

# 15

Report No.



**Vulnerable and Predatory Prisoners  
in Western Australia:  
A Review of Policy and Practice**



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES  
WESTERN AUSTRALIA

**Cover photo: Entrance to K Block at Acacia Prison.  
A higher percentage of prisoners are held in protection at  
Acacia Prison than at any other prison in the State.**

**Vulnerable and Predatory Prisoners in Western Australia:  
A Review of Policy and Practice**

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# The Inspector's Overview

PASSIVE MANAGEMENT IS NO MANAGEMENT AT ALL

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In the course of formal inspections and numerous informal contacts with Western Australian prisons, it had become abundantly clear that protection prisoners were a forgotten sub-group within the prison system. Management, understandably sensitive to their duty of care responsibilities, had taken the easy way out by removing anyone who seemed at all vulnerable from the mainstream population, thus simultaneously removing them from some of the normal features and privileges of prison life. Meanwhile, those prisoners who were a threat to their safety for the most part continued to access mainstream conditions. Moreover, within protection units some prisoners were vulnerable to other protection prisoners – even more vulnerable perhaps in this closed environment than they might have been in mainstream. Our observation was that the whole management regime had become passive and formulaic. A vigorous culture of unit management and individual case management would not have worked in this way.

Accordingly, I decided to carry out a thematic review – ‘a review of an aspect of a prison service’ – under section 109I(3)(b) of the *Prisons Act (WA) 1981*. This would not just involve a review of the literature and the local WA documentation but also extensive fieldwork. The WA situation needed to be ‘brought alive’ by detailed understanding of what was happening on the ground, how the arrangements affected the lives of prisoners and staff, and by inference what changes could be made to improve the situation. Fieldwork of this kind, to be effective, requires special skills, particularly inter-personal ones in gaining the confidence of staff and prisoner informants. In this regard, I was fortunate to be able to employ Dr Keith Carter as a consultant; Dr Carter has extensive experience of ethnographic research in British prisons. The detailed descriptions in the text emanate mainly from his observations. Of course, this information was triangulated against the ongoing observations of staff of this Office gained as they went about their inspection or liaison tasks.

Dr Carter also assisted me in the literature review. However, as with all Inspection Reports, the final responsibility for the content, tone and recommendations rests with me, as Inspector. Both the Department of Justice and AIMS, as operator of Acacia Prison, were given ample opportunity to comment on the draft report. The Department's responses and commitments to action are set out as Appendix 4; AIMS did not take up the invitation to respond.

Richard Harding  
Inspector of Custodial Services

*15th April 2003*

# Chapter 1

## PROTECTING VULNERABLE PRISONERS

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### THE NEED FOR A THEMATIC REVIEW

- 1.1 It is notorious that prisons can become lawless environments – places where gangs can run regimes and where those who are weak or ‘different’ can be assaulted, sodomised or victimised in other ways. These things can, and do, lead on to incidents of suicide and self-harm. For some prisoners, prison thus becomes a place for punishment (by other prisoners), not merely one where they are sent as punishment.
- 1.2 If there is a pattern, it is that the larger the population, the greater the risk that control may de facto be surrendered by management to prisoners.<sup>1</sup> Where this has occurred, the incidence of prisoner-on-prisoner violence and intimidation often increases. In the Anglophone world, this is most evident in the United States<sup>2</sup> (Wicker 1976; Jacobs 1977; Weiss 1991; Ralph and Marquart 1991; Adams 1994). Short of these occasions of semi-anarchical breakdown of law and order, there are ample opportunities for intimidation of the weak by the strong. This has, for example, been documented in several Reports of the UK Chief Inspector of Prisons, and the same phenomenon is also found in the ‘softer’ regimes of northern Europe such as Germany (Kury and Smartt 2002).<sup>3</sup>
- 1.3 Australia is far from immune, with the New South Wales system widely considered to be the most violent (Bearup 2002), including high rates of sexual assault and rape (Heilpern 1998). The Inspector-General of Corrective Services for New South Wales, in his most recent Annual Report,<sup>4</sup> has stated that: ‘Standover or bullying of inmates by other inmates is rife... Unchecked, this situation results in many self-harm incidents, abusive or aggressive conduct or requests for protection, all of which have a deleterious effect upon the operation of the system... It also supports the operation of gangs within the system.’
- 1.4 The ‘healthy prison’ test, developed by HM Chief Inspector of Prisons in the UK and endorsed by the Office of the Inspector of Custodial Services, requires that the weakest prisoner should feel safe.

<sup>1</sup> This is a generalisation that requires qualification. Wortley (2002) in his excellent analysis of prisoner-on-prisoner violence refers to studies that have attempted to isolate and explain more than 20 variables. He concludes that: ‘generally, the available research is methodologically weak and contradictory findings are common’ (p. 98). Possibly the most robust of the studies he cites, however, is that of Ralph and Marquart (1991) in relation to violence within the Texas prison system in the mid-eighties, and this supports the view expressed in the text.

<sup>2</sup> A December 2000 survey found that 21 per cent of prisoners in USA prisons reported at least one episode of forced sexual contact, with seven per cent characterising their experience as rape. In most states of the USA, the legal standard for the prison’s civil liability for such events is that management must have had actual knowledge of a substantial risk to a prisoner and must positively have ignored it. In practice, this has led to a situation where some prison wardens believe, as one actually testified in an Arkansas case, that ‘prisoners bear the responsibility for fighting off sexual advances by letting others know that they were “not going to put up with it”’: *New York Times*, 15 April 2001. As will be explained later, Australian prison authorities are subject to more stringent legal provisions with regard to such incidents. In 2002 the US Congress passed the *Prison Rape Reduction Act*, aimed at reducing the incidence of prison rape through the collection and analysis of data and the provision of funds to correctional agencies for the implementation of preventive measures.

<sup>3</sup> A comprehensive literature review of prisoner-on-prisoner violence in western prison regimes is presented in this article. See also Wortley (2002), chapter 5, and Edgar, O’Donnell and Martin (2002), chapters 1 and 5.

<sup>4</sup> November 2002, p. 10.



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The principle is fleshed out as follows:

*By their nature prisons are unsafe places in which to live. Very often bullying and stealing are rife. Many offenders who come into prison have survived outside by bullying and stealing, and continue this sort of behaviour during their period of imprisonment. Prisoners should not escape these realities by living indefinitely in isolation; nor can staff keep prisoners away from each other yet still enable them to take part in purposeful activity or lead useful lives.*

- 1.5 The use of protection arrangements, as a supposed means of ensuring safety, has been increasing in all Australian prison systems for many years. Western Australia has been no exception.<sup>5</sup> In the course of its normal prison inspections, the Office of the Inspector has become aware not only of the sheer numbers of protection prisoners but also of the ways in which their presence can distort management and create tensions. For example, at Casuarina Prison we found great resentment that protection prisoners were assigned the kitchen jobs, much sought after by other prisoners, and at Acacia Prison we observed that a whole industry area had been quarantined to enable protection prisoners to work there in safety. At Hakea Prison, the unit that accommodated such prisoners was squalid, their access to fresh air limited, and services such as visits and library use circumscribed. At Bandyup Prison, protection prisoners were left to their own devices, unsupervised, for long periods of the day – and the fact that there were very few of them did not alter the inappropriateness and inherent risks of this management approach. Also, everywhere there was insufficient differentiation between categories of protection prisoners – an implicit assumption that ‘one size fits all’ for management purposes, whereas it is now well understood that intimidation and bullying can and does occur within these groups.<sup>6</sup>
- 1.6 Western Australia has the considerable advantage that most of its prisons have very small populations,<sup>7</sup> so that the structural opportunities for ‘alternative’ (i.e., prisoner dominated) control regimes to arise are more limited. Nevertheless, as stated above, there are numerous vulnerable prisoners in the system, falling into the familiar categories such as sex offenders, informers, debtors,

<sup>5</sup> The Department of Justice has confirmed that it is unable to supply figures showing a clear sequence over, say, the last five years. There are several reasons for this, ranging from the purely technical (how figures were collated and stored) to the substantive (whether a protection prisoner should continue to be classified as such when transferred to a prison that does not have specific protection facilities but accommodates such persons according to informal arrangements that amount in practice to partial protection). Accepting these difficulties, it nevertheless seems to the Inspector that such data are core data for the effective overall management of a prison system and should certainly be collected in the future. As to the point that numbers are increasing, this is a matter of widespread observation and would not seriously be disputed, even though the absence of data makes it impossible to quantify this trend with any precision.

<sup>6</sup> A consequence of the fact that the numbers of protection prisoners are increasing is the difficulty of arranging protection within the protection unit. For example, a staff member at Hakea Prison stated: ‘If we didn’t have as many prisoners (in the protection unit), we could keep predators away from the others. How do you realistically do that, there’s no way. Protection is a growth industry.’

<sup>7</sup> The populations as at 16 January 2003 were, respectively: Acacia – 660; Albany – 137; Bandyup – 118; Broome – 111; Bunbury – 145; Casuarina – 322; Eastern Goldfields – 106; Greenough – 165; Hakea – 561; Karnet – 156; Nyandi – 40; Roebourne – 111; Wooroloo – 174.

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former criminal justice system personnel such as police or prison officers, persons or groups whose antagonisms in the outside world have spilled over into prison life,<sup>8</sup> and the intellectually disabled.<sup>9</sup>

- 1.7 This Office has become concerned that the Department of Justice may be tending to put too much reliance upon segregation of the vulnerable, rather than control of the predators, to achieve their safety. There are evident signs that the system relating to protection prisoners may be over-utilised. In the three main male prisons in the State, there were at the time of our fieldwork in March/April 2002 a total of 259 protection prisoners (about 17% of the relevant populations): see further Section 4, below. The consequences of this include: that some protection prisoners may be deprived of some prison services; paradoxically, that some may be treated more favourably than non-protection prisoners; that the protection status, once conferred, may be extremely difficult to alter; and that the interface between protection policies and anti-bullying strategies has become distorted.
- 1.8 A corollary of concentrating on the management of the vulnerable rather than of the predators seems to have been neglect of the mechanisms for progressing prisoners back to mainstream. In other words, the question of how to ensure that the vulnerable do not live 'indefinitely in isolation' (to quote from the healthy prison test) has been relegated to a low priority. Departmental policies seem to condone to some extent the discriminatory conditions that protection prisoners as a category must endure.

### TERMS OF REFERENCE

- 1.9 The foregoing factors in combination justified a 'thematic review of a prison service', in terms of section 109I(3)(b) of the *Prisons Act 1981*. Accordingly, the Inspector served notice upon the Department of Justice that the purposes of the Review were as follows:
- to ascertain the extent of the use of protection status in the Western Australian prison system;
  - to ascertain the characteristics of protection prisoners as to conviction offences, prison conduct, demographics and other relevant factors;
  - to ascertain what procedures are followed and criteria applied in conferring protection status;

<sup>8</sup> The Western Australian position has understandably been influenced by a case where a prisoner murdered another at Casuarina Prison, the maximum-security prison in the State. The circumstances were that the victim had been convicted of various sex offences, one of which allegedly involved the victimisation of the son of the prisoner who committed the murder. To complicate matters, the victim had specifically requested that he should be removed from the protection unit and put back into mainstream, and had signed a waiver exonerating the Department of Justice from liability in the event of his being harmed. The practice of requiring these so-called 'waivers' is discussed further below.

<sup>9</sup> Department of Justice figures relating to the protection population as at 4 September 2002 categorised protection prisoners as follows: 49 per cent sex offenders, 24 per cent disturbed and vulnerable, 25 per cent 'other prisoner issues', one per cent witness protection, and one per cent 'other'. These categories, whilst useful, probably do not tell one quite enough about the underlying nature of protection needs. Internationally, there is an increasing need for protection mechanisms to be put in place for HIV-positive prisoners. This has, fortunately, not become a major issue in Western Australia.

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- to ascertain the implications of being placed on protection from the point of view of the availability of prison services, sentence progression and management, and related matters;
- to ascertain Departmental practices with regard to the ongoing review of protection status and, more generally, in relation to mainstreaming prisoners who have been on protection or who would prima facie seem to be eligible for protection;
- to ascertain staff understanding of and attitudes towards protection prisoners and the nature of their training;
- to ascertain the operation of the Department's anti-bullying policies and, more generally, its ways of recognising and managing potential or actual predators within the prison population; and
- to assess the impact of the foregoing factors upon the management of the prison system and population as a whole.

1.10 The timing of the Review has been fortuitous in that, whilst it has been under way, two outstanding books have been published that bear upon the subject. The first was written by an Australian scholar and prison administration expert, Dr Richard Wortley, and is entitled: *Situational Prison Control: Crime Prevention in Correctional Institutions*. The second, jointly authored by Drs Kimmett Edgar, Ian O'Donnell and Carol Martin, is the culmination of almost a decade of research into prison violence by a group working out of the Oxford University Centre for Criminological Research, and is entitled: *Prison Violence: The Dynamics of Conflict, Fear and Power*. Reference will be made at the end of this Chapter to the broad issues coming out of these publications that inform analysis of the Western Australian material.

### RESEARCH METHODOLOGY

1.11 The Review examines the use of protection in Western Australia, the conditions inside the units housing protection prisoners, the processes and protocols regarding the monitoring of protection regimes, the documentation relating to protection, and the wellbeing of both staff and prisoners who work within those areas of prisons. The research concentrates upon the three main Metropolitan male prisons – Acacia (the newly opened, privately run prison); Hakea (the public-sector remand, classification and receiptal prison); and Casuarina (the main maximum-security prison in Western Australia) – as well as Bandyup Women's Prison, and Bunbury Regional Prison. The latter is important because it has both sex offenders and ordinary prisoners living together in mainstream.<sup>10</sup>

1.12 The Review was conducted inside the protection units at each of the prison locations. The reviewer had unrestricted access to all areas, documents and personnel, having been authorised under section

<sup>10</sup> This is also the case at Karnet Prison Farm. The issues are rather different there, however, since the sex offenders are integrated during the day in work and program activities whilst for the most part segregated in their accommodation.

109K(2) of the *Prisons Act (WA) 1981*. The fieldwork examined each prison from the early prisoner count to lock-up. At all the locations a mixture of research methods was adopted: direct and semi-participatory observation; informal chats with prison staff (normally between three and four officers) and prisoners (ranging from three to eight prisoners); more formal group interviews with prisoners (between ten and 20 prisoners from a wing); individual private interviews with some prisoners and some prison staff; a semi-structured questionnaire to staff and prisoners; and an examination of the prisoner documentation processes and regimes in operation at each site. The reviewer recorded all the informal interviews at the time, and transcribed the data each evening after the prison visit. The various methods allowed both staff and prisoners to open up (privately or publicly) about the world of protection and raise and identify good practice and concerns about the treatment and care of protection prisoners and the training of prison staff. Considerable use has been made, therefore, of direct quotations from personnel; this adds 'colour', weight and authenticity to a study that by its nature must reflect the experience and perceptions of participants.

#### FIGURES RELATING TO THE USE OF PROTECTION IN WESTERN AUSTRALIA

- 1.13 The total prison population in Western Australia on 23 May 2002 was 2,765 prisoners, comprising 2,065 in Metropolitan Prisons and 700 in Regional Prisons. The total population included 194 women prisoners, of whom 141 were in Metropolitan Prisons and 53 in Regional Prisons.
- 1.14 As mentioned above, the numbers of protection prisoners throughout Western Australia have increased over the past ten years. Whilst there have been increases in the number of sex offenders, drug users and mentally ill prisoners, this fact in itself does not account for the increase within the protection population. On 29 May 2002, there were 67 prisoners on protection at Hakea (out of a total population of 560), 57 at Casuarina (total population 399), and 135 (124 on normal protection and 11 in the Geriatric Unit) at Acacia (total population 650). Protection prisoners have thus become a significant group within these three main male prisons in the Metropolitan Area, numbering at that time 259 in all and thus comprising 17 per cent of the relevant population.<sup>11</sup> If the total number of male prisoners on protection were located in a single prison, this would create the third largest prison in the Metropolitan Area.<sup>12</sup>

#### PROTOCOLS AND PROCEDURES IN WESTERN AUSTRALIA FOR REGULATING PRISONERS AND DEALING WITH VULNERABLE AND PROTECTED PRISONERS

- 1.15 The Department of Justice has extensive rules, procedures and protocols governing the use of

<sup>11</sup> As at 4 September 2002, the total number of protection prisoners at the three main male prisons was 244. This indicates that the base number remains fairly stable, even as the overall prison population changes.

<sup>12</sup> See footnote 7, above. Bandyup Women's Prison had two protection prisoners out of a total population of 95. The figure varies somewhat, between nil and about five or six, but is usually at the low end. Also, at Bandyup, there is a tendency to utilise the Crisis Care Unit for prisoners who might equally be considered protection prisoners – a practice that arguably accords with the spirit of Operational Instruction No. 4 (see Appendix 1).

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protection, and these are incorporated under the Operational Instruction No. 4. This is set out as Appendix 1 of this Report. The Review examined the operation of this protocol by prison managers and the staff in each of the prison locations.

1.16 Once a prisoner has been identified as being in need of protection, there are six strategies that supposedly should be adopted before he/she is moved to a protection unit. These are:

- (i) closer supervision by officers in the prisoner's normal environment;
- (ii) change of cell placement to be near supportive individuals or to provide for closer supervision;
- (iii) temporary confinement in the prisoner's own cell;
- (iv) temporary placement in an observation cell;
- (v) employment in an area with closer supervision; or
- (vi) placement in another unit.

1.17 In other words, formal policy looks for a graduated response, with removal to full protection status very much a last resort. Yet there was no evidence that any of these alternative strategies were truly operative in any of the main sites. No documentation relevant to such options was found in prisoners' files. Prisoners were simply given the status of protection without any serious consideration being given to any of the alternatives within the mainstream population. The strong impression was that staff simply transferred prisoners either because of the fear of breaching their duty of care, or because it was automatically considered too dangerous or difficult to keep such prisoners in the mainstream population, or because they were unaware of possible graduated responses.<sup>13</sup>

1.18 The protocols also outline the responsibilities of the 'designated superintendent' with regard to the interim management strategies for each individual protection prisoner. In relation to the removal and transfer (paragraph 5a) of a prisoner, the 'designated superintendent ... shall only move to transfer the prisoner when none of the placement options listed in paragraph 4 is practicable and it does not conflict with the prisoner's Individual Management Plan'. These are the six strategies (above), yet none of the records we found in any of the prisoners' files indicated that superintendents have attempted to find alternatives, other than protection.

1.19 Compounding this, the majority of protection prisoners did not have 'protection forms', and for those who did have them they typically were not completed at the time the prisoners were transferred to the protection unit. Indeed, some of these forms were dated well over eight months after the prisoner had been placed on protection. There was clear evidence that some of the

<sup>13</sup> The question of how to deal with perpetrators is dealt with in a separate Operational Instruction (see paragraphs 1.49–1.52). Arguably, there would be some benefit in linking the two policies more closely in the minds of management and officers, for they are two sides of the same coin.

documentation that was found had been generated very much ‘after the event’, in response to the commencement of this Review.

#### THE SOCIAL CULTURE OF THE PRISON ENVIRONMENT

- 1.20 This approach to the issue is, perhaps, understandable when considered in the context of the social culture of prisons. As Irving Goffman has famously described it, a prison is a total institution – ‘a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life’.
- 1.21 The central features of this ‘total institution’ include the following; the members’ daily activities are all carried on in the immediate company of others, who are all treated alike and required to do the same thing together; all phases of the day’s activities are tightly scheduled (mechanistic routine), being imposed from above by a system of ‘explicit rules’ and a body of officials; and all the activities are brought together to fulfil the official aims of the institution. The prison environment has traditionally been seen from the perspective of two oppositional groups, the ‘captors and the captives’ (Sykes 1958). The largest group, the ‘captives’, are completely alienated from any decision-making or social responsibility inside the prison environment or within their family. All prisoners are initially labelled by the criminal justice system (whether convicted and unconvicted) as a real and potential danger to society, irrespective of the differences in their individual offences.
- 1.2 Most prison systems place great emphasis on security and control, at the expense of justice (Woolf 1991), disregarding the fact that many of the people, now incarcerated in prison, have had a great deal of personal responsibility, autonomy and in many cases respect outside the prison. This position has now been stripped, taken away, and he/she is treated very much like a dangerous or spoilt child who should not be trusted. The prison officers (‘captors’) tend to reinforce this negative institutional stance. Being the smallest group inside a total institution, they tend to see the prisoners as a threat both to the security and control of the prison, as well as to their own autonomy, personal safety and power inside the institution. This ‘them and us’ stance traditionally has separated the prison cultures, even though to the outsider there is also an observable symbiosis between the value structures of the two groups. This distance between them has led to ‘pluralistic ignorance’ and ‘group solidarity’ in both prisoners and staff (Kauffman 1988; Carter 1995). It is not surprising that this phenomenon exists in both groups because ‘solidarity is essential for their survival’ (Kauffman 1988: 248), and the system creates distance between the two groups.
- 1.23 Sykes (1958) has identified the effects of five ‘pains of imprisonment’ as the deprivation of: liberty, goods and services, autonomy, personal security and heterosexual relations. Protection prisoners receive even less liberty, goods and services, and autonomy than the rest of the prison population, whilst their personal security is inherently problematical. Goffman (1961), also reinforces these beliefs, coining the phrase the ‘degradation of self’ to describe the situation where labelling processes

and the prisoners' own responses to their situation continuously reinforce their sense of unworthiness and low status inside the prison.

- 1.24 The negative reinforcement of the prisoner status is further exacerbated by the idea of the 'importation model' (Hawkins 1976). This concept describes how the negative behaviour and attitudes of prisoners is somehow transported into prison life and reflects the character of the total institution. Whilst the lifestyle of many prisoners is deemed to be anti-social, the greater majority of them did not previously live in communities where bullying, stand-overs, male rape and assaults were commonplace. Even if that were the case, they had at that time the capacity to leave. A senior manager at Hakea expressed the commonly held view that [there is no point] 'in trying to deal with bullying, it's the same as on the outside'. However, that is not necessarily correct; and in any case prison managements have a duty of care at common law, the content and extent of which is influenced by the fact that prisoners cannot escape the threats, assaults, stand-overs or rapes that characterise life in some prisons.
- 1.25 Whilst these patterns are still evident within many prisons throughout the world, steps are being taken to redress the imbalances of incarceration. Changes can lead to a more humane prison environment, where personal responsibility is required from prisoners to assist in 'changing their behaviour' both inside and outside prison. These changes are, broadly speaking, more apparent in the Nordic and northern European prison systems than elsewhere, though that is not to deny that there are distinct areas in most Western prison systems, including Western Australia, where similar cultural shifts are occurring.
- 1.26 In such prison systems, high quality staff training, effective management at all levels, staff development and effective prisoner interaction are purportedly recognised as being the basic prerequisites for the creation of a 'healthy' prison environment. Thus, to effectively address the myriad of problems found inside prisons and introduce some form of 'normalisation' to the prison experience, the prison staff have to be the keystone to implementing cultural, social and institutional change inside any prison.
- 1.27 They are in fact the catalysts of change, they lay down the standards for acceptable behaviour, and they are responsible for the creation of their own work environment – though in this regard their symbiotic relationship to prisoners is sometimes evident as decisions made and imposed by centralised management hierarchies often seem out of touch with their own perceptions of realities. Nevertheless, their role and training is of critical importance to the life and safety of both prisoners and staff. If a prison is unsafe, either generally or for vulnerable prisoners, then the responsibility for that rests primarily with the staff, for it is the management that is accountable for the monitoring and creation of that environment. For far too long prison managers have blamed overcrowding and related issues on the non-implementation of effective management strategies, rather than addressing these problems themselves.

1.28 In the past the prison environment has been one of entrenched negative stereotyping and labelling, where people (both staff and prisoners) are awarded a pariah status from each other that reinforces the distance and creates barriers between both groups. In order to implement a change of culture inside the prison, it is necessary to establish how this grew in the first place and how can these barriers and distrust be eliminated within a prison?

### THE PLACE OF PROTECTION PRISONERS WITHIN PRISON CULTURE

1.29 Both prison cultures – those of prison staff and of prisoners – find common ground in the area of the sex offenders and child molesters. For each group, these prisoners are contemptible. Although many of the staff remarked that they ‘just treat them as people’, others had stronger negative views but did not wish to voice them and simply said words to the effect that ‘I just do my job, I just switch off from their offences. If I did not have this uniform on, I wouldn’t have anything to do with them.’ The same contempt is felt for informers, be they witnesses under protection prior to court trials or informers within the prison itself.

1.30 The prison system reinforces and creates the alienation and pariah status of protection prisoners by locating them outside the mainstream. They are excluded from normal interaction with other prisoners, and as a result are restricted in work, social activities, education, canteen access and visiting rights. By these markers, all of them are lumped together, labelled as simply sex offenders or informers. In other words, there is a tendency for both staff and prisoners to assume that all protection prisoners, whatever the reason for their having acquired this status, are members of these two most despised categories. Once classified and moved to a protection unit, the prisoner is ‘known’ not just in the particular prison but, potentially, across the whole system.

1.31 Prisoners and staff reinforce those administrative decisions by subconsciously and consciously applying this pariah status to anyone who has been classified as a protection prisoner. It is arguable that much of this categorisation of risk (from other prisoners) is a direct result of failing to ensure that certain anti-social behaviour by prisoners is actively challenged. It seems apparent that systematic violence towards sex offenders is in part condoned, or at any rate not challenged, by a system that readily makes assumptions that it is too dangerous for them to be located in mainstream. Research does show that an effective anti-bullying strategy can reduce the need for protection and in some cases eradicate the need altogether (HMCIP Durham Inspection 2002). The growth of protection may well be attributable to the inability of the particular Prisons Department to implement an effective strategy to address inappropriate behaviour in mainstream, so as to control predatory behaviour.

1.32 Protection prisoners are further alienated by the prison culture of the mainstream population, both staff and prisoners, who sometimes refer to protection prisoners as ‘dogs’ (informers) or ‘tamps’ (sex offenders) and call the units they are housed in the ‘boneyard’. This underclass status is further reinforced in some cases by the staff working on protection, who use derogatory terms when dealing with protection prisoners.



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1.33 For example, one Hakea protection prisoner said that officers used ‘phrases like “happy campers”, “come on you spineless lot”, on escorts around the prison; the officer shouting at us, “hold hands children, two by two” – this only reinforces their attitude towards us. We are grown men, no matter what our offences are.’ Similarly, a Casuarina protection prisoner stated that: ‘Staff shouted at me a few times a day – ‘dickhead faggot.’ It’s all part of the gaol’s attitude towards us in the boneyard’.

1.34 Protection prisoners are normally little or no threat to the security and control of the prison; the vast majority conform to the rules and regulations and they rarely challenge or insist on their rights. The underclass status is further reinforced by the fact that the prison system severely limits all the regimes and movements available to this group on the grounds of their own safety within the prison. As a result, protection prisoners traditionally accept this restrictive label, and many of them believe that the hazard of mainstream life, with more facilities and freedom, is too high a price to pay.

1.35 Pursuing the question of the interaction between staff and protection prisoners and the evolving institutional culture, some prisoners said:

*I would like to return to mainstream, but it’s impossible, there are too many dramas.*

*The staff never get off their arses and really do not know what’s going on. The strongest survive and the little people like me just get bashed. I’m better off in here.*

*Protection is camping under a bridge, in gaol terms. We are not part of the whole system, we are on the outside and like a tramp who camps under the bridge we get less than people in main society. On protection we get the left-overs.*

1.36 Staff said:

*If some of them were allowed into mainstream they would be seriously assaulted or even murdered. You just cannot allow them out there.*

*Once in here then there’s no place to go. They are all seen as ‘dogs’ and ‘tamps’ and wouldn’t be safe outside.*

## THE CONCEPT OF A HEALTHY PRISON AND ITS APPLICABILITY TO PROTECTION PRISONERS

1.37 As mentioned at the outset, this Review adopts the concept of a ‘healthy prison’ for the purpose of evaluation. A healthy prison environment needs to develop a balanced relationship between security, control and justice, where both staff and prisoners remain healthy. The key constituents are:

- A safe environment;
- Treating people with respect;
- A full, constructive and purposeful regime; and
- Resettlement training to prevent further offending (Ramsbotham 1999: 57).

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- 1.38 Some of the tests for a healthy prison environment for protection prisoners and staff are interchangeable; the staff and prisoners should ‘feel safe’ and ‘all prisoners and staff should be treated with respect as individuals.’ With regard to prisoners, they should be ‘busily occupied, expected to improve themselves and be given opportunities to do so – all prisoners can strengthen links with their families and prepare for release.’
- 1.39 The tests for staff working inside a healthy prison is that they should be ‘informed and consulted about their sphere of work, have high expectations made of them, be well led and respect their own health’. These areas were also examined in some depth during the fieldwork at the various institutions, and covered matters ranging from effective leadership at unit and superintendent level, staff management, the training of officers in respect of protection issues, prisoner/staff interaction and the implementation of Operational Orders and protocols in respect of protection prisoners.
- 1.40 In many of the prisons in the Metropolitan Area, a traditional barrier management style operates. Architectural structures also tend to reinforce distance and separation. This isolation of prisoners and staff creates at times an impersonal environment, where the only interaction is one of control (during population counts, cell checks, recreation, visits, programs, meals and most other aspects of the prison regime). These obstructions to direct interaction foster an inappropriate culture.
- 1.41 During the fieldwork, most prison staff in protection units could be found located inside the unit office or ‘pod’, rather than patrolling or interacting with prisoners.<sup>14</sup> Prisoners frequently cited situations where officers rarely went on the units but stayed inside the ‘pod’. To exacerbate matters, some officers, in the opinion of prisoners, often pretended not to be aware that prisoners were trying to get their attention to make a request. One prisoner said: ‘One officer simply sits in the office reading the papers and tells me to fuck off, go away and not bother him.’ Distant management, rather than direct supervision, creates fears, mistrust and myths about both groups, and reinforces the collective cultures on both sides of the institutional spectrum.

