

**Understanding the Queensland
Women in Prison Report:
A Detailed Analysis**

Sisters Inside

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We have a system where there is virtually no accountability for the welfare of female prisoners, where the inspector of prisons reports to the minister—not to parliament, not to any other independent body. We have a system where the Corrective Services Department investigates the Corrective Services Department. We had the minister dismissing this report as containing no evidence of discrimination, yet page after page it raises serious issues of discrimination, just one example being on page 45 where it describes prima facie evidence of discrimination on the basis of disability.

Then we heard the minister go on to attack Debbie Kilroy, who runs an advocacy group called Sisters Inside. In a system where there is no accountability, where people in crisis support units are not subject to any outside inspection and they do not have anyone to whom they can turn if they are being mistreated, it is vital that there be independent advocacy groups. Yet this government would prefer to abuse the advocacy group, to demand an apology from Debbie Kilroy, than to listen to the serious concerns not just of Debbie but of the Anti-Discrimination Commission of Queensland.

(Dr Bruce Flegg¹, Member of Parliament)

¹ Speech by **Dr FLEGG** (Moggill—Lib) to the Queensland Parliament on 8 March 2006 at 12.27 pm, as reported in Hansard (Queensland Parliament 2006:675)

Introduction

So ... what's all the fuss about the Anti-Discrimination Commission Queensland's report on *Women in Prison*?

Sister Inside claims that women in prison in Queensland are being abused and discriminated against. This paper aims to explain how the Anti-Discrimination Commission Queensland (ADCQ) has seriously investigated these claims and found substantial evidence of possible discrimination/abuse, and how the Department of Corrective Services (DCS) has tried to dismiss what both Sisters Inside and the ADCQ are saying.

This paper is based on 3 documents, and what has happened since they were publicly released. The documents are:

- **Women in Prison: A report by the Anti-Discrimination Commission Queensland**, March 2006 (http://www.adcq.qld.gov.au/pubs/WIP_report.pdf)
- **Department of Corrective Services: Response to the Anti-Discrimination Commission Queensland Women in Prison Report**, March 2006 (http://www.dcs.qld.gov.au/Publications/Corporate_Publications/reviews_and_reports/ADCQ/ResponseFINALlowres.pdf)
- **Submission of Sisters Inside to the Anti Discrimination Commissioner for the Inquiry into Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland**, June 2004 (<http://www.sistersinside.com.au/media/adcqsubmission.pdf>)

This detailed paper is mainly written for people involved in advocating with/for women in prison. A shorter version in less bureaucratic language (57 pages) is available from Sisters Inside.

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Abbreviations Used in This Paper:

ADCQ = Anti-Discrimination Commission Queensland
 DCS/The Department = (Queensland) Department of Corrective Services

Prison Facilities for Women:

Wacol/BWCC = Brisbane Women’s Correctional Centre
 Townsville = Townsville Correctional Centre
 Numinbah = Numinbah Correctional Centre
 Warwick = Warwick Women’s Work Camp
 Helana Jones = Helana Jones Community Correctional Centre
 CSU = Crisis Support Unit
 DU = Detention Unit

The Story Sofar ...

On International Human Rights Day in December 2003, Sisters Inside wrote to the DCS, asking them to do a major review and report into the treatment of women prisoners in Queensland. The complaint argued that some of the practices in women's prisons were in breach of the (Queensland) *Anti-Discrimination Act 1991*, the Federal Government's anti-discrimination laws and human rights conventions.

Within 1 month, the DCS wrote back saying there was no discrimination!

Sisters Inside believed that discrimination against women was built into the whole criminal justice and prison systems (ie. *systemic discrimination*). They also believed that Aboriginal women and women with disabilities faced even more discrimination. So, Sisters Inside wrote again to the DCS, giving them more detailed evidence (from government documents) about discrimination against women prisoners.

The DCS did not act on the complaint. So, in June 2004 Sisters Inside sent a submission to the ADCQ, asking them to investigate possible *systemic discrimination* in the administration of women's prisons. Sisters Inside argued that *women prisoners experience direct and indirect discrimination on the grounds of sex, race, religion and impairment*².

Sisters Inside saw the main means of discrimination as:

- *The classifications system;*
- *The number of low security beds;*
- *Access to conditional and community release;*
- *Access to programs;*
- *Access to work;*
- *Strip searching.* (Kilroy 2004:3)

If direct or indirect discrimination was occurring, this would be in breach of the Anti-Discrimination Act.

In March 2006, the ADCQ released its report on *Women in Prison*, which agreed that some discrimination and breaches of fundamental human rights were probably occurring to women in Queensland prisons and recommended changes needed to avoid being in breach of the Anti-Discrimination Act 1991. At the same time, DCS released their *Response to the Report*, which argued that most of the problems identified didn't exist, were impossible to avoid, or were already being fixed up!

This paper analyses the ADCQ *Report* and the DCS's *Response* to it.

² Kilroy 2004:3

Some General Comments on the ADCQ Report

What is the ADCQ's job?

The Anti-Discrimination Commission Queensland (ADCQ) is responsible for investigating possible **discrimination** – that is, are people (or groups of people) being unfairly treated compared to other similar individuals or groups (on the basis of sex, race, disability and other characteristics³)? This includes the question of whether they are having less of their needs met, than the comparison group. The *Anti-Discrimination Act 1991* also gives the ADCQ the authority to investigate more subtle (indirect) discrimination and breaches of human rights:

A prison sentence deprives a prisoner of his or her right to liberty. It should not deprive a prisoner of other rights. A basic human rights principle is that all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the person. (ADCQ 2006:23)

The ADCQ approached this review from a broad perspective – looking at both direct and indirect discrimination and abuse of human rights. It is important to note that **equal but different** treatment is **not** discrimination. In fact, the Report includes recommendations for different treatment of women prisoners compared with male prisoners (eg. **Recommendations 2, 24**), and different groups of women prisoners (eg. **Recommendations 42, 25, 53, 37**), based on their particular characteristics and needs. As the Report says:

The development of specific policies to recognise the special needs of certain groups of prisoners is an important first step in creating a system that equitably deals with those (individual offenders') needs. (ADCQ 2006:20)

In other words, it recognised Sisters Inside's argument that accommodating women in an institution designed to meet the needs of men, is a *sex equality issue*⁴.

Why didn't the Report say "There is (or isn't) discrimination in women's prisons"?

Sisters Inside deliberately asked for an investigation, rather than an individual complaints process. This was based on their finding that, amongst culturally and linguistically diverse women, *76.9% of women in prison stated that they felt very uncomfortable lodging a complaint because of fear of retribution from the prison*

³ ADCQ 2006:24

⁴ Kilroy 2004:43

system⁵. Other women in prison are also afraid of possible retribution and *the more vulnerable a person is the less likely they are to disclose any abuse and mistreatment they are experiencing*⁶. This is a very reasonable fear, given the history of *unsatisfactory handling of previous complaints by government officials*⁷.

The *Women in Prison Report* is from an inquiry the Commission had undertaken. The Report is not a Commission **hearing**. It is not the purpose of the Report to formally investigate individual complaints and determine whether specific cases of discrimination actually exist. Instead, the Report is answering the question **“if someone put in a formal complaint, what are the chances of the ADCQ finding that discrimination exists?”**⁸

Basically, the Report has given DCS (and other government authorities) advance warning that they are **at risk** of a successful claim of discrimination against them, in **every** area raised in the *Sisters Inside* submission. Sometimes the risk is extremely high (eg. where the Report says that *“prima facie discrimination”* exists⁹). Most often the risk is serious (eg. where the Report says *“we have serious concerns”* or *“this may be a case of discrimination”*).

What does the Report cover?

Over 18 months, the review looked at the research that had already been done, and talked with many people. This included all key ‘stakeholders’ in the prison system (DCS management, prison staff, women prisoners, advocacy organisations, other professionals, etc.). There was also a chance for members of the public to put in submissions. The review looked at both legislation/policy and how it was applied in **practice**:

... the critical issue is whether these principles are recognised and applied in practice on a daily basis by all persons responsible for making policy, devising programs, and administering the prison system. These persons include staff and others who work directly with prisoners and those who supervise or interact with them.

One of the greatest challenges for administrators of any large institutional entity is identifying and eliminating or reducing the impact of systemic and indirect discrimination. Systemic discrimination is the creation, perpetuation or

⁵ *ibid*:34

⁶ *ibid*:42

⁷ *ibid*:42

⁸ Interestingly, the Minister for Corrective Service doesn’t seem to understand this! By saying that the report didn’t find any cases of discrimination as stated in Hansard on the 8th March 2006 (Queensland Parliament 2006:649), she shows her lack of understanding of the difference between research and investigation of individual complaints!

⁹ ADCQ 2006:45

reinforcement of persistent patterns of inequality among disadvantaged groups.
(ADCQ 2006:23)

According to the ADCQ, the DCS is required to provide corrective services, with the goal and purpose of *community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders*¹⁰.

The focus of the ADCQ's research and consultation review ... has been to understand the extent to which the DCS has achieved that goal and purpose in relation to all female offenders, and whether the means of achieving that goal is done in a non-discriminatory manner ... (ADCQ 2006:1)

The review examined the underpinnings of the correctional system, the prison infrastructure, the classification system, the opportunities for rehabilitation, women prisoners' health and safety needs, and how the needs of particular minority groups of women prisoners are addressed. (ADCQ 2006:20)

Women in Prison is a very long and detailed report (156 pages). It recommends 3 general changes and 68 specific changes. Overall, it identified 4 main issues:

1. Women prisoners may be over-classified.
2. *Children's needs are inadequately addressed.*
3. *Mental health issues are often ignored.*
4. *Indigenous women are especially at risk of discrimination.* (ADCQ 2006:5)

The Report is also a great source for basic information about women in the correctional system in Queensland. It includes clear, concise information such as:

- Queensland, national and international laws/agreements relevant to discrimination, human rights and imprisonment;
- the current structure of women's prisons in Queensland;
- findings of other research and reports (including some never publicly released by DCS);
- detailed statistics on women in prison in Queensland; and
- current DCS policies and procedures under each of the headings.

Each chapter includes a list of key comments made by women prisoners themselves.

¹⁰ Corrective Services Act 2000 s3, as quoted in ADCQ 2006:1

Some General Comments on the DCS Response

Whilst the ADCQ Report looks at both **theory and practice**, the Department of Correctional Services' (DCS) *Response* focuses on the Department's **policies and plans**. This is a very defensive document. It often uses emotional language and (in places) lack of rational argument and evidence when defending its position. The Response tends to talk about how difficult DCS's job is, rather than responding to specific concerns about possible discrimination in their policies and practices.

The Response rarely comments on what **is** ... it simply argues that new laws/rules will make things better. In some areas (eg. strip-searching) the Response argues that what they do at present is OK ... that "the ADCQ is *naïve* ... they don't understand the realities of prison management"¹¹. The main messages of the Response are "we've already fixed that" or "we are currently reviewing that" and therefore "this report is outdated/irrelevant". For example:

The result of the work that has been done in relation to prisoner classification is that the Department will operate a very different classification system than it currently operates and a very different system that was reviewed by the ADCQ. (DCS 2006:8)

The DCS Response agrees that many of the actions of prison staff are based on judgment, rather than black and white rules (eg. the classification system¹²). Yet, it suggests that new rules will deal with the problems raised by the ADCQ Report ... a **big** contradiction that runs throughout their Response. They simply ignore the fact that the Report is questioning **both** the rules **and** the way these rules are put into practice ... how prison staff make these judgments. This is partly why *Women in Prison* contains such strong recommendations about prison staff training (**Recommendations 41, 59, 65**) and accountability in general (**Recommendations 65-68**).

The DCS Response mostly focuses on a narrower definition of discrimination than the ADCQ Report. It often compares male and female prisoners (direct discrimination) and ignores the indirect discrimination and human rights issues raised by ADCQ. The DCS Response essentially argues that male and female *criminogenic needs* are similar¹³, and therefore it is not a problem that women's prisons are based on a model designed for men. It appears that only one book, published in the USA in 2003¹⁴, is used to support this claim. The DCS does not respond to the wide range of evidence for differences between the needs of male and female prisoners, included throughout the ADCQ Report.

¹¹ DCS 2006:11

¹² *ibid*:18

¹³ Andrews & Bonta cited in DCS 2006:34

¹⁴ *ibid*

The Response is contradictory right from its beginning. In its **first** paragraph it says the DCS *is committed to upholding the principles of the Anti-Discrimination Act 1991*¹⁵. On its **second** page, it argues that the ADCQ should have compared the way the Queensland prison system is run with *best practice* elsewhere¹⁶ ... suggesting that this should have been the focus of *Women in Prison* (rather than whether discrimination was happening). Whether Queensland prisons are *better* or *worse* than anywhere else is irrelevant! The question for the ADCQ was whether women are being discriminated against in Queensland prisons ... whether services and programs *reflect the different needs and capabilities of the individual groups of prisoners not measured in relation to each other, but measured in relation to their needs.*¹⁷

Where the ADCQ Report is often very concrete and specific, the DCS Response is generally vague. For example, the ADCQ called for more **low security** places for women prisoners. The DCS said this would be *simply not possible* within 100km of Brisbane, because only 3 of the 17 councils were interested in having a **high security** facility in their area, and people in Burpengary opposed an open-style **immigration** facility. In other words, the Response gave no evidence for their strong claim that creating more **low security** places would be impossible.¹⁸ In fact, the Response seems to indicate that the DCS has not seriously investigated the possibility, and does not intend to do so.

Further, the Response says DCS is building a new women's prison in Townsville with both *secure cell and residential style accommodation*¹⁹, but doesn't suggest that it will include low/open security accommodation. We know from experience at Wacol that residential style accommodation can still be high security. What is even more worrying, is that the Response implies that the proposed new South East Queensland prison will also fail to include low security facilities.

The DCS often uses *hardened* community attitudes toward prisoners as their reason for not trying to improve the treatment of women prisoners²⁰. Yet, there is no indication throughout the Response that the DCS is doing anything to educate the community that their assumptions about women prisoners are often wrong. More than this, the actions of the DCS seem to be reinforcing community misperceptions by presenting women prisoners as dangerous people who should be kept in the highest possible security.

If, in fact, as the DCS claims:

Many of the recommendations contained in the Report are consistent with changes to policy and practice that has been driven by ... departmental reviews

¹⁵ DCS 2006:3

¹⁶ *ibid*:4

¹⁷ Kilroy 2004:45

¹⁸ DCS 2006:7-8

¹⁹ *ibid*:7

²⁰ *ibid*:4

and the Department has implemented or will shortly implement many of these changes (DCS 2006:3)

then why is the DCS unwilling to report publicly on their progress in implementing ADCQ recommendations²¹?

Perhaps DCS's caution is the fact that public reporting would mean that their claims would have to be **tested**. The Response details changes in policies and structures, then, simply claims that these *made very real differences to the real life of female offenders, and their families*²². A good example is the *Through-care Model*, which the DCS claims will address many of the concerns raised by ADCQ²³. Despite the fact that a detailed process has been implemented by the Department, the Response includes **no evidence** that *real women* have found these changes useful. Essentially, the DCS is asking us to simply trust them, and arguing that public reporting of their actions (including in response to the Report) is unnecessary because their own internal accountability mechanisms are so effective.

The Response often simply repeats and details changes that have already been taken into account by the ADCQ and included in the Report. The DCS fails to address the concerns raised by the ADCQ about both current practice and proposed changes. Basically, the Response says "we're changing this, so you don't need to worry". The DCS applies this principle to many areas of the Report, including:

- Prisoner classification,
- Community release,
- Rehabilitation,
- Mental health (including use of CSU's),
- Strip searching,
- Children, and,
- Accountability.²⁴

Of course, the fact that something is **changing** doesn't automatically mean that it's **improving**. There is a serious risk of "shifting deck chairs on the Titanic" if the issues raised by the ADCQ are not addressed during the process of change. There is little evidence of this throughout the Response.

