



QUEENSLAND  
**OMBUDSMAN**  
*Standing for fairness*

# Overcrowding at Brisbane Women's Correctional Centre



An investigation into the action taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's Correctional Centre.

**September 2016**





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September 2016

The Honourable Peter Wellington MP  
Speaker  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Speaker

In accordance with s.52 of the *Ombudsman Act 2001*, I hereby furnish to you my report,  
*Overcrowding at Brisbane Women's Correctional Centre: An investigation into the action  
taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's  
Correctional Centre.*

Yours faithfully



Phil Clarke  
Queensland Ombudsman

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## Foreword

For some time, I have been concerned about overcrowding in Queensland's prisons, particularly at the Brisbane Women's Correctional Centre (BWCC).

Following an investigation by this Office in 2013, I recommended that the Director-General of the department then responsible for Queensland Corrective Services (QCS) take certain action to relieve overcrowding at BWCC. The Director-General accepted my recommendations.

In 2016, I find that overcrowding at BWCC has worsened to the extent that it is the most overcrowded correctional centre in Queensland.

The level of overcrowding at BWCC, when compared with men's prisons and coupled with the inadequate living conditions for prisoners, creates the circumstances where the administration of BWCC is improperly discriminatory towards female prisoners.

Overcrowding at a correctional centre has serious consequences. Sometimes, two prisoners are forced to share a cell designed for one. Due to the configuration of a cell, this means one prisoner sleeps on a mattress on the floor with their head close to an exposed toilet and shower. This creates concerns about privacy, dignity and hygiene. It also puts pressure on BWCC's staff and infrastructure, and interferes with the effective delivery of health services and programs. As a result, the overall and important task of trying to rehabilitate prisoners becomes extremely difficult.

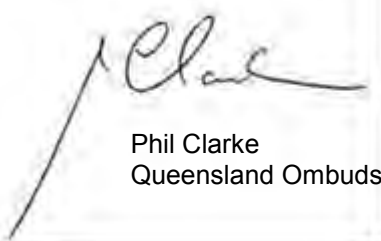
I am also very concerned that the overcrowding at BWCC has coincided with a significant increase in the number of prisoners involved in assaults, self-harm episodes or incidents of attempted suicide.

All members of the community, including prisoners, have a right to fair and reasonable treatment from public sector agencies.

My recommendations in this report are aimed at ensuring that the level of overcrowding at BWCC is reduced, prisoners' living conditions are improved, and their access to services is increased.

I have decided to present this report to the Queensland Parliament because I consider it is in the public interest to do so.

Finally, I would like to thank those officers from QCS who assisted with the investigation. I would also like to thank my staff who regularly visit all correctional centres in Queensland, and particularly acknowledge Principal Investigator Kylie Faulkner for her hard work and professionalism in leading the investigation and preparing this report.



Phil Clarke  
Queensland Ombudsman

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## Dictionary

Term	Meaning
2013 report	The <i>Report under s.50 of the Ombudsman Act 2001: Investigation into the management and use of double-ups in Queensland correctional centres</i> that I issued to the Director-General of DCS on 15 August 2013
average daily state or ADS	A count of the number of prisoners in QCS's physical and legal custody at the end of each day, averaged over the calendar month
built bed capacity	The number of built prisoner accommodation bed places in single and shared cells at low security correctional centres
built cell capacity	The total number of built prisoner accommodation cells as defined in QCS's <i>Procedure – Prisoner Accommodation Capacity</i> . For BWCC, the built cell capacity is 267 which includes the safety unit
BWCC	Brisbane Women's Correctional Centre
COPD	QCS's <i>Custodial Operations Practice Directive</i>
Corrective Services Act	<i>Corrective Services Act 2006</i>
Corrective Services Regulation	Corrective Services Regulation 2006
DCS	The former Department of Community Safety which had responsibility for QCS at the time of the 2013 report
the department	Department of Justice and Attorney-General, the agency responsible for QCS
double-up or doubling-up	The practice of placing two prisoners in a cell that was originally designed for one prisoner
Healthy Prisons Handbook	<i>Healthy Prisons Handbook</i> (QCS, November 2007)
HJCC	Helana Jones Correctional Centre
the investigation	Queensland Ombudsman's investigation into the action taken by QCS in response to overcrowding at BWCC
IOMS	QCS's Integrated Offender Management System database
NCC	Numinbah Correctional Centre
Nelson Mandela Rules	<i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i>

Term	Meaning
this Office	Office of the Queensland Ombudsman
Ombudsman Act	<i>Ombudsman Act 2001</i>
ORSS	Offender Reintegration Support Service
parole board	<p>An independent statutory body appointed by the Governor in Council to make decisions about prisoners applying for parole and resettlement leave. Parole boards also monitor the progress of prisoners granted parole and make decisions regarding the amendment, suspension or cancellation of orders. Queensland has three parole boards:</p> <ul style="list-style-type: none"> <li>• the Queensland Parole Board</li> <li>• the Southern Queensland Regional Parole Board</li> <li>• the Central and Northern Queensland Regional Parole Board</li> </ul>
parole order	A parole order made by a parole board under s.194 of the Corrective Services Act or a court
parole returns	Prisoners who return to prison because their parole order is suspended and/or cancelled
prisoners on remand or remand prisoners	Persons charged with a criminal offence who have been ordered by a court to be detained in custody while awaiting trial or sentencing
QCS	Queensland Corrective Services
Report on Government Services	The Productivity Commission's <i>Report on Government Services 2016</i>
residential unit	Residential style accommodation within a correctional centre
safety order	Has the same meaning as in s.53(1) of the Corrective Services Act
secure unit	One of two types of accommodation areas at BWCC, the other being residential units
SEQ	South-east Queensland
single cell capacity	The total number of cells in a correctional centre that were designed to be used for prisoner accommodation excluding all safety unit and detention unit cells
WMHHS	West Moreton Hospital and Health Service

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## Executive summary

This investigation found that Brisbane Women's Correctional Centre (BWCC) is the most overcrowded correctional centre in Queensland.

As a way of managing overcrowding, Queensland Corrective Services (QCS) continues to make extensive use of doubling-up prisoners, that is, two prisoners sharing a cell that was designed for one prisoner. In many cases, this means one of the prisoners must sleep on a mattress on the floor with her head close to an exposed toilet. This practice substantially impacts on a prisoner's privacy and dignity.

Prisoners who are doubled-up experience less favourable living conditions than those in single cells. I am of the view that the extent of overcrowding at BWCC means female prisoners in south-east Queensland are being treated less favourably than male prisoners. I consider this is improper discrimination against female prisoners in Queensland.

In my view, QCS has failed to provide adequate living conditions for prisoners at BWCC.

### Ombudsman investigation in 2013

In August 2013, I issued a report to the Director-General of the former Department of Community Safety (DCS) titled *Report under s.50 of the Ombudsman Act 2001: Investigation into the management and use of double-ups in Queensland correctional centres* (the 2013 report).

In the 2013 report, I found that the use of double-ups as a strategy for the long-term management of increases in prisoner population was unreasonable. I recommended DCS take the necessary action to relieve overcrowding at BWCC.

The Director-General of DCS accepted my recommendations and I decided not to make the 2013 report public.

### After the 2013 investigation

I subsequently monitored the steps taken by DCS and the Department of Justice and Attorney-General (the department)<sup>1</sup> to address the concerns raised in the 2013 report and implement my recommendations. Monitoring included visiting BWCC as part of this Office's Correctional Centre Visits Program, analysing complaints received from prisoners at BWCC and investigating systemic issues arising from those complaints and/or observed during visits to BWCC.

The number of prisoners at BWCC has continued to increase. At the time of this Office's visit to BWCC in April 2015, BWCC was 47.7% above its single cell capacity. From investigators' observations and their discussions with prisoners and QCS officers at BWCC during the visit, the impact of overcrowding at BWCC was identified as a major and ongoing concern.

I considered that it was in the public interest to investigate whether QCS was taking reasonable administrative action in response to the overcrowding.

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<sup>1</sup> Following machinery of government changes in 2013, QCS was moved from DCS to the department.

## **What this investigation found**

### **Double-ups**

BWCC continues to make extensive use of doubling-up. Prisoners are doubled-up in both secure and residential units. BWCC's secure cells were designed for one prisoner. Built-in bunk beds have been added to some cells but the majority of doubled-up cells have one prisoner sleeping on a mattress on the floor that is placed close to an exposed toilet.

I raised concerns about the privacy, decency and hygiene issues associated with this practice in my 2013 report. I recommended that where double-ups were unavoidable, QCS should examine options to mitigate the impact on prisoners, including addressing privacy concerns when using toilets in doubled-up cells. Unfortunately, it appears these issues remain largely unaddressed.

Other problems with the use of double-ups at BWCC continue, including:

- inappropriate doubling-up of prisoners subject to segregation conditions which resulted in two prisoners being locked together in a cell in excess of 80 hours
- pregnant prisoners required to sleep on mattresses on the floor
- lack of privacy of personal information and property and a lack of space for personal belongings
- disagreements between prisoners sharing cells over issues including when the light or the television is on.

### **Impacts of overcrowding**

Overcrowding has created serious service problems at BWCC.

As part of this investigation, I considered the level of prisoners' access to services, including programs, education, training and transitional support services, as well as recreational activities at BWCC since the 2013 report. It appears that, despite the increase in prisoner numbers at BWCC, there has not been any substantial increase in services provided to prisoners. Some services have actually declined.

I am concerned about the low number of prisoners provided with opportunities while at BWCC, which could help to mitigate the risk of reoffending. These include:

- programs aimed at helping with substance abuse and stopping reoffending
- transitional support
- education and vocational training.

I also considered the impact on health services at BWCC. This investigation found that QCS failed to:

- ensure that prisoners on safety orders were examined by a doctor as required by s.57 of the *Corrective Services Act 2006*
- provide sufficient psychological services to meet the needs of prisoners and fulfil QCS's obligations in its own procedures.

Overcrowding has created a range of other problems for prisoners such as insufficient:

- tables and chairs to allow all prisoners to be able to sit to eat their meals
- washing machines and dryers for the number of prisoners accommodated at BWCC.

Due to the significant increase in the incidents of assault, self-harm and attempted suicide, I am concerned about the manner in which QCS has managed overcrowding at BWCC.

### **Drivers of overcrowding**

According to the department, the increase in prisoners at BWCC is driven by:

- an increase in the number of prisoners on remand
- low security correctional centres for female prisoners in south-east Queensland not being used to their full capacity
- an increase in the number of prisoners returning to prison because their parole order is suspended and/or cancelled.

It is clear that demand management strategies have not yet had the effect of significantly decreasing the number of prisoners at BWCC. QCS's own modelling predicts continued growth in female prisoner numbers in south-east Queensland.

At the time of this investigation, it was not government policy to increase the capacity of secure custody for female prisoners in south-east Queensland and, as far as I am aware, there are no immediate plans to do so. This report is focused on the administrative actions of QCS in managing female prisoners. Section 16(1)(a) of the Ombudsman Act precludes me from questioning the merits of a policy decision made by Cabinet and no comment in this report should be read as a criticism of government policy.

### **Opinions and recommendations**

In this report, I have recommended that the Director-General of the department take significant and immediate action to:

- improve the living conditions of prisoners at BWCC and increase their access to services
- address the drivers of the growth in female prisoner numbers and reduce overcrowding at BWCC.

If the action taken is not assessed as being effective in returning BWCC to its single cell capacity, proposals for increasing the capacity of accommodation for female prisoners in south-east Queensland should be developed and presented to government.

### **Opinions**

#### **Opinion 1**

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BWCC is the most overcrowded correctional centre in Queensland having regard to its single cell capacity.

#### **Opinion 2**

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Any action taken by QCS since August 2013 has not materially impacted the level of overcrowding at BWCC.

#### **Opinion 3**

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Failing to provide adequate living conditions for female prisoners at BWCC is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

#### **Opinion 4**

QCS has not taken reasonable action to mitigate the impact of overcrowding on prisoners at BWCC, including by:

- selecting unsuitable prisoners to double-up
- not addressing privacy concerns when using toilets in doubled-up cells
- not providing sufficient space for the storage of personal items in doubled-up cells
- not providing sufficient tables and chairs in common areas of units for the number of prisoners accommodated in the unit.

This is administrative action that is unreasonable and wrong for the purposes of s.49(2)(b) and s.49(2)(g) of the Ombudsman Act.

#### **Opinion 5**

Requiring pregnant prisoners to share a cell with another prisoner, particularly in circumstances where the pregnant prisoner sleeps on a mattress on the floor, is administrative action that is unreasonable and wrong for the purposes of s.49(2)(b) and s.49(2)(g) of the Ombudsman Act.

#### **Opinion 6**

As the level of overcrowding at BWCC exceeds all secure correctional centres for males, and has since 2013, female prisoners in secure custody in south-east Queensland are being treated less favourably than male prisoners in Queensland and this amounts to administrative action that is improperly discriminatory for the purposes of s.49(2)(b) of the Ombudsman Act.

#### **Opinion 7**

The number of program opportunities (aimed at addressing such issues as substance abuse and reoffending) provided to prisoners at BWCC as a proportion of its population is very low and has not kept pace with increases in the prisoner population. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

#### **Opinion 8**

The level of prisoners' access to services at BWCC has not increased in line with the increased number of prisoners at BWCC and some services have actually declined. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

#### **Opinion 9**

It is QCS's responsibility to ensure that it meets its obligation under s.57 of the Corrective Services Act. Between at least March 2015 and June 2015, QCS did not comply with s.57 of the Corrective Services Act at BWCC. This administrative action is contrary to law for the purposes of s.49(2)(a) of the Ombudsman Act.

#### **Opinion 10**

QCS has failed to provide sufficient psychological services to meet the needs of prisoners and fulfil QCS's obligations in its own procedures. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.



## Recommendations

### Recommendation 1

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The Director-General increase program delivery and transitional services provided to prisoners at BWCC to ensure that more prisoners are able to receive the benefit of the programs and services that QCS is required to provide under s.266 of the Corrective Services Act.

### Recommendation 2

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The Director-General take action necessary to ensure that the obligation under s.57 of the Corrective Services Act is met at BWCC.

### Recommendation 3

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The Director-General immediately increase the level of psychological services provided at BWCC to ensure that the psychological needs of prisoners are being adequately addressed.

### Recommendation 4

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The Director-General immediately implement initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC, including:

- (a) specifying the timeframes by which each initiative will be implemented
- (b) establishing specific targets for the number of prisoners who will participate in each initiative
- (c) modelling the potential impact of each initiative on prisoner numbers and providing advice to government on the results of the modelling, within six months.

### Recommendation 5

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The Director-General evaluate the success of the initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC and report to government at six monthly intervals.

### Recommendation 6

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If, based on modelling or monitoring against targets of the initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC, these initiatives are not effective in returning BWCC to its single cell capacity, the Director-General develop and advise the government of his proposals for increasing the capacity of accommodation for female prisoners in south-east Queensland.

### Recommendation 7

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While implementing initiatives to reduce the drivers of growth in female prisoner numbers and addressing overcrowding at BWCC, the Director-General take immediate action to mitigate the impact of overcrowding on prisoners and improve their living conditions.

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# Chapter 1: Introduction

## 1.1 Previous Ombudsman report

On 15 August 2013, I issued a report to the Director-General of the former Department of Community Safety (DCS) titled *Report under s.50 of the Ombudsman Act 2001: Investigation into the management and use of double-ups in Queensland correctional centres* (the 2013 report) which considered:

- the extent of doubling-up in Queensland correctional centres
- the conditions and management of prisoners in double-up
- Queensland Corrective Services' (QCS) strategies for utilising prisoner accommodation and managing prisoner growth.

In the 2013 report, I formed the opinion that, in light of relevant legislation<sup>2</sup> and standards,<sup>3</sup> the use of double-ups as a strategy for the long-term management of increases in prisoner population was unreasonable.

I made a number of recommendations, including:

- Recommendation 1: In instances where double-ups are unavoidable and having regard to relevant standards, QCS examine options to mitigate the impact of doubling-up on prisoners, including addressing privacy concerns when using toilets in doubled-up cells.
- Recommendation 3: QCS establish guidelines applicable to all centres directed towards minimising the risk posed by double-ups and ensuring the safety and wellbeing of prisoners in a double-up situation including setting standards:
  - (a) that provide for the regular monitoring and recording of individual prisoners' safety and wellbeing
  - (b) that provide for monitoring the access of prisoners in double-up to services and amenities (including out of unit activities) to ensure that where prisoner numbers increase beyond a correctional centre's single cell capacity there is:
    - i) a corresponding increase in services
    - ii) corresponding access to recreational and library facilities and other amenities for doubled-up prisoners
  - (c) to ensure that doubled-up prisoners do not suffer disadvantage in accessing centre privileges and progression through the accommodation system
  - (d) that mitigate the conditions of their confinement (e.g. increased out of cell time)
  - (e) for the selection of prisoners appropriate for double-up and 'flagging' or noting of prisoners identified as unsuitable for double-ups on IOMS [QCS's Integrated Offender Management System database]
  - (f) that allow for a process of review of a decision to put a prisoner in double-up
  - (g) that allow for rotation for those prisoners placed in double-up.

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<sup>2</sup> Section 18(1), Corrective Services Act.

<sup>3</sup> United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, Rules 9, 10 and 12, [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)  
DCS et al, *Standard Guidelines for Corrections in Australia* (Revised 2004), 'Care and Wellbeing' sections 2.2 and 2.3, [http://www.correctiveservices.qld.gov.au/Resources/Policies/Documents/guidelines\\_for\\_corrections\\_in\\_australia.pdf](http://www.correctiveservices.qld.gov.au/Resources/Policies/Documents/guidelines_for_corrections_in_australia.pdf); QCS, *Healthy Prisons Handbook*, November 2007, sections 3.1, 3.5 and 3.7, [http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Miscellaneous\\_Documents/Healthy%20prisons%20handbook.pdf](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Healthy%20prisons%20handbook.pdf).

- Recommendation 5: QCS take the necessary action to relieve overcrowding at Brisbane Women's Correctional Centre (BWCC).

Significantly, the Director-General of DCS accepted these recommendations.

I decided not to make the 2013 report public at that time for the following reasons, as stated in that report:

My meeting with the QCS Commissioner provided some assurance to me that, while there are considerable pressures on Queensland's correctional centres due to prisoner population issues, QCS is willing to take steps to deal with the issues raised in this report in a timely manner.

The next 12 months will provide a better picture about trends in prisoner population growth in Queensland and how QCS is dealing with the challenges raised in this report. I intend to monitor what steps are taken to address the concerns raised in this report. I may decide to report publically in the future in relation to this matter.

The Director-General of DCS stated in a letter dated 1 August 2013:

I concur that QCS' management of prisoner numbers is a matter of public interest and would have no objection if, at a later point, you determine that your report should be made available to the public.

## 1.2 Implementation of the recommendations in the 2013 report

After the 2013 report, I sought regular updates from QCS on the implementation of the recommendations that I made.

On 30 July 2014, I advised the Director-General of the Department of Justice and Attorney-General (department), which QCS moved to following machinery of government changes in 2013, that in my view:

- recommendations 1 and 3 had only been partially implemented
- information provided to me about the expansion of secure accommodation for female prisoners and some other related actions directed towards the issue of overcrowding reflected the implementation of recommendation 5; however, I was concerned that this was a long-term process and that BWCC was likely to be overcrowded for some time.

I advised the Director-General that I would continue to monitor the issues raised in the 2013 report and the department's actions in addressing them as part of this Office's program of visits to correctional centres and in response to complaints received relating to issues associated with double-ups.

