in detention in Victoria.<sup>31</sup> Other significant places include Victoria's:

- Twenty-three police gaols.<sup>32</sup>
- Two youth justice centres.<sup>33</sup>
- Eighteen designated mental health facilities where people can be detained for compulsory psychiatric treatment under mental health laws, or if they are found unfit to stand trial or not guilty because of mental impairment.
- Disability residential services. DHHS's Disability Forensic and Assessment Treatment Service (DFATS) and Long Term Residential Program accommodate people with an intellectual disability detained for compulsory treatment under disability laws, as well as people found unfit to stand trial or not guilty because of mental impairment. Community-based disability service providers may also detain people subject to supervised treatment orders under disability laws. The number of people subject to such orders, and their locations, change over time.
- DHHS's secure welfare service for children and young people in the child protection system in Melbourne.

137. The exact number of people in these places changes constantly as people move between detention and the community, or between types of facilities. Figure 1 (see next page) provides a snapshot of the number of people detained in these facilities on 1 March 2017, shortly before the investigation commenced.<sup>34</sup>
138. Other significant places of detention are prison transport vehicles and court cells, which hold people temporarily.

<sup>30</sup> *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) pt 2.

<sup>31</sup> Department of Justice and Regulation (Vic), *Prison* (16 October 2017) Corrections <<http://www.corrections.vic.gov.au/home/prison/>>. The 15 prisons include the Karreenga Annexe, which is located adjacent to the Marnong Correctional Centre, and the Judy Lazarus Transition Centre. The number of prisons will increase to 16 when the new Ravenhall prison begins accepting prisoners later in 2017.

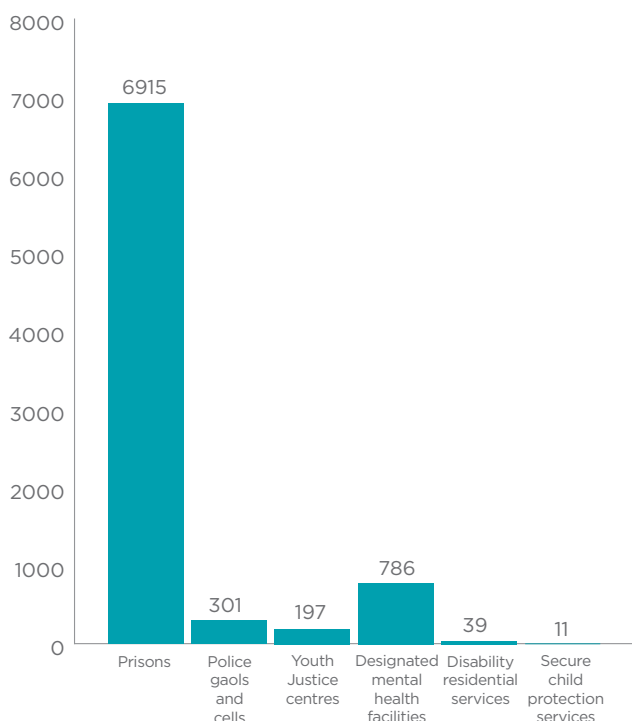
<sup>32</sup> The *Corrections Act 1986* (Vic) s 11 provides for the Governor in Council to make an Order appointing any premises or place that is not a prison to be a police gaol. Not all police cells are appointed as police gaols.

<sup>33</sup> At the time this report was drafted, the Victorian Government had announced a new youth justice facility at Cherry Creek outside Melbourne.

<sup>34</sup> The data for people in designated mental health facilities under the *Mental Health Act 2014* (Vic) is current as at 2 June 2017, not 1 March 2017. The number of people in police cells on 1 March 2017 varied over the course of the day. Figure 1 shows the highest count of detainees that day.

139. The Department of Justice and Regulation also advised there were 74 people living in specialist state facilities under serious sex offender supervision orders as at 1 March 2017. The Victorian Government has announced plans for two new facilities to house these people.
140. The investigation team was not able to accurately estimate the number of people experiencing 'de facto detention' in care settings such as nursing homes, disability homes and mental health facilities.
141. The investigation heard anecdotally that people living in these facilities are sometimes unable to leave at will because of locked doors or other restraints.

**Figure 1: Number of people detained under Victorian law, by major places of detention (as at 1 March 2017)**



Sources: Department of Justice and Regulation; Victoria Police; Department of Health and Human Services. Note that the data for people in designated mental health facilities under the *Mental Health Act 2014* (Vic) was current at 2 June 2017, not 1 March 2017.

142. The Victorian Law Reform Commission considered the issue in 2012 and recommended changes to guardianship and other laws to regulate these situations.<sup>35</sup> OPA released a discussion paper proposing a new legal framework and safeguards while this investigation was under way.<sup>36</sup>

143. DHHS (the government department responsible for mental health, disability and aged care in Victoria) commented on a draft of this report and advised that:

The legislative frameworks within which these services operate do not allow for people to be held against their will. Instead, practices such as use of locked doors, are used in these facilities to ensure safety and security.

144. While these arrangements are generally intended to be protective rather than punitive, they may still fall within OPCAT's scope for the reasons explained on page 22.
145. The investigation asked DHHS for any data or information about the extent of 'de facto detention' in Victoria, and legal or other advice about when such constraints might amount to deprivation of liberty.
146. The department publishes data about the use of restraint and seclusion in disability and mental health facilities, and provided some of this data to the investigation.<sup>37</sup> Without further analysis, however, it is not possible to determine how often these practices would constitute deprivation of liberty for the purposes of OPCAT.
147. The number of people experiencing 'de facto detention' in Victoria, and the places they are detained, is therefore unknown.

<sup>35</sup> Victorian Law Reform Commission, *Guardianship*, Report No 24 (2012) 317-347.

<sup>36</sup> Office of the Public Advocate (Vic), *Designing a deprivation of liberty authorisation and regulation framework: discussion paper* (2017).

<sup>37</sup> Department of Health and Human Services (Vic), *Senior Practitioner Report 2015-16* (2016); Department of Health and Human Services (Vic), *Victoria's Mental Health Services Annual Report 2015-16* (2016).

# Monitoring detention – what happens now?

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## Who monitors places of detention in Victoria?

148. Victoria has a network of at least 13 bodies that monitor conditions in places of detention.
149. The powers, jurisdiction and independence of these bodies differ widely. Only a few visit places of detention regularly to check detainees' conditions and treatment. Many were set up to resolve or investigate individual complaints, or examine specific issues. Some are independent, but many operate within government departments, sometimes out of public view.
150. There is also little consistency in the type and level of monitoring across different types of detention. Prisons have at least seven oversight bodies, while police gaols and cells have three.
151. Figure 2 (see next page) illustrates the complexity of the current arrangements.
152. The following sections describe the monitoring arrangements for the major places of detention identified in the previous chapter.

## Prisons

153. There are two bodies that visit prisons regularly to monitor conditions and treatment of prisoners:
  - The Victorian Ombudsman has been visiting prisons at least annually for almost 30 years by arrangement with Corrections Victoria. The Ombudsman suspended these visits in 2016 pending consideration of OPCAT's implications.
154. These schemes are supplemented by other oversight arrangements.
155. The Ombudsman investigates complaints about prisons, including complaints that prisons have acted incompatibly with the human rights enshrined in the Charter. The Ombudsman can also initiate investigations into systemic problems using 'own motion' powers. The 2015 report on the rehabilitation and reintegration of prisoners in Victoria is one example.<sup>39</sup>
156. The Justice and Review Assurance Office (JARO) within the Department of Justice and Regulation also looks at systemic issues in prisons. Its role is to advise the department's secretary about 'areas of risk, the adequacy of existing controls and opportunities for improvement'.<sup>40</sup> It has examined issues concerning treatment of detainees, such as the use of force against prisoners. It also reviews significant incidents such as deaths in custody, providing insight into the treatment of detainees and their conditions. JARO is a business unit in the department and its work is not public.

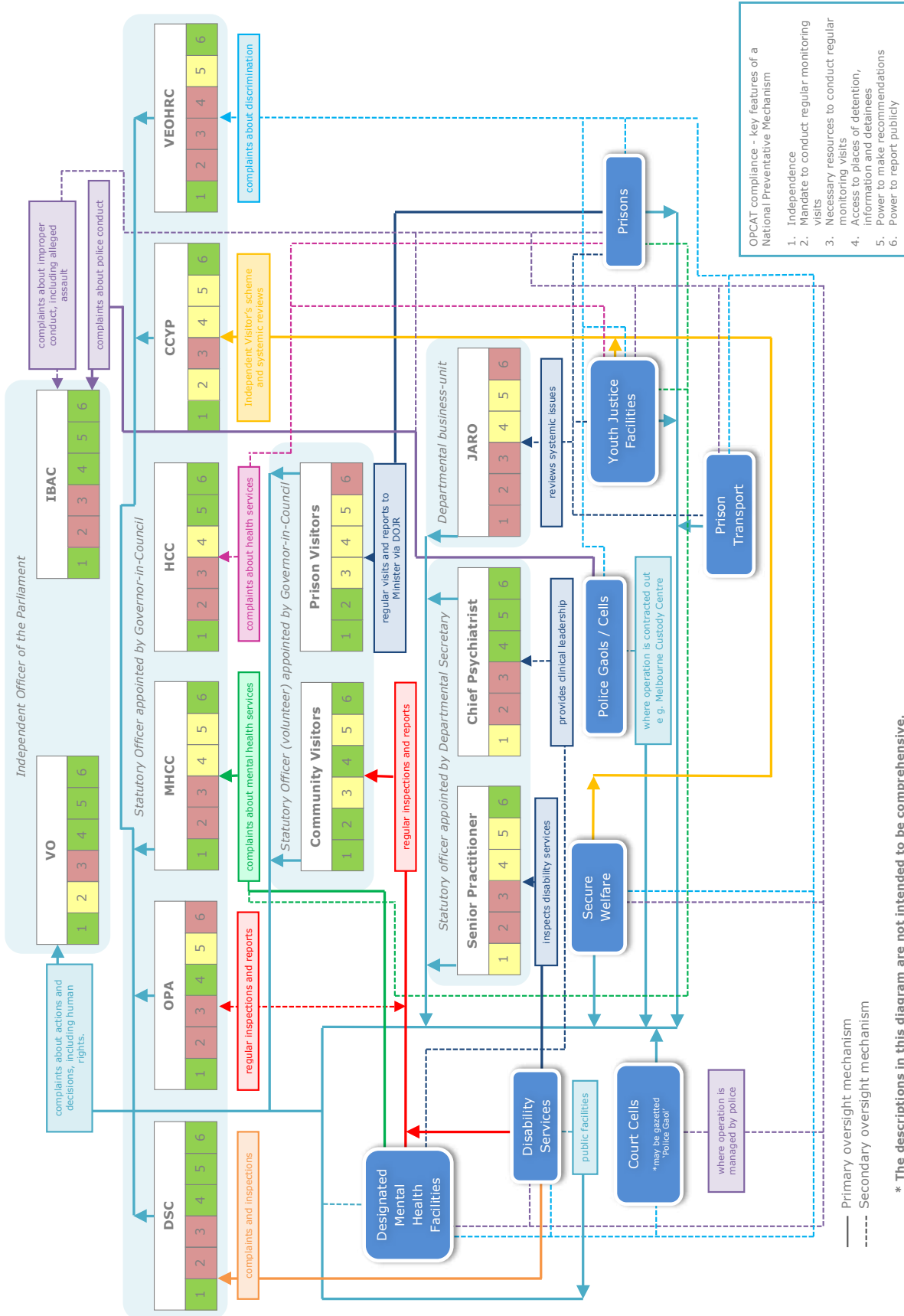
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<sup>38</sup> *Corrections Act 1986 (Vic) s 35; Corrections Regulations 2009 (Vic) reg 63 ('Corrections Regulations')*.

<sup>39</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015).

<sup>40</sup> Department of Justice and Regulation (Vic), *Justice Assurance and Review Office* (7 July 2017) <<http://www.corrections.vic.gov.au/utility/justice+assurance+and+review+office/>>.

Figure 2: Oversight arrangements for monitoring of closed environments in Victoria



\* The descriptions in this diagram are not intended to be comprehensive. Additional detail about oversight bodies' powers and functions can be found elsewhere in this report.

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157. A further four bodies resolve or investigate individual complaints about specific issues in prisons:

- The Health Complaints Commissioner deals with complaints about prison health services.
- The Mental Health Complaints Commissioner deals with complaints about services provided by public mental health services in prisons.<sup>41</sup>
- IBAC can receive complaints and notifications about corrupt conduct by prison officers, such as serious assaults.
- VEOHRC can take complaints about, and conduct investigations into, discrimination under equal opportunity laws. It also reviews policies and programs for human rights compatibility, provides education about the Charter, and reports annually to the Victorian Government about the Charter's operation.

### Police gaols and cells

158. IBAC is the agency responsible for investigating complaints about police conduct in Victoria. IBAC does not have a dedicated program for conducting inspections of police cells.

159. The Ombudsman takes complaints about one police gaol – the Melbourne Custody Centre – and has visited and investigated conditions there in the past.<sup>42</sup> The Ombudsman's jurisdiction over this gaol exists because Victoria Police has contracted out its operation, and the contractor falls within the scope of the Ombudsman Act.<sup>43</sup>

160. VEOHRC can also take complaints about, and conduct investigations into, police in relation to discrimination under equal opportunity laws. As with prisons, VEOHRC can also provide human rights education and, on request, review police programs and practices for human rights compatibility.

### Youth justice centres

161. There are two bodies that visit youth justice centres regularly to monitor conditions and the treatment of detainees in those facilities:

- The Ombudsman has been visiting at least annually for a decade.
- CCYP, the statutory agency that promotes improvements in policies and practices that affect the safety and wellbeing of children and young people, operates a volunteer independent visitor scheme for youth justice centres. Independent visitors visit monthly and speak with young people and staff, meet with centre managers to talk about their observations, and report to CCYP.<sup>44</sup> The program includes Aboriginal volunteers who visit Aboriginal children and young people. CCYP's Commissioners and staff visit youth justice centres as well.

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41 The Commissioner takes complaints about 'mental health service providers' i.e. designated mental health services or publicly funded mental health community support services: *Mental Health Act 2014* (Vic) s 3 (definition of 'mental health service provider'), pt 10.

42 Victorian Ombudsman, *Investigation into use of excessive force at the Melbourne Custody Centre* (2007).

43 *Ombudsman Act 1973* (Vic) sch 1 item 23.

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44 Commission for Children and Young People (Vic), *Independent visitor program* (8 September 2017) <[www.cyp.vic.gov.au/upholding-childrens-rights/independent-visitor-program](http://www.cyp.vic.gov.au/upholding-childrens-rights/independent-visitor-program)>.

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162. The Ombudsman and CCYP also have powers to investigate and report on systemic issues in youth justice. The Ombudsman published a report on Victoria's youth justice centres in January 2017.<sup>45</sup> In March 2017, CCYP published a major report on the use of isolation, separation and lockdowns in youth justice.<sup>46</sup> CCYP also:

- receives notifications about 'category one' incidents at youth justice centres.<sup>47</sup> It uses these to monitor centres and may follow up reports.
- can conduct inquiries into services provided to an individual child or group of children.

163. JARO also has internal review and assurance functions in relation to youth justice centres. As noted earlier, JARO is part of the department and its work is not public.

164. As with prisons, individual complaints about conditions and treatment can be made to the Ombudsman, the Mental Health Complaints Commissioner, the Health Complaints Commissioner, IBAC and VEOHRC, depending on the type of complaint and the service providers involved.

### Designated mental health facilities

165. There are two bodies that visit designated mental health facilities to monitor conditions and the treatment of residents:

- The Ombudsman has visited the Thomas Embling Hospital, Victoria's secure forensic mental health hospital, in the past.
- OPA coordinates a volunteer community visitor program that visits designated mental health services.<sup>48</sup> Community visitors are appointed by the Governor in Council on the recommendation of OPA. Community visitors may enter and inspect premises at any time (or as directed by OPA); speak to any person receiving mental health services who wishes to speak to them; and inspect any record, including clinical records if they have the consent of the person receiving the services. They may also assist people receiving mental health services to resolve issues, seek support from other services or make complaints to the Mental Health Complaints Commissioner. Community visitors report to a board, which publishes an annual report. The reports regularly raise issues about conditions and treatment of residents.<sup>49</sup>

166. The Public Advocate, OPA's head, has a statutory power to enter premises, inspect documents and see residents.<sup>50</sup> In practice, regular visits are carried out by her office's community visitor scheme.

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45 Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* (2017).

46 Commission for Children and Young People (Vic), *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017).

47 *Commission for Children and Young People Act 2012* (Vic) s 60A. Category one incidents are the most serious incidents and include the death of a young person and allegations of physical or sexual assault.

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48 Community visitors have the power to visit 'prescribed premises', the definition of which includes a designated mental health service and a mental health service provider in which residential services and 24-hour nursing care is provided for persons with mental illness: *Mental Health Act 2014* (Vic) s 213.

49 *Mental Health Act 2014* (Vic) pt 9; Office of the Public Advocate (Vic), *Community Visitors Annual Report 2017* (2017).

50 *Guardianship and Administration Act 1986* (Vic) s 18A.



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167. Victoria also has a Chief Psychiatrist who 'provides clinical leadership and promotes continuous improvement in the quality and safety of mental health services' and 'promotes the rights of persons receiving mental health services'. While his office is primarily focused on clinical matters, it considers some issues relevant to humane treatment of detainees, such as the use of seclusion and restraint. He also has investigation powers and can enter and inspect premises. He is a statutory officer appointed by the Secretary of DHHS and is supported by an office of departmental employees. He publishes an annual report on his activities.<sup>51</sup>
168. The Mental Health Complaints Commissioner is the specialist complaints agency established to take individual complaints about public mental health services.<sup>52</sup>
169. Complaints may also be made to the Ombudsman, IBAC or VEOHRC depending on the nature of the complaint and service provider involved.<sup>53</sup> The Ombudsman can investigate systemic issues involving public facilities.<sup>54</sup>

## Disability services

170. There are three bodies that visit, or have the power to visit, disability services:
- OPA's volunteer community visitor program visits DFATS and other disability services regularly. Community visitors have statutory functions under disability laws to inquire into issues such as the appropriateness and standard of premises for the accommodation of residents and any suspected abuse or neglect. Their board publishes an annual report on their activities and can refer matters to the Secretary of DHHS and other bodies for attention, and report to the minister.<sup>55</sup>
  - The Senior Practitioner, Disability also has powers to visit and inspect disability services including DFATS. He is a statutory officer appointed by the Secretary of DHHS and is subject to the Secretary's 'general direction and control'. While his functions are not focused on prevention of cruel, inhuman and degrading treatment generally, he has functions regarding use of seclusion and restraint and reports annually on these issues.<sup>56</sup>
  - The Disability Services Commissioner, the specialist agency for complaints about disability service providers, can inspect the premises of disability services for the purpose of conducting an investigation.<sup>57</sup>

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51 Department of Health and Human Services (Vic), Chief Psychiatrist (8 September 2017) <<http://www2.health.vic.gov.au/about/key-staff/chief-psychiatrist>>; *Mental Health Act 2014* (Vic) Act pt 7 div 2.

52 The Commissioner takes complaints about 'mental health service providers' i.e. designated mental health services or publicly funded mental health community support services: *Mental Health Act 2014* (Vic) s 3 (definition of 'mental health service provider'), pt 10.

53 The Ombudsman may take complaints about administrative actions by or in an 'authority' and bodies performing a function on behalf of an authority: *Ombudsman Act 1973* (Vic) ss 2 (definition of 'authority'), 13(4), 13(5).

54 See, eg, Victorian Ombudsman, *Investigation following concerns raised by a Community Visitor about a mental health facility* (2014).

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55 *Disability Act 1996* (Vic) pt 3 div 6.

56 *Disability Act 1996* (Vic) pt 3 div 5.

57 *Disability Act 1996* (Vic) ss 132E, 132F.



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171. Other bodies can investigate systemic issues. The Ombudsman, for example, can take and investigate complaints and systemic issues regarding DFATS.
  172. The Disability Services Commissioner can investigate complaints and systemic issues relating to conditions and treatment of residents at community-based disability services, but not DFATS.
  173. The Senior Practitioner, Disability can instigate individual reviews, service reviews or organisation reviews. He can also be requested by the Disability Services Commissioner to provide clinical input into its investigations.
  174. Individual complaints may be made to the Disability Services Commissioner, the Ombudsman, IBAC or VEOHRC depending on the nature of the complaint and service provider involved.
  175. Disability laws also confer review functions on the Senior Practitioner, OPA and the Victorian Civil and Administrative Tribunal in relation to the creation and review of treatment plans for people subject to compulsory treatment.<sup>58</sup>

### **Prison transport**

176. Prison transport services in Victoria are provided by a contractor to Corrections Victoria.
177. There are no bodies that regularly inspect this service.
178. Detainees can make complaints about conditions and treatment to the Ombudsman, IBAC or VEOHRC depending on the nature of the complaint. Both JARO and the Ombudsman can look at systemic issues involving prison transport.

### **Court cells**

179. Some court cells in Victoria are designated as police gaols and subject to the same monitoring arrangements as those facilities, but not all.
180. The Department of Justice and Regulation advised that, depending on location, court cells may be managed by the courts, by Victoria Police or by contractors.
181. There are no bodies that regularly inspect these facilities.

### **Secure welfare (child protection)**

182. In the past, the Ombudsman has visited DHHS's secure welfare service for young people to assess conditions and treatment of residents.
183. CCYP previously piloted an independent visitor scheme for this service and other out-of-home residential services for children and young people. The pilot has been completed and CCYP advised it is developing a new monitoring strategy.
184. The Ombudsman takes complaints from young people living in this service and can investigate systemic issues regarding their conditions and treatment. CCYP can also conduct inquiries into these issues, as well as monitoring services through its receipt of 'category one' incidents.<sup>59</sup> It has powers to inquire into services provided to individual, or groups of, children.
185. As with other places of detention, IBAC and VEOHRC may be able to take complaints depending on the nature of the complaint.

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<sup>58</sup> *Disability Act 1996* (Vic) ss 154-155, 168-169.

<sup>59</sup> *Commission for Children and Young People Act 2012* (Vic) s 60A. Category one incidents are the most serious incidents and include the death of a young person and allegations of physical or sexual assault.

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## Post-sentence supervision

186. People subject to ‘detention orders’ under Victoria’s serious sex offender laws remain in prison for the duration of those orders.<sup>60</sup> Their conditions and treatment are monitored in the same way as prisoners (see pages 26 and 28).
187. As page 24 noted, serious sex offender laws also allow people to be placed on ‘supervision orders’ that require them to reside in specialist residential facilities. The Ombudsman can take complaints from these people about their conditions, and has visited these facilities on occasion in the past. As with other places of detention, IBAC and VEOHRC may also have a role depending on the nature of the complaint.
188. The Victorian Government has announced plans to create a new Post Sentence Authority in 2018 to monitor people who are the subject of these orders. The Bill to create the Authority focuses on compliance with orders, rather than the conditions in which detainees are held.<sup>61</sup>

## De facto detention

189. The investigation also examined monitoring arrangements for care settings, assuming that some of these may fall within OPCAT’s scope.
190. Victorian mental health and disability facilities are visited regularly by OPA’s community visitor program. The Mental Health Complaints Commissioner, Health Complaints Commissioner, Disability Complaints Commissioner and the Ombudsman can take complaints, depending on the type of service provider involved.

191. Arrangements for disability services are expected to change under the National Disability Insurance Scheme (NDIS). The Commonwealth Government has announced plans to establish a new NDIS Quality and Safety Commission from 1 January 2018. The Commission will monitor safety, handle complaints, respond to incidents such as alleged abuse, and provide leadership in reducing and eliminating restrictive practices.<sup>62</sup>
192. DHHS advised that state regulatory mechanisms will remain until mid-2019. It advised that the continuing role of state monitoring systems following the NDIS roll out is still to be settled between state and Commonwealth governments.
193. Monitoring in aged care homes is also split between Commonwealth and state bodies. OPA’s community visitor scheme regularly visits Supported Residential Services, which are state-regulated, privately-operated services that provide supported accommodation, including to elderly people.<sup>63</sup>
194. Most monitoring occurs through the Commonwealth Government’s Aged Care Complaints Commission and Australian Aged Care Quality Agency. The Commonwealth Government commissioned a review of these arrangements while this investigation was under way, following revelations about poor care of residents at a South Australian service.<sup>64</sup>
195. The Ombudsman, IBAC and VEOHRC may also be able to take complaints about these facilities depending on the nature of the facility and the type of complaint.<sup>65</sup>

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60 *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) s 42.

61 *Serious Sex Offenders (Detention and Supervision) Amendment (Governance) Bill 2017* (Vic).

62 Department of Social Services (Cth), *NDIS Quality and Safeguarding Framework* (29 August 2017) <[www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework](http://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-quality-and-safeguarding-framework)>.

63 *Supported Residential Services (Private Proprietors) Act 2010* (Vic) pt 9.

64 Minister for Aged Care (Cth), ‘Federal Aged Care Minister to Commission Review of Aged Care Quality Regulatory Processes’ (Media Release, 1 May 2017); Minister for Aged Care, (Cth) ‘Quality review released: Aged care assessment visits to be unannounced’ (Media release, 25 October 2017).

65 *Ombudsman Act 1973* (Vic) ss 2 (definition of ‘authority’), 13(3), 13(4).

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## Are Victoria's monitoring schemes OPCAT-compliant?

196. While Victoria has multiple types and layers of monitoring for its places of detention, none are completely compliant with OPCAT or the standards set by the UN Subcommittee on the Prevention of Torture (see pages 34-35).
197. The investigation measured Victoria's current arrangements against key standards for NPMs:
- functional independence
  - necessary resources to carry out OPCAT inspections
  - mandate to make regular preventive visits, including unannounced visits
  - ability to access information about the number of places of detention, the number of people detained in those places, and their treatment and conditions
  - ability to access all places of detention and speak privately with detainees
  - ability to make recommendations about the treatment and conditions of people in detention, and engage in dialogue with authorities about their implementation
  - ability to publish annual reports.
198. Figure 3 (see next page) is a 'traffic light' assessment of how the key monitoring bodies currently measure against these standards.
199. Victoria's independent prison, youth justice and community visitor schemes, along with the Ombudsman, are the only bodies that have been conducting regular visits to assess conditions in places of detention.
200. The APT, the key international organisation promoting OPCAT's implementation, notes that independent visiting schemes 'are not without limitations in relation to OPCAT criteria', particularly because they rely on volunteers and focus on frequency of visits rather than system-wide analysis.<sup>66</sup>
201. The Ombudsman's pilot OPCAT-style inspection shows how the investigative powers of the Ombudsman and other investigation bodies can be successfully adapted to OPCAT inspections.
202. However, the Ombudsman and other investigative bodies do not currently have a legislative mandate to conduct OPCAT-style inspections and no funding to conduct them in the long term. The APT notes that granting OPCAT inspection functions to ombudsman offices 'will always require additional resources, both human and financial' as well as internal changes to the office's expertise and operations.<sup>67</sup>
203. Other monitoring bodies operate within government departments, and do not satisfy OPCAT's requirements for independence. Or they are focused on resolving or investigating individual complaints, compared with OPCAT's focus on prevention of abuses.

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<sup>66</sup> Association for the Prevention of Torture, *OPCAT Implementation Manual* (2010) 220.

<sup>67</sup> *Ibid* 211-213.