### RETURNING TO MAINSTREAM

- 1.42 Operational Instruction No. 4 requires that protection prisoners should be reviewed ‘at least weekly’. The majority of prisoners had never been reviewed, in some cases for years. Most prison staff and unit managers, including superintendents, were unsure of how often the process was meant to take place. It appears that the management and supervision of all staff working with protection prisoners is lacking or non-existent. Accordingly, once placed on such a regime the prisoner is not infrequently there for the duration of his/her sentence, with little hope of being transferred back into mainstream.

<sup>14</sup> This was done under the guise of carrying out paperwork or inputting data into Total Offender Management System (TOMS). All of the staff expressed concern at their lack of training and expertise in typing or operating computers and many of them took up to an hour to type a small document. Reference has been made to this in the Inspector’s *Report of an Announced Inspection of Hakea Prison – March 2002*, with the recommendation that the Department of Justice should appoint part-time keyboard personnel to assist in each Unit in the prison: see Recommendation 17.

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1.43 In that regard, it should be noted that the Department's approach towards managing a person back into mainstream is very much dependent upon his signing a so-called 'Protective Custody Waiver'. This acknowledges that the prisoner has been informed that he may be in danger in the general population but that, nevertheless, he wishes to waive the right to protective custody. This document is of no legal import whatsoever; it does not and cannot exonerate the Department from exercising its own judgement as to how best to meet its duty of care.<sup>15</sup> What it does seem to suggest is that the Department is intent on partially shifting responsibility for the management of important aspects of this problem across to the prisoners themselves – in requesting protection in the first place and then in requesting return to mainstream.

### PROTECTION STATUS – INTERNATIONAL CONCERNS

1.44 Issues of protection status are contemporary problems within many prison systems throughout the world, and some of the major points alluded to concerning these groups are worth documenting in this report. The International Handbook on Good Prison Practice, *Making Standards Work*, refers extensively to this issue:

*In some systems vulnerable prisoners are segregated for their own protection. Often these prisoners are held in cells identical to those used for punishment. They may have little or no access to the opportunities offered in the prison's normal regime. The effect is tantamount to punishment.*

*In the past sexual offenders were seen as the major group needing protection from other prisoners, or from staff, in some systems. It appears that there are more and more of these vulnerable or disadvantaged groups: HIV positive prisoners, the mentally disordered and the educationally subnormal. (paragraphs 76, 77)*

1.45 The research examines the 'opportunities' provided by the Department for protection prisoners and examines the perceptions of both staff and prisoners about being held on protection.

1.46 The International Handbook emphasises that separation of vulnerable prisoners is not the preferable way of managing such prisoners:

*It is important that prison administrations adopt a positive approach to protecting prisoners. Separating prisoner from other prisoners because they are vulnerable or on their own request certainly is not the most preferable solution. On the contrary, it may lead to protection on protection. Often it is only an embarrassment type solution. Forming small groups of prisoners, of which some vulnerable prisoners are part, may be a better solution.*

1.47 There should be full staff involvement in management in as normal an environment as is feasible. Staff, for their part, should be supported by proper training:

*All prisoners, including vulnerable prisoners, need programmes addressing their needs. These should include advice and care for HIV positive prisoners, psychological care, remedial education and therapeutic programmes*

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<sup>15</sup> The 'waiver' and the legal advice obtained by this Office are set out in Appendix 2 to this Report.

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*for sexual offenders. In extreme cases their needs may not be met in prison, but require some other form of custody. (paragraph 81)*

*In addition training of staff should emphasise a professional approach towards all prisoners, regardless of offence or handicap, and challenge prejudice and stigmatising attitudes among staff and prisoners. (paragraph 82)<sup>16</sup>*

1.48 The ‘professional assistance of staff’ is an integral part of care of protection prisoners. The research examines the training and attitudes of staff working within the protection units, and identifies some of the good work conducted by staff as well highlighting the shortcoming of a group of officers who have received little training for dealing with such a varied group of offenders.

### BULLYING STRATEGY: PROTOCOLS AND POLICIES OF THE DEPARTMENT OF JUSTICE

1.49 The obverse of vulnerability is intimidation. To the extent that intimidation can be reduced, so can the need for protection. The supposed strategy for addressing inappropriate behaviour is outlined in Operational Instruction No. 15 – Anti-Bullying (May 2001). The Department’s Operational Instruction refers to bullying as ‘intimidation, threatening behaviour or standover tactics which may include:

- Psychological pressure, name calling and threats;
- Vandalising property;
- Unprovoked attacks;
- Repeated occurrences of any one or more of the above; and
- The intention to cause fear or harm to the victim.

1.50 The explanatory material suggests that the Department understands the theoretical issues thoroughly:

*The aim of the approach being taken, or that should be taken, is to heighten awareness of the consequences of bullying and to reduce its incidence in prison. This aim will be achieved by discouraging those who have anti-social or predatory tendencies from indulging in behaviours that are harmful to others, through the provision of appropriate environments and opportunities to address anti-social behaviour and by giving victims of such behaviour support and opportunities to develop skills for dealing with intimidation. These are essential elements in working towards the goal, that requires a stable system creating a safe and co-operative environment within which prisoners can undertake constructive activity.*

The Department’s protocol for addressing bullying inside prison rests on four main principles: awareness; identification; intervention; and training.

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<sup>16</sup> Penal Reform International, 2nd edition, 2001 (London).

1.51 The fieldwork conducted in the course of this Review indicated that many of the staff and management are unaware of the extent of bullying in mainstream, have little knowledge of how to address or recognise different forms of bullying, and have received no formal training about these matters since their basic training. In other words, the Department's theoretical insights have not been reinforced in day-to-day prison management practices. For many officers, bullying has become an accepted way of prison life. Prisoners frequently talked about prison staff, and made such comments as:

*Instead of dealing with the problem, they influence the outcome, but only certain officers do it. Most sit on their arse.*

*If they didn't smoke they wouldn't come out of the office.*

*Only when we tell them, they don't do much.*

1.52 For their part, officers talked about the lack of training in respect of bullying:

*I remember in the distant past, my three months' basic training, about looking for changes in behaviour. Bullying was the reason for those changes. (Prison Officer, 19 years' service)*

*It doesn't operate that well. I've never had any prison training in respect of it. All we really have is the notices. (Prison Officer, five years' service)*

*There's the doc [pointing to the poster half-hidden behind the notice board]. I don't know how it operates. (Senior Officer in charge of a Protection Unit)*

## OVERVIEW OF BULLYING

1.53 If intimidation and bullying are to be forestalled or stamped out, there must be total commitment from the top. The UK Chief Inspector of Prisons has stated:

*An effective anti-bullying strategy cannot just be an adjunct to a prison regime – it has to be led by the governor and senior managers and implemented by the staff at all times. Its effectiveness relies on staff being able to understand what is happening between prisoners, take appropriate action against bullying and being in control of arrangements for cell sharing and making their decisions after careful consideration. (HMCIP Strategic Plan 1999–2002: 7.15)*

1.54 Any successful strategy must be top-down, the staff and senior management must ensure, lead, oversee, and constantly reinforce its implementation. A positive anti-bullying prison culture is created by the staff at all levels, supported by the majority of prisoners, who must see its operation in practice. The key to its success rests on the built environment, effective strategies to deal with bullying, and most importantly, on the professionalism of the staff working in the institution. There must be present:

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- Effective monitoring and supervision by superintendents of staff at all levels in relation to anti-bullying strategies;
- Effective interaction between staff and prisoners at all levels within the organisation;
- Informative records kept of individual prisoners;
- Regular monitoring of the wellbeing of prisoners to establish that they are safe in the prison environment;
- The training of all officers, civilians and prisoners to recognise and address bullying at all levels in the institution; and
- An effective monitoring system of addressing bullying with clearly laid down strategies and documentation processes.

1.55 These six points constitute a holistic set of fundamental strategies, and each strategy is less effective without the others. In order to address bullying at an institutional level and create an embryonic culture of behavioural change throughout a prison, the staff, and management must all be trained in anti-bullying techniques and be responsible for their implementation, and prisoners must understand the core importance of this value within the organisation.

1.56 It is essential that staff and junior management ensure that prison officers on the ground work directly with prisoners and forcefully combat, at the earliest opportunity, suspected bullying. They need to document all incidents, vigorously investigate all suspected occurrences, and develop strategies at a unit level for dealing with situations that involve bullying. The strategic objective should be to sanction bullies and affect their behaviour, not to manage the immediate impact of that behaviour through removing their victims from reach. Responsibility for managing the situation cannot simply be passed over to another area of the prison – the ‘protection unit’.

1.57 If bullying is to be addressed, then it must be addressed in ‘normal location’ and ‘nipped in the bud’ there. The last resort should be protection. Only after all other avenues for dealing effectively with the victimiser or the victim have been tried and have failed should the prisoner be classified as a protection candidate – but only on a temporary basis. This status should be reviewed regularly, and never seen as a permanent solution.

1.58 This pro-active approach is a direct attack on bullying. If it is holistically and professionally applied, the atmosphere of the prison and working and living condition of both staff and prisoners would change.

### BULLYING IN UNITED KINGDOM PRISONS

1.59 The Prison Services Agency in the United Kingdom launched its anti-bullying strategy in 1993. O’Donnell and Edgar (1996) examined two adult male and two young offender prisons between

April 1994 and December 1995. Their data showed that 46 per cent of young offenders and 30 per cent of adults had been assaulted, robbed or threatened with violence in the previous month (Home Office Research Findings No. 37, August 1996). The Prison Service had traditionally responded to bullying by placing prisoners identified as vulnerable into segregation, for their own protection.

1.60 Subsequently, O'Donnell and Edgar (1998) examined six prisons (Feltham, Hunterscombe, Cardiff, Lancaster Farms, Aylesbury and Woodhill). They discuss the various methods and strategies that were being utilised in addressing bullying, with the objective of actively discouraging such behaviour. The 'whole prison' approach, together with a 'multi-discipline approach' and 'nipping it in the bud', appeared to work effectively when all staff (uniformed and civilian) and prisoners were trained and pro-actively worked together.

1.61 What appeared to be essential was the availability of a unit where the 'predators' could be taken out of mainstream and inappropriate behaviour dealt with. This should not be a punishment unit, but one whose regime and programs challenged the predator. It was important that the victim remained in the prison mainstream, whilst the predator was removed. This gave a clear message to the rest of the prison population – that this type of anti-social behaviour would not be tolerated in the mainstream – and laid down standards of behaviour within the prison environment.

1.62 One of the most successful strategies was the one adopted at Feltham Young Offenders Institution. The approach identified and segregated the victimisers in a special unit called the Waite Unit. The Unit's origins were the suicide of a victimised prisoner, as the dedication of the unit indicated:

*Lee Michael Waite hanged himself at Feltham on 31st August 1991. He was aged 18 years. He had been robbed, beaten and sexually assaulted by other inmates. This unit was named and dedicated to his memory by his mother, Pauline Waite, on the 15th July 1992. It is intended to protect the vulnerable by controlling and addressing the behaviour of those who create such tragedies.*

1.63 The Waite Unit is located in the same wing as the segregation unit and under the control of the same officers. Prisoners do not have to be charged with an offence to be sent there, nor have they to be held under the administrative segregation provided for under YOI Rule 46 (Good Order and Discipline). They are simply identified by highly trained wing officers as bullies; a minimum of two or three incidents of bullying is required to identify a candidate for the Unit. The case file consists of the accounts of witnesses and victims (the latter thus not being required to face the bully at an adjudication), direct observations by staff, entries in the wing observation log, and their personal history records. If this information were sufficient to convince both the Governor and staff on Waite Unit that the inmate had been involved in bullying, then he would be removed there.

1.64 O'Donnell and Edgar observed that the daily routine on the unit was strict and austere, and a points system based on behaviour modification was in operation. The purpose of the unit was to address the previous inappropriate behaviour in mainstream; meals were eaten in cells, with no association with other prisoners. The predator was seen as a threat to other prisoners and thus needed to improve his

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behaviour before being allowed back into the mainstream population. Points would be deducted for inappropriate conduct. Whilst on the unit, counselling was provided, consisting of discussions between individual prisoners and officers about the inmate's bullying. The inmates were required to write essays on a variety of topics, such as what led them to coming into the unit, how they would define bullying, or the effects of bullying on the victim (O'Donnell and Edgar 1998).

- 1.65 All prisoners started at Level 1 and had to progress to Level 3 before being considered for a return to normal location. Many prisoners achieved this in five to seven weeks, though some took rather longer. At Level 3 prisoners were allowed out of their cells all day and were allowed to clean the wings. Level 2 prisoners were given assembly work to do, whilst locked in their cells. Level 1 prisoner followed a very basic regime.
- 1.66 Level 1 and Level 2 prisoners had closed visits (even for remand prisoners). They had to earn open visits. A closed visiting area was built on the unit, so that residents would be denied the opportunity to go over to the main visiting area. This prevented them from interacting with other prisoners and friends on normal location. Thus, the 'pariah' status accorded to protection prisoners was transported to the predators themselves, who had come to be regarded as socially unacceptable by both the prisoners and prison staff.<sup>17</sup>
- 1.67 In sharp contrast with this approach, predators who prey on other prisoners but who do not have their behaviour challenged and remain on mainstream can simply wait for their next victim. They sometimes receive 'hero' status from the weaker prisoners, obtain a 'hard man' or 'gang leader' status, and are seen in some cases as 'bomb-proof' because the prison fails to deal effectively with them. The UK strategy removes all such inappropriate status; the Western Australian practice does not do so.

## INDUCTION OF PRISONERS IN THE UK SYSTEM

- 1.68 All new inmates receive induction to make them aware bullying will not be tolerated in the prison and are shown that bullying causes deep distress for its victims. At Cardiff Prison, for example, the use of a 25-minute video made by HTV Wales for the prison management discusses the prevalence and impact of bullying. Using inmates as actors, it shows different forms of bullying and encourages people to report it through a confidential letter system. A booklet links the video to the full presentation as part of the induction process and staff training.
- 1.69 The presentations given to staff and prisoners are interactive – inmates and staff are encouraged to contribute to the debate and the talks highlight the stages in the development of the bullying relationship.

<sup>17</sup> Variants of this approach are now widespread in UK prisons. For example, at Forest Bank a 'bullying monitoring booklet' will be opened in relation to identified bullies, and this will accompany him whenever he moved off his wing. Failure to improve would lead to the imposition of a Waite Unit style of regime: see HMCIP: 'Report of a Full Announced Inspection of HM Prison and Young Offenders Institution Forest Bank, June 2002', paragraphs 3.01–3.07.



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1.70 By showing the process of bullying in steps, both prisoners and staff can see that bullying can initially appear harmless, but that it becomes more damaging as the relationship develops. This shows that prisoners and staff all need to be aware of the stages of its development:

- Information – learning about the potential victim;
- Name calling – in front of others or out of the windows at night;
- Ridicule – jokes and insults to unsettle the potential victim;
- Rumour – spreading malicious rumours;
- Isolation – cutting victim off from peer support;
- Verbal threats – instilling fear;
- Physical threats – increasing fear through threat of harm;
- Exploitation – demanding surrender of goods; and
- Tasks – manipulating the victim into service.<sup>18</sup>

1.71 At the end of the induction talk, inmates were asked to sign an agreement not to take part in bullying or to help others bully, and to share information which helps to prevent bullying. This is a contract with the prisoner mirrored by the fact that the prison also enters into a ‘compact’ to provide a safe living environment. There is ownership on both side of the institutional spectrum.

1.72 This pro-active approach sees bullying as unacceptable and therefore not part of the normal prison culture; but in order for it to operate effectively the whole of the prison needs to understand the seriousness of bullying and to implement a zero tolerance attitude towards it.

### RECENT LITERATURE

1.73 Richard Wortley’s book is grounded in the theories of situational crime prevention. This approach emphasises that criminal events cannot be fully understood if one’s exclusive focus is upon the personal psychology, culture or disposition of the offender. The time and the place and all factors relevant to the opportunity must also be analysed. A theory of human action, including criminal action, must be dynamic. People behave the way they do not only because of who they are but also because of where they are and when they are there. That being so, it is possible to reduce crime opportunities at the situational level – the practical attraction of which is that one does not have to set out to change people’s personalities or dispositions as a way of reducing crime.

<sup>18</sup> This typology is applicable to bullying at all closed institutions – for example, army barracks, boarding schools, nursing homes, mental hospitals and orphanages.

- 1.74 This understanding of criminal events has reaped impressive rewards.<sup>19</sup> Examples range from steering column locks to public transport fare evasion, subway graffiti, obscene phone calls, bank and ATM robberies, gun-related crime<sup>20</sup> and even aircraft hijacking.<sup>21</sup> Applying these sorts of insight to a prison setting, some predictable situational prevention factors emerge: single cells; individual cell-locks to supplement institutional security arrangements; interactive unit management; elimination of blind spots and/or CCTV; micro-dot identification of personal property; adequate telephone access so that competitive factors do not emerge; shop or canteen arrangements that forestall stand-over opportunities; controls on the sorts of personal property (such as non-personalised phone-cards or brand-name sneakers) that are attractive targets; and so on. Wortley's comprehensive matrix of opportunity reduction strategies for prisons is set out as Appendix 3A of this Report.
- 1.75 To this point there is perhaps nothing surprising about Wortley's analysis. However, he takes it further to what he calls 'precipitation-control strategies in prisons'. This takes the notion of situational crime prevention beyond time and place opportunities to a point where the underlying social and community context is significant. Wortley's matrix is reproduced as Appendix 3B. It includes such factors as: officers as exemplars; removal of troublemakers (predators); support for whistle-blowers; credible grievance mechanisms; unit induction; humane conditions; non-provocative commands; reduced crowding; greater prisoner control over their immediate living environment; and so on. In other words, the totality of prison management, environment and culture constitutes potential precipitating factors, and these can be managed so as to minimise their impacts.
- 1.76 This insight is one that is observationally self-evident to persons carrying out a series of prison inspections, but Wortley locates it in the theoretical literature in a way that lends it extra credence and strength. Protection practices and trends may not be a precise litmus test of prison management and culture, but they are certainly a useful indicator.
- 1.77 The new book by Edgar, O'Donnell and Martin is, as mentioned, the culmination of a decade's fieldwork and empirical research (see paragraph 1.10, above). The book also encompasses a comprehensive review of the British and international literature. Factors of particular interest that emerged include the following: that victimisation rates are typically under-reported;<sup>22</sup> that there is a

<sup>19</sup> See, for example, *Situational Crime Prevention: Successful Case Studies*, edited by R.V. Clarke (1992, Harrow and Heston, New York) and follow-up editions of that book.

<sup>20</sup> Experience since Australia's gun buyback scheme commenced in 1996 has now shown the links between general gun availability in the community and criminal events involving the use of guns: see Mouzos, J., 'National Homicide Monitoring Annual Report 2000–2001' (Australian Institute of Criminology, Canberra, March 2002).

<sup>21</sup> The events of 11 September 2001 should be seen in the context of a 30-year period during which security screening at airports progressively reduced hijacking from the high frequency rates of the early 1970s to very low levels. The 2001 hijackings demonstrate that situational crime prevention approaches must be constantly refreshed and reviewed if they are to remain effective. The 'Stanley trimmer', as it is known in Australia, presented with its blade enclosed by the shaft, had not previously been thought of as a 'knife' or a 'weapon' for security purposes; but demonstrably we all now understand its capabilities in this regard.

<sup>22</sup> This mirrors reporting patterns in the civilian population, but the under-reporting is generally much greater in the prison setting. Heilpern (1998) demonstrates that under-reporting of sexual assaults is particularly marked.

close overlap between victims and victimisers, prisoners switching between roles in different situations;<sup>23</sup> and that fear of victimisation is not related in a linear way to the recency, frequency or extent of victimisation and indeed sometimes runs completely counter to these factors. The latter observations may seem counter-intuitive, but Edgar et alia explain that the manner of response has a bearing upon fear. They follow Bottoms' seminal analysis of the 'safety paradox' through with their own empirical data.<sup>24</sup> This is sufficiently important to spell out here.

- 1.78 Bottoms (1999) pointed out that, although the rule of actual or threatened force is pervasive in prison society, this co-exists with surprisingly high levels of perceived safety. Seeking to explain this, he explored five factors: the lived experience of prisoners; their strategies for self-protection; the balance between routines and personal choice; the tendency for prisoners to rely on private justice; and the ethos, management style and staffing arrangements within prisons.
- 1.79 As to the first, there is research evidence that, with experience of prison life, prisoners work out coping mechanisms; it is the new and disorientated prisoners who are most fearful. Second, self-protective mechanisms are developed, such as withdrawal from social interaction, or aggressive postures, or joining an alliance of some kind. Third, routines can lead to a sense of stability and order but individuals will work out the extent to which they can remain individualistic. By and large, the less one conforms to the imposed routines, the more one's vulnerability increases, and prisoners will work out the optimum balance for their particular situations as part of their coping mechanism. Fourth, the antagonism to 'dobbing in' fellow prisoners (and thus risk becoming the lowest of the low – a 'dog') is so widespread that a degree of victimisation is accepted as part of the price of not seeming to join the side of the 'captors', to use Sykes' terminology. Finally, the prison culture as a whole can be somewhat reassuring – picking up in another context Wortley's identification of precipitating factors involved in prisoner-to-prisoner violence.
- 1.80 Edgar et alia use this point to reconcile their own work with that of Wortley. Having expressed their own concern that 'opportunity reduction policies can easily shade into an over-controlling approach which may lead to restrictive and oppressive regimes' (pp. 205–6), they emphasise that situational prevention must be seen as one component of a broader strategy which confronts the underlying causes of victimisation and conflict:

*Social controls are based on changing the culture, strengthening relationships, ensuring that the exercise of power is seen as legitimate by most prisoners most of the time, and developing mutual trust. Crucially, neither social nor situational methods advocate the maintenance of order through the enforcement of rules alone.*

<sup>23</sup> This observation is in accord with Wortley's analysis as to precipitating and situational factors.

<sup>24</sup> This safety paradox is present in WA prisons. For example, at Hakea Prison 60 per cent of prisoners stated that there was a great deal of prisoner-on-prisoner violence, whilst 66 per cent reported that they felt safe and only 11 per cent said that they never felt safe.

WESTERN AUSTRALIAN ISSUES

- 1.81 The recent literature serves to emphasise that bullying, violence and thus protection issues will not be solved in isolation. They must be seen within the holistic vision of the prison regime. A ‘solution’ to bullying cannot be found, and would not last, within a prison system or an individual prison that is dysfunctional. That must be the constant background to this thematic review.
- 1.82 Nevertheless, the discussion must focus upon detailed arrangements, attitudes and policies, for it is these that go to make up a significant part of that holistic picture. It will be seen that the failure to effectively target predators in mainstream population has arguably led to the increase in the number of prisoners wishing to go into protection and the ongoing pattern of high numbers. Bullying and stand-overs have become a commonplace or routine feature of prison life, so as to become acceptable to both staff and management. Passive acceptance of the hurt and pain caused by predators appears to be the collateral damage of prison life. The management comes to see these prison casualties as a normal part of prison culture and operationally acceptable.
- 1.83 As this anti-social behaviour is not effectively addressed as part of overall prison culture, the very same phenomenon is, as previously mentioned, present even in the protection units themselves. Of course, the extent is not as great, but it is true to say that there must be ‘protection within protection’ for some prisoners. A prisoner at Bunbury who had been in protection at other prisons for most of his sentence said:
- In the protection unit, I was always in fear. This is the first time I can sleep peacefully at night and not worry about being assaulted, threatened or stood-over when I am not behind my cell door. Here I feel safe.*
- 1.84 This example is a timely one, for it brings out that the Western Australian situation has its successful aspects. Bunbury Regional Prison has managed to integrate sex offenders with the general population. This is attributable to strong and consistent local management, and demonstrates – as the literature from around the world confirms – that staff and managers have the power to lay down the ground rules for controlling and regulating behaviour inside their establishments, and that the prisoners will take their behavioural cues from them.<sup>25</sup>
- 1.85 The remainder of this Thematic Review will examine those Western Australian prisons identified as being central to this issue – Acacia, Bandyup, Casuarina and Hakea – and outline the findings at each of the locations in line with the principles of the ‘healthy prison’.

<sup>25</sup> The same comment can be made about Karnet Prison Farm: see Report No. 5, *Report of an Announced Inspection of Karnet Prison Farm* (Office of the Inspector of Custodial Services, December 2001), paragraphs 1.17–1.18 and 2.3.

# Chapter 2

## PROTECTION PRISONERS AT HAKEA PRISON

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### THE BACKGROUND

- 2.1 The Review and research of protection prisoners took place at Hakea Prison between Sunday 10 March and Friday 15 March 2002, in parallel with the full prison inspection being carried out by the Inspector of Custodial Services.
- 2.2 The research followed the methodology described in Chapter 1. This consisted of structured and semi-structured interviews, as well as a series of observations, informal meetings and discussions, with prisoners and staff. In addition, questionnaires were issued to prisoners (24 issued of which 21 were returned completed, representing 31% of prisoners in protection) and to staff (seven were returned). Two meetings with prisoners were held on the wings in the day room, giving them the opportunity to speak about conditions on the unit out of the hearing of officers. These meetings allowed prisoners to voice and raise issues that were common to them all, or any individual problems facing them on the unit. Discussions were also held with staff out of the hearing of prisoners. These research techniques allowed both staff and prisoners to speak privately or publicly, from their own perspective, about the conditions and treatment of both groups who live or work in protection.

### DESCRIPTION OF THE PRISON AND THE PROTECTION UNIT

- 2.3 Hakea Prison is the main Reception, Remand and Assessment establishment for the Metropolitan Area. On 1 March 2002 it was holding 578 male prisoners, of whom 378 (65.3%) were remands and 200 convicted. Protection prisoners were all housed in Unit 4, which is centrally located inside the prison, surrounded on all sides by the mainstream population. At the time of the Review, Unit 4 held 76 prisoners (13.1% of the total prison population at that time).
- 2.4 The unit could be regarded as the H Block style of the prison architecture – a central area (office) with four separate wings leading from it, known as Wings A, B, C, and D, where the protection prisoners were located. Each of these wings can be locked and separated from the rest of the unit by the means of grilles at the end of each wing. Each wing has its own showers area, toilets, day room and some have an outside area (small courtyard) where prisoners can obtain fresh air and take some exercise.
- 2.5 A Wing was being used to facilitate the Sex Offender Treatment Program (SOTP), and some of the prisoners were ‘visiting’ for this purpose from other establishments in the prison system. Eleven prisoners were on the SOTP, whilst four were working and two were unemployed. B Wing contained a total of 19 prisoners of whom 12 were working and seven unemployed. C Wing had a total of 20 prisoners – 13 working and seven unemployed, and D Wing also had 20 prisoners (11 working and nine unemployed).
- 2.6 Staff stated that the facilities in A Wing were inappropriate for the SOTP course. There was little natural light and no air-conditioning, so that the atmosphere was oppressive and stuffy. Also, because the room was being used for lectures, other prisoners held there but not attending the course were

## PROTECTION PRISONERS AT HAKEA PRISON

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prevented from using the day room. A heavily utilised phone booth was located immediately outside the window of the room, so that to conduct teaching and counselling in this environment was not conducive to the programme, there being a lack of privacy.

### THE YARDS

- 2.7 Situated on the various wings, within the unit, were areas where prisoners could gain access to fresh air and sunlight. These yards contained a garden area with benches and shaded areas, as well as a barbecue and a small area where the men could exercise. During the Review these areas were normally locked and prisoners continually complained about the lack of access to fresh air and exercise. The Unit 4 complex is an old building by prison standards. It has low ceilings, little natural light, or fresh air flowing through the building and the cells are cramped and need refurbishment. People living in this extremely closed and restricted regime require open access to natural space, sunlight and fresh air.
- 2.8 The yard opposite the control room had to be closed by the Inspectorate during the first day of the Inspection (Sunday 10 March 2002). Inside this area were found two broken seats, where only two brick pillars remained. On top of these pillars were four metal supports sticking above the bricks, each about four inches long, and these posed a potential danger to both prisoners and staff. If any one fell against these posts, serious injury could result. Initial inquiries indicated that the metal posts had been there for about four months, but on the next day speaking to the officers, they stated it had been in this condition for almost a year. We were told that the Health and Safety Officer had submitted reports to his superiors some eight months previously, but no action had been taken. Although it was a simple problem to rectify,<sup>26</sup> no action was taken, and the yard remained closed to prisoners during the six days the Inspectorate spent at the prison. This small incident seemed to epitomise the service delivery found within the unit and in respect of protection prisoners.
- 2.9 During the inspection, the whole unit was usually open to prisoners between 4.30 p.m. and 5.15 p.m. Prisoners stated that they had had more freedom on the unit because of the Review, as usually the grilles were open for only around 30 minutes, and at times only 15 minutes, during the day. The lack of freedom in this unit is bordering on a punishment regime, rather than a normal prison environment.

### THE PLACEMENT OF PRISONERS IN THE UNIT

- 2.10 The Protection Unit is a high-use area of the prison. Yet there did not appear to be a systematic way of transferring prisoners to the unit or of allocating them within it. An officer stated: 'We have such large numbers we just accommodate them where we can. The sex offender treatment course has taken most of our single cells so that reduced our options by a quarter.' The main strategy was to

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<sup>26</sup> The necessary materials and tools were readily available in the Industries area.

## PROTECTION PRISONERS AT HAKEA PRISON

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attempt to locate 'like with like'. There was little concern about the offences for which the prisoners were charged or convicted, or whether the person was on remand or a convicted prisoner. Staff put it simply: 'Aboriginals with Aboriginals, old with old, and young with young.'

