



Ombudsman Tasmania

**Investigation into the strip searching procedures for women
at the Hobart Reception Prison**

20 November 2017

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Abbreviations and Acronyms

DSO – Director’s Standing Order

HRP – Hobart Reception Prison

MOU – Memorandum of Understanding

SOP – Standard Operating Procedure

TPS – Tasmania Prison Service

Executive Summary

A correctional officer raised concerns with my Office regarding the involvement of men in the forcible strip search of a woman in the Hobart Reception Prison. I decided, as a consequence, to investigate the Tasmanian Prison Service's compliance with its strip searching procedures at that prison.

Strip searching involves the removal of all of a detainee's clothes. Its purpose is to reduce the chance of harm within a custodial setting but the process also clearly has the potential to cause it. I was satisfied that the Prison Service was following best practice when detainees were cooperating with the strip search but some issues arose in the context of those strip searches where correctional and police officers were required to use force.

All detainees who enter the Hobart Reception Prison, including those who are being held until sober, people being brought before a magistrate and those being held for questioning, are strip searched. I have suggested that Prison Services review whether the blanket requirement of strip searching is required at HRP. I appreciate, however, that there are a number of balancing factors involved so I have not made a formal recommendation. I have suggested, however, that TPS contact the West Australian Police Commissioner to enquire about the efficacy of body scanners that were installed in that jurisdiction following a forcible strip search of a woman that resulted in her finger being fractured.

Prison Services is now introducing a new Directors Standing Order for Searches. I had the opportunity to consider a draft copy of the document and it is a much more comprehensive document than the previous orders and better addresses specific requirements for transgender detainees and detainees with disabilities.

The investigation identified training gaps which are now, or are in the process of being, addressed for both correctional and police officers. There needs to be greater integration between TPS and Tasmania Police with respect to the exchange of training resources to ensure that all officers conducting strip searching have received the appropriate training and are aware of, and have access to, the relevant Director's Standing Orders.

A draft copy of this report was provided to the Secretary of the Department of Justice, the Director of Prisons and the Commissioner of Police. The Secretary and the Director made no comment. The Commissioner of Police advised that the report had been forwarded to the Education and Training division of Tasmania Police for review. The outcome of that review is detailed in the body of the report. Essentially strip searching of non-compliant people is now taught to Tasmania Police recruits and

Tasmania Police is going to liaise with the Prison Services regarding access to the relevant Director's Standing Orders.

I make the following recommendations as a result of my investigation:

Recommendation 1

I recommend that the new searching DSO requires that all women be informed prior to the strip search that access to the video footage in cell 107 is restricted and that processes involving a privacy cell be formalised.

Recommendation 2

I recommend that the review of all use of force incidents at HRP be included in the responsibilities of the HRP superintendent.

Recommendation 3

I recommend that detainees being strip searched be routinely informed about how they can complain if they have any concerns regarding their treatment. Detainees should also be given information regarding their ability to complain following any incidents involving use of force.

Recommendation 4

I recommend that training material on strip searching specifically address the impact it can have on the victims of sexual assault.

Recommendation 5

I recommend that DSO 1.02 be amended to specifically provide that refresher training in the use of force and physical equipment also includes communication skills.

Recommendation 6

I recommend that TPS negotiate with Tasmania Police regarding the provision of training to Tasmania Police training officers in relevant procedures for strip searches in reception prisons. The negotiated outcome should be incorporated into the MOU.

Recommendation 7

I recommend that, following the introduction of the new searching DSO, arrangements be made as a matter of priority to ensure Tasmania Police officers who transfer detainees to reception prisons receive appropriate training in the TPS searching procedures.

Recommendation 8

I recommend that TPS considers actively disclosing its revised searching DSO when it comes into force, to the extent permitted by s8 of the *Corrections Act 1997*.

Introduction

Background

1. A now former correctional officer contacted my office in March 2016 raising concerns about a search at the Hobart Reception Prison. The officer reported that two male and two female correctional officers forcibly strip searched a female detainee. The officer asserted that the search was in direct violation of the Director's Standing Orders (DSO) and Standard Operating Procedures (SOP) which dictate that only female staff may remove the clothes of a female detainee. The officer also referred to another similar incident from a year prior involving the strip search of a young woman who they believe had a mental health condition. Three or four male officers and one female officer reportedly forcibly strip searched this woman. He reported that this was clearly distressing for the woman as she screamed continuously following the incident and was still screaming when the officer left the area approximately 30 minutes later. The officer reported both incidents to the Director of Prisons but was not satisfied with the response.
2. I had not received a complaint from the detainee but decided to investigate, on my own motion, the Tasmania Prison Service's compliance generally with its procedures for the strip searching of women at the Hobart Reception Prison (HRP). I focused specifically on the admission process when a detainee is brought into the watch-house at HRP.
3. Historically, we have received a limited number of complaints regarding strip searches. The majority of complaints relate to prison visitors being strip searched when they visit friends and family. Visitors, unlike detainees and prisoners, have the option of refusing to be strip searched and leaving the prison facility.
4. In deciding to conduct an own motion investigation I took into account the 2014 case of *United Voice, Tasmanian Branch v The Minister administering the State Service Act 2000/Department of Justice* in the Tasmanian Industrial Commission. This case was a review of a decision to terminate the employment of a male correctional officer who strip searched a pregnant detainee at HRP in 2013. I considered the investigation would be an opportunity to consider any changes that have been introduced at HRP since that incident.

Jurisdiction

5. I can investigate a matter on my own motion pursuant to s13 of the *Ombudsman Act 1978*. The subject of the investigation needs to relate to the administrative action of a public authority. In this case the administrative action related to the

procedures surrounding strip searches of women in HRP. The Tasmania Prison Service (TPS), which is part of the Department of Justice, manages HRP and is a Tasmanian public authority for the purposes of the *Ombudsman Act 1978*. It therefore falls within my jurisdiction. I issued the requisite notices to the Secretary of the Department of Justice and the then Minister for Corrections, the Honourable Dr Vanessa Goodwin MLC on 4 April 2016.

The Legislation

6. The *Corrections Act 1997* (the Act) provides for the establishment, management and security of prisons and the welfare of prisoners¹ and detainees² (or remandees). Appendix A contains the relevant sections of the Act, being the guiding principles, and the particular provisions relating to searches. The guiding principles of the Act provide that people who are subject to the Act retain their normal rights and responsibilities as citizens, except as these are limited in accordance with law. It also provides that services and procedures should be fair, equitable and have due regard to personal dignity and individuality, as far as is consistent with the need for appropriate levels of security and control.
7. HRP differs from a normal prison environment, however, as watch-house detainees can also be held there. Watch-house detainees are persons in custody but who do not meet the definitions of detainee and prisoner in the Act as they have not been before a magistrate or a justice and remanded or sentenced. For simplicity I have used the term detainee throughout this report to encompass persons in custody, such as watch-house detainees, as well as detainees. This is despite its specific meaning in the Act.
8. DSO 1.35 is a specific DSO that applies to watch-house detainees at HRP. These procedures, like all DSO, are issued in accordance with section 6(3) of the Act which provides that the Director of Corrective Services may make standing orders for the management and security of the prisons and for the welfare, protection and discipline of prisoners and detainees. Section 17(2) of the *Criminal Law (Detention and Interrogation) Act 1995*, however, specifically provides that the Director may make correctional standing orders in respect of the welfare, protection and management of persons in custody who have been transferred from the custody of a police custody officer to a correctional officer of a reception prison.
9. I also reviewed various relevant international conventions. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for

¹ Section 3 of the Act: **prisoner** means a person who is subject to an order of a court by which he or she is sentenced to a term of imprisonment and includes a person declared as a dangerous criminal under section 19 of the *Sentencing Act 1997*.

