



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES

## Assaults on staff in Western Australian prisons

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## 1 Inspector's overview

On any given day, there are over 5000 prisoners in Western Australia and the majority are there because of violent or high risk behaviour in the community, often associated with health and social issues. This means that prison staff face significant challenges on a daily basis. Positively, despite the potential risks, this review found that assaults on prison staff are relatively infrequent and that serious violence is rare.

These findings indicate that staff who work in prisons are often skilled in dealing with volatile situations, including where prisoners are agitated or distressed, or during high risk activities such as escorts or restraints. This is a tribute both to the staff and to the Department of Corrective Services as a whole. However, the nature and circumstances of the assaults hold some learning opportunities and challenges. This report identifies a number of factors that contribute to assaults on staff and makes a series of recommendations designed to improve safety.

### Rates of assault

Across the state, there were 414 recorded incidents of staff assault during the five years covered by this review, an average of 7 to 8 assaults per month. Obviously, staff safety is a high priority, and every assault is of concern, but the figures need to be placed in the context of the total imprisonment rate: each month our prisons hold prisoners for more than 150,000 'prisoner days'.<sup>1</sup>

The figures also need to be placed in the context of what is being recorded, a point well-illustrated by data from September 2013. That month, there was a distinct spike in assaults, with 24 recorded cases, three times more than the average. However, almost a third of these assaults were committed by the same woman, in three incidents, over two days at Bandyup Women's Prison. Two mornings in a row, she threw her breakfast at a staff member, each incident constituting an assault. The third incident occurred later on the second day. She was under escort after a visit to a mental health nurse and lashed out at staff, punching, scratching and kicking them. Five staff members sustained scratches and bruises and because there were five victims, five assaults were recorded. This illustrates how quickly the assault rate can rise based on the behaviour of certain individuals or the presence of multiple staff in a single incident. It also shows that generalised counts and records do not reflect the particular circumstances in which assaults occur or the type of behaviour involved.

Serious, targeted violence towards staff is rare. 'Serious assaults' are defined by the Department of Corrective Services as assaults where physical injuries are sustained requiring ongoing medical treatment or overnight hospitalisation. There were 22 serious assaults over the five year period covered by this review, an average of one per quarter.

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<sup>1</sup> There are more than 5000 prisoners in our prisons: 5000 prisoners x 30 days = 150,000 prisoner days per month.

## Prisoners with mental health issues

Prisoners with mental health issues or cognitive impairments, particularly women, were over-represented in staff assault incidents. This comes as no surprise, and aligns with international and local experience. These prisoners are more vulnerable and more challenging to manage. They place an increased burden on custodial staff, most of whom have little or no specialist training in meeting their needs. Staff understand this and frequently complain that they need better training.

I am pleased that the Department has supported our recommendation that it should develop a broad corrections mental health management strategy. However their response relies very heavily on the future development of mental health precincts in Casuarina and Bandyup prisons. While commendable in theory, these precincts will take some time to come to fruition and detail as to how they will operate and who they will house is currently lacking. It must also be acknowledged that issues of mental health pervade most prisons and more immediate, system-wide measures should be considered to improve staff and prisoner safety.

## Idle hands

Another key finding of this review was that prisoners with idle hands, meaning those who were not meaningfully involved in work, education or other programs, were more likely to assault staff than prisoners who were busy. Almost three quarters of prisoners who assaulted staff were unemployed or underemployed at the time.

The Department has supported our recommendation to increase access to meaningful employment, education and skill development programs across the system but I am concerned that its support is subject to funding and other competing priorities. I well understand issues of funding and priorities but reducing meaningful activities is a poor long term investment decision. Quite apart from the fact that idle prisoner hands increase staff risk, the lack of meaningful activities for prisoners also impacts on rehabilitation, and therefore community safety, a point also emphasised by a 2010 Parliamentary committee.<sup>2</sup>

Given the focus of the current Minister and Commissioner for Corrective Services on protecting staff and on protecting the community by reducing recidivism, I hope there will be an increased priority on providing meaningful activities for prisoners. If this is to happen, it is vital to ensure that people employed to provide such activities are able to do so. Currently, as the Department states in its response to our recommendation, Vocational Support Officers (VSOs) at some prisons are regularly being removed from education and training to cover 'operational requirements and muster management'. This should not be happening to the degree that it is: VSOs are employed to provide skills training, not to provide routine coverage for matters such as 'muster

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<sup>2</sup> Community Development and Justice Standing Committee, *Making Our Prisons Work: An Inquiry into the Efficiency and Effectiveness of Prisoner Education, Training and Employment Strategies*: Report No 6, November 2010.

management'. Better solutions must be found but unfortunately, the Department's response makes no commitment to end what is a very poor practice.<sup>3</sup>

## Security ratings and over secure facilities

This review found that staff assaults were far more likely to be committed by maximum and medium security prisoners and much less likely to be committed by minimum security prisoners. This is probably not surprising and suggests that the Department's systems for determining security ratings, risks and alerts is having some success in identifying prisoners who pose a risk to others.

However, there was a troubling correlation between the practice of holding people in more secure facilities than their security classification dictates, and staff assault. A large number of prisoners are being held in more secure facilities than their security ratings would dictate, and these prisoners are assaulting staff more often than when they are placed at facilities which align with their security ratings. For example, prisoners who are rated minimum security are far more likely to assault staff if they are held in a medium or maximum security facility as opposed to a minimum security facility. In addition to the increased risk to staff, this practice also increases costs and decreases access to specialised reintegration services.

Given these facts, I am disappointed by the Department's response to our recommendation to "reduce the number of prisoners subjected to levels of security which are unnecessary given their assessed security rating". The Department claims that prisoners are being placed in "suitable facilities dependent on their security rating, risks, alerts and needs" but shows no commitment to better matching its security ratings of prisoners with its facilities and regimes.

## An example: Bandyup Women's Prison

Some years ago, when I was arguing for investment in women's prisons to match what was being invested in men's prisons, more than one person suggested to me that 'women prisoners don't hit people'. This was very far off the mark. The prison with the highest rate of assault per prisoner by far is Bandyup Women's Prison. Over the period covered by this review, its rate of staff assault was two and a half to three times higher than the state's two main maximum security male prisons, Hakea and Casuarina.

The reason for this is that Bandyup reflects all the key contributing factors: high rates of mental illness; too little for prisoners to do because of crowding, poor conditions and limited services; and the challenge of managing too many minimum and medium security women in a maximum security environment.

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<sup>3</sup> The 2012 inspection of Greenough Regional Prison provides a good example. The practice of redeploying VSOs to manage staffing and budgetary constraints had resulted in a high level of discontent among VSOs, and the loss of six VSOs in one year. Eleven of 28 VSO positions were vacant, meaning that fewer prisoners could be supervised in the industries area and more were left in the units with nothing meaningful to do: see OICS, *Report of an Announced Inspection of Greenough Regional Prison*, Report No. 83 (Apr 2013).

## Conclusion

Assaults on staff can have both short and long term repercussions for the victim. There are the obvious physical injuries which a staff member may endure from a strike, or a kick. There are other assaults, like spitting, where the injuries are less obvious but no less harmful. It can take six months before a staff member can be certain they have not contracted a virus following a spitting incident. The wait can be stressful and can considerably impact the staff member's personal life given the potential risk of infecting others.

Fortunately, staff assaults particularly serious staff assaults are rare. This is both commendable and expected. Constant vigilance is needed by the Department to ensure the numbers stay low and there is room for improvement in its tracking of incidents and its ability to learn from them. Overall, however, the Department is doing well at ensuring the risk to staff is low.

Neil Morgan

20 July 2014



## 2 Recommendations

		Page
1	Reduce the number of prisoners subjected to levels of security which are unnecessary given their assessed security rating.	19
2	Increase access to meaningful employment, education and skill development programs across all correctional facilities.	21
3	Develop a broad corrections mental health management strategy, which includes staff training; day care and wing-based treatment services; and prison diversion options for people with serious mental health issues and intellectual impairment.	25
4	Ensure workforce planning identifies and maintains an appropriate ratio of male and female prison officers, and prison rosters reflect this mix.	31
5	Develop a targeted approach to improving staff conflict resolution skills.	34
6	Revise Policy Directive 41 to remove remaining ambiguity from the classifications of staff assault.	39
7	Improve record keeping practices, incorporating: i) Quarterly reviews to identify incomplete incident reports ii) Effective quality assurance practices iii) Enhanced performance development for report writing when needed.	41
8	Formalise the review of all staff assaults, including documenting triggers for the assault and the consequences (DCS and other) applied to the prisoner.	42

### 3 Background

- 3.1 Prisons are challenging environments where the risks include violence. The vast majority of such violence occurs between prisoners, with more than 350 prisoner-on-prisoner assaults being formally recorded every year in Western Australian prisons. If fights occur between prisoners, these are sometimes recorded as assaults and sometimes as other incidents. There is also an unknown and unrecorded level of prisoner-on-prisoner violence.
- 3.2 Occasionally, violence spills over towards staff. The vast majority of these incidents will be recorded. In 2013 prisoner-on-staff assaults accounted for almost one in every four recorded assaults.
- 3.3 Assaults on staff in prisons can have both short and long term repercussions for the victim. There are the obvious physical injuries which a staff member may endure from a strike, or a kick. But there are other assaults, like spitting, where the injuries are less obvious but no less harmful. The presence of blood borne viruses in prison environments is significantly higher than the wider community.<sup>4</sup> It can take six months before a staff member can be certain they have not contracted a virus following a spitting incident. The wait can be stressful and can considerably impact the staff member's personal life given the risk of infecting others.
- 3.4 Assaults can also have mental health repercussions for both victims and witnesses. They can experience emotional exhaustion which may lead to depression<sup>5</sup> or, in some cases, to post-traumatic stress disorder (PTSD) leading to intense feelings of panic or fear.<sup>6</sup> There can also be a range of other symptoms ranging from nightmares and sleeping difficulties to disinterest in daily activities.<sup>7</sup> Recent studies have found a link between prison officers experiencing PTSD and burnout and prisoner-to-staff violence.<sup>8</sup>
- 3.5 All injuries, physiological or psychological, can develop into long term ailments or traumas. They can affect a staff member's ability to return to work or their willingness to return to the same environment. Between 2008 and 2012 there were 90 workers' compensation claims resulting from staff assaults in prisons. This resulted in a total of 2,607.5 days lost, at an average of 29 days per claim.<sup>9</sup>

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<sup>4</sup> Butler, T., Lim, D. and Callander, D. *National Prison Entrants' Bloodborne Virus and Risk Behaviour Survey 2004, 2007 and 2010*, The Kirby Institute (University of New South Wales) and National Drug Research Institute (Curtin University) (September 2011), 5

<sup>5</sup> Nyklicek, I., & Pop, V. J. Past and familial depression predict current symptoms of professional burnout. In *Journal of Affective Disorders*, 88 (2005) 63-68.

<sup>6</sup> Beyond Blue, *Post-traumatic stress disorder (PTSD) Fact Sheet*, 1  
<https://www.bspg.com.au/dam/bsg/product?client=BEYONDBLUE&prodid=BL/0504&type=file>

<sup>7</sup> *Ibid.*

<sup>8</sup> Blitz, C.L., Wolff, N., and Shi, J. Physical victimisation in prisons: The role of mental illness. In *International Journal of Law and Psychiatry* (2008) Vol. 31, 385-393; Boudoukha, A.H., Altintas, E., Rusinek, S., Fantini-Hauwel, C. and Hautekeete, M. Inmates-to-Staff Assaults, PTSD and Burnout: Profiles of Risk and Vulnerability. In *Journal of Interpersonal Violence* (2013) Vol. 28, 2332-2350

<sup>9</sup> RiskCover, *Workers' Compensation Class – Department of Corrective Services – Claims with Specified Accident Types* (8 November 2013)

On many occasions the staff member immediately returned to their duties and most returned in less than three months. However, in six cases the staff member was unable to return to work for more than three months.

3.6 Repercussions for prisoners who assault staff are varied. The immediate consequences may include:

- the deployment of chemical agent,
- segregation in cell; and
- the removal of privileges including social visits by family.

3.7 There can also be knock on effects for the prisoner. Segregation in cell can lead to isolation from supports within the prison. This may exacerbate stressors the person is already experiencing; stressors which may have triggered the initial assault. It is also possible that during a restraint the prisoner may sustain injury.

3.8 The longer term effects for prisoners include an increased period of incarceration as a consequence of criminal charges being brought before the courts. In the case of less serious assaults, 'internal' prison disciplinary charges may also be laid under section 70 of the Prisons Act 1981. A single staff assault incident can also degrade the relationships the prisoner has with other staff. This may, in turn, lead to conflict with those staff, as they may develop a sense of being at risk from the prisoner regardless of the person's behaviour towards them.

3.9 This review comes at a time when assaults on staff have been widely reported in the media. In September 2013 there was a spike of assaults on prison staff. The rate of assault was 0.46 assaults per 100 prisoners, the highest monthly rate since November 2004.<sup>10</sup> However, very little detail surrounding these assaults was furnished in media reports. For example, little distinction was made between assaults requiring hospitalisation and assaults where the victim received no physical or psychological injuries.

## Defining assault

3.10 Defining assault is complex and general criminal law definitions and categorisations do not coincide with those used in the Department's policy documents. There are significant differences in the scope of conduct that is covered, on the question of 'intent' and on the classification of assaults as 'serious'. Adding to the complexity, the categories used in Departmental policy documents do not accord with the definitions used on its key database (TOMS). The Department of Corrective Services (the Department) has also recently changed some of the policy definitions.

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<sup>10</sup> TOMS, *Staff assaults per calendar month – All prisons*

## The criminal law

- 3.11 The Western Australian *Criminal Code Act 1913* provides a broad definition of assault.<sup>11</sup> Most assaults involve some sort of contact with the victim: “a person who strikes, touches, or moves, or otherwise applies force of any kind to the person of another, either directly or indirectly, without his consent... is said to assault that person.” However, assaults also include cases where the accused person “by any bodily act or gesture attempts or threatens to apply force.” The word ‘force’ is also broadly defined: “applying heat, light, electrical force, gas, odour, or any other substance or thing which, if applied, could cause injury or personal discomfort.”
- 3.12 The Criminal Code therefore covers a very wide range of non-consensual behaviours, ranging from raising a fist or a gentle ‘push’ to serious violence. The Department’s definitions, by contrast, use the term ‘physical violence’.<sup>12</sup> This would not appear to cover threats or attempts to apply force.
- 3.13 The courts have also ruled that assaults are offences of intent. In other words, the prosecution must prove that the accused person intended to apply force and people will not be convicted of assault if the contact was accidental, careless or negligent.<sup>13</sup> On paper, the Department’s definitions focus only on the contact and not on the intent. This has caused confusion in some prisons. At Bandyup Women’s Prison in 2011, staff complained that attacks on them were not being treated seriously enough by their own Department. However, part of the issue lay in the fact that the relevant managers at the time took the view, like the courts, that assaults require intention. They believed that in some situations (such as contact occurring during the use of restraints on mentally unwell prisoners) it was by no means clear that contact was intentional.<sup>14</sup>
- 3.14 The criminal law has always imposed higher penalties for assaults on public officers, for assaults where ‘bodily harm’ is caused, and for offences of ‘unlawfully doing grievous bodily harm’. ‘Bodily harm’ has a relatively low threshold. It is defined as any ‘bodily injury that interferes with health or comfort’<sup>15</sup> and can include bruising or minor abrasions. ‘Grievous bodily harm’ (GBH) is very narrowly defined and covers only a ‘bodily injury which endangers life or is likely to endanger life, or which causes or is likely to cause permanent injury to health.’<sup>16</sup>
- 3.15 Assaults on public officers have always been classified by the criminal law as ‘serious assaults’. In 2009 the Western Australian Parliament enacted new

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<sup>11</sup> *Criminal Code Act 1913* (WA) s222.