Figure 3: Current monitoring bodies – comparison with key features of National Preventative Mechanisms

	Independence	Mandate to conduct regular monitoring visits	Necessary resources to conduct regular monitoring visits	Access to places of detention, information and detainees	Power to make recommendations	Power to report publicly
Victorian Ombudsman	Statutory office headed by independent officer of Parliament	No statutory mandate but occurs in practice	No specific funding to conduct regular monitoring visits	Statutory investigation powers	Statutory power to make recommendations	Statutory power to report to Parliament
Independent prison visitors	Statutory volunteer officers appointed by minister	Statutory mandate to visit prisons	Volunteer program with nominal funding	Statutory right to access prisons and speak with detainees, but not to access information	No statutory power but can occur in practice	No statutory power and reports are not published in practice
Justice Assurance and Review Office (JARO)	Business unit in the Department of Justice and Regulation	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	No statutory power but occurs in practice	No statutory power but occurs in practice	No statutory power and reports are not published in practice
IBAC	Statutory office headed by independent officer of Parliament	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory investigation powers	Statutory power to make recommendations	Statutory power to report to Parliament
Commission for Children and Young People (including its independent visitor schemes)	Statutory office headed by Governor in Council appointee	No statutory mandate but occurs in practice under independent visitors scheme	No specific funding to conduct regular monitoring visits	Statutory right to access information but not places or detainees. Occurs in practice under independent visitor scheme	Some statutory powers. Occurs regularly in practice	Statutory power in some circumstances
Public Advocate	Statutory officer appointed by Governor in Council	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory powers	No statutory power, except where a matter has been referred by minister	No statutory power to report
Community visitors	Statutory volunteer officers appointed by Governor in Council	Statutory mandate to visit facilities	Funded volunteer program. Likely to require extra resources for OPCAT inspections	Statutory powers	Statutory power to make recommendations to board	Statutory power to report via board and annual report to Parliament

	Independence	Mandate to conduct regular monitoring visits	Necessary resources to conduct regular monitoring visits	Access to places of detention, information and detainees	Power to make recommendations	Power to report publicly
Chief Psychiatrist	Statutory officer appointed by departmental secretary	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory powers	Statutory power to make recommendations	Statutory power to report via secretary and publish annual report
Senior Practitioner, Disability	Statutory officer appointed by departmental secretary	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory powers but may only be used for specific purposes	Statutory power to give directions to services, not make recommendations	Statutory requirement to publish annual report
Health Complaints Commissioner	Statutory officer appointed by Governor in Council	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory investigation powers to speak with persons and obtain documents. Search warrant required to enter premises	Statutory power to make recommendations	Statutory power to report to Parliament
Mental Health Complaints Commissioner	Statutory officer appointed by Governor in Council	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory inspection powers but may only be used in course of investigating a complaint	Statutory powers but may only be used in course of investigating a complaint	Statutory power to publish reports
Disability Services Commissioner	Statutory officer appointed by Governor in Council	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	Statutory investigation powers	Statutory power in some cases	Statutory power in some circumstances
VEOHRC	Statutory office with board appointed by Governor in Council	No statutory mandate and has not occurred in practice	No specific funding to conduct regular monitoring visits	No statutory powers (although power to review programs and practices on request)	No express power but occurs under other statutory powers	Statutory power

# Implementing OPCAT – what needs to happen?

## Who should conduct OPCAT inspections?

204. It is a matter for the Victorian Government to decide which body or bodies to designate as its NPMs.

205. The APT has identified several options:

- establishing a new specialised agency to conduct OPCAT inspections
- designating an existing institution, such as an ombudsman's office or human rights commission
- designating an existing institution, with additional involvement of civil society organisations
- designating multiple existing institutions to inspect places of detention within their areas of responsibility and expertise
- involving other bodies, such as independent visitor schemes.<sup>68</sup>

206. The box at right describes how other countries around the world have implemented OPCAT, including New Zealand and the United Kingdom. Both of those countries designated multiple existing bodies as their NPMs.

207. Designating an existing body or bodies has advantages in terms of resources but, as the previous section noted, none of Victoria's current monitoring bodies satisfy all key standards for NPMs at present.

208. Regardless of which option the Victorian Government chooses, changes will be required to implement OPCAT here. This section explores some of the practical changes involved – legislative, resourcing and operational.

## What legislative changes are needed?

209. The independence and powers of NPM/s should be guaranteed by law.

210. Some monitoring bodies already have strong legislative powers to conduct OPCAT inspections (see Figure 3 on previous page), if the Government chooses the option of designating one or more of those bodies.

211. The Ombudsman conducted the pilot OPCAT-style inspection at DPFC, for example, using the powers in the Ombudsman Act.

### How have other countries implemented OPCAT?

Sixty-five countries around the world have designated NPM/s to conduct OPCAT inspections.<sup>69</sup>

They have adopted different models:

- fifteen countries created new bodies
- thirty-five designated ombudsman's offices, either to perform as NPM/s on their own or with assistance from other bodies and civil society organisations
- eight designated their national human rights commission
- four designated multiple NPM/s that specialise in different places of detention
- three adopted other systems that suit their local governance arrangements.<sup>70</sup>

New Zealand and the United Kingdom both designated multiple existing bodies as their NPMs.



68 Association for the Prevention of Torture, above n 66, 208-222.

69 Eighty-four countries in total had ratified OPCAT at the time this report was written, but not all had designated NPMs yet.

70 Association for the Prevention of Torture, *OPCAT Database* (viewed 28 September 2017) <<http://www.apt.ch/en/opcat-database>>.





New Zealand has four NPMs that conduct OPCAT inspections. The New Zealand Ombudsman inspects prisons, immigration detention facilities, health and disability places of detention, and children and young people's residences. The New Zealand Office of the Children's Commission also inspects children and young people's residences.

The Independent Police Conduct Authority inspects places of police custody and the Inspector of Service Penal Establishments inspects places of military detention. The New Zealand Human Rights Commission was designated as the central NPM and it coordinates the other NPMs, produces reports and liaises with the UN Subcommittee on the Prevention of Torture.

The New Zealand Parliament passed OPCAT-specific legislation to set out the powers and functions of its NPMs.

The United Kingdom designated 18 existing bodies when it ratified OPCAT in 2009, and has since added another three NPMs.

They include independent inspectorates for prisons and police forces, the Children's Commissioner for England, the Healthcare Inspectorate for Wales, the Mental Welfare Commission for Scotland, and volunteer visitor schemes for police custody, court cells and prison transport.

Her Majesty's Inspectorate of Prisons coordinates the NPM network in the United Kingdom.

The United Kingdom's NPMs use their existing legislative powers to conduct OPCAT inspections.

212. The Ombudsman Act gives the Ombudsman the power to 'obtain information from such persons and in such manner as the Ombudsman thinks fit'.<sup>71</sup> Authorised Ombudsman staff can enter and inspect authority premises, request information and documents, speak with people and interview witnesses.<sup>72</sup>
213. The Ombudsman's independence is guaranteed in Victoria's constitution<sup>73</sup> and she can make recommendations and table reports in the Parliament.<sup>74</sup>
214. There are numerous examples of modern Ombudsman offices and other monitoring bodies using their investigation powers to improve conditions for people in detention.<sup>75</sup>
215. The Commonwealth Ombudsman also uses the investigation powers in its legislation to inspect immigration detention facilities.
216. There would, however, still be advantages in the Victorian Government enacting OPCAT-specific legislation for its NPM/s.
217. Investigative powers are often geared towards making findings about specific allegations of misconduct or ill treatment. OPCAT inspections, by contrast, are focused on identifying risk factors and protective measures to prevent abuses in future. In the words of the APT, OPCAT inspections emphasise 'cooperation, not condemnation'.<sup>76</sup>

<sup>71</sup> *Ombudsman Act 1973* (Vic) s 17(3).

<sup>72</sup> *Ombudsman Act 1973* (Vic) ss 18(1), 21.

<sup>73</sup> *Constitution Act 1975* (Vic) s 94E.

<sup>74</sup> *Ombudsman Act 1973* (Vic) ss 23, 25.

<sup>75</sup> *Victorian Ombudsman*, above n 5, 42, 45, 54.

<sup>76</sup> *Association for the Prevention of Torture*, above n 73, 13.

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218. Existing monitoring bodies often have some limitations on their powers. The Ombudsman Act, for example, restricts Ombudsman staff's ability to speak with a person who has a 'mental impairment' without an independent person present.<sup>77</sup> This is an important protection in the context of an investigation into maladministration, but limits the ability of detainees to speak with Ombudsman staff in the context of an inspection.
219. New Zealand passed OPCAT-specific legislation to confer functions, powers and protections on its NPMs, including the New Zealand Ombudsman, and to provide for confidentiality of information.<sup>78</sup>
220. Effective implementation of OPCAT in Victoria requires similar changes to give NPMs:
- a clear legislative mandate to conduct regular, preventative inspections and other NPM functions
  - jurisdiction over all places of detention within NPM responsibilities, including any private facilities where relevant
  - powers to access places of detention (including making unannounced visits), information and unrestricted power to speak with detainees
  - power to make and follow up implementation of recommendations, and report publicly
  - confidentiality of information collected by the NPM
  - appropriate immunities and protections for NPM officers, detainees and other witnesses
  - powers to share information with other NPMs and the UN Subcommittee.

## What resourcing changes are needed?

221. The Victorian Government will also need to work with its designated NPM/s to develop an appropriate budget for inspections and other NPM functions.

## How much do inspections cost?

222. The Victorian Ombudsman's pilot OPCAT-style inspection is estimated to have cost at least \$105,000.
223. This includes salary costs for 11 officers who attended the inspection on different days.<sup>79</sup> It also includes the cost of a clinical psychologist, who was contracted to assist for just over two days of the inspection, and the assistance of an onsite interpreter for one afternoon. It does not include travel and accommodation costs borne by the Victorian Ombudsman.
224. There were also costs involved in planning for, and reporting on, the inspection. These included liaising with DPFC about arrangements for the inspection, meeting with monitoring bodies and civil society organisations to obtain intelligence about the prison, analysing documentary and survey evidence and drafting the report.<sup>80</sup>
225. The Department of Justice and Regulation advised there were also significant resource implications for the prison, including resources required to collect documentation for the inspection team.

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<sup>77</sup> *Ombudsman Act 1976* (Vic) ss 18E(3)-(6).

<sup>78</sup> *Crimes of Torture Act 1989* (NZ) pt 2.

<sup>79</sup> The New Zealand Ombudsman made the services of its Chief Inspector available to the Victorian Ombudsman for the purposes of the pilot inspection. A notional amount for the Chief Inspector's salary has been included for the purposes of this estimate.

<sup>80</sup> Desktop publishing costs were not possible to estimate at the time the report was finalised and were not included.



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226. The cost of inspections is likely to vary, of course, depending on the place of detention, its location and the extent of risks at the facility. Visits to smaller places of detention may cost less. Visits to large facilities in regional areas, requiring expert advice, are likely to cost more.

### What funding would NPMs need?

227. The resources needed to implement OPCAT in Victoria depend on the number of places of detention subject to OPCAT inspections, and how often they are inspected.

228. The budget for the Office of the Inspector of Custodial Services in Western Australia, which conducts OPCAT-style inspections at 23 prisons and youth justice centres in that state, as well as police lock-ups, court custody centres and prison transport, provides an indication of the funding likely to be required for an NPM in Victoria. Its total expenses in 2015-16 were \$3.6 million.<sup>81</sup>

229. Our investigation identified more than 60 places of detention that clearly fall within the scope of OPCAT in Victoria (see page 24).

230. This does not include prison transport or court cells, where people are detained temporarily.

231. It also does not include care settings where people may be deprived of liberty, such as state-owned or regulated disability accommodation and nursing homes. Previous work by the Victorian Ombudsman and others has highlighted the vulnerability of people in these types of facilities to abuse and neglect.<sup>82</sup>

232. The United Kingdom currently conducts OPCAT inspections in these settings. In 2016, New Zealand's Human Rights Commission recommended that its government designate a body to monitor aged care and disability residences where people are or may be prevented from leaving at will, following comments by the UN Subcommittee about gaps in New Zealand's OPCAT implementation.<sup>83</sup>

233. The Australian Human Rights Commission has indicated that Australia might wish to progressively implement OPCAT by establishing NPM/s with broad mandates but initial limited focus on particular places of detention.<sup>84</sup> This could assist the Victorian Government and its NPM/s to manage their resources in the short term.

234. Whichever places are included, NPMs will need funding to build inspection teams with multi-disciplinary expertise, and adequate gender and cultural representation. To promote cultural safety and rights, Aboriginal and Torres Strait Islander representation in NPMs and their inspection teams will be particularly important, given the overrepresentation of this community in adult prisons and youth justice facilities.

235. In addition to inspections, NPMs will also require resources for:

- developing and reviewing inspection standards and processes
- general corporate costs such as management, supervision and training of staff
- other functions identified by the UN Subcommittee, such as input into legislation and policy, engagement with authorities about implementing recommendations, and contact with other NPMs and the UN Subcommittee.<sup>85</sup>

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81 Office of the Custodial Inspector (WA), *Annual Report 2015-16* (2016).

82 Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 1 - the effectiveness of statutory oversight* (2015); Victorian Ombudsman, *Reporting and investigation of allegations of abuse in the disability sector: Phase 2 - incident reporting* (2015); Australian Law Reform Commission, *Elder Abuse*, Final Report No 131 (2017). See also community visitor annual reports at the Office of the Public Advocate website <[www.opa.vic.gov.au](http://www.opa.vic.gov.au)>.

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83 Human Rights Commission (NZ), *The scope and role of the Optional Protocol to the Convention Against Torture (OPCAT) in relation to Aged care and disability residences and facilities* (2016).

84 Australian Human Rights Commission, *OPCAT in Australia: Consultation Paper* (2017) paragraphs 54-62.

85 *UNSPPT Guidelines on NPMs* paragraphs 28, 35, 38-40. See also *Association for the Prevention of Torture*, above n 66, 246, 256-260.

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## What operational changes are needed?

236. The Victorian Government should also take practical steps to give NPMs ready access to information and intelligence about places of detention in Victoria.

237. In its comments on a draft of this report, DHHS noted that:

Collaborative approaches with existing oversight mechanisms, including those within the department's auspice, will be instrumental in the model of National Preventative Mechanisms adopted in Victoria.

238. DHHS suggested arrangements be implemented to ensure that NPMs draw on the expertise of other monitoring bodies so the needs of vulnerable people are identified and addressed. In particular, it noted that:

people with disability and children and young people may require specific support associated with their cognitive presentation and developmental capacity to facilitate their communication, participation and their understanding of processes and their rights.

239. In the case of prisons, the Ombudsman has a longstanding arrangement with Corrections Victoria under which Corrections Victoria provides regular data about the number of people in prisons and police cells.

240. The investigation team was also able to obtain information about DPFC without the need for coercive powers:

- Corrections Victoria provided statistical and other information about DPFC
- other monitoring bodies shared complaint data and intelligence about DPFC.

241. Victoria's NPMs would be assisted by similar arrangements.

242. In the case of detention laws that are rarely used, it would be helpful for detention authorities to notify the relevant NPMs when these laws are used. There are already examples of these arrangements operating in Victoria. Victoria's terrorism legislation requires authorities to notify the Victorian Ombudsman and IBAC of the making of a preventative detention order.<sup>86</sup> Victoria's disability laws require the Senior Practitioner, Disability to be notified when a person is admitted to DFATS, Victoria's residential treatment facility.<sup>87</sup>

243. The Victorian Government may also wish to review other monitoring bodies' powers to ensure they can share information and data with Victoria's NPM/s. It may also wish to ensure that, where its NPMs identify particular abuses that warrant investigation, NPMs can refer these to the appropriate body for further consideration.

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<sup>86</sup> *Terrorism (Community Protection) Act 2003* (Vic) s 13F.

<sup>87</sup> *Disability Act 1996* (Vic) s 152(1)(f).

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**Part Two:**  
**Pilot inspection at the**  
**Dame Phyllis Frost Centre**  
**(12-18 July 2017)**

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# About the Dame Phyllis Frost Centre

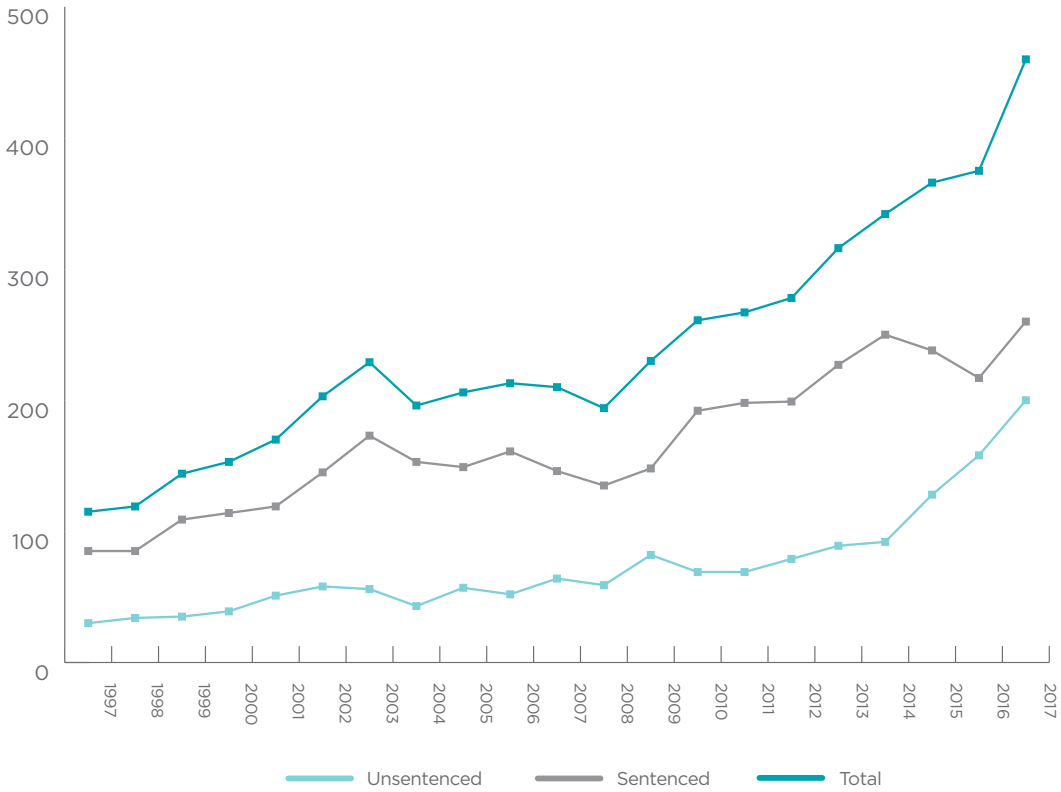
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244. The Dame Phyllis Frost Centre (DPFC) is Victoria's main women's prison and the only reception and remand prison for women in the state.
245. It is located in Ravenhall, around 20 kilometres west of central Melbourne.
246. The prison accommodates maximum, medium and minimum security-rated women. It also has a mothers and children unit that houses women whose children are living with them in prison. Women can apply to keep their children with them until the age of five.
247. The facility is one of two women's prisons in Victoria (the other is Tarrengower Prison, a minimum-security facility). Both are publicly owned and run by Corrections Victoria.
248. DPFC opened in 1996. Originally built to accommodate 125 prisoners, it had the capacity to accommodate 482 women as at 30 June 2017.
249. The prison has an open layout. Units and areas of the prison are not fenced off from one other, except for the units for protection and separated prisoners and prisoners receiving acute mental health treatment.
250. At the time of the inspection, the prison was undergoing significant change.
251. It was coping with an increase in women at the prison, driven by rising imprisonment rates in Victoria.<sup>88</sup>
252. Figure 4 (see next page) illustrates the increase in women at DPFC over the past 20 years. The total number of women at the prison grew from 278 to 460 in the five years from 30 June 2012 to 30 June 2017. The number of women on remand at the prison more than doubled in the same period, from 79 women to 200 women.
253. Ombudsman staff were told that growth is likely to continue, with a projected population of 700 women at the prison by 2019.
254. A major expansion of facilities is underway to cater for this growth. A new unit with an additional 20 beds was due to open the week after the inspection. The prison has plans to open a new health and wellbeing precinct in late 2018, and plans to build a new reception area, new industries buildings and a new gatehouse. There were construction works and tradespeople onsite throughout the pilot inspection.
255. The prison is also moving from an 'incentive-based' model to a 'needs-based precinct' model.
256. Under the incentive-based model, women are placed in better or worse accommodation in the prison depending on their behaviour.
257. Under the needs-based model, women will be placed in accommodation that addresses their individual needs.
258. The prison has already opened a rehabilitation and transition precinct to house women preparing for release into the community. As noted, it plans to open a health and wellbeing precinct next year.

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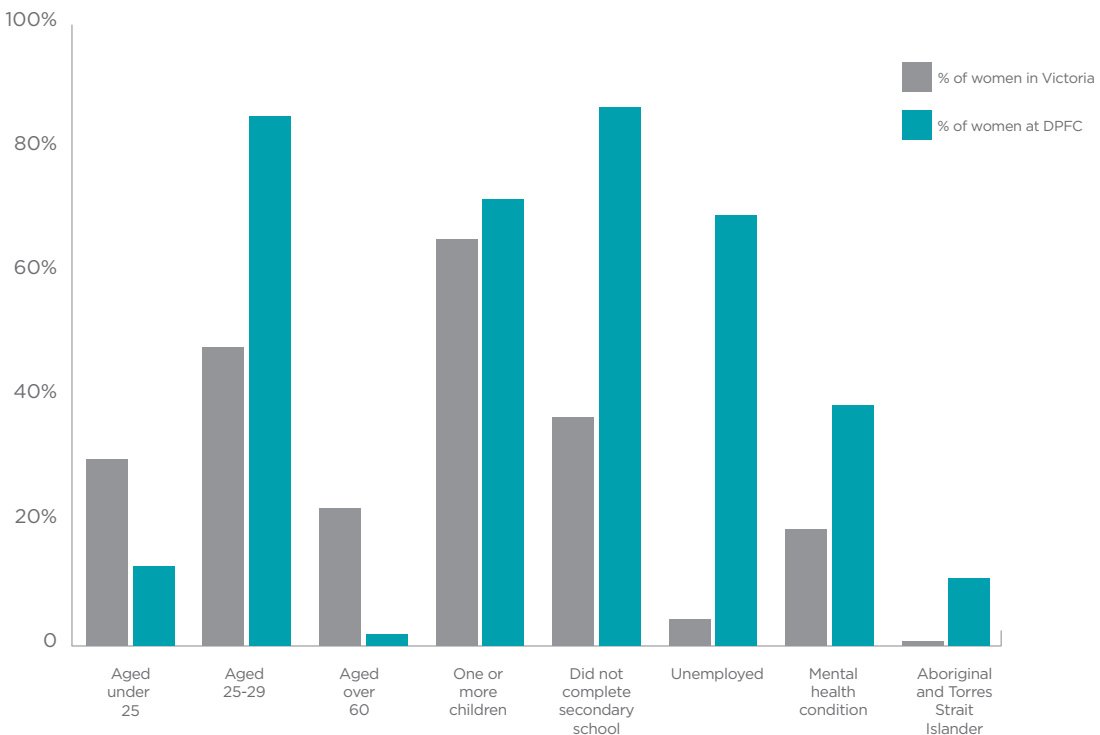
<sup>88</sup> Australian Bureau of Statistics, *Prisoners in Australia, 2016*, cat no 4517.0 (2016).

Figure 4: Number of sentenced and unsentenced women at DPFC at 30 June, 1997-2017



Source: Corrections Victoria.

Figure 5: How do women at DPFC compare with women in Victoria?



Source: Corrections Victoria; Australian Bureau of Statistics.

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## About the women

259. There were 444 women at DPFC on the first day of the inspection.
260. There were also seven children living with their mothers in the mothers and children unit, and eight of the women were pregnant.
261. Figure 5 (see previous page) compares the women at DPFC on the first day of the inspection with women in Victoria generally.
262. It confirms that women at DPFC are more likely to come from backgrounds of disadvantage. They are less likely to have completed secondary school, more likely to have been unemployed, and more likely to have poor mental health.
263. It also confirms the higher rates of imprisonment for Aboriginal and Torres Islander women in Victoria. Aboriginal and Torres Strait Islander people make up 0.8 per cent of Victoria's population<sup>89</sup> but almost 11 per cent of the population at DPFC. The rate of imprisonment for Aboriginal and Torres Strait Islander women in Victoria has increased since 2007, from a rate of 151.8 women per 100,000 in 2007 to 273 women per 100,000 in 2016.<sup>90</sup>
264. The inspection team could not obtain reliable data on the number of women with a disability at DPFC, or the number of women who were survivors of violence and abuse.
265. The Department of Justice and Regulation provided data on women with disability at DPFC. However, for the reasons noted on pages 94-95, the inspection team does not consider data on cognitive disability to be reliable. The Department also advised that it can be difficult to obtain and record data on physical disabilities, 'particularly if women do not receive support or services'.
266. Research shows that people with cognitive disability are overrepresented in the justice system.<sup>91</sup>
267. The Department noted that the accuracy of its data on family violence is affected by the fact that women may not wish to disclose it, or may prefer to do so during professional counselling, in which case it would not be shared with custodial staff or via Corrections Victoria systems.<sup>92</sup>
268. Women in prison in Australia tend to have extensive histories as victims of violence and abuse, including childhood sexual abuse, family violence and other violence.<sup>93</sup> Aboriginal and Torres Strait Islander women in prison are even more likely than other women prisoners to be survivors of family violence and/or sexual violence.<sup>94</sup>
269. On the first day of the inspection, 41 per cent of the women at DPFC were unsentenced (on remand awaiting trial or sentencing). Fifty-nine per cent were serving sentences, most under five years.
270. For 42 per cent of the women, this was their first time in an adult prison.

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89 Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016*, cat no 2071.0 (2017).

90 Corrections Victoria, *Prisoner Statistical Profile 2006-07 to 2015-16* (30 June 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/annual+prisoner+statistical+profile+2006-07+to+2015-16>>.

91 Eileen Baldry et al, 'Reducing Vulnerability to Harm in Adults with Cognitive Disabilities in the Australian Criminal Justice System' (2013) 10 *Journal of Policy and Practice in Intellectual Disabilities* 222; Corrections Victoria, 'Acquired Brain Injury into the Victorian Justice System' (Corrections Research Paper Series Paper No 4, 2011).

92 Department of Justice and Regulation (Vic) response to draft inspection report, 27 October 2017.

93 Australian Institute of Family Studies, *Addressing women's victimization histories in custodial settings*, ACSSA Issues No 13 (2012).

94 Human Rights Law Centre, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing overimprisonment* (2017).

# Inspection methodology

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271. The Ombudsman's aim was to conduct the pilot inspection at DPFC using OPCAT standards where possible.
272. Ombudsman staff carried out substantial research and consultation to meet this aim. This chapter explains the steps they took.

## Consulting other inspection bodies

273. The inspection team drew on the expertise of inspection bodies in Australia and internationally.
274. These included the New Zealand Ombudsman, which has conducted OPCAT visits since 2007, the Western Australian Office of the Inspector of Custodial Services (WAOICS), the Tasmanian Custodial Inspectorate, and the Commonwealth Ombudsman.
275. The Association for the Prevention of Torture (APT), a Geneva-based non-government organisation that builds capacity of countries to implement OPCAT, provided advice and guidance.
276. The team also consulted publicly available material, such as publications on detention monitoring by the International Committee of the Red Cross, Her Majesty's Inspectorate of Prisons (HMIP) in the United Kingdom and the Norwegian Ombudsman.
277. A member of the team accompanied the Commonwealth Ombudsman's office on one of its inspections of immigration detention facilities, as an observer.

## Inspection tools

278. The inspection team developed tools to assist the inspection, including surveys for prisoners and staff (see Appendices 1 and 2) and aide-memoires for the inspection team (see Appendix 3).
279. The prisoner survey was based on surveys used by:
  - the New Zealand Ombudsman
  - WAOICS
  - the Tasmanian Custodial Inspectorate
  - HMIP
  - and the Measuring the Quality of Prison Life survey developed by Professor Alison Lieblich and colleagues at the Cambridge University Institute of Criminology.
280. The APT provided comments on a draft version of the survey. It was translated into the most prevalent language at the prison after English.
281. The staff survey was based on the survey used by WAOICS, with questions added or changed to suit a women's prison and Victoria's prison system.
282. Staff also developed aide-memoires to guide the inspection team about what to look for at DPFC. They listed relevant Victorian laws and regulations, notably the *Corrections Act 1986* (Vic) and the *Charter of Human Rights and Responsibilities Act 1996* (Vic), Corrections Victoria's policy and international standards.
283. The aide-memoires were adapted from a format used by the New Zealand Ombudsman. Each aide-memoire related to a particular issue at the prison, such as accommodation, remand prisoners, health, and contact with family and community.

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## Announcing the inspection

284. National Preventive Mechanisms (NPMs) can conduct both unannounced and announced inspections. Many NPMs do both. Most HMIP and New Zealand Ombudsman inspections are unannounced.
285. For practical reasons, the Ombudsman chose to announce this inspection four weeks in advance.
286. The inspection was the first of its kind in Victoria and differed significantly from a traditional Ombudsman investigation.
287. Ombudsman staff met with the management of DPFC on 16 June 2017 to announce the prison would be the site for the pilot inspection. They explained that the purpose of the inspection was preventive, rather than an investigation into a specific allegation or incident. They also discussed the practical arrangements and requested preliminary information.
288. Staff took steps to mitigate any potential effects of announcing the inspection in advance.
289. The prison management was receptive and cooperated fully with the inspection and requests for information.
290. To ensure that staff, women and visitors at DPFC were aware of the inspection, posters about the inspection and its purpose were delivered to the prison. These were displayed around the prison.

## The inspection team

291. OPCAT requires NPMs to have the appropriate capabilities and professional expertise. It also states that they should strive for gender balance and the adequate representation of ethnic and minority groups.<sup>95</sup>
292. The inspection team was made up of 10 women and two men and included:
- the New Zealand Ombudsman's Chief Inspector, who was seconded for the duration of the inspection. She has extensive experience conducting OPCAT inspections as well as working in prisons in the United Kingdom and New Zealand. She is also a qualified nurse
  - a clinical psychologist with extensive experience in adult mental health, child psychology and trauma
  - investigation officers from the Ombudsman's office, including an officer with nursing qualifications, officers who speak relevant community languages, and officers chosen for their qualifications and knowledge in law, criminology, human rights and the criminal justice system.

## Addressing gaps in representation

293. Victoria's NPM/s will need to ensure they have Aboriginal and Torres Strait Islander people on their inspection teams given the overrepresentation of Aboriginal and Torres Strait Islander people in Victorian prisons.<sup>96</sup>

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<sup>95</sup> OPCAT, above n 2, art 18(2).

