

Understanding the Queensland *Women in Prison Report*

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 Flegg MP,
Speaking in Queensland Parliament on 8 March 2006

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
- **Department of Corrective Services: Response to the Anti-Discrimination Commission Queensland Women in Prison Report,** March 2006
- **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

This paper is mainly written for women in prison ... in Queensland, and nationally. Hopefully, it will also be a useful resource for others involved in the justice system and the general public.

A 77 page, academic-style analysis, with added details (eg. quotes and many in-text references) is also available. It is mainly written for people involved in advocating with/for women in prison. For details, contact 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*.

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.

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, deciding whether people (or groups of people) being unfairly treated compared to other similar individuals or groups (eg. because of their sex, race or disability). 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 looked 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 needs.

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**.

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 because they believe that many women in prison were afraid of retribution if they lodged a complaint. They concluded that *the more vulnerable a person is the less likely they are to disclose any abuse and mistreatment they are experiencing*. This is a very reasonable fear, because women have already experienced *unsatisfactory handling of previous complaints by government officials*.

The ADCQ did not aim to formally investigate individual complaints about possible discrimination. 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?”**

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”* exists). 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** by responsible officials (eg. prison management and staff). The ADCQ said that one of the hardest things for prison administrators to achieve was a system that deals with the risk of *systemic and indirect discrimination*. *Systemic discrimination* is where there are patterns of inequality amongst disadvantaged/minority groups.

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*.

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)

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.

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. 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 system). Yet, it suggests that new rules will deal with the problems raised by the ADCQ Report. This is 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 similar, and therefore it is not a problem that women's prisons are based on a model designed for men. They seem to use only one book, published in the USA in 2003, to support this claim. (On the other hand, the ADCQ provides a wide range of evidence for differences between the needs of male and female prisoners, which the DCS does not respond to.)

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*. On its **second** page, it argues that the ADCQ should have compared the way the Queensland prison system is run with *best practice* elsewhere ... 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 respond to the different needs of individuals groups of prisoners.

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.

Further, the Response says DCS is building a new women's prison in Townsville with both *secure cell and residential style accommodation*, but doesn't suggest that it will include low/open security accommodation. We know from experience at Wacol that residential style accommodation is still in 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 prisoners. 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.

In **General Recommendation III**, the ADCQ asked the DCS to report on their progress in implementing the Report's recommendations, over the next 2 years. The DCS suggest that this would be a waste of energy because:

Many of the recommendations contained in the Report are consistent with changes to policy and practice that has been driven by ... departmental reviews and the Department has implemented or will shortly implement many of these changes (DCS 2006:3)

If this is true, then why is the DCS unwilling to report publicly on their progress in acting on the ADCQ recommendations?

Perhaps DCS is worried 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*. A good example is the *Through-care Model*, which the DCS claims will address many of the concerns raised by ADCQ. But, the Response includes **no evidence** that *real women prisoners* have found these changes useful. Essentially, the DCS is asking us to simply trust them, and arguing that public reporting of their actions 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". 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 DCS's 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:

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 of amount of violence which occurs in a **family** context and is unlikely to pose a threat to the wider community.
3. The Response simply argues 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 must be a serious risk. It totally ignores the ADCQ findings that show that imprisonment may not be being used as a last resort.
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 mostly dismisses the ADCQ's findings. The Response demonstrates clearly that DCS culture is committed to continuing its current overall 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*. Clearly, the DCS is unwilling to make any major changes in response to the ADCQ Report.

Extra Comment

Just before this document went to print, we found a list published by DCS. The 2 page table lists 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 paper 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. But, mostly it lists issues which are **not** main recommendations of the Report. Rather, they are the Department's **own** plans for change. Some even seem to contradict the ADCQ's recommendations (eg. *Classification* and *Safety Orders*). It seems that the DCS does **not** plan to address any other issues raised by the ADCQ while they are developing the new Act.

- 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 claims that it *strives to avoid discriminatory practices against women*. The Response says that *where systemic discrimination against female prisoners is identified and substantiated it will take the necessary and appropriate remedial action*. This is interesting, because 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* 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 what it's done (if anything) in response to the ADCQ Report.

The Classification System & Prisoner Management

ADCQ Recommendations

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.
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.

Covered in ADCQ Report – pages 41-56

Covered in DCS Response – pages 4-8 & 17-24

This was one of the top 4 areas of concern for the ADCQ, which felt that women prisoners may be over-classified. It was also concerned that women might be imprisoned in a secure (or other) prison facility for longer than necessary.

The ADCQ Report describes the many differences between the prison numbers and offending patterns of male and female prisoners. It emphasises that:

- Less women than men are convicted of violent offences, even though women are only 6.7% of all prisoners.
- Many women in prison (maybe more than 85%) are mothers of dependent children.
- Most mothers in prison were the main carer of their children before being sent to prison.

- Indigenous and/or disabled women are a much higher percentage of the population inside prison, than the population outside prison.

The ADCQ concluded that *only a very small minority of women prisoners are seriously violent or predatory*. The ADCQ Report looked at risk classification and security classification separately. It raised serious concerns about the use of **both** current classification systems with women in prison. These concerns are equally relevant to the new DCS system.

The DCS emphasises other statistics:

- Less women than men are sentenced to prison (rather than other community-based penalties).
- Women are more likely to re-offend than men.