<sup>12</sup> See [3.17]-[3.22].

<sup>13</sup> *McIver* (1928) 22 QJPR 173; *Hall v Fonceca* [1983] WAR 309.

<sup>14</sup> Office of the Inspector of Custodial Services (OICS), *Report of an Announced Inspection of Bandyup Woman’s Prison*, Report No. 73 (Oct 2011), [3.20]-[3.25] and Recommendation 7.

<sup>15</sup> *Criminal Code Act 1913* (WA) s1.

<sup>16</sup> *Ibid.*

sentencing laws for assaults on public officers, including prison officers, where bodily harm or GBH is caused. Cases involving bodily harm carry a mandatory minimum of six months' imprisonment and cases of GBH a minimum of 12 months.<sup>17</sup>

- 3.16 Given the broad definition afforded to 'bodily harm', the mandatory penalties for 'serious assaults' under the criminal law are of potentially broad scope. However, the Department's policy documents use very different and much narrower definitions. Whilst Parliament considers that assaults occasioning bodily harm to prison officers deserve a minimum of six months' imprisonment, very few of these would meet Departmental definitions of a 'serious assault'.<sup>18</sup>

### Departmental policies

- 3.17 The circumstances around assaults in a closed environment are different from those that may occur in the wider community. While some staff assaults are clearly deliberate acts of aggression by a prisoner targeting a particular officer for a specific reason, other assaults occur as part of a restraint when a prisoner is being physically removed from a situation. The Department has therefore developed its own definitions of assault which are outlined in *Policy Directive 41 – Reporting of Incidents and Additional Notifications* (PD41).<sup>19</sup>
- 3.18 The policy in effect at the time of the review classified assaults into two categories, serious assault and non-serious assault. The definitions are provided below.

**Table 1**

*Policy Directive 41 definitions of serious assault and non-serious assault*

Type of assault	Definition from PD41 (effective 7/02/2011-13/01/2014)	Examples
Serious assault	Occurs when physical violence results in physical injuries which require overnight hospitalisation or ongoing medical treatment	<ul style="list-style-type: none"> <li>• A punch resulting in a broken jaw</li> </ul>
Non-serious assault	Occurs when physical violence is committed but does not result in physical injury or any injury sustained does not require overnight hospitalisation	<ul style="list-style-type: none"> <li>• A punch which results in bruising</li> <li>• Food being thrown</li> </ul>

- 3.19 The categorisation of assault in the policy did not align with the Department's offender management database (TOMS) where details of assaults are recorded. TOMS has three categories of assault, not two. It requires the user to record an assault incident as a serious assault, an assault or as 'other' assault. The TOMS

<sup>17</sup> Ibid, ss318 and 297.

<sup>18</sup> See [3.17]-[3.22].

<sup>19</sup> Department of Corrective Services (DCS), *Policy Directive 41 Reporting of Incidents and Additional Notifications, Appendix A - Categorisation of incidents in TOMS* (effective 7 February 2011)

definitions are generic across all prisons nationally<sup>20</sup> and are in accordance with the Report on Government Services definitions.<sup>21</sup> The TOMS definitions are:<sup>22</sup>

**Serious Assaults** – the victim was subjected to physical violence that resulted in physical injuries requiring medical treatment involving overnight hospitalisation in a medical facility (eg prison clinic, infirmary, hospital or a public hospital) or on-going medical treatment. Serious assaults include all sexual assaults.

**Assault** – the victim was subjected to physical violence that resulted in physical injuries but did not require overnight hospitalisation or on-going medical treatment.

**Other Assault (no injury)** – the victim was subjected to physical violence that did not result in physical injuries or require any form of medical treatment.

- 3.20 Section 6.3 of PD41 stated that it was necessary to categorise all incidents accurately and it referred to the three-fold TOMS categorisation of serious assaults, assaults and other assaults. However PD41 did not explain any of the three TOMS categories and only defined the two terms that it was using, namely, serious assaults and non-serious assaults.<sup>23</sup>
- 3.21 The documentation was confusing in itself and to key users of TOMS and PD41. During this review PD41 was amended becoming effective on 14 January 2014. The updated policy now adopts four assault categories and dispenses with the former categories of serious assault and non-serious assault. The four new categories are serious assault, assault, assault other and sexual assault.<sup>24</sup>
- 3.22 The new PD41 categories now align better with the TOMS incident reporting requirements. However, some ambiguities still remain and Recommendation 6 recommends that these be addressed.

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<sup>20</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 4

<sup>21</sup> Coordinator, Custodial Inspections, Department of Corrective Services, email (6 November 2013). See also [4.12]–[4.16].

<sup>22</sup> *Ibid.*

<sup>23</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 4

<sup>24</sup> DCS, *Policy Directive 41 – Reporting of Incidents and Additional Notifications Appendix 1A Assaults – Critical and Non-Critical*, (effective 14 January 2014)

## 4 How many staff assaults occur?

- 4.1 While seemingly a simple question, placing a figure on how many staff assaults have occurred in WA prisons is not straightforward. Several factors have impacted our analysis including:
- ambiguities in the definition of assault;
  - incidents of staff assault being labelled incorrectly; and
  - method used to determine assault frequency.
- 4.2 The previous chapter has discussed the issues with respect to the definition of assaults. Compounding these difficulties, we also found examples of staff assaults which were labelled as other things, such as prisoner assault or misconduct.<sup>25</sup> These factors reduce the reliability of the information collected by the Department in the TOMS database, however as this is the only available source of information, findings from this report had to be formed on this data.
- 4.3 There are also issues with the method used to determine staff assault. The most common way, which is used by the Department, is to report assaults based on the number of victims. This means that if two or more prisoners assault a single staff member, only one assault is recorded. However if one prisoner assaults two staff members in a single 'event', multiple assault incidents will be recorded. This can occur, for example, when two staff members seek to restrain a prisoner who resists and, in the process, makes contact with both officers. The counting rules are further complicated when there are multiple staff members and multiple prisoners involved in a single incident.
- 4.4 Rather than use this approach, this review examined the number of assault records, treating each prisoner and each assault victim as a separate record. This leads to a higher number of assaults than other counting methods and is arguably rather artificial. However, it is the only way to be able to break down the data and to be able to analyse staff and prisoner circumstances.
- 4.5 In the five years between 2008 and 2012 the TOMS system recorded 414 incidents where prisoners assaulted staff.<sup>26</sup> There were 415 prisoners in these incidents (one incident involved two prisoners). There were 456 staff victims in the 414 incidents.
- 4.6 The same incident that involved the two prisoners also involved several staff, three of whom were assaulted by both of the prisoners. For this incident, two assault records were created for each of the three staff members in order to document the details of the assault by each prisoner. Therefore, for the purposes of this review, there were 459 assaults on staff between 2008 and 2012.

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<sup>25</sup> See [3.17] – [3.22] and [8.36].

<sup>26</sup> The data analysis that underpins this report was conducted during 2013, therefore data refers primarily to the preceding five year period 2008-2012. Where possible, basic data is updated to include information from 2013.

**Table 2**

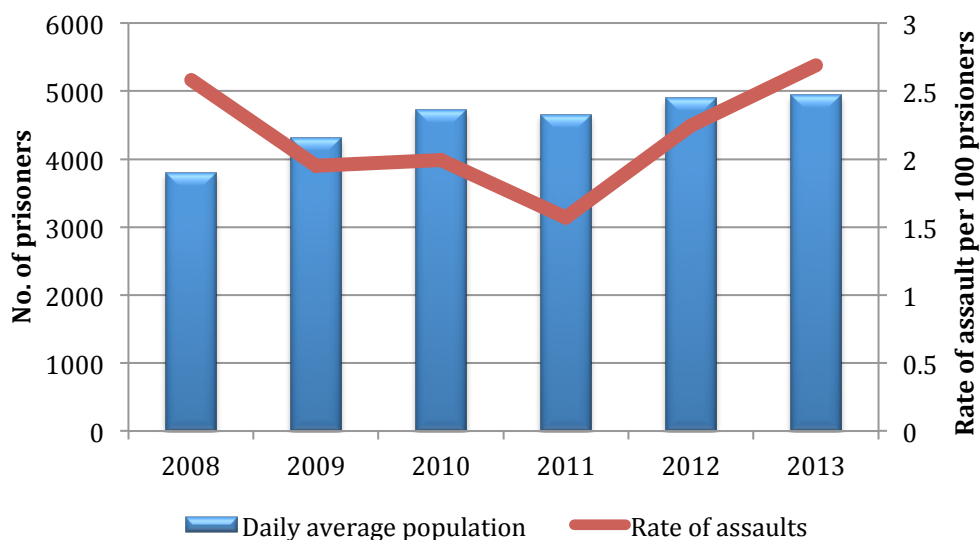
*Various counts for assault-on-staff incidents for 2008-2012*

Type of data	Count
Incidents	414
Prisoner	415
Victims/Staff	456
<b>Total assault records examined in this review</b>	<b>459</b>

4.7 Given an average daily prisoner population of 4,473, this means there were between 7 and 8 assaults per month across the state. Of the 459 assaults examined in this review, there were: 22 serious assaults (4.5 per annum), 299 assaults, and 138 other assaults.

### Overall rates

4.8 From 2008 to 2011, the annual rate of staff assault per 100 prisoners decreased from 2.6 to a low of 1.6.<sup>27</sup> However, in 2012 it increased to 2.4 and the upward trend continued in 2013 when the rate rose to 2.65.



**Figure 1**

*Rate of all staff assaults compared to the daily average prisoner population across WA, since 2008*

4.9 The number of assaults fluctuates on a monthly as well as an annual basis. The monthly figures ranged from a high of 16 assaults in March 2011 to no assaults in July the same year. Despite the March high, assaults on staff were lower in 2011 than other years.

<sup>27</sup> The rate of assault is the number of assaults each year divided by the daily average population, and multiplied by 100 to give a rate per 100 prisoners.



## Rate of 'serious assaults'

- 4.10 There were very few cases (22) of serious assaults against staff between 2008 and 2012. This represents less than 5 per cent of all assaults. However, the number of serious assaults has been increasing from a low of two in 2010 to five in 2011, seven in 2012 and nine in 2013.<sup>28</sup> While the prisoner population has increased during this period, this does not account for the increase in serious assault. Expressed as a rate, there were 0.04 serious assaults on staff per 100 prisoners in 2010 and 0.14 in 2012.
- 4.11 The Department reports on serious assaults in its Annual Reports. The figures differ from those presented in this review because they include serious assaults on staff and prisoners. In 2011, the Department set itself a performance target of fewer than 0.50 serious assaults per 100 prisoners. This was actually below the rate of serious assaults that existed at the time. However, the 2012-2013 Annual Report states that the rate of serious assaults increased from 0.40 in 2011-2012 to 0.55 in 2012-2013.<sup>29</sup> This means that the Department did not meet its target that year.

## Australian comparisons

- 4.12 Each year the Australian Government Productivity Commission produces a Report on Government Services (ROGS). This provides information on the effectiveness and efficiency of government services. One of the effectiveness indicators for corrective services is assaults in custody.
- 4.13 ROGS reports on two categories of assault: 'serious assaults' and 'assaults' (see Appendix C for full definitions).<sup>30</sup> The small numbers of serious staff assaults mean that a single assault can cause considerable variations in the rate from one year to the next, which makes it difficult to make comment on the findings. What is evident is that there are very few serious staff assaults nationally and in this State. However since 2007, with the exception of 2009-2010 and 2011-2012, the rate of serious staff assault each year has been higher in Western Australia compared to the national rate. In 2012-2013 the rate was three times the national rate.<sup>31</sup>

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<sup>28</sup> TOMS *Report Assaults – State All Prisons* (06/01/2014).

<sup>29</sup> DCS, *Annual Report 2012/2013* (September 2013), 87

<sup>30</sup> The rates expressed in this review are considerably elevated from ROGS data as matters recorded on TOMS as 'assault other' (30.1% all assaults) have been included: see [4.8]

<sup>31</sup> Productivity Commission – Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014* (2014), C.42

**Table 3***Report on Government Services 'Assaults in custody' indicator since 2007-2008*

Year	Western Australia		Australia	
	Serious assault	Assault	Serious assault	Assault
2007 - 2008	0.08	0.34	0.02	0.63
2008 - 2009	0.12	0.65	0.03	0.53
2009 - 2010	-	0.95	0.03	0.64
2010 - 2011	0.19	1.27	0.06	0.65
2011 - 2012	0.06	0.90	0.06	0.76
2012 - 2013	0.18	1.21	0.06	0.79

- 4.14 Although fluctuations in the annual serious assault rate should be interpreted with caution, the overall rate of assault is not subject to the same limitations. For the past five years Western Australia's rate of assault has been higher than the national average. In 2012-2013 the Western Australian rate was over one and a half times the national rate.
- 4.15 The table below is a partial reproduction from ROGS showing staff assaults in all Australian jurisdictions for 2012-2013.

**Table 4***Rate of assault and serious assault in custody in Australian jurisdictions 2012-2013*

	WA	NSW	Vic	Qld	SA	Tas	ACT	NT	Australia
Serious assault	0.18	0.01	0.06	0.07	-	-	-	-	0.06
Assault	1.21	0.58	1.56	0.36	0.51	1.90	-	-	0.79

- 4.16 ROGS cautions against direct comparisons between state jurisdictions noting that a single occurrence in smaller jurisdictions can significantly increase that jurisdiction's rate of assault. Conversely, a single assault incident will have only a minor impact in a larger jurisdiction. However comparing the similar sized prison populations in Victoria and Western Australia minimises this effect. For both 2011-2012 and 2012-2013 the Western Australian serious assault rate was worse than the Victorian rate. However, Western Australia fared considerably better than Victoria in both years for the rate of assault.



**Figure 2**

*Rate of assault and serious assault in custody in Western Australia and Victoria in 2011/12 and 2012/13*

## 5 Who is assaulting staff and where?

5.1 Not surprisingly prisoners who assault staff are more likely to be younger and have a history of violence. Those with higher security ratings are over-represented in staff assaults, as are women, people on remand and Aboriginal people.