## 1.3 Monitoring of overcrowding

Since the 2013 report was finalised in August 2013, this Office has monitored the steps taken by QCS to address the concerns that I raised and implement my recommendations, including whether it was taking the necessary action to relieve overcrowding at BWCC.<sup>4</sup> This monitoring has included:

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<sup>4</sup> Recommendation 5 in the 2013 report.

- review of statistics about the prisoner population of BWCC
- visits to BWCC as part of this Office's Correctional Centre Visits Program
- analysing complaints received from prisoners at BWCC
- investigating systemic issues arising from complaints made by prisoners and/or observed during visits to BWCC.

QCS's statistics on prisoner populations showed that the number of prisoners at BWCC continued to increase after the 2013 report.<sup>5</sup> At the time of this Office's visit to BWCC in April 2015, the average daily state of BWCC was 381<sup>6</sup> (47.7% above its single cell capacity of 258). This meant that there were, on average, 61 more prisoners at BWCC in April 2015 than there had been in August 2013, when I had finalised the 2013 report. In March 2016, the average daily number of prisoners for the month was 378.77<sup>7</sup> (46.8% above BWCC's single cell capacity).

From investigators' observations and their discussions with prisoners and QCS officers at BWCC during the April 2015 visit, the impacts of overcrowding at BWCC were identified as a major concern. The issues identified during that visit included:

- living conditions of prisoners
- inappropriate double-ups, including pregnant prisoners and a prisoner who had returned from hospital having to sleep on mattresses on the floor of doubled-up cells
- prisoners on safety orders not being examined by a doctor in accordance with the requirements of s.57 of the *Corrective Services Act 2006*
- under-resourcing of ancillary services, including psychologists, resulting in, for example, delays in the assessment of the risk of harm being undertaken
- availability of programs targeting the factors that lead to criminal behaviour (that is, criminogenic needs), including substance abuse
- availability of recreational and other meaningful activities, including access of protection prisoners to time in the gym and on the tennis court
- access to amenities, including sufficient numbers of tables and chairs in units, washing machines and dryers
- storage space for prisoners' personal belongings
- provision of health services.

## 1.4 Investigation

Given the level of overcrowding at BWCC and the impact it appeared to be having on the female prisoners accommodated there, I considered that it was in the public interest to investigate whether QCS was taking reasonable administrative action in response to the overcrowding.

On 7 May 2015, I wrote to the Director-General of the department and advised him that I had decided, in accordance with s.18(1)(b) of the *Ombudsman Act 2001*, to conduct an investigation of QCS's response to overcrowding at BWCC.

The investigation was conducted informally, that is, without exercising any of the powers under Part 4 of the Ombudsman Act.

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<sup>5</sup> The average daily state for BWCC for August 2013 was 320.71. QCS, Email, 20 June 2016, Attachment.

<sup>6</sup> QCS, Email, 20 June 2016, Attachment.

<sup>7</sup> *ibid*

The principal objects of the investigation were to:

- consider whether QCS was taking reasonable administrative action in response to the overcrowding at BWCC, including action taken to address the drivers of the growth in prisoner numbers
- examine the status of the various capital projects aimed at relieving overcrowding at BWCC.

As part of the investigation, I have obtained written responses and documents from:

- the Director-General of the department
- the Commissioner of QCS
- the General Manager of BWCC
- the Acting Director-General of Queensland Health.

A recorded interview was also conducted with the Commissioner of QCS on 9 July 2015.

## 1.5 Proposed report

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

I must also comply with these rules when conducting an investigation.<sup>8</sup> Further, the Ombudsman Act provides that, if at any time during the course of an investigation it appears to me that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the final report is made.<sup>9</sup>

This report was completed as a proposed report in May 2016.

To satisfy my obligations, I provided the proposed report to the Director-General of the department. After receiving the Director-General's response to the proposed report, I sought clarification from QCS in relation to a number of discrepancies between statistics that I had used in the proposed report and information provided in the Director-General's response. Where appropriate, I have referred to the Director-General's response and the additional information provided by QCS throughout this report. I thank the Director-General and QCS for the responses.

The investigation was not undertaken with a view to criticising any particular officer. I have, therefore, not made any adverse comment against any person in this report. Accordingly, my comments in this report should not be taken as reflecting adversely on the reputation, competency or integrity of any QCS officer involved in the operation of BWCC or more generally involved in QCS's response to the overcrowding at BWCC.

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<sup>8</sup> Section 25(2), Ombudsman Act.

<sup>9</sup> Section 26(3), Ombudsman Act.

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## Chapter 2: Jurisdiction and legislation

### 2.1 Jurisdiction and Ombudsman Act

As the Ombudsman, I am an officer of the Queensland Parliament and am empowered to deal with complaints about the administrative actions of Queensland public sector agencies. As QCS is an 'agency' for the purposes of the Ombudsman Act,<sup>10</sup> it follows that I may investigate its administrative actions.

Under the Ombudsman Act,<sup>11</sup> I have authority to:

- investigate the administrative actions of agencies on complaint or on my own initiative (without a specific complaint)
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

I am not able to question the merits of a policy decision made by Cabinet.<sup>12</sup>

The Ombudsman Act outlines the matters about which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency.<sup>13</sup> These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.<sup>14</sup>

Although the Ombudsman is not bound by the rules of evidence,<sup>15</sup> the question of the sufficiency of information to support an opinion of the Ombudsman requires some assessment of weight and reliability. The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.<sup>16</sup>

#### **'Unreasonableness' in the context of an Ombudsman investigation**

In expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', I am applying its popular, or dictionary, meaning. I am not applying the doctrine of legal unreasonableness applied by the Courts when judicially reviewing administrative action.

### 2.2 Other relevant legislation, policies and procedures

The investigation considered relevant provisions of the Corrective Services Act and Corrective Services Regulation 2006.

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<sup>10</sup> Section 8(1), Ombudsman Act.

<sup>11</sup> Section 12, Ombudsman Act.

<sup>12</sup> Section 16(1)(a), Ombudsman Act.

<sup>13</sup> Sections 49 and 50, Ombudsman Act.

<sup>14</sup> Section 49(2), Ombudsman Act.

<sup>15</sup> Section 25(2), Ombudsman Act.

<sup>16</sup> See *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 282. See also the discussion in R Creyke and J McMillan, *Control of Government Action – Text, cases and commentary*, 2nd edition, LexisNexis Butterworths, Australia, 2009, at 12.2.20.

The investigation also considered three standards on the treatment of prisoners:

- *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*<sup>17</sup> (Rules 12, 13 and 15)
- *Standard Guidelines for Corrections in Australia* (Revised 2012)<sup>18</sup> ('Care and Wellbeing', sections 2.2 and 2.3)
- *Healthy Prisons Handbook*<sup>19</sup> (Sections 3.1, 3.5 and 3.7).

While the standards do not have the force of law in Australia they are relevant benchmarks against which it is reasonable to consider the treatment of prisoners in Queensland.

The relevant extracts of the legislation and standards are set out in full in the Appendix.

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<sup>17</sup> General Assembly resolution 70/175, annex, adopted on 17 December 2015, [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf).

<sup>18</sup> Queensland Government et al, *Standard Guidelines for Corrections in Australia* (Revised 2012), [http://aic.gov.au/media\\_library/aic/research/corrections/standards/aust-stand\\_2012.pdf](http://aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2012.pdf).

<sup>19</sup> QCS, *Healthy Prisons Handbook*, op. cit.



## Chapter 3: Monitoring of prisoner numbers

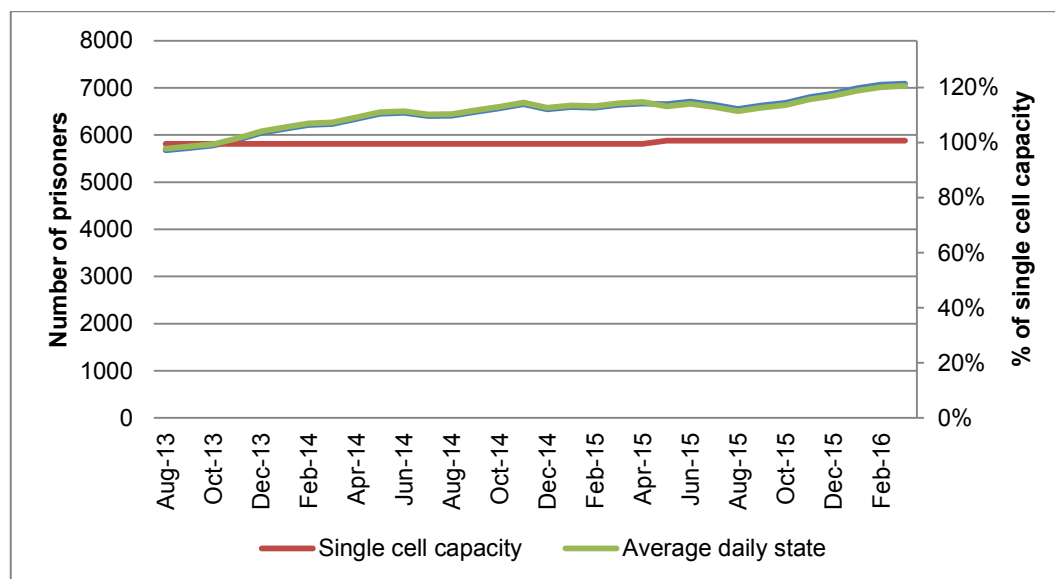
This chapter discusses the increase in the number of prisoners at all secure correctional centres in Queensland since the 2013 report. The chapter also specifically analyses the increase in prisoner numbers at BWCC and provides QCS's modelling of forecast growth in the coming years.

### 3.1 Increase in prisoners at secure correctional centres

The number of both male and female prisoners in Queensland has increased since the 2013 report.

Graph 1 shows the combined single cell capacity of all secure correctional centres in Queensland<sup>20</sup> and the average daily state of those centres from August 2013 to March 2016. As can be seen, there have been more prisoners than cells available since November 2013. Graph 1 also shows that, in the time between August 2013 and March 2016, the total number of prisoners at all of the secure correctional centres in Queensland increased by 24.4%.

**Graph 1 – Number of prisoners at all secure correctional centres in Queensland<sup>21</sup>**



According to the Director-General, the imprisonment rate of women in Queensland is the third highest in Australia and, while the male prisoner population is rising, the female population is rising faster.<sup>22</sup>

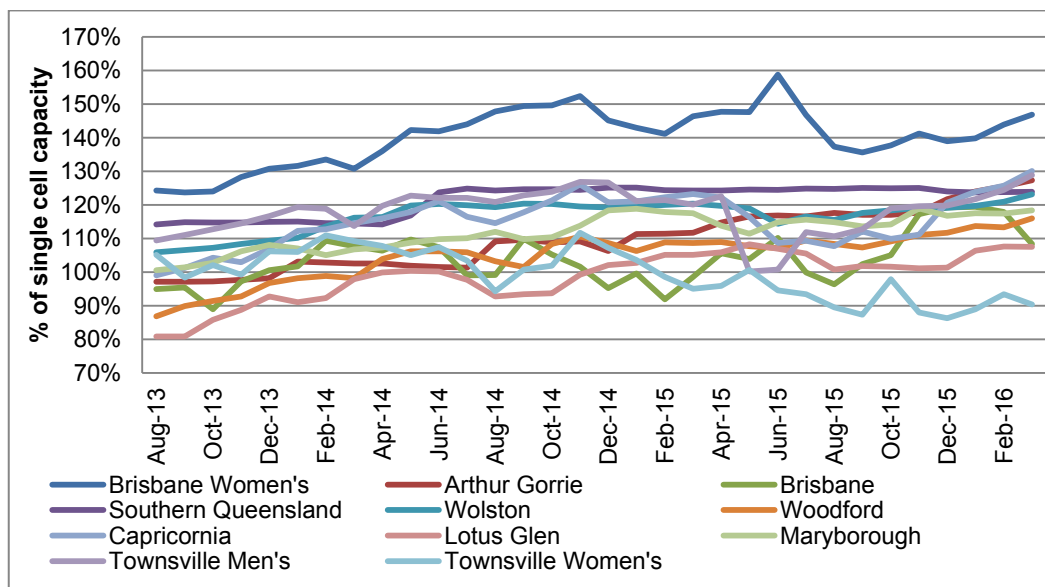
<sup>20</sup> Arthur Gorrie Correctional Centre, Brisbane Correctional Centre, Brisbane Women's Correctional Centre, Capricornia Correctional Centre, Lotus Glen Correctional Centre, Maryborough Correctional Centre, Southern Queensland Correctional Centre, Townsville Correctional Centre, Townsville Women's Correctional Centre, Wolston Correctional Centre and Woodford Correctional Centre.

<sup>21</sup> QCS, Email, 20 June 2016, Attachment.

<sup>22</sup> D Mackie, Letter, 3 September 2015, p.10.

On my analysis of statistics obtained from QCS,<sup>23</sup> BWCC has become the most overcrowded prison in Queensland (as a percentage of its single cell capacity). This can be seen in Graph 2 which details the percentage that all secure correctional centres were above or below their single cell capacities from August 2013 to March 2016.

**Graph 2 – The percentage that secure correctional centres in Queensland were above or below their single cell capacities**

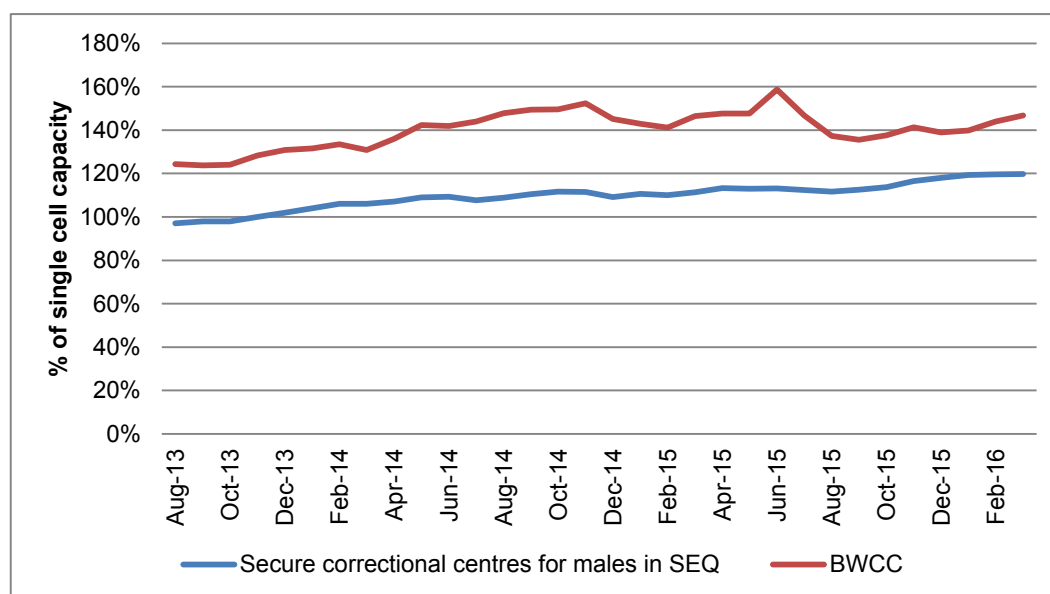


Graph 3 includes only secure correctional centres in south-east Queensland, where BWCC is situated, and shows the combined overcrowding figure for the male correctional centres compared with BWCC. The graph shows that in March 2016, the secure correctional centres for male prisoners in south-east Queensland<sup>24</sup> were overcrowded by 19.7% (that is, the prisoner population exceeded the total single cell capacity of those correctional centres by 19.7%). However, at that same time, BWCC was overcrowded by 46.8%.

<sup>23</sup> QCS, Email, 20 June 2016, Attachment.

<sup>24</sup> The male correctional centres included in this analysis are Arthur Gorrie Correctional Centre, Brisbane Correctional Centre, Wolston Correctional Centre, Southern Queensland Correctional Centre and Woodford Correctional Centre.

**Graph 3 – Comparison of the level of overcrowding at BWCC to that of all secure correctional centres for males in south-east Queensland**



The overcrowding at male correctional centres in south-east Queensland has been eased by the recent opening of Borallon Training and Correctional Centre.<sup>25</sup> From the information I have been provided by the department, there are no immediate plans to increase the capacity of secure correctional centres for female prisoners in Queensland. I will discuss this further in Chapter 8.

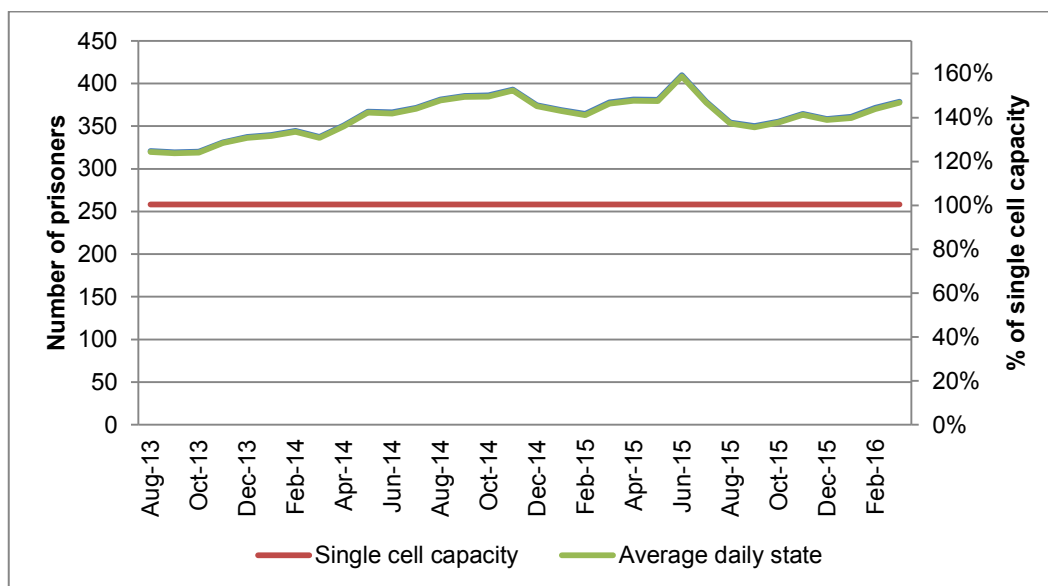
### 3.2 Increase in female prisoner numbers at BWCC

For the purpose of this report, I have conducted a detailed analysis of the average daily state of BWCC since the 2013 report. My analysis shows that BWCC has accommodated significantly more prisoners than its single cell capacity for the entire period since August 2013. The last time that BWCC's average daily state was below its single cell capacity of 258 was in June 2012 when the average daily state was 255.43.<sup>26</sup>

Graph 4 shows that BWCC's highest monthly average population of 409.57 prisoners was recorded in June 2015 when there were 151 prisoners above BWCC's single cell capacity of 258. This meant there were 58.7% more prisoners at BWCC than the centre was designed to accommodate at that time and approximately 300 prisoners would have been sharing a cell.

<sup>25</sup> Prisoner numbers for Borallon Training and Correctional Centre, Woodford Correctional Centre and Wolston Correctional Centre were viewed on IOMS on 6 July 2016.

<sup>26</sup> D Mackie, Letter, 9 June 2016, Attachment, p.2.

**Graph 4 – Average daily state of BWCC**

When interviewed in July 2015 about the overcrowding at BWCC, the Commissioner stated:

[S]o this is our situation. We're about 110-120 over capacity at Brisbane Women's. That means that we've got women doubled-up, we've got about 30 extra built beds, we've got women on the floor, we've got women all round the place – big pressure on health, medical, and our programming infrastructure and a range of other things.<sup>27</sup>

While at the time of interview with the Commissioner there were some signs that the population was declining from its peak in June 2015, as Graph 4 demonstrates, the population is trending back towards that level.