The Response suggests that this means that women *do pose a risk to public safety*. But ... they don't explain why, if women prisoners are such a big risk, they only spend an average of about 2 months in prison.

How women in prison are security classified

The classification system has a huge impact on the daily life of women in prison. The Report says:

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. (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 prisoners with mental health or intellectual disabilities, women from culturally and linguistically diverse backgrounds, and Indigenous women.

The Report noted that over the past few years, Indigenous women have been more likely to be classified as high security prisoners and more likely to be held in secure custody than non-Indigenous women. Whilst Indigenous women are more likely to have committed a violent crime, these are often related to long term domestic violence. The Report said that when *these women are removed from those situations of domestic violence, they pose an extremely low risk of escaping or re-offending*. The ADCQ effectively argued 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).

Overall, the ADCQ listened to women prisoners' stories about inconsistencies in the classification process. The Commission 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*. The Report argued that DCS should do research on whether the classification system is valid, especially for men and women in minority groups (**Recommendation 2**).

The DCS argued that the best security assessment is achieved by prison officers making judgments. Simply using the facts of each case does not allow for the fact that women, and the *risk* that they pose, can change during their time in prison. The Department suggested that *random desktop monitoring on documents which record classification decisions* is an adequate way to make sure that quality decisions about classification are made by prison officers.

A consultation report quoted by the DCS admitted that not treating gender as a classification criteria might result in unfair disadvantage for women prisoners. But the Response implies that, because the ADCQ didn't produce an example of a specific classification system for women from anywhere else, it is not fair for them to recommend changes in Queensland. The Response dismissed, or ignored, most concerns about security classification raised by the ADCQ.

Recommendation 3 of the ADCQ Report focused 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 included in the new Act. The DCS rejected this. The only reason given was that no other State in Australia does it. **If** 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.

Impact of the new security classification system

The DCS did not fully accept the ADCQ's criticisms of the security classification system. But it did say that there will be changes under the new Act, including less security classifications, changing classification criteria and allowing women on remand to be classified. 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

Under the new system, all women will be classified either *high* or *low* security ... the *open* classification will no longer exist. The Response does not explain how having less security classifications addresses the ADCQ's concerns. How can taking away the chance 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.

2. Changing classification criteria

Change is not always the same as improvement, and the DCS did not show how the new classification criteria will **improve** the situation of women in prison.

The DCS plans to use risk factors to decide security classifications. The Response claims this will mean *that women are classified at the lowest level of security necessary to ... good order and security*. This is **not logical**, because the current lowest level of classification will no longer be available. All women who are currently classified in the *open* category will automatically be **increased** to *low* security. More than this, the ADCQ found that the current risk assessment tools (eg. ORNI) may not be reliable. If these problems continue into the new system, this may also **increase** the number of women on the higher classification.

The DCS said ORNI won't be used for security classification, but, they did not show how they will avoid transferring some of the problems with ORNI into the new system. The system will mainly look at 4 criteria:

- Nature of offence - 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).
- Risk of escape - There is a danger of assessing officers making assumptions about the risk of escape (eg. where women are under immigration detention).
- Risk of re-offending - There is a risk of 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).
- Risk of harm to self/others - There is a risk of assumptions about the risk of harm (eg. because the person has behaviour that they find difficult to understand, or because they are in prison for a "violent" offence).

The DCS Response does not suggest any ways to protect against these types of potential mis-classifications.

3. Allowing women on remand to be classified

Allowing classification for women on remand does not **guarantee** that they will be classified. It does not guarantee that they will have access to the services and programs requested by the ADCQ.

It is **very** worrying that the DCS claim the new classification system *will align more closely to infrastructure*. Most existing facilities, and 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 that it is important to be consistent in how you treat prisoners across a facility. In other words ... **any** prison will function according to the security requirements of its highest classified prisoners. The only reason given is that it makes the system easier to understand. The idea 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 ADCQ Report was concerned that because only 25.6% 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 argued that:

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 are accommodated and remain in open facilities ... The majority of women prisoners can be appropriately managed in facilities that are based on community living ... (ADCQ 2006:47)

The ADCQ said that many women in prison felt there were few opportunities for them to progress through the prison system, particularly compared to the opportunities for men. This included concerns that *short termers* often end up serving their whole sentence in a secure facility, and that despite low classification many women have to stay in high security facilities because of the lack of low security beds.

The ADCQ said that the DCS should prioritise development of smaller facilities based on community living (**Recommendation 1**). The DCS said it agreed with this recommendation. This is **totally inconsistent** with its plans. The Department plans to build 2 big new prisons for women – Townsville beginning with 150 beds (later 200 beds) and South East Queensland with 250 beds. Only one small facility is planned – a work camp in North Queensland. According to the DCS, all future facilities will include secure fences.

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 possible. It argues that the **design** of facilities where staff and prisoners will be *sharing same space areas*, addresses the ADCQ's concerns. Rather than promoting interaction with the community, the DCS is proposing to react to community pressure to increase security and separation.

The Response did not support **Recommendation 5**, which talked about placing women in the least restrictive environment possible. It stated that the DCS places prisoners in *accordance with their risk and subject to the availability of open custody places* (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 how *approval* is given for mothers to have their children with them.

