



29 March 2012

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The Secretary  
Joint Standing Committee on Treaties  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

BY EMAIL: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Secretary

**Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

The Office of Police Integrity (Victoria) (OPI) welcomes the opportunity to provide the following submission to the Joint Standing Committee on Treaties (JSCOT) in connection with the Commonwealth Government's consideration of the proposal that Australia ratify the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (New York, 18 December 2002) ('OPCAT').

OPI **supports** ratification of OPCAT by the Commonwealth Government.

**1 Background**

**(a) *OPI's Human Rights Oversight Objective***

OPI is an independent statutory authority established in 2004, and subsequently re-established under the *Police Integrity Act 2008* (Vic). OPI is headed by the Director, Police Integrity ('DPI'), an independent officer of the Victorian Parliament.

The DPI has four statutorily prescribed objects, namely:<sup>1</sup>

- to ensure that the highest ethical and professional standards are maintained in Victoria Police;

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<sup>1</sup> *Police Integrity Act 2008* (Vic), s 8(1).

- to ensure that police corruption and serious misconduct are detected, investigated and prevented;
- to educate Victoria Police and the general community regarding police corruption and serious misconduct, including the effect of police corruption and serious misconduct; and
- **to ensure that members of Victoria Police have regard to the human rights set out in the *Charter of Human Rights and Responsibilities*<sup>2</sup> (emphasis added).**

Accordingly, one of the DPI's four statutory objects is to ensure that members of Victoria Police have regard to human rights in the course of their policing activities. In the pursuit of that particular object, the DPI has on several occasions had cause to examine – individually and in collaboration with other agencies – the conditions for persons in police custody in Victoria through a human rights framework, more recently in the context of the relevant rights guaranteed under the Victorian Charter.

In supporting the ratification of OPCAT by the Commonwealth Government, this submission highlights the positive developments observed by OPI following several years of oversight of the conditions in Victorian police cells. This submission is based on OPI's experiences and observations that, in its view, support Australia's ratification of OPCAT. It does not express a view on the process by which Australia ought to effect the ratification of OPCAT, or the fulfilment of its legal obligations under international law as a consequence.

**(b) *Victoria's Police Cells Constitute a Closed Environment***

As at the time of OPI's most recent inspection of the conditions in designated Victorian police cells, Victoria Police had 22 police stations that operated police cells designated as category 'A' cells.<sup>3</sup> Many of these facilities are co-located with, or in the vicinity of, a Magistrates' Court. These cells are gazetted watch-houses, which can hold a total of 294 detainees for periods ranging from 3 to 30 days. Individuals can be

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<sup>2</sup> In full, the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('*Victorian Charter*').

<sup>3</sup> Category 'A' cells are defined as charging stations with 24 hour operation and support the observation of persons in police cells. Also in operation are category 'B' cells (stations with 24 hour operation with sufficient staff to provide support observation) and Category 'C' cells (non-24 hour stations at which the cells may be used for emergency detention of prisoners pending release on bail, payment of a fine, or removal to category 'A' cells or category 'B' cells).

detained in category 'A' cells operated by Victoria Police for diverse reasons, including:

- people who are intoxicated or appear to be mentally ill;
- those who have been charged and are awaiting transfer to a remand centre; and
- sentenced prisoners and those on remand, who are in transit before and after appearing in court.

There are a number of features that distinguish police cells from prisons managed by correctional facilities. In prisons, staff are specifically trained to look after prisoners, whereas police are generally not trained to a similar standard in respect of detainees held in police custody. In addition, prisons are intended to accommodate individuals for lengthy periods of time, whereas police cells are designed as short stay or temporary holding facilities.

There is a widely held view amongst police and others that the custody of people in police cells is not a core function of policing. What is seen as the diversion of police resources from 'real policing' or operational duties creates problems in attracting appropriately experienced police for police stations that regularly accommodate large numbers of detainees. As a result, and contrary to human rights principles, there are significant differences in the treatment of detainees in police cells throughout Victoria.

It is in this context that OPI provides this submission.

## **2 Protecting the Human Rights of People in Police Custody: OPI Experience**

In the pursuit of its object of overseeing Victoria Police's adherence to the human rights set out in the Victoria Charter, the DPI has on several occasions had cause to examine the conditions for persons held in police custody in Victoria. Those inquiries have been carried out both collaboratively with other statutory agencies, and in more recent years, independently. This section traces the positive, yet incremental, developments that OPI has observed as a consequence of its active oversight of conditions of police cells in Victoria, leading OPI to conclude that ongoing engagement with Victoria Police in this context has led to more humane conditions of detention and the better protection of the rights of persons held in police custody.

(a) 'Conditions for Persons in Custody' (July 2006)

In 2005, OPI and Ombudsman Victoria (OV) conducted a joint investigation into the conditions for people in custody (both police custody and prisons). This investigation followed a 2002 investigation by OV into overcrowding in police cells.<sup>4</sup> The report of the investigation, 'Conditions for Persons in Custody' was tabled in the Victorian Parliament in July 2006 (included as **Attachment 1**).

In respect of the conditions in police cells, the Report made the following conclusions:<sup>5</sup>

"Monitoring the length of stays of detainees in police cells over the last six months has shown that many detainees, including those who are vulnerable and/or have 'protection' status, are held in unsuitable conditions for long periods. Circumventing regulations on the length of stay in police cells, by way of 'swapping' detainees between police stations and the use of section 56 of the Corrections Act 1986, is unacceptable."

"The conditions and access to services and amenities in many watch-houses do not comply with basic requirements. The poor condition of cells and inadequate access to basic amenities in a large number of watch-houses raise duty of care issues. In these situations, police cells should not be used to hold detainees, and certainly not for long periods."

"My investigation has found that in a number of critical areas, no progress has been made in respect of the recommendations made in the 2002 Ombudsman report on 'Conditions in Police Cells and Overcrowding'. Deficiencies in police cells identified then, remain and continue to place detainees and staff at risk."

Whilst the Report was prepared and tabled in a legislative environment pre-dating the introduction of the Victorian Charter, the conclusions drawn nevertheless expressed deficiencies in police cell conditions that had clear human rights implications. Deficiencies identified in the Report, such as overstays in unsuitable conditions, overcrowding and lack of access to basic amenities quite clearly engaged a number of human rights norms, including the right to protection from torture and cruel, inhuman or degrading treatment, right to life, right to privacy, right to liberty and

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<sup>4</sup> Ombudsman Victoria, *Twenty-Ninth Report of the Ombudsman Victoria* (June 2002) <<http://www.ombudsman.vic.gov.au/www/html/253-annual-report-2002.asp>> at 24 March 2012.

<sup>5</sup> Office of Police Integrity and Ombudsman Victoria, *Conditions for Persons in Custody* (July 2006) <<http://www.opi.vic.gov.au/index.php?i=95&m=0&t=1&iv=c>> at 24 March 2012, 63.

security of the person, right to humane treatment when deprived of liberty, and the right to a fair hearing, amongst others.

The Report made 34 recommendations in relation to police cells, which were intended to address these problems.<sup>6</sup> Victoria Police accepted the majority of the recommendations and commenced a process for implementing the recommendations shortly after the Report was tabled. OPI continued to monitor the implementation of the recommendations and subsequently commenced a series of on-site inspections of police cells (see further paragraph 2(c)).

**(b) 'Policing and Human Rights: Standards for Police Cells' (December 2008)**

Following the tabling of the joint OPI and OV Report in July 2006, in 2008 OPI developed a toolkit ('Police and Human Rights: Standards for Police Cells') with a set of standards against which the human rights of people in police cells can be monitored (included as **Attachment 2**). The standards in the toolkit are based on human rights norms prescribed in the Victorian Charter, United Nations treaties and instruments, and state legislation and regulations. Studies of police cells and custody conditions in other Australian and international jurisdictions were also taken into account and adapted to the Victorian jurisdiction.

The standards in the toolkit cover eight key areas – admission and assessment of detainees, accommodation, health and hygiene, food, psychological well-being, discipline, restraint, and treatment of detainees with special needs.<sup>7</sup> The toolkit is not intended to be exhaustive or prescriptive, but rather designed to assist OPI's audit process of human rights compliance by Victoria Police, as well as to assist custody sergeants and internal auditors within Victoria Police to assess progress in the ongoing improvement of the treatment and care of people in police custody.

**(c) 'Update on Conditions in Victoria Police Cells' (June 2010)**

In June 2010, OPI tabled a report in the Victorian Parliament – 'Update on Conditions in Victoria Police Cells' – which summarised the findings of an audit conducted by OPI from April to December 2009 (included as

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<sup>6</sup> Ibid 64-68.

<sup>7</sup> Office of Police Integrity, *Policing and Human Rights: Standards for Police Cells* (June 2010) <<http://www.opi.vic.gov.au/index.php?i=20&m=211&t=1>> at 24 March 2012, 4-11.

**Attachment 3).** The OPI audit team measured the implementation and effectiveness of recommendations made in the joint OPI and OV Report of July 2006 (as referred to in paragraph 2(a)) and assessed the impact of the Victorian Charter on this area of policing, using the toolkit developed and published by OPI in December 2008 (as referred to in paragraph 2(b)).

The OPI Report noted that a number of recommendations of the 2006 Report accepted by Victoria Police had been implemented. For example, the recommendation that detainees have access to clean clothes as required was assessed as implemented.<sup>8</sup>

However, a number of agreed recommendations were either not implemented or implemented in a piecemeal fashion by only a few police detention complexes. For example, in response to OPI's recommendations Victoria Police agreed to:<sup>9</sup>

- appoint a central area to be responsible for the inspection of all police cells. Victoria Police assigned this function to the Prisoner Management Unit and, whilst inspections had occurred, they appeared to be irregular in nature and had (at the time of the Report) only recently become more frequent.
- make improvements to the facilities available to medical and nursing staff in watch-houses, including the provision of basic equipment and designated rooms to offer a degree of privacy. The Report found that many cell complexes did not have a space reserved for health care personnel offering a degree of privacy, or a separate room with basic facilities.
- organise regular workshops or training sessions for watch-house staff to share good practices and to help promote consistency across watch-houses. Whilst Victoria Police proposed to develop a tailor made training package for this purpose, OPI's audit revealed that a training package for use by all cell complexes had not (at the time of the Report) been rolled out and little had been done centrally to coordinate the package and ensure its appropriate distribution.

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<sup>8</sup> Office of Police Integrity, *Update on Conditions in Victoria Police Cells*  
<<http://www.opi.vic.gov.au/index.php?i=95&m=0&t=1&iv=u>> at 24 March 2012, 25.

<sup>9</sup> Ibid 25-26.

The Report concluded by acknowledging that 'inconsistency between cell complexes on a broad range of issues emerges as the major theme' from the audit. However, as a positive development it was observed that:

"a number of custody managers took a positive approach to the audit, seeing it as an opportunity to improve practices. During the course of the audit a number of concerns identified by OPI staff were promptly rectified when they were brought to the attention of custody managers."<sup>10</sup>

Whilst the OPI audit of individual cell complexes provided insight into the incremental improvement in police cell conditions, the audit provided a broader understanding of the structural impediments to substantive change in this area of policing:

"...it became evident during the course of the audit that, at a corporate level, limited resources have been directed to improving and standardising custodial practices. The annual custody conference organised by the Prisoner Management Unit is a productive forum but there is no ongoing mechanism for driving change and improvement... This is not a criticism of the personnel involved but a comment on the limited centralised resources assigned to this important area."<sup>11</sup>

### **3 Why OPI Supports the Ratification of OPCAT**

The National Interest Analysis prepared in connection with this consultation identifies that while 'there are, in Australia many mechanisms in place for oversight and inspection of places of detention', there are also 'some gaps in monitoring – the key area of significance being detention in police detention facilities'.<sup>12</sup> The National Interest Analysis opines that 'these gaps might be removed by expanding the mandate of an existing independent body or establishing a new independent body to specifically carry out the national preventative mechanism functions with respect to these places of detention.'<sup>13</sup>

OPI agrees with the above sentiment expressed in the National Interest Analysis. Whilst OPI believes that its ongoing oversight and reporting on conditions in Victorian police cells has played a constructive role in the development of cell conditions that better accord with fundamental human rights standards, it acknowledges that such progress is both incremental and

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<sup>10</sup> Ibid 27.

<sup>11</sup> Ibid.

<sup>12</sup> National Interest Analysis [2012] ATNIA 6, paragraph 9.

<sup>13</sup> National Interest Analysis [2012] ATNIA 6, paragraph 31.

inconsistent across the jurisdiction. As set out in OPI's Report of June 2010 entitled 'Update on Conditions in Victoria Police Cells (referred to in paragraph 2(c)), a key deficiency identified in the current regulatory regime is that there exists no coordinated 'mechanism for driving change and improvement' and that there are insufficient 'centralised resources assigned' to improving the conditions of police cells. In this context, OPI has commented publicly in the past that 'a multi-faceted approach to detainee management is required' and that 'there needs to be ongoing internal and external monitoring that is transparent and accountable.'<sup>14</sup>

OPI believes that ratification of OPCAT, and the introduction of a national preventative mechanism, will significantly reduce the 'gaps' in the existing oversight of police detention facilities. The requirement to establish a national preventative mechanism will, in OPI's view, result in a more coordinated approach to the overseeing of police cell conditions, collectively within Victoria, horizontally between state jurisdictions, and vertically with the Commonwealth. OPI expects that the improved coordination of the oversight of police cell conditions will significantly assist with driving change and improvement in police cell conditions as well as minimising the inconsistencies observed in different parts of Victoria in relation to the delivery of police cell conditions that accord with fundamental human rights standards. This is particularly important given the broader context of rising prison populations in Victoria, which is likely to continue to have a spill-over effect on the number of persons held in police custody. OPI believes that the coordinated oversight of police cells through an OPCAT framework will assist in ameliorating the differences in treatment experienced by detainees held in police custody compared with detainees held in correctional facilities, particularly at a time when there is an increased burden being placed on Victoria Police to manage persons in police custody.

In addition, OPI expects that a nationally-coordinated oversight mechanism will result in positive engagement between the established national preventative mechanism and Victoria Police, in much the same way that OPI has positively engaged with Victoria Police to date. Moreover, OPI anticipates that the ratification of OPCAT and establishment of a national preventative mechanism will assist in raising awareness amongst Victoria Police (and other state police forces) of the need to improve police cell conditions such that they accord with Australia's human rights obligations. In OPI's view, raising

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<sup>14</sup> Office of Police Integrity, *Protecting Human Rights for People in Police Custody* (paper presented at the Australasian Human Rights and Policing Conference, Melbourne 8-10 December 2008) <<http://www.opi.vic.gov.au/index.php?i=96&m=176&t=1>> at 24 March 2012.



awareness amongst Victoria Police of this issue will result in improved engagement and collaboration with the established national preventative mechanism, and progressively result in human rights becoming 'part of the fabric' of policing, including in the important context of police detention.

OPI acknowledges the fact that there exist different levels of oversight of conditions in police cells in other state jurisdictions, which are benchmarked against different human rights and legislative standards. As a consequence, there is no coordinated approach to ensuring that the conditions of police cells are benchmarked against Australia's human rights obligations under various human rights treaties to which Australia is a State Party, including the *Convention Against Torture*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Rights of the Child* (amongst others).

OPI expects that the establishment of a national preventative mechanism(s) that is accommodative of Australia's federalised system of government will result in the harmonisation of the practice(s) of such mechanism(s) across Australia, and the benchmarking of police detention conditions against Australia's human rights treaty obligations. OPI views the harmonisation of monitoring practices and the benchmarking of cell conditions against Australia's human rights treaty obligations as a positive step toward ensuring that the human rights of persons detained in police custody are respected, protected and promoted on a consistent basis and against uniform standards.

Yours faithfully

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**Attachments**

1. 'Conditions for Persons in Custody' (July 2006).
2. 'Policing and Human Rights: Standards for Police Cells' (December 2008).
3. 'Update on Conditions in Victoria Police Cells' (June 2010).

**Om**



To

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

and

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

It has been said that it is the test of any civilised community how it treats people in custody. This report addresses my concerns about the conditions in which people are held in both police cells and prisons in Victoria.

My report shows that despite the former Ombudsman investigating conditions and overcrowding in police cells in 2002, there is still cause for serious concerns. Numbers in custody in Victoria have significantly increased over the past decade. Overcrowding and long stays, particularly in police cells are common. While I am conscious that there are a number of initiatives underway which will have some impact on conditions in custody, I remain concerned on the following issues:

- Overcrowding and long stays for persons in police cells
- A lack of access to basic amenities for both detainees in police cells and prisons
- Deficiencies in the provision of health care, particularly mental health, with implications for the wider community
- Inconsistent practices in the management of people in custody, both in police cells and prisons, particularly vulnerable prisoners
- The need for a more robust and transparent mechanism for monitoring custodial conditions in police cells and in prisons.

My report by its nature is detailed, as many of the issues are complex, particularly the interaction between persons being moved between police cells and prisons.

The response to my conclusions and recommendations has been positive, particularly on the part of the Department of Justice and Corrections Victoria.



G E Brouwer  
**OMBUDSMAN AND  
DIRECTOR, POLICE INTEGRITY**



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## EXECUTIVE SUMMARY

A society's level of civilisation can be judged by how it treats people detained in custody. These are persons who, for whatever legally sanctioned reason, are compulsorily deprived of liberty by the State and to whom the State owes a duty of care for their safety, security and well-being.

Prisoner complaints to my office have increased by 86 per cent over the last 10 years. I note that this is in the context of a 50 per cent increase in the number of prisoners over the same period. A number of systemic issues arising from the complaints have been previously identified and investigated by my office, including the way prisons handle prisoners' property and how drug testing is administered in prisons. A previous Ombudsman investigation in 2002 found there was significant overcrowding in unsuitable conditions for persons detained in police cells.

As Ombudsman I am charged under the *Ombudsman Act 1973* with the investigation of individual complaints by prisoners about conditions and treatment while in custody, and in addition, may investigate systemic issues or specific concerns. Also under Section 86NA of *Police Regulation Act 1958*, as Director, Police Integrity I am able to investigate issues in relation to Victoria Police including those concerning police cells.

In June 2005 I commenced an investigation into the conditions and treatment of persons held in police cells and in prisons as a result of complaints made to me and following the 2002 review. The objectives of my investigation were to report on, and to clarify the conditions in both prisons and police cells at various stages of the custody process.

My investigation included visits to custodial facilities, including police cells, to observe specific conditions and amenities, examine relevant documents and meet with police and prison staff and with prisoners/detainees. Discussions were also held with other stakeholders in Victoria's custodial system. On-site inspections were carried out by my investigators to police cells and prisons. Twenty watch-houses in metropolitan Melbourne and regional Victoria were visited, out of a total of 61. Ten out of a total of 11 prisons were visited, including eight male and two female prisons, with different security ratings in metropolitan Melbourne and regional Victoria.

The elements of satisfactory conditions in custody are clear. In Victoria they are prescribed by legislation and the policies and procedures of the custodial agencies - Corrections Victoria and Victoria Police which set the standards by which the custodial authorities operate. My investigation has identified a number of areas of concern. Key findings include those where action is required immediately to improve current conditions, and those which have strategic impact on the future directions of the Victorian custodial system.

The role of police is basically not a custodial one and Victoria Police is not an organisation geared to having to hold large numbers of detainees in custody in substandard conditions for long periods – separate resources and staff are not allocated for this task. That is the function of the prison system and its custodial staff.

My concerns about custodial arrangements in both police cells and prisons include:

- Overcrowding and long stays for persons in police cells
- Non compliance with duty of care and contractual obligations for detained persons and insufficient attention to custodial standards
- Lack of access to basic amenities by detainees/prisoners
- Inadequate transport arrangements
- Deficiencies in provision of health and mental health care
- A need for more robust and transparent internal mechanisms for monitoring custodial conditions both in police cells and prisons.

Central to my investigation is the finding that the numbers and lengths of stays of persons in police custody are unacceptably high. This leads to unsatisfactory conditions and limited access to services and amenities for detainees. An increasing number of those detained in police cells are vulnerable, at risk of self harm and/or have a 'protection' status. In my view they should not be held longer in police cells than other detainees, as was found to be the case, because of an inability by the prisons system to find suitable vacancies for them. My investigation found a number of systemic issues which prevented the smooth transfer of detainees from police cells into the prison system, leading to unsatisfactory conditions in custody.

This office has previously reported on the overcrowding and conditions for persons held in police custody. It is with concern that I conclude that conditions in police cells mirror most of the earlier criticisms and confirm that overcrowding in some police watch-houses continues, that conditions for persons held in custody, in particular for those kept there for more than a few days, continue to be below acceptable standards.

While this situation has recently been relieved by the opening of the new Remand Prison, I remain concerned about the issue of prisoners held in police cells for unnecessarily long periods of time.

There were inadequate responses to my predecessor's 2002 recommendations. Of those which had been accepted, little evidence was found of any action taken to implement them; of those which were either adopted in principle or rejected as not practicable, no alternative strategies had been developed or progressed. This lack of action is not acceptable.

It is clear that the current division of custodial responsibilities and arrangements between Victoria Police and Corrections Victoria is not working in a way which ensures adequate and decent conditions for detainees.



**I found the following in relation to conditions in police cells:**

- *Sub standard conditions and overcrowding in police cells, particularly at the Melbourne Custody Centre.*
- *Vulnerable persons are inappropriately held in police cells.*
- *Segregation of different categories of detainees in police cells is difficult – males from females, young persons, drunks, those with mental problems and 'protection' status detainees, within the limited and confined space of most cell complexes.*
- *Poor safety, security and welfare conditions exist for the transport of persons to and from police cells.*
- *Unsatisfactory physical conditions and design faults, including hanging points, were found in the older police cell complexes.*
- *Intoxicated persons are frequently held in police cells inappropriately.*
- *Access to basic amenities in police cells, such as visits and telephones is limited - many inconsistent practices exist between watch-houses in providing access.*
- *Provision of basic services, such as health care, is often inadequate or absent.*
- *Absence of consistent training in duty of care and custodial role of watch-house staff.*
- *Lack of internal monitoring and supervision in many watch-houses.*
- *Staffing levels are insufficient for the tasks required in the watch-house.*
- *Systemic monitoring of conditions in police cells is absent.*

**I found the following in relation to conditions in prisons:**

- *Assessment and classification procedures need to be improved to prevent blockages, leading to overcrowding and long stays in police cells.*
- *Mental health services for prisoners in all prisons needs to be better addressed.*
- *Insufficient facilities and services for the needs of many special needs and vulnerable prisoners.*
- *Deficiencies exist in the health care provided.*
- *Prisoners access to telephones and visits should be improved.*
- *Improvements are required in the work available for prisoners.*
- *A review of educational and other programs for prisoners is warranted.*
- *Improved access to information for prisoners about prison rules and procedures for prisoners at reception and during their stay is required.*
- *Concern over disciplinary practices and search and related procedures.*
- *Prisoner transport conditions need improvement.*
- *Systematic monitoring of conditions in prison is limited and requires a more robust and transparent scrutiny.*

## OWN MOTION INVESTIGATION

*The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country ...these are the symbols which in the treatment of crime and criminals mark and measure the stored up strength of a nation, and are the sign and proof of the living virtue in it (Winston Churchill, UK House of Commons, 20 July 1910).*

### Background

Each year I receive many individual complaints from people held in custody. These complaints make up almost a quarter of all complaints received and represent a significant proportion of all matters handled by my office. The nature of the complaints indicates that there are major systemic issues relating to conditions in custody which are not being adequately addressed. The former Ombudsman's report on *Conditions and overcrowding in police cells* (May 2002), showed that there was cause for serious concern. It found that inadequate conditions in police cells were exacerbated by significant overcrowding and long stays, and were caused by the lack of capacity of prisons to cope with the increase of prisoners. I have more recently investigated how prisons handle prisoners' property (November 2005) and how drug testing in prisons is carried out (May 2005). The general conditions under which people are held in custody, both in police cells or in prisons, however remains of concern.

I considered that it was timely to investigate the outcome of the 2002 recommendations and to assess the general conditions for people held in custody, not only those in police cells but also in prisons. The same people move in and out of these two radically different custodial facilities. High numbers of prisoners lead to increased levels of overcrowding, which in turn lead to a need to increase prison capacity (which takes time), and to heavy reliance on police cells to hold prisoners until there are vacancies in the prison system. It should be noted that in my report where I refer to 'prisoners' this usually includes persons sentenced and unsentenced in the prison context, whereas 'detainees' refers to both prisoners and others who are held in police custody.

Numbers in custody in Victoria have significantly increased. In mid October 2005 prisons in Victoria held one of the highest recorded populations – 3,665 prisoners. Ten years earlier (30 June 1995) there were 2,467 prisoners – an increase of 55 per cent. I note that the highest recorded number of prisoners was on 31 October 2003 when there were 3,828 prisoners. Overcrowding and long stays, particularly in police cells, have a direct impact on custodial conditions and on the capacity of the custodians to comply with their duty of care obligations. Custodial conditions are also a measure of whether the basic human rights of those who are deprived of liberty are adequately provided for.

I am conscious of the fact that the Victorian criminal justice system is constantly evolving and that there are a number of initiatives underway which will change the current custodial system and have an impact on conditions in custody. In the first half of 2006 two new prisons were opened, which added 900 new prison beds (but led to decommissioning of temporary beds). There are policy developments in train, including the Review of the Bail Act; legislative changes, such as in the area of family violence giving greater powers for police to detain perpetrators; and proposals to replace suspended sentences with prison terms or supervision orders. The anti-terrorist legislation at the Commonwealth level will also significantly increase the potential for holding persons in custody and have consequences for conditions. My investigation provides a progress report and is a benchmark against which the impact of these various changes on conditions in custody can be measured in the future.

A recent Commonwealth inquiry relating to the cases of Cornelia Rau and Vivian Alvarez (Palmer, 2005) as well as the *Royal Commission into Aboriginal Deaths in Custody* (1991) have shown the serious consequences when there is little appreciation of the duty of care owed by custodial staff to a person in custody. I believe it is appropriate to investigate at this time the general conditions in Victorian custodial facilities and the factors which contribute to them.

On 22 June 2005, I wrote to the Secretary of the Department of Justice, Ms Penny Armytage, the Chief Commissioner of Police, Ms Christine Nixon and the Minister for Police and Emergency Services/Minister for Corrections, the Honourable Tim Holding MP, advising them of my intention to conduct an own motion investigation into the conditions in custody under section 14 of the *Ombudsman Act 1973*. In parallel, I undertook an own motion investigation pursuant to Section 86NA of the *Police Regulation Act 1958*.

## Overview of the custodial system in Victoria

In June 2005 there were 12 prisons in Victoria with a total design capacity of 3,921 including 'flexible' or temporary capacity, comprising two prisons for women and ten for men. (It should be noted that Bendigo Prison closed in December 2005). Two (Port Phillip Prison and Fulham Correctional Centre) are operated by private companies under contract to Corrections Victoria, holding between them 40 per cent of all prisoners (Attachment A provides further details). Prisons are purpose built for prisoners to live there, often for a long time while serving their sentence or if they are on remand, awaiting the court outcome. They provide a range of programs and services to meet the needs of different categories of prisoners.

Prisoners are also held in police custody. Police cells or 'lockups' are usually part of the watch-house in a police station complex. They are intended to serve a fundamentally different purpose from prisons, and were originally designed as temporary holding or transit detention facilities at the 'front end' of the criminal justice system for persons who have been arrested and/or are detained before and after court appearances or waiting to be transferred to prison. The 78 watch-houses in Victoria are gazetted, strictly limiting the legal holding period which for most is seven days or fourteen days. Victoria Police also set a notional capacity for each watch-house. Attachment B provides details. The watch-houses range in size from the large Melbourne Custody Centre with a capacity to hold 72 detainees for up to 28 days, to small regional lockups which occasionally hold detainees for a day or two. The distinction between the two types of custodial facilities is very clear to any observer who visits police cells and compares them to prisons.

### Trends in the use of custody

At the end of February 2006 there were almost 3,800 persons in custody in Victoria. Most are held in prison with a small but persistent number held in police cells - 217 on 8 February 2006. Smaller numbers are also detained in juvenile justice centres run by the Department of Human Services, and psychiatric facilities, as well as in court holding cells for very short periods. However, the focus of my investigation is on conditions for those persons held in prison and police cells.

My office monitored on a daily basis the numbers of persons held in police cells, both male and female, in metropolitan or regional locations and how many are held for 10 days or more, as well as the number of 'protection' prisoners and the vacancies made available to Victoria Police in the prison system. This information has been analysed over the last six months and, together with other information taken from the registers of the police watch-houses visited, provides a summary of who is held in police cells, for how long and their movements in and out of various forms of custody.

On 8 February 2006, I found that 217 persons were held in police cells at 7am on that day. Of these, 74 were sentenced prisoners; 80 detainees had been in police cells for ten days or more; 18 had been in custody 20 days or more and Corrections Victoria had not offered vacancies to these prisoners. Many of the prisoners had 'protection' status – 38: of whom five had been there for 30 days or more, seven for between 20-29 days and eight for 10 to 19 days.

Detainees who are given 'protection' status are those who need to be separated from other prisoners for their own protection, either because of the offences committed, or because of threat from other detainees. They may be vulnerable because of disability or mental health issues. Five of these 'protection' prisoners had medical conditions noted for priority transfer; five had transferred from other police watch-houses, while 13 were sentenced prisoners. Twelve percent of all persons in police cells on 8 February 2006 were held in the Melbourne Custody Centre where the conditions and design for accommodating large numbers of detainees for long periods of time have been criticised as unsatisfactory and in breach of basic rights and standards.

Despite increasing trends in the numbers of persons in custody, the Victorian crime rate is at its lowest level since 1993. According to figures reported by Victoria Police (Media release 10 August 2005) reported crime for 2003-04 showed a 22 per cent decrease per 100,000 population since 2000-01. Low levels of crime are also reflected in the relatively smaller rate of defendants per 100,000 persons in Victoria appearing in courts, according to figures from the Australian Bureau of Statistics *Criminal Courts 2004-2005 and the Report on Government Services 2005*. As the size of the prison population is dependent on the number and length of custodial sentences imposed by the courts, the increased prison population has been attributed to changes in sentencing practice and a generally more punitive approach reflecting strong community pressure for law and order. Lower thresholds for violence and other anti-social behaviours lead to 'tough on crime' policies which are associated with more severe, longer sentences and tightening of court procedures for bail and other related orders and a decline in the seriousness of the criminal histories of prisoners. At the same time, there have been considerable efforts put into the development of diversionary schemes and increasing non-custodial options.

Keeping people in custody represents a substantial financial burden for governments. According to the Report on Government Services 2005, expenditure for prisons has grown most rapidly across Australian jurisdictions and 21 per cent of government recurrent expenditure for Justice Services in 2003-04 was spent on corrective services. No information is available on the cost to police services of holding many people in police cells and the resources required to run police cells are generally absorbed in the general policing budget.

## Who is in custody?

The profile of Victorian prisoners (*Statistical Profile of the Victorian Prison System 1999-2000 to 2003-2004*) shows that the overwhelming majority of persons in prison are males – approximately 90 per cent of all Victorian prison receptions and about 93 per cent of the prison population are male. In terms of age, most prisoners are aged between 18 and 34 years with the largest age category being between 25-29 years. There is over representation in prison of Aboriginal and Torres Strait Islanders, in that they represent 5 per cent of all prisoners and detainees while only making up 0.5 per cent of the Victorian population. The majority of sentenced prisoners have been convicted of property offences, offences against the person, such as assault, sex offences, and

homicide and drug trafficking. Of male prisoners who were sentenced in 2003-04, 43 per cent received sentences of less than 6 months and 35 per cent sentences of 6-12 months. For females the corresponding figures were 55 per cent and 27 per cent.

Recent trends in the prison population show increases in the numbers of females, Indigenous people, those with mental health concerns, and prisoners with complex health related conditions, including multiple illicit substance use, alcohol problems and communicable diseases. There has been a marked increase in the reception of unsentenced (remand) prisoners, rising from 2,313 in 1999-00 to 2,880 in 2003-04. Remand prisoners represented 47 per cent of all receptions into prison in 1999-00 increasing to 53 per cent in 2002-03. Six out of ten remand prisoners receive a custodial sentence on conviction. Imprisonment of older prisoners (over 50 years) is also increasing. Many are growing old in prison with longer sentences and reduction of early release. They are also entering prison later in life, reflecting an ageing population more generally. In addition, many of those in prison have been there before. At 30 June 2004 around half of male prisoners had been in prison before under sentence, while 38 per cent of female prisoners had been in prison before. The increasingly complex needs of people held in custody and their high levels of social disadvantage including unemployment, homelessness, weak social supports, low literacy levels have also been well documented.

The profile of persons held in police cells is assumed to be broadly similar to the profile of the prison population. Unfortunately, there is no regular published information on who is held in police cells, why they are there and for how long.

## Conditions in custody - a question of standards

Australia has signed a number of international treaties in respect of human rights including the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* as well as the *UN Convention Against Torture*. The *UN Convention Against Torture* which requires states to...

*keep under systematic review ...arrangements for the custody and treatment of persons subject to any form of arrest, detention, or imprisonment ... with a view to preventing any cases of torture: and preventing cruel, inhuman or degrading treatment.*

The *UN Basic Principles for the Treatment of Prisoners* 1990 state amongst other things that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. However, these rights do not automatically form part of Australian law, nor do they bind Australian governments. They therefore offer little or no practical protection when rights are violated. The preferred approach of the Victorian Government has been to address human rights through education, human rights training and examining government practice through investigatory and reporting processes. Although the Victorian Constitution provides some important democratic safeguards, it does not cover specific rights. Many human rights provisions nevertheless are contained in other Victorian legislation, including the *Equal Opportunity Act* 1996 (Vic), the *Information Privacy Act* 2000 (Vic), the *Freedom of Information Act* 1982 (Vic) the *Corrections Act* 1986 (Vic) and the *Crimes Act* 1958 (Vic).

The Victorian legislative and regulatory framework for custodial facilities and conditions are set out in the *Corrections Act 1986*; the *Corrections Regulations 1998*; and the *Corrections (Police Gaols) Regulations 2005*. For Victoria Police, duty of care obligations and the provision of services and conditions in respect of police cells is described in the *Victoria Police Manual*, in particular sections 104, 105, 113 and 115. For Corrections Victoria the specific standards governing custodial conditions are embodied in the *Corrections Act 1986*, the *Corrections Management Standards*, *Director's Instructions (public prisons)* and *Operating Procedures (private prisons)*. The Standards were introduced in 1995 (for women) and 1996 (for men) to ensure that consistent correctional management policy and standards applied across privately and publicly managed prisons. The Standards for both men and women prisoners have been revised and are due for implementation on 1 July 2006. For the private prisons (Port Phillip Prison and the Fulham Correctional Centre) the standards are contained in the respective operating procedures and in contract conditions. Accountability processes and monitoring of compliance with custodial standards, by both Victoria Police and Corrections Victoria, are carried out through internal mechanisms and procedures. For Victoria Police it occurs through internal inspections and audits. For Corrections Victoria, this occurs through the Corrections Inspectorate, a unit within the Department of Justice. Other obligations on custodial authorities enforceable at law by regulatory authorities include hygiene and occupational health and safety requirements under various statutes.

## Investigation scope and approach

The 2002 Ombudsman's report provided the initial starting point for my investigation. The principal focus was to investigate the custodial arrangements for detained persons and prisoners, including:

- the physical conditions
- the safety and security of their environment
- their access to basic services
- how the needs of special groups are met
- how standards for the care and control of persons in custody are applied in Victoria.

I sought to clarify the responsibility for care and control of detainees at various stages of the custodial process, including arrangements and transfers between Victoria Police and Corrections Victoria and to identify the factors contributing to large numbers of persons held in police cells.

In carrying out this investigation I sought evidence from a wide range of sources. Key stakeholders whose participation was actively sought during the investigation include Corrections Victoria, its public prisons and the two private prisons, Victoria Police and Department of Justice staff (including those from the Equal Opportunity Commission and the Guardianship Board). Others contacted and spoken with included individuals held in police cells and prisons, prison staff, including health and education staff, police officers at stations with custodial duties, magistrates, non-government organisations and individuals, such as Official Prison Visitors, representatives from Liberty Victoria, Victoria Legal Aid, the Law Institute and the Public Interest Law Clearing House (PILCH), Salvation Army chaplains and staff from the Brosnan Centre and the Victorian Association for the Rehabilitation of Offenders (VACRO).

I was concerned to identify through observation, review of documents and interviews, an independent view of custodial conditions. The difficulties in this complex exercise are acknowledged. Prisoners' accounts of deprivations, mistreatment, inadequate conditions and complaints have in the past often been denied and discounted as untrue. Nevertheless, I believe that the views of prisoners and independent voices – those of doctors, chaplains, official visitors and lawyers and others - should be heard and opportunities were provided for this to occur. Such reports added value in assessing the consistency of the views, observations and complaints brought to my attention.