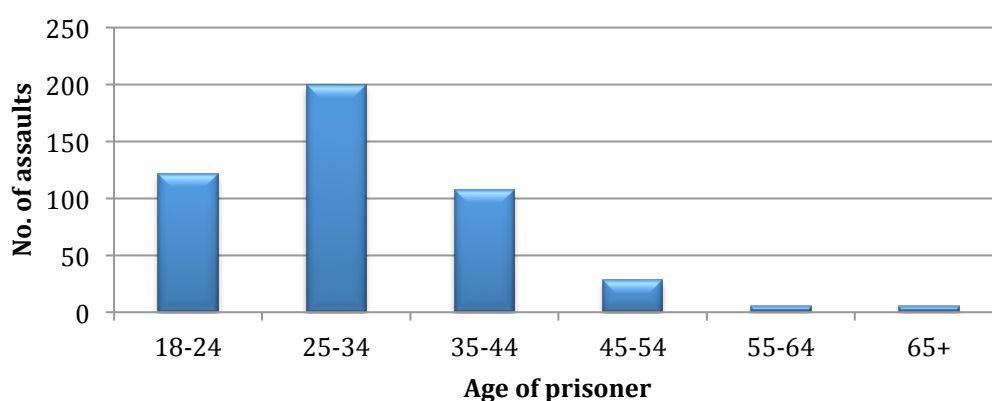
### Legal status

5.2 The number of people held on remand is increasing and currently stands at over 20 per cent of the state's prisoner population. Remandees are over-represented in staff assaults compared with sentenced prisoners. From 2008 to 2012, they constituted around 18 per cent of the prison population but were responsible for 28.1 per cent of assaults. There were also a further 18 prisoners who were not in custody the day prior to the assault and five who were on appeal.<sup>32</sup>

5.3 This overrepresentation accords with common sense: remand prisoners are more likely to be distressed, anxious, mentally unsettled or still under the influence of drugs or other substances.

### Age

5.4 Prisoners aged 34 years and younger were over-represented in staff assaults. Young adults aged 18-24 years represent 20 per cent of the daily average prisoner population but were involved in more than 25 per cent of assaults. Prisoners aged between 25-34 years make up approximately 37 per cent of the population, but were involved in almost 43 per cent of all staff assaults. Together, prisoners younger than 35 accounted for close to 70 per cent of assaults.



**Figure 3**

*Frequency of staff assault by age range of prisoner 2008-2012*

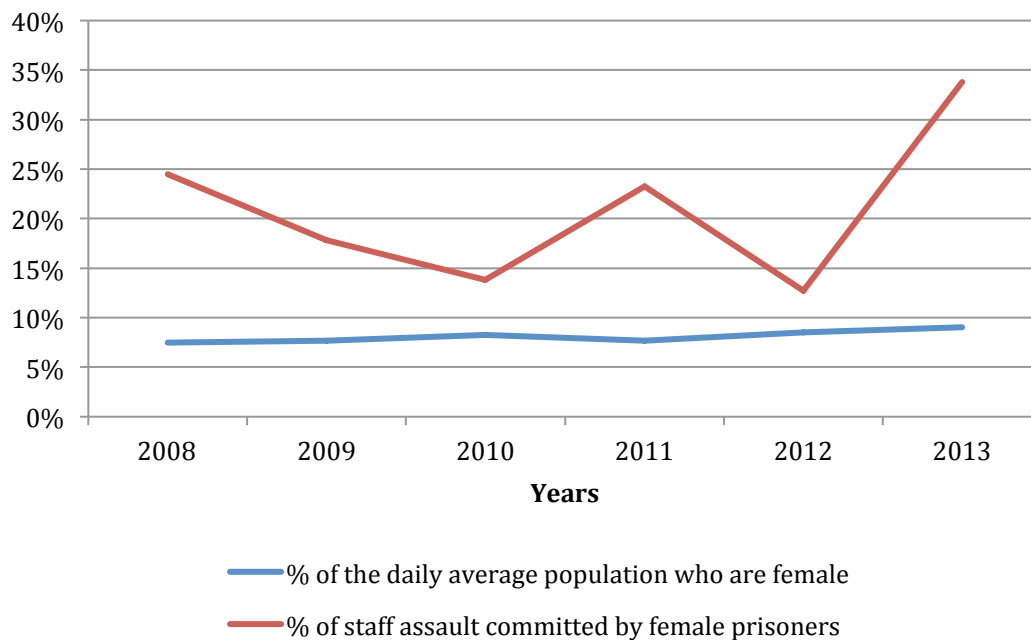
<sup>32</sup> Prisoner status information was extracted for the day preceding the assault to account for any changes on the day of the assault. Of the 18 prisoners who were not in custody the day prior to the assault, 10 people were remanded and one was sentenced on the day. Others were remanded or sentenced after the assault incident occurred and two people were not received into custody on the day either before the assault incident or afterwards.

5.5 This overrepresentation of younger adults in assault on staff incidents is consistent with criminological research.<sup>33</sup>

## Gender

5.6 Women prisoners are very highly over-represented in staff assaults. The number of women in prison has been increasing rapidly over recent years and they now constitute 9.2 per cent of the state's prison population compared with 7.5 per cent in 2008. For the period 2008-2012, women were responsible for 18.1 per cent of all assaults, well over double their overall representation.

5.7 In 2008, women accounted for almost 24 per cent of assaults and in 2011, when staff assaults dropped significantly overall, the number of assaults by women increased by 30 per cent. In 2012 the number of women assaulting staff dropped significantly but it was again very high in 2013.



**Figure 4**

*Percentage of staff assaults by female prisoners compared to the female daily average population*

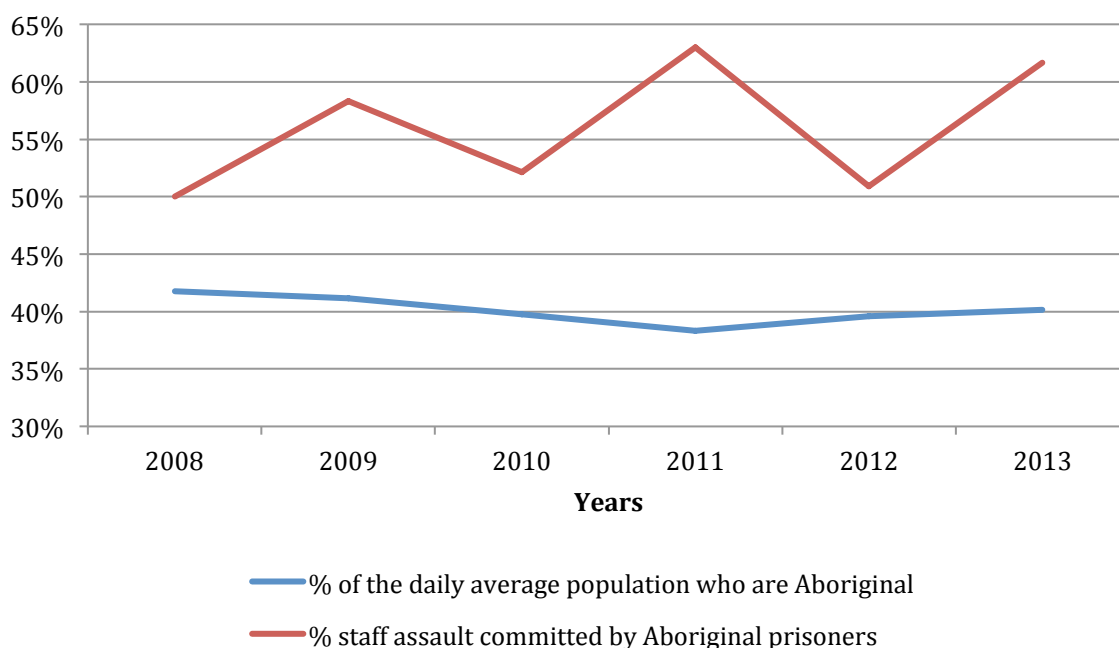
5.8 These figures are very troubling and the reasons are complex. They certainly include unmet mental health needs as well as crowding and poor conditions and restricted services at the state's main female prison, Bandyup. Few assaults were

<sup>33</sup> Lahm, Karen F. Inmate Assaults on Prison Staff: A Multilevel Examination of an Overlooked Form of Prison Violence. In *The Prison Journal* (2009) Vol. 89, 142

committed by women at other prisons and Bandyup has by far the highest rate of staff assaults in the state.<sup>34</sup>

## Aboriginality

5.9 Aboriginal prisoners were over-represented in staff assaults. They were responsible for 54.2 per cent of the assaults, yet only comprised 40 per cent of the daily average prisoner population. This overrepresentation was most noticeable in 2011 when Aboriginal prisoners committed 63 per cent of staff assaults while comprising only 38.3 per cent of the prison population.

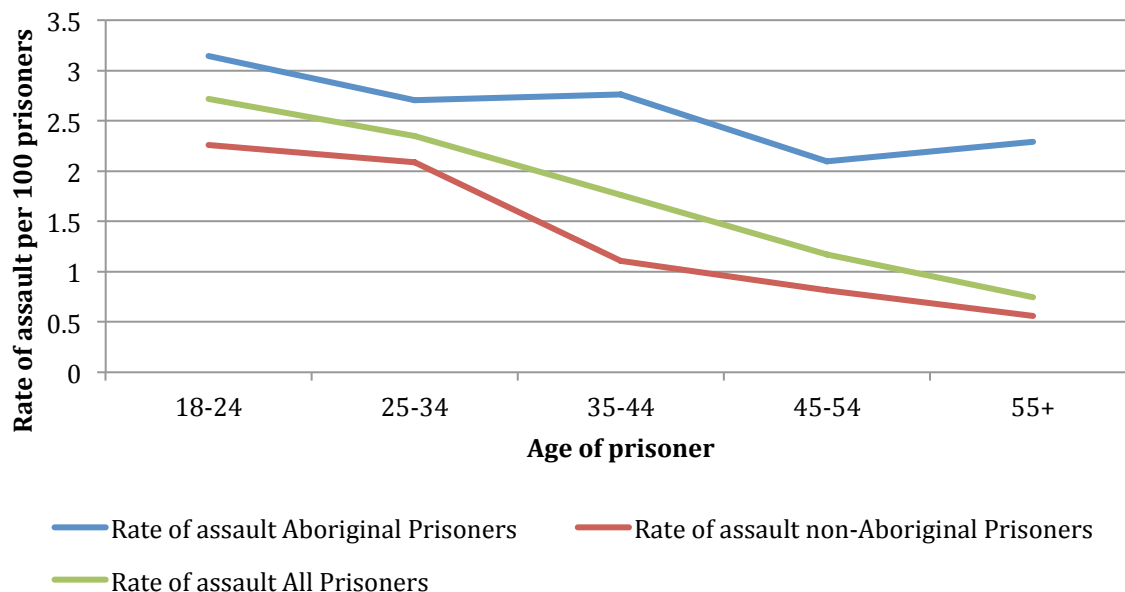


**Figure 5**

*Percentage of staff assaults by Aboriginal prisoners compared to the Aboriginal daily average population*

5.10 Aboriginal prisoners in Western Australia are younger than their non-Aboriginal counterparts. Almost 65 per cent of all Aboriginal prisoners are aged between 18-34 years compared to only 52 per cent of non-Aboriginal prisoners in the same age range. Given almost 70 per cent of assaults on staff were by younger prisoners it was expected that Aboriginal people would feature prominently. However, not only were Aboriginal prisoners over-represented in the younger age ranges of 18-24 years and 25-34 years, they were also over-represented in the older age groups.

<sup>34</sup> See [5.26]



**Figure 6**

*Rate of assaults committed by Aboriginal and non-Aboriginal people in prison, 2008-2012*

- 5.11 Aboriginal prisoners are also more likely to be involved in multiple incidents of staff assault. Of the 67 prisoners who were involved in two or more incidences of staff assault, 43 were Aboriginal (64%).
- 5.12 The higher rates of assault by Aboriginal people must be seen in the context of the higher prevalence of general risk factors amongst Aboriginal prisoners and their compounding effect. This review found that apparent mental health and cognitive impairment were associated with higher rates of staff assault<sup>35</sup> and these conditions are more common amongst Aboriginal people.<sup>36</sup> ‘Idle hands’ was also associated with an increased risk of assault and Aboriginal prisoners tend to be more frequently unemployed or under-employed.<sup>37</sup> Finally, as previously noted, remand prisoners and women are over-represented in staff assaults<sup>38</sup> and Aboriginal people are heavily over-represented in both of these cohorts. On 20 March 2014:<sup>39</sup>

<sup>35</sup> See [6.16] – [6.25].

<sup>36</sup> According to an Australian Institute of Health and Welfare report, the rate of Aboriginal people hospitalised for mental health problems was nearly twice that of other Australians: Australian Institute of Health and Welfare 2011. *The health and welfare of Australia’s Aboriginal and Torres Strait Islander people, an overview 2011*. Cat. no. IHW 42. Canberra: AIHW. And a recent Commonwealth Parliamentary Committee report found that there are indications that Fetal Alcohol Spectrum Disorder is more prevalent in Aboriginal communities compared to non-Aboriginal communities: House of Representatives Standing Committee on Social Policy and Legal Affairs, *FASD: The Hidden Harm Inquiry into the prevention, diagnosis and management of Fetal Alcohol Spectrum Disorders* (November 2012)

<sup>37</sup> See [6.2] – [6.7].

<sup>38</sup> See [5.2] – [5.3] and [5.6] – [5.8]

<sup>39</sup> <http://www.correctiveservices.wa.gov.au/about-us/statistics-publications/statistics/2014.aspx>. On this day the prison population comprised 2834 non-Aboriginal men, 560 of whom were on remand; 1811 Aboriginal men, 429 of whom were on remand; 252 non-Aboriginal women, 198 of whom were on remand; and 221 Aboriginal women, 56 of whom were on remand.

- 23.9 per cent of Aboriginal prisoners were on remand compared with 13.6 per cent of non-Aboriginal prisoners.
- 47 per cent of the female prisoner population was Aboriginal, compared with fewer than 40 per cent of the male population.

### Foreign national prisoners

- 5.13 Foreign national prisoners were under-represented in staff assaults. They constituted 8.14 per cent of the daily average prisoner population for the five year period between 2008 and 2012 but only 5 per cent of cases (23 of the 459 prisoners). More than a third of those incidents (9) were committed by people from Sudan, two of whom were involved in multiple incidents.

### History of violence

- 5.14 When a person is incarcerated for an offence involving violence, a flag is placed on their departmental record. The evidence shows that people with a flagged record of violence are significantly more likely to commit staff assaults.
- 5.15 In 2012 just over half (53%) of sentenced male prisoners were allocated a violence flag. Of the 264 sentenced males who assaulted staff, 202 were assigned this flag. Therefore more than three quarters of the sentenced male prisoners who assaulted staff had a known history of violence.
- 5.16 More than 65 per cent of men assigned a violence flag who assaulted staff had an assault listed as their most serious offence (133). This included 29 men whose most serious offence was assaulting a public officer, 15 men whose offences were manslaughter, unlawful killing, murder or wilful murder, and 24 men with unlawful wounding offences.
- 5.17 In 2012, 47 per cent of all sentenced women prisoners had violence flags (a slightly lower rate than their male counterparts). However, 67 per cent of sentenced women who assaulted staff (29 out of 43) had such flags. Of these 29 women, 19 had various types of assault listed as their most serious offence and nine had assaulted a public officer. There were another six women whose most serious offence was manslaughter or unlawful wounding.

### Prisoner security ratings

- 5.18 Prisoners in Western Australia are rated maximum, medium or minimum security based on assessments by the Department. Maximum security prisoners are rated such because they present a high risk: of escape, to staff or other prisoners, or to the safety of the public in the event of an escape.<sup>40</sup> The tool used

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<sup>40</sup> DCS, *Adult Custodial Rule 18 - Assessment and Sentence Management of Prisoners* (effective 6 December 2012), 5



to assess security status also takes into account factors such as violence against others which may indicate a risk of future staff assaults.