### 3.3 Forecasts of growth in prisoner numbers

Since I commenced the investigation that resulted in the 2013 report, QCS has provided me with a number of its forecasts of growth in prisoner numbers.

I noted in the 2013 report that it was evident from modelling of forecast growth at that time that there was insufficient available secure cell accommodation for women in south-east Queensland and that the projections did not show any improvement in overcrowding at BWCC. I stated that the doubling-up at BWCC appeared persistent and I did not consider it could be explained simply as being caused by a temporary surge in prisoner numbers.

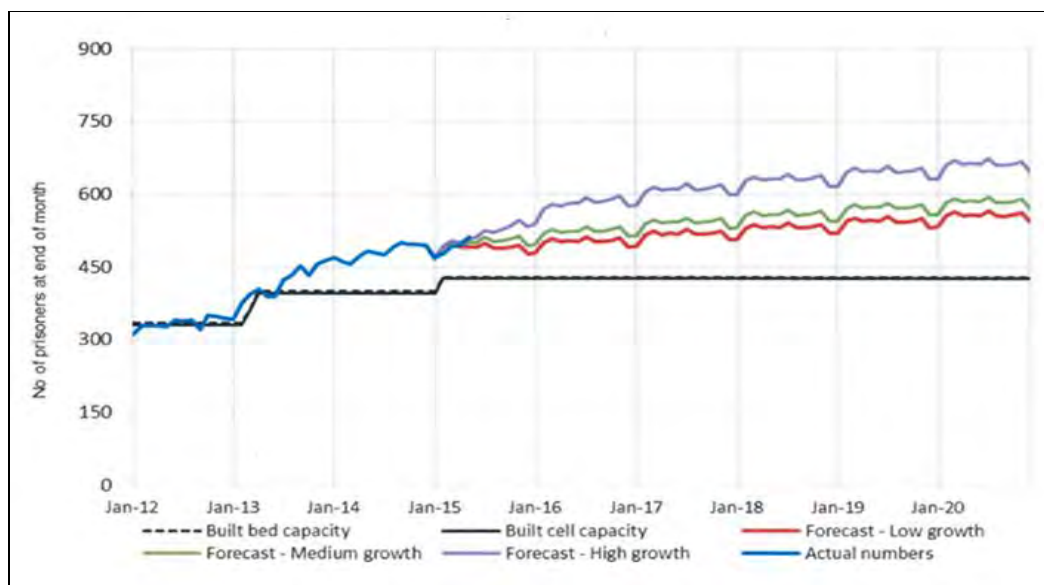
The number of prisoners did continue to grow from that time and, as I have previously stated in this report, the overcrowding continued to get worse at BWCC.

On 26 June 2015, the Commissioner provided me with the department's modelling for the growth in female prisoner numbers in south-east Queensland, including modelling forecasts for low, medium and high growth (Graph 5). QCS makes a number of assumptions in the calculations of its forecasts:

<sup>27</sup> M Rallings, Transcript of interview, 9 July 2015, p.22.

- A low-growth scenario assumes prisoner numbers will grow in line with the growth of Queensland's adult population.
- A medium-growth scenario assumes prisoner numbers will grow at the more moderate rate experienced during 2014 and that this will continue to June 2015 before reverting to a growth rate in line with Queensland's adult population.
- A high-growth scenario assumes a re-emerging higher rate of growth until December 2015 before reverting to a growth rate in line with Queensland's adult population.<sup>28</sup>

**Graph 5 – QCS's forecast, single cell capacity and actual prisoner numbers for female prisoners in south-east Queensland<sup>29</sup>**



This modelling shows that, even if growth remains low, BWCC will continue to be well over its single cell capacity of 258 into the foreseeable future. If high growth is experienced, according to QCS's forecast, there could be over 600 female prisoners in custody in south-east Queensland by early 2017.

At interview, the Commissioner stated:

I'm not expecting a big decrease in the level of growth, but I'm not expecting it to continue to grow at that level or to exceed that. That may be a little bit optimistic, but I think there's enough reason to believe that we may see a slight plateau at least.<sup>30</sup>

### 3.4 Opinions

BWCC is the most overcrowded secure correctional centre in Queensland and, as a result, has the most prisoners who are required to share cells that are designed for a single prisoner.

It is very concerning that the number of prisoners at BWCC has continued to increase. The peak was in June 2015 when the average daily state of BWCC for that month was 409.57.

<sup>28</sup> D Mackie, Letter, 9 June 2016, Attachment, p.2.

<sup>29</sup> M Rallings, Letter, 26 June 2015, Attachment 1. Refer to Dictionary for definitions of built bed capacity and built cell capacity.

<sup>30</sup> M Rallings, Transcript of interview, 9 July 2015, p.50.

Given the increase in prisoner numbers at BWCC since my recommendation in the 2013 report, it is my view that QCS has not taken reasonable action to relieve overcrowding.

The level of overcrowding at BWCC exceeds all secure correctional centres for males, and has done so for the entire time since the 2013 report. This will be further discussed in Chapter 4.

I have formed the following opinions:

**Opinion 1**

BWCC is the most overcrowded correctional centre in Queensland having regard to its single cell capacity.

**Opinion 2**

Any action taken by QCS since August 2013 has not materially impacted the level of overcrowding at BWCC.

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**The Director-General's response to the proposed report**

The Director-General did not object to my opinions.

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## Chapter 4: Living conditions of prisoners at BWCC

This chapter discusses the living conditions of prisoners at BWCC, particularly for those who are required to share a cell that was designed for one prisoner. The chapter also discusses the less favourable treatment of female prisoners in south-east Queensland compared with their male counterparts.

### 4.1 Doubling-up cells

Prisoners are doubled-up in both the secure and residential units at BWCC.

#### 4.1.1 Doubling-up in secure unit cells

A standard secure cell at BWCC is 8.4m<sup>2</sup>. Generally, each cell has facilities for one prisoner: one bed, a desk with one fixed seat, wall storage unit with shelving for personal items, a toilet, basin and a shower.

Built-in bunk beds have been added to 30 cells to accommodate a second prisoner in each of those cells. However, the majority of single cells used to accommodate two prisoners have just one bed.

When doubled-up in these single cells, one prisoner sleeps on a mattress on the floor. The mattress is placed close to the exposed toilet, wedged at the other end against the desk near the door. Prisoners are required to sleep with their head at the end closest to the toilet to allow for checks to be conducted by officers during the night, which BWCC staff told this Office are not possible if the prisoner sleeps with their head at the end closest to the door.

When the prisoner sleeping in the bed needs to get out of bed, she has to step over the prisoner sleeping on the mattress on the floor. This layout is problematic, particularly when the prisoner in the bed needs to use the toilet in the dark.

Figure 1 shows a mattress on the floor of a single cell in a secure unit at BWCC and demonstrates the limited space in which two prisoners are accommodated.

**Figure 1 – A doubled-up single secure cell with mattress on the floor at BWCC<sup>31</sup>**



At the time of this Office's visit to BWCC in April 2015, prisoners were generally being locked in their cells at approximately 5.30pm and unlocked at approximately 7.30am. Therefore, when prisoners were doubled-up, they were generally spending at least 14 hours every day locked in their small cell together. QCS has advised that changes to officers' shift lengths mean that prisoners at BWCC are now locked in their cells at approximately 6.20pm.<sup>32</sup> Prisoners in double-up will now be spending over 13 hours locked in their cell together.

At the time of this Office's visit to BWCC in April 2015, the average daily state of BWCC was 381 prisoners, which meant it was 47.7% over its single cell capacity, with the majority of shared cells in secure units. Some examples of overcrowded secure units at BWCC are:

- A secure unit with a single cell capacity of 24 prisoners accommodated 16 extra prisoners.<sup>33</sup> Of the 40 prisoners in the unit, 32 would have been sharing a cell with another prisoner, with only eight prisoners having their own cell.
- A unit designed to accommodate 16 prisoners was 80% over capacity with 29 prisoners.<sup>34</sup> There would have been 26 prisoners in shared cell situations.

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<sup>31</sup> This photo was taken during the investigation for the 2013 report. There have been no changes to the fixtures in secure cells since that time. QCS has, however, replaced the mattresses in this photo with new thinner fire retardant mattresses.

<sup>32</sup> D Mackie, Letter, 9 June 2016, Attachment, p.3.

<sup>33</sup> IOMS, viewed 17 July 2015.

<sup>34</sup> IOMS, viewed 24 July 2015.

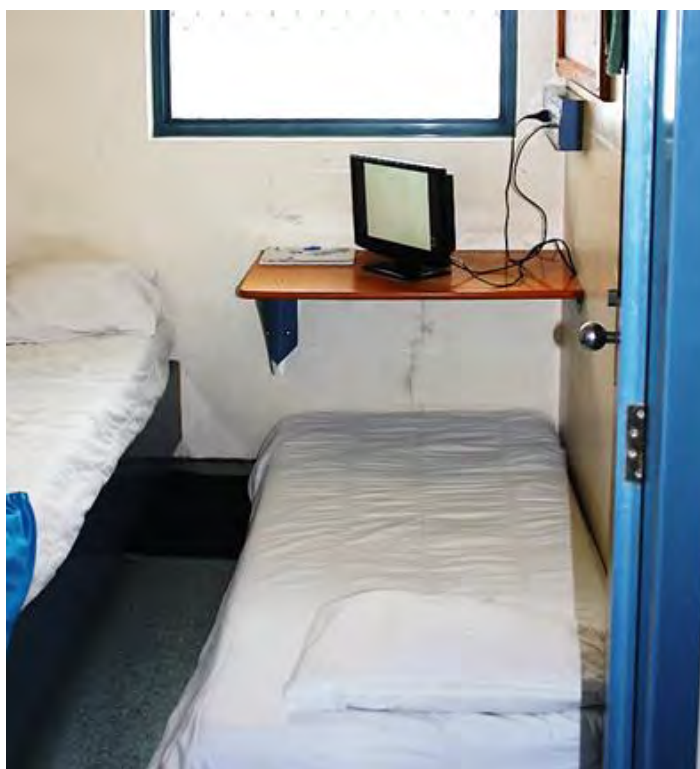


### 4.1.2 Doubling-up in residential unit cells

Residential units at BWCC are designed to accommodate six prisoners in six small, single rooms (without their own bathroom facilities) with a communal kitchen, shared bathroom and living/dining area.

When residential units are in double-up, extra mattresses are placed on the floor in single rooms, taking up almost all of the available floor space, as can be seen in Figure 2.

**Figure 2 – A residential cell at BWCC with a mattress on the floor<sup>35</sup>**



During this Office's visit to BWCC in April 2015, there were up to three rooms doubled-up in each residential unit, meaning that the number of prisoners accommodated was 50% above the capacity for which the units were designed.

Statistics obtained from QCS's IOMS database on 17 July 2015 record that two residential units, with six single cells, were each accommodating 10 prisoners at that time, 66% over capacity.

In residential units, after lock-away at approximately 6.20pm each day,<sup>36</sup> prisoners are locked in their units rather than being locked in their individual rooms. Prisoners are able to access the unit's common area, kitchen and bathroom areas during these times.

Male prisoners accommodated in the residential areas of men's correctional centres do not share rooms. Instead, residential units generally have one extra prisoner per unit, with that prisoner sleeping on a mattress in the common area.<sup>37</sup>

<sup>35</sup> This photo was taken during the investigation for the 2013 report. There have been no changes to the fixtures in residential bedrooms since that time. QCS has, however, replaced the mattresses in this photo with new thinner fire retardant mattresses.

<sup>36</sup> Previously 5.30pm (see discussion about this in section 4.1.1).

<sup>37</sup> During this Office's visit to Southern Queensland Correctional Centre in November 2015, it was observed for the first time that some residential units had two prisoners accommodated on mattresses in common areas.

#### **4.1.3 Inappropriate doubling-up**

In the 2013 report, the recommendations I made included that QCS establish guidelines applicable to all centres directed towards minimising the risk posed by double-ups and ensuring the safety and wellbeing of prisoners in a double-up situation, including setting standards (among others):

- that provide for the regular monitoring and recording of individual prisoners' safety and wellbeing
- for the selection of prisoners appropriate for double-up and 'flagging' or noting of prisoners identified as unsuitable for double-ups on IOMS.

A number of situations have been brought to my attention through complaints made to this Office which I consider to be inappropriate doubling-up of prisoners at BWCC.

#### **Double-up of two prisoners subject to segregation conditions**

In 2014, I investigated complaints from a number of prisoners at BWCC about their ongoing segregation. The investigation revealed that two prisoners who had shared a cell for 12 days (with one of the prisoners sleeping on a mattress on the floor) had only received their minimum statutory right of two hours of time out of their cell<sup>38</sup> on five days. On three days the prisoners had some out of cell time but this was less than the required two hours. On four days the two prisoners remained locked in the cell all day, which at one point amounted to in excess of 80 hours locked together in a cell designed for one prisoner.

#### **Pregnant prisoners required to sleep on mattresses on the floor**

This Office has received two separate complaints about individual pregnant prisoners who had been required to not only share a cell with another prisoner but to sleep on a mattress on the floor.

In one case, a prisoner was sleeping on a mattress on the floor of a doubled-up cell while she was pregnant and then immediately following her return from hospital after suffering a miscarriage.

When the issue of pregnant prisoners sleeping on mattresses on the floor of cells was raised directly with BWCC management by this Office, a system was put in place to include in a weekly management report details of where each pregnant prisoner at BWCC is accommodated to ensure that pregnant prisoners are appropriately accommodated in a bed rather than on a mattress on the floor.

It is my view that requiring a pregnant prisoner to share a cell with another prisoner, particularly when the pregnant prisoner is required to sleep on a mattress on the floor, is inappropriate and amounts to administrative action that is unreasonable and wrong. My opinion is at section 4.6.

### **4.2 Effect of doubled-up accommodation on privacy and decency**

In the 2013 report, I recommended to QCS that in instances where double-ups were unavoidable, it examine options to mitigate the impact of doubling-up on prisoners, including addressing privacy concerns when using toilets in doubled-up cells.

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<sup>38</sup> Section 5(d), Corrective Services Regulation requires prisoners undergoing separate confinement to be given the opportunity to exercise, in the fresh air, for at least two daylight hours a day.

### 4.2.1 Toilets in secure cells

Rule 15 of the Nelson Mandela Rules states that every prisoner should be able to 'comply with the needs of nature when necessary and in a clean and decent manner'. QCS's own Healthy Prisons Handbook states that an indicator of 'sanitary arrangements that take account of health, hygiene and human dignity' is '[w]hen the toilet is in [a] cell it is enclosed to ensure privacy'.<sup>39</sup>

Toilets in secure cells at BWCC are exposed, as can be observed by the photograph in section 4.1.1. This affords no modesty to prisoners who share a cell when they use the toilet during the more than 13 hours they are locked in their cells together each day.

In addition to decency, I raised concerns in the 2013 report about hygiene issues associated with the location of bedding on a floor so close to a toilet shared by two prisoners and I advised QCS that I considered it should specifically examine options for allowing prisoners privacy when using toilets in doubled-up cells, such as a temporary privacy screen.

In response to the 2013 report, QCS advised me that:

- it had examined the practicalities of installing screens and found that it would not to be feasible in the current cell configuration
- the question of providing privacy in a cell that is 8.4m<sup>2</sup> and containing the current level of amenity raised some serious issues for designers and operators of the current infrastructure particularly in relation to fire safety and suicide prevention<sup>40</sup>
- the General Managers of correctional centres recognise that the use of toilet facilities by prisoners in shared cell accommodation remains an issue and that centre management were cognisant of it.<sup>41</sup>

Unfortunately, it appears from recent visits to BWCC that the issues of dignity and hygiene in relation to toilet facilities in doubled-up cells in secure units (during lock-away periods) remain largely unaddressed.

Where doubling-up occurs in a residential unit, the arrangement is less problematic in terms of decency because there are separate bathrooms available that can be used by all prisoners. However, these bathrooms are designed to be used by six prisoners, and at times, there are up to four extra prisoners accommodated in the units (sleeping on mattresses on the floor of single cells).

### 4.2.2 Privacy of personal information

Prisoners have raised issues with this Office about privacy of their personal information when sharing a cell with another prisoner, including the risk that their roommate could steal their personal property.

In one case, a prisoner complained that her personal information, which included legal documents for her upcoming trial, was accessed by the prisoner she was sharing a cell with and then shown to other prisoners with whom she shared a unit.

<sup>39</sup> Section 3.5, Healthy Prisons Handbook.

<sup>40</sup> K Anderson, Letter, 2 October 2013, Attachment 1, p.4.

<sup>41</sup> J Sosso, Letter, 11 September 2014, p.2.

### 4.3 Provision of storage space in doubled-up cells

The lack of space for personal belongings in doubled-up cells has been an ongoing concern voiced to this Office by prisoners at BWCC.

The Healthy Prisons Handbook requires QCS's own inspectors to check cells to ensure that '(p)rovision for the storage of personal belongings and photographs is adequate... prisoners have their own bed, pin board and cupboard and use of a table and chair.'<sup>42</sup>

During visits to BWCC, investigators from this Office have observed that doubled-up single cells in both secure and residential units seldom have adequate provision for the storage of personal belongings for both prisoners sharing the cell as the cell was designed with shelf fixtures for one prisoner only. Generally, there were only shelves for one prisoner's belongings and in some cases the second prisoner's belongings were kept in a box on the floor or in the common room area of residential units. There is also only room for one desk and a chair in each cell.

Figure 3 shows the desk, chair and wall storage unit for storing personal property that is provided in a single secure cell at BWCC.

**Figure 3 – Desk, chair and wall storage unit in a single secure cell at BWCC**



In response to concerns that I raised with QCS in the 2013 report, and in following up recommendations that I made about the adequacy of storage space in doubled-up cells, the former Director-General advised me:

At the BWCC, prisoners are requested to keep their cell property to a minimum. The centre has found that there is adequate storage in the purpose built units if property items are stored neatly.<sup>43</sup>

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<sup>42</sup> Sections 3.1 and 3.7, Healthy Prisons Handbook.

<sup>43</sup> J Sosso, Letter, 11 September 2014, p.2.

Other concerns that have been raised by prisoners with investigators are as follows:

- despite centre management approving plastic caddies for storing toiletries, some unit officers do not allow prisoners to have them
- there is no space to hang two wet towels after both prisoners have showers in secure units
- when two prisoners are doubled-up in a cell where one of them is on a mattress on the floor, it is not possible for both prisoners to be able to watch the television screen from their beds
- there have been disagreements between prisoners sharing cells over issues including when the light in the cell is on, what to watch on television and how late the television should be on at night.

I am concerned that these issues could lead to conflicts between prisoners sharing cells and increase the risk of assault.

#### 4.4 Amenities provided for prisoners in units

Prisoners at BWCC have raised concerns about there not being enough tables and chairs in common areas of units to accommodate all prisoners when the units are overcrowded. This means that during meal times some prisoners have to either sit on the ground or stand to eat or else go outside to the exercise yard attached to the unit to sit, something which prisoners say they are not supposed to do.

The fixed seating provided in two different types of secure units at BWCC can be seen in Figures 4 and 5.

**Figure 4 – Fixed seating provided in a secure unit at BWCC**





**Figure 5 – Fixed seating provided in a smaller secure unit at BWCC**



Prisoners also raised concerns about the lack of washing machines and dryers in the units, which could cause a hygiene issue for prisoners who are not able to wash their clothes. The Together Union, on behalf of its members at BWCC, also referred to the lack of washing facilities available to prisoners in its submission to the Queensland Parliament's Legal Affairs and Community Safety Committee, *Inquiry on strategies to prevent and reduce criminal activity in Queensland*.<sup>44</sup>

## 4.5 Less favourable treatment of female prisoners

As I have stated, the level of overcrowding at BWCC exceeds that in all secure correctional centres for males, and has done so for the entire time since the 2013 report.