<sup>96</sup> At the time of the inspection there were women at the prison who identified as both Torres Strait Islander and Aboriginal.



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294. As the inspection team did not include any Aboriginal people, the team sought advice from:

- Aunty Zeta Thomson, a Wurundjeri and Yorta Yorta elder, Koori Independent Prison Visitor and member of the Women's Correctional Services Advisory Council
- Ms Melissa Brickell, a descendent of the Yorta Yorta and Wiradjeri people who is a member of Reconciliation Victoria
- Mr Jidah Clark, Senior Advisor in Aboriginal Policy at the Victorian Equal Opportunity and Human Rights Commission (VEOHRC)
- the prison's Aboriginal Wellbeing Officer.

295. Based on the advice provided, the inspection organised an informal discussion group for Aboriginal and Torres Strait Islander women who wished to attend.

296. The discussion was held early on during the inspection to allow the women time to become familiar with Ombudsman staff and to decide whether they wanted to speak to them later.

297. The group was held in a safe space ('Healing space', see page 92), with the Aboriginal Wellbeing Officer present for some of the time. Two members of the inspection team were present for the whole afternoon, which allowed women to come and go without any pressure to join a structured discussion.

298. The team also met with the prison's Multicultural Liaison Officer before the inspection to find out about the main languages spoken at the prison and the issues faced by women from culturally diverse backgrounds.

299. The inspection team arranged a focus group meeting for women from the largest non-English speaking cultural group, and arranged for a qualified interpreter to be present.

## Intelligence-gathering

300. The inspection team met with civil society organisations and Victorian monitoring bodies to gather information about current issues relating to DPFC.

301. The team consulted with six civil society organisations with knowledge of DPFC and the Victorian prison system, nine monitoring bodies, including the Independent Prison Visitors who visit DPFC, and a former prisoner.

302. The inspection team also called for public submissions about DPFC and the implementation of OPCAT. The team received submissions from: the Victorian Aboriginal Legal Service, Victoria Legal Aid and a Monash University academic, Dr Susan Baidawi.<sup>97</sup>

## The inspection week

303. The inspection was conducted over seven days from Wednesday 12 July to Tuesday 18 July 2017.

304. The team attended the prison on the weekend to observe weekend visits and activities. It also attended from 7.30am some mornings to observe unlocking of cells and medication rounds, and stayed until 7.30pm one evening to observe the lock up at night.

305. The inspection team met with the General Manager and prison management on the first morning and received a security briefing.

306. DPFC made keys and radios available to the team, allowing full and unescorted access around the prison. It also allocated a meeting room to the team to use as a base throughout the week.

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<sup>97</sup> Dr Baidawi's submission included a copy of a report by the Criminal Justice Research Consortium at Monash University: Trotter, C et al, *A Strategic Framework for the Management of Australia's Ageing Prisoners* (Monash University, 2013).

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307. The team spent the first afternoon distributing the prisoner survey. The team identified women who needed help to complete the survey, for example because English is their second language or due to literacy issues.
308. The team gave women postage pre-paid envelopes to return the surveys (mail to the Victorian Ombudsman is not monitored by the prison). They also collected completed surveys during the week.
309. The team distributed 386 prisoner surveys in total, and received 179 completed surveys, a response rate of 46 per cent. Appendix 1 sets out the responses to the survey.
310. The team handed out copies of the staff survey when walking around the prison. They also attended the 7.30am staff parade on two mornings, and left copies at prison reception.
311. Of 341 staff surveys left at the prison, 73 were returned. This equates to a response rate of 21 per cent. Appendix 2 sets out the responses.
312. The inspection team split up throughout the rest of the week to visit different areas and observe activities around the prison. They spoke extensively with staff and women.
313. At the end of the week, the Acting Deputy Ombudsman and the Chief Inspector met with the General Manager of the prison to provide preliminary feedback about the inspection team's observations.

## Triangulation of evidence

314. This report draws on a range of sources including documentary evidence, the inspection team's observations, conversations with women and staff, survey results, and advice from civil society and other oversight bodies.
315. In its response to the draft report, the Department of Justice and Regulation expressed the view that this report relies too heavily at times on 'prisoner survey results and anecdotal reports from individuals ... in drawing conclusions/ making findings with respect to compliance with OPCAT and human rights law more generally'.
316. NPMs are often informed by prisoner surveys and comments from a range of individuals, including staff and prisoners. Where it is possible to do so without identifying individuals, this report indicates where the information came from (for example a staff member or a prisoner).
317. An important part of the methodology used for this inspection was the triangulation of evidence to ensure that findings are based on more than one source. Inspection bodies like the HMIP in the United Kingdom compare observations and discussions during inspection visits with survey responses and other evidence to ensure their reports have a robust evidence base.
318. The inspection team invested time reading and analysing the responses to its prisoner and staff surveys. They also obtained and analysed considerable statistical and documentary evidence from the prison, Corrections Victoria and Justice Health.
319. DPFC and Corrections Victoria responded promptly to requests for information. The Ombudsman acknowledges the significant time and resources required to compile the information requested.

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## The following chapters

320. The following chapters are structured according to the APT's six recommended areas for detention monitoring.<sup>98</sup> There is also an additional chapter on diversity, which addresses the issues affecting particular groups of women at DPFC.
321. The chapters set out the inspection team's observations regarding DPFC. They identify risks that increase the potential for torture and other cruel, inhuman or degrading treatment at the prison, and protective measures that can help to reduce those risks.
322. The inspection team recognises that, while this report focuses on DPFC, many of the risks and protective measures it identified may exist across the prison system. This report endeavours to identify issues that are specific to DPFC and those that may be more widespread.

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<sup>98</sup> Association for the Prevention of Torture, *Monitoring places of detention: a practical guide* (2004).

# Humane treatment

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323. There are some practices used to maintain order and security in prisons that, if used improperly, pose a high risk of torture or cruel, inhuman or degrading treatment or punishment. These include the use of force and mechanical restraints, separation or solitary confinement of prisoners, and strip searches.

324. The main international standards regarding treatment of prisoners – the Nelson Mandela Rules – emphasise that these practices should be a last resort.<sup>99</sup>

325. This chapter looks at how these measures work at DPFC.

## Use of force and mechanical restraints

326. The *Corrections Act 1986* (Vic) allows prison officers to give any order to a prisoner that the officer believes necessary for the ‘security or good order of the prison or the safety or welfare of the prisoner or other persons’. Officers may use ‘reasonable force’ to compel a prisoner to obey such an order.<sup>100</sup>

327. Corrections Victoria policy defines ‘reasonable force’ as the minimum amount of force necessary, used for the minimum time, to resolve the reason for its use.<sup>101</sup>

328. The *Corrections Regulations 2009* (Vic) state that officers can apply mechanical restraints to a prisoner only if there are reasonable grounds to believe that the use of restraint is necessary. They state that a prisoner must not be kept under restraint longer than is necessary.<sup>102</sup>

329. The types of restraints that can be used include handcuffs, arm restraints, leg restraints, belts which restrain parts of the body and ‘spitter hoods’.<sup>103</sup>

330. DPFC has a relatively high incidence of force and restraint.

331. A report by the Justice and Assurance Review Office (JARO, known at the time as the Office of Correctional Services Review) found that DPFC recorded the second highest use of force of any prison in Victoria in 2014 and 2015.<sup>104</sup>

332. JARO attributed DPFC’s use of force to:

- the fact that it is a reception and assessment prison, and houses prisoners who are new to the prison system and may be withdrawing from drugs or alcohol
- the fact that it is the main women’s prison in Victoria and therefore houses Victoria’s most challenging women prisoners. JARO noted that nearly half of the events it reviewed involved just six women.

333. JARO also noted that 14 per cent of events involving use of force at DPFC related to self-harm by women, higher than at other Victorian prisons.

334. The inspection reviewed DPFC’s records regarding use of force and restraint for 2016-17.

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99 United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106, UN Doc A/Res/70/174 (17 December 2015) rules 43-52 (‘Nelson Mandela Rules’).

100 *Corrections Act 1986* (Vic) s 23.

101 Corrections Victoria, *Deputy Commissioner’s Instruction 1.13A: Application of instruments of restraint* (10 January 2017) (‘Deputy Commissioner’s Instruction 1.13A’).

102 *Corrections Regulations 2009* (Vic) reg 13.

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103 *Corrections Regulations 2009* (Vic) reg 13; *Deputy Commissioner’s Instruction 1.13A*, above n 101, s 2.5.

104 Office of Correctional Services Review (Vic), *Review of the application and management of reasonable force in a corrections custodial environment* (2017).

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335. DPFC recorded 107 instances of use of force during this period (for reasons explained on page 61, actual use of force at the prison may be higher). Eight instances, or 7.5 per cent, involved use of force to directly prevent women self-harming. Fifteen instances involved use of force when moving women to observation cells or conducting assisted strip searches as a protective measure.

336. Women who responded to the prisoner survey had mixed responses regarding whether the prison uses too much force (see Appendix 1).

### Use of force and restraint on pregnant women

337. The Corrections Act and Corrections Victoria policy are silent on the use of force against pregnant women, or in the presence of children who are living with their mothers in prison.

338. DPFC advised that a working group on use of force against pregnant women was convened in May 2016, and provided evidence that the working group is close to finalising a policy.

339. Corrections Victoria policy allows handcuffs and velcro arm and leg restraints to be used on pregnant women if authorised by the General Manager. Other forms of restraint are not permitted.<sup>105</sup>

340. DPFC's Local Operating Procedures state that women who are more than six months pregnant who leave the prison for medical treatment, or who are travelling with their children, should only be handcuffed or shackled in exceptional circumstances.<sup>106</sup>

341. Multiple sources, including staff members and a civil society organisation, advised that, in practice, women – including pregnant women – are routinely handcuffed when attending external medical visits, unless the doctor requests the cuffs be removed.

342. The inspection also heard anecdotally of pregnant women who were traumatised by being handcuffed or shackled when attending medical appointments, or who had refused to attend appointments after learning they would be restrained.

343. In response to the draft report, the General Manager advised that there is 'confusion from our staff about when they can handcuff a pregnant woman' despite clear instructions set out in the Local Operating Procedure. She said that 'it is a case of reminding/educating the staff'.

### Separation

344. The Corrections Regulations allow prisoners to be separated from other prisoners 'if reasonable for the safety or protection of the prisoner or other persons, or the security, good order or management of the prison'.<sup>107</sup>

345. Corrections Victoria policy states prisoners may require separation:

- following alleged involvement in an incident
- as a result of a hearing into a prison disciplinary offence
- following receipt of information that they may not be safe
- following receipt of information that a prisoner poses a risk to the security, good order or management of the prison.<sup>108</sup>

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<sup>105</sup> Deputy Commissioner's Instruction 1.13A, above n 101, section 2.7.

<sup>106</sup> Dame Phyllis Frost Centre, Local Operating Procedure 1.12.1: External escorts and transfer of prisoner (26 May 2017) s 8.0.

<sup>107</sup> *Corrections Regulations 2009* (Vic) reg 27.

<sup>108</sup> Corrections Victoria, *Sentence Management Manual*, Part 3, PM3 – Separation Regimes, 4 (13 November 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/sentence+management+manual+part+3>>.

346. DPFC has two 'management' (or separation) units – Swan 1 and Swan 2.
347. On the first day of the inspection, there were 17 women in Swan 1 and 18 women in Swan 2.
348. Swan 1 is intended for women on 'intermediate' regimes, meaning that most women in the unit are subject to some restrictions but are generally free to leave their cells and the unit during the day.
349. Swan 2 is a more restrictive environment, in which women may be held in solitary confinement, under close observation, and are generally allowed out of their cells for one or two hours daily.
350. Women can also be held in separation in the Marmak (mental health) unit. Women are sometimes placed on separation regimes in other units if there is a lack of beds in Swan 1 and Swan 2.
351. In its response to the draft report, the Department of Justice and Regulation advised that it does not use the term 'solitary confinement' but 'separation regimes':
- A variety of regimes and privileges exist to provide a range of conditions necessary to maintain the security, safety and management requirements of the individual prisoner and the prison system. Prisoners are managed under the least restrictive conditions consistent with the reasons for placement.<sup>109</sup>
352. Where the term 'solitary confinement' is used in this report, it refers to the practice of confining a prisoner for 22 hours or more a day without meaningful human contact, as defined in the Nelson Mandela Rules.<sup>110</sup>

## Conditions and treatment in Swan 2

353. The inspection team visited Swan 2 several times throughout the inspection and spoke with women and staff there.
354. Swan 2 is characterised by bleak physical conditions (see Photos 1-6 on page 54).
355. The inspection team was informed the unit is scheduled for demolition as part of the building work currently being undertaken at DPFC. Completion of this project is still some time away.
356. Women in Swan 2 are locked in their cells for at least 22-23 hours a day. They can ask to speak with a chaplain, make phone calls during the time they spend out of their cell and have visits with family and friends. They have limited access to other activities such as education or programs.
357. Some women told the inspection team they do not spend time in the fresh air daily. Staff confirmed they were not always able to offer all prisoners the minimum entitlement required by the Nelson Mandela Rules and the Corrections Act.<sup>111</sup> This was also confirmed by inspection of records in the unit recording women's daily access to fresh air.
358. The inspection team also observed that women in Swan 2 have little meaningful human interaction.
359. Corrections Victoria policy states that staff are expected to speak and interact with prisoners in a meaningful way regularly throughout the day.<sup>112</sup> The team observed little interaction between staff and the women during their time in Swan 2, other than basic communication needed to perform functions like delivering food.

<sup>109</sup> Department of Justice and Regulation (Vic), response to draft inspection report, 27 October 2017.

<sup>110</sup> *Nelson Mandela Rules*, above n 99, rule 43.

<sup>111</sup> *Nelson Mandela Rules*, above n 99, rule 23; *Corrections Act 1986* (Vic) s 47(1)(a).

<sup>112</sup> Corrections Victoria, *Sentence Management Manual*, Policy Framework, 17 (29 June 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/sentence+management+manual+part+1>>.

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360. Several women who had been held in Swan 2 described self-harming while in the unit because they felt it was the only way to get staff to engage with them.

361. The inspection team also noted some instances where the use of force and restraint in the unit appeared excessive or unnecessary:

- Incident reports record instances where staff applied handcuffs to women who were incapacitated or unconscious after self-harming, and before medical assistance was provided. Incidents like these may be illustrative of a culture within the prison where the application of restraints is prioritised over the provision of medical assistance.
- The inspection observed staff moving one woman from her cell to a 'Muirhead'<sup>113</sup> cell at her request because she reported she was at risk of self-harming. The woman was handcuffed and escorted by five officers for a move of several metres.

362. In the words of one woman at the prison who had spent time in the unit, 'I'm not a bloke, it doesn't take six people to put me on the ground'.

363. The clinical psychologist on the inspection team noted that conditions in Swan 2 were likely to re-traumatise women who had been victims of sexual assault or other violence.

364. During the inspection, women who had spent time in Swan 2 made comments confirming this observation.

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<sup>113</sup> Women who are at risk of suicide or self-harm may be placed in a 'Muirhead' (or wet) cell for observation: Corrections Victoria, *Deputy Commissioner's Instruction 1.05: Searches and patrols* (17 August 2016).



Photo 1: Cell door – Swan 2



Photo 2: Cell – Swan 2

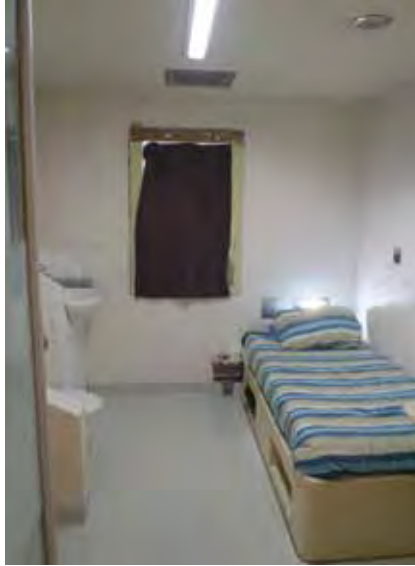


Photo 3: Swan 2



Photo 4: Officer's station – Swan 2



Photo 5: 'Airing yard' – Swan 2



Photo 6: Phone box – Swan 2





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## Privacy in Swan 2

365. Staff in Swan 2 use CCTV to monitor women who have been placed in observation cells because they are considered to be at risk of self-harm. The CCTV monitors are in the officers' station, which has an external door leading through a gated yard into the compound and an internal door leading into the unit.
366. The CCTV monitors are visible to anybody entering the unit from the external courtyard. They provide a full view of the observations cells, including the toilet area.
367. On one occasion, the inspection team encountered a man sitting behind the desk in front of the monitors, from where he had a full view of a naked woman in an observation cell using the toilet. When asked, he advised that he was not a staff member, but a tradesman there to do repairs.
368. There is a legitimate need to monitor women in the unit closely, particularly those at risk of suicide and self-harm. However, the current situation and position of the CCTV monitors in a thoroughfare is incompatible with women's right to privacy under the *Charter of Human Rights and Responsibilities Act 1996 (Vic)*<sup>114</sup> and is degrading to those women.

## Use of Swan 2

369. Swan 2 appears to be used as the default option for dealing with challenging behaviours at DPFC, and for holding women when there are limited options to place them elsewhere.
370. For example, women who request or are deemed to need protection on arrival at the prison may be held in Swan 2 until the protection panel decides their placement at its weekly meeting.

371. The prison's incident reports over the past year also describe instances where women were sent to Swan 2 after complaining of being bullied, or because they were in distress.
372. There was an incident of prisoner-on-prisoner assault during the inspection after which both the victim and perpetrator were moved to Swan 2. The prison advised that this occurs when it is not immediately clear who was responsible for the altercation, pending investigation.
373. While the Corrections Act and Corrections Victoria policy allow women to be separated for their own protection, or if they have been involved in an incident (see page 51), the conditions in Swan 2 are inappropriate for women who have been victims of assault or require protection.
374. The focus of Swan 2 appears to be containment, rather than addressing behaviours and transitioning women back to mainstream accommodation.
375. The inspection team was told that women are not provided with a copy of plans setting out the steps they need to take to move back into the mainstream prison population.

## Review of separation placements

376. Corrections Victoria policy states that a Sentence Management Panel (SMP) must review prisoners placed in management units within seven or eight days of their initial separation.<sup>115</sup>
377. The inspection team reviewed records of SMP meetings and the records appeared to be sufficient.

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<sup>114</sup> *Charter of Human Rights and Responsibilities (Vic)* s 13(a).

<sup>115</sup> Corrections Victoria, *Sentence Management Manual, Part 2, AC 4 - Determining a Prisoner's Placement* (29 June 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/sentence+management+manual+part+2>> states that review must take place within eight days. Corrections Victoria, *Deputy Commissioner's Instruction 1.17: Separation regimes* (29 September 2016), *Deputy Commissioner's Instruction 1.17* section 1.3 states that reviews must take place within seven days.

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378. The SMP must offer Aboriginal and Torres Strait Islander prisoners a support person during the interview, use interpreters where necessary, and liaise with 'Disability Prison Program' staff in some cases. However, the SMP does not have any independent or clinical members, despite the impact of separation on conditions for women and their wellbeing.

### Long term separation of women

379. At the time of the inspection, there were several women at DPFC who had been in Swan 2 for over twelve months.

380. The Nelson Mandela Rules prohibit indefinite and prolonged solitary confinement. They define 'prolonged solitary confinement' as a period of solitary confinement in excess of 15 consecutive days.<sup>116</sup>

381. The impacts of solitary confinement on mental health are well-documented and include anxiety, panic attacks, chronic depression, rage, poor impulse control, paranoia and psychosis.<sup>117</sup>

382. The Royal Commission into Aboriginal Deaths in Custody reported on the 'extreme anxiety experienced by Aboriginal prisoners committed to solitary confinement' and recommended that corrective services recognise 'it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation'.<sup>118</sup>

383. People who have experienced previous trauma are particularly vulnerable to the effects of solitary confinement. Prolonged periods in separation can result in chronic symptoms that persist long after release.<sup>119</sup>

384. Long term separation can also impede efforts to rehabilitate prisoners and prepare them for release into the community. This potentially increases risk to the community.

385. In its consultation with civil society organisations, the inspection team heard that the use of prolonged solitary confinement is an issue of concern across the prison system in Victoria.

386. Corrections Victoria policy states that 'long-term' management placement must be authorised by the Assistant Commissioner of Corrections Victoria's Sentence Management Division.<sup>120</sup> It defines long term as separation for longer than 30 days, rather than the 15 days set out in the Nelson Mandela Rules.<sup>121</sup>

387. The policy states that an SMP must review long-term management prisoners at least once a month, or more frequently if necessary, to ensure that placement is for the minimum time, and under the minimum restrictions necessary to ensure the management of the safety and security of the prison system and the prisoner.<sup>122</sup>

388. Corrections Victoria advised that in the case of one of the women in Swan 2, they also convene regular meetings of custodial, health and forensic mental officers and other experts to consider ways to address her behaviour.

389. There appear to be limited opportunities to engage women in addressing the circumstances and personal factors that contributed to their separation, and little diversion for them.

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<sup>116</sup> *Nelson Mandela Rules*, above n 99, rule 43.

<sup>117</sup> Dr Sharon Shalev, *Thinking Outside the Box? A review of seclusion and restraint practices in New Zealand* (2017), New Zealand Human Rights Commission, 17.

<sup>118</sup> Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody* (1991) Vol 3, rec 181.

<sup>119</sup> *Shalev*, above n 117, 18.

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<sup>120</sup> *Deputy Commissioner's Instruction 1.17*, above n 115.

<sup>121</sup> Corrections Victoria, *Sentence Management Manual, 'PM4 - Long Term Management* (13 November 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/sentence+management+manual+part+3>>.

<sup>122</sup> *Ibid*.

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390. The inspection team reviewed the Individual Management Files for some of the women. In some cases, there was limited information about planning for transition to mainstream or release into the community.
391. During the inspection, one of the women was released directly from Swan 2 into the community. The woman was wearing a canvas gown used by the prison when women are at risk of self-harm. Members of the inspection team overheard a conversation between prison staff about whether she should be escorted through the prison to the gate in the gown, or be allowed to change into her clothes before leaving the management unit. They ultimately decided to allow the woman to change into her own clothes in the unit.
392. The inspection team was concerned that escorting the woman to the gate in the gown would be degrading to her. The conversation was also indicative of a culture in the management unit which focuses on containment, rather than preparing women for transition back to a normal life in the community.
393. The inspection team does not question that the women in long term management have highly complex needs and behaviours, which are extremely challenging for the prison and its staff. It also recognises that the prison has a duty of care to protect its staff and other women at the prison from these behaviours.
394. Long-term separation in an environment like Swan 2 may, however, amount to treatment that is cruel, inhuman or degrading under the Charter<sup>123</sup> and is incompatible with the Nelson Mandela Rules.

## Strip searches

395. A strip search, according to the Corrections Regulations, is a search of a person that requires the person to remove any or all of their clothing, and the examination of the person's body and of that clothing, 'but does not require the person to be touched by the person or persons conducting the search'.<sup>124</sup>
396. The Nelson Mandela Rules provide that strip searches should be conducted only when 'absolutely necessary' and prison administrations should be encouraged to develop and use appropriate alternatives.<sup>125</sup>
397. This is reinforced by the Corrections Regulations, which require there to be 'reasonable grounds' for believing that a strip search is necessary for the security and good order of the prison.<sup>126</sup>
398. In practice, women at DPFC are routinely strip searched:
- when they first arrive at the prison during the reception process
  - after all contact visits (other than professional visits).
399. They are also required to remove their clothes in front of officers before all contact visits (other than professional visits). This practice, which the prison states is not strip searching, is discussed in more detail below.
400. Staff also advised the inspection team that women are strip searched before and after all external appointments, even if they have not left the sight of staff. This includes pregnant women attending external medical appointments.

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<sup>123</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic) s 10.

<sup>124</sup> Corrections Regulations 2009 (Vic) reg 5.

<sup>125</sup> Nelson Mandela Rules, above n 99, rule 52.

<sup>126</sup> Corrections Regulations 2009 (Vic) reg 69.

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## The strip search process

401. Two female members of the inspection team observed several strip searches in the visits centre with the permission of the women involved. They stood outside the room so they could hear what the staff and women were saying, but could not see the search.
402. The searches were conducted by female staff in a private room, consistent with the Nelson Mandela Rules.<sup>127</sup>
403. Corrections Victoria policy states that staff conduct a visual inspection only and do not touch the women.<sup>128</sup> DPFC's local operating procedures give officers the discretion to offer women the option of a 'top-bottom search' where women remove only half of their clothing at any one time.<sup>129</sup>
404. The inspection team did not hear staff offering the option of a top-bottom search. Staff advised that the women already know the routine for strip searches.
405. The inspection team observed that the room in which women were searched was very cold (the inspection took place in the middle of winter). Staff arranged a portable heater, which was still there at the end of the inspection.

## Pre-visit procedure

406. DPFC's local operating procedure states that strip searches before personal visits can only be targeted, but allows for all women to be strip searched after personal visits.
407. The prison advised that it does not routinely strip search women before contact visits. In response to the draft report, the General Manager stated that 'women are not searched prior to a contact visit, they are merely undressed to put their overalls on'.
408. The pre-visit procedure observed by the inspection team involved women being taken into a room and required to remove their clothes in front of an officer, while another officer watched from outside the room. The officers were wearing latex gloves, as required by Corrections policy when conducting 'any search' in a prison<sup>130</sup> and the inspection heard officers ask one woman to untie her hair.
409. The strip search register for that day did not record any targeted searches.
410. If this practice is a strip search, it is inconsistent with DPFC's local operating procedure, being routine rather than targeted. It should also be recorded as a strip search in the appropriate register.
411. If the practice is not a strip search, as stated by the General Manager, the prison's authority to have officers watch women taking their clothes off every time they have a contact visit is unclear. Such a practice would also be incompatible with the women's rights to privacy, humane treatment and freedom from degrading treatment under the Charter.
412. Whatever terminology the prison uses to describe the pre-visit procedure, the practice observed by the inspection was consistent with the definition of a strip search within the Corrections Regulations.

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<sup>127</sup> Nelson Mandela Rules, above n 99, rule 52.

<sup>128</sup> Corrections Victoria, *Commissioner's Requirement: Strip searches in prison* (November 2015).

<sup>129</sup> Dame Phyllis Frost Centre, *Local Operating Procedure 1.5.2: Strip Searching Female Prisoners* (27 March 2013).

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<sup>130</sup> Corrections Victoria, *Deputy Commissioner's Instruction 2.15: Infection Control in Prisons, section 5.0* (18 July 2017).

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## The practice of routine searches

413. Strip searches invariably raise concerns about rights to privacy, humane treatment and protection from cruel, inhuman or degrading treatment under the Charter.<sup>131</sup> For a strip search to be compatible with the Charter it must be reasonable, necessary and demonstrably justified.<sup>132</sup>
414. Some other countries have stopped routine strip searching of women in recognition of its degrading impact.
415. The United Kingdom moved to a targeted, intelligence-based approach to strip searching after a 2007 report described regular strip searching of women as 'wholly unacceptable'. The report stated:
- Strip-searching is humiliating, degrading and undignified for a woman and a dreadful invasion of privacy. For women who have suffered past abuse, particularly sexual abuse, it is an appalling introduction to prison life and an unwelcome reminder of previous victimisation. It is unpleasant for staff and works against building good relationships with women.<sup>133</sup>
416. Women at DPFC made similar comments in the prisoner survey, describing being strip searched as humiliating, degrading and invasive and likening it to sexual assault.
417. The inspection team was told that DPFC's policy of routine strip searching is intended to prevent contraband drugs entering the prison.
418. The team found little evidence, however, to justify the practice in the case of searches before and after contact visits.
419. A review of DPFC's records of contraband seized at the prison in 2016-17 identified that, of the 148 seizures recorded, only four involved items seized in the visits centre. Only one of the four entries involved a drug – half an 'apo-irbesartan' (blood pressure) tablet. One involved tobacco, and two involved jewellery.
420. It is also clear that drugs and contraband are entering the prison through other means. Data provided by Corrections Victoria show that random drug testing resulted in 19 positive urine tests at DPFC between July 2016 and May 2017. This figure does not include drug use detected through targeted testing. The register of offences for Swan 1 and Swan 2 alone lists 18 positive drug tests from April to July 2017, two instances of drug possession and one instance involving possession of a syringe.
421. There are alternative steps the prison could take to address this problem. Page 65 of this report discusses gaps in the prison's contraband detection processes, including a need to increase the resources of the prison's intelligence unit.
422. The inspection team also noted that DPFC does not have a body scanner which would allow women to be screened for internally concealed contraband and avoid invasive strip searches. This is despite there being a room marked 'body scan room' next to the reception entrance.
423. A strip search practice that is not evidence-based is inconsistent with the Corrections Regulations.

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<sup>131</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 10(b), 13(a), 22.

<sup>132</sup> *Ibid* s 7(2).

<sup>133</sup> Home Office (UK), *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System* (2007) 31.