- 5.19 The logical assumption is that higher security conditions reduce the likelihood of involvement in incidents of staff assault. However maximum security prisoners have the highest rate of assault. They constitute only around 11 per cent of the prisoner population but were responsible for approximately 25 per cent of all staff assaults.<sup>41</sup>
- 5.20 Approximately 64 per cent of staff assaults were committed by people rated as medium security (who made up 57% of the prison population). By contrast, only seven per cent of staff assaults were committed by people rated as minimum security (32% of the prison population).<sup>42</sup>
- 5.21 The fact that assaults are far more likely to be committed by maximum and medium security prisoners would suggest that the Department's assessment and classification tool is having some success in identifying prisoners who pose a particular risk to others. However, there is a 'flip-side' to this. Currently, a very large number of people are being held in more secure facilities than they are assessed to need. The evidence in the next section is that these prisoners are assaulting staff more often than when they are placed at facilities which actually align with their lower security rating.

### Security ratings and actual placement

- 5.22 In response to a rapid growth in prisoner numbers from 2009, the government invested heavily in additional prison capacity, primarily for men. There has been investment at all security levels, but especially at the three male maximum security facilities, Albany, Casuarina and Hakea prisons. As a result, the state now has more than 2,500 maximum security beds for fewer than 500 maximum security prisoners. Inevitably, there has been a large increase in prisoners being placed at more secure facilities than their security classification dictates.<sup>43</sup> Assault rates vary widely between facilities:

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<sup>41</sup> Security rating information was extracted for the day prior to the assault in case the prisoner's security rating changed immediately after the assault incident. There were 115 prisoners who were rated maximum the day prior to the assault incident.

<sup>42</sup> There were also 18 prisoners who assaulted staff the day, or the day after, they arrived in custody, prior to being assigned a security rating.

<sup>43</sup> OICS, *The flow of prisoners to minimum security, section 95 and work camps in Western Australia* (December 2012), 22

**Table 5***Number and rate of staff assaults by custodial facility<sup>44</sup>*

	<b>2008-2012 daily average population</b>	<b>No. of assaults</b>	<b>Annual rate of assault</b>
<b>Maximum security</b>			
Albany	275	17	1.26
Bandyup	223	73	6.54
Casuarina	623	65	2.09
Hakea	798	100	2.51
<b>Medium security</b>			
Acacia	926	114	2.46
<b>Minimum security</b>			
Pardelup	84	1	1.22
Wooroloo	313	4	1.28
<b>Multipurpose security</b>			
Broome	125	14	2.24
Bunbury	293	8	0.55
Eastern Goldfields	113	20	3.54
Greenough	267	31	2.32
Roebourne	164	12	1.46

- 5.23 Assault rates at minimum security facilities are appropriately low. There are four 'pure' minimum security prisons in Western Australia; Karnet, Pardelup and Wooroloo prison farms and Boronia Pre-release Centre for Women. Prisoners placed at these facilities require a low level of supervision and control within the prison and they can be reasonably trusted in open conditions.<sup>45</sup> Only one assault was recorded at Pardelup (October 2010) and Wooroloo recorded just one assault each year except in 2011. No staff assaults were recorded at either Karnet or Boronia.
- 5.24 Acacia Prison is the only facility classified as medium security throughout. It holds minimum security prisoners in addition to those classified as medium security. It cannot permanently house maximum security prisoners, however occasionally it temporarily holds people rated maximum.<sup>46</sup> Acacia is the largest prison in the state with a daily average population of 926 prisoners for the five year period. It had the highest number of assaults of any prison and approximately a quarter of all staff assaults occurred there. However, Acacia's annual rate of staff assault compared to its prisoner population (2.46 assaults per 100 prisoners) was lower than the annual rate at Bandyup, Eastern

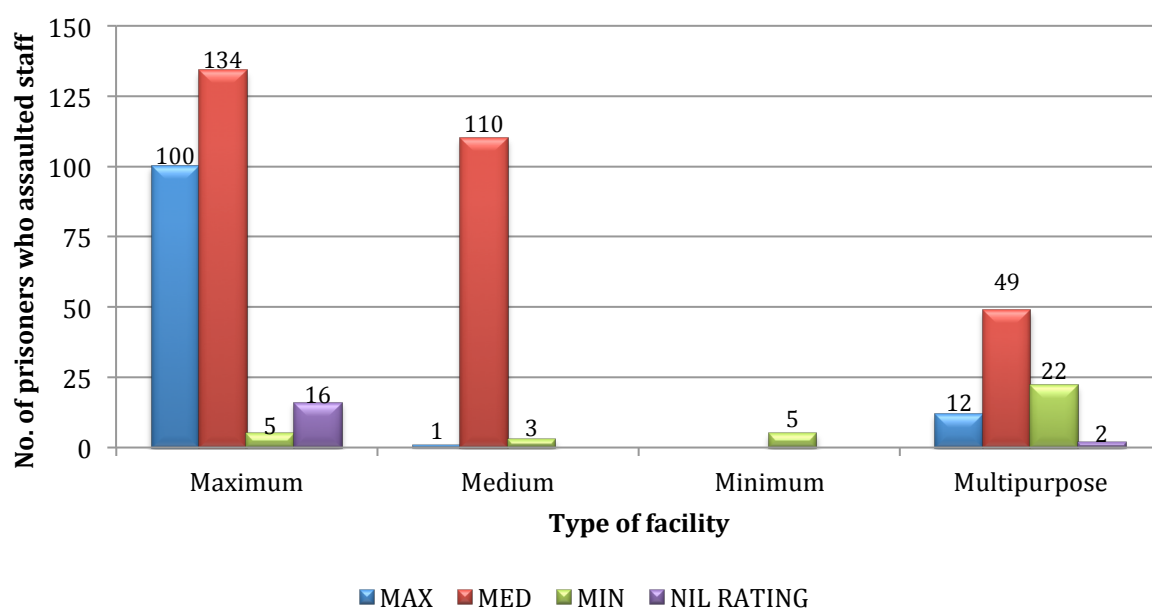
<sup>44</sup> Karnet and Boronia are not included in the table as they recorded no assaults. Wandoo Reintegration Facility and West Kimberley Regional Prison are also not included: they recorded no staff assaults for the reporting period but both facilities only opened late 2012.

<sup>45</sup> DCS, *Adult Custodial Rule 18 Assessment and Sentence Management of Prisoners* (effective 6 December 2012), 5

<sup>46</sup> Acacia may hold a maximum security prisoner when the prisoner's security rating is upgraded and they are awaiting transfer to a maximum security facility. This is a short term measure which may be a few days at most.

Goldfields, and Hakea prisons. There was one assault by a maximum security prisoner at Acacia, and three by minimum security prisoners.

- 5.25 Four prisons - Albany, Bandyup, Hakea and Casuarina - are classified as maximum security facilities due to their design, philosophy and operational procedures. Together they accounted for 56 per cent of staff assault incidents (255). Prisoners held in these facilities can have various security ratings. Out of the 255 prisoners who assaulted staff in maximum security prisons, 100 were maximum security, 134 medium and 5 minimum. Another 16 did not have classifications.
- 5.26 The rate of staff assault at Bandyup Women’s Prison was by far the highest in the state. It was two and half to three times higher than the rate at the two large male maximum security facilities, Hakea and Casuarina. Alarming, by the end of 2013 Bandyup Women’s Prison had amassed 40 assaults for the year, more than double the number of assaults in 2012. This was vastly higher than any other facility with Hakea recording the next highest count (22) followed by Acacia (20).
- 5.27 The remaining prisons – all of which are regional – are best described as multipurpose. They accommodate prisoners with all types of security ratings. For example, Bunbury Regional Prison is predominantly medium security with a number of maximum security beds. However, it also has a ‘Pre-release Unit’ accommodating approximately 100 minimum security prisoners. There were 85 staff assaults at multipurpose prisons, the vast majority of which were committed by medium security prisoners (57.6%).



**Figure 7**  
*Breakdown of prisoner security ratings by prison security types*

- 5.28 As shown, prisoners rated minimum security assaulted staff far more frequently when placed in a maximum or multipurpose facility than when placed at minimum security. Almost three quarters of assaults (73.3%) by minimum security prisoners occurred in multipurpose facilities, despite less than 30 per cent of minimum security prisoners being located in these facilities. In addition, the same number of minimum security prisoners assaulted staff in maximum security facilities as in minimum security facilities, despite there being three times as many minimum security prisoners at minimum security facilities.
- 5.29 There are sometimes legitimate reasons why prisoners are placed in facilities where the security rating is higher than their own. This might be to maintain familial contact and visiting arrangements, or to undertake programs not offered at other prisons. However, there are occasions when people are accommodated in a facility with a higher security rating than their own simply because there is insufficient room in the system to accommodate people in an appropriate facility.
- 5.30 In the 2012 report *The flow of prisoners to minimum security, section 95 and work camps in Western Australia*, this Office found too many prisoners were being held at higher security levels than their ratings required. A massive number of minimum security prisoners are being held at maximum and medium security prisons, with no regime differentiation. Similarly, there are many medium security prisoners being held in maximum security facilities.
- 5.31 The extent of detention in over-secure facilities has been even more marked in the female estate. In 2009, Bandyup held around the same number of maximum as minimum security prisoners. However, in 2012, it held 3.5 times more minimum security women than maximum security. Almost one in four women held at Bandyup were rated as minimum security, a figure far in excess of any of the male prisons. The numbers at Bandyup were equivalent to the total design capacity of Boronia, the state's only dedicated female minimum security facility.
- 5.32 The 2012 review concluded that the Department should reduce the number of prisoners subjected to levels of security that are unnecessary given their security ratings. The correlation between housing people in over-secure facilities and the rate of staff assault gives added weight to this conclusion. In 2012 the Department committed to action but the situation continues to be of concern.

***Recommendation***

*Reduce the number of prisoners subjected to levels of security which are unnecessary given their assessed security rating.*

## 6 When and why are assaults occurring?

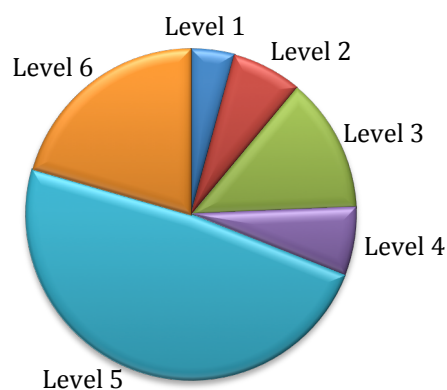
- 6.1 The circumstances of almost all the assaults were unique and generally they were the end result of a sequence of events rather than having a single direct cause. However, some patterns emerged which provide valuable information in considering risk mitigation and incident management strategies.

### Idle hands

- 6.2 Prisoners not involved in work or education programs were far more likely to commit assaults on staff than prisoners who were busy. Almost three quarters of prisoners were unemployed or underemployed at the time they assaulted staff.

### Figure 8

*Prisoner's gratuity level at time of assault*



- 6.3 Gratuities or payments are made to prisoners on a weekly basis. The amount a prisoner is paid is dependent on their level of engagement in work or education. The levels range from one to six where one equates to the greatest level of involvement and six the least.<sup>47</sup>
- 6.4 Prisoners who are not working and receiving no income are considered level six. This occurs when a person refuses work, a Superintendent directs them not to work, or they are confined to their cell as part of behaviour management.<sup>48</sup> Prisoners who are awaiting work are allocated gratuity level five. Gratuity level four is earned by those undertaking unit worker positions, which is notorious for requiring very little effort, and typically involves no more than mopping or sweeping a specified area of the unit. In some cases this work would only occupy a prisoner for an hour or less each day. People on level four to level six gratuities are considered by this Office as either unemployed or underemployed.

<sup>47</sup> There is also a Gratuity Level 23 which is a 'Work Camp Level' which is paid to all work camp prisoners from their date of commencement at the work camp.

<sup>48</sup> *Prison Regulations 1982 r45B*

- 6.5 Prisoners in less skilled work roles, part time employment or full time programs can earn level three gratuities. Level two gratuities are earned by long term workers or prisoners engaged in full time education. Level one prisoners are employed in a trade or are working towards trade skills.
- 6.6 This Office has consistently raised concerns in recent years regarding facilities which lack real opportunity for meaningful job skilling and accredited training.<sup>49</sup> A recent inspection of Casuarina Prison revealed that almost half of Casuarina's prisoners were unemployed or underemployed.<sup>50</sup> This led to a recommendation that the Department should ensure all eligible prisoners at Casuarina are offered meaningful employment or education and skill development activity. Similar findings were present at the 2012 inspections of Greenough<sup>51</sup> and Hakea prisons<sup>52</sup> where unemployment and underemployment were significant problems.

### **Recommendation**

*Increase access to meaningful employment, education and skill development programs across all correctional facilities.*

## **Overcrowding**

- 6.7 Overcrowding is often linked to staff assaults in prisons.<sup>53</sup> There is no doubt that crowded conditions contribute to the stresses of imprisonment: they not only reduce a prisoner's level of privacy but also reduce access to positive activities to keep prisoners busy, such as employment, and create additional pressures on services such as health, mental health and counselling. These are all risk factors, and crowded conditions create stresses for staff as well as prisoners.<sup>54</sup> However, although the highest rates of assault are at the most crowded prison, Bandyup Women's Prison, there is no simple direct link to overcrowding alone.

## **Measuring 'capacity'**

- 6.8 National figures measure overcrowding by the extent to which actual occupancy levels outstrip design capacity.<sup>55</sup> 'Design capacity' is described by the

<sup>49</sup> OICS, *Report of an Announced Inspection of Casuarina Prison*, Report No. 88 (March 2014); *Report of an Announced Inspection of Greenough Regional Prison*, Report No. 83 (March 2013); *Report of an Announced Inspection of Hakea Prison*, Report No. 81 (November 2012); *Report of an Announced Inspection of Albany Regional Prison*, Report 78 (June 2012); *Report of an Announced Inspection of Broome Regional Prison*, Report No. 77 (March 2012)

<sup>50</sup> OICS, *Report of an Announced Inspection of Casuarina Prison*, Report No. 88 (March 2014), 54

<sup>51</sup> Thirty-eight per cent of prisoners at Greenough Regional Prison were employed as unit workers.

<sup>52</sup> The unemployment rate at Hakea Prison was 44 per cent and a quarter of prisoners who were employed were engaged as unit workers.

<sup>53</sup> ABC News website, *Prison officer assaults blamed on overcrowding*, <http://www.abc.net.au/news/2012-12-16/prison-officers-blame-overcrowding-for-officer-assault/4430316> (16 December 2012); PerthNow website, *Figures show big jump in prison assaults*, <http://www.perthnow.com.au/news/western-australia/figures-show-big-jump-in-prison-assaults/story-e6frg13u-1225813791454> (26 December 2009)

<sup>54</sup> Victorian Ombudsman, *Investigation into deaths and harm in custody* (March 2014), 5

<sup>55</sup> Productivity Commission – Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014* (2014), DQI 22

Department as the total number of permanent beds.<sup>56</sup> It includes single occupancy cells and approved double occupancy cells. It does not include temporary double bunking, non-standard beds like those in segregation, observation, medical beds, beds in decommissioned units or wings, or cells which are out of order for maintenance or refurbishment.

6.9 The Department also uses the term 'total capacity'. This is defined as the total number of beds including design capacity and temporary beds. Therefore it includes doubled-up cells which are not approved for long-term double occupancy.<sup>57</sup>

6.10 A third term used by the Department is 'operational capacity'. This includes infrastructure capacity, both temporary and permanent, but also incorporates a consideration of staffing levels.<sup>58</sup>

### **Assaults and levels of overcrowding**

6.11 Bandyup Women's Prison, which had the highest rate of staff assault, is also the most crowded prison in the state. Its design capacity is 183 prisoners but according to the Department it had a 'total capacity' of 260 and an operational capacity of 259 during 2012 and 2013.