² Section 3 of the Act: **detainee** means a person, other than a prisoner, who is subject to an order of a court by which he or she is remanded or otherwise committed to prison.

Women Offenders ('Bangkok Rules') are most relevant, with rules 19 and 20 providing:

Rule 19

*Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.*³

Rule 20

*Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches in order to avoid the harmful psychological and possible physical impact of invasive body searches.*⁴

10. The United Nations Standard Minimum Rules for the Treatment of Prisoners ('the Mandela Rules') (which are relevant to all prisoners, male and female) provide:

Rule 50

*The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.*⁵

Rule 51

*Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.*⁶

³ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('Bangkok Rules')*, GA Res 65/229, UNGAOR, 65th sess, UN DOC A/RES/65/229 (21 December 2010) r 19.

⁴ *Ibid* r 20.

⁵ *United Nations Standard Minimum Rules for the Treatment of Prisoners ('Mandela Rules')*, GA Res 70/175, 70th sess, UN DOC A/RES/70/175 (17 December 2015) r 50.

⁶ *Ibid* r 51.

Rule 52(1)

Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.⁷

11. The International Covenant on Civil and Political Rights provides that:
 - No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.⁸
 - All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.⁹
12. Australia is a member of the United Nations, and its domestic statutes should be interpreted consistently with international law so far as the language of the statute permits.¹⁰ International standards may therefore be relevant when interpreting and applying the searching provisions of the Act despite the fact that they are not binding.
13. In any case, the guiding principles of the Act, as outlined above, are similar in spirit to the international rules, which refer to dignity, privacy, individuality and respect.

The Investigation

Methodology

14. I wrote to the Department of Justice and the Director of Prisons to obtain information. My staff and I also met with the Director and other staff at various times to discuss matters arising from the investigation. I was shown through the watch house area and stepped through the process that follows someone's admission into the watch house.
15. I wrote to the Commissioner of Police as Tasmania Police officers are often called upon to assist with strip searches at HRP.

⁷ Ibid r 52(1).

⁸ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 7.

⁹ Ibid art 10(1).

¹⁰ See, eg. *Polites v The Commonwealth* (1945) 70 CLR 60, 68-9, 77, 80-1; *Kartinyeri v The Commonwealth* (1998) 195 CLR 337, 384 [97].

16. I reviewed a number of recordings, which do not include sound, of compliant and non-compliant strip searches of women at the Hobart Reception Prison.
17. I invited correctional officers and police officers based in the HRP and Hobart Police Station to contact my office. I requested that a notice be placed in staff common areas and I also sent a copy of the invitation to the relevant unions and association. Following contact from one of those unions, an informal discussion was arranged with approximately 12 correctional officers at HRP. Two of my investigation officers attended to obtain a better perspective on correctional officers' experiences of the requirement to strip search female prisoners and detainees.
18. I provided a notice to TPS to place at the Mary Hutchinson Women's Prison inviting prisoners and remandees to contact my office about their experience of being strip searched at HRP. All prisoners and remandees would have been strip searched when admitted into custody through the Hobart Reception Prison or the Launceston Reception Prison. Unfortunately we did not receive any feedback. During the course of the investigation, however, we did receive correspondence from a female remandee complaining about being strip searched at HRP.

The strip searching process

19. I reviewed the relevant internal procedures for strip searching at the Hobart Reception Prison which include:
 - Interim DSO 1.11 – Searching Prisoners/Detainees – issued 23 October 2006;
 - DSO 1.35 – Watch-house detainees – implemented 20 September 2013;
 - SOP 1.11.1 – Searching Male Prisoners/Detainees – issued 20 September 2013; and
 - SOP 1.11.2 – Searching Female Prisoners/Detainees – issued 3 October 2013
20. TPS advised during the course of the investigation that these procedures and other searching DSOs were being reviewed and consolidated into one DSO about searching. I have had the opportunity to consider a working draft of the DSO and, positively, the draft addresses a number of areas of concern I had intended to report upon at the conclusion of my investigation. I have mentioned those areas throughout this report. This DSO is due to be implemented on 1 December 2017 to coincide with commencement of amendments to the searching provisions of the Act.

21. The DSOs listed above make it clear that everyone who is taken into custody at HRP is strip searched. There are no exceptions. This practice is also continued in the draft searching DSO.
22. DSO 1.35 sets out when a person is in custody. The relevant sections are in Appendix B but it includes people who are under arrest and taken into custody for the purposes of questioning, bringing them before a magistrate, and holding someone who is intoxicated.
23. It is relatively standard practice in Australia for routine strip searches to take place on admission into a prison.¹¹ Practices vary, however, between watchhouse facilities and these variances result from a range of factors including legislation and procedures. In Queensland, for example, the Police Procedures Manual provides that:

*A police officer's or watchhouse officer's general duty of care toward a person is not in itself sufficient justification to conduct an unclothed search. An unclothed search should only be conducted when a responsible officer reasonably suspects the person poses a particular risk and an unclothed search is necessary to mitigate the risk.*¹²
24. The manual specifies that unclothed searches, or strip searches, are not to be conducted as a matter of routine.¹³
25. The Tasmanian Acting Commissioner of Police advised that police officers have the authority to conduct strip searches of persons in custody under s58B of the *Police Offences Act 1935*.¹⁴ This provision, however, requires the police officer to believe on reasonable grounds that it is necessary to search an accused person in custody. This is in contrast to the blanket requirement under the DSOs. The Tasmanian Police Manual specifically provides though that where reception prison facilities, such as HRP, are available to members, these are to be used for detaining people in custody in preference to a designated police station.
26. In contrast, it is clear that Tasmanian correctional officers must comply with TPS procedures requiring routine strip searching of all detainees, including juveniles, who enter HRP. Whether that procedure of blanket strip searches

¹¹ See for example www.corrections.vic.gov.au/home/prison/going+to+prison/arrival/, www.correctiveservices.justice.nsw.gov.au/Documents/Womens-Handbook-complete.pdf at p.8, and www.correctiveservices.wa.gov.au/_files/prisons/adult-custodial-rules/policy-directives/pd-85-appendix-procedures.pdf at p.6.

¹² Queensland Police, Operational Procedures Manual Public Edition issue 57, Chapter 16, p26 accessed at www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter16.pdf.

¹³ Ibid p21.

¹⁴ Section 4A (7) of the *Police Offences Act 1935* also provides that a police officer may search an intoxicated person who has been taken into custody in accordance with s4A(2).

for all who are taken into custody is justifiable, including those being held for questioning or who will be bailed when sober, is not so clear. It comes down to the balance between security and dignity. Security considerations are very real and include concerns about suicide, self-harm and the potential threat that smuggled weapons or drugs pose to correctional and police officers, other detainees and court staff.

27. As outlined above, TPS is in the process of reviewing and consolidating searching DSOs and SOPs and will consult with various parties near the end of that process. The main DSO providing for searches of prisoners and remandees, interim DSO 1.11, has been in place since 2006. The consultation process, which will include Tasmania Police and other internal committee groups within TPS, may be a valuable opportunity for a discussion to be had about the blanket strip searching policy and whether it is still reasonable in a watch-house context.
28. Appendix C contains a brief summary of TPS' strip searching requirements. During my investigation I obtained video footage of a small, random sample of strip searches of cooperative female detainees. I was satisfied that the procedures were being applied and reflect best practice, such as ensuring the detainee is at least half clothed at all times. The recordings, however, do not include audio so I could not independently confirm if detainees were routinely provided with information about the nature, process and reasons for strip searching. This investigation was prompted, however, by a situation where a detainee was not cooperative and refused to submit to a strip search.