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. The Report says *it could be argued that this is direct discrimination on the basis of impairment*. The Department says it is *investigating options for alternative service delivery close to Numinbah*, but doesn't give any details about this. But, in the meantime, the Response claims that strip-searching upon entry to Wacol is *mandatory*. 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 complicated language to talk about which parts 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 argue that this is so they can have visitors and *reintegration leave*. The Response talks about *hot bedding*, 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*. We don't know exactly what this means, but it sounds like the new work camp will be quite different from Warwick, with a much greater emphasis on security!

How women in prison are risk classified

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*.

The ADCQ Report questions whether using ORNI (which was designed for male prisoners) will give an accurate risk assessment women prisoners, because their offending patterns and personal histories are so different. **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*.

As outlined earlier, the DCS argues that male and female *criminogenic needs* are similar (based on a single, American book). 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 throughout Australia and the rest of the world.

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 ORNI assessment. If the ORNI assessment is inaccurate, this could have major consequences for the woman prisoner, including setting up unfair barriers to parole. The ADCQ was concerned about the number of women prisoners who said they have to wait a long time for a place in a program, because failing to complete programs (especially mandatory programs) reduces a woman's chance of parole.

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 risk assessed 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.

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. The DCS argued that women should not be **offered** places in offence-related intervention programs, because this would suggest that they are guilty. The DCS Response is **contradictory**, because it goes on to say that women on remand have access lots of services/programs based on assessment by a nurse. But, it 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).

Why would participation in some programs, but not others, suggest guilt? Yet, the DCS is not willing to give women the **choice** to participate in certain programs. 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. 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 year, and provide a comprehensive prisoner education program on the new Act. The Response does not make any comment on whether/how it will improve the quality of its information to prisoners. The DCS argues that changes to the Act will make sentence management more consistent, and the process of progression through the sentence clearer. But, they don't provide much evidence for this claim.

Low Security Facilities

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 56-63

Covered in DCS Response – pages 4-8 & 24-26

Only 23% of the available beds for women in prison are in (so-called) *open security* facilities. At the beginning of ADCQ's review, these were not all filled ... even though many women were accommodated in higher security facilities than their security classification. Only 3 low/open security facilities are available for women (compared with 8 for men) and only 1 work camp exists for women (compared with 11 for men). This means that women are more likely to be isolated from family/children than men. Overall, the Report said that failure to provide equal access to open security facilities *is likely to constitute sex discrimination*.

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

- The Department appears set to phase out open security facilities altogether.
- 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 high security restrictions.
- The DCS showed its unwillingness to build new low security facilities early in its Response. It claimed (with little logical explanation) that it is impossible to secure land for open/low security facilities in urban areas. This is despite the fact that DCS doesn't seem to have approached any councils about a **low security** facility, and 3/17 councils near Brisbane approached about a new secure facility were interested. The Response admits that *some more remote communities are willing to host facilities*.

- The Response does not detail any specific plans for low security facilities apart from the North Queensland work camp.
- This is despite the fact that it didn't show 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.

Increasing open/low security facilities

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*. This is inconsistent with the *United Nations Standard Minimum Rules for the Treatment of Prisoners*. The Report therefore argues that current arrangements have *the potential to discriminate against female prisoners on the basis of their sex*.

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 different levels of *freedom of movement* for low security male and female prisoners could be discrimination.

The Report also criticises the standard of facilities at Helana Jones. The ADCQ is especially concerned about the lack of facilities for children between age 2 and 5, and the lack of exercise facilities for women.

The Report recommends establishing new work camps in North and South-East Queensland as a priority (**Recommendation 9**). The DCS says it supports this recommendation. However, it only talks specifically about **early** planning for one work camp in North Queensland. It is unclear whether it has any other plans for women's work camps.

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)

There is no further detail **anywhere** in the Response about any plans for *typical housing and hostel style accommodation* in the community. Is DCS talking about the wider community, or the 'prison community', here? Clearly, any plans that do exist are not far

advanced! If this really is about community-based housing, it would **contradict** their comments on not building any more fenceless facilities.

Again, the Response resorts to simple comparisons of men and women to try to argue that direct discrimination does not exist. Then ... it argues that women's needs are addressed through designing their facilities differently from men's ... that they are designed to *create and foster a freer regime inside the secure perimeter than a male centre*. No doubt the women surrounded by electrified security fencing at Numinbah 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*.

Low security facilities for women with disabilities

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 says this appears to discriminate against some women with disabilities.

The ADCQ recommends making at least one existing low security facility fully accessible for women with physical disability (**Recommendation 11**). 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*. But it is unclear whether this will make these facilities **fully accessible**. 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* (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.

Recommendation 12 talks about making sure that women with mental health or intellectual disabilities have the same access to low security facilities as other women, through provision of support services at low security sites. The Department says that it *consistently strives* to place these women in low security facilities **if this is appropriate** (our emphasis). The Response makes no comment on the recommendation that support services be offered at other locations. This suggests that they don't have any intention of making low security facilities **appropriate** for these women.

The ADCQ argues all new facilities should be fully accessible for people with a disability (**Recommendation 13**). 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

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 63-68

Covered in DCS Response – pages 8-9 & 26-30

The new system

The new Act is expected to establish parole as the **only** form of early release. 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, 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. The new system will be phased in over a 16 month period.

