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ombudsman

Investigation into prisoner access to health care

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report of an investigation into prisoner access to health care.

G E Brouwer
OMBUDSMAN

29 August 2011

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Executive summary

1. There is a revolving door between our prisons and our community. In 2010, the Australian Bureau of Statistics reported[1] that 49 per cent of Victorian prisoners surveyed had previously been imprisoned in the adult system and 41 per cent of Victorian prisoners were serving a sentence between one and five years.

2. A Department of Justice[2] study found Victorian prisoners to be 'an extraordinarily needy, unhealthy and life damaged cohort…at the very high risk end of the Victorian health spectrum'. It identified that Victorian prisoners suffer significantly higher than average levels of hepatitis (A, B and C); depression; sexually transmitted diseases; self-harm and injury; suicide attempts and hospitalisation.[3]

Victorian prisoners suffer significantly higher than average levels of hepatitis (A, B and C); depression; sexually transmitted diseases; self-harm and injury; suicide attempts and hospitalisation.

3. With such high rates of recidivism, the health of Victoria's prisoners can have significant impacts on the broader community and it is imperative that this impact is minimised by providing prisoners with a reasonable standard of health care.

With such high rates of recidivism, the health of Victoria's prisoners can have significant impacts on the broader community.

4. In my 2006 report, 'Conditions for Persons in Custody' I raised a number of concerns with the standard of health care provided in Victoria's prisons and made recommendations to address these concerns. While many of these recommendations were accepted, some were not and I have concerns that issues I identified in 2006 have yet to be resolved.

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1 ABS 2010, page 29.

2 Deloitte Consulting, *Victorian Prisoner Health Study,* 2003.

3 Deloitte Consulting, *Victorian Prisoner Health Study,* 2003, page 7.

5. Prisoner rights are legislated in the *Corrections Act 1986* which states that prisoners have the right to access reasonable medical care and treatment necessary for the preservation of health.[4] The *Charter of Human Rights and Responsibilities Act 2006* states that 'all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person'.[5]

6. Prisoner health care in Victorian prisons is administered by private health care providers which are contracted to perform that role. In 2007, the responsibility for health services within Victoria's corrections system was transferred from Corrections Victoria to Justice Health. Justice Health is 'responsible for the planning and coordination of health services' across Victoria's justice system and oversees the provision of health care by the contracted health care providers.

Harm minimisation

7. Studies have repeatedly shown that the prevalence of communicable disease within the prisoner population is significantly greater than in the wider community.

The prevalence of communicable disease within the prisoner population is significantly greater than in the wider community.

8. My 2006 report, 'Conditions for Persons in Custody' recommended that Corrections Victoria:

   > Give priority to completing and implementing the CV [Corrections Victoria] Communicable Disease Policy including making condoms available in all male prisons.

9. My current investigation has established that:
   - there is still no comprehensive communicable disease policy
   - condoms are still not available in prisons, despite the Department of Justice recently committing to implementing my 2006 recommendation
   - Hepatitis C treatment is only being provided in three of the 14 Victorian prisons
   - Opioid Substitution Therapy (OST) programs are under resourced and affecting prisoner prison transfers.

4 *Corrections Act 1986* (Vic) s47 (1) (f).

5 *Charter of Human Rights and Responsibilities Act 2006* s22.

Mental health services

10. Untreated mental health issues can adversely impact on the greater community when offenders are released; it has also been shown to increase the likelihood of re-offending.

Untreated mental health issues can adversely impact on the greater community when offenders are released.

11. Almost one third of Victoria's male prisoners have diagnosed mental health conditions and my investigation established that the level of mental health services available for the male prison population is grossly inadequate. There are not enough beds in psychiatric wards for male prisoners and waiting lists are significant.

Medical assessments

12. Prisoners are completely dependent on prison health care providers for the provision of their health care needs. Medical assessments are vital to ensure that prisoners are provided the correct medication and health care treatments.

13. My investigation established that prisoners are being assessed within the requisite time frame of 24 hours upon entry to a prison. However, the time constraints for each assessment often force doctors to assess prisoners in less than half the time they require, or to complete assessments over the telephone from a doctor's private home. In this regard, Justice Health has undertaken to conduct an audit to ascertain where improvements can be made.

Prisoner transportation

14. As male secondary medical care is generally only provided at Port Phillip Prison, prisoners must be transported by Corrections Victoria to secondary health care appointments.

15. My investigation established that insufficient resources are provided to transfer prisoners to their scheduled appointments and this frequently results in specialist appointments being cancelled or deferred or prisons absorbing the costs of escorting prisoners themselves.

16. I reported in 2006 that generally prisoners decline medical treatment because they do not wish to be transferred to Port Phillip Prison, largely from a fear of losing their places in prison employment and other programs. In response to this issue I recommended that prisoners who attend medical appointments not lose their allocated cell/bed and work related privileges. That recommendation was not accepted by Corrections Victoria. My current investigation established that prisoners are still declining medical treatment at alarming rates.