The DCS use of statistics is generally less detailed and sophisticated than ADCQ's. For example, in trying to demonstrate that women prisoners pose a greater risk than the ADCQ claims, the DCS **firstly** says:

²¹ This is in response to General Recommendation 3, which asks the DCS to include details of their progress toward addressing possible discrimination, in the next DCS Annual Reports for the next 2 years - DCS 2006:16

²² DCS 2006:6

²³ *ibid*:5-6

²⁴ *ibid*:8-12

It is true that only a very small proportion ... are defined technically as 'serious violent offenders' (DCS 2006:6).

then, it emphasises that many women are serving sentences for violence. The Response quoted its own **internal** report that found that 48% of women at BWCC and 75% of women at TWCC are serving sentences or on remand for violence offences. However, it does not address some major problems with its argument:

1. The internal DCS report is not available for the public to look at. We don't know, for example, whether ORNI (a risk assessment tool which was seriously questioned by the ADCQ) was used to develop those statistics.
2. The DCS totally ignores the detailed argument and evidence in the ADCQ Report about the large amount of violence which occurs in a **family** context and is unlikely to pose a threat to the wider community.
3. The Response simply believes that because the law says that prison should be a last resort in sentencing, then that is what's happening ... and therefore women who are imprisoned are, by definition, a serious risk. It totally ignores the ADCQ findings that show that imprisonment may not be being used as a last resort by sentencing authorities.
4. Whilst believing the courts use prison as a last resort, the DCS does not appear to accept the court's conclusion about whether a woman is a *serious violent offender*. (It is unclear why the DCS does not accept the findings of the courts, which look in details at the **circumstances** of the offence when determining whether the woman is a *serious violent offender*.)

Overall, the DCS is generally dismissive of the ADCQ's findings. The Response demonstrates clearly that DCS culture is committed to continuing its current general approach to women in prison. It is this approach which has led to the many examples of possible discrimination and breaches of human rights outlined in the *Women in Prison* Report. It is clear that the DCS is unwilling to make any major changes in response to the ADCQ Report.

Shortly before this document went to print, the DCS published a list of the ADCQ recommendations. The 2 page table listed which recommendations they said they did, and did not, support. The Department claimed to support less than half the Report's recommendations (35/71). This analysis suggests that even these 35 recommendations are not always fully supported. See **References** for publication details.

The General Recommendations

The *General Recommendations* are about the overall DCS process of responding to the ADCQ Report.

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

The DCS says that the new Act will include some of the issues raised. Most of those it lists²⁵ are **not** central recommendations of the Report. Rather, they are the Department's **own** plans for change. Some even seem contradictory to the ADCQ's recommendations (eg. *Classification* and *Safety Orders*²⁶). It does **not** appear that the DCS plans to address any (other) matters raised by the ADCQ as part of the legislative review process.

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

The DCS states that it *strives to avoid discriminatory practices against women*²⁷. The Response says that *where systemic discrimination against female prisoners is identified and substantiated it will take the necessary and appropriate remedial action*²⁸. This is interesting, given that the Department has effectively rejected **most** of the recommendations of the ADCQ Report, and doesn't comment on **many** of the other comments on possible direct, indirect and systemic discrimination included in the Report.

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

The Department says that it doesn't see *sufficient justification*²⁹ to report on its progress for in the next two annual reports. This means that we cannot expect to hear any further major/consolidated comments from the DCS on its actions arising from the ADCQ Report.

²⁵ *ibid*:15-16

²⁶ *ibid*:15-16

²⁷ *ibid*:16

²⁸ *ibid*:16

²⁹ *ibid*:16

The Classification System & Prisoner Management

There are valid and legitimate concerns that the classification system may be over-classifying women. The ORNI may be over-assessing their needs and risks, resulting in their imprisonment in a secure or other prison facility for unnecessarily longer periods than warranted.
(ADCQ 2006:133)

Early in the ADCQ Report, the significant differences between the prison numbers and offending patterns of male and female prisoners is spelt out. The Report emphasises that despite making up only 6.7% of the overall prison population³⁰, fewer women than men are convicted of violent offences³¹. Many women in prison (possibly higher than 85%³²) are mothers of dependent children, and most of them were primary or sole carer of their children prior to imprisonment. A disproportionately high percentage of women in prison are Indigenous³³ and/or disabled³⁴. Against this background, the Report examines the way prisoners are classified.

Sisters Inside's submission argued that risk classification influenced security classification, and therefore they had to be examined together. The DCS argued that these were completely separate systems. It is interesting that the new classification system proposed by DCS will be strongly focused on risk factors³⁵, since the Department was so clear that the security and risk assessment systems are separate. The Report looked at each, separately, and raised serious concerns about **both** current classification systems, when applied to women in prison. These concerns are equally relevant to the new system proposed by the DCS.

The DCS Response suggests that because less women than men are sentenced to prison (rather than other community-based penalties), this means that women *do pose a risk to public safety*³⁶:

Women remanded in custody have been determined, for example, to present too great a potential risk to others, too great a risk of re-offending, or too great a potential flight risk to continue to reside in the community until sentencing.
(DCS 2006:6)

They particularly see the fact that a higher % of women re-offend as supporting this claim³⁷. What they don't explain is why, if women prisoners are such a big risk, their

³⁰ ADCQ 2006:27

³¹ *ibid*:28-29

³² M.A. Farrell quoted in ADCQ 2006:30

³³ ADCQ 2006:107

³⁴ *ibid*:92

³⁵ DCS 2006:18

³⁶ *ibid*:6

average period of actual imprisonment (according to DCS's own statistics) is only about 2 months.³⁸

How women in prison are security classified

The classification system has a significant impact upon the day-to-day life of a prisoner. It is therefore of critical importance that the system be managed and operated in a way that maintains high standards of credibility, consistency and accountability. Otherwise the system risks encouraging or tolerating corrupt and incompetent practices. It also risks officers making unlawful assessments based on ill-informed or unarticulated prejudices about gender, race, disability or religious belief. ... The ADCQ is concerned that there is a strong possibility of systemic discrimination occurring in the classification of female prisoners, particularly those who are Indigenous. (ADCQ 2006:45)

The Report raises serious concerns about the fairness and accuracy of the security classification system for all women prisoners. The ADCQ was particularly concerned that the current system in women's prisons might have a discriminatory effect on 3 groups of prisoners.

1. The Report found that there was *prima facie* direct discrimination³⁹ against women with **mental health or intellectual disabilities** either because their health status is treated as important during assessment, or because the medical and support services they require are only available in higher security areas of the prison.
2. The Report found that **women from culturally and linguistically diverse** backgrounds may be discriminated against on the basis on race, during the classification process⁴⁰.
3. It is clear from the data that **Indigenous women** are disproportionately classified as high security prisoners⁴¹ and that this pattern has existed for several years. Indigenous women are more likely to be classified as high security and more likely to be held in secure custody, than non-Indigenous women. Indigenous women are more likely to have been convicted of a violent crime than other women ... but does this justify their higher classification? The Report argues that offences often occur in a context of long term domestic violence and when *these women are removed from those situations of domestic violence, they pose an extremely low risk of escaping or re-offending*⁴². The ADCQ effectively argued

³⁷ *ibid*:7

³⁸ DCS cited in ADCQ 2006:90

³⁹ ADCQ 2006:45

⁴⁰ *ibid*:45

⁴¹ *ibid*:48

⁴² *ibid*:49

that their type of offence and length of sentence is at risk of being 'double counted' ... in other words, that these are also used to assess the likelihood of escape or re-offending (2 completely different criteria in the 12 criteria of the classification system). The ADCQ concluded that ... *the integrity of the current classification system as a measuring tool (for Indigenous women) has not been demonstrated to the ADCQ.*⁴³

Overall, the ADCQ saw a danger of discriminatory decisions being made, based on the assumptions of the individual officers doing each assessment. It was concerned that **the current system of risk assessment appears to be highly subjective, with few levels of quality control to ensure consistency of decision making among officers.**⁴⁴ The Report detailed the concerns of women prisoners about the inconsistencies they felt were occurring during the classification process.⁴⁵ The Report argued that DCS should undertake research into the validity of the classification system, particularly in relation to men and women in minority groups (**Recommendation 2**).

The DCS argued the importance of prison staff judgment in making classification decisions:

It is important to note that each assessment is based on balancing the individual factors pertinent to the case. (DCS 2006:18)

The Response talked about earlier use of more measurable systems, and why they are no longer used. (This is mainly because the *risk* that women pose may change during their imprisonment⁴⁶.) However, the only mechanism used for monitoring these judgments is *random desktop monitoring on documents which record classification decisions*. The DCS implies that this is an adequate mechanism for ensuring *quality assurance*⁴⁷, and did not propose any other means of overcoming the problems of subjectivity and inconsistency of decision making raised by the ADCQ.

A consultation report quoted by the DCS admitted that not treating gender as a classification criteria might result in unfair disadvantage for women prisoners:

... it was generally stated that the classification criteria should not include a requirement to take into account gender, cultural and linguistic background, or Aboriginality. However, some respondents suggested that the inclusion of such a requirement would ensure that prisoners from these groups are not unfairly disadvantaged by the classification process. (Report by Dr Dominic Katter quoted in DCS 2006:18)

⁴³ *ibid*:49

⁴⁴ *ibid*:45

⁴⁵ *ibid*:54

⁴⁶ DCS 2006:18

⁴⁷ *ibid*:19

However, the Response implies that, because *the ADCQ does not produce any evidence of a classification system which is specifically geared to women in any other jurisdiction*⁴⁸, it is not reasonable for the Report to recommend changes. The Response goes on to dismiss or ignore the many concerns about security classification raised by the ADCQ:

1. Women with **mental health or intellectual disabilities**: The DCS Response said that *this factor is not included in the proposed new legislative factors*⁴⁹. The Department simply said they no longer upgrade the classification of prisoners with mental health issues. They did not address any of the issues of indirect discrimination in classification, raised by the ADCQ.
2. Women **from culturally and linguistically diverse** backgrounds: The only area of this finding addressed by the DCS Response, was comment that *a prisoner who does not want to be deported may be an increased escape risk*⁵⁰. The DCS did not comment on any other aspects of the ADCQ's concerns about possible discrimination against these women during the classification process.
3. **Indigenous women**: The Response did not comment specifically on issues related to Indigenous women and security classification.

Recommendation 3 of the ADCQ Report focuses on the importance of low security classification for rehabilitation. It recommends that female prisoners be classified at *the lowest level of security necessary*, and that this be formalised in legislation.

Impact of the new security classification system

The DCS made it clear that it did not fully accept the ADCQ's criticisms of the security classification system. But it did note that there will be changes under the proposed new Act - less security classifications, changing classification criteria and allowing women on remand to be classified⁵¹. The Response suggests that the new system will address many of the issues raised by the ADCQ. In fact, it appears likely to work directly **against** the spirit and concerns of the whole ADCQ Report.

1. Less security classifications: The Response does not explain how having less security classifications (only 2 for women) relates to the ADCQ's concerns. All women will be classified either *high* or *low* security ... the *open* classification will no longer exist.⁵²

⁴⁸ *ibid*:18

⁴⁹ *ibid*:19

⁵⁰ *ibid*:19

⁵¹ *ibid*:8

⁵² *ibid*:18

2. Changing classification criteria: Change is not always the same as improvement, and the DCS did not provide evidence for their claim that the new classification criteria will **improve** the situation of women in prison. How can elimination of the option of *open* classification improve women's position? It certainly isn't consistent with **Recommendation 3**, because the *lowest level of security necessary* may no longer exist.

The DCS plans to tie security classifications more closely to risk factors⁵³. The Response claims this will mean *that women are classified at the lowest level of security necessary to ... good order and security*⁵⁴. This is **not logical**, for 2 reasons:

1. The current lowest level of classification will no longer be available. The classification of all women currently in the *open* category will immediately be increased to *low* security. This will automatically **increase** their security classification, and will mean that in the future, women who **would have** qualified for open imprisonment will not even have the option.
2. If the classification process used retains the same problems as the current security and risk classification processes, which the ADCQ found may not be reliable (see comments above and later in this section). This may also **increase** the number of women on the higher classification.

The proposed new security classification system focuses on 4 criteria:

1. Nature of offence.
2. Risk of escape.
3. Risk of re-offending.
4. Risk of harm to self/others⁵⁵.

Whilst the DCS said *ORNI is not, and can not, be used to determine classification as it is not consistent with the legislative requirements*⁵⁶, the Department's response did not address subtle ways in which some of the problems with ORNI could be translated into the new security classification system. As the ADCQ has already found, the nature of offence may not relate to the security risk of the woman (eg. where violence occurs in a family context, this does not automatically mean that the woman is more likely to be violent). There is a danger of assessing officers making assumptions about the risk of escape (eg. where women are under immigration detention). There is a risk of assessing officers making assumptions about re-offending (eg. because someone is in a particular offence category or cultural group which statistically produces more re-offenders, **this** woman is more likely to re-offend). There is a risk of assessing officers making assumptions about the risk of harm (eg. because the person has behaviour that they find difficult to understand, or because they are nominally in prison for a "violent"

⁵³ *ibid*:15

⁵⁴ *ibid*:15

⁵⁵ *ibid*:18

⁵⁶ *ibid*:20

offence). **The DCS Response does not detail any new protections against these types of potential mis-classifications.**

Recommendation 3 also proposed the inclusion of the principle of *lowest level of security necessary* in legislation. The DCS rejected this. The only reason given was that no other State in Australia does it⁵⁷. **If**, in fact, the new system will mean that women are classified at the *lowest level of security necessary*, **then** it is difficult to see why the DCS is unwilling to include this principle in the new Act.

3. Allowing women on remand to be classified: *Allowing* classification for women on remand does not **guarantee** that they will be classified, nor that they will have access to the services and programs requested by the ADCQ. (This is further explored later in this section.)

It is **very** worrying that the DCS claim the new classification system *will align more closely to infrastructure*⁵⁸. The vast majority of existing facilities, and of proposed new facilities, are suited to medium/high security classifications. More importantly, when talking about the location of lower classification women in higher classification facilities, the DCS said:

There will be some differences in the management of prisoners, however this has to be balanced (against) the security of a facility. It is important that there is a level of consistency in managing prisoners at one location to ensure that operational protocols are easily understood by all staff and prisoners and hence enhance the safety of all persons to access a facility. (DCS 2006:20)

In other words ... **any** prison will function according to the security requirements of their highest classified prisoners. The only reason given is that it makes the system easier to understand. The suggestion that having a more easily understood system leads to greater safety for women prisoners, is difficult to understand!!!

Mis-match between classification and accommodation

The Report also focused on the problem of a mis-match between security classifications and the availability of lower classification beds. Because only 25.6%⁵⁹ of beds are low/open classification, many lower classified women are in secure facilities, under the same restrictions as higher classified women. It argues that all women in BWCC and TCC experience similar security measures and levels of supervision. The Report found:

The keeping of open classification prisoners in a secure facility is not best practice. All efforts should be made to ensure the open classification prisoners

⁵⁷ *ibid*:20

⁵⁸ *ibid*:15

⁵⁹ ADCQ 2006:46

are accommodated and remain in open facilities, even when they are in need of medical or other services.

... Only a very small minority of women prisoners are seriously violent or predatory. The majority of women prisoners can be appropriately managed in facilities that are based on community living, with prison regimes and practices to encourage positive supportive interaction between staff and residents. The highest priority should be given to the interests of children in determining the placement of mothers serving full-time sentences.

*DCS has already developed a modest but highly effective and innovative model that could be expanded and made available to many more female prisoners. The Warwick Women's Work Camp appears to have achieved commendable results in rehabilitating women prisoners ...*⁶⁰

It acknowledges the concerns of women in prison, who felt there were few opportunities for them to progress through the prison system, taking into account their classification, particularly compared to the opportunities for men⁶¹. This included concerns that *short termers* often end up serving their whole sentence in a secure facility, and that despite low classification women have to stay in high security facilities because of the lack of low security beds⁶².

The ADCQ recommended prioritising development of smaller facilities based on community living (**Recommendation 1**). The DCS said it agreed with this recommendation⁶³. This is **totally inconsistent** with its plans. The Department plans to build 2 big new prisons for women, beginning with one to open in Townsville in 2008 with 150 beds (later to increase to 200 beds), followed by another in South East Queensland with 250 beds. Only one small facility is planned – a work camp in North Queensland⁶⁴. According to the DCS:

*The Department will gradually move away from fenceless facilities ... and ... Future development of correctional facilities for all prisoners ... will include secure fences*⁶⁵.

In other words, there is **no** emphasis on small facilities. The DCS argues that having residential units for 6 women **within** the new prisons *mirrors life outside the facility* as closely as possible⁶⁶. It is relying on the **design** of facilities where staff and prisoners will be *sharing same space areas*, to address the ADCQ's proposal that accommodation should include *regimes and practices that foster positive and supportive interaction between staff and residents and the greater community*. Rather than promoting

⁶⁰ *ibid*:47

⁶¹ *ibid*:53

⁶² *ibid*:53

⁶³ DCS 2006:17

⁶⁴ *ibid*:7

⁶⁵ *ibid*:17

⁶⁶ *ibid*:17.

interaction with the community, the DCS is proposing to react to community pressure to increase security and separation.