6.12 In 2012, Bandyup was operating above its operational capacity from April onwards.<sup>59</sup> On four occasions its population reached more than ten per cent above operational capacity and for the year as a whole it operated at more than five per cent above capacity. However the rate of assault at Bandyup in 2012 was 5.12 per 100 prisoners, the second lowest rate over the five year period.

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<sup>56</sup> Advice received from the Department, Facility Design and Operation Capacity, received 25/09/2013

<sup>57</sup> Like design capacity, total capacity excludes non-standard beds and beds in decommissioned units or wings: advice from the Department, Facility Design and Operation Capacity, received 25/09/2013

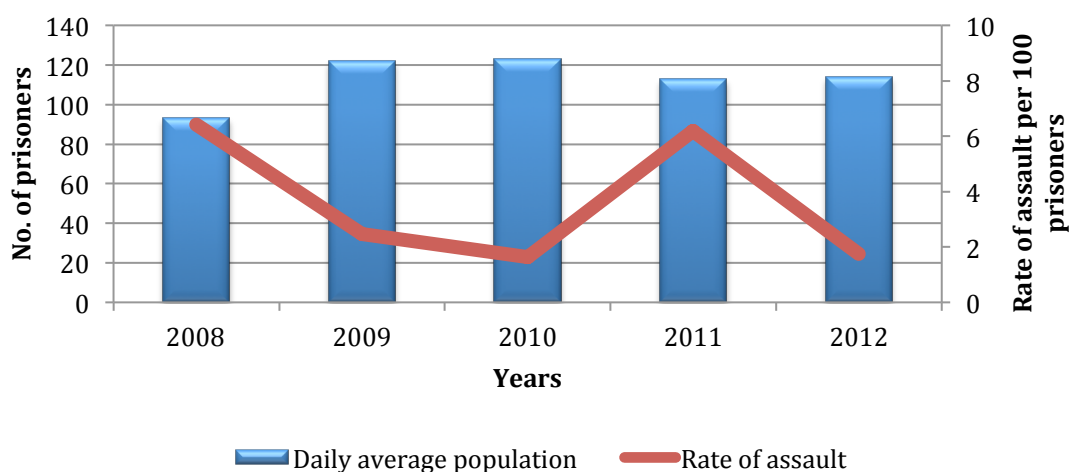
<sup>58</sup> Again, operational capacity excludes non-standard beds and beds in decommissioned units or wings: advice from the Department, Facility Design and Operation Capacity, received 25/09/2013

<sup>59</sup> TOMS- Count Facility - Historical - Bandyup Women's Prison taken on the 15<sup>th</sup> day of every month for 2012.

**Table 6***Population count at Bandyup Women's Prison on 15<sup>th</sup> day of each month 2012*

Month 2012	Population count	+/- Operational Capacity (259)	% Crowding	Rate of assault
January	237	- 22	91.5	0.84
February	246	- 13	95	0.81
March	251	- 8	96.9	0
April	273	14	105.4	0
May	260	1	100.4	0.39
June	284	25	109.7	0.35
July	289	30	111.6	0
August	299	40	115.4	0.33
September	276	17	106.6	0.36
October	284	25	109.7	1.06
November	293	34	113.1	0.34
December	298	39	115.1	0.67
<b>Daily average population</b>	<b>274</b>	<b>15</b>	<b>105.8</b>	<b>5.12</b>

6.13 Similar findings occurred at Eastern Goldfields Regional Prison (Eastern Goldfields) which has the second highest rate of staff assault in Western Australia. In 2008 Eastern Goldfields had its lowest daily average population but its highest rate of staff assault. In 2010 the facility recorded its lowest rate of assault and highest daily average prisoner population. It should be noted that these fluctuations are affected by the small population at Eastern Goldfields.

**Figure 9***Eastern Goldfields Regional Prison daily average population compared to the rate of assault*

6.14 A mixed picture emerges in 2011 where the rate of staff assault at Eastern Goldfields was again high and the population size was higher but still the second lowest for the five year period. This mixed picture is also apparent at Acacia, Casuarina and Hakea prisons.



## Mental health and cognitive impairment

- 6.15 Prisoners with mental health concerns and intellectual disability were significantly over-represented in staff assault incidents.
- 6.16 In 180 staff assault cases, the prisoners were recorded as having some form of psychiatric illness identified by Departmental health staff. This constitutes almost 40 per cent of all assaults. In contrast, people identified by the Department with psychiatric illness, constitute only 14 per cent of the daily average prisoner population.<sup>60</sup> More than a quarter of 180 staff assault cases were women (27%) and over half were Aboriginal (51.7%). There were only 121 distinct prisoners involved in the 180 staff assaults, with 30 prisoners responsible for two or more assaults.
- 6.17 There were 69 staff assault records where the prisoner was identified as having an intellectual disability. Only 2.6 per cent of the prison population is recorded with an intellectual disability yet these prisoners were responsible for 15 per cent of all staff assaults.
- 6.18 The combined effect of these figures is stark: 55 per cent of assaults were committed by those 16.6 per cent of prisoners formally identified with a mental health condition or an intellectual impairment.
- 6.19 There is no real surprise in these findings. They accord with the both international and local experience. A recent review by this Office found that people held in prison under *Criminal Law (Mentally Impaired Accused) Act 1996* with a cognitive impairment learn a variety of negative institutionalised behaviours such as violence and victimisation through the modelling of peer group behaviour.<sup>61</sup> It also found that mental illness can be exacerbated by the unfamiliar and threatening prison environment.<sup>62</sup> Prisoners with mental illness are at risk of self-harm, suicide, aggression, assault and behavioural disturbance; their presence can affect the entire prison and poses an increased burden on custodial officers who generally have no little or no specialist training.<sup>63</sup>
- 6.20 For a whole range of reasons, including the correlation between mental health / intellectual disability and staff assault, consideration should be given to ways to better manage these prisoners. In an ideal world, people with serious mental health conditions would not be held in a prison environment but this is unlikely to happen. In 2001, in acknowledgement of the high prevalence of mental health issues in UK prisons, the Department of Health and HM Prison Service developed a strategy for developing and modernising mental health services in prisons. This strategy acknowledged that despite the best efforts of health care staff, prisoners were receiving no or inappropriate treatment from staff with the wrong mix of

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<sup>60</sup> TOMS data extractions taken from the 15 day of January, April, July and October for the years 2008 to 2012.

<sup>61</sup> OICS, *Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely* (April 2014) 19

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

skills in the wrong kind of setting. Rather than solely advocating for the removal of mentally unwell people from prisons, the strategy focussed on greater use of day care and wing-based treatments. The intention was to allow the lives of these prisoners to be made more normal, with greater opportunities to participate in a purposeful regime and other activities.<sup>64</sup>

- 6.21 The UK strategy acknowledged that if prisoners with mental health problems are to be managed appropriately, all staff must be trained so they have ‘sufficient competence to know what to look for and what to do if they have concerns’.<sup>65</sup> This Office has frequently raised concerns about the limited mental health training available to prison officers, despite the obvious need and the desire of staff to undertake such training.<sup>66</sup>

### Mental health and cognitive impairment: female prisoners

- 6.22 As discussed earlier, female prisoners are committing staff assaults at twice the rate of their general number in the prison population and the rate of assault at Bandyup Women’s Prison is vastly higher than any other facility in the state.
- 6.23 This corresponds with a rate of mental health issues present amongst female prisoners. Departmental research indicates that 39 per cent of incarcerated women had some history of mental health illness and 28 per cent had specifically identified mental health ailments.<sup>67</sup> Of those women who have assaulted staff members, almost 60 per cent were medically assessed as requiring psychiatric care compared with 35 per cent of male assaulters.<sup>68</sup> Additionally, more than 15 per cent of women who assaulted staff were assessed by the Department as having an apparent intellectual disability.
- 6.24 The unequivocal link between assaults and issues of mental health and cognitive impairment on the part of all prisoners, and especially women, adds impetus to the need for a fundamental reappraisal of the way this state is tackling these issues in its prisons. A number of reviews are underway but action, training and new strategies are needed.

#### **Recommendation**

*Develop a broad corrections mental health management strategy, which includes staff training; day care and wing-based treatment services; and prison diversion options for people with serious mental health issues and intellectual impairment.*

<sup>64</sup> Department of Health and HM Prison Service, *Changing the Outlook, A Strategy for Developing and Modernising Mental Health Services in Prisons*.

<sup>65</sup> Department of Health and HM Prison Service, *Changing the Outlook, A Strategy for Developing and Modernising Mental Health Services in Prisons*.

<sup>66</sup> OICS, *Report of an Announced Inspection of Casuarina Prison* (2014) Report No. 88; *Report of an Announced Inspection of Hakea Prison* (2012) Report No. 81; *Report of an Announced Inspection of Albany Regional Prison* (2012) Report No. 78; OICS, *Report of an Announced Inspection of Bandyup Women’s Prison* (2011) Report No. 73

<sup>67</sup> DCS, *Profile of Women in Prison 2008* (2009), 7

<sup>68</sup> As part of the data extraction each individual’s medical status was analysed. For 48 out of 83 female prisoners who assaulted staff the psychiatric status as part of a medical assessment was checked in the affirmative.

## Trigger patterns

- 6.25 In order to determine common triggers to staff assault, a detailed analysis of the circumstances surrounding staff assaults was required. In order to achieve this, the review focussed on the assaults conducted in 2012 and examined every incident report entered by staff on TOMS,<sup>69</sup> linked to the each of these assaults.
- 6.26 In 2012 there were 110 assaults on staff. The triggers for these events were many and varied, with some incident reports indicating multiple reasons. However, similarities did emerge making it possible to categorise the triggers for these assaulted into 12 themes.<sup>70</sup>

**Table 7**

*Triggers identified in staff assault incidents in 2012*

Triggers	Prisoners		
	Female	Male	Total
Accidental		2	2
Agitation or stress		4	4
Escort	4	10	14
Health	1	3	4
Response to a specific officer		6	6
Other		3	3
During a restraint	3	10	13
Placement/regime related	1	8	9
Request related	5	9	14
Response to advice, information or instruction	1	38	39
Indecent/sexual		3	3
Unknown		5	5
<b>Total</b>	<b>15</b>	<b>101</b>	<b>116</b>

- 6.27 A third of assaults, 39 cases, were triggered in response to information, advice or instructions provided by staff. A further quarter of incidents, 27 cases, were the result of an escort or occurred when the prisoner was being restrained by staff.
- 6.28 Half of the 22 serious assault incidents which occurred between 2008 and 2012 resulted because the prisoner responded poorly to advice, instruction or information provided by staff. This trigger far outweighed other explanations that staff attributed to the remaining serious assaults, three of which occurred when staff were restraining the prisoner and another four occurred during escorts. There was one incident where the prisoner was agitated immediately prior to the incident and another where the prisoner specifically targeted the officer. There were two occasions where there was no identifiable trigger.

<sup>69</sup> This review was not able to interview prisoners about their perceptions of events.

<sup>70</sup> A total of 116 triggers were cited in the 110 assault reports.

- 6.29 The most likely trigger for assaults by men were was being provided with advice or instructions. With the exception of one incident, the staff member providing the information, and who was subsequently assaulted, was also male.
- 6.30 Assault incidents involving female prisoners had even less commonality, partially due to the relatively small number of these incidents. Five incidents were triggered by a request being denied or staff informing the prisoner that an outcome was still pending. Three occurred while women were being escorted within the prison and one as part of an external escort and another three while staff were restraining a woman for behaviour management.<sup>71</sup>

### Nature of assault

- 6.31 In 18 of the 2012 incidents, staff were struck by objects that prisoners threw or kicked at them. Most of these incidents related to prisoners having requests denied or being told that the outcome was still pending. Prisoners also sometimes assaulted staff in this manner as a response to being given information, advice or instruction or in response to placement decisions or changes.
- 6.32 Most men resorted to striking the staff member or striking staff in combination with other modes of assault such as kicking, biting and head butting. A number of male assault incidents involved spitting, or throwing or kicking an object at the staff member. There were also three occasions in 2012 where male prisoners indecently touched and therefore assaulted female staff.
- 6.33 Female assaulters tended towards using readily accessible items to assault staff, with seven staff being struck by, or deflecting objects, which were thrown or kicked at them. Spitting featured in four assaults in combination with another mode of assault such as kicking, grabbing or biting. Three out of these four assaults occurred whilst the prisoner was being restrained.

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<sup>71</sup> All three of these incidents occurred because the prisoners were required to be removed from their cell but for varying reasons including self-harm, the potential dangers of a broken window and movement to a management unit.

## 7 Who is being assaulted?

- 7.1 This review examined a range of issues relating to the staff who were assaulted with the intention of using the information to manage the risk of future assaults. In examining this information there is no suggestion of shifting responsibility onto the victim; there is never justification for assaulting a staff member.

### Staff role

- 7.2 Over 60 per cent of staff (288 officers) were working in a traditional custodial officer role when they were assaulted. These people are responsible for day to day management of multiple prisoners. As such, these staff engage with prisoners throughout the day increasing their exposure to the risk of staff assault. A further 21 per cent (94 staff) were in other custodial roles such as senior officers, unit managers and officers in charge of special management units which also have a high proportion of contact with prisoners. The remaining 19 per cent of staff were in other roles including education<sup>72</sup> and health services.

**Table 8**

*Role of staff who have been assaulted from 2008-2012*

Staff role	Assaults
Custodial role	382
Escort role	23
Medical role/environment	20
Administration role	14
Specialist custodial role	10
Education role	8
Unknown	1

- 7.3 Unexpectedly, there were few (5) assaults on recovery officers whose role is to respond to incidents throughout the prison. These officers tend to be involved in restraining people for reasons such as physical violence, threatening behaviour, non-compliance and self-harm. Given the increase in exposure to volatile situations it was assumed that the number of assaults on staff in these roles would be higher. However, it is likely the skill and training of these officers kept the rate of staff assault low. Similarly a low number of Emergency Support Group (ESG) officers were assaulted (3). The ESG is a specialised response team of highly trained and skilled officers charged with responding to critical incidents and volatile situations.<sup>73</sup> The final group making up the 'specialist custodial roles', were staff from the Canine Unit. Two assaults occurred on people from this unit.