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424. It is also not a reasonable and demonstrably justified limitation under the Charter of the rights of women at DPFC to privacy, to protection from cruel, inhuman or degrading treatment and to humane treatment when deprived of liberty.<sup>134</sup>
425. In response to the draft report, the General Manager advised that while it is up to Corrections Victoria to determine policy on strip searches, she is committed to reducing the number of strip searches performed at DPFC and is 'open to alternative technologies that would reduce the need for them'.
426. The General Manager also said she believes the post-visit strip search is a deterrent against the entry of contraband.<sup>135</sup>

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<sup>134</sup> *Charter of Human Rights and Responsibilities Act 2006* ss 7(2), 10(b), 13(a), 22.

<sup>135</sup> Discussions between the General Manager and members of the inspection team, 17 October and 1 November 2017; email from the General Manager to a member of the inspection team, 7 November 2017.

# Protective measures

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427. Prisons need strong safeguards to ensure that upholding discipline, security and order does not expose prisoners to torture or cruel, inhuman or degrading treatment or punishment.

428. Protective measures include:

- maintaining accurate records regarding measures such as use of force and restraint
- separating categories of prisoners from each other
- providing avenues for prisoners to report incidents and make complaints
- giving prisoners adequate information about their rights and obligations
- ensuring that prison disciplinary procedures are fair.

429. This section considers the range of protective measures DPFC has in place.

## Record-keeping – use of force and restraint

430. Appropriate documentation regarding use of force, including the application of mechanical restraints, is an important accountability measure.

431. Corrections Victoria policy requires prisons to:

- keep a use of force register that records ‘reasons for the use of force’ and ‘details of investigation and/or internal disciplinary action, if any’<sup>136</sup>
- keep a separate ‘use of restraint’ register to record use of mechanical restraints<sup>137</sup>
- prepare reports providing full details of incidents at the prison.

432. DPFC maintains a use of force register, a use of restraint register and incident reports in accordance with these policies. However, the inspection team identified some shortcomings in these records.

### Use of force register

433. The inspection team compared DPFC’s use of force register with incident reports completed by prison staff over two months.

434. This identified that staff do not always record use of force on the register. For example, the register does not include any entries between 3 May and 7 June 2017, even though there are several incident reports from that period that talk about use of force.

435. There were at least two incident reports which stated ‘use of force register completed’ when there was in fact no corresponding entry in the register.

436. When the use of force register was completed, there was sometimes insufficient information about the reasons for the force.

437. While Corrections Victoria policy requires the prison to record ‘reasons for the use of force’,<sup>138</sup> the template form used to complete the register does not reference the reasons for using force.

438. In some cases, the reasons can be deduced from other records, such as incident reports, but this is not always the case. Not recording reasons for using force can increase the risk of force being used for an improper purpose.

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<sup>136</sup> Corrections Victoria, *Commissioner’s Requirement 1.1.1: Use of force (Tactical Options) 5.15* (August 2014) (‘Commissioner’s Requirement 1.1.1’).

<sup>137</sup> *Deputy Commissioner’s Instruction 1.13A*, above n 101, section 2.8.

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<sup>138</sup> *Commissioner’s Requirement 1.1.1*, above n 136, 5.15.



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## Use of restraint register

439. The inspection team also compared DPFC's use of restraint register against incident reports.
440. Again, this identified that staff are not recording all instances of use of restraint in the register.
441. The inspection team also noted that Corrections Victoria policy does not require use of handcuffs to be recorded in the case of:
- 'routine internal escorts which require prisoners to be handcuffed'<sup>139</sup>
  - prisoners who have been placed on a 'handcuff regime'.<sup>140</sup>
442. Some staff do record each use of handcuffs applied as part of a handcuff regime, while others told the inspection team they never complete the register in these cases.
443. This means the actual use of restraints at DPFC is likely to be under-reported.

## Safety

444. Prisons can also reduce the risk of cruel, inhuman and degrading treatment by taking steps to protect prisoners from violence while in detention.
445. The prisoner survey asked women whether they felt safe at DPFC and their responses were mixed (see Figure 6 on page 63).
446. When asked what made them feel unsafe, women most commonly mentioned bullying by prisoners and/or staff.

Women also mentioned:

- feeling at risk due to staff disclosing confidential information about them to other prisoners
  - violence by prisoners or staff
  - high levels of illicit drug use in the prison
  - staff being slow to respond to incidents, not taking concerns seriously, or not being visible around the prison
  - lack of CCTV surveillance in some areas of the prison.
447. When asked what did make them feel safe, women typically listed:
- being able to lock themselves in their cells
  - their friends
  - keeping to themselves or out of trouble
  - certain staff who were helpful or quick to respond to incidents
  - being in areas with CCTV and staff patrols.

## Prisoner-on-prisoner abuse

448. Data provided by Corrections Victoria reported 100 alleged prisoner-on-prisoner assaults in 2016-17.
449. The inspection team's review of incident reports for 2016-17 found 104 alleged prisoner-on-prisoner assaults, and a further 25 attempted or threatened assaults. Ninety-eight of those incidents were reported to police.

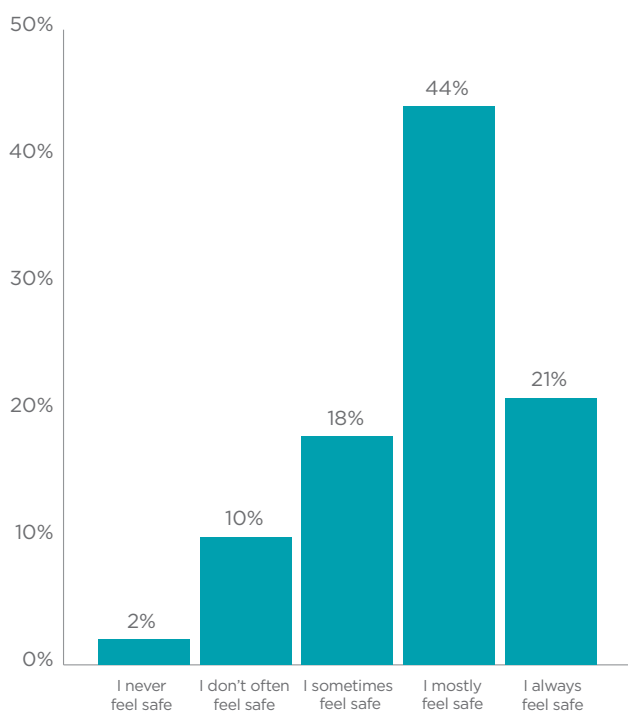
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<sup>139</sup> Deputy Commissioner's instruction 1.13A, above n 101.

<sup>140</sup> Prisoners in high security and management units may be placed on handcuff regimes if they pose a significant risk of violence to staff or other people in the prison. A regime gives officers blanket authority to apply handcuffs in particular situations, such as when a prisoner is taken outside their unit for visits or medical treatment: see Deputy Commissioner's Instruction 1.13A, above n 101, section 2.2.1.



Figure 6: Feeling safe in prison – experience of women at DPFC



Source: Victorian Ombudsman survey of women at DPFC Question 3.1 (see Appendix 1)

452. Increasing the visibility of staff around the prison is one way to deter violence and abuse between prisoners. This is discussed further under ‘dynamic security’ (see next page).

### Staff-on-prisoner abuse

453. The inspection team also identified allegations that some staff at DPFC have abused prisoners.

454. Data provided by Corrections Victoria and incident reports for 2016-17 identify five allegations of staff-on-prisoner physical assault. Four of these alleged assaults were reported to police.

455. Eleven per cent of women who responded to the prisoner survey said they had been assaulted by staff while at DPFC. A further three per cent said they had been sexually abused by staff. Forty-five per cent said that staff had threatened or intimidated them. Forty-seven per cent reported that staff had made insulting remarks about them, their family or their friends.

450. There were also four alleged sexual assaults of a prisoner by another prisoner or prisoners.

451. Twenty-five per cent of women who responded to the prisoner survey said they had been physically assaulted by a fellow prisoner while at DPFC. About half (52 per cent) said another prisoner had threatened or intimidated them. Two per cent said they had been sexually abused by a fellow prisoner.

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## Prisoner-on-staff abuse

456. Corrections Victoria data shows that there were 48 alleged prisoner-on-staff assaults in 2016-17, 12 of which resulted in injury.
457. The majority of staff who responded to the inspection survey (81 per cent) reported that they mostly or almost always felt safe at work.
458. However, six per cent of staff reported that sexual abuse of staff by prisoners occurs 'often' or 'very often'. No staff indicated that physical abuse of staff by prisoners happens 'very often', while three per cent indicated it happens 'often'.

## Reporting and responding to abuse

459. Prisons can also deter violence and abuse against prisoners by building safe and robust reporting systems and dealing with incidents effectively.
460. The prisoner survey asked women whether they had reported instances where they had been physically or sexually abused, intimidated or harassed by a staff member or fellow prisoner.
461. Only a third said they had reported the incident, and only 13 per cent said the prison had taken action. Eleven per cent of women were satisfied with the action taken by the prison. The same number indicated they had received the support they needed from the prison.

462. Typical reasons given by women for not reporting incidents were:

- fear that reporting would make the situation worse
- fear of reprisals by officers or other prisoners
- reluctance to be labelled a 'dog' or a 'dobber'
- lack of confidence the matter would be dealt with confidentially
- fear of not being believed if the report concerned the conduct of an officer
- past experience of no action being taken
- belief the concern would not be taken seriously.

463. While acknowledging that the vulnerability of prisoners poses challenges to establishing robust complaints mechanisms in any custodial environment, these responses suggest that DPFC can do more to increase confidence in its processes.

## Dynamic security

464. The visible presence of officers and interaction with prisoners is sometimes called 'dynamic security'. The WAOICS states:

Dynamic security is arguably the most important element of an effective, humane and safe custodial environment. It is derived from regular positive interaction between prisoners and professional, well-trained staff. Good dynamic security better enables incident prevention through the early detection of possible security or safety threats and by ensuring prisoners are actively engaged in the prison regime.<sup>141</sup>

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<sup>141</sup> Office of the Custodial Inspector (WA) *Code of Inspection Standards for Adult Custodial Services (2007)* 27.

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465. The inspection team did not observe many officers actively patrolling or conversing with women during their time at DPFC. Officers tended to cluster at the officers' post in each unit.

466. It was suggested to the inspection team that this may have been due to cold weather during the week of the inspection. The inspection team also heard anecdotally that there used to be more interaction between staff and the women when smoking was allowed in the prison.

## Contraband

467. Effective systems for preventing contraband, such as drugs, also increase the safety of prisoners.

468. In their survey responses, staff and women at DPFC both suggested that it is easy to get contraband into the prison.

469. Sixty-three per cent of staff who responded to the survey indicated that they thought the prison's measures to prevent entry of contraband were mostly ineffective.

470. Thirty-nine per cent of women who responded to the survey said it was easy to get drugs in the prison. A number commented on the presence of illicit drugs posing a safety risk.

471. The Prison Intelligence Unit (PIU) is the unit at DPFC responsible for detecting and monitoring security threats to the prison, including contraband. Its responsibilities are diverse and include monitoring prisoner phone calls and mail, running background checks on prisoners and visitors, and coordinating drug tests.

472. The inspection team noted that the PIU also has other administrative responsibilities, such as approving women's requests to add telephone numbers to their telephone list (see page 85), and its resources have not kept pace with the rising number of women at DPFC.

473. The inspection team also heard anecdotally about delays in performing targeted searches and drug tests, and a lack of resources to run background checks on contractors entering the prison.

## Remand prisoners

474. The Nelson Mandela Rules and the *Charter of Human Rights and Responsibilities Act 1996* (Vic) require prisons to keep unsentenced (or remand) prisoners separate from convicted prisoners.<sup>142</sup>

475. The aim is to protect unsentenced prisoners and recognise that people who have not been convicted of a crime are entitled to a presumption of innocence.

476. DPFC is not meeting this requirement.

Photo 7: Entrance to remand precinct, DPFC



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<sup>142</sup> *Nelson Mandela Rules*, above n 99, rule 11; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 22. The Charter contains an exception where placing prisoners together is 'reasonably necessary'.

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477. The prison does have a remand precinct, but it is not fenced off from the rest of the prison and the only thing preventing sentenced prisoners entering the precinct is an 'out of bounds' sign (see Photo 7 on page 65).

478. Sentenced and unsentenced prisoners are free to mix during the day, and in some cases sentenced prisoners are housed in remand units due to a lack of alternative accommodation.

479. A remand prisoner was assaulted by a sentenced prisoner in the remand precinct during the inspection.

480. Despite the risks, separation of sentenced and remand women would be difficult to achieve in the current environment due to the rapid growth in women on remand, which has risen from 26 per cent of the prison population to 43 per cent in the past three years.

481. The prison advised that attempts to achieve such separation would result in a less open facility and would be unfairly restrictive for women on remand, who would have to be confined to a small area of the prison despite now making up nearly half of the prison population.

482. Remand prisoners are also meant to be subject to fewer restrictions than sentenced prisoners.

483. Women on remand are not obliged to work, in recognition of their unsentenced status. This is consistent with international standards and the provisions of the Corrections Act.<sup>143</sup>

484. However, they are not accorded other rights provided by international standards and the Corrections Act.

485. For example, the inspection team did not observe unsentenced women wearing their own clothes. All unsentenced women who were asked about it said they are not offered the choice of wearing their own clothes.

486. This appears to contravene the Corrections Act, which accords unsentenced prisoners the right to wear their own clothes.<sup>144</sup>

## Protection prisoners

487. Women who are deemed to need protection from other prisoners are placed in the Murray unit, a separate, secure 31-bed unit which is fenced off from the rest of the prison. They can attend education, work and recreation facilities and the visits centre at different times from the rest of the prison population.

488. This report has already noted that new arrivals requiring protection are sometimes housed in Swan 2 until the weekly protection panel meets, which is inappropriate given conditions in that facility (see pages 52-54).

489. Some women in the Murray unit said they were satisfied with the conditions in the unit. Others expressed frustration at the more limited opportunities available for them to attend the recreational centre, work and take part in study.

490. Women in the unit can only attend education one afternoon per week, for example, and the recreation centre once per week.

491. The inspection team was generally satisfied that DPFC is giving women in the unit access to facilities. There are five timeslots set aside each week for women in the unit to have visits at the visits centre, and they have access to the medical centre and telephone calls. Women from the unit also attend prisoner liaison meetings (see page 68), which gives them an opportunity to raise concerns with prison management.

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<sup>143</sup> *Nelson Mandela Rules*, above n 99, rule 116; *Corrections Act 1986* (Vic) s 84H.

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<sup>144</sup> *Corrections Act 1986* (Vic) s 47(1)(e).

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## Women in separation

492. The inspection team identified risk areas in record-keeping relating to the treatment of women in separation.
493. Corrections Victoria advised that it does not collect data on the prevalence of long-term separation or the average length of time women spend in separation.
494. When asked about the number of women held in prolonged solitary confinement as defined by the Nelson Mandela Rules (over 15 days), Corrections Victoria advised that its Sentence Management Unit (SMU) keeps records of all prisoners separated under a management regime, but does not collate data on how long the prisoner is separated.
495. DPFC also advised that it did not keep 'airing' records showing the amount of time women who are separated in the Marrmak mental health unit spend in the fresh air, until it was pointed out by management at the time of the OPCAT inspection. The prison advises that it now maintains these records.

## Access to information

496. The availability of information to women about their rights and prison processes is generally poor.
497. Staff do provide orientation information to women when they first arrive at the prison.
498. The inspection team was given a copy of DPFC's updated Prisoner Information Booklet for new arrivals, dated 27 June 2017. In many respects the booklet is an example of good practice, providing information about the way the prison works and prisoners' rights and responsibilities. However it does not contain information about health services at the prison.
499. The prison also produces an informative 'fortnightly bulletin' for prisoners, with information about services and activities at the prison.
500. It is not clear how widely DPFC's Information Booklet and fortnightly bulletin are distributed. When the inspection team asked women, they were not always aware of these publications.
501. There are also noticeboards around the prison and in each unit. The information displayed on the noticeboards was inconsistent during the inspection. For example, there were posters about how to contact the Royal Commission into Institutional Responses to Childhood Sexual Abuse, the Ombudsman and the Health Complaints Commission in some parts of the prison but not others.
502. The inspection team also noted there was limited information available in community languages for women who cannot speak English. It observed only one document in easy English, pinned on a wall in the Marrmak unit.
503. There are some resources in the prison libraries, but again these were limited.
504. The copies of the Deputy Commissioner's Instructions and Commissioner's Requirements in the library were out of date, for example.
505. In the legal library, there was some information on visa cancellation rules and the Koori Court, but no material on the shelves labelled 'child support' and 'violence and sexual assault'. There was also little information about human rights, and no reference to prisoners' rights or the Corrections Act.
506. The inspection team spoke to many women throughout the week who were not aware of their rights or the services available to them. Most said they get their information from other prisoners.

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## Complaints

507. DPFC operates a formal complaints system which allows women to raise concerns about their conditions and treatment in detention.
508. For most complaints, women are expected to raise the issue with unit staff in the first instance. They can escalate the matter to unit supervisors and prison management if it is not resolved.
509. Prisoners can also complain to independent external agencies, including the Victorian Ombudsman, the Health Complaints Commissioner and the Independent Broad-based Anti-corruption Commission (IBAC). Calls to these agencies are free of charge for women and are not monitored by the prison.
510. Sixty-four per cent of the women who responded to the prisoner survey said they were aware of how to make a complaint within the prison.
511. Women gave mixed feedback about how confident they were about complaining. Forty-six per cent reported not feeling safe to make a complaint within the prison, while 40 per cent said they did feel safe.
512. Fifty-four per cent indicated it is not easy to make a complaint within the prison and 71 per cent felt the prison does not deal with complaints fairly.
513. Twenty-nine per cent of women reported that staff had tried to stop them making a complaint within the prison, and 21 per cent said staff had attempted to stop them complaining to an external agency like the Ombudsman.
514. The legal library was the only place the inspection team saw comprehensive information about how to make a complaint within the prison, and then escalate it to an external agency. However, the poster dated from 2008 and the addresses of some of the external agencies, such as the Ombudsman, were out of date.
515. There were some Ombudsman and Health Complaints Commissioner posters around the prison but they were not consistently displayed near telephones in all units.
516. In addition to its complaints system, the prison holds semi-regular prisoner liaison meetings where prisoner representatives and senior managers, and sometimes the General Manager, meet to discuss issues of concern for women and events at the prison.
517. The inspection team attended one of these meetings and reviewed minutes of other meetings for the 2016-2017 financial year.
518. This opportunity for women to meet with senior staff to voice concerns and discuss issues is positive and an example of good practice.

## Disciplinary proceedings

519. Prisoners can be disciplined for offences against prison rules while they are in detention.
520. The Corrections Act defines prison offences as any contravention of the Corrections Act or Corrections Regulations.<sup>145</sup> A prison offence may relate to something that would be considered a criminal offence if it occurred in the community (such as assault) or something that relates to a breach of rules within the prison (such as possession of tobacco products or being out of bounds).

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<sup>145</sup> *Corrections Act 1986* (Vic) s 48.

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521. The Nelson Mandela Rules set standards for handling of disciplinary offences in prison. Prisoners should be informed of the nature of allegations against them, for example, and given time to prepare a defence.<sup>146</sup>
522. In Victoria, suspected prison offences are investigated by a disciplinary officer, who may decide to reprimand the prisoner, withdraw one of the prisoner's privileges for under 14 days, charge the prisoner with a prison offence, or take steps to have the matter dealt with under criminal law (typically by having the matter notified to police).<sup>147</sup>
523. There is no avenue of appeal or review of the decision made by the disciplinary officer.
524. If a prisoner is charged with a prison offence, the matter is either dealt with by the police and courts or goes to a General Manager's Disciplinary Hearing, delegated to be heard by an Operations Manager.
525. If a prisoner is found guilty, the Operations Manager can impose a reprimand, a fine or withdraw privileges for up to 14 days per offence but no more than 30 days.<sup>148</sup>
526. With the permission of the prisoner involved, a member of the inspection team observed a hearing relating to an alleged prison offence in the Swan 1 unit.
527. The conduct of the hearing was an example of good practice. The woman was read her rights and provided the opportunity to enter a plea and outline her case. The penalty imposed was proportionate and took into account the woman's guilty plea, mitigating circumstances and her need to maintain contact with her family.
528. The Operations Manager hearing the case also asked the woman about what was going on in her life and advised her of her right to request an emergency telephone call based on her response.
529. The inspection team heard anecdotally that prisoners are often not aware of their rights in relation to Governor's hearings, and there can be significant variation in penalties depending on which Operations Manager hears the matter.
530. Prisoners have no avenue of appeal within the prison, and can only appeal to the Supreme Court. While this right of judicial review is consistent with the Nelson Mandela Rules,<sup>149</sup> often it is not a realistic option for pursuing an appeal.

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<sup>146</sup> *Nelson Mandela Rules*, above n 99, rules 36-41.

<sup>147</sup> *Corrections Act 1986* (Vic) s 50(5).

<sup>148</sup> *Corrections Act 1986* (Vic) s 53(4).

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<sup>149</sup> *Nelson Mandela Rules*, above n 99, rule 41.



# Health and wellbeing

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531. Prisoners should receive the same standard of health care that is available in the community, according to both the Nelson Mandela Rules and national standards.<sup>150</sup>

532. The Corrections Act also states that prisoners have the right to access:

- reasonable medical care and treatment necessary for the preservation of health
- reasonable dental treatment necessary for the preservation of dental health
- a private registered medical practitioner, dentist, physiotherapist or chiropractor chosen by the prisoner with the approval of the 'principal medical officer'. Access to these private services is at the prisoner's own expense.<sup>151</sup>

533. Corrections Victoria's internal standards note that women prisoners generally present with a range of complex health needs such as experience of childhood sexual abuse and domestic violence, mental illness, drug use, or a history of self-harm.<sup>152</sup>

534. On paper, DPFC is well placed to meet these needs. It has a medical centre that operates 24 hours a day, seven days a week, a mental health service and a range of alcohol and drug and other programs.

535. On the ground, however, the inspection team heard story after story, from both women and prison staff, about problems with prisoners accessing health services. Victoria Legal Aid also raised health services in its submission to the investigation, as did civil society organisations during the investigation's consultations with them.

536. Denial of access to adequate medical treatment can, depending on severity, breach the prohibition on torture, cruel, inhuman or degrading treatment.<sup>153</sup>

537. This chapter looks at how health services are working at DPFC and how this risk can be addressed.

## Health screening

538. Corrections Victoria policy requires DPFC to medically assess all women within 24 hours of their arrival at the prison, consistent with the Nelson Mandela Rules.<sup>154</sup> This is to ensure that medical issues and risks are identified and managed early.

539. Assessments are carried out by Correct Care Australasia (CCA), the private company contracted by Justice Health<sup>155</sup> to deliver health services at public prisons. CCA medical practitioners ask about medical history, medications, allergies, drug and alcohol use, sexually transmitted diseases and pregnancy. CCA mental health professionals also assess mental health and risk of self-harm.

540. The inspection team heard that women sometimes arrive at DPFC at night after CCA's doctor has left for the day. The CCA duty nurse sees the women, who books their assessment for the next day. If there are no immediate health concerns, women can be accommodated in their unit overnight.

541. Despite this problem, the prison was generally meeting Corrections Victoria's target. In July 2017, 123 of 129 assessments had been completed within 24 hours.

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<sup>150</sup> *Nelson Mandela Rules*, above n 99, rule 24; *Standard Guidelines for Corrections in Australia (Revised 2012)* (9 February 2017) <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/standard+guidelines+for+corrections+in+australia>>.

<sup>151</sup> *Corrections Act 1986* (Vic) s 47.

<sup>152</sup> Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria* (2014) 77.

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<sup>153</sup> See, for example, *Salakhov and Islyamova v Ukraine* (European Court of Human Rights, Application No 28005/08, 14 March 2013). Victorian courts have not considered whether inadequate health services are a breach of section 10 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Supreme Court has considered whether refusal to allow a prisoner access to IVF treatment breached the right to humane treatment in section 22: *Castles v Secretary of the Department of Justice* [2010] VSC 310 (9 July 2010) [113].

<sup>154</sup> *Nelson Mandela Rules*, above n 99, rule 30; Corrections Victoria, *Deputy Commissioner's Instruction: 1.11 Reception, care and control of prisoners* (3 August 2017) s 1.14.

<sup>155</sup> Justice Health is a business unit in the Department of Justice and Regulation (Vic) responsible for health services in prisons.



Photo 8: Exterior of medical centre, DPFC



Photo 9: 'Ward' at medical centre



Photo 10: 'Ward' at medical centre

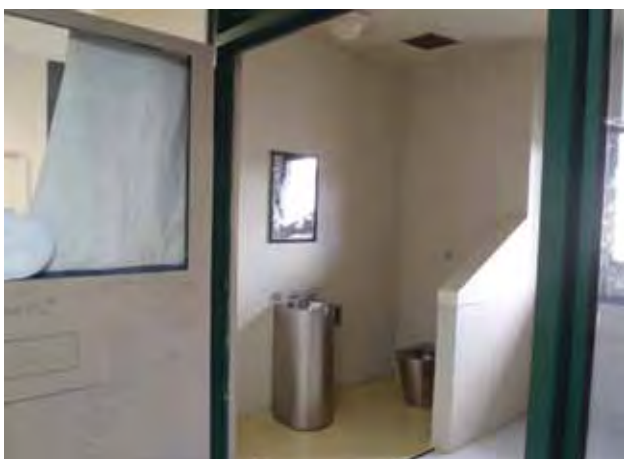


Photo 11: View looking out of 'ward' to nurses' station



## Primary health

542. CCA provides primary health services at DPFC's medical centre.

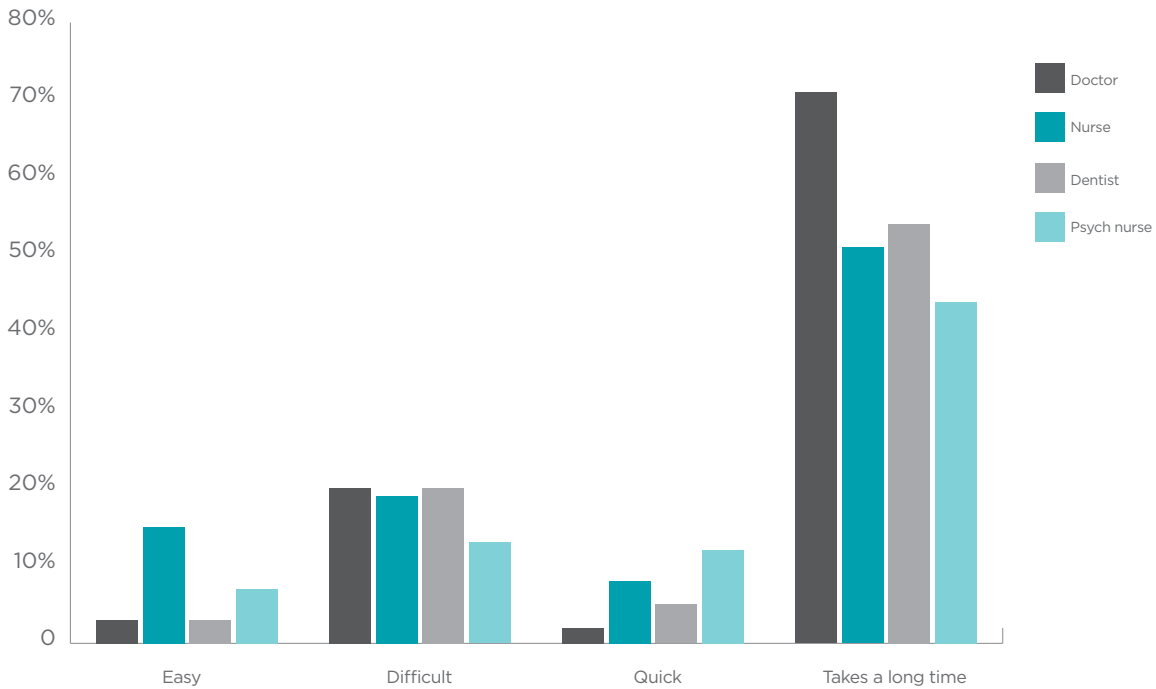
543. The medical centre has three 'wards' and two holding rooms. These are little more than cells (see Photos above). They have glass panels that offer limited privacy. There is graffiti on the doors and the inspection team found the environment cold and noisy. In response to the draft report, CCA advised that these rooms are not used for health care provision and women are not housed there on an ongoing basis.

544. At the time of the inspection, CCA was funded to provide nursing staff 24 hours a day, seven days a week, and a general practitioner between 10am and 6pm on weekdays and 10am and 3pm on Saturdays. It also provides services such as dentistry, optometry, physiotherapy and podiatry, and makes referrals to external specialists when required.

545. The medical centre is a busy facility. In June 2017, there were 519 of what CCA calls 'occasions of service' involving the doctor, 1,656 involving the general nursing clinic and 705 involving the psychiatric nursing clinic. The service ordered 412 diagnostic tests, booked 108 appointments outside the prison and transferred women to emergency departments 13 times.