I also carried out an analysis of formal written complaints over four years from prisoners and from detained persons in police cells to the Ombudsman's office and the Office of Police Integrity. This, and a review of the relevant literature, assisted in the development of an investigation framework. Information was collected principally by on-site inspections during July and August 2005. These were limited to 10 of the 12 prison facilities (excluded were Bendigo Prison, which closed in December 2005, and Langi Kal Kal, a small minimum security prison) and to police cells in 20 police stations (out of a total of 78 gazetted – although 17 of these are listed as de-commissioned). Selection of police stations aimed to give a reasonable cross section of metropolitan Melbourne and regional stations, some close to courts, some very busy, some old and some new. Details of facilities visited are given in Attachment C.



# CONDITIONS FOR PERSONS HELD IN POLICE CELLS

## Background

A feature of the custodial system in Victoria is that persons can be held in two vastly different type of facilities – prisons or police cells, and, that they can and frequently do move back and forth from one to the other. Most striking are the differences in conditions under which persons deprived of their liberty are held in the two types of facilities. This lies at the heart of many of the points of concern identified by my investigation. It is also the cause of many complaints to my office.

Despite the fact that every year a large number of persons are detained in police cells, little is known about who is detained in them, for what reasons, the circumstances they are held in and the conditions they experience. There are no statistics published on a regular basis. Nor are police cells subject to regular external scrutiny or annual reporting. There are no Official Visitors of police cells as there are in the prison system. Mostly invisible to the public eye, it is generally only when a death occurs in police custody and through coronial findings that police cells come to the public's attention.

Police do not view themselves as custodians at all – they perceive their crime-fighting role as central. They identify with being keepers of the peace, preventing crime and enhancing community safety. They do not want or like dealing with angry, bored detainees in very confined conditions with minimum access to services.

Yet the reality is that they have a substantial custodial role, even though it is often downplayed or overlooked. Police cells in Victoria are frequently and extensively used to detain people and constitute a significant and integral component of Victoria's custodial system. At any time, around 4-5 per cent of persons in custody in Victoria, excluding those in psychiatric, juvenile justice and immigration detention facilities, are held in police cells. The Australian Institute of Criminology *Survey on Custody in Police Cells* (2004) found that during October 2003 police cells in Victoria received 2,286 persons into custody, which on an annual basis would be greater than 25,000 persons.

Previously, the Ombudsman's office has investigated conditions for persons held in police cells. However, the scope of my present investigation is now broader as it also includes conditions for persons in prison. In May 2002 the then Ombudsman initiated an investigation because of major concerns about the rise in the number of persons detained in police cells, both sentenced prisoners and persons on remand awaiting transfer into the prison system. In that report (Ombudsman Victoria 2002), it was made clear that:

*These prisoners ...are primarily the responsibility of the [then] Office of the Correctional Services Commissioner whose facilities are designed for the management of prisoners and whose staff are properly trained and qualified for that purpose.... But it is the police who are required to perform this function when the prison system cannot handle prisoners in excess of prison capacity, despite lacking the specialised training and appropriate facilities to perform the task. (2002:1)*

Further it was found that:

*This situation has caused dissatisfaction amongst both the police and the prisoners entrusted to their care. The police are dissatisfied because of the need to manage large number of prisoners requiring the use of resources, which could be better and more appropriately utilised to perform the functions and duties of policing for which they have been trained. The prisoners are dissatisfied because they are denied the proper care, privileges and accommodation that are available to the majority of prisoners who are held in correctional facilities. (2002:1)*

Prisoner dissatisfaction was manifested by complaints to the Ombudsman about the conditions of police cells in various locations. While individual complaints had been investigated and responded to:

*Such action amounts to little more than treating the symptoms rather than the cause. Cells in police stations are not designed to hold sentenced or remand prisoners. (2002:1)*

So the question is – has anything changed? Have the concerns identified by my predecessor in 2002 been addressed and the recommendations accepted and implemented?

## **Segregation in police cells**

Overcrowding creates serious problems for watch-houses because different types of detainees have to share cells when they would otherwise be kept separate, for example, young from old, intoxicated persons from others. This was found in 2002 to lead to frequent transfers of detainees between watch-houses to find a suitable vacant cell and to difficulties in relation to intoxicated persons. It was recommended that if drunkenness is to continue to be treated as a criminal offence, consideration should be given to extending the program where drunks are released into the care of another person or establishing detoxification centres where drunks could be lodged. Victoria Police agreed at the time to consider extending the policy of releasing drunks into the custody of appropriate persons.

Persons detained in police cells can be an explosive mix of drunks, remand prisoners who should be kept separate from sentenced prisoners, persons needing to be kept separate because of their offences, first timers, those at risk of self harm, young people, women and the physically and mentally ill. Such vulnerable detainees have to be properly managed within the confined space of the watch-house, presenting staff with major duty of care problems, particularly as a significant proportion of prisoners are in custody for drunkenness.

Police are required for safety and security reasons to separate various categories of detainees, such as those who are mentally ill, female or young persons, those who are drunk. Yet many watch-houses are not specifically designed to cater for this. Watch-houses often have very limited scope to segregate detainees, especially when numbers in police cells are high. It impacts negatively on the safety and security of the detainees, often creating unnecessary tension and management issues. Segregating detainees also impacts significantly on staff resources and means police are constantly moving detainees between cells for showers, cleaning, exercise, to see visitors and when new detainees arrive.

At times when there is a lack of vacancies in the cells, persons requiring separation may be held in interview rooms (with no video surveillance) and even occasionally in police vans. An ad hoc practice has developed over the years because of the lack of cell capacity (and to overcome the restrictions on how long detainees can be held) for police to transport the detainee to police cells in another police station. I consider this to be an unacceptable practice.

Police are well aware of the risks and difficulties of putting more than one person in a cell but it is a common occurrence. In some stations male prisoners cannot have showers if there is a female detainee, because they have to be locked down or swap cells. The same applies when there are young people or sex offenders, or those who require high security. According to police officers spoken to by my investigators, Victoria Police try to avoid having females and those with 'protection' status in the cells at all. However, the figures I have been monitoring during the course of the investigation show that this is not the case in particular in respect of 'protection' detainees. An analysis of police cell use in 2005 showed that detainees who have 'protection' status are generally more likely to stay longer in police cells than other detainees.

## Drunks

Drunkness remains a criminal offence in Victoria, despite the recommendations of the Parliamentary Committee on Drugs and Crime Prevention's *Inquiry into Public Drunkenness* (2001) to decriminalise drunkenness. Victoria is the only state in Australia where being drunk in a public place is of itself a criminal offence and where police do not have access to designated places of safety for holding drunks. More recently this Committee (March 2006) in its enquiry into *Strategies to Reduce Harmful Alcohol Consumption* recommended again that public drunkenness should be decriminalised. The Committee further concluded that an essential requirement of such decriminalisation is the provision of adequate numbers of sobering up centres and associated services. I believe it is in everyone's interest that this matter be given priority. Intoxicated persons are a danger to themselves and to others and accommodating them in unsuitable police cells, rather than taking them to health care facilities and sobering up centres with properly trained staff, puts them and their jailers at risk.

Of course decriminalising drunkenness does not mean that police cannot remove a drunk person from a public place. Police should still be able to detain a drunk for their own safety or the safety of other persons and/or property. Also, police would still retain the power to arrest intoxicated persons found committing criminal offences.

Police report that they are increasingly reluctant to place drunks in police cells... *they yell and scream and are aggressive and difficult...they are noisy and keep the others awake...* (Watch-house staff). In one regional station the death of a drunk in the cells many years before had left an indelible mark on the officer who saw it happen, and wherever possible he avoids locking drunks up. The last person the watch-housekeeper wants in custody is a noisy, uncooperative, often violent drunk who disturbs and upsets other persons in the cells. The drunk is also a high-risk person to have in police custody, at risk of self-harm or causing harm to others, including police, and against whom force may have to be used, often in the form of OC spray or foam. Problems are caused when an intoxicated person has to be placed in police cells with others because of the limited capacity for police to place such persons in segregation. Where available, drunks are held in 'minimalist' holding cells away from other cells but are still at high risk of self-harm. Operating procedures specify that drunks should only be held for a short time (up to 4 hours), and checked every thirty minutes and this seems to be generally adhered to.

Watch-houses do not provide regular information on the number of drunks held in police cells and how long they stay. The Victoria Police POLCELL database records who is detained in police cells, with the exception of drunks, although they are recorded on the hard copy watch-house register. This omission on the electronic data base should be rectified so that a more accurate measure is obtained of police cell use by intoxicated persons.

## Indigenous persons

In respect of Indigenous persons who are detained, police generally rely upon the services of the Aboriginal Community Justice Panels (ACJP) or relatives to take them from the watch-house. The Panels seem to work well in some places if there are good links with organisations such as the local Aboriginal cooperative, where they can inform police of possible health or family concerns for an Indigenous detainee. Panels reportedly work less well in other locations, where they are not always ready to come or may refuse to pick up some well-known individuals.

## Females

As females need to be separated from male prisoners, the proximity of the male cells to the female cells can also be an issue.

## Juveniles

Children and young persons held in police cells need to be separated from adults. Young people under the age of 18 years were found to be detained in a number of locations during my inspections. Police see these as 'inconvenient' and in liaison with Victoria Police Prisoner Movements Unit give them priority for moving them out of the police cells, usually into the juvenile justice system. In regional locations, if there is no means of transporting them then *...a crew drives them to Melbourne (Juvenile Justice Centre) – 2 hours there and 2 hours back...* (Regional police).

## 'Protection' prisoners

Persons in need of special protection because of their vulnerability, which may be due to their offence; because they are first time offenders; or because who they are – police; major crime identities; white collar offenders, also require segregation from 'mainstream' prisoners in the confined space of a watch-house.

One particular issue regarding 'protection' prisoners that creates an unnecessary problem to the appropriate placement of detainees. A 'protection' prisoner cannot be held in a watch-house amongst the 'mainstream' detainees. Anecdotal evidence suggests that information regarding 'protection' prisoners is rarely updated or current. Instances were reported where detainees with 'protection' status had to be segregated, despite the persons from whom separation was required having been dead for many years. However, detainees were still considered in need of protection and therefore required separation from 'mainstream' detainees.

Another issue identified is the different definitions used by Victoria Police and Corrections Victoria to label someone as 'protection' or 'separate'. This has led to confusion, and at times led to inappropriate placement of detainees with potential risk issues, and non compliance with duty of care requirements.

A number of police noted the recent rise in the number of 'protection' detainees who require separation from 'mainstream' detainees, adding to overcrowding problems and increasing lengths of stay in police cells.

Within metropolitan Melbourne, Moorabbin police station is a large watch-house frequently used for 'protection' detainees who need to be kept separate from 'mainstream' detainees and often for lengthy periods of time because of the lack of vacancies within the prison system, but also because there are no vacancies within other watch-houses.

For example:

Moorabbin is a Category A metropolitan watch-house (14 day holding period), able to hold 14 detainees. It is not attached to a court. Many detainees are on remand pending bail, or in transit from Mildura, or are special needs groups such as females, sex offenders or those waiting to get into MAP and who require segregation. In addition detainees from Dandenong and Frankston police stations go there when their cells are full or require detainees to be separated. There are also persons held there who have not paid their fines or who have outstanding warrants.

The watch-house is neatly maintained and clean. There is a sense of order and established procedures. When the two sides of the cell complex are full with 'separates' then no 'mainstream' prisoners can be held there.

Police at this station ...*won't have drunks*...and locking up intoxicated persons is a last resort when all other options have been tried. Options may include transport to St Kilda cells or the Melbourne Custody Centre, unless they need urgent medical attention, in which case they go to Monash Medical Centre.

The juggling exercise that is required when detainees need segregation, to access food, showering and visits is a major problem in watch-houses and often involves the 'lock down' of other detainees, creating disturbances and considerable tension.

Increasing numbers of vulnerable detainees, including women, young people, 'protection' detainees and mentally ill people who are held in police cells, particularly test the capacity of watch-houses to keep these different categories of detained persons separate. They present police with a difficult task, which directly impacts on being able to provide basic amenities, such as food, showering, visits, clean clothes and medical care. It is clear that the need to segregate detainees remains a serious practical problem for police watch-houses and was confirmed by the analysis of watch-house incident reports involving many vulnerable detainees, as well as by many police spoken to and by independent sources.

*I recommend that:*

- *Drunkness should be decriminalised as an offence in line with the recommendation of the Parliamentary Inquiry into Public Drunkness. As an interim measure, suitable watch-houses should be designated as places of safety for accommodating intoxicated persons. Police would still retain the power to arrest intoxicated persons found committing criminal offences.*

*I recommend that Victoria Police:*

- *Make improvements to the reports from the POLCELL database of detainees in police custody to enable better monitoring of police cell use, and should include the recording of intoxicated persons and other vulnerable persons. When the new E\*Justice system is implemented, the module for police cells should include the recording of all persons held in police cells, including intoxicated persons.*

*Monitoring of the daily occupancy in police cells at key times during the day (7am, 10am and 5pm) should be complemented by 'flow' figures, that is, the number of receptions and discharges. Improved reporting of length of stay, on the frequency of the use of the Corrections Act 1986 Section 56 (which permits the holding of detainees beyond the gazetted limit), and on the practice of 'swapping' of detainees between police stations, should be developed and implemented. Reporting should also allow for the easy tracking of individual detainees through the various custody facilities.*

*Victoria Police advise that this recommendation will be addressed upon implementation of the E\*Justice system.*

- Liaise with Corrections Victoria to develop common definitions and criteria for persons who need 'protection', 'separation', or 'segregation' and ensure that training is provided to watch-house staff, in this regard.*

*Victoria Police support this recommendation.*

## **Conditions for a safe and secure environment in police cells**

Under duty of care obligations, watch-house staff are required to provide a safe and secure environment for all detainees, no matter how short a time they stay there. However, during the course of the investigation a range of issues were identified which called into question the adequacy of the safety and security of persons held in police cells.

### **Physical conditions and design of cells**

*All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation (UN Standard Minimum Rules for the Treatment of Prisoners: Article 10).*

The typical police cell is designed to accommodate two to three persons and has a sleeping/seating concrete slab on which mattresses can be placed, an open toilet and wash basin with a drinking faucet. Generally, all fittings are robust and eliminate anchorage points and opportunities for damage and recesses that can be used to hide weapons or other contraband. Ceiling heights are set to allow closed circuit camera surveillance. In the more modern Police Stations each cell has direct access to an internal exercise yard, where detainees spend most of their day and includes fixed concrete furniture - a table and seats as well as open area and a television set contained in vandal proof cabinets built into the wall and controlled by custody staff from outside.

Despite the Victoria Police Design Guidelines, my investigators found that the physical state of many police cells was unsatisfactory. In some cells and yards in older watch-houses detainees can remove mortar or pieces of cement from cell walls which are then reportedly used to inflict harm on themselves. In several facilities there was water seeping into cells, with moss and mould growing (Kyneton, Sale). Even in new watch-houses the physical conditions of custody remain very basic for anyone who has to be accommodated for more than a day or two.

A number of safety features were inspected. Cell complexes must have resuscitators, which should be placed for easy access and staff trained in their use. However, in some instances (Bendigo, Sale) it was found resuscitators were kept in locked rooms or were not visible. Yet the need for their use is real as illustrated in Ballarat, where it was prominently placed, and where it had recently been used to revive a detainee who had caused serious self-harm.

Fire retardant materials are now generally accepted as the norm in police cells for blankets and mattresses, yet not all watch-houses used them. Large variations were found regarding accessibility of fire extinguishers and First Aid kits and where these are located in watch-houses. It is unclear if each watch-house has a fire evacuation plan and whether practice drills take place. Despite efforts to reduce the risk of fires, it was reported that fires still occur in cells.

While the newer watch-houses have eliminated or at least reduced hanging points in the cells to prevent self harm and suicide, in some older watch-houses there are still numerous hanging points, such as bars, low ceilings and low hanging mesh roofs and door knobs. These flaws are known to watch-house staff, yet persons who maybe at risk or self harm or suicide continue to be detained therein.

Most cells have 'duress' alarm buttons enabling detainees to call watch-house staff, although they do not allow two-way communication. Nevertheless, they are useless if they are not working, or if staff ignore them when used by a detainee. In Bairnsdale, for example, it was found that the duress button had not been working for some time and had only recently been fixed. Staff at other watch-houses said that the alarm button was 'a nuisance' if used repeatedly, and is often ignored if a detainee 'over uses' it.



The design and layout of the watch-house within a police station can have major impact on the conditions experienced by detainees. There are marked variations depending on when the police station was built – some are old (Horsham, Bairnsdale, Sale, Kyneton) with design faults leading to unsatisfactory conditions. Some watch-houses have carried out internal renovations and redesign work, to provide more practicable arrangements, budget permitting (Traralgon). Some are attached to courts, linked via tunnels or covered walkways (Dandenong and Heidelberg). At other watch-houses detainees have to walk through public areas (Kyneton, Bendigo and Moe) or require police transport to court which pose additional safety and security issues (Bairnsdale).

The photograph below shows a cell at Kyneton, with clear signs of water damage. The cells were built in 1856 and held persons in custody up to October 2005, at which time I raised my concerns with the Chief Commissioner.



While in some new police stations the watch-house is designed so that it can be sealed off to enable potential outsourcing of the custodial role to Corrections Victoria staff or private contractors (Ballarat), it was reported that it is no longer done in the latest designs.

*I recommend that Victoria Police:*

*– Review the condition of all cell complexes in light of the findings of this report.*

*Victoria Police advise that:*

*Horsham is scheduled to be upgraded in the 2007 financial year and Sale in 2008, subject to funding.*

*Construction has commenced on a new Bendigo Police complex.*

*Victoria Police propose to conduct an audit of conditions in all cells.*

– *Ensure all new cells are fitted with a basin allowing access to drinking water.*

*Victoria Police advise that the Design Guidelines allow for recessed basins in all cells.*

– *Ensure all cells are equipped with duress alarm buttons, and are responded to promptly by staff.*

*Victoria Police agree with this recommendation.*

## Monitoring detainees and surveillance cameras

My investigators found that the monitoring of detainees in police cells was in many respects unsatisfactory. While surveillance cameras were observed in all cells visited, in the 'yards', at the charge counters, in the sally port, as well as in the police station more generally, the quality of the system for monitoring persons in custody, in particular those at risk of self harm or suicide was unsatisfactory. Police themselves pointed to design faults in the video recording, such as the placement of cameras, or obstacles to viewing screens. For example, in Ballarat, staff in the new watch-house have no monitors at that location but need to look at monitors some distance away in the main station complex because the original design had incorporated the possibility of separating the watch-house from the rest of the station.

My investigators found a wide variety of systems in use for the surveillance cameras. Many watch-houses are still using old, time-lapse equipment that record images on VHS tapes which have to be replaced when full and are then recorded over within a short period of time. Any historical visual record of incidents is therefore lost. Issues also exist regarding the storage of the tapes, as these take up room in a watch-house, or have to be taken off-site. Kyneton was found to have video surveillance but no capacity to record. I note that, as a result of a recent upgrade, Kyneton cells are now monitored by digital technology with the capacity to record. Because of its lack of amenities and the condition of the exercise yard, Victoria Police advise that the cells will not be used to hold prisoners overnight.

Watch-house staff recognise that the time lapse cameras are a problem as they sometimes *...run out of tape before we can put another one in to replace it...or they break and we can't get them out of the unit...*(watch-house staff). Newer facilities, such as at Sunshine have a digital system that allows for improved recording and archiving. Similarly, the Melbourne Custody Centre has recently upgraded its camera equipment to a digital system. Such systems allow images to be recorded to a computer system and kept for months and then 'burnt' onto CD or DVD and kept permanently, if required. A demonstration of the recall capacity of the camera surveillance at Sunshine watch-house showed two incidents that had been saved. In one, a drunk was sprayed with OC spray producing resolution of the incident. In the other incident a detainee produced a weapon at the charge counter, but was obscured by a half open door. Because of this, my investigators were informed that a new camera will be installed to overcome the blind spot.

*I recommend that Victoria Police:*

- *Review the camera surveillance systems in all watch-houses and upgrade those without digital recording capabilities. Watch-houses should have the capacity to hold all video recordings for not less than a month from the date of recording.*

*Victoria Police advise that this recommendation was 'not required' as older facilities are being progressively upgraded as funding becomes available.*

## **Searches**

As part of maintaining a safe and secure environment police have powers to search the detainee for items that can harm themselves or others. When searches are conducted 'contraband' is often found, sometimes in the lining of clothes. An example was given at Ringwood where a detainee regurgitated a razor blade and bled extensively. Tobacco, which is not allowed in most cells is often found and can then lead to 'management' problems, at times requiring the use of force or by charging the detainee with police gaol offences. Particular care is taken to remove shoelaces and at some watch-houses shoes are also removed, according to police, as an extra precaution against self-harm or harm to others.

Searches are usually conducted in a separate room with no camera in the watch-house area. Where this is not available a 'pat down' search with two officers will be done at the charge counter. Female officers search females if they are on duty, otherwise the female detainee is kept in the holding cell until a female officer arrives or else male officers conduct a 'pat down' search. Strip searches are routinely done with the approval of the sergeant. No 'body cavity' searches are permitted although some watch-house staff want the power to do such searches to remove objects such as tobacco, matches and weapons. The smuggling of these items into watch-houses by persons coming from prison is reported to be a problem.

*I recommend that Victoria Police:*

- *Ensure that all prisoners coming to police cells are aware of watch-house rules and the consequences of breaching them, in particular in relation to smoking.*

*Victoria Police propose to audit all local watch-house rules for consistency and best practice regarding possible areas of improvement.*

## Court safety and security

Detainees in police cells are frequently escorted by police to and from court, which maybe located next door or at some distance away. I note that some of the conditions under which they are escorted pose safety concerns. The potential for aggressive behaviour and/or self harm incidents following adverse court decisions and sentencing outcomes needs to be recognised by police when detainees return to the cells. There seems to be lower standards of security in and around courts, compared to watch-houses and this potentially places the public, court and judicial officers and police at risk.

While many courts have holding cells attached, responsibility for the detainee remains with the police. At some courts, usually two officers will accompany one detainee, but when there are staff shortages this can sometimes be reduced to one. The officers remain there while the hearing takes place, and return with the prisoner to the watch-house when finished. This practice impacts on the shift rosters of the watch-house, especially where a number of prisoners may need to be shuttled back and forth between the court and the watch-house, and hence impacts on the safe management of detainees. In the newer police stations (such as Dandenong and Ballarat) there is direct access via an enclosed passage or a tunnel which links the watch-house to the courts, which are covered by the security cameras.

At Bairnsdale and Moe, police escort detainees from court holding cells through public areas to access the court. In Bendigo, detainees are escorted from the watch-house to court on foot, along a public path next to a school, and while prisoners are usually cooperative, according to the police there, the situation is undesirable, as it is a busy court with many people moving around.

At the Melbourne Custody Centre where frequent movement of prisoners occurs between the cells and the Melbourne Magistrates' Court, which is located above in the same building, escorts to the court rooms are provided by the centre staff and where the courts are secure, the arrangements appear to work well.

A number of court holding cells are in poor condition – with no or limited toilet amenities and an absence of adequate video surveillance (for example at the Bairnsdale Courthouse). Such cells either should not be used or should be brought up to acceptable standards.

Most courts have teleconferencing facilities which could minimise the need for transporting detainees between the court and custodial facilities, thus reducing security risks and also the need for stays in police cells for prisoners. However, I understand that video conferencing is not being used to its fullest extent. Some prisoners like the 'outing' to court and welcome the opportunity to see family members and friends. Conversely, prisoners also commented that video conferencing is preferred because there is no need for strip searches, travel time is eliminated, as is waiting around in holding cells or police cells.

Given the short duration of some court appearances, such as mention hearings (five minutes is common) or where the matter is adjourned (sometimes a number of times), greater use could be made of video conferencing. I also consider that conveying prisoners to court and guarding them during their appearance is essentially not a police function. In my view it should be carried out by a more appropriate organization such as Protective Services or Corrections Victoria.

*I recommend that Victoria Police:*

- *Explore, in conjunction with Corrections Victoria and Court Services, ways of increasing the use of teleconferencing.*

*Victoria Police agreed.*

- *Liaise with Court Services to review the current system of listing court cases to reduce the need for holding detainees in police cells for lengthy periods.*

*Victoria Police agreed and stated that this is managed on a case by case basis.*

*I recommend that the Department of Justice:*

- *Upgrade court cells where necessary.*

*The Department of Justice agreed.*

## Transporting detainees

Police are also frequently required to transport prisoners – between different watch-houses, to and from hospital, and court and, at times to and from prison.

In respect of the transport service between prisons, courts and police cells, there is a single contract with GSL (Australia) Pty Ltd which is monitored by a contract administrator in Corrections Victoria, with the Corrections Inspectorate producing monthly performance reports and an annual incident audit. The Inspectorate has recently completed a report *Review of Victorian Prisoner Transport Services* (Department of Justice, June 2005), which identified the not infrequent use of police vehicles for transporting prisoners, if a GSL vehicle is unavailable. Of concern is that the Review found that the police vehicle inspected was not fitted with CCTV and did not have:

- a two way intercom system between driver and detainees
- separate secure compartments for detainees
- seat belts
- padded seats
- a GPS link for emergencies (which are all required under the GSL contract).

This poses serious risks to detainees and their escorts. If inspections of other police vehicles confirm these conditions, and the frequency of trips by detainees in police vehicles is established, then I believe that there are safety and security concerns that should be addressed by Victoria Police.

These concerns also apply to police transporting detainees between police stations. Reasons for these trips frequently are that the permitted length of stay at a particular watch-house has been reached, so the detainees are moved on to another police station to commence a 'new' detention episode. To minimise the time demands on police for such transfers, in some localities police, for example from Bairnsdale and Sale, meet half way and do 'swaps' of detainees. It was also found that these 'swaps' often occur within police regions, necessitating long trips, rather than transferring detainees to the nearest police station but which is in a different region. These practices are unacceptable.

*I recommend that Victoria Police:*

- *Review the conditions in which detainees are transported in police vehicles, in light of the above issues.*

*Victoria Police advise that this recommendation is under consideration.*

## **Lack of a systematic inspection program**

It is of concern that if conditions and access to basic entitlements and services are inadequate and non-compliant with basic standards, the person detained has limited recourse to any remedy. I believe that a regular program of inspections of police cells would be desirable. In the case study outlined below, such inspections might have led to the situation in the Kyneton cells to have been addressed earlier.

While there are regular visits by Ombudsman staff to prison facilities to explain the role and procedure for making complaints to prisoners and to take individual complaints, there are no such visits to police watch-houses. A more accessible and effective way of allowing complaints to be heard needs to be established. In Scotland, for example, there is an independent Inspector of police watch-houses, while in the UK there are volunteer community members (Independent Custody Visitors) who visit and report on conditions under which persons are detained in police cells and how standards relating to their welfare are complied with.

## Case Study - Kyneton police cells - inspected on 1 September 2005

The Kyneton Police cells are in a category B watch-house which is not gazetted as a police gaol. This limits the holding period for persons detained there to 3 days. It is however a 24 hour police station and located next to the Court House.

There are three cells in the watch-house, each with several concrete bunks, very high ceilings and small, highly placed, barred windows which are open to fresh air. The cells are off a small enclosed anteroom leading to a narrow enclosed yard, onto which a shower recess also opens. The cells were found to be dirty, the interior walls showing signs of sustained water damage and mould. The open toilets located immediately next to the bunk beds are heavily stained and are in such a condition that they can no longer be cleaned properly. Heating from the high ceiling is ineffective because of open windows. The cells have no drinking water. There are heavy layers of leaves between the windows and the exterior as well as covering almost all of the mesh roof of the exercise yard, which is a fire hazard. There are also hanging points in the yard, and, while there is video surveillance, at the time of inspection there was no facility for recording. Visitors are required to speak through the bars of the cell, giving no privacy. Lack of security at and around the charge counter, and while escorting detainees in and out of the cells to go to court or onto vehicles, is a major safety concern for police in the watch-house as well as for the general public.

The state of these cells is totally unsatisfactory in a modern society. While recommendations have been made in the past concerning the unacceptable conditions at the Kyneton watch-house, these were stop gap measures (more secure doors were installed), rather than decommissioning these unsuitable, sub standard cells.

Evidence indicates that in the past persons have been held in custody there for a period of up to 2 weeks and in 2005 it was still not unusual for persons to be incarcerated there for 3 to 4 days duration. Between 8 August and 1 September 2005, nine detainees were recorded as being held there. Police who are responsible for the day to day running of the cells expressed concerns about the conditions.

I wrote to the Chief Commissioner of Police about my concerns, indicating that the facility should be closed immediately and alternative arrangements made for the housing of person in police custody, possibly through the use of the modern facility at Gisborne Police Station. I commend the Chief Commissioner on her prompt response to my concerns. On 19 October 2005 the Kyneton police cells were closed. They have recently been reopened after refurbishment, but will not hold prisoners overnight.

The photograph below of Kyneton cells exercise yard shows a build-up of leaves on the mesh ceiling and potential self harm points on the walls.



The UN principles for the protection of persons under any form of detention or imprisonment state that *places of detention shall be visited regularly by qualified and experienced persons appointed by and responsible to a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment*. Victoria Police should put this principle into practice.

*I recommend that Victoria Police:*

*– Appoint a central area to be responsible for the regular inspection of all police cells.*

*Victoria Police agree.*



## Preventing injuries, illness and deaths

Police are required to record all incidents that occur within watch-houses when detainees suffer an injury. When an injury does occur, the details are recorded on an electronic Incident Fact Sheet. Between 1 July 2004 - 30 June 2005 a total of 246 incidents involving injuries to detainees in the watch-houses were recorded. The most frequent incidents were recorded at Frankston Police Station (10 per cent), Dandenong Police Station (10 per cent) and Ringwood Police Station (9 per cent). While this reflects in part the higher numbers of detainees held in these stations, it should be noted that, for example at Heidelberg which also had high numbers of detainees, far fewer injuries were recorded.

The most common type of injury across all recorded incidents were:

- *Self-Harm (36 per cent)*
- *Fighting Amongst Detainees (13 per cent)*
- *Injuries sustained while being Physically Restrained (9 per cent)*
- *Attempting to Assault Police Officers (9 per cent).*

The types of injuries detainees sustained varied, with the most common relating to self-harm involving cuts to the arm/body (17 per cent), followed by deliberately punching or head-butting the cell wall (15 per cent), and to a lesser extent, attempting to hang/choke themselves (4 per cent). Fights with other detainees or physical restraint by the police, involved facial injuries, such as blood noses or cut lips/eyes (14 per cent). The flow of blood also had a secondary effect, with incidents recorded of detainees (many of who are Hepatitis C positive or with infections), smearing blood across walls and floors or splattering blood at officers.

For a third of the incidents an ambulance was called to attend the watch-house. This again highlights the need for a close working relationship between the police and this emergency service. In nearly all instances, the ambulance was escorted by police to a local hospital. The services of a Custodial Doctor/Nurse were utilised on 17 occasions, while on eight occasions the injuries were minor and police were able to provide First Aid.

It was notable that 60 incidents involved detainees who were drunk, again highlighting the difficulties of detaining those who are intoxicated. Most injuries relating to this group included self-harm attempts and falling down and hitting their head.

In almost a quarter of the incidents police officers recorded using OC Spray or Foam to stop a detainee from injuring themselves further. This was often used during physical scuffles, as well as during or following a self-harm attempt.

Seventeen incidents also arose from detainees smuggling items into the watch-house, including knives, pills, pins, tobacco and cigarette lighters. Self-harm attempts were common according to police when a detainee entered the cells with items hidden on their body. Surveillance cameras assisted officers in detecting detainees who remove such items from their body.

Between 1 July 2004 - 30 June 2005 a total of 142 incidents were recorded where detainees became ill in police cells. The most frequent were recorded at:

- Dandenong Police Station (13 per cent)
- Sunshine Police Station (11 per cent)
- Frankston Police Station (8 per cent).

The most common condition was *Chest/Stomach Pains* (28 per cent), *Fit/Seizure* (14 per cent) and *Drug Withdrawal Symptoms* (13 per cent). For 84 per cent of all incidents, an ambulance was called to attend. In nearly all instances police escorted the ambulance with the detainee to a local hospital for tests and treatment. Whilst such action helps avoid more serious outcomes, it also places strain on police resources at the watch-house. The Custodial Nurse or Doctor attended the detainee in 14 per cent of incidents and in three instances police applied first aid.

Outcomes from self-harm attempts were typically anxiety attacks or breathing difficulties. None according to police were considered serious. There were also 33 incidents involving drunks, with most of these involving chest pains, fits/seizures and collapsing unconscious in the cells.

Two deaths in police cells examined by the Coroner are summarised in the Table below to illustrate a number of critical duty of care issues. Similarly, two deaths in prison are presented later in this report. Relevant recommendations of the Coroner are incorporated into appropriate areas covered by my investigation.

**Table 1: Two deaths in police cells investigated by the Coroner, Victoria**

<p><b>2003</b>  <b>Female</b>  <b>Warrnambool Police Station</b>  <b>Hanging</b></p>	<p><b>Coroner's recommendations to Victoria Police</b></p>
<p>Deceased ('D') was arrested at 2:10pm on suspicion of theft and was held after interview in cells at 9:45pm.</p> <p>D proceeded to tear strips off standard issue blanket and placed one end over the upper hinge of the open cell door and placed a 'noose' around neck and applied pressure.</p> <p>The video camera system did not record the incident as the police forgot to insert a new videotape for that day. The hanging occurred within a 'black spot' not easily visible on monitors.</p> <p>D was recorded on LEAP as previously threatening suicide when held at Geelong Police Station in 2002. Staff at Warrnambool accessed LEAP and at least two officers were aware of the warning.</p>	<ul style="list-style-type: none"> <li>– Improved information exchange on person in custody, including details of medical conditions/medication</li> <li>– Greater attention to duty of care responsibilities and more training in this</li> <li>– Transfer custodian role from watch-house keepers in Victoria Police to non-police</li> <li>– Continue to eliminate cell hanging points</li> <li>– Provide each police cells with 'suicide' blankets</li> <li>– Establish unscheduled external auditing of conditions in police cells every 6 months</li> <li>– Bail process to include list of welfare/management issues for remand decision</li> </ul>
<p><b>2000</b>  <b>Male, 22 years</b>  <b>Melbourne Custody Centre (MCC)</b>  <b>Choked on Vomit</b></p>	<p><b>Coroner's recommendations to Victoria Police</b></p>
<p>D was arrested for being drunk at 11:45pm. Taken straight to the MCC, he was placed in a cell and found dead by custodial staff at 2:05am.</p> <p>D had previously that night consumed 6 Mogadon tablets along with a significant amount of alcohol; however medical staff at the MCC did not consider transferring the detainee to hospital.</p> <p>Staff performed regular checks on D however no attempts were made to wake him and obtain a verbal response. At 1:42am D was seen on the monitors vomiting in his cell, however the quality of the footage is poor and the system was based on time-lapse recording.</p>	<ul style="list-style-type: none"> <li>– Ensure refresher training to custodial staff on watch-house policies and procedures</li> <li>– Ensure monitoring by senior staff that policies and procedures are complied with</li> <li>– Establish documented and effective 'handover' about detainees when staff shift changes</li> <li>– Amend policies and procedures on duty of care responsibilities, especially for at risk detainees</li> </ul>

More recently in the Knox Police cells on 21 July 2005, a 47 year old woman died from strangulation after having been remanded into custody. She was allegedly found under the blanket with a stocking around her neck. The Coroner is currently conducting an investigation.

In my view, Corrections Victoria staff should be utilised in the larger watch-houses to free up operational police.

*I recommend that Victoria Police:*

- *Remind watch-house staff to pay close attention to any LEAP database risk warning regarding a detainee, especially relating to suicide/self-harm when receiving a detainee into custody. If a detainee is considered ‘high risk’ Victoria Police should not hold the detainee in police cells, unless exceptional circumstances exist, but arrange for their immediate transfer to a prison or a secure health facility.*

*Victoria Police acknowledge that it is a requirement for any ‘Warning Flags’ to be recorded against detainee details.*

- *In conjunction with Corrections Victoria use dedicated, trained Corrections Victoria staff for managing detainees in larger police cell complexes rather than police members.*

*Victoria Police advise that this recommendation is under consideration.*

## **Access to Health Care**

Health concerns and access to medical care for detainees in police watch-houses continues to be a major issue. Many watch-houses, particularly in the metropolitan Melbourne area, have custodial nurses on call or doing regular rounds and local general practitioners are available when needed through contractual arrangements. Nevertheless, my investigators found that the access to health care is still far short of what is required. It is acknowledged that there are practical difficulties in attempting to provide adequate access to health care in police cells, and given the rapid fluctuations of numbers in cells which require a lot of flexibility.