- 2.11 This approach was, at best, crude and cumbersome. One prisoner told us: 'I'm over sixty and the young man in the cell with me played his music loud; we had nothing in common, and I asked to move in with a man more my age. I made two applications, and they were disregarded by the staff. Eventually my friend asked the officers and was told to "fuck off", but later they moved me.'
- 2.12 Staff recognised that there were problems of locating prisoners who were either sexual or physical predators with the vulnerable and disturbed, but said that due to such large numbers and the premium for space, little could be done to accommodate these problem prisoners. The only recourse was to 'watch them like hawks and make sure they do not cause problems on the wing'.
- 2.13 Of the 66 prisoners housed in the Unit, 24 were unemployed. This meant that more than 35 per cent remained in the Unit, or in their wings, locked behind the grilles and thus cut off from short visits out of the unit (for medical services, visits, shop and library, gym and the oval).

### IDENTIFYING REMAND OR CONVICTED PRISONERS IN THE PROTECTION UNIT

- 2.14 It was impossible to establish readily who was a remand and who was a convicted prisoner, as the unit held both groups. On a pre-visit (22 January 2002), this issue had been raised. This information at that time was not readily available to staff, and the only way of establishing it was to check on the TOMS computer system on an individual prisoner basis.
- 2.15 It is important to recognise the need for staff to be able to recognise unsentenced prisoners living on the unit, especially where they reside with convicted prisoners because:

*Crucial to the proper treatment of unsentenced prisoners is the attitude and skills of prison staff. They need to be confident in their knowledge and application of procedures and have the interests of individual prisoners at heart in order to protect them from negative prison cultures. This can only be achieved if they understand the status of unsentenced prisoners, and are suitably trained to meet their particular needs. (Ramsbotham 2000:11.04)*

This is so whether remand prisoners are in mainstream or in protection.<sup>27</sup>

<sup>27</sup> The 'healthy prison' test, discussed at the beginning of Chapter 1, is equally applicable, with some refinements, to remand prisoners and remand prisons. That test is adumbrated as follows: (a) as to safety, the importance of sensitive treatment at reception, ongoing risk assessment and information sharing, and taking active steps to avoid bullying; (b) as to respect, the importance of politeness and courtesy, of repeating basic information for new prisoners, of fair treatment for all remand prisoners, of clean and decent conditions, of good health care, and of access to due process; (c) as to purposeful activities, the importance of full and predictable regimes; and (d) as to re-settlement, the importance of preparation for release and the importance of maintaining contact with family, friends and community. Note that the notion of preparation for release includes preparation for transfer to another prison after conviction and assessment.

## PROTECTION PRISONERS AT HAKEA PRISON

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2.16 On a subsequent visit to Hakea, green and yellow spots had been placed on the board in the unit office next to the name of each prisoner. Staff stated that this had only been done a few days before the prison inspection, and ‘green was for convicted and yellow for remand’.<sup>28</sup> Although this enabled staff readily to identify who was a convicted and who a remand prisoner, some of the staff on duty had not been informed of this new practice. In the presence of the principal researcher, one prison officer examining the board said: ‘What’s the green and yellow spots for?’ and the other officer replied: ‘I think the green allows us to use mace and the yellow are for people with a medical condition.’<sup>29</sup> The officers had only just returned from a number of rostered days off, and had not been briefed about the changes in procedure.

2.17 Many of the staff working in the unit also displayed little knowledge of matters relating to correct procedures that should be adopted in the treatment and care of protection prisoners. A prison officer said:

*The rest of the prison have been having training on a Wednesday, just prior to the inspection, updating them on the Operational Orders and Director General’s Rules. We cannot attend as we have a normal unlock for shops and library. I really do not know about what is expected of me as we have never had training in respect of protection.*

### STAFFING AND WORKING ENVIRONMENT IN PROTECTION

2.18 The Protection Unit is normally staffed by one Senior Officer (SO) and four base grade staff – one escort officer, one officer in the control room (office) and two wing officers, each responsible for two wings of the unit.

2.19 Officers were often used to cover staff shortages on mainstream. Officers said that protection was ‘always the first place to take staff from’. They were used on a regular basis in mainstream units, or to assist with mainstream recreation activities, or where there were shortages of staff in other units or elsewhere in the prison. Staff said that this constantly left the unit under-staffed, on what was in effect a ‘lock-down’ status, so that protection prisoners were only allowed outside their wing areas for roughly 45 minutes to one-and-a-half hours per day. Consequently, prisoners were normally locked behind the grilles with access only to the wing area for the majority of the day and limited access to yards or other parts of the unit. This meant that those prisoners who were not working, either because of their age or health related matters (at the time of this inspection about 36%, but always a substantial number), were restricted to a punishment-type regime with little access to fresh air or other constructive interaction with other prisoners.

<sup>28</sup> About half were remand prisoners.

<sup>29</sup> With such a bizarre conversation, the possibility did occur to the researcher that an elaborate joke might be being played at his expense. However, the overall context of the exchange and subsequent conversations made it clear that the conversation was serious and genuine.



## PROTECTION PRISONERS AT HAKEA PRISON

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2.20 To exacerbate matters, the Senior Officer was also required to attend a daily meeting with management, and this further depleted the number of staff on the unit, reducing the cover to the minimum operational complement of staff. Prisoners said:

*We hardly get any time to go into C Wing yard as it is always locked because it is open to mainstream. We are behind the grilles most of the time. It's no life and I haven't broken the rules here.*

*We are locked in our cells for 13 hours, do laundry work for five-and-a-half hours, then locked behind grilles for four hours, and only able to get out of the wings for one-and-a-half hours, sometimes.*

2.21 Wing officers said:

*I would ensure the staff are not taken away. We have enough as long as we are left alone. I control one SO, two wing officers and an escort officer. If one is sick he is not replaced. During recreation periods in mainstream, staff are taken from here, which takes us down to the minimum and the grilles are closed.*

*This morning we had four medical escorts, two interviews (official visits), four reception (two at court and two transfers) – that's a quiet day, but the escort officer can only do one at a time, and he is always chasing his tail. He has to fit in all of the escorts, and at times there are conflicts. If he is taken away, then we are in trouble, which is most of the time. We seem to have more staff at the moment, probably due to the prison inspection.*

2.22 The staff were normally found in the control room (office), rarely venturing outside this room, apart from prisoner counts and meals. When the grilles were locked, officers did not normally go onto the wings of the units, so prisoners were left unsupervised and very much to their own devices. It is somewhat surprising on two counts that staff do not patrol the wings: first, the office does not give staff a view into any part of two of the wings and only a partial vision of the grilles, or entrance, to the other two wings; second, the areas identified by staff and prisoners as areas where 'stand-overs' take place – such as toilet areas, showers, day rooms, cells or the yards if they are open – are left unregulated and unsupervised. Prisoners on the wings are therefore left unsupervised, and this allows predators opportunities to bully other prisoners unobserved.

2.23 A Senior Officer identified danger areas on the unit as follows: 'Shower rooms, day rooms, yards and cells. You cannot address them properly.' Another said: 'Millions of them, in every corner. Cannot see any of the yards from the control room. Showers where someone gets belted, but stand-overs in all the places. The Zone Manager said that C Wing yard is to be open all the time, that's why the wings are open today, this is just for the Inspection as it has been closed normally.'

2.24 Wing officers did not enter the wing area alone. Our own observation was that they mainly sat in the office talking, reading newspapers, or engaged in some form of administrative work. There is no doubt the culture of the unit is that of separation rather than integration.

2.25 Staff did not deny this. One stated: 'When I'm on escorts, I'm hardly in the unit. When I am there, I go and sit in a cell and have a yack and a smoke, but wing officers usually stay in the office especially

## PROTECTION PRISONERS AT HAKEA PRISON

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on hot days.' Whilst the staff can identify the problem areas on the unit, the responses to our survey questionnaires showed that they rarely addressed prisoners on a personal or professional basis.

2.26 Prisoners rarely saw officers on the wing, and many of them stated the staff had 'little knowledge of what was actually going on in the units'. Overwhelmingly, responses to the prisoner surveys confirmed this impression, with over 90 per cent of the respondents stating that staff did not work directly on the unit in a manner that was interactive with prisoners.

2.27 Staff shortages were, as has been seen, frequently cited as the reason for this separation. However, there was little evidence of direct supervision of staff by managers at any level. The control and monitoring of staff appears to have been left to 'drift', with no direct leadership in operational terms. Prison officers in the unit were never challenged or directed by supervisors to patrol or questioned as to why they were in the office. The culture of 'barrier' management that pervaded the unit was not challenged.

2.28 During the Review, a security test was conducted in which staff were required to open and check all the cells and take a count of the prisoners on the unit. It was found that, in two of the cells, the officer's key did not operate the lock. The other two officers tried to open the cell, and eventually one of the keys opened the locked cell door. In response to what should have been a huge embarrassment, one of the officers remarked: 'There are a number of cells on the unit which the keys won't open the door. Usually one of the other keys will work.'

2.29 This breach of safety was not treated as a major problem by the staff. Yet failure to gain access to the cell could result in loss of life in a serious incident.<sup>30</sup> All staff and supervisors were aware of the problems with the keys, but no management solution or strategy was adopted to address this problem.

### SENIOR OFFICERS WORKING IN PROTECTION

2.30 The foregoing matters all point towards hiatuses in management. In a day-to-day sense, Senior Officers are intended to be the line managers, and should be setting a lead. However, within the broader prison organisational structure, they are simply regarded by many of the staff as an extra pair of hands, rather than as a supervisor. This attitude is mirrored from above.

2.31 There were four Senior Officers on the roster, and none of them had any real 'ownership' of the unit. Each officer, when on duty, ran the unit in his own style, leading staff to frequently state that 'the rules change depending on who is the Senior Officer'. The 12-hour shift system also appeared to impede a stable management system. In the present system Senior Officers were only on the unit for three days at a time, and staff did not know which rules were to be implemented or which style

<sup>30</sup> In Report No. 12, *Report of an Announced Inspection of Hakea Prison* (Office of the Inspector of Custodial Services, December 2002), there is considerable discussion of the fire dangers throughout the prison system and particularly at Hakea: see The Inspector's Overview and paragraphs 3.11–3.15.

## PROTECTION PRISONERS AT HAKEA PRISON

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of 'leadership' was in force. Although there is a Zone Manager (Assistant Superintendent level), with overall responsibility for the unit, there appeared to be little interaction between him and staff or prisoners. To make matters worse, arrangements as to which Zone Manager has responsibility for the unit change from time to time.

2.32 In light of this dysfunctionality, it is really no surprise that there is no apparent consistency in operational supervision of procedures or practices present within the unit. One officer was also highly critical of the lack of training for supervisors, the lack of training for staff working in protection, the non-existent training in respect of bullying, and the non-application of protection policies within the prison. He stated that:

*They just send them here, it's simply passing the buck and this is the end of the line. Here the rest of the prison just forgets them. None of the staff have received any specialist training for protection. We don't get any on a Wednesday. We just fly on a wing and a prayer.*

2.33 The officer felt that he was 'just another body', he did not have the autonomy or authority to run the wing properly as a Senior Officer should be able to do. The officer stated: 'How can you have four different Senior Officers running a wing with any consistency?'

### THE MONITORING AND DOCUMENTATION OF PROTECTION PRISONERS – OPERATIONAL INSTRUCTION NO. 4

2.34 This key Instruction has been discussed in Chapter 1 and its terms are set out in detail in Appendix 1. The implementation of this policy is the direct responsibility of the designated Superintendent. In operational terms, the Superintendent should ensure that the staff and management of the unit are adopting those protocols on the ground. Our observations suggested that the procedures and rules governing protection prisoners at Hakea Prison have not been implemented correctly. We found that:

2.35 There is no written evidence on prisoners' files that any alternative options, other than protection, were attempted in the prison mainstream before transferring the prisoner. It was apparent from the records that a prisoner simply asks for protection and this is granted, without any of the listed options being attempted or suggested in the mainstream population: see Rule 4(a) (i–vi).

2.36 There was no documentary evidence of any written 'interim management strategy', in terms of Rule 4(a), and also a lack of any detailed management plan or written records of matters relating to the need for protection: see Rules 4(b) and 4(c). The protection forms were incomplete and imprecise, simply listing the six reasons for being placed on protection – namely, reprisals, racial issues, personality conflict, the nature of the offence, tribal issues and other – without spelling out in any detail the relevance of each of them. In the absence of proper documentation, there was little opportunity for staff to be able to address the original decision for protection status.

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- 2.37 In relation to the requirement that ‘suitable employment and activities should be provided for prisoners on protection’ (Rule 4(d)), the regime provided on protection amounted virtually to a punishment.
- 2.38 Very few prisoners were informed of the reasons behind the decision to place them on protection. Prisoners made statements such as: ‘It was my offence and they put me here. I had no choice.’ Others referred to ‘dramas in mainstream’, ‘debts’, or simply being ‘bashed by other prisoners’. Whilst most were aware that mainstream was not safe for them and knew their own motives for coming into protection, the prison did not inform the prisoners of any management strategy concerning them as individuals: see (Rule 4(e)).
- 2.39 There did not appear to be any effective system for the review of protection status. (Rule 4(f)) states that ‘the designated Superintendent shall ensure prisoners under protection are reviewed at no less than weekly intervals and the need for continuing protection assessed’. This is arguably the most important of the Rules. It is designed to ensure that, for the majority of prisoners, protection is a temporary measure and steps are being taken by staff to facilitate transfer back into mainstream. Prior to the Review a Senior Officer had been allotted to update the files of prisoners on the unit and the ‘Protection Review Book’. He informed us that there were 42 Admission Checklists missing from the files (63% of prisoners) and the protection forms were missing from 35 prisoner files (53% of prisoners).
- 2.40 The only written evidence of why the prisoner was located in protection was the protection form (Rule 4(g)), when present in the file. Examining the documentation of prisoners on protection many of them had forms filled in some eight months after being assigned to protection. In many cases these forms were the only documentation available and normally only contained a couple of words, which did not sufficiently explain the reasons behind the decision. If prisoners did not have protection forms, i.e. if the initial documentation had been omitted, then there was nothing to trigger a review.

### DETAILED DOCUMENTATION OF THE OPERATIONAL PRACTICE IN RELATION TO PROTECTION PRISONERS IN UNIT 4

- 2.41 The conclusions set out above were derived from the detailed analysis set out below. Files were randomly selected in relation to 25 prisoners (37% of the unit’s population), and photocopies were taken from the ‘Prisoners Review File’ and examined. It was found that only eight files contained a protection form signed by the prisoner at or near the time they were placed into protection. The Zone Manager had only signed three of these forms, approving such action; the rest had been left blank. The other 17 files had protection forms that were dated well after the person had been placed on the Protection Unit. Examples were as follows:

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- 2.42 Prisoner A had been placed on protection on 19 October 2001; the protection form was issued on 19 February 2002 and signed by the Zone Manager on the same day. Thus, this prisoner had been on protection for a period of four months without any documentation. Since his transfer he had been reviewed only twice – on 28 February 2002 and 7 March 2002.
- 2.43 Prisoner B had been placed on protection on 10 September 2001; the protection form was signed later on 19 February 2002, together with the Zone Manager’s approval. This prisoner had been on the unit five months without the necessary documentation. As with Prisoner A, the review process had only been commenced after the start of the Review by this Office – on 28 February 2002 and 7 March 2002.
- 2.44 Prisoner C had been placed on protection 31 March 2001; the protection form had been signed on 4 August 2001, and the Zone Manager approved it on 10 August 2001. Before that time, this prisoner had been on the unit five months without the necessary documentation. In one year on the unit this prisoner had been reviewed only four times (4 August 2001; 25 November 2001; 28 February 2002; and 7 March 2002).
- 2.45 Prisoner D had been placed on protection 10 September 2002; the protection form was completed 19 February 2002 and approved by the Zone Manager the same day. He has been reviewed twice – on 28 February 2002 and 7 March 2002.
- 2.46 Prisoner E was placed on protection 16 February 2000; the protection form was signed the same day. He has been reviewed 21 times in all – 14 times in 2000, five in 2001 and twice in 2002. His case is the one that most nearly meets the requirements of Operational Instruction No. 4.
- 2.47 Over the past years there is little evidence, from the records, of any meaningful review process having taken place in Hakea; the situation of Prisoner E was quite exceptional in this regard. However, it was apparent that since February 2002 there had been a concerted effort to update all the files and introduce some form of review. Even so, the depth of these reviews was questionable as the reviewer simply noted on the forms such comments as: ‘Remain on protection, prisoner very anxious’ or ‘Remain seg’ (short for segregated). This latter comment was the single most common entry concerning the review process. Obviously, this information tells interested parties nothing about the circumstances of the decision or the wellbeing of the prisoner on protection. The review process is an opportunity for staff to speak to every prisoner on protection, assess their wellbeing on the unit, deal with problems, examine the regimes for each prisoner and build an interactive, caring and professional relationship with prisoners.
- 2.48 The survey to prisoners (21 respondents) asked them to identify: ‘Why they had been placed on protection?’ Fifteen prisoners (73% of the respondents) had asked for protection, the other five had been placed on protection on the initiative of staff. Those who were regarded as sex offenders had been placed on protection without any real choice of going into the mainstream population. They wrote on their questionnaires such comments as: ‘No say in the matter due to the nature of the

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offence' and 'Magistrate sentenced me to protection.' Yet only 33 per cent of this group (seven prisoners) could be labelled as potential sex offenders (some of these being remand prisoners); the other 66 per cent had been transferred to protection because of problems in the mainstream prison. They offered such explanations as:

*Because I'm gay and I have been sexually assaulted in the past and I cannot defend myself and have a disability.*

*I was assaulted for not bringing drugs into the prison.*

*Because I'm an amphetamine cook on the outside, and I didn't and won't supply the prison drugs, stand-over tactics shit.*

*Outside drug debts.*

*Fear of other persons, due to the nature of my offence (Aboriginal assault).*

2.49 The protection prisoners were asked: 'How long have you been on protection?' Out of 20 respondents, 13 had been on the unit for less than one year, with four for over one year, and one prisoner five years on the unit. In relation to the issue of review, the majority of respondents stated that they did not know if they had ever been reviewed or, more definitely, that this had never been done. One prisoner was aware of having been reviewed once in two years on protection. Otherwise, the process was either not occurring or was so casual that it had made no impression upon them.

2.50 Officers working in the unit mirrored this lack of awareness about the review requirements.

They stated:

*The Senior Officer normally does it but I do not know. Main reason it doesn't get done because some of the prisoners are permanent protection.*

*Not up to me, not my field. Would assume the SO does it.*

2.51 Another knew about the process but assumed that it would be a waste of time for all concerned:

*There's a book that's kept. That's a waste of time, once they come in they are tainted and marked, they will stay. Review is an utter waste of time. There's a guy who raped an 84-year-old lady and stole her money – he'll be in here for a long time – once you're in Unit 4, that's it really.*

2.52 The documentary evidence, together with the statements made by staff working in protection and the supporting remarks given by prisoners reflects a culture of inaction or disregard of protocol and policies at all levels within the prison environment.

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EVALUATING PROTECTION ARRANGEMENTS AT HAKEA FROM THE POINT OF VIEW OF THE HEALTHY PRISON TEST

**Safety in the prison as a whole**

- 2.53 The first question is whether prisoners feel safe. Before addressing safety on the unit itself, which is a small part of a larger prison, it is necessary to look at the whole issue of the policies and strategies that are in place to address bullying or inappropriate behaviour. Linked to this is the training and induction of prisoners entering Hakea, as any strategy addressing the safety of prisoners should be prison-based. An integral part of this strategy is also the training and management of prison staff.
- 2.54 A pre-Inspection survey of Hakea conducted by the Inspector of Custodial Services found that only 36 per cent of the prison officers thought that the policies and practices relating to bullying were ‘effective’, whilst 64 per cent believed they were not effective.<sup>31</sup> The responses also showed that 83 per cent thought that physical assault happened often, 84 per cent believed that verbal abuse happened often, and 81 per cent thought bullying happened often. It appears from these responses that assault, verbal abuse and bullying have been identified by the staff as integral to the mainstream prison culture at Hakea.
- 2.55 The Inspectorate also surveyed prisoners about their safety.<sup>32</sup> Sixty-six per cent of the respondents stated that they felt safe, with 11 per cent stating positively that they did not feel safe and the remainder having no particular view one way or the other. Yet 60 per cent of the prisoners thought there was a lot of physical violence perpetrated by fellow prisoners – a fact that points up the relevance of the ‘safety paradox’ discussed in Section 15 of Chapter 1. The prisoners also identified the role of staff, with 40 per cent stating that staff perpetrated physical violence and 33 per cent asserting that they were involved in bullying prisoners. This also represents a culture of violence and intimidation within the prison. Those prisoners who did not feel safe in mainstream expressed the following comments: ‘I didn’t feel safe, not enough officers around’ and ‘Violence here is an everyday event, well covered up by the prison system.’
- 2.56 The survey evidence strongly suggests that both prisoner and staff experience a dominant and pervasive culture of bullying on both sides of the institutional divide. One prisoner claimed: ‘I had problems over here with another prisoner. Told them about it, but officers still sent me over here [the protection unit].’ Bullying appears not to be actively addressed at an institutional level by management or at a base level by the staff or prisoners within the institution.
- 2.57 The policies and practices relating to bullying and intimidation are covered by the Operational Instruction No. 15. This was referred to in Chapter 1, and revolves around the precepts of awareness, identification, intervention and training. Effectively applied, it seems calculated to minimise these problems.

<sup>31</sup> Of the 136 questionnaires issued to staff, 57 were returned completed, representing a return rate of 42 per cent.

<sup>32</sup> There were 51 completed questionnaires out of a total of 72 – a 73 per cent response rate.

## PROTECTION PRISONERS AT HAKEA PRISON

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2.58 However, the practice was radically different from the theory. What we found at Hakea Prison was that there had been:

- No staff training addressing this behaviour;<sup>33</sup>
- No prisoner training, or education at the time of induction as to how to deal with and address this type of anti-social behaviour;
- No staff training in recognising the different levels of bullying behaviour and how it develops within an institutional environment;
- A reluctance to move the predators off mainstream;
- No alternative regimes except Unit 1 (punishment regime) for predators and protection for the vulnerable;
- No understanding of the fact that if the victim is moved into protection and the predator left in mainstream, this creates a hero status for him.

### Safety in Unit 4

2.59 Safety on the protection wing itself did not seem a paramount consideration for staff. They regarded the prisoners as being generally weaker than those in normal location and thus not likely to be predators themselves. Such an assumption belies the profile of protection prisoners. Some are vulnerable and disturbed, and find mainstream far too dangerous, and this group contains some sex offenders. Others have serious personality disorders and/or are on some form of medication.

2.60 The residual group consists of prisoners who have problems with mainstream; they are generally younger and members of this group at times take advantage over the weaker prisoners. They identify themselves as Ordinary Decent Criminals (ODCs) and state that they are not ‘tamps’ or ‘dogs’. This culture-within-a-culture in protection is acknowledged by staff but is not effectively addressed or even challenged on the unit. In part, staff agreed to some extent with the negative stereotyping and labelling of sex offenders on the unit. Thus, there appears to be an acceptance of bullying within the unit by both groups. Prisoners stated they had been bullied whilst on the unit, and only three prisoners stated that they had not experienced it. Most of the victimised prisoners stated they had been bullied inside the wings; as mentioned, these are generally locked and lack staff supervision. When asked to describe what type of bullying took place prisoners stated: ‘verbal abuse, sexual abuse and assault’, ‘theft’ and ‘verbal abuse and theft’.

2.61 Such incidents were generally not reported to staff. Prisoners explained this in the following terms: that they ‘would have been called a “dob” and there was the possibility of physical attack if I did report it’ and ‘they [the officers] wouldn’t do anything, not for a “dog”; it’s hard enough here’.

<sup>33</sup> Anti-bullying posters stuck up at odd points around the prison are the nearest approximation to staff training: see further the discussion below.



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- 2.62 Prisoners were asked whether the staff were aware of bullying. Typical responses included: 'Rarely, they don't patrol the wings'; 'Yes – but they do nothing to address it'; 'Only when we tell them, they don't do much, if trouble occurs it's usually verbal and we generally sort it out ourselves. If physical the SO makes inquiries and they both go to punishment cells in Unit 1.' Out of 19 prisoners who answered this question, most believed staff were aware of the problems, but had little knowledge of their extent, and did little in addressing or challenging this anti-social behaviour.
- 2.63 In this regard, staff testimony as to the absence of training in regard to Operational Instruction No. 15 on anti-bullying policy was virtually unanimous. The only indication of the strategy was a poster, which had been slid behind the main notice board of the unit, making only half of it visible to both prisoners and staff. One officer said: 'There's the doc [pointing at the same time to the poster half-hidden behind the notice board]. I don't know how it operates.' Another member of staff, who stated he had been trying to deal with an allegation of bullying, said: 'The poster refers to Operational Order 15. I made inquiries but have been unable to get a copy of it. The prisoner was surprised I was going to take it up. He wanted to know who to write to about it.'
- 2.64 Staff in the unit are not trained to recognise the importance of effectively challenging intimidatory behaviour and argue the only action available to them is to send people to the punishment unit, after which 'they come back here; there's no alternative as they cannot go into mainstream and we have to deal with them the best we can'. Staff all acknowledged that 'stand-overs' took place on the unit. However, it was 'less than mainstream. Part of the reason is that prisoners want to be here, but "tamps" are looked down on by everybody.'
- 2.65 Although safety is an important concept, the prisoners and staff appear to measure it against life in mainstream, and thus paradoxically seem less concerned than one might expect against these tangible risks. When asked about whether they were in fear on the wing, prisoners stated:
- No, not any more as I am now the second-longest on B Wing. I've gained respect and give advice to new blokes as it can be intimidating if it's first time in here.*
- No, as I am in C Wing and people there look after me.*
- We are not slap-happy here and we get on well on the unit. We are all in the same boat.*
- We all have a common understanding about safety.*
- 2.66 To summarise: there is no effective anti-bullying strategy operating within the prison as a whole or within the Protection Unit itself. Prisoners have little faith in how the staff deal with predatory behaviour, and are reluctant to inform staff of incidents. Neither the staff nor prisoners have ownership of their home or work environments or lay down any firm rules governing anti-social behaviour. With no consensus about approaching bullying, the status of the predator is enhanced. The lack of prison officers on the ground or patrolling regularly on the unit also adds to the situation.

### Respect for prisoners

2.67 Prisoners stated that prison officers systematically ignored them when they were asking for advice or wanted access to items under officers' control, such as newspapers, cleaning utensils and so on. They stated some staff told them to 'fuck off', and staff at times, just simply carried on reading the papers without even looking up, whilst ignoring their requests. One prisoner stated: 'You can wait at control for over 15 minutes, just waiting for them to stop talking.' Prisoners in the discussion groups reiterated that 'we are not treated as equals - differently to prisoners in mainstream' and 'we are trapped in the wing for 90 per cent of the day with no chance to exercise or lose weight.' Sex offenders in particular felt demeaned. One referred to the way in which officers used 'phrases like, "Wake up happy campers"; "Come on you spineless lot"; or, when they were being escorted around the prison, 'Hold hands two by two.' The prisoners felt degraded by the officer who treated them as children and had little respect for them as people.

### Purposeful activity

2.68 The majority of protection prisoners live in a restricted regime environment, in comparison to the mainstream population. They are disenfranchised in relation to their choice of work, education and all forms of recreation.

2.69 Work is limited to the laundry. It appears that the laundry needs a stable work population of prisoners, and the Protection Unit supplies such a workforce in a remand prison. Many of the prisoners in the unit will remain in that work situation until they are convicted. Although Hakea is primarily a remand prison, many protection prisoners stay there after conviction; one prisoner, for example, has been on the unit for five years.

2.70 Operational Instruction No. 10 (dated 13 March 2002), 'Employment of Protection Prisoners', purports to make the full range of work opportunities available for those in protection, but then goes on to emphasise laundry work. The Instruction states:

There is an agreed position that the Laundry, because of its operational needs, must be the primary focus of employment of protection prisoners with all other areas being secondary... No prisoner employed in the Laundry is to be transferred to another work area without the approval of the Laundry Manager and Unit Manager. Any impasse in this process is to be referred to the Zone Manager for resolution.

2.71 Other work, even in the units, is not to impinge upon this:

**Employment in the unit.** The Unit Manager may employ up to a maximum of eight prisoners in accordance with the Gratuity Profile. Prisoners are not to be 'poached' from the laundry to achieve this.

## PROTECTION PRISONERS AT HAKEA PRISON

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**Employment in Visits.** The Senior Officer Visits may employ up to a maximum of five prisoners in the Visits area as cleaners. Prisoners are not to be ‘poached’ from the Laundry to achieve this.

2.72 As these Rules indicate, the need to keep the laundry going is paramount, overriding welfare issues.

Prisoners told us that ‘work in the laundry takes precedence over everything. If you are sick, you must go to work until you are seen by a medic, which can take days.’ Another said: ‘I work in the laundry, but I want to work in visits. The guy in visits will have me as I am a good worker but they refuse to let me go. Once they have you its impossible to get out of the place.’

2.73 Allegedly, there are also health risks, involving the sharing or re-use of gloves. One prisoner said: ‘There is a clear breach of duty of care in prison. Laundry workers are starting to wear gloves that may be contaminated with Hepatitis B and C and AIDS. This is a breach of the duty of care.’

2.74 The financial rewards leave much to be desired. There are pay differentials in comparison to other mainstream workers doing comparable work for the same hours. Laundry work is paid at Level 4 (\$19 a week), whilst some comparable work is paid at Level 1 (\$36 a week).

2.75 Disadvantage spills over from the workplace into general prison life. Lunch breaks are often very short and access to recreational activities and the library is circumscribed. Prisoners normally work from 8.15 a.m. to 3.00 p.m. (Monday to Friday) and take their lunch from 12.05 p.m. to 12.35 p.m. Many of them complained that they did not have enough time to eat their lunch before returning to work. Some prisoners alleged they were still eating their lunch when being escorted back to the laundry. The availability of escorts does at times dictate how long prisoners have to eat, because the escorts are normally conducted when the rest of the prison population are on lock-down eating their own lunch.

2.76 Despite these tangible disadvantages, prisoners were nevertheless concerned at the prospect of losing their jobs. As there was no other real access to work, the consequence would probably be that they would be moved to Casuarina or Acacia so as to make way for another protection prisoner brought in to keep the numbers up in the laundry.