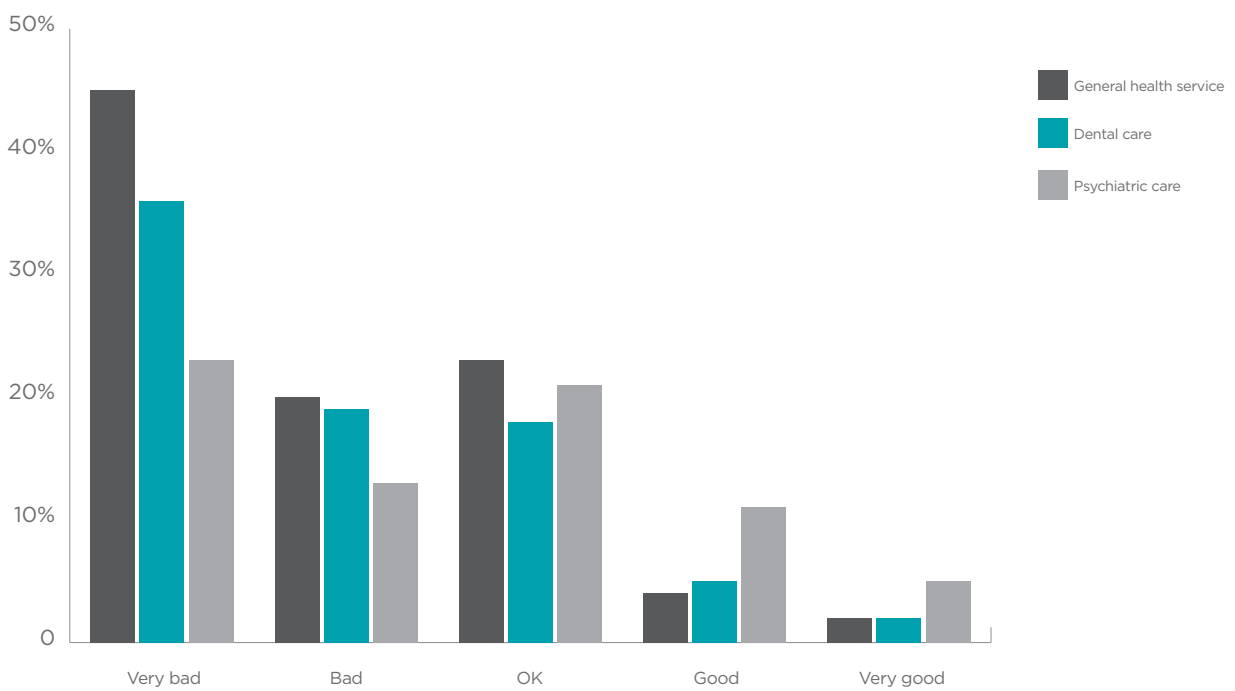
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546. Women wanting medical care submit a request form at the medical centre or attend a daily 'sick parade'. The inspection team observed CCA nursing staff triaging forms and allocating appointments. The forms state that high priority cases will be seen within one week, medium priority cases within one month, and low priority cases will be allocated the next available appointment.
547. The inspection team heard from women and prison officers that, in reality, women wait weeks and sometimes months to see the doctor. Twenty per cent of women who responded to the prisoner survey said it was difficult to see a doctor and 71 per cent said it took a long time (see Figure 7, next page). Forty-one per cent of prison staff rated in-prison health services as poor or very poor. The inspection team heard stories of women who had spent weeks in pain and discomfort, or whose conditions had deteriorated to the extent that they ended up in hospital.
548. The situation was slightly better in relation to access to nursing care. As Figure 7 shows, 19 per cent of prisoners said it was difficult to see a nurse and 51 per cent said it took a long time.
549. In response to the draft report, CCA advised that care is provided within clinically appropriate timeframes and referred to Justice Health audits confirming this. The inspection team received very different evidence from women and staff at the prison.
550. The issues identified by the inspection team are not new. Corrections Victoria's own prisoner surveys have been identifying problems with health services at DPFC since 2013. CCA advised that following the 2015 survey it had developed an action plan to 'improve the health service from prisoners' perception'. It said that actions taken included a review of wait times and communication with women about their appointments and the management of dental pain.
551. The growing number of women at DPFC, particularly remand women, has increased pressure on the prison's health services. The inspection team heard that remand women can be withdrawing from drugs and have other health needs that have gone unaddressed in the community.
552. CCA advised that there have been some increases in resources in response to the growth in prisoner numbers, including an extra eight hours per week of doctor's time since August 2017. Justice Health also told the inspection team that it undertakes regular audits against its quality framework. It is not clear, however, when Justice Health last undertook a major review of health needs.
553. The inspection team also observed two other issues that were contributing to the problem.
554. The first is CCA's dual responsibility for screening new arrivals and providing services to the rest of the prison population. Women can arrive at the prison at any time of day and into the night with limited notice. CCA staff need to ensure these women are screened within 24 hours, so appointments for other women are cancelled and rescheduled.
555. The second is poor communication around appointment times. Staff at the medical centre advised that they do not tell women their appointment time in advance because so many appointments are cancelled and rescheduled. CCA advised that each night it provides a list of appointments to custodial staff to arrange movement of the women the next day. The inspection also observed medical centre staff contacting the woman's unit, and unit officers putting out a call for the woman over the prison intercom system.

Figure 7: Access to health services at DPFC – women’s experience



Source: Victorian Ombudsman survey of women at DPFC, Question 4.2 (see Appendix 1)

Figure 8: Quality of health services at DPFC – women’s experience



Source: Victorian Ombudsman survey of women at DPFC, Question 4.1 (see Appendix 1)

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556. This communication is not always effective. Women cannot hear the intercom, for example, if the area they are in is noisy or they are outside the unit.

557. The inspection team reviewed a sample of appointment lists and medical files, which confirmed that large numbers of appointments are marked as 'DNA' or 'Did not attend'. The team observed some women declining to attend appointments when called, but many women said they never heard about appointments. The team spoke with some women who opted to wait at the Medical Centre, sometimes for hours, rather than relying on a call.

558. In response to the draft report, CCA advised that it intends to trial giving women appointment times in advance for all clinics, except the doctor's clinic.

559. Preventive health services appear to be falling by the wayside as a result of high demand from women needing care. Data provided by Justice Health showed that no pap smear tests were ordered in 2016-17. Although there were 56 women in the prison aged 50 years or over at the time of the inspection, CCA had ordered no bowel cancer screening tests and only one mammogram in 2016-2017.

560. In response to the draft report, CCA advised that women are routinely asked at reception about the date and result of their last pap smear and whether 'a mammogram has been completed as appropriate', and offered screening for blood borne viruses and sexually transmitted infections.

561. CCA also told the investigation that 18 women had accepted the offer of preventive screening for breast cancer between 1 January and 31 October 2017. However, data provided by Justice Health for the first half of 2017 did not record any such screening.

562. A member of the inspection team with nursing qualifications considered the health services generally acceptable overall, but 65 per cent of women described the quality of general health services as 'bad' or 'very bad' (see Figure 8, previous page).

## Mental health

563. There is also high demand for mental health services at DPFC.

564. On 12 July 2017, the first day of the inspection, there were 172 women with a 'P' or psychiatric risk rating. Twelve women had an S2 or S3 rating, meaning they were presenting a significant or potential risk of suicide or self-harm. A further 194 women had an S4 rating, meaning they had a previous history of self-harm behaviour.

565. CCA provides primary mental health services at DPFC, delivered by psychiatric nurses.

566. Forensicare, Victoria's institute of forensic mental health, provides services to women with serious psychiatric conditions or needing immediate or intensive care at the prison's 20 bed Marmak unit. The multidisciplinary Forensicare team in the unit includes a psychiatrist, nurses and a psychologist.

567. The prison is meant to be able to transfer woman requiring involuntary treatment to the Thomas Embling Hospital, Victoria's secure forensic mental health facility. Bed shortages at Thomas Embling mean women sometimes remain in Marmak.

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568. The prison has documented procedures for identifying and managing women considered at risk of suicide or self-harm. Women arriving at the prison undergo an 'at risk' assessment, and prison staff can refer women for assessment at other times based on observations or information. The prison is required to conduct all at risk assessments within two hours. In 2016-2017, there were 580 'at risk' referrals and all but one was seen within two hours. CCA advised that the prisoner not seen within two hours was transferred to hospital for emergency treatment and reviewed on her return.
569. Despite the various services available, access to mental health services is still a problem. Figure 7 (see page 73) shows that 13 per cent of women who responded to the prisoner survey said it was difficult to see a psychiatric nurse. Forty-four per cent said it takes a long time. Forty-one per cent of prison officers also rated mental health services as 'poor' or 'very poor'.
570. As with other health services at DPFC, women were generally dissatisfied with the quality of care, although they rated psychiatric care more highly than other health services at the prison (see Figure 8 on page 73).
571. The inspection team, which included a clinical psychologist, was concerned by conditions in the Marmak Unit. While the recreation areas were pleasant, the common living areas and cells are grim (see Photos 12-15 on page 76). The unit is due to be decommissioned when the prison's new health and wellbeing precinct opens in 2018.
572. The inspection team also noted that staff in the unit are stretched. As well as providing services at Marmak, Forensicare officers are expected to contribute to the prison's mental health outpatient program, operate outreach and day programs, and provide on the job training and support for custodial officers. Its nurses spend considerable time on administrative tasks like arranging court assessments, reducing their time for therapeutic care. These pressures are driving a system that focuses on reacting to immediate needs, rather than longer term care and reintegration of women.
573. While plans for a new building for the unit in 2018 are welcome, this will not address these resourcing problems.

## Dental services

574. The inspection team also noted problems with access to dental services at DPFC.
575. CCA currently provides a dentist at DPFC one day per week.
576. Women and prison officers told the inspection team that dental treatment is only available to women with sentences longer than 12 months, meaning women on remand cannot access the service. The team heard stories of women on remand with swollen faces and bleeding mouths who had not been able to see the dentist.
577. This is contrary to international standards, which require that the services of a qualified dentist be available to every prisoner, regardless of their status.<sup>156</sup> It is also contrary to the Corrections Act, which provides that every prisoner has a right to 'reasonable dental treatment necessary for the preservation of dental health' (see page 70).

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<sup>156</sup> *Nelson Mandela Rules*, above 99, rule 25.2.

Photo 12: Exterior of Marmmak Unit, DPFC



Photo 13: Common living area in Marmmak Unit



Photo 14: Vacant cell in Marmmak Unit

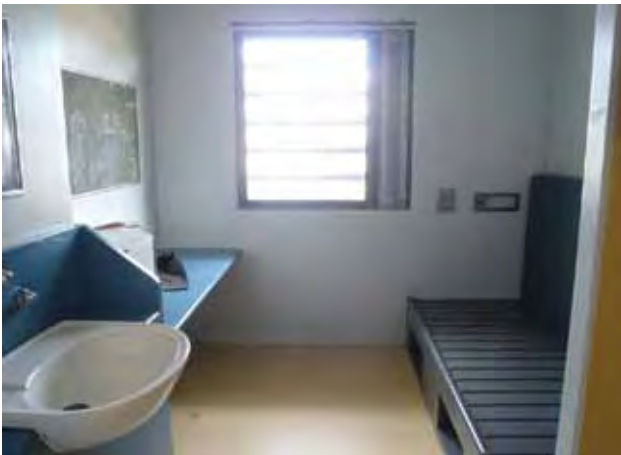


Photo 15: Bathroom in vacant cell in Marmmak Unit



578. Following the inspection, Justice Health clarified that its policy is that all prisoners can access emergency dental care when needed. Justice Health uses Dental Health Service Victoria's definition of emergency care. This includes cases where a person has a swollen face, neck or mouth, is unable to open their mouth, or has tooth or gum pain that results in waking overnight. It is only general dental services (eg dental check-ups) that are limited to women with sentences longer than 12 months.

579. This does not appear to be well understood at DPFC. The only written advice the inspection team could find inside the prison was on the back of CCA's dental appointment request forms. It sets out Justice Health's policy but does not explain what is and is not emergency care.



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580. In its response to the draft report, CCA stated that 'any prisoner who presents with dental issues which are painful, urgent or require immediate medical care following triage by nursing staff is reviewed by a medical officer and/or dentist as appropriate'. This advice does not match reports provided by both women and custodial staff at DPFC.

581. Again, women tended to rate the quality of the service provided poorly (see Figure 8 on page 73). In its response, CCA stated that waiting times for eligible women are often shorter than for patients awaiting public dental services in the community. Many of the issues with the dental services, however, appeared to centre on confusion about eligibility for services.

## Pharmacy

582. CCA administers all medication at DPFC, including common over-the-counter medication such as painkillers. In early 2017, CCA trialled giving some women weekly Webster packs to self-administer medication, but prison management discontinued the trial after 'incidents'.

583. Women attend the medical centre and a second 'satellite' centre twice a day to collect medication, once in the morning and once in the late afternoon. Nurses attend the management and protection units to dispense medication to women there.

584. The timing of the late afternoon round is problematic for women taking night medication. The inspection team heard, for example, of women being given sleeping pills at 4.30pm. The inspection team sighted a CCA information sheet stating that prescribed night medication is delivered to cells at 9pm, but did not hear of this happening in practice.

585. The inspection team observed a morning medication round and it was smooth but protracted. CCA prepares plastic medication pouches for each woman before the rounds. Nurses do not check the pouches before handing medication to women, which raises the potential for women to be given incorrect medication.

586. The inspection team heard anecdotal accounts of this happening and noted CCA had submitted some adverse event reports to Justice Health.

587. In response to the draft report, CCA advised there were nine reported medication errors and 22 reported pharmacy provider errors between July 2016 and September 2017. CCA said these are low error rates, of 0.1 per cent and 0.3 per cent respectively per average prisoner group.

588. Medication is stored securely and transported by custodial staff via vehicle to the satellite medical centre. The inspection team observed custodial officers conduct mouth checks to ensure that women swallowed their medication and did not divert it for trafficking.

589. Women and civil society organisations raised the issuing of prescriptions as being a major issue.

590. CCA provides only certain types of medication, often generic brands. Women who arrive at the prison with a prescription from their doctor in the community may find that they cannot get that medication in prison, or they need to arrange an appointment with the CCA doctor to get a different prescription. As page 72 noted, this is not always an easy task.

591. The inspection team also heard stories of women whose CCA prescriptions had run out without warning, and who had to wait to see the doctor to get their prescriptions renewed.

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592. In response to the draft report, CCA advised they had experienced some challenges with the rollout of an electronic prescribing system. However, they said they had implemented strategies to mitigate against risks.

593. During the inspection, women appeared to be receiving inconsistent advice about how to renew their prescriptions. The inspection team observed a sign in the medical centre asking nurses to check for expiring medications during medication rounds and to ensure relevant patients were booked in with the doctor. The team observed one nurse giving women 'movement slips' to attend the medical centre that day. Another nurse, however, was advising women to make appointments themselves.

## Mothers and children

594. At the time of the inspection, there were eight women at DPFC who were pregnant, and seven pre-school age children living with their mothers.

595. A midwife visits DPFC weekly. Women are escorted to hospital to give birth, consistent with the Nelson Mandela Rules and national standards,<sup>157</sup> and can have a support person with them during labour.

596. A relatively small proportion of women at DPFC had used these services. Of those that had, 14 per cent rated it as 'bad' or 'very bad' and six per cent rated it as 'good' or 'very good'.

597. While international standards state that children living with their mothers in prison should be given health care,<sup>158</sup> Justice Health policy is that children should use external health services in the community. CCA is therefore not contracted to provide general health care to children at DPFC, but can provide emergency medical treatment. Maternal and child health nurses from the local council attend the prison monthly to carry out progressive health checks and immunisations.

## Health and wellbeing programs

598. DPFC offers programs to help women address other health and wellbeing problems, such as alcohol and drug use and experience of sexual abuse. They include:

- An Opioid Substitution Therapy Program (OSTP) or methadone program operated by CCA. There were 90 women participating in this program, as at 16 June 2017.
- Alcohol and drug programs provided by Caraniche under contract with Corrections Victoria.
- A Forensicare program aimed to assist women with personality disorders to manage their emotions.
- Counselling and support from WestCASA for women who have experienced sexual assault or family violence.
- The prison's Health Promotion Officer, who offers health education on issues such as smoking and nutrition.

599. The inspection team heard there is no waiting list for DPFC's OSTP, but there were 82 women on waiting lists for Caraniche's programs in June 2017. Waiting lists for other programs were not available.

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<sup>157</sup> *Nelson Mandela Rules*, above n 99, rule 28; *Standard Guidelines for Corrections in Australia*, above n 150, 28.

<sup>158</sup> United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, UN GAOR, 65h sess, Agenda Item 105, UN Doc A/Res/65/229 (21 December 2010) rules 9, 51 ('Bangkok Rules').



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## Health privacy

600. International and national standards require authorities to ensure the confidentiality of prisoners' medical information. National standards only allow disclosure of information in limited circumstances, such as where maintaining confidentiality would jeopardise the good order and security of the prison.<sup>159</sup>

601. The inspection team noted examples of poor confidentiality practices:

- The team observed mental health assessments for new arrivals being carried out in holding cells in the presence or hearing of custodial staff.
- Prisoners and staff can overhear discussions between nurses and women during daily medication rounds. Two prisoners attend the nurses' station at a time and custodial officers are present to check that prisoners are not diverting medication. In the Swan 2 management unit, custodial staff escort nurses to cells.
- DPFC's incident reports record that a prisoner raised concerns about being 'stood over' for her opioid pain medication, after a nurse spoke about the medication in a voice loud enough for other prisoners to hear.

602. In response to the draft report, CCA advised that for safety reasons, its staff can request custodial staff be present during a consultation. It said custodial staff are bound by privacy agreements. CCA also advised that its staff are actively encouraged to avoid discussion during medication rounds, and that 'the imminent implementation of iDose (biometric dosing of OSTP) at DPFC will also assist in improving privacy during medication rounds'.

## Governance

603. The concerns identified by the inspection team indicate a need to review governance arrangements for health services.

604. The inspection team observed good working relationships between clinical and custodial officers in the Marmak Unit, but less interaction between medical and other staff at the medical centre.

605. At the time of the inspection, CCA's health services manager was not invited to the prison's management meeting. This could limit the scope for custodial and medical officers to integrate practices and services.

606. After the inspection, the General Manager advised that the health services manager now attends the prison's weekly executive meeting. CCA advised there is now an Operations Manager assigned to the medical centre whom medical staff can liaise with directly, which has 'improved communications, coordination and professional relationships within the medical centre'.

607. As page 67 noted, the Prisoner Information Booklet for newly arrived women contains almost no information about health services.

608. Justice Health provided the inspection with other brochures for women about health services at the prison. It is not clear how this information is made available to women and, as noted earlier, the brochures contain limited information about some issues (see page 76).

609. DPFC's Local Operating Procedures regarding health services are also many years out of date. Key DPFC procedures still refer to the previous health services contractor, even though CCA took over in 2012. The prison advised that these procedures are under review.

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<sup>159</sup> *Nelson Mandela Rules*, above n 99, rules 31, 32.1; *Bangkok Rules* rules 10-11; *Standard Guidelines for Corrections in Australia*, above n 150, 28.

# Material conditions

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610. Adequate material conditions – clothing, shelter and food – are also essential to the humane and dignified treatment of people deprived of their liberty.
611. Prisoners are reliant on prisons to supply these essential needs and to guarantee a clean, hygienic and decent living environment.
612. This section examines the material conditions at DPFC. Overall, these were reasonably good, however the rapid growth in prisoner numbers is putting a strain on services and infrastructure.

## Clothing and hygiene

613. The Corrections Act guarantees prisoners' rights to clothing that is suitable for the climate and work, and adequate to maintain prisoners' health.<sup>160</sup>
614. Women at DPFC receive a standard allocation of clothing suitable for hot and cold weather, and have access to laundry facilities for washing.
615. They also receive basic toiletries and sanitary products, and can purchase additional items from the prison's canteen.
616. Most women who responded to the prisoner survey were generally satisfied with these arrangements, as were women who spoke with the inspection team during the inspection.

## Accommodation

617. Women at DPFC are housed in a combination of cell units and cottage-style accommodation.
618. Women in cell units have shower and toilet facilities in their cells, while there are shared facilities in cottage units.

Photo 16: Shower, Hunter 2, DPFC

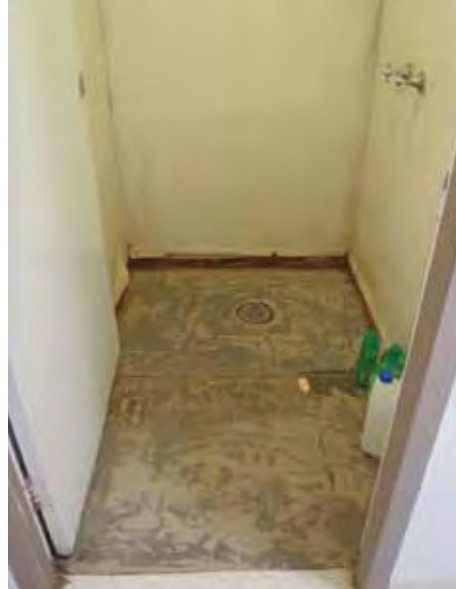


Photo 17: Sink, Hunter 3



Photo 18: Bathroom, Hunter 3



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<sup>160</sup> *Corrections Act 1986 (Vic)* s 47.

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619. Most cells are single occupancy although there are some shared cells.
620. While the increase in prison numbers has put pressure on facilities at times, DPFC had sufficient capacity to house its population during the week of the inspection.
621. As page 42 noted, DPFC is undergoing a major expansion to cater for growing prisoner numbers. One new unit was due to open the week after the inspection and additional beds will reportedly become available in 2018.
622. The new units will provide the prison with greater flexibility to manage the needs of women. The General Manager advised the new units will be able to be converted into cell accommodation or used as cottage-style, self-catering accommodation.
623. The accommodation in use at the time of the inspection ranged from original buildings dating from 1996, to newer units.
624. There were significant differences in the quality of, and conditions in, accommodation across the prison, particularly between the old and newer units.
625. Most units meet minimum standards set down in the Nelson Mandela Rules for lighting, ventilation and hygiene.<sup>161</sup>
626. However, the inspection team found sub-standard and unhygienic conditions in older units, particularly the Hunter 2 and Hunter 3 units. Photos 16-18 (see previous page) show a shower and toilet with no floor and sinks that were cracked and bubbling.
627. The inspection team heard reports from women about inadequate heating in parts of the prison. The visits centre, for example, does not have adequate heating or cooling equipment for the comfort of staff, women or visitors. During the inspection, staff were bringing in portable heaters.

## Food

628. The Nelson Mandela Rules require that every prisoner be provided:
- at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.<sup>162</sup>
629. The Corrections Act also gives prisoners the right to be provided with adequate and nutritious food, and to be provided with 'special dietary food' for medical or religious reasons, or because the prisoner is a vegetarian.<sup>163</sup>
630. Women who live in cell accommodation receive meals from the prison kitchen and can prepare some food in unit kitchens. Women in cottage accommodation cook for themselves.

## Meal times

631. For residents of cell units, early delivery times for evening meals was the main concern noted by the inspection team.
632. Throughout the week, the inspection observed 'evening' meals being delivered to units between 3.20pm-3.40pm.
633. In some cases, meals were delivered to units as early as 2.30pm but not distributed to the women until much later, meaning they were cold by the time the women got to eat them.
634. This is inconsistent with the Nelson Mandela Rules' requirement that meals be served 'at the usual hours'.
635. It also means there is a long gap between dinner and breakfast the next morning.
636. Meals being served early or cold can be a source of tension within the prison, according to the inspection team's review of a selection of women's Individual Management Files and the team's own observations.

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<sup>161</sup> *Nelson Mandela Rules*, above n 99, rules 12-17.

<sup>162</sup> *Nelson Mandela Rules*, above n 99, rule 22.

<sup>163</sup> *Corrections Act 1986* (Vic) s 47(1).

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## Menu

637. For women living in cells, the DPFC has a four-weekly rotating menu with four main choices, which include vegetarian options.
638. Prisoners may also request meals that meet their dietary requirements, for example for religious reasons.
639. The menus reviewed by the inspection team offered a good range of choices and variation. The inspection team also ate from the prisoner lunch and dinner menus during the inspection, and the food was well-prepared and nutritious on those occasions.
640. The menus are reviewed by a dietician who provides feedback and suggested improvements. The most recent dietician's review, dated August 2016, noted that the prison had made improvements to the menu in line with past recommendations. It recommended further minor changes, such as reducing salt and sauce rations and increasing lean meats, fruits and vegetables.

## Self-catering units

641. DPFC gives women in cottage-style units a weekly allowance to spend on a choice of food products. At the time of the inspection, the weekly allowance was \$42 a week per woman.
642. During the week of the inspection, the prison increased the prices of some food items. The price of meat, for example, nearly doubled. This occurred without warning and was not accompanied by a corresponding increase in the women's weekly allowance. Some women said products such as meat would now be out of their reach.

643. The inspection team obtained a copy of the new price list and attempted to create a menu for a week that would cost no more than \$42. This was possible but a difficult task, and would require splitting up a single portion of meat for every meal during the week. It was easier to create a vegetarian menu.

644. After this was raised with the General Manager by the inspection team, she requested advice from staff about increasing the weekly allowance. The issue was under consideration at the time this report was drafted.

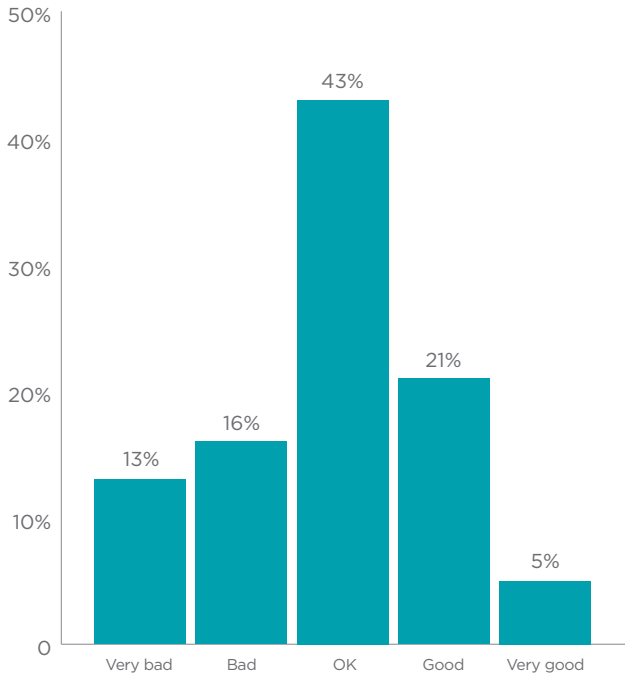
## Prisoner perceptions

645. Most of the women who spoke with the inspection team said the food at DPFC is adequate and meets their cultural or religious needs.
646. This included women from a range of cultural backgrounds, and women in cell and self-catering accommodation.
647. The majority of women who responded to the prisoner survey also rated the food as 'OK', 'good' or 'very good' (see Figure 9, next page).

## Property

648. Women at DPFC are allowed to keep a limited amount of personal property with them in their cells. Other property is stored by the prison and made available on request.
649. At the time of the inspection, there was only one property officer, who was responsible for handling all incoming property requests, logging incoming women's property, and arranging all property for exit or transfer to DPFC and Tarrengower prison.

Figure 9: Perception of food at DPFC



Source: Victorian Ombudsman survey of women at DPFC, Question 2.4 (see Appendix 1)

650. This led to a backlog of property for processing. During the inspection, many women raised concerns about delays accessing stored property (see Photo 19, above).

651. Some women also said they often receive inconsistent advice about what items they can keep in property, and how many items they can keep in their cells at any one time. Some described having items such as books confiscated from their rooms during searches, even though they had been allowed to sign them out from property.

Photo 19: Property waiting to be processed, DPFC



652. Other women said that their families received inconsistent advice about leaving property for them, such as whether they need permission from the General Manager to leave books, and what types of clothes are acceptable.

653. In response to the draft report, the General Manager said the prison was recruiting a second property officer. She also provided evidence that the prison has a property working group, which recently submitted proposals to clarify instructions for visitors on leaving property for prisoners.

# Purposeful activity

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654. The wellbeing of prisoners also depends on their ability to engage in purposeful activity in detention – to maintain contact with family and friends and the outside world, to get physical exercise, and to work and learn.

655. These activities have the added benefit that they improve prisoners' chances of a successful return to the community when the time comes.

656. International and national standards set minimum requirements around these activities.<sup>164</sup>

657. The *Corrections Act 1986 (Vic)* also states that prisoners have the right to:

- receive one visit for at least half an hour each week
- send and receive mail, subject to certain security measures
- take part in education programmes in prison.<sup>165</sup>

658. DPFC generally meets these requirements well. It routinely exceeds Corrections Victoria's benchmarks for the number of eligible prisoners engaged in purposeful activity for 30 hours or more each week.

659. This is not the experience of all women at DPFC, however. Thirty-seven per cent of women who responded to the prisoner survey felt staff did not support them to stay in touch with family and friends, and 44 per cent said they did not feel their time was spent on useful activities.