A female prisoner in south-east Queensland is much more likely to have to share a cell with another prisoner than a male prisoner in any other correctional centre. Further, up to an additional four women are accommodated in the six-bed residential units at BWCC by sharing cells with other women, whereas usually only one additional man is accommodated in the six-bed residential units at Southern Queensland Correctional Centre and Wolston Correctional Centre, and they sleep in the common area.

When one has regard to the less favourable living conditions experienced by prisoners who are in double-up compared with those in a single cell, in all the circumstances, I am of the view that, due to the extent of overcrowding, female prisoners in south-east Queensland are being treated less favourably than male prisoners. I consider this amounts to improper discrimination of female prisoners in Queensland.

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<sup>44</sup> Together, 'Together Queensland Union Submission by Brisbane Women's Correctional Centre (BWCC) members', submission to the Queensland Parliament's Legal Affairs and Community Safety Committee, *Inquiry on strategies to prevent and reduce criminal activity in Queensland*, p.4.

## 4.6 Opinions

I have formed the following opinions:

### Opinion 3

Failing to provide adequate living conditions for female prisoners at BWCC is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

### Opinion 4

QCS has not taken reasonable action to mitigate the impact of overcrowding on prisoners at BWCC, including by:

- selecting unsuitable prisoners to double-up
- not addressing privacy concerns when using toilets in doubled-up cells
- not providing sufficient space for the storage of personal items in doubled-up cells
- not providing sufficient tables and chairs in common areas of units for the number of prisoners accommodated in the unit.

This is administrative action that is unreasonable and wrong for the purposes of s.49(2)(b) and s.49(2)(g) of the Ombudsman Act.

### Opinion 5

Requiring pregnant prisoners to share a cell with another prisoner, particularly in circumstances where the pregnant prisoner sleeps on a mattress on the floor, is administrative action that is unreasonable and wrong for the purposes of s.49(2)(b) and s.49(2)(g) of the Ombudsman Act.

### Opinion 6

As the level of overcrowding at BWCC exceeds all secure correctional centres for males, and has since 2013, female prisoners in secure custody in south-east Queensland are being treated less favourably than male prisoners in Queensland and this amounts to administrative action that is improperly discriminatory for the purposes of s.49(2)(b) of the Ombudsman Act.

### The Director-General's response to the proposed report

The Director-General did not object to my opinions but provided the following comment:

Overall, QCS is confident that BWCC continues to perform well despite the pressures of the rapid growth in female prisoners and the subsequent overcrowding of BWCC.

Section 18(1) of the Corrective Services Act 2006 (the CSA), provides that where practicable, a prisoner must be provided with his or her own room. I would like to assure you that QCS, in accommodating prisoners within available capacity, has full regard to this requirement. Prisoners are placed in single bed cells wherever possible. Double up accommodation is only used when there is either no other option available within a correctional centre or prisoners have requested a double up and this is deemed safe

and appropriate.

QCS has limited options at its disposal to manage service demand. Prisoner numbers are influenced by a range of factors outside of QCS' control, including rates of crime, sentencing practices and parole board decisions. QCS endeavours to accommodate the prisoner population within available resources and as safely and humanely as possible.

BWCC is the sole high security correctional centre for women prisoners in South-East Queensland (SEQ). Given this, QCS has limited capacity to allocate additional prisoners across a number of correctional centres, as is the case for male prisoners. In response to the growth in female prisoners, QCS has proactively taken a number of steps to reduce overcrowding at BWCC including expanding the eligibility criteria for low security placement and increasing low security capacity in SEQ by 30 beds.

QCS has also been working towards full utilisation of low security capacity, however, in the interests of community safety, not all prisoners are suitable to transfer from high security to low security to ease the pressure on BWCC.

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## Chapter 5: Incidents at BWCC

This chapter discusses the increases in the incidents of assault and self-harm that have occurred at BWCC in recent years.

### 5.1 Incidents of assault

Both the number of assaults and the rate of assault per 100 prisoners at BWCC have increased since the 2013 report.

When asked at interview about the rate of assault at BWCC, the Commissioner stated:

... not just [BWCC], but across the board, the number of assaults on staff have been remarkably low. The number of assaults between prisoners has been very high ... the increase has been greater than the increase in the prisoner numbers ...<sup>45</sup>

Table 1 shows the number of assaults at BWCC in the 2012-13 to 2014-15 financial years.

**Table 1 – Number of assaults at BWCC<sup>46</sup>**

Financial year	Average daily state	Number of assaults							
		Prisoner on prisoner				Prisoner on staff			
		Serious Assault	Assault	Assault-Other	Total	Serious Assault	Assault	Assault-Other	Total
2012-13	282.16	2	18	34	<b>54</b>	1	-	6	<b>7</b>
2013-14	336.32	5	25	46	<b>76</b>	-	1	11	<b>12</b>
2014-15	381.17	8	35	79	<b>122</b>	2	1	13	<b>16</b>

Table 2 shows the rate of assault per 100 prisoners at BWCC in the 2012-13 to 2014-15 financial years.

**Table 2 – Rate of assault per 100 prisoners at BWCC<sup>47</sup>**

Financial year	Average daily state	Rate of assault per 100 prisoners							
		Prisoner on prisoner				Prisoner on staff			
		Serious Assault	Assault	Assault-Other	Total	Serious Assault	Assault	Assault-Other	Total
2012-13	282.16	0.71	6.38	12.05	<b>19.14</b>	0.35	-	2.13	<b>2.48</b>
2013-14	336.32	1.49	7.43	13.68	<b>22.60</b>	-	0.30	3.27	<b>3.57</b>
2014-15	381.17	2.10	9.18	20.73	<b>32.01</b>	0.52	0.26	3.41	<b>4.19</b>

While there was a 35% increase in the average daily state of BWCC between the 2012-13 and the 2014-15 financial years, the total number of prisoner-on-prisoner assaults more than doubled (126% increase). In that time, BWCC experienced a fourfold increase in the number of serious prisoner-on-prisoner assaults. The rate of serious assaults per 100 prisoners increased from 0.71 to 2.10, a 196% increase.

The total number of assaults by prisoners on staff more than doubled in the same time, although the number categorised as serious assaults remained very small.

Table 2 shows that there were a total of 32.01 prisoner-on-prisoner assaults recorded for

<sup>45</sup> M Rallings, Transcript of interview, 9 July 2015, p.51.

<sup>46</sup> D Mackie, Letter, 3 September 2015, Attachment 2. The figures are consistent with the Productivity Commission's Report on Government Services' counting rules.

<sup>47</sup> *ibid.*

every 100 prisoners at BWCC in the 2014-15 financial year. This has increased from 19.14 prisoner-on-prisoner assaults for every 100 prisoners that occurred in the 2012-13 financial year.

The Commissioner advised that the increase in assaults at BWCC has not been as pronounced as it has across all correctional centres. He stated:

... we are seeing women involved in different sorts of assaults on each other ... we've never seen before. We're also seeing differences in their sentencing as well ... I don't think we can just attribute it to the environment. But I think it's got to be part of it ... Serious assault has gone up ... serious assault means that the person is seriously assaulted ...<sup>48</sup>

The Director-General advised me:

QCS is committed to ensuring a safe and secure correctional environment and all staff are trained to de-escalate and deal with a range of issues that arise between prisoners. All assaults that occur in Queensland correctional centres are taken very seriously and are referred to the Queensland Police Service officers in the Corrective Services Investigation Unit.

QCS continue to monitor both the frequency and the penalties handed to the perpetrators of assault.<sup>49</sup>

## 5.2 Incidents of self-harm

The number of self-harm incidents have increased at what I consider to be an alarming rate in recent years at BWCC. As can be seen in Table 3, there were more than five times as many self-harm incidents in the 2014-15 financial year involving more than three times the number of prisoners compared with two years earlier in 2012-13.

**Table 3 – Self-harm incidents and attempted suicides at BWCC<sup>50</sup>**

Financial year	Average daily state	Self-harm		Attempted suicide	
		Number of incidents	Number of prisoners	Number of incidents	Number of prisoners
2012-13	282.16	15	9	3	3
2013-14	336.32	24	23	1	1
2014-15	381.17	84	29	1	1
2015-16 (to 31 March 2016)	363.58	83	31	10	9

Table 3 shows that the number of self-harm incidents at BWCC in the nine months of the 2015-16 financial year to 31 March 2016 was 83. This is only one less than the total number of these incidents that occurred in the whole of the 2014-15 financial year.

While it is noted that the number of suicide attempts at BWCC decreased after 2012-13, in the 2015-16 financial year to 31 March 2016 there were ten attempted suicides.<sup>51</sup> This is a considerable increase when compared with the number of attempted suicides in the preceding three financial years in both number of attempts and number of prisoners involved.

When asked at interview about whether the use of double-ups was 'feeding into' the increase, the Commissioner stated:

<sup>48</sup> M Rallings, Transcript of interview, 9 July 2015, p.52.

<sup>49</sup> D Mackie, Letter, 3 September 2015, p.6.

<sup>50</sup> *ibid*; and D Mackie, Letter, 9 June 2016, Attachment, pp.4-5.

<sup>51</sup> Queensland Corrective Services Intranet, Knowledge Place reports, viewed 22 April 2016; and D Mackie, Letter, 9 June 2016, Attachment, pp.4-5.

... I would imagine that it is less about double-up and more just about the environment - the noisy, crowded environment, and there isn't space for people to - and if they are symptomatic, if they are very reactive because of a trauma history and they are in a constantly noisy, high stimulus environment, I suspect it overwhelms people's ability to cope. I think that's far more just about the general crowding than the actual double-up would be my hypothesis.<sup>52</sup>

Subsequently, the Director-General advised me:

QCS has a comprehensive at-risk management (self harm/suicide) procedure to minimise harm and to prevent loss of life by identifying and safely managing offenders who are at-risk of self-harm or suicide.<sup>53</sup>

There were no deaths of prisoners at BWCC, from natural or unnatural causes, in the period from 1 July 2012 to 31 March 2016.<sup>54</sup>

I discuss at-risk management further at section 6.3.4.

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**The Director-General's response to the proposed report**

The Director-General advised:

It is important to note that this data is a count of incidents. These counts can be distorted if a small number of prisoners have a repeated number of self-harm or attempted suicide incidents.  
...

For example, in the case of self-harm incidents during 2014-15, 60% of incidents can be attributed to three prisoners.

In 2015-16 (to 31/3/2016), one prisoner was involved in one third of all self-harm incidents.

If a prisoner is only counted once for each incident type across the entire period examined (1/7/2012-31/3/2016), the number of self-harm incidents reduces from 206 incidents to incidents involving 76 individual prisoners. The number of attempted suicide incidents reduces from 15 incidents to incidents involving 13 individual prisoners.

Monitoring of incidents is maintained to identify those women involved in repeat incidents, with access provided to specialised external psychological services where required.

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**Ombudsman's comment on the response**

I accept the Director-General's statement that a small number of prisoners have been involved in multiple incidents of self-harm and I have amended this section of the report, including Table 3, to reflect the count of the number of prisoners involved and not just the overall number of incidents. However, this does not alleviate my concerns about the prevalence of self-harm and attempted suicides in recent years at BWCC, particularly as it is not just the total number of self-harm and attempted suicide incidents that have occurred but also the number of prisoners involved in these incidents that has increased disproportionately to the increase in the number of prisoners at BWCC.

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<sup>52</sup> M Rallings, Transcript of interview, 9 July 2015, p.53.

<sup>53</sup> D Mackie, Letter, 3 September 2015, p.6.

<sup>54</sup> QCS Intranet, Knowledge Place reports, viewed 22 April 2016.

### 5.3 Conclusion

I recommended in the 2013 report that QCS establish guidelines applicable to all correctional centres directed towards minimising the risk posed by double-ups and ensuring the safety and wellbeing of prisoners in a double-up situation including, among others, setting standards.

While I cannot confirm that there is a causal link between overcrowding and consequential doubling-up at BWCC and the increase in the number of incidents of assault, self-harm and attempted suicide, the statistics show that the number of incidents has increased disproportionately to the increase in prisoner numbers.

Having regard to the significant increase in the incidents of assault, self-harm and attempted suicide at BWCC, I am concerned about QCS's management of overcrowding at BWCC, particularly requiring prisoners to double-up.

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## **Chapter 6: Services provided to prisoners at BWCC**

This chapter discusses the services that are provided to prisoners at BWCC, including recreational activities, offending behaviour and substance abuse programs, transitional support, education and health services. The chapter also considers how these services have been affected by the overcrowding that has been experienced at BWCC over recent years.

### **6.1 Recommendation made in the 2013 report**

In the 2013 report, I referred to potential decreased access to services and amenities at correctional centres, including medical services and access to recreational facilities. I also noted that prisoners in secure units were locked in their cells for a period of approximately 14 hours a day, including those in double-up who shared a space (designed for one) with another prisoner. I noted that no consideration appeared to have been given to allowing doubled-up prisoners longer out of cell time to help improve their conditions of confinement.

Recommendations in the 2013 report that I made included the setting of standards that:

- provide for monitoring the access of prisoners in double-up to services and amenities (including out of unit activities) to ensure that where prisoner numbers increase beyond a correctional centre's single cell capacity there is:
  - a corresponding increase in services
  - corresponding access to recreational and library facilities and other amenities for doubled-up prisoners
- ensure that doubled-up prisoners do not suffer disadvantage in accessing centre privileges and progression through the accommodation system.

In response to the 2013 report, the department advised me that it had taken steps to mitigate the effects of overcrowding on prisoners at BWCC in the short term, including ensuring that the number of prisoners was evenly distributed across the centre and increasing the availability of activities that prisoners are able to do outside of the units by increasing the number of Activities Officers from two to four.<sup>55</sup> I was also advised that, rather than increasing the amount of time prisoners were out of their cells each day, centres had adopted a strategy of increasing the availability of in-cell access, which provided prisoners with personal space and an opportunity for 'time out' by removing them from unit common areas and exercise yards. I was advised that the strategy was 'reported to be working effectively at centres'.<sup>56</sup>

As part of this investigation, I have considered the level of prisoners' access to essential services and recreational activities at BWCC since the 2013 report. It appears that, despite the increase in prisoner numbers, there has not been any substantial increase in services provided to prisoners and that some services have actually declined.

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<sup>55</sup> J Sosso, Letter, 4 April 2014, p.6.

<sup>56</sup> J Sosso, Letter, 11 September 2014, p.4.

## 6.2 Offender development services

### 6.2.1 Offender development services at BWCC

The Corrective Services Act<sup>57</sup> states that 'the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders'. It also requires QCS to establish programs and services:

- to help prisoners reintegrate into the community after their release from custody, including by acquiring skills
- to initiate, keep and improve relationships between offenders and members of their families and the community
- to help rehabilitate offenders.<sup>58</sup>

BWCC has a number of initiatives aimed at rehabilitating prisoners, including intervention programs, transitional and reintegration services, and education and training.

The Director-General advised me that the offender development staff at BWCC includes up to seven different roles.<sup>59</sup>

1. Correctional Manager, Offender Development
2. Manager, Women's Community Program
3. Program Delivery Officer
4. Education Officers
5. Cultural Liaison Officer
6. Vocational Training Officer
7. Transition Coordinator.

The Director-General also advised me:

In response to growing prisoner numbers, QCS has increased the number of employees dedicated to offender development activities.<sup>60</sup>

However, the statistics provided to me by QCS evidence that the number of full-time equivalent (FTE) employees dedicated to offender development activities remained the same between August 2013 and August 2015, with no increase in response to growing prisoner numbers.

**Table 4 – Number of FTE offender development staff at BWCC<sup>61</sup>**

Date	FTE offender development staff	Average daily state
August 2013	13	320.71
August 2014	13	381.68
August 2015	13	356.42

Even when BWCC was at its highest average daily state of 409.57 in June 2015 (which represented an almost 28% increase in the number of prisoners compared with August 2013), there does not appear to have been any increase in the number of FTE employees in these crucial roles or any increase in the funding provided for the roles. This is despite my recommendation to QCS in the 2013 report that where prisoner numbers increase beyond a correctional centre's single cell capacity there should be a corresponding increase in services.

<sup>57</sup> Section 3(1), Corrective Services Act.

<sup>58</sup> Section 266, Corrective Services Act.

<sup>59</sup> D Mackie, Letter, 3 September 2015, p.3.

<sup>60</sup> *ibid*, p.5.

<sup>61</sup> *ibid*, p.3.

In my view, this raises the question of whether QCS can deliver important rehabilitative programs and transitional services to prisoners in the circumstances.

### 6.2.2 Programs provided to prisoners at BWCC

Offending behaviour programs and substance abuse programs provided to prisoners in correctional centres are aimed at reducing recidivism. According to QCS documents, the programs it provides are targeted to specific prisoner needs related to their reoffending risk. Programs include both criminogenic needs, that is, the factors that lead to criminal behaviour (e.g. antisocial attitudes, values, beliefs and/or personality, including impulsivity, substance abuse, hostility, anger, poor problem solving skills, education, and/or employment) and non-criminogenic needs, that is, offender needs that when changed are unlikely to alone have an effect on recidivism (these can include the health and wellbeing of prisoners).

Table 5 shows the programs provided at BWCC since the 2012-13 financial year and the number of prisoners who completed those programs.

**Table 5 – Programs delivered at BWCC by QCS or an external provider funded by QCS**

Program name	Provider	Completions			
		2012-13 (ADS 282.16)	2013-14 (ADS 336.32)	2014-15 (ADS 381.17)	2015-16 (to 30 April 2016) (ADS 363.97)
Turning point preparatory program (15 hours)	QCS	21	12	7	6
Pathways high intensity substance abuse program (100 – 120 hours)	QCS	-	11	23	6
Low and short intensity substance abuse programs (20 hours and 8 hours)	External	6	19	20	27
Real understanding of self-help (40 hours)	QCS	-	5	-	-
Ending offending (12 hours)	QCS	7	17	-	-
Resilience (2 days)	QCS	-	-	-	15
Positive discipline	External	-	-	-	21
<b>TOTAL</b>		<b>34</b>	<b>64</b>	<b>50</b>	<b>75</b>

As can be seen, the number of program completions actually decreased between the 2013-14 and 2014-15 financial years even though the average prisoner population increased by 50 in that same time. There was, however, an increase in prisoners completing the more intensive, longer, substance abuse program.

I have also looked at the number of prisoners completing and participating in programs in the context of the throughput of prisoners at BWCC. Table 6 shows the throughput of prisoners at BWCC (that is, the number of prisoners who entered and left) in the 2014-15 financial year.

**Table 6 – Prisoner movements into and out of BWCC for the 2014-15 financial year**

<b>Movements from/to</b>	<b>Movements in</b>	<b>Movements out</b>
Prisoners entering BWCC who were not subject to QCS supervision (e.g. parole)	456	
Prisoners released from BWCC without any supervision by QCS		185
Prisoners entering BWCC who were subject to QCS supervision (e.g. parole suspension)	734	
Prisoners released from BWCC subject to supervision by QCS (e.g. parole)		665
Prisoners transferred into BWCC from another correctional centre	130	
Prisoners transferred from BWCC to another correctional centre		446
Prisoners moved into BWCC from mental health facilities	16	
Prisoners moved from BWCC to mental health facilities		13
<b>TOTAL</b>	<b>1,336</b>	<b>1,309</b>

In addition to the 366 prisoners who were already at BWCC in June 2014,<sup>62</sup> another 1,336 moved through BWCC in the 2014-15 financial year. The movements in and out of BWCC are total movements and include prisoners who moved in or out more than once. According to QCS, there were 1,166 distinct prisoners at BWCC in the 2014-15 financial year.<sup>63</sup> As can be seen from Table 5, only 50 of those 1,166 prisoners completed a program at BWCC at some time during the 2014-15 financial year.