Non-compliant searches

29. Concerns were raised with this Office regarding the involvement of male officers in that strip search. The particular detainee had a history of aggressive behaviour, including spitting at correctional officers, and was not cooperating with the requirement to be strip searched. She also had a history of self-harm. I reviewed the footage of this incident along with the footage of ten other incidents at HRP that involved the use of force to strip search female detainees.
30. The procedures contain limited direction as to what happens when someone is non-compliant. The interim DSO 1.11 is clear, however, that it is a minimum standard that prisoners/detainees must be strip searched upon their initial reception to a prison.

DSO 1.35 provides that:

Correctional Officers may use reasonable force to restrain, control or search a watch-house detainee in accordance with Standing Order 1.02

(Use of Force) and notification must be made in accordance with Standing Order 1.05 (Incident Reporting).

DSO 1.11 also provides:

Where it is necessary in the interest of prison security or good order to conduct a search and the prisoner/detainee refuses to cooperate with the conduct of the search, force may be used to carry out the procedure. Correctional Officers will ensure that the minimum force necessary is used to complete the search.

31. The SOP for searching female prisoners/detainees sets out four steps:
 - 1) Inform the prisoner/detainee that refusal to submit or cooperate with search procedures may result in being charged with a prison offence.
 - 2) Endeavour to secure the prisoners/detainees co-operation.
 - 3) In the event that the Correctional Manager believes that it is necessary to use force to carry out the search procedure, only the minimum necessary force may be used and only after all the other avenues of securing the prisoner/detainees co-operation have failed.
 - 4) Ensure appropriate registers relating to use of force are completed per the relevant use of force standard operating procedure.
32. Responsibility for the first two lies with the correctional supervisor or the most senior officer on duty and the last two are the responsibility of the correctional manager.
33. The Use of Force DSO is informed by Part 4A of the Act.¹⁵ This part places the responsibility on the Director to ensure force is always the last resort and in accordance with Part 4A.
34. When viewing the footage of the various incidents, it is difficult to determine whether the use of force was the last resort and that the amount of force required was the least amount necessary. The absence of audio means it is difficult to ascertain what, if any, attempts were made to communicate with the detainee and whether the detainee was being cooperative or became cooperative during the search. Each incident involved numerous different factors that may have had an impact on the response, such as the time of day and the subsequent number of staff working and whether the detainee was under the influence of drugs or alcohol or had a previous history of aggression. It is important to note, in those circumstances, that with the limited information

¹⁵ See appendix D for the relevant excerpts from the Act.

I have to hand I have not assessed the cases and their compliance with the various DSOs. Rather, I viewed them for the purposes of familiarising myself with the process and considering the practical application of the searching DSOs.

35. The general pattern of the strip searches where force was used involved correctional and/or police officers forcing the detainee to lie face down on a mattress on the floor of an unoccupied cell. An officer held down the detainee's upper body and another officer held down the detainee's lower body using various holds and locks. An anti-suicide blanket¹⁶ was used to cover the detainee's body and a third officer then had the primary role of taking off the detainee's clothing. Sometimes there were additional officers assisting in holding the detainee, generally no more than four, and removing clothing from the cell. Once the search was concluded the officers left the cell, leaving the detainee naked with the anti-suicide blanket.
36. I observed a number of cases where only female correctional and/or police officers conducted the search. There were cases, however, when male correctional and/or police officers were involved. When my investigation officers met with correctional officers the male staff said they "hate" having to assist with strip searching females and they endeavour to be as professional as possible and maintain the woman's modesty and dignity. In every case I observed it was clear that officers were attempting to afford detainees some dignity as they all had an anti-suicide blanket draped over their bodies during the strip search.
37. It is not ideal for men to be involved in searches of non-compliant women but for safety reasons it sometimes does occur. It would be an absurd situation, for example, if during a compliant search that becomes violent, a male observing officer standing outside the cell, who is not in sight of the detainee, could not respond to assist his female colleague. If a detainee is non-compliant before the strip searching begins, but there are insufficient female correctional or police officers available, then male officers need to assist. Female correctional officers told my staff that they would not want male officers to feel they need to "hang back" when needed due to any perception that they might be behaving inappropriately.
38. If a man or men were involved in the strip search then it was generally a female officer who was taking the clothing off the female detainee. There were occasions when there were a number of staff involved in the search and staff who were not assisting with the strip search waited outside the cell, out of sight but within hearing range. There were other occasions where officers, both male

¹⁶ A tear resistant blanket.

and female, were within sight observing others conduct the search and removing clothing items which were passed to them.

39. A minimum of at least three officers were usually in the cell in the non-compliant strip searches. In one case there were up to eight police and correctional staff in the cell at once although generally only three or four officers were holding down the detainee. The other staff were either gathering jewellery as it was passed to them, removing clothing from the cell, observing or sweeping items from the cell. In this case it seemed unlikely that this many staff were necessary to be in the cell although I appreciate that before the detainee was safely restrained additional staff close at hand might have been required.
40. We were informed that the more people involved in restraining a detainee, the less pressure and force was required to hold that detainee in position. There are also health and safety implications if an individual cannot be safely restrained. During my officers' meeting with correctional officers it was also mentioned that the strength of some detainees was significant and comments were made about the impact of methamphetamine on some people's behaviour.
41. The current absence of procedures relating particularly to non-compliant strip searches, however, essentially means there is limited guidance as to matters such as minimising the number of people that should be present in the cell. Practices such as standing in the doorway or in the cell observing may well be necessary in certain circumstances to enable a quick response to any escalating situation. In the interest of trying to maintain some dignity for the detainee, however, it is obviously preferable for the minimum number of people required to assure safety to be in the cell or directly observing.
42. What would already be a distressing process for detainees could be made much worse when there are more people than necessary involved. The draft of the new searching DSO, however, addresses the process for non-compliant searches. The final document should provide guidance to staff about trying to minimise staff numbers in the cell.

Self-harm processes and anti-suicide gowns

43. Suicide is a common cause of death in Australian prisons and the rate of self-inflicted deaths in the prison population greatly exceeds that of the community.¹⁷ Prison suicide risk is generally highest early in the detention period and both histories of actual self-harm and thoughts of self-harm are more

¹⁷ Matthew Willis, Ashleigh Baker, Tracy Cussen and Eileen Patterson (2016) Self Inflicted Deaths in Australian Prisons, *Trends and Issues in Crime and Criminal Justice* no.513, p.1.

common among female than male prison entrants.¹⁸ An Australian Institute of Health and Welfare report into the health of Australia's prisoners found that 36% of female entrants to the prison system in 2015 reported having intentionally harmed themselves and 14% reported having had thoughts of harming themselves during the previous 12 months.¹⁹