It is left to police to decide what to do with a detainee when there are health concerns - whether to call for custodial nursing help, utilise local practitioners (some only available after hours and weekends), or whether to take the person to hospital or call the ambulance. The introduction of the medical check list (also dubbed the ‘coma’ scale by police) in 2000 to assess risk, allows an initial rating to be made at the watch-house of the degree of risk a detainee presents. This is a good innovation and appears to be effectively used.

The poor health of many persons in custody is widely acknowledged. They commonly suffer from epilepsy, diabetes, asthma, heart complaints, palpitations, cramps (produced by withdrawal from drugs), and various communicable diseases, such as Hepatitis C, HIV and scabies. Many have mental problems, such as depression, anxiety attacks, self harm behaviour, may be suicidal, or suffer from schizophrenia or borderline personality disorders.

In addition to various health problems, a number of detainees have or sustain injuries while in police cells. This can involve bleeding and open wounds which need to be managed carefully and are a significant public health and occupation health and safety issue. Police take precautions when handling prisoners or their property by wearing latex gloves.

In relation to substance abuse, Victoria Legal Aid lawyers report that detainees are not able to be given proper medical attention when they are suffering withdrawal symptoms. While methadone is provided in police cells, it can only be prescribed through the custodial nurse and an external pharmacist has to dispense it. It is unclear how detainees can access methadone if they cannot obtain the necessary confirmation from their doctor while in custody. Not all watch-houses will facilitate such access.

It was estimated by some police that 50 per cent of detainees are on some form of medication, sometimes as many as four out of five. At the MCC records showed that 72 per cent of detainees in June 2005 were on prescribed medication. Ensuring proper access to medication for detainees in police cells is also of concern for a number of reasons. Prisoners may come from prison to police cells without their regular medication, which for some serious chronic conditions can be a major issue. It is reported that the behavior of detainees might not be so bad if they had their medication with them. Police giving medication to persons in custody carries risks. They are not trained or qualified to do this and have little free time to adhere to the proper procedures... *You do the best you can, we are not trained to do this...*, according to one officer. While the cost of medication for detainees is covered by Victoria Police, sometimes police have the family bring the medication, which presents other safety issues.

It is also unclear whether detainees when released or returned to prison are able to take their police-issued medication with them. It was an issue raised with my officers while visiting the MCC. Custodial nurses at some police stations noted that when a detainee is transferred from police custody to the Melbourne Assessment Prison, any medication is disposed of and, it was reported, information on their medical status provided by police may end up in the same way. The detainee must then obtain new prescriptions and hope that any previously diagnosed illness is re-diagnosed by medical staff within the prison system. The absence of a 'seamless' procedure for medication between police custody and custody in the prison system is in my view an issue of concern and relates to the more general problem of the fragmented and discontinuous health care provisions for persons in custody referred to in more detail later in this report.

Any emergency situation in police cells is usually dealt with by local ambulance services and hospitals. There are many cases where police need to escort the detainee to hospital, creating staffing problems for the watch-house. Instances were given to my investigators of long waits to access hospital services and occasionally the detainee is kept in the police van outside, until they are ready to be seen.

My investigators found considerable variation in the availability of health services for detainees held in police cells. Many watch-houses, particularly in regional Victoria have limited or no access to the service of the Custodial Medicine Unit of the Victoria Police. Overall, the coverage of this service and the corresponding funding remains modest given the poor health of many detainees. In terms of facilities for health care staff, usually in the larger stations there is a room for medical visits, where the medication is often also stored. In smaller stations where space is at premium, a storage room or even the kitchen is used.

## Mental health issues

Access to mental health care has been identified by a number of organisations as a major issue in the custodial facilities managed by both Corrections Victoria and its private prison operators and by Victoria Police (see for example the Senate Inquiry on Mental Health, October 2005; Victorian Mental Health Institute Annual Report, November 2005). Increasing numbers of detainees are reported to have mental health issues, often complicated by substance and alcohol abuse. Violent behaviour is often reported in relation to detainees with mental illness. Knowing how to effectively deal with mental illness in police cells requires more time and skill than police have available.

In relation to the services provided by the Crisis Assessment Teams (CAT) and Department of Human Services (DHS) within the watch-house context, improved liaison and coordination is required so that both police and DHS staff understand each others' role better. Critical comments were made by police about the Crisis Assessment Teams, which reportedly do not respond promptly to police requests for assistance or where privacy restrictions prevent information about a detainee being passed on between police and the DHS staff. It appears that the protocol in place is not being fully implemented by Victoria Police and area mental health services at the local level. I understand that this is being addressed by the Interdepartmental Liaison Committee with representatives from the two agencies.

The presence of a mental health nurse attached to the courts is reported to work well where they exist in dealing with detainees, for instance, at Sunshine where the court is next to the watch-house. As well, custodial nurses attached to the Victoria Police Custodial Medicine Unit who attend many police cells are psychiatrically trained and provide considerable support for watch-house staff in relation to mental health issues. The St Vincent Hospital Psychiatric Services in Melbourne is also well utilised by police but not easily available to regional watch-houses.

DHS advise that the implementation of the E\*Justice project will be invaluable for facilitating health management of detainees.

The need for mental health assessment of persons detained in police cells is important, as these persons may be at risk of self harm or suicide and require close attention to duty of care responsibilities. To some extent this can be addressed by the custodial nurse. However when they are not available, police should be able to transfer these detainees promptly into the prison system via the 'front end' Melbourne Assessment Prison (MAP) for males (or to DPFC for females). Unfortunately, because of a lack of beds in the MAP, male detainees with mental health issues are often left waiting in police cells for longer than necessary or desirable.

For example:

A detainee was held in a regional watch-house for 8 days. He had previously been diagnosed with schizophrenic behaviour and had already spent 4 weeks in police custody in another regional police station. He was suicidal and was without his medication. He was unable to sleep as lights were kept on all night. He did not want to be there but wanted to go to MAP where he could smoke and would be assessed and given his medication. He was unable to understand why he was kept there. He found the food impossible to eat so had kicked the cell door spilling the food. The result was that police came in and sprayed him with OC spray.

Central to the problem of insufficient beds at the MAP to take mentally ill and/or 'protection' detainees from police cells, are the policies and procedures of Corrections Victoria. These require that any prisoner assessed as a P1, who is either ill or requiring assessment, must remain at MAP until the P1 status is removed. Around a third of all prisoners at MAP are classed as P1 and often stay there longer than other prisoners. Although not all P1 prisoners at MAP are waiting to go to the Acute Assessment Unit, the Unit can provide support to those prisoners who are not necessarily acutely ill. However, because there are only 15 beds in the Acute Assessment Unit where there is psychiatric support, a large number of P1 prisoners are waiting for a bed in that unit and can remain at MAP often for up to 3 months. This produces a blockage, slowing throughput of prisoners at MAP, resulting in long stays for vulnerable persons in police cells waiting for a bed at MAP. Further discussion on this issue is provided in later in this report.

*I recommend that Victoria Police:*

- Ensure that detainees who are assessed as suffering from a serious medical condition not be held in police cells overnight.*

*Victoria Police agree with this recommendation.*

- Liaise with Corrections Victoria so as to enable the number of vulnerable persons waiting in police cells for a bed at MAP, to be reduced.*

*Victoria Police agree and advise that this issue will be addressed as part of a Department of Justice project.*

- *Make improvements to the facilities available to medical and nursing staff in watch-houses. In 24 hour watch-houses there should be a separate room for their use with basic equipment such as a couch, desk, and lockable cupboard. In all other stations, a space should be reserved for health care personnel, offering a degree of privacy.*

*Victoria Police agree and propose to conduct an audit of older facilities to assess suitability and cost of compliance.*

- *Ensure the 2004 protocol between the DHS Mental Health Branch and Victoria Police for the provision of psychiatric services to detainees in police cells is fully implemented.*

*Victoria Police acknowledge the protocol.*

## **Basic entitlements and access to amenities and services**

Decent conditions in custody, including access by detainees to amenities and services and basic standards under accepted international guidelines are generally incorporated in Victoria Police procedures and policies. However, my investigation found a number of concerns in relation to such provision.

### **Reception procedures**

Upon arrival how do detainees in police cells know what to expect in the watch-house and what they are and are not allowed? In the majority of stations visited my investigators were advised that detainees are told verbally. In very few instances a written list of watch-house ‘rules’ are provided. A lack of information can lead detainees to use the duress button to find out when they eat, whether and when visits are possible, if smoking is permitted and these continuous questions to police can create unnecessary ‘management’ issues.

At some watch-houses, the rules are stuck on the wall near the charge counter but are often difficult for a detainee to read. At others, they are only available to police staff at the watch-house, and when asked about how detainees find out what is and is not permitted, the response is that they are told this when they come in. A number of officers at watch-houses also commented that detainees are given information only if they ask for it. Some detained persons according to police ‘know the ropes’, and have been in the cells before and know what is, or mostly what is not allowed, for example smoking. However, I consider that all detainees should be given a written induction package on admission.





My investigators found that information which should be available, for example, medication scripts, other warrants and prior criminal histories, is often missing or incomplete, requiring watch-house staff to telephone for the information.

*I recommend that Victoria Police:*

- *Ensure that standard information about the watch-house rules is displayed in reception areas of police stations so it is visible to detainees and also securely displayed on the wall within internal yards, as is the case at Ringwood watch-house.*

*Victoria Police has advised that an audit of compliance will be completed.*

- *Explain such information to detainees and include details of visits, smoking, fire safety procedures, meals, how to make requests or complaints and other basic entitlements and amenities. It should also be given to them in writing on admission.*

*Victoria Police has responded that detainees are provided with appropriate information.*

## Access to food and drink

*Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served under Standard Minimum Rules (UN Standard Minimum Rules for the Treatment of Prisoners: Article 20.2).*

There are no common procedures for the provision of food to persons in police cells. Some police stations have arrangements with a local hotel, while others use hospital food services or engage private caterers. In the majority of watch-houses meals are prepared and frozen in plastic or aluminium containers which are supplied in advance by caterers. Police have to heat them up in the microwave. It is reported that food can be still cold and/or frozen and sometimes the food is past its use-by date.

According to police spoken to by my investigators, detainees are fed three times a day but the quality and quantity of meals is frequently unsatisfactory. While some detainees said that the food was not too bad and was considered satisfactory by staff, in other locations, the quality of food was considered questionable.

In all newer police watch-houses there is access to drinking water in the cells. However there are cells in at least one older station where detainees have to be let out of their cell to access drinking water. Although at Kyneton, where this was the case, the cells are not now used to hold prisoners overnight.

*I recommend that Victoria Police:*

- *Ensure that food quality within watch-houses is monitored by local Command, including random sampling of food by watch-house supervisors.*

*Victoria Police advise that this recommendation is under consideration.*

## Bedding and sleeping facilities

Another area of concern in police cells is the condition of the bedding and sleeping facilities. Cells have 'beds' consisting of concrete blocks, on which prisoners can sleep or sit. Three vinyl foam squares or a long foam mattress with a built in pillow covered in green cotton type material are provided. A number of detainees commented that the vinyl foam squares slipped around on the concrete blocks and were extremely uncomfortable.

In general, single foam mattresses are being used in the recently built watch-houses, while the vinyl foam squares (three per detainee) are present in older watch-houses, especially in regional parts of Victoria. The photograph below shows the bedding provided at the police cells in Sale.



There are no sheets or pillows, as it is understood that these can be used for self-harm attempts, but several blankets are provided, usually of a grey material. In some facilities a better quality blue (non rip) blanket is available. Detainees are also provided with a towel for showering purposes.

At the Melbourne Custody Centre there are white blankets, which makes it easy to see if they are soiled. The cleaning of the blankets and mattresses is usually outsourced although it is unclear with what regularity and may at times be restricted for budget reasons. In some watch-houses, clean blankets are not adequately separated from dirty and possibly contagious ones and some stored blankets were observed to be littered with leaves, dust and cobwebs.

At other watch-houses, there are well stocked stores of mattresses, blankets and towels. Moorabbin uses clearly marked bins provided by the local council to keep blankets properly stored.

*I recommend that Victoria Police:*

- *Replace all vinyl foam squares used as mattresses in police cells with a one piece mattress as they deteriorate.*

*Victoria Police advise that this recommendation is under consideration.*

## Activities and amenities

As police cells are generally devoid of any features (except for a television set in the exercise 'yard'), which allow for any meaningful activity by detainees, it is not surprising that boredom is a significant issue, especially for those locked up for more than a few days. According to watch-house staff, some cope better than others with the enforced inactivity.

Sometimes police reported when some activities had been tried, such as a providing a ball to throw around, or newspapers and books, this had to be stopped because of 'bad' behaviour on the part of one or more of the detainees. For instance, a tennis ball can be split and opened, while books or newspapers have been used to jam into the toilets, to block cameras or damage the hinges on a cell door.

Cells are unlocked in the mornings, sometimes as early as 6am after which detainees can access showers which are off the 'yard'. Lockdown in the cells preventing access to the 'yard' generally occurs around 9.30pm, sometimes later if detainees are watching television. Some watch-house staff said that on a Friday night the television is left on until later so detainees can watch the football until it finishes.

It is reported by detainees and by others (such as Legal Aid lawyers and chaplains) that a detainee's right to practice their religion while in police custody is severely curtailed despite legislative provisions. Access to facilities for prayer based on religious beliefs are in the main not able to be adequately catered for in police cells.

Long stays clearly exacerbates such inactivity in police cells, and adds to the level of tension between police and detainees.

*I recommend that Victoria Police:*

- *Ensure that all watch-houses are equipped with a tamper proof television in the cell complex.*

*Victoria Police agree.*

## Privacy issues

Watch-houses are subject to privacy laws. In a number of locations, watch-house whiteboards containing names and details of who is in custody, were visible for other detainees or visitors to see from the charge counter. The boards contained information such as the name of detainees, arrival dates, departures, type of detainee and risk status, medication etc. Good practice was observed at Horsham where a pull down blind covered the whiteboard, and at some stations the board is off to the side so that it cannot be seen from the counter (for example Sunshine).

Another privacy issue relates to the location of toilets in the cells. These have no privacy and are not screened off from the detainees sharing the cell or from the cameras (as they are in cells at the County Court and at the Canberra Remand Centre). Male and female officers can observe detainees via the surveillance cameras while using the toilet.

The photograph below shows the inside of a cell at Heidelberg with the open toilet, wash stand and concrete slab for sitting and sleeping on.



*I recommend that Victoria Police:*

- Ensure that watch-house white boards containing detainee information are not visible to other detainees and visitors when standing at the charge counter.*

*Victoria Police agree.*

## Managing police cells—impact on conditions

A pivotal role in managing detainees held in police cells is played by the Victoria Police Prisoner Coordination Unit. This Unit receives and collates orders for the transfer of detainees to and from police custody, prisons and courts. It also monitors on a daily basis the number of detainees held in police cells across Victoria. Its role is critical in directing the flow of detainees from police cells into the prison system and between police watch-houses, taking into account the needs of individual detainees, conditions in various watch-houses and the vacancies offered by the prison system. However, its role is clearly constrained by the need for sufficient suitable vacancies in the prison system for expeditious transfer of detainees from police cells.

### Management practices

While the *Victoria Police Manual* sets out a number of policies and procedures for the operation of the watch-houses, it is unclear by what means the duty of care standards are communicated to watch-house staff, how they are trained on this topic or how compliance is monitored.

My investigation found large differences in the running of watch-houses. Variations between watch-houses also create ‘misunderstandings’ over entitlements and access to amenities, especially for detainees who move between a number of different locations. This can subsequently lead to complaints by detainees. The lack of a consolidated set of standards for the duty of care and conditions of custody is of concern. An example of a useful guide to handling of persons coming into police custody is the UK *Guidance on the Safer Detention and Handling of Persons in Police Custody 2006*, which provides a comprehensive approach to custodial standards.

Many but not all police stations were able to present a local procedures manual derived from the *Victoria Police Manual*. Many police stations have also developed innovative practices for the management and care of persons in custody. Some relate to record keeping (rubber stamps are used for detainees to sign property sheets), or the storing of police firearms (installation of a safe within the ‘sally port’ at the entry to the watch-house). In my view, much more could be done to promote good practices in running watch-houses. One example is Ringwood which implemented a new design for mattresses with a built in pillow and individual duress alarms carried by each police officer. In terms of improving monitoring of detainees, Ringwood has installed small monitors on the wall by the door to the internal yard that shows everything within the yard without having to open the door and enter the yard.

Such good practices are not being shared with other watch-houses. As a result, opportunities to recognise good work and the skills of staff and to spread these practices to other locations are missed. Greater sharing of good practices, within the parameters of the set standards, needs to be provided.

*I recommend that Victoria Police:*

- *Organise regular workshops or training sessions for watch-house staff to share good practices in custodial management and to help promote consistency across watch-houses.*

*Victoria Police agree and propose to develop a training package.*

## Staffing and supervision

While the design and physical state of the police cells determine to a considerable extent the conditions in custody, it is equally critical that there be adequate staffing and good supervision of the watch-house. Managing the watch-house and satisfactorily carrying out the obligations associated with the custodian role require clear duties and procedures, adequate resources with competent and appropriately trained staff. Again police watch-houses differ greatly in the staffing and management practices that have developed just as they do in terms of their size, physical design and location, the numbers of persons detained and how long they are held.

Generally, my investigation found that there is inadequate staffing for watch-houses. At many police stations police were concerned about the staff required to provide care to detainees in police cells, while at the same time managing a number of other tasks associated with the watch-house. Other duties can include, depending on the size of the station, attending to the front counter when members of the public come in, answering the telephones (at one station some 50 per cent of calls were for re-routing to regional headquarters) and attending to other administrative tasks, including having responsibility for the firearms store.

Adequate supervision by the sergeant or senior sergeant of watch-house staff may be less than optimal when there are also other management responsibilities. In some locations the supervisor reported always doing the rounds of cells when coming on duty, and talking to detainees. This does not appear to be the general rule for all watch-houses.

It is clear that police have no interest in retaining their current custodial role. Indeed, there appear to be strong resistance from many police to perform this task. Given that looking after detainees is highly stressful with considerable risks, the rotating staff arrangements may be positive at one level but it can mean that good practice is not necessarily built upon, nor provide adequate continuity over time in the management of the persons in the cells.

The lack of formal compulsory training for custodial care and management of detainees is an issue. Some Regional Training Officers disseminate information on the custodial role but it is only on an ad hoc basis. By contrast, prison staff receive an initial six weeks full time course and two weeks on site training in prisoner management. Where difficult situations have to be managed, such as cell extractions, or dealing with sick, injured or persons with mental problems, there would appear to be a lack of appropriate training provided to watch-house staff to handle such incidents.

What seems to work best in police cells is the application of clear, fair and consistent rules for managing detainees by experienced staff.

***I recommend that Victoria Police:***

***– Review the adequacy of its Custody Welfare training package.***

***Victoria Police agree with this recommendation.***

## **Use of force**

The use of force by police on detainees within the watch-house is often associated with the 'management' of detained persons, such as when a detainee is not compliant with the rules of the watch-house and/or good order is not adhered to.

When force is used on a detainee, incidents are recorded in the *Use of Force Database*. Between 1 July 2004 – 30 June 2005 a total 129 use of force incidents in Watch-houses were recorded, with the most frequent incidents occurred at Frankston Police Station (14 per cent), Ringwood Police Station (10 per cent) and Geelong Police Station (9 per cent).

The most common type of force used was *OC Foam* (43 per cent) and *OC Spray* (23 per cent), followed by the *Physical Restraint of a detainee* (26 per cent). While the stated reasons for deploying force varied, the vast majority of incidents were recorded as: *Assault of police officers* (or attempts to do so) being *verbally aggressive* towards officers and detainees *attempting self-harm*. *Damage to the cells*, including interfering with the surveillance cameras, was less common but occurred regularly.

Eight of the 129 incidents involved females, while three involved detainees 19 years of age or younger. The majority of incidents involved people of Caucasian background, while eight Indigenous detainees were recorded. The majority of incident reports gave no reason why the person was in custody, although being held for *being drunk* and *recently arrested* was common.



Detainees received minor injuries with no major injuries recorded. Police frequently called an ambulance if the detainee required medical assistance. There were cases of officers being punched, kicked, head butted, bitten and spat upon. An injury to an officer was also sometimes the reason force was deployed. In almost all cases when police were injured it was as a result of holding a drunk in custody and highlights the difficulties officers face in holding people in custody who are affected by alcohol.

The use of OC spray (or foam spray) on persons detained in custody requires police to provide the person sprayed with after-care. This varies between police stations. It can be a bucket of cold water thrown on the affected area, or putting their heads under the cold tap (as hot water makes it more painful) or more typically, under a cold shower. When clothes are wet no change of dry clothes is generally available.

The guidelines for the use of force, for which all police were trained as part of Operation Victor, clearly need to be revisited. In my view, the degree of force used should be the minimum required to control the situation or manage the behaviour; that force should be used as a means of control, never as a method of punishment; it should be discontinued as soon as practicable and that alternatives to force such as negotiation and conflict resolutions techniques wherever possible should be used. Before the decision is made to use force in police cells, clear orders should be issued to detainees with sufficient time and warnings to allow for compliance.

## Making complaints

Complaints about conditions in police cells made to the Office of Police Integrity are less common than complaints to the Ombudsman from persons held in prison. Some of the reasons for the disparity may relate to detainees spending less time in police cells than in prison; the absence of any information on how to go about making a complaint; and possibly fear of retaliation if they do complain.

The main types of complaints received by the Ombudsman or Office of Police Integrity relate to not receiving medication on time, assaults between detainees, property that is lost or stolen or damaged, and the way the detainee is spoken to/treated by the police. Sometimes the physical conditions are complained about – such as when it is too cold in the cells or the dirty state of the cells.

Management in Victoria Police indicate that there are few complaints received about conditions in cells. However, an examination of incident reports on the use of force within the watch-house, would suggest that in some instances, the trigger is that the detainee is making or trying to make a request or complaint. It is also virtually impossible for a detainee to make a complaint when no access is given to writing materials or telephones.

At times family members or lawyers may make a complaint on behalf of detainees. One case in Bendigo in 2004 involved a mother of a detained person who went on a hunger strike, which then led to changes in the local watch-house rules about how long persons could be detained.

The case study below involving the Melbourne Custody Centre illustrates the difficult conditions under which detainees are held there.

### **Case Study – Melbourne Custody Centre** - inspected in July-August 2005 and January 2006

Central to the management of Victoria's prisoners and detained persons is the large purpose built Melbourne Custody Centre (MCC). This watch-house is managed on behalf of Victoria Police by the private prison operator, GEO Group Australia. Opened in 1993, the facility is located under the Melbourne Magistrates Court in the city's legal precinct and across the road from the County and Supreme Courts. The MCC was originally designed as a day holding facility only to facilitate court escorts and management of persons to and from the Magistrates Court while in custody.

With a maximum capacity at night of 67 detainees (52 males and 15 females), the MCC holds persons arrested by the police (including drunks), those awaiting court appearances, as well as those sentenced or on remand and waiting to be transferred into the prison system. Between July 2004 and June 2005 the number of persons received monthly into custody ranged from 524 to 707. This excluded drunks, whose number ranged from 107 to 193 per month. The number of detainees held overnight per month ranged from 62 to 91.

Over the past decade, the centre has expanded from day holding facility to a multi-functional role and now has a gazetted holding period of 28 days. The Mildura watch-house is the only other facility able to hold detainees for this long. Due to its expanded role, the MCC now suffers from serious design and operational shortcomings.

The conditions in the MCC have been described as *totally inappropriate, inhumane.... completely unacceptable in a modern society.... appalling and an aberration* (State Coroner). It has been called *the yellow submarine* because it is totally underground with no access to fresh air or to daylight and is painted in primary yellow colours. It is considered to have the worst conditions of any watch-house in Victoria because of the overcrowding, the severe design limitations and the fact that people can be locked up there for 28 days. In January 2006, my investigators found the air foul, with the air conditioning not coping with the large number of detainees kept there.

Most disturbing are the long stays for persons with 'protection' status who are held at the MCC. On 5 February 2006, 207 persons were recorded as being held in police cells across Victoria, there were 67 detainees held in the MCC of whom 27 were 'protection' detainees – five had been held there for more than 28 days – the longest stayer had been there for 39 days, the next longest 38 days. Fourteen 'protection' detainees had been at the MCC for between 11 and 28 days.

## Physical Conditions and Layout

The conditions of the MCC are largely associated with the physical limitations of the facility. It has no sunlight or fresh air which means that at all times, both detainees as well as staff are living and working underground. There are 27 holding cells, with 21 cells off three separate internal 'exercise yards'. (When visited, up to 10-20 detainees per yard were observed). Three detainees can be held per cell allowing a maximum capacity of 67, if all are 'mainstream' and do not require segregation. Two showers are located at the end of each cellblock which are makeshift additions with minimal modesty screens, attached to the internal courtyards.

The confined space combined with the large number of detainees held there creates difficult conditions for both detainees and staff.

While fluorescent lights are turned off at night in the cells, lights are left on in corridors and the interior exercise yards. This provides sufficient light for the 'day/night' surveillance cameras, to operate in the cells using a digital system. The main reception area has a bank of monitors allowing staff to view camera footage throughout the centre including the charge counter. The footage is backed up on computer systems. In case of power failure, the MCC has its own generator – this was seen in action by my investigators and appears to operate well.

The MCC has two padded cells and also has a dedicated room for conducting strip searches. The centre has recently installed a surveillance camera in the strip search room, following an alleged assault in February 2005 on a detainee by two staff. Footage from this camera is restricted to a monitor in the manager's office, so as to protect staff from complaints, as well as detainees from inappropriate treatment.

Like other watch-houses, no privacy screens exist for toilets in the cells. This means that a detainee is in full view while using the toilet, not only to other detainees in the cell, but also to staff and anyone else around the control desk where the surveillance cameras are on full view.

The MCC employ full time cleaners as well as specialist contract cleaners who are on call for heavy duty cleaning when there are blood spills and the like. Detainees also help clean out the cells and yards and *gives them something to do* as one staff member commented.

## Access to services and amenities

Staff at the MCC describes one of the biggest issues in managing so many detainees (up to 90 for lunch on court days) is the food. Detainees often reject the food provided and comment to staff that it is of a poor quality. The food is provided by an external catering firm, and due to the contract in place, no alternative can be offered to detainees. However, two samples of the food are sent monthly to a certified food-testing laboratory to ensure that the food is healthy and of adequate nutritional value. If a detainee complains about the food at any time, the meal is also sent for testing. I understand that test results confirmed in August 2005 that the food is not up to standard.

The MCC is one of the few watch-houses visited that permit detainees to shave. A detainee is given a disposable razor, along with a warm cup of water, towel and soap. Staff members stand by as a detainee shaves at a basin, although shaving is only allowed on weekends. Daily showers are permitted and clean towels are provided.

Although the MCC is considered a non-smoking facility, smoking is permitted at the MCC but as elsewhere, it is largely used as a management tool. Detainees will clean out cells and yards, in return for extra cigarettes. Friends or family members also may drop off additional cigarettes at the MCC at anytime, although all cigarettes are pooled and shared between detainees to avoid jealousy and stand over tactics. Detainees have been observed playing cards for cigarettes.

In terms of communication, letter writing is permitted if a detainee wishes to write an official letter to a lawyer or the Ombudsman. To do this, the detainee is placed in a 'box visit' booth to ensure that writing materials are not taken into the cells. Similarly, telephone calls are permitted but only if official or for family emergencies, and then are made only by staff on behalf of detainees. Detainees are permitted visits from friends and family - on Wednesday evening, Saturdays and Sundays. There are six 'box visit' booths for visits.

The MCC has a clean clothing exchange arrangement for detainees. On Tuesday (evening), Thursday (evening) and Sunday a family member or friend can come to the MCC with a clean set of clothes, and remove the soiled clothes that the detainee was wearing. A number of items are not permitted to prevent self-harm attempts. These include jackets, footwear and any type of cord/lace. Similarly, lined track pants are not allowed as these may conceal contraband or weapons, while food, literature and personal items are not allowed. Detainees must remove their shoes if considered dangerous (no steel caps), or at least remove their laces. Thongs are given to detainees not wishing to be bare-foot.

Television sets are installed in the yards and daily newspapers are supplied. The Salvation Army also supplies books and magazines, although these will not be accepted from family or friends to minimise the risk of drug trafficking. Games such as chess are also supplied to detainees if staff judge that they 'are behaving'.

When a detainee is received at the MCC a medical examination is undertaken. A Custodial Nurse from Pacific Shores Health is employed 24 hours a day at the centre. (In June 2005 there were 855 sessions with nurses recorded for individual detainees). If necessary, a detainee can be transported to St Vincent's Hospital for further assessment and treatment. Medication is available (often anti depressant and anti psychotic). Medication costs the MCC \$5500 per month.

## Management Issues

Management at the MCC believe that it operates with fewer problems than other police watch-houses because it has dedicated custodial staff from GEO Group Australia to run the facility and not Victoria Police officers. This difference means that issues a detainee may have with the arresting police officers are not carried over into the custody environment.

Victoria Police closely monitor and regularly audit the contract and running of the MCC to ensure that the standards of the contract with GEO Group Australia are being adhered to via a Victoria Police inspector and a contract manager. MCC policies and procedures reflect contract conditions and requirements and monthly performance testing against a 'Scale Rating Scheme' can lead to fines and other penalties if standards are not being met.

There is also a regular meeting held at the MCC to address issues and concerns which arise and affect the well-being of detainees. It is chaired by a magistrate and attended by MCC staff, representatives from Victoria Police, Salvation Army, Ombudsman Victoria, Centrelink and staff from Port Phillip Prison and Dame Phyllis Frost Centre. This forum provides an opportunity for staff and other stakeholders to discuss various issues and resolve any problems.

The length of stay at the MCC is dependent on the available beds at the Melbourne Assessment Prison (MAP). Many issues exist regarding access to and availability of vacancies at the MAP for MCC detainees. For instance, the MAP does not take any detainees after 3pm and other prisons also refuse late receptions. This means that if a detainee attends court late on a Friday, the MAP will not accept them until the following Monday morning, requiring the detainee to be held at the MCC for three days. Similarly, the MAP can only receive a maximum of 25 detainees per day which means that transferring out of the MCC (and also out of other watch-houses) is dependent on how many detainees are moving out of the MAP. Female detainees are reported to be less of a problem, as they tend to leave the MCC more rapidly than males, and are transferred to available beds at Dame Phyllis Frost Centre.

The Victoria Police Prisoner Management Unit reported to my investigators that they try and place as many 'protection' prisoners as possible at the MCC where a separate yard is available. Thus detainees who have 'protection' status or other special needs groups, including females, can be held separately from other detainees. While it appears that this usually works well, it reduces the full capacity of the centre, as a detainee who needs to be isolated and placed in a cell that may have a capacity for four or six detainees.

Intoxicated persons are also held at the MCC (around ten per cent of all detainees held there) creating considerable problems. They are a difficult group and are disruptive to the orderly running of the facility. Management would prefer to divert drunks elsewhere. They must be isolated from other detainees, are generally more violent and aggressive and at risk of self-harm.

At times there is minimal or no official information or paperwork about the risk status of a detainee, which creates difficulties for staff in determining the level of supervision. This is particularly important for detainees with mental health concerns, who may have to wait for lengthy periods in the MCC, remaining there until a vacancy occurs in the MAP Acute Assessment Unit. Mental health concerns for many detainees are increasing, yet it is increasingly difficult to access vacancies in MAP, through which all prisoners must go before being admitted to prison, or directly transfer those in need to facilities such as Thomas Embling Hospital and St Vincent's/St Augustine Hospital.

In my view, the MCC has reasonably satisfactory conditions for detainees to be held overnight, or if necessary at weekends. It is not a facility in which detainees should be kept for longer, and was never designed to do so. I consider that it should revert to being a temporary holding facility, similar to what exists under the County Court. This would require the prompt transfer of detainees into the prison system. Strategies enabling this include the creation of a greater number of vacancies at MAP which is currently the gateway into that system and/or the construction of another remand/holding facility within the legal precinct with comparable conditions for detainees to those in prisons (this course of action I understand has also been considered by the Department of Justice) or other appropriate arrangements, such as decentralising the assessment and classification functions from the MAP.

*I recommend that Victoria Police:*

- *Ensure that the MCC is used as a daytime holding centre where prisoners are only held overnight or over a weekend.*

*Victoria Police agree.*

## Other issues

### Cleaning of cells

In 2002 my predecessor found that the standards of cleaning varied greatly across stations visited and depended on whether cells were full or not. In general the cells were found to be clean given the age and conditions, although showers and toilet facilities in particular needed more attention. Stricter supervision of cleaning generally and in particular toilets and showers was recommended. Victoria Police agreed to review and monitor current service level arrangements. In addition, it was recommended that set procedures for cleaning blood spills and vomit should be strictly adhered to. Victoria Police also agreed to this recommendation.

At a number of watch-houses visited in 2005 the cells and interior exercise yards where detainees are kept were found to be clean and well kept (Shepparton, Ballarat, Melton, Wangaratta, Moorabbin). However, they were not in the majority. My investigators found too frequently that cells were dirty and unswept. Some exercise yards were covered with dust, dead leaves and cobwebs. Showers were often stained with soap scum, the open toilets in the cells where detainees eat and sleep were often unclean; floors and walls scratched and marked with blood, urine, vomit, even faeces stains. Sometimes the age of the cell complex, including the conditions of toilets and cell walls and floors (such as at Kyneton, Horsham, Sale, Bendigo and Bairnsdale) made acceptable standards of cleanliness hard to achieve.

At some stations, the cells are only cleaned when they are empty, which for busy watch-houses may not be as often as necessary. Yet at other stations (Ballarat, Moorabbin) regular, if not daily cleaning by contract cleaners is reported which includes sterilising the toilets and areas where spills have occurred. Often greater efforts at cleaning need to be made after incidents, and when outbreaks of, for example, head lice or scabies occur. The high risk that detainees with infections (such as Hepatitis C, HIV) pose by contact with blood and saliva clearly presents a major public health concern at police watch-houses.

I consider that it is unacceptable that there is still no specific policy in the *Victoria Police Manual* in respect of cleaning cells and daily inspection of the cellblocks to ensure their cleanliness.

*I recommend that Victoria Police:*

*– Monitor cleanliness in cells on a regular basis.*

*Victoria Police agree.*

## Personal hygiene

*Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness (UN Standard Minimum Rules for the Treatment of Prisoners: Article 15).*

In respect of personal hygiene, all watch-houses visited in 2005 have shower facilities with hot and cold water enabling detainees to shower and wash, usually early in the morning around 7-8 am. Clean towels, soap and disposable toothbrush and toothpaste are provided daily, and are then collected and counted by watch-house staff.

There are no consistent procedures in place across watch-houses in respect of providing toiletries and in particular for shaving. While shaving is not easy to arrange in the current cell environment, it is nevertheless unacceptable from a health and personal hygiene perspective that persons held in police custody are not able to maintain personal hygiene, including the ability to shave and to be presentable, especially for court appearances.

Victoria Police consider that permitting detainees to shower and shave is a local management issue.

## Access to fresh air and daylight

Despite the findings in 2002 that detainees should have access to fresh air and daylight, there has been no change to most police cells in respect of access to any kind of outside area, natural light or to fresh air. This is a breach of UN minimum standards rule 11(a) and contradicts Victoria Police Design Guidelines which state that detainees *will have access to an external exercise yard, open to the environment where [they] may get some fresh air... without compromise to the security of the custody facility* (p 25). New facilities, such as those at Heidelberg, Gisborne and Preston built since 2002, have no outside exercise areas and cells have no natural light or fresh air. While some have windows in the 'yards' so daylight can be glimpsed, they cannot be opened.

There is total reliance in most watch-houses on air-conditioning. While there is generally adequate heating, a constant temperature with recycled stale air of low humidity which, when experienced for 24 hours, for days, if not weeks on end, can lead to considerable discomfort. Inadequate heating was experienced in older watch-houses such as at Kyneton, Horsham, Castlemaine and Sale during my investigators' visits.



I consider that access to fresh air and to daylight are basic conditions for any detainees who are in custody for more than a few days. In 2005 there were many instances where people are held for 10 days or more (some are in custody for more than 30 days) without any access to fresh air or daylight. I understand that continuous confinement in these conditions over long periods of time is associated with Vitamin D deficiency and related health concerns, and represents significant environmental impoverishment which can lead to cognitive and emotional problems. Detainees under these conditions are unable to distinguish night from day, time of day (watches are removed) and can become disoriented and confused, and lose track of time.

For example:

Mill Park Police cells – one Victoria Legal Aid lawyer reported seeing a client who had been in Mill Park cells for over four weeks and had jaundice because he had no access to sunlight.

No access to fresh air and day light for many days leads to health, wellbeing and welfare problems and is not compliant with basic standards for custodial care.