While I acknowledge QCS's advice that to participate in most programs, a prisoner must be sentenced and have sufficient time remaining in custody to complete the program, I am surprised by the very low number of program places as a proportion of the total number of prisoners that move through the centre in a year.

The General Manager of BWCC has stated that she estimated up to 90% of women are jailed because of drugs, either on drugs charges or for crimes relating to drugs, such as burglary to fund the habit.<sup>64</sup> Despite this, only 50 prisoners completed substance abuse programs at BWCC in the 2014-15 financial year.

I have been provided with some details of additional community-based service providers that visit BWCC and provide programs to prisoners, including Sisters Inside and Alcoholics Anonymous. When asked at interview whether he thought enough was being done in relation to the availability of programs at BWCC, the Commissioner answered 'No'.<sup>65</sup>

The level of overcrowding at BWCC has had a direct effect on QCS's ability to provide programs at BWCC. When the Commissioner was asked at interview if QCS was doing anything to provide more programs for prisoners at BWCC, his response included:

It's not much point, I think, strategically, bringing in a whole bunch more programs and services when the infrastructure is so much under pressure, because we're not going to be able to really deliver, have them delivered, very effectively and efficiently anyway.<sup>66</sup>

In my opinion, it is unreasonable for QCS to not be providing programs to prisoners at BWCC aimed at helping with substance abuse and stopping reoffending because of the overcrowding at the centre. My opinion and recommendation are at section 6.5.

<sup>62</sup> Average daily state of BWCC for June 2014 was 366.10. QCS, Email, 20 June 2016.

<sup>63</sup> D Mackie, Letter, 9 June 2016, Attachment, p.6.

<sup>64</sup> R Brennan, 'Jailhouse Mothers', *Sunday Mail*, 13 December 2015, p.17.

<sup>65</sup> M Rallings, Transcript of interview, 9 July 2015, p.22.

<sup>66</sup> *ibid*, p.23.



### 6.2.3 Transitional support provided to prisoners

QCS's *Custodial Operations Practice Directive (COPD) on Rehabilitation and Education* includes in its outcomes: 'Appropriate and targeted reintegration support is available to prisoners'. The COPD states:<sup>67</sup>

- Sentenced prisoners within nine months of parole eligibility, court ordered parole release or full-time discharge are eligible for QCS's Transitions Program or Transition Support Service dependent upon their assessed risk and needs.
- Prisoners who are not eligible or cannot access a Transitions Program prior to their release for operational reasons are eligible for Transitional Support Service, including those with short sentences.
- Prisoners who have significant outstanding reintegration needs may also be eligible for referral to Offender Reintegration Support Service (ORSS) following completion of the Transitions Program or Transitional Support Service.

The Transitions Program is described by QCS as a release program that aims to engage participants in a proactive planning process to formulate realistic plans for release and set achievable goals for resettlement in the community. It focuses on linking participants with community-based agencies and government departments that can continue to provide participants with resettlement assistance in the post-release period.<sup>68</sup> In the 2014-15 financial year, 17 prisoners at BWCC completed the Transitions Program.<sup>69</sup>

QCS information states that the Transitional Support Service aims to assist participants plan for their release through an assessment of their reintegration needs and provision of appropriate referral or support information, and is provided to ensure prisoners exiting custody receive assistance to plan for their resettlement in the community.<sup>70</sup> In the 2014-15 financial year, 290 prisoners received assistance through the Transitional Support Service at BWCC.<sup>71</sup>

I have been advised that ORSS is a throughcare program delivered by QCS-funded external service providers. The Director-General advised me:

ORSS links offenders to longer-term support networks across a range of fields such as housing, alcohol and drug management, health, financial counselling and family support. Practical activities include picking offenders up on the day of release, accompanying them to [Probation and Parole], and services such as Centrelink or doctors. Priority is given to offenders who have significant reintegration needs such as being homeless or at risk of homelessness on release, or are assessed as being at a high risk of reoffending.<sup>72</sup>

According to QCS,<sup>73</sup> 850 prisoners were discharged from BWCC in the 2014-15 financial year, either to freedom or to community-based orders.<sup>74</sup>

Table 7 shows the number of prisoners at BWCC who accessed each type of transitional service in the 2014-15 financial year.

<sup>67</sup> QCS, *Custodial Operations Practice Directive – Rehabilitation and Education*, p.26.

<sup>68</sup> QCS, *Reintegration Support Model – Administration Manual*, p.9.

<sup>69</sup> D Mackie, Letter, 3 September 2015, p.5.

<sup>70</sup> QCS, *Reintegration Support Model – Administration Manual*, p.19.

<sup>71</sup> D Mackie, Letter, 3 September 2015, p.5.

<sup>72</sup> *ibid.*

<sup>73</sup> QCS, Email, 20 June 2016, Attachment.

<sup>74</sup> Discharges to freedom means the prisoner is no longer supervised by QCS and discharges to community supervision are identified as the discharges to a Probation and Parole location with at least one active community supervision order (e.g. parole, probation, reparation order) on the date of discharge. D Mackie, Letter, 3 September 2015, p.5.

**Table 7 – Transitional services provided to prisoners at BWCC in 2014-15**

Transitional service	Number of prisoners
Transitions Program	17
Transitional Support Service	290
Offender Reintegration Support Service	121

This table suggests that only half the prisoners discharged received any kind of transitional-related service. The Director-General stated:

The existing suite of reintegration services are insufficient to meet the volume of prisoners discharged each year and in particular, women.<sup>75</sup>

At interview, the Commissioner stated:

From our perspective, it's no good just getting someone successfully released to the community only to have them fail on parole a month later, and be back in custody. That's so often the pattern that occurs. So, there needs to be some durability of that support that continues on, post just that immediate release period.

Of course, the research that has been done around post-release mortality shows just how significant that period in the coming months after release – how risky it is for prisoners. We just currently don't have that continuity of service that continues post-release, to give the level of support that I think is really required.<sup>76</sup>

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**The Director-General's response to the proposed report**

The Director-General advised:

It is acknowledged that available reintegration services at BWCC are insufficient to meet demand.

QCS is in the final stages of a co-design and procurement process, where non-Government organisations have worked in partnership with Government and service users (prisoners/offenders) to design a new gender specific service that specifically aims to reduce prisoner numbers at BWCC.

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## **6.2.4 Education available to prisoners at BWCC**

Providing education and training opportunities to prisoners is an important part of their rehabilitation as it can help to increase their employment opportunities when they are released.

The Director-General advised that there is a range of educational and training options prisoners can access at BWCC.<sup>77</sup> Table 8 details the number of prisoners who participated in these education and training opportunities in the 2014-15 financial year and in the first nine months of the 2015-16 financial year.

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<sup>75</sup> D Mackie, Letter, 3 September 2015, p.6.

<sup>76</sup> M Rallings, Transcript of interview, 9 July 2015, p.12.

<sup>77</sup> D Mackie, Letter, 3 September 2015, p.1.

**Table 8 – Number of participants in education at BWCC<sup>78</sup>**

Education type	2014-15	2015-16 (to 31 March 2016)
Vocational Education and Training (VET)	146	92
Literacy and Numeracy	77	290
Secondary Education	21	22
Tertiary Education	14	20
<b>TOTAL</b>	<b>258</b>	<b>424</b>

As I have already discussed at section 6.2.2, there were more than 1,166 women who were imprisoned at BWCC at some point in the 2014-15 financial year. According to QCS's statistics in Table 8, only 258 prisoners participated in the educational and training opportunities offered at BWCC. The number has increased in the current financial year, although I note that there has been a significant drop in prisoners participating in VET. The total number of participants as detailed in Table 8 includes prisoners who may have participated in more than one type of educational opportunity.

**The Director-General's response to the proposed report**

The Director-General advised:

A significant model change occurred regarding prisoner education in 2014-15, which changed the way prisoners can access funded education across the correctional system. The Department of Education, Training and Employment moved from block funding of \$3.7M, with a \$975K contribution by QCS, to a new subsidy for eligible prisoners called Certificate 3 Guarantee. Funding under this program is paid directly to providers. Significant implementation lags of the C3G program occurred across the QCS system with both QCS and providers unable to access operational information prior to the implementation date of 1 July 2014. As the new model was progressively implemented, a series of operational challenges were identified, with a review provided to DETE with a range of recommendations. QCS continues to negotiate with DETE for program changes that will support increased engagement of prisoners in education and training.

QCS also took on direct purchasing of VET modules in order to ensure that a level of education and training was available while these issues are progressively resolved. Education participation figures for 2015-16 to date have been provided below, which shows an increase in the number of individuals able to participate in education and training.

## 6.2.5 Conclusion

As I have stated, in the 2013 report my recommendations included that QCS monitor the access of prisoners in double-up to services and amenities (including out of unit activities) to ensure that where prisoner numbers increase beyond a correctional centre's single cell capacity there would be a corresponding increase in services and corresponding access to recreational and library facilities and other amenities.

From the evidence provided, it appears that, despite the increase in the number of prisoners at BWCC, there has not been any substantial increase in the level of prisoners' access to services since the 2013 report, and that some services have actually declined. My opinion and recommendation are at section 6.5.

<sup>78</sup> D Mackie, Letter, 9 June 2016, Attachment, p.8.

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**The Director-General's response to the proposed report**

The Director-General advised:

It is noted that offender development staff numbers alone do not provide the full picture of rehabilitative services available at BWCC. In addition to services delivered by QCS staff, external services are purchased for delivery at BWCC in education, programs, and reintegration areas. Queensland Health provide the Indigenous Mental Health Intervention Program, and a linked transitional support program delivered to program participants after release.

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## **6.3 Provision of health services**

### **6.3.1 Concerns about health-related services provided to prisoners at BWCC**

During the course of monitoring of BWCC, I have identified a number of areas of concern relating to the provision of health and health-related services. These include:

- health services provided to prisoners at BWCC by West Moreton Hospital and Health Service (WMHHS)<sup>79</sup>
- the statutory requirement for prisoners on safety orders to be examined by a doctor not being met
- provision of psychological services to prisoners.

### **6.3.2 Health services provided to prisoners at BWCC by WMHHS**

I am concerned that the health services provided to prisoners by WMHHS may not be sufficient to deal with the number of prisoners at BWCC. One Queensland Health employee at BWCC has advised this Office:

I don't have enough time to do my own job because of overcrowding and not enough staff.

While Queensland Health is an agency within the jurisdiction of this Office, it is the primary function of the Health Ombudsman of Queensland to oversee health services.

For this reason, I considered it appropriate to refer my concerns to the Health Ombudsman for his consideration.

### **6.3.3 Health services for which QCS is responsible**

While I have not investigated further issues related to health services provided to prisoners at BWCC by WMHHS, I have considered as part of the investigation health-related matters that are the responsibility of QCS. These are the requirement for prisoners on safety orders to be examined by a doctor and the provision of services by psychologists employed by QCS.

#### **Requirement for prisoners on safety orders to be examined by a doctor**

A prisoner can be placed on a safety order for a number of reasons:

- a doctor or psychologist reasonably believes there is a risk of the prisoner harming herself or someone else

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<sup>79</sup> Queensland Health is responsible for delivering health services to prisoners in publicly operated correctional centres.

- QCS reasonably believes there is a risk of the prisoner harming, or being harmed by, someone else
- the safety order is necessary for the security or good order of the correctional centre.

Safety orders can be for a period of up to 28 days. However, further consecutive orders can be made. Prisoners on safety orders can be lawfully confined in their cells for periods of up to 22 hours a day<sup>80</sup> and have no contact with other prisoners for the whole term of the safety order.<sup>81</sup> Such conditions can effectively amount to a situation akin to solitary confinement.

In *Callanan v Attendee X*,<sup>82</sup> Applegarth J stated:

The adverse health effects of solitary confinement have been well-established ...

... More recent studies have reaffirmed that solitary confinement has a profound, adverse impact on the health of prisoners. Research indicates that many who have been subject to solitary confinement are at a risk of long-term psychological damage. The extent of psychological damage varies and will depend on individual factors, such as an individual's background and pre-existing mental state, environmental factors, prison regime (including the time out of cell and degree of human contact), the context of isolation (e.g. punishment, own protection, involuntary) and its duration. The most widely reported effects of solitary confinement are its psychological effects.

In his judgment,<sup>83</sup> Applegarth J referred to Rule 32(1) of the Standard Minimum Rules for the Treatment of Prisoners which he stated provided that:

... punishment by close confinement ... shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

The Corrective Services Act places a positive obligation on QCS to ensure that prisoners on safety orders are examined by a doctor. Section 57 states:

#### **57 Medical examination**

A doctor must examine a prisoner subject to a safety order—

- as soon as practicable after the order is made; and
- subsequently, at intervals that are, to the greatest practicable extent, of not more than 7 days.

At the time of this Office's visit in April 2015, prisoners at BWCC on safety orders were not being examined by a doctor as required by this section of the Corrective Services Act.

I raised my concern about this at the time with the Acting Directors-General of the department and Queensland Health.

In response, the Acting Director-General of Queensland Health advised me:

On a literal interpretation, section 57 requires that a doctor must examine a prisoner subject to a safety order, both in circumstances where there are and are no, medical issues (mental or otherwise) associated with the order or prisoner. The medical examination must be performed even where an inmate is on an order for 'security' or 'good order' purposes. All such medical examinations are currently undertaken within the general practice clinic (GPC), which has logistical impacts for both West Moreton and the QCS in that inmates need to be removed from their cells and taken to the GPC.

<sup>80</sup> Section 5(d), Corrective Services Regulation requires prisoners undergoing separate confinement to be given the opportunity to exercise, in the fresh air, for at least two daylight hours a day.

<sup>81</sup> Prisoners are generally able to attend scheduled appointments, such as visits or medical appointments.

<sup>82</sup> [2013] QSC 340 pp.11-12.

<sup>83</sup> *ibid.*

...

Due to the increase in prisoner population and the associated increase in safety orders at the BWCC (the average number is between 40-60 per week), there is an additional demand placed on current VMO hours and existing resources.<sup>84</sup>

However, the Director-General of the department advised me that the General Managers of BWCC, Wolston Correctional Centre and Brisbane Correctional Centre were notified by email dated 14 April 2015 that Queensland Health was withdrawing the services of a medical officer with immediate effect.

I obtained a copy of the email that was sent by the Nursing Director of WMHHS's Prison Health Services to the three General Managers dated 14 April 2015 which stated:

- As discussed at our recent Interdepartmental meeting, our current Doctor hours are unable to support the reviews for safety orders in accordance with the QCS Act 2006, Part 2, division 5, section 57; Medical Examination - Safety orders require review by a Medical Officer every 7 days.
- Current resources and medical hours for correctional centres within West Moreton Hospital and Health Service (WMHHS), have not been increased to meet the increase[d] population to deliver primary health care services, resulting in longer waiting times. Current solutions to the arising patient safety concerns, delivery and access to timely primary health care are being progressed within two parallel actions 1. Nurse Practitioner model to be implemented and 2. submission for additional resources to support increase VMO hours for all centres located within WMHHS.
- Prisoners on Safety Orders are currently seen by a health professional twice a day.
- Compliance with legislation is not efficient use of resources for the service delivery of Prison Health Services.
- Wording within the Act refers to a 'Medical Officer Examination'. The average number of Safety Orders per correctional centre is approx. 60. It is not possible to complete an examination on 60 prisoners to the standard of the community expectation of what is considered an 'Examination'. Community/family complaints have increase for West Moreton in direct relation to the interpretation of the Act and the Medical Officer examination every 7 days whilst under a safety order.

General Practitioner Government Medical Officers (GP-GMOs) can be engaged by Queensland Corrective Services (QCS) to ensure ongoing compliance with legislation and reviews of Safety Orders until which time an amendment can be made ...

The Director-General of the department advised me that as at 13 May 2015 there were 23 prisoners at BWCC who had not received the legislative standard of service as a consequence of the withdrawal of services by Queensland Health.

In my view, it is ultimately the responsibility of QCS to ensure that it meets its obligation under the Corrective Services Act. Its admitted failure to ensure that prisoners on safety orders were examined by a doctor as required by s.57 of the Corrective Services Act was, therefore, in my opinion, contrary to law. My opinion is at section 6.5.

At interview in July 2015, the Commissioner advised investigators that QCS had reached an agreement with Queensland Health under which QCS would retain doctors to undertake the required examination of prisoners on safety orders whenever a Queensland Health doctor was not available and Queensland Health would reimburse the cost. The Commissioner described this as 'a very short-term measure'.<sup>85</sup>

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<sup>84</sup> Acting Director-General of Queensland Health, Letter, 22 June 2015, p.3.

<sup>85</sup> M Rallings, Transcript of interview, 9 July 2015, p.45.

I have been advised by the Director-General that a Bill which includes an amendment to the Corrective Services Act to allow both doctors and nurses to undertake the examination of prisoners on safety orders<sup>86</sup> is currently before the Legal Affairs and Community Safety Committee of the Queensland Parliament.<sup>87</sup>

The Acting Director-General of Queensland Health advised me that WMHHS supports the proposal for a legislative amendment to be made to the Corrective Services Act to enable nursing staff, in addition to doctors, to carry out a safety order examination.<sup>88</sup>

As it is a matter for the Queensland Parliament to decide whether the proposed amendment is appropriate I will not make any comment in that regard.

However, while the Corrective Services Act currently provides for it, the Director-General must ensure that the obligations in relation to the medical examination of prisoners on safety orders are being discharged and I have made a recommendation to that effect at section 6.5.

### 6.3.4 Psychology services at BWCC

Psychologists at BWCC are employed by QCS. They perform important functions including conducting an Immediate Risk Needs Assessment of each prisoner on their admission to BWCC to identify any risks or needs that require immediate action, helping prisoners adjust to the day-to-day life of imprisonment, assessing prisoners throughout their imprisonment for suicidal or self-harming behaviour, and providing crisis counselling.

When conducting a suicide or self-harm assessment on a prisoner, QCS's procedure requires a psychologist to produce a report that includes:

- an assessment of risk
- a report on the psychological status of the prisoner
- recommendations for ongoing support
- recommendations for specialist intervention (if required)
- any behavioural problems
- an assessment of the prisoner's social, relationship and family matters (stressors)
- any welfare/personal issues such as religious needs, visits and phone calls
- any information that may assist in the effective management of the prisoner.<sup>89</sup>

Another important task undertaken by psychologists at BWCC is the at-risk assessment of prisoners transferred to the detention unit to undergo separate confinement.

As was highlighted by a complaint received from a prisoner at BWCC, any delay in the at-risk assessment being completed can impact a prisoner's statutory right to be provided with two hours of exercise each day<sup>90</sup> and to be able to maintain basic hygiene.

The General Manager of BWCC described the usual procedure when a prisoner is moved to the detention unit as follows:

- an at-risk assessment of the prisoner is completed by a psychologist, preferably on the same day the prisoner is moved to the detention unit

<sup>86</sup> A Bill for An Act to amend the *Corrective Services Act 2006*, the *Police Powers and Responsibilities Act 2000*, the *Public Safety Preservation Act 1986* and the *Terrorism (Preventative Detention) Act 2005* for particular purposes.

<sup>87</sup> D Mackie, Letter, 9 June 2016, p.3.

<sup>88</sup> Acting Director-General of Queensland Health, Letter, 22 June 2015, p.2.

<sup>89</sup> QCS, *Custodial Operations Practice Directive – Risk*, p.26.