44. The Use of Force report for one of the non-compliant search incidents noted that clothing was not returned to the detainee in accordance with DSOs and procedures. This was presumably a reference to DSO 2.01 Suicide and Self-harm Prevention. If a detainee is non-compliant and they have not completed the transfer process, including a preliminary risk assessment where detainees are asked various questions about self-harm, it seems the detainee is presumed to be at the highest level of risk of self harm. Consequently, their clothes are not returned to them so as to minimise the risk of injury or death. Regular checks are required to be performed under DSO 2.01 if someone is considered to be at risk of self-harm. There are also already 30 minute checks required to be performed for all detainees under DSO 1.35 during the night shift.
45. As indicated above, correctional officers routinely use anti-suicide blankets to partially cover non-compliant women during strip searches. Most of the footage provided ended not long after the use of force incidents concluded with the detainees lying on the mattress naked in the cell with only the anti-suicide blanket. In one non-compliant search it was observed that the detainee was not given back her clothes until 1.15pm, almost four hours after the search was concluded. This detainee was being held for questioning. The post admission log specified when clothing was returned but questions regarding observations on admission were not completed in the paperwork and questions regarding suicide and self-harm were not asked of the detainee as she was not compliant. It is unclear why correctional officers did not seek answers to these questions prior to 1.15pm as no notes were made on the post admission log. I am aware, however, that this detainee had been managed through episodes of self-harm when previously detained.
46. In another case it was not until the morning, seven hours after the strip search, that the female detainee's clothing was returned, although presumably she was asleep for most of that time. My officers have also dealt with similar complaints from male detainees.
47. I was informed that only two anti-suicide gowns were available at HRP. Anti-suicide gowns, although made of the same tear resistant material as anti-suicide blankets, can be worn. They clearly need to be washed between uses, however, so I questioned whether this was a sufficient number in order to ensure that

¹⁸ Ibid p.2 and p.3.

¹⁹ Australian Institute of Health and Welfare (2015) The Health of Australia's Prisoners 2015, p 50.

one was always available. In the limited footage I had viewed, no one was provided with a gown. Although not ideal, they are clearly preferable to being left naked. TPS advised that it would review the suicide gown requirements at the HRP and procure an appropriate number. I understand these have now been obtained and are being used.

48. The provision of suicide gowns to people immediately after a non-compliant strip search, however, does not negate the need to attempt to complete the preliminary risk assessment. As the DSO for Suicide and Self Harm Prevention currently requires, protective clothing should only be used when the severity of the risk warrants such action. Regular checks are required to check on the safety of the detainee and presumably can also be used as opportunities to ascertain if the risk assessment can be completed and a decision made about returning a detainee's clothing.

Staffing

49. The Director of Prisons pre-emptively asked that, if I choose to make recommendations to increase the ratio of female correctional officers at HRP, that I consider:
 - in the period 1 July 2016 to 5 December 2016, 199 female detainees were received at HRP;
 - on some days no female detainees are admitted to the watch-house and occasionally there may be a gap of 4 to 5 days between female admissions to the watch-house;
 - an increase in female correctional officers should not reduce the number of male correctional officers as the vast majority of watch-house and prison admissions are male; and
 - increasing the female correctional officer ratio at the Reception Prisons cannot be done without substantial cost to the TPS.
50. Taking those comments into account, along with the comments that the correctional officers made to my staff, I do not consider a recommendation about enforcing male to female staff ratios would be constructive. It seems clear that there are generally female police officers available to assist with compliant searches if there are no female correctional staff on shift. If female officers are not immediately available there is a process whereby the detainee is placed under constant supervision until a female officer is free. Notably in all the incidents I viewed where force was necessary to effect a strip search, the male officers' roles generally only extended to assisting female officers.

The human impact

51. It was clear on reviewing footage of both compliant and non-compliant strip searches that the process was upsetting. From discussions with correctional officers, it is clear it is not only detainees who find the process distressing although it could also be easy to become inured given strip searching occurs daily. During the course of our investigation we received correspondence from a woman who was forcibly strip searched when she entered HRP. She said she had in the past suffered extensive domestic violence including “sexual attacks” and the experience of being forcibly strip searched left her feeling very vulnerable, as if she had once again been assaulted and violated.
52. Research about the impact of strip searching on women reinforces these observations. The 2014 Strip Searching of Female Prisoners Report by the Queensland Ombudsman²⁰ sets out in detail the impact of strip searches on the female prisoner population. It details, with various references, the high levels of past sexual abuse among female prisoners, especially compared to the general population, and notes that strip searches have the capacity to have a negative impact on female prisoners, more significantly than other parts of the population. The experience can be re-traumatising.

The privacy cell

53. All of the cells in the watch house contain Closed Circuit Television (CCTV) cameras which are monitored by correctional officers. Cell 107, however, contains a CCTV camera that can only be accessed by management. Women are routinely strip searched in this cell to protect their privacy.
54. It is unclear from the procedures, however, if women are told that access to the footage for cell 107 is restricted. The benefit of the privacy cell in terms of allaying concerns about other officers viewing the footage is arguably negated if people are not told about the process.
55. If a non-compliant detainee is strip searched in cell 107 the practice appears to be that they remain in that cell. If another female detainee enters HRP the situation is assessed and, if safe, the occupant in cell 107 would be moved to another cell and the new detainee strip searched in 107. Alternatively, the new detainee may be searched in a different cell while a custodial officer holds up a blanket blocking the camera. This is far from ideal, particularly if any allegations of assault are made and there is no CCTV footage.

²⁰ www.ombudsman.qld.gov.au/improve-public-administration/reports-and-case-studies/investigative-reports/strip-searching-of-female-prisoners-report-2014.

56. During the course of the investigation it became apparent that non-compliant female detainees were not routinely searched in cell 107 but rather sometimes in the cell in which they were going to be housed. The primary reason for this appears to relate to safety concerns. Cell 107 currently has two concrete bed plinths which present a real danger of harm to the detainee and correctional and police officers if the detainee is resisting being searched. There is limited floor space because of the plinths and numerous hard edges which significantly increase the risk of injury in the event of a struggle. Prison Services is currently in the process of removing some of the concrete plinths in the watch house cells, including cell 107.
57. Another reason detainees who are non-compliant are not strip searched in cell 107 relates to concerns about self-harm. Detainees who have not been through the preliminary risk assessment, so are potentially at risk of self-harm, cannot be monitored using CCTV in cell 107. Although correctional officers are meant to perform regular checks in person if there is a risk of self-harm, it appears that practically there can be times where that can be difficult during night shift. There are three correctional officers on duty on the night shift. One officer is always in the control room and the remaining two officers need to conduct checks throughout HRP, not just the watch-house cells, as well as receiving new detainees as they arrive. It limits the correctional officers' responsiveness if the control room cannot provide alerts of potential self-harm incidents.
58. The use of the privacy cell to help to allay privacy concerns is admirable but it seems practices relating to its use are generally ad-hoc and not documented. Its use when a detainee is not compliant also presents a number of issues in terms of safety that need to be addressed.

Recommendation I

I recommend that the new searching DSO requires that all women be informed prior to the strip search that access to the video footage in cell 107 is restricted and that processes involving a privacy cell be formalised.

Search register

59. As part of my investigation the TPS search register was reviewed in order to request footage of incidents. The search register is a requirement under DSO 1.35, which relevantly provides:

10.7 The Correctional Manager Statewide Reception Prisons must ensure a Search Register is maintained at each watch-house facility. At a minimum, the Search Register must include:

- *the date, time and location of the search*
- *the type of search conducted (i.e. strip search, body search or other)*
- *the names and sex of all persons who were present, their position or rank, and their role as Search Officer, Observing Officer or other (specify)*
- *details of any contraband or unauthorised item voluntarily handed over*
- *details of any contraband or unauthorised item found during the search and where it was found*
- *any comment or complaint by the watch-house detainee in respect of how the search was conducted*

10.8 The Correctional Manager, State Reception Prisons is responsible for ensuring the Search Register is contemporaneous and accurately maintained, and must review and sign the Search Register at least once every month to establish compliance.