2.77 Education is also an important part of a structured day in prisons. However, only two hours’ a week is available – usually on Friday afternoons and involving computer training. Protection prisoners with writing or reading difficulties are not catered for at all. One prisoner said: ‘I’m sorry, I cannot fill in the questionnaire as I cannot write or read that good. Can I see you and you can ask me the questions?’ No educational opportunities had been offered to this prisoner. A prison officer acknowledged the deficiency: ‘They need more access to educational facilities; lots could do with help if you see the letters they send, especially reading.’

2.78 In summary, prisoners called education a ‘joke’ or ‘a pathetic excuse for education’. The standard of educational services is unacceptably poor.

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- 2.79 Linked very closely to the provision of education is library access. There are two libraries within Hakea Prison. One is a law library for prisoners to prepare and research their defences or appeals. This library was not available to protection prisoners, even though many of them were on remand. None of the prisoners interviewed even knew of the existence of this library.<sup>34</sup>
- 2.80 Access to the other library is on Wednesday mornings when the rest of the prison is on lock-down for staff training. Prisoners told the reviewer that sometimes the library was closed, and some of them had not been able to gain access for well over two weeks. The prison shop is adjacent to this library, and when it is open they have to conduct their spends and in the same time period choose books. Prisoners only had between ten and 15 minutes to choose books from this library. On the grounds of security, a total of 66 prisoners have only around 30 minutes to gain access to the shop and library and then to return to their units, to be escorted to work before the mainstream are released from lock-down. The library officer told the reviewer that protection prisoners as a group were avid readers, but there were frequent occasions when the library had been closed on Wednesday mornings.
- 2.81 In a remand prison it is essential that prisoners have access to a legal library. At Hakea there is no such provision for prisoners on remand, and this could influence the opportunities to prepare their cases or research issues concerning their defences. Likewise, many prisoners on protection are charged with further offences and these men also do not have access to the law library.
- 2.82 Recreation for prisoners on protection at Hakea is quite limited. Indeed, the prisoners who work in the laundry (usually about half of the population of the unit) do not have access to the gym at all during the week. This is because the time of access – 2.00 p.m. to 3.00 p.m. – clashes with their workday (which does not finish until 3.30 p.m.). Gym access is thus, in effect, only available for unit workers and the unemployed, and then only if a recreation officer is available. In practice, gym is cancelled quite often; access for protection prisoners is not a high priority for management.
- 2.83 Consequently, the only recreation laundry workers have is access to the oval at weekends. In anticipation of the inspection of Hakea, Instruction No. 8 – ‘Access to the Oval’ – was promulgated on 7 March 2002.<sup>35</sup> It states:
1. Access to the Oval is to be facilitated every Sunday afternoon between 1300 and 1415 hours.
  2. For this to occur there must be at least eight prisoners or more.
  3. Where there are less than eight prisoners willing to attend, access to the Oval will not proceed.
  4. The Wing grille gates are to be secured during this period while unit staffing is reduced.<sup>36</sup>

<sup>34</sup> This matter is fully discussed in Report No. 12, *Report of an Announced Inspection of Hakea Prison* (Office of the Inspector of Custodial Services, December 2002), Chapter 2 and Recommendation 2.

<sup>35</sup> Another Operational Instruction – No. 7, Use of a Barbecue – was promulgated a few days before the commencement of our Inspection. This provides for use of a barbecue once a month – something that had never previously occurred.

<sup>36</sup> We were informed that protection prisoners had previously only been to the oval twice in three years – namely, during the two weekends prior to this Review.

## PROTECTION PRISONERS AT HAKEA PRISON

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2.84 There is no provision for older prisoners on the unit. One of the ten or so men on the unit who could be regarded as senior citizens said: 'I'm well over 60 and my legs are not so good. I would love to go to the oval but if I got there I'm sure I couldn't get back.' This group was completely disregarded in relation to regimes for older prisoners, or alternative exercise.

### Preparation for release

2.85 It is important for prisoners to be able to continue or strengthen their family links whilst in prison. There are severe restrictions as to when protection prisoners can receive visits at Hakea. Visiting times for ordinary protection prisoners are 9.30 a.m. to 10.30 a.m. on Mondays, Wednesdays and Fridays and 9.00 a.m. to 10.00 a.m. on Saturdays, and for sex offenders 9.30 a.m. to 10.30 a.m. on Tuesdays and Thursdays.

2.86 The time of 9.30 a.m. was far too early for many of their families to attend the prison. Many of them had not had regular visits and believed that part of the explanation lay in the inappropriateness of these times. It should be noted that these restrictions applied also to remand prisoners who, in mainstream, are entitled to daily visits at more convenient times.

### Healthy staff

2.87 The material aspects of the healthy prison test for staff were that:

- they are informed and consulted within their sphere of work;
- they have high expectations made of them; and
- they are well led.

2.88 Prison officers working in protection were rarely consulted, or informed in any depth if at all, of the circumstances behind the transfer of prisoners into the unit. Senior Officers complained about the lack of consultation and the fact that, in their view, the Zone Manager made decisions without knowing the effect of those decisions on the unit. Staff stated that they had never had a wing meeting where individual prisoners were discussed in a professional manner.

2.89 In relation to programs operating for prisoners on the unit, officers had no knowledge of what went on in respect of the only program taught on the unit (Sex Offenders Treatment Program). Many of the staff expressed the need to know more about sex offenders, who were a significant group on the unit. One officer captured the mood when he said:

*How can I deal with sex offenders when I know nothing at all about them, except what I read in the paper. We have no training. I do not know what makes them tick and nothing in the way of treatment and care of them.*

## PROTECTION PRISONERS AT HAKEA PRISON

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2.90 Expectations are closely related to the way prison staff are trained, and it is unreasonable to expect anything of staff if you do not train them for their roles. The prison survey conducted by the Inspectorate at Hakea found profound deficiencies in this area.

2.91 Staff said:

*The sort of training we need is crisis counselling. I cannot understand how some one can find a two-year-old attractive. What makes me tick rather than bash. We need conflict resolution. When someone cuts up, I simply wrap a towel round it and send him off to the health centre.*

*All we've had, apart from security training, is 'keep them apart'. The training is inadequate – as I did not know the Director General's Rules or Operational Orders. I have tried to deal with a case of bullying with a prisoner and using the poster which refers to Operational Instruction 15. The problem is to bluff my way through it, and the SO didn't know it either.*

2.92 Different members of staff outlined the level of training they had received – 'No CPR in the last four years, ten years since my First Aid training and no refresher course'; 'No training in respect of protection, First Aid March 97, CPR December 2001'; 'Only received CPR because I kicked up about it. We have more of the older guys and slash-ups on this wing.' Other members of staff simply wrote, 'None.' It was all-too obvious from speaking to officers working in protection that none of them have received any specific training in respect of the group of prisoners they deal with and consequently there are 'not informed or consulted and have low expectations made of them'.

2.93 Prison officers working at all locations at Hakea identified areas of need and stated that they did not have enough information on the following areas:

- Prisoner assessment (76%);
- Psychology and mental health (87%);
- Individual Management Plans (IMP) (86%) – in the survey only nine per cent of the 54 staff respondents stated they had enough knowledge to do their jobs properly;
- Aboriginal culture (51%).

2.94 Staff also stated they had received little training, apart from Control and Restraints, in the last five years. Only seven per cent had received any suicide awareness training, 14 per cent cognitive/behavioural skills training, five per cent assessment procedure training, two per cent Individual Management Planning training, and 11 per cent cultural awareness training.

2.95 In relation to being 'well led,' a massive 84 per cent of officers said relationships between uniformed staff and prison management were mediocre or poor, rather than very good, good or satisfactory. The first line managers (Senior Officers) appeared to know little more than the base grade staff of the procedures and protocols in respect of protection prisoners. Although there was a 'Protection Review

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Book', it had not been correctly used for many years. None of the supervisors had received any specific training in respect of protection nor had there been any management training in the last ten years.

### CONCLUSION

2.96 The Department falls well short of meeting the healthy prison tests in relation to protection prisoners at Hakea. Being in protection is tantamount to undergoing a punishment regime, in terms of the practical limitations upon quality of prison life.

2.97 Operational Instructions 4 and 15 are not being implemented. Properly applied, the latter Instruction would go some way towards controlling the increases that have occurred in the numbers of protection prisoners in Western Australia. Staff training in relation to how to combat bullying within the prison is non-existent. A structural façade is in place, but is not really operative at an operational level. No person at the prison appears to be accountable or responsible for supervising these Instructions at a base level within the prison, or at Department level. Whilst the Superintendent is responsible operationally, it appears from the review that he has not taken charge of ensuring that the Instruction is being implemented within the prison. Assistant Superintendents have disregarded or failed to ensure the effective implementation of both Operational Instructions, and Senior Officers have little understanding of how they operate within the unit or at a prison level.

2.98 In summary, Hakea Prison is not properly prepared for its role as the primary public-sector protection prison in Western Australia. If accreditation were required for handling protection prisoners, Hakea would by any sensible criteria fail the test.

### Postscript

*In its response (16 March 2003), the Department states that protection prisoners are now held in Unit 6. This move occurred within two months of our Inspection. The Department also states that prisoners are reviewed weekly, that recreation opportunities are now available and that about 75 per cent (52/70) of such prisoners are now employed, mostly in the laundry.*

*Whilst these improvements are to be welcomed, none of them erodes the main points in this section.*

# Chapter 3

## PROTECTION PRISONERS AT CASUARINA PRISON

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### THE BACKGROUND

- 3.1 The Review and research of protection prisoners took place at Casuarina Prison between Tuesday 12 February and Thursday 14 February 2002.
- 3.2 The research followed the same methodology as in each of the other prisons, consisting of structured and semi-structured interviews with prisoners and staff, together with a series of observations, informal meetings and discussions. It also included a series of prisoner questionnaires, together with interviews with ten prisoners, representing 17 per cent of the protection population, and staff questionnaires to seven staff. A random selection of prisoners and staff were interviewed over a three-day period, with some private meetings, on a one-to-one basis, in a wing office. Numerous unstructured and informal conversations were also conducted with prisoners and staff within the Protection Unit.

### DESCRIPTION OF THE PRISON AND THE PROTECTION UNIT

- 3.3 Casuarina is the high-security prison for Western Australia. At the time of the Review, it held 369 prisoners, with 57 protection prisoners in Unit 6, and eight high-protection status prisoners housed in the Intensive Observation Unit (IOU). Thus, protection prisoners constituted 18 per cent of the total prisoner population.
- 3.4 The prison opened in 1991 and is of modern construction, and the units have a feeling of space, cleanliness and natural light. All the units have their own security fences on the outside of the living accommodation which can be opened electronically via the control room in each unit. The security fence allows prisoners the freedom to leave the unit, but still be contained within a defined area. The yards contain a fenced sports area, about the size of a basketball court, and a grassed area where prisoners can sit.
- 3.5 The unit housing protection prisoners is known as Unit 6. The building is divided into two separate areas. On the left side of the building are Wing A (housing long-term prisoners) and directly above this Wing C, which is mainly used for young prisoners and others who are seen as problematic or would be considered a danger to other prisoners in the unit. On the right side of the building are Wings B and D, which house a mixture of protection prisoners together with the vulnerable and disabled.
- 3.6 Unit 6 houses the usual cross-section of prisoners deemed to be in need of protection: serious sex offenders (child rapists, sexual murderers, paedophiles), prisoners who are in danger from other prisoners within the prison because of debts or giving evidence against other prisoners, vulnerable and disturbed prisoners, who suffer from a variety of personality disorders or other forms of intellectual disability, and those who for a variety of reasons would find it hard to fit into normal location. Many of the vulnerable and disturbed are older prisoners (some with medical conditions) who have no previous criminal history or similar past lifestyle to the rest of the prisoners on the unit.



## PROTECTION PRISONERS AT CASUARINA PRISON

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- 3.7 The majority of prisoners housed in Unit 6 have some form of personality disorder (whether social or medical), suffer from disability or illness, and are using some form of medication. In addition, a large proportion of prisoners have been serious drug abusers. In a sense the unit is a divided place between those prisoners who genuinely are in need of protection, those who should be contained in a secure medical institution and those who should be protected in protection from a variety of sexual and physical predators. Staff referred to the unit as ‘a jungle within a jungle’.
- 3.8 All prisoners who live in Unit 6 are considered, no matter what their offence, as ‘tamps’ (sex offenders who tamper with children) by the rest of the prison population. They are labelled, judged, shouted at and insulted by the rest of the prisoners whenever they leave the security of the unit. Cluster stereotyping means that the majority of prisoners are at risk from the mainstream prisoners. Consequently, once they have been located in Unit 6 it is extremely difficult to relocate them – a fact that emphasises the need to be extremely circumspect about classifying prisoners for protection in the first place.
- 3.9 Inside the unit, the same practice of labelling takes place. The ‘normal’ or ‘ordinary decent criminals’ (ODCs), as they call themselves, refer to those prisoners who are sex offenders as ‘scum’, ‘dogs’, ‘lower than human beings’ or ‘tamps’, and state forcibly that they have little to do with them on the unit.
- 3.10 Unit 6 is completely surrounded by a security fence; within this is an area for the prisoners to play sport. This provides the opportunity for prisoners to exercise within the curtilage of the unit. On the other side is a grassed area with seating and shade for prisoners who do not wish to exercise. This area is not used to the extent it could be because of the shortage of staff on the grounds of safety; this is despite the fact that it is separated from the rest of the prison and is indicative of the pervasive sense of vulnerability.

### THE INTENSIVE OBSERVATION UNIT

- 3.11 High-protection-status prisoners are located in a high-security building that also contains the Special Handling Unit (SHU). At the time of the Review, this area contained eight prisoners who were classified as requiring high-protection status, normally because of their offences and in some cases their previous occupations.
- 3.12 Of these prisoners, only five could be regarded as in need of a high-security regime. The other three prisoners on the unit were there because they were considered suitable by prison staff to be involved in the sensitive role of admissions, and because of this they were located off mainstream. The isolation prevents them revealing any information they garner from this role to other prisoners. Prison officers also made the assumption that these men were ‘different from the crowd in mainstream and they would be in danger there’.

### THE PLACEMENT OF PRISONERS IN THE PROTECTION UNIT

- 3.13 A Senior Officer spoke of prisoners being ‘dumped’ into the Protection Unit. He questioned whether there were proper procedures and assessment routines in place. Within the unit itself, the allocation of prisoners to the various wings can be a major problem as many of them, especially the younger prisoners, bully the weaker prisoners and the vulnerable and disturbed.
- 3.14 Normally the long-term sex offenders are placed on A Wing, which most staff regarded as being self-regulating and having few problems. Directly above this is C Wing. This area has been designated for the problem prisoners, normally much younger than the rest and commonly known as ‘political prisoners’ within the units. Many of these men owe money for drugs, have had problems with other prisoners outside or inside the prison and have been assaulted in mainstream. Inside the main prison these men would not be considered as predators, but on a unit housing older prisoners and the vulnerable and disturbed, these men have the opportunity to ‘flex their muscles’ and cause problems for weaker prisoners. The staff attempt to locate these prisoners away from the vulnerable and disturbed (wings B and D), but problems do frequently arise when there are insufficient places available on the unit or a prisoner is causing problems on his assigned wing. At such times prisoners may have to be moved into the vulnerable and disturbed wings (B and D). Staff see this inappropriate risk-taking as an ongoing structural and operational problem for the unit.

#### A Wing

- 3.15 This wing holds long-term lifers in semi-self-care, some of whom were high-profile offenders, such as serial killers, paedophiles, child killers, sexual murderers and stalkers. The staff working in the Protection Unit encourage some of these prisoners to influence the behaviour of prisoners on C Wing, but there are dangers in this practice because some of them are still sexual predators and, as mentioned, C Wing prisoners may themselves be looking for opportunities to flex themselves. This wing was holding 14 long-term prisoners at the time of the Review.

#### B Wing

- 3.16 The vulnerable and disturbed wing contained prisoners who had a mixture of problems. Some of these related to their age (especially some of the sex offenders), their mental capacity and their overall physical weakness.

#### C Wing

- 3.17 Offenders on this wing were usually placed on protection because of problems they had on mainstream including bad drug debts outside and inside prison, family problems, and having been assaulted in mainstream. Some of the younger prisoners were considered as ‘predators’ by staff and other prisoners on the unit. Staff used this unit as a place to locate potentially troublesome prisoners. This unit contained 12 prisoners.

## PROTECTION PRISONERS AT CASUARINA PRISON

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### D Wing

- 3.18 This wing was also for vulnerable and disturbed prisoners and held prisoners similar to B Wing. Between them, B and D Wings contained 31 prisoners. The total count in Unit 6 was 57 prisoners.

### STAFFING THE PROTECTION UNIT

- 3.19 The unit is normally staffed by one Senior Officer (SO) and three base grade officers, one officer being in the control room (office) and two on the wings, each responsible for one side of the unit. There is also normally an escort officer, not attached to the unit, who has the responsibility of escorting prisoners from protection to various parts of the prison.
- 3.20 In the centre of the building, separating the two sides, is the control room. It is permanently staffed by a prison officer, who is able to observe both sides of the unit, including the day rooms, but has no vision of the cell areas or of the outside of the building where prisoners congregate when the unit's doors are open. The unit doors are only open when there is a full complement of staff.
- 3.21 The officer in the control room has a number of duties, which include answering the telephone, issuing gardening equipment and other items of property, and dealing with application forms and a variety of personal and institutional queries from prisoners from each side of the unit. At the same time he/she is expected to operate the electrical gates and doors to the whole complex. This needs total concentration and he/she has little time for observing particular prisoners. The other two prison officers have responsibilities for prisoners on each side of the unit (about 30 prisoners each) but are normally located or found inside the control room, assisting the controller. Wing officers do not work inside the units on a permanent basis and see their roles as regulating their wings from outside the unit. They were asked how they supervise the wings and although staff stated they worked inside the unit, most of the time they were located inside the control room answering queries from the window. When asked how often they patrolled the unit, wing officers said such things as:
- That's a difficult one. We check things, get a feeling but normally in and out.*
- Usually muster, unlock, cell searches and medication as a basic officer; as an SO I spend time with prisoners and get to know them.*
- 3.22 Other officers simply stated: 'regularly', 'as required', 'usually in and out, but there's usually a reason – cell search', 'half a dozen times; they are always locking the keys in their cells'. These answers tend to confirm that presence within the accommodation areas is abnormal rather than normal.
- 3.23 The protection prisoners themselves were reasonably satisfied with the level of contact. They said:

*They wander through and sort problems.*

## PROTECTION PRISONERS AT CASUARINA PRISON

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*They should be in control, mix more with prisoners. Sometimes you don't even see a screw outside [in the yard].*

*Mainly in the control room, but they do patrol.*

*They work directly, a must of a good crew. Heaps better than mainstream.*

*Wander around, pretty good.*

*They are there enough. Talk to me and see me sometimes.*

3.24 Even though prisoners' views varied, over 60 per cent of the prisoners believed the officers who worked on the unit on a permanent basis had an understanding of the problems within the wing areas. Nevertheless, all the prisoners remarked that they would like to see more staff walking around the units and interacting with prisoners.

3.25 Problems frequently arise when one of the wing officers is required for escort duties. When this occurs, prisoners are locked inside each of their day areas until there are enough staff to allow open conditions. Open conditions allow all the prisoners on the unit to associate, outside their immediate living areas. Where prisoners from all the wings do associate together, the logistics of observing them effectively with only two members of staff presents an impossible scenario with all the blind spots both inside and outside of the unit. This is arguably when some of the control problems and inappropriate behaviour takes place.

3.26 When there are sufficient officers available, they normally spend little time effectively patrolling the unit, apart from meals, medication, spends and prisoner counts. The culture of Casuarina, as with some other prisons in WA, is not one of close or direct supervision. The 'barrier method' management style adopted in this prison isolates staff from what is going on inside the two separate parts of the unit, preventing both officers and prisoners from developing a closer relationship that would benefit the running and management of the unit.

3.27 Officers stated that before the 1998 riot, the unit office (control room) was open, with no reinforced glass, but since that incident the barriers have been reinforced. This now provides 'a safety barrier, in case the wheel comes off, and I wouldn't want to go back' [to the pre-riot arrangements], as one prison officer stated. Officer safety is a paramount consideration when dealing with such a variety of offenders, but these barriers can create the problems of distance and an unbalanced relationship between the two groups. If prison staff are not working directly with prisoners, then there is a danger that staff are not aware of all that is going on the inside the unit.

### SENIOR OFFICERS WORKING IN PROTECTION

3.28 Senior Officers spoke about the difficulties in allocating prisoners to appropriate accommodation on the unit and how the mix of prisoners at times made the management of the unit 'almost impossible'. Comments included the following:

## PROTECTION PRISONERS AT CASUARINA PRISON

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*What we have here is a 'jungle environment' and we have no effective way of dealing with it.*

*This is an area for vulnerable and disturbed – the object is to keep that group stable and having to cope with their vulnerability. It's difficult sometimes to deal and keep the unit stable but the added problem of other prisoners, sexual offenders who are predators and the younger element.*

*On Wing C, we have five or six young ones who cause problems on the unit for the rest of the prisoners. They are protected prisoners but they are only here because it's easy time for them, they have no peer pressure from any of the other prisoners. They can be heavies, in the sense with the vulnerable and disturbed.*

- 3.29 Senior Officers as a group complained that they were not involved at all in the initial management decisions as to who got sent to Unit 6:

*We don't run the wing as we have no control over who is sent here. Those decisions are out of our hands. We just have to get on with it.*

### THE MONITORING AND DOCUMENTATION OF PROTECTION PRISONERS – OPERATIONAL INSTRUCTION NO. 4

- 3.30 There were no clear documentation processes in operation at Casuarina Prison in relation to protection prisoners. Operational Instruction No. 4 had not been effectively complied with. There was no evidence that 'alternative options', other than protection, had been attempted in mainstream: Rule 4(a), (i–vi). There was no evidence of any interim management strategies or written evidence to support such a strategy in any of the files examined during the review: (Rule 4(b), 4(c)).

- 3.31 Some staff were informally aware of individual reasons for particular prisoners being located on Unit 6, but there was no written documentation either in relation to those prisoners or generally. Only two protection forms (from examining a random sample of 15 prisoner files) were found on the unit. The surveys and discussions show that neither staff nor prisoners were aware that the review process was meant to take place 'at not less than weekly intervals'. Prisoners when asked about the review stated:

*No, once in protection that's it. (Prisoner came into unit in August 1995 – not a sex offender);*

*Once a year. (Came into the unit in May 1996 – not a sex offender);*

*Unknown. (Came into the unit July 2001 – not a sex offender);*

*I think every couple of months. (Came into the unit July 1998 – sex offender);*

*This February, nothing before. (Came into the unit March 1998 – sex offender).*

- 3.32 The requirements of Operational Instruction No. 4 were unknown to most of the prison staff working in protection, apart from a small number of officers who had a very vague understanding of it. In relation to the review process staff said:

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*I honestly don't know if there's a set time for it. If they request protection that's it.*

*Some are never [reviewed], not to my knowledge.*

*Not for a very long time.*

*Couldn't say specifically, once labelled then there is little option in the mainstream.*

*Varies from prisoner to prisoner, long-term annually, the others fortnightly or monthly.*

*Nothing laid down on a regular basis, but to vet every prisoner is impractical and a waste of resources.*

- 3.33 It is evident that there is no review of protection prisoners taking place at Casuarina Prison in any documented or structured way.

### DOCUMENTATION OF OPERATIONAL PRACTICE OF PROTECTION PRISONERS IN UNIT 6

- 3.34 It had originally been intended, as part of the fieldwork, to randomly select files of 15 protection prisoners and examine closely the review process of five of these. This simple exercise proved problematic, however, as only two of the files contained a Protection Form and some documentation. The other 13 files contained no protection forms, so it was difficult to establish why the prisoner was placed on protection. The protection form states the reasons why the prisoner was placed in protection, whether at his own request or when the prison made the decision. Absence of documentation makes proper management and review impossible and also raises real questions of due process.
- 3.35 The Department has three methods of recording information concerning individual prisoners: the prisoner file (hard copy), the Total Offender Management System (TOMS – electronic database) and the Department's central records. With no protection forms in hard-copy version held on the wing, the electronic version was the only other source of information available at the prison. The TOMS contained extremely limited information under the heading 'Protection', and in all the files examined (ten on the computer) the reasons for protection were blank. There appeared to be no alternative information source. Checks made of the last option, the central records at the Department headquarters, confirmed that protection forms were missing from most of those files also. It appears that prisoner files held at Head Office are no longer updated regularly, nor is information being placed on the TOMS system.
- 3.36 There was a considerable amount of buck-passing in relation to these deficiencies. Senior Officers stated that the responsibility for providing this documentation rests firmly with the units that initiate the transfer of prisoners to Unit 6. Staff also stated that many of those prisoners had been transferred from Crisis Care or the Infirmary, and no protection forms had accompanied them upon transfer. In addition, prisoners transferred from other prisons direct into Unit 6 likewise often arrive without documentation, it was claimed.

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3.37 Confirmation of this assertion was found during the Review (5 February), as a prisoner was received in Unit 6 from Albany Prison. Because he had been a protection prisoner in that establishment he was automatically sent to Unit 6. On the 14 February the prisoner's forms arrived from Albany by normal post (they should have been with the prisoner on arrival). They stated:

*Prisoner transferred to Casuarina as he needs protection if housed in Albany. ASMM advised of reason. He does not require protection in any other prison.*

3.38 The TOMS system provided no evidence to show that this prisoner only required protection status at Albany, and on arrival at Casuarina no admission check-list was completed and added to his file. This prisoner had at this stage been in Unit 6 for nine days, and was now labelled and known as a 'tamp' by mainstream prisoners. The difficulties of transferring him back to mainstream had thus been exacerbated during this period.

3.39 Another prisoner on Unit 6 had been transferred from Hakea Prison three years previously because of a problem with another prisoner in mainstream. The protection prisoner had not been reviewed since arriving at Casuarina even though the prisoner who originally threatened him had died almost two years ago. There was no effective strategy to move this prisoner into the mainstream population, for he also had now been labelled.

3.40 In summary, Operational Instruction No. 4 is not operating at a unit level and steps need to be taken to ensure that the necessary documentation is provided when prisoners are housed in Unit 6. Once located in Unit 6, steps must be taken to ensure that staff, supervisors and management conform to the requisite standards and review processes.

### THE INTENSIVE OBSERVATION UNIT

3.41 Files and paperwork were examined in the IOU, and out of the eight prisoners deemed to require high protection, only one had a protection form. This stated under the review section, 'duration of sentence' – which meant that his case will not be reviewed for the whole of his sentence. The other seven prisoner files contained no protection forms and had not been reviewed; however, monthly management meetings are held on this unit and their cases are discussed regularly. The prisoners are generally high-profile and all are located within the unit for their own safety. Their backgrounds and offences vary from being an ex-police officer and an ex-prison officer to a race-motivated murderer, a high profile paedophile and a drugs informant. While their status is unlikely to change, the regulations are explicit that prisoners should be reviewed 'at least weekly'.

### SAFETY WITHIN THE PRISON

3.42 In the survey of Casuarina Prison staff conducted by the Inspectorate in September/October 2001, 100 per cent stated that prisoner-on-prisoner bullying was prevalent, with 61 per cent stating it occurred often, and 39 per cent sometimes. Breaking this down somewhat, 39 staff stated that sexual

abuse happened often, 31 sometimes and one never. Physical abuse was reported to occur often by 22, sometimes by 17, and never by no respondents. Verbal abuse was stated to occur often by 26 respondents, sometimes by 13, and nil by none. It is clear that the majority of staff recognise different forms of bullying or anti-social behaviour, but see it as a 'normal' part of the prison culture within Casuarina.

3.43 In relation to the prisoners' survey, 37 per cent of prisoners at the prison always felt safe, 35 per cent felt safe most of the time, 11 per cent never felt safe and 17 per cent sometimes felt safe. Twenty-two prisoners (15%) commented on sexual assault between prisoners.

3.44 These surveys suggest that in 2001 both prisoners and staff experienced a dominant and pervasive culture of bullying at all levels. Operational Instruction No. 15, concerned with Anti-Bullying Policies and Procedures (May 2001) should be operating at the prison, but as will be seen the policy that this epitomises has not been effectively implemented.

#### ANTI-BULLYING AND SAFETY IN UNIT 6

3.45 The elimination of bullying and 'stand-overs' in Unit 6 would be an integral part of feeling safe in the environment. Yet this behaviour appears to be considered a normal part of the culture and the way of life both inside this unit and inside the prison. Prisoners stated:

*Bullying here is mainly verbal, but I've been threatened to have my lights punched out a few times. I've been raped on the wing but it was covered over.*

*A couple on the unit can't cut it out there and try to do it in here.*

*Quite a bit, in cells and the day room, blokes on the unit shouldn't be here. They take advantage when they get here during spends and stand-overs on the phone.*

*Sometimes people hear what they have done. There have been a few fights since I have been here.*

3.46 Part of the problem lies in the cultural practice of not effectively challenging or addressing this sort of behaviour within the prison. Officers in Unit 6 remarked that there was little that could be done with predators in protection, as the only option available was to send them to Unit 1 (punishment). This was not a permanent solution to the issue, as in time the prisoner simply came back to the unit and in many cases continued the same anti-social behaviour. Prison officers said:

*It's a merry-go-round, there's no answer, we get them back here.*

*They go to Unit 1, threaten to self-harm, then transfer to CCU, with televisions, then the CCU transfers them back to be able to do the same things.*

It was obvious that officers working in Unit 6 were frustrated about the lack of management options for dealing with predators.