660. This section looks at what DPFC offers and notes some issues to be addressed.

## Contact with family and friends

661. DPFC recognises that women have often been primary caregivers in the community and provides for them to maintain contact with children, family and friends through:

- Personal visits. Women at DPFC can book two personal visits each week – one on weekdays and one on weekends – in two hour blocks. This exceeds the rights set out in the *Corrections Act*.
- Unlimited ability to make telephone calls at their own expense. Calls are limited to 12 minutes and women must wait a minimum of 10 minutes between calls.
- Being able to send and receive an unlimited amount of mail at their own expense.

662. DPFC's Visits Centre is reasonably pleasant (see Photo 20, page 85). It has a café that is run by prisoners and offers reasonably priced food. There is an outdoor area with play equipment for children and a separate room with toys and decorations where volunteer groups run a 'Fun with Mum' program twice a month.

663. There are telephones for each unit or set of units, including the management and Marmak mental health units. There were reports of delays with repairing faults with telephones. The inspection team identified one faulty telephone while at the prison.

664. The visits observed by the inspection team on a Saturday afternoon ran smoothly, with officers processing visitors as quickly as possible despite the large number of visitors. Visitors who spoke with the team mostly advised they had no concerns about the process. Sixty-two per cent of women who responded to the prisoner survey said staff treated their visitors 'very well' or 'well enough'.

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<sup>164</sup> *Nelson Mandela Rules*, above n 99, rules 23, 58-66, 96-108; *Bangkok Rules*, above n 158, rules 26-28, 42-47; *Standard Guidelines for Corrections in Australia*, above n 150, 25-26, 28-34

<sup>165</sup> *Corrections Act 1986 (Vic)* s 47.



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Photo 20: Visits centre, DPFC



665. During the inspection, women raised two main concerns about their ability to contact family and friends.

666. The first was delays. Fifty-one per cent of women who responded to the prisoner survey reported they had experienced problems getting access to the telephone. Sixty-nine per cent reported experiencing problems sending or receiving mail.

667. DPFC's Prison Intelligence Unit is responsible for approving and adding telephone numbers to women's telephone accounts, and for checking incoming and outgoing mail where women have been flagged for intelligence monitoring. Resources in this unit have not increased in line with the growth in prisoner numbers.

668. The second concern raised by women during the inspection was the cost of telephone calls.

669. Women pay community rates for mobile, STD and international calls, but their income in prison is far more limited than the average community member (see page 88).

670. The cost of phone calls is a particular problem for women from interstate or overseas, for whom telephone calls are the only way to speak with children and family.

671. International standards state that authorities should take measures to counterbalance disadvantages faced by women detained in institutions located far from home.<sup>166</sup>

672. Corrections Victoria policy states that officers can arrange for emergency and welfare calls, including to family, where a prisoner does not have funds, and General Managers can exempt women from paying for their own calls for welfare or other reasons. Women may also apply to have an extra \$50 per month deposited into their prison account by friends or family for STD or international calls. However, women are not routinely advised of these options.

673. DPFC has introduced a Skype program for prisoners with family members who cannot visit in person but the program is only used in exceptional cases and eligibility is very limited.

674. Women can only use the Skype program to contact children or family who are interstate or overseas if, for example, one of the parties is suffering from a physical disability or prolonged illness, and women must explain why verbal contact alone is not sufficient. In addition, women can only apply to use Skype once every three months.

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<sup>166</sup> *Bangkok Rules*, above n 158, rule 26.



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## Restricting family contact as a punishment

675. The inspection team noted that DPFC sometimes restricts women's contact with family and friends as punishment for disciplinary offences in prison. The prison may:

- Restrict women to non-contact (or box) visits, which involves women speaking with visitors through a glass panel which prevents physical contact (see Photo 21 on page 87).
- Suspend women's ability to make telephone calls. Corrections Victoria policy states that eligibility to make calls is dependent on good behaviour and may be withdrawn in certain circumstances, including as a result of a disciplinary hearing.<sup>167</sup>

676. Twenty-five per cent of women who responded to the prisoner survey said they had been deprived of visits as punishment (it is assumed this refers to contact visits, not all visits). Twenty-three per cent of women said they had been deprived of telephone calls to family as punishment.

677. International standards, however, state that:

Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.<sup>168</sup>

678. Restricting women to box visits meets this standard, because it still allows for some contact.

679. Suspending telephone calls, however, arguably breaches the standard and is not a reasonable limitation on the right to protection of families and children in the Charter.<sup>169</sup>

## Contact with the outside world

680. DPFC provides access to in-cell and in-unit televisions so that women can stay abreast of what is happening in the outside world.

681. Women at DPFC are allowed one professional visit each week, which allows them to meet with their lawyer if necessary.

682. Facilities for professional visits, like other facilities in the prison, are stretched. The visits centre has only two offices for legal visits and the inspection team observed a legal consultation taking place in the centre's open area when the offices were full. Officers had arranged for the lawyer and client to sit at the back of the area, where they could not be overheard.

683. Women need to add lawyers to their phone list if they want to speak with them by telephone. The inspection team heard of delays with this approval process from both women and legal groups. Fifty-one per cent of women who responded to the prisoner survey said it was easy to communicate with their lawyer, but 44 per cent said it was not.

684. Prisoners who are foreign nationals are entitled to communicate with diplomatic and consular representatives.<sup>170</sup>

685. There were 129 foreign nationals at DPFC at the time of the inspection. However, the inspection team heard that officers were not always aware of the processes for facilitating this contact.

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<sup>167</sup> Corrections Victoria, *Commissioner's Requirement - Prisoner Telephone System* (April 2016) para 4.1.

<sup>168</sup> *Nelson Mandela Rules*, above n 99, rule 43. See also *Bangkok Rules*, above n 158, rule 43.

<sup>169</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 17.

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<sup>170</sup> *Nelson Mandela Rules*, above n 99, rule 62.

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Photo 21: Booth for non-contact (box) visits, DPFC



Photo 22: Recreation Centre, DPFC



Photo 23: Prison gymnasium, DPFC

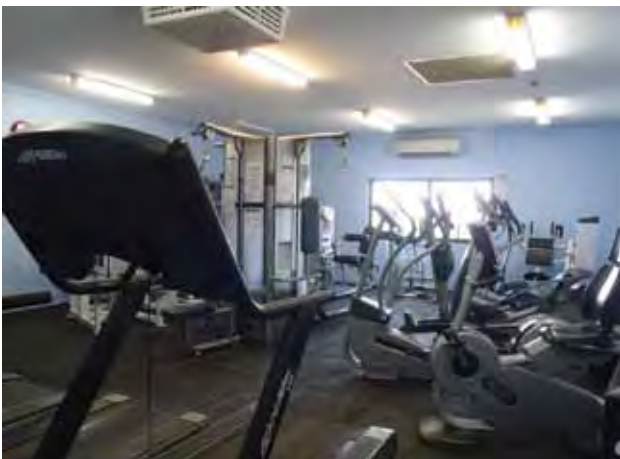


Photo 24: Prison library, DPFC



Photo 25: Outdoor sports courts, DPFC



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## Recreation and exercise

686. DPFC provides a good range of recreation facilities and activities for women.

687. The facilities include an indoor recreation centre with a sport courts and equipment, a gymnasium and art and craft room, as well as outdoor sports courts and a small swimming pool (see Photos 22-25).

688. The prison library in the recreation centre has an ageing but well-stocked collection and some resources in Chinese and Vietnamese, but limited material in other languages.

689. The prison offers regular activities such as bingo and special activities for ANZAC Day, NAIDOC week, Australia Day, Chinese New Year and Christmas, including a children's Christmas party.

690. Women and staff also stage an annual play for family, friends and staff.

691. Some women reported problems with crowding in the sports facilities and in activities, but this was not observed during the inspection.

## Work

692. DPFC operates a routine 'structured day' from 9am to 3.30pm Monday to Friday, where women engage in work, programs and education.

693. All sentenced women under the age of 65 at DPFC are expected to work, with exceptions for women who have chronic illness, are pregnant or in full time education. Work is optional for remand women, consistent with the Nelson Mandela Rules and Corrections Act.<sup>171</sup>

694. These arrangements were working well at DPFC. It offers work for women in areas such as:

- the prison kitchen and two prison cafes, one that caters to staff and functions and the other at the visits centre
- the prison's industries factory, for example sewing prison uniforms
- horticulture, which maintains the prison's gardens
- as a 'unit billet', cleaning the units and ordering and collecting food
- as peer workers, providing support to other prisoners.

695. The work offered to women is meant to increase their employability, but 41 per cent of women who responded to the prisoner survey were sceptical about whether their work or training might help them get a job when they leave. The inspection team heard the prison tries to accommodate women's interests and the prison's operational needs, as well as employment prospects in the community.

696. DPFC pays women for work in the prison, consistent with international standards.<sup>172</sup> Wages range between \$6.50 and \$8.95 per day, depending on skill level.

## Education

697. DPFC also offers education opportunities to women to improve their chances of employment in the community.

698. Corrections Victoria has contracted Box Hill Institute to provide vocational education and training (VET) courses onsite at DPFC. These are accredited to the same standards as VET courses in the community, allowing women to continue study once they are released, if they wish.

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<sup>171</sup> Ibid rule 116.

<sup>172</sup> Ibid rules 96-103.

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699. The courses include literacy and numeracy programs, English classes for non-English speaking women, and vocational courses in areas such as cooking, hospitality, information technology, horticulture and business skills.
700. Most courses were offered at basic Certificate I or II levels at the time of the inspection, which would not generally provide a qualification for work in the community. They also do not cater for women with more advanced literacy and numeracy skills, of whom there are a sizeable proportion at DPFC. The prison is aware of this and is negotiating with Corrections Victoria and Box Hill regarding the mix of courses provided.
701. Women at DPFC can also apply to undertake other courses through distance education.
702. The prison reports that it tries to integrate vocational training with work in the prison where possible. Women studying hospitality or business administration, for example, may work in the two prison cafes.
703. The inspection team observed that space in DPFC's education building is very cramped and struggling to cater to the increased number of women at the prison. There was only a limited number of computers, for example, and the inspection heard that women are regularly turned away because the room is full.
704. Forty per cent of women said it was easy to get involved in vocational or skills training, with 37 per cent saying it was difficult. DPFC has waiting lists for some courses but most are not excessive.

## Programs

705. DPFC also offers a series of programs for sentenced women to address issues including:
- health and wellbeing (see page 78)
  - offending behaviour and contributing causes, such as problem gambling
  - parenting programs for women who have children with them in the prison
  - transition back into the community.
706. Some, but not all, programs are available to remand women.
707. Women reported problems accessing programs. Thirty-eight per cent of survey respondents said they had not been able to access programs to be eligible for parole, and 37 per cent said it was difficult to access offending behaviour programs.
708. Corrections Victoria could not supply data on waiting lists for programs but the inspection heard there was a four to five month wait to access the prison's program for women with personality disorders or emotional regulation issues, for example.

## Case management and transition

709. Civil society organisations that met with the inspection team raised concerns about arrangements for women to transition back into the community, particularly in relation to housing.
710. In 2015, the Victorian Ombudsman tabled a report on rehabilitation and reintegration of prisoners in Victoria that made recommendations about these issues.<sup>173</sup>

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<sup>173</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015).

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711. The inspection team identified ongoing problems with DPFC's case management arrangements.
712. In Victoria, custodial officers are expected to act as 'case managers' for women as well as providing for security and order at prisons. This involves working with prisoners to reinforce positive behaviour, challenge anti-social behaviour and ensure prisoners have access to options and services to encourage rehabilitation.
713. The 2015 Ombudsman report recommended that the Department of Justice and Regulation develop systems and processes to provide greater continuity of, and stronger emphasis on, prisoner case management.<sup>174</sup>
714. This is a work in progress at DPFC. Forty per cent of women who responded to the prisoner survey were not able to identify their case manager.
715. The prison has, however, recently established a rehabilitation and transition precinct for women who are approaching release. It is also expanding the use of day release permits for women so they can make arrangements in the community, such as opening bank accounts, before their release.

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<sup>174</sup> Ibid 154.

# Diversity

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716. DPFC accommodates a diverse and high-needs cohort of women.
717. Women come from a range of cultural, linguistic and religious backgrounds, including a significant number of Aboriginal and Torres Strait Islander women.
718. The prison houses a small number of young children who live there with their mothers.
719. There are also women with a range of mental and physical health issues and cognitive and physical disabilities.
720. Particular cohorts, including transgender, intersex and gender diverse people, are often more at risk within custodial environments. Prisons need to take account of these vulnerabilities when planning action to prevent cruel, inhuman and degrading treatment.
721. This chapter looks at how DPFC is managing these issues.

## Aboriginal and Torres Strait Islander women

722. Victoria has the lowest Aboriginal and Torres Strait Islander population of any state or territory.<sup>175</sup> Yet, as page 44 noted, Aboriginal and Torres Strait Islander women made up 11 per cent of the population at DPFC at the time of the inspection.
723. The catastrophic effects of colonisation and the resultant intergenerational trauma on Aboriginal and Torres Strait Islander people and communities are well-documented.<sup>176</sup>
724. Aboriginal and Torres Strait Islander women in prison are more likely than other women prisoners to be victims of domestic and sexual violence and have mental, cognitive or physical disabilities. They are also more likely to have been unemployed, lived in insecure housing, and to have been the primary carer for children before their incarceration.<sup>177</sup>
725. A 2013 study of Aboriginal prisoners in Victoria found that 46 per cent of female participants, all of whom were imprisoned at DPFC, had post-traumatic stress disorder (PTSD). Rates of mental illness for both men and women were significantly higher than among non-Aboriginal prisoners, with the most prevalent disorders being major depressive episodes and PTSD.<sup>178</sup>

### Aboriginal Wellbeing Officer

726. DPFC employs a single Aboriginal Wellbeing Officer (AWO), whose role is to look after the cultural and welfare needs of the Aboriginal and Torres Strait Islander women in the prison.
727. The AWO has worked there since the prison opened, and is highly respected by women and staff who spoke with the inspection team.
728. Her workload is very diverse and often involves advocating for prisoners with custodial and health authorities. Given that she is responsible for the welfare of around 40 to 50 women, her services are in high demand.
729. This situation is far from unique to DPFC. The inspection team understands that not all prisons in Victoria have a full-time AWO, and AWOs at some prisons provide services to larger numbers of Aboriginal and Torres Strait Islander prisoners.

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<sup>175</sup> Australian Bureau of Statistics, *Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016*, cat no 2071.0 (2017).

<sup>176</sup> See, eg, Healing Foundation, *Growing up our children strong and deadly* (2015).

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<sup>177</sup> Human Rights Law Centre, above n 94.

<sup>178</sup> Professor James Ogloff et al, *Koori Prisoner Mental Health and Cognitive Function Study: Final Report prepared for the Department of Justice, Victoria* (2013).



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## Cultural awareness amongst staff

730. The Victorian Aboriginal Legal Service (VALS) recently reported on its discussions with Aboriginal prisoners at several Victorian prisons, including DPFC:<sup>179</sup>

One inmate [at DPFC] stated that there was a need for the officers to have cross-cultural training as there was very little understanding about Aboriginal people, history and culture. Any 'Aboriginal issues' are handballed directly to the Aboriginal Wellbeing Officer and it was felt this was unfair as the other (non-Aboriginal) officers have a duty to learn and be informed and assist Aboriginal prisoners.

731. Representatives from VALS also raised this issue in a submission to the investigation. VALS stated that current one-off or irregular 'cultural competence' training is inadequate.

732. VALS recommended that all prison staff receive ongoing cultural training that includes understanding the impacts of colonisation, intergenerational trauma and poverty, and having local elders explain the history and impacts of colonisation on the Aboriginal people in the area.

733. New custodial officers receive some cultural awareness training as part of initial training. Only two staff members attended 'Koori Cultural Awareness Training' in 2016-17.

## Healing Space

734. DPFC has set aside an area known as the 'Healing Space' within the prison for Aboriginal and Torres Strait Islander women.

735. Several of the women commented that they were proud of the space. It was small but homely, with a kitchenette and artwork on the walls and straw animal dolls on shelves, all of which were created by the women.

736. It was connected to a small and well-kept garden with a large mural at the back, also created by the women.

## Access to health services

737. One of the main issues raised by the women and other sources was access to culturally appropriate health care.

738. The inspection team heard that an Aboriginal nurse used to work at the prison several years ago. This reportedly worked well as she had been able to provide culturally appropriate care to the women and explain cultural issues to other medical staff.

739. In response to the draft report, CCA advised that it has a contract with the Victorian Aboriginal Health Service for a nurse to visit DPFC to provide 'culturally appropriate and safe care around the issues of sexual health and blood borne viruses'.

## Access to the Mothers and Children program

740. Access to the Mothers and Children program is a particularly sensitive issue for Aboriginal and Torres Strait Islander women in prison. The widespread forced removal of Aboriginal children from their families by the state continues to have devastating and wide-ranging impacts on Aboriginal families and communities.<sup>180</sup>

741. Several sources raised concerns about the access of Aboriginal women to DPFC's Mothers and Children program.

742. The inspection was advised anecdotally that for the past few years, none of the Aboriginal women who have applied for the program have been accepted.

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<sup>179</sup> Alistair McKeich, Victorian Aboriginal Legal Service, *Aboriginal Inmate Wellbeing* (2017).

<sup>180</sup> See, eg, Australian Human Rights Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997).



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743. Information provided by Corrections Victoria confirmed that the last successful application to the program by an Aboriginal woman was in 2014.
744. Aboriginal women submitted 12 applications in 2015-2017. Eight did not proceed because the woman was released, moved to another facility or withdrew the application. Four were rejected on the grounds that it was not in the 'best interest of the child'.
745. The inspection team heard concerns that the process for assessing the applications may be culturally inappropriate.
746. The inspection team is not in a position to determine if there are barriers for Aboriginal and Torres Strait Islander women in accessing the program.
747. However, the data suggests that this is a potential risk area for DPFC, and a review would be advisable.

### **Programs and education**

748. DPFC offers tailored cultural programs for Aboriginal and Torres Strait Islander women.
749. Many of the women spoke highly of the Koori art program, run by the Box Hill Institute, however some said the other cultural education course available to them was not engaging or relevant to their needs.

### **Culturally and linguistically diverse women**

750. There were 160 women from culturally and linguistically diverse backgrounds at DPFC during the inspection, including 36 women who required an interpreter to communicate in English.

751. At the time of the inspection, the prison employed one Multicultural Liaison Officer (MLO). Women who had worked with him spoke highly of the activities and support he provided. However, not all women were aware they could access his services.
752. In October 2017, the General Manager advised that the prison had engaged a second MLO.
753. Women who cannot communicate in English presented as particularly isolated in the prison. Many have difficulty communicating with staff and other women and were unaware of their rights or how to raise concerns.
754. The prison does not routinely translate written information into community languages. The Prisoner Information Booklet has not yet been translated into other languages.
755. The medical centre arranges interpreters for women attending medical appointments. The prison is also meant to arrange interpreters for newly arrived women during the reception process, but not all non-English speaking women who spoke with the inspection team had received this service.
756. Staff at the prison confirmed that it is often impractical to arrange interpreting services for other day to day communication.
757. One woman, who was the only speaker of her language in the prison, said her case manager tried to arrange meetings on a day when a prison officer who was fluent in her language could also attend.
758. Women often relied on other prisoners to interpret for them, which is potentially risky and could result in confidential information being divulged to other prisoners.

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## Religion

759. DPFC generally caters well to the needs of different religions.
760. It has a multifaith centre which offers a range of religious services throughout the week. Chaplains from different religions attend the prison regularly and share this space.
761. Fifty per cent of women who responded to the prisoner survey said it was easy to attend religious or cultural activities, and 59 per cent said they were able to speak to a religious leader of their faith in private if they wanted to.
762. Chaplains were by far the most trusted category of staff amongst women who responded to the survey.

## Women with a disability

763. The Corrections Act states that prisoners who are 'intellectually disabled or mentally ill' have the right to access special care and treatment, either within the prison or outside the prison with the Governor's approval, where it is considered necessary or desirable by the medical officer.<sup>181</sup>
764. Corrections Victoria policy states that prisons are required to accommodate prisoners with a disability in a safe, secure environment which helps them adjust to the prison environment. Prisons must also provide programs that address the individual needs and offence-related behaviours of inmates.<sup>182</sup>
765. Each prison has a disability portfolio holder who is responsible for connecting women with a disability with appropriate services. This position is a responsibility on top of the portfolio holder's substantive position.
766. The inspection understands that the focus of the disability portfolio holder at DPFC is cognitive impairment, and that physical impairment is generally dealt with by the health service provider, CCA.
767. As outlined below, many of the issues faced by women with physical or cognitive impairments also affect women who experience age-related mobility problems and physical or cognitive conditions such as dementia.

## Cognitive impairment

768. Data from Corrections Victoria showed there were 10 women with a diagnosed intellectual disability at the time of the inspection, and no women who had been diagnosed with an acquired brain injury (ABI).
769. The data regarding ABI would not seem to be accurate. A senior programs officer at Corrections Victoria with expertise in disability and psychology advised that 50 per cent of prisoners worldwide are thought to have an ABI.
770. The prison has some services in place for women with a diagnosed intellectual disability. For example, the disability portfolio holder arranges for women to maintain links with their disability workers in the community.
771. OPA runs a volunteer program that supports prisoners with a diagnosed intellectual disability at disciplinary hearings. The inspection team understands that there is a lower take-up from DPFC than other prisons.

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<sup>181</sup> *Corrections Act 1986* (Vic) s 47(1)(g).

<sup>182</sup> Corrections Victoria, *Deputy Commissioner's Instruction 2.8: Prisoners with a disability* (15 September 2015).

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772. Due to there being fewer female than male prisoners in Victoria, women with a cognitive impairment do not always receive the same level of support that prisoners do in the men's prison system. Port Phillip Prison has a unit that is specifically for prisoners with a cognitive impairment, for example, but there is no equivalent at DPFC.

773. There was limited information available in easy English around the prison.

774. The inspection team also spoke with staff across the prison who were having to learn on the job how to communicate and work with prisoners with a cognitive disability. This increases the risk that staff may not respond appropriately to challenging behaviours associated with disability.

775. Dr Baidawi's submission noted that this is also an issue across the Victorian prison system in relation to older prisoners suffering from dementia and related cognitive impairment.

### Screening for cognitive impairment

776. The Ombudsman's 2015 report on the rehabilitation and reintegration of prisoners recommended that the Department of Justice and Regulation review practices for identifying and screening prisoners with a cognitive impairment to ensure these functions are carried out by staff with specialist knowledge.<sup>183</sup>

777. The inspection team was advised that diagnosing an ABI requires a neuropsychological assessment and is expensive. The inspection team also heard that women are sometimes not at the prison for long enough for assessment.

778. The inspection team was advised that Corrections Victoria has now identified a suitable screening tool, but requires further funding to roll this out in prisons.

### Physical impairment

779. The layout of the prison requires a great deal of physical movement, and some women with physical mobility issues have difficulty getting around the complex, for example to walk from their unit to the medical centre.

780. The prison now has one disability-accessible cottage-style unit in its remand precinct, and staff make an effort to find appropriate accommodation for women. This is challenging, however, as most of the units are not suitable for women with disabilities.

### Personal care

781. The inspection team did not observe any specialist aides or carers onsite at DPFC to assist women with physical disabilities or women who require assistance with self-care.

782. Women who need assistance currently rely on other prisoners or prison staff to offer help. Research has found this is an issue across both male and female prisons in Victoria and NSW, and also concerns frail elderly people in prison.<sup>184</sup>

783. Some women raised concerns that there is an expectation that 'women look after women'. Prison staff told the inspection team that some women had been injured providing personal care to fellow prisoners.

784. The inspection team was also advised that prison officers sometimes provide personal care assistance to the women. This is not an official part of their role, and one officer told the inspection they did it because 'I'm a human being'.

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183 Victorian Ombudsman, above n 173.

184 Trotter et al, above n 97, 59-61.

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785. Relying on custodial staff and prisoners to act as informal personal carers exacerbates the vulnerability of prisoners requiring care. At best, it puts them at risk of not getting the specialist care they require, and at worst makes them vulnerable to abuse or ill-treatment.

786. It also places the staff and prisoners providing the care in an inappropriate position, putting them at risk of injury and opening them up to allegations of abuse.

787. The Corrections Victoria senior programs officer interviewed by the inspection advised that Corrections Victoria has funded personal care workers in a unit for prisoners with cognitive impairment at Port Phillip Prison.

788. Staff at DPFC did not appear to be aware that requesting funding was an option.

## Mothers and children

789. The majority of the women held at DPFC have children (see page 43), although Corrections Victoria was unable to provide data on how many have children under the age of 18.

790. Half of the women who responded to the prisoner survey indicated they had children under the age of 18, and 36 per cent said they were the primary carer for their child or children before they were imprisoned.

791. There were seven children residing with their mothers at the prison during the inspection. The majority of mothers in the prison live there without their children.

## Mothers and Children program

792. The Corrections Act provides for the Secretary of the Department of Justice and Regulation to permit a prisoner to have their child reside with them, if it is in the child's best interest and if the good order, management and security of the prison will not be threatened.<sup>185</sup>

793. The Bangkok Rules<sup>186</sup> state that children in prison should be provided with an upbringing that is as close as possible to that of a child outside prison.

794. Mothers and children at DPFC are housed in two of the prison's newer cottage-style units, which are in good condition.

795. Women can purchase, or have their visitors drop off, toys. However, there was no outdoor playground equipment for the older children. The inspection team was advised there had been no playground equipment for about 18 months.

796. The inspection team spoke with some of the women in the unit, who advised they were happy there and appreciated being able to have their children with them.

797. The clinical psychologist on the inspection team found that, to the extent it was possible to observe within the short period of the inspection, the interior unit facilities did not appear to be a limiting factor for parents providing appropriate care for their children.

798. The prison employs a Mothers and Children support worker who provides services to mothers whose children reside with them and to expectant mothers. She also provides support to staff working in the Mothers and Children unit.

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<sup>185</sup> *Corrections Act 1986* (Vic) s 31.

<sup>186</sup> *Bangkok Rules*, above n 158, rule 51.2

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799. The women in the unit spoke highly of the support worker, and also of the prison officers who staff the unit, who some described as very helpful.

800. Staff in the unit do not receive any specific training about working with mothers and children in a custodial environment.

801. The inspection team was advised that there is some written information available, and staff in the unit also seek advice from the Mothers and Children support worker.

802. This is potentially a risk area. It also appears to contradict the Commissioner's Requirements, which require training to be made available to all staff working directly with mothers and children participating in the program, on issues such as sensitive management of children.<sup>187</sup>

### Mothers without their children

803. The inspection team noted the distress experienced by women with young children who are not with them in prison.

804. Staff told the inspection team that some women are constantly advised by Child Protection services that their children are moving accommodation, or do not know where their children have been placed.

805. The inspection team heard that children's carers sometimes refuse or are unable to bring children to visits.

806. The inspection team was advised that DPFC would benefit from having additional counselling services available so that mothers who were grieving at being separated from their children could access timely support.

807. Members of the team observed a reception interview at which a woman was asked in detail, and with apparent concern, whether she knew where her children were and whether she needed to make arrangements for their care.

### Transgender, gender diverse and intersex people

808. Corrections Victoria policy states that prisoners who are transgender, gender diverse or intersex must be treated with dignity and must not be discriminated against or harassed on the grounds of their medical condition, gender identity, intersex status or related issues.<sup>188</sup>

809. Their safety in custody is of paramount importance, and they are to have access to the same range of work, rehabilitation, education and recreation programs and facilities as other prisoners.

810. DPFC has some procedures in place to ensure that transgender people are treated with dignity. For example, transgender prisoners can choose the gender of the staff who strip search them.

811. Overall, the prison appeared to be attempting to meet the needs of transgender, gender diverse and intersex prisoners, however there seemed to be some communication issues regarding their needs and ensuring that staff were aware of their status, where appropriate.

812. Only one staff member attended 'LGBTI Awareness' training in 2015-16, suggesting this is an area where more training for staff may be beneficial.

813. In response to the draft report, the General Manager advised that Transgender Victoria had delivered two training sessions in October 2017, attended by 30 staff members.

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<sup>187</sup> Corrections Victoria, *Commissioner's Requirement - Mothers and Children*, 5.48.1 (September 2016).

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<sup>188</sup> Corrections Victoria, *Commissioner's Requirement 2.4.1: Management of Prisoners who are Transgender, Gender Diverse or Intersex* (January 2017).

# Staffing

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814. While OPCAT inspections are primarily concerned with conditions and treatment for detainees, they also examine conditions for staff working in places of detention.
815. As the Nelson Mandela Rules note, the proper administration of a prison depends on the 'integrity, humanity, professional capacity and personal suitability' of its staff.<sup>189</sup>
816. The 360 or so staff at DPFC work in a particularly challenging environment. They must balance the safety and security of the prison with upholding prisoners' dignity and meeting the needs of a diverse group of women. Like the women at DPFC, they deal with ageing and sometimes cramped facilities. As page 42 noted, their workplace is undergoing considerable change.
817. In a women's prison, staff also need to be particularly aware of and trained in gender-specific needs and backgrounds of female prisoners and their children.<sup>190</sup>
818. This chapter looks at what DPFC is doing to ensure staff can provide appropriate conditions and treatment for women.
822. The inspection team was advised that having mixed genders can also be an opportunity to provide women with positive male role models.
823. Rather than insisting that women's prisons be staffed exclusively by women, NPMs in some countries suggest an ideal ratio as a guideline. The New Zealand Ombudsman, for example, suggests a 70:30 female to male staff ratio. The HMIP in the United Kingdom suggests that at least 60 per cent of staff in direct contact with women and 60 per cent of governor-grade staff should be female.<sup>193</sup>
824. Data provided by Corrections Victoria shows that women currently make up 52 per cent of DPFC's workforce.
825. A large number of male custodial staff in some units at the prison was noticeable during the week of the inspection.
826. Less than a third of the prison's 28 Emergency Response Group (ERG) are women. The ERG are specialist officers who respond to incidents and emergencies in the prison, with use of force a likely outcome. The gender makeup of this group may result in largely male groups of officers using force against women. The clinical psychologist in the inspection team observed that this may compound trauma in women who have experienced violence in the past.