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. The ADCQ was concerned that a larger percentage of Indigenous women are not granted conditional release, and that the DCS had not explained this, which *must raise concern that Indigenous women may be experiencing indirect or systemic discrimination in the way their sentences are managed.* The DCS proposes that the new system will ensure equity of release for Indigenous women.

The ADCQ found that new laws may address some of the problems resulting from women serving their whole sentence in secure custody ... but only 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 (including *short termers*) spending their whole time in prison in high security conditions.

At the moment, women are required to have a low/open classification to be eligible for community based release. Usually, a *long termer* must have spent 9 months in an open custody facility to be eligible for conditional release. If the new parole board continues this approach, the problems with the classification system and availability of low security accommodation will **still** exist.

Conditional release for Indigenous women

Recommendation 18 proposes that the independent justice strategies review further examines conditional release programs for Indigenous women. The ADCQ acknowledged that existing DCS strategies may help Indigenous women maintain their community links during imprisonment. But they felt that more should be done. The DCS has not provided evidence to suggest that the new strategy will overcome existing problems for Indigenous women serving sentences longer than 3 years. The DCS says it has already provided a submission to the external review of the Aboriginal and Torres Strait Islander Justice Agreement.

Other recommendations suggested:

- Better statistical information about 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 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 boards. 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** offer 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.
- 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. Reviewing existing programs is **completely different** to developing customised programs. In other words, they do

not plan to develop specific programs for Indigenous women as part of the new system!

Conditional release for women with disabilities

The ADCQ was also concerned that DCS did not keep enough statistical information on community based release for women with intellectual or mental health disabilities. This made it impossible to determine whether they are discriminated against in the conditional release process. (This will be equally relevant in the new system.) The Report suggested that if DCS did not keep more statistical information, this might *indicate indirect discrimination on the basis of impairment*. **Recommendation 16** called for evaluation of the progress of women with ... disabilities through each stage of the prison regime so that any discrimination could be identified and steps taken to address the problem. 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.

Strip Searching

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 69-76

Covered in DCS Response – pages 10-11 & 30-32

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

(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.

Both mandatory and non-mandatory strip searching were clearly of major concern to the ADCQ, and the Report devotes a whole section to this issue. The ADCQ acknowledged that occasionally it is valid to conduct strip searches in situations where there is reason to believe that women may be hiding a prohibited item. However, it was very worried about how often women are strip searched, especially in CSU's. Here, until late December 2005, women were required to undergo 6 routine strip searches a day and often additional strip searches. (The number of routine strip searches at Wacol, but not Townsville, was reduced to 3 in December 2005. The ADCQ was concerned that because this was not a formal policy it could be reversed at any time).

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

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 presents strip searching as an individual issue (*an affront to personal dignity*), rather than a human rights issue. The DCS Response does **not even mention** the issue of prior sexual abuse amongst women in prison ... this implies that main impact on women is individual discomfort. The Response does separate mandatory and non-mandatory strip searching. It implies that because strip searching occurs elsewhere, this means it is OK to use in Queensland. The Response twice describes the ADCQ as *naïve to the complexities of the correctional environment*.

The ADCQ Report acknowledged Sisters Inside's argument that strip searching has not been an effective way of finding contraband. It quotes Sisters Inside's finding that of 41,728 strip searches conducted over a 3 year period, only 2 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*, the DCS Response claims that drug use in the prison has

been reduced from 20% - 5% since mandatory strip searching was introduced. The ADCQ concluded:

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 did not comment on the ADCQ's suggestion that other ways of searching for drugs should be tried.

The DCS argued that there is another reason for strip searching - finding *implements of self-harm*. But the ADCQ commented that suicide attempts and self harm continue to occur in secure custody, despite frequent strip searching. The ADCQ said that the DCS has a legal *duty of care* for prisoners ... the question is how is this best achieved? They concluded that 2 things needed to be balanced:

1. the possibility that strip searches may stop women harming themselves.
2. the large number of women prisoners with a history of sexual abuse whose mental health/rehabilitation might be harmed through strip searching.

So ... the ADCQ questioned the **balance of harm**, but did not directly answer the question. The Report concluded that it *still has serious concerns about the number of strip-searches conducted on prisoners being held in CSU, and, 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.*

The Report said there are two situations where strip-searching might be **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 prisons.
(**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 practice.)
2. Women in CSU – Routine strip searching has a greater impact on women with mental health disability than on those who do not.

The Report identified some situations where strip searching might be **indirect discrimination**:

1. Contact visits – Both male and female prisoners are strip searched when they return to prison, but the overall impact on female prisoners is greater because so many of these women have been sexually abused.
2. Low security prisoners in high security facilities – When women are accommodated in a higher security facility than their security classification, they are subject to routine

strip searching which would not occur if they were accommodated in low/open facilities. **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 recommendation.

3. Frequency of strip searches in CSU's – This has a greater impact on women with a mental health disability. The Report said that even when they leave their cells, women in CSU are under constant observation. It asked whether other, less intrusive types of search could sometimes be used.

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*, and not apply the same principle in the CSU in Townsville. It did **not** agree to reduce the number of strip searches in Townsville. **Nor** did it agree to formalise the reduced rate of mandatory strip searching (eg. through a new directive).