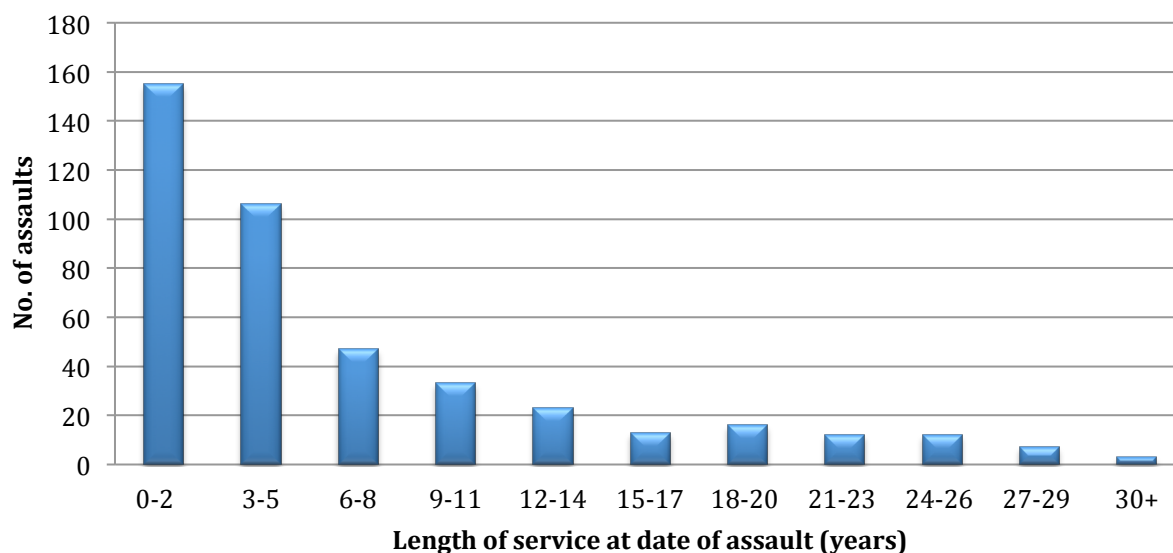
<sup>72</sup> Educational staff include personnel in Vocational Support Officer (VSO) positions. VSO often supervise large numbers of prisoners for prolonged periods of time, yet only three VSOs were assaulted by prisoners between 2008 and 2012.

<sup>73</sup> DCS, *Annual Report 2012/2013* (September 2013), 29

7.4 Twenty three assaults were carried out on staff whose role is to escort prisoners. These staff were primarily contractors who were employed to escort prisoners to court and to medical appointments. Four of these incidents occurred while the prisoner was being searched and a further two resulted from the prisoner resisting restraint.

### Length of service

7.5 Length of service was strongly linked to the likelihood of staff assaults for those which occurred between 2008 and 2012. More than 36 per cent of assaults occurred before the staff member reached their third year of employment.<sup>74</sup> This is despite this group only making up 25 per cent of the workforce. As length of service increased staff were less likely to be assaulted.



**Figure 10**

*Number of assaults committed on staff members by length of service<sup>75</sup>*

7.6 Staff with 10 years or more experience constitute almost 35 per cent of the prison workforce. Although they were less likely to be victims of assault than their newer colleagues, a quarter of all assaults were directed to this group. In cases where the staff member had 10 or more years' experience, a third of the assaults occurred when they were dealing with an agitated person, a person with a mental health or substance issue, or someone who had no identifiable trigger for the assault. This suggests that more experienced staff have more exposure to people who are difficult to manage and that assaults with no identifiable trigger could not be prevented by the staff member's level of experience.

<sup>74</sup> The length of service was only available for 428 staff members. In 17 cases the staff member's commencement date was unknown and in another 16 cases the date of commencement supplied was after the date of assault.

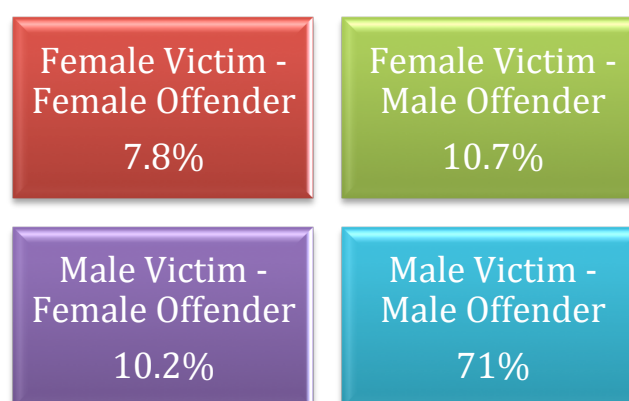
<sup>75</sup> Includes staff members who have been assaulted on multiple occasions.

## Age

- 7.7 The percentage of staff assaults in each age group mirrored the prison workforce. Employee age therefore does not appear linked to the likelihood of staff assault.

## Gender

- 7.8 Men make up 77 per cent of the custodial staff in prisons and women around 23 per cent. Relative to their numbers, males were more frequently assaulted (81.5 per cent of victims) than females (18.5 per cent of victims) over the period 2008-2012. It is unsurprising that 71 per cent of assaults were male on male. Female prisoner on female victim assaults accounted for almost eight per cent of all assaults and female prisoner on male victim assaults for approximately 10 per cent.



**Figure 11**

*Gender of staff and prisoners involved in staff assault*

- 7.9 Female prison officers were victims of assault less frequently than male officers, making up only 16 per cent of all custodial officers who were assaulted. This is low given female prison officers currently make up 23 per cent of the prison officer workforce.<sup>76</sup> Female prison officers were also much less likely to be victims of serious assaults. Only two of the 22 serious assaults involved female officers.
- 7.10 In 2005, New Zealand research into women officers working in male prisons theorised that:<sup>77</sup>

[W]here an inmate may gain some peer prestige from knocking over a male officer, no such kudos follows attacks on women. In a world where male pride remains strong, men who assault women are disdained as bullies and cowards.

<sup>76</sup> DCS, *Annual Report 2012/2013* (September 2013), 66

<sup>77</sup> Newbold, G. Women officers working in men's prisons. In *Social Policy Journal of New Zealand*, Issue 25 (July 2005), 111.

The research also found that given the prisoners were unable to resort to violence to resolve differences with female officers, they were forced to use different verbal strategies.<sup>78</sup>

- 7.11 Other research has supported this theory. In 2001 Cheeseman, Mullings and Marquart conducted a survey of prisoners from four male Texas prisons.<sup>79</sup> The self-reported information shows the prisoners were half as likely to be physically aggressive towards female officers as they were to male officers.<sup>80</sup>
- 7.12 There are legitimate reasons for a gender imbalance in the prison officer group. Duties like strip searching and urine testing are generally performed by officers of the same sex.<sup>81</sup> As male prisoners constitute approximately 92 per cent of the prisoner population, a greater proportion of male officers is appropriate to ensure there are always available staff to carry out these duties. However, given the benefits of female prison officers, including that they have been assaulted less frequently by prisoners, consideration should be given to determine the most effective mix of female and male officers, and strategies developed to ensure this mix is achieved and maintained. Overall staffing levels and prison rosters should reflect this mix.
- 7.13 The Department has previously claimed that maintaining a gender balance on any given shift is not viable, due to the practice of shift swapping. However the Corrective Services Prison Officers' Enterprise Agreement 2013 notes that "Prior to submitting an application for a Shift Swap, the Officer making the application must have given due consideration to operational commitments or procedural responsibilities that may be impacted by the absence."<sup>82</sup> Given the safety benefits, as well as the need to maintain the ability to carry out all duties, it is not unreasonable to ensure that shift swaps still maintain an adequate gender balance.

### ***Recommendation***

*Ensure workforce planning identifies and maintains an appropriate ratio of male and female prison officers, and prison rosters reflect this mix.*

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<sup>78</sup> Newbold, G. Women officers working in men's prisons. In *Social Policy Journal of New Zealand*, Issue 25 (July 2005), 111.

<sup>79</sup> Cheeseman, KA., Mullings, JL. and Marquart, JW. Inmate perceptions of security staff across various custody levels. In *Corrections Management Quarterly* (2001), 5(2), 41

<sup>80</sup> Minimum prisoners reported that they were more aggressive toward males officers (32.7%) than female officers (15.8%). Similarly, both medium and maximum security prisoners reported being more aggressive towards male officers than female officers (medium security prisoners aggression towards males was 54.2% but to female officers only 26.0% and maximum prisoners reported aggression towards male offices was 66.3% compared to 22.5% for female officers).

<sup>81</sup> In exceptional circumstances strip searches may be conducted by people of the opposite sex.

<sup>82</sup> Corrective Services Prison Officers' Enterprise Agreement 2013, s29.5



## Victims of multiple assaults

- 7.14 There were 364 discrete staff members who were assaulted by prisoners between 2008 and 2012. Almost a fifth of these staff members, 66 people, were subject to more than one assault incident.
- 7.15 Nine female staff members were assaulted multiple times, eight of whom were assaulted twice and one who was assaulted three times. Eight of the female multiple victims were in custodial roles each time they were assaulted. Their positions included unit manager, unit officer and senior officer. The other female staff member was in a custodial role at the time she was first assaulted and then was in an administrative role during the second assault. Six of the nine women were assaulted before they had completed five years of service.
- 7.16 Fifty seven male staff members were assaulted multiple times. Similar to the females, the majority of male multiple assault victims were in custodial roles when they were assaulted (48). The remaining nine male staff were in various medical, escort, administrative and specialist roles at the time they were assaulted.

**Table 9**

*Staff members subject to multiple assaults*

No. multiple assaults	No. of victims		
	Female	Male	Total
Two assaults	8	44	52
Three assaults	1	7	8
Four assaults		3	3
Five assaults		2	2
Eight assaults		1	1
<b>Total</b>	<b>9</b>	<b>57</b>	<b>66</b>

- 7.17 One male officer had been assaulted eight times, seven in discrete incidents and once where he was assaulted by two prisoners. He had been in a custodial officer position at Acacia Prison and his excessive appearance as a victim came to the attention of management. Enquiries made into this officer's actions found that although his behaviour was not unlawful, his overall approach and interaction with prisoners contributed to the assaults.<sup>83</sup> The employee was offered counselling, engaged with a psychologist and was redeployed into a non-prisoner contact role.

## Training and performance management

- 7.18 There is no excuse for prisoners assaulting staff but incident reports, across the five year review period, did show numerous examples of situations that had unnecessarily escalated. On many occasions it was obvious that a different

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<sup>83</sup> Advice received from Director Acacia Prison in response to a draft version of this report (22 June 2014).

approach from the staff member would have been far less likely to have resulted in an assault. There were also several examples of an assault occurring when policy, procedures and common-sense had been ignored. Examples include:

- Multiple examples of staff members opting to continue conversations with prisoners about poor behaviour while they were agitated and yelling at the staff member that they do not have to listen.
- An officer who refused a prisoner's request for a towel, choosing to later revisit the issue with the person, even though no further useful information could be supplied. The prisoner reacted to the topic being revisited.
- A staff member suggesting to a prisoner the reason she was trying to get a transfer was because the officer was constantly 'nagging' her about cleaning the showers properly. The staff member was walking very close to the prisoner at the time and she knocked the staff member while trying to move away.
- An officer with no support, and without calling in the incident, placing himself between two fighting prisoners.

It should also be emphasised that these examples were revealed by the way staff themselves had written up the incident. Interviews with prisoners would undoubtedly have revealed other allegations about officer behaviour.

- 7.19 Historically prison officer training has been heavily focussed on use of force techniques to control or restrain a person when necessary. Use of force training for prison officers is one of a small number of courses which are to be undertaken or refreshed annually.
- 7.20 The findings of this review would indicate the Department is for the most part successful in training these skills. This is shown by the surprisingly small percentage of assaults that were triggered when the prisoner was agitated or stressed, or during escorts or restraints. However, the large proportion of assaults that were triggered in response to advice, information or instructions being provided to a prisoner, coupled with the numerous examples of situations which were escalated by staff, suggests a need for enhanced training in conflict resolution and de-escalation techniques. This should be considered as part of both induction and routine refresher training.
- 7.21 Equally, there were many incidents where the staff member demonstrated good practice but an assault still occurred. This suggests that the conflict resolution skills of many staff are already well suited to the role and that mitigation strategies for these assaults lie in other areas.
- 7.22 However for some staff a targeted approach for skills development through performance management is needed, especially where it is clear that policy or

procedures were not followed, or where a staff member's actions have escalated a situation.<sup>84</sup> This is particularly important for staff who become involved in multiple incidents. Performance development is essential to reduce the risk not only to them, but also to their colleagues if an incident escalates to something where multiple staff must intervene.

- 7.23 There was some evidence that both the Department and Serco<sup>85</sup> are using a performance management approach in some cases. Training, advice and guidance has been offered to some staff as a result of an incident or incidents. However given the lack of formal reviews into staff assault incidents, it was difficult to determine if this is being undertaken in a systematic and thorough manner.

***Recommendation***

*Develop a targeted approach to improving staff conflict resolution skills.*

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<sup>84</sup> The Department has an existing mechanism in place to address performance development opportunities for staff; the Performance Appraisal and Development System (PADS). However, the effectiveness of this system has been repeatedly questioned by this office given the assessments are not consistently used for the allocation of training and development resources.

<sup>85</sup> Serco are currently contracted to provide services at Acacia Prison, Wandoo Reintegration Facility, and at court custody facilities throughout Western Australia. Serco are also contracted to transport prisoners to and from court, and to escort them to medical appointments and other approved external activities.

## 8 What is being done about assaults on staff?

### Consequences of assault

- 8.1 The penalties for prisoners involved in staff assaults lacked accountability, transparency and consistency. Most records of staff assault were incomplete and outcomes were frequently not recorded.
- 8.2 In 2012 there were 110 assaults against staff. Of these only 65 had recorded outcomes on the Department's offender management database, TOMS. Consequently the outcomes of 40 per cent of staff assaults in 2012 are difficult to determine because they were not recorded against the assault report. A review of the incident report minutes<sup>86</sup> revealed that many staff referred the alleged assault to the Western Australian police but no outcome of the result of this referral was recorded. Other incidents were dealt with internally.
- 8.3 Sanctions imposed by the Department, both under the *Prisons Act 1981* and administratively, vary depending on the circumstances and severity of the incident. They include:
- confinement to a punishment cell;
  - confinement to sleeping quarters;
  - loss of gratuities; and
  - loss of privileges, such as contact social visits.
- 8.4 In addition to departmental sanctions, staff assault can have other repercussions, including further imprisonment if the prisoner is convicted by the courts.<sup>87</sup>
- 8.5 As the Department does not maintain a register of when a prisoner is given a mandatory sentence, it is impossible to determine the effect of the new law on people in custody. Additionally, when a prisoner does receive a prison sentence for a staff assault, that sentence is not linked to the incident record on TOMS. Instead, those interested must manually cross check staff assault incidents with a prisoner's court history details to determine any sentencing details. A cross check revealed 20 occasions where a prison sentence was issued for assaulting a public officer in Western Australian prisons, between 2010 and 2012. Departmental sanctions were imposed on some of these people in response to the assault. However, most of the records for those 20 incidents had not been finalised and contained no information on whether Departmental sanctions were imposed.

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<sup>86</sup> According to the Department's *Juvenile Custodial Officer (Induction Training) TOMS Module* (Version 5.51.0.117), incident minutes contain a summary of the incident facts and any additional information ascertained following an investigation. The minutes also outline an explanation for consequences that are dispensed or the reason the matter is referred to a higher authority.

<sup>87</sup> See [3.15].

**Table 10***Departmental sanctions for prisoners who have received a mandatory sentence*

Departmental sanctions	Total
Records incomplete	12
Loss of privileges	3
Period of confinement	2
Loss of privileges and period of confinement	1
No sanction imposed	2
<b>Total</b>	<b>20</b>

- 8.6 While the Department continues to poorly record the outcomes of staff assaults, it will be unable to ensure that there has been a sufficiently robust response or that there has been consistency.<sup>88</sup> Some prisoners may face limited consequences while others face Department penalties as well as punishment from the judicial system. Although each assault needs to be dealt with on an individual basis, there needs to be better tracking and recording, and greater transparency.