## Gender balance

819. The Nelson Mandela Rules state that women's prisons should not employ male staff in positions where they are directly supervising women prisoners.<sup>191</sup>
820. However, this is impractical in many countries due to the difficulty in recruiting sufficient numbers of female staff.
821. There is also an argument that mixed genders working in women's prisons can help to normalise prison life as it reflects conditions in the community.<sup>192</sup>
827. The inspection team was advised that the prison has difficulty retaining young female custodial officers.
828. The inspection team understands that the prison does not currently have a strategy to recruit more female staff, although several years ago it sought an exemption from VEOHRC to conduct a female-only recruitment round.

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<sup>189</sup> *Nelson Mandela Rules*, above n 99, rule 74.

<sup>190</sup> *Bangkok Rules*, above n 158, rule 33.

<sup>191</sup> *Nelson Mandela Rules*, above n 99, rule 81.3.

<sup>192</sup> Association for the Prevention of Torture, *Women in detention: a guide to gender sensitive monitoring* (2015) 11.

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<sup>193</sup> Her Majesty's Inspectorate of Prisons (UK), *Expectations: Criteria for assessing the treatment of and conditions for women in prison* (2017).

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## Staff training

829. This report has noted that staff at DPFC work with a diverse cohort of women with complex needs.

830. New custodial officers attend a 42-day training course to obtain a Certificate III in Correctional Practice. The course includes sessions on human rights, suicide and self-harm awareness, prisoner rights and privileges, 'cultural awareness', 'Koori cultural awareness' and 'ethics in a correctional environment'.

831. Corrections Victoria also provides training throughout the year, and the prison locks down twice a month for staff training.

832. The inspection team observed some gaps in staff training, despite these measures.

833. The Certificate III course for new recruits does not currently include modules on disability awareness, or working with prisoners with general mental or physical health issues.

834. The inspection team also heard that staff working in specialist areas of DPFC such as the mental health unit and the mothers and children unit received no formal training on the specific needs of the people in their care.

835. Staff in these areas learned 'on the job' from working alongside the specialist staff in their units. While it was positive to see good working relationships between specialist and custodial staff, the expectation of providing informal training to colleagues places an additional burden on specialist staff, whose time and resources are limited.

836. Many staff who responded to the inspection's survey reported lacking sufficient training in key areas, including:

- occupational health and safety (45 per cent)
- emergency response - loss of control (51 per cent)
- managing prisoners with health issues (48 per cent)
- managing prisoners with drug issues (48 per cent)
- child protection (47 per cent)
- suicide prevention (42 per cent).

837. Thirty-four per cent stated they had received inadequate training in case management.

838. DPFC's training records indicate that relatively few staff attended training in some important areas in 2016-17. Out of approximately 350 staff at DPFC:<sup>194</sup>

- one attended 'Disability awareness training'
- one attended an 'LGBTI Awareness Session'
- two attended 'Koori Cultural Awareness training' [KCAT] and 15 attended 'KCAT for Prison Officer Recruits'
- 57 attended 'Family Violence Awareness' training
- 66 attended case management training
- 70 attended 'Suicide and Self Harm Prevention' training.

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<sup>194</sup> These figures do not include the Certificate III training provided to new staff.



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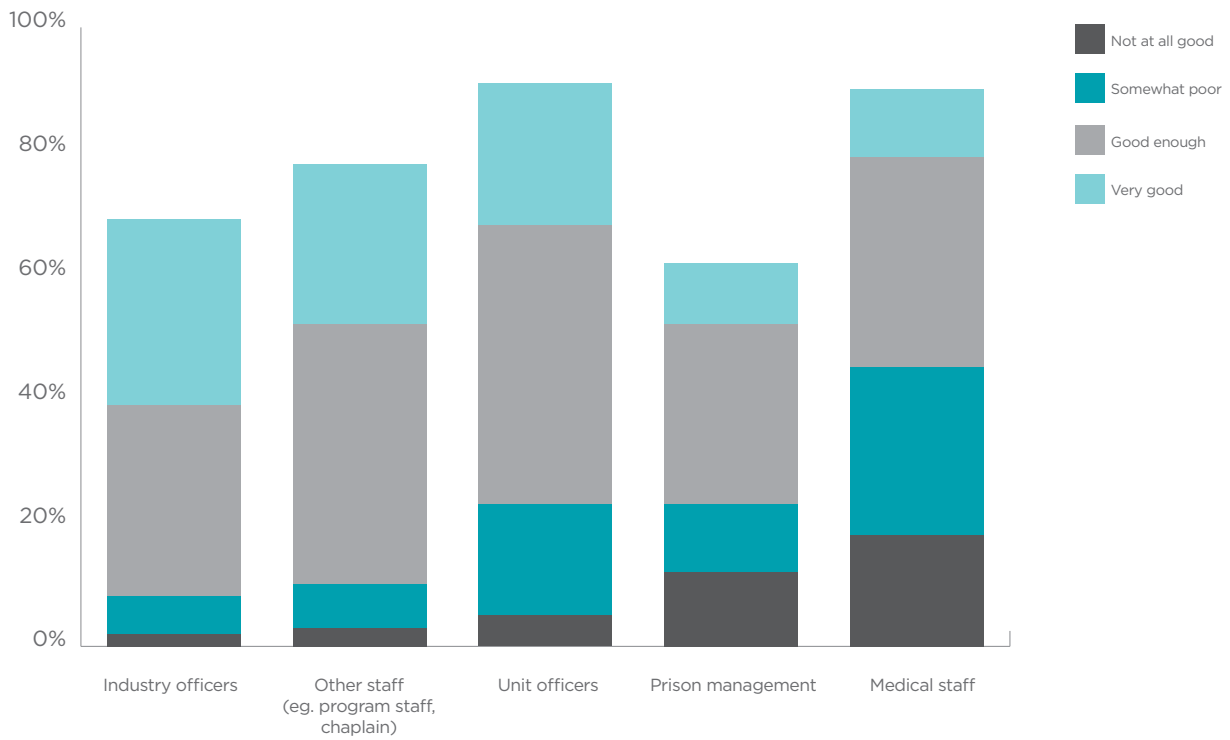
## Culture and morale

839. Reports of bullying, violence, and sexual abuse between staff can be a sign of a poor culture in places of detention. If staff treat one another this way, detainees are also likely to be at risk.
840. Very few staff who responded to the inspection's survey reported that staff-on-staff sexual or physical abuse occurs often or very often. However, 35 per cent reported that bullying happens often or very often.
841. The staff survey suggested poor staff perceptions of prison management at the facility, although survey respondents reported more positive relationships with their line managers.
842. Sixty-four per cent of staff indicated that staff can express work-related grievances in the prison, but nearly half said that such grievances do not get resolved.
843. The inspection team heard anecdotally of high rates of sick leave amongst staff at DPFC. There were reports of inexperienced staff regularly being rostered on to cover absences in specialist areas of the prison.
844. The inspection team observed that facilities for staff at the prison were generally poor. Despite the stressful environment staff work in, there was a lack of private staffrooms for them to take breaks in.
845. In response to the draft report, the General Manager said she has engaged an external consultant to advise on improving the culture within the prison and assisting the transition to the 'needs based precinct' model.

## Prisoner perceptions

846. Prisoners provided mixed feedback about custodial and other staff in conversations with the inspection team and in responses to the survey (see Figure 10, next page).
847. There were reports of poor conduct, including violence, victimisation and threats, by particular custodial officers, while women mentioned other officers who were known to be fair or helpful.
848. A common theme in prisoner feedback was that prison rules were being applied inconsistently. Women perceived this as officers favouring or disfavouring certain prisoners, or simply not knowing the rules. This was a significant source of frustration and resentment for the women.
849. The inspection team also observed that certain staff take an active interest in the women in their area. Some took the time to raise concerns with the inspection team about issues faced by women.
850. Fifty-eight per cent of women who responded to the prisoner survey said there is a staff member they can turn to if they have a problem.
851. When asked whether unit staff would help them if they had a problem, 17 per cent of prisoner respondents said yes, 12 per cent said no, and 59 per cent responded that some would help, but not others.
852. Twenty-four per cent responded that unit supervisors would help them, while 13 per cent said they would not, and 46 per cent said some would help, but not others.
853. Prisoner perceptions were more negative about medical staff than unit officers. Thirty-seven per cent of women indicated medical staff would not help them, while only 14 per cent said they would, and 35 per cent said some would help but not others.

Figure 10: Relationships with staff – women’s perceptions\*



\*Blank responses and “I don’t interact with them” responses to this question have been excluded from this graph, and the remaining responses have been scaled to 100% for each grouping.

Source: Victorian Ombudsman Prisoner Survey, Question 2.10 (see Appendix 1)

# Recommendations

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## Recommendation 1: Use of force and restraint

The Department of Justice and Regulation, with reference to the findings of this inspection report and the findings and recommendations of JARO's recent review into the application and management of force:

- a) propose how it will implement strategies to minimise the use of force at DPFC
- b) in accordance with section 41(c) of the Charter, request that its proposal be reviewed by VEOHRC to assess compatibility with human rights.

### Department's Response

*Accepted.*

## Recommendation 2: Restraint of pregnant women

The General Manager at DPFC ensure that officers comply with the Deputy Commissioner's Instructions and Local Operating Procedures regarding restraint of pregnant women, including seeking her authority before applying restraints.

### Department's Response

*Accepted. The department advised:*

*The Local Operating Procedures (LOPs) clearly state that mothers travelling with their children or mothers who are six or more months pregnant, should not be handcuffed or shackled, unless exceptional circumstances apply.*

*The LOPs also require the authorisation of the General Manager (GM), Dame Phyllis Frost Centre (DPFC) prior to applying restraints.*

*The GM will undertake education initiatives to ensure that staff are aware of the LOPs regarding restraint of pregnant women.*

## Recommendation 3: Separation

The Department of Justice and Regulation:

- (a) consider options for replacing the Swan 2 management unit
- (b) engage clinical and human rights expertise to consider DPFC's compliance with international standards and best practice regarding:
  - the long-term use of management for some women
  - the level of interaction between officers and women
  - access to purposeful activity.

### Department's Response

*Accepted. In response to recommendation 3(a), the department advised:*

*The replacement of Swan 2 is included in Corrections Victoria's infrastructure program and funding is currently being sought to undertake these works. The works will be undertaken when it is possible to effectively manage the logistics of ensuring that the women housed in Swan 2 can be moved to appropriate temporary accommodation.*

*The Department advised that recommendation 3(b) will be implemented as part of its Women's System Reform Project (WSRP). It said:*

*The WSRP will develop strategies to effectively manage the changing profile and growth in the women's prison population. This includes future planning around appropriate infrastructure, women's programs and services as well as an operating model configured to meet the complex needs of the Victorian women's prison system.*

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## Recommendation 4: Conditions for separated women

Pending the review in Recommendation 3(b), the General Manager at DPFC:

- ensure that women on separation regimes are offered at least one hour out of their cells each day
- take steps to restrict viewing of CCTV monitors in Swan 2 to protect the privacy of women
- ensure women are given written information outlining the goals they need to meet to return to mainstream units.

### Department's Response

*Accepted and under way. The department advised:*

*Consistent with the LOPs, women are offered at least one hour every day out of cell. There are however, instances where it is necessary to lock down Swan 2, but this is always after the airings are complete.*

*Privacy screens have already been ordered.*

*The GM, DPFC will work with the Sentence Management Division to enable provision of written information outlining the goals women in separation need to meet to return to mainstream units.*

## Recommendation 5: Strip searching

The General Manager at DPFC:

- immediately cease the practice (by whatever name) of strip searching all women before and after contact visits and following external appointments
- replace it with a Charter-compliant practice of strip searching based on intelligence and risk assessment.

### Department's Response

*Not accepted. The department advised:*

*While the General Manager of Dame Phyllis Frost Centre acknowledges the need to improve record keeping with respect to strip searching, the department does not consider that current practice with respect to observation and supervision of women changing into overalls before contact visits amounts to "strip searching". The department is also of the view that current supervision, observation and strip searching is Charter compliant.*

## Recommendation 6: Detecting contraband

The Department of Justice and Regulation strengthen alternative ways to detect contraband, including reviewing the resources of the Prison Intelligence Unit.

### Department's Response

*Accepted and under way. The department advised that:*

*The department is actively pursuing appropriate technology to detect contraband in a manner that balances respect and dignity.*

*It should be noted however, that to date challenges have been encountered in terms of finding equipment for which the expertise to service and maintain it is available in Australia.*

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## Recommendation 7: Rights of women on remand

The General Manager at DPFC ensure that all unsentenced women are offered the option of wearing their own clothes.

### Department's Response

*Accepted and under way. The department advised:*

*This matter has been discussed with the Prisoner Liaison Group and they have all advised that they do not want to wear their own clothes as they will stand out and will be stood over for their items.*

*It is also relevant to note that many women do not arrive at DPFC with clean or adequate clothing.*

*The GM will however, provide unsentenced women with the option to wear their own clothes upon initial reception at DPFC.*

## Recommendation 8: Better information

The General Manager at DPFC increase information for women about prison procedures and prisoner rights including:

- arranging for the orientation book for new prisoners to be provided in community languages, easy English and audio-visual versions
- working with Justice Health and Correct Care Australasia to improve information for women about health services, including what constitutes emergency dental services
- ensuring prison libraries have up to date copies of the Commissioner's Requirements and Deputy Commissioner's Instructions and appropriate legal resources.

### Department's Response

*Accepted.*

## Recommendation 9: Health planning

The Department of Justice and Regulation give proper consideration to the evidence in this report about the health services at DPFC to ensure that they are adequate to meet the women's needs now and into the future.

### Department's Response

*Accepted.*

## Recommendation 10: Improving health services and privacy

The General Manager at DPFC work with Justice Health and Correct Care Australasia to:

- devise an effective system for notifying women of the date and time of doctors' appointments
- conduct a trial under which women can possess and self-administer appropriate over-the-counter medication
- implement a consistent process for ensuring that doctors regularly review expiring prescriptions before they expire
- ensure that medical information is not discussed in the presence of officers or other prisoners, except where permitted under international standards.

### Department's Response

*Accepted and under way. The department advised:*

*Work is being undertaken [to devise an effective system for notifying women of appointments] now with CCA.*

*Noting that [self-administration of medication] has been trialled previously, a further trial will commence in the new year.*

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*Justice Health's quarterly performance audit of Medication Management in Q1, 2017-18 confirms that CCA has implemented local systems and processes to manage expiring prescriptions on a regular basis.*

*Justice Health will work with the prison health service provider and the prison staff to ensure that prisoner privacy is maintained.*

### **Recommendation 11: Maintenance of older units**

The General Manager at DPFC ensure that outstanding maintenance repairs at the Hunter units are completed as soon as possible.

#### **Department's Response**

Accepted and under way. The department advised that:

*The maintenance works are included in the department's infrastructure program and funding is currently being sought to undertake these works.*

*The works will be undertaken when it is possible to effectively manage the logistics of ensuring that the women housed in the Hunter units can be moved to appropriate temporary accommodation.*

### **Recommendation 12: Improving contact with children**

The General Manager at DPFC expand the Skype program at the prison to all women whose children cannot physically attend the prison, for distance or other reasons.

#### **Department's Response**

*Accepted.*

### **Recommendation 13: Protecting contact with family**

The Department of Justice and Regulation amend its Commissioner's Requirements and Deputy Commissioner's Instructions to comply with section 17 of the Charter, by ensuring that telephone contact with children and family cannot be withdrawn as a punishment for disciplinary offences, except where demonstrably justified.

#### **Department's Response**

*Accepted.*

### **Recommendation 14: Aboriginal and Torres Strait Islander women's access to Mothers and Children program**

The Department of Justice and Regulation work with the Department of Health and Human Services, the Commission for Children and Young People and the Victorian Aboriginal Child Care Agency to:

- identify barriers to Aboriginal and Torres Strait Islander women participating in DPFC's Mothers and Children program
- develop strategies and programs to support Aboriginal and Torres Strait Islander women's participation in the program.

#### **Department's Response**

*Accepted and under way. The department advised that:*

*The department is acutely aware of the complex reasons why Aboriginal and Torres Strait Islander women are currently unable to access the Mothers and Children Program and already has plans to address this as part of the Women's System Reform Project.*

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### **Recommendation 15: Identifying cognitive disability**

The Department of Justice and Regulation seek funding for the rollout of the preferred screening tool for cognitive disability, including acquired brain injury, in its 2018-19 budget.

#### **Department's Response**

*Accepted.*

### **Recommendation 16: Personal care for women with a disability**

The General Manager at DPFC identify women with a disability who need assistance with personal care, and make appropriate arrangements to provide it.

#### **Department's Response**

*Accepted.*

### **Recommendation 17: Play equipment for children**

The General Manager at DPFC fund, or partner with community organisations to fund, play equipment for children living with their mothers at the prison.

#### **Department's Response**

*Accepted. The department advised:*

*A new playground will be established as a part of the new Reintegration and Transition Precinct.*

### **Recommendation 18: More women officers**

The General Manager at DPFC develop a strategy for recruiting and retaining women to increase the proportion of female custodial officers at DPFC to 60 per cent by 2020, including seeking any necessary exemptions under the *Equal Opportunity Act 2010* (Vic).

#### **Department's Response**

*Accepted.*

### **Recommendation 19: Equipping officers to work with a diverse population**

The General Manager at DPFC ensure training for all custodial officers at DPFC from 2018 about:

- women with a disability
- women with mental health conditions or personality disorders
- Aboriginal and Torres Strait Islander women. This training should also be extended to Correct Care Australasia staff
- transgender prisoners
- for officers working in the Mothers and Children unit – working with mothers and children.

#### **Department's Response**

*Accepted and under way. The department advised that:*

*These training suggestions for staff will be included as a part of the [Women's System Reform Program].*



# Appendix one: Prisoner survey

## Prisoner Survey

### *Dame Phyllis Frost Centre*

The Victorian Ombudsman is here to inspect the conditions at the Dame Phyllis Frost Centre. **We want to get your view** of the prison.

These questions are about **this prison only**, not about any other prison you may have been at.

There are no right or wrong answers.

This questionnaire is voluntary (only fill it in if you want to) and confidential. No other agency can access information from the Victorian Ombudsman, and our office is not subject to Freedom of Information.

Please do **not** put your name on the survey.

When the survey is completed please hand it back to a member of the Inspection team, or send it using the envelopes provided (these are **protected** mail and cannot be read by the prison).

*Thank you for helping. You are the only person who can tell us what you think we need to know.*

In order for the Ombudsman Inspectors to monitor the conditions of detention and treatment of detainees within this prison, we ask that you fill in the following information about yourself.

*Your responses to these questions will remain both anonymous and confidential.*

#### SECTION 1: ABOUT YOU

**Question 1.1 The unit I am currently living in is...**

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**Question 1.2 My age is... (tick one)**

Under 21	21-29	30-39	40- 49	50- 59	60- 69	70+
4%	24%	33%	21%	12%	2%	1%

**Question 1.3 My first language is...**

English	Other (please write below)
78%	

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 1.4 My security rating is... (tick one)**

Minimum	Medium	Maximum	Don't know
23%	17%	26%	30%

**Question 1.5 I am... (tick one)**

Sentenced	Remand - accused	Remand - convicted	Other (please write below)
59%	30%	4%	

**Question 1.6 (for each statement, tick 'yes' or 'no')**

	Yes	No
I identify as Aboriginal	8%	84%
I identify as Torres Strait Islander	2%	91%
I am from a minority ethnic or cultural group	13%	79%
I have difficulty reading	9%	83%
I have difficulty writing	9%	84%
I am a foreign national (not an Australian citizen)	9%	83%
This is my first time in prison	46%	49%
I have children under the age of 18	50%	43%
I have a disability?	21%	70%

**SECTION 2: RESPECT AND DIGNITY****Question 2.1 From my experience... (for each statement, tick one column)**

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree
I feel like I can keep my personality in this prison	12%	26%	19%	26%	13%
I have no control over my day-to-day life in this prison	15%	27%	28%	22%	6%
Bullying by prisoners is not tolerated in this prison	12%	25%	17%	25%	17%
All this prison really cares about is my "risk rating" rather than the person I really am	24%	30%	26%	11%	7%
The best way to get things done in this prison is to be polite and go through official channels	14%	28%	25%	17%	13%
Weak prisoners have a tough time in this prison	30%	36%	18%	9%	3%
Privileges are given and taken fairly in this prison	6%	10%	22%	29%	31%
I am treated with dignity in this prison	4%	17%	26%	25%	25%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 2.2 My legal rights (for each statement, tick 'yes' or 'no')**

	Yes	No
It is easy to communicate with my legal representative in this prison	51%	44%
I trust that staff at this prison would never open letters to or from my legal representative or other exempt mail (e.g. the Ombudsman or IBAC)	42%	51%

**Question 2.3 In the unit I am currently living in: (for each statement, tick 'yes' or 'no')**

	Yes	No
I am normally offered enough clean, suitable clothes for the week	61%	36%
I am normally able to have a shower every day	94%	4%
I normally receive clean sheets every week	72%	25%
I normally get cell cleaning materials every week	74%	24%
I can normally get my stored property, if I need to	35%	60%
The shop/canteen sells a wide range of goods that meet my needs	35%	63%

**Question 2.4 On average, the food here is... (tick one)**

Very bad	Bad	OK	Good	Very good
13%	16%	43%	21%	5%

**Question 2.5 Cultural and religious rights (for each statement, tick 'yes', 'no', or 'not relevant to me').**

	Yes	No	Not relevant to me
It is easy to get food that meets my religious or cultural needs	26%	25%	45%
I am able to practice my religion in this prison	53%	10%	33%
It is easy to attend religious or cultural activities	50%	19%	27%
I am able to speak to a religious leader of my faith in private if I want to	59%	11%	27%

**Question 2.6 Keeping my child with me in prison (for each statement, tick 'yes,' 'no,' or 'not relevant to me')**

	Yes	No	Not relevant to me
I have applied to keep my child (or children) with me in this prison	7%	16%	74%
My application to keep my child with me was refused	6%	7%	83%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 2.7 Getting help (for each statement, tick 'yes' or 'no')**

	Yes	No
There is a member of staff I can turn to if I have a problem	58%	36%
I know who my case manager is	55%	40%
I meet with my case manager at least once a week	9%	87%
A member of staff has checked on me personally in the last week to see how I'm going	23%	72%

**Question 2.8 If I had a problem, I think these people in the prison would help me**

	Yes	Some would help but not others	No	Don't know	I don't interact with them
Unit officers	17%	59%	12%	2%	4%
Unit supervisors	24%	46%	13%	3%	8%
Industry officers	27%	26%	13%	6%	22%
Education facilitators	31%	26%	16%	9%	12%
Program facilitators	41%	26%	13%	8%	7%
Peer support prisoners	38%	13%	15%	13%	17%
Prison management	16%	22%	20%	17%	20%
Medical staff	14%	35%	37%	5%	3%
Psychologist	22%	26%	22%	11%	14%
Chaplain	54%	11%	7%	7%	17%
Other prisoners	40%	41%	9%	4%	2%
Aboriginal Wellbeing Officer	15%	3%	13%	6%	58%
Independent Prison Visitors	21%	7%	13%	17%	36%

**Question 2.9 If I had problem, I think these organisations outside the prison would help me:**

	Yes	Sometimes, but not always	No	Don't know	I don't interact with them
Ombudsman	48%	27%	5%	11%	6%
IBAC	14%	7%	6%	35%	30%
Health Complaints Commissioner	37%	21%	12%	16%	11%
Other (please write the organisations here):					

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 2.10 My relationships with the following staff are:**

	Not at all good	Somewhat poor	Good enough	Very good	I don't interact with them
Industry officers	2%	6%	31%	30%	27%
Unit officers	5%	18%	45%	23%	6%
Prison management	12%	11%	29%	10%	36%
Medical staff	18%	27%	34%	11%	7%
Other staff (e.g. program staff, chaplain)	3%	7%	42%	26%	17%

**Question 2.11 Officers in this prison:**

	All of the time	Most of the time	Sometimes, but not always	Not very often	Never
Apply the rules fairly	6%	13%	46%	24%	9%
Are respectful during cell searches	8%	26%	25%	23%	15%
Are respectful during strip searches	27%	28%	19%	13%	10%
Use too much force	7%	16%	29%	23%	19%
Treat prisoners with dignity	7%	18%	37%	24%	12%
Respect my culture/religion	20%	18%	24%	13%	12%
Feel free to make any comments about the way staff treat you:					

**SECTION 3: SAFETY**

**Question 3.1 In this prison... (tick one)**

I never feel safe	I don't often feel safe	I sometimes feel safe	I mostly feel safe	I always feel safe
2%	10%	18%	44%	21%

The things that make me feel **safe** in this prison are:

The things that make me feel **unsafe** in this prison are:

**Question 3.2 Staff in this prison respond quickly to incidents and alarms (tick one)**

Always	Most of the time	Sometimes, but not always	Not very often	Never
25%	41%	22%	4%	2%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 3.3 Since I have been here... (for each statement, tick 'yes' or 'no')**

	Yes	No
<b>Staff</b> have made insulting remarks about me, my family or my friends	47%	49%
<b>A prisoner or prisoners</b> have made insulting remarks about me, my family or my friends	59%	39%
<b>Staff</b> have threatened or intimidated me	45%	51%
<b>A prisoner or prisoners</b> have threatened or intimidated me	52%	45%
<b>Staff</b> have hit, kicked or assaulted me	11%	85%
<b>A prisoner or prisoners</b> have hit, kicked or assaulted me	25%	72%
<b>Staff</b> have sexually abused me	3%	94%
<b>A prisoner or prisoners</b> have sexually abused me	2%	95%

Feel free to tell us more about what happened:

**Question 3.4 Please complete this question if you answered 'yes' to any questions in Q3.3 (for each statement, tick 'yes' or 'no')**

	Yes	No
I reported the incident or behaviour	35%	45%
I reported it, and the prison took action	13%	63%
I reported it and was satisfied with the action the prison took	11%	65%
I reported it, and the prison gave me the support I needed	11%	66%

**[If you didn't report the incident]** I didn't report it because:

Feel free to tell us more about the way the prison handled the incident(s) or behaviour:

**Question 3.6 Over the past twelve months in this prison, prison staff have... (for each statement, tick 'yes' or 'no')**

	Yes	No
Used force against me	14%	81%
Physically restrained me	18%	77%
Deprived me of visits as a punishment	25%	69%
Deprived me of phone calls to my family as a punishment	23%	74%
Deprived me of food as a punishment	10%	85%
Strip searched me as a punishment	26%	68%

Feel free to tell us more about what happened:

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

## SECTION 4: HEALTH AND WELLBEING

### Question 4.1 Overall, the quality of the health services in this prison is...

	Very bad	Bad	OK	Good	Very good	I haven't used this service
General health service	45%	20%	23%	4%	2%	4%
Medical specialists	36%	20%	23%	9%	3%	7%
Dental care	36%	19%	18%	5%	2%	15%
Psychiatric care	23%	13%	21%	11%	5%	23%
Pregnancy/postnatal care	8%	6%	4%	4%	2%	70%
Paediatric (child health specialist) care	5%	4%	5%	3%	1%	75%

### Question 4.2 To see the following people, it is... (for each statement, tick the column that applies)

	Easy	Difficult	Quick	Takes a long time	Don't know
The doctor	3%	20%	2%	71%	1%
The nurse	15%	19%	8%	51%	2%
The dentist	3%	20%	5%	54%	13%
The psych nurse	7%	13%	12%	44%	18%

### Question 4.3 Medical staff treat me with respect... (tick one)

Always	Most of the time	Sometimes, but not always	Not very often	Never
12%	40%	31%	10%	3%

### Question 4.4 Support for my needs in this prison (for each statement, tick 'yes,' 'no,' or 'not relevant to me')

	Yes	No	Not relevant to me
I access disability support services in this prison	5%	27%	64%
I feel supported in my disability needs	5%	25%	66%
I have emotional wellbeing/mental health issues	55%	17%	25%
I feel supported in my emotional wellbeing/mental health needs	21%	47%	26%
I have been pregnant while in this prison	12%	23%	61%
I felt supported by the prison while I was pregnant	5%	13%	77%
I had a baby while in this prison	6%	19%	70%
The prison supported me to care for my baby after the birth	2%	10%	83%
The prison supported me to breastfeed my baby	1%	10%	85%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.