Overall, the ADCQ found that **any** strip-searching remains legally valid **only** until alternative safe, less intrusive, equally effective search methods are found. It listed several ideas for reducing the number of strip searches. The DCS did not comment on any of these. It argued that body scanning machines (being used in overseas prisons) should be seriously investigated. **Recommendation 19** says prison authorities must keep a track of new alternative technologies, and immediately apply any that are safe/less intrusive/equally effective.

According to the DCS, the methods used by prison officers in Queensland are *best practice*, and are conducted in a *professional manner*. The Response claims that the Department is always investigating new security technology 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). The DCS did **not** respond to the level of urgency implied by the ADCQ Report, and did **not** agree to **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

ADCQ Recommendations

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.
- 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.

Covered in ADCQ Report – pages 77-83

Covered in DCS Response – pages 4-6, 9 & 33-38

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)

The ADCQ recognised that programs and activities play a key role in the rehabilitation of women prisoners. 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.

Recommendation 23 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, advocacy groups (including Sisters Inside) and prison officers (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*.

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 prisoners.
- 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*. The Report did not review core programs. But, a variety of people were concerned about program appropriateness. Therefore, the ADCQ argued that DCS should review core programs *carefully and critically*, with particular reference to the *suitability and effectiveness of existing core programs for female prisoners*. The ADCQ felt that *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*.

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*. This is clearly quite different to developing courses specifically for women.

The Report raised particular concerns about prisoners with *intellectual disability* (maybe 30% of women prisoners). 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. Therefore, *neglecting the needs of these prisoners may be discrimination on the basis of impairment*.

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

- **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. At the moment, it is reviewing an outdated version of ORNI. The Response does not include a date for beginning or ending this task. Even though this review hasn't occurred, the Department emphasised that the only difference between male and female offenders is their learning style.
- **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.
- **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. It says it is delivering “new” programs relevant to women. These are 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 development stage.

- **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, mainly because the facilitation will be better. 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.
- **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.

Vocational and education programs

This was a rare area in which women prisoners seem to have a higher level of involvement than male prisoners. In vocational education women had 10% participation, compared with 7.4% in the overall prison population. 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 more trade/apprenticeship choices.

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. The DCS did not say when these would begin.

Secondary/tertiary education

Women prisoners also seem more likely to undertake secondary/tertiary education 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 opportunity.

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

Work and Industry Opportunities

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 83-87

Covered in DCS Response – pages 5-6, 9 & 38-39

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 prisons. 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 security. It found that Queensland prisons had the most limited industry range of Australian prisons. **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 did not add much to the information about work opportunities already covered by the ADCQ Report. It said the Department is reviewing the function of prison industries, and is thinking about introducing a new rehabilitation model, which focuses more on *work readiness skills* and integrating accredited training into (existing?) prison industries. It did **not** propose to put any effort into 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. The ADCQ did not find *any clear instance where women have been paid a lower base rate of remuneration for performing the same work as men*. But, 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. **Recommendation 32** asks that the DCS reviews its policy on bonuses to make sure that it is non-discriminatory. The Department says the review of prison industries will include looking at bonuses and trying to find a system that is consistent.

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

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 89-106
Covered in DCS Response – pages 44-46

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 the main responsibility for making sure that 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.

Many male and female prisoners are economically and socially disadvantaged. This means that they can be expected to have greater health needs 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*. 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 the prisons should use experts from outside the prison more (including *community-based organisations with skills/expertise in these areas*). 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 especially important.

According to the Report, a multi-disciplinary approach is sometimes used by prison health services, but **only** for prisoners at risk of suicide and **only** while their situation is acute. 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).

Recommendation 39 argued the need for more resources to address a range of health issues:

*... 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 (our emphasis).*

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 saying which services should be provided. The new Act will include the *basis for grant funding* consistent with a *new funding model for external providers*, focused on accountability:

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. (DCS 2006:45)

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 non-prison/community 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. (DCS 2006:46)

This suggests that women prisoners will **only** be able to get help for needs which:

- are identified through ORNI (or other needs-assessment tools), and,
- they tell prison authorities about.

This could have **very** serious consequences for responding the needs of women which they may choose to keep private ... the **very** needs raised by ADCQ – sexual assault, substance abuse or mental health issues. It might also put pressure on non-prison/community organisations to reduce the level of confidentiality they offer their prison clients.

In other words, the DCS's new approach to funding runs the risk of working directly **against Recommendation 39**.

Safe & Humane Custody – Mental Health

ADCQ Recommendations

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 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.
- 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.

Covered in ADCQ Report – pages 92-104

Covered in DCS Response – pages 9-10, 13-14 & 41-47

This was one of the top 4 areas of concern for the ADCQ, which felt that *mental health issues are often ignored and are poorly addressed*.

According to a DCS survey 2/3 of all women prisoners reported that they had mental health treatment or assessment, prior to coming to prison. It also found that more women prisoners have a mental health history than men.

Sisters Inside's submission said it was important to be cautious about DCS statistics on mental health, because of the way this label can be used to take greater control over women prisoners. However they, like the ADCQ, were very concerned people ending up in prison because there is nowhere else for them to go, the lack of mental health services in women's prisons and not enough skilled response to women with mental health issues.

Alternatives to imprisonment for offenders with mental health issues

The Report found that there is a very serious 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 this.