## Reporting assault

### Classifying an incident as critical or non-critical

- 8.7 All staff who are involved in or witness an incident, including a staff assault, are required to enter a report on TOMS. *Policy Directive 41 – Reporting of Incidents and Additional Notifications* (PD41) provides guidelines and procedures for reporting incidents.<sup>89</sup> (Appendix C provides the full definitions used by both PD41 and TOMS).
- 8.8 In order to record an incident on TOMS the author must first decide if the incident was critical or non-critical. Critical incidents are subject to additional reporting notifications not required of non-critical incidents. Immediate verbal advice must be provided to a number of people within the Department and other preliminary reports must be provided within an hour.
- 8.9 At the time of the review, PD41 referred to critical incidents as any event included in a list of provided examples.<sup>90</sup> In addition to a serious assault, critical incidents included events such as escapes and attempted escapes, serious self-harm, attempted suicide incidents, security equipment being misplaced or stolen, bodily fluid contact, bomb threats, dangerous occurrences like natural disasters,

<sup>88</sup> Similar findings were reported in this Office's inspections of both Banksia Hill Detention Centre (see *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre* (2012), Report No. 76, chapters 4-5) and Bandyup Women's Prison (see *Report of an Announced Inspection of Bandyup Women's Prison* (2011), Report No. 73, [3.20] – [3.25]).

<sup>89</sup> DCS, *Policy Directive 41 – Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 2

<sup>90</sup> DCS, *Policy Directive 41 – Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 2

and death. Between September 2010 and the end of 2012, 84 staff assault incidents were recorded as critical.<sup>91</sup>

- 8.10 Non-critical incidents were described in PD41 as events that may result in charges being laid or a loss of privileges being applied to a prisoner.<sup>92</sup> Non-critical incidents included: fighting, threatening behaviour, locating prohibited items, property damage, the discovery of unknown substances, and non-serious assaults. Between September 2010 and the end of 2012, 125 staff assault incidents were recorded as non-critical.

### **Classifying the type of assault: PD41 prior to 14 January 2014**

- 8.11 During the period of this review, section 6.3 of PD41 stated that it was necessary to categorise all incidents accurately and specifically referred to a three-fold categorisation: ‘serious assaults’, ‘assaults’ and ‘other assaults’. However PD41 only defined ‘serious assaults’ and ‘non-serious assaults’ by way of examples and did not attempt to define ‘other assaults’.<sup>93</sup>
- 8.12 On the surface, PD41 aligned with the TOMS definitions (see Table 11). However, there were discrepancies.

**Table 11**

*Categories for assaults*

<b>PD41 incident classifications</b>	<b>PD41 assault categories</b>	<b>TOMS &amp; ROGS categories</b>
Critical	Serious assault	Serious assault
Non-critical	Non-serious assault	Assault Other assault

- 8.13 Discrepancies may occur when the assault involved bodily-fluid to bodily-fluid contact. For example, if a prisoner spits and it came in contact with a staff member’s eye or mouth, PD41 categorised that event as a critical incident and an ‘other’ assault. Yet the TOMS definition of other assault was when no physical injuries occurred or the injuries did not require any medical treatment. This did not align with the ongoing medical treatment that is required with repeat blood borne virus testing which occurs months after the assault. Adding to this, further treatment may be required depending on the test results. An assault requiring ongoing medical treatment would otherwise be categorised as serious assault. Consequently defining and recording bodily-fluid to bodily-fluid contact was unnecessarily complicated.
- 8.14 It is not surprising that this confusion led to a significant number of data entry errors being detected during the review which included:

<sup>91</sup> Prior to September 2010 incidents were classified as serious, major and minor rather than critical and non-critical.

<sup>92</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications, Appendix A - Categorisation of incidents in TOMS* (effective 7 February 2011)

<sup>93</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 4

- incorrectly classifying an incident as either critical or non-critical;
- allocating the wrong assault type to the event; and
- inappropriately marrying the incident category with the wrong assault type.

8.15 Of the 84 staff assaults recorded as critical incidents, only 17 (20%) were correctly classified as critical incidents based on the information contained in the reports relating to the incident. The information regarding two assaults was wholly unknown from the reports and the remaining 65 should have been categorised as non-critical incidents according to the terms of PD41.

8.16 The 84 critical incidents were categorised as 12 serious assaults, 65 assaults and seven other assaults. From the information provided in the incident reports it appears that these should have been categorised as only two serious assaults, with 49 being assaults and 31 being other assaults.

**Table 12**

*Incident reports classified as per PD41*

Recorded in TOMS	Reassessed from information in incident descriptions			
	<i>Serious assault</i>	<i>Assault</i>	<i>Other assault</i>	<i>Unknown</i>
<i>Serious assaults: 12</i>	1	7	4	
<i>Assaults: 65</i>		42	21	2
<i>Other assault: 7</i>	1		6	
<b>Total</b>	<b>2</b>	<b>49</b>	<b>31</b>	<b>2</b>

8.17 Table 12 shows critical incidents and their recorded assault types compared to a reassessment based on the incident records and PD41 and departmental definitions. The highlighted figures represent those assault types which were categorised correctly. Of the 49 records correctly assigned an assault category, 46 were incorrectly logged as a critical incident, leaving only three out of 84 which were correctly classified as a critical incident and allocated the correct assault category.

8.18 It is the responsibility of the supervisor of the author of the incident report to review the report.<sup>94</sup> This includes whether the incident is classified as critical or non-critical and the type of assault is correctly allocated. These findings demonstrate this quality assurance process is not working.

<sup>94</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 7 February 2011), 4

## Recent amendments to PD41

- 8.19 During this review the Department acknowledged the confusion caused by the various definitions of assault and incident classifications.<sup>95</sup> It therefore amended PD41<sup>96</sup> and the new policy came into effect on 14 January 2014.
- 8.20 The updated policy directive dispenses with the former categories of serious assault and non-serious assault. Instead four new categories are defined<sup>97</sup> and those categories now align with the TOMS incident reporting requirements:<sup>98</sup>
- serious assault
  - assault
  - assault other; and
  - sexual assault.<sup>99</sup>
- 8.21 Improvements have been made to the new policy. These include:
- providing staff with pictorial guidance to enable them to correctly classify staff assaults as critical or non-critical; and
  - classifying all staff assaults as critical incidents except when no physical injury is sustained.
- 8.22 However the amended policy still contains discrepancies which may continue to confuse staff when they record a staff assault. These errors are:
- not offering further clarity for the classification of bodily fluid contact; and
  - ambiguity and inconsistency in the definitions of non-critical incident assaults.<sup>100</sup>

### ***Recommendation***

*Revise Policy Directive 41 to remove remaining ambiguity from the classifications of staff assault.*

## Quality of reporting and recording

- 8.23 Reports on assault from 2008-2012 showed too much variability in terms of their content and quality of reports. Furthermore, far too many records were

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<sup>95</sup> Interview with Assistant Commissioner Custodial Operations and Director Security Services.

<sup>96</sup> The redraft was occurring at the time of the review and a copy was provided to this Office.

<sup>97</sup> See Appendix C for the full definitions.

<sup>98</sup> DCS, *Policy Directive 41 – Reporting of Incidents and Additional Notifications Appendix 1A Assaults – Critical and Non-Critical*, (effective 14 January 2014)

<sup>99</sup> All sexual assaults are considered serious assaults. Sexual assault is defined broadly as any non-consensual 'sexual contact'. It therefore covers what the general criminal law calls 'indecent assault' as well as 'sexual penetration' offences.

<sup>100</sup> The new PD41 definition of non-critical assault states that it applies only to assaults where the victim is a prisoner and where no weapon was used. However, the categorisation reference for TOMS states that non-critical assaults can occur against staff.



incomplete. It is not possible for an organisation to track its responses to events or to learn from experience if record keeping is so poor.

- 8.24 PD41 stipulates that incident reporting should be accountable and transparent. Each report is required to be completed independently of other staff and should be free from subjectivity. Only the facts of the incident are supposed to be recorded. While many reports were independent, objective accounts of the incident, many espoused the opinion of the author and relied upon other reports to provide detail about the incident. The following example is an incident report which was submitted and accepted by a supervisor.

This prisoner is continuously creating problems for ... staff.... Tragically he has a serious affliction which would be devastating for any person let alone a prisoner in prison. However he must realise that he can't obstruct officers attending to their rightful duties. He is aware that the assault of a prison officer is a very serious offence and can expect retribution from our system.

- 8.25 This report gives no information about the incident, merely expressing an opinion of the staff member. It should not have been written as a record of the event and should not have been accepted by the supervisor.
- 8.26 The many well written reports indicate that training and guidance has been provided to staff writing reports. As such, improvements to reporting are more likely to be gained in improving the quality assurance process, and providing feedback and guidance to individual staff members when reports do not meet the policy guidelines.
- 8.27 In addition a large number of reports were not finalised. While some delay in finalising reports can be expected, particularly if the outcome of an incident involves an external agency such as the police, this does not account for the large numbers of incomplete reports. In March 2014 a review of incidents occurring in the first two weeks of 2013 was undertaken. Of the 971 incidents in TOMS for those two weeks, a third still had pending reports awaiting finalisation. It is unlikely that any of these incidents were awaiting additional information over a year later.
- 8.28 This Office consistently raises concerns about poor record keeping practices in the Department.<sup>101</sup> Staff assaults are just one area where systems and processes need to be improved.

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<sup>101</sup> OICS, *Report of an Announced Inspection of Banksia Hill Detention Centre*, Report No. 76 (January 2012); OICS, *Directed Review into an Incident at Banksia Hill Detention Centre on 20 January 2013*, Report No. 85 (August 2013); OICS, *Funeral attendances by incarcerated people in Western Australia* (September 2013); OICS, *Report on an Audit of Custodial Roof Ascents* (December 2012).

### **Recommendation**

*Improve record keeping practices, incorporating:*

- i) Quarterly reviews to identify incomplete incident reports*
- ii) Effective quality assurance practices*
- iii) Enhanced performance development for report writing when needed.*

### **Systemic reviews and risk mitigation strategies**

8.29 Both the Department and Serco advised the Office that there were no specific strategies targeting a reduction in staff assault in Western Australian prisons. However, both have a range of strategies designed to address negative prisoner behaviours, improve security and provide a safe custodial environment. The Department and Serco expect these strategies to have a mitigating effect on the number of assaults on staff.

#### **The Department – Adult Custodial Division**

8.30 The Department does not examine staff assaults on a systemic basis. Rather each assault is reviewed by Head Office personnel on a case by case basis. Some of these incidents are referred to the Standards and Review Directorate or the Internal Investigation Unit for further analysis.

8.31 The Department claimed that the case by case reviews involve examining the incident reports, video footage and photographs. However we found no evidence that reviews were, in fact, conducted in such detail. In a random sample of 10 incidents the Department was only able to provide a three point summary of the assault incident identifying the names of the people involved, the incident's category (critical or non-critical), the type of assault (assault, other assault or serious assault) and a single sentence synopsis of the incident. These reviews provided no more information than what was recorded in TOMS.

8.32 If case-by-case reviews are conducted, one would expect, at a minimum, that personal, situational or environmental triggers would be analysed and documented. Review outcomes, such as additional training requirements or amendments to policy, should also have been documented.

8.33 In summary, there was no evidence that a thorough case by case review approach was actually taking place, or that it was allowing for learning to be gained or improvements to be made in reducing staff assault.

#### **The Department – Professional Standards Division**

8.34 The Department's Custodial Standards and Review Branch, part of the Professional Standards Division,<sup>102</sup> performs regular reviews of various types of

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<sup>102</sup> During the review the Department was undergoing a functional restructure. From 10 February 2014 the Professional Standards Division was absorbed by the new Operational Support Division. After this key functions of the Professional Standards Division

critical incidents including staff assaults. The reviews are conducted to test compliance with policy, procedure, legislation and good practice.<sup>103</sup> In 2012-13, eight reviews were undertaken into nine staff assault incidents. Eight of these nine incidents involved adult prisoners and one involved a young person.

- 8.35 These reviews were comprehensive, providing a detailed prisoner profile and summary of the assault incident. They also made a number of recommendations based on the findings. Some of these recommendations regard systemic issues to be addressed broadly by the Department in all prisons whilst other recommendations were more specific to the prison where the assault occurred or for the staff who were involved.
- 8.36 However, it is very concerning that three of the nine incidents were not recorded on TOMS as staff assaults. One incident was recorded as a prisoner-on-prisoner assault, another as a prisoner injury from an apparent attempted suicide and the third was labelled as misconduct with threatening behaviour. The incidents were incorrectly classified in TOMS despite the assaults clearly being reported in the incident descriptions. If three from nine incidents were not correctly recorded on the Department's database it is very probable that there are substantially more.

#### **Recommendation**

*Formalise the review of all staff assaults, including documenting triggers for the assault and the consequences (DCS and other) applied to the prisoner.*

#### **Serco Asia Pacific**

- 8.37 Similar to the Department, Serco does not have a specific prevention strategy for staff assaults. Instead staff at Acacia use a variety of strategies designed to holistically address prisoner behaviour and management needs. This includes anti-bullying, anti-violence and safer custody strategies, as well as the company's strategic direction and philosophy of prisoner engagement and dynamic security as a means for reducing staff assaults.
- 8.38 Serco's reporting requirements for staff assault are the same as the Department's. Additionally, Serco is also required to advise the Department's Contract Management Branch when a staff assault occurs.
- 8.39 Like staff assault incidents in public prisons, those that occur at Acacia are examined by the Adult Custodial Division and in the case of serious assaults, by the Professional Standards Division.<sup>104</sup> Serco intermittently conduct its own

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were divided amongst two new directorates (the Intelligence Services Directorate and the Investigations Services Directorate) and the Office of Reform. The Professional Standards Division has since been abolished.

<sup>103</sup> DCS, *Annual Report 2012/2013* (September 2013), 74

<sup>104</sup> With the cessation of the Professional Standards Division it is unknown at the time of writing if this review function has been absorbed by other business areas within the Department.

operational reviews of systemic issues. It also monitors workers' compensation statistics, medical treatment injuries and lost time injuries which provide an indication of when staff assault incidents become an issue at Acacia Prison, or for staff providing security at court, or during escorts.

## 9 Summary

- 9.1 The most important finding from this review is that staff assaults, particularly serious staff assaults are rare. This is both commendable and expected. Keeping staff safe is a primary concern for any workplace and prisons are no exception.
- 9.2 The surprisingly small percentage of assaults triggered when the prisoner was agitated or stressed, or during high risk activities such as escorts or restraints, indicates that many staff are highly skilled in dealing with volatile situations. However, there are some specific challenges for staff.
- 9.3 Prisoners with mental health issues or cognitive impairments, particularly women, were over-represented in staff assault incidents. This comes as no surprise, given it aligns with international and local experience. These prisoners are more vulnerable and more challenging to manage. They place an increased burden on custodial staff who generally have little or no specialist training in meeting their needs. Multiple strategies which include staff training and increasing specialised services are needed to reduce the burden on staff. Logically this should also reduce the number of staff assaults.
- 9.4 Other risk factors for staff assault were:
- Prisoners with idle hands, meaning those who were unemployed or underemployed in the prison.
  - Prisoners held in more secure facilities than their security classification dictates.
- 9.5 For different reasons, both of these risk factors have been ongoing areas of concern to this Office for several years. The lack of meaningful job skilling and accredited training has significant impacts upon rehabilitation. Conversely, holding people in more secure facilities than their security classification dictates, increases costs and decreases access to specialised reintegration services. The findings of this report which show a correlation between these factors and staff assault, adds weight to the arguments to provide more employment and work opportunities, and reduce the number of prisoners housed in over secure facilities.
- 9.6 The risk factors identified in this report overlapped to produce a cumulative effect. This was most evident at Bandyup Women's Prison where the staff assault rate was up to three times higher than other facilities. Bandyup has higher rates of prisoners with mental health issues or cognitive impairments. Access to work and education programs are low, and it holds 3.5 times more minimum security women than maximum security women despite this being a maximum security prison.