17. I consider that a regional secondary medical facility would ease the burden on costly prisoner transports as prisoners would not need to travel so far for treatment. Alternatively, consideration should be given to sourcing external medical facilities closer to each regional prison.

Medical resources

18. As the prison population grows so too does the need for prisoner medical care. My investigation established that while extra beds are being placed in prisons, the burden this places on prison facilities has not been addressed.

19. I have recommended that Justice Health review the resources provided to each prison to ensure that nursing hours and facilities can meet the demand.

Oversight of health care provided

20. My investigation identified that prisoners do not have reasonable telephone access to the Health Services Commissioner or Justice Health to complain about medical treatment.

21. All prisoners (except those at Port Phillip Prison) require the Health Services Commissioner's consent before being able to add her telephone number to their telephone call list. Telephone call lists can only contain a maximum of ten telephone numbers so if this number is exceeded, prisoners may need to choose between the Health Services Commissioner and another telephone number on their list.

22. Prisoners are not entitled to complain to the Health Services Commissioner by telephone as a matter of right, like they can complain to my office. This limits their ability to complain about health related concerns.

23. Justice Health does not give consent for prisoners to have its telephone number added to a prisoner telephone call list.

24. While prisoners can write to Justice Health or the Health Services Commissioner, I consider this is an inadequate and untimely way to resolve often urgent health concerns.

25. While the Health Services Commissioner uses mediation and conciliation to resolve disputes, she has never formally investigated a prisoner health complaint and I have concerns that systemic issues are not investigated, unless by my office.

26. In this regard I recommend that the Minister for Health review the legislation and functions of the Health Services Commissioner in light of my conclusions.

Prisoner access to health care

Harm reduction services

Communicable diseases

27. Studies have repeatedly shown that the prevalence of communicable diseases[6] within the prisoner population is significantly greater than in the wider community. The National Prison Entrants' Blood-borne Virus and Risk Behaviour Survey 2004 & 2007[7] (the national survey) identified that:

    - 41 per cent of Victorian prisoners have Hepatitis C (compared with one per cent of the general population)[8]
    - 20 per cent of Australian prisoners have hepatitis B and less than one per cent have the Human Immunodeficiency Virus (HIV).

Forty one per cent of Victorian prisoners have Hepatitis C (compared with one per cent of the general population).

28. It is recognised that the spread of diseases can be minimised by the introduction of practical measures such as condoms, dental dams[9] and bleach[10] within prisons. My 2006 report, 'Conditions for Persons in custody', recommended that Corrections Victoria:

    > Give priority to completing and implementing the CV [Corrections Victoria] Communicable Disease Policy including making condoms available in all male prisons.

29. My 2011 investigation established that:

    - the Victorian justice health system does not have a comprehensive communicable disease policy and
    - condoms are still not available in prisons, despite the Department of Justice recently committing to implementing my 2006 recommendation.

30. Improving the health of prisoners has important public health consequences and a comprehensive communicable diseases policy should be a priority within any justice system.

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6 Communicable disease is a disease which can be transmitted by fluid exchange, contaminated substances or close contact with an infected individual.

7 Butler T, Papanastasiou C. National Prison Entrants' Blood-borne Virus and Risk Behaviour Survey Report 2004 & 2007. National Drug Research Institute (Curtin University) & National Centre in HIV Epidemiology and Clinical Research (University of New South Wales), 2008, ISBN: 1 74067 582 7.

8 Recent figures for Hepatitis C prevalence estimate that about 250,000 Australians have the disease, less than one percent of the total population. See http://www.health.vic.gov.au/healthvictoria/apr11/hepc.htm.

9 Dental dams are latex sheets which are placed over the vaginal area during oral sex to prevent the transmission of disease.

10 For cleaning syringes and bodily fluid spills.

31. While I note that some positive steps have been taken,[11] I consider that a comprehensive policy must be implemented to respond to the prevalence of communicable diseases in prison particularly as there is still no comprehensive policy in place.

32. In response to my draft report then Director, Justice Health wrote:

> I accept that there is no current overarching "communicable diseases policy". I also acknowledge that you have previously detailed the significant number of initiatives implemented by Justice Health and Corrections Victoria in your February 2010 report to Parliament.

Provision of condoms and dental dams in prison

33. Condoms are provided in prisons in New South Wales, South Australia, Western Australia and the Australian Capital Territory. They are not yet accessible within prisons in Victoria, despite my 2006 recommendation that condoms be made available.

34. On 28 February 2011 my investigators interviewed Mr Robert Hastings, Commissioner Corrections Victoria in relation to condoms being provided within Victorian prisons. On 25 February 2011, then Director, Justice Health was interviewed about the same issue. Both Mr Hastings and then Director, Justice Health said that the prison officer union (the CPSU) had not been supportive of the program and this had resulted in delay.

35. In correspondence dated 20 June 2011 Ms Penny Armytage, Secretary of the Department of Justice formally notified me that her department would implement my 2006 recommendation for introducing condoms into male prisons.