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3.47 Prisoners stated that they reported the alleged bullying to staff, or to individual officers whom they believed would keep an eye on them. However, when asked about an anti-bullying strategy, officers stated:

*I've never been told of anything. Recently a few posters – but formally not anything, posters have been placed up.*

*They put a poster up on the walls; that's about it, probably a circular but nothing formal. There's nothing on the orientation list about bullying, nor on the computer. It's probably only mentioned if the person was vulnerable to bullying.*

3.48 Senior Officers, the immediate line managers, were no better informed:

*Not that I am aware of, there's none in the prison.*

*Only signs on the unit. They sit on the wall and look good. To all intents and purposes it appears to be an accepted part of prison culture.*

3.49 It appears that there is documentation relating to an anti-bullying strategy within Casuarina Prison, but that the staff are unaware of it or how to implement it.

3.50 However, staff were obviously aware of the danger areas where bullying takes place. They stated:

*Showers and cells, wherever you can't see them.*

*Shower block – there have to be incidents in the shower, but this is not visible to us.*

*Garden area – we have a patrol status in the cell areas.*

*Biggest problems – only one telephone one each side; there is a danger of phone hopping.*

*C landing, due to the protection needs and age of the prisoners on the unit.*

3.51 The need to have a constant staff presence on the unit is reinforced by these observations of the wing officers themselves. In contrast to the prisoners, they feel physically quite safe, yet in a sense because of their responsibilities they simultaneously feel disabled, and thus somewhat vulnerable, by the lack of leadership, training and direction for protection staff. They are concerned about the inappropriate use of protection for prisoners who require medical care or who are suffering from intellectual disabilities. The unit at times appears 'like an overflow from crisis care rather than a protection unit'. The lack of an effective anti-bullying strategy or workable alternatives for dealing with 'predators' also makes their working environment difficult.

### DO STAFF AND PRISONERS FEEL RESPECTED?

3.52 Prisoners and staff appear to work well together on the unit and have very positive feelings about each other. Many prisoners would like to see more staff out of the office working on the wings.

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Prisoners believed that some of the problems on the wings were caused by ‘blow-ins’ (temporary staff who did not know the prisoners) or the way the unit operated. Senior Officers and staff commented that problems arose from time to time when a new temporary supervisor was posted into the unit who did not realise the individual reasons why certain prisoners were not allowed to live in certain areas. Prisoners said of staff:

*All right, three times better than Canning Vale.*

*Excellent towards me compared to Hakea.*

*Good staff – a lot of blow-ins don’t know how to handle the unit.*

*Good, not all of them – some good/very good – some shouldn’t be in this unit [blow- ins].*

*Not too bad. The officers on the wing are OK.*

3.53 A few prisoners believed some staff treated them like children, but the prisoners were generally positive about the staff attitudes towards them. Most of the staff who worked in protection had applied for this role, but felt that the prison had failed to acknowledge the specific problems they faced. There was a lack of consultation from the management and the SOs felt at times ‘steam-rolled’ when prisoners were transferred into the unit without any consultation or paperwork.

3.54 It appears that on the whole prisoners and staff feel respected by each other on Unit 6.

### PURPOSEFUL ACTIVITY

#### Work

3.55 Out of 57 prisoners in Unit 6, only four were unemployed at the time of the review. Thirty prisoners work outside the Protection Unit and are escorted by staff to and from their place of work. Twelve prisoners work in the garment shop, 17 in the kitchen and there is one gardener for the administration area (an elderly prisoner) who normally only works in the mornings.

3.56 The 17 kitchen workers are employed seven days a week. They finish at different times during the afternoon, as some of them start earlier in the day, just before 8.00 a.m. The prisoners working in garments work a five-day week, Monday to Friday between 8.30 a.m. and 3.30 p.m.

3.57 Access to all other work is strictly limited because of the danger for protection prisoners from the mainstream population. With the population dropping, the tailors’ shop has now been closed, removing a previous employment option for protection prisoners. There is no other alternative employment for prisoners outside the unit.

3.58 Twenty prisoners are employed within the unit. The majority of these prisoners work inside the units as cleaners, apart from six who work in the ‘veggie garden’, a secure area attached to the outside of the unit, growing vegetables for the prison and other establishments. The area at the side

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and back of the unit has been reticulated, and is cultivated by the prisoners, providing work experience in gardening and cultivation. The six prisoners who work in this area are left very much to their own devices, and whilst this is considered a vulnerable area because it is outside the view of officers, the vulnerability really only extends to taunts and to the fact of being identified. The four prisoners who chose not to work are secured in their cells during prisoner work hours.

3.59 Over 92 per cent of prisoners are employed on the unit and the majority feel that the work is useful and meaningful for them. This is a good record.

### Education

3.60 The movement restrictions placed on protection prisoners in effect means that there is no real provision of education, apart from Wednesdays between 1.30 p.m. and 3.00 p.m. At those times around 15 prisoners attend education, being mainly involved in computer courses. There are no full-time or part-time education courses available to protection prisoners. Although staff point out that the unit contains a relatively high proportion of prisoners proficient in numeracy and literacy, there is still a need for more access to education and more work could be done to accomplish this. It is ironic that one of the strongest features of Casuarina Prison as a whole has been its delivery of education services.<sup>37</sup>

### Library

3.61 Library access is only available once a week, but prisoners are not allowed to attend the actual library building. Instead books are brought to the unit. This results in prisoners being denied access to certain books – for example, the law collection – as regulations state that they must not leave the library. It also diminishes choice of recreational reading.

### Recreation

3.62 The only recreation for protection prisoners is limited to the oval or gym on Thursdays between 1.30 p.m. and 3.30 p.m., or Saturdays between 4.00 p.m. and 6.00 p.m. Prisoners complained about the lack of access and stated that: ‘Gym once a week is not enough’, ‘We would like more time on the oval’, and ‘If we are lucky we get an hour a week.’

3.63 Prisoners in Unit 6 have reasonable work provision and the employment rates are high in comparison to other protection units in the publicly managed prisons of the State. In relation to education, there is no recognised standard, and two hours per week is insufficient. The library is not available to prisoners and a book trolley amounts to inadequate provision. Recreation opportunities, twice a week normally for about an hour, are extremely limited. Prisoners summed up their feelings

<sup>37</sup> See Report No. 11, *Report of an Announced Inspection of Casuarina Prison – October 2001* (Office of the Inspector of Custodial Services, October 2002), paragraphs 4.82–4.84.

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by saying that just because they lived in the boneyard, it did not mean that they should be treated as second- or third-class prisoners.

### PREPARATION FOR RELEASE

3.64 Prisoners on protection have no restrictions placed on them regarding the number of visits they are allowed to receive. Visits take place at the same time and in the same place as for mainstream prisoners; Unit 6 protection prisoners are located near the officers on duty on the grounds of safety. Prisoners are escorted to and from the visits and are located separately from other prisoners before and after visits. Numerous protection prisoners stated that the visits regime was one of the positive things about Casuarina Prison.

3.65 High-protection prisoners receive their visits in interview rooms within the general visits area but are not accessible to other prisoners.

### HEALTHY STAFF

3.66 The concept of healthy staff is an integral part of the total care of prisoners as prison officers need to be 'informed and consulted within their sphere of work' and have 'high expectations made of them'. The staff working in protection raised the issue of vulnerability, by which they meant not their physical risk but their procedural or legal vulnerability if they handle matters inappropriately. This is closely linked to the notion of the 'staff being informed' and links back to recurring theme of inadequate staff training.

3.67 All the officers working in protection have been chosen or have applied for this role, but there has been no specific training to support the core tasks. For example, staff graphically outlined some of the problems they faced in relation to self-harming:

*Horrific self-harm incidents have taken place on the unit – slash-ups, people who have regularly burnt holes in their arms, a guy who slashed himself and the blood was up to my shoes on the floor.*

*One bloke opened his arm up with a blade and the flesh just opened up before my eyes. His arm literally fell open.*

*We have had not training for dealing with incidents like that, it is stressful and don't ask about First Aid training.*

3.68 Seven officers at Casuarina were interviewed, using a semi-structured interview questionnaire containing qualitative questions. It emerged that only one officer working in the Protection Unit had received any specialist training for working with vulnerable and disabled prisoners. Of serious concern was that no other officers had received any training, other than control methods, since their basic training. A prison officer with over nine years' service said:

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*I have never had any training since basic training. I have never had even a First Aid refresher course and at times I operate on a wing and a prayer.*

Another with 11 years' service, including six years in Unit 6, said:

*I had a suicide awareness training course for half-a-day around three years ago and found it very useful, also a one-day cognitive skills course. That's the lot in my eleven years service. I would say that any training builds confidence and that's very important in a place like this.*

Other testimony included:

*I spent one and a half years working in Crisis Care, with some very disturbed people, but had no training. I've been here for about two years and I had a refresher First Aid course last year. That's the only training apart from control since my basic course.*

*There is no such thing as staff training in prisons, apart from control and restraint. You are not taught about other methods of dealing with problem prisoners and are expected to use your natural abilities. Most of my staff have asked to work on this unit. There's no support or training for them working with these prisoners. Most of the staff here have excellent communication skills, but you only need one with the wrong attitude and they can cause so much friction inside the unit. Sometimes you fly by the seat of your pants when juggling the prisoners on the unit and simply hope the wheel will not come off.*

*I've never been trained in supervision and man-management techniques but certainly no training in respect of dealing with protection prisoners. It's scandalous how officers have to rely on their life skills in a unit so diverse.*

3.69 The prison officers working in Unit 6 urgently need training in suicide awareness, drugs and alcohol awareness, sex offender issues, first aid, stress management, conflict resolution, anti-bullying strategies and broad training, such as cognitive skills, which gives them an understanding of behavioural problems within the unit. It is quite apparent that prison staff are barely coping in their work environment and cannot have 'high expectations' made of them without the necessary training.

3.70 The staff at Unit 6 are not 'well led'. Senior Officers believe that the Department is not directing or enforcing the implementation of Operational Instructions at a prison management level. Senior Officers have had no effective management training or any training which would enable them to lead, guide or train staff within the unit in areas specific for the needs of protection prisoners. The test for healthy staff therefore fails on many levels: the lack of training and information specific to their work place, the lack of leadership and training for their supervisors, and the lack of consultation by the management and other ancillary groups within the prison. This amounts to an unhealthy work environment for both staff and prisoners.

## CONCLUSIONS

3.71 The Department has to this point failed to meet its duty of care to prison staff at Casuarina Prison.

The need for training and staff development is urgently required, because prison officers working in protection feel extremely vulnerable and unskilled in their roles. The Protection Unit increasingly caters for prisoners who are vulnerable and disturbed, and the unit appears to have a policy of 'protection within protection'. The unit appears to have an unacknowledged medical and psychological role, especially for those prisoners with intellectual problems, and is no longer simply a protection unit. It is a serious indictment that very few officers have been trained in suicide awareness and First Aid, as these skills are essential in the management of prisoners on the unit.

3.72 The prison has not implemented an effective anti-bullying strategy, with the consequence that there is no real alternative way of dealing with predators – 'they simply come back on the unit'.

3.73 Whilst both prisoners and staff generally feel reasonably safe, there needs to be a move away from the 'barrier management' style, encouraging officers away from the control room. In respect of the services for protection prisoners, the regimes for education, library and recreation are below acceptable standard. However, in relation to work, Casuarina Prison has achieved reasonable opportunities for protection prisoners.

## Postscript

*The Department of Justice, in its response to this Draft Report, has informed the Inspector of numerous changes, as follows:*

- In September 2002, a review of the protection prisoners in Unit 6 was conducted, and all the protection request forms were updated in the files through cross-checking with the Movements Senior Officer.
- Weekly reviews commenced in November 2002 with the introduction of Local Order 23 in compliance with Operational Order 4.
- At the time of the review there was no formal anti-bullying strategy other than the DOJ posters on the issue. In October 2002 Local Order 7 was issued outlining a strategy for Casuarina.
- Since the time of review the Printshop has been converted to a protection workshop.
- The following workshops now employ protection prisoners:

Kitchen	11
Garments	12
Printshop	15
Gardens	8
Unit	16

## PROTECTION PRISONERS AT CASUARINA PRISON

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- 94 per cent of Unit 6 prisoners are currently employed, i.e. 58 of the 62 protection prisoners.
- Whilst education is still available on Wednesdays between 1.30p.m. and 3.00p.m., the provision of two Programs rooms within the unit enables education and programs to be delivered in the unit, thus increasing the access for protection prisoners to these areas of learning.
- Since the unit was closed for refurbishment and reopened, staff has re-organised the prisoners and separated them as follows:
  - C landing is now for those identified as disturbed and vulnerable.
  - B and D Wings are for general protection prisoners.
  - Local Order 23 is being reviewed and rewritten to better reflect what should occur.

# Chapter 4

## PROTECTION PRISONERS AT ACACIA PRISON

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### THE BACKGROUND

4.1 The Review and research of protection prisoners at Acacia Prison was conducted between 22 April 2002 and 26 April 2002. As with the methodology at each of the other prisons, the research consisted of structured and semi-structured interviews with prisoners and case management officers (uniformed prison staff), together with a series of observations, informal meetings and discussions with staff and prisoners. The research also included a series of surveys of prisoners and case management officers. Twenty prisoners were surveyed (nearly one-fifth of the applicable population) and eight case management officers. Three seminars were held in the accommodation blocks, with between 25 to 30 prisoners attending each session. A random selection of prisoners and staff were also interviewed. Outside the unit, numerous unstructured and informal conversations were conducted with prisoners and staff within F and K Blocks. These research techniques allowed both staff and prisoners to speak privately or publicly, from their own perspective, about the conditions and treatment of groups who live or work in protection.

### DESCRIPTION OF THE PRISON AND THE PROTECTION UNIT

- 4.2 Acacia Prison is the only privately managed prison within the Western Australian system. It is the most modern in the Western Australian system and the main medium-security prison in the Metropolitan Area. The first prisoners were received in May 2001. At the time of the Review it was holding 640 prisoners, with between 116 to 124 protection prisoners (K Block) and 11 protection prisoners on the geriatric unit (F Block). This represents 21 per cent of the total population of Acacia, the highest percentage of prisoners in protection in the WA prison system.
- 4.3 It is relevant that, when the Contract for the Management of Acacia Prison was entered into, it was not the parties' intention that protection prisoners would be sent there. However, that arrangement quickly changed and at the time of the Review Acacia held almost half of the prisoners on protection in the WA system. Overwhelmingly, prisoners come to Acacia with their protection status already decided through processes that have occurred within the public system. Only a tiny proportion of protection prisoners acquire that status for the first time whilst at Acacia.

### K Block

4.4 K Block held between 116 and 124 prisoners in four residential units known as K1, K2, K3 and K4. The buildings are identical in design. Each has a central area where prisoners eat communally, a wing television area and two separate levels containing the living accommodation. Each building has two 'buddy cells', and in each of K1 and K2 there is also a 'four-up cell'. The four units have a total single bed accommodation of 108. This means that there are 132 beds available in the various types of accommodation, though for practical purposes an occupancy level of 124 is tantamount to 100 per cent occupancy. The accommodation is spacious and modern, and the buildings are bright and airy in comparison to other, older prisons in the WA system.



## PROTECTION PRISONERS AT ACACIA PRISON

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4.5 Within the K Block complex there are two classrooms, one at each side of the entrance to the block, and these are used for programs, teaching and crafts. There are also two small rooms in each wing; one of them is used as an interview room for the case management staff and the other, nominally the supervisor's office but rarely used as such, is also normally utilised for interviewing prisoners. Both these offices are opposite and in view of the control room.

4.6 The block accommodates a wide variety of prisoners, from lifers and long-term prisoners to short-term prisoners. Some prisoners who were serving long sentences found it hard to deal with prisoners who were only in the block for a relatively short period of time. One stated:

*It's a bitch when you are locked up with people who only have 40 days to go and you have eleven years left. They should be on minimum security.<sup>38</sup>*

4.7 The block contains prisoners convicted of various offences: serious sex offenders (child rapists, sex murderers, paedophiles), drug dealers, armed robbers, vulnerable and disturbed prisoners, and those who are intellectually impaired, including very petty criminals. The rest of the prison population tends to lump them all together as 'dogs and tamps'. Consequently, they need to be escorted every time they leave the unit to go into mainstream. A woman staff member recalled an incident when she was escorting six prisoners to the medical centre. She said:

*A group of prisoners outside of the kitchen started shouting abuse at them and calling them names. I ran up to them and placed them on a report immediately. They were disciplined and lost their jobs. I think they were surprised at the action I took, but I was pleased with myself for doing it. At the end of the day they are only people like me.*

4.8 Whilst this action represents a firm and professional stance in the respect of bullying (a matter to be raised later in this Report), the attitude of this officer is not untypical of many young officers who are eager to prove themselves and have no preconceived ideas or cultural baggage concerning prisoners. There is nevertheless still a risk to protection prisoners from the mainstream population. Of course, as in other protection units, there are also predators within the protection group.

### F Block

4.9 This building houses geriatric prisoners in a multi-purpose complex, which also contains the Crisis Care Unit (CCU). The building is separated into two halves, although there is one central control room from which the officer on duty observes both sides of the unit. At the time of the review the building was holding 17 older prisoners, of whom 11 were protection prisoners. This building has no exercise yard, and its original purpose was not designed for older protection prisoners. As a result the unit has no outdoor facilities or access to fresh air and the prisoners rarely go out of the unit. There

<sup>38</sup> This is an emerging problem. Acacia was never intended to be a releasing prison; prisoners were expected to be transferred to a re-entry or resettlement prison such as Wooroloo or Karnet before release, but the exigencies of managing the changing prison population seems to have led the Department to a position where it has had to put Acacia into this role.

## PROTECTION PRISONERS AT ACACIA PRISON

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is a games and television room, and those prisoners who smoke do so there. This is obviously, by today's public health standards, unacceptable practice, but as there is no access to the outdoors an arrangement such as this is difficult to avoid.

4.10 The lack of outside facilities is, in fact, a matter of widespread concern. Prisoners' comments included:

*It's OK in here, but with no access to the outside it's like being in concrete box. We are completely shut off from civilisation.*

*The officers here are great, they have been trying to get us a yard. All of us would love to get our hands dirty and build an area where we could at least sit in the sun.*

### Outside K Block

4.11 K Block has a central concreted area with a shaded patch containing a barbeque; the four separate blocks surround this space. This whole area is surrounded by a large grassed space containing a number of small trees and flower-beds. There is a small basketball court surrounded by a partition fence within the central complex, and here the protection prisoners play sport. Outside each of the four units are places where prisoners can sit in the open air. The complex is a well designed and has views of the surrounding countryside, giving it an atmosphere of space and openness. Prisoners remarked:

*This is a good prison and the facilities here are far better than any of the other prisons I have been in. I suppose I know I'm a prisoner, but the fresh air and space does help me to cope with it.*

*At least I can go outside have fresh air, see the sun and the trees. At Hakea it was like being in a goldfish bowl.*

## PLACING OF PRISONERS IN THE UNIT

4.12 At the time of the review K Block held 116 prisoners, as follows: Unit K1 – 25 prisoners; Unit K2 – 28 prisoners; Unit K3 – 31 prisoners; and Unit K4 – 30 prisoners.

### Unit K1 – Level 1

4.13 Unit K1 has 28 single cells plus a four-bed cell located on the ground floor. The ground floor is utilised for induction; a resident peer support prisoner is permanently located in the four-bed cell to provide advice and support for new prisoners. The peer support prisoner is on Level 3 privileges, so has extra items in his possession. He stated:

*The other prisoners just see me as a guy doing jail, I explain the rules to the new ones. I help with the induction of prisoners to the unit and help them with the forms. Some of them have writing problems, other disabilities, and there are also the quiet ones, that could fall through the net.*

4.14 The top floor is used for prisoners on a basic regime. Generally these have caused trouble within the block, and have been regressed to the lowest level of privileges. At the time of the review both staff and prisoners believed that Unit K1 was being used too much to accommodate Aboriginal prisoners. It was said that a number of dominant Aboriginal prisoners were located in K1, and that these men were attempting to encourage other Aboriginal prisoners to move into the unit, creating a ‘them and us’ regime within the block. The leader of this group had been a particular problem to staff and prisoners. He had had allegations of intra-prison rape made against him, and was considered by other prisoners as a ‘predator’ on the unit. During the Review an anonymous note had been passed to a member of staff saying, ‘If X [name of prisoner] doesn’t get a blow job tonight, he’s going to kill me.’ It was obvious that prisoners were fearful of this man, but were not prepared to give evidence against him because of reprisals from other Aboriginal prisoners who were part of his group. The lack of intervention had created a hero status for this prisoner, and staff said:

*There’s little we can do except to put him in K1, but he still has free range outside of the unit. It’s not the best solution but without evidence there is little we can do. We need some alternative – another place other than on this block to house him, or transfer him out of here.*

4.15 These comments tie in well with the earlier observation, in Chapter 1, that Western Australia would benefit from the creation of a management regime akin to that in the Waite Unit at Feltham Young Offenders Institution in the UK – a non-punitive behaviour modification approach that is triggered by staff assessment of prisoners rather than by disciplinary processes.<sup>39</sup>

4.16 A major problem with prisoners who have been regressed and are on Level 1 in K1 is that there is no separate area for association, so that prisoners located here mix with other prisoners on Levels 2 and 3. The induction period for new prisoners lasts for three months and both staff and prisoners believed this was too long a period to be on Level 1. Prisoners also raised the issue that older prisoners were moved earlier than the younger men from K1 into other units with Levels 2 and 3.

#### Unit K2 – Level 2

4.17 This unit is the first stage in the incentives scheme where prisoners are allowed more privileges. The unit meeting held with 20 prisoners found that the majority were satisfied with the regime. Most were extremely positive about the opportunities in protection compared with other facilities in which they had been held. There was very little difference between Level 2 and Level 3 privileges in relation to property entitlements, amounting to one electrical item such as a remote control for television, a computer, a video or a kettle. Many of the prisoners thought these differences between levels were too small and in some cases petty. Certainly, this incentive was not enough in itself to overcome a reluctance to move into K3, for this was seen as predominantly a sex offender unit and thus stigmatised as the ‘boneyard of the unit’ by the rest of the prisoners in the block.

<sup>39</sup> See paragraphs 1.59–1.67.

### Unit K3 – Level 3

4.18 All prisoners on this unit are on Level 3 privileges. As stated, the population is predominately sex offenders; they are on the whole reluctant to move from the unit as they believed this was the safest unit for them in protection. This unit possessed a very relaxed and safe atmosphere in comparison with other units in the block. Six of the prisoners formed a unit committee, and regulated the unit themselves. If any problems arose they would have a unit meeting and ‘deal with it in-house’.

Prisoners stated:

*We take care of our own and it's a happy place to live in. There's no stand-overs, or any of that shit here, as we all take responsibility for each other here.*

4.19 Prisoners living on the unit were aware that the rest of the block saw the unit as a sex offender unit, but were not bothered as ‘we generally keep ourselves to ourselves’. Within this unit a number of prisoners were involved in tutoring other prisoners and the other peer support prisoner.

### Unit K4 – Level 3, Self-care

4.20 K4 is the self-care unit for the block and usually holds prisoners who are much older than those in the rest of the units. Younger prisoners are reluctant to move here because of criticisms by older prisoners about the level of noise they generate and their loud behaviour. The peer support prisoner said of K4:

*There is friction in the block as this unit has an ‘us and them’ attitude, to the rest of the block. It's the least pleasant unit and contains the old crotchety men who are control freaks. There are about six people in all in charge and they feed their frenzy into the rest of the unit.*

4.21 It could be argued that a broader range of prisoners needs to be introduced into each of the Level 3 units, as at present K3 appears to be the domain of sex offenders and K4 of the older prisoners. This creates an unhealthy mix in the block for prisoners, and seems to reduce the incentive for prisoners to graduate up into the self-care unit or to Level 3 status. On the other hand, the present arrangements could be regarded as good management practice, facilitating a trouble-free environment

## STAFFING THE PROTECTION UNITS

4.22 Five staff members, known as ‘case management officers’ (CMOs), normally work in K Block. They have 12-hour shifts. One CMO is engaged permanently as the control room officer; that person is responsible for monitoring prisoners in and out of the unit using the electronic surveillance system. The prison as a whole depends on the use of swipe cards for movements; each prisoner has an identification card that logs him automatically out of the unit and he normally has ten minutes to arrive at his next destination before the computer raises an alarm. The benefit of this system, which is not replicated in any of the public prisons, is that it enables protection prisoners to move freely

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around the prison when the mainstream prisoners are in their units, without having to be escorted.<sup>40</sup> The control room officer is also responsible for applications, mail and general inquiries from prisoners who come to the window in the office. The officer also deals with general inquiries concerning the block from within the prison.

4.23 Two CMOs are used for escorts. One officer is permanently located inside H Block (Light Industries Unit), the only work area for protection prisoners, and remains there in a security role. The other CMO is engaged on general escorts to visits, medication, or other inquiries and, when not on escorts, is attached to Block K.

4.24 Two CMOs are posted in K Block and are responsible for protection prisoners throughout their shift. They deal with all the inquiries from prisoners and hold interviews in the office, directly located outside the control room. All officers, including the other members of staff on duty, are also case management officers with responsibility for about 12 prisoners each. The officers have all been trained in TOMS and correct administrative practices in relation to prisoner files. These functions are seen as an important aspect of their role. These officers explained their roles as follows:

*As a case manager for 12 prisoners, I look after their needs for parole, education and work locations.*

*I am responsible for the daily running of the unit, making sure that prisoners go to their work areas, escorting prisoners to interviews, medical appointments and visits. I also deal with case management issues, hygiene inspections and trouble shooting for unit issues.*

4.25 Our observation was that the prisoners' files were up to date and contained well-ordered material. In this regard, performance at Acacia Prison was notably better than comparable practices in the public prisons.

4.26 However, our observations revealed little evidence of staff patrolling inside the living accommodation on a regular basis. Normally around 30 prisoners were outside their units during the day, or congregated by the barbeque; others simply sat on the grass talking. But some prisoners did not venture outside their units for, although this area is under surveillance by CCTV cameras, there are still numerous blind spots and thus opportunities for stand-overs and bullying, i.e. by other protection prisoners.

4.27 Staff should not rely solely on modern technology at the expense of personal interaction. Case management officers were generally found inside the control room or inside one of the offices interviewing prisoners. Although they were occupied with other important responsibilities, patrolling of the unit was at best spasmodic or at worst rare. The officers would not generally enter any of the accommodation blocks on their own, because of perceived safety issues, and some prisoners raised the issue that the officers should be seen more inside their living accommodation. Whilst officers

<sup>40</sup> Of course, there are also occasions when escorts are required, as the officer's testimony in paragraph 4.7 illustrates.

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were not seen patrolling, the survey results seem to show a different picture. Over 70 per cent of the staff respondents stated that 'staff worked directly with the prisoners on the wing'.

4.28 However, this comment may have more to do with the case management of prisoners than the issue of wing patrols. For prisoners said: 'They only come out of the office for a fag, if they did not smoke then they wouldn't come out.' Whatever the exact truth, the vast majority of protection prisoners believed that the staff were genuinely trying to deal with issues concerning the wellbeing of prisoners and had good things to say about the case managers on the unit. One view was expressed as follows: 'They have a hard job and try their level best, they come into the units and speak to us as people, we have a joke with some of them. In the early days they used to wake us up with a good morning, I've never known that in prison.'

4.29 All the CMOs were new to prison work. The vast majority were eager to learn new procedures, having adapted well within their new sphere of work and displayed a genuinely positive approach to their work. The approach was one of 'ownership' of the block, and many of them had a degree of pride in the way they treated prisoners. The prisoners on the whole responded positively to the staff, and there was good interaction between the two groups. Even though many of the staff were originally inexperienced in dealing with prisoners, they nevertheless developed and learnt quickly, possessing a generous approach in all aspects of their new roles.

### SUPERVISORS OF K BLOCK

4.30 No senior member of staff is assigned to work permanently in this unit. All the CMOs working in K Block held the same rank. They have limited, but expanding, experience of dealing with prisoners, and were not authorised to make any management or control decisions without the approval of their supervisors. Case officers were not allowed to make inquiries at the prison administration concerning unanswered or late answers to applications made by the prisoners. Problems frequently arose concerning property and cash transactions that had not been processed, and prisoners had asked officers to sort it out for them. All queries had first to go through the supervisor. All application forms, no matter how trivial, had to be signed by a supervisor before any decisions could be made on the block. The system was inefficient and caused hold-ups in sorting out trivial problems, sometimes making them worse.

4.31 There were two supervisors in charge of K Block, both of whom had been recruited from the public sector. Each was also responsible for other blocks in the prison with a total of 357 prisoners coming under the control of each of them. Thus, they worked in various locations during the day. One of the supervisors was of the opinion that the staff 'have not enough experience to make any decisions'.

4.32 We heard strong criticisms of the individual management styles of the supervisors. Clearly, there was something of a rift between the custodial levels. The rights and wrongs cannot be resolved, and in any case change with changes in personnel. However, the strategic point is that management of

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protection prisoners suffers when efforts are spread too thinly on the ground and decision-making power is not in a compensatory way devolved down the line.

### THE MONITORING AND DOCUMENTATION OF PROTECTION PRISONERS – OPERATIONAL INSTRUCTION NO. 4

- 4.33 Acacia Prison is not subject to the public sector Operational Instruction No. 4. However, the prison should have its own protocols governing the care and safety of protection prisoners. The General Manager stated that originally it was not in the remit of the contract to take protection prisoners and this responsibility had only been taken on in response to a Departmental request. As a result, there was no operational instruction regarding protection prisoners operating at the time of this initial request. Nevertheless, it seems odd that protocols were not developed as protection prisoners started to come on-stream. With over 21 per cent of the prison population at Acacia Prison now on protection, there is a need for the urgent development and implementation of a clear set of policies.
- 4.34 The protection prisoner files examined in the Review contained the Individual Management Plans for each prisoner, work interviews and compacts, various other prison applications for property, the planned week for every prisoner, education and recreation needs, visits, telephone approvals and a strategy to address their offending behaviour. The files, put together by the case management officers, were well organised with the paperwork filed in the correct sections of the prisoner file.
- 4.35 There were no protection forms on any of the files. Staff (CMOs) and management were unaware of any review process for prisoners held on protection. The documentation of protection prisoners is fundamental to the process of holding them in such a restricted regime. The absence of a formal review policy operating at Acacia is surprising, to say the least. Without reviews there can be no resolution of the protection status of a prisoner.
- 4.36 Not surprisingly, in the light of the fragmentary documentation generated in public prisons about protection prisoners, the Acacia files did not hold protection forms or information generated in the prison from which the prisoner was transferred. Inquiries were made with the staff at the induction unit at Acacia, who confirmed that they did not complete any protection forms and did not know the location of any supposed original documentation. Thus, 124 prisoners are on protection with no supporting documentation.