10.9 The Search Officer must make an entry in the Search Register each time a watch-house detainee is strip-searched.

60. TPS acknowledged that an internal compliance review conducted of the HRP in 2016 identified that not all of the required information was being captured in the Search Register. The superintendent checks, required under clause 10.8 above, were also not being completed. It advised that these issues were addressed with the relevant Superintendent who is now aware of their responsibilities. Re-formatting of the search registers was also underway to ensure compliance with the DSO, for example, my staff noted that names of police officers who assisted with searches were not listed.
61. I understand the superintendent at HRP now reviews footage of all use of force incidents. This is a positive development to ensure best practice. One of the findings of the 2011 Risdon Prison Complex inquiry indicated that there was no evidence that a manager or supervisor routinely attend any cells, area or strip searches to observe practices.²¹ It must be noted that this was a finding from some time ago and in a different facility but nevertheless, formalising this review process would ensure that supervisors are regularly observing practices and able to proactively address any issues that arise.

²¹ Mick Palmer AO APM, Risdon Prison Complex Inquiry, March 2011, p.97.

Recommendation 2

I recommend that the review of all use of force incidents at HRP be included in the responsibilities of the HRP superintendent.

Complaints

62. Correctional officers are required to specify in the search register if any complaints have been received. It is unclear, however, from the procedures if it is required that detainees be asked at any point if they want to complain or are informed about their ability to complain. Having a requirement in the register to record any complaints that have been received is of limited value if people do not know that they can complain or how. Complaints can present a valuable opportunity for service improvement.
63. Juvenile strip searching procedures indicate that, before a search, the search officer must, among other things, advise the young person of their entitlement to make a complaint about the manner and circumstances in which a strip search is conducted. No similar provisions were found with respect to male or female adult detainees. I think it is reasonable that the new draft searching DSO provide for a similar statement to be made to all detainees.
64. There is a complaints DSO²² and detainees who become remandees or prisoners are provided with information regarding their ability to complain but there is no requirement in the procedures for those released prior to this process to routinely receive this information. Clearly detainees can ask but given the power imbalance in a prison environment, especially following situations where correctional officers have required someone to strip naked, it would seem reasonable to make it an express part of the strip searching procedures to actively provide information to adult detainees about complaints processes. The addition of appropriately placed signage regarding the ability to complain should also be considered.

Recommendation 3

I recommend that detainees being strip searched be routinely informed about how they can complain if they have any concerns regarding their treatment. Detainees should also be given information regarding their ability to complain following any incidents involving use of force.

²² Interim Director's Standing Order 4.01 Requests and Complaints, issued 23 October 2006.

Progress since the Tasmanian Industrial Commission case

65. During the investigation I also asked about the improvements implemented following an incident on 23 May 2013 when a male correctional officer strip searched a pregnant detainee.²³ The Director advised that in October 2013 a review of the strip searching SOPs was undertaken and the SOPs were subsequently updated and reissued, as outlined above. He summarised the amendments made at that time:

- the SOPs were re-issued as Directorate SOPs, encompassing all prison facilities and standardising the searching procedures for watch-house detainees;
- definitions for *Search Officer* and *Observing Officer* were included;
- it was reinforced that the ‘half and half’ searching method was to be used; and
- it was reinforced that squats and parting of the buttocks cheeks are not part of the strip search process for either male or female prisoners or detainees.

Searches of people who identify as transgender, transsexual and intersex

66. DSO 2.15 Transgender Prisoners/Detainees specifies that strip searches are to be performed by correctional officers of the same gender of identification as the detainee. There is no cross reference to this process in the searching DSOs and SOPs. The new draft searching DSO, however, addresses the searching process for transgender, transsexual and intersex detainees along with a reference to DSO 2.15. Notably, DSO 2.15 was revised during the course of this investigation and it appears to be a comprehensive document.

Searches of people with injuries or disabilities

67. There was no reference in the searching DSOs and SOPs nor DSO 2.13 Prisoners/detainees with Disabilities about specific processes or considerations for searches of people with a disability or injury. TPS’ new draft searching DSO, however, now addresses this issue.

²³ See *United Voice, Tasmanian Branch v The Minister administering the State Service Act 2000/Department of Justice* (31 January 2014) Tasmanian Industrial Commission.

Audits

68. I asked the Director if TPS undertakes any quality assurance audits to ensure compliance with DSOs and SOPs relating to strip searching. I was informed that a rolling programme of compliance audits has been implemented across all TPS facilities, which includes compliance with strip searching related DSOs and SOPs. I was provided with a copy of the current audit schedule, which included an audit of compliance with searching DSOs in various facilities from July 2016 onwards. No information was provided as to past audits.
69. As the Custodial Inspector, appointed under the *Custodial Inspector Act 2016*, I will also be inspecting TPS' compliance with strip searching requirements.

Alternatives to strip searching

70. The Bangkok Rules, as outlined earlier, state that alternative screening methods, such as scans, should be developed to replace strip searches and invasive body searches in order to avoid the harmful psychological and possible physical impacts of invasive body searches.
71. During my investigation I referred the Director to a Western Australian Corruption and Crime Commission report, 'Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013', dated 20 August 2015.²⁴ This incident involved the strip searching of a female detainee who, during the course of the incident, received a fractured finger as a result of the force used.
72. This report discussed Western Australia Police's purchase of body scanners. It appears they were to be purchased for use at the Perth Watch House to prevent the need for strip searches unless the scanners identified an object of concern.
73. Although I acknowledged that the provision of body scanners would potentially involve a significant cost, I asked whether TPS has explored or considered the introduction of body scanners at reception prisons. TPS confirmed it has considered introducing body scanners into the prison system but said, '*a number of issues have been raised in relation to the use of full body scanners:*'
 - Due to the detailed images generated by body scanners, these may be considered an intrusive rather than non-intrusive searching method (as was demonstrated when the introduction of body scanners at airports was proposed).

²⁴www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf.

- The long-term health effects of full body scanners are unknown. This issue would need careful consideration if body scanners were to be routinely used to search prisoners and detainees (particularly given that consent to conduct a search is not required).
 - Other jurisdictions have ceased using body scanners as they have proven ineffective on non-compliant prisoners; non-compliant prisoners are those most likely to be concealing unauthorised items.
74. The Commonwealth Department of Infrastructure and Transport published a report in February 2012, 'The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment' which discussed the introduction of body scanners in airports.²⁵ Obviously it is a different environment to a watch-house but, with respect to health effects, it noted that the Commonwealth government will only allow millimetre-wave body scanner technology. The report indicates that this technology uses non-ionising radio frequency energy in the millimetre-wave spectrum to scan passengers. Apparently the energy projected by one of these body scanners is 10,000 times less than a mobile phone transmission, which is much less than the maximum permissible exposure levels set by the Australian Radiation Protection and Nuclear Safety Agency.²⁶
75. The report also contained detailed analysis of the privacy issues involved. The report indicated that the greatest concern from stakeholder consultation undertaken by the Department was the potential for misuse of revealing images. To mitigate this privacy impact, legislation was to be introduced that only permitted body scanners to produce a generic, gender-neutral body image from which the person cannot be identified. In addition, body scanners used for aviation screening do not store, transmit or print any data produced from a body scan. Again, the technology used in a custodial setting may need to vary to that used in an airport but the issues of privacy are not insurmountable especially given video data, which includes strip searches, is already retained for up to three months.
76. It may therefore be worthwhile for TPS to conduct further research into the introduction of body scanners given information can now be sought from the West Australian Police regarding its experience of the introduction of the scanners. I would suggest that TPS contact the Western Australia Police Commissioner to ascertain if the agency is willing to share its research into, and experience of, body scanning technologies.