*I recommend that Victoria Police:*

*– Wherever possible permit detainees who are there for more than a day access to fresh air for one hour per day, particularly where cells and 'yards' have no access to fresh air and/or natural light.*

*Victoria Police advise that this is a local management issue.*

## Lighting at night

In 2002 the Ombudsman reported on complaints about lights being left on in the cells at night and 'dimmers' being turned on and off, preventing sleeping. He recommended that where possible the main cell lights be turned off at night with only sufficient lighting being used as necessary for security. Victoria Police supported the recommendation.

It is a matter of concern that in almost all watch-houses visited in 2005 lights are still left on all night in the cells. An exception is Sunshine Police Station where day/night security cameras are being installed which allow lights to be switched off. The usual reason given for leaving lights on at night is that it is for security and safety reasons and that the cameras located in cells will not function without the lights. In some police stations there are 'dimmer' switches but it was found that they are broken or are not used, as they are reported to give insufficient light for cameras to operate. Other watch-houses have no 'dimmer' switches at all so lights are left on full all the time.

For many detainees spoken to the consequence of harsh, neon lights left on during the night leads to significant sleeping problems. The result is that detainees request sleeping tablets or cover up under the blankets, which present additional security concerns, as police cannot then see whether the person is conscious or not. The death in the Knox police cells in July 2005, allegedly occurred while the detainee was concealed under a blanket. It is not common practice for police to enter each cell at night to check on detainees. Instead, there is heavy reliance on surveillance cameras to ensure the well-being and care of detainees.

Research has shown that sleep deprivation leads to emotional mood deterioration - persons become irritable and short-tempered both with themselves and with others. Loss of emotional control is more likely and the reduced ability to act and think coherently. In addition, many persons in custody experience high levels of anxiety and when they are also deprived of sleep, they become more difficult to manage. This increases the potential for violent behaviour and self-harm, thus making the problem of maintaining control whilst in custody more problematic for police. Sleeping problems can be further exacerbated by the presence of others engaging in disturbing behaviour, especially by intoxicated persons.

There are no instructions on lighting in police cells in the *Victoria Police Manual* nor are minimum light specifications for cameras provided.

*I recommend that Victoria Police:*

- *Review the lighting levels in all cells and where possible install day and night / light sensitive cameras so that lights within cells can be switched off at night. Where this is not possible, cells should have ‘dimmer’ switches installed in cells which provide sufficient light for the cameras for use at night time.*

*Victoria Police advise that a review of all older facilities will be conducted.*

## Smoking in police cells

The prohibition on smoking within the watch-house was the single most frequent source of complaint and cause of distress from detainees. A very high percentage of detainees are smokers (around 80 - 90 per cent by one estimate) and the effects of withdrawal from cigarettes can be very unsettling. In 2005 most cells have no access to outside areas and fresh air and smoking is generally not allowed inside. Detainees denied access to cigarettes can be highly disruptive, cause incidents and create considerable management problems for police. It is perceived by prisoners as a punitive measure.

Nevertheless, in some watch-houses smoking may be permitted, depending on a number of factors. These include the attitude of the person in custody, the watch-housekeeper's discretion and the good fortune of being held in a watch-house that has the design and physical layout to permit the practice. Older stations where smoking can occur include Castlemaine, Sale and Bairnsdale because there is a 'yard' open to fresh air. Sometimes in smaller regional stations, a detainee might be allowed to go outside at the back of the watch-house or in the 'sally port' to have a smoke, accompanied by a police officer, who may also smoke. In one watch-house, an officer reported to my investigators going out to buy cigarettes for detainees who were held there for 5-6 days.

The non-smoking rule in watch-houses causes considerable management problems in other ways. Prisoners who are brought on the van from prisons where smoking is permitted may have cigarettes with them and according to some police, makes searches critical to find 'contraband' in the form of tobacco, matches, and lighters. At two stations, staff even requested that body/cavity searches be allowed to put an end to such practices, which reportedly are the result of inadequate searches by prisons when prisoners are put on the prison transport vans to go to police cells.

A significant exception in relation to permitting smoking is the Melbourne Custody Centre. Smoking is permitted in both the cells and the 'yards' as there is a separate air conditioning unit able to clear the air.

There is no consistent approach across the watch-houses in relation to persons smoking in police cells or to the way cigarettes can be made available. It is often left to the discretion of individual watch-house staff whether to permit smoking and under what circumstances. In some locations, due to the restrictions imposed by the unsuitable physical conditions of the facility or the inability to segregate detainees, smoking might still be permitted as a 'tool' to ease tensions and discomfort. Yet in other facilities deemed more suitable, smoking is strictly prohibited. At Ringwood, where there is an outdoor yard for detainees where smoking could occur, it is not used because there is no camera surveillance.

## Access to telephones and letter writing

Reasonable access to telephones and letter writing should be a basic amenity for persons detained in police cells. In particular, persons on remand or awaiting bail should be able to contact their legal representatives and/or families. In prison, remand prisoners are able to contact both in writing and by telephone their lawyers, prepare their case, arrange for bail and organise their personal affairs and make contact with their families, including making arrangements for the care of their children. However, no police station visited by my investigators is equipped to easily give detainees such access.

Detainees in police cells continue to be denied access to basic means of communication with the outside world, despite the 2002 recommendation that access to telephones and writing materials be made available. Yet it was found police practices vary considerably. For example, Heidelberg police station allows one call a week; in Horsham, paper, pens and books are provided and families are encouraged to bring materials; at Castlemaine a call will be made on behalf of prisoners. Thus considerable discretion is used by Police, often dependent on the conduct of individual detainees. Police report that...*on occasion,...* *if the prisoner behaves...only if they don't play up...* would they make a call on behalf of a detainee, or allow a letter to be written. But equally, it depends on the time available and workload of watch-house staff and on their willingness to provide access.

In spite of practical difficulties and acknowledging potential safety and security concerns, the importance of detained persons being able to make specific contact with the outside world cannot be over emphasised. Access to letter writing and telephone calls is an essential condition of being held in custody and should not have to be earned by 'good behaviour' or depend on the time available of watch-house staff. Access to letter writing and to telephones could be provided in the 'box' cells for visits or interview rooms, and would assist in reducing boredom and preventing tension in the watch-house.

*I recommend that Victoria Police:*

*– Permit reasonable access by detainees to telephones and letter writing facilities to contact legal representatives and family at all police stations.*

*Victoria Police advise that it will endeavour to be consistent in its approach to this issue.*

## Access to visitors

I am concerned by the continued limited access and the poor facilities in police cells across Victoria for visitors, including lack of privacy. As watch-houses often hold persons prior to court, it is important that they have timely and confidential access to their legal representatives, (and that they can access and safeguard documentation relevant to their court case). During the course of my investigation I found that, in spite of the earlier recommendation that detainees be able to receive visits, there remain significant restrictions on visits as well as large variations in what is permitted at police watch-houses. While legal representatives are generally given access when required, it is a different matter for families and friends.

My inspections also found that the ban in place on non-professional visitors at Frankston Police Station in 2002 is still in place. Considering that 'box' visits cells are used there for professional visits, it is unclear why this ban continues to remain in place for non-professional visits and find this restriction unacceptable.

According to many police, restrictions on visits are simply due to a lack of appropriate facilities and/or to insufficient staffing to allow for the reception of visitors or for arranging and supervising detainees to be placed in the 'box' visit cells. It is the reality of many watch-houses that detainees are segregated into various categories, within a small confined space and arranging visits present police with substantial logistical and staffing challenges.

I found wide variations between visiting arrangements, the duration and frequency of visits in watch-houses.

For example:

- Frankston – non-professional visits are still not permitted
- Ballarat - visits can be on Tuesdays and Thursday 1-4pm by appointment to be made the day before
- Geelong - visits are permitted on Saturdays for 30 minutes
- Heidelberg - visits were weekdays 4-8pm and weekends from 12-4pm (one per sentenced prisoners and two for remand prisoners); restricts personal visits to only ten minutes after 4.30pm
- Ringwood - visits are 15 minutes on Sundays
- Wangaratta - no visits at weekends but any time during the week
- Bairnsdale - visits are permitted on a 'as needs basis' and are not restricted, neither in frequency nor in duration, subject to the availability of staff. The visitor is given a chair, placed behind a line several feet away from the steel barred cage where the detainee is kept
- Horsham - visitors have to stand/sit behind a demarcation line and speak to the detainee who is behind bars; can come from 10am until 6pm, except on court days.

Conditions in which such visits are conducted are also often unsatisfactory.

For example:

At Geelong, the male 'box' interview room is unclean, there are difficulties in hearing through the 'air phone'; there is no lock on the door so there is little privacy; anyone can come in during the visit; there is nowhere to speak to female detainees in confidence as they have to stay in their cells and others can overhear matters relating to their case, including matters of a personal nature.

In older police stations (such as Horsham, Sale, Bairnsdale) visitors (including professional visitors) are required to stand, sometimes in the open regardless of the weather, behind a white/yellow line 2 metres from the cell and communicate in this way, allowing little privacy.

Information about entitlement of visits for detainees also needs to be improved. Detainees are usually advised orally of the possibility of visits. In some instances there is a notice about visits at the charge counters, although often not easily visible to detainees.

I am concerned that restricted access to visitors continues to be a general feature of conditions in police cells, in spite of instructions contained in the Victoria Police Manual Sec 10.3.6.

*I recommend that Victoria Police:*

- *Permit visits to detainees in police custody consistent with what is allowed in prison for both professional and non-professional visits (that is, with at a minimum one visit per week of a minimum of thirty minutes duration) and watch-house management should ensure that they are complied with.*
- *Visiting hours should be communicated to detainees when they are received into the watch-house and such visits should be facilitated.*
- *Non-professional visits should be introduced at Frankston immediately.*

*Victoria Police do not agree with these recommendations.*

## Clothing and property of detainees

In general, the handling of detainees' property has improved since 2002 with good recording and storage arrangements widely in place across the watch-houses visited and there appears to be satisfactory compliance with the Victoria Police Manual (Sec 10.2.4). When a detainee is first brought to the charge counter, their property is itemised and they sign the form stating that the list is correct. Plastic see-through bags are generally used for clothing and valuables – cash, wallets, mobile phones, cards are sometimes kept separate from clothes. The bags are usually sealed with a tag provided by the prison transport service, or heat sealed. However, examples have been brought to my notice of incorrect property sheets with items such as mobile phone, keys, clothing not recorded.

In respect of the issue of providing clean clothes to detainees in police cells, there is little evidence to suggest any advances have been made since 2002. Persons detained in police cells are left in the clothes they are arrested in until such time when and if they are allowed to exchange dirty clothes for clean ones, or they are released. Many detainees who had been in the cells for over 10 days or longer are still in the same clothes they arrived in without having had a change of clothing. Some detainees attempt to wash their underwear and socks under the shower and dry them as best they can on cell doors as there are no laundry facilities. There is a clear hygiene issue in leaving detainees for extended period in the same clothes. Paradoxically, it was reported at one station that clean clothes are not accepted as they create a hygiene problem because the station could not store the dirty clothes. At a number of locations, police rely heavily on the Salvation Army to provide clean clothing in cases where families cannot do so. Yet at other locations these services are not utilised or are not permitted. Sometimes police are not even aware of the service, as was the case at Traralgon.

There are no consistent procedures for providing clean clothing for persons in police custody and it seems again to be subject to the discretion or time available of the watch-house keeper. In some locations, friends or relatives are permitted to supply clean clothing to a person in custody on the proviso that they take away any dirty clothing. At other police stations this is not permitted.

In respect to other welfare assistance to detainees in police cells, the Salvation Army and other welfare organisations are often asked to visit partners or families, provide toiletries for female detainees, give tobacco when it is allowed, and assist in arranging visits or post release accommodation. Welfare assistance in particular cases may also be provided through Court Network in relation to family contact and also through the Victorian Association for the Care and Rehabilitation of Offenders (VACRO). It is doubtful that all watch-house staff are aware of these various services and the extent to which they inform detainees and facilitate access.

Some specific welfare problems were identified in the course of the investigation. It is reported some prisoners arrive from prison without any possessions (no extra clothing, no money or identity papers) to go to court via the police cells, as they expect to return to prison the same day. When they are released by the court, they need assistance for transport, food, help with finding accommodation and need to arrange for their property to come from the prison, which is often far away and difficult to get to. Again, the Salvation Army assists in this regard and has been particularly active in addressing this matter with management at the Melbourne Custody Centre.

Generally, there remains a lack of a standard approach across police watch-houses to access clothing and related welfare services. There is also considerable variation in how well the property of detainees is stored.

*I recommend that Victoria Police:*

- *Facilitate access to a set of clean clothes for each detainee either through their own families or friends, or else from the Salvation Army or other welfare services.*

*Victoria Police propose to reinforce this recommendation where this is not occurring.*

## Conclusions

Police are not jailers and do not see themselves as such. The lack of police training in this role, coupled with the inadequate physical conditions and design of police watch-houses makes it inappropriate to hold detainees for longer than 48 hours. Monitoring the length of stays of detainees in police cells over the last six months has shown that many detainees, including those who are vulnerable and/or have ‘protection’ status, are held in unsuitable conditions for long periods. Circumventing regulations on the length of stay in police cells, by way of ‘swapping’ detainees between police stations and the use of section 56 of the *Corrections Act 1986*, is unacceptable.

The conditions and access to services and amenities in many watch-houses do not comply with basic requirements. The poor condition of cells and inadequate access to basic amenities in a large number of watch-houses raise duty of care issues. In these situations, police cells should not be used to hold detainees, and certainly not for long periods. The classification of watch-houses needs to be reviewed to ensure that the watch-house categories correspond to their gazetted status.

My investigation has found that in a number of critical areas, no progress has been made in respect of the recommendations made in the 2002 Ombudsman report on *Conditions in police cells and overcrowding*. Deficiencies in police cells identified then, remain and continue to place detainees and staff at risk.



## Recommendations

*I recommend that:*

- *Drunkness should be decriminalised as an offence in line with the recommendation of the Parliamentary Inquiry into Public Drunkness. As an interim measure, suitable watch-houses should be designated as places of safety for accommodating intoxicated persons. Police would still retain the power to arrest intoxicated persons found committing criminal offences.*

*I recommend that Victoria Police:*

- *Make improvements to the reports from the POLCELL database of detainees in police custody to enable better monitoring of police cell use, and should include the recording of intoxicated persons and other vulnerable persons. When the new E\*Justice data system is implemented, the module for police cells should include the recording of all persons held in police cells, including intoxicated persons. Monitoring of the daily occupancy in police cells at key times during the day (7am, 10am and 5pm) should be complemented by 'flow' figures, that is, the number of receptions and discharges. Improved reporting of length of stay, on the frequency of the use of the Corrections Act 1986 Section 56 (which permits the holding of detainees beyond the gazetted limit), and on the practice of 'swapping' of detainees between police stations, should be developed and implemented. Reporting should also allow for the easy tracking of individual detainees through the various custody facilities.*

*Victoria Police advise that this recommendation will be addressed upon implementation of the E\*Justice system.*

- *Liaise with Corrections Victoria to develop common definitions and criteria for persons who need 'protection', 'separation', or 'segregation' and ensure that training is provided to watch-house staff, in this regard.*

*Victoria Police support this recommendation.*

- *Review the condition of all cell complexes in light of the findings of this report.*

*Victoria Police advise that:*

*Horsham is scheduled to be upgraded in the 2007/08 financial year and Sale in 2008/09, subject to ERC funding.*

*Construction has commenced on a new Bendigo Police complex.*

*Victoria Police propose to conduct an audit of conditions in all cells.*

- *Ensure all new cells are fitted with a basin allowing access to drinking water.*

*Victoria Police advise that the Design Guidelines allow for recessed basins in all cells.*

- *Ensure all cells are equipped with duress alarm buttons, and are responded to promptly by staff.*

*Victoria Police agree with this recommendation.*

- *Review the camera surveillance systems in all watch-houses and upgrade those without digital recording capabilities. Watch-houses should have the capacity to hold all video recordings for not less than a month from the date of recording.*

*Victoria Police advise that this recommendation was ‘not required’ as older facilities are being progressively upgraded as funding becomes available.*

- *Ensure that all prisoners coming to police cells are aware of watch-house rules and the consequences of breaching them, in particular in relation to smoking.*

*Victoria Police propose to audit all local watch-house rules for consistency and best practice regarding possible areas of improvement.*

- *Explore, in conjunction with Corrections Victoria and Court Services, ways of increasing the use of teleconferencing.*

*Victoria Police agreed.*

- *Liaise with Court Services to review the current system of listing court cases to reduce the need for holding detainees in police cells for lengthy periods.*

*Victoria Police agreed and stated that this is managed on a case by case basis.*

*I recommend that the Department of Justice:*

- *Upgrade court cells where necessary.*

*The Department of Justice agreed.*

*I recommend that Victoria Police:*

- *Review the conditions in which detainees are transported in police vehicles, in light of the above issues.*

*Victoria Police advise that this recommendation is under consideration.*

- *Appoint a central area to be responsible for the regular inspection of all police cells.*

*Victoria Police agree.*

- *Remind watch-house staff to pay close attention to any LEAP database risk warning regarding a detainee, especially relating to suicide/self-harm when receiving a detainee into custody. If a detainee is considered ‘high risk’ Victoria Police should not hold the detainee in police cells, unless exceptional circumstances exist, but arrange for their immediate transfer to a prison or a secure health facility.*

*Victoria Police acknowledge that it is a requirement for any ‘Warning Flags’ to be recorded against detainee details.*

- *In conjunction with Corrections Victoria use dedicated, trained Corrections Victoria staff for managing detainees in larger police cell complexes rather than police members.*

*Victoria Police advise that this recommendation is under consideration.*

- *Ensure that detainees who are assessed as suffering from a serious medical condition not be held in police cells overnight.*

*Victoria Police agree with this recommendation.*

- *Liaise with Corrections Victoria so as to enable the number of vulnerable persons waiting in police cells for a bed at MAP, to be reduced.*

*Victoria Police agree and advise that this issue will be addressed as part of a Department of Justice project.*

- *Make improvements to the facilities available to medical and nursing staff in watch-houses. In 24 hour watch-houses there should be a separate room for their use with basic equipment such as a couch, desk, and lockable cupboard. In all other stations, a space should be reserved for health care personnel, offering a degree of privacy.*

*Victoria Police agree and propose to conduct an audit of older facilities to assess suitability and cost of compliance.*

- *Ensure the 2004 protocol between the DHS Mental Health Branch and Victoria Police for the provision of psychiatric services to detainees in police cells is fully implemented.*

*Victoria Police acknowledge the protocol.*

- *Ensure that standard information about the watch-house rules is displayed in reception areas of police stations so it is visible to detainees and also securely displayed on the wall within internal yards, as is the case at Ringwood watch-house.*

*Victoria Police has advised that an audit of compliance will be completed.*

- *Explain such information to detainees and include details of visits, smoking, fire safety procedures, meals, how to make requests or complaints and other basic entitlements and amenities. It should also be given to them in writing on admission.*

*Victoria Police has responded that detainees are provided with appropriate information.*

- *Ensure that food quality within watch-houses is monitored by local Command, including random sampling of food by watch-house supervisors.*

*Victoria Police advise that this recommendation is under consideration.*

- *Replace all vinyl foam squares used as mattresses in police cells with a one piece mattress as they deteriorate.*

*Victoria Police advise that this recommendation is under consideration.*

- *Ensure that all watch-houses are equipped with a tamper proof television in the cell complex.*

*Victoria Police agree.*

- *Ensure that watch-house white boards containing detainee information are not visible to other detainees and visitors when standing at the charge counter.*

*Victoria Police agree.*

- *Organise regular workshops or training sessions for watch-house staff to share good practices in custodial management and to help promote consistency across watch-houses.*

*Victoria Police agree and propose to develop a training package.*

- *Review the adequacy of its Custody Welfare training package.*

*Victoria Police agree with this recommendation.*

- *Ensure that the MCC is used as a daytime holding centre where prisoners are only held overnight or over a weekend.*

*Victoria Police agree.*

- *Monitor cleanliness in cells on a regular basis.*

*Victoria Police agree.*

- *Wherever possible permit detainees who are there for more than a day access to fresh air for one hour per day, particularly where cells and 'yards' have no access to fresh air and/or natural light.*

*Victoria Police advise that this is a local management issue.*

- *Review the lighting levels in all cells and where possible install day and night / light sensitive cameras so that lights within cells can be switched off at night. Where this is not possible, cells should have 'dimmer' switches installed in cells which provide sufficient light for the cameras for use at night time.*

*Victoria Police advise that a review of all older facilities will be conducted.*

- *Permit reasonable access by detainees to telephones and letter writing facilities to contact legal representatives and family at all police stations.*

*Victoria Police advise that it will endeavour to be consistent in its approach to this issue.*

- *Permit visits to detainees in police custody consistent with what is allowed in prison for both professional and non-professional visits (that is, with at a minimum one visit per week of a minimum of thirty minutes duration) and watch-house management should ensure that they are complied with.*
- *Visiting hours should be communicated to detainees when they are received into the watch-house and such visits should be facilitated.*
- *Non-professional visits should be introduced at Frankston immediately.*

*Victoria Police do not agree with these recommendations.*

- *Facilitate access to a set of clean clothes for each detainee either through their own families or friends, or else from the Salvation Army or other welfare services.*

*Victoria Police propose to reinforce this recommendation where this is not occurring.*

# CONDITIONS FOR PERSONS HELD IN PRISON

## Background

Prisons in Victoria differ in significant ways - in the specific functions they serve for various categories of prisoners; in the age and physical design of the facilities; how they are operated and managed; and where they are located. All these features impact on the conditions experienced by prisoners. It is a complex task to compare conditions between prisons. Instead, this section investigates those essential conditions relating to duty of care and the key aspects in prison that impact most on prisoners, and that are likely to be common across the range of prisons investigated.

In June 2005 Victoria's 11 prisons (9 for men and 2 for women) ranged in size from 46 female prisoners at Tarrengower to 784 male prisoners at Fulham. Some are minimum security, such as Dhurringile and Beechworth. Others are high security prisons such as Barwon, while some hold many remand (unsentenced) prisoners (Port Phillip and Melbourne Assessment Prisons). In June 2005 almost half the male prison population was held in two prisons, Port Phillip and Fulham, which are also privately run. The Dame Phyllis Frost Centre (DPFC) holds 82 percent of all female prisoners. Details of the capacity of each prison is in Attachment A.

Two new prisons commenced operating in 2006 and are likely to have a significant impact on the Victorian prison system. They are the Metropolitan Remand Centre located at Ravenhall, close to the existing Dame Phyllis Frost Centre for female prisoners, approximately 20 kms from Melbourne, and the Marngoneet Correctional Centre at Lara (close to Barwon Prison), some 70 kms from Melbourne. The Metropolitan Remand Centre is a 600 bed maximum security remand prison providing for unsentenced adult male prisoners, currently held at the Melbourne Assessment Prison and at Port Phillip Prison. Accommodation at this new prison will consist mostly of single cells, built to the Building Design Review Project (BDRP) standards which aim to reduce the risk of self harm.

The Marngoneet Correctional Centre is a 300-bed medium security prison for sentenced male prisoners and will provide treatment programs for drug and alcohol, for sex offending, for prisoners with a history of violent offending as well as vocational services and cognitive skills and psychological well-being programs. In addition, the 25-bed Judy Lazarus Transition Centre in West Melbourne will open, but will have less impact on the prison system as it has a focus on pre-release preparation for male prisoners.

The Victorian prison population at 12 October 2005 was 3,667, 3,415 men and 252 women, 49 per cent more than in 1995, reflecting an increasing trend in imprisonment, as noted earlier in this report. In terms of receptions into prison, 47 per cent were remand prisoners in 1999-2000, rising to 57 per cent in 2003-04. Sentenced prisoners at June 2004 represented 83 per cent of all prisoners, with 17 per cent held on remand, 20 per cent of Indigenous prisoners were on remand compared to 17 per cent of non Indigenous prisoners.

The issue of conditions in prison is presented under the following three broad headings:

- Conditions which relate to a safe and secure environment
- Provision of basic entitlements and access to services and amenities
- Management of prisons and how this impacts on conditions for prisoners.

## **Providing a safe and secure environment in prison**

One of the key elements for assessing the conditions in custody is to consider whether the custodial authorities are providing a safe and secure environment for prisoners. This is the critical duty of care role for custodial authorities. Prisoners are deprived of their liberty from a few days to many years, and in some cases, for the rest of their lives and depend on the custodial authorities for their safety and well being. Unlike police cells, prison may be 'home' to prisoners for a significant period of time and prisoners can be greatly affected by any diminution of rights, or lack of access to services, mistreatment or poor conditions.

### **Physical conditions**

It is impossible to generalise about the physical conditions of cells across the Victorian prisons, because of the wide variation between individual prisons and indeed within individual prisons. Some prisons are very new (Beechworth prison was opened in February 2005). Some are old (Ararat prison was built in the 1950s). Some prison units consist of small single bed cells, and some cells hold up to 4 prisoners, or have cottages which have self-catering facilities. Some cells designed for one person have had temporary bunks added. All these variations in the prisons impact on conditions in custody.

Prison cells usually have windows to daylight, and in some cells can be opened to fresh air, screened off shower and toilet facilities, a desk and chair, and cupboard as well as shelf space for the prisoner's belongings. Depending on the type of cell, there may also be small viewing windows in the door for checks by prison staff. There is no camera surveillance in normal cells, although camera surveillance exists in cells specially designed to prevent self-harm attempts. These are the 'management' or 'observation' cells which closely resemble police cells in their physical design with minimal amenities. A duress alarm button is a feature in many but not all prison cells and is used in emergencies to call for help.

There have been recent improvements in the general physical condition of many cells in prison, in particular with the removal of hanging points. In 2001 the Victorian Government allocated a total of \$50 million over ten years to improve cell safety and fire prevention across the entire prison system. The Building Design Review Project (BDRP) developed cell safety standards, in response to the State Coroner's findings into five deaths at the Port Phillip Prison between 1997 and 1998. The project aims to remove hanging points from maximum and medium security cells and improve fire safety in prison. Nevertheless, in many older facilities, such as in Ararat, hanging points were observed. Risk of fire remains a reality in the prison environment.

All cells have facilities for heating, although my investigators identified a number of problems in this regard. In Ararat, many cells were found to be inadequately heated for winter and the standard issue of two blankets insufficient. While cell windows usually can be opened for fresh air and daylight, in some locations, such as Ararat, they were found to be rusty and in dirty condition.

At DPFC in one unit, which housed a prisoner with her baby, heating was not working because of a problem with the ventilation system (possibly as a result of prisoners smoking indoors) and required repair. Access to fan heaters is not readily available when heating is insufficient or broken and there are sometimes long delays in having repairs done. Cooling in summer does not appear to be a problem.

There are different units within each prison, which allow for segregation of various categories of prisoner – young from old, 'protection' prisoners from 'mainstream' prisoners. The different units are scattered around the prison precinct, which, in the case of closed prisons, is surrounded by a high wall and various security measures. Within the walls of maximum and minimum-security prisons, most prisoners have access to fresh air, daylight and there are open areas planted with grass and gardens to which the majority of prisoners also have access.

Conditions for prisoners held in 'management' or 'observation' cells or who are required to be segregated for various reasons are much more restricted, and they can be held in their cells for 23 hours a day. Exercise yards for prisoners held in these units are very small and they have even more limited access to services and amenities. For example, within the Acacia Unit at Barwon Prison which houses 'protection' prisoners, one of the exercise yards does not have a toilet. I raised this matter for attention as a matter of urgency in April 2005 with Corrections Victoria. While approval has been granted to fix the problem, in February 2006 the prison was still waiting for the additional funding before a toilet is provided.



There are noticeable differences in the physical conditions between the older prisons, such as Ararat and Tarrengower, which need refurbishing, and the newer prisons, such as Beechworth. In Ararat, the communal showers and toilets located outside the cells are unsatisfactory, although building modifications is currently under way to rectify this. At Tarrengower, some units are in shabby condition and communal areas such as the laundry are in a poor condition.

The security measures to prevent escapes from custody dominate the physical environment in prisons. Maximum-security prisons, such as Port Phillip Prison and Barwon Prison, are built with a surrounding perimeter wall and there are walls and/or fences separating the various units within the prison. This creates 'no go' areas and ensures that prisoners are held securely within the appropriate unit/area. Medium-security prisons such as Loddon Prison may still have a surrounding perimeter wall, however some freedom exists within the grounds for prisoners to walk from one area to another. A minimum-security prison such as Beechworth Correctional Centre does not have a perimeter wall and greater freedom is given to prisoners. Nevertheless in all prisons, regular musters to count the number of prisoners at set times and surveillance cameras are used to ensure that a secure environment exists and that prisoners do not leave the prison without permission.

Duty of care within a prison also covers more mundane aspects of physical conditions. Many complaints were made by prisoners to my investigators about repairs to the physical cell and unit structures - taps dripping, toilets not working and non-functioning lights, which often require repeated requests to prison authorities to be repaired.

For example:

A prisoner complained about a toilet not working in his cell which he shared. It took 3 weeks to fix the toilet. In that time, the prisoners were not allowed to move out to other cells and resorted to urinating and defecating in the shower recess...the prisoner said he felt *like an animal and was stressed and scared...it wasn't humane.*

*I recommend that Corrections Victoria:*

- *Equip all prison cells with duress alarm buttons incorporating intercoms, which must be operative and able to be responded to promptly by staff.*
- *Ensure that duress alarm buttons are tested in all prison cells on a regular basis.*
- *Complete the building program at Ararat Prison as soon as possible to enable a reduction of numbers of prisoners per cell and the elimination of four bed cells.*
- *Review its procedures for maintenance repairs in prisons so that they are promptly dealt with.*

- *Ensure that the yard in the Acacia Unit at Barwon Prison is provided with a toilet, as a matter of urgency.*
- *Refurbish the facilities at Ararat and Tarrengower Prisons.*

## Assessment and classification of prisoners

The assessment and classification of prisoners is critical for the security, safety and well-being of prisoners and a pivotal process in the smooth operation of the prison system. Making timely and appropriate assessment of prisoners impacts both on the management of prisoners and on the conditions they experience. I note the many policies and procedures that Corrections Victoria has developed in this regard and the key role of the central Sentence Management Unit in Corrections Victoria. Assessment of prisoners involves incorporating a range of factors into the decision process, including length of sentence and prisoner needs, so as to appropriately place prisoners in different types of prisons and the various units therein. All prisoners in Victoria are assessed according to a three level security classification. In June 2005 numbers of prisoners in each category were as follows:

- Maximum Security (977 of whom 66 per cent were unsentenced)
- Medium Security (1946 of whom all were unsentenced)
- Minimum Security (769 all of whom were sentenced)

The need for improvements to the assessment and classification arrangements has been highlighted by complaints from prisoners to my office. This was also confirmed by the recent *Review of Corrections Victoria Sentence Management Process* (2005) which identified a number of significant issues which need to be addressed, particularly in the context of the opening of the new prisons in 2006.

A major legal distinction exists between those prisoners who have been convicted and are serving a sentence and those who are on remand and held in custody until they appear in court to determine their guilt. The separation of remand and sentenced prisoners is also a United Nations standard. In practice this appears to be given little attention. Sentenced and unsentenced prisoners mix freely at DPFC, MAP and at Port Phillip. This practice is expected to cease this year for males as the new Metropolitan Remand Centre opens so that male remand prisoners will no longer be held at Port Phillip Prison as is currently the case, except in special circumstances. Women remand prisoners will continue to be held at DPFC and remain unseparated from sentenced prisoners.

A major difference exists between male and female prisoners in how the security ratings works. Male prisoners can be held in specific maximum, medium and minimum security prisons to accommodate the three security ratings. For women however, there are no medium security prisons, only one maximum security facility (DPFC) and one minimum security facility (Tarrengower Prison). As female medium security prisoners cannot be held at Tarrengower Prison, they are all held at DPFC. While DPFC has the facilities to accommodate medium security prisoners, it is questionable whether being held in a maximum security environment is best for their well-being, including their eventual reintegration into the community. Compared to male prisoners, this situation is perceived as unfair and complaints have been made to the Equal Opportunity Commission (EOC) that it is discriminatory.

Within each prison there are also different types of units to which prisoners can be assigned depending on their security classification. This leads to different conditions and access. It is the primary task of Sentence Management Unit within Corrections Victoria to decide who goes where, when and for how long. There is also input from the prison staff. From such decisions flow other consequences: what work is offered, whom the prisoner is lodged with and specific conditions and entitlements.

While an initial assessment of each prisoner is required to be conducted within twenty-four hours of arriving into prison, it can at this time give an inaccurate view of the prisoner, who on reception is given the highest security rating. Initial assessments need to be followed up once the prisoner is acclimatised after a month or so. At present this is not the case. Reviews of the classification of each prisoner occur at three monthly intervals, although a prisoner is able to request a review of the classification at any time. They are also conducted on transfer to classified locations.

It is a Corrections Victoria policy requirement that all male prisoners must go to the MAP for assessment and psychological classification, prior to their dispersal to other prisons. Previously, a tool known as SITUPS (Structured Interview for Understanding Prisoner Safety) was utilised to assess all prisoners by mental health staff as part of the initial reception process. However, there is some doubt anecdotally as to whether SITUPS is an effective tool and the information it gives was reportedly not widely utilised by prison staff. Corrections Victoria advises that the use of SITUPS has ceased as a review cast serious doubts as to its predictive capabilities.

The issues concerning SITUPS are similar in relation to the information contained in the orange police file which accompanies prisoners who are transferred from police cells to prison. This is also reportedly often ignored by prison staff, as discussed in section 2 of this report.

## Mental health assessment

Currently, mental health ratings are given to prisoners at the MAP and include:

- P1– High risk/acute mental illness (held at MAP only - in July/August 2004 they represented 31 percent of all prisoners at MAP)
- P2– Medium risk. Specific care required (held at PPP only)
- P3– Stable. Ongoing regular care is required (held at other prisons)
- P4– Low risk/recovering (held at other prisons)

As noted previously, the MAP is the only prison that can hold prisoners who are rated as P1 and they cannot be shifted elsewhere in the prison system. Port Phillip Prison, which can hold sentenced and unsentenced prisoners, is only able to hold P2 prisoners, while P3 and P4 prisoners can be accommodated at all the other prisons. The recent commissioning of the new Metropolitan Remand Centre may alleviate some of these pressures.

Whether the P1 category is so broad that it presently includes prisoners who could be catered for in prisons other than the MAP, needs to be closely examined. Moving prisoners out of the MAP more rapidly into other prisons would allow detainees held in police cells waiting transfer into the prison system to be moved into the MAP much quicker than is currently the case.

At the MAP, prisoners assessed with serious mental problems remain in the Acute Assessment Unit, (or wait in other units at MAP for a vacancy to occur there) until they can either be moved to Thomas Embling Psychiatric Hospital, if there is a vacancy, or their P1 status is downgraded to P2 or less, which means they can then be moved to other prisons. Psychiatric and psychological assessments also take time.

## Classification of prisoners

The transfer from a maximum security prison, through to a medium and then a minimum security prison (known as the 'cascading effect,') is supposed to be the logical progression for prisoners serving longer sentences. Such transfers can cause considerable upheavals in the lives of prisoners and their families as the physical location of where the prisoner is held changes and can cause disruption to program participation and completion. Consideration of flexible ways of minimising such disruptions would be desirable.

There are inconsistencies in the way classification rules are applied and how the different categories of prisoners are treated, between prisons of the same security standing, within prisons and also depending on who the staff are. Thus at Ararat there are very distinct groupings of prisoners in terms of where they live in units and cells, yet in the work environment such segregation is reported to not occur. This can lead to situations which appear illogical and are seen as 'unfair' by prisoners. For example, some prisoners cannot get a haircut because it is only available in a unit where they are not allowed to go. Access to the library is similarly restricted for some prisoners because of the segregation rules.

I note that while sentence management classifies prisoners to a prison and at times, to specific units, the prison is then responsible for determining the accommodation within that location.

Generally, there does not appear to be a great deal of flexibility in the classification system, and this can have a direct impact upon bed vacancies in some prisons. Because it is necessary to enter the prison system as a maximum security prisoner at either the MAP (and then at Port Phillip Prison) or DPFC, any empty beds at minimum security prisons do not create any 'actual' vacancies. At present the system is running at over 95 per cent capacity and current vacancies are predominantly at Barwon and Fulham. I believe that greater efforts should be made to ensure that empty beds are filled with suitable prisoners to help ease the pressure on the reception processes at the MAP, Port Phillip Prison and DPFC. Corrections Victoria should consider more flexible policies and procedures, and continue to expand initiatives such as Weekend Leave and Home Detention, when considered safe and applicable for minimum security prisoners.

Within each prison there are also internal ratings which determine whether a prisoner can work, for example, in handling garbage (which needs a B rating in Barwon) or whether they can work at all (A ratings at Barwon Prison means no job is given). Following the recent Corrections Victoria review of its assessment and classification procedures it would be opportune to address the perceived lack of transparency regarding prisoner ratings and to develop a system which is more transparent and consistent.