### THE HEALTHY PRISON TEST

#### Test 1 – Do Staff and Prisoners feel Safe on Protection?

- 4.37 Most staff at Acacia are new to this type of institutional work. However, there appears to be a reasonably healthy relationship between staff and prisoners. During their basic induction course, staff were apparently trained to recognise bullying. Nevertheless, there appears to be no prison-wide

strategy in force. Prisoners in Block K said that ‘bullying, assaults and stand-overs were rife in mainstream’ and one prisoner remarked:

*I never wanted to come into the boneyard. I'm not frightened in the mainstream as I can stand up for myself. As soon as I got bashed for not bringing drugs in, then they sent me here. I didn't want to come, but they dragged me up here fighting. Once in here there's no way out, then even when I get outside I will be tagged as a 'tamp' and some shit outside will recognise I was in here. I'm only in here because they cannot deal with the real troublemakers out there.*

4.38 There is an anti-bullying directive operated by AIMS known as 2.4.1, but it appears that little has been done to combat the problem within the prison. In August 2000 an ‘Anti-Bullying Committee’ was formed, and it supposedly was to meet on the first Tuesday of every month. Our inquiries revealed that this has not occurred, however, and the ‘philosophy of the anti-bullying strategy to remove the bully from the mainstream rather than the victim’ is not operating effectively within the prison. There is no alternative unit within Acacia for locating predators, to keep them away from the mainstream population. The induction process for prisoners fails to inform about the strategy and is therefore insufficient to further a holistic prison strategy.

#### Anti-bullying and Safety in Block K

4.39 The majority of officers were aware that bullying took place on Block K. Nevertheless most prisoners and staff felt safe within their working and living environment. Prisoners stated:

*They [bullying incidents] do take place on the block and mostly take place in Unit K1 – because of the lack of patrol and the mixing of too many difficult prisoners together on the unit.*

*The young white prisoners will only pick on the more vulnerable white prisoners and not the Aboriginals who have their own group. The Aboriginals will try and pick on anyone given the chance. But normally each keeps to his own.*

4.40 When asked whether staff were aware of bullying, prisoners made comments such as: ‘sometimes’, ‘maybe,’ ‘not always’, or ‘yes, I suppose they are’, and over 65 per cent of the prisoners were of the opinion that staff were not fully aware of the depth of the problem. Surprisingly, only three out of 20 prisoners admitted to having been bullied whilst in K Block, and this reflects the relaxed and safe atmosphere within the unit. Two of the prisoners who admitted to being bullied stated that they had been bullied whilst in K1 when they were in Level 1. The unit was at this time being used to house problem prisoners, together with induction prisoners – an unsatisfactory mix within the same unit.

4.41 It is not easy to be confident as to the extent of bullying within the unit. What is evident, however, is that to this point Acacia has not operated an effective anti-bullying strategy, even though the contract is explicit that prisoner safety is one of its main requirements. On balance, however, it can be said that prisoners do not feel positively unsafe.



**Test 2 – Do Staff and Prisoners feel Respected?**

*Attitudes of staff*

4.42 From the survey of 20 prisoners in K Block, 75 per cent rated the staff as either excellent or good in their attitudes towards prisoners, and only one prisoner rated staff as below average. The other four respondents stated the officers were average. Most protection prisoners who had been held at other prisons in WA feared that staff at Acacia may revert to the same negative public-sector attitudes, and the good relationship between staff and prisoners would be lost.

4.43 The case management system, whereby each officer is responsible for about 12 prisoners, creates a relationship of 'dynamic security' between the CMOs and individual prisoners under their care. This management style helps to break down any pre-formed institutional barriers that have been built by prisoners about staff in previous prisons.

4.44 Another positive influence has been the role of the peer support prisoners in the unit. They are a conduit between the groups, and these men deal with minor problems in the units, without having to involve staff with such basics as how to obtain phone calls, organise spends or fill in forms. The peer support prisoners have a good relationship with some of the case management officers but argue that:

*The supervisors do not consult me. It is difficult to get staff, especially the supervisor, depending on who is on. I would like to raise issues from prisoners and although I get cooperation most of the time, it's a difficult job all of the time. They need to acknowledge the importance of my role here. I actually help them.*

4.45 There is no doubt that prisoners enjoyed the relaxed staff approach; the majority of staff called the prisoners by their first name, something that added to a more humane relationship within the block. Yet staff were always professional and in control. The majority of prisoners preferred living in the protection blocks, though as always in a prison setting there were mixed views:

*This is the best prison I have been in so far.*

*They were good at first and now they are changing their attitude.*

*The unit is generally well run, but there should be greater attention to fairness as far as the rules and regulations go. It seems that some [prisoners] are able to do as they please without any retribution, whereas others who do the right thing often are denied requests.*

*Some are excellent, others' attitude is that it's just another job; again others have the attitude of the SS over the Jews.*

*Staff in a prison have a broad task, part warder, part social worker, part friend, part teacher – the staff here are new to the environment and need greater education to enable them to deal with the vast job description.*

4.46 Some prisoners were concerned with the management style and the differential treatment by some staff of prisoners. They stated when a particular supervisor was on duty the staff seemed different and more authoritative. One prisoner said:

*Staff told me to 'fuck off or you will get pinched'. There are double standards here since the new supervisors came to the prison. They both worked at Canning Vale, but it's still 100% better than any other gaol.*

*I've been here since 17 July [2001] and we had heaps of communication and were always asked in a nice way. It was more obliging the way they asked us to do things. Now we have a lot more prisoners and the staff have much less time but it's still far better than at Casuarina.*

4.47 Most case management staff working with prisoners take their responsibilities very seriously, and during the review process two members staff remained on the block for over an hour after their tour of duty ended, without pay, to finish their prisoner files. One officer said:

*I know how important this is and if I didn't finish them I would worry about it at home. It's best to have peace of mind and a fresh start tomorrow.*

4.48 In summary, both staff and prisoners working or living on Block K feel on balance reasonably respected. There could be improvements, of course, but this limb of the healthy prison test is met.

### **Test 3 – Are prisoners fully and purposefully occupied and are they expected to improve themselves?**

#### ***Work***

4.49 The Light Industries area, housed in H Block, is set aside for protection prisoners. The block contains two large adjoining warehouse-style buildings. One side is the vegetable preparation area known as 'Dove Creek'; the other side is used for general light industrial work where prisoners make wire baskets (a project financed by the Prisoner Fellowship Association, which also takes the profits), a leather work area which has recently started making lanyards for keys and radio holders for the prison, and an area which makes picture frames for the art produced by the prison.

4.50 Both warehouses are vast, and their operational areas are progressively being expanded to give more opportunities to protection prisoners. Geriatric and disabled prisoners have the opportunity to work there. At the time of the review, one of these prisoners was in a wheelchair and the other suffered from emphysema. Two trade instructors – one for each side of H Block – and one escort officer are permanently on duty within the area.

4.51 The veggie preparation area employs protection prisoners on a three-shift system, operating Monday to Friday from 8.00 a.m. to 12 noon, 1.00 p.m. to 5.00 p.m. and 6.00 p.m. to 10.00 p.m., and prisoners can work three shifts per day if they wish. There are plans to reduce this to two shifts and to introduce weekend work. The trade instructor introduces a degree of flexibility in relation to attending work and stated:

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*If a prisoner does not come in the morning there is no reason why he cannot attend another shift. This allows prisoners to have visits, education courses and other things. We try and accommodate them here.*

4.52 All prisoners applying to work in the unit are interviewed and assessed by the trade officer and complete a form of contract in relation to their behaviour on the unit; this is signed by both the officer and prisoner. Prisoners who work there are given trade training as well as responsibility; indeed, and at time of the Review one of the prisoners was in sole charge of the whole process. The trade officer said:

*I'm training the prisoners here and many of them will have a qualification in veggie preparation when they leave. Most of them would be able to find a job on the outside.*

4.53 Trying to establish the number of prisoners working in veggie preparation at any one time was difficult, but the records show that 28 prisoners attended the morning shift, 21 the afternoon shift and on average between 21 and 25 the late shift. The area was also in the process of expanding into vacuum packing and the industry had produced over 35 tonnes of prepared vegetables in a week.

4.54 One of the positive aspects of prisoners working on H Block was that the wages were, by prison standards, good. One prisoner remarked:

*There is less hassle on the units as people generally have enough money from work to buy cigarettes. On mainstream you are continually being bothered by prisoners for tobacco.*

4.55 Work for protection prisoners is also available within K Block itself. The unit has twelve cleaners and two gardeners. Some of the less able prisoners are used as cleaners on the units, especially the older prisoners. A certain amount of friction exists because the money that can be earned in the veggie preparation is much higher compared to work within the unit. Prisoners working on veggie preparation in H Block said:

*Protection has limited work choices, but good money and there are three shifts available. You could get 12 days pay for working only five days, if you decide to do double shifts. That's 40 to 50 dollars.*

4.56 By contrast, the unit cleaners said:

*We receive \$27 for seven days work, and at Dove Creek, the onion factory, for five days you can get over \$40 and they can do three shifts a day. We are on Level 3 [gratuities] and only receive \$27 per week and work for seven days. It's a fucking rip off.*

4.57 Prisoners employed as full-time tutors on the unit raised the same issue. They could not earn the same money as other prisoners working in 'Dove Creek', and believed their input into the unit was more valuable and important.

4.58 The prison is still in the early stages of developing work opportunities for protection prisoners, but it is nevertheless supplying a comparatively comprehensive system of work. It appears that work is

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available to all prisoners on protection, and the opportunities available are broader and superior to those provided in the public sector.

4.59 Block F has 11 protection prisoners, of whom six prisoners work. Three work at Block H and are given special light duties, and the others work as cleaners within the unit. The other five prisoners are unwell or of retirement age; one of the prisoners on the unit is over 80 years old.

### *Education*

4.60 Education provided for protection prisoners at Acacia appears to be better than that at any of the public prisons. The prison provides one whole day per week, or half a day if prisoners are working full-time. Linked to this is seamless learning with links to the protection block, by the innovative use of prisoner tutors (seven prisoners) within the protection block; this system makes use of the varied skills of prisoners on the unit and provides them with some recognition of their intelligence and self-worth. This also provides protection prisoners living in the block with easy access to help, advice and teaching within the unit on a daily basis. The tutors teach a number of subject areas, including English, Maths, Music, Art, Computer Studies, First Aid and Literacy. All tutors teach a minimum of 20 hours per week, and are paid at Level 2.

4.61 The unit has two on-site classrooms where courses and programs can take place. Currently, in addition to the subjects mentioned above, the unit provides the following programs: Drug and Alcohol awareness programs using prisoner tutors as co-facilitators; and a Cognitive Skills course for all prisoners in the unit run by a case management officer and taught twice a week for 38 sessions; a Small Business Management Course taught one morning per week for eight prisoners; A Sex Offender Treatment Program was scheduled to begin in May 2002 using one floor of the self-care (K4) unit, and a Violent Offender Treatment Program is operating on a one-to-one basis. Thus, there appears to be a comprehensive and varied package provided in education for prisoners on protection.

### *Library*

4.62 Protection prisoners have access to the library for the same period as they have education – one whole day. Prisoners remarked that there should be more dictionaries available and that the choice of books is somewhat limited.

### *Recreation*

4.63 There is access to the gymnasium and oval each day between 5.30 p.m. and 6.15 p.m. The sports co-ordinator also attends the unit to assist the disabled prisoners. The block holds an early prisoner count at 4.55 p.m. to allow men from the unit more time on the oval. Prisoners who go to the oval have to eat their meals later; they stated that sometimes the meals were cold but they were prepared to put up with this for the extra time it provided them on the oval. Normally around 30 to 35 prisoners attend the oval each day.

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4.64 Protection prisoners in F Block are supposed to have the same opportunities for the oval as those in K Block. However, in reality this does not take place on a regular basis. Prisoners said that the staffing of the unit was so low that there were never enough officers to supervise them out of the unit, or to go to the oval. Prisoners said that for around five weeks in March 2002 they had not been out of the unit at all. One prisoner stated:

*Trying to get someone to take us out is as rare as rocking horse shit. You cannot get them.*

The lack of fresh air and physical activity for people in F Block needs to be addressed.

### *Summary*

4.65 On the whole Acacia Prison fares well in the healthy prison test in relation to work and education, and goes some way to providing a 'fully and purposeful occupied' day. Whilst more could be done to improve choice to protection prisoners, Acacia does lay down a standard framework of facilities for protection prisoners that the public sector could measure itself against.

## **Test 4: Prisoners can strengthen links with their families and prepare themselves for release**

### *Visits*

4.66 Visiting times are varied and reasonably generous: on Fridays from 3.00 p.m. to 5.00 p.m., Saturdays from 8.30 a.m. to 10.30 a.m., Sundays from 3.00 p.m. to 5.00 p.m., and Mondays from 8.30 a.m. to 10.30 a.m. The prisoners regarded the visiting times as one of the positive things about Acacia. They also said that the way their families were treated by the staff in the prison was very good. For example, prisoners remarked:

*When mum comes here, she says she gets treated as a human being and she refused to go to Casuarina because she didn't like mixed visits and also the staff treated her badly with their attitude.*

*Visitors like coming here, they don't get treated like prisoners by the staff.*

4.67 Prisoners generally stated that families were less reluctant to visit them at Acacia, and some of them stated that family ties were stronger at this prison because of the treatment they received.

4.68 In relation to telephone calls prisoners were less laudatory, stating that the cost of calls from Acacia was prohibitive. The prison is outside the Metropolitan telephone area and calls are charged at STD rates. Many had to use most of their wages keeping in contact with their families and friends because of this system.

4.69 A cheaper telephone system should be introduced so prisoners are not penalised because of the location of the prison. It is important for prisoners to keep ties with families or friends who are not able to visit them on a regular basis.

**Test 5: Healthy Environment for Staff**

- 4.70 The healthy prison test for staff working in Block K shows that case management officers are stretched, sometimes to their limits, and certainly have 'high expectations' made of them within their work environment. With only two case management officers working inside the unit and up to 124 protection prisoners, they face acute pressure, both administratively and practically. The CMOs are supposed to regularly patrol the block, including the inside of four separate units, properly complete all the necessary paperwork, deal effectively with prisoner inquiries and supervise the various activities inside the unit. This is a huge responsibility for new officers, and there is a danger that some staff will suffer 'burn-out' unless they receive the necessary support of their management.
- 4.71 In respect of training, the prison should add to staff basic training, especially for officers working with protection prisoners. There is a need for improved training with regard to suicide awareness, stress management, anti-bullying strategies and a thorough knowledge of protection procedures within the prison. Whilst the staff have been trained to a basic level, this needs to be expanded for dealing with a group of prisoners with special needs. The stresses caused by inadequate training are exacerbated by the fact that there is no supervisor on the unit on a permanent basis to oversee, regulate, advise or assist these relatively new staff.

**CONCLUSIONS**

- 4.72 Acacia is still relatively new in comparison to public-sector prisons in WA, and has around twice the State average of prisoners in protection. There are no explicit policies operating in respect of anti-bullying or protection within the prison. Nevertheless, the care and treatment of protection prisoners at Acacia appears to be better than at other prisons in WA. The prisoners on the whole feel safe and respected by the staff, and there appears to be a healthy relationship between prisoners and officers. There is no doubt that this positive aspect has a lot to do with their attitude, non-judgemental approach and genuine eagerness to address issues brought to their attention. The case management officers are the linchpin for creating a personable living and working environment. The issue of effective and appropriate management within the block does, however, need addressing.<sup>41</sup>

<sup>41</sup> Acacia Prison was the subject of a full Inspection by the Office of the Inspector of Custodial Services in March 2003. The position with regard to protection prisoners had deteriorated in that there was now clear evidence of intimidation within K Block, i.e. by protection prisoners upon other protection prisoners. There was insufficient interaction between staff and prisoners to prevent this occurring. The situation had also deteriorated with regard to the availability of work. The previously identified weaknesses, with regard to case management and record keeping, had not improved. An evaluation as at March 2003 instead of March 2002 would conclude that the conditions were not satisfactory. The earlier comment that the arrangements were fragile unfortunately was prescient. A full report of this Inspection will be tabled in Parliament in October 2003.

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4.73 Prisoners in Block F do not fare as well as prisoners in Block K. The block has no yard, and prisoners do not receive proper and regular access to the outside of the unit. Steps must be taken to create a yard on the unit and access for recreation. The prisoners rate the staff in Block F as excellent, however, and they have the same attitude and commitment of staff in the other protection unit.

4.74 Acacia measures up reasonably well under the healthy prison tests. If accreditation were an issue, then, unlike Hakea, it would pass the test. However, the arrangements seem rather fragile in that they are unsupported by formal arrangements and not fortified by adequate training. Staff and prisoners could lose the good rapport that has been established if those areas are not addressed effectively.

# Chapter 5

## PROTECTION PRISONERS AT BANDYUP WOMEN'S PRISON

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### INTRODUCTION

5.1 The Review and research of protection prisoners took place at Bandyup Women's Prison between Monday 18 February and Wednesday 20 February 2002, with a second visit on 10–11 June 2002 during the Announced Inspection of Bandyup. The research was carried out in the same manner as that described in the three previous Chapters.<sup>42</sup>

### DESCRIPTION OF THE PRISON AND THE PROTECTION UNIT

- 5.2 Bandyup Women's Prison is the main female establishment in the Metropolitan Area, and houses prisoners with a maximum-, medium- and minimum-security rating. In June 2002 there were 33 maximum-security prisoners (34%), 53 medium-security (55%) and 10 (10%) minimum-security, making a total of 96 prisoners. At the time of the Review, some four months earlier, the population had been 102 prisoners. The prison holds both remand and convicted prisoners in the same areas, and therefore female prisoners who have not yet been convicted associate with other female prisoners who have been convicted of serious offences. The inspection survey by the inspectorate in June 2002 noted that sentenced prisoners accounted for 58 per cent of the population and 39 per cent were remanded.
- 5.3 The prison has self-care accommodation units (for 22 prisoners), which allows selected prisoners to cook and clean for themselves. This area is generally used for long-term prisoners. During the day prisoners from self-care are free to visit other female prisoners in the rest of the prison, but prisoners not in self-care are prohibited from visiting their accommodation area.
- 5.4 At that time the main accommodation area was known as A Block, or the 'Compound'. At the time of the review, it held 70 female prisoners. Since then the new accommodation block has been opened and the Compound is being refurbished. The area was known by some of the staff as the 'jungle' and contained a broad mix of prisoners. There were maximum-rated prisoners and prisoners serving time for simple non-payment of motoring fines, Aboriginal offenders who were a thousand miles from their home and unconvicted prisoners on serious or relatively trivial charges, and so on; and they were all located together in a quadrangle style of accommodation with single and double accommodation cells. The central area is a grassed area with trees, shrubs, benches and telephones.
- 5.5 Bandyup also has a separate mother and baby unit, with the facilities for up to four mothers to keep their young babies for up to 12 months. If there are vacancies (which is very unusual) this has occasionally been used at times as respite care for protection prisoners when the mix of prisoners in the Multi-Management Unit has been difficult to manage. This eventuality could arise because the Multi-Management Unit (MMU), as it was called at the time of the Review, was used to house not

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<sup>42</sup> The Announced Inspection of Bandyup was resumed in late November 2002 so as to enable assessment to be made of changes that had been brought about following the opening of the new residential unit. Observations made at that time also are reflected in aspects of this Chapter.



## PROTECTION PRISONERS AT BANDYUP WOMEN'S PRISON

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just prisoners who needed protection, but also prisoners who were on punishment regimes and those who were vulnerable and disturbed. The prison's management or punishment cell area (F Block) had been closed as a result of fire about a year previous to the review. Subsequently, a new management area has been completed; it is quite separate from the protection area.

- 5.6 The MMU – or Protection Unit as it is now called, for that is its only current function – has four single cells, two double cells and one four-up cell. There is a building containing a communal shower with toilet facilities. The washing of items of personal property takes place at a sink inside the yard area. At the time of the Review, there were five prisoners in the unit – three protection prisoners, one discipline offender and one prisoner who was vulnerable and disturbed who had been transferred there from the Crisis Care Unit.<sup>43</sup> This was an extraordinary mix of prisoners – protection, control and medical – in such a small area and would seem to have been potentially dangerous and inappropriate. It is some consolation that this situation should never recur in the future.

### Yards

- 5.7 The cells in the Protection Unit each have a television, and there are doors on two sides. One door of the cell leads to a fenced area, which is adjacent to and overlooks the Compound. Prisoners on the unit are able to speak to prisoners inside the Compound but do not have direct access to that area. The other door leads to the unit yard, which has shaded areas, plastic tables and chairs for the prisoners and a fridge. Normally the prisoners on the unit are allowed out of their cells during the whole of the day. This area is about half the size of a normal tennis court.
- 5.8 The fridge where food and milk is left during the day is located on the concrete outside of the living quarters. All the meals to the unit are provided by the kitchen and received on plastic plates.

### PLACING OF PRISONERS IN THE MULTI-MANAGEMENT UNIT AT THE TIME OF THE REVIEW

- 5.9 Prisoner 1 had been on the unit for three days and was there under Rule 36 for causing trouble and fighting in the Compound. Prisoner 2 (protection) had been in Bandyup for one month. This was her first offence, and she had been charged with arson. She said that she could not live in the Compound because the other prisoners were aggressive, calling her names and pushing her around. Since being in MMU she stated that she had been pushed around on a number of occasions, but never told the staff this because of reprisals. At the weekend she claimed she had been stood-over:

*They called me the C word and wanted my cigs. When I said she couldn't have them she became aggressive. There were no officers on the unit all day as the staff were in Crisis Care or visits. By 6 o'clock I was really upset and so frightened that I rang the bell and told them it was a medical emergency. The prisoner who was*

<sup>43</sup> It was not clear whether this prisoner was regarded as a protection prisoner or not. In a male prison she would probably have been categorised in this way.

## PROTECTION PRISONERS AT BANDYUP WOMEN'S PRISON

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*causing the problems all day was taken off the unit. I think she was suffering from mental problems and we left the unit that night and stayed in the nursery. That's where we go for 'time out' off the unit when there are no prisoners with babies in the prison. At weekends it's the worst; there are usually no staff around and I feel frightened here.*

5.10 Prisoner 3 (protection) had been remanded in custody for attempted burglary, but had also given evidence for the Crown against three other people in a murder trial. One of these was a female prisoner who was now living in the Compound and serving 20 years for wilful murder following the verdict in that case. Prisoner 3 stated that she had tried to live on the mainstream (Compound) but had been 'smacked in the back of the head within the day of going there'.

5.11 She also stated that there were many problems in the MMU, due to the fact that the unit was used for a variety of prisoners. Since being located on the unit, she had to cope with prisoners who had extreme psychological problems and who had 'slashed-up' and been sent to the unit from Crisis Care. She stated that:

*Some officers are really helpful, especially the two on today, but others get really pissed off and never come out of the office and you cannot get access to them.*

5.12 Prisoner 4 had asked for protection as a result of fear of reprisals from two people, not currently in the prison system but on bail, who would most likely be sent to this prison in the future. She stated she was pregnant to the husband of one of these women and had refused to sign a waiver form to come out of protection. She said:

*I am stressing out and not ready for mainstream, my mind's not right yet. I got lots of pain and I haven't seen a doctor yet.*

5.13 Prisoner 5 refused to be interviewed during the review process. Her situation was basically a medical one. Officers working on the unit stated:

*It's not our job to lift people off the floor of the unit for medical reasons. Prisoners sitting in their own pee. We have been told just to call the medical people.*

5.14 Two protection prisoners in the unit said:

*During our stay here some prisoners were on heavy medication and one of them we had to dress, bathe and look after most of the day as there were no staff around. She was just lying naked outside her cell one day. I feel like we have been punished being in here.*

### STAFFING AND WORKING ENVIRONMENT IN THE MULTI-MANAGEMENT UNIT

5.15 At the time of the Review, staffing was inadequate. The consequence was that the unit was left completely unattended and unsupervised for prolonged periods, sometimes with prisoners unlocked and sometimes with them still locked into their cells. For example, on the Wednesday of the review

period, there were no officers on the unit from 9.05 a.m. to 11.35 a.m. and all the prisoners remained locked in their cells with no access to the yard area. The two officers were on a 'cell extraction' training course and had been instructed to lock the prisoners in their cells.

**THE MONITORING AND DOCUMENTATION OF PROTECTION PRISONERS –  
OPERATIONAL INSTRUCTION NO. 4**

- 5.16 There were no clearly documented processes in operation at Bandyup Prison in relation to protection prisoners at the time of this Review. There was no evidence that 'alternative options', other than protection, had been attempted in mainstream nor that any interim management strategies or written evidence to support such strategies had been attempted.
- 5.17 The officers were all aware of individual reasons for prisoners being located on MMU, but there was little supportive written information. The only information was normally found on the protection forms (Rule 4(g)), which contained short, one- or two-word reasons for the regime. The survey showed that some staff and prisoners were unaware of the review process 'at not less than weekly intervals' that should be operating within MMU, although prisoners said that attempts had been made by the ASPM to transfer them to mainstream.
- 5.18 Operational Instruction No. 4 was unknown to the officers working in protection; they stated that prisoner reviews were only conducted by the management. In relation to the review process staff said,
- To my knowledge unknown. I think it's done by the ASPM management.*
- Daily, ongoing because of the lack of space by the ASPM.*
- 5.19 It is evident that there is a 'review' of some sort in relation to protection prisoners taking place at Bandyup, but there appears to be no formal documentation of the process involved. To put this into perspective, this approach may well be quite sensible and pragmatic in the context of such low numbers. Usually, the prisoners and their situations are individually known to the ASPM. Women prisoners by and large do not remain in protection for prolonged periods; gradually a degree of tolerance does develop amongst the remainder of the population in a way that finds no equivalent within most male prisons. One way of assessing this is for the ASPM or another officer to make informal inquiries of peer support group prisoners or those prisoners who are known to be in touch with the ethos of the prison to ascertain whether the main population is yet ready to tolerate the particular prisoner.<sup>44</sup> As a result, there are some prisoners in mainstream whose crimes are of a sort – multiple murders of young women, participation with male partners in sexual abuse of young children – that would endanger them permanently within the male prison system. Another example

<sup>44</sup> The only male prison with any success in moving protection prisoners back into mainstream is Albany Regional Prison. Interestingly, informal means are also relied upon there, with peer support group prisoners 'sniffing the wind' of the main population to supplement the assessments of staff.

relates to a racist killing, yet the offender's presence in mainstream is now tolerated by persons of the same race as the victim. These moves back to mainstream had been achieved despite widespread ignorance of Operational Instruction No. 4.

5.20 It should also be noted that, once minimum-security status has been achieved, prisoners can be sent on to Nyandi, which operates on the ideology that predators will be shanghai-ed back to Bandyup rather than vulnerable prisoners being put into protection – a very important safety-valve, therefore.

5.21 Of course, not every attempt at mainstreaming goes smoothly. Officers reported: 'We had two prisoners try to get back to normal location, it lasted 20 minutes. One had a fight and the other was threatened.'

5.22 One should be wary, nevertheless, of generalising about the protection arrangements for women prisoners as if they were men. A women-centred approach is likely to produce and underpin policies and practices that are markedly different. In its relatively informal approach Bandyup may have stumbled upon a system that by and large fits its needs. As against that, formal documentation helps ensure that people's situations are not overlooked. We later became aware of a case where a prisoner had been kept alone in the protection area for three months, and even though she had originally requested protection, she should have been actively reviewed and the process of such reviews clearly identified for management purposes.

### CONDITIONS IN PROTECTION

5.23 Having said that, the conditions in the Protection Unit are very poor. Generally, prisoners have regular, if minimal, human contact only at unlock, lunch-time and evening lock-up. No other regular checks are made throughout the day, though informal and irregular contacts do occur. However, prisoners can contact staff if necessary by using the emergency call button in their cells. A member of the Prison Counselling Service would generally visit once a week. The recreation officer visits occasionally, but there is no formal contact with education staff. Access to work opportunities are, for obvious reasons, extremely limited, whilst access to the telephone is ad hoc and dependent on staff being free to escort the prisoners to the Compound.