²⁵ Department of Infrastructure and Transport (2012) The use of body scanners for aviation security screening in Australia: Privacy Impact Assessment, accessed at: <http://travelsecure.infrastructure.gov.au/files/airport-body-scanners-privacy-impact-assessment.pdf>.

²⁶ Ibid p19.

Training

Recruits

77. Correctional officer recruits go through 11 to 12 weeks of training prior to commencing in the role. I was informed that all searching training starts with a classroom activity to locate and understand the relevant DSOs and SOPs, prior to going through a power point presentation on searching and numerous practical sessions and assessments spanning the recruit course. I reviewed the power point presentation and it does not mention the impact of strip searching. All correctional officers have access to the DSOs which contain information about the impact of strip searching, especially on the victims of sexual assault, but I consider there would be benefit in reinforcing this in the training materials. Ensuring new recruits have a better understanding about different people's reactions to strip searching is likely to help to ensure a greater degree of empathy and understanding in performing this task. Importantly, it may help reinforce the increased need to minimise the use of force when performing strip searches to ensure compliance.

Recommendation 4

I recommend that training material on strip searching specifically address the impact it can have on the victims of sexual assault.

Refresher training

78. Correctional officers in HRP raised concerns about the transfer of staff from other custodial facilities who may not have the same level of experience with the specific requirements of working in a reception prison. Staff referred to the significant number of detainees in reception who are under the influence of drugs and alcohol.
79. The Director advised that correctional officers receive a two-day induction when transferred to a new work location, including HRP. I was not provided with any documentation regarding the induction process but differences between facility operations and prisoner/detainee demographics are apparently dealt with through the local induction process.
80. The Director advised that Correctional officers are recruited to a generic statement of duties and, with the exception of a small number of specialist positions, may be placed on any roster at any prison facility. He specified that recruits are trained as 'all round' officers, not to work at a specific prison. Some skills are more in demand in certain facilities but it was stressed that the foundation knowledge and skills are the same. Comparison was made with the

Transitional Unit and Crisis Support Unit which may present a higher level of risk than other areas of the prison as the rate of physical intervention by staff is higher. Correctional officers in these areas, I was informed, routinely deal with prisoners who are at risk of suicide or self-harm, demonstrating violent behaviour, suffering mental illness or under the influence of drugs or alcohol.

81. With respect to strip searching, the Director said that this is a skill correctional officers should be easily able to maintain as it is a task that is routinely performed and that if a correctional officer does not feel confident strip searching a prisoner or detainee, they can familiarise themselves with the procedures or request coaching from a supervisor.
82. In contrast, during the meeting my staff had with correctional officers one officer said that they were not familiar with the strip searching procedure but learnt on the job from other officers. The individual referred to some staff at Mary Hutchinson Women's Prison who have never had to conduct strip searches.
83. The drafting of the new searching DSO presents a valuable opportunity to provide refresher training to correctional officers about the process despite the fact it is apparently a task routinely performed. For example, refresher training may contain further detailed instructions regarding non-compliant searches and clarify that it is permitted for the opposite sex to assist in those circumstances. This would also be an opportunity to focus on de-escalation training to assist officers in trying to avoid the need to use force to effect a strip search.

DSO 1.02 Use of Force provides:

Staff Development and Training Unit must ensure new correctional officer recruits, prior to commencing duty in an operational environment, successfully complete training in tactical communication, negotiation, conflict resolution, de-escalation techniques, self-defence and use of force [including the theory and practical components].

Correctional officers must successfully complete refresher training in the use of force and physical force equipment at least once every two years.

84. It is not clear from the DSO whether refresher training in use of force and physical force equipment includes refresher training in communication and de-escalation skills to avoid the need to use force in the first instance.
85. During discussions with correctional officers one staff member indicated they had not done any self-defence training in over a decade. Other staff referred to insufficient training and said that what they do receive, which is often online

training, is of low quality. It was indicated that they have no training in managing conflict other than at the initial recruit training. One officer considered training in dealing with individuals who are using methamphetamine would be of benefit given the types of behaviours exhibited by those using the drug when presenting at HRP.

86. The Director advised that he recently endorsed a new Defensive Tactics Operators' Manual, which outlines the approved defensive tactics for correctional officers. It is intended that the defensive tactics trainers, once they themselves have been trained, will eventually deliver training to all correctional officers. In the chapter 'Communication Skills' the opening paragraph reads as follows:

Communication is a dynamic process and is probably the most important defensive skill available to correctional officers. The aim of tactical communication is to assist Officers to manage incidents without the need to use force or to give the Officers the time required to remove themselves from a dangerous situation. This is achieved by defusing volatile situations and turning non-compliant and violent inmates into compliant inmates through effective communication.

87. Unfortunately, there is only limited information, amounting to a page and a half, about effective communication in the manual. I appreciate that it is probable that recruit training addresses this topic in greater depth but hopefully there is a strong emphasis on communication and de-escalation as part of the roll out of this new training given many correctional officers have not been recruits for some time.

Recommendation 5

I recommend that DSO 1.02 be amended to specifically provide that refresher training in the use of force and physical equipment also includes communication skills.

Interaction between Tasmania Police and Tasmania Prison Service

88. From a review of the footage and the strip search register it is clear that police officers are regularly required to assist with strip searches at HRP. The then Acting Commissioner of Police advised that Tasmania Police recruits receive instructions on strip searching and the likelihood of assisting correctional officers as part of their training through discussions regarding the Memorandum of Understanding (MOU) between the Department of Justice and the

Department of Police and Emergency Management (as it then was). There are also more detailed working protocols between the Department of Justice and Tasmania Police. It was apparent from my inquiries, however, that police officers do not have access to, or receive training in, the TPS DSOs and SOPs regarding strip searches.

89. The Commissioner confirmed that the DSOs do apply to Tasmania Police officers when assisting correctional officers to conduct strip searches. This is because all police officers are deemed to be correctional officers under s5(6) of the *Corrections Act 1997*. The Commissioner advised, however, that DSOs are not easily accessible to police.
90. My investigation officer discussed with a Tasmania Police training officer the specific training provided to police officers regarding strip searches. It predominantly relates to the *Misuse of Drugs Act 2001*. No instruction is provided regarding the specific strip searching requirements of the TPS although there is a basic similarity in the general processes. In the training documentation Tasmania Police provided, however, there was no specific instruction or comment about the impact of being strip searched on women who have been sexually assaulted. This information is specified in the TPS SOP, which police officers cannot currently access. Positively, the training officer quickly identified this gap in Tasmania Police's training and took steps to address it.
91. It is a minimum standard of DSO 1.11 that all correctional officers conducting searches must have successfully completed the relevant training through the TPS training unit. International standards also require that searches only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures. It is therefore concerning that police officers, who are regularly called upon to assist in strip searching both compliant and non-compliant detainees, do not receive specific instruction in TPS DSO procedural requirements or have access to those procedures.
92. I wrote to the Director of Prisons and noted that police access to the DSOs seemed to be necessary. The Director agreed that police officers in their capacity as correctional officers should have access and be trained in TPS searching methods. The Director outlined though that correctional officer recruits undergo 11 to 12 weeks training followed by a 12 month probationary period in order to become a correctional officer. He stated that during that time recruits are trained in the legislation, DSOs and SOPs relevant to their role. The Director pointed out that simply providing police officers with access to correctional standing orders and TPS training materials will not address differences in escorting procedures, use of mechanical restraints, use of force,

searching procedures and various other DSOs that apply to correctional officers.