The *Review of Corrections Victoria Sentence Management Process* commissioned by Corrections Victoria in 2005 to which I referred earlier, focussed on improving prisoner classification policies and practices. I support the main findings of this review, which address a number of the issues identified by my investigation. I understand that Corrections Victoria is currently reviewing the recommendations of this report. I also note that the Corrections Inspectorate conducted a *Healthy Prison Review at the Melbourne Assessment Prison* (Department of Justice, 2004) which found that the large numbers of prisoners with mental health problems (around a third of all male prisoners) created complex management issues with heavy demands on staff and infrastructure.

*I recommend that Corrections Victoria:*

- Review the criteria and use of the current P1 rating policy and related procedures.*
- Introduce greater flexibility in the current classification procedures, including a model which allows the movement of prisoners from maximum security to fill empty beds in other facilities, if necessary with security upgrades in selected units.*
- Consider expanding Home Detention and Weekend Leave programs in appropriate circumstances, in conjunction with the Adult Parole Board.*

## **Vulnerable and special needs prisoners**

Providing a safe and secure environment for vulnerable and special prisoners is fundamental to the duty of care of custodial authorities. While conditions for the majority of prisoners, who are classed as ‘mainstream’ can be relatively standardised, there are a number of categories of prisoners, although comparatively few in number, whose needs require particular attention in terms of their conditions and access to services and amenities.

### **‘Protection’ prisoners**

I am particularly concerned about conditions for prisoners with a ‘protection’ status whose numbers have been increasing in recent years. Prisoners can be classified as a ‘protection’ prisoner by requesting it themselves or because prison management decides they are in need of ‘protection’ status, which enables them to be segregated from the ‘mainstream’ prisoners. Reasons for ‘protection’ status include greater awareness of and response to possible risks to some prisoners in custody, because of what they have done or because of who or what they are. Corrections Victoria policy also requires that once a prisoner has been a ‘protection’ prisoner previously, this status remains unchanged upon re-entry to prison, even though the reason for the earlier protection status may no longer exist: for example, where the prisoner who was a threat to another prisoner has since died. This policy needs to be reviewed to ensure that the current circumstances of a prisoner in fact require the ‘protection’ status, even though he/she has had that classification in the past.

The consequence of the increase in 'protection' prisoners is that they have to be accommodated in separate units, away from 'mainstream' prisoners. Conditions for such 'protection' prisoners vary across the system but all prisons have facilities where they can be segregated. Generally, the conditions experienced by 'protection' prisoners are markedly different to those in 'mainstream' categories and much more restricted in terms of access to services and amenities. For instance, I have received a number of complaints from 'protection' prisoners at DPFC who state that they cannot go to the library, canteen or gym due to their 'protection' status.

In police cells detainees in need of protection can ask for 'segregation' or 'separation' status, but a different definition and criteria are used in the prison system. This can lead to confusion and risk when a 'protection' prisoner moves between police cells and prison. In prison 'protection' status in 2005 was most often attributed to males convicted of sex offences against children (35 per cent), 20 per cent had prior protection status, that is, they had a previous stay in prison and had 'protection' status then, while 10 per cent needed protection from associates in prison. For females, the reasons for protection are somewhat different – 38 per cent had prior protection status, 19 per cent related to 'standover' behaviour in the prison and 14 per cent were on protection because they had provided information to authorities.

In some prisons when there are no beds for 'protection' prisoners in the designated protection units, they are held in management (or punishment) units such as in the Charlotte Unit at Port Phillip Prison and the Acacia Unit at Barwon. Conditions in 'management' units are considerably more restricted compared to 'mainstream' or 'protection' units. When held in a management unit, a prisoner cannot work or undertake other activities, will be locked within their cell for up to 23 hours of the day, and are only entitled to a minimum of one hour per day 'out of cell time' during which they may exercise in fresh air. Most management units have a small courtyard that is enclosed with a caged-wire roof allowing the prisoner to walk around. Prisoner entitlements such as phone calls and visits are also severely restricted.

## Intellectually/mentally disabled prisoners

Intellectually/mentally disabled prisoners pose particular challenges for prison staff if they are left in 'mainstream' units. One solution that works well at Port Phillip Prison is the Marlborough Unit where such prisoners live together with two 'prisoner stabilisers' from the 'mainstream', who assist and support in this special needs group. Programs for these prisoners include cooking classes, hygiene instruction and life skills training. No similar facility exists for disabled female prisoners, although arguably the A6 unit at DPFC does cater for those with an intellectual disability.

## Transsexual prisoners

When transsexual (and intersex) persons are held in prison, there need to be clear policies and procedures in place to ensure their safety and welfare and which are sensitive to their needs. Most obviously, they should not be placed incorrectly at reception in the wrong gender prison which can put them in jeopardy from other prisoners. Incorrect placement of these prisoners has occurred in the past. A case was reported to my investigators of a prisoner who had undergone a sex change operation, who was kept at the MAP for three weeks even though the prisoner had been strip searched and her female gender was obvious to officers on her arrival.

## Indigenous prisoners

In June 2005 there were 220 Indigenous prisoners (21 of whom were female), with the highest numbers of Indigenous males held in Port Phillip Prison (58), Fulham Prison (40) and Barwon Prison (34). Indigenous prisoners represent around 5 per cent of all prisoners. They are particularly vulnerable and continue to be over-represented in prison. In spite of the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* (1991), there have been four Indigenous deaths in Victorian prisons between 1993 and 2006. I note that the *Victorian Implementation Review of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* was tabled in Parliament, (Department of Justice, 2005) and assessed progress in this regard.

Indigenous people in prison have access to Aboriginal Well-being Officers. There are six currently employed across Victoria's prisons. They carry out a broad range of tasks in supporting Indigenous prisoners and maintaining links with prisoners' families and communities as well as ensuring that any Indigenous specific issues are dealt with in a culturally aware and appropriate manner. They also assist with phone calls on behalf of families or prisoners, encouraging Indigenous cultural activities and events within the prisons, encourage greater understanding between Indigenous and non Indigenous prisoners and staff, arrange for prisoners to attend funerals and help to facilitate visits. Where Indigenous complaints occur, such as about racist attitudes and comments, these too can be worked through with Aboriginal Well-being Officers. There are also three Indigenous Official Visitors among the 29 Official Visitors to prisons and who deal with complaints from Indigenous prisoners. Corrections Victoria has introduced a number of initiatives for Indigenous prisoners including the Cultural Immersion Program, Marumali Program and Indigenous Services Officers (non-Indigenous staff who are allocated responsibilities to assist Indigenous prisoners).

In my view, there is considerable scope to expand the coverage of the Aboriginal Well-being Officers at MAP, Barwon, Fulham, Loddon, and Port Phillip Prisons. They have a critical role in linking the Indigenous prisoners back into the community, and in preventing re-offending. This should be recognised by an appropriate job classification and greater efforts should be made to recruit, train and retain such officers as an integral part of an effective prison system which is responsive to the needs of Indigenous prisoners.



## Female prisoners

Women represent seven per cent of all prisoners and are held in two prisons. DPFC a maximum security facility which holds both remand and sentenced prisoners and Tarrengower which is minimum security. As at 30 June 2004, only 10 per cent of sentenced women prisoners had a maximum security rating. By inference, DPFC holds a majority of prisoners who should be in a medium or minimum security environment. For many women prisoners, there is little sense of progress as they move through their sentence. Transferring from a high security rating, through to medium and then a minimum-security rating all occurs in the same facility often without appreciable changes to their circumstances.

The needs of female prisoners differ from those of male prisoners in many ways. Women are greater users of health services and many female prisoners are reported to suffer from some form of mental illness or have a history of sexual or physical abuse. Prison also has to cater for women prisoners who are pregnant or who have children under school age. Currently women prisoners may have their children with them in prison up to the age of four years. A meeting held at DPFC in March 2005 raised particular issues for long-term prisoners, such as the difficulty of keeping in touch with family and the community, having to wait too long to access programs and activities, the limited access to grandchildren who are reportedly not allowed at the prisoners' Christmas party, and the need for psychological support, which can address loss of identity and self esteem.

I note that the Victorian Government released *Better Pathways: An Integrated Response to Women's Offending and Re-offending* (Department of Justice, 2005), which is a four year strategy to curb the growing number of women imprisoned in Victoria and to improve ways to rehabilitate women and reduce re-offending. This strategy is a good initiative.

## Non-English speaking prisoners

The needs of non-English speaking prisoners do not appear to present major concerns in the current prison environment, as they are relatively small in number. However, there may be scope to develop more culturally specific programs for some culturally diverse groups. Good examples were found at several prisons. At Loddon Prison multi-cultural days allow prisoners of culturally diverse backgrounds to prepare traditional meals and share information relating to their culture. At Tarrengower, female prisoners contribute to culturally specific programs.

Greater efforts could be made to recruit prison staff from the culturally diverse communities who are also represented in the prison population and to ensure adequate training is available for prison staff in cultural awareness and understanding. It is noted that at Tarrengower a Vietnamese Liaison worker is starting shortly to assist and an Asian Liaison worker has started at DPFC. It is unclear to what extent these initiatives are also occurring in male prisons. However race based tensions exist in male prisons which could be partly addressed by recruiting staff from the relevant cultural group.

I note the recent recruitment campaign for the new Metropolitan Remand Centre and Marngoneet Custody Centre and am encouraged that of the 315 recruits 38 per cent are women.

## Older prisoners

The needs of older prisoners require conditions suited to their greater health needs and different circumstances. This will become an increasing area of concern with the ageing prison population. It maybe unnecessarily stressful, for example, to have women prisoners in their 70s located in the same unit as young mothers with babies, as was observed at DPFC. Corrections Victoria recognises this potential problem and has advised that one benefit was that older prisoners do have a moderating influence on younger prisoners.

## Young prisoners

Young prisoners are catered for in some prisons by special units supported by Youth Development Officers and special education and training programs. It would be desirable to expand such facilities wherever there are young prisoners in custody at all prisons.

*I recommend that Corrections Victoria:*

- *Review the number of Aboriginal Well-being officers.*
- *Ensure that designated facilities are available at each prison to accommodate the needs of intellectually and physically disabled prisoners.*
- *Ensure that prison staff have access to qualified interpreters if required.*
- *Recruit staff from multi cultural backgrounds to work within prisons.*
- *Ensure that the information the Sentence Management Unit receives in regard to ‘protection’ prisoners is current and appropriately utilised when deciding whether a prisoner requires protection status or not and where they are to be placed.*
- *Develop a protocol with Victoria Police on a uniform definition of ‘protection’ status, incorporating segregation/separation needs for persons in custody.*
- *Ensure that ‘protection’ prisoners are not held in management units due to a lack of appropriate beds for any longer than is necessary.*

## Preventing injuries and deaths

Effective custody management involves a duty of care for the safety and well being of prisoners, with particular attention to those at risk of suicide or self-harm. Nevertheless deaths in prison do occur. They may be due to natural causes, suicide, drug overdose, accidental injury and homicide. According to the Australian Institute of Criminology report on Deaths in Custody (2005) there have been 33 deaths in Victorian prisons between 1999 and 2004 of which 17 are recorded as due to natural causes. Further deaths occurred in Port Phillip Prison in November 2005 and March 2006 which are currently being investigated by the Coroner. In this regard, Corrections Victoria advise that only one of these was ‘unnatural’.

The following table summarises two deaths in prison investigated by the Coroner.

<b>2002</b> <b>Male</b> <b>Beechworth Prison</b> <b>Hanging</b>	<b>Coroner’s recommendations</b>
<p>Deceased (D) was found at 12:30pm suspended by a ligature around his neck that was tied to a window security grill in the shower recess. He was settled at Port Phillip and had said that if taken to Beechworth Prison, he would kill himself. Despite previous self-harm attempts, D was considered at reception to Port Phillip to be a low risk for self-harm and suicide.</p>	<ul style="list-style-type: none"> <li>– Prison staff should remain vigilant to identify potential hanging points and remove them promptly.</li> <li>– Exchange and use of information about prisoners between prison staff must be improved for better management of vulnerable prisoners and incorporated into decisions for placement of prisoners.</li> <li>– Review the appropriateness of current psychiatric rating system of prisoners, and ensure it includes psychological symptoms.</li> <li>– Review the resourcing, operation and effectiveness of the Youth Unit, with a view to setting up similar units in other prisons.</li> </ul>
<b>2000</b> <b>Male</b> <b>Port Phillip Prison</b> <b>Heroin Overdose</b>	<b>Coroner’s recommendations</b>
<p>D was found at 8:10am slumped over his desk in his cell with evidence of a recent injection. Toxicological analysis of body fluid revealed a toxic level of heroin. D had jammed the lock to his cell door in an attempt to prevent entry. D had been placed in a cell within Scarborough North Unit adjacent to an inmate well known for his drug use. The two had used dental floss to pass drug paraphernalia between the two cells. In addition, the Unit was searched during the day prior to the body being found, yet the deceased’s cell was not searched, nor was the adjacent cell. D was only several weeks from being transferred to Bendigo Prison with facilities to treat drug-affected prisoners.</p>	<ul style="list-style-type: none"> <li>– Broaden the availability of the methadone program to prisoners.</li> <li>– Improve consultation between Sentence Management and prison staff and guidelines on placement of prisoners.</li> <li>– Review the process for classification and placement of prisoners.</li> <li>– Ensure prisoner placement is not compromised by prison management views on high profile prisoners.</li> </ul>

The need to ensure that prison staff recognise that they owe a duty of care to persons in their custody and that they know that they can be held legally responsible for the death or injury of the detained persons caused or contributed to by a breach of that duty, has been previously highlighted by recommendations of the *Royal Commission Into Aboriginal Deaths In Custody* (1991). Recommendation 122 in that report makes it clear that custodians must be aware of their duty of care responsibilities and are trained appropriately to meet them upon recruitment and subsequently. *Corrections Victoria sets out the duty of care requirements in the Correctional Management Standards, Director's Instructions (public prisons) and Operating Procedures (private prisons) along with the related policies, procedures and standards.*

## Peer support

Peer educators, peer listeners, peer mentors and 'stabilisers', refer to trusted prisoners who volunteer to assist and support new and/or vulnerable or special needs prisoners to adapt to the prison environment. Their use is widespread within the prison system and can assist in minimising risks to prisoners. The schemes are appreciated by staff and prisoners alike. Tasks for peer support prisoners can include liaising between prisoners, staff and visitors, resolving disputes, dealing with complaints about bullying and intimidation. Prisoners say they are able to go to a peer support worker more easily than to an officer, to mediate or resolve particular issues. Peer support is not available for prisoners placed in the management cells, although their role might be useful in such situations.

Peer listeners and mentors have a 'case load' and are available to other prisoners 24 hours 7 days a week. At Loddon Prison there are some 40 of these prisoners in the different units. In other locations there are prisoner 'stabilisers' who may assist in supporting new or vulnerable prisoners (Port Phillip Prison). At the MAP there are also 'buddy' cells, which allow new or vulnerable prisoners to share cells with longer-term inmates. A good practice noted at Ararat is that peer educators and mentors can access a psychologist who provides de-briefing support. On the other hand, issues about privacy and breaches of confidentiality can arise and require appropriate handling. While the peer listener and mentor schemes are valuable in giving prisoners an increased sense of responsibility for the welfare of their fellow inmates, they should not represent an attempt by prison management to shift the burden in respect of the legal duty of care that they owe to prisoners. Greater clarification on this issue would be desirable and the schemes need careful monitoring and appropriate support and training for prisoners who take part in the schemes.

*I recommend that Corrections Victoria:*

- Ensure that the recommendations made by the Coroner into the deaths in prison are promptly implemented, including the recommendations made in relation to the deaths in Port Phillip Prison (2002) and Beechworth Prison (2002).*
- Extend prison peer educator and peer listener programs to prisoners in management units.*
- Training for peer educators should be provided and regular debriefing for peer educators by professional staff should be made available.*

## **Basic entitlements and access to services and amenities**

### **Food**

Issues about food can loom large for persons deprived of liberty for lengthy periods and are the source of many complaints. When visiting a prison, my officers regularly inspect the kitchen and request a copy of the latest meals list to ensure that there is variety and nutrition. Meals are also checked.

Depending on which prison or in what unit prisoners live in, prison food can be prepared and served in different ways. Generally, 'mainstream' prisoners have meals where choices of meal are available, including a low fat option, other special diets, and Asian and Halal food. In lodges accommodating 8-10 prisoners, meals are collected from the main kitchen and brought back to eat. At DPFC meals are delivered in a motorised golf buggy to units by 'billets' who are trusted prisoners in each unit employed to carry out duties such as cleaning, serving and preparing food. There is also self-catering in the cottages where meals are prepared and eaten.

Many prisoners spoken to by my investigators observed that food quality has improved and that there is now greater variety and more choice in meals. This is an achievement given that prisons have to cater for large numbers of meals within budget limits every day. Nevertheless, concerns about food in prisons remain. While prisoners usually have no complaints about the quantity provided for hot meals, it is the quality that can be an issue. It is reported at DPFC that food is often fried with high fat and carbohydrate content (such as dims sim, chicken nuggets, pies and chips), and women prisoners complain about gaining weight while in prison. Many prisoners spoken to would like more fresh fruit and green vegetables.

*I recommend that Corrections Victoria:*

- *Regularly monitor standards for the quality and quantity of food.*
- *Review the provision of food in prisons in respect of expenditure to ensure basic nutritional requirements for adults are being met.*

## Access to health care

*It is important both for the rights of the prisoner and for the public health of all, that time in custody is used positively for the prevention of disease and the promotion of health, and that negative effects of custody on health are reduced to a minimum, health promotion and disease prevention are not just the responsibility of the clinical professionals in the prison, but can, and to be effective should, be built into every branch of prison management to create a whole climate for improving health (WHO Health in Prisons Project 2001, cited by Inspector of Custodial Services, WA 2005).*

Access to health services for prisoners should be at a comparable level to that available in the general community. The *Corrections Act 1986* section 47(f) states that prisoners have the right of access to reasonable medical care and treatment necessary for the preservation of health (emphasis added). Provision also exists for prisoners to access private medical care at their own expense. This becomes even more critical given that the health profile of prisoners and detainees held in police cells is acknowledged to be worse than that of the general population. Levels of infectious diseases, mental illness, chronic respiratory and heart conditions and drug and alcohol problems are much higher (see *Victorian Prisoner Health Study*, February 2003). Addressing the health needs of persons in custody presents an opportunity to improve their health status while in prison so that when they are released they are in better health, reducing the risk of impacting on the wider community and health services.

According to the *Corrections Health Board Communicable Disease Policy Discussion Paper* (December 2004), health care providers have a duty to manage prisoners' health in a manner equivalent to that which is available in the community. An objective of Corrections Victoria is that prisoners' health is not compromised by their imprisonment. I note three further studies which have been undertaken in Victoria on prisoner health:

- *Hepatitis C Virus Among Inmates in Victorian Correctional Facilities* (September 2002, Burnet Institute)
- *Victorian Prisoner Health Study* (February 2003, Deloitte)
- *Survey of Harms in Victoria Prisons* (April 2003, Turning Point Alcohol and Drug Centre).

The provision of custodial health services is complex. Corrections Victoria purchases prison health services from a number of different health providers. It contracts GSL who run Port Phillip Prison to provide health services who then sub-contracts to St Vincents Correctional Services (SVCHS) to provide the service. SVCHS is only contracted directly by Corrections Victoria for primary health care at Marngoneet and MRC. At Fulham Correctional Centre, health services are provided 'in-house' by GEO Group Australia Pty Ltd (GEO), the contracted provider. Although Forensicare is a DHS funded service, it is contracted (and funded) by Corrections Victoria to provide psychiatric services at all public prisons, including the Acute Assessment Unit. DHS funds the Thomas Embling Hospital, where prisoners with mental health problems may be sent.

While there is one prisoner medical file used by all the health providers that accompanies a prisoner as they transfer between prisons, or between prisons and police cells and health providers hold regular meetings to coordinate care, there is no general unified approach to prisoner health. Health care to prisoners appears fragmented, lacking in coordination and adequate communication between its various components. This situation has been documented in a number of coronial findings and reviews. Added to the complexities are the health services provided to persons held in police cells by the Victoria Police Custodial Medicine Unit and local GPs.

The lack of a 'seamless' forensic health care service impacts directly on the safety and well-being of persons held in both police cells and prisons. An example of the difficulties encountered is in relation to privacy and the availability of medical information about prisoners. While medical confidentiality should not prevent limited disclosure of information to custodial managers where the prisoner maybe at risk of suicide or self-harm and to inform how the person should be treated and cared for, lack of effective communication between the various health services leads to complaints from prisoners. Given the complexities and intertwined nature of the many health and mental health conditions of prisoners, a health care continuum needs to be in place which includes the effective provision of medication and exchange of health information with appropriate privacy safeguards between service providers.

I understand that the current implementation of the E\*Justice project will allow for the electronic transfer of medical information assessments between Victoria Police, prisons and health providers, and includes provision for common risk categories in relation to suicidal behaviour, communicable diseases, mental health and physical health. It is not clear when this project will be fully implemented.

## Communicable diseases

Communicable diseases are known to be high in the prison population and pose serious health risks for prisoners, staff and visitors. Prisoners can be infected with Hepatitis B, Hepatitis C, and HIV.

The risk of spreading such diseases within prison and on release to the community requires effective measures to be in place. With large numbers of prisoners serving short terms of imprisonment, coupled with high levels of re-offending, the risks to the health of the broader community are significantly increased. One such measure is drug testing to reduce the availability of drugs within prison. Others have argued that it is also necessary to introduce ways to ensure needles are clean for drug injection through a needle exchange or disinfection swabs or by providing bleach. Similar arguments have been raised to support the introduction of condoms in prison to prevent the spread of sexually transmitted diseases. I would hope that these matters form part of the *Corrections Victoria Communicable Disease Policy*, and that the Corrections Health Board continues its work in this area. I support actions which will help combat or prevent the spread of communicable diseases to the community, including the provision of condoms within prisons.

## Access to health care

A significant underlying problem with health care for prisoners is that there is no Medicare coverage for prisoners. Therefore they are unable to access services via the Medicare system. Instead the cost of health services is borne by the custodial facility (funded centrally by Corrections Victoria), or by the prisoner. In spite of the recommendation made by the *Independent Report into the Management and Operation of Victoria's Private Prisons* (Kirby, 2000) for the Minister of Corrections to seek agreement from appropriate Ministers for a joint approach to the Commonwealth Minister for Health to provide Medicare coverage for persons detained in custody, no progress appears to have occurred to change this situation. While many prisoners are diagnosed and treated for the first time in prison, there is a risk of health issues impacting on the wider community, particularly for communicable diseases.

Providing medication is a major daily routine in all prisons and requires appropriate procedures by the prison nursing staff. In Ararat which at the time of my investigators' visit held 387 prisoners, more than 200 were on medication of one form or another. In Dhurringile there were 120 out of 150 reported to be on medication. In addition to dispensing methadone to prisoners withdrawing from heroin, other medication for prisoners often includes insulin for diabetics, treatment for schizophrenia and other psychotic conditions, anti depressants and mood stabilisers. Some of the issues in respect of medication in prison are similar to those found in police cells. When prisoners transfer from one prison to another, there may be delays in providing prescribed medication. This leads to frequent visits to the health service to deal with relatively minor complaints which medication, previously prescribed and provided, would have addressed.



Prisoner access to dentists, physiotherapists, podiatrists, optometrists and psychiatrists appears to be satisfactory, although there are complaints about the long waits, sometimes 4-6 months before prisoners could be seen.

There is frequent need for outpatient services for prisoners who require medical treatment not able to be provided in their own prison. The existing arrangements are that such elective medical care can be provided free of charge to prisoners at the Port Phillip Prison Hospital, which handles up to 300 appointments per day. St Vincent's Hospital also provides an outpatient service. Attendance at any local hospital by prisoners is at their own cost and has to include \$60 per hour prison officer escort charges. Nevertheless such medical care is often sought. At Ararat, for example, prisoners attend the local hospital according to one officer... *we take on average 2 prisoners per day to the Ararat Hospital*. In emergency situations, or at appointments organised by the health service, prisoners are not required to pay.

Another matter was identified which makes access to reasonable medical care in prisons problematic. Prisons have a policy whereby when a prisoner is required to temporarily vacate their cell to go to Port Phillip (or elsewhere) for medical treatment, they lose their cell and/or job and related privileges. The usual reason given is that the vacancy this creates needs to be filled. A direct consequence of the policy is that prisoners, who are recommended by the health provider for outpatient medical treatment, change their mind and refuse to go. As part of this process, they sign a waiver that they consent to not receiving treatment as recommended.

At one prison, inspection of the medical records by my investigators showed that from January to May 2005, a large number of such waivers were signed by prisoners.

Prisoners refused to go to Port Phillip for medical attention for the following reasons:

- Difficulties of transfer (packing up belongings, losing their current cell placement, losing the work position)
- Fear of maximum security prisoners at Port Phillip Prison
- Attitude of staff at Port Phillip
- Concern about the facilities they are kept in at Port Phillip
- Missing and interrupting programs
- Not wanting to go in restraints
- Length of journey
- Not wanting to go by prison van.

Since January 2005 to end of July 2005, according to the health provider the number of prisoners refusing medical care was as follows: DPFC-37, Beechworth-9, Barwon-69, Ararat and Langi Kal Kal-88, MAP-18.

Another concern is that Corrections Victoria's contracted health providers may refuse prisoner access to some medical services because of insufficient funding. While prisoners can pay for the required health services or medication out of their own pocket, most prisoners do not have private health cover.

In my view, Corrections Victoria has a responsibility to provide a reasonable level of health care to prisoners. The duty of care to prisoners clearly remains with Corrections Victoria. Each treatment should be assessed on a case by case basis in terms of any long term consequences or the life threatening nature of a prisoner's medical condition.

Complaints about health care in prison are generally the responsibility of the Health Services Commissioner. In the twelve months July 2004 to June 2005 the Commissioner received a total of 130 complaints about prison health issues. Of these 32 per cent came from prisoners held at Barwon, 22 per cent from Port Phillip Prison and 15 per cent from Fulham Correctional Centre, while DPFC prisoners provided 12 percent of complaints and the minimum security prison had very few. Most complaints related to prisons refusing medical treatment or inadequate or inappropriate medical treatment in prison (42 per cent), while 35 per cent of complaints related to medication, especially methadone or for mental health related conditions. Problems relating to dental care accounted for 8 per cent of complaints, while several complaints related to privacy concerns and to long waiting times to access health care.

It is my view that there remain significant deficiencies in the health care provided to prisoners. These relate to insufficient resources, unsatisfactory contractual arrangements with health providers and prison regulations which create obstacles to the provision of effective health care.

*I recommend that Corrections Victoria:*

- *Review the contractual arrangements and the monitoring and auditing of the provision of health care, including mental health care in prisons in conjunction with the Department of Human Services, to address deficiencies.*
- *Ensure that prisoners attending medical appointments do not lose their cell/bed and work related privileges.*
- *Give priority to completing and implementing the Corrections Victoria Communicable Diseases Policy. This should include making condoms available in all male prisons.*
- *Liaise with the Commonwealth with a view to gaining access to Medicare for prisoners.*

## Mental health issues

Across all prisons visited, mental health problems were of concern, both in male and female prisons. It has also been acknowledged in many forums, including the recent Senate Inquiry into Mental Health which released its report in October 2005.

Adequate psychiatric assessment upon entry is critical to dealing appropriately with mental health issues in the prisons system. For all male prisoners this is done at the MAP, while for females it occurs at DPFC. Up to 80 per cent of female prisoners are estimated to have mental health concerns, including psychotic disorders or depression. Many women have also been found to be suffering from post-traumatic stress disorders which, if left undiagnosed and untreated, can be aggravated by the confined conditions within prison. However, women do not have the specialist psychiatric services that exist for men at MAP, in the Acute Assessment Unit. I note that this issue is currently being addressed by Government, with planning already underway in terms of constructing the facility.

There is insufficient capacity within prisons to adequately deal with the many mental health problems including personality disorders, psychiatric and suicidal conditions. My investigators found visiting mental health staff do not have enough hours on duty to meet the need; they are too few in number, and there appears to be little or no access to after hours service. When a prisoner's mental health condition is so acute that they have to be moved into psychiatric care, they also may wait long periods before they can receive appropriate treatment. Even then the options are restricted to a return to MAP or wait for a vacancy to occur in the Thomas Embling Psychiatric Hospital.

The lack of vacancies in the Thomas Embling Hospital for mentally ill prisoners, and in particular for female prisoners, is also of concern. While a number of beds are reserved for prisoners, initially it was 70 out of 100 beds, the hospital is reported to have a decreasing number of vacancies for prisoners (40 of 100 beds, of which 10 are for women prisoners), as beds are increasingly filled up with long term non-forensic patients.

Prisoners who are assessed as having a 'personality disorder' rather than being classified as mentally ill are often neglected or ignored. These prisoners do not meet the criteria for specialised mental health services, and they are generally considered untreatable. Expert advice is needed on how this category of prisoner can be managed to ensure a proper duty of care is exercised and they are not denied access to appropriate services or amenities.

In general, staff within the prison system are not specifically trained to recognise the signs of mental illness, or sufficiently prepared to deal with and handle these prisoners. Adequate staff training in both being alert to and handling prisoner behaviour showing signs of mental disorder is critical. I note that DHS strongly endorses the need for specific training for prison officers in dealing with prisoners with a mental disorder.

*I recommend that Corrections Victoria:*

- Review mental health services for prisoners within all prisons. Wherever possible, access to mental health services for prisoners should minimize the need for transfer of the prisoner to other locations.*
- Develop a strategy in conjunction with DHS to increase the number of places available for prisoners with severe mental health problems in a secure psychiatric hospital.*
- Provide prison officers with specific training in regard to mental illness and personality disorders.*

## Other issues

### Access to telephones and letter writing

Prisoners have access to telephones via the 'Arunta' Prisoner Telephone System which allows prison authorities to lawfully monitor prisoner calls. There is usually a telephone call box in the common areas of most prisons. In the male prisons, telephones are often next to each other, making it hard to hear and providing little privacy to prisoners, especially when other prisoners are queuing up to use them. It is most noticeable at Beechworth Correctional Centre, where a bank of telephones was located close to each other. At DPFC and Tarrengower there are call boxes. The installation of such call boxes to other prisons would overcome these concerns.

A common complaint by prisoners is about the difficulties in accessing telephones. There are not enough telephones for the large number of prisoners who want to access them at peak times. Although telephones are readily available for use during the day, they cannot be accessed because most prisoners are at work. The problem is particularly acute for prisoners held in management units, who are let out of their cells for a limited period during the day. This is their only opportunity to access the telephones to make calls, and is a constant source of frustration. Prisoners who are held in management cells for non-disciplinary reasons, either because they are high profile prisoners or require protection, are disadvantaged.

In the evenings when there are cheaper call rates, there are large queues to use the telephones by 'mainstream' prisoners. In prisons where nightly lockdowns take place early, there is no access to the telephones during the evening. In addition, the voice quality of telephones is reported at some prisons to be a problem and telephones are frequently out of order and take some time to be repaired.

The cost of telephone calls is another concern to prisoners, who have limited funds for telephones and earn as little as \$5 a day for prison work. However, costs are determined by Telstra and given the location of most of the prisons outside the metropolitan area telephones costs are charged at the long distance rate. Although prisoners in country prisons are allowed additional funds in their telephone account (this must also be approved by prison management), many complaints over the last 5 years to my office called for reduction in the cost of telephone calls. I welcome the decision by Corrections Victoria to a 20 per cent reduction in telephone costs for prisoners, effective across all prisons from 10 October 2005. This now means that a metered call cost is reduced from 40 cents to 32 cents.

In respect to letter writing and the receipt of mail there are relatively few complaints from prisoners. Legal mail, as well as mail to and from my office, is exempt mail and cannot be opened by prison staff. However other mail is inspected. Complaints by prisoners regarding mail include the slowness with which it is delivered and also that exempt mail has been opened by the authorities. It is often unclear whether any particular prison procedure is responsible for delays or if it is an Australia Post issue.

I believe there needs to be a general improvement in making access to telephones more available at suitable times to all prisoners across the prison system.

*I recommend that Corrections Victoria:*

*– Review access to telephones across all prisons and in particular in the evenings, as well as for prisoners in management units.*

## **Access to work**

Being able to work while in prison is a constructive step towards a successful re-entry into the community upon release from prison. Work in prison services, such as in the prison laundry, kitchen or prison industries - making number plates, bags and uniforms for sale, also generates income for prisons. Making uniforms and flags in the sewing workshop at Port Phillip Prison, making paper bricks in Tarrengower are some examples of the work offered which produces income for the prison. Opportunities also exist in unpaid community work by minimum security prisoners. At Tarrengower, women prisoners are able to do community work in the local town and include activities such as helping old people, serving food and cleaning up gardens. Employment opportunities also exist for male minimum security prisoners in similar unpaid community work.

While remand prisoners technically have a choice whether they work in prison or not, sentenced prisoners have to be employed. Common complaints from sentenced prisoners are that the work offered in prison is meaningless and monotonous, and of no value outside the prison. At medium and minimum security prisons, much work occurs outside the prisons. There are 'bush gangs' who participate in Landcare projects including tree planting at Loddon, Fulham and Ararat and in hospitality work. At the minimum-security prisons there is work on the prison farm. The workshops in the old Beechworth prison in the middle of the township provide work for around 40 prisoners who are transported from the new Beechworth Correctional Centre some 5 km away.

One concern is delays in being allocated work upon arrival at the prison. At Barwon this was reported to sometimes be as long as 5-6 weeks, although it was reported that work can be offered at Beechworth within days. A long delay affects the amount of money received by prisoners and can prevent purchases of personal items and telephone calls as well as limiting the opportunity to be usefully employed.

Another concern is that many prisoners are not given work, as there are no vacancies in the prison industry sections. At Fulham, it is reported that 50 percent of prisoners had no work or insufficient work, leaving much idle time. At Loddon Prison only 280 prisoners had jobs out of 400. While external factors can impact a prisoner's ability to work, such as the prison negotiating and securing contracts, it would be highly desirable to improve the work opportunities in prisons and to align them better with skills which can be exercised upon release from prison.

*I recommend that Corrections Victoria:*

- *Actively seek to identify and develop employment opportunities for prisoners by attracting suitable contracts for industries within prisons.*

## Access to education programs and other programs

Access to education and other training and personal development programs for prisoners is an important element in providing them with opportunities that address possible causes of offending behaviour and increase the likelihood of employment on release, thereby reducing the risk of re-offending.

Prisoners are able to access a range of education programs within all prisons. Some prisons show greater flexibility than others in allowing prisoners to work part time and to undertake part time study, for example, at Fulham. The most widely used education programs are those provided by the TAFE sector, offering certificates such as in woodwork, welding, carpentry, cooking, food handling and preparation. These can be undertaken by prisoners at Kangan TAFE, East Gippsland TAFE and Bendigo TAFE. The certificates obtained do not indicate that they are obtained in prison. In addition, a 'red card' Occupation Health and Safety Certificate is also able to be obtained to enable prisoners to work on building sites and is a useful qualification for prisoners to have after release. In addition, other programs include the Reducing Re-offending framework, the Bearing Point Review (of Education) and the Offender Management Framework.

A general complaint made by prisoners is that there are not enough places in education programs, and that there are long waits, sometimes up to 18 months to get into courses. Only a small proportion of prisoners can do full time education, for example only 5 per cent in DPFC. Lack of sufficient staff and funding for the prisons to meet the demand is cited as the main reason.

One frequent concern raised by prisoners is that there is a lack of continuity in relation to education programs when prisoners transfer from one prison to another. There is no carry over of the education courses started in one prison to another prison, which makes it hard to complete certificates and diplomas. A related issue is that with the transfer, some courses may not be available in the new prison. The policy of moving prisoners to other prisons with different security rating, also works against achieving set educational or program outcomes for prisoners. Program initiatives in one prison are not necessarily picked up by other prisons.

While courses are provided free to prisoners, there are exceptions. Prisoners wanting to do university or correspondence courses which incur HECS and other fees, must meet these costs.

Programs which address specific prisoner needs, include sex offender treatment, problem solving, anger management, as well as cultural awareness programs for Indigenous prisoners. Innovative programs observed at Ararat include radio production and a range of hobbies may also be permitted, such as woodwork. It is unclear to what extent programs are easily available to all prisoners. According to some prisoners such programs are only available in the last two years of the sentence.

In terms of other programs and support services available in prisons, prisoners can be visited and participate in Alcoholic Anonymous groups, Centrelink sessions, meetings with the Salvation Army chaplains and other religious organisations. Cognitive skills training programs, which cover topics such as self control management, interpersonal problem solving, analytical thinking and moral reasoning, are also available in a number of prisons. The value of such courses cannot be underestimated and can have a significant impact on a prisoner's reintegration into the community. For those prisoners serving short sentences, in particular 6 months or less access to programs seems to be more problematic and when available may not be able to be completed in time before release. Currently, there are often lengthy delays in being able to start courses once interest is shown.