**Question 4.5 Drugs and alcohol (for each statement, tick 'yes' or 'no')**

	Yes	No
It is easy to get illegal drugs in this prison	39%	50%
It is easy to get alcohol in this prison	9%	80%
Prisoners with drug/alcohol problems get enough help	25%	64%

Feel free to tell us more about the health services in this prison:

**SECTION 5: FAMILY AND FRIENDS**

**Question 5.1 Caring for children (tick 'yes' or 'no')**

	Yes	No
I was the primary carer for my child or children before I was imprisoned	36%	58%

**Question 5.2 When I first arrived here, I was able to contact my children for the first time... (tick one)**

Within 48 hours	After one week	Other (please write below)	Not relevant to me	Within 48 hours
17%	22%	20%	34%	

**Question 5.3 Keeping in contact with family and friends (for each statement, tick 'yes,' 'no,' or 'I don't know')**

	Yes	No	I don't know
Staff at this prison support me to stay in touch with my family/friends	47%	37%	12%
It is easy for my family/friends to get here	33%	58%	4%
The visits area is well set up for family visits	50%	28%	14%
I have had problems sending or receiving mail	69%	23%	3%
I have had problems getting access to the telephone	51%	42%	1%

**Question 5.4 In general, staff at this prison treat my visitors... (tick one)**

Very well	Well enough	Badly	Very badly	I don't know
12%	50%	15%	3%	15%

Feel free to tell us more about keeping in contact with family and friends:

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

## SECTION 6: MAKING COMPLAINTS

### Question 6.1 Making complaints within the prison (for each statement, tick 'yes' or 'no')

	Yes	No
I know how to make complaints in the prison	64%	32%
It is easy to make a complaint	38%	54%
I feel the prison deals with complaints fairly	19%	71%
I feel the prison deal with complaints in a reasonable time	15%	72%
Staff have tried to stop me from making a complaint when I wanted to	29%	63%
I feel safe making complaints in this prison	40%	46%

**[If you don't feel safe making a complaint]** I don't feel safe making complaints in this prison because:

### Question 6.2 Making complaints outside the prison (for each statement, tick 'yes' or 'no')

	Yes	No
I know how to make a complaint to the Health Complaints Commissioner	62%	34%
I know how to make a complaint to IBAC	27%	65%
I know how to make a complaint to the Ombudsman	73%	23%
In the past, prison staff have tried to stop me from making a complaint to these organisations	21%	72%
I feel safe making a complaint to these organisations	62%	28%

**[If you don't feel safe making a complaint]** I don't feel safe making a complaint to one of these organisations because...

## SECTION 7: ACTIVITIES

### Question 7.1 The usefulness and availability of activities (for each statement, tick 'yes' or 'no')

	Yes	No
Overall, I feel my time here is spent doing useful activities	47%	44%
The work or training I do here might help me get a job when I get out of here	50%	41%
I can access the right programs to be eligible for parole	43%	38%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 7.2 To get involved in the following activities, it is... (for each statement, tick 'easy,' 'difficult,' or 'I don't know')**

	Easy	Difficult	I don't know
Work	72%	19%	3%
Vocational or skills training	40%	37%	15%
Education (including basic skills)	53%	32%	8%
Offending behaviour programs	31%	37%	22%

**Question 7.3 I am currently involved in the following activities... (for each statement, tick 'yes' or 'no')**

	Yes	No
Work	78%	17%
Vocational or skills training	31%	59%
Education (including basic skills)	53%	40%
Offending behaviour programmes	27%	64%
Rehabilitation and Transitional Permits ('leaves')	14%	74%

**Question 7.4 Fresh air (tick 'yes' or 'no')**

	Yes	No
I get fresh air for at least one hour per day (minimum entitlement)	91%	5%
<b>[If 'no']</b> I don't get fresh air for at least one hour per day because:		

**Question 7.5 Time spent outside the cell... (tick one)**

	Less than 2 hours	2 to less than 4 hours	4 to less than 6 hours	6 to less than 8 hours	8 hours +
On an average weekday I spend this many hours out of my cell (including hours at education, at work, showers etc.)	7%	9%	13%	20%	43%

**Question 7.6 Time spent at the gym... (tick one)**

	Less than 2 hours	2 to less than 4 hours	4 to less than 6 hours	6 to less than 8 hours	8 hours +
Each week, on average, I go to the gym for...	53%	15%	13%	4%	5%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 7.7 Time spent at the library... (tick one)**

	Never	1 to 2 times	3 to 5 times	More than 5 times	I don't want to use it
Each week, on average, I use the library...	20%	54%	9%	7%	4%

Feel free to tell us more about the activities offered in prison:

**SECTION 8: CHILDREN IN PRISON**

*Please ONLY complete this section if you have a child or children living with you in this prison. In this section 'child' also means 'baby.'*

**Question 8.1 (for each statement, tick 'yes' or 'no')**

	Yes	No
The prison supports me to care for my child		
The prison provides me appropriate food for my child		
It is easy to access medical services for my child when I need to		
My accommodation in this prison is suitable for my child		
Children who live here are treated well by the staff		
Children who live here are treated well by other prisoners		
There are enough toys/play equipment for my child in the unit		
The prison provides opportunities for my child to socialise and undertake activities outside of the prison		
While living in the mothers and babies unit I can still access the programs I need to get parole		

Feel free to tell us more about having your child with you in prison:

**Question 8.2 My child is able to have contact visits with family and/or friends... (tick one)**

More than once a week	Every week	Every fortnight	Other (please write below)

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 8.3 When I first arrived at this prison with my child (or children):**  
**(for each statement, tick 'yes' or 'no')**

	Yes	No
Staff treated my child well		
I was given what I needed to look after my child		
I was given information about caring for my child in this prison		
My child was offered something to eat		
My child had a medical assessment		
If you answered 'yes' to the above question, who did the medical assessment? (e.g. nurse, doctor, paediatrician):		

**Question 8.4 Child Safety in this prison (tick 'yes' or 'no')**

	Yes	No
There have been times when I have felt my child was unsafe being with me in prison		

**[If yes]** I felt my child was unsafe because:

**Question 8.5 Child Safety in this prison (tick 'yes' or 'no')**

	Yes	No
I think my child is safe now		

The reasons for my answer are:

**Question 8.6 Child Safety in this prison (tick 'yes' or 'no')**

	Yes	No
I think the prison has appropriate child protection arrangements		

**Question 8.7 Child Safety in this prison (tick 'yes' or 'no')**

	Yes	No
If I was worried about my child's safety in this prison, I would report it		

**[If no]** I would not report it because:

**[If yes]** I would report my safety concerns to (e.g. unit staff, medical staff, Ombudsman, other prisoners):

Thank you for your telling us about your life in this prison. Feel free to make any further comments here:

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

# Appendix 2: Staff survey

## Staff Survey

### *Dame Phyllis Frost Centre*

The Victorian Ombudsman is here to inspect the conditions at the Dame Phyllis Frost Centre. **We want to get your view** of the prison, including what it is like to work here, what you think is going well here, and what could be improved.

There are no right or wrong answers.

This questionnaire is **voluntary** (only fill it in if you want to) and **confidential**. No other agency can access information from the Victorian Ombudsman, and our office is not subject to Freedom of Information.

Please do **not** put your name on the survey.

When the survey is completed please hand it back to a member of the Inspection team, or send it using the envelopes provided (these are **protected** mail and cannot be read by the prison) .

If you want to discuss any of the issues raised by the survey, please contact one of the Inspection Officers during the inspection and they will be more than happy to talk with you.

***Thank you for helping. You are the only person who can tell us what you think we need to know.***

In order for the Ombudsman Inspectors to monitor the conditions of detention and treatment of detainees within this prison, we ask that you fill in the following information about yourself.

***Your responses to these questions will remain both anonymous and confidential.***

### SECTION 1: ABOUT YOU

#### **Question 1.1 How long have you worked for Corrections Victoria? (*tick one*)**

Less than one year	More than 1 year, less than 5 years	More than 5 years, less than 10 years	More than 10 years
3%	36%	32%	30%

#### **Question 1.2 How long have you worked for this prison? (*tick one*)**

Less than one year	More than 1 year, less than 5 years	More than 5 years, less than 10 years	More than 10 years
7%	36%	30%	27%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 1.3 (tick 'yes' or 'no')**

	Yes	No
Have you ever worked for a men's prison in Victoria?	40%	60%

**Question 1.4 What is your role in this prison? (tick one)**

Prison officer, unit supervisor, or operations manager	Programs/education/vocational support officer	Medical staff	Other (please specify)
78%	4%	11%	7%

**Question 1.5 (tick one)**

	Male	Female	Other
Are you male or female?	36%	64%	0%

**SECTION 2: QUALITY OF YOUR WORKING LIFE**

**Question 2.1 How would you rate the quality of your working life in this prison? (Low = 1, High = 10) (tick one)**

1	2	3	4	5	6	7	8	9	10
1%	7%	5%	8%	14%	14%	16%	18%	8%	4%

**Question 2.2 How would you rate your current level of work-related stress? (Low = 1, High = 10) (tick one)**

1	2	3	4	5	6	7	8	9	10
5%	8%	4%	4%	4%	19%	16%	18%	10%	8%

**Question 2.3 What are the three most satisfying things for you about working in this prison? (write your answer)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Question 2.4 What are the three most stressful things for you about working in this prison? (write your answer)**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.



### SECTION 3: YOUR WORKING CONDITIONS

**Question 3.1 Overall, how well do the following human resources processes operate at this prison? (for each statement, tick one column)**

	Mostly effective	Mixed	Mostly ineffective	Don't know
Leave applications	48%	22%	14%	8%
Pay	56%	25%	8%	3%
Recruitment	11%	38%	37%	7%
Coverage for position while on leave/absent	22%	37%	27%	5%
Rostering	23%	44%	21%	3%
Occupational Health and Safety	27%	40%	23%	1%

**Question 3.2 Over the past six months, how much overtime do you think you have worked? (tick one)**

One or more shifts per week	Once a month	Not often	I didn't do any overtime
29%	23%	32%	12%

**Question 3.3 Overall, what do you think of the quality of the facilities you work in? (tick one)**

Very bad	Bad	OK	Good	Very good
23%	34%	32%	8%	3%
Feel free to make any comments about the facilities you work in:				

**Question 3.4 Overall, how well do you think staff from across the prison work together? (tick one)**

Very poorly	Poorly	OK	Well	Very well
4%	15%	36%	36%	7%
Feel free to make any comments:				

**Question 3.5 Overall, how do you rate each of the following? (for each statement, tick one column)**

	Very poor	Poor	OK	Good	Very good
Support from your line manager	8%	14%	32%	19%	26%
Communication from your line manager	5%	18%	29%	26%	21%
Support from executive management at DPFC	21%	26%	29%	14%	10%
Communication from executive management at DPFC	19%	26%	34%	12%	7%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

Support from regional management	25%	23%	33%	8%	4%
Communication from regional management	21%	29%	30%	11%	3%
Support from Head Office	22%	16%	38%	12%	4%
Communication from Head Office	21%	15%	42%	11%	4%
Feel free to make any comments:					

**Question 3.6 (for each statement, tick 'yes' or 'no')**

	Yes	No
Are staff able to express work-related grievances in this prison?	64%	27%
Do work related grievances get resolved in this prison?	38%	48%

**SECTION 4: SAFETY AND SECURITY**

**Question 4.1 How safe do you feel in your working environment? (tick one)**

I almost never feel safe	I mostly feel unsafe	I mostly feel safe	I almost always feel safe
0%	18%	51%	30%

**Question 4.2 Using the scale below, how often do you think the following occurs at this prison? (write a number in each column)**

**(0 = never | 1 = hardly ever | 2 = sometimes, but not often | 3 = often | 4 = very often)**

	Staff to staff	Prisoner to staff	Staff to prisoner	Prisoner to staff
Sexual abuse	0 = 41% 1 = 19% 2 = 16% 3 = 4% 4 = 3%	0 = 51% 1 = 19% 2 = 8% 3 = 5% 4 = 1%	0 = 60% 1 = 19% 2 = 4% 3 = 0% 4 = 0%	
Physical abuse	0 = 60% 1 = 19% 2 = 4% 3 = 1% 4 = 0%	0 = 47% 1 = 31% 2 = 5% 3 = 3% 4 = 0%	0 = 5% 1 = 1% 2 = 30% 3 = 26% 4 = 25%	
Racist remarks	0 = 19% 1 = 34% 2 = 23% 3 = 7% 4 = 0%	0 = 3% 1 = 5% 2 = 25% 3 = 23% 4 = 30%	0 = 41% 1 = 30% 2 = 12% 3 = 3% 4 = 0%	
Other verbal abuse	0 = 15% 1 = 27% 2 = 32% 3 = 7% 4 = 5%	0 = 0% 1 = 0% 2 = 7% 3 = 25% 4 = 63%	0 = 29% 1 = 27% 2 = 27% 3 = 5% 4 = 0%	

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

Bullying	0 = 8%	0 = 14%	0 = 29%	
	1 = 16%	1 = 15%	1 = 26%	
	2 = 27%	2 = 22%	2 = 27%	
	3 = 19%	3 = 23%	3 = 4%	
	4 = 16%	4 = 14%	4 = 0%	

**Question 4.3 Overall, how effective is the prison at... (for each statement, tick one column)**

	Mostly effective	Mixed	Mostly ineffective	Don't know
Preventing entry of contraband	7%	26%	63%	3%
Being aware of what is happening in the prisoner group	15%	52%	25%	7%
Having good, clear security procedures	19%	51%	29%	0%
Maintaining perimeter security, gates, grills, locks, cameras	38%	37%	19%	4%
Intelligence gathering	30%	42%	11%	14%

Feel free to make any comments about safety and security in this prison:

## SECTION 5: ROLE AND FUNCTION OF PRISON OFFICERS

**Question 5.1 How important are the following aspects of your role? (for each statement, tick one column)**

	Not important	Somewhat important	Very important
Helping to protect the community	4%	21%	64%
Prisoner discipline	3%	25%	60%
Ensuring prison security	1%	4%	82%
Providing safety for staff	1%	3%	85%
Providing safety for prisoners	1%	10%	78%
Helping the prison to run smoothly	0%	16%	73%
Being a positive influence or role model	3%	12%	74%
Providing emotional support to prisoners	7%	38%	44%
Advocating for prisoners	12%	40%	37%
Assisting prisoners in rehabilitation	4%	26%	59%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

**Question 5.2 Do you feel that you have received enough training in the following areas?**

	Yes	No	Doesn't apply to my role
Use of restraints	62%	16%	16%
Use of chemical agents	21%	32%	44%
Use of breathing apparatus	62%	18%	15%
Child protection	10%	47%	36%
CPR/First Aid	70%	18%	7%
Emergency response: fire, natural disaster	45%	40%	10%
Emergency response: loss of control	27%	51%	16%
Occupational health and safety	42%	45%	5%
Suicide prevention	48%	42%	5%
Case management	52%	34%	8%
Cultural awareness	68%	22%	5%
Interpersonal skills	62%	29%	4%
Management of prisoners with drug issues	40%	48%	7%
Management of prisoners with health issues	41%	48%	5%
Use of the disciplinary process	37%	40%	16%

*(for each statement, tick one column)*

**SECTION 6: MEETING PRISONERS' INDIVIDUAL NEEDS**

**Question 6.1 Overall, how do you think this prison manages the needs of Aboriginal and Torres Strait Islander prisoners in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Communication with them	3%	1%	21%	16%	55%	3%
Provision of a culturally relevant diet	3%	8%	18%	15%	41%	14%
Respect for and recognition of their culture	3%	1%	15%	19%	56%	4%
Provision of appropriate programs	3%	3%	19%	14%	55%	5%

**Question 6.2 Overall, how do you think this prison manages the needs of prisoners from other culturally/religiously diverse backgrounds in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Communication with them	3%	7%	29%	221%	33%	5%
Provision of a culturally or religiously relevant diet	1%	7%	23%	23%	37%	7%
Respect for and recognition of their culture or religion	1%	3%	26%	25%	41%	3%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

Provision of appropriate programs	3%	7%	27%	25%	32%	5%
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**Question 6.3 Overall, how well do you think this prison manages the needs of victims of human trafficking in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Identifying prisoners who might be victims of trafficking	7%	16%	15%	4%	1%	53%
Communication with them	7%	16%	10%	10%	1%	52%
Providing appropriate support to them	8%	15%	10%	7%	4%	52%

**Question 6.4 Overall, how well do you think this prison manages the needs of prisoners who have experienced family violence in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Identifying prisoners who might be victims of family violence	1%	7%	26%	26%	21%	16%
Communication with them	1%	8%	22%	32%	18%	16%
Providing appropriate support to them	5%	11%	22%	26%	23%	10%

**Question 6.5 Overall, how well do you think this prison manages the needs of prisoners who are mothers with dependent children in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Supporting them to contact their children on the outside	1%	4%	22%	16%	41%	12%
Supporting them to parent their children who are in prison with them	1%	3%	21%	14%	47%	11%
Providing a healthy and stimulating environment for young children	4%	19%	29%	5%	26%	12%
Support for pregnant women	1%	5%	18%	19%	44%	8%
Support for mothers of young babies	1%	4%	15%	21%	44%	11%
Support for mothers to breastfeed their babies	1%	4%	10%	16%	37%	27%

**Question 6.6 Overall, how well do you think this prison manages the needs of prisoners with a disability in respect of... (for each statement, tick one column)**

	Very poorly	Poorly	OK	Well	Very well	Don't know
Identifying prisoners who might have a disability	4%	12%	29%	27%	22%	4%
Communication with them	3%	21%	27%	23%	19%	5%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

Providing appropriate support for their needs	8%	21%	25%	23%	18%	4%
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## SECTION 7: CONDITIONS FOR PRISONERS

**Question 7.1 Overall, how would you rate the quality of the following in this prison?  
(for each statement, tick one column)**

	Very poor	Poor	OK	Good	Very good
General cleanliness of the grounds and buildings	26%	19%	33%	18%	1%
Ability of prisoners to keep themselves clean	4%	16%	44%	23%	8%
Prisoners' access to clothing	4%	11%	32%	30%	18%
Access to bedding	3%	11%	29%	34%	18%
Accommodation for children	0%	8%	32%	34%	18%
Toys/play equipment for children	4%	11%	36%	27%	14%
Activities for children	4%	23%	37%	15%	11%
Food	1%	7%	30%	26%	29%
Access to sport and physical recreation	1%	5%	29%	38%	19%
Access to visits	1%	0%	21%	33%	37%
Access to request forms	1%	0%	14%	41%	40%
Access to telephone	1%	4%	18%	36%	34%
Access to mail	3%	7%	18%	32%	34%
Visits facilities	3%	8%	16%	36%	29%
Prisoners' ability to attend funerals	3%	5%	40%	23%	19%
Provision of legal resources	1%	10%	29%	32%	21%
Quality of cell space	3%	10%	21%	33%	29%

**Question 7.2 Overall, how would you rate the quality of the following services to prisoners? (for each statement, tick one column)**

	Very poor	Poor	OK	Good	Very good
In-prison health services	25%	16%	21%	22%	15%
Access to health specialists	23%	19%	25%	19%	12%
Mental health services	21%	22%	21%	22%	14%
Suicide prevention and at-risk managements	11%	12%	38%	18%	16%
Services for prisoners in other forms of crisis	11%	15%	38%	18%	14%
Services for mothers and children	7%	7%	36%	25%	19%
Chaplaincy	1%	0%	22%	36%	33%
Case management	3%	8%	32%	33%	18%
Education	3%	7%	30%	34%	16%
Vocational training	4%	10%	30%	33%	15%
Prison industries	4%	7%	30%	30%	21%
Programs	4%	10%	27%	30%	21%
Reintegration programs	8%	14%	25%	29%	16%

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.

Orientation services	4%	12%	30%	30%	15%
In-prison complaints services (unit officer, GM, etc.)	5%	11%	26%	29%	22%
External complaints bodies (Ombudsman, Health Services Commissioner, IBAC etc.)	3%	1%	18%	36%	36%

*Please only answer the question below if you have worked in one or more men's prisons in Victoria.*

**Question 7.3 Compared to men's prisons in Victoria, conditions in this prison are (tick one)**

Much better	A bit better	About the same	A bit worse	A lot worse
18%	7%	18%	14%	15%

Feel free to make any comments about the differences:

Thank you for completing this survey. Feel free to make any further comments below. If you want to discuss any of the issues raised by the survey, please contact one of the Inspection Officers during the inspection and they will be more than happy to talk with you.

Note: Responses to survey questions may not always total 100 per cent. Some survey respondents did not answer all questions. The percentage of non-responses is omitted.



# Appendix three: Aide memoire 3 (health and wellbeing)

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## Aide Memoire 3 – Health and Wellbeing

### Health & Wellbeing<sup>1</sup>

Prisoners are cared for by a health service that assesses and meets their health needs while in prison and which promotes continuity of health and social care on release. The standard of health service provided is equivalent to that which prisoners could expect to receive elsewhere in the community.

- Standard 32:** Prisoners are cared for by a health service that accurately assesses and meets their health needs while in prison and which promotes continuity of health and social care on release.
- Standard 33:** Prisoners benefit from health services which are safe and accessible and which maintain decency, privacy and dignity and promote their wellbeing.
- Standard 34:** Patients are treated with respect in a professional and caring manner which is sensitive to their diverse needs, by appropriately trained staff.
- Standard 35:** Prisoners are aware of the prison health services available and how to access them.
- Standard 36:** All prisoners receive information about health promotion and the control of communicable diseases.
- Standard 37:** Prisoners' immediate health and social care needs are recognised on reception and responded to promptly and effectively.
- Standard 38:** Prisoners' individual health care needs throughout their duration at the prison are addressed through a range of care services.
- Standard 40:** Prisoners assessed as requiring secondary care services are able to access them without undue restrictions to ensure continuity of care.

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<sup>1</sup> These standards are derived from Her Majesty's Inspectorate of Prisons, United Kingdom, *Expectations: Criteria for assessing the treatment of prisoners and conditions in prisons* (2012) and Association for the Prevention of Torture monitoring guides.

This aide memoire is not designed to be an exhaustive checklist of questions. It is designed to prompt thinking and further investigation.

**Standard 41:** Prisoners are cared for by a pharmacy service which assesses and meets their needs and is equivalent to that in the community.

**Standard 42:** Prisoners are cared for by a dental health service that assesses and meets their needs and is equivalent to the standard and range in the community.

**Standard 43:** Prisoners with common or severe and enduring mental health problems are

**Standard 44:** recognised and supported by health staff and specialist services at the prison, and have unhindered access to help in pursuing recovery.

**Relevant Commissioner's Requirements and Deputy Commissioner's Instructions include:**

- CR 2.3.1 Management of at risk prisoners
- CR 3.4.1 Mothers and Children Program
- DCI 1.02 At risk procedures
- DCI 1.12 Reception, care and control of prisoners
- DCI 2.01 Discharge of prisoners
- DCI 2.08 Prisoners with a disability
- DCI 2.15 Infection control in prisons
- DCI 4.13 Opioid Substitution Therapy Program

**Relevant rights under the *Charter of Human Rights and Responsibilities Act 2006*:**

- Section 8 Recognition and equality before the law
- Section 9 Right to Life
- Section 10 Protection from torture, cruel, inhuman or degrading treatment
- Section 13 Privacy and reputation
- Section 21 Liberty and security of person
- Section 22 Humane treatment when deprived of liberty

Date	Time	Inspecting Officer

Aide memoire:	Evidence/Findings
<b>the humane treatment of people deprived of their liberty</b>	
<ul style="list-style-type: none"> <li>• Is every prisoner on admission is given a health assessment, supplemented, where available, by the health record maintained by their community provider?</li> <li>• Are care plans are instituted and implemented timeously?</li> </ul>	
<ul style="list-style-type: none"> <li>• Has the prison implemented a reception screening</li> </ul>	

<ul style="list-style-type: none"> <li>process to identify prisoners with a disability?</li> <li>• What happens when someone is identified as having a potential disability?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are prisoners who need interpreters always able to access them when using the prison health services?</li> </ul>	
<b>protective measures to safeguard the rights of people detained</b>	
<ul style="list-style-type: none"> <li>• Is there evidence of appropriate confidentiality of healthcare consultations and records is maintained in the prison</li> </ul>	
<ul style="list-style-type: none"> <li>• Do the contracted health care providers ensure that the medical file accompanies the prisoner on transfer?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are prisoners identified as having been victims of physical, mental or sexual abuse supported and offered appropriate treatment? Are the relevant agencies are notified?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is care taken during the period immediately following the admission of a prisoner to ensure their health and wellbeing?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are preventive healthcare practices implemented effectively in relation to the assessment, care and treatment of those at risk of self-harm or suicide?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are preventive healthcare practices implemented effectively in relation to the care and treatment of those exhibiting addictive behaviours?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are healthcare records held for prisoners?</li> <li>• Are there effective procedures to ensure that healthcare records accompany all prisoners who are transferred in or out of the prison?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are preventive healthcare practices implemented effectively in relation to transmissible diseases.</li> </ul>	
<ul style="list-style-type: none"> <li>• Preventive healthcare practices are implemented effectively in relation to the maintenance of hygiene and infection control standards.</li> </ul>	
<b>the material conditions of the prison meet minimum standards</b>	
<ul style="list-style-type: none"> <li>• What does the medical unit look like? Is there a high turnover of prisoners?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is the environment clean, scruffy, noisy, calm, busy, smelly, dingy, graffiti, structured, controlled, chaotic?</li> </ul>	
<ul style="list-style-type: none"> <li>• When is maintenance carried out, including decoration?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are notice boards are up to date and maintained?</li> </ul>	

<ul style="list-style-type: none"> <li>• How are women able to access sanitary items?</li> <li>• Are any provided for on arrival?</li> </ul>	
<ul style="list-style-type: none"> <li>• Is bedding clean and adequate (including pillow)?</li> <li>• Are prisoners provided with a sufficient quantity of bedding, towels etc. to take account of climatic conditions?</li> <li>• Are there arrangements to issue further non-standard bedding to address climatic conditions or following medical/other advice?</li> </ul>	
<b>the regimes and activities of people detained are appropriate to meet individual needs</b>	
<ul style="list-style-type: none"> <li>• Are care plans implemented for prisoners whose physical or psychological health or capability leave them at risk of harm from others?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are health education activities for both prisoners and staff implemented throughout the prison?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are appropriate steps taken prior to release to assess a prisoner's needs for ongoing care and to assist them in securing continuity of care from community health services?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are remand and sentenced prisoners mixed in health/mental health facilities?</li> </ul>	
<b>adequate access to medical and other health services</b>	
<ul style="list-style-type: none"> <li>• Do prisoners have direct confidential access to a healthcare professional?</li> </ul>	
<ul style="list-style-type: none"> <li>• Does healthcare provided in the prison meet accepted professional standards?</li> </ul>	
<ul style="list-style-type: none"> <li>• Where the healthcare professional identifies a need, are prisoners able to access specialist healthcare services either inside the prison or in the community?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do healthcare staff offer a range of clinics relevant to the prisoner population?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are the specific needs of pregnant women, new mothers, babies and children met?</li> </ul>	
<b>appropriate staffing, monitoring and training</b>	
<ul style="list-style-type: none"> <li>• Is there an appropriate level of healthcare staffing in a range of specialisms relevant to the healthcare needs of the prisoner population?</li> </ul>	

4

This aide memoire is not designed to be an exhaustive checklist of questions. It is designed to prompt thinking and further investigation.

<ul style="list-style-type: none"> <li>• Are healthcare professionals working in the prison able to demonstrate an understanding of the particular ethical and procedural responsibilities that attach to practice in a prison and to evidence that they apply these in their work?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do healthcare professionals exercise all the statutory duties placed on them to advise the director of any situations in which conditions of detention or decisions about any prisoner could result in physical or psychological harm?</li> </ul>	
<ul style="list-style-type: none"> <li>• Do healthcare professionals fully undertake their responsibilities as described in the law and in professional guidance to assess, record and report any medical evidence of mistreatment of prisoners and to offer prisoners treatment needed as a consequence?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are there effective measures that ensure the timeous attendance of appropriate healthcare staff in the event of medical emergencies are in place and are practised as necessary?</li> </ul>	
<ul style="list-style-type: none"> <li>• Are partnerships between the prison health services and external health services effective? e.g. is communication effective? [See for example partnerships between DPFC and hospitals for women giving birth. Also, access of children to external health providers]</li> </ul>	
<ul style="list-style-type: none"> <li>• Do all new prison staff receive training in the theoretical background to infectious disease and descriptions of those diseases that might be transmitted in prisons (e.g. the hepatitis viruses, HIV, scabies, gastroenteritis, tuberculosis, etc.) and how this would occur?</li> <li>• Are existing staff who have not undertaken this training required to do so?</li> <li>• Staff should have easy access to pamphlets specific to the infectious diseases potentially transmitted in prisons. Occupational Health and Safety Officers should endeavour to make such material available.</li> <li>• When required, staff appointed by General Managers deliver training in relation to infection control to all staff at an appropriate forum.</li> <li>• Staff should be encouraged to undertake the <i>Infection Control Element</i> within Certificate III of the National Competency Standards.</li> </ul>	



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