The ADCQ was also concerned about the shortage of substance abuse, housing, social and disability support in the community. The Report argued 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 these problems, to try to reduce the number of women with mental health issues in prison. The DCS says it already supports some initiatives by individual government departments, and would be happy to support a *whole of government* strategy.

Even though there are some 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 is concerned that *systemic discrimination* may be happening in the justice system.

The ADCQ further argued that the DCS has a *major responsibility* to make sure that there are adequate alternatives to prison for offenders with mental illness. **Recommendation 35** argues for the development of *more and improved community sentencing options* to divert these women from the prison system.

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* 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 DCS, 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 this is likely, 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

The ADCQ saw alternatives to prison as the best solution for many women. The Report also looked at the treatment of women with mental illness inside Queensland prisons. It mainly used information from 2 reports – one 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:

- Government departments not deciding who is responsible for mental health services.
- Mainly aiming services at prisoners with major mental health problems.
- 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.
- 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 these people.

According to the ADCQ, the report made recommendations which could improve prison mental health services without extra funding. The ADCQ supports the recommendations of the CFMHS report, and urged the government to act on them.

The Report also talked about the Palmer Inquiry, and its comments on the 6 month detention of Cornelia Rau in Wacol. The Palmer Inquiry was highly critical of the prison's ability to respond to a prisoner with a major personality disorder or major mental illness. The Inquiry said it *might be necessary ... to radically reorganise existing relationships, training and clinical pathways ... in the Queensland mental health system.*

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*. According to the DCS Response, it has received extra funding for prisoner mental health for this financial year. It does **not** say there will be any ongoing increases in funding.

Like the CFMHS, the ADCQ was worried about:

- The focus on drug therapies as the main form of treatment (where treatment is given).
- Lack of counselling/therapy.
- Inaccurate amateur diagnoses by prison staff leading to women being treated inappropriately.
- The limited availability of beds at the forensic unit at John Oxley.
- The shortage of secure mental health beds in the Queensland health system generally.

It seems that mental health issues are only briefly touched on in the 9 week training program for new prison officers. This is why **Recommendation 40** argues for 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.*

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. So we still don't know how *brief* (or long) the training is!!! The DCS also says it is involved in review that are looking at staff training in this area.

Recommendation 37 argues the need for better services for identifying and treating mental illness amongst women in prison. The DCS did not comment in detail on this detailed recommendation. The Department argued that *mainstream health services* are better equipped to deal with these problems, and it is working together with Queensland Health to

look at future services. 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.

Basically, the DCS argument implies that “everything will be OK if prison health services are handed over to Queensland Health. They can look at the need for more intensive care facilities, and finding alternate ways to treat personality disorders. 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 that post-release *step down accommodation facilities* should be developed for women with mental illness. The DCS did **not** agree to develop any new facilities or services specifically for women with mental illness.

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* found that:

- About 1/2 the women surveyed had thought about committing suicide.
- About 1/3 had attempted suicide at some time.
- Indigenous women were more likely to have suicidal thoughts, but no more likely to attempt suicide, than non-Indigenous women.
- More than 20% of the women reported having harmed themselves.

The Survey concluded that a *wish to die* might be a reasonable response to both the life problems faced by many prisoners before coming to prison, and the impact of imprisonment. Both DCS and other research have found that self harm is more common amongst women in prison than men.

The ADCQ recognised that the *DCS has a responsibility and a duty to protect prisoners from self-harm*. But the Report questions whether CSU's are the best way to achieve this. Prison staff often put women in CSU because they think they are self harming or a suicide risk. The Report commented on the large number of studies which suggest that use of isolation might in fact **increase** a prisoner’s desire to self harm. The Royal Commission into Aboriginal Deaths in Custody argued strongly that it is *undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention*.

The ADCQ described the process required to detain women in the CSU:

- A prison officer can initiate an order for up to 5 days, and a doctor or psychologist for up to 3 months.
- 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.

The Report told the stories women in prison who are afraid to show even *perfectly normal human emotions*, because of the threat of being placed in CSU by prison staff.

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*. The ADCQ also supported another proposed legislative change, which is to not automatically place women at risk of self-harm in the CSU. But the ADCQ still 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'*), and
- the effectiveness of using CSU's as a response to risk of **self-harm** (as distinct from threats to others)

The rate of suicide in Australian prisons has not decreased since the Royal Commission report. This questions the effectiveness of CSU's for suicide prevention. The ADCQ acknowledged that prison authorities have tried some other strategies (eg. formal suicide prevention programs, screening for risk), but had failed to reduce the suicide rate.

Without completely ruling out the use of CSU's, the Report argued they should **not** be used in response to a risk of self harm. **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.

Overall, the ADCQ felt that there should be a **much** stronger focus on alternate self harm prevention strategies. These 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 helping prisoners to develop hopes and plans for the future. 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.

The DCS responded by justifying current procedures and repeating plans for changes to CSU's under the new Act. 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*. 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! **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 CSU.) **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*.)

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 included women's stories of their experiences 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. 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 ...
 - *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 are “the exception rather than the rule” and says the Department and the police will ask the ADCQ to provide details of allegations so they can be *appropriately investigated*. 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 & Humane Custody – Other Health Issues

ADCQ Recommendations

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

Covered in ADCQ Report – pages 89-106

Covered in DCS Response – pages 40-41 & 47-48

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 women re-offend.