93. The Director said that in hindsight, the transfer of the Hobart and Launceston watch-house facilities to the TPS seems to have been a poorly thought out plan. He said that at the time of the transfer, proper consideration does not appear to have been given to the supporting legislation, division of responsibilities, juveniles or issues such as police officers being expected to perform the role of correctional officers but with no training as a correctional officer or instruction in correctional standing orders.
94. The Director said he can make a copy of DSO 1.35 Watch-House Detainees and the searching related procedures available to Tasmania Police but he did not consider it necessary or appropriate for police officers to have general access to all correctional standing orders, particularly those relating to prison security. The Director confirmed that TPS does not currently deliver training to police officers. He said that whilst he is willing to share training resources with Tasmania Police, a large proportion of the searching module is the practical component which requires demonstration and instruction by a competent trainer. The Director said he was prepared to provide a trainer to instruct Tasmania Police training officers in TPS strip searching procedures. Tasmania Police would need to deliver the training to its staff and issues such as difference in control and restraint techniques, use of force and physical force equipment and personal protective equipment will remain.
95. This proposal appears reasonable and should it be adopted, TPS will then be able to eventually satisfy the requirement of the Bangkok Rules that searches are only carried out by staff who have been properly trained in appropriate searching methods and in accordance with established procedures. The exception being that if a detainee is non-compliant, male staff may be required to assist. At the moment, training of female police officers in the specific requirements of the DSO appears to be on the job and potentially ad hoc.
96. Commissioner Hine, in response to my draft report, outlined that a copy of my report had been forwarded to Education and Training for review from a training and operational perspective. The review found that strip searching of non-compliant people is now taught to Tasmania Police recruits. Recruit Course 1/2017, which graduated on 15 September 2017, was the first course to receive this training. The Commissioner stated that previous recruit training has included basic training in strip searching, including the impact of searching women who may have been victims of a sexual assault.
97. Commissioner Hine confirmed that Tasmania Police does not currently have access to the DSOs and SOPs but the review recommended that these be

requested from the Department of Justice. Following review of the DSO and SOP, the Commissioner said that consideration could be given to incorporating the relevant sections into operational skills training after consultation with TPS trainers. Commissioner Hine said that a training package with updated searching techniques could then be created to train and/or refresh current operational officers as recommended in my report.

Recommendation 6

I recommend that TPS negotiate with Tasmania Police regarding the provision of training to Tasmania Police training officers in relevant procedures for strip searches in reception prisons. The negotiated outcome should be incorporated into the MOU.

Recommendation 7

I recommend that, following the introduction of the new searching DSO, arrangements be made as a matter of priority to ensure Tasmania Police officers who transfer detainees to reception prisons receive appropriate training in the TPS searching procedures.

Active disclosure of DSO

98. The Director highlighted concerns about providing police officers with general access to all correctional standing orders, particularly those relating to prison security. Whilst concerns relating to security are understandable, especially in light of the confidentiality requirements of s8 of the Act, I would contrast this position with the practices of the Western Australian Department of Corrective Services, Queensland Corrective Services and Corrections Victoria which actively publish many of their procedures or directives on their websites, with appropriate redactions, including those relating to searches.²⁷ Although there are appreciable differences between Tasmania's prison system and these larger states, as well as different legislative instruments, there is nonetheless merit in considering the benefit of increased transparency.
99. Clearly the active disclosure of some, or parts of, DSOs would be inappropriate from a security perspective but providing public information about the strip searching process will ensure greater accountability and transparency. I note written authority can be sought from the Minister for Corrective Services,

²⁷ www.correctiveservices.wa.gov.au/files/prisons/adult-custodial-rules/policy-directives/pd-26-procedure-search-prisoner.pdf, www.correctiveservices.qld.gov.au/Resources/Procedures/Standard_Operating_Procedures/documents/search.pdf and www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/commissioners+requirements+part+1

pursuant to s8(2)(b) of the Act, to enable the release of confidential information. At the moment even basic information, such as the blanket strip searching requirement on admission into a prison, is not mentioned on the TPS website. The fact visitors can be required to be strip searched is also not noted.

Recommendation 8

I recommend that TPS considers actively disclosing its revised searching DSO when it comes into force, to the extent permitted by s8 of the Corrections Act 1997.

Conclusion

100. There is no doubt that strip searching can be a confronting and upsetting process but unfortunately it is also arguably necessary in a prison environment to address security and welfare concerns. I am satisfied that, overall, strip searches are being conducted professionally and in accordance with TPS DSOs and the relevant SOP. It is important to recognise that the watch-house cells at HRP would be a difficult and potentially dangerous working environment with the behaviour of some people in custody being affected by drugs and/or alcohol. A number of issues have been identified in this report, however, regarding the DSOs and training which could be improved. TPS has been proactive in bringing about a number of changes of its own initiative and it is hoped that the further recommendations in this report may assist in ensuring that the strip searching process is as fair and reasonable as it can be. Greater information about the complaints process being provided to detainees will ensure that if an individual has specific concerns they can be raised, addressed, and reviewed by my office if necessary.

Richard Connock
OMBUDSMAN

20 November 2017

Appendix A

Corrections Act 1997

4. Guiding principles

The powers conferred by this Act are to be exercised with proper regard to the following principles:

- (a) the community is entitled to an appropriate level of protection from illegal behaviour by people subject to this Act;
- (b) people who are subject to this Act retain their normal rights and responsibilities as citizens, except as these are limited in accordance with law;
- (c) services and procedures should be fair, equitable and have due regard to personal dignity and individuality, as far as is consistent with the need for appropriate levels of security and control;
- (d) individuals are capable of change;
- (e) people subject to this Act continue to be members of the community and should be assisted to become socially responsible. Whilst their liberty is restricted to various degrees, demonstrated social responsibility should lead to less intrusive control and intervention.

22. Search

- (1) The Director may, for the security or good order of the prison or the prisoners or detainees, at any time order a correctional officer to –
 - (a) search any part of the prison; or
 - (b) search and examine a prisoner or detainee, a visitor to the prison, a correctional officer or any person appointed or employed for the purposes of this Act or any other person in the prison; or
 - (c) search and examine any thing in the prison; or
 - (d) as well as the formal search required by section 20, require a person wishing to enter a prison to submit to a search and examination of the person and of any thing in the person's possession or under the person's control; or
 - (e) conduct any search under paragraph (a), (b), (c) or (d) at random.

- (2) If a person, other than a prisoner or detainee or a correctional officer, refuses to submit to be searched under this section while inside the prison, the Director may order the person to leave the prison immediately.
- (3) A person who disobeys a Director's order under [subsection \(2\)](#) is guilty of an offence.

Penalty: Fine not exceeding 10 penalty units.

- (4) A search or examination of a female visitor under this section is to be made by a female officer and in the presence of females only.
- (5) For the purpose of exercising the powers conferred by this section, a correctional officer may use such force, means and assistance as the correctional officer considers is reasonably necessary for the purpose.

Appendix B

Excerpt from DSO 1.35 regarding custody:

For the purposes of the *Criminal Law (Detention and Interrogation) Act 1995*, a person is in custody if he or she is:

- under lawful arrest by warrant
- under lawful arrest under s.27 of the *Criminal Code Act 1924* or a provision of any other Act

A person who has been taken into custody in accordance with the *Criminal Law (Detention and Interrogation) Act* may be detained by a police officer:

- for a reasonable time after being taken into custody for the purposes of questioning the person, or carrying out investigations in which the person participates, in order to determine his or her involvement, if any, in relation to an offence
- during the period reasonably required to arrange to bring the person before a magistrate or justice and to transport the person to a magistrate or judge

Section 16(2)(c) of the *Criminal Law (Detention and Interrogation) Act* enables a 'person in custody' to be transferred to the custody of a correctional officer of a reception prison.