<sup>90</sup> Section 5(d), *Corrective Services Regulation* requires prisoners undergoing separate confinement to be given the opportunity to exercise, in the fresh air, for at least two daylight hours a day.

- the door between the detention unit cell and the exercise yard is not left open until after an at-risk assessment is completed because the closing mechanism of the door is a hanging point (i.e. suicide risk)
- from the time the prisoner is transferred to the detention unit to the time the at-risk assessment is completed, there must be an officer in the unit to open the exercise yard and monitor the prisoner while the door is open.<sup>91</sup>

According to QCS's COPD for *Detention Units*:

In circumstances where a prisoner has been identified as being at-risk of self harm or suicide the door between the cell and the exercise yard of the detention unit is not to remain open unless the prisoner is under constant observation.

A prisoner who had been moved to the detention unit for behavioural reasons complained that in the first four days she was in the detention unit she had only been given access to the exercise yard attached to her cell once, during which time she was able to have a five minute shower.<sup>92</sup> It was found by Ombudsman investigators that the at-risk assessment of the prisoner was not completed until four days after she was moved into the detention unit. Records provided by BWCC show that the prisoner was allowed to access the exercise yard on three of the four days but the prisoner was not provided with the minimum required amount of out of cell time of two hours.<sup>93</sup> In addition, it was found that there was also no approved safety order authorising the prisoner's separate confinement for that four-day period.

When the circumstances of this complaint were discussed with the Commissioner at interview, he stated:

... it's not acceptable. I think there are procedural and legislative requirements that we have to meet, and there is no excuse. If more resources are needed to do it because we're not achieving it, then we're going to provide them. But there is no excuse. ... that's not something that there is any point of negotiation or debate about. It just has to be met.<sup>94</sup>

I agree with the Commissioner that the situation involving that specific prisoner was unacceptable.

QCS must ensure that the psychological wellbeing of prisoners at BWCC is a priority and must provide sufficient resources to do so.

However, despite an increase in prisoner numbers at BWCC between August 2013 and August 2015, the number of full-time equivalent (FTE) psychologists employed at BWCC actually decreased, as can be seen in Table 9. The department advised me that BWCC actually had funding for nine FTE psychologists as at 30 August 2015.<sup>95</sup>

**Table 9 – Number of full-time equivalent (FTE) psychologists employed at BWCC<sup>96</sup>**

Date	FTE psychologists employed at BWCC	Average daily state
August 2013	8	320.71
August 2014	9	381.68
April 2015	8.1	381.67
August 2015	7.6	356.42

<sup>91</sup> Visit by Ombudsman officers to BWCC in April 2015.

<sup>92</sup> In the type of cell that the prisoner was accommodated in, the shower is located in the exercise yard, not in the cell itself.

<sup>93</sup> Section 5(d), Corrective Services Regulation.

<sup>94</sup> M Rallings, Transcript of interview, 9 July 2015, p.43.

<sup>95</sup> D Mackie, Letter, 3 September 2015, p.3.

<sup>96</sup> D Mackie, Letter, 29 May 2015, p.2 and D Mackie, Letter, 3 September 2015, p.4.



Having regard to the factors below, I have formed a view that QCS has not provided a sufficient level of services to prisoners at BWCC in the face of the increasing prisoner numbers as evidenced by:

- the number of self-harm incidents at BWCC which increased by 5.6 times between the 2012-13 and 2014-15 financial years<sup>97</sup> (see Table 3)
- the number of individual prisoners involved in a self-harm incident which increased 3.2 times from 9 in 2012-13 to 29 in 2014-15<sup>98</sup>
- the observed failure to complete at-risk assessments in a timely manner
- the fact that the number of psychologists does not appear to have kept up with the proportionate increase in prisoner numbers.

In my opinion, failing to provide sufficient psychological services to meet the needs of prisoners and fulfil QCS's obligations in its own procedures was unreasonable administrative action. My opinion and recommendation are at section 6.5.

I have made a recommendation at section 6.5 that QCS immediately address the sufficiency of psychological services provided at BWCC to ensure that prisoners are provided with an appropriate standard of care.

## 6.4 Access to recreational activities outside of units

The facilities available at BWCC for prisoners to engage in recreational activities outside of units include one oval, one gym and two tennis courts.<sup>99</sup> A roster system is used to allocate access to the facilities between the different accommodation units.

Despite doubling the number of Activity Officers employed by BWCC from two to four, the increase in prisoner numbers has meant that there are more prisoners needing to use the available recreational facilities. A consequence of that is a decrease in the time that prisoners are able to use the facilities and subsequent increase in the amount of time they spend in their units.

This Office received a complaint from prisoners at BWCC about the reduction in the time they could spend using recreational facilities outside their units. The prisoners had been restricted to accessing the tennis court one day each week for two hours and the gym one day each week for 45 minutes, with no time allocated for them to access the oval. The issue was raised by this Office directly with BWCC management. As a result, BWCC's schedule for access to the tennis court and gym was changed to allow the prisoners increased access to the gym, tennis court and oval.

Ombudsman investigators have experienced first-hand the noise levels in secure units at BWCC, which can be extremely loud when a large number of prisoners are present in a unit. One prisoner described to investigators during the visit to BWCC in April 2015 what it was like being in an overcrowded secure unit:

You can't escape the noise.

I reiterate the concerns I expressed in the 2013 report:

- increasing the availability of recreational equipment in an overcrowded unit is not an effective substitute for allowing prisoners to leave the unit to attend an oval or gym

<sup>97</sup> See Table 3 at section 5.2.

<sup>98</sup> *ibid.*

<sup>99</sup> Ombudsman officers have observed the tennis court being used as a walking track rather than for playing tennis.

- I cannot see how prisoners are able to effectively engage in recreational activities in the common areas of units when there are 40 prisoners<sup>100</sup> in a space designed for almost half that number
- there could be long-term impacts on the security and good order of the units and the wellbeing of prisoners and staff.

## 6.5 Opinions and recommendations

I have formed the following opinions:

### **Opinion 7**

The number of program opportunities (aimed at addressing such issues as substance abuse and reoffending) provided to prisoners at BWCC as a proportion of its population is very low and has not kept pace with increases in the prisoner population. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

### **Opinion 8**

The level of prisoners' access to services at BWCC has not increased in line with the increased number of prisoners at BWCC and some services have actually declined. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

### **Opinion 9**

It is QCS's responsibility to ensure that it meets its obligation under s.57 of the Corrective Services Act. Between at least March 2015 and June 2015, QCS did not comply with s.57 of the Corrective Services Act at BWCC. This administrative action is contrary to law for the purposes of s.49(2)(a) of the Ombudsman Act.

### **Opinion 10**

QCS has failed to provide sufficient psychological services to meet the needs of prisoners and fulfil QCS's obligations in its own procedures. This is unreasonable administrative action for the purposes of s.49(2)(b) of the Ombudsman Act.

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### **The Director-General's response to the proposed report**

The Director-General did not object to my opinions.

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<sup>100</sup> See section 4.1.1.

I make the following recommendations:

#### **Recommendation 1**

The Director-General increase program delivery and transitional services provided to prisoners at BWCC to ensure that more prisoners are able to receive the benefit of the programs and services that QCS is required to provide under s.266 of the Corrective Services Act.

#### **The Director-General's response to the proposed report**

The Director-General did not object to my recommendation but provided the following information:

QCS acknowledges that reintegration services are an important component of crime prevention strategies' and the available services at BWCC are insufficient to meet demand. To address this, QCS sought and has received a funding allocation of \$500,000 in 2015-16 and \$1 million per annum in 2016-17 and 2017-18.

QCS is responding to the growth in female prisoner numbers in SEQ with a focus on the delivery of effective strategies to assist the reintegration of female prisoners. These strategies have been co-designed with service users (prisoners) and in accordance with research evidence that demonstrates women's patterns of crime differ significantly to men's, particularly with respect to mental health, substance abuse and victimisation.

QCS is in the final stages of a co-design and procurement process, where non-Government organisations have worked in partnership with Government to design a new gender specific service that specifically aims to reduce prisoner numbers at BWCC. This new service will provide a significantly higher level of access to re-entry support, both in prison and after release. As part of a broader service system, the new provider/s will ensure that all women approaching release are offered support.

Women offenders released from prison will also have access to a significantly higher level of support in the community. While subject to procurement and contract processes, this is currently estimated at approximately 80% of all women released from custody in SEQ. Existing post release services are available to approximately 10-20% of women leaving custody.

By taking a new and dynamic approach to managing women prisoners, QCS aims to make a difference to the lives of many and enhance community safety at the same time.

#### **Ombudsman's comment on the response**

I acknowledge that an allocation of \$1 million per annum for the next two financial years for the delivery of reintegration services is a significant expenditure commitment. However, as detailed in Recommendation 4 at section 8.4, in implementing this initiative, I consider that QCS needs to specify the timeframes by which it will be implemented, establish specific targets for the number of prisoners who will participate in the initiative, model the potential impact of the initiative on prisoner population pressures, provide advice to government in relation to results of the modelling, and evaluate performance against the initiative at six monthly intervals.

### **Recommendation 2**

The Director-General take action necessary to ensure that the obligation under s.57 of the Corrective Services Act is met at BWCC.

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#### **The Director-General's response to the proposed report**

The Director-General did not object to my recommendation but provided the following information:

QCS acknowledges section 57 of the CSA [Corrective Services Act] provides that a doctor must examine a prisoner subject to a Safety Order as soon as practicable after the order is made and at intervals of not more than 7 days.

I can advise an agreement has been established with Queensland Health (QHealth) under which QCS retains doctors to undertake the required examination of prisoners on Safety Orders where a QHealth doctor is not available. QHealth will then reimburse this cost to QCS.

QCS has also implemented a number of changes to the Integrated Offender Management System database and oversight reports to enhance the oversight and management of Safety Orders, including reports specifically relating to the required medical examination.

Further, QCS is currently pursuing an amendment to the CSA to allow either a doctor or nurse to undertake the examination of prisoners on Safety Orders. The proposed amendment bill was introduced into the Queensland Parliament in April 2016. The Bill has been referred to the Legal Affairs and Community Safety Committee (the Committee) for detailed consideration. A report from the Committee is due in July 2016.

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#### **Ombudsman's comment on the response**

I am pleased that QCS is continuing to take steps to ensure that it meets its obligations under s.57 of the Corrective Services Act at BWCC and all other correctional centres.

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### **Recommendation 3**

The Director-General immediately increase the level of psychological services provided at BWCC to ensure that the psychological needs of prisoners are being adequately addressed.

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#### **The Director-General's response to the proposed report**

The Director-General did not object to my recommendation but provided the following information:

It is noted that QHealth provides a significantly higher degree of psychological services at BWCC on the strength of research demonstrating the overwhelming proportion of Indigenous women who have experienced trauma. QHealth provides services through Offender Health Services and Prison Mental Health Services (PMHS).

Based on research undertaken on the experience of trauma in Aboriginal and Torres Strait Islander Women in custody, PMHS has received funding to deliver the Indigenous Mental Health

Intervention Program (IMHIP), which is open to any Indigenous woman who wishes to participate. This connects to post release transition services through Gallang Place. These programs substantially increase the availability of psychological services at BWCC.

The availability of services and support for offenders released from BWCC to parole, including those at risk of being returned to custody through an order suspension, will be substantially improved under the new co-designed female specific re-entry program. New providers will be in place during 2016-17. These services will cover many of the domains noted in the report as areas for improvement, such as access to substance abuse programs. It is also likely to deliver mental health services, accommodation support, employment assistance and services focussed on domestic violence.

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## Chapter 7: Growth in female prisoner numbers

In this chapter I discuss QCS's understanding of the factors that have been driving the increase in recent years of prisoner numbers at BWCC. The chapter also discusses the action that QCS has taken, or intends to take, to address these drivers of growth.

### 7.1 QCS's understanding of the drivers of the increase in prisoner numbers

According to the Director-General, the imprisonment rate of women in Queensland is the third highest in Australia and the female prisoner population is rising faster than that of males.<sup>101</sup>

From the information provided to me by the department, the main reasons for the increase in the number of female prisoners, which has resulted in overcrowding at BWCC are:

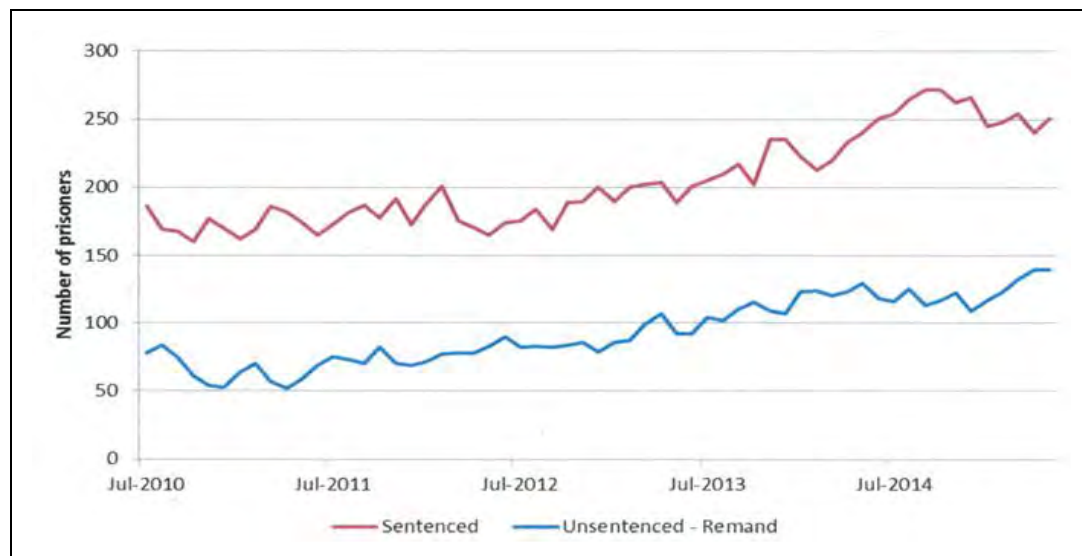
- an increase in the number of prisoners on remand
- low security correctional centres for female prisoners in south-east Queensland not being used at their full capacity
- an increase in the number of prisoners returning to prison because their parole order is suspended and/or cancelled (parole returns).

### 7.2 Prisoners on remand

#### 7.2.1 Increase in female prisoners on remand at BWCC

As at 31 May 2015, more than a third of prisoners at BWCC were on remand (that is, not sentenced). Graph 6, which was provided to me by QCS, also shows that the number of remand prisoners has been increasing for some time.

**Graph 6 – Number of sentenced prisoners and remand prisoners at BWCC<sup>102</sup>**



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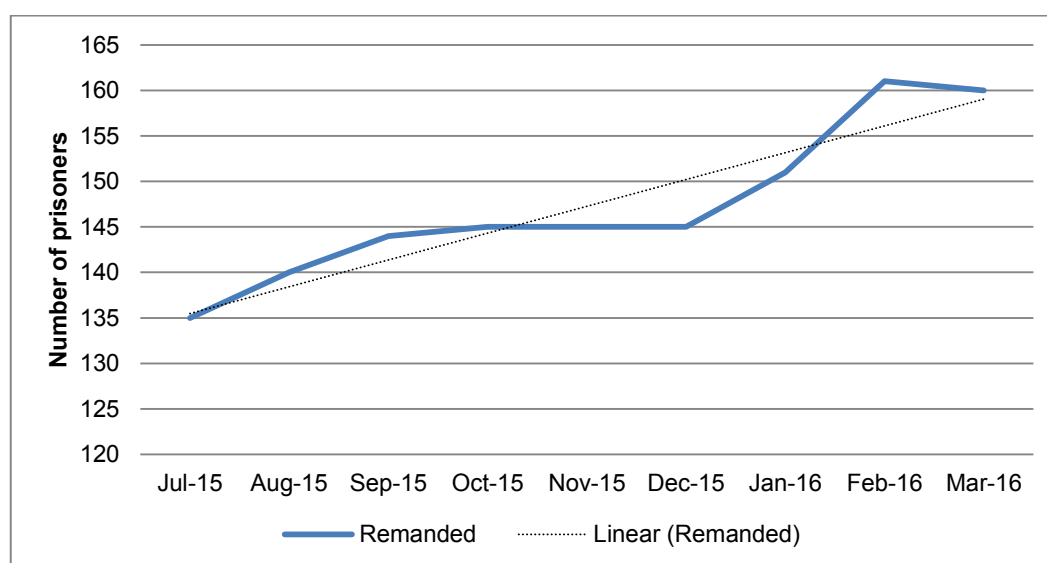
<sup>101</sup> D Mackie, Letter, 3 September 2015, p.10.

<sup>102</sup> M Rallings, Letter, 26 June 2015, Attachment 5.

At interview, the Commissioner said he suspected that part of the reason for the increased number of female remand prisoners is a change in the number of women charged and sentenced for violence and drug offences. Owing to the seriousness of these types of offences, it is more likely a person will be remanded by the courts. He said that 'in the absence of an alternative to remand in custody, they end up sitting in custody'.<sup>103</sup>

Since that interview, the number of prisoners at BWCC who are on remand has continued to trend upwards. In March 2016, as can be seen in Graph 7,<sup>104</sup> the average daily state for remand prisoners was 160 prisoners. This represents 42% of the average daily state of all prisoners at BWCC.

**Graph 7 – Number of remand prisoners at BWCC**



### 7.2.2 QCS's strategy to deal with the increase in remand prisoners

The Commissioner stated at interview that QCS could not do much about the number of prisoners on remand in the short term. However, he stated that while QCS did not directly control a prisoner's remand status, there had been significant coordination across the department on the issue of remand.<sup>105</sup>

There are a number of initiatives the Commissioner referred to in relation to remand prisoners, including specialist courts and supported bail programs. He stated:

Certainly, there is common understanding across the department of the impact of remand, great interest in looking at alternatives. I think some of the recent government decisions around specialist courts will have an impact. What we know anecdotally is, quite a number of women who have been remanded in custody are released to court or to parole on sentencing, and ... that aligns with the very high number of women on very short sentences, and the increase in violence and drugs and property offences as drivers.

Those are the things that they tend to get a custodial court ordered parole sentence, but serve very little time post-sentencing in custody ... this is anecdotally, but the courts are of the view that these are people who can be safely managed in the community. However, in the absence of an alternative to remand in custody, they end up sitting in custody.

<sup>103</sup> M Rallings, Transcript of interview, 9 July 2015, p.8.

<sup>104</sup> QCS Intranet, Knowledge Place reports, viewed 22 April 2016.

<sup>105</sup> M Rallings, Transcript of interview, 9 July 2015, p.8.

... we're certainly instigating the conversation around particularly bail diversion type of programs; accommodation is ... a big factor in whether or not somebody gets bail ... so we're looking at supported bail type of programs, and whether there's some opportunities to use technology like electronic monitoring in conjunction. Now, these are only very early conversations, but we certainly see it as one of a suite of interventions that are well worth having a closer look at.<sup>106</sup>

In terms of the number of prisoners on remand who are at BWCC, QCS has taken action to allow those prisoners to be accommodated in a low security correctional centre. I will discuss this in more detail at section 7.3.

### **7.2.3 Conclusion**

I acknowledge that QCS is not responsible for deciding whether a person is remanded and that its ability to otherwise influence the number of female prisoners being remanded by the courts is limited. However, the Commissioner stated at interview that there are other strategies, including diversionary programs, that could be implemented to arrest the growth in remand prisoners and, consequently, its contribution to the overcrowding at BWCC.