The ADCQ Report's recommendations focus on placing women in the least restrictive environment possible, particularly if they are mothers (**Recommendation 5**). The Response did not support this recommendation. It stated that the DCS places prisoners in *accordance with their risk and **subject to the availability of open custody places***⁶⁷ (our emphasis). Clearly, since the Department plans to increase the number of large, fenced facilities with fairly uniform supervision based on the highest classified prisoners on site, there will be proportionally **less** genuinely low custody (and no open custody) places available. The DCS does not place any emphasis on improving facilities available to children, or changing the means by which *approval* is given for mothers to have their children with them⁶⁸.

Recommendation 7 proposes that women from NCC requiring hospital/dental treatment should not be housed in S1, or subject to strip-searching, whilst in Brisbane. According to the Report, *it could be argued that this is direct discrimination on the basis of impairment*, because women with health issues are treated less favourably than women without health issues at Numinbah⁶⁹. The Department says it is *investigating options for alternative service delivery close to Numinbah*⁷⁰. It does not offer any timeline on this *investigation*, or detail the efforts being made to improve the options to Numinbah women. But, in the meantime, the Response claims that strip-searching upon entry to Wacol is *mandatory*⁷¹. What DCS fails to point out is that this is the DCS's **own** rule ... not one imposed by legislation. It is the **DCS** that makes strip-searching *mandatory*, and the DCS could choose to change this requirement.

The ADCQ was positive about some elements of the Warwick model, and proposed applying these to any new facilities (**Recommendation 6**). It is difficult to understand the DCS's response to this recommendation. The Response uses obscure bureaucratic language to talk about which elements of the Warwick model will be included in the new North Queensland work camp. It seems to be saying that this will be a 5 day per week camp, with women returning to the Townsville prison each weekend. It seems to be arguing that this is partly in the prisoners' interest – so they can have visitors and *reintegration leave*⁷². The Response talks about *hot bedding*⁷³, which seems to suggest changing groups of women going to the camp. There's **lots** of talk, about **lots** of different *reviews, department projects and examination, with a view to refining and clarifying deliverables for the program*⁷⁴. We don't know exactly what this means, but it sounds like the DCS haven't finalised their plans yet, but the new work camp will be quite different from Warwick, with a much higher focus on security!

⁶⁷ *ibid*:22

⁶⁸ *ibid*:22

⁶⁹ ADCQ 2006:53

⁷⁰ DCS 2006:24

⁷¹ *ibid*:24

⁷² *ibid*:23

⁷³ *ibid*:23

⁷⁴ *ibid*:24

How women in prison are risk classified

According to the DCS, Offender Risk/Needs Inventory (ORNI) is a separate assessment from the classification system⁷⁵. ORNI is applied to all prisoners (male and female) serving sentences of more than 12 months. It is designed to identify the risk they pose to the community and what they need to reduce the chances of re-offending, so that an appropriate rehabilitation program can be put in place for each prisoner. Criteria used to make this assessment include *educational level, employment history, reliance upon government assistance, and ... housing background*⁷⁶. Sisters Inside's original submission to the ADCQ argued that the ORNI process *converts disadvantage into risk*⁷⁷.

The ADCQ raises serious questions about the:

- validity of the ORNI tool for assessment of risk (and therefore the viability of each prisoner's rehabilitation program), and,
- waiting times for programs.

Exactly the same assessment tool is used for female and male prisoners. The Report did not comment directly on Sisters Inside's claim that disadvantaged women are more likely to attract a high ORNI assessment. However the ADCQ does question the viability of applying ORNI to women prisoners, given the differences in offending patterns between men and women. According to the Report, research suggests *that the issues surrounding criminality in men need to be considered differently from those of women*, particularly in relation to history of abuse, the seriousness of their offence and employment history.⁷⁸

Recommendation 2 talks about the importance of having a classification system *based on the specific characteristics of women* and the need for research into the *reliability and validity of classification instruments*. This applies equally to security classification and risk classification (ORNI). As outlined earlier, the DCS argues that male and female *criminogenic needs* are similar (based on a single, American book)⁷⁹ and there are no women-specific systems elsewhere. The Response simply dismissed all arguments on the need for women-specific systems. The DCS does not argue that ORNI is reliable and valid ... only that systems like this are being widely used both nationally and internationally⁸⁰.

ORNI classification affects a woman's chances of **parole**. A prisoner with a high ORNI assessment will be expected to have completed more programs than one with a low

⁷⁵ DCS cited in ADCQ 2006:51

⁷⁶ ADCQ 2006:50

⁷⁷ Kilroy 2004:4

⁷⁸ ADCQ 2006:50-51

⁷⁹ Andrews & Bonta cited in DCS 2006:34

⁸⁰ DCS 2006:20

ORNI assessment. If the ORNI assessment is inaccurate, this could have major consequences for the woman prisoner. According to ADCQ:

A prisoner may therefore be unfairly refused parole owing to inaccurate assessments in both the classification and the ORNI assessments. (ADCQ 2006:52)

The ADCQ also noted the frequent concerns expressed by women prisoners that they sometimes have to wait a long time for programs, even those which are mandatory, to be available to them.⁸¹ Again, a failure to complete programs reduces a woman's chance of parole.

According to the Report:

These issues are of major concern to the ADCQ and must be the subject of investigation and independent research to restore confidence among all stakeholders in the fundamental systems being used by the DCS to manage prisons and those inside them. (ADCQ 2006:52)

The DCS Response does not say anything directly about these concerns. It argues that the new Act, which will contain automatic parole arrangements, will address any problems.

Women on remand

The Report argued that women on remand should not be automatically classified and treated as high security prisoners. They should be classified in the same way as other prisoners. If on long term remand, they should be assessed under Offender Risk/Needs Inventory (ORNI) and have the same access to programs and training as other prisoners. It was recommended that this be included in legislation (**Recommendation 4**).

The DCS plans to apply the new security classification system to these women, and include this in the new Act. This means that some women on remand could be classified low security prisoners.⁸²

The DCS rejected the idea of applying ORNI to remand prisoners, because it is based on the assumption that women have been found guilty of a crime, and these women have not yet been tried. The DCS argued that women should not be **offered** places in offence-related intervention programs for crimes they haven't yet been convicted of⁸³. The critical word here is **offered**. This is not about imposing programs on these women as punishment. (It would appear simple to incorporate something in legislation that said

⁸¹ ADCQ 2006:52

⁸² DCS 2006:20

⁸³ *ibid*:21

participation in a program was not an admission of guilt!) Regardless, the DCS Response is **contradictory**, because it goes on to say that women on remand have access so *services to assist in rehabilitation* and *substance abuse related services* based on assessment by a nurse⁸⁴. Why would they need *rehabilitation* if they are not convicted? Wouldn't provision of *substance abuse related services* have the same potential problems of associated guilt as participation in abuse prevention programs?

The Response included a long list of services/programs available to women on remand⁸⁵, but did not comment on:

- Whether they were guaranteed access to these services/programs,
- How quickly they might have access to these services/programs,
- Whether they use these services/programs with the same frequency as other women prisoners, or,
- What the consequences of using these services/programs are (eg. strip searching).

Apart from offence-related programs, the Response did not make clear whether women on remand would have the **same** access to the **same** services and programs as other women in prison.

Women's understanding of the prison management system

Many women in prison talked with the ADCQ about their difficulties in understanding the system and how it works. This included lack of information at the beginning of their sentence, inconsistent sentence management and lack of a clear progression through their sentence. They felt these *changing goalposts* made rehabilitation harder. They also felt classification was inconsistent.⁸⁶ The ADCQ asked DCS to review the information given to prisoners to address these issues (**Recommendation 8**).

The DCS says that it plans to review the information given to prisoners later this year⁸⁷, and provide a comprehensive prisoner education program on the new Act⁸⁸. The Response does not make any comment on whether/how it will improve the quality of its information to prisoners. Elsewhere in the Response, DCS argues that changes to the Act will make sentence management more consistent, and the process of progression through the sentence clearer. They provide little evidence for this claim.

⁸⁴ *ibid*:21

⁸⁵ *ibid*:21

⁸⁶ ADCQ 2006:54

⁸⁷ DCS 2006:24

⁸⁸ *ibid*:22

Low Security Facilities

There are ... legitimate concerns about the high numbers of women prisoners in Queensland kept in secure custody prisons, even through they are classified as low security prisoners. (ADCQ 2006:134)

Findings of the ADCQ Report

Only 23% of the available beds for women in prison are in (so-called⁸⁹) open security facilities. At the beginning of ADCQ's review, these were not all filled, despite the fact that many women were accommodated in higher security facilities than their security classification. Only 3 facilities (Townsville, Numinbah and Helana Jones) are available for women (compared with 8 for men) and only 1 work camp (Warwick) exists for women (compared with 11 for men). This means that women are more likely to be isolated from family/children, despite the greater likelihood that they were the primary carers of children prior to imprisonment. According to the Report:

The ADCQ supports an expansion of the work camp model. These camps should be established as soon as possible in both northern Queensland and South-East Queensland. Failure to provide equal access to these types of facilities is likely to constitute sex discrimination. (ADCQ 2006:59)

Numinbah is one of the facilities called "open security". The facility has both male and female prisoners. However, the women's area is surrounded by a high electrical fence, and the women at the Numinbah have more restrictions than the men. Whilst this might be necessary to protect the women, *it means that any benefits from being classified as a low security prisoner and accommodated in an open security facility are being subjugated to the needs of the larger number of male prisoners.*⁹⁰ This is inconsistent with the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, which says:

Men and women so far as possible be detailed in separate institutions: in an institution which receives both men and women the whole of the premises allocated to men and women shall be entirely separate. (Section 8a, quoted in ADCQ 2006:59)

The Report therefore argues that current arrangements have *the potential to discriminate against female prisoners on the basis of their sex*⁹¹

⁸⁹ It would appear that Helana Jones is the **only** facility not surrounded by security fencing.

⁹⁰ ADCQ 2006:60

⁹¹ *ibid*:60

Townsville is also has both male and female prisoners. Whilst some men are at a minimum security farm, women prisoners of all classifications are co-located. Due to overcrowding, higher classification women have been moved into the low classification facilities, and security has been upgraded to the level required for the higher classification. According to the Report:

The lesser freedom of movement for low security females in comparison to low security males may discriminate against women prisoners. (ADCQ 2006:61)

The Report is also critical of the standard of facilities at Helana Jones. It expresses particular concern about the lack of facilities for children between age 2 and 5, and the lack of exercise facilities for women⁹².

This is why the Report recommends establishing new work camps in North and South-East Queensland as a priority (**Recommendation 9**), and developing alternatives to Numinbah and Townsville which are genuinely open security and entirely separate from institutions for men (**Recommendation 10**).

The ADCQ expressed serious concerns about the accessibility of **all** low/open security facilities to people with certain disabilities. **All** are wholly or partly inaccessible for some women with physical disabilities. Further, **none** appeared to be easily able to accommodate a person with intellectual or mental health disabilities, who may require more support than prisoners without these conditions. The Report states:

Because of these access and support issues, it would appear that female prisoners with certain physical, mental health or intellectual disabilities are much less likely to be located in one of the low security facilities, compared to women without a disability. This appears to discriminate against female prisoners with certain disabilities, who, because of those disabilities, have to be held at the BWCC or the secure area of TWCC for the duration of their sentence. (ADCQ 2006:62)

The Report's recommendations include making at least one existing low security facility fully accessible for women with physical disability (**Recommendation 11**), ensuring that women with mental health or intellectual disabilities have the same access to low security facilities as other women, through provision of support services (**Recommendation 12**) and making all new correctional facilities fully accessible for people with a disability (**Recommendation 13**).

The DCS Response

The Department's response to specific recommendations made by the ADCQ, needs to be seen in the context of comments elsewhere in their Response:

⁹² *ibid*:61

1. The Department appears set to phase out open security facilities altogether.
2. Most plans for new facilities are for prisons which are designed to accommodate high security women prisoners. This means that low security prisoners will live under many of the restrictions of a high security prison.
3. The DCS showed its unwillingness to build new low security facilities early in its Response. It claimed (with little logical explanation) that:

The operational reality for the Department is that it is simply not possible to source land for a new open/low security facility (without a secure perimeter) in urban areas. (DCS 2006:7)

This is despite the fact that 3/17 councils near Brisbane approached about a new secure facility were interested⁹³! The DCS does not appear to have approached any in relation to a **low security** facility. On the other hand, it has acknowledged that *some more remote communities are willing to host facilities*⁹⁴.

4. The Response does not detail any specific plans for low security facilities other than the North Queensland work camp.
5. This is despite the fact that it did not demonstrate that there were any particular problems with the Warwick (rural) or Helana Jones (urban) low/open security facilities, or any other logical reason other than untested assumptions about community resistance.

The DCS says it supports **Recommendation 9**. However, it only talks specifically about **early** planning for one work camp in North Queensland. It is unclear whether any plans are in place for a women's work camp in South East Queensland. Given the review of the Warwick model discussed earlier, it is implied that the North Queensland camp will not be permanently residential and will have many of the restrictions typical of a higher security facility.

The ADCQ Report proposed alternatives to Numinbah and Townsville which are genuinely open security and entirely separate from institutions for men. (**Recommendation 10**). According to the DCS Response:

The Department ... already planned to ensure that women prisoners will be provided with access to the same accommodation options offered to male prisoners. Within secure custody this will include both cell and residential accommodation and within the community this will include both typical housing and hostel style accommodation where possible. (DCS 2006:25)

⁹³ DCS 2006:7-8

⁹⁴ *ibid*:7

There is no further detail **anywhere** in the Response about any plans for *typical housing and hostel style accommodation*. Clearly, any plans that do exist are not far advanced! There is no comment on the **contradiction** between the claim that the Department plans community-based housing, and the Department's commitment to *moving away from fenceless facilities*⁹⁵.

Again, the Response resorts to simple comparisons of men and women to try to argue that direct discrimination does not exist. It detailed the design features of women's facilities that are different from men's, then said:

In general, a female correctional facility is designed to create and foster a freer regime inside the secure perimeter than a male centre with the building layouts designed to encourage small group activities in an open environment. (DCS 2006:25)

No doubt the women at Numinbah who, unlike the male prisoners are surrounded by electrified security fencing, will be delighted to hear that their accommodation is freer than the men's!!! And the women in CSU's will be pleased to know that these facilities are more common in women's prisons than in men's, and have been developed to meet their *special needs*⁹⁶.

Recommendation 11 proposed making one existing low security facility accessible to women with physical disabilities. The DCS legitimately argued that it has to make a financial decision between renovating *old* facilities and building new ones. It says that new prisons will *include provisions for women with disabilities*⁹⁷. However:

- it is unclear whether this will make these facilities **fully accessible**, as proposed by the recommendation, and,
- it ignores the fact that most accommodation in future will effectively be in high security facilities (albeit in residential style accommodation for low security prisoners).

Rather than making a firm commitment to implementing this recommendation, the Response says *Modifications may be identified and endorsed in other facilities if/when required*⁹⁸ (which could be translated "we'll do it when and if we want to!"). The DCS argues that it does not currently have any physically disabled women prisoners. This ignores the fact that access issues may affect others (eg. visitors, children), not only the women prisoners themselves.

When talking about enabling women with mental health or intellectual disabilities the same access to low security facilities, the Department seems to ignore the part of the recommendation that suggests that they provide support services at low security

⁹⁵ *ibid*:17

⁹⁶ *ibid*:25

⁹⁷ *ibid*: 26

⁹⁸ *ibid*:26

facilities (**Recommendation 12**). It says that it *consistently strives* to place these women in low security facilities ***if this is appropriate*** (our emphasis)⁹⁹. However, it emphasises placing women near support services (particularly at BWCC) rather than placing the support services near the women! The Response makes no comment on the recommendation that support services be offered at other locations.

The Department says that it will comply with the laws (including the *Anti-Discrimination Act*) when building new facilities. It does not say that it supports **Recommendation 13**, and will make new facilities **fully** accessible for people with a disability.