### Pre-release programs

Another group of programs in prison relate to pre-release planning and preparation and contribute to minimising re-offending on release. While I note the availability of the Transition Assistance Program, which is available to all prisoners within 3 months of release, earlier preparation for release could be provided. Eligibility for parole often requires having completed certain programs, such as the cognitive skills program which may not have been available at prisons. The Parole Board is also increasing its refusals for parole where prisoners have not undertaken drug treatment programs. In 2004-05 it rejected 159 prisoners for parole with most common reasons including refusal to participate in programs and continuing to use drugs. It has also expressed concerns about the adequacy of pre-release preparation for some prisoners.

A day release program exists to enable long term prisoners prior to their release to go on escorted leave to arrange accommodation, employment and various formalities, such as setting up bank accounts, getting a driving licence, in preparation for a return to the community. Part of the pre release process involves contact with Centrelink to ensure welfare payments can be made on release. At Beechworth Prison it is reported that arrangements are made to ensure the prisoner has employment to go to on release and is given a bus and train ticket to get to Melbourne where most come from (and where the employment usually is).

It is unclear whether any outstanding warrants are dealt with while the person is in prison. While there is a procedure on reception for prisoners to raise outstanding warrants with the Sheriff's Office, this should be a process implemented by Corrections Victoria and not rely on prisoners to self report. It is understood that the Sheriff's Office is able to have the warrants served concurrently with the prison sentence. This should be standard practice to ensure that upon release, the person is not immediately re-apprehended for the outstanding warrants.



There is little evidence in prisoners' IMP files of a sentence plan. Work or education achievements of prisoners do not appear to be recorded or taken into account by staff when a prisoner transfers to another prison. A sentence plan prepared initially at the assessment conducted when entering prison, which sets out clear objectives and providing a continual focus on the aims of the sentence towards addressing the offending behaviour is required. This should be available to staff and prisoners. At present, such a focus is hard to achieve, and the objectives of the sentence are lost in the voluminous IMP prisoner files.

I also note that Corrections Victoria is working on integrating support services for women prisoners, similar to the bridging support programs for men.

*I recommend that Corrections Victoria:*

- Liaise with the Adult Parole Board to ensure that there is better coordination in relation to assessment criteria regarding release and eligibility for parole.*
- Facilitate and extend post release support for any prisoner exiting prison (including advice on access to long term accommodation, community based services and treatment programs, parenting and family support programs and sexual assault / family violence programs).*
- Review its budget allocation to education and other programs.*
- Ensure that prisoners are able to access appropriate courses and programs and maintain continuity throughout their sentence, particularly long term prisoners.*

## Access to visitors

A prisoner's access to visitors is an important means of maintaining ties with family and friends. Usually, contact visits are permitted at set times, although this is a privilege which can be withdrawn under defined circumstances. A frequently voiced concern is that visiting times are too restrictive – usually restricted to weekends. For example, at Ararat visitors are permitted at weekends between 9am and 3.15pm and on public holidays, but only children over 16 years are allowed and is more restrictive than in other prisons because of the nature of offences by prisoners held there (many are serving sentences for sex offences). At Dhurringile, visitors can come in the afternoon from 12.30 to 4.30pm at weekends. At DPFC, visits are permitted for two hours on Tuesday, Wednesdays and Fridays and at weekends. At both DPFC and Port Phillip Prison visitors are allowed access up to 7pm in contrast to more restricted visiting hours in other prisons.

Availability of rostered staff has been identified as a problem limiting more liberal visiting times. Some restrictions on visits can seem arbitrary. For example, at one prison it was reported that a prisoner was not allowed to have his stepchildren visit. A child's drawing was also not allowed to be passed on to a father. An unfinished chocolate bar bought at the canteen was not allowed to be taken out of the prison by a prisoner's son.

Visitors also need to know that they are not permitted into a prison without the required 100 points for security, which means being able to produce a driver's licence, a bank card or other personal identification. Some family members from remote locations visiting their relative in prison have been turned back because they were not able to satisfy the 100 points of identification or else are restricted to non-contact visits. It is desirable for all prisoners and visitors to be well informed regarding the policy.

There are issues in the way rules for visitors are applied and the conditions of access to visitors for prisoners.

For example:

- There are non-contact visits for prisoners whose visiting rights are restricted, usually for disciplinary reasons. Non-contact visits are held in 'box' cells with the prisoner on one side of a secure window and the visitor on the other side, speaking can be through a telephone or a secure mesh screen.
- Visitors can be refused entry to the prisons because they have prior criminal records, or outstanding legal matters. At Port Phillip Prison, visitors are banned automatically if they are on bail, regardless of the charges. Some prison managers will use their discretion to admit visitors with criminal records. For instance, if the offence is minor and committed a long time ago then this restriction may be waived.
- A problem arises when a ban on visitors is put in place by a particular prison, the prisoner is then transferred to another prison and there is a lack of clarity regarding the status of any bans relating to that prisoner in the new prison. A banned visitor may attempt to see the prisoner at the new location, only to be turned away. I understand that a ban is applicable across the state and not just at the prison where it was applied. Only the prison that applied the ban can remove it. This can be confusing when a prisoner has long since left the prison which imposed the ban.
- If a visitor is banned for a certain period, once the period has passed, the ban does not automatically end. The ban remains in place until the visitor applies to the prison to have it lifted.

I also receive a number of complaints regarding the confrontational nature of the visiting process, especially in regard to the attitude of staff at prisons. A number of complaints relate to staff who have been aggressive and rude. If a visitor becomes aggressive, they are automatically refused entry to the prison, and are then banned for a set period. It is often reported to my office that the experience of visiting a friend or relative in prison is difficult and embarrassing, and that staff can significantly worsen the situation by being uncivil and generally unfriendly.

There can be long waits for visitors to meet with prisoners, particularly in the larger prisons (Barwon, Port Phillip Prison). The locations of most prisons outside metropolitan Melbourne, requires that visitors have to travel long distances and can make it hard to maintain family ties while in custody. For example at Fulham, visitors arrive by train at Sale, and previously had to take a taxi at a cost of \$55 to reach the prison. A bus service is now operating, which is a commendable initiative by the prison.

*I recommend that Corrections Victoria:*

- *Lift bans on visitors once the period of the ban has been completed.*
- *Provide more information about prison rules and procedures regarding visiting to visitors prior to entering a prison. An information sheet should be provided in this regard.*
- *Remind prison staff working in the visitor reception areas that they should be civil to visitors at all times.*

## Smoking

Corrections Victoria's Smoke Free Work Environment Policy provides that from 1 March 2006 all prisoner accommodation across the Victorian prison system is designated as 'non-smoking'. Usually smoking is allowed in the open air. In prison cells smoking is not allowed and if prisoners are caught smoking in their cell they may face disciplinary action, usually resulting in a fine. However, this is not enforced after hours or during lockdown. In some prisons, smoking is not allowed during visits even in the open air.

The housing of prisoners in a particular cell can be complicated by the issue of smoking. For instance, a bed may become available in a two-bed cell, where the resident prisoner is a smoker and the second bed is given to a non-smoker, which can lead to conflict between the prisoners.

An issue was also raised during my investigation in regard to prisoners being transferred from prison to police cells to attend court. Police officers within watch-houses reported that prisoners are not being searched thoroughly by prison staff on departure, and are arriving at the watch-house with cigarettes and lighters hidden on (or in) their body.

*I recommend that Corrections Victoria:*

- *Ensure that prison officers thoroughly search prisoners when they transfer from prison to police watch-houses to attend court.*

## Managing prisons

The administration of prisons can impact significantly on the conditions experienced by prisoners and in shaping the quality of prison life. Managing a prison also involves effectively implementing policies and procedures within the prison environment.

### Staff-prisoner interaction

Staff-prisoner interactions are an important factor in shaping conditions in prisons. Inconsistencies between staff in dealing with prisoners can be a source of friction between prisoners and staff. Some officers allow leeway in certain situations, while other officers do not. The discretion used by officers while important in applying the rules regulating prison life, should be underpinned by key principles which are explained to prisoners enabling better understanding of the decisions taken so that a perception of fairness is promoted.

The presence of female staff in male prisons and male staff in female prisons appears to work reasonably well and was not identified as a concern to prisoners or staff consulted. Some prisoners who are 'old timers', reported to my investigators that staff are now more approachable, less aggressive and treated prisoners with more respect than in the 'old Pentridge days'.

All prisons visited hold regular meetings, usually monthly or more frequent, between the prison manager (Governor/General Manager/Director) and prisoner representatives. My investigators attended several of these meetings to identify issues and concerns raised by prisoners, some which were dealt with on the spot.

The meetings are also a way for management to communicate to prisoners various developments affecting their welfare and to be alerted to prisoner concerns. At Tarrengower there are informal meetings every fortnight where issues can be raised, and twice weekly formal Governor's Requests where requests or complaints are dealt with. At DPFC there are regular meetings between management and staff which allow for a range of prisoner issues; such as inter-prison telephone calls to family members, special purchases for pillows and doonas by prisoners; or having pets in prison. Problems are solved in an effective and timely way which can improve conditions generally for the prisoners.

#### *I recommend that Corrections Victoria:*

- *Ensure that regular prisoner representative meetings occur and that culturally diverse groups are represented. Processes for selecting prisoner representatives should be fair and transparent.*

## Rules and disciplinary procedures

An orderly prison that provides a safe and secure environment for prisoners as well as for staff requires a system of rules which are administered fairly and consistently.

My office has in the past had concerns about the level of fines imposed on prisoners found guilty of a disciplinary offence (*Ombudsman Victoria Annual Report 1999-2000*). I also note the *Prison Discipline Regime Review* (Dugan, 2003), which examined prison discipline provisions, sanctions and privileges and its recommendations.

I have concerns about the issue of consistency and equity between prisons and within a prison between different units, in applying disciplinary procedures. While acknowledging the need for some 'local' rules, there should not be, for example, substantial differences in penalties received for the same offences in different prisons. My office has raised these concerns before. In the application of the prison disciplinary procedures, it is clear that there needs to be better training of prison staff, including an understanding of the importance of procedural fairness in conducting internal hearings and imposing penalties for what are generally minor matters. I note that serious offences are referred to police.

Discipline action can result in a prisoner losing privileges, such as employment or a single cell. If they are subsequently found to be not guilty they may still lose their privileges as a result of being held in a management unit in the intervening time.

The various rules and disciplinary arrangements for prisons are not readily accessible to most prisoners. Up-to-date copies of the Corrections Victoria *Director's Instructions* should be made available to prisoners in the prison library or in the units. This would contribute to overcoming the lack of information prisoners appear to have about their entitlements and the rules and policies in operation and hence reduce confusion and misunderstanding.

## Bullying

One common problem in prisons is bullying behaviour which can be directed at certain stigmatised groups such as sex offenders or at new or vulnerable prisoners. How this is addressed can indicate much about the orderly running of a prison. My investigators noted on prison bulletin boards in a number of prisons information about how to prevent bullying. I welcome such initiatives and the desirability of training staff and peer support prisoners in recognising signs of bullying and in developing appropriate ways to resolve such situations. I also note with interest in this context the report by the WA Inspector of Custodial Services (2003) on *Vulnerable and Predatory Prisoners in Western Australia : a Review of Policy and Practice* and how measures to protect vulnerable prisoners from bullying can lead to more restricted conditions for these prisoners in practice, compared to 'mainstream' prisoners.

## Use of force

Use of force by prison staff occasionally occurs. It may involve physical contact with a prisoner in confrontational situations to control behaviour and enforce order. Prisoners have complained to my office on a number of occasions about use of force. This often relates to situations where a prisoner fails to comply with the requirements for extraction from an observation cell, and the subsequent force used by officers. Another common use of force situation is where prison officers physically separate prisoners when fights or riots take place.

The use of force is permitted in a number of prescribed circumstances and can range from the use of handcuffs as a security restraint to the use of batons and OC spray to deal with a violent prisoner. The nature of the use of force required and the circumstances in which it is applied has been the subject of a report *Use of Force Review* (Comrie, 2002) to Corrections Victoria. Its recommendations are relevant to a number of issues identified by my investigators. The *Use of Force Review* noted in its Executive Summary that there are ...*significant barriers to a systematic approach to fundamental issues such as use of force* ...and that the relevant standards contained in for example the *Corrections Victoria Director's Instructions* which ...*were designed to allow for variability at the local level, tend to be imprecise and do not facilitate a coordinated and integrated systemic approach (p4)*. The Department of Justice has recently provided a progress report of its implementation of the Review.

*I recommend that Corrections Victoria:*

- *Ensure that a regularly updated copy of Corrections Victoria Director's Instructions is available in prison libraries and is accessible to all prisoners.*
- *Ensure that prisoners found not guilty of prison charges be reinstated with comparable entitlements/ privileges they had previously held.*

## Searches conducted in prison

Searches are a fact of life in prison. Prisoners' cells and property may be subject to random or targeted searches, based on information received from intelligence sources. Prisoners themselves may also be subject to strip searches as may their visitors. The legal basis for strip searches is sections 44-46 of the *Corrections Act 1986* and section 62 and 63 of the *Corrections Regulations 1998*. The searches can be random or targeted and refusal to be subject to them can lead to penalties or even the use of force.

Currently, a prisoner is not allowed to be present in their cell during a search. If the prisoner is present in their cell at the time, they will be asked to stand outside the cell until the search is complete. I have received a number of complaints in the past regarding cell searches where a prisoner's property has been left scattered around the cell. I have also received complaints about items of property missing after a search has occurred. A flaw in the current system appears to be that prison officers sometimes leave the cell door open after the search is completed, leaving the contents of the cell vulnerable to theft or interference by other prisoners. My recent report on the *Investigation into the Handling, Storage and transfer of Prisoner Property in Victorian Prisons* (December 2005) makes recommendations in this regard.

## Strip searches

The strip searching of prisoners can be conducted both before and after a contact visit, when leaving prison to attend court or for other appointments. This is repeated upon return to the prison. This may be based on intelligence regarding the trafficking of drugs into prison, or when sniffer dogs indicate that drugs are located on a visitor.

Typically, in a strip search prisoners are required to remove all clothing, one article at a time and hand it to the officers conducting the search, who should be of the same sex as the prisoners. Once naked, a detailed examination is made of the prisoner. These searches can locate illicit drugs and tobacco. At DPFC it is now reported that women are given the choice of removing either the top or bottom half of their clothing separately, the clothes are then searched. It has been stated that *...the requirement of a strip search disproportionately impacts on women prisoners because of their greater need to maintain family bonds...* through contact visits. Visitors may also be strip searched. They may be targeted, selected at random or identified by detection procedures including 'sniffer' dogs.

The importance of properly conducting searches was highlighted in the recently reported findings of the Coroner into the death of a prisoner in the Protection Unit at Fulham who was stabbed by two other prisoners. The Coroner concluded that there had been a failure of staff to appreciate impending trouble in the unit due to inadequate supervision and searches.

*I recommend that Corrections Victoria:*

- *Ensure that both prisoners and visitors are aware of the requirements to conduct strip searches and that the consequences of refusal be explained.*

## Drug testing in prisons

Prisoners with drug related issues represent a high proportion of all prisoners and the smuggling of drugs into prison by both prisoners and visitors is a significant safety and security matter. Much has been written about the need to stop drugs from entering prisons. The major approach by Corrections Victoria has been to set up a regime for the random drug testing of urine to detect any illicit substances across all prisons in Victoria. If a prisoner refuses or fails to provide urine sample within 3 hours, a fine may be imposed and/or privileges will be stopped, such as limited visiting hours. Random testing for drugs every two weeks can occur at any time of day or night, involve 'sniffer' dogs and include the searching of visitors cars parked outside the prison.

Due to many complaints received regarding drug testing procedures, I conducted an own motion investigation into drug testing in Victorian prisons in early 2005. Recommendations from my investigation highlighted the need for a number of improvements, including:

- When a prisoner is admitted to an external hospital or transferred from a police cell, the transporting officer should obtain a discharge summary advising of all medications administered to the prisoner during the hospitalisation or stay in police custody to avoid incorrect interpretations of urine drug test results.
- Urine samples should be promptly delivered directly to an approved laboratory for testing within 7 days of the taking of the sample in compliance with procedures for transporting such medical samples.
- Prisoners who are charged and found not guilty as a result of recording a false positive should be provided with a full return of privileges.
- All prisons should improve the documentation on drug testing, in particular in relation to evidence showing that a false positive was recorded.

The seriousness of the issue of drugs in prison was specifically highlighted by the Coroner in his findings into the heroin overdose death in Port Phillip (2002). He stated that... *this death yet again highlights the problem of illicit drugs continuing to find their way into the prison system, despite the implementation and regular review of search procedures... including a program of random and targeted searching, random and targeted urine testing, proactive use of dog handlers, imposition of Identified Drug user status, drug counselling and education and a program of training staff in drug control and protection measures.* He further concluded that the... *evidence is clear that drugs remain endemic in the prison system.* He recommended that a feasibility study be conducted on the 'Passive Alert Dogs' and fluoroscope detection equipment for the screening of any person entering a prison, including prison staff.



## Emergency management days and lockdowns

Emergency Management Days enable reduction in the *length of a sentence being served by prisoners on account of good behaviour while suffering disruption or deprivation-during an industrial dispute or emergency existing in the prison or police goal in which the sentence is being served; or in other circumstances of an unforeseen and special nature* (Corrections Act 1986, section 58E).

Emergency Management Days were originally intended to compensate for the conditions experienced during lockdowns by prisoners for whom it would be unfair to bear the consequences of the lockdown which occurred through no fault of their own. In practice, it means that days are taken off a prisoner's sentence if there are industrial disputes of prison officers, which require prisoners to be locked down in their cells for 23 hours in a day. The Commissioner of Corrections Victoria, as the delegate of the Secretary of the Department of Justice, may approve Emergency Management Days, after determining that the 'disruption' is a substantial interruption of a prisoner's normal daily routine. Regulation 70 of the *Corrections Regulations* 1998 allows for a minimum of four days to be taken off a prisoner's sentence for every day or part thereof locked down.

Emergency Management Days are not applicable in situations where prisoners have been locked down in their cells due to the searching of a unit for contraband, to investigate an incident such as a stabbing. An example of this occurred at Fulham, when a bullet was found in the prison which led to the whole prison being locked down for 3 days.

A number of court cases have tested the policy, such as in the *Pavic v Anderson & Ors* (22 October 2004). They highlight the need to ensure that prisoners are able to bring legitimate claims regarding their conditions and entitlements before the courts and receive a fair hearing. The problem with the policy in practice is that it gives a very narrow definition and requires a two step process to obtain the Emergency Management Days. First, to determine whether a prisoner who has been locked down meets the criteria and secondly, whether the circumstances are appropriate.

I note that prisoners are often held in police cells in far inferior and harsher conditions than prisons. This is generally because of the lack of appropriate vacancies in the prison system and its inability to meet the specific accommodation needs of these prisoners. In my view, they should be eligible for Emergency Management Days.

***I recommend that Corrections Victoria:***

- Consider amending the Corrections Act 1986 so that Emergency Management Days can be applied for, in appropriate circumstances, by sentenced and unsentenced prisoners who are subsequently sentenced, when they are held in excess of 48 hours in police cells.***

## Transporting prisoners

While prisoners live in generally stable conditions in prison, there is a strong likelihood that they will have to move at various times during the term of their sentence. Reasons for transfers include attending court, going to hospital, or a change in classification of security rating requiring a shift to another prison. Duty of care responsibilities also apply when transporting prisoners.

Transport for prisoners is currently outsourced to GSL Custodial Services Pty Ltd (GSL) by Corrections Victoria. The contract for prisoner transport in 2003 was split with both Victoria Police and Corrections Victoria having separate contracts. In June 2004 Victoria Police transferred the contract, together with the budget allocation to Corrections Victoria. The service monitor and contract administrator roles both now reside in Corrections Victoria. Standards in relation to the conditions of transport for prisoners must comply with the *Victoria Police Manual* and there are requirements to be met as specified in the GSL contract.

A recent report by the Corrections Inspectorate, *Review of Victorian Prisoner Transport Services* (Department of Justice, 2005) identified a number of issues where the services provided fell short of the standards required by the contract. Areas where deficiencies were found included incomplete staff refresher training, poor record keeping, no regular reviews or updating of emergency management procedures, little adherence to servicing and maintenance requirements for the vehicle fleet, high breakdown levels of electronic surveillance equipment in the vans compounded by poor quality vision, broken lights and 'blind spots', inoperative communications equipment which prevent prisoners from speaking with the driver and an inadequate emergency duress monitoring system. These matters do not comply with the contract and create unacceptable risks. Recommendations highlighted the need for more rigorous reporting, increased operational oversight to ensure standards are being met and the need to clarify responsibility to monitor service standards.

Transport vans inspected by my investigators are fairly modern and typically have small individual compartments on the sides of the van to hold one or two prisoners, and a larger open area in the rear of the vehicle that can hold approximately four to six prisoners. Unlike Police divisional vans, all seats are fitted with seatbelts for prisoner safety.

A number of problems were identified by my investigators. For example, the duration of the trips and the lack of amenities is of concern. It is understood that complaints from the judiciary about long travel times from prisons to higher courts has led to a new delivery and pickup schedule in May 2005 which has reduced travel times. However, the scheduling of the regular transport runs between the Melbourne Courts with stops at various prisons, can make it a very long journey for prisoners, in particular those who are last off the van.

In some cases, when prisons refuse to receive prisoners after hours, it means that prisoners, due for return to prison are held over at local police watch-houses until the next day. Late arrival by the prison van at the prison can mean no meal for the prisoner. Leaving court in Melbourne at 4pm can mean arrival at DPFC (some 20 km away) at 9pm, without food, water or toilet stops.

The inability of prisoners on vans to communicate with the driver and the defective CCTV surveillance identified in the Inspectorate's report raise duty of care issues. Other issues in relation to transport involve the classification of a prisoner and the level of security at a prison where a stop is made. For instance, if a truck is to stop at Dhurringile (minimum security) en route to Melbourne, a prisoner with a maximum security rating on the truck will not be allowed to leave to have a drink of water or use the toilet. Similarly, a male prisoner would not be able to leave the truck if stopping at a female prison. In addition, while the GSL contract specifies that adult prisoners should be separated from young prisoners, males from female prisoners and 'protection' prisoners from 'mainstream' prisoners, there are no records to show that the separations are correctly carried out. A complaint was made to my office by staff at a youth detention centre about the poor state of health of youth detainees who arrive at the centre transported on prison vans from police cells.

Providing water and food to prisoners whilst in transit is also an issue. According to GSL Transport, it is assumed that the prisoner has had a meal prior to departure, or will receive a meal at the destination. The main problem with this assumption is that when a prisoner does not arrive at the destination until after evening mealtime, the prison does not keep a meal for him/her. The prisoner will then have to wait until breakfast the following day to eat. GSL Transport does not provide prisoners with plastic bottles to drink from. It was suggested to my investigators that prisoners might use the bottle as a weapon against each other, or urinate into the bottle and throw it at staff.

For example:

A complaint about prisoner transport was received from a family member of a prisoner in July 2005 about a prisoner located in a regional prison who developed a serious allergy. He was sent to Port Phillip prison for medical treatment. On the trip, there were no toilet stops at all. There was urine on the floor. No food or water was provided, although several water bottles were distributed but were insufficient for all prisoners on the van. There was smoking in the van, even though there were non smokers. The duration of the trip was made much longer by the frequent stops to take on or drop off other prisoners.

One way of minimising transporting prisoners from prison for court appearances is expanding the use of video or teleconferencing between the courts and the prisons which all have the facility to do this. At Port Phillip it is reported that there are up to 400 teleconferences a month, which significantly reduces the need to transfer prisoners to court locations and for them to be held in police cells.

*I recommend that Corrections Victoria:*

- *Closely monitors the prison transport contract and considers a variation to the contract to ensure conditions which meet basic standards are part of the contractor's obligations.*

## **Mechanisms for monitoring conditions in prisons**

All prisons have internal procedures for complaint handling or where issues of concern can be raised. These can be dealt with through prisoner representatives who meet regularly with management. Requests can also be put through to the 'Governor' or prison manager, via a request book in some prisons.

In addition, there are the 29 Official Prison Visitors (as at November 2005) who act as the 'eyes and ears' for the Minister of Corrections and report through the Corrections Inspectorate, a unit within the Department of Justice. They visit prisons and discuss concerns with staff and prisoners. They listen to complaints, attempt to clarify issues and seek answers to questions that prisoners might have. Official Visitors attend prisons on a regular basis.

Prisoners also have access to my office by telephone and in writing. Many complaints are received about a range of issues and prisons are one of the largest single source of complaints in my jurisdiction. My officers also visit the prisons regularly throughout the year to take complaints, make enquiries and conduct investigations. While complaints from prisoners are handled by my office, I believe that there is need for a greater independent monitoring role by my office in respect of conditions for prisoners and their treatment. This function exists in other states such as WA.

To improve access to my office, I will be introducing a free call 1800 number in all prisons.

Critical to a well functioning corrections system is a rigorous internal monitoring mechanism for standards and conditions. At present, the Department of Justice has an internal unit, the Corrections Inspectorate, established in 2003 and whose role is to provide advice on the operation of the Victorian corrections system. This includes monitoring and reporting on the compliance of public and private prisons, and the prisoner transport provider with standards determined by Corrections Victoria. In addition, the Inspectorate, which is co-located in the Department of Justice but separate from Corrections Victoria, provides administrative support to the *Official Prison Visitors Scheme*, conducts individual prison reviews against an agreed framework of best practice; and thematic reviews of specific prison operations or services and conducts enquiries and investigations into serious prison incidents.

I consider that there is a clear need for the independent scrutiny of conditions in custody. In this regard, I propose to review the performance of the Corrections Inspectorate within the next six months.

*The Department of Justice noted my intention to conduct a review.*

## **Conclusions**

My investigation found that action is required to change the current arrangements for the transfer of persons in custody between Victoria Police and the prison system. Persons should not be detained in sub-standard police cells for long periods because of the lack of suitable vacancies in the prison system.

The rigidity of some of the policies and procedures of Corrections Victoria in relation to assessment and classification, while designed to provide a safe and secure environment for different categories of prisoners (as well as staff), can lead to blockages in the system. An undesirable result of this is that some prisoners are held in police cells for long periods while waiting for a vacancy at the 'front-end' of the prison system, even though there are vacancies available in other parts of the system.

In particular, persons with a protection status have longer stays in police cells than other detainees because of deficiencies in the procedures to assess these prisoners (in particular P1 prisoners with mental health issues). This situation should be addressed.

Inadequacies have also been identified in the way prisoners are transported. Insufficient attention is given to the conditions under which prisoners are transported, often without basic amenities for long trips and lack of consideration of alternatives to transporting prisoners, such as expanding the use of video conferencing between prisons and courts.

Access to reasonable healthcare, including mental health care, is limited. The lack of a continuum of care when persons in custody move between police cells and prisons and the fragmented nature of the health service provision in prison are of concern.

Prisoners who are either held in management units, for their own protection or need for separation, suffer conditions which are highly restricted because of the lack of appropriate vacancies. They should not be disadvantaged in terms of basic amenities and privileges compared to 'mainstream' prisoners.

Access to education and other programs, such as pre-release planning and employment opportunities in prison is critical to successful re-entry into the community after release and reduces re-offending. Limitations have been identified in my investigation and improvements should be continued in this area.

Issues in prison which have previously been investigated by my office – drug testing and the handling of prisoner property, continue to require monitoring.

Other areas also of concern include the way in which visits for prisoners are facilitated, appropriate prison disciplinary techniques and how the needs of special groups of prisoners, such as women, the disabled, Indigenous people and those with mental health issues are met.

The independent scrutiny of prison conditions is a key component of robust, transparent accountability mechanisms. In particular, the role of Official Prison Visitors could be strengthened and enhanced in combination with the role of an independent overseeing agency, such as my office, not only in dealing with prisoner complaints but equally in investigating and monitoring systemic issues.

The opening of the new prisons in Victoria in 2006 provides an opportunity to improve and address a number of issues identified in this investigation in relation to conditions for persons held in prison.

## Recommendations

*I recommend that Corrections Victoria:*

- *Equip all prison cells with duress alarm buttons incorporating intercoms, which must be operative and able to be responded to promptly by staff.*
- *Ensure that duress alarm buttons are tested in all prison cells on a regular basis.*
- *Complete the building program at Ararat Prison as soon as possible to enable a reduction of numbers of prisoners per cell and the elimination of four bed cells.*
- *Review its procedures for maintenance repairs in prisons so that they are promptly dealt with.*
- *Ensure that the yard in the Acacia Unit at Barwon Prison is provided with a toilet, as a matter of urgency.*
- *Refurbish the facilities at Ararat and Tarrengower Prisons.*
- *Review the criteria and use of the current P1 rating policy and related procedures.*
- *Introduce greater flexibility in the current classification procedures, including a model which allows the movement of prisoners from maximum security to fill empty beds in other facilities, if necessary with security upgrades in selected units.*
- *Consider expanding Home Detention and Weekend Leave programs in appropriate circumstances, in conjunction with the Adult Parole Board.*

- *Review the number of Aboriginal Well-being officers.*
- *Ensure that designated facilities are available at each prison to accommodate the needs of intellectually and physically disabled prisoners.*
- *Ensure that prison staff have access to qualified interpreters if required.*
- *Recruit staff from multi cultural backgrounds to work within prisons.*
- *Ensure that the information the Sentence Management Unit receives in regard to 'protection' prisoners is current and appropriately utilised when deciding whether a prisoner requires 'protection' status or not and where they are to be placed.*
- *Develop a protocol with Victoria Police on a uniform definition of 'protection' status, incorporating segregation/separation needs for persons in custody.*
- *Ensure that 'protection' prisoners are not held in management units due to a lack of appropriate beds for any longer than is necessary.*
- *Ensure that the recommendations made by the Coroner into the deaths in prison are promptly implemented, including the recommendations made in relation to the deaths in Port Phillip Prison (2002) and Beechworth Prison (2002).*
- *Extend prison peer educator and peer listener programs to prisoners in management units.*
- *Training for peer educators should be provided and regular debriefing for peer educators by professional staff should be made available.*
- *Regularly monitor standards for the quality and quantity of food.*
- *Review the provision of food in prisons in respect of expenditure to ensure basic nutritional requirements for adults are being met.*
- *Review the contractual arrangements and the monitoring and auditing of the provision of health care, including mental health care in prisons in conjunction with the Department of Human Services, to address deficiencies.*
- *Ensure that prisoners attending medical appointments do not lose their cell/bed and work related privileges.*
- *Give priority to completing and implementing the Corrections Victoria Communicable Diseases Policy. This should include making condoms available in all male prisons.*

- *Liaise with the Commonwealth with a view to gaining access to Medicare for prisoners.*
- *Review mental health services for prisoners within all prisons. Wherever possible, access to mental health services for prisoners should minimize the need for transfer of the prisoner to other locations.*
- *Develop a strategy in conjunction with DHS to increase the number of places available for prisoners with severe mental health problems in a secure psychiatric hospital.*
- *Provide prison officers with specific training in regard to mental illness and personality disorders.*
- *Review access to telephones across all prisons and in particular in the evenings, as well as for prisoners in management units.*
- *Actively seek to identify and develop employment opportunities for prisoners by attracting suitable contracts for industries within prisons.*
- *Liaise with the Adult Parole Board to ensure that there is better coordination in relation to assessment criteria regarding release and eligibility for parole.*
- *Facilitate and extend post release support for any prisoner exiting prison (including advice on access to long term accommodation, community based services and treatment programs, parenting and family support programs and sexual assault / family violence programs).*
- *Review its budget allocation to education and other programs.*
- *Ensure that prisoners are able to access appropriate courses and programs and maintain continuity throughout their sentence, particularly long term prisoners.*
- *Lift bans on visitors once the period of the ban has been completed.*
- *Provide more information about prison rules and procedures regarding visiting to visitors prior to entering a prison. An information sheet should be provided in this regard.*
- *Remind prison staff working in the visitor reception areas that they should be civil to visitors at all times.*
- *Ensure that prison officers thoroughly search prisoners when they transfer from prison to police watch-houses to attend court.*



- *Ensure that regular prisoner representative meetings occur and that culturally diverse groups are represented. Processes for selecting prisoner representatives should be fair and transparent.*
- *Ensure that a regularly updated copy of Corrections Victoria Director's Instructions is available in prison libraries and is accessible to all prisoners.*
- *Ensure that prisoners found not guilty of prison charges be reinstated with comparable entitlements/privileges they had previously held.*
- *Ensure that both prisoners and visitors are aware of the requirements to conduct strip searches and that the consequences of refusal be explained.*
- *Consider amending the Corrections Act 1986 so that Emergency Management Days can be applied for, in appropriate circumstances, by sentenced and unsentenced prisoners who are subsequently sentenced, when they are held in excess of 48 hours in police cells.*
- *Closely monitors the prison transport contract and considers a variation to the contract to ensure conditions which meet basic standards are part of the contractor's obligations.*

*The Department of Justice welcomes the review and agrees with the general outcomes sought by the majority of the recommendations and, where practicable, the department will take appropriate steps to implement them.*



# ATTACHMENT A

## PRISON CAPACITY AND PRISON BED NUMBERS As at 1 June 2006

Men's Prisons					
Security Level		Design Capacity		Flexible Capacity	Total Operational Capacity
Max	MAP	250	25	bunks	275
Max	Port Phillip	614	131	bunks	745
Max	Barwon	325	88	bunks (36); RCA (1 x 52)	413
Max	MRC	600	0		600
Med	Marngoneet	300	0		300
Med	Ararat	282	61		343
Med	Fulham	658	167	bunks (135); RCA (52)	825
Med	Loddon	320	80	bunks	400
Min	Beechworth CC	120	0	bunks	120
Min	Dhurringile	108	52	52 bed RCA	160
Min	Langi Kal Kal	100	10	temp beds	110
<b>Total</b>		<b>3677</b>	<b>614</b>		<b>4291</b>
Women's Prisons					
Max	DPFC	175	85	RCA (52) and bunks	260
Min	Tarrengower	38	16	12 beds RCA + 4 bunks	54
<b>Total</b>		<b>213</b>	<b>101</b>		<b>314</b>
<b>System Total</b>		<b>3890</b>	<b>715</b>		<b>4605</b>

## ATTACHMENT B

### VICTORIA POLICE WATCH HOUSES – CATEGORY AND GAZETTED STATUS As at 6 July 2005

Watch-house Category A	Gazetted as Police Gaol	Length Of Stay	Cell Capacity Males	Cell Capacity Females	Cell Capacity Total
MCC *	Yes	30	52	15	67
Moorabbin *	Yes	14	9	4	13
Geelong *	Yes	14	24	0	24
Melton *	Yes	14	9	7	16
Ballarat *	Yes	14	25	5	30
Broadmeadows	Yes	14	10	2	12
Moonee Ponds	Yes	3	6	3	9
Mill Park	Yes	14	6	4	10
Bendigo *	Yes	3	5	2	7
Mildura	Yes	30	8	3	11
Shepparton *	Yes	14	6	4	10
Dandenong *	Yes	14	18	4	22
Frankston *	Yes	14	16	0	16
Bairnsdale *	No	14	3	0	3
Morwell	No	14	4	0	4
Heidelberg *	No	14	12	6	18
Knox	No	14	6	2	8
Ringwood *	No	14	11	6	17
Wodonga	No	14	8	6	14
Wangaratta *	No	14	18	0	18
Warrnambool	No	14	9	1	10
Fitzroy	No	14	6	2	8

Watch-house Category C	Gazetted as Police Gaol	Length Of Stay	Cell Capacity Males	Cell Capacity Females	Cell Capacity Total
St Kilda	No	3	6	4	10
Sunshine *	No	14	9	3	12
Prahran	Yes	7	4	1	5
Williamstown	Yes	14	9	1	10
Colac	Yes	3	3	2	5
Portland	Yes	14	4	2	6
Echuca	Yes	4	6	0	6
Swan Hill	Yes	14	4	1	5

## ATTACHMENT B CONTINUED

Watch-house Category C	Gazetted as Police Gaol	Length Of Stay	Cell Capacity Males	Cell Capacity Females	Cell Capacity Total
Glen Waverley	Yes	7	1	1	2
Nunawading	Yes	7	3	1	4
Mornington	Yes	7	6	3	9
Horsham	Yes	14	4	2	6
Narre Warren	Yes	14	12	0	12
Rosebud	No	7	4	2	6
Wonthaggi	No	3	4	0	4
Warragul	No	3	6	0	6
Carlton	No	14	8	0	8
Keilor Downs	No	14	9	1	10
Werribee	No	5	3	1	4
Ararat	No	3	6	0	6
Hamilton	No	14	3	3	6
Maryborough	No	3	4	2	6
Cranbourne	No	3	4	0	4
Benalla	No	14	6	0	6
Mansfield	No	2	4	0	4
Seymour *	No	14	8	2	10
Doncaster	No	7	4	2	6
Stawell	No	7	4	2	6
Craigieburn	No	14	6	4	10
Traralgon *	No	14	4	2	6
Sale *	No	14	6	2	8
Moe *	No	7	4	0	4
Castlemaine *	No	3	4	0	4
Kyneton *	No	3	3	0	3
Cobram	No	1	1	0	1
Bacchus Marsh	No	1	2	2	4
Kerang	No	5	4	1	5
Cowes	No	2	6	2	8
Korumburra	No	1	1	0	1
<b>Total Gazetted Police Gaols</b>	24				
<b>Total not Gazetted Police Gaols</b>	37				

\* Indicates Police Station visited in 2005

# ATTACHMENT C

## CUSTODIAL FACILITIES VISITED DURING THE INVESTIGATION

Police Station Name	Date Visited 2005	2002 Visit	Year Gazetted	Co-Located with Court
MCC	07/07/05	-		Yes
Melton	20/07/05	Yes	1993	-
Geelong	22/07/05	Yes	1992	Yes
Moorabbin	29/07/05	Yes	1993	-
Dandenong	11/08/05	Yes	1994	Yes
Sunshine	11/08/05	Yes	1999	Yes
Frankston	12/08/05	Yes	1993	Yes
Ringwood	19/08/05	Yes	1997	Yes
Heidelberg	19/08/05	Yes	2003	Yes
Shepparton	14/07/05	-	1998	Yes
Castlemaine	20/07/05	-		Yes
Bendigo	27/07/05	Yes	1989	Yes
Sale	03/08/05	Yes		Yes
Bairnsdale	03/08/05	-		Yes
Horsham	08/08/05	-		Yes
Ballarat	09/08/05	-	1999	Yes
Traralgon	15/08/05	Yes		-
Moe	15/08/05	Yes		Yes
Wangaratta	30/08/05	-	1993	Yes
Kyneton	01/09/05	-		Yes

Prison	Security	Gender	Date Visited	Prison Capacity (as at 11/04/05)
MAP	Max	Male	12/07/05	275
Dhurringile	Min	Male	14/07/05	170
Port Phillip	Max	Male	18/07/05	744
Barwon	Max	Male	22/07/05	462
Loddon	Med	Male	27/07/05	399
DPFC	Max	Female	01/08/05	260
Fulham	Med	Male	02/08/05	845
Ararat	Med	Male	08/08/05	397
Beechworth	Min	Male	30/08/05	120
Tarrengower	Min	Female	01/09/05	54

# Policing and human rights

Standards for police cells

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December 2008



*... All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person<sup>1</sup>*

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## BACKGROUND

From January 2008, Victoria Police have been required to act and make decisions having regard to the human rights set out in the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

One of the Office of Police Integrity (OPI)'s functions is to oversee Victoria Police's compliance with the Charter. OPI's other functions are to:

- ensure that the highest ethical and professional standards are maintained in Victoria Police;
- ensure that police corruption and serious misconduct is detected, investigated and prevented; and to
- educate Victoria Police and the general community about police corruption and serious misconduct.<sup>2</sup>

In 2005, OPI and Ombudsman Victoria conducted a joint investigation into the conditions for people in custody, in response to a number of complaints from people held in police cells or prison. The report of the investigation, *Conditions for persons in custody*, was tabled in the Victorian Parliament in July 2006.<sup>3</sup> The report found conditions for detainees were unsatisfactory in several areas. It made a number of recommendations, including several intended to improve the conditions for people detained in police cells. The majority of recommendations relevant to Victoria Police were accepted. A process for implementing the recommendations commenced shortly after the report was tabled. OPI continues to monitor the implementation of these recommendations and has commenced a series of on-site inspections of police cells.