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. There are plans to make the Drug Court permanent, but 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.

The ADCQ Report says that *lack of availability of programs to women serving short sentences may be a form of indirect discrimination*. 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*.) Therefore, less women are able to meet the criteria for substance abuse programs than

men. As detailed in the DCS Response to **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.

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*.

Recommendation 34 spells this out.

The Response says that as part of a new DCS drug strategy, **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*.

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 started before coming to prison.
- Avoiding hospital treatment (or breast screening/mammograms) because of strip searching upon leaving and re-entering prison.
- Feeling that medical issues are not always treated confidentially.

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*. 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.

The role of male prison officers

The ADCQ listed a number of concerns about the role of male prison officers raised by women prisoners. These 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).
- Male officers being involved 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*. As included in **Recommendation 43**, the ADCQ agreed that male officers should not be checking women in observation cells or doing inspections at night, 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.

The DCS effectively dismissed this recommendation. It argues that daily rosters aim to achieve a gender balance overall, with more female officers in *areas requiring increased supervision and observation*. There are always female officers present when male officers work in *prisoner accommodation areas*. 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%.

Aboriginal & Torres Strait Islander Women

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 107-115

Covered in DCS Response – pages 48-50

This was one of the top 4 areas of concern for the ADCQ, which concluded that *Indigenous women are especially at risk of discrimination, and there are strong indicators that Indigenous women are being systematically discriminated against in the criminal justice and correctional systems, as both victims and offenders*.

The ADCQ includes many statistics which compare Indigenous and non-Indigenous women throughout the 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 includes statistics to show 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 are more likely to have a higher security rating.
- Indigenous women are more likely to 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.

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 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.

The Report acknowledges that the DCS has taken some steps to 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).

But the ADCQ is still concerned that systemic discrimination may be affecting Indigenous women. 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.

The Report was positive about two DCS initiatives – a possible women's work camp in North Queensland, and court-ordered parole with community corrections services in 4 Queensland Indigenous communities. However, it concluded that not enough is being done to fully address the *prima facie ... direct discrimination* experienced by Indigenous women prisoners.

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 new & creative rehabilitation programs and facilities for Indigenous women, particularly in North Queensland.

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.

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. **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 their own research into healing programs.

The ADCQ also commented 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 working directly with women.

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. The Department is keen to increase the proportion of staff from diverse cultural backgrounds, particularly Aboriginal and Torres Strait Islander staff.

Whilst these changes are promising, the question remains whether this will increase the number of Indigenous DCS staff working **directly** with Indigenous women prisoners. The DCS already has 4.2% Indigenous staff, 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.
- The high cost of video links for family contact.

In response to **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*. It did **not** propose any other strategies to overcome possible systemic discrimination against Indigenous women in prison.

Young Women in Prison

ADCQ Recommendations

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 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.

Covered in ADCQ Report – pages 115-117

Covered in DCS Response – page 50

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. **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 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 age. **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 & Linguistically Diverse Prisoners

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 117-119

Covered in DCS Response – pages 51-52

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.

Telephone interpreters are routinely used during the prison induction process. But 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). The DCS claims it already does this.

Also, failing to make courses available to other women as accessible as possible to these women *might be indirect discrimination*. **Recommendation 51** proposes improvements in this area. 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 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.

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.

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 their 2005 Multicultural Action Plan includes providing access to newspapers and books in prisoners' mother tongue. They do not 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, even though the Multicultural Action Plan includes *providing for a range of dietary needs ... based on culture or religion ... where reasonable*.
- 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.

The DCS Multicultural Action Plan is due to be fully implemented by September 2007. There is a list of *performance indicators* the Department plans to meet. 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 having essential information translated, dietary choices, keeping religious items in cells, religious sites within the prison, access to reading material, more effective official visitors, and an effective complaints system.

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

ADCQ Recommendations

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.

Covered in ADCQ Report – pages 119-124

Covered in DCS Response – pages 11-12 & 53-56

This was one of the top 4 areas of concern for the ADCQ, which found that *children's needs are inadequately addressed*.

Sentencing mothers to prison

The ADCQ Report said that up to 85% of women in prison are *parents of dependent children and heads of single parent families*. With more and more mothers going to prison, the ADCQ was worried that not enough research had been done on the impact of their mother's imprisonment on children. This is why **Recommendation 56** suggested this research be done.

Under the UN Convention on the Rights of the Child, Australia is supposed to make sentencing of mothers consistent with *the best interests of the child*. The Report argues that a mother's imprisonment can have a major impact on their children, and lead to many problems.

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 showed that the effect on an offender's children is not usually considered by the judge/magistrate when deciding whether to send a mother to prison. The ADCQ argues that *the best interests of the child should always be considered by sentencing authorities*, and the law should be changed to make sure of this (**Recommendation 57**).

The DCS argued that courts can already give non-prison sentences, and are quite capable of including family responsibilities in their sentencing decisions. The Department of Justice and Attorney General doesn't agree with formally including *the best interests of the child* as a factor in sentencing. The Response says:

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** in some cases. The ADCQ Report made it **very clear** that it was suggesting this 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 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 its view and Australia's international obligations.

Recommendation 55 suggests 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).