Conditional Release and Post-Prison Community-Based Release

The ADCQ found that because of lack of facilities, many women (including those with short sentences) serve their whole sentence in secure custody. In particular, the Report was concerned about the greater percentage of Indigenous women (39.76%) compared with non-Indigenous women (28.37%) who are not granted conditional release¹⁰⁰:

No reasons have been given to the ADCQ by the DCS to explain the significant variance in the percentage of Indigenous and non-Indigenous women granted conditional release. In the absence of credible explanations for this variance, this must raise concern that Indigenous women may be experiencing indirect or systemic discrimination in the way their sentences are managed. (ACDQ 2006:64)

The new Act is expected to establish parole as the only form of early release¹⁰¹. Remission, conditional release and community based release won't exist any more. Release to work and home detention will be replaced by parole with relevant conditions. *If a prisoner is suitable for release*¹⁰², they will be under supervised community parole, rather than the current gradual, unpredictable process of release. The DCS says there will be a new parole board which is independent of the Department, a new probation and parole service, and new community corrections facilities in 4 rural communities.¹⁰³ The new system will be phased in over a 16 month period¹⁰⁴.

⁹⁹ *ibid*:26

¹⁰⁰ ADCQ 2006:64

¹⁰¹ DCS 2006:8

¹⁰² *ibid*:8

¹⁰³ *ibid*:8

¹⁰⁴ *ibid*:27

Perhaps the most significant change is that DCS staff will no longer make decisions about any form of release. For most prisoners serving less than 3 years, their release date will be determined as part of sentencing. Having a fixed release date should make it easier to plan for release. In response to the ADCQ's concerns, the DCS proposes that this will *ensure equity of release*¹⁰⁵ for Indigenous women.

The ADCQ found that proposed new legislation may address the overall problem of women serving their whole sentence in secure custody for women sentenced to less than 3 years. However, this may not apply to women serving over 3 years, particularly Indigenous women. It will also not address the problem of women spending their whole time in prison in high security conditions.

Current community corrections boards work by criteria. Usually, women are required to have a low/open classification to be eligible for community based release (release-to-work, home detention or parole). Usually, a *long term*er is required to have spent time in an open custody facility for 9 months to be eligible for conditional release. If the new parole board continues to apply this approach, this, **again**, raises questions about the reliability of the classification system, and the availability of low security accommodation.

Again, there appears to be a significant difference between the conditional release rates of Indigenous and non-Indigenous women. During a 3 year period, 51.44% of non-Indigenous women were refused conditional release, compared with 61.54% of Indigenous women¹⁰⁶. **Again**, the ADCQ raised concerns about the possibility of *indirect or systemic discrimination*¹⁰⁷ against Indigenous women. The ADCQ acknowledged Sisters Inside's concerns that many Indigenous women are unwelcome in their community of origin, and that this makes it more difficult to develop viable release plans. Whilst acknowledging existing DCS strategies to help Indigenous women maintain their community links during imprisonment, the ADCQ felt that more should be done. The DCS has not provided evidence to suggest that the new strategy will overcome these problems for Indigenous women serving sentences longer than 3 years.

Recommendation 18 proposes that the independent justice strategies review undertake further examination of conditional release programs for Indigenous women. The DCS has already provided a submission to the external review of the Aboriginal and Torres Strait Islander Justice Agreement.

Other recommendations called for:

- better statistical information on women who are released early, including comparison of Indigenous and non-Indigenous women (**Recommendation 14**). The DCS says *it is not proposed to provide the particular information as an*

¹⁰⁵ *ibid*:8

¹⁰⁶ ADCQ 2006:65

¹⁰⁷ *ibid*:66

annual matter of course (our emphasis), because conditional release will be redundant. Decisions about collection of data under the new system will rest with the courts/parole boards¹⁰⁸. It would seem surprising if DCS will cease to gather data, or make recommendations about what statistics to keep, under the new system.

- improved processes to aid in the early release of more Indigenous women (**Recommendation 15**). The DCS did **not** propose to make any particular changes to their processes for Indigenous women. The Response either defended current practices (eg. classification assessments and inclusion of cultural considerations in programs), or talked about how the Program Improvement Project is currently reviewing and clarifying referral criteria to intervention programs. (This Project might address DCS-perceived problems of over-servicing of some prisoners and insufficient servicing for others, including a possible alternative to the Transitions Program for prisoners serving sentences less than 12 months).¹⁰⁹
- development of specific programs to improve the opportunities and support for community release for Indigenous women (**Recommendation 17**). The DCS said it is already **reviewing** its various offender intervention programs to ensure they are relevant to the needs of Indigenous offenders (men and women) and completing a specific version of the Transitions Program for women.¹¹⁰ Reviewing existing programs is **completely different** to developing customised programs. In other words, they do **not** propose to develop specific programs for Indigenous women as part of the new system!

The ADCQ also expressed concern that DCS did not keep sufficient statistical information on community based release for women with intellectual or mental health disabilities. This made it impossible to determine whether (as Sisters Inside claimed¹¹¹) they are discriminated against in the conditional release process. (This will be equally relevant in the new system.) The Report further said that *failure to take such steps may indicate indirect discrimination on the basis of impairment*.¹¹² **Recommendation 16** called for *evaluation of the progress of women with ... disabilities through each stage of the prison regime to identify and take steps to address issues of potential indirect and systemic discrimination*. The DCS Response mostly talked about existing systems for identifying, assessing, (medically) treating and managing these women. It talked about possible new systems for assessment (an interdepartmental committee is looking at this) and improved treatment through transfer of prison mental health services to Queensland Health. The DCS did **not** agree to take any steps to address issues of possible discrimination.

¹⁰⁸ DCS 2006:27

¹⁰⁹ *ibid*:27-28

¹¹⁰ *ibid*:29-30

¹¹¹ Kilroy 2004:24

¹¹² ADCQ 2006:66

Strip Searching

Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating experience for any human being, male or female. Even if a strip-search is conducted in a totally professional and impersonal manner, the humiliation is compounded by the fact that prisoners then have to be supervised and relate on a daily basis with prison officers who have observed them in a naked and vulnerable state. In our western society where public nakedness is far removed from the accepted norm, this immediately reduces the dignity of any relationship between the prison guard and prisoner.

However, for a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatise women who have already been greatly traumatised by childhood or adult sexual abuse. The vast majority of female prisoners who spoke to the ADCQ said strip-searching diminished their self-esteem as human beings and greatly emphasised feelings of vulnerability and worthlessness. Strip-searching can greatly undermine the best attempts being made by prison authorities to rehabilitate women prisoners through programs and counselling to build self-esteem, cognitive and assertiveness skills.

(ADCQ 2006:72-73)

Mandatory strip searching is when a strip search is conducted **routinely**, rather than because there is a particular **reason** to believe that a woman may be hiding contraband.

The issue of mandatory strip searching was clearly of major concern to the ADCQ, and the Report devotes a whole section to this issue. The ADCQ acknowledged the occasional validity of strip searching in situations where there is reason to believe that women may be hiding a prohibited item. However, it expressed serious concerns about the frequency of strip searching of women prisoners, particularly those in the CSU who, until late December 2005, were required to undergo 6 routine strip searches a day and further strip searches in a range of circumstances. (The number of routine strip searches at Wacol, but not Townsville, was reduced to 3 in December 2005, however, the ADCQ was concerned that this was merely a change in practice, not policy, and could therefore be reversed at any time¹¹³).

The DCS made its overall position on strip searching very clear:

¹¹³ *ibid*:71

While it is acknowledged that many people find the idea of strip searching an affront to their personal dignity, these powers are warranted. Strip searches are essential for prisoner and staff safety and security and assist in the detection of contraband. All states in Australia have a practice of strip searching prisoners. (DCS 2006:10)

This statement immediately questions the idea of strip searching as a human rights issue, by making it an individual issue (*an affront to personal dignity*). The DCS Response does **not even mention** the issue of prior sexual abuse amongst women in prison, and reduces the possible impact of strip searching to a matter of individual discomfort. The Response does not distinguish between mandatory and non-mandatory strip searching. It implies that because strip searching occurs elsewhere, this justifies its use in Queensland and somehow addresses any questions of discrimination. The Response twice describes the ADCQ as *naïve to the complexities of the correctional environment*¹¹⁴.

The Report acknowledged Sisters Inside's argument that strip searching has proven an ineffective way of finding contraband. It quotes their finding that of 41,728 strip searches conducted over a 3 year period, only 2 searches discovered significant contraband. The ADCQ also acknowledged the DCS's argument that this ignores the deterrent effect of strip searching. Whilst Sisters Inside research found that *51% of women state that they are still using drugs within the prison*¹¹⁵, the DCS Response claims that drug use in the prison has been reduced from 20% - 5% since mandatory strip searching was introduced¹¹⁶.

On the balance of things, the ADCQ found:

It is apparent that drugs are entering and being used in secure prisons in spite of the rigorous strip-searching regime currently imposed by prison authorities. If there is any evidence that drugs are entering prisons through means others than prisoners and their visitors, prison authorities must consider the need for more frequent and rigorous searches of staff and other persons entering prisons. (ADCQ 2006:71-72).

The DCS Response specifically addresses the issue of drug use in prisons, and argues that rates of use in women's prisons are at least comparable, and sometimes higher than in men's prisons. It argues that *strip searching is one highly effective means of prevent(ing) drugs from entering into prisons*¹¹⁷. It does not address the statistics that indicate that drugs are extremely rarely found during strip searches, except to repeat their belief that they have a deterrent effect. Nor does it respond to the ADCQ's suggestion that alternate means of searching for drugs, including searching of staff, should be actively pursued.

¹¹⁴ DCS 2006:11, 31

¹¹⁵ Kilroy 2004:25

¹¹⁶ DCS 2006: 32

¹¹⁷ *ibid*:11

Another DCS rationale for strip searching is finding *implements of self-harm*¹¹⁸. The ADCQ noted that suicide attempts and self harm continue to occur in secure custody, despite frequent strip searching.¹¹⁹ The ADCQ recognised that the DCS has a legal *duty of care* for prisoners, and saw some validity in the argument that strip searches can be justified to prevent women from self harm. On the other hand, the Report noted the large number of women prisoners with a history of sexual abuse¹²⁰. Overall, the ADCQ questioned the **balance of harm** between strip searching to prevent self harm and its negative impact on mental health/rehabilitation. The Response did not include any comment on the *balance of harm* argument. The Report concluded:

The ADCQ still has serious concerns about the number of strip-searches conducted on prisoners being held in CSU, particularly where individual prisoners are being held in CSU for lengthy periods. (ADCQ 2006:73)

Strip-searching of distressed and vulnerable women should always be reduced to the minimum levels necessary, and this should be clearly stated in directives and instructions to staff working in the CSU's. (ADCQ 2006:75)

The Report identified two situations in which strip searching might constitute **direct** discrimination:

1. Inter-prison visits – Male prisoners are strip-searched once and female prisoners are strip-searched 4 times, because visits are located at male prisons¹²¹. (**Recommendation 22** called for immediate changes to this situation, so female prisoners are not strip searched more often than the men. The Department says it will re-examine the practice¹²².)
2. Women in CSU – Routine strip searching has a greater impact on women with mental health disability than on those who do not¹²³.

The Report identified a number of situations in which strip searching might constitute **indirect** discrimination:

1. Contact visits – Both male and female prisoners are strip searched upon return to their prison, but the overall impact on female prisoners is greater because of the high proportion that has been sexually abused¹²⁴.
2. Low security prisoners in high security facilities – Many women in prison are accommodated in a higher security facility than their security classification. Despite their low risk of escape or self harm, many are still subject to routine strip

¹¹⁸ *ibid*:31

¹¹⁹ ADCQ 2006:72

¹²⁰ *ibid*:72

¹²¹ *ibid*:70

¹²² DCS 2006:32

¹²³ ADCQ2006:74

¹²⁴ *ibid*:74

searching which would not occur if they were accommodated in low/open facilities¹²⁵. **Recommendation 20** saw relocation of these women as *a matter of highest priority*, and said they were undergoing *an unreasonable and unacceptable number of routine strip-searches*. The DCS basically justified its current practices, repeated future plans, and did **not** support this recommendation¹²⁶.

3. Frequency of strip searches in CSU's – If some of these searches are *unreasonable* (eg. less intrusive forms of search could be used at certain times), the frequency has a greater impact of women with a mental health disability¹²⁷. The Report noted that even when they leave their cells, women in CSU's are under constant observation, which raised the question of whether other forms of search could be used at some times¹²⁸.

Recommendation 21 argued the importance of reducing the number of routine strip searches in CSU's and making this a matter of formal policy. The DCS said it supported this recommendation. The Response then went on to justify current practice, and emphasise the decrease in the number of mandatory searches in the CSU at BWCC in late 2005. It didn't explain why it could halve the number of searches at Wacol *without increased risk of harm to prisoners or staff*¹²⁹, and not apply the same principle in the CSU in Townsville. It did **not** agree to extend this changed practice to Townsville. **Nor** did it agree to formalise the reduced rate of mandatory strip searching through a new directive.

Overall, the ADCQ found that **any** strip searching remains legally valid **only** for as long as alternative safe, less intrusive, equally effective search methods do not exist. It listed several ideas for reducing the number of strip searches. The DCS did not comment on any of these. It particularly identified body scanning machines currently used in overseas prisons as an alternative that should be seriously investigated.

Recommendation 19 requires prison authorities to be aware of alternative technologies as they emerge, and immediately apply any that meet these criteria.

According to the DCS, the methods used by prison officers in Queensland are *best practice*, and are conducted in a *professional manner*. The Response did not address the issues of the particular impact of strip searching on women with a history of (child) sexual abuse. The Response claims that the Department continually examines the viability of emerging technology to enhance security practices at correctional facilities, and has fully investigated alternatives to strip searching. It says that *there is no prison in the world that is widely using this technology* (our emphasis)¹³⁰. The DCS did **not** respond to the level of urgency implied by the ADCQ Report, and did **not** agree to

¹²⁵ *ibid*:74

¹²⁶ DCS 2006:31

¹²⁷ ADCQ 2006:74

¹²⁸ *ibid*:74

¹²⁹ DCS 2006:32

¹³⁰ *ibid*:31

immediately adopt viable alternatives. It only said that it would not **consider** alternatives until they were found to be safe. The Department emphasised the potential cost of introducing technology.

Access to Programs and Services

Being deprived of one's liberty is a severe form of punishment. It has long been recognised that, aside from community safety or punishment, one of the major roles of prisons is to provide prisoners with opportunities for rehabilitation. The concepts of rehabilitation is that the time spent in prison can be used as an opportunity to provide prisoners with programs and activities to develop skills and resources that will assist them to live in society successfully when they return to life outside, without committing further breaches of the criminal law.
(ADCQ 2006:79)

According to advocacy groups, there are less programs/services/activities available to women in prison than men. They are also lower quality and there is less choice.¹³¹

Recommendation 23 says:

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

This reflects the ADCQ's overall concern that programs/services/activities seem to be given a lower priority than custodial issues by DCS. The Report supports the concerns of a wide group of people – women prisoners in their comments to the ADCQ, advocacy groups (including Sisters Inside) and prison officers¹³² (as reported in a DCS study).

The DCS says it agrees with this recommendation and talks about setting up new directorates, policy reviews and projects in the Department to address the rehabilitation needs of prisoners. They appear not to have actually **done** anything to demonstrate a *similar effort*.¹³³

¹³¹ ADCQ 2006:77

¹³² In the DCS's own *Business Model Review* (July 2004), quoted in ADCQ 2006:78

¹³³ DCS 2006:33

Core programs

The ADCQ repeated concerns expressed by prison officers, advocacy groups and women prisoners about:

- the suitability, timing, quantity and variety of courses available to women in prison.
- the impact of limited opportunities to undertake core courses, on women's chances of parole or reduced security classification.

Core programs were originally designed for male prisoners. The ADCQ was clearly not convinced by the DCS's argument *that it develops programs specific to women's needs or modifies existing programs when there is a sound basis to believe that male and female prisoners' programming needs differ*¹³⁴. The Report did not review core programs. But, based on the wide concern expressed about program appropriateness, argued that DCS should do this *carefully and critically*, with particular reference to the *suitability and effectiveness of existing core programs for female prisoners*¹³⁵.

Adapting specially developed male courses for female inmates is unlikely to address satisfactorily, the needs of women prisoners, given their differing offending behaviour, their life and significant physical, psychological, social, vocational, health and educational needs. To be effective, programs need to be specifically developed to address women's needs and build their capacity to integrate into the community when they leave prison. (ADCQ 2006:78)

The DCS provided detailed information about current review and projects which are modifying core programs, including making some changes specific to *women, indigenous and special needs offenders*¹³⁶. This clearly does not address the ADCQ's call for customised programs.