## **7.3 Usage of low security correctional centres**

### **7.3.1 Low security correctional centres not being used to their full capacities**

Details that I have been provided by QCS of prisoner numbers at the two low security women's correctional centres in south-east Queensland, Numinbah Correctional Centre (NCC) and Helana Jones Correctional Centre (HJCC), show that they have consistently accommodated fewer prisoners than their built bed capacity in recent years. This is despite BWCC being significantly overcrowded the entire time.

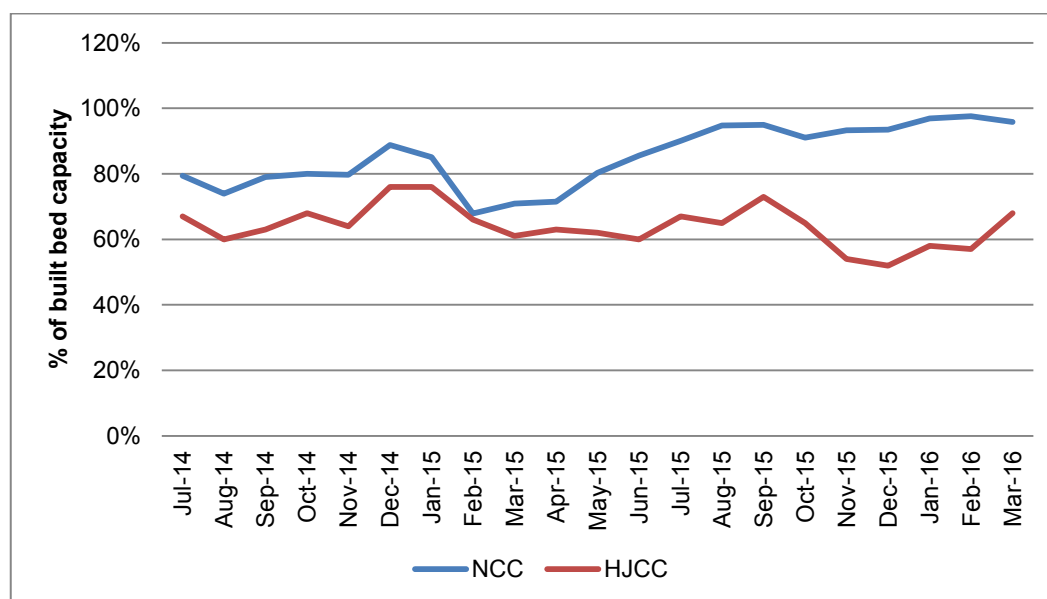
Graph 8 shows the number of prisoners at NCC and HJCC as a percentage of the built bed capacity of each centre from July 2015 to March 2016. The built bed capacity of NCC is 119 and HJCC is 29.<sup>107</sup>

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<sup>106</sup> *ibid.*

<sup>107</sup> 'Built bed capacity' is defined in QCS's *Procedure – Prisoner Accommodation Capacity Definitions* as the number of built prisoner accommodation bed places in single and shared cells.



**Graph 8 – Usage of low security women’s correctional centres in south-east Queensland<sup>108</sup>**

While the two low security women’s correctional centres have not been used to their full capacity, pleasingly, QCS has more recently increased the usage of NCC to near its full capacity.

### 7.3.2 QCS’s strategy to deal with the underuse of low security correctional centres

I have been advised by QCS that it has taken a number of steps to ensure its low security correctional centres for female prisoners in south-east Queensland are being more fully used.

At interview, the Commissioner advised that BWCC employed a case manager in June 2015 with responsibility for identifying prisoners suitable for placement in the low security correctional centres.<sup>109</sup>

The Director-General advised me:

QCS is investigating amending procedures to allow fully remanded female prisoners and sentenced female prisoners with further remands for non-violent offences, who are assessed as otherwise suitable, to be transferred to and remain in low custody placement.<sup>110</sup>

When Ombudsman officers visited NCC on 1 December 2015, they were told that prisoners on remand were now being accommodated at that centre.

<sup>108</sup> QCS, Email, 20 June 2016, Attachment.

<sup>109</sup> M Rallings, Transcript of interview, 9 July 2015, pp.22-23.

<sup>110</sup> D Mackie, Letter, 3 September 2015, p.9.

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**The Director-General's response to the proposed report**

The Director-General advised:

BWCC is the sole high security correctional centre for women prisoners in South-East Queensland (SEQ). Given this, QCS has limited capacity to allocate additional prisoners across a number of correctional centres, as is the case for male prisoners. In response to the growth in female prisoners, QCS has proactively taken a number of steps to reduce overcrowding at BWCC including expanding the eligibility criteria for low security placement and increasing low security capacity in SEQ by 30 beds.

QCS has also been working towards full utilisation of low security capacity, however, in the interests of community safety, not all prisoners are suitable to transfer from high security to low security to ease the pressure on BWCC.

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### **7.3.3 Conclusion**

Allowing female prisoners who are on remand to be accommodated at low security correctional centres means that, while not reducing the overall number of female prisoners on remand, there is a significant increase in the number of prisoners who can be considered for transfer from BWCC to NCC or HJCC.<sup>111</sup>

Taking account of the number of prisoners at BWCC and the number of available beds in low security correctional centres in south-east Queensland, it appears to me that maintaining those centres at close to 100% of their capacity will not address the overcrowding problem at BWCC. However, it will help relieve the overcrowding and take some pressure off BWCC's stretched resources, removing the need for at least some women to share cells and sleep on mattresses on the floor.

For this reason, in my view, for low security options to have any substantial effect on decreasing the overcrowding at BWCC, QCS would need to substantially increase the available capacity for low security prisoners in south-east Queensland by building additional infrastructure.

## **7.4 Parole-related issues and recidivism**

### **7.4.1 The increase in parole returns and recidivism at BWCC**

According to QCS, there are a number of issues related to parole and recidivism that have contributed to the increasing number of prisoners at BWCC:

- parole returns
- lack of support provided to female prisoners at BWCC and female offenders on parole to mitigate the risk of reoffending
- resourcing of probation and parole services.

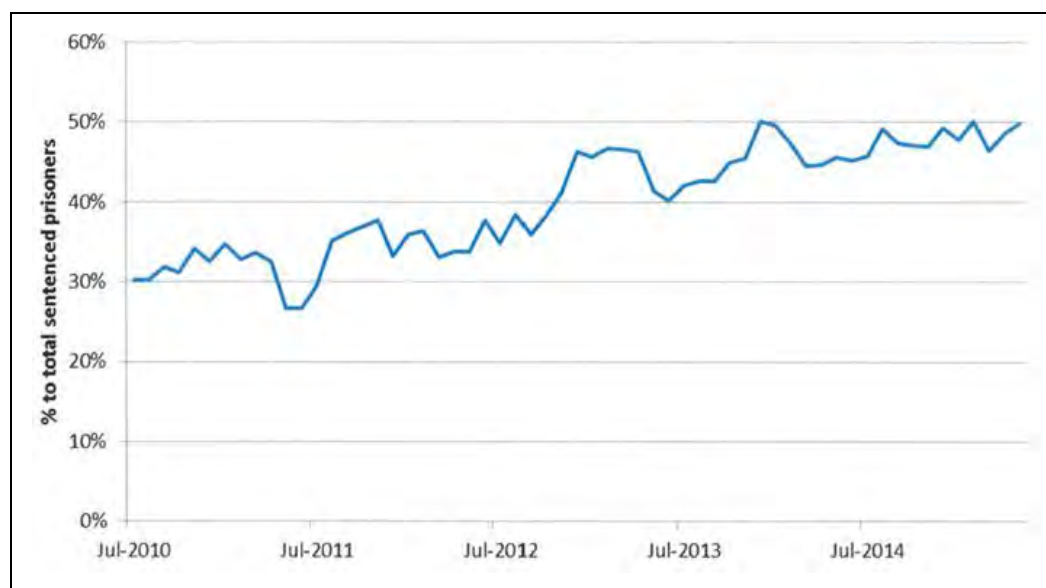
#### **Parole returns**

Graph 9, which was provided to me by QCS, shows the proportion of sentenced prisoners at BWCC who have had parole suspended and/or cancelled as a total of all sentenced prisoners.

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<sup>111</sup> See section 7.2 for details of the number of prisoners on remand at BWCC.

**Graph 9 – Sentenced prisoners at BWCC who have had parole suspended and/or cancelled as a proportion of all sentenced prisoners<sup>112</sup>**



At May 2015, approximately 50% of the prisoners at BWCC who were sentenced had been returned to prison because their parole order was suspended and/or cancelled. In July 2010, these prisoners account for only 30% of all sentenced prisoners at BWCC. In August 2013, the figure was approximately 40%.

The Commissioner stated at interview that he was surprised at how high the proportion of prisoners at BWCC with parole cancellation or suspension was.<sup>113</sup>

It is apparent that the increasing number of prisoners who have returned to BWCC because their parole was suspended and/or cancelled has contributed to overcrowding.

According to information provided to me by QCS, the main reason for a parole order being suspended was because it was decided that the prisoner posed an unacceptable risk of committing an offence. As at 31 May 2015, more than half of the prisoners at BWCC who had their parole suspended and/or cancelled were there for this reason. The Director-General explained that an offender subject to supervision (that is, on parole) will have their parole suspended for this reason when it is considered that they are no longer able to be managed appropriately in the community without presenting an unacceptable risk of offending. The Director-General stated:

Consideration is given to each individual's circumstance and may include an aggregate of issues that when put together considerably increase the offender's risk. Such issues may include: committing a further offence; using illicit substances; abusing alcohol (linked to their offending); no longer having suitable housing; adverse intelligence information; or an overall lack of protective factors. QCS staff will consider mitigation strategies that may be implemented to address such concerns (where possible), however, if mitigations are not possible, or an offender is unwilling to engage in mitigation activities, suspension action will be undertaken.<sup>114</sup>

Until July 2015, QCS's *Probation and Parole Operational Practice Guidelines* required parole to be suspended in all cases where an offender registered a confirmed positive result to amphetamines, methamphetamines, opiates or cocaine when tested. The

<sup>112</sup> M Rallings, Letter, 26 June 2015, Attachment 9.

<sup>113</sup> M Rallings, Transcript of interview, 9 July 2015, p.14.

<sup>114</sup> D Mackie, Letter, 3 September 2015, p.8.

guidelines did not allow for any discretion to be exercised by the deciding officer to balance the requirement to remove an offender from the community because they posed an immediate risk with the potential detrimental impacts of returning an offender to custody (such as disruption to their established supports and reintegration plans).

### **Support provided to female prisoners at BWCC and female offenders on parole to mitigate the risk of reoffending**

I have already discussed in this report the low number of prisoners at BWCC who are provided with opportunities while at BWCC which could help to mitigate the risk of reoffending, including:

- programs aimed at helping with substance abuse and stopping reoffending (at section 6.2.2)
- transitional support (at section 6.2.3)
- education and vocational training (at section 6.2.4).

In relation to QCS-provided support for offenders on parole, the Director-General stated:

[A] woman subject to parole, discharged from a SEQ women's correctional centre would report once a week to their P&P Officer for a period of six to eight weeks (assessment phase).

During the assessment phase relevant information is gathered, analysed and interpreted in order to prioritise interventions according to identified criminogenic risks and needs in a way that is tailored to the individual's capacity to engage and respond. Upon completion of the assessment phase, an offender will be provided an alternate reporting frequency, which is determined on a case by case basis.

... QCS delivers robust community supervision to ensure the safety of the community and the prevention of crime. Consequently, QCS is committed to increasing the quality and accessibility of intervention programs within the community through continued stakeholder engagement to broaden service delivery capacity.<sup>115</sup>

Table 10 shows the number of participants in each program and intervention delivered by QCS to offenders discharged from BWCC to parole in the 2014-15 financial year.

**Table 10 – Post-release programs and interventions provided by QCS to prisoners discharged from BWCC to parole (2014-15 financial year)<sup>116</sup>**

<b>Program / Intervention</b>	<b>Number of participants</b>	<b>Number of completions</b>
Turning Point Preparatory Program	8	5
Low Intensity Substance Abuse Program	14	6
Substance Abuse Maintenance Intervention groups	4	3
<b>TOTAL</b>	<b>26</b>	<b>14</b>

As was shown in Table 6 (at section 6.2.2), in the 2014-15 financial year, there were 665 prisoners discharged from BWCC under QCS supervision (e.g. a parole order).

While I acknowledge that this is a total of all discharges from BWCC, rather than individual prisoners (that is, some prisoners were discharged from BWCC multiple times during the period) and that only a small proportion would have spent more than three months in custody under sentence prior to their release,<sup>117</sup> I am concerned that there were only 26 participants in the QCS programs provided in the 2014-15 financial year for prisoners discharged from BWCC.

<sup>115</sup> *ibid.*

<sup>116</sup> *ibid.*, p.9.

<sup>117</sup> QCS, Email, 20 June 2016, Attachment, p.10.

### Resourcing of QCS's Probation and Parole unit

While the number of prisoners in Queensland has increased, along with the number of prisoners returning to BWCC because their parole has been suspended, the funding for probation and parole services has actually decreased.

According to the Productivity Commission's *Report on Government Services 2016*, Queensland's spend per offender on community corrections in 2014-15 was the second lowest in Australia. The average net cost per day was \$14.01 for Queensland, which was \$8.63 or 38% less than the Australian average. The difference was even more significant when compared with New South Wales, Victoria, Western Australia and Northern Territory, which can be seen in Table 11.

**Table 11 – Real net operating expenditure, per offender per day (2014-15 dollars)<sup>118</sup>**

	Qld	NSW	Vic	WA	SA	Tas	ACT	NT	Aus
2010-11	12.75	25.99	22.53	43.69	15.77	11.09	14.43	38.35	21.59
2011-12	14.40	27.41	27.13	44.46	17.60	12.27	15.72	45.32	23.55
2012-13	14.06	26.82	27.76	46.60	17.97	11.06	18.80	44.34	23.68
2013-14	13.44	23.01	27.43	43.61	17.42	11.98	18.40	40.14	21.97
2014-15	14.01	23.83	25.68	46.94	17.81	13.42	31.78	43.50	22.64

Table 12 shows that in 2014-15, Queensland had the highest offender-to-operational staff ratio within community corrections in Australia. Compared with the Australian average, Queensland had approximately 65% more offenders to each of its operational staff.

**Table 12 – Community corrections offender-to-staff ratios, 2014-15<sup>119</sup>**

	Qld	NSW	Vic	WA	SA	Tas	ACT	NT	Aus
<b>Offender-to-all staff</b>	<b>23.9</b>	<b>16.7</b>	<b>13.5</b>	<b>9.5</b>	<b>17.5</b>	<b>24.8</b>	<b>12.5</b>	<b>9.2</b>	<b>16.4</b>
Offender-to-operational staff	35.1	20.8	16.3	12.6	23.6	29.6	16.1	11.7	21.2
Offender-to-other staff	74.8	86.2	78.5	38.1	66.9	152.5	56.1	43.8	72.2

When asked at interview if the amount spent in Queensland on probation and parole raised any concerns for him in relation to the level of resourcing, the Commissioner stated:

You bet. So we haven't seen an increase in probation and parole numbers, and in terms of our staff – we've seen this growth in offenders. As I said, we have a very high number of offenders. I think those are all very good things. Those factors – what I would like to see is a big increase in probation and parole ... I don't think they even need to be resources administered by us. I mean, there's no reason why they can't be other government departments where there is just some sort of mechanism by which prisoners are prioritised access prior to going on release in programming.<sup>120</sup>

The Commissioner also stated that, on his analysis, there had not been an increase in the capacity of the parole boards since 2006. He stated:

... there are more members than the original boards and they've increased the number of meetings, but there hasn't been a significant increase in the capacity ... it's not unheard of for them to have meetings for over 100 matters, particularly for the regional meetings ... I would be very surprised if there was not an issue about the timeliness, to be able to address matters in the first instance.<sup>121</sup>

<sup>118</sup> Table 8A.11, Report on Government Services.

<sup>119</sup> Table 8A.22, Report on Government Services.

<sup>120</sup> M Rallings, Transcript of interview, 9 July 2015, p.41.

<sup>121</sup> *ibid*, p.12.

Any delays in decision-making by the parole boards on parole applications have the effect of prisoners remaining in prison longer than they may otherwise need to, likely adding to the problem of overcrowding at BWCC.

#### **7.4.2 QCS's strategy to deal with parole issues**

QCS has advised me of a number of actions it has taken (or will take) to address issues related to parole returns and recidivism including:

- removing automatic parole suspension for positive drug tests
- changing the way QCS considers the period for suspension of parole
- providing support to prisoners/offenders on parole to mitigate the risk of reoffending
- improving parole services.

##### **Removing automatic parole suspension for positive drug tests**

Changes to QCS's *Probation and Parole Operational Practice Guidelines* became effective from 20 July 2015. Amendments included the removal of the requirement for parole to be suspended when an offender returned a confirmed positive result for illicit drugs and the inclusion of additional guidance relating to consideration of suspension length when exercising discretion under s.201 of the Corrective Services Act. QCS says that this ensures that decision-makers are not fettered in their suspension decisions and also allows all drug results to be considered on a case-by-case basis in the context of an offender's overall risk.<sup>122</sup>

The change was made following the decision of the Supreme Court in *Morgan v Chief Executive of Parole*<sup>123</sup> in which Dalton J concluded:

- the power to suspend a parole order under s.201(2) of the Corrective Services Act is discretionary
- the exercise of discretionary power in accordance with a rule or policy without regard to the merits of the particular case is improper
- the department's policy was a fetter on the discretion of the decision-maker and therefore improper
- the Corrective Services Act authorised the Chief Executive to suspend a parole order for up to 28 days so the length of time in which the suspension is to be enacted must therefore be considered as part of the overall decision-making process.

##### **Shortening the period for suspension of parole**

The Commissioner provided information about work that QCS is doing with the parole boards in relation to shortening the period of parole suspension (in which time the parole board has to make a decision about whether it will cancel parole). He stated:

Currently, when we do a suspension, we need to nominate the period and we have up to 28 days. So we're working with the parole boards ... nominating a shorter period of time. What that does is mean that the parole board needs to consider the suspension within that period of time, or the suspension no longer takes effect and the person is in the community.

So it is pushing the turnaround time. That is particularly for matters that the parole board are more likely to be minded to release back into the community. We need to navigate that a little bit carefully, and with some administrative processes in place to manage that, but we're certainly keen to do that.<sup>124</sup>

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<sup>122</sup> D Mackie, Letter, 3 September 2015, pp. 7-8.

<sup>123</sup> [2014] QSC 253.

<sup>124</sup> M Rallings, Transcript of interview, 9 July 2015, p.12.

## Support provided to prisoners to mitigate the risk of reoffending

As I have already discussed at section 6.2.2, the Commissioner stated at interview:

It's not much point ... strategically, bringing in a whole bunch more programs and services when the infrastructure is so much under pressure, because we're not going to be able to really deliver, have them delivered, very effectively and efficiently anyway.<sup>125</sup>

Subsequent to that interview, in relation to transitional support for prisoners at BWCC, the Director-General provided information about funding that was included in the department's 2015-16 budget (continuing over four years) for reintegration services within QCS. He advised that QCS had commenced redesigning the current reintegration support model which will provide a new structure and a dedicated women's re-entry service.<sup>126</sup> According to the Director-General, QCS would co-design the new service to ensure it addressed issues specific to female prisoners (such as history of trauma and relationship safety), and provide the most efficient and effective ways of supporting individuals as they transition to, and live in, the community post-release.

QCS's publication *CORRECTIONSnews* provided the following information about the female prisoner reintegration project in its October 2015 edition:<sup>127</sup>

QCS is responding to growth in female prisoner numbers in South East Queensland, with a focus on the delivery of effective strategies to assist the reintegration of female prisoners. These strategies have been developed in accordance with research evidence that demonstrates the patterns of crime for women differ significantly to men, particularly with respect to mental health, substance abuse and victimisation.