### SAFETY AND RESPECT WITHIN THE PRISON

5.24 Bandyup is not regarded as a particularly safe environment by either staff or prisoners. The staff survey showed that 70 per cent of staff believe that prisoner-on-prisoner physical assault takes place often, whilst 89 per cent believe that racist remarks and 93 per cent that other forms of verbal abuse are made often. Prisoners' responses broadly supported this: 46 per cent reported some prisoner-on-prisoner sexual assault, 50 per cent stated there was a lot of bullying, and 28 per cent reported physical violence between prisoners. Staff explanations included the following:

*As per the lack of staff, we do not have time to be seen and having a presence in the prison to watch and listen.*

*Bullying goes undetected because it is ignored by staff who don't want to get involved and because women are silent about these things.*

5.25 Yet 80 per cent of the women stated that they either 'mostly felt safe or always felt safe' – the safety paradox manifesting itself again. However, the remarks made by some of the prisoners highlight problems within the mainstream population:

*There is a lot of tension in the prison at times and because everyone is close-knit it is hard not to get involved in arguments and prison bitching.*

*Some prisoners are very violent for no apparent reasons and take it out on the other prisoners.*

5.26 The prisoners also reported that there were some 'sexual assaults perpetrated by officers against prisoners (five respondents), physical violence (52%), bullying (42%) and racist remarks (48%)'. The responses also indicated that prison officers endured 'some physical violence' (64%), bullying (54%) and racist insults (45%) from prisoners. Prison officers stated that they normally deal with bullying when they see it, and said:

*If I see it, I approach and say – What's going on here? There say, 'nothing', as they cannot 'dob' the person in and are terrified of taking it further.*

*We know stand-overs go on, people go into each other's cell and toilets. It's going to happen and it must be horrendous for an ordinary crim.*

5.27 Officers also said that prisoners had property taken from inside their cells but the victimised prisoners would not accuse the offenders of stand-overs so that the management were reluctant to discipline the prisoner. They said:

*X is a real stand-over merchant and we found in her cell bras, cigs, toiletries, and she said the prisoners gave them to her. We knew that wasn't true, but they will not make a formal complaint.*

*One prisoner had four cell keys in her possession and nothing was done about it. The management are a little like the prisoners, they will not support the staff when a complaint is made. How can we keep discipline if the admin don't back us?*

5.28 Staff acknowledged that there was an anti-bullying policy at the prison, but said that it was not operating and that, in any case, they had received no training. The only indication of any strategy was a booklet, 'Bandyup Women's Prison Anti-Bullying Strategy – No Bullies', dated January 2002. The booklet was distributed to Senior Officers, but many of them had not read or implemented this. Prison officers working at Bandyup said of the anti-bullying strategy:

*Yes there's one implemented and lots of signs about the place.*

## PROTECTION PRISONERS AT BANDYUP WOMEN'S PRISON

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*About two years ago, but only a poster.*

*Basically I do not know, no one has explained it to us.*

5.29 It appears that Operational Instruction No. 15 has been alluded to, but the training and implementation of this policy is not evident. This is further supported by the survey of both the staff and prisoners. At the time of the review, therefore, Bandyup had no effective strategy in place for dealing with predators.

5.30 It is disappointing to have to conclude that the safety test fails in respect of both staff and prisoners. In addition, the environment was one of great disrespect – between staff and management, staff and some other staff, and prisoners and staff. These points are brought out in the Inspector's Report No. 14, *Report of an Announced Inspection of Bandyup Women's Prison – June 2002* (Office of the Inspector of Custodial Services, April 2003).

### PURPOSEFUL ACTIVITY

#### Work

5.31 As mentioned, there is effectively no work available. Work only became available if prisoners signed a partial waiver protection form, akin to that set out in Appendix 2 but confined to the withdrawal of protection in the textile shop. Not surprisingly, at the time of the review no protection prisoners on the unit were working.

#### Education, library and recreation

5.32 Education is non-existent on the unit and the prisoners are unable to attend education programs. Prisoners who want books can be escorted to the library, and this is regarded as recreation. Beyond that, recreation is virtually non-existent.

### PURPOSEFUL ACTIVITY AND A LATER REVIEW OF THE PROTECTION UNIT

5.33 In June 2002 the reviewer returned to Bandyup and re-examined the protection of prisoners. At the time of this visit, there was only one prisoner left in protection – one of the original prisoners from the February inspection. The prisoner had been on her own in the unit for about three months; the building was no longer used to accommodate punishment prisoners and the Crisis Care Unit was now fully operational. The prisoner stated that she saw nobody during the day and normally only saw an officer at unlock in the morning, at lunch and when she was locked up in her cell for the night. The officer in charge of the unit and half the compound area said:

*I just check to see if she is all right in the morning and maybe pop in when I have time during the day. I have my hands full with the Compound so I rarely get a chance. I always ask her if she wants anything in the morning and arrange it for her.*

The prisoner said:

*You really have to hassle them to get anything. The staff generally ignore me and are not very helpful. Since living in this small space on my own for such a long time I'm now frightened of large spaces. If I wanted to slash-up, they wouldn't find me.*

5.34 The prisoner also said that she had not seen a recreation officer for three months and had put on 15 kilos since she came into protection because of the lack of exercise. She had visited the library only twice in the last month and the library officer now allowed her to take five books. In relation to using the telephone, she stated that the only telephone she was permitted to use was in the Crisis Care Unit (CCU), and this involved being escorted out of the unit:

*I have to make applications to use the phone but by the time the escort arrives its usually after 6 o'clock in the evening and my lawyer has gone home. I have to leave a recorded message for him. I usually get escorted about twice a week to the CCU for telephone calls.*

The system prevented the prisoner from consulting with her lawyer and from effectively preparing her case.

5.35 The prisoner also remarked that her medication (antibiotics) was now given to her by staff and she no longer had to attend the medical centre. In relation to health she stated that she had been diagnosed as having Hepatitis C, but since arriving at Bandyup had received no counselling or advice on this illness. She also stated that she had been waiting four months to see an optometrist as she needed glasses for reading, but had not yet been seen. There is no doubt that this prisoner had been isolated and has been left and virtually forgotten for most of her sentence in protection.

#### PREPARATION FOR RELEASE

5.36 Protection prisoners have their visits with other prisoners. This requires an escort to be available. Beyond that, no services relevant to preparation for release seem to be available.

#### HEALTHY STAFF

5.37 The whole question of staff morale is addressed in the Bandyup Inspection Report. In summary, it could hardly be worse, having deteriorated over years of neglect and indifference.

#### SUMMARY

5.38 Protection arrangements are profoundly unsatisfactory. Bandyup Prison fails all of the tests for a healthy prison in respect of protection prisoners and staff working in that environment. The fact that there are so few protection prisoners at Bandyup is, of course, a good thing. Paradoxically, this may have enabled management to 'get away' with managing the whole question in an ad hoc way, and certainly in their ability to mainstream prisoners again or to move them on to a more suitable

## PROTECTION PRISONERS AT BANDYUP WOMEN'S PRISON

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environment (Nyandi) they have by and large done well. However, when one starts to measure some of the tangible factors that go to make up reasonable prison services – access to work, education, recreation, health services and so on – it becomes apparent that the situation is below an acceptable standard.<sup>45</sup>

<sup>45</sup> Numerous small changes have been made to the regime since our fieldwork. Cumulatively, they seem to have improved the situation for protection prisoners, but it remains unsatisfactory.



# Chapter 6

## PROTECTION PRISONERS AT BUNBURY REGIONAL PRISON

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### THE BACKGROUND

- 6.1 Bunbury Regional Prison is the primary location within Western Australia for the delivery of the intensive sex offender treatment programs to medium-security prisoners. Until 2001 the average daily population had been about 200; and at the time of the Review (6– 8 May 2002) it had been 153. This reduction had been brought about in anticipation of the closure of the minimum-security section. This occurred in June 2002, and since then the population has been running at about 130–140. In the past, as many as 60 per cent of the population have been sex offenders; however, at the time of the Announced Inspection of the prison (November/December 2002) that proportion had fallen to 34 per cent (45 out of 134 prisoners).
- 6.2 These prisoners were distributed throughout the prison, particularly in Unit 2 (the Compound area) and the self-care units. In other words, they are not in protection but are integrated into mainstream. Almost without exception, the sex offenders had been in protection at their previous prisons – mainly Hakea and Casuarina. There is a view that a critical mass of about 50 per cent of total prisoner population is required to ensure that sex offenders remain safe. This view is not empirically derived but anecdotal. The ‘common sense’ underlying it is recognition that the overall tone and ethos of a prison ultimately determines whether prisoners are safe and that sex offenders as a group can affect that ethos if their numbers are sufficient. This rather crude representation of organisational dynamics probably contains an element of truth, but is certainly not an adequate analysis in itself. At Karnet – a minimum-security prison – the Inspector had found 32 per cent of prisoners were sex offenders, and that although there were ‘some anecdotes of bullying ... they were fairly non-specific’. It was noted that ‘on balance, this aspect of the regime appears satisfactory’.<sup>46</sup>
- 6.3 The question accordingly arises as to how safe mainstreamed sex offenders are at Bunbury and how this situation has been achieved and maintained. What makes a non-segregation policy viable and sustainable?

### DO PRISONERS FEEL SAFE IN THE PRISON?

- 6.4 Although no formal anti-bullying strategy appears to operate within the prison, the culture of Bunbury condemns such behaviour and prisoners are well aware of the repercussions. De facto, if not formally, the spirit of Operational Instruction 15 has partially been implemented by a common sense approach, without any staff training, inside the prison. When questioned the staff said:

*There are no anti-bullying posters on the units and no staff are trained in recognising different levels of bullying behaviour.*

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<sup>46</sup> See Report No. 5, *Report of an Announced Inspection of Karnet Prison Farm – April/May 2001* (Office of the Inspector of Custodial Services, December 2001), paragraphs 1.17–1.18. It should be noted that at Karnet there is partial segregation of the majority of sex offenders, in terms of sleeping accommodation. But in every other respect there is full integration with other prisoners.

*I can recognise it, understand the reasons behind it, clearly identify it and support the victim.*

*Encourage dobs and at the end of the day, do something within the system to address attitudes towards it and break down the social barriers against dobbing.*

*Deal with the bully.*

- 6.5 Staff working inside Bunbury said that the Induction and Orientation Book for new prisoners contained information concerning the importance of effectively addressing bullying behaviour inside the prison, but argued:

*We now have a new Induction/Orientation book which addresses bullying but many of the staff, including myself, have not been told of a systematic way of dealing with it.*

*The feeling is slap happy here. It needs to be done properly with time set aside to do it properly.*

*The book just appeared in the unit with no information or guidance about how it should be implemented.*

- 6.6 It is evident that the staff actively address bullying as part of their remit and, although none of them have been trained in techniques, they have an intolerant attitude towards this behaviour.<sup>47</sup> It is not an accepted part of the culture of this prison or of prisoners residing there. Consequently, both prisoners and staff feel reasonably safe in the environment. The surveys carried out for the November/December 2002 Inspection indicated that 81 per cent of prisoners felt safe or very safe. Some prisoners who had been to other prisons (mainly Hakea and Casuarina) stated that this prison was the first they had been sent to where they had felt safe in a mainstream prison population. For example, one prisoner said:

*When I came in here from Hakea the first few months were a pressure as I expected to be bashed in mainstream, but after a few weeks the place became a normal environment and I felt comfortable for the first time in prison.*

- 6.7 The ‘safety paradox’ was still present, however, with 24 per cent stating that prisoner-on-prisoner violence occurred and the general view being that the main targets were sex offenders. One prisoner stated that, contrary to the view expressed above, some officers tolerated or even encouraged intimidation of sex offenders:

*They (officers) allow violent prisoners who hate sex offenders here to punish us.*

- 6.8 Comments from other prisoners indicated that they resented being accommodated in the same prison as sex offenders. The picture was not one of uniform tolerance, therefore. Nevertheless, there

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<sup>47</sup> In its response to the draft Report, the Department stated that all prisoners being transferred to Bunbury are screened for possible bullying propensities. Both former protection prisoners and prisoners who have elsewhere displayed predatory tendencies are interviewed at the ASPM/Security Manager level upon arrival to explain what behaviour is expected of them at Bunbury. Also, the Monday morning de-brief of senior officers and managers has a regular agenda item relating to bullying and predators.

was an overall acceptance of the fact that there was a mixed population and, for their part, sex offenders were able to cope in the mainstream prison environment without undue stress.

## RESPECT FOR PRISONERS

6.9 Many prisoners said that they had found it difficult to readjust to being in a mainstream prison population because of their past experience of assaults and other inappropriate behaviour they had found as part of the culture in other prisons. The cultural atmosphere and the apparent safety of both staff and prisoners is directly related to a number of interrelated but significant factors operating inside this prison, which add up to a respectful attitude.

6.10 First, the morale at the prison was good.<sup>48</sup> The majority of staff enjoyed working there, and had a reasonably good relationship with the senior managers and civilian staff (peer support, health, teaching, forensic and program staff). Officers did not appear to be ‘burnt out’ or stressed in their working environment. For example, one stated:

*I really enjoy working here, we have our fingers on the pulse most of the time. It's challenging and we need some proper training but I think we do a good job.*

6.11 There appears to be ownership, team work and a non-judgemental attitude in the staff working at this prison; managers and staff appear to be pro-active in creating a healthy work and living environment for both prisoners and staff. The staff and prisoners feel supported, consulted and the majority of them believe that they are ‘well led’. Prisoners said of officers:

*Some of the staff are really good and help you.*

*Officers who work in this prison do far more than in other places. It's a different relationship with staff here.*

*In the other prisons, the staff never came into my cell, here they get to know people and we see them in a different light.*

6.12 Many staff speak to prisoners by their first names; the only other prison where this was found was in Acacia. This breakdown of the institutional barriers historically erected between officers and prisoners has been somewhat eroded, thus creating a more open environment where it is culturally acceptable to inform the staff of intimidatory practices and suspected bullies.

6.13 Most of the sex offenders did not see this action as ‘dobbing’, but as their own legitimate responsibility for and ownership of the conditions that prevailed inside the prison. The information that was passed on was normally reinforced by the swift action by staff and management resulting in the removal of the predator from mainstream by way of punishment. This might even involve

<sup>48</sup> Morale had declined by the time of the Announced Inspection (November/December 2002), mainly because of the uncertainty as to Bunbury's future role, or even its survival, following the closure of the minimum-security wing. The illustrations of good morale set out in the text that follows would now have to be qualified somewhat.

## PROTECTION PRISONERS AT BUNBURY REGIONAL PRISON

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transferring the other prisoner elsewhere – a strong deterrent because Bunbury is generally regarded as a good place to be within the prison system and also because local prisoners would have their visiting privileges in effect reduced by transfer to the Metropolitan Area.

- 6.14 Bunbury thus appears not to be a prison where strong division exist between the ‘captors and the captives’. Most of the officers working at Bunbury treated the sex offenders no differently than the mainstream population. Prison officers who were involved in teaching programs and courses said that they had come to see sex offenders differently because they had a working relationship with them as people. A prison officer working as a facilitator on the Sex Offender Treatment Program said:

*Since I have been involved in the course, I see the prisoners as people. I suppose it's to do with the interaction and depth of the course. It not only changes their attitudes but also mine. I would have left the job if I didn't do this sort of work. Before I was simply a turnkey, now I'm involved with the prisoners.*

- 6.15 For their part, prisoners said about this officer:

*The officer on the course is a great guy. He's still an officer but I now know him and he knows me better.*

- 6.16 A prisoner who had been in other Metropolitan prisons said:

*In protection at other prisons I felt really vulnerable and needed to be protected from some of the shits on the unit. The staff never really got to grips with what was going on in the unit and to be honest didn't really care about us. We were just a nuisance and shit.*

- 6.17 Bunbury Prison has a number of effective alternatives available to it, which other prisons in the Review do not. As mentioned, the most important of these is the possibility of being transferred out of this prison. This was the most feared action of all as many of the prisoners in the general population were from the local area and this meant that families and friends would be unable to visit if they were transferred to other prisons:

*There are very few stand-overs here. I'm not a tamper and I do not like them here. At the end of the day we are all prisoners and I do not associate with them. If I did do anything I would be shipped out and I like it here. It's quite laid back.*

- 6.18 Linked to this option was the fact that the majority of prisoners saw Bunbury as a fair and humane establishment where the atmosphere inside the prison, the courses offered including work and education and the demeanour of staff was considered far better than in other prisons. The risk of being transferred out meant that they would be ‘doing hard time’, and this was a reality many of them had experienced at other prisons.

### A HEALTHY PRISON FOR STAFF

- 6.19 The staff at Bunbury Prison appeared to be positive about their working environment. However, one area where staff felt unsupported was in the area of training and staff development. Staff said:

## PROTECTION PRISONERS AT BUNBURY REGIONAL PRISON

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*We have never had any training relating to protection prisoners, or sex offenders or anti-bullying strategies.*

*In 14 years I've had restraints, unit management, computing, chemical agents – but no refresher in First Aid, and CPR was two and half years ago.*

*I have six years' service and all the training I have received, apart from control methods, is my initial 12 weeks course.*

*Over the last six years I have had had Cog Skills for one day; originally I was told it would be 72 hours but now it's cancelled as a result of budget cuts*

*All I have had is TOMS for one day, then another three-quarters of a day, that's all. We are slowly being buried under paperwork without the skills for inputting most of it on the computer. Some of the staff take up to an hour to input data.*

- 6.20 The prison officers at Bunbury raised the issue of staff training, an integral part of a 'healthy staff' test, in the same way as other prison officers in this review. There is a need for more appropriate staff training, other than control and restraint methods, to be introduced by the Department so as to reflect the contemporary role of this prison and the nature of the prison population housed at Bunbury Prison.
- 6.21 The staff are 'well led', but the Department fails in the area of keeping them 'informed' in the changing responsibilities and nature of their roles. Bunbury is being used as both a specialist prison for sex offenders, whilst also providing the function for the general population. It does provide a safe environment and is the only prison in the review that actively addressed to any degree of success the anti-social and destructive behaviour of bullying in prisons in WA.

### CONCLUSIONS

- 6.22 Bunbury is a very safe prison in comparison with other prisons in the review. The non-separation policy works well and this is due to a number of factors.
- 6.23 The overriding major factor is that the prison is considered a good prison by both staff and prisoners. All prisoners, whether sex offenders or other prisoners, believe that to be transferred out is a retrograde move and they consider most other prisons in WA to be inferior. Therefore, there is a disincentive for predatory behaviour such as stand-overs, assaults and verbal abuse, especially towards sex offenders. This option at Bunbury is not as readily available to other prisons in the review: for example, where else can a maximum-security Casuarina prisoner be sent except, perhaps, to Albany? In a sense the threat of being transferred out is more effective than taking predators off mainstream and locating them in a unit on their own.
- 6.24 Most of the prisoners are fully occupied during the day and have little free time on their hands to become involved in petty issues concerning other prisoners. The majority of prisoners see the prison

## PROTECTION PRISONERS AT BUNBURY REGIONAL PRISON

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as assisting them rather than punishing them. The courses, programs, traineeships and education provided in the prison are good by WA standards.

6.25 There is no overriding culture of bullying at Bunbury Prison. This is not due to the implementation of a formal strategy (Operational Instruction No. 15) but to the fact that there is a strong culture of tolerance. This is the strongest single factor in the creation of a safe environment.

6.26 However, formal processes must be strengthened. The informal structures underlying the positive culture are by their nature somewhat fragile.

# Chapter 7

## CONCLUSIONS AND RECOMMENDATIONS

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### THE EXTENT OF THE USE OF PROTECTION IN THE WESTERN AUSTRALIAN PRISON SYSTEM

- 7.1 In the three principal male prisons that rely on protection regimes in relation to prisoner management – Hakea, Casuarina and Acacia – there is a reasonably consistent overall pattern of approximately one prisoner in six being held on protection. Acacia Prison, which only became fully operational in May 2002, accommodates the greatest number of such prisoners – almost 50 per cent. Ironically, the original contracts relating to the operation of that ‘privately managed’ prison did not provide for the management of protection prisoners, and that function has been agreed subsequently.
- 7.2 It was not possible to ascertain with any exactitude whether the use of protection status has been increasing, though this anecdotally appears to be the case and official sources seem tacitly to have accepted this. There are also within the WA prison system substantial numbers of prisoners who have at one time or another been on protection but have now been brought into mainstream. These prisoners predominately are accommodated in Bunbury and Karnet Prisons. At the time of the Review, there were about 90 prisoners falling into this category – i.e. about one-third of the number who were currently under protection.
- 7.3 The lack of good quality data is itself a problem. Managing protection prisoners has become a core function, not just in terms of numbers but also because it has become enmeshed in the whole functioning of the prison system. At any given time, it should be possible for the Department to know how many prisoners are on protection for what reasons at which prisons and how long they have had this status.<sup>49</sup>
- 7.4 This Review has attempted to address the question of whether protection status is ‘over-utilised’ and, related to this, whether there are effective means for reviewing and changing that status. It is evident that the Department of Justice has succeeded in creating a system that facilitates a change of status through a change in prison location – in other words, as a by-product of sentence progression and management. So the issues about possible over-utilisation of protection status and mechanisms for review relate primarily to prisoners who have remained within the prison where their protection status originated or have been transferred to another prison carrying their protection status with them.

### THE CHARACTERISTICS OF PROTECTION PRISONERS

- 7.5 There is nothing particularly surprising about the categories of prisoners who receive protection. The Department’s own figures, cited in footnote 10 of Chapter 1, indicate that sex offenders are the

<sup>49</sup> By the same token there should be better data relating to violent incidents in prisons – not just prisoner-on-prisoner but also prisoner-on-staff and prisoner-on-visitor. The Council of Australian Governments treats assaults within prisons as an indicator of custodial effectiveness (see the 2002 *Report on Government Services*, pp. 525–6). All States except WA and Queensland collect and report such data. New South Wales has now developed an instrument and protocol for collecting such data that it claims is working rigorously. The WA Department of Justice should investigate this and adopt it for use here.

## CONCLUSIONS AND RECOMMENDATIONS

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predominant group, with ‘disturbed and vulnerable’ and persons having ‘other prisoner issues’ making up the bulk of the remainder. These categories are somewhat unhelpful in that they aggregate various sub-categories together, yet an understanding of who requires protection and for what reasons is necessary to achieve full and constructive management of this issue. Our own observations confirm that sex offenders were the predominant group and that prison informers, protected witnesses, persons who have incurred debts within prisons, former criminal justice personnel, the intellectually disabled, and persons and groups whose antagonisms have been brought in from the outside world to prison life constitute the main categories. However, at this stage the WA prison system, though not quarantined entirely from gang formation, is not subject to the kind of prisoner power struggles that result in substantial numbers of prisoners seeking a way out, by way of protection. In this regard, Western Australia is more fortunate than some other Australian prison systems, particularly New South Wales, and in a different league altogether from the situation in some of the large prisons in the USA.

- 7.6 An interesting phenomenon that would not have been found if this Review had been done a decade ago is that there are substantial numbers of older prisoners requiring protection. This anecdotally has come about because of the retrospective ‘round-up’ of sex offenders who may have committed offences many years ago and thus are considerably older by the time they are sentenced to imprisonment. A consequence of this is that at Acacia Prison there is a geriatric protection wing.
- 7.7 As mentioned, the intellectually disabled have always traditionally been a vulnerable group and there is evidence that larger numbers of such persons are tending to find their way into the prison system. Consequently, there is some suggestion that an overlap is developing between those who are in protection and those who are or should be in crisis care. This was particularly evident at Casuarina and certainly complicates management issues.

### PROCEDURES AND CRITERIA RELATING TO PROTECTION

- 7.8 In the public prisons, Operational Instruction No. 4 purportedly governs protection procedures. This Instruction sets out a series of graduated responses for dealing with prisoners who consider that they are in need of protection. The first response is, or should be, closer supervision by officers in the prisoner’s normal environment; this leads to five other stages, culminating in placement in another unit, before full protection status is granted. In other words, Departmental policies contemplate protection should be a last resort.
- 7.9 In practice, this Review has established that protection is often a first resort. We received frequent testimony that protection is granted at the first request; prison officers and their line managers are exceedingly risk-averse in this regard. As was seen, their knowledge and training in relation to these issues was extremely sparse, so it is really no really great surprise that the graduated series of responses are usually by-passed. In addition, they presuppose an active style of management – unit management in the best sense – that simply is not present in most of the major public prisons in this State.



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- 7.10 The Review revealed that documentation relating to the decision to put a prisoner on protection was either non-existent or so brief and uninformative as to be almost useless. None of the potential data sources – local prison written records, the TOMS data, or Head Office prisoner records – was satisfactory in this regard.
- 7.11 With regard to Acacia Prison, it seems that most of the prisoners kept on protection were received from Hakea or some other prison already possessing that status, and that this was simply continued. With regard to protection which was conferred for the first time on a prisoner who was already at Acacia, there were no written criteria and no formal documentation suggesting that a graduated response to the problem should be followed. As with the public prisons, therefore, Acacia would send a prisoner on to the next prison with inadequate documentation as to his situation. This is an important point; protection should not be thought of as a static situation relevant to one prison only. Once a prisoner has taken on that label, it is relevant to his management wherever he subsequently transfers.
- 7.12 At Bandyup, staff equally lacked knowledge of the Department's official policies and procedures. However, because it is a small prison staff tend to know prisoners individually. The use of protection is highly exceptional and when it does occur it is fairly widely known why it has occurred and the basis is self-evident. This, again, is hardly a vindication of Departmental failure to follow its own Operational Instruction and train staff in how to do so, but the practical detriment that follows from these failures is much less significant.

### CONDITIONS FOR PROTECTION PRISONERS

- 7.13 Conditions at Hakea were unacceptable. The accommodation in Unit 4 is of a very poor standard and requires refurbishment. Access to recreation facilities, library use and educational programs are each very restricted – well below the standard which prevails for other prisoners at Hakea. Visiting arrangements are discriminatory. Staff interaction with prisoners is very poor; there is almost no element of unit management. This is exacerbated by the practice of prison management of pulling staff out of Unit 4 to cover absences of persons in other parts of the roster. There is undoubtedly bullying within the protection unit, and the non-interactive nature of the management regime allows this to occur.
- 7.14 Prisoners are sent to prison as punishment; but in the protection unit at Hakea Prison it is as if they are sent there for punishment. The prison in this regard lamentably fails the healthy prison test. Real questions arise as to whether this function should continue to be performed at all at Hakea. As spare capacity develops around the prison system, other possibilities present themselves; for example, Albany Regional Prison has, in relation to small but regular numbers of protection prisoners, shown an ability to manage them back into mainstream whilst still at Albany itself. Although it may not be an ideal arrangement to re-open a wing at that prison for the purposes of managing protection, at this stage the disadvantages of continuing at Hakea arguably are even greater.

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- 7.15 At Casuarina Prison the situation is measurably better than at Hakea. The officers interact better with the prisoners and some prisoner services are distinctly better – for example visits and availability of work. On the other hand, access to library facilities and education services is very poor, and recreation opportunities are limited. The two biggest problems concern the mix of protection prisoners – predatory ones are within the same unit, albeit on a different landing and some of the prisoners held in protection arguably should be held in crisis care. However, because the general cultural environment of Casuarina Prison is better than that at Hakea, the situation in the protection unit is likewise more acceptable. Of course, all the same management defects and record-keeping hiatuses are present as at Hakea, and the gaps in staff knowledge and training are immense. But the overall regime is just about tolerable for the time being.
- 7.16 Acacia Prison offers much better services for protection prisoners. Work opportunities are excellent; access to education is good; library access is likewise good; recreational opportunities are of an acceptable standard; and visiting arrangements and the attitudes towards visitors are excellent. By and large the interaction between staff and protection prisoners is positive. The exception to the foregoing comments is found in the management of F Block – the block set aside for geriatric protection prisoners. This is not of an acceptable standard. However, the bulk of protection prisoners (about 90 per cent of them) have the benefit of the good quality regime that has been described in the text.
- 7.17 The conditions for the very few protection prisoners who are held from time to time at Bandyup are very poor. Essentially, there is nothing to do, with no access to education and no worthwhile access to work or recreation. However, the prison has at last been able to move away from the situation where protection prisoners shared their accommodation area with those on punishment or management regimes or undergoing some crisis. At least the situation is a safe one, and usually it is short-term inasmuch as Bandyup has been able to return people to mainstream fairly successfully.

### REVIEWING PROTECTION PRISONERS AND RETURNING THEM TO MAINSTREAM

- 7.18 This Review revealed graphically that the review mechanisms set out in Operational Instruction No. 4 are to all intents and purposes defunct. This is hardly surprising; how could one sensibly set out to review the case of persons in relation to whom almost no documentation exists, in a context where interactive unit management is highly exceptional, through the agency of staff and line management who have not been trained for this task? The fact of the matter is that the Departmental presumption has been that, once one moves into protection in one of the major prisons, that is where one stays. The only way out might, as mentioned, be by way of transfer to a prison such as Bunbury or Karnet.
- 7.19 One of the most extraordinary aspects of this Review has been the discovery of a system of so called ‘protection waiver’ forms. In effect, the status review is for the prisoner himself to undertake and risk-manage. The Inspector sought legal advice on this matter, and it is evident that the Department is legally vulnerable should it attempt to rely upon this waiver in any action for negligence brought

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against it. What is required is active and constructive management of risk, which in turn takes one back to proper assessment that full protection is required, ongoing review, development of plans to return to mainstream, and ultimate return to mainstream in circumstances where the factors which previously made the prisoner vulnerable are not immediately and foreseeably present. A system such as this would protect from duty of care litigation even if on the odd occasion it went unforeseeably wrong; attempting to transfer the risk to the prisoner himself will not protect from litigation, however. It is evident that this approach to protection prisoner management must cease forthwith.

7.20 As mentioned, the Department has been successful in integrating prisoners previously on protection into mainstream in different prison settings – the relatively relaxed and culturally supportive medium-security environment of Bunbury Prison and the open and minimum-security environment of a good working prison at Karnet. In each case it does seem that the key factor has been a supportive cultural environment, where officers understand the issues and treat these prisoners with no less respect than they treat other prisoners. These prisons also have a capacity to deal with predators, but a key aspect of the Bunbury regime in particular is the ability to transfer predators back to a more rigorous prison regime. That is also true at Karnet.

7.21 Bandyup is also able to finesse some of its protection issues by transfer to another prison, Nyandi. We came across cases where prisoners on protection remained there only until such time as they qualified for minimum-security status, at which point they would be transferred to Nyandi. At Nyandi itself there is an established practice of transferring predators back to Bandyup paralleling the practice adopted at Bunbury. Thus, a previously protected prisoner at Nyandi, whose situation would almost inevitably be known to other prisoners there, can reasonably expect not to be the subject of intimidation in that new location.

7.22 Of course, not all Bandyup protection prisoners qualify for minimum status and transfer to Nyandi. Interestingly, Bandyup has also had some success in transferring protection prisoners directly back into mainstream. Nothing is documented about this and there are no protocols; but dealing with such small numbers in a female environment, it seems that the situations that have made the prisoner vulnerable initially tend to be able to be resolved informally and with the passage of time. This is not, as the discussion in the Bandyup chapter reveals, invariably successful, but it does represent an aspect of the reality. It is not a system, however, and it cannot possibly grow into a structured policy until it is more closely examined and documented and refined.