The Report raised particular concerns about prisoners with *intellectual disability* (maybe 30% of women prisoners¹³⁷). The ADCQ found that there doesn't appear to be a systematic approach to dealing with the learning needs of people with intellectual, cognitive or learning disability within core programs. It was concerned that these women might suffer lower chances of parole than other prisoners, because the available programs were unsuitable. The Report said:

Neglecting the needs of these prisoners may be discrimination on the basis of impairment. (ADCQ 2006:79)

Report recommendations reinforce the many concerns expressed to the ADCQ about core programs:

¹³⁴ ADCQ 2006:77

¹³⁵ *ibid*:78

¹³⁶ DCS 2006:9

¹³⁷ ADCQ 2006:79

- **Recommendation 24** argues the need to separately work out what women need in core programs. The DCS says it has to review ORNI-R first. It is currently reviewing an outdated version of the tool. The Response does not include a date for beginning or ending this task. Despite the fact that this review has not occurred, the Department **again** argues the similarity between male and female offenders. The only difference acknowledged is in learning style.¹³⁸
- **Recommendation 25** requires regular evaluation of how core programs affect women's reintegration into the community. The DCS says it does this already, and will commence 6-monthly evaluations soon.¹³⁹
- **Recommendation 26** sees increased DCS resourcing of core programs as a *high priority*. The Department argues that it has already done a lot in this area, including external evaluation of programs and getting funding to revise/replace programs. "New" programs relevant to women that are being delivered are developed/adapted versions of *New Choices*, a preparatory program for higher risk offenders, and new medium and high intensity substance abuse programs. All other initiatives are still at the research/procurement stage.¹⁴⁰
- **Recommendation 27** talks about providing core programs suited to prisoners with learning-related disability. The DCS says that the new programs will enable these prisoners to beneficially participate. This is mostly due to improved facilitation. They also note that more severely disabled participants tend to benefit more from transitional support than programs. They do **not** propose any specific changes to core programs for people with disabilities.¹⁴¹
- **Recommendation 28** proposes that core programs be made available to women on lengthy remand or sentences of less than 12 months. According to the DCS, women on remand will continue to be excluded because core programs are designed for convicted prisoners. Women serving short sentences will continue to be excluded from *Making Choices* because of its length. The DCS does **not** propose to change this policy.¹⁴²

Vocational and education programs

This was a rare area in which, superficially at least, women prisoners had a higher level of involvement than male prisoners. In vocational education women had 10% participation, compared with 7.4% in the overall prison population¹⁴³. However, both prison officers and women prisoners identified a range of ways Adult Education could be improved, including better integration with industry (eg. work placement) and a wider range of trade/apprenticeship opportunities.

¹³⁸ DCS 2006:33-34

¹³⁹ *ibid*:34-35

¹⁴⁰ *ibid*:35-36

¹⁴¹ *ibid*:36-37

¹⁴² *ibid*:37

¹⁴³ ADCQ 2006:81

The Report found that including the prison address on TAFE and other certificates worked against women prisoners' rehabilitation and future employment opportunities. **Recommendation 29** proposed that the address be deleted in future. The DCS said that it is Departmental policy to exclude the name of the correctional facility from key documents. However, student results may include the post office box number of the facility. The DCS does **not** propose to change this policy.

Again, the ADCQ found no evidence of a focus on the needs of prisoners with intellectual disability in vocational and education programs, and recommended that prison authorities develop systems to overcome this problem (**Recommendation 30**). The DCS advised that, currently, *Education Officers who identify prisoners with an intellectual disability organise these individuals together so that trainers can tailor their delivery to meet the needs of this group*. The Department **does** propose changes in this area. A committee is looking at how to identify and assess prisoners with learning-related disabilities. The DCS plans to offer programs specifically to these prisoners, using trainers with experience teaching people with intellectual disability. Where these prisoners participate in mainstream courses, training will be delivered at a pace suited to the group. Additional tutorials will be provided on a group or individual basis. No timeline was offered for these activities.¹⁴⁴

Secondary/tertiary education

Again, women in prison engaged with secondary/tertiary education at a much higher rate than male prisoners. In 2004/5, 27.7% of women undertook (free, voluntary) secondary education, compared with only 7.9% of men. In 2004/5, despite the fact that students need to find a way to pay for their own tertiary education, 19.5% of women (compared with 6.1% of men) took up this opportunity¹⁴⁵.

The ADCQ was concerned that some prisoners reported being discouraged from full time study by prison officers¹⁴⁶. The DCS did not comment on this.

Other services

The ADCQ found possible discrimination in women prisoners' access to outdoor recreational facilities compared with men of the same classification¹⁴⁷. The DCS did not comment on this.

¹⁴⁴ DCS 2006:38

¹⁴⁵ ADCQ 2006:82

¹⁴⁶ *ibid*:82

¹⁴⁷ *ibid*:83

Work and Industry Opportunities

Because work rates vary so much between different men's and women's prisons, the Report could not easily compare opportunities for work between male and female prisoners in any of the 3 work areas:

- Helping the prison system to function
- Prison industries (commercial sub-contracting)
- Community service/paid job

Women's prisons had similar rates of work opportunities to some of the men's facilities. However, the ADCQ did find that some of the male prisons offered many more industry employment opportunities than any of the women's prisons¹⁴⁸.

The Report supported an earlier DCS study (the *Business Model Review 2004*) and argued for a much wider range of skills development opportunities for women. The ADCQ was concerned about the quality of work and the rehabilitation value of the work available to women prisoners. As the Report says:

For example, it is unlikely that there are few rehabilitative benefits being achieved through the Numinbah women performing the task of packing plastic forks into plastic bags. (ADCQ 2006:86)

Even the DCS's own study saw prison industries as needing reform, and suggested that DCS saw prisoner rehabilitation as less important than security¹⁴⁹. It found that Queensland prisons had the most limited scope of industries of Australian prisons¹⁵⁰.

Recommendation 31 suggests that DCS extend the scope of prison industries so the women can do work which genuinely develops their job skills.

The DCS Response restated information about work opportunities already covered by the ADCQ Report¹⁵¹. Apart from that, it said it is reviewing the function of prison industries, and *is considering a rehabilitative model which has a focus on providing prisoners with work readiness skills ... and which will increase the integration of accredited vocational education and training with the industries.*¹⁵² It did **not** propose any focus on broadening the range of opportunities for women prisoners, **nor** did it put a timeline on the review and/or any resulting changes.

The ADCQ consistently heard concerns from female prisoners about different pay rates for men and women, however, the ADCQ did not find *any clear instance where women*

¹⁴⁸ *ibid*:86

¹⁴⁹ As summarised in ADCQ 2006:84

¹⁵⁰ *Business Model Review* quoted in ADCQ 2006:85

¹⁵¹ DCS 2006:38-39

¹⁵² *ibid*:39

have been paid a lower base rate of remuneration for performing the same work as men¹⁵³. However, while male and female prisoners are paid the same **base** rates for their work, the ADCQ found evidence of possible discrimination in the payment of bonuses:

The ADCQ is concerned that the highly discretionary way bonuses are paid can inadvertently give rise to discrimination. ... The DCS should also carefully examine the availability of service and industry work to women with impairments, including those with intellectual impairments. Such women should not be denied payments of bonuses through imposition of terms that may be in breach of the Anti-Discrimination Act. (ADCQ 2006:87)

Recommendation 32 is that the DCS reviews its policy on bonuses to make sure that it is non-discriminatory. The Department says *it recognises the difficulties associated with the bonus scheme as well as appreciates the importance of maintaining a remuneration scheme that is fair and equitable*. The review of prison industries will include examining this issue, to try to find a system that is consistent. Again, no timeline is given for completion of this review or implementation of its findings.¹⁵⁴

Safe and Humane Custody – Overall Health Care in Women’s Prisons

It is a fundamental human right of everyone, including prisoners, ‘to the enjoyment of the highest attainable standard of physical and mental health’. (International Covenant on Economic, Social and Cultural Rights, quoted in ADCQ 2006:89).

The Report states clearly that because prisoners are dependent on the government for their health care, the government has primary responsibility for ensuring their health care is consistent with their human rights. Prisoners have the right to health care that is the equivalent of that available to the wider community. Imprisonment can damage the mental and physical health of prisoners, so they may need more health care than many members of the wider community.

Both male and female prisoners are typically economically and socially disadvantaged¹⁵⁵. This means that they can be expected to have greater health needs

¹⁵³ ADCQ 2006:86

¹⁵⁴ DCS 2006:39

¹⁵⁵ ADCQ 2006:80

than many members of the wider community. The Queensland Women Prisoners' Health Survey found that women in prisons are a *high need group for health services relative to women in the community*¹⁵⁶. In particular, there is evidence that many women prisoners have a history of drug abuse, mental health issues and/or (child) sexual abuse. This means they need more health services than many community members. (Of course, some women experience more than one of these problems.) Whilst there is currently a multi-disciplinary medical team in women's prisons, the Report proposes that more expertise should be drawn from experts outside the prison (including *community-based organisations with skills/expertise in these areas*)¹⁵⁷. The Report argues that it is particularly important that these experts can provide support both during and after imprisonment. The ADCQ sees *groups with expertise in assisting and supporting women who have experienced sexual assault* as particularly important.¹⁵⁸

According to the Report, a concerted multi-disciplinary approach is sometimes used by health services teams at the prisons, but only for prisoners at risk of suicide and only whilst their situation is acute¹⁵⁹. It is unusual for ongoing support to be provided to prisoners not at risk of suicide. The DCS has a unique opportunity to help women overcome the problems arising from their disadvantaged health history. An improvement in health services, is likely to be a valuable investment in the rehabilitation of women prisoners (and, therefore, in long term community safety)¹⁶⁰.

Recommendation 39 argued the need for more resources to address a range of health issues – not only mental health, but also substance abuse and sexual assault issues. Further, it says:

... In particular, a multi-disciplinary approach should make use of non-prison-based and community-based organisations with particular expertise in the areas of substance abuse, mental health and sexual assault. (Recommendation 39)

The DCS Response to this recommendation is interesting! The Department outlines a *whole-of-Government co-ordinated response* to funding community-based organisations providing services to offenders. It appears that all (Queensland) government departments have agreed to only fund organisations approved by DCS and to work closely with DCS when specifying services to be provided. The new Act will include the *basis for grant funding consistent with a new funding model for external providers, focused on accountability*¹⁶¹:

¹⁵⁶ B.A. Hocking quoted in ADCQ 2006:89

¹⁵⁷ ADCQ 2006:89

¹⁵⁸ *ibid*:89

¹⁵⁹ *ibid*:89-90

¹⁶⁰ *ibid*:90

¹⁶¹ DCS 2006:45

*These models will also seek to integrate the use of external services providers and other non government organisations in a new style of service partnership with the department.*¹⁶²

In other words, the DCS does **not** say it will increase resources in this area. But, it **does** say that whatever resources are allocated by **any part of** the Queensland government to external organisations will have to be approved and closely monitored by DCS. Further, the Response says:

*All delivery and interventions are evidence-based and use the assessed need profiles of offenders.*¹⁶³

This suggests that needs not identified through ORNI or other needs-assessment tools, and those not made known to the prison system, will not be addressed under the new model. This could have **very** serious consequences for responding the needs of women in prison which they may choose not to disclose to prison authorities ... the **very** needs raised by ADCQ – sexual assault, substance abuse or mental health issues. It might also have implications for the level of confidentiality external organisations are willing to offer women in prison.

In other words, the DCS's new approach to funding runs the risk of working directly **against** this recommendation.

Safe and Humane Custody – Mental Health

In examining the health and safety needs of women prisoners, the review has concluded that the needs of women with mental health issues are poorly addressed by the current custodial system. (ADCQ 2006:134)

According to a DCS survey 2/3 of all women prisoners reported that they had mental health treatment or assessment, prior to coming to prison¹⁶⁴. Again, according to the DCS, more women prisoners have a mental health history than men¹⁶⁵.

Sisters Inside's submission urged caution in accepting DCS statistics on mental health, because of the way this label can be used to take greater control over women

¹⁶² *ibid*:45

¹⁶³ *ibid*:46

¹⁶⁴ B.A. Hocking cited in ADCQ 2006:92

¹⁶⁵ Cited in ADCQ 2006:92

prisoners¹⁶⁶. However they, like the ADCQ, were very concerned about the use of prisons as *default placement for people with disabilities*¹⁶⁷, the lack of mental health services in women's prisons and lack of appropriate skilled response to women with mental health issues¹⁶⁸.

Alternatives to imprisonment for offenders with mental health issues

The Report found that there is a critical shortage of both in-patient and community-based mental health services in Queensland. It raised the question about whether people were being placed in prison *for their own safety* because of lack of other options, and argued the need for more research about this¹⁶⁹:

There is no dispute that improved and integrated services for mental illness and substance abuse, as well as assistance in areas such as housing, social and disability support, would reduce the likelihood of people with mental illness coming into contact with the criminal justice system. (ADCQ 2005:93)

The ADCQ noted that improved services in the community would reduce the number of women with mental health problems in the criminal justice system. **Recommendation 36** proposes that the Queensland Government addresses problems with provision of overall services to people with mental illness, to try to reduce the over-representation of women with mental health issues in prison. The DCS says it would support any whole-of-Government approach to servicing people with mental illness, and already supports some initiatives by individual government departments¹⁷⁰.

Despite protections in the criminal justice process, the ADCQ concluded that people with a mental illness are *poorly dealt with at all stages of the criminal justice system ...* and that staff at all levels in the system needed training on how to recognise people with mental health issues. The Report says:

This is an issue that needs to be properly addressed by the entire justice system to ensure that systemic discrimination does not continue to occur for persons with mental health issues. (ADCQ 2006:93)

It further argued that the DCS has a *major responsibility* to make sure that there are adequate alternatives to imprisonment for offenders with mental illness.¹⁷¹

Recommendation 35 argues for the development of *more and improved community sentencing options* to divert women with mental health issues from the prison system.

¹⁶⁶ Kilroy 2004:13

¹⁶⁷ *ibid*:12

¹⁶⁸ *ibid*:12-14

¹⁶⁹ ADCQ 2006:92-3

¹⁷⁰ DCS 2006:42

¹⁷¹ ADCQ 2006:93

The DCS detailed the new model of community corrections centres being developed as part of the new Act. The Department argues that these should improve their ability to support the use of community corrections orders by courts. The Response says that all *offenders will be assessed for special needs*¹⁷² and referred to mental health services if required. It does **not** detail any **specific** plans to improve availability of community mental health services or support offenders with mental health disabilities in the community.

The Department of Justice and Attorney General is responsible for developing sentencing options. According to the Response, they would support looking at ways existing sentencing options (eg. community corrections orders) could be improved or used more often, rather than developing new sentencing options.

Perhaps the increased number of community corrections services in urban, rural and remote areas will increase the willingness of judges and magistrates to use sentencing alternatives. But, will they use them for women with mental health disabilities:

- in the absence of improved community mental health services?
- in the absence of specialist DCS programs/services for women with these disabilities?

And ... if there is a serious prospect of this, why are they building so many new beds for women in prison at a time when crime rates are falling?

Treatment of women with mental health issues in prison

Whilst seeing diversion from prison as the best solution for many women, the ADCQ also looked at the treatment of women with mental illness inside Queensland prisons. It drew heavily on 2 previous reports – the (unreleased) report by the Community Forensic Mental Health Service (CFMHS) and the Palmer Inquiry into the immigration detention of Cornelia Rau.

The CFMHS report raised key problems in addressing the needs of prisoners with mental illness, which included:

- Debate between government departments about who is responsible for mental health services.
- Mainly aiming services at prisoners with major mental health problems and mainly using drug treatments.
- Keeping mentally ill prisoners in prison (including CSU) rather than admitting them to District Mental Health Services.
- Limited access to drug treatment and rehabilitation programs.
- Lack of treatment for people with personality disorders.

¹⁷² DCS 2006:41

- Limited access to ongoing therapy or counselling.
- Lack of programs designed for people with mental illness or intellectual disability.
- The harsh prison environment being unsafe for people with these disabilities.¹⁷³

According to the ADCQ, the draft report made recommendations which could improve prison mental health services without further funding. The ADCQ supports the recommendations of the CFMHS report, and says that it raises *serious concerns* that are consistent with their findings:

The ADCQ urges the government to act on those recommendations to ensure that the current level of inadequacy of mental health services provided to prisoners in Queensland does not continue. (ADCQ 2005:95)

It referred to the Palmer Inquiry, and its comments on the 6 month detention of Cornelia Rau in Wacol. According to the Report, the Palmer Inquiry was highly critical of the effectiveness of the prison in responding to a prisoner with a major personality disorder or major mental illness. The Inquiry said:

It might be necessary, in the light of experience, to radically reorganise existing relationships, training and clinical pathways for the delivery of services in the Queensland mental health system. In particular, the Inquiry has in mind the need to advance preliminary observations of possible mental illness more speedily toward action for assessment and to look for practical ways in which clinical pathways will better ensure the continuity of care. (Palmer Inquiry quoted in ADCQ 2006:95-96)

DCS advised the ADCQ that it is working with Queensland Health to transfer health care responsibility in prisons. The Department believes *this will improve the standard of care for prisoners with mental illness*¹⁷⁴. According to the DCS Response, it has received an additional \$342,000 for (all) prisoner mental health to the end of this financial year¹⁷⁵. It does **not** detail any ongoing increases in funding.