This toolkit aims to provide a framework for assessing conditions in police cells, having regard to human rights and the issues identified in the 2006 report. It is based on standards set out in the Charter, United Nations instruments and publications,<sup>4</sup> and state legislation and regulations.<sup>5</sup> Studies of police cells and custody conditions in other Australian and international jurisdictions, including Western Australia,<sup>6</sup> Australian Capital Territory,<sup>7</sup> the Netherlands<sup>8</sup> and the United Kingdom,<sup>9</sup> have also been taken into account and adapted to this jurisdiction.

The Standards and Indicators set out in this toolkit are not intended to be prescriptive or exhaustive. The toolkit is designed to assist OPI's audit process and to be used by custody sergeants and internal auditors within Victoria Police to assess progress in the ongoing improvement of the treatment and care of people in police custody.

Please contact OPI if you have any comments regarding this document. Suggestions to improve the toolkit are welcome.

# STANDARDS

## Admission and assessment

*On admission, police take steps to ensure the health, safety and welfare of detainees.*

### **Indicators**

- Prior to admission into a police cell, every person is assessed in relation to his or her physical, mental and psychological condition.
- Any person in police custody in need of medical attention is examined by a qualified health practitioner. Where urgent medical attention is required, arrangements are made to take the person to an appropriate health care facility, as a matter of urgency.
- Personal information is obtained in a manner that is respectful of a detainee's privacy and dignity. Information about detainees is not visible to other detainees or visitors.
- A separate medical record is kept for any detainee requiring medical attention.
- Information about the detainee is entered in a register. The register includes information about the person's identity and the legal authority under which the person is detained, the date and time of his or her admission and the date of release.
- A decision to search a detainee is only made when, taking into account all the circumstances, it is considered necessary for the safety of the person or others, to locate a weapon or item that may be used to effect an escape, or to obtain evidence associated with the offence, or offences, for which the person was arrested.
- Where a decision has been made to conduct a search officers conducting the search have regard to the privacy and dignity of the detainee.
- A record is made of any article or substance taken from a detainee. The record includes information about what police did with the article or substance.
- Property taken from a detainee is stored safely. Property that is in the lawful possession of a detainee and not required for evidentiary purposes is returned to the person on his or her release from police custody in the same condition that it was in when it was taken from the person.
- Each detainee is provided with information, in a format he or she can understand, about the reason for his or her detention and the rights and responsibilities of detainees.

- Digital Closed Circuit Television (CCTV) equipment is fitted in the sally port, reception area, each cell and all internal and external communal facilities in the cell complex. Equipment is subject to regular maintenance and checked to ensure it is in good working order with correct positioning.
- CCTV footage is securely stored for at least one month. Access to the footage must be authorised by the officer in charge. An access and overwriting register is kept.

## **Accommodation**

*The physical conditions of the cells and cell complex provides for the humane and dignified treatment of detainees. Detainees are provided with an adequate standard of accommodation that ensures their safety and welfare, and balances individual rights with the rights of others.*

### **Indicators**

- Cell blocks are calm and relaxing. There is capacity to isolate detainees who create a disturbance.
- Duress alarms in cells and communal areas are present and functioning.
- Cells are clean, kept at a comfortable temperature and well ventilated.
- Cells are at least 2.5 metres long, 2.2 metres wide, and 2.8 meters in height.
- Cells have light-shaded wall colours and are appropriately lit. Detainees have access to natural light during the day and access to artificial lighting in the evening. Artificial lights are dimmed or turned off when the detainee wants to sleep.
- CCTV monitoring is compatible with lighting and dimming facilities.
- Detainees are segregated on the basis of gender.
- Children and young people in police custody are segregated from adult detainees.
- Unconvicted detainees are segregated from sentenced offenders.
- There is one person per cell overnight.
- Each detainee has access to a one-piece mattress.

## Health and hygiene

*Detainees are held in a clean environment that enables them to comply with the needs of nature in a clean and decent manner, maintain a good appearance compatible with their self respect and provides for their physical and mental health and well being.*

### **Indicators**

- Cells are clean, free from hanging points and have a basin with access to drinking water and a toilet in working order.
- Each detainee has clean bedding suitable for the climate.
- As a general rule, detainees are able to wear their own clothing, so long as it is clean and fit for use. Where a detainee's personal clothing has been removed for evidentiary purposes or because it is damaged or dirty, steps are taken to procure items of suitable personal clothing for the detainee from friends, family members or a local charity. In the interim, detainees are provided with clothing suitable for the climate that is not degrading or humiliating.
- Detainees are able to take daily warm showers in clean conditions that allow for privacy.
- Detainees have access to toilet articles including toilet paper, soap, and oral hygiene equipment.
- Males are able to shave. Females have access to sanitary items.
- Detainees held for more than 24 hours have access, for at least an hour a day, to an outdoor exercise yard that provides shelter from the weather.

## Food

*Detainees are provided with quality food that takes into account individual religious or dietary needs, is of good nutritional value, and is well prepared and presented.*

### **Indicators**

- Detainees' food is palatable, of good nutritional value and supplied in sufficient quantities with additional food available on reasonable request.
- Special dietary requirements including religious, cultural or health needs are catered for.
- Detainees are provided with meals and clean eating utensils at regular meal times or as required.

- Meals are complemented by drinks (e.g. coffee, tea, milk).
- Detainees are provided with drinks between meals at least three times a day (e.g. coffee, tea, milk).
- Food preparation and serving areas are clean.
- Staff preparing and/or serving food are trained in food handling practices.

## **Psychological well being**

*Detainees are treated with dignity and respect. At all times, custodial officers act professionally and with integrity to maintain and uphold the human rights of detainees. The conduct of custodial officers provides a good role model for detainees and encourages detainees to have self-respect and a sense of responsibility.*

### **Indicators**

- Each detainee has the opportunity to inform a friend or relative of his or her whereabouts as soon as practicable after being taken into custody.
- Each detainee understands the cell block rules. A copy of the cell block rules in easy-to-read English is securely displayed in reception and in internal communal areas.
- Detainees who do not read or speak English have access to translated information or an interpreter and receive information about the reason for their detention and the cell block rules in a format they understand.
- Each detainee has the opportunity to express his or her religion and adhere to the customs and practices of that religion.
- At night, custodial officers try not to wake detainees who are sleeping and refrain from turning on lights and loudly opening or closing doors.
- Each detainee has reasonable access to a telephone.
- Each detainees has access to his or her lawyer, without restriction to the number or length of visits
- Detainees have access to a visit from family or friends at least twice a week.
- Clean rooms are available for visitors to meet privately with detainees.

- Detainees have access to recreational activities. A range of books and magazines, writing materials, and a tamper-proof television in working order are available for detainees.
- Access to recreational activities and regular exercise will increase in proportion to the detainee's length of stay in custody.
- Any restriction on the personal rights or freedom of a detainee is only made after the officer in charge has decided such restriction is necessary for the safety of the individual or others or for the orderly conduct of the cell complex.
- Any detainee wishing to make a complaint about his or her treatment in custody is provided with information about how to lodge a complaint.

## **Discipline**

*Detainees are not discriminated against and are provided with equal protection under the law.*

### **Indicators**

- Any alleged breach of a cell block rule or police gaol regulations is investigated by the officer in charge of the facility.
- A detainee who is alleged to have breached a rule is given the opportunity to be heard in any investigation into the breach.
- Where an investigation establishes that a breach has occurred the person is dealt with in accordance with the law

## **Restraint**

*Detainees are protected from torture and cruel, inhuman or degrading treatment.*

### **Indicators**

- A detainee is only subject to restraint if restraint is authorised by the officer in charge and;
  - the person is being moved under escort and the officer in charge believes restraint is necessary to secure the safe transfer of the detainee; or
  - the officer in charge believes on reasonable grounds that:
    - exceptional circumstances exist; and
    - restraint is necessary to prevent an assault or injury to any person or substantial damage to property.



- Only restraints authorised for use are applied (currently these are limited to police issue handcuffs or a restraint waist belt).
- Where a restraint is applied to a detainee, policies and procedures are complied with including appropriate recording and documentation. A Use of Force form is completed and submitted.

### **Treatment of detainees with specific needs**

*Every person is equal before the law and has legal protection to enjoy his or her human rights without discrimination.*

#### ***Children and young people***

*Particular care is taken to protect the rights of children and young people detained in police custody.*

#### ***Indicators***

- Children and young people are detained in police custody as a last resort and for the shortest possible time.
- Particular effort is made to contact a responsible family member or lawful guardian of the child or young person and facilitate the attendance at the police station of the family member or guardian.
- Particular care is taken to provide for the safety, health and wellbeing of children and young detainees. They are segregated from adult detainees.
- Particular care is taken by custodial officials to act as role models for children and young detainees to encourage them to have self-respect and a sense of responsibility.

#### ***Aboriginal and Torres Strait Islander detainees***

*People of Aboriginal or Torres Strait Islander descent are recognised as having distinct cultural rights. These include the right to maintain their kinship ties and their distinct relationship with the land and waters under traditional laws and customs.*

#### ***Indicators***

- The Victorian Aboriginal Legal Service and local Aboriginal Community Justice Panel are contacted when any person who identifies as being an Aboriginal person or Torres Strait Islander is admitted into police custody.

- As soon as possible after the person is admitted into police custody, the officer in charge will facilitate a meeting at the police station between the detainee and a representative of the Victorian Aboriginal Legal Service and/or the local Aboriginal Community Justice Panel.
- Particular care is taken to provide for the safety, health and wellbeing of Aboriginal and Torres Strait Islander detainees. Information provided by the detainee's legal or community representative is taken into account in providing the best possible treatment and care of the detainee and in determining what should happen when the person is released from, or transferred out of police custody.

***Detainees with health needs***

*Detainees with health needs are provided with health services equivalent to those available to the community as a whole.*

***Indicators***

- Custody officers are familiar with procedures for contacting appropriate health care professionals.
- Detainees who become unconscious, require immediate medical attention or are considered at high risk of harming themselves or others are immediately transferred to a prison, secure health facility or other appropriate health care facility.
- Detainees who require less urgent medical attention and who are waiting for a health examination are monitored at least every 15 minutes, or as otherwise prescribed by a health care professional.
- Detainees suffering serious medical or mental health conditions are transferred to an appropriate health care facility.
- Contracted health professionals are familiar with police custodial arrangements.
- Detainees with pre-existing medical conditions have access to their prescribed medication and, where practicable, access to their current treating medical practitioner.
- Detainees requiring medication have access to appropriately prescribed, dispensed and administered medication by a medical practitioner, pharmacist or nurse.
- Detainees undergoing methadone treatment continue to receive methadone administered by an appropriate health care professional.
- Medical advice is obtained for detainees appearing to withdraw from drug or alcohol addiction.

- Drug or alcohol addicted or affected persons are monitored in accordance with their physical condition and conscious state. In-cell contact with an intoxicated person or a person withdrawing from drugs or alcohol takes place at least every half hour, until the person responds to verbal prompting and is properly oriented in time and place.
- Any person who appears to be mentally ill is monitored continuously until he or she has been examined by a doctor or qualified mental health practitioner.
- A register is kept of all in-cell contact, including the time and duration of the contact, the custodial officers involved and the results of observations about the condition of any person who appears to be mentally ill or who is intoxicated.
- Any person apprehended by police under the *Mental Health Act* (Vic) 1986 or assessed as having a mental illness by a registered mental health practitioner is transferred to an appropriate health care facility as a matter of urgency.

## Relevant Victoria Police Manual References

VPM 101, 103, 105, 113, 114 & 115.

## Endnotes and references

- 1 *Charter of Human Rights and Responsibilities Act (Vic) 2006 s 22(1) and United Nations 1966 International Covenant on Civil and Political Rights Article 10*
- 2 *Police Integrity Act 2008 s 8 (Proclamation anticipated early December 2008)*
- 3 Ombudsman Victoria & Office of Police Integrity, *Conditions for persons in custody*, July 2006.
- 4 United Nations Office on Drugs and Crime 2006 *Custodial and Non-custodial Measures-Detention prior to Adjudication – Criminal Justice Assessment Toolkit, Custodial and Non-custodial Measures - Prisons – Criminal Justice Assessment Toolkit*
- 5 See in particular *Corrections (Police Gaols) Regulations (Vic) 2005*
- 6 Office of the Inspector of Custodial Services (Western Australia), *Code of Inspection Standards (Draft)*, updated 05/02/2007.
- 7 Commonwealth Ombudsman, *Review of ACT Policing's Watchhouse operations: Joint report by the Australian Federal Police and the Commonwealth Ombudsman*, June 2007; Human Rights Office (Australian Capital Territory), *Human Rights Audit of Quamby Youth Detention Centre*, June 2005.
- 8 Eric Blaauw, Riel Vermunt & Ad Kerkhof (1997). "Detention Circumstances in Police Stations: Towards Setting the Standards," *Policing and Society*, 7, pp.45-69.
- 9 National Centre for Policing Excellence (United Kingdom), *Guidance on the safer detention & handling of persons in police custody*, 2006. Coyle A, *A Human Rights Approach to Prison Management – Handbook for prison Staff* 2002

# Update on conditions in Victoria Police cells



# OPI Letter of transmittal

To

The Honourable the President of the Legislative Council (Vic)

And

The Honourable the Speaker of the Legislative Assembly (Vic)

This report is presented to Parliament in accordance with section 28(2) of the *Police Integrity Act* 2008. It summarises the results of an audit conducted in 2009 by the Professional Standards Assurance Unit of the Office of Police Integrity into conditions in the 22 category 'A' police cells operated by Victoria Police.

The focus of the Audit Team was to examine facilities, systems and processes in place in the cell complexes. Informal interviews were conducted with officers in charge of the police stations operating category 'A' cell complexes. Constraints on the scope of the audit meant detainees and some custodial staff were not interviewed. As a result, the Audit Team was not able to assess the qualitative experience of individuals detained in police cells, nor the extent to which detainees are treated with dignity and respect in accordance with their human rights.

It should be noted the audit could not have been undertaken without the full support and cooperation of the Victoria Police Prisoner Management Unit and the officers in charge of the police stations with category 'A' cell complexes. Their willingness to support the work of the Audit Team is appreciated.



Michael Strong  
DIRECTOR, POLICE INTEGRITY

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# Overview

This report summarises the findings of an audit conducted by the Professional Standards Assurance Unit of the Office of Police Integrity (OPI) from April to December 2009 of category 'A' police cells operated by Victoria Police.

Police cells are categorised as follows:

- Category A cells – charging stations with 24 hour operation and support observation of persons in police cells.
- Category B cells – stations with 24 hour operation with sufficient staff to provide support observation.
- Category C cells (emergency stations) – non 24 hour stations at which the cells may be used for emergency detention of prisoners pending:
  - release on bail or payment of a fine
  - removal to category A or B cells.<sup>1</sup>

Victoria Police currently has 22 police stations which operate police cells designated as category 'A'. Many of these facilities are co-located with, or in the vicinity of a Magistrates' Court. The category 'A' cells are also gazetted watch-houses with defined limits on the number of consecutive days the facility can hold any one individual. The category 'A' cells operated by Victoria Police can hold a total of 294 detainees for periods ranging from 3 to 30 days.

Victoria Police also manages the contract for the Melbourne Custody Centre, a police gaol designed to accommodate up to 72 detainees for up to 30 days per person. The audit did not include the Melbourne Custody Centre. The Melbourne Custody Centre is run by a private contractor, and falls outside OPI's jurisdiction, which is limited to the conduct of sworn police and Victoria Police policies, procedures and systems.

Individuals can be detained in category 'A' cells operated by Victoria Police for diverse reasons. They include:

- people who are intoxicated or appear to be mentally ill;
- those who have been charged and are awaiting transfer to a remand centre; and
- sentenced prisoners and those on remand, who are in transit before and after appearing in court.

There are a number of features that distinguish police cells from prisons managed by correctional facilities. In prisons, staff are specifically trained to look after prisoners,

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<sup>1</sup> Victoria Police Manual - Policy and Procedures Guidelines, Persons in Police Custody

whereas police are not. In addition, prisons are intended to accommodate individuals for lengthy periods of time, whereas police cells are designed as short stay or temporary holding facilities.

There is a widely held view amongst police and others that the custody of people in police cells is not a core function of policing. It is seen as a waste of police resources for them to be responsible for this function. Yet high demands on health and welfare services with insufficient access to safe and secure assessment, treatment and accommodation services, 24 hours a day, have a flow-on effect for police. They regularly find themselves providing custodial care for people who are intoxicated, drug affected or who appear to have a mental illness.

As most category 'A' cell complexes are co-located with courts, significant police resources are also expended in providing police escorts to and from court for people who have been detained in police cells. In some instances demands for police court escorts can only be met by supplementing custody staff with general duties staff, thus reducing the number of staff available for general duties work, such as responding to call outs, divisional patrols etc.

What is seen as the diversion of police resources from 'real policing' or operational duties creates problems in attracting appropriately experienced police for police stations that regularly accommodate large numbers of detainees.

The negative attitudes towards custodial duties expressed by many police is also reflected in the lack of priority Victoria Police has given to ensuring there is adequate training for custody staff, appropriate facilities and standardised operating policies, procedures and practices for cell complexes.

As a result, and contrary to human rights principles, there are significant differences in the treatment of detainees in police cells throughout Victoria. To a large extent, the rights and type of custodial care provided to a person will be dependent on which cell complex he or she is detained.

There is significant debate about the extent to which restrictive rules that ensure safety and good order should be modified to accommodate the individual needs of detainees. While some custody managers justify limitations on the rights of detainees as necessary for the safety and good order of the cell complex, others argue that affording rights to detainees creates a calmer atmosphere and easier work environment. In practical terms, the age of the facility and resources available to a particular cell complex also impacts on the sort of custodial care a detainee will receive.

Notwithstanding some systemic difficulties, the OPI Audit Team found that, since 2006, there has been a significant reduction in the overall numbers and length of stay of detainees in police cells. They also found that the majority of officers in charge of police stations with category 'A' cells were committed to the welfare of detainees. Their response to the audit process was generally co-operative and professional.

Many have embraced suggestions for improvement made during inspections. The general interest and commitment to contribute to improving systems is demonstrated by the number of custody managers who responded positively to an OPI invitation to participate in a working group to reflect on the audit findings.

The outcome of that working group was to identify priority areas which require attention by Victoria Police. These include:

- appropriate resource allocation;
- increased use of video link and implementation of court prioritisation processes;
- improved access to nursing and health services;
- standardised training; and
- increased uniformity for Standard Operating Procedures.

Some of these issues were identified in 2006. Although since that time Victoria Police through its Prisoner Management Unit has taken some steps towards a more co-ordinated approach to custodial care, more needs to be done. Victoria Police should capitalise on the momentum provided by the OPI audit to establish a mechanism that will coordinate and drive change and act as a repository for information and guidance on issues.

# Background

In addition to monitoring Victoria Police complaint handling, the functions of the OPI's Professional Standards Assurance Unit are aimed at supporting local police managers to understand that ethical health, performance management, dealing with complaints, having regard to human rights and providing professional policing services are interrelated and are the responsibility of every Victoria Police member, regardless of rank.

One of the ways the Unit is approaching this work is through targeted audits. The audit process can 'pulse check' systems and processes to identify constraints or systems issues that prevent or inhibit 'best practice'. It also enables OPI to provide formal recognition of good work undertaken by police.

In this case the audit process used by the OPI Audit Team measured the implementation and effectiveness of recommendations made in a joint OPI Ombudsman report in 2006. The Audit Team also assessed the impact of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter) on this area of policing, using a toolkit developed and published by OPI in 2008.

## 2005 Joint OPI Ombudsman Victoria investigation

In 2005, following concerns about overcrowding and long stays in police cells, OPI and Ombudsman Victoria commenced a joint investigation into conditions for people in police cells and prisons. The report of that investigation was tabled in Parliament in July 2006. Titled *Conditions for persons in custody* (the 2006 Report), the report set out key findings in relation to police cells. These are set out in Appendix One.

The report made a number of recommendations, 34 of which were aimed at improving conditions for people detained in police cells. Some of these recommendations related to improving communication between Victoria Police, Corrections Victoria and the courts. Others were more specific and were intended to improve the physical conditions of police cells and standardise practices across the state.

## Human rights

In January 2008, the Charter took effect. It requires public authorities, such as Victoria Police and OPI, to have regard to specific human rights and to both protect and promote human rights. In the OPI 2008 *Annual Report*, the treatment of people in police custody was identified as a key area of risk of human rights infringements by police. The Report also documented the results of a pilot audit of the implementation of recommendations from the 2006 Report that had been undertaken in the first half of 2008. That audit found:

*While there have been significant overall improvements in the number of detainees in police cells and their access to health services, it is of concern that, contrary to the Charter, the experience for detainees continues to vary sometimes dramatically, based on their place of detention.<sup>2</sup>*

One of OPI's objects under the Police Integrity Act 2008 is to ensure that members of Victoria Police have regard to the human rights in the Charter. In furtherance of that object, OPI developed a toolkit for assessing standards in police cells using a human rights framework. Titled *Policing and Human Rights: Standards for police cells*, the toolkit was based on international human rights instruments, best practice models for the detention of people and the findings of the 2006 Report. It was launched at the Victoria Police Inaugural Human Rights and Policing Conference and published on the OPI website ([www.opi.vic.gov.au](http://www.opi.vic.gov.au)) in December 2008.

## 2009 OPI Audit

From April to December 2009, OPI's Professional Standards Assurance Unit inspected each of the 22 police stations identified in Appendix Two. The focus of the Audit Team was to examine facilities, systems and processes in place in the cell complexes. Each station was evaluated against the recommendations from the 2006 report and the OPI *Standards for police cells* toolkit. Constraints on the scope of the audit meant the qualitative experience of individuals detained in police cells and the extent to which detainees' rights were respected, were not able to be assessed.

Following the inspection of each police station, OPI auditors prepared a draft report. This was then forwarded to the officer in charge of the station for comments as to accuracy. Once the comments of the officer in charge had been incorporated, the inspection report was finalised. A copy of the final inspection report was then forwarded to the officer in charge of the station that had been inspected and to the Victoria Police Prisoner Management Unit.

This report provides an overview of key themes that emerged from the police cell inspections. It also provides a statistical analysis of cell occupancy data for 2009 based on information provided by the Victoria Police Custodial Risk Management Unit.

A draft copy of this report was provided to Chief Commissioner Overland. His response is included as an attachment to this report as Appendix Three.

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<sup>2</sup> Office of Police Integrity 2008 *Annual Report* p37

# Facts and figures

This section of the report sets out statistical data that demonstrates differences and similarities between the various category 'A' cell complexes inspected by the Audit Team. Table 1 sets out a range of comparative data.

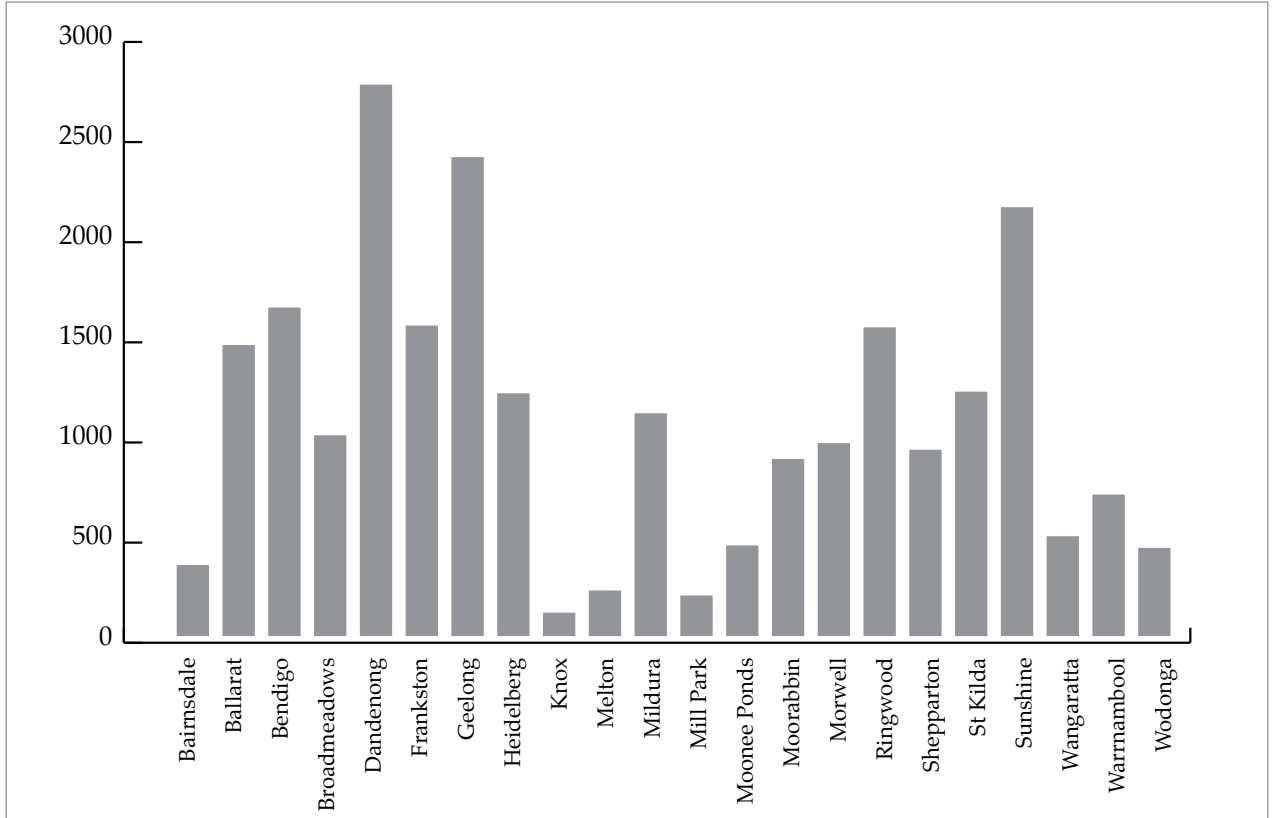
**Table 1: Comparative statistics 2009**

Police Station	Approx cell block age (years)	Cell bed capacity	Total detained 2009	No. Mental Health Act	No. 'drunk'	% 'drunk'	Average daily occupancy
Bairnsdale	5	11	399	1	221	55%	1.09
Ballarat	10	30	1498	1	680	45%	4.1
Bendigo	2	18	1685	20	940	55%	4.61
Broadmeadows	20	11	1047	4	177	17%	2.86
Dandenong	17	22	2798	3	369	13%	7.66
Frankston	16	16	1595	5	677	42%	4.36
Geelong	18	21	2436	1	1257	52%	6.67
Heidelberg	6	18	1257	0	195	16%	3.44
Knox *	19	8	161	0	36	22%	0.44
Melton *	16	16	272	1	134	49%	0.74
Mildura	3	16	1157	0	747	65%	3.16
Mill Park *	12	10	247	15	77	31%	0.67
Moonee Ponds	20	9	497	1	371	75%	1.36
Moorabbin	18	14	929	4	504	54%	2.54
Morwell	3.5	14	1008	1	218	22%	2.76
Ringwood	12	17	1586	1	543	34%	4.34
Shepparton	9	10	975	15	435	45%	2.67
St Kilda *	20	10	1265	3	1169	92%	3.52
Sunshine	10	12	2186	3	412	19%	5.93
Wangaratta	15	16	543	4	383	71%	1.48
Warrnambool	11	10	751	4	350	47%	2.05
Wodonga	7	14	485	11	276	57%	1.32
			<b>Total</b> 24777	<b>Total</b> 98	<b>Total</b> 10,171	<b>Av</b> 49%	<b>Av</b> 3.08

\*Denotes towns / suburbs without operating Magistrates' Courts.

The figures in Table 1 are based on all detainees entered into the custody module of the police data collection system, regardless of their length of stay. The custody type is based on the initial custody type at the time of admission.

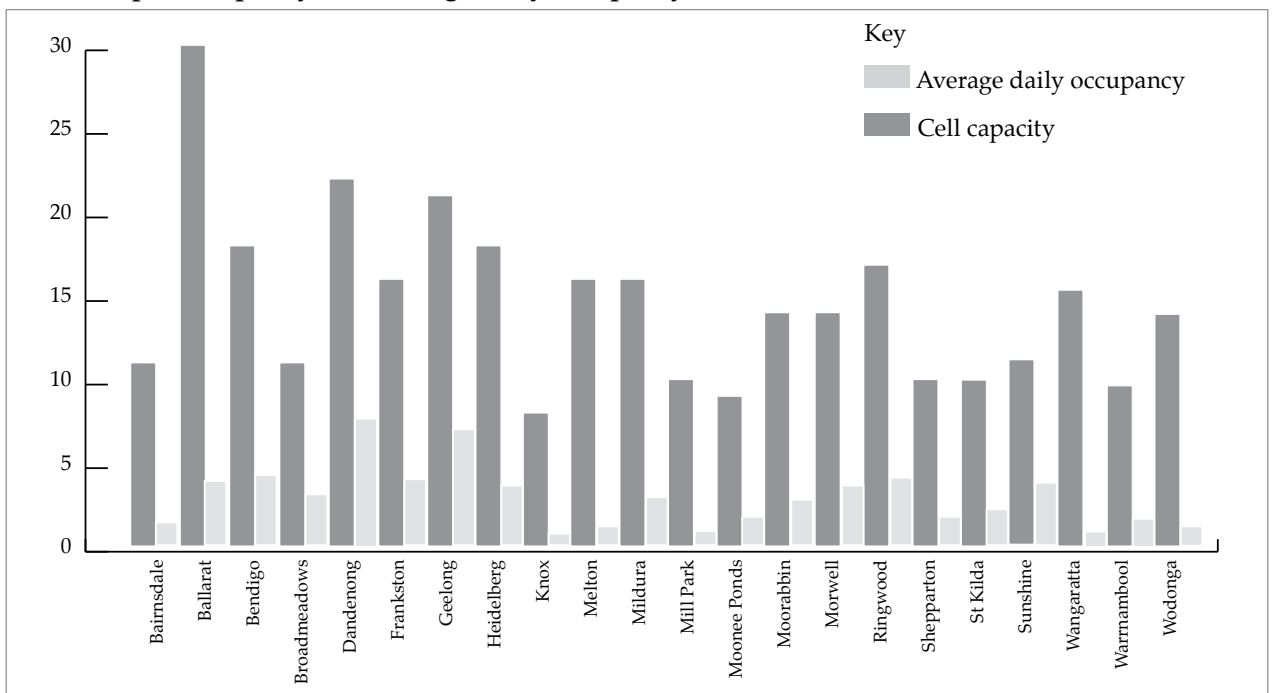
**Graph 1: Total number of detainees 2009**



Graph 1 depicts the total number of detainees to show comparisons at a glance.

It is not surprising that Dandenong, Sunshine and Geelong, which are co-located with busy Magistrates' Courts, are busy cell complexes.

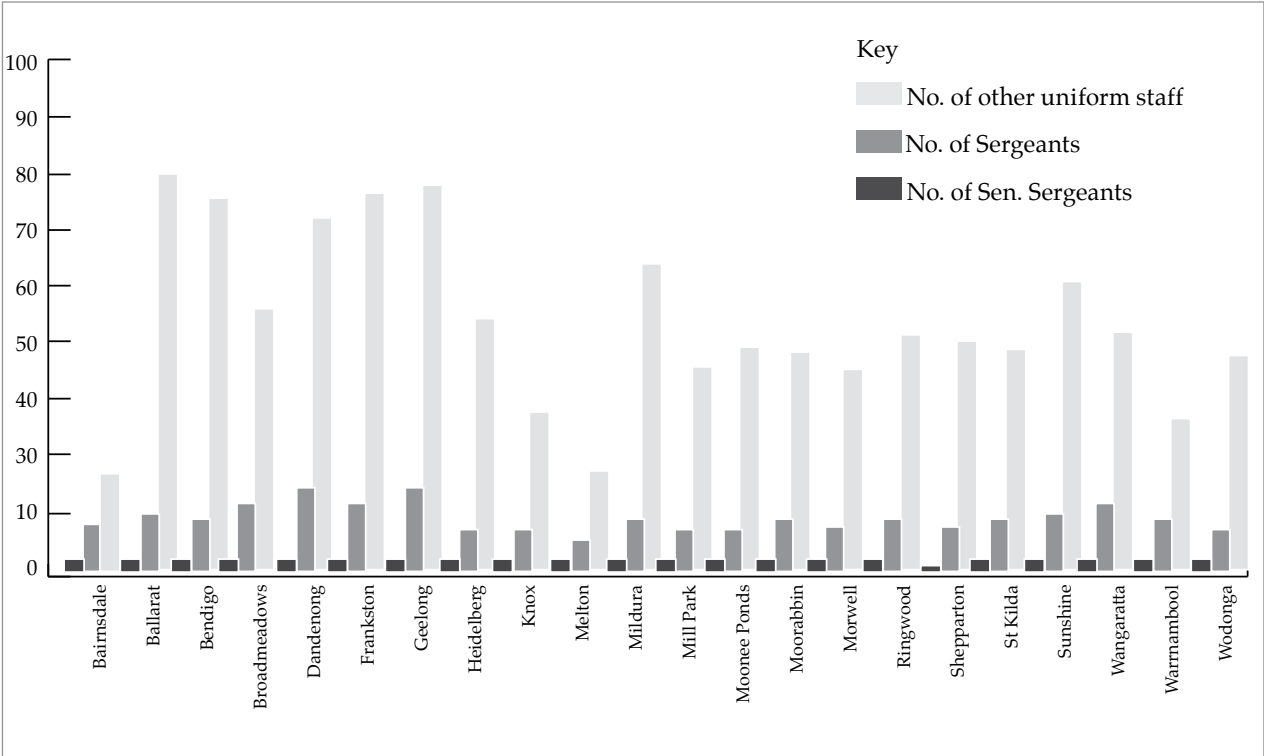
**Graph 2: Capacity and average daily occupancy**





Graph 2 demonstrates the cell capacity of each station and the average daily occupancy rate. Again, data for Dandenong, Geelong and Sunshine demonstrates the comparatively high work load of these cell complexes.