### STAFF ATTITUDES AND TRAINING

7.23 In relation to the primary category of protection prisoners – sex offenders – staff attitudes range from the derisive, as with a few officers at Hakea, to the compassionate, as was seen in at least one case at Bunbury. In this regard, officers probably reflect the broad community approaches to these issues. What also emerged is that the attitudes towards sex offenders tend to spill over somewhat to

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the attitudes to other protection prisoners – for the systems are such as to leave them somewhat undifferentiated in people’s perceptions.

- 7.24 However, staff attitudes should be related to their responsibilities, and it is through training that attitudinal change and consistency will be mediated. It starkly emerged that there is no training worth speaking of relation to the general attitudes towards prisoners who require, or end up in, protection. Nor is there training with regard to the Department’s own systems – in particular Operational Instruction No. 4 – and the documentation that should proceed and then regularly follow upon the grant of protection status. There is, in fact, profound ignorance throughout the officer ranks as to these matters – and this is not something for which officers themselves should be expected to take responsibility.
- 7.25 At Acacia it did not appear that the training situation was any better. The preferable culture in relation to protection prisoners seemed essentially to be a by-product of the fact that it is a new prison, with new staff who have not at this stage absorbed the cultural approach which differentiates between deserving and undeserving prisoners. That is, of course, a fragile basis for the future retention of what appeared to be good values and practices. As mentioned previously, Acacia must move to a point to where its policies and practices are properly documented and its staff thoroughly trained.

### ANTI-BULLYING POLICIES

- 7.26 The Department exhibited a strong theoretical understanding of these issues and the philosophy underlying Operational Instruction No. 15 is well-founded. However, that Instruction was in practice almost universally irrelevant to the everyday management of the publicly managed prisons. At Hakea and Casuarina, staff consistently testified that they knew nothing about the policy or, if they did know that one existed, that they had no idea what it was they were supposed to do to implement it. Beyond the obvious level of extracting a prisoner who was visibly beating up another from the area, they were unaware of the ways of recognising early warning signs as to intimidation and bullying. The message they were getting from the manner in which anti-bullying policy notices were displayed – torn, half-hidden – was that the matter was of no real importance; it was a token policy for token observation. Of course, predictably, they had received no training about these matters. Moreover, they worked in an environment where it was the victim who would be segregated rather than the predator.
- 7.27 It is also true to say that they are used to a situation where a prison disciplinary charge is the normal peg on which to hang discipline against a predator. Yet Section 36 (3) of the Prisons Act would certainly justify wider moves against predators. An approach such as that found in the UK and epitomised in the Waite Unit at Feltham could be implemented without the need for legal changes.

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- 7.28 There is also the ‘easy life’ temptation. It is much harder to deal in one’s working life with hard cases than soft ones. The prison environment in Hakea, in particular, is one where the staff are significantly demoralised and thus less likely to take on the difficult challenges. Thus it is that the vulnerable prisoner becomes the focus of problem solving moves rather than the predator.
- 7.29 In this regard, Acacia Prison is little different. Its formal anti-bullying policy seemed likewise not to be fully understood or applied by officers. However, the generally more supportive atmosphere for protection prisoners did much to off-set this.

### OVERALL IMPACT

- 7.30 At one level it could be said that the Departmental practices, being so risk-averse and automated in relation to protection and the management of vulnerable prisoners, do something to ensure their safety. No prison administration wants to have a major assault or a murder on its hands if it can avoid this by segregating likely victims. The impact of the murder at Casuarina Prison a decade ago still reverberates.
- 7.31 On the other hand, whole groups of prisoners suffer disadvantage during their incarceration. This is not simply a regrettable matter from the point of view of their own comfort, but it likely constitutes a barrier to their own effective rehabilitation and re-entry to the outside community. More importantly, if violent men are permitted, unchallenged, to continue their violent behaviour in the prison context, then it is likely that their offending behaviour will become even more habituated and will continue upon their release. In a word, a prison system that does not confront bullying and intimidation is one that is failing in its core task.
- 7.32 It is part of the rehabilitation and re-entry strategy, therefore, to achieve prison regimes and arrangements where protection is not regarded as somehow normal but is highly exceptional. There will always be, in any system, people who can only be managed within such a regime, and this is fully understood and accepted. However, an explicit objective of a properly functioning prison system should be to minimise these numbers as far as is sensibly manageable. It cannot be said from the performance to date that the Western Australian prison system has treated this as a serious objective. Yet, paradoxically, it has an outstanding track record at two prisons – Bunbury and Karnet. The Department of Justice is well capable, if it sets this objective, of achieving it. It is no coincidence, however, that those two prisons each have a supportive cultural environment – far different from that at Hakea, in particular, and also at Casuarina.
- 7.33 This brings us back to the key point emerging from the literature, that the general prison culture and environment is crucial to all matters of management, including the use of protection and the reduction of bullying and intimidation. It is not possible to have a bad prison with a good anti-bullying policy or appropriate protection regimes; the latter need to be embedded in positive culture. The recommendations that follow accordingly presume across-the-board improvement in the whole

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of the WA prison system and in particular in those prisons with the major populations of protection prisoners. In that regard, although Acacia Prison has so far been more successful than Casuarina and Hakea, the broad thrust of these recommendations are equally applicable there. It would be a great pity if Acacia, through not confronting and regularising its procedures and protocols, began to drift towards the sorts of situation that we have found at Hakea. Early action by way of implementing the recommendations that follow should head off any such possibility, whilst for the Department of Justice implementation of these recommendations is requisite to begin the process of climbing back from what are at the present time unsatisfactory arrangements in relation to protection.

### RECOMMENDATIONS

1. The Department of Justice should review its policies and procedures for putting prisoners on protection with a view to implementing as far as possible the graduated responses contemplated by the existing Operational Instruction No. 4.
2. Proper records must be kept as to requests for and decisions relating to protection; such records must indicate the basis for decisions in sufficient detail to facilitate future management of the prisoner.
3. Aggregated records as to the reasons for protection and the categories of protection prisoners should also be kept.
4. The guiding philosophy in relation to protection prisoners should be to manage them safely back into mainstream either in the prison where protection status originates or in another appropriate prison.
5. Protection prisoners should, as far as possible, not be unduly disadvantaged as to their privileges and conditions compared with those available to mainstream prisoners, and each prison should develop a plan to work towards this objective.
6. A case management system should be developed to review protection cases regularly, preferably at monthly intervals.
7. Prison staff should receive special training as to the reasons for protection and all issues surrounding the treatment of such prisoners.
8. With regard to anti-bullying policies and practices, each prison should develop protocols for the practical implementation of Operational Instruction No. 15.
9. Anti-bullying policies should be supplemented by a management approach akin to that found in the UK in the Waite Unit model, suitably adapted for local conditions.
10. The Department should discontinue use of the Protection Waiver Form immediately.
11. An audit should be carried out in the relevant prisons to see how far the 'Opportunity Reduction Strategies' set out in Appendix 3A are applicable and can be implemented.

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12. Staff training modules recommended in 7, above, should also include training in anti-bullying strategies and awareness.
13. The Department and each prison should strive to develop a culture where prisoners, as well as staff, understand and implement the value that bullying and intimidation are unacceptable.
14. Taking note of practices elsewhere, particularly in New South Wales, the Department should endeavour to develop a better means of reporting and recording assault levels within prisons, particularly those involving prisoner-on-prisoner violence.
15. The Department should confirm and consolidate its good practice, exemplified at Karnet, Bunbury and Nyandi prisons, in removing predators.
16. AIMS should take note of the foregoing recommendations and ensure that its policies, protocols and practices at Acacia Prison are consistent with those of the Department. In particular, AIMS should clarify its written procedures, protocols and record-keeping with regards to admission to and review of protection and its anti-bullying policies and should train its staff in all of these matters. Both the Department in relation to each of its prisons and AIMS in relation to Acacia Prison should report on the foregoing matters as a standard and regular item in their Annual Reports.

## CONCLUSIONS AND RECOMMENDATIONS

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# Appendix 1

## OPERATIONAL INSTRUCTION NO.4

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### MANAGEMENT OF PRISONERS REQUIRING PROTECTION.

#### PRISONS ACT – SECTIONS 7(1) & 35.

#### 1. Purpose

This Instruction establishes procedures for the management of prisoners who require protection from other prisoners for any period during imprisonment. Protection shall be provided in the least restrictive manner practicable.

#### 2. General

A prisoner may require protection from other prisoners if he/she is:

- (a) directly/indirectly threatened by another prisoner/s;
- (b) a possible target for vengeance or retribution due to the nature of the offence or other activities inside or outside the prison;
- (c) given or has given, information to prison officers, police or evidence in court concerning other prisoners, relatives or associates;
- (d) able to demonstrate that protection is necessary.

#### 3. Identification of Prisoners

- (a) On admission to prison, the reception officer is to assess whether the prisoner appears to be in need of protection. Where the identification is made at reception an entry shall be made on the admission checklist.
- (b) An officer may identify a prisoner as being in need of protection at any time during imprisonment as a result of observations, information from other prisoners or from the prisoner.
- (c) At other times, a prisoner may make a request for protection which is to be recorded on a standard form (see appendix 1).
- (d) A copy of the Protection Request Form is to be forwarded to the Records/Movements Officer who is to endorse the prisoner's warrants with a "protection" stamp. A copy of the form is to be attached to the warrants.

#### 4. Management and placement

- (a) The unit manager shall determine an interim management strategy once a prisoner has been identified as being in need of protection. The following placement options shall be considered:

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- i. closer supervision by officers in the prisoner's normal environment;
  - ii. change of cell placement to be near supportive individuals or to provide for closer supervision;
  - iii. temporary confinement in the prisoners own cell;
  - iv. temporary placement in an observation cell;
  - v. employment in an area with closer supervision;
  - vi. placement in another unit.
- (b) The designated superintendent shall:
- i. consider the interim management strategy as soon as practicable;
  - ii. refer to all written reports available, (others may be requested) and any information sources/s listed under (a) above;
  - iii. confirm or change the interim management strategy;
  - iv. determine the daily regime for the prisoner.
- (c) Written records shall be made of all matters relating to the need for a prisoner requesting protection, and any subsequent action taken.
- (d) Suitable employment and activities should be provided to prisoners on protection.
- (e) The officers managing the prisoner shall be informed that the prisoner is under protection, the reasons and the management strategy.
- (f) The designated Superintendent shall ensure prisoners under protection are reviewed at no less than weekly intervals and the need for continuing protection assessed.
- (g) In the event that the designated Superintendent determines that further protection is unnecessary, he/she is to document the reasons and the prisoner shall be required to sign a statement to that effect. Should the prisoner refuse, the designated superintendent shall consult with the Director Sentence Management or the relevant Director, before submitting a written statement detailing the reasons for the removal of protection.
- (h) For movements within a prison, a prisoner on protection will normally be escorted by an officer.

### 5. Removal or transfer

Any decision by the designated Superintendent to remove or transfer a prisoners for the purpose of protection shall only be made when none of the placement options listed in 4 above is practicable and it does not conflict with the prisoner's Individual Management Plan.

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- (b) If the proposed transfer conflicts with the prisoner's Individual Management Plan, approval for the transfer must be sought from the Director, Sentence Management or the relevant Director.
- (c) The designated Superintendent shall ensure that the receiving prison is fully informed of all relevant information relating to a prisoner in need of protection.

Terry Simpson  
**General Manager**  
**Prison Services**

*14 May 2001*

# Appendix 2

## DEPARTMENT OF JUSTICE PROTECTION WAIVER FORM

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<b>CASUARINA PRISON</b>	
<b>PROTECTIVE CUSTODY WAIVER</b>	
NAME	FILE NO.
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<i>I am aware that I may be in danger in the general population. This matter has been discussed with the Casuarina Prison staff, nevertheless I wish to waive the right to protective custody which was offered to me and be placed in the general population.</i>	
<i>I reserve the right to request protective custody at any time in the future, should that become necessary.</i>	
PRISONER'S SIGNATURE	DATE
<hr/>	
STAFF WITNESS	DATE
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### ADVICE FROM CROWN SOLICITOR REGARDING PROTECTION WAIVER FORM, (FEBRUARY 2002)

#### Effectiveness of 'protective custody waiver'

I refer to your letter of 8 February 2002.

Attached to your letter was a form of 'Protective Custody Waiver', which a prisoner is required to sign when he is removed from protective custody at Casuarina Prison at his own request. The text of that form reads:

'I am aware that I may be in danger in the general population. This matter has been discussed with the Casuarina Prison staff. Nevertheless, I wish to waive the right to protective custody, which was offered to me, and be placed in the general prison population. I reserve the right to request protective custody at any time in the future, should that become necessary.'

You have sought my advice as to the legal effect of this document if a prisoner were in fact attacked when placed back in the general prison population. That is, you have asked whether documents of this

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kind are effective in general terms to achieve the purported end of relieving the Department from ‘duty of care liability’ in this situation.

It is clear that the Chief Executive Officer of the Department of Justice, as custodian of prisoners,<sup>1</sup> has a common law duty to exercise reasonable care for the safety of prisoners during their detention in custody<sup>2</sup>. That duty extends to exercising reasonable care to protect a prisoner from harm intentionally caused to him by other prisoners.<sup>3</sup> Of course, this duty does not render a custodial authority liable for all injuries received by a prisoner from assaults by other prisoners. A plaintiff must show that there was a failure to take such steps to prevent harm as were reasonable for a body in the position of a custodial authority. He must also establish that the failure was causative of the injury sustained, in that if reasonable steps had been taken the assault would not have occurred.

I note that some protection from liability is given to persons doing things for the purposes of carrying out the provisions of the *Prisons Act* 1981.<sup>4</sup> However, this provision does not operate to prevent the State from incurring liability vicariously for the negligent acts of its employees.<sup>5</sup> Further, given the strictness with which provisions of this kind are construed,<sup>6</sup> it is doubtful as to whether the protection of this provision extends to negligent omissions (such as the omission to separate or supervise prisoners) as opposed to negligent acts. It is also doubtful as to whether that protection extends beyond legal actions, such as actions for false imprisonment and assault, which arise from conduct necessarily engaged in by the custodial authority in the exercise of a particular power.

It is in this context that it is necessary to consider the effect of the waiver document.

I doubt that the relationship between a prisoner and the custodial authorities is such as to permit the prisoner to waive, or contract out of, the duty of care owed to the prisoner.

The relationship between the custodial authority and the prisoner as to the form of custody in which the prisoner is kept is clearly not contractual. Therefore, the scope for the formation of a contractual exclusion or indemnity clause as to these matters must be very limited.

Aside from the contract, it is a defence to an action in negligence to establish that the plaintiff voluntarily assumed a risk of injury, including injury arising from the defendant’s negligence. However, the defence of voluntary assumption of risk only relates to risks incidental to a free association between parties, so that

<sup>1</sup> Section 16(1) of the *Prisons Act* 1981.

<sup>2</sup> *Howard v Jarvis* (1958) 98 CLR 177 at 183.

<sup>3</sup> *Ellis v Home Office* [1953] 2 All ER 149; *Dixon v Western Australia* [1974] WAR 65; *L v The Commonwealth* (1976) 10 ALR 269; *Nada v Knight* (1990) Aust. Torts Reports 81–032; *Oliviera v New South Wales* Unreported Supreme Court NSW (Spender AJ); 3 July 1995.

<sup>4</sup> Section 111 of the *Prisons Act* 1981.

<sup>5</sup> *Nada v Knight* (1990) Aust. Torts Reports 81–032 at 67,922.

<sup>6</sup> *Puntoriero v Water Administration Ministerial Corporation* (1999) 199 CLR 575.

<sup>7</sup> *Insurance Commissioner v Joyce* (1948) 77 CLR 38 at 57–58; J G Fleming *The Law of Torts* (9th ed, 1998, LBC Information Services) at 338–40; F Trindade and P Cane *The Law of Torts in Australia* (3rd ed, 1999, Oxford University Press) at 575–76.

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the risk can be said to have been voluntarily assumed.<sup>7</sup> It can hardly be said that a prisoner freely and voluntarily accepts the risks associated with his incarceration. Further, as decisions as to custodial arrangements are for the custodial authority rather than a prisoner,<sup>8</sup> it can hardly be said that a prisoner has voluntarily assumed the risks associated with a particular form of detention. Even in cases of a self-harm by a person of sound mind, the defence of voluntary assumption of risk has a very limited role to play in a prison environment.<sup>9</sup>

Even if the current terms of the ‘Protective Custody Waiver’ were given effect to, it is unlikely that they would be construed as exempting the CEO or the State from liability for negligence. It is a general rule of construction that an exemption clause that does not limit liability for negligence in clear terms should be construed as relating to liability not based on negligence.<sup>10</sup> The current Waiver does not purport to expressly exempt the custodial authorities from liability at all. It merely waives the prisoner’s ‘right to protective custody’. The Waiver form does not say that the release of the prisoner into the general prison population is at the prisoner’s own risk, or that the custodial authorities’ possible liability in negligence or otherwise is to be excluded.

The only use to which a form such as the waiver might be effectively put is to record a prisoner’s desire to be placed in the general prison population. That is because the identification of the steps which a custodial authority ought reasonably take to protect a prisoner from harm by others in the prison population may be affected by the prisoner’s expressed wishes. A court may well be more willing to regard the placement of a prisoner in the general population as reasonable where the prisoner has expressed a wish to be placed in the general population. In that context, it is appropriate that the prisoner’s request be recorded in writing so that it can be proved in later legal proceedings if required.

However, the terms in which the current waiver is cast appear to me to go beyond simply recording the prisoner’s request to be placed in the general prison population. Further, they do so in a manner that is in fact counter-productive from the perspective of the position of the custodial authorities in future litigation. This is because the waiver contains an acknowledgement of the danger the prisoner may face in the general prison population. Cases determining claims by injured prisoners have held that a greater level of separation or supervision may be required where there is reason to appreciate the danger faced by the injured prisoner or the danger posed by the assaulting prisoner.<sup>11</sup> The custodial authority is more likely to be held liable for an assault that it ought to have anticipated than it is where there is no particular reason to anticipate an assault. In a negligence action a prisoner may be able to use the Protective Custody Waiver to establish that the custodial authority appreciated the danger he faced, so that a higher level of protection should have been provided for him. If, as you have indicated is the case, the waiver form is invariably signed when prisoners are released then the form may give a false impression detrimental to the

<sup>8</sup> See section 54C of the Prison Regulations 1982.

<sup>9</sup> See *Reeves v Commissioner of Police* [2000] 1 AC 360 at 367–69, 375–76, 380–81.

<sup>10</sup> *Davis v Commissioner for Main Roads* (1968) 117 CLR 529 at 537.

<sup>11</sup> *Ellis v Home Office* [1953] 2 All ER 149 at 161; *Dixon v Western Australia* [1974] WAR 65 at 71–72.

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custodial authority in some cases. For example, the form may be used as evidence of an appreciation of risk in a case where prison officials in fact had no particular reason to think that a prisoner was at any continuing risk in the general prison population, but still required that the form be signed.



## Appendix 3A

### OPPORTUNITY-REDUCTION STRATEGIES IN PRISON

Increasing Perceived Effort	Increasing Perceived Effort	Reducing Anticipated Rewards	Increasing Anticipated Punishments
Target hardening: <ul style="list-style-type: none"> <li>• Vandal-proof furnishings</li> <li>• Hardened plastic screens</li> </ul>	Entry-exit screening: <ul style="list-style-type: none"> <li>• Screening visitors</li> <li>• Searches on leaving workshops</li> </ul>	Target removal: <ul style="list-style-type: none"> <li>• Restrictions on personal property</li> <li>• Protection for vulnerable prisoners</li> </ul>	Increasing costs: <ul style="list-style-type: none"> <li>• Formal charges</li> <li>• Non-replacement of vandalised property</li> </ul>
Access control: <ul style="list-style-type: none"> <li>• Control gates</li> <li>• Closing wings during the day</li> </ul>	Formal surveillance: <ul style="list-style-type: none"> <li>• CCTV</li> <li>• Drug testing</li> </ul>	Identifying property: <ul style="list-style-type: none"> <li>• Property marking</li> <li>• Prison issue</li> </ul>	Removing privileges: <ul style="list-style-type: none"> <li>• Denial of parole</li> <li>• Expulsion from units</li> </ul>
Deflecting offenders: <ul style="list-style-type: none"> <li>• Staggered cell release</li> <li>• Structured activities</li> </ul>	Surveillance by employees: <ul style="list-style-type: none"> <li>• Direct supervision in units</li> <li>• Civilian staff</li> </ul>	Reducing temptation: <ul style="list-style-type: none"> <li>• Single-cell accommodation</li> <li>• Supervision of outside workers</li> </ul>	Increasing social condemnation: <ul style="list-style-type: none"> <li>• Unit meetings</li> <li>• Utilising prisoner self-interest</li> </ul>
Controlling facilitators: <ul style="list-style-type: none"> <li>• Plastic cutlery</li> <li>• Restrictions on fruit juice</li> </ul>	Natural surveillance: <ul style="list-style-type: none"> <li>• Defensible space principle in units</li> <li>• Shared cells for suicide risks</li> </ul>	Denying benefits: <ul style="list-style-type: none"> <li>• PIN for phone cards</li> <li>• Ignoring manipulation</li> </ul>	Making an example: <ul style="list-style-type: none"> <li>• Punishing ringleaders</li> <li>• Publicising punishments</li> </ul>

## Appendix 3B

### PRECIPITATION-CONTROL STRATEGIES IN PRISON

Controlling Prompts	Controlling Pressures	Reducing Permissibility	Reducing Provocations
Controlling triggers: <ul style="list-style-type: none"> <li>• Weapons effect</li> <li>• Allowing mementos</li> </ul>	Reducing inappropriate conformity: <ul style="list-style-type: none"> <li>• Mixed-age populations</li> <li>• Dispersing trouble-makers</li> </ul>	Rule setting: <ul style="list-style-type: none"> <li>• Guards as moral agents</li> <li>• Unit induction</li> </ul>	Reducing frustration: <ul style="list-style-type: none"> <li>• Personal control over lights, heat etc.</li> <li>• Non-provocative commands</li> </ul>
Providing reminders: <ul style="list-style-type: none"> <li>• Warning signs</li> <li>• Overt indications of security</li> </ul>	Reducing inappropriate obedience: <ul style="list-style-type: none"> <li>• Support for whistle-blowers</li> <li>• Participatory management</li> </ul>	Clarifying responsibility: <ul style="list-style-type: none"> <li>• Ownership of living spaces</li> <li>• Alcohol restrictions</li> </ul>	Reducing crowding: <ul style="list-style-type: none"> <li>• Reduced prisoner numbers</li> <li>• Use of colour, windows, light etc.</li> </ul>
Reducing inappropriate imitation: <ul style="list-style-type: none"> <li>• Guards as exemplars</li> <li>• Removal of troublemakers</li> </ul>	Encouraging compliance: <ul style="list-style-type: none"> <li>• Negotiating with prisoners</li> <li>• Grievance mechanisms</li> </ul>	Clarifying consequences: <ul style="list-style-type: none"> <li>• Sense of community in units</li> <li>• Confrontation in unit meetings</li> </ul>	Respecting territory: <ul style="list-style-type: none"> <li>• Personal decorations</li> <li>• Room keys</li> </ul>
Setting positive expectations: <ul style="list-style-type: none"> <li>• Domestic-quality furnishings</li> <li>• Conferring trust</li> </ul>	Reducing anonymity: <ul style="list-style-type: none"> <li>• Small prison size</li> <li>• Limiting guards' uniforms</li> </ul>	Personalising victims: <ul style="list-style-type: none"> <li>• Prisoner-guard contact</li> <li>• Humane prison conditions</li> </ul>	Controlling environmental irritants: <ul style="list-style-type: none"> <li>• Noise-absorbing surfaces</li> <li>• Air-conditioning</li> </ul>

## Appendix 4

### RESPONSE BY THE DEPARTMENT OF JUSTICE: ACTION PLAN ADDRESSING THE RECOMMENDATIONS

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1. The Department of Justice should review its policies and procedures for putting prisoners on protection with a view to implementing as far as possible the graduated responses contemplated by the existing Operational Instruction No. 4.

*Response and Proposed Action*

*Agree to review policy framework surrounding protection in terms of both system-wide policies and local procedures and regimes.*

2. Proper records must be kept as to requests for and decisions relating to protection; such records must indicate the basis for decisions in sufficient detail to facilitate future management of the prisoner.

*Response and Proposed Action*

*Agree. Existing Operational Instructions will be reviewed.*

3. Aggregated records as to the reasons for protection and the categories of protection prisoners should also be kept.

*Response and Proposed Action*

*This would not be possible in the context of current informational systems, but will be reviewed in the future.*

4. The guiding philosophy in relation to protection prisoners should be to manage them safely back into mainstream either in the prison where protection status originates or in another appropriate prison.

*Response and Proposed Action*

*Agree.*

5. Protection prisoners should, as far as possible, not be unduly disadvantaged as to their privileges and conditions compared with those available to mainstream prisoners, and each prison should develop a plan to work towards this objective

*Response and Proposed Action*

*Agree. As part of the Department's review, each prison will be working towards this objective.*

6. A case management system should be developed to review protection cases regularly, preferably at monthly intervals.

*Response and Proposed Action*

*Case Management of protection prisoners will be further incorporated in AIPR as part of ongoing case management.*

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7. Prison staff should receive special training as to the reasons for protection and all issues surrounding the treatment of such prisoners.

*Response and Proposed Action*

*As part of the Department's review of protection policy and procedures the education and training of staff will be examined.*

8. With regard to anti-bullying policies and practices, each prison should develop protocols for the practical implementation of Operational Instruction No. 15.

*Response and Proposed Action*

*As per recommendation 1.*

9. Anti-bullying policies should be supplemented by a management approach akin to that found in the UK in the Waite Unit model, suitably adapted for local conditions.

*Response and Proposed Action*

*Part of the Department's review will include examination of appropriate models.*

10. The Department should discontinue use of the Protection Waiver Form immediately.

*Response and Proposed Action*

*As per discussions, the Department has sought Crown Solicitor's Office advice for an appropriate format for prisoners to acknowledge their being offered protection and subsequent refusal. It is agreed that this should in no way imply a reduced duty of care and that further documentation of these decisions should occur.*

11. An audit should be carried out in the relevant prisons to see how far the 'Opportunity Reduction Strategies' set out in Appendix 3A are applicable and can be implemented.

*Response and Proposed Action*

*As part of the Department's overall review, the use of such models will be considered.*

12. Staff training modules recommended in 7, above, should also include training in anti-bullying strategies and awareness.

*Response and Proposed Action*

*As per recommendation 7.*

13. The Department and each prison should strive to develop a culture where prisoners, as well as staff, understand and implement the value that bullying and intimidation are unacceptable.

*Response and Proposed Action*

*Agree.*

RESPONSE BY THE DEPARTMENT OF JUSTICE: ACTION PLAN ADDRESSING  
THE RECOMMENDATIONS

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14. Taking note of practices elsewhere, particularly in New South Wales, the Department should endeavour to develop a better means of reporting and recording assault levels within prisons, particularly those involving prisoner-on-prisoner violence.

*Response and Proposed Action*

*Measurement of assaults in the Western Australian prison system is consistent with national definitions set down by COAG. Considerable effort has been applied to ensure WA complies with these definitions in the way data is recorded and reported. In particular, assaults are recorded as a count of victims rather than incidents (including incidents of violence).*

*As a result of these changes the number of assaults reported has increased significantly. The assault rate reported by WA to COAG last financial year was comparable with the NSW rate and considerably higher than other jurisdictions. Although some under reporting is still likely to exist this will be addressed as an ongoing management issue.*

*Performance measures are kept under ongoing review. The Inspector's concerns will be taken into account for future development of this measure.*

15. The Department should confirm and consolidate its good practice, exemplified at Karnet, Bunbury and Nyandi prisons, in removing predators.

*Response and Proposed Action*

*Agree with the assessment of good practice in these prisons and that other prisons can learn from them. However these prisons have the ability to regress prisoners by way of removal to other sites which is not an option for all prisons.*

16. AIMS should take note of the foregoing recommendations and ensure that its policies, protocols and practices at Acacia Prison are consistent with those of the Department. In particular, AIMS should clarify its written procedures, protocols and record-keeping with regards to admission to and review of protection and its anti-bullying policies and should train its staff in all of these matters.

*Response and Proposed Action*

*AIMS Policy & Procedure 2.4.1 Anti-Bullying Strategy is consistent with the principles and recommendations of the Inspector of Custodial Services Report on Protection Prisoners. The policy emphasises support for the victim and the identification and management of bullies and victimisers via a behaviour modification plan formulated by the Anti-Bullying Committee.*

*AIMS Policy and Procedure 2.2.7 Identification of Prisoners Requiring Protection has been reviewed by the joint AIMS/DoJ Policy Review Committee. The Policy has been returned to the Manager of Offender Services for further amendments with regard to ensuring procedures address segregation of a vulnerable prisoner as a last resort and that management of the perpetrator becomes the primary focal point. It is expected that the Review Committee will sign off this amended policy by the end of March.*

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*Refresher training for custodial staff at Acacia on Saturday mornings before unlock have been 1½ hours sessions on the Ant-Bullying Strategy. These anti-bullying training sessions are expected to continue over the next few weeks. It has also been inserted in the Pre-Custodial Induction Training Program for new recruits.*

17. Both the Department in relation to each of its prisons and AIMS in relation to Acacia Prison should report on the foregoing matters as a standard and regular item in their Annual Reports.

***Response and Proposed Action***

*Performance measures in regard to anti-bullying and protection prisoners will be included in the AIMS Monthly Report, commencing April 2003.*

*The report will include;*

- *Number of protection prisoners transferred from other prisons*
- *Number of protection prisoners classified at Acacia*
- *Number of protection requests resolved by mediation/or non-segregation methods*
- *Number of protection prisoners returned to mainstream*
- *Number of bullies identified*
- *Number of victimisers managed by (a) transfer; (b) counselled; (c) behaviour modification plan and; (d) charged.*
- *Anti-Bullying Committee Report/Minutes.*



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