Whilst not commenting on whether this will lead to improved care, the Report did emphasise the seriousness of the current lack of services, as detailed in the CFMHS and Palmer Inquiry Reports:

The ADCQ does not believe that failures of the prison mental health services and systems to provide appropriate care are unique to the Cornelia Rau case. ... Prison staff with low-level training and skills in dealing with people with mental illness, often fail to recognise manifestations of mental disorder and respond with restraint or disciplinary action. (ADCQ 2006:96)

¹⁷³ cited in ADCQ 2006:94

¹⁷⁴ DCS 2006:10

¹⁷⁵ *ibid*:10

It reinforced the findings of the CFMHS report and raised concerns about the focus on drug therapies as the main form of treatment (where treatment is given), the lack of counselling/therapy, inaccurate amateur diagnoses by prison staff leading to inappropriate responses, the limited availability of beds at the forensic unit at John Oxley and the shortage of secure mental health beds in the Queensland health system generally. It concludes:

Because of the inadequate capacity or the reluctance of relevant authorities to admit and treat acutely ill patients, it appears that, on more than a few occasions, women prisoners with acute mental illness may be being inappropriately detained and receiving inadequate treatment in either the CSU, DU or health units of the women's prisons. Prison staff are not trained to deal with acute mental illness, and the prison environment is not an appropriate setting to treat women with serious mental health issues. (ADCQ 2006:97)

It appears that mental health issues are only briefly touched on in the 9 week training program for new prison officers. This is why **Recommendation 40** focuses mandatory training for prison staff on identifying and responding appropriately to mental illness. This is to ensure *that human rights abuses do not occur through misjudgment, ignorance or prejudice.*¹⁷⁶

The DCS rejects the ADCQ claim that initial training for prison officers only briefly touches on mental health issues. It lists the topics included in the course, but does **not** indicate the length or detail in which these topics are covered.¹⁷⁷ So we still don't know how *brief* (or long) the training is!!!

The DCS also talked about reviews currently looking at staff training in this area. The DCS is:

- Participating in the review of the *National Correctional Services Training Package* which is addressing the need for greater attention to the management of prisoners with mental health needs,
- Reviewing the ongoing training of officers in suicide prevention (including recognising and responding to mental health issues) and,
- Developing a refresher course in this area for officers, to be run every 3 years.¹⁷⁸

Recommendation 37 looks in detail at the need for better services for identifying and treating mental illness amongst women in prison. This includes improved rehabilitation and treatment programs, increased access to intensive care facilities for acutely mentally ill prisoners, extra support for counselling/therapeutic approaches and new ways of treating personality disorders.

¹⁷⁶ ADCQ 2006:97

¹⁷⁷ DCS 2006:46

¹⁷⁸ *ibid*:46-47

The DCS commented on few aspects of this detailed recommendation. It repeated that it had made submissions to two reviews and said it *recognises the complex needs of this group are likely to be best managed by mainstream health services*¹⁷⁹. It has set up a joint working party with Queensland Health *to oversee the development of future delivery options and resourcing requirements*¹⁸⁰. The DCS did **not** comment on parts of the recommendation it can implement/improve:

- Rehabilitation and treatment programs for women with mental health issues.
- Not using CSU's for women with mental health issues.
- Extra support for counselling/therapeutic approaches.

Nor on the need for:

- More intensive care facilities.
- Finding alternate ways to treat personality disorders.

Basically, the DCS argument implies that “everything will be OK if prison health services are handed over to Queensland Health” and “we don’t plan to make any changes in our practices”.

The ADCQ was also concerned about the lack of post-release planning, rehabilitation, referral to community-based social services and follow-up for prisoners with mental illness. **Recommendation 41** proposed the establishment of *step down accommodation facilities* for women with mental illness on their release from prison. The DCS did **not** agree to develop any new facilities or services specifically for women with mental illness. It simply repeated its plans already outlined for an improved Transition Program and better use of External Service Providers¹⁸¹.

Self harm and suicide prevention

The ADCQ did not directly argue that there was discrimination in the treatment of women who self harmed or were seen as a suicide risk. However, the Report implies a series of concerns about possible breaches of the human rights of these women.

Suicidal thoughts or actions need to be seen as a separate issue from mental illness. Whilst many women with mental illness have suicidal tendencies, not all women with suicidal tendencies are mentally ill. The *Queensland Women Prisoner's Health Survey* concluded that a *wish to die* might be a reasonable response to both the life difficulties faced by many prisoners prior to imprisonment, and the impact of imprisonment. The Survey found that about *half the women prisoners sampled reported having thought about committing suicide and 31.6% had attempted suicide at some time*. Indigenous women were more likely to have suicidal thoughts, but no more likely to attempt suicide,

¹⁷⁹ *ibid*:43

¹⁸⁰ *ibid*:43

¹⁸¹ *ibid*:47

than non-Indigenous women. More than 20% of the women reported having harmed themselves.¹⁸² Both DCS and other research have found that self harm is more common amongst women in prison than men.¹⁸³

Whilst recognising that the *DCS has a responsibility and a duty to protect prisoners from self-harm*¹⁸⁴, the Report questions the use of CSU's to achieve this. A key DCS response to perceived suicide risk or self harm by women in prison is to place them in the CSU. The Report acknowledged that the use of isolation facilities for people at risk of self harm is controversial. It cited a large number of studies which suggest that use of isolation might in fact **increase** a prisoner's desire to self harm.¹⁸⁵ In particular, it repeated the comments of the Royal Commission into Aboriginal Deaths in Custody which argued that it is *undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention*.¹⁸⁶

The ADCQ described the process required to detain women in the CSU. In particular it noted that a prison officer can initiate an order for up to 5 days, and a doctor or psychologist for up to 3 months. The Report detailed accounts by women in prison that they are afraid to show even *perfectly normal human emotions*, because of the threat of being placed in CSU by prison staff¹⁸⁷. Women in CSU must be examined by a doctor at least every 7 days whilst in CSU. For orders longer than two months, prisoners are entitled to ask the person in charge of the prison for a second opinion. However, prison authorities are not obliged to act on the advice of the second doctor/psychologist.¹⁸⁸

The ADCQ was positive about the fact that the proposed new legislation will reduce the possible order from 3 months to 1 month. The Report found that *placement of women in such units for prolonged periods is not an adequate long term response, and may breach an individual's human rights*¹⁸⁹. The ADCQ also supported another proposed legislative change, which is to not automatically place women at risk of self harm in the CSU¹⁹⁰. Overall, however, the ADCQ seriously questioned:

- the appropriateness of using **Crisis** Support Units for long term detention of prisoners (*When women are in need of longer term care, the situation is not a 'crisis'*¹⁹¹), and
- the effectiveness of using CSU's as a response to risk of **self** harm (as distinct from threats to others)

¹⁸² B.A. Hockings et al cited in ADCQ 2006:97

¹⁸³ 3 studies cited in ADCQ 2006:98

¹⁸⁴ ADCQ 2006:99

¹⁸⁵ *ibid*:99-100

¹⁸⁶ cited in ADCQ 2006:100

¹⁸⁷ ADCQ 2006:100

¹⁸⁸ *ibid*:98

¹⁸⁹ *ibid*:101

¹⁹⁰ the Response provided further details on proposed changes in DCS 2006:10

¹⁹¹ ADCQ 2006:101

The effectiveness of CSU's in suicide prevention is further underlined by the fact that the rates of suicide in Australian prisons have not decreased since the Royal Commission report.¹⁹² The Report noted that a number of other strategies have also been tried by prison authorities (eg. formal suicide prevention programs, screening for risk), and had failed to reduce the suicide rate.

Without explicitly ruling out the use of CSU's in every circumstance, the Report proposed they should **not** be used in response to a risk of self harm. Overall, the ADCQ felt that rather than focusing on suicide prevention, *there should be a greater emphasis on developing and strengthening protective factors within the prison to mitigate against self-harm, instead of the current level of reliance on strategies such as CSU's.*¹⁹³ This **much** stronger focus on alternate self harm prevention strategies could include family support/visits, more programs/activities, support from other prisoners, support from prison/probation staff, support from prison visitors and other services, and enabling prisoners to develop hopes and plans for the future.¹⁹⁴ In particular, the Report suggested DCS consider:

- Active involvement of inmates in suicide and self harm prevention. This idea is based on an overseas model, where carefully selected prisoners were trained and supported to befriend needy prisoners. This strategy reduced incidence of self harm in these prisons.
- Allowing community mental health workers to visit and support self help groups on a regular weekly basis. This strategy may have the added advantage of providing transition support for prisoners upon release.
- Reviewing the induction process for women in prison for the first time.¹⁹⁵

Recommendation 38 argues that CSU's should be a last resort for distressed prisoners, and they should only be used if a woman is a risk to others. The recommendation continues:

... Prisoners should not be secluded if they do not pose a risk to others. Individual care plans should specify the measures required to manage the risk of self-harm and suicide safely, including removal to a specialist mental health facility if required. (Recommendation 38)

The DCS Response focused on justifying current procedures, and repeating plans for an "improved" approach to CSU's. (These include shortened order times, increased medical surveillance of women in CUS and non-mandatory use of CSU for women at risk of self harm.) The DCS argued that it is current policy to keep prisoners at risk of suicide or self harm out of CSU's, *unless all other options in the mainstream correctional environment have been exhausted*¹⁹⁶.

¹⁹² *ibid*:100

¹⁹³ *ibid*:101

¹⁹⁴ *ibid*:101

¹⁹⁵ *ibid*:101-102

¹⁹⁶ DCS 2006:43

The DCS did **not** respond to the idea of strengthening protective factors within the prison. It argued that placing women in CSU was not *seclusion* ... because they are encouraged to interact with other CSU prisoners and staff!¹⁹⁷ **Nor** did the Department respond to the idea of individual care plans for women at risk. (Individual plans are only used once women are in CSU¹⁹⁸.) **Nor** did the Department support *removal to a specialist medical facility* for women at high risk of self harm or suicide. (This is reserved for women assessed as *acutely psychotic*¹⁹⁹.)

A very interesting sentence is hidden in the text:

It is proposed that following the introduction of the legislation, crisis support units will no longer exist and prisoners who require intensive support because of the risk they post to themselves or others will be cared for in health facilities either within a corrective services facility or within a hospital setting. (DCS 2006:44)

No further details are included about this apparently **major** change, it isn't mentioned anywhere else in the Response, and no timeline is attached to this "plan". Why is the Department justifying CSU's if they plan to close them down? Or ... are they simply planning to rename them again? ... or will they be taken over by Queensland Health staff?

Women's experience of CSU

The ADCQ Report detailed the reported experiences of women in the CSU in BWCC, including 24 hour lighting, use of suicide gowns which expose women's naked bodies beneath, detention of women naked in the padded cell, not being allowed to use tampons, extended confinement in individual cells, strip searching upon each entry/exit to their cell.²⁰⁰ The DCS Response strongly denies this account and says:

- *Under no circumstance are women detained in a naked state*
- *Lights in cells ... are not on 24 hours a day but rather a night light sufficient for observation of all prisoners well being is operational*
- *Suicide gowns are ... vastly different to gowns worn in operating theatres ... they have no fastenings whatever ... paper pants are provided*
- *Provisions are made by the centre for supply of feminine hygiene products*
- *Women ... in the CSU at BWCC are not strip-searched every time they exit and re-enter their cells*
- *Women are not placed in CSU's as a result of perfectly normal human emotional reactions to sad events ...*

¹⁹⁷ *ibid*:44

¹⁹⁸ *ibid*:44

¹⁹⁹ *ibid*:44

²⁰⁰ ADCQ 2006:99

- *Prisoners ... in the CSU at BWCC are not secluded from other prisoners (within the CSU) unless they pose a risk of harm to staff or other prisoners.* (DCS 2006:13, our emphases)

The DCS implies that the ADCQ account of the experiences of women in CSU indicates possible *specific instances of mistreatment*²⁰¹ and says the Department and the police will ask the ADCQ to provide details of allegations so they can be *appropriately investigated*²⁰². In other words, they are saying “if any of these things have happened, they are unusual ... and are about the misbehaviour of **individual** officers, rather than **systemic** problems”.

Safe and Humane Custody – Other Health Issues

Substance abuse

Women in prison are more likely to have a history of substance abuse than male prisoners. Yet, drug abuse intervention programs are not available to short term or remand prisoners, and a high proportion of these re-offend.²⁰³

The Report argues that the Drug Court should be available to all women charged with substance abuse offences in Queensland (**Recommendation 33**), as a way of increasing their chances of treatment. (This would also have the advantage of diverting women, who would otherwise serve short sentences without support programs, from imprisonment.) Whilst the Drug Court is not the responsibility of DCS, the Response did comment briefly on this recommendation. Whilst there are plans to make the Drug Court permanent, there are **no** plans to extend it Statewide. The Response outlined other programs targeted at drug dependant offenders, but none of these are relevant to women in prison.²⁰⁴

The Report further argues that *lack of availability of programs to women serving short sentences may be a form of indirect discrimination*²⁰⁵. This is because women typically serve shorter sentences than men and most women serve less than 12 months. (According to the DCS, *the average actual period served in prison by female prisoners is about 2 months.*²⁰⁶) Therefore, fewer women are able to meet the criteria for accessing substance abuse programs than men. As detailed in the DCS Response to

²⁰¹ DCS 2006:13

²⁰² *ibid*:14

²⁰³ ADCQ 2006:90

²⁰⁴ DCS 2006:40

²⁰⁵ ADCQ 2006:90

²⁰⁶ DCS cited in ADCQ 2006:90

Recommendation 28, women serving short sentences will continue to be excluded from *Making Choices*. They will have access to *substance abuse interventions*. It is unclear whether this includes core programs, and what exact **changes** DCS is planning in the options available to women serving short sentences.²⁰⁷

It is also important that more substance abuse programs are customised to the needs of women prisoners in general, and Indigenous women in particular. The Report acknowledges the argument that women's reasons for substance abuse are different from men's and therefore women-specific programs should be developed. It further argues that a failure to develop specific programs for women that adequately consider the needs of Indigenous women *could give rise to complaints of indirect discrimination*.²⁰⁸ **Recommendation 34** spells this out.

The DCS says *all offenders will be provided with access to quality treatment, intervention and support in accordance with individual need and length of sentence*²⁰⁹, as part of a new departmental drug strategy. The Response says that **treatment** will be responsive to individual needs, and new programs will be available to remand and short sentence prisoners. However, the Response does **not** include any programs *specifically design for women* or particularly designed to address *the needs of Indigenous women*.²¹⁰

Other health issues affecting women in prison

The ADCQ listed a range of concerns from women in prison. These included not being allowed to continue medication/treatment commenced prior to coming to prison, avoiding hospital treatment (or breast screening/mammograms) because of strip searching upon leaving and re-entering prison and feeling that medical issues are not always treated confidentially.²¹¹

Recommendation 42 proposed that mobile breast screening services be brought into the prison. The DCS argues that this option was investigated 2 years ago, and found not to be financially viable because of the small number of women prisoners over 50 years old. The Response says *if a woman requires breast screening services then this is accommodated through the Princess Alexandra Hospital*²¹². It does **not** guarantee regular preventative breast screening for all women in prison over 50. It does **not** address the problem of strip searching as the "cost" of having a breast screen for older women prisoners.

²⁰⁷ DCS 2006:37

²⁰⁸ ADCQ 2006:91

²⁰⁹ DCS 2006:40

²¹⁰ *ibid*:40-41

²¹¹ ADCQ 2006:104

²¹² DCS 2006:47

The role of male prison officers

The Report also listed a number of concerns about the role of male prison officers expressed by women prisoners. This included male officers checking through cell windows whilst on night shift, male officers being responsible for checking women in observation cells with 24 hour camera surveillance (especially when naked in the padded cell at the CSU) and involvement in strip searches in the CSU when female officers were not available.