This reintegration project is being conducted utilising a 'co-design' framework, fostering a consultative approach through the engagement of staff and prisoners, as well as external government and non-government stakeholders.

The framework involves a process of designing a practical solution alongside the people it will directly affect.

...

At this stage of the project, discussion groups have commenced with female prisoners from Brisbane Women's Correctional Centre, Numinbah Correctional Centre and Helana Jones Correctional Centre, as well as external stakeholders.

In response to Recommendation 1 in the proposed report, the Director-General provided me with additional information about QCS's strategies to assist the reintegration of female prisoners which I have provided in full at section 6.5.

In addition to services provided by QCS, I have been advised that Queensland Health contracts a community service provider to provide a transitional support program for prisoners with mental health needs and that in 2015-16 Queensland Forensic Mental Health will establish a one-year trial of a specialised transitional support provider for Aboriginal and Torres Strait Islander women exiting from BWCC.<sup>128</sup>

In relation to support provided to offenders on parole, the Director-General advised that QCS:

- is committed to increasing the quality and accessibility of intervention programs within the community through continued stakeholder engagement to broaden service delivery capacity

<sup>125</sup> *ibid*, p.23.

<sup>126</sup> A separate model will be developed for men's re-entry services.

<sup>127</sup> A Burton, 'Female Prisoner Reintegration Project', *CORRECTIONSnews*, October 2015, p.5.

<sup>128</sup> D Mackie, Letter, 3 September 2015, p.10.

- has procured independent consultants to undertake a review of its current external service delivery practices with the results informing future direction and continuous improvement of service delivery
- may consider the use of Payment by Outcome contracts for prisoner rehabilitation services structured around compliance with bail undertakings and recidivism outcomes.<sup>129</sup>

### **Improving parole processes**

The Director-General advised me that QCS was undertaking the following work to improve its parole processes:

- QCS has already taken a number of steps to enhance the progression process for longer-term prisoners exiting custody. Further work with the parole boards will be undertaken to provide holistic support to women prisoners for parole readiness, application processing and breach management to ensure that women, where appropriate, are released from custody at the earliest possible opportunity.
- QCS will also recommend amendments to the existing parole board guidelines to fast track the consideration of parole suspension matters and investigate options to increase parole board capacity.<sup>130</sup>

### **7.4.3 Conclusion**

Implementing changes to parole processes and introducing other strategies directed at reducing reoffending and addressing the recidivism rate for female prisoners is, in my view, a positive step for QCS to take.

However, any changes made by QCS and/or strategies implemented, in my view, need to be substantial if they are going to have the required outcome of significantly reducing overcrowding at BWCC. This is particularly the case when one has regard to the current very low level of programs and interventions that are being delivered and the very high number of prisoners returning to BWCC on parole suspensions.

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<sup>129</sup> *ibid.*

<sup>130</sup> *ibid.*, p.9.



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## **Chapter 8: Action required to address the overcrowding at BWCC**

This chapter discusses the options that are available to QCS to address the overcrowding at BWCC. The chapter also discusses proposed initiatives that QCS considers will address the drivers of the growth of female prisoner numbers.

### **8.1 Options to address the overcrowding at BWCC**

It is now over three years since I recommended in the 2013 report that QCS take the necessary action to relieve overcrowding at BWCC. The overcrowding has in fact worsened considerably since the 2013 report. Although there were some signs that population pressures were easing in July and August 2015, the number of prisoners at BWCC appears to be trending again towards record levels.

In addition to taking action to address the consequences of BWCC being overcrowded, including the living conditions of prisoners and the services available to them, it is my view that QCS must take action immediately to address the issue of the overcrowding itself.

Based on the information that I have been provided by QCS and matters raised by the Commissioner during interview, it appears to me that there are two options available to address the continuing overcrowding at BWCC:

- increase the supply of accommodation for female prisoners in south-east Queensland and/or
- invest in strategies that will decrease the number of prisoners at BWCC and address the drivers of the growth in prisoner numbers, thus reducing the demand.

### **8.2 Increasing capacity of secure custody for female prisoners**

One obvious solution to the problem of overcrowding at BWCC would be for QCS to increase the capacity of prison accommodation for women in south-east Queensland by, for example, increasing the number of cells within existing facilities or opening a new secure correctional centre with sufficient capacity to accommodate the current number of women prisoners, plus the additional growth in prisoner numbers that QCS has forecast.<sup>131</sup>

Prior to finalising the 2013 report, the former Commissioner of QCS outlined strategies to me aimed at easing the population pressures at BWCC through expanding and using alternative placement options.<sup>132</sup> I received subsequent advice from the former Director-General of the department in 2014<sup>133</sup> that overcrowding at BWCC would be relieved by Southern Queensland Correctional Centre being converted to a women's prison, with female prisoners moving in mid-2015.

This strategy was ultimately not implemented and, at the time of this investigation, it was not government policy to convert Southern Queensland Correctional Centre to a female correctional centre or increase capacity of secure custody for women. As far as I am aware, the government has no immediate plans to increase the capacity of secure

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<sup>131</sup> See section 3.3.

<sup>132</sup> Briefing to Ombudsman officers by M Morrison, 16 April 2013.

<sup>133</sup> J Sosso, Letter, 11 September 2014, p.4.

custody for women in south-east Queensland. This report is focused on the administrative actions of QCS in managing female prisoners. Section 16(1)(a) of the Ombudsman Act precludes me from questioning the merits of a policy decision made by Cabinet and no comment in this report should be read as a criticism of government policy.

When asked at interview about the option of the department opening up more correctional centres for female prisoners, the Commissioner said that it would cost a million dollars per secure cell to build.<sup>134</sup> He also stated:

I think opening up more infrastructure for women will just mean that the drivers for reducing the number of women prisoners are relaxed, and we won't see any change.<sup>135</sup>

### 8.3 Alternative action required by QCS

Until government further considers the need to increase the capacity of secure custody for female prisoners in south-east Queensland, in my view, QCS must instead take significant and immediate action to:

- improve the living conditions of prisoners at BWCC and increase their access to essential services
- reduce the number of prisoners at BWCC
- address the drivers of the growth in female prisoner numbers and reduce overcrowding at BWCC.

When interviewed, the Commissioner stated that he wanted to reduce the number of female prisoners:

I think we can do something about it. It will take a little bit of money, but not a great deal. It will take a pretty concentrated effort, but we're ripe for that ... personally, I'd like to see the pressure maintained for a short period of time, and then to actually do something about it ... There is certainly a will to do something about women. We've probably got – if not once in a generation, we've certainly got once in a decade opportunity to do something different, and we're keen to take it.<sup>136</sup>

The Director-General has since advised me:

QCS is actively working to manage female prisoner numbers in Queensland ...

... QCS is exploring a range of gender specific demand management options to enable female prisoner numbers to be managed at a lower cost to Government, while maintaining community safety.

Policies, programs, and practices that reflect empirical, gender-based differences are considered the most effective approach to reducing prisoner numbers and, in turn, demand on the correctional system.

In 2015-16 QCS will implement a range of gender specific demand management options to improve services to women under sentence, transitional support, parole management, use of low custody infrastructure and community supervision. QCS has also committed \$1 million to specialised women's re-entry support services. By taking a new and dynamic approach to managing women prisoners QCS aims to make a difference ... to the lives of many, without compromising community safety.

If the demand management strategies are successful in the short-term to medium-term, this may delay the need for additional secure capacity for female prisoners.

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<sup>134</sup> M Rallings, Transcript of interview, 9 July 2015, p.53.

<sup>135</sup> *ibid.*

<sup>136</sup> *ibid.*, p.53.

The department has provided me with some detail about a number of strategies it considers could help to address both the continuing overcrowding at BWCC and the growth in female prisoner numbers, which I discussed in Chapter 7.

While the overcrowding at BWCC has eased somewhat since its peak of 412 in June 2015, as at March 2016, there remained over 120 additional female prisoners above BWCC's single cell capacity and prisoner numbers are trending back upwards.<sup>137</sup> This indicates to me that any demand management strategies that have already been implemented by QCS have not yet had the effect of significantly decreasing the number of prisoners at BWCC.

However, I appreciate that, as is noted in Chapter 7, more work is planned. I have not undertaken a detailed analysis of these future strategies as the available detail is very limited.

When asked at interview in July 2015 what the timeframe was for QCS's proposals to be implemented, the Commissioner stated:

... I'm only starting now ... I don't think we can continue on much more ... so if we haven't made a big impact in the next few months, I'm going to be really anxious. But by Christmas, we're going to know whether or not we can do it. Because the alternative is, we go back to government and we say, 'We need more prisons still'.<sup>138</sup>

Having regard to the current state of BWCC, I consider that these strategies need to be implemented quickly and evaluated after a relatively short time to determine whether they are having a demonstrable impact on overcrowding. QCS should establish specific targets for the number of prisoners who will participate in the various initiatives. Additionally, QCS should model the possible impacts of each initiative to examine its potential to reduce the demand for prison accommodation. Modelling should be used to determine whether the initiatives are likely to be successful in addressing overcrowding at BWCC and used to inform government regarding future options.

If these initiatives are found not to have been effective in addressing overcrowding, in my view, QCS should advise the government of a proposal for increasing the capacity of accommodation for female prisoners in south-east Queensland. I consider that time is of the essence in this process having regard to the current living conditions of female prisoners at BWCC and the significant time it will take to build and commission any new facility.

In the meantime, I am of the view that immediate steps need to be taken by QCS to improve the living conditions for female prisoners at BWCC.

<sup>137</sup> The average daily state of BWCC for December 2015 was 358.48. QCS, Email, 20 June 2016, Attachment.

<sup>138</sup> M Rallings, Transcript of interview, 9 July 2015, p.29.

## 8.4 Recommendations

I make the following recommendations:

### Recommendation 4

The Director-General immediately implement initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC, including:

- (a) specifying the timeframes by which each initiative will be implemented
- (b) establishing specific targets for the number of prisoners who will participate in each initiative
- (c) modelling the potential impact of each initiative on prisoner numbers and providing advice to government on the results of the modelling, within six months.

### Recommendation 5

The Director-General evaluate the success of the initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC and report to government at six monthly intervals.

#### The Director-General's response to the proposed report

The Director-General did not object to my recommendations but provided the following information:

Reducing prisoner numbers is not the sole responsibility of QCS. Many parts of Government and the community have a role to play in preventing crime. The length of time prisoners spend in prison is determined by court clearance timeframes, sentencing decisions, statutory and court ordered minimum parole periods, and parole release decisions, among other factors. As the end point in the criminal justice system, only some factors can be directly influenced by the correctional system.

Successful innovations elsewhere to reduce prisoner numbers have come as the result of a concentrated Whole-of-Government response and while QCS and other agencies are working together to address these issues, more can be done to strengthen responses which may reduce prisoner numbers or slow growth in prisoner numbers.

A number of initiatives have been identified by QCS and other agencies which will be prioritised for future investigation. Women prisoners are the focus group in a number of these initiatives.

#### Ombudsman's comment on the response

The Director-General has stated that more can be done to strengthen responses which may reduce prisoner numbers or slow growth in prisoner numbers.

While I acknowledge that QCS is not solely responsible for reducing female prisoner numbers, and that there are many other factors which influence the number of female prisoners, QCS clearly plays an important role in this. In response to Recommendation 1, the Director-General stated that QCS acknowledges that reintegration services are an important component of crime prevention strategies and that it is responding to the growth in female prisoner numbers in south-

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east Queensland with a focus on the delivery of effective strategies to assist the reintegration of female prisoners.

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#### **Recommendation 6**

If, based on modelling or monitoring against targets of the initiatives to reduce the drivers of growth in female prisoner numbers and reduce overcrowding at BWCC, these initiatives are not effective in returning BWCC to its single cell capacity, the Director-General develop and advise the government of his proposals for increasing the capacity of accommodation for female prisoners in south-east Queensland.

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#### **The Director-General's response to the proposed report**

The Director-General did not object to my recommendation but provided the following information:

QCS will continue to consider a range of policies and procedures to manage the increasing demand for prison beds at BWCC. QCS is currently exploring options to achieve a better balance between Townsville Women's Correctional Centre and BWCC's capacity utilisation.

Investment in high security custodial capacity is ultimately a decision for Government. It is QCS' preference to continue identifying options to increase the capacity at low security centres in SEQ. Low security centres better prepare female prisoners for their release into the community. There are dedicated staff to help prisoners rehabilitate and prepare them for release through setting up meetings to regain care of their children, and arrange accommodation, Centrelink, bank accounts and identification documents.

QCS is currently exploring a range of gender specific options to enable female prisoner numbers to be managed at a lower cost to Government, while maintaining community safety. Policies, programs, and practices that reflect empirical, gender-based differences are considered the most effective approach to reducing prisoner numbers, improving community safety and, in turn, demand on the correctional system.

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#### **Ombudsman's comment on the response**

I recognise that the decision to increase custodial capacity for women is one for government and that it is not currently government policy to do so. That is why I am recommending that QCS assess the effectiveness of its initiatives to address the drivers of growth in female prisoner numbers and, if they are not effective, it provide the government with a proposal for increasing the capacity of accommodation for female prisoners in south-east Queensland.

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### **Recommendation 7**

While implementing initiatives to reduce the drivers of growth in female prisoner numbers and addressing overcrowding at BWCC, the Director-General take immediate action to mitigate the impact of overcrowding on prisoners and improve their living conditions.

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#### **The Director-General's response to the proposed report**

The Director-General did not object to my recommendation but provided the following information:

QCS is aware of the impact a lack of privacy has on prisoners, and is actively identifying initiatives to reduce the impacts of overcrowding on prisoners across Queensland.

In relation to the privacy concerns noted, the Facilities Management Branch within the Department of Justice and Attorney-General has examined the practicalities of installing screens. The provision of light weight screening (curtains) raises issues including increased suicide opportunities. This may be either the curtains themselves or the suspension system required to hang the curtains. The additional fire load provided by the curtains is an issue that also needs to be considered.

QCS has undertaken a program of cell safety (anti-hang measures) for twenty years and its current cell designs are world class in this regard. Any initiatives undertaken to reduce the overcrowding impacts must have regard to possible hanging points and the increased suicide risk that may present.

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#### **Ombudsman's comment on the response**

I am not suggesting that QCS should take any action to improve the living conditions of prisoners at BWCC which would have the effect of increasing the risk of suicide. However, it would appear to me that there are other options than that discussed by QCS that it could explore that could reduce the impact on privacy in shared cells. On visits to youth detention centres in Queensland, Ombudsman officers have seen creative solutions used to provide some privacy to young people sharing rooms at the centres when showering.

My recommendation is not just about allowing prisoners some privacy when sharing a cell. It is about mitigating the impacts of overcrowding on all prisoners at BWCC and not just those who are required to share a cell. It would include improving the living conditions of all prisoners at BWCC which have been affected as a result of the centre being continuously over its single cell capacity since June 2012.

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## **Chapter 9: Conclusion**

My concern is that unless immediate and significant action is taken to address the issues raised in this report, not only will the overcrowded conditions continue at BWCC but they will worsen in the longer term. A dedicated focus on addressing the drivers of overcrowding and a greater investment in gender-specific programs in such areas as transitional and re-entry support, parole management and community supervision are important and commendable steps for the department to be taking. However, if these things alone are not able to address, in a substantial way, the living conditions, lack of services and poor rehabilitative opportunities for female prisoners in south-east Queensland, then other approaches will need to be found.

Building new cells takes time. For this reason, I consider that it is essential that the department model the potential impact of these initiatives to seek to determine, in an empirical manner, whether they are likely to have the desired impact. If they are not, then more will need to be done, and quickly. Once implemented, these initiatives will require regular evaluation and monitoring. Again, if they are not achieving the necessary outcome, swift additional action will be required.

In the meantime, the department must act both creatively and decisively to improve the day-to-day living conditions, introduce greater privacy and improve essential services to these prisoners. The longer it takes for a solution to the problem to be realised, the longer these women are subjected to this detrimental environment.

## Appendix: Legislation and standards considered in the investigation

Legislation/ Standard	Relevant provisions	
Corrective Services Act	s.3(1)	The purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.
	s.18(1)	Whenever practicable, each prisoner in a corrective services facility must be provided with his or her own room.
	s.57	A doctor must examine a prisoner subject to a safety order— (a) as soon as practicable after the order is made; and (b) subsequently, at intervals that are, to the greatest practicable extent, of not more than 7 days.
	s.266	(1) The chief executive must establish programs or services— (a) for the medical or religious welfare of prisoners; and (b) to help prisoners reintegrate into the community after their release from custody, including by acquiring skills; and (c) to initiate, keep and improve relationships between offenders and members of their families and the community; and (d) to help rehabilitate offenders.  (2) The programs or services must take into account the special needs of offenders. <i>Example—</i> Whenever possible, female doctors must be appointed to prisons for female prisoners.
Corrective Services Regulation	s.5(d)	The chief executive must ensure a prisoner undergoing separate confinement— ... is given the opportunity to exercise, in the fresh air, for at least 2 daylight hours a day.
Nelson Mandela Rules	Rule 12	1. Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself or herself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.  2. Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the prison.
	Rule 13	All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
	Rule 15	The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.
Standard Guideline for Corrections in	2.2	Each prisoner should be provided with suitable living accommodation.



Legislation/ Standard	Relevant provisions	
Australia	2.3	Cells or rooms that are designed for single or multiple occupancy should be consistent with the standards relating to size, light, ventilation, etc., as set out in the Standard Guidelines for Prison Facilities in Australia and New Zealand (1990) or as later modified.
Healthy Prisons Handbook	3.1	<p>Accommodation is clean and provides a reasonable amount of space for each prisoner, with space for personal belongings, ventilation, a reasonable temperature, and natural light.</p> <p>From an inspection of the accommodation, determine that:</p> <ul style="list-style-type: none"> <li>• Each prisoner has enough space in their cell or room to move around comfortably and to sit at a table, whether the cell or room is single or multiple occupancy.</li> <li>• Each cell or room has a table and chair.</li> <li>• Provision for the storage of personal belongings and photographs is adequate.</li> <li>• Drinking water is available at all times.</li> <li>• Cells / rooms are clean and materials are available to enable prisoners to keep them clean.</li> <li>• The unit, common areas and exercise yards are clean.</li> </ul>
	3.5	<p>Sanitary arrangements take account of health, hygiene and human dignity.</p> <p>From an inspection of the accommodation, determine that:</p> <ul style="list-style-type: none"> <li>• There is access to a toilet and wash hand basin at all times.</li> <li>• When the toilet is in a cell it is enclosed to ensure privacy.</li> <li>• If prisoners have to call for the cell door to be opened to access the toilet, staff respond in a timely manner.</li> <li>• Prisoners are able to wash their hands with soap after using the toilet.</li> <li>• Showers provide privacy.</li> <li>• Prisoners are able to shower every day.</li> </ul>
	3.7	<p>All prisoners occupy accommodation that is suitable for the purpose and for their individual needs.</p> <p>Check that cells have been appropriately fitted out, taking into account the following types of occupancy:</p> <ul style="list-style-type: none"> <li>• double occupancy</li> <li>• at risk</li> <li>• disability</li> <li>• aged prisoners</li> <li>• young offenders.</li> </ul> <p>Check that cells are sufficiently warm in winter and cool in summer.</p> <p>Check that cells are ventilated and have sufficient daylight, and that prisoners have their own bed, pin board and cupboard and use of a table and chair.</p> <p>Check that older prisoners in shared cells with bunk beds are given priority for lower bunks.</p>







QUEENSLAND  
**OMBUDSMAN**

*Standing for fairness*