Section 4A of the *Police Offences Act* enables a police officer to take into custody and hold an intoxicated person.

A person taken into custody under s.4A of the *Police Offences Act*:

- is to be released at the expiration of 8 hours after he or she was taken into custody, or when a police officer is of the opinion that it is reasonable to do so
- when approved by a police officer authorised by the virtue of the provisions of s.4A(6A) of the *Police Offences Act*, a person may be held for a further 4 hours where that person is:
 - likely to cause injury himself, herself or another person, or damage to property
 - is incapable of protecting himself or herself from physical harm

Appendix C

The interim DSO from 2006 specifies that searches are conducted for the safety and protection of every person within the prison facility and to ensure that the secure containment of prisoners/detainees is maintained. It specifies that searches are not conducted to agitate, punish or cause indignity to prisoners/detainees. It clearly specifies that searches must be conducted with consideration for prisoner'/detainees' dignity, self-respect and privacy, without compromising the effectiveness of the search.

A strip search is defined in DSO 1.11 as, 'a visual search of a person which involves the removal of all items of clothing, with the clothing being searched piece by piece for contraband.' This is in contrast to a body search which is "commonly known as a 'pat down' search, which involves searching a person through his/her clothing by a series of pats". It is important to note that correctional officers do not conduct cavity searches.

At least two correctional officers must be present during strip searches, and where possible, both officers should be the same sex as the prisoner/detainee. If this is not possible, the officer who is of the same sex as the prisoner/detainee will conduct the search. The second officer, the observing officer, must be in line of sight of the first officer but not directly view the prisoner/detainee.

All correctional officers conducting searches must have successfully completed the relevant training through the staff development and training unit.

It is a minimum standard that prisoners/detainees must be strip searched upon their initial reception to a prison. This is reinforced in the Watch-house detainees DSO which states that for the safety, security and good order of the facility, all watch-house detainees will be routinely strip searched upon admission as per Standing Order 1.11 and the relevant SOPs. A police officer is to remain present until the watch-house detainee is secured in a cell and will provide assistance with the search and placing the person in the cell if required.

Where a prisoner/detainee refuses to cooperate with the conduct of a search, the DSO specifies that force may be used to carry out the procedure. Correctional officers are to ensure that the minimum force necessary is used to complete the search.

DSO 1.35 indicates that if the search is delayed for any reason, the watch-house detainee must be placed under constant observation in a 'camera-ed cell'.

This DSO also requires the correctional manager of the Reception Prisons to ensure a search register is maintained at each watch-house facility.

DSO 1.35 sets out identical requirements to DSO 1.11 regarding the searching and observing officers' roles but also states that female watch-house detainees will only be searched by a female correctional officer, or if no female officers are available, a female police officer.

Detainees, under the DSO, are given the opportunity to voluntarily surrender any unauthorised items but the DSO states that this does not negate the requirement to conduct a strip search.

The SOP provides step by step instructions for searching male and female prisoners/detainees. The SOP for searching females specifically sets out the responsibilities of the Correctional Manager, now Superintendent:

Ensure all officers undertaking strip searches are informed of the significant number of women in prison who have experienced physical and/or sexual abuse and that the strip searching of women prisoners/detainees must be conducted in a sensitive and gender specific manner.

Ensure all prisoners/detainees are provided with information they can understand about the nature, process and reasons for strip-searching.

The process provides for an upper and lower body approach so the detainee is only half naked at any one point. Clothes are to be returned after being searched. If any clothing is retained for evidence the SOP provides that detainees are to be immediately provided with replacement clothing. The SOP specifies that correctional officers are never to touch the prisoner/detainee while performing a strip search. Nor are female prisoners/detainees to be instructed to squat or part their buttock cheeks.

Appendix D

Corrections Act 1997

PART 4A - Use of Force

34A. Managing use of force

- (1) The Director must ensure, as far as practicable, that the use of force in relation to the management of prisoners and detainees is always –
 - (a) a last resort; and
 - (b) in accordance with this Part.
- (2) The Director must make standing orders or an operating procedure in relation to the use of force, including provision in relation to the following:
 - (a) the circumstances in which, and by whom, force may be used;
 - (b) the kinds of force that may be used.
- (3) The power to make a standing order or an operating procedure includes power to make different provisions in relation to different matters or different classes of matters, and provisions that apply differently by reference to stated exceptions or factors.

34B. Authorised use of force

- (1) A correctional officer may use force that is necessary and reasonable for this Act, including for any of the following:
 - (a) to compel compliance with a direction given in relation to a prisoner or detainee by the Director;
 - (b) to act under section 28;
 - (c) to prevent or stop the commission of an offence or disciplinary breach;
 - (d) to prevent the escape of a prisoner or detainee;
 - (e) to prevent unlawful damage, destruction or interference with property;
 - (f) to defend the correctional officer or someone else;
 - (g) to prevent a prisoner or detainee from inflicting self-harm;
 - (h) any other thing prescribed by the regulations.

(2) However, a correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which force may be used cannot be achieved in another way.

34C. Application of force

- (1) A correctional officer may use force under this Part only if the correctional officer –
 - (a) gives a clear warning of the intended use of force; and
 - (b) allows enough time for the warning to be observed; and
 - (c) uses no more force than is necessary and reasonable in the circumstances; and
 - (d) uses force, as far as practicable, in a way that reduces the risk of causing death or grievous bodily harm.
- (2) However, a correctional officer need not comply with subsection (1)(a) or (b) if, in urgent circumstances, the correctional officer believes, on reasonable grounds, that doing so would create a risk of injury to the correctional officer, the prisoner or detainee or any other person.

34D. Use of restraints or weapons

- (1) The use of force under this Part includes the use of restraints and weapons.
- (2) The Director must ensure, as far as practicable, that the use of force involving a restraint or weapon is proportionate to the circumstances, and in particular that –
 - (a) the circumstances are sufficiently serious to justify the use; and
 - (b) the kind of restraint or weapon is appropriate in the circumstances; and
 - (c) the restraint or weapon is used appropriately in the circumstances.
- (3) The Director must also ensure that restraints and weapons are only used under this Part –
 - (a) by correctional officers trained to use them; and
 - (b) in accordance with standing orders or an operating procedure that applies to their use.
- (4) The Director must take all steps to ensure that potentially lethal force is not used under this Part unless the actions of a prisoner or detainee or other person are likely to cause death or serious injury.

- (5) In applying force under this Part, a correctional officer may use a restraint or weapon, including any of the following:
- (a) body contact, impact and restraint;
 - (b) a mechanical restraining device;
 - (c) a baton;
 - (d) riot control equipment;
 - (e) a chemical agent;
 - (f) an electro-muscular disruption device or a conducted electrical weapon;
 - (g) a distraction device;
 - (h) a firearm;
 - (i) any other thing prescribed by the regulations.

34E. Medical examination after use of force

If force has been used under this Part, the Director must ensure that a prisoner or detainee affected by the use of force is examined as soon as practicable and that appropriate medical health care is available to the prisoner or detainee.

34F. Reporting use of force

- (1) The Director must keep a record of any incident involving the use of force under this Part that causes injury or death to anyone.
- (2) The record must contain details of the incident, including the circumstances, the reason for the decision to use force and the force used.
- (3) The Director must give a copy of the record to the Coordinator of the Official Visitors Scheme for the purpose of informing the official visitors as soon as practicable after the incident.