Some specific allegations by women prisoners which were not detailed in the Report, have been referred to the Crime and Misconduct Commission.

The *Standard Minimum Rules for the Treatment of Prisoners* says that women prisoners should only be supervised by women officers. International human rights documents require that if male staff are employed *they should never be in the sole control of women and there should always be a female member of staff present*. The ADCQ agreed that male officers should not be checking women in observation cells or doing inspections at night, as included in **Recommendation 43**. The Report did not comment on the allegation of involvement of male officers in strip searches in CSU, but it did say that in the ADCQ's opinion, male officers should not be working in CSU's at all.²¹³

The DCS effectively dismissed this recommendation:

Rosters are reviewed daily to ensure appropriate gender balance across the facilities accommodation areas and increased numbers of female staff in areas requiring increased supervision and observation. Male officers do not conduct duties in prisoner accommodation areas without the presence of female officers.
(DCS 2006:48)

In other words, whilst DCS aims to have 70% female staff in women's prisons, it is **not** willing to commit to excluding male staff from high supervision/observation duties or CSU's. **Nor** does it aim to increase the percentage of female officers in women's prisons above 70%.

²¹³ ADCQ 2006:105-106

Aboriginal and Torres Strait Islander Women

There are strong indicators that Indigenous women are being systemically discriminated against in the criminal justice and correctional systems, as both victims and offenders.

(ADCQ 2006:134)

Statistical comparisons between Indigenous and non-Indigenous women are made throughout the *Women in Prison* Report. Indigenous women are at an extremely high risk of imprisonment. (3% of the Australian population is Indigenous; as at 30 June 2005, 26.5% of women in prison were Indigenous.) The Report details statistics for the following claims. In summary it has found that, compared with non-Indigenous women:

- Indigenous women's rate of imprisonment is higher.
 - Indigenous women's rate of imprisonment is growing at a faster rate.
 - Indigenous women have a higher rate of recidivism.
 - Indigenous women prisoners are more likely to have a higher security rating, and be in secure accommodation.
 - Indigenous women are less likely to get early release.
 - Indigenous women are more likely to be placed in CSU or DU.
 - Indigenous women are more likely to be the victim of a violent crime.
 - Indigenous women are less likely to be functionally literate in English.
- (ADCQ 2006:107-110)

Every Aboriginal or Torres Strait Islander woman has a different story, and a unique experience of prison. It is impossible to generalise about Indigenous women's experience of prison, when they come from such different backgrounds – with Aboriginal and TSI women having different heritage, and those from urban settings having different life stories (and often, even first language) than those from communities. Each woman's previous life experiences and her outside support system, will impact on her ability to cope with prison culture.²¹⁴

The Report acknowledges that the DCS has taken steps to recognise and respond to the needs of Indigenous prisoners. These include encouraging community links, employing ATSI support officers, cultural awareness training for prison officers and encouraging NAIDOC celebrations. The DCS also offers specific programs around visitation, family support and participation in the *Ending Family Violence Program*. Indigenous prisoners in BWCC are granted leave of absence at a higher rate than non-Indigenous women (mostly to attend funerals).²¹⁵

²¹⁴ *ibid*:108

²¹⁵ Kilroy cited in ADCQ 2006:109

Despite this, the ADCQ is concerned that systemic discrimination may be affecting Indigenous women. The list of differences listed above (and backed up with statistics in the Report) *suggests systemic and possible indirect discrimination against Indigenous women prisoners is occurring in the justice and correctional systems in Queensland.*²¹⁶

Issues such as over-classification (security and risk), less access to early release, the extra impact of distance/prison location and inadequacy of rehabilitation programs for Indigenous women, have been covered already.

According to the ADCQ:

Preventing discrimination requires addressing differences rather than treating all people the same. Indigenous women need equal opportunities to benefit from safe and secure custody, rehabilitation and reintegration back to their community. This requires the provision of correctional services that address their unique needs. (ADCQ 2006:111)

It's a "chicken and egg" problem:

- Are Indigenous women a higher security risk than other prisoners because they are more likely to re-offend, as the DCS argues?, OR,
- Are Indigenous women more likely to re-offend because their rehabilitation process is less effective for them than other women, as the ADCQ suggests?

The ADCQ identifies a number of ways in which Indigenous women are likely to be discriminated against in the rehabilitation process:

- The unique impact of isolation (eg. CSU) on Indigenous women prisoners;
- Culturally inappropriate programs and services, designed for non-Indigenous male prisoners;
- Less access to low security facilities near their families/communities, compared with male prisoners.²¹⁷

The Report was positive about two DCS initiatives – the possibility of a women's work camp in North Queensland, and court-ordered parole with community corrections services in 4 Queensland Indigenous communities. However, these will not fully address the *prima facie ... direct discrimination* experienced by Indigenous women prisoners²¹⁸.

The ADCQ was particularly concerned about the apparent lack of Indigenous-specific features in the proposed new Townsville women's prison. This location is particularly important, because Indigenous women are more than 50% of the population in TWCC. **Recommendation 45** talks about the need to investigate suitable programs and

²¹⁶ ADCQ 2006:109

²¹⁷ *ibid*:111-112

²¹⁸ *ibid*:112

facilities for Indigenous women, particularly in North Queensland. The Report talked about the need for innovative approaches to rehabilitation including addressing the *healing* needs of Indigenous prisoners.²¹⁹ The DCS Response said:

- All new facilities will include *an indigenous area* with internal and external meeting and activity spaces.
- Mainstream programs will be made accessible through *new audio visual based tools*.
- An *indigenous area* will be added to existing correctional facilities.²²⁰

The DCS did **not** mention any plans for further investigation into innovative approaches to rehabilitation for Indigenous women prisoners.

The ADCQ noted experiences interstate and overseas, where healing programs have been helping to breaking the cycles of domestic violence and re-offending. These models could also provide the extra appropriate post-release support needed by Indigenous women prisoners in Queensland.²²¹ **Recommendation 47** calls for research into healing programs.

The DCS says that 2 current External Service Providers (Queensland Murri Chaplaincy Corporation and Brisbane Council of Elders) can introduce healing programs for women if they wish. These would be evaluated, along with other programs, by June 2006 and any changes implemented by July 2007. The Department does **not** plan to conduct proactive research into healing programs.²²²

The ADCQ also noted that no female Indigenous staff are employed to work with Indigenous women prisoners. **Recommendation 46** proposes that the DCS increase the number of Indigenous staff in women's prisons. The Report says:

It is essential that Indigenous women prisoners are able to access Indigenous female staff at various levels of the correctional system, particularly for counselling, case management, program delivery and health services. ...and the ADCQ urges the DCS to endeavour to increase the number of Indigenous staff working in women's prisons. (ADCQ 2006:113).

The Department plans to increase the number of Indigenous appointments from the current 3% per year to 6% by June 2007. It has changed its recruitment and selection process and done a promotional campaign to try to overcome identified barriers to the appointment of Indigenous staff.²²³ The DCS is keen to increase the proportion of staff from diverse cultural backgrounds, particularly Aboriginal and Torres Strait Islander staff.

²¹⁹ *ibid*:112-113

²²⁰ DCS 2006:48-49

²²¹ ADCQ 2006:112-113

²²² DCS 2006:50

²²³ *ibid*:49

Whilst these changes are promising, the question remains whether this will increase the number of Indigenous DCS staff working with Indigenous women prisoners. The DCS already has 4.2% Indigenous staff²²⁴, yet **no** female Indigenous staff are employed to work with Indigenous women prisoners.

Some of the other issues raised by Indigenous women and noted in the Report, include:

- Insufficient recognition of Aboriginal kinship when deciding whether to allow women prisoners to attend funerals,
- Inappropriate separation of Indigenous and non-Indigenous prisoners (both during NAIDOC and in prison placement),
- Reduced frequency of Elders Visits,
- Racist attitudes by some prison officers, and,
- The high cost of video links for family contact. (ADCQ 2006:113-114)

Overall, the Report recommended that the DCS *researches, considers and implements strategies that aim to reduce potential systemic discrimination against Indigenous women in the corrections system.* (**Recommendation 44**).

The DCS saw the development of community corrections services in 4 communities as *designed to improve equity of service to overcome any systemic discrimination resulting from an offender living in a remote area*²²⁵. It did **not** propose any other strategies to overcome possible systemic discrimination against Indigenous women in prison.

Young Women in Prison

According to the United Nations *Convention on the Rights of the Child*, **the best interests of the child** must be a *primary consideration* when making laws and policies about under 18 year olds. Because many 17 year olds are still *mentally and physically immature*, the Report argues it is not *in their best interest* to be in adult prisons.²²⁶

Recommendation 48 says that the Queensland government should immediately change the law so that all 17 year old offenders are dealt with in the juvenile justice system.

The ADCQ is particularly concerned about the common practice of putting 17 year old prisoners in the protection unit *for their safety*. This can lead to other prisoners

²²⁴ *ibid*:49

²²⁵ *ibid*:48

²²⁶ ADCQ 2006:115-6

believing they must be informers ... which, in turn, means they must spend their whole sentence in protection. Because the protection unit is *prison within a prison* with less freedom and facilities than the general prison population, the Report concludes that placing a 17 year old in protection, simply because they are 17, is '*prima facie*' direct discrimination on the basis of age²²⁷. **Recommendation 49** calls for an immediate end to this practice.

The DCS rightly notes that changes in these areas would require a whole-of-Government decision. It argues that the current Corrective Services Act requires 17 year olds to be kept apart from other prisoners, unless it is in their interest to be part of the mainstream prison population. The DCS **could** conclude that (in light of the ADCQ's advice) it is likely to be in young women's best interest to be in the mainstream population more often than not! The DCS **could** also put this area forward for consideration as part of the legislative review process. The Response does **not** include any plan for action, or advice to government, on young women in prison.

Culturally and Linguistically Diverse Prisoners

Approximately 10% of women prisoners were not born in Australia, and their ability to speak and understand English is mixed. This obviously reduces the ability of those with limited English to understand prison systems and participate in programs/services. The language barrier can mean that these women live in a "prison of isolation within the prison". Many also lack family and other supports.

Whilst telephone interpreters are routinely used during the prison induction process, the ADCQ found that they are rarely used after the first 24 hours of imprisonment. According to the Report, it seems that prison staff mostly use other prisoners for interpretation. **Recommendation 50** argues that formal interpreters should be routinely used for any important communication with prisoners with limited English. *Failing to provide an interpreter in such circumstances may constitute indirect discrimination under the ADA* (Anti-Discrimination Act)²²⁸. The DCS claims it already does this.²²⁹

Also, failing to make courses available to other women as accessible as possible to these women *might be indirect discrimination*²³⁰. **Recommendation 51** proposes this. The Report noted that women from non-English speaking backgrounds should not be penalised for failing to complete programs, if a main reason was their English language

²²⁷ *ibid*:116

²²⁸ *ibid*:118

²²⁹ *ibid*:51

²³⁰ *ibid*:118

skills. This is particularly relevant to the parole process, where completion of core programs can have a direct affect on prisoners' access to early release. (This may continue to be a barrier for women serving sentences longer than 3 years.)

The DCS argues that programs are already accessible to these women and the integration of more visual training methods into revised core programs will add to this accessibility. They do **not** propose any further changes specific to the needs of women with limited English, and do **not** propose to address the problem of failure to complete programs due to language skills.²³¹

Other areas that might constitute racial/religious discrimination, if prison authorities do not *take reasonable steps* to remedy the problem are:

- Access to SBS and reading materials in the prisoner's own language (**Recommendation 52**). The DCS says that the Multicultural Action Plan developed in 2005 includes the requirement to provide access to media (including newspapers and books) in prisoners' mother tongue. They do not specifically mention access to SBS.
- Access to culturally appropriate staple food free of charge (**Recommendation 53**). The DCS claims that since the current menus are nutritionally sound, culturally appropriate foods will continue to be available only through special buy-ups. This is despite the fact that the Multicultural Action Plan includes *providing for a range of dietary needs ... based on culture or religion ... where reasonable*.²³²
- Accommodation of difference religious needs (**Recommendation 54**). The Department is positive about the idea of responding to the varied religious needs of prisoners. This is reflected in the intention to replace the word *chaplain* with *religious visitor* in the new Act.²³³

Overall, the Response includes a list of *performance indicators* from the Multicultural Action Plan, for implementation by September 2007. However, these are widely open to interpretation – just as the *special buy up* option is used to argue that the department accommodates *a range of dietary needs*. Hopefully, the Plan will lead to improvements in:

- Translated essential information
- Dietary options
- Keeping religious items in cells
- Religious sites within the prison
- Access to media
- More effective official visitors
- A sound complaints mechanism.²³⁴

²³¹ DCS 2006:51

²³² *ibid*:52

²³³ *ibid*:52

²³⁴ *ibid*:52

However, the DCS does **not** acknowledge the fear of retribution for complaints felt by the majority of women from culturally and linguistically diverse backgrounds, **nor** does it discuss how a complaints mechanism could address this. It does **not** include a commitment to celebrating significant cultural/religious days.

Prisoners who are Mothers of Dependent Children

This was one of the top 4 areas of concern for the ADCQ.

Sentencing mothers to prison

The Report cited evidence that up to 85% of women in prison are *parents of dependent children and heads of single parent families*²³⁵. With increasing rates of imprisonment for women, the ADCQ was very concerned about the shortage of research in this area. In particular (**Recommendation 56**) it proposed that the Commission for Children and Young People and Child Guardian research the impact on children of their mother's imprisonment. This is in line with Australia's obligation to make sentencing of mothers consistent with *the best interests of the child*²³⁶. The Report argues that a mother's imprisonment can have a major impact on their children, and *lead to social, behavioural, emotional and psychological difficulties as well and physical and mental health problems*²³⁷.

The DCS noted that any decision to research the impact of incarceration on children would need to be made by the Commission for Children and Young People and Child Guardian. It proposed that **if** the Commission did this research, it could extend the study to include all parents, to make it easier for DCS to address **Recommendation 66!**

According to the law, imprisonment is supposed to be a last resort. Courts are supposed to consider *other relevant circumstances* when sentencing. However, the Report listed case law and a Court of Appeal finding which demonstrated that the effect on an offender's children is unlikely to be taken into account when deciding whether to send a mother to prison. The ADCQ argues that, consistent with Australia's international obligations, *the best interests of the child should **always** be considered by*

²³⁵ ADCQ 2006: 119

²³⁶ UN *Convention on the Rights of the Child*, quoted in ADCQ 2006:120

²³⁷ Research published by the Australian Government Department of Family and Community Services, cited in ADCQ 2006:120

sentencing authorities²³⁸. **Recommendation 57** proposes changes to the *Penalties and Sentences Act 1991* to include this as a factor in sentencing the parent of a dependent child.

As stated previously by the DCS, non-custodial options are already available to the courts. The Department argues that courts are quite capable of including family responsibilities in their sentencing decisions. However it says that the Department of Justice and Attorney General is opposed to including the interests of the child as a factor in sentencing. The Response argues that sentences *should fit the crime and the circumstances of the offender*²³⁹:

Although it might be a relevant circumstance in some cases, it is not appropriate to elevate the best interests of a dependent child as a primary sentencing objective. (DCS 2006:54)

The DCS does not explain when/where/why the best interests of the child might be an inappropriate **factor to consider** (as distinct from a *primary sentencing objective*) in some cases. The ADCQ Report made it **very clear** that it was proposing it simply be added to the list of factors that must be considered by sentencing authorities ... not a *primary sentencing objective*.

According to the DCS, their main concern about including the best interests of the child as a factor, is that it could be argued that **any** sentence may not be in the best interests of the child. The Department did **not** comment on the contradiction between Australia's obligations under the UN Convention on the Rights of the Child, and its position.

The Report also recommends (**Recommendation 55**) that the Queensland Government consider other alternatives (eg. home detention, periodic detention and community service orders) for women with dependent children. Ideas on alternatives from other countries included suspended sentences until the child is aged 14 (Russia) and housing women under curfew in units attached to prisons but outside the gates (Germany)²⁴⁰.

*If the mother of dependent children must be incarcerated, all attempts **must** be made to maintain the attachment bond between mother and child ...* (ADCQ 2006:121)

The DCS argued that Queensland should look at ways of improving existing sentencing options, and using them more frequently, before exploring other models. (The German example related to **facilities** provided to mothers and children, rather than sentencing options!) The Response did **not** mention any plans to either review the development of facilities for mother and children **nor** to look at ways of improving existing sentencing options.