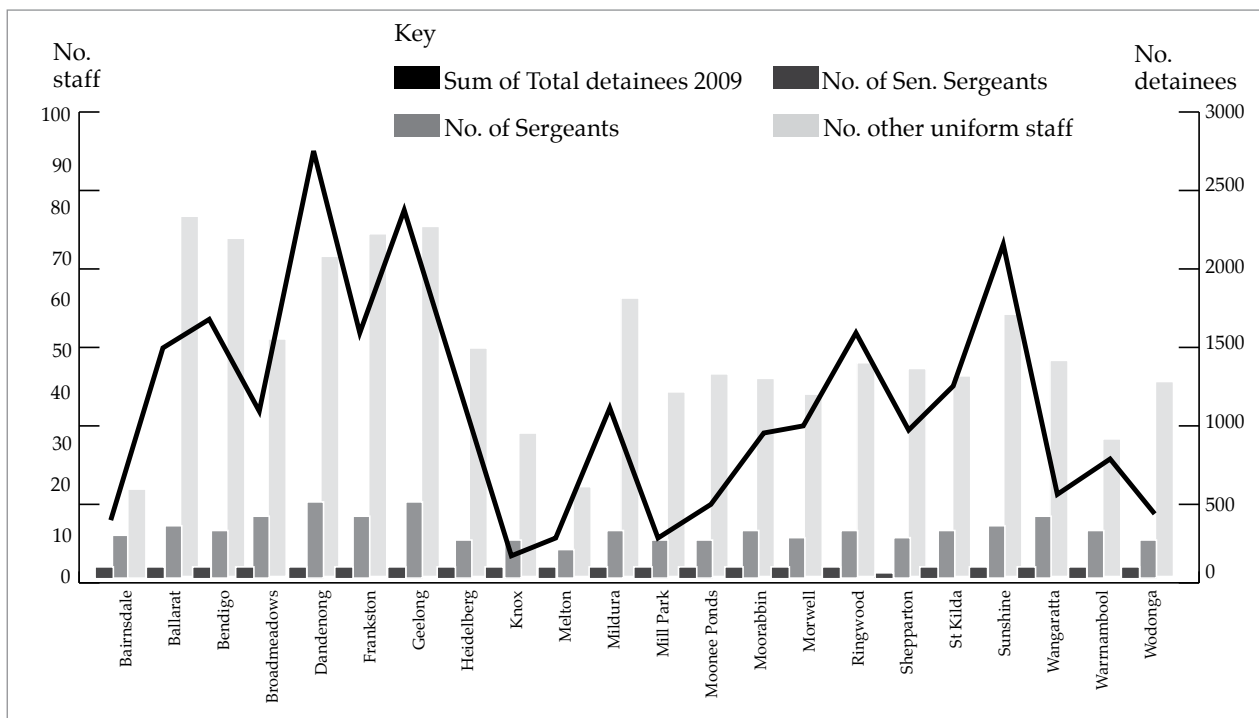
**Graph 3: Staffing profiles**



Graph 3 depicts the staffing profile of stations with category ‘A’ cells. Numbers represent staff allocated to a station. In any week, numbers of staff actually on the roster will be fewer than staff allocated to work at the station. This is due to staff absences, leave, secondments etc. While actual staff numbers will vary from roster to roster, staff allocation figures enable broad comparisons to be made.

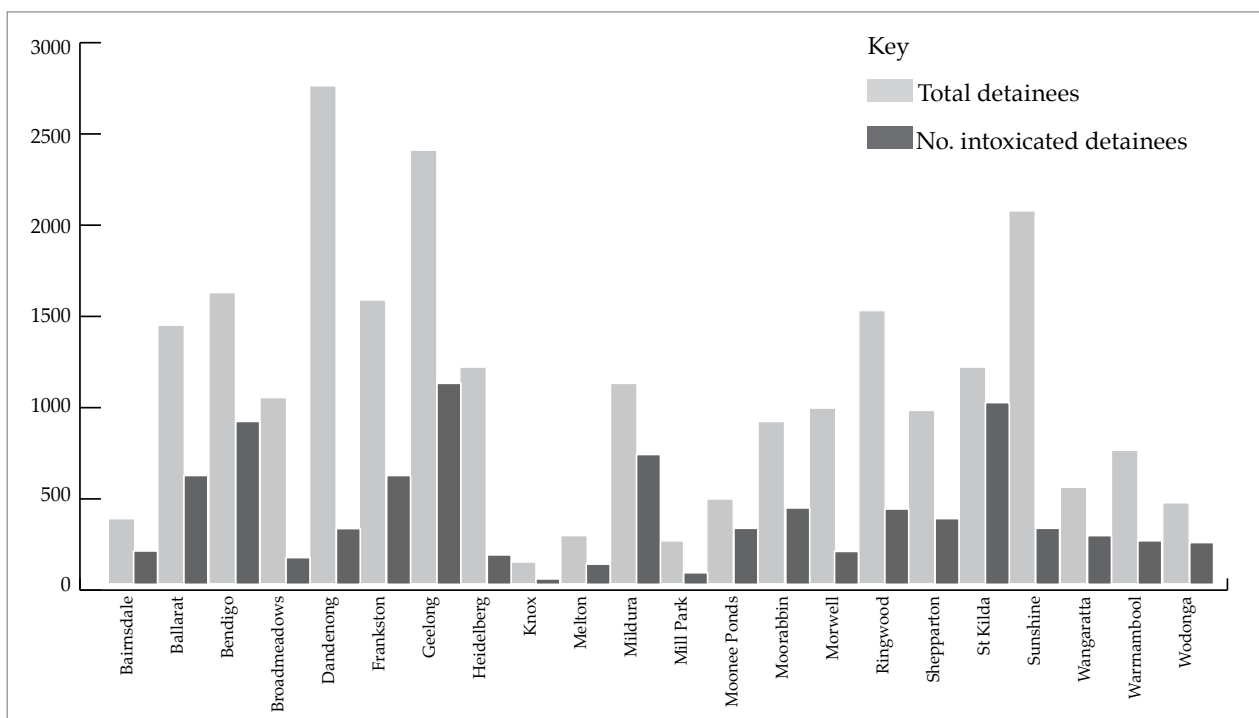
Most category ‘A’ cell complexes have two Senior Sergeants allocated to the station, although in some instances one of the Senior Sergeants may act as a divisional reliever. The Senior Sergeants are supported by Sergeants. Numbers of Sergeants range from six at Melton to 16 at Geelong. Numbers of Uniform staff (Constables, Senior Constables and Leading Senior Constables) range from 27 (Bairnsdale) to 81 (Geelong).

**Graph 4 : Staffing profile and total number of detainees**



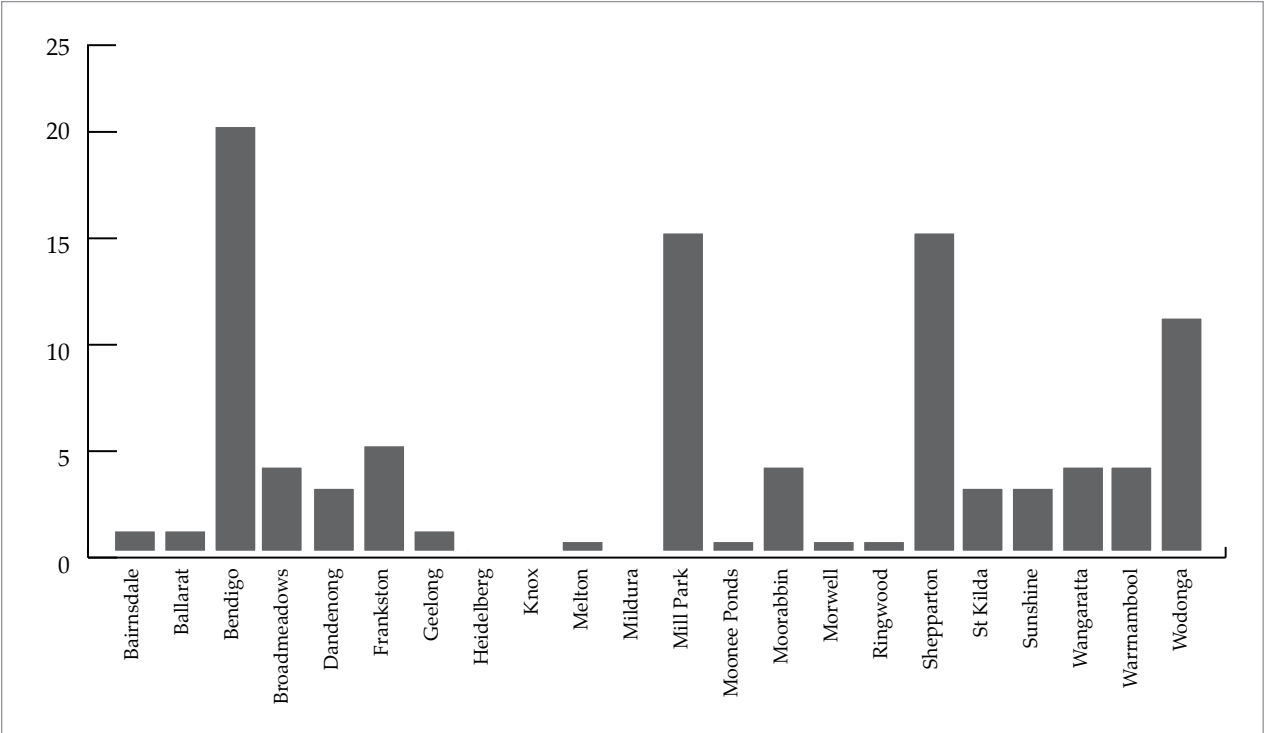
Graph 4 depicts the number of putatively available staff, that is, staff allocated to a station compared to the total number of detainees in 2009. This demonstrates that both Dandenong and Sunshine have the smallest ratio of staff to detainees. Knox, Melton and Mill Park have the fewest number of detainees compared to allocated staff. These stations are amongst the minority of stations with category 'A' cells not co-located or proximal to a Magistrates' Court.

**Graph 5: Proportion of detainees intoxicated**



As can be seen from Graph 5, many of the cell complexes record a significant number of detainees detained because they are 'drunk'. This feature of police cells was commented on in the 2006 Report. The proportion of people detained for 'drunkenness' ranges from 13% (Dandenong) to 92% (St Kilda) of all detainees.

**Graph 6 : Number of Mental Health Act detainees**



Victoria Police has only recently begun collecting data in relation to individuals detained under the *Mental Health Act 1986*.

While recently published research indicates a significant proportion (approximately 20%) of all people identified by police as potential offenders will have had formal contact with mental health services<sup>3</sup>, the figures in Graph 6 represents people who have been apprehended by police under section 10 of the *Mental Health Act 1986*. Section 10 will be invoked by police when a person appears to be mentally ill and has recently attempted suicide, or poses a risk of self-harm, or harm to others. Section 10 applies to people who are not suspected of being involved in any crime. It requires police to arrange for the person to be examined and assessed 'as soon as practicable'. The figures in Graph 6 are only a small sub-set of all detainees but represent people who have been detained in a police cell when they should have been in a hospital or health environment. It is of significant concern that individuals in urgent need of mental health services have to wait in a police cell before they can be assessed.

Despite increased 24 hour access to custodial nursing and medical support since 2006, police are still required to deal with detainees with a range of complex and potentially high-risk health needs. In some instances, at the same time as providing for the detention of people charged with criminal offences, or facing criminal court proceedings, police custody staff have to provide a safe environment for people who have a mental illness,

or who are drunk, or intoxicated, or who may be experiencing drug withdrawal, or extreme anxiety. Currently, the majority of police custody staff are expected to manage these potentially extremely volatile situations with no specific training in the custodial care of people with complex needs.

# Key themes

## Commitment to continuous improvement

Notwithstanding the lack of a consistent approach on a broad range of issues and differences in resourcing, workload, and work environments, the majority of those currently responsible for day to day police custody management approach their work with professionalism and commitment.

A number of custody complexes have used the 2008 OPI toolkit to modify practices. Without compromising safety and good order in the cell complex, some custody managers have taken steps to better accommodate the rights of detainees. While most custody staff spoken to by OPI auditors did not have detailed knowledge of the Charter, they had a general awareness of human rights as a concept and the need to treat detainees with dignity. Some underpin this approach by pointing out that treating detainees with dignity is likely to produce a more co-operative atmosphere in the cell complex, which in turn makes the job of looking after detainees easier.

Many category 'A' cell complexes have a Leading Senior Constable or Sergeant who is assigned portfolio responsibility for custody matters. Several of the police who perform these functions displayed an impressive knowledge of custodial processes. As the following examples demonstrate, some have adopted a proactive problem-solving approach to issues that have arisen.

### **Improved access to exercise and fresh air**

Half of the category 'A' cell complexes, including Moonee Ponds, do not have usable external yards with access to fresh air. Moonee Ponds have attempted to address this constraint (despite increased security risks) by allowing detainees to exercise and access fresh air while being supervised in the 'sally port' area. Similar to a carport or garage, the 'sally port' area is located at the back of the police station and is used for setting down and picking up detainees from divisional vans.

### **Addressing geographic isolation**

Mildura has attempted to compensate for constraints associated with geographic isolation by permitting detainees to have up to three visits a week from family and friends. The standard at most other cell complexes is one a week. Detainees at Mildura are also permitted greater access to a telephone than is the case at most other complexes. During the audit, the custody supervisor explained that the geographic isolation of Mildura means that face to face contact between detainees and their families is very limited once a detainee is transferred into the corrections system. Therefore, greater contact is permitted while the person is in the police cells at Mildura.

### **Training and facilities**

At Ringwood, managers have developed a multi-faceted training package for staff and purchased a custom-made rack to keep mattresses clean and aired.

### **Inconsistencies, lack of minimum standards**

Despite the progress that has been made in some areas, the lack of uniformity and minimum standards in custodial conditions across the State remains a major concern. In response to recommendations in the 2006 Report, the Prisoner Management Unit within Victoria Police, which is now part of the Custodial Risk Management Unit, facilitates communication between managers of cell complexes and holds an annual conference to update managers of category 'A' cells on current issues. Nevertheless, significant inconsistencies in practices persist.

### **The quality and content of Standard Operating Procedures**

The amount and relevance of information in Standard Operating Procedures varies significantly between stations. At some stations, the watch-house and gaoler instructions form a small part (in one instance 10 pages) of the overall station instructions. Other complexes have comprehensive Standard Operating Procedures for detainee management set out in 65-page documents.

The extent to which the Standard Operating Procedures are reviewed and kept up to date also varies. At Wangaratta, the Standard Operating Procedures were six years old. New Standard Operating Procedures were in the process of being signed off at the time of the OPI inspection, but it was apparent that the existing Standard Operating Procedures were out of date and out of sync with current practices. As there is no standardised training for custodial staff, Standard Operating Procedures are the only mechanism to inform good practice and to hold custodial staff to account for the way they carry out their duties. It is important that they are regularly reviewed and kept up to date.

There have been attempts in the past by individual cell complex managers, and Victoria Police more broadly, to encourage standardisation of detainee management practices. As a result, the Standard Operating Procedures for Bendigo, Morwell and Ringwood have the same structure and reflect many of the same processes. Apart from these three complexes, the only common feature of the Standard Operating Procedures of the remaining 18 complexes is their difference from each other.

### **Searches**

Section 104C of the *Corrections Act* 1986 establishes and prescribes search powers in relation to detainees in police cells. Broad search powers are granted in relation to anyone charged with an offence. More restrictive powers relate to police cell detainees who have not been charged.

In most cell complexes anyone detained for being drunk in a public place is given a pat down search only. Generally, these detainees are segregated from the other detainees.

While there is a consistent approach to searching those who are intoxicated, there is little consistency in relation to strip searches.

In some complexes, apart from those detained for being drunk in a public place, all detainees whether charged or not, are subject to a strip search. In other complexes only detainees who have been charged with an offence and subject to a risk assessment will be strip searched, if considered at risk of concealing a weapon or contraband.

Privacy considerations vary between cell complexes. At most cells, pat down searches are conducted at the processing counter. At all cell complexes, strip searches are conducted out of sight of other detainees. However, in half the cell complexes, strip searches are monitored by CCTV camera. One custody manager explained that the CCTV coverage safeguarded the participants in the search process. At another station, male detainees are searched in a cell with CCTV coverage but to protect the privacy of female detainees, they are searched in a multi-purpose room without coverage. At the remaining cell complexes, despite the logistical problems, searches are intentionally conducted in rooms without CCTV coverage, to afford the detainee privacy. This means searches are conducted in interview rooms, storage rooms and, in one case, a kitchen.

### **Visits**

The number of visits per week that detainees are permitted also varies between stations. At Mildura, subject to staffing, detainees are permitted up to three visits from family or friends per week. At Frankston, although detainees may be permitted to see family or friends in the visitors' rooms at the court before returning to the cells after a hearing, no visits are permitted in the cells. OPI auditors were told that this was because there are insufficient staff to supervise visits in the cells.

At most stations the information provided to detainees states that, subject to resources, detainees are allowed one visit a week, usually on a designated day. Most custody managers indicated that, in practice, a greater number of visits are permitted if staffing levels permit. If a detainee does not appear to be coping well, some staff permit longer or more frequent visits. Similarly, juvenile detainees are generally permitted a greater number of visits. Visits from legal practitioners and support workers are generally only limited if there is insufficient staff.

In the same way that the flexibility adopted by cell complexes in relation to visits is used to benefit detainees, some custody managers use their discretion to withdraw visitor entitlements as a mechanism for sanctioning 'bad' behaviour. One custody sergeant indicated that visits are one of the only behaviour management tools available to staff.

### **Other 'privileges'**

Every category 'A' cell complex now provides detainees with access to a basic common room that contains a television. Access to other forms of recreational activities varies across the state. Fifteen of the twenty-two category 'A' cell complexes permit access to items such as books, newspapers, magazines, playing cards and, in one case, a tennis ball. In many complexes the items are provided by the police station. In some complexes detainees must rely on items, such as books, to be brought in by family or friends. In a few complexes detainees are restricted to watching television, as reading material is prohibited. The OPI Audit Team was told this restriction was justified because, in the past, detainees had used written material to block drains or locks.

Although every cell complex will place a telephone call on the detainee's behalf upon arrival, only a minority of cell complexes will let detainees talk directly to friends or family over the phone. Many undertake to place subsequent calls to family or friends to convey messages, but access to telephones, directly or indirectly, is always at the discretion of watch-house staff. At one station, the cell rules explicitly state that access to a telephone through station staff is subject to the behaviour of the detainee.

Similarly, a number of stations indicated that the provision of hot drinks to detainees between meals is at the discretion of watch-house staff and contingent on the good behaviour of detainees.

### **Food**

Although Victoria Police has recently attempted to standardise food in cells by seeking a whole of sector contract in the 2010 tendering process, the OPI Audit Team found that the quality of food differed significantly between cell complexes. While all the food inspected appeared reasonably nutritious, the extent to which it appeared appetising differed markedly between complexes. The food that was provided daily by local businesses was the most appealing. The food at Mildura and Morwell, for example, looked appetising and at Morwell the servings were particularly generous.

At most cells, the food is provided by a hospital or private catering company. It is delivered to the cells frozen in take-away containers. Detailed instructions are generally available regarding the heating time required for meals. Vegetarian meals are generally available, although on at least one occasion no vegetarian option could be identified. Police were often vague about how other dietary requirements would be met. As frozen meals were often delivered only once or twice a week, there was no immediate opportunity to obtain special meals from the usual caterer. Staff told OPI auditors that meals to meet special dietary needs would be sourced locally, but they were unable to identify a specific supplier.

None of the police to whom OPI auditors spoke had been trained in food handling. It is not considered necessary by Victoria Police because staff either pass on freshly prepared



meals on plates or heated frozen meals in containers. Some custody managers expressed concern that food handling training is not provided as in some cases police do prepare toast or snacks

Custody managers told OPI auditors they monitor the quality of the food through feedback from detainees. Only one of them indicated that he had tasted a meal.

### **Variations in information available to detainees**

The 2006 Report made specific recommendations about the information that should be available to detainees and the manner in which it should be communicated. However, the information provided orally to detainees continues to vary between cell complexes. One manager indicated that the cell rules and processes are explained in detail. At another station, detainees are simply told to behave themselves. Police at a number of complexes indicated that the extent of the information conveyed to detainees depended on their familiarity with the police gaol system; new detainees are usually given information while experienced detainees are expected to 'know the ropes'. Often detainees are directed to written rules posted on the walls of the cell blocks and told they can ask questions. Although most detainees are able to communicate in English, police will use the Telephone Interpreting Service if necessary.

Most cell complexes have written rules available to detainees, either at the charge counter or in the internal communal areas or both. No-one provides detainees with individual copies of rules. Neither St Kilda nor Wangaratta have written rules on display, nor do they provide any oral explanation to detainees.

Most cell block 'rules' do not refer to evacuation procedures in the event of a fire.

### **CCTV systems**

Victoria Police rolled out new digital CCTV systems to Category 'A' cells over the period the audit was conducted. As a result, many of the custody managers were uncertain about how to use them, particularly in relation to downloading information from them. The newness of the systems makes it understandable that there was a lack of knowledge regarding some aspects of their functions, less understandable is the differences in responses to some questions asked by the OPI auditors. The Custodial Risk Management Unit, told OPI auditors that the CCTV systems should maintain recordings for 90 days before footage starts to be overwritten. Managers variously told OPI auditors in response to questioning that the footage was kept for 30 days, 40 days, 45 days, 60 days or 90 days. It is possible that the CCTV systems which have been installed do not all meet the expected standards. One manager said that the footage was supposed to be retained for 90 days but the system only appeared to be storing it for 30 days. Systems for downloading and storage of footage of incidents or access to such footage all varied.

### **Lack of current risk analysis**

It is apparent that many of the detainee management practices within cell complexes have developed as a reaction to specific events, rather than as a result of undertaking risk assessments based on the profile of particular detainees or conditions.

This is exemplified at Knox. The complex is more than 18 years old. In 2005 a detainee committed suicide by hanging. During the day Knox, like most cell complexes adopts the practice of encouraging detainees to stay in the secure common room, so that individual cells can be locked. However, as each cell has its own toilet, this creates a problem for detainees who need to use a toilet during the day. Most complexes allow access to a toilet during the day by leaving one or more cell doors open. At Knox the door of one of the male cells has been removed. This reduces the risk of hanging associated with an open door and removes the risk of crushing hand injuries associated with a door that opens and closes. At the same time individual cells can be locked and detainees have constant access to a toilet during the day while they are in the common room.

In some complexes cell doors can be locked open (Frankston). While the reaction of the management at Knox to a tragic event is understandable, the Knox approach has not been adopted by other cell complexes. Whether Knox management is overly cautious, or other complexes are not cautious enough, is not the issue, the issue is that there has not been a comprehensive risk assessment to inform standardised practices in this area.

The optimal solution is only available at the newest stations such as Mildura. At Mildura some doors may be locked open and have a cowl or pelmet over the top of the door to remove hanging points.

A further telling example of the reactive approach to risk management adopted by some custody managers relates to whether male detainees are permitted to shave. In eleven cell complexes, shaving is not permitted at all. In six cell complexes, shaving is permitted as a matter of course. In the remaining five cell complexes, shaving is permitted in certain circumstances, such as when a detainee is attending court. The actual risk associated with detainees having access to razors does not appear to have been assessed, or subject to any written instruction.

### **Minimum standards**

The issue of minimum custody standards was discussed with custody staff throughout the audit process and with the working group. Police were generally wary of the proposal. They indicated they had two major concerns. Firstly, that staffing levels may sometimes be inadequate to ensure minimum standards are met. For example, entitlements to a minimum number of visits needed to be contingent on there being enough staff available to supervise each visit. Secondly, they indicated that the ability to grant or remove 'privileges' is one of the only mechanisms they have to encourage detainees to cooperate with watch-house rules.

Despite these concerns, Victoria Police is obliged under the Charter to address the issue of minimum standards in relation to the rights of detainees. Appropriate adjustments to the resourcing of stations must be made to ensure minimum standards are met. The consideration of additional 'privileges', over and above minimum standards, to encourage cooperative conduct by detainees, is then a matter for individual custody managers.

## Differences in resourcing

### **Physical constraints**

The physical limitations of cell complexes are a source of frustration for many. The design of older cell complexes is incompatible with many of the minimum standards recommended under international human rights principles.<sup>3</sup> For example, some detainees have no access to an outdoor exercise yard and limited access to natural light. Many cells have flaking paint in the shower areas and are marked by scratched graffiti. The fact that some stations are leased means that modifications cannot be made. Custody managers are responsible for ensuring that regular maintenance is attended to, but few have access to funds to address major refurbishments.

### **Staffing**

It is a widely held view amongst police and others that it is a waste of resources for police to be involved in custodial and prisoner escort duties. In anticipation of a change in government policy on this issue, a number of new police complexes have been designed so the cells could be managed by an agency other than Victoria Police, as is the case with the Melbourne Custody Centre.

The view that 'watch-house' duties are non-core policing duties affects the capacity of police to attract suitably motivated staff to work in the area. A number of managers, particularly at stations with busy cells, told the OPI Audit Team that they have trouble attracting experienced or senior police to their stations because of the cells. As a result, some cell complexes have a disproportionately high number of probationary constables working in the area. This is not necessarily problematic at busy complexes where experienced staff are regularly rostered on to work in a supervisory capacity. Staffing requirements become more problematic in the stations with low daily occupancy rates. When detainees are present, these cell complexes are often required to draw on general policing resources to staff the custody area on an as needs basis. This means staff without the skills and experience to deal with the range of custody issues may be left to fend for themselves.

Lack of resources was also used by police managers to explain discrepancies in the level of attention shown to the rights of detainees. The extent to which detainees had visitor rights, access to telephone calls or males had access to shaving was, in many instances, dependant on the number of staff that were available to supervise detainees.

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3 United Nations *Standard Minimum Rules for the Treatment of Prisoners*

The 2006 Report noted that there was inadequate staffing and supervision of police cell complexes. It said custodial staff members were required to undertake a number of other tasks, such as attending to the front counter, answering telephones and managing firearms storage at the same time as supervising detainees. The 2009 OPI Audit found little had been done to address these issues. Inadequate staffing was identified by the working group of Victoria Police members convened for the audit as the most significant issue affecting their capacity to effectively carry out their custodial duties.

### **Court escorts**

Further demands are placed on police resources in providing court escorts for detainees. At one country station, it was reported that up to eight police at a time may be required for court escort duties. To meet this demand, police on divisional van duties may be taken off the road or neighbouring stations called upon to provide staff.

A consistent concern raised by cell managers in the course of audit inspections was that detainees no longer receive any priority in court listings. In one example, two police providing court escort for a detainee to a court hearing in a neighbouring town waited most of the day for the matter to be called. OPI auditors were told some solicitors are responsible for changes to court priority listing because they do not obtain instructions early enough in the day.

Lack of prioritisation for police detainees not only increases the demands on police, it also impacts on the rights of detainees. In some instances, particularly in rural locations, a remand prisoner may be transferred from corrections to custody in police cells to attend a court hearing. If the court hearing is delayed or extends over one or more days, the prisoner's cell at the correctional facility may be given to someone else. Demands on cells in prisons may mean the detainee is transferred to another part of the correctional facility or to a different location. Anxieties about this occurring can impact on the detainee's behaviour.

These issues are not new and have to some extent been addressed by increased use of video links between courts and prisons. There are currently some structural impediments to the immediate expansion of video linkage but further use of this mechanism is strongly supported by police to whom the Audit Team spoke.

### **Mental Health Act detainees**

As corroborated by the figures in Graph 6, some, but not all, custody managers reported difficulties with mental health Crisis Assessment and Treatment Teams. In some instances where difficulties are experienced, particularly in rural areas, there are no appropriately qualified staff available to attend cells. In other cases health professionals take too long to attend to assess individuals who appear to be mentally ill. Some managers reported that some health professionals prefer to assess people in police cells due to the shortage of other appropriately secure facilities. This is disturbing.

# Summary of progress since 2006

A number of the recommendations of the 2006 Report accepted by Victoria Police have been implemented. For example, all category 'A' cells have tamper-proof televisions and detainees have access to clean clothes as required. However there are a number of key recommendations that were agreed to by Victoria Police that have not been implemented at all or have been implemented by only a few complexes.

Two of the recommendations of the 2006 Report were that Victoria Police should:

- *Ensure that all prisoners coming to police cells are aware of watch-house rules and the consequences of breaching them, in particular in relation to smoking and*
- *Ensure that standard information about the watch-house rules is displayed in the reception areas of police stations so it is visible to detainees and also securely displayed on the wall within internal yards, as is the case at Ringwood watch-house.*

In response to the recommendation, Victoria Police advised that it proposed to audit all local watch-house rules for compliance, consistency and best practice regarding possible areas of improvement. It is evident from the inconsistencies identified in the current audit in relation to the information provided to detainees orally and in a written form that the recommendation has not been implemented.

A third recommendation of the 2006 Report was that Victoria Police should:

- *Appoint a central area to be responsible for the regular inspection of all police cells.*

Victoria Police agreed to this recommendation and the task was assigned to the Prisoner Management Unit. Inspections have occurred but they appear to be irregular in nature and have only recently become more frequent.

A fourth recommendation of the 2006 Report was that Victoria Police should:

- *Make improvements to the facilities available to medical and nursing staff in watch-houses. In 24 hour watch-houses there should be a separate room for their use with basic equipment such as a couch, desk and lockable cupboard. In all other stations, a space should be reserved for health care personnel, offering a degree of privacy.'*

Victoria Police agreed to this recommendation and proposed to conduct an audit of older facilities to assess suitability and cost of compliance. The 2009 OPI Audit found that many category 'A' cell complexes do not have a space reserved for health care personnel offering a degree of privacy, let alone a separate room with facilities. However, given the physical constraints and often cramped conditions observed at the older cell complexes during the audit, it is acknowledged that in most locations the recommendation is not able to be implemented.

A fifth recommendation of the 2006 Report was that Victoria Police should:

- *Organise regular workshops or training sessions for watch-house staff to share good practices and to help promote consistency across watch-houses.*

Victoria Police agreed to this recommendation and proposed the development of a tailor made training package. It is evident from the 2009 OPI Audit that a training package for use by all cell complexes has not yet been rolled out. Much of the progress that has been made towards the development of a package has been at the initiative of a group of members at Ringwood station. Little has been done centrally to co-ordinate the package or ensure it is appropriately distributed.

# Conclusion

Inconsistency between cell complexes on a broad range of issues emerges as the major theme arising from the cells audit conducted by OPI. The inconsistencies can be explained in variety of ways. The availability of staff and the willingness of managers to assign them to custodial duties affects the flexibility that is incorporated into watch-house rules. The location of the complex can have a significant impact on the conditions experienced by detainees. Conditions varied according to whether cells were adjacent to a court, in the city or in the country. Quieter cells and cells in rural locations were often more flexible regarding the number of visits a detainee could have. Yet staff at busier cells generally exhibited a greater knowledge of detainee management practices.

While managing police custody complexes and people in custody is seen by many as outside core policing duties, a number of custody managers took a positive approach to the audit, seeing it as an opportunity to improve practices. During the course of the audit a number of concerns identified by OPI staff were promptly rectified when they were brought to the attention of custody managers.

Although the focus of the audit was individual cell complexes, it became evident during the course of the audit that, at a corporate level, limited resources have been directed to improving and standardising custodial practices. The annual custody conference organised by the Prisoner Management Unit is a productive forum but there is no ongoing mechanism for driving change and improvement. For example, standardised training for detainee management has been under discussion since the publication of the 2006 Report but has not yet been implemented. Inspections of cell complexes over the last four years by the Prisoner Management Unit have been irregular and have been slotted in around its core business of managing prisoner movements. This is not a criticism of the personnel involved but a comment on the limited centralised resources assigned to this important area.

It is acknowledged that the Victoria Police Human Rights Project is working to address human rights in police cells. However, it is not the role of this project to be the repository of information and the provider of advice on ongoing improvements in respect to the broad range of issues associated with the management of police cells.

# Future directions

In March 2010, OPI convened a working group where OPI auditors met with Victoria Police custody managers to discuss issues identified in the audit. A number of issues were raised, some of which were more contentious than others. Overall there was consensus and strong support for a number of reforms. These include

- appropriate resource allocation;
- increased use of video link and implementation of court prioritisation processes;
- improved access to nursing and health services;
- standardised training; and
- increased uniformity for Standard Operating Procedures.

As stated previously some of these issues were identified in 2006. While since that time Victoria Police through its Prisoner Management Unit has taken some steps towards a more co-ordinated approach to custodial care, more needs to be done. Victoria Police should capitalise on the momentum provided by the 2009 OPI Audit to establish a mechanism that will coordinate and drive change and act as a repository for information and guidance on custody issues.



# Appendix One – Key findings in 2006 report

Key findings in relation to conditions in police cells were:

- *Sub standard conditions and overcrowding in police cells, particularly at the Melbourne Custody Centre.*
- *Vulnerable persons are inappropriately held in police cells.*
- *Segregation of different categories of detainees in police cells is difficult – males from females, young persons, drunks those with mental [health] problems and ‘protection’ status detainees, within the limited and confined space of most cell complexes.*
- *Poor safety, security and welfare conditions exist for the transport of persons to and from police cells.*
- *Unsatisfactory physical conditions and design faults, including hanging points, were found in the older police cell complexes.*
- *Intoxicated persons are frequently held in police cells inappropriately.*
- *Access to basic amenities in police cells, such as visits and telephones is limited – many inconsistent practices exist between watch-houses in providing access.*
- *Provision of basic services such as health care is often inadequate or absent.*
- *Absence of consistent training in duty of care and custodial role of watch-house staff.*
- *Lack of internal monitoring and supervision in many watch-houses.*
- *Staffing levels are insufficient for the tasks required in the watch-house.*
- *Systemic monitoring of conditions in police cells is absent.<sup>4</sup>*

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4 Office of Police Integrity, Ombudsman Victoria July 2006 *Conditions for persons in custody* p8

## Appendix Two – List of police stations inspected

Bairnsdale

Ballarat

Bendigo

Broadmeadows

Dandenong

Frankston

Geelong

Heidelberg

Knox

Melton

Mildura

Mill Park

Moonee Ponds

Morabbin

Morwell

Ringwood

Shepparton

St Kilda

Sunshine

Wangaratta

Warrnambool

Wodonga

# Appendix Three – Chief Commissioner’s response

11 JUN 2010 15:05

NO. 059 P. 2



VICTORIA POLICE

**Simon Overland** APM  
Chief Commissioner of Police

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Mr Michael Strong  
Director, Police Integrity  
Office of Police Integrity  
PO Box 4676  
Melbourne Vic 3001

P.O. Box 415  
Melbourne 3005  
Victoria Australia

Dear Mr Strong *Michael,*

## Update on conditions in Victoria Police cells

I have reviewed the draft Parliamentary report relating to conditions in Victoria Police cells and accept your findings identifying some inconsistencies over the review period of April to December 2009. As you are aware, Victoria Police has been working to improve custody conditions in its 'A' category facilities since the 2006 recommendations were made and that work is ongoing.

The Victoria Police Corporate Management Review Division has recently assessed our custody arrangements against the 34 recommendations made in your 2006 review and concluded that all but 5 of the 30 recommendations that relate to Victoria Police have been completed. Of those that have not been completed only 1, relating to the Melbourne Custody Centre is not in the process of being addressed due to the lack of an alternative facility. The remaining 4 recommendations, namely:

- New cells be fitted with basins to allow access to drinking water;
- Custody Welfare training package;
- Replace all vinyl foam square with a one piece mattress; and
- Allow detainees who are held for more than a day access to fresh air for one hour per day

are being addressed by Victoria Police and all are partially completed.

Victoria Police has recently established the Person in Custody Review Team led by Commander Trevor Carter and reporting to the Deputy Commissioners. This team is doing further work in relation to police custody issues and is in the process of developing an organisational based Code of Practice so that a minimum standard of prisoner care is achieved at all custody location.

If you have any further queries regarding this issue please contact Inspector  
Ian Geddes at my office on 9247 6585.

Yours sincerely,

Simon Overland APM  
Chief Commissioner

11, 06, 10