- 9.7 Female prison officers were less frequently assaulted than their male counterparts and were much less likely to be victims of serious assault. This finding is supported by international research which has shown that male prisoners (over 90% of the prisoner population in WA) are less likely to be physically aggressive towards female officers, as they may be perceived to be bullies or cowards. There is, and should be, a gender imbalance in the prison officer group which enables sensitive duties to be carried out, such as strip searching. However this finding demonstrates one of the benefits of having a mix of genders and the importance of maintain the appropriate mix.
- 9.8 Some staff were more likely to be victims of staff assault than others. While many staff were capable of dealing with difficult people, the incident reports also showed numerous examples where staff actions had escalated the situation. Poor management of an incident not only puts the staff member at risk but also their colleagues and other prisoners. It was unclear if sufficient follow up with the staff member was undertaken after these incidents. What was clear is that a targeted approach for skills development through performance development was needed.
- 9.9 The Department's record keeping practices, combined with poor guidance on classifying assault limited its ability to review assaults and learn from incidents. There were numerous errors in the data, and many reports were not complete. It was evident that quality assurance practices to date were not sufficient to combat these errors. While overall the rate of staff assault is low, by not being able to examine quality information from each assault, it is likely the Department is missing opportunities for reducing the risk of staff assault.

## Appendix A: Key findings

- Staff assaults, particularly serious staff assaults, in Western Australian prisons are infrequent. Only 22 serious staff assaults have occurred in the five years from 2008 – 2012.
- Certain prisoner cohorts are overrepresented in staff assaults namely:
  - a. Prisoners with mental health concerns and intellectual disability
  - b. Female prisoners
  - c. Prisoners who are the least involved in work or education programs
  - d. Prisoners held in more secure facilities than needed
- Overcrowding, in and of itself, is not directly linked to staff assaults in Western Australian prisons.
- The triggers in staff assault incidents are many and varied with incidents involving female offenders exhibiting less commonality than those incidents involving male prisoners.
- Targeted professional development is needed where incidents were unnecessarily escalated by the approach of the staff member involved.
- Department record keeping on staff assault has significant problems, including
  - a. Classifications being confusing and leading to errors
  - b. Poor quality assurance practices
  - c. Poor quality reports espousing opinion or not being independent.

## Appendix B: Department of Corrective Services response to recommendations

Recommendation	Response
1. Reduce the number of prisoners subjected to levels of security which are unnecessary given their assessed security rating.	<p><b>Not Supported</b></p> <p>The Department is committed to placing prisoners in suitable facilities dependent on their security rating, risks, alerts and needs.</p>
2. Increase access to meaningful employment, education and skill development programs across all correctional facilities.	<p><b>Supported in Principle</b></p> <p>Opportunities to increase access to meaningful employment, education and skill training is dependent on infrastructure development and availability of resources. Additional infrastructure is required to increase the capacity of industries at some facilities, and thus increase the provision of employment and training for prisoners. Such development is subject to funding and other competing Departmental priorities. In terms of resource availability, this impacts on the provision of employment, training and education services. Vocational Support Officers are being removed from education and training, and utilised for operational requirements and muster management. Notwithstanding this, work skills development and employment for prisoners is a priority and a review is currently underway to ensure that prisoners are provided with relevant 'job ready skills' to increase opportunities for employment upon release into the community.</p>
3. Develop a broad corrections mental health management strategy, which includes staff training; day care and wing-based treatment services; and prison diversion options for people with serious mental health issues and intellectual impairment.	<p><b>Supported</b></p> <p>Health Services have submitted, for internal approval, a proposal paper suggesting the development of a health precinct within Casuarina and Bandyup Prisons. Each of these would largely comprise of a specialised mental health area with appropriate facilities and increased staffing. These areas would allow patients with mental health issues to be appropriately clinically treated in a "safe environment" and can be expected to ameliorate much of the current issues. In the meantime in the women's precinct, more stable female prisoners are moved from Bandyup to GRP. Should an individual at GRP decompensate and require increased support or hospitalisation they are generally returned to a metropolitan prison.</p>
4. Ensure workforce planning identifies and maintains an appropriate ratio of male and female prison officers, and prison rosters reflect this mix.	<p><b>Supported in Part</b></p> <p>Workforce planning is progressing initiatives to determine an appropriate female representation range for this cohort for each of the public prisons. Feedback from Prison's staff over the past few years and comparisons of their views from similar facilities have helped construct the range for female representation to this point. Further research is required and being conducted. It is envisaged that by achieving appropriate gender mix, rostering issues will also be improved.</p>
5. Develop a targeted approach to improving staff conflict resolution skills.	<p><b>Supported – Existing Departmental Initiative</b></p> <p>The Department has developed the Performance Appraisal and Development System (PADS) which is designed to manage the performance of uniformed officers. The overall</p>



	<p>objectives of performance assessments are to measure, maintain and improve job performance as well as identifying training needs for the employee. The PADS cycle consists of 2 annual meetings. In addition to these meetings, the PADS Guidelines (sect 8.3) provide for "Regular Feedback" a process whereby behaviour and performance is monitored on an ongoing basis, outside of the 2 annual meetings. The template associated with this is based on the situation (incident) and action principle. The PADS Guidelines (sect 13.1) go on to state that performance concerns can be addressed as soon as the assessor becomes aware that an employee is not meeting required standards. General training and development needs are identified during this process. The PADS process is underpinned by the Public Sector Standards in HR Management (Guidelines sect 18). Further to this, the PADS Policy states that the manager or employee can request performance review meetings or discussions at any time, and the PADS agreement can be amended to reflect the outcome of these discussions, including any training needs. All training needs identified in the PADS agreement for all employees are provided to the Training Academy to enable planning to occur for the following year professional development courses facilitated both at the Academy and in the prisons.</p>
<p>6. Revise Policy Directive 41 to remove remaining ambiguity from the classifications of staff assault.</p>	<p><b>Supported – Existing Departmental Initiative</b></p> <p>Policy Directive 41 - Reporting of Incidents and Additional Notifications was amended and republished with an effective date of 29 January 2014. This is a dynamic policy which is reviewed on a continuous basis to meet changing reporting requirements and to address ambiguous definitions.</p>
<p>7. Improve record keeping practices, incorporating:</p> <ul style="list-style-type: none"> <li>i) Quarterly reviews to identify incomplete incident reports</li> <li>ii) Effective quality assurance practices</li> <li>iii) Enhanced performance development for report writing when needed.</li> </ul>	<p><b>Supported</b></p> <p>With the establishment of the Operations Cell the closure process for incident reports will be incorporated into the duties of the 24 hour duty manager. In addition to this a full quality assurance process has already been established for the tracking and completion of all PD41 returns ensuring that the reports are accurate, reviewed by the Superintendent and also by the Operations Team. This allows for the identification of lessons learnt and these are shared regularly with the Operational field.</p>
<p>8. Formalise the review of all staff assaults, including documenting triggers for the assault and the consequences (DCS and other) applied to the prisoner.</p>	<p><b>Supported</b></p> <p>The Department agrees that the reviewal processes for staff assaults needs improvement. This matter will be considered as part of the current functional restructure.</p>

## Appendix C: Definitions of assault

### Legal

Western Australian *Criminal Code Act 1913*, section 222 defines assaults as

A person who strikes, touches or otherwise applies force of any kind to the person of another, either directly or indirectly, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without their consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to affect that purpose, is said to assault that other person, and the act is called an assault.

The term “applies force” includes the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever if applied in such a degree as to cause injury or personal discomfort.

### Policy Directive 41, effective 14 January 2014

The Department of Corrective Services’ *Policy Directive 41 – Reporting of Incidents and Additional Notifications*,<sup>105</sup> effective from 14 January 2014, defines

#### Critical Incidents

**Serious assault** – where as the result of an assault, the victim receives physical injuries requiring overnight hospitalisation, overnight care at a prison medical centre/infirmery or ongoing medical treatment.

This section applies to serious assault (as defined above) on any person.

**Assault** – where as a result of an assault, the victim receives physical injuries that may or may not have required medical treatment but did not require overnight hospitalisation, overnight care at a prison medical centre/infirmery or ongoing medical treatment.

This section applies to an assault (as defined above) on:

- A member of staff, contractor, volunteer or visitor
- A prisoner, only in the event that a weapon was used to assault the prisoner.

**Sexual assault** – a sexual assault is any sexual act carried out

- Without a person’s consent
- Where consent is given as a result of intimidation or fraud

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<sup>105</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 4 January 2014)

- Where consent is proscribed (ie the person is legally deemed incapable of giving consent because of youth, temporary/permanent (mental) incapacity or there is a familial relationship etc)
- Where consent could not be given freely and voluntarily (ie due to the victim being intoxicated or unconscious)

regardless of whether the sexual assault results in injury or medical treatment. Sexual assaults include where the victim reports that any person in any manner has sexually assaulted him/her or there is clear evidence of such as assault having occurred.

### **Non-critical incidents**

**Assault** – where as a result of an assault, the victim receives physical injuries that may or may not have required medical treatment but did not require overnight hospitalisation, overnight care at a prison medical centre/infirmery or ongoing medical treatment.

This section applies to an assault (as defined above) on a prisoner where no weapon was used.

**Assault other** – Where as a result of an assault, the victim receives NO physical injuries and did not require any form of medical treatment.

This section applies to an Assault Other (as defined above) on a prisoner, member of staff, contractor, volunteer or visitor.

### **Policy in effect at the time of the review**

The PD41 in effect at the time of the review<sup>106</sup> defines two categories of assault; serious and non-serious. Serious assaults occur when the

Victim is subjected to physical violence that resulted in physical injuries requiring medical treatment involving overnight hospitalisation in a medical facility (eg prison clinic, infirmery, hospital or a public hospital) or on-going medical treatment. The serious assault category includes all sexual assaults. In cases of sexual assault the victim reports that any person in any manner has sexually/indecently assaulted him/her, or there is clear evidence of such an assault having occurred, irrespective of whether the person has been hospitalised or not.

A serious assault is defined as an occurrence where:

- There is at least one apparently reliable witness to the assault; or
- The victim claims an assault and there is no obvious reason to doubt this claim; or a visible injury has occurred and there is sufficient

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<sup>106</sup> DCS, *Policy Directive 41 Reporting of Incidents and Additional Notifications* (effective 7 February 2011)

circumstantial or other evidence to make an assault the most likely cause of the injury on the basis of the balance of probabilities.

Treatment within the emergency department is not classified as admission to hospital.<sup>107</sup>

A non-serious assault is 'an act of physical violence committed by a prisoner on a prisoner/staff/visitor that does not result in physical injury and/or does not require overnight hospital treatment.'<sup>108</sup>

## TOMS

The Department's database, Total Offender Management Solution (TOMS) definitions align with the Report on Government Services definitions (see below); however they also include a third category – other assault (no injury). The definitions are

**Serious Assaults** – victim subjected to physical violence that resulted in physical injuries requiring medical treatment involving overnight hospitalisation in a medical facility (eg prison clinic, infirmary, hospital or a public hospital) or on-going medical treatment. Serious assaults include all sexual assaults.

**Assault** – the victim is subjected to physical violence that resulted in physical injuries but did not require overnight hospitalisation or on-going medical treatment.

**Other Assault (no injury)** – the victim is subjected to physical violence that did not result in physical injuries or require any form of medical treatment.

## Report on Government Services

The Report on Government Services definitions for assaults are

**Serious Assaults** – an act of physical violence committed by a prisoner that resulted in physical injuries requiring medical treatment involving overnight hospitalisation in a medical facility (eg prison clinic, infirmary, hospital or a public hospital) or on-going medical treatment. Serious assaults include all sexual assaults.

**Assault** – an act of physical violence committed by a prisoner that resulted in physical injuries that may or may not have required medical treatment, but not overnight hospitalisation or on-going medical treatment.

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<sup>107</sup> DCS, *Policy Directive 41 Appendix A – Categorisation of incidents in TOMS* (effective February 2011), 1.

<sup>108</sup> *Ibid*, 7

## Appendix D: Methodology

A list of all staff assault incidents which occurred between 1 January 2008 and 31 December 2012 was obtained from the Department's database, Total Offender Management Solution (TOMS), using standard query language data extraction.

An in-depth review of all staff assault incidents occurring in 2012 was performed by examining the incident descriptions and minutes. From the information contained in these 110 records, a comprehensive list of themes was generated (see below). These themes enabled a thematic analysis of the triggers which were attributed to staff assault incidents. This process was also carried out for incidents involving more than ten years' experience and for all serious assaults.

Document requests were made to both the Department of Corrective Services and Serco Asia Pacific. This included the demographic and employment information of the staff victims of assault. All document requests were analysed and incorporated into the findings of this review.

Finally, interviews were conducted with Departmental staff including: the Assistant Commissioner Custodial Operations and Director Security Services, and the Deputy Managing Director and Director of Operations of Serco Asia Pacific.

### Themes of staff assault triggers

While many and varied, the triggers for staff assaults had some similarities and were therefore categorised into 12 broad themes. The following is a description of these themes.

**Agitation or stress:** The prisoner presented or reported as being as agitated or stressed immediately prior to the assault.

**Request related (social):** The prisoner made a request regarding social contact which was either denied by staff, refused by another individual or was still pending a decision.

**Request related (medical):** The prisoner was seeking medical assistance, specialist medical care or medication which was either denied or pending.

**Request related (other):** The prisoner made a request which was denied by staff or was still pending. This included canteen or spends related requests.

**During a restraint:** The prisoner was being physically restrained or mechanically restrained at the time of the assault. The restraint may have resulted from an earlier incident or escalating behaviour.

**Response to specific officer:** The prisoner identified having an issue with the officer including suggestions that the officer was racist or the threatening.

**During escort (internal):** The assault occurred during an escort within the prison.

**During escort (external):** The assault occurred as part of an escort outside a prison, whilst in transit or whilst being ushered onto an escort vehicle.

**Response to advice information or instruction:** The prisoner responded poorly to advice, information or instructions provided to them and an assault followed.

**Indecent/sexual:** The prisoner touched an officer in a manner that was sexually inappropriate.

**Accidental:** The assault presented as accidental in nature or the prisoner reported it as unintentional.

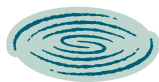
**Placement/regime related:** The assault occurred in response to a change in the prisoner's placement or regime or in response to a decision to change the prisoner's placement or regime.

**Unknown:** There was no identified reason provided in the reports regarding why the assault occurred.

**Health:** The assault may have been a consequence of issues related to the prisoner's health. This included where the prisoner has documented mental health concerns and/or intellectual disability, he/she missed their medication, chemical influence and where the prisoner's behaviour may be explained by earlier injury.

**Other:** The reason the assault occurred was a unique explanation for the timeframe with no overarching theme linking them all. This included

- A prisoner claiming the assault was a joke
- Where the prisoner was compliant until he was in view of other prisoners and subsequently the assault ensued
- A prisoner who was running between unit wings claiming an officer was in the way



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