²³⁸ ADCQ 2006:121

²³⁹ DCS 2006:54

²⁴⁰ ADCQ 2006:121

The Department also gave an opinion on periodic detention as an alternative to prison. It argued that this could make segregation anxiety worse for the child.²⁴¹ The DCS does not appear to have taken account of the possible loss of job, loss of housing and child dislocation likely to occur as a result of even a **very** short period of imprisonment for mothers!

Children inside prison

The ADCQ was concerned about both the quantity and quality of facilities for women with children inside Queensland prisons. The Report cites examples of women not being allowed to keep their babies with them due to shortage of suitable facilities. It proposes (**Recommendation 59**) that new, family-friendly, purpose-built facilities be developed, and that these are designed to *put the best interests of the child first*²⁴². It further argues that prison staff in these areas should be specially trained.

The Report further recommends:

That prisons which accommodate dependent children with their mothers provide adequate living and play space and organised activities for those children, in accordance with community standards. (Recommendation 58)

The DCS argues that facilities for children at BWCC are *adequate*, and problems at TWCC will be overcome when the new prison is built. It simply says that *as new or additional facilities are provided, the needs of imprisoned mothers with children will be included as a high priority*²⁴³. It includes a long, **unquantified** list of activities and services available to children at BWCC²⁴⁴. The DCS does **not** propose to increase the number of places for women and children outside the TWCC. **Nor** does it comment on the adequacy of facilities at other correctional institutions (eg. Helana Jones). **Nor** does it comment on the extent to which facilities for children meet community standards. **Nor** does it comment on the separateness and family-friendliness of facilities. **Nor** does it commit to family-skilled staffing.

²⁴¹ DCS 2006:53.

²⁴² ADCA 2006:121

²⁴³ DCS 2006:55

²⁴⁴ *ibid*:11-12

Children outside prison

The ADCQ was also concerned for the wellbeing of children not living with their imprisoned mother. The impact of mother/child separation has been well documented. Since most mothers in prison are single parents, children will usually be forced to live with someone who's not their parent. They may be forced to live with strangers. They may be forced to change home and school. They may have to face prejudice and stigmatisation. They may not have opportunities to see their mother face-to-face (especially if from an Indigenous family), due to the limited locations of women's prisons and/or carers' lack of willingness/ability to manage visits.

And ... when their mother is released, they may face increased poverty due to her loss of employment whilst in prison.

This is why the Report recommends significant improvements in both:

- the DCS family contact policy (including free video-conferencing – **Recommendation 60**), and,
- transitional support (including access to accommodation, financial assistance, employment and support services – **Recommendation 61**).

Most women serve sentences of less than 12 months; the average period of actual imprisonment for women is approximately 2 months. As the Report implies, it is difficult to see how this impact on a child, particularly where the mother is serving a short sentence, is *in the child's best interest*²⁴⁵.

The DCS strongly defended its provision of family contact and transitional support. It asserts that the Department pays the cost of video conference calls²⁴⁶. It provides a long list of support to enable family contact²⁴⁷. However, it does **not** quantify the **frequency** of events such as special visits and family days.

Whilst defending its record on transition support (through funding non government organisations to provide accommodation, transport and emergency funding), the DCS is implementing a new program by June 2006. Facility-based *Transitions Coordinators* will run a variety of services for **all** women prisoners, including resettlement needs analysis, linking prisoners with community organisations and delivering the Transitions Program (for high risk prisoners).²⁴⁸ The DCS did **not** suggest any specific services for women and children. It did **not** propose any further improvements in its family contact or transition services.

²⁴⁵ ADCQ 2006:122

²⁴⁶ DCS 2006:55

²⁴⁷ *ibid*:12

²⁴⁸ *ibid*:56

Transgender Female Prisoners

According to the ADCQ, the Anti-Discrimination Act is clear about the sex of a transgender person – they are the sex that they say they are! Current approaches by the DCS, where the Department decides on the location of transgender prisoners are inconsistent with the Act.

The Report (**Recommendation 62**) proposes that the DCS work on the assumption that transgender prisoners will go to a prison of their gender identity. However, the ADCQ allows for their **choice** to go to a prison not of their gender identity (eg. because they believe they will be safer there). They should also have the **choice** of accommodation in a protection unit (**Recommendation 64**). However, this should not be imposed on them by prison authorities. Imposing this would constitute a *prima facie* case of discrimination²⁴⁹.

The ADCQ asserts the right of transgender female prisoners to ongoing medical care (including hormone treatment), access to the items needed to maintain their gender identity (eg. shaving/waxing) and underwear appropriate to their gender identity (**Recommendation 63**).

The DCS rejects all 3 recommendations, and argues that its duty of care to keep prisoners safe is its first priority. The Response asserts the Department's responsibility to make all key decisions about transgender prisoners:

- Their location (prisoner identify/preference is one of the four factors considered by DCS),
- Their access to hormone treatment (DCS decides after consultation with a variety of health professionals), and,
- Their access to protective custody.²⁵⁰

The Response did **not** comment on prisoner access to items needed to maintain their gender identity and gender-appropriate underwear. **Nor** does it comment on the sex of a transgender person as covered in the Anti-Discrimination Act.

²⁴⁹ ADCQ 2006:125

²⁵⁰ DCS 2006:56-57

Accountability of Prisons (including Independent Scrutiny)

Prison management must operate within a clear ethical framework. When one group of people is given significant power over another group, constraints must be put in place to ensure power is not abused. The ethical basis for running a prison service must come from the highest levels of management, and flow right through to the officers who supervise the daily routines of prisoners.

To ensure prisons are accountable and operate within an ethical framework, important mechanisms need to be developed and maintained. (ADCQ 2006:127)

Throughout the Report, the ADCQ raised concerns about the capacity of prison staff to respond appropriately, especially to the needs of specific groups of women prisoners. **Recommendation 65** proposes mandatory training in a range of areas which affect prison officers' daily work – unlawful discrimination, sexual harassment, Indigenous issues and dealing with women from a range of cultural backgrounds. (This is in addition to the training on working with women with mental health issues proposed in **Recommendation 40**.)

The DCS does not deny that prison staff have only 9 weeks' initial training. The Response argues that prison officers are recruited and trained to a very high standard. The Department sees initial psychological testing and criminal history check as assuring quality appointments, and formal accredited training as guaranteeing competent staff.²⁵¹

The Department argues that all areas in this recommendation are already included in prison officers' training, and that officers are assessed on their performance every 3 years. **Again**, the DCS does **not** explain the level of detail or quantity of training in each topic. The ADCQ would not have included this recommendation if evidence showed prison officers were competent in these areas. It is reasonable to assume that the current training provided is inadequate to ensure a level of performance that meets the requirements of the Anti-Discrimination Act ... hence the need for the ADCQ Report!

The Report proposes improvements in the public information available on women in prison. It recommends that research and statistics on offenders include gender, race, disability and impact of mothers' imprisonment on dependent children (**Recommendation 66**).

The Department says that it already keeps data on gender and race. It does not yet have a way of diagnosing disability ... an interesting comment, since the DCS has asserted throughout the Response that it adequately addresses the needs of women

²⁵¹ *ibid*:14

with disabilities! **(It is difficult to understand how they do this, if they have not diagnosed women’s disabilities.)** It is currently working with other Queensland government bodies to try to develop a *screening tool*²⁵². The DCS claims that it cannot collect data on the impact of incarceration until other research (**Recommendation 56**) has been done²⁵³. **(It is difficult to understand why not.)**

Basically, DCS says it is moving toward collecting all this data, but may not be able to make the information publicly available because of privacy issues²⁵⁴. **(It is difficult to understand why data could not be released in an anonymous, non-identifying way.)**

The DCS appears to believe that ... **despite** its history of questionable policies and practices, **despite** its failure to address detailed evidence and sophisticated argument of the ADCQ, **despite** its apparent willingness to prioritise responding to misguided community attitudes over the human rights of women prisoners ... we should simply **trust** them to get on with the job – without any regular, formal, independent, public scrutiny.

A *Chief Inspector of Prisons* has recently been appointed. Their main job is to do detailed inspections of prisons (both with and without warning). The ADCQ is positive about the idea of having a *formal overseeing function*²⁵⁵ to make sure that the human rights of prisoners are protected. However, the ADCQ is worried about current plans for the Chief Inspector to be a part of DCS, and report to the Director-General (rather than reporting publicly and/or to Parliament). This raises questions about the ability of the new Chief Inspector to be independent.

The role and functions of the Chief Inspector of Prisons are not yet included in legislation. The Report proposes that, like many places around the world, the job:

- Allows the Inspector to visit and inspect any prison, whenever they wish,
- Covers both juvenile and adult facilities,
- Is located outside DCS and the Department of Communities,
- Has enough staff to do its job properly, and,
- Reports directly to Parliament. (**Recommendation 67**)

The DCS argues:

The correctional system in Queensland operates in an open, accountable and transparent manner. It is strictly regulated by legislation and open to scrutiny by a range of internal and external stakeholders. Prisoners have an array of complaint mechanisms should they wish to lodge a complain, including the “blue letter” system (where complaints can be lodged directly with the General Manger,

²⁵² *ibid*:58

²⁵³ *ibid*:59

²⁵⁴ *ibid*:58-59

²⁵⁵ ADCQ 2006:127

Director-General or Minister); the Ethical Standards Branch; the Official Visitor; the Ombudsman; the Crime and Misconduct Commission; the Prisoner's Legal Service; Legal Aid Queensland; and to the ADCQ itself. (DCS 2006:12)

The Department emphasises the opportunity for women prisoners to make **individual complaints** to a variety of authorities. This completely ignores the fear of retribution experienced by many women prisoners. The need to be able to make anonymous complaints to a trustworthy independent authority is critical to the human rights of women in prison. This has been a key element of the ADCQ's success in gathering so much information for this Report.

The DCS defends the proposed model for the Chief Inspector and claims that sufficient independence is achieved through the fact that the (present) Chief Inspector is from outside the Department and is not involved in departmental management. This is actually untrue as the Chief Inspector reports directly to the Director General of DCS. The Department rejects the idea of extending the role to include juvenile justice facilities (without giving reasons) and says the Chief Inspector is happy with the level of resourcing provided. It claims that the Chief Inspector will *publicly report on his activities*²⁵⁶ but does **not** go into further detail about the nature of the reporting ... or why (if the Chief Inspector is already *independent*) they are unwilling to have the position located outside the DCS.

The ADCQ notes that the issue of mental health for women prisoners has been raised in all States/Territories. It has recommended that a national review into how the justice and prisons systems deal with women with mental health issues be conducted by the Human Rights and Equal Opportunity Commission (**Recommendation 68**). The DCS says it would fully cooperate with a review if it occurs.²⁵⁷

In terms of overall accountability, the Report says:

Ongoing effective community engagement with all relevant stakeholders will provide some of our most disempowered Queenslanders (women prisoners) with a voice. ADCQ urges DCS to work with community representatives and advocacy organisations to ensure that its programs, policies and legislation are continually developed in a fully informed way. (ADCQ 2006:131)

The ADCQ has assured the DCS, community and advocacy organisations that it will continue to be willing to help make sure that laws and practices meet the needs of women prisoners in Queensland.²⁵⁸

²⁵⁶ DCS 2006:60

²⁵⁷ *ibid*:60

²⁵⁸ ADCQ 2006:131

Conclusion

The ADCQ Report concludes:

A common thread throughout this review is the need for policies and services to be designed specifically for women. The DCS should access community representatives, experts and prison advocates to ensure its policies meet the needs of women prisoners. The criminal justice system must take new and possibly radical approaches and alternatives to the existing regime for female offenders. The system must recognise the links between violence against women, including sexual offending, child abuse and domestic violence. Most women prisoners are both victim and offender. A coherent and strategic approach must be taken by all government departments and agencies to ensure that these issues are not dealt with in isolation. (ADCQ 2006:134)

In conducting this review, it has become apparent that the Queensland Government, the DCS and the Department of Justice and Attorney-General need to reconsider the pathways for female offenders. There appears to be an over-reliance on the prison custodial system for dealing with women offenders. Many women in prison are both victims of crime and offenders. While figures indicate that crime has fallen significantly in the last few years, public perceptions are that it has increased, leading to pressure for more severe sentences. (ADCQ 2006:133)

Whilst rejecting the spirit and/or detail of **most** of the ADCQ's recommendations, one comment by the DCS was very true:

The department over the years has also had to deal with operating a correctional system in the context of the demands of today's society. The difficulties of dealing with a rapidly growing prison population, the challenges of building new correctional facilities in a community where attitude to prisons and prisoners has hardened and the challenges presented by the continuing law and order debate, are but a few of those demands. (DCS 2006:4)

It is important to recognise that the prison system is influenced by community attitudes ... and that the culture of the prison system risks adopting these same community attitudes. This is **irrelevant** to the ADCQ's job in this Report. It is also **irrelevant** to the DCS's responsibility to protect the rights of women in prison. But, it **does** explain why society tolerates such a high level of possible discrimination against women in prison and the DCS defends so many of its practices.

Trying to stop the abuse of women in prison is not **only** about making these individual women's lives better. It is about our whole society, and whether we want to live in a community that allows its most disadvantaged and powerless citizens to be abused and discriminated against.

Hopefully, you can now understand what has happened over the past couple of years. In particular, how powerful systems and people in society can so easily dismiss abuse and discrimination and how we, the community, need to say **NO** to allowing the serious issues raised by Sisters Inside and the ADCQ to disappear quietly.

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List of ADCQ Recommendations²⁵⁹

General recommendations:

Executive summary

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

Specific recommendations:

Custodial infrastructure and classification

1. That the Department of Corrective Services, when planning for any future custodial infrastructure for women, gives the highest priority to developing smaller facilities based upon community living, with prison regimes and practices that encourage positive and supportive interaction between staff and residents and the greater community.
2. That the Department of Corrective Services:
 - develops classification instruments based on the specific characteristics of men and women, and
 - draws up a schedule for testing the reliability and validity of classification instruments, for all prisoners including those from Indigenous or other minority groups.The DCS should publicly release the reports of such research.
3. That corrective services legislation states that female prisoners be classified at the lowest level of security necessary to ensure the good order and security of prisons and the security of the community.
4. That proposed legislation changes ensure:
 - female prisoners on remand be classified in the same way as other female prisoners, and
 - long term remand prisoners be assessed under the Offender Risk/Needs Inventory and not be deprived of necessary programs and training.
5. That women prisoners be placed in the least restrictive environment possible and, in particular, the highest priority be given to the interests of children in determining the placement of their mothers serving full-time sentences.

²⁵⁹ Verbatim transcript - ADCQ 2006: 8-15

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

Low security facilities

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

Conditional release

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

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

Strip-searches

19. That prison authorities, at all time, be aware of the development and use of any new technologies or less intrusive methods of search that can replace the need for routine strip-searching in secure prisons. Any equally effective and viable but less intrusive and humiliating alternatives that are developed, should immediately replace routine strip-searching.
20. That alternative accommodation arrangements need to be made as a matter of highest priority for those women who are classified as low security but who are accommodated in high security facilities. These women are undergoing an unreasonable and unacceptable number of routine strip-searches.
21. That the Department of Corrective Services continues to review and reduce the number of routine strip-searches performed on women in the crisis support units. Further, that a new directive be issued to reflect current practice of reducing the number of strip searches in crisis support units.
22. That the Department of Corrective Services reviews and amends its policies and practices to ensure that female prisoners are not being treated less favourably than male prisoners, in having to undergo numerous strip-searches during inter-prison visits.

Rehabilitation and social reintegration

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

Vocational and educational training

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

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

Work and industry opportunities

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

Drug and substance abuse

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

Mental health issues

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

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

Other health issues

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

Custody issues

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

Aboriginal and Torres Strait Islander women

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

Young women in prison

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

Culturally and linguistically diverse prisoners

50. That prison authorities routinely access telephone interpreting services for prisoners who are not confident in the English language, for the reception process and any discussion involving their case management, health or other issues of significance.

51. That prison authorities make all reasonable efforts to ensure programs are accessible to prisoners from non-English speaking backgrounds.
52. That prison authorities take all reasonable steps to ensure literature and reading material is provided to prisoners in their own language.
53. That prison authorities take reasonable steps to cater for the dietary requirements of inmates from different cultural backgrounds without cost to the prisoner.
54. That prison authorities take reasonable steps to accommodate the differing needs and religious observances of prisoners from culturally diverse backgrounds.

Women prisoners who are mothers of dependent children

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

Transgender female prisoners

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

Accountability of prisons

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

Independent scrutiny

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