The DCS argued that Queensland should look at ways of improving existing sentencing options, and using them more frequently, before exploring ideas from other places. They did **not** mention any plans to:

- review the development of facilities for mother and children.
- look at ways of improving existing sentencing options.

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. 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 worried about both the number and standards of facilities for women with children inside Queensland prisons. Their Report gives examples of women not being allowed to keep their babies with them due to shortage of suitable facilities. It suggests in **Recommendations 58 and 59** that:

- New, family-friendly, purpose-built facilities be developed.
- These should be designed to *put the best interests of the child first*.

- Prison staff in these areas should be specially trained.
- They should have the same amount of living and play areas as in the general community.
- They should have the same amount/quality of organised activities for child as in the general community.

The DCS says that facilities for children at Wacol are *adequate*, and problems at TWCC will be overcome when the new prison is built. The DCS Response includes a long list of activities and services available to women and children at Wacol ... but doesn't say anything about the quality of these services, or how often they are available.

The DCS Response says **nothing** about increasing the number of places for women and children (except at the new Townville prison). It says **nothing** about ADCQ criticisms about the quality of mother/child facilities at other facilities (eg. Helena Jones). It says **nothing** about family-friendliness of facilities or staff.

Children outside prison

The ADCQ was also worried about the wellbeing of children not living with their mother in prison. There's lots of evidence that separation can be very damaging for children. Because 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. They may not have chances to see their mother face-to-face (especially if from remote communities), because of the lack of prisons close to home, or because their carers can't/won't bring them for visits.

And ... when their mother is released, the family may be even poorer, if she's lost her job whilst in prison.

Most women serve sentences of less than 12 months; the average time in prison for women is approximately 2 months. It is hard to see how a mother serving a short sentence, is *in the child's best interest*. This is why the Report recommends:

- 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**).

The DCS strongly defended its family contact and support when leaving prison (transitional support). It claims that the Department pays the cost of video conference calls. It provides a long list of services it provides to help with family contact. But, it doesn't say how often many of these things (eg. special visits and family days) happen!

Apart from new *Transitions Coordinators* at each prison, the DCS did **not** agree to develop any new services especially for women and children. It did **not** agree to make any other improvements in family contact or transition services.

Transgender Female Prisoners

ADCQ Recommendations

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.

Covered in ADCQ Report – pages -125124

Covered in DCS Response – pages 56-57

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! At the moment, the Department decides whether transgender prisoners are sent to men’s or women’s prisons. This is inconsistent with the Act.

The Report (**Recommendation 62**) argues that DCS should automatically send transgender prisoners will to a prison of their gender identity unless the prisoner **chooses** not to (eg. because they believe they will be unsafe there). They should also have the **choice** of accommodation in a protection unit (**Recommendation 64**). But this should not be imposed on them by prison authorities. Imposing this would constitute a *prima facie* case of discrimination.

The ADCQ says that transgender female prisoners have a right 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 Department argues that it is responsible for making all important 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).
- Their access to protective custody.

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 conflict between this point of view and its responsibilities under the Anti-Discrimination Act.

Accountability of Prisons (including Independent Scrutiny)

ADCQ Recommendations

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.
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.

Covered in ADCQ Report – pages 127-131

Covered in DCS Response – pages 12-14 & 57-60

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 ability 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 says that it makes sure that:

- Staff are good quality (through initial psychological testing and criminal history check).
- Staff are skilled (through formal accredited training).

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 ... which is why the ADCQ Report was needed!

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 is already keeps data on gender and race, but can't fully meet this recommendation because:

- It does not yet have a way of diagnosing disability. This is an interesting comment, because the DCS has claimed that it addresses the needs of women with disabilities! (**It is difficult to understand how they do this, if they have not diagnosed women's disabilities.**)
- It cannot collect data on the impact of incarceration until other research (**Recommendation 56**) has been done. (**It is difficult to understand why not.**)

DCS says it is moving toward collecting all this information. But, it says that even when it can collect the data, it may not be able to make the information public because of privacy issues. (**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* 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 job of *Chief Inspector of Prisons* is not yet included in legislation. The Report proposes that, like many places around the world, the job should:

- Allow the Inspector to visit and inspect any prison, whenever they wish.
- Cover both juvenile and adult facilities.
- Be located outside DCS and the Department of Communities.

- Have enough staff to do its job properly.
- Report 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, 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 these different 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 is one of the reasons why the ADCQ was able to collect so much information for this Report.

The DCS claims that the Chief Inspector’s job is independent enough because 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 says that the Chief Inspector will *publicly report on his activities* but does **not** go into further detail about what type of reporting. It does **not** explain why the Department is unwilling to have the position located outside the DCS.

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

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.

Conclusion

The ADCQ Report concluded:

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)

The ADCQ is worried that while crime rates seem to have fallen over the past few years, more women are being imprisoned. This seems to arise from community attitudes, rather than factual information.

The Queensland Government is influenced by community attitudes. The community seems willing to ‘turn a blind eye’ to the high level of possible discrimination against women in prison. The DCS and the Department of Justice and Attorney-General have mostly followed negative community attitudes and defended prison practices, rather than challenging them.

In the end, it doesn’t matter what the community thinks. It is the responsibility of the Queensland Government to make sure that women are not unnecessarily put in prison. They are also responsible for making sure that prisons are run in a way that protects the rights of women prisoners.

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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