36. My investigators have since requested an update on the implementation of condoms within prisons and were advised that the provision of condoms and dental dams would be implemented in two stages. Stage one (to be commenced in September 2011) is proposed to involve the introduction of condoms and dental dams in four of the 14 Victorian prisons.

37. Justice Health reported to my office that three to four months after the completion of stage one it would undertake a 'process evaluation'. After this is complete, the remaining prisons should receive condoms and dental dams in stage two.

38. In correspondence to my office, Justice Health advised that:

> The implementation of condoms and dental dams has been delayed whilst an OH&S risk assessment is being conducted at the request of the CPSU.

11 Such as introducing bleach sachets for the sterilisation of syringes.

Hepatitis treatment programs

39. Hepatitis C is a treatable disease which requires a multidisciplinary approach involving general practitioners, nurses, allied health professionals and psychologists over a six to twelve month treatment period.

40. A general practitioner interviewed by my investigators described the failure to treat Hepatitis C within the prison system as having a 'catastrophic' effect on the broader community. Specifically, he said that:

> [It is the] impact on hospitals, gastro units in particular, with people … after 20-25 years of having Hep C that will overwhelm the hospitals. It will be what gastroenterologists will be doing in 20 years time. To avoid that outcome, there is a large number of people which need to be treated every year.

41. Corrections Victoria's 2009 progress report to my office noted that screening for blood-borne viruses and sexually transmitted diseases has increased and access to Hepatitis C treatments is 'improving'. However my investigation established that the access to these programs is insufficient as it is only available at three of the 14 Victorian prisons.

42. Given that 41 per cent of Victorian prisoners have Hepatitis C (compared within one per cent of the general population),[12] I consider that Hepatitis C treatment with prisons should be a matter of some priority.

43. In response to my draft report, then Director, Justice Health wrote:

> I would note that in the community, only 1% of people with Hepatitis C receive treatment. This is due to a number of factors, including treatment readiness.
>
> …
>
> Hepatitis C treatment is intensive and complex, and introduction in all prisons would be very resource intensive, and this is one of the reasons why nurse-led models are being explored. I expect that the model of treatment will continue to be refined as services are progressively extended over time, resources permitting.

Opioid Substitution Therapy

44. Methadone and buprenorphine are synthetic drugs prescribed by medical practitioners to treat opioid dependencies such as heroin addiction. They are considered highly effective in the treatment of heroin dependence and can be prescribed by medical practitioners within Victorian p risons. They are administered through a program called the Opioid Substitution Therapy Program (OST Program).

45. As the prison population grows, so too does the number of people who require placement on the OST Programs. A common concern raised by medical practitioners, prison General Managers and correctional staff during my investigation was that the OST Programs are unable to meet the demand of the increase in patients.

12 Recent figures for Hepatitis C prevalence estimate that about 250,000 Australians have the disease, less than one percent of the total population. See http://www.health.vic.gov.au/healthvictoria/apr11/hepc.htm.

46. Port Phillip Prison was initially contracted to provide 135 daily OST Program places however the prison has been forced to increase this significantly due to increase in the demand for the service. During February 2011, Port Phillip Prison was providing on average 226 prisoners a day with OST.

47. Similarly, at the Melbourne Assessment Prison, an OST Program initially set up to treat 40 prisoners is currently servicing 106 prisoners.

48. It is recognised best practice to provide prisoners with OST Program treatment in the morning, however due to the limited resources - both in facilities and staffing - this is not practicable and some doses must be provided into the early evening.

49. The General Manager of Port Phillip Prison, Mr John Myers said at interview that the increased hours for dosing could impact upon prisoners who need to be treated prior to leaving for court the next day. Specifically, he said that it:

> … adds clinical risk to the guys because if you come up [to] the window [at] 5 [pm to] get dosed then… you get dosed at 6 [am] before you go to court, the time span between your two doses is too close.

50. At interview, then Director, Justice Health said that prisons are funded over and above their particular contract levels to accept prisoners on the OST program.

51. In response to comments in my draft report, then Director, Justice Health wrote:

> Justice Health has increased nominal baseline funding for OSTP from 583 places in July 2009 to 742 in May 2011, representing a 27% increase in two years.
>
> Notwithstanding nominal baseline funding increases, actual OSTP doses dispensed and funded have generally exceeded baseline: in May 2011 there were 758 doses of OSTP dispensed daily across the system.

52. My investigation identified that the limit on the number of available OST Programs can affect prisoner movement between prisons because prisoners on OST must continue that program at the next prison.

53. Then Director, Justice Health denied that the number of prisoners in OST Programs are 'capped' and stated that Justice Health will fund extra methadone requirements. However, her evidence is inconsistent with the evidence received during my investigation from nursing staff, doctors and General Managers within the prison system.

54. In response to comments in my draft report, then Director, Justice Health wrote:

> I note that dispensing drugs of addiction in a prison context has a significant infrastructure and security overlay, because of the need to manage the risk of drug diversion. This can create a logistical limitations [*sic*] on the number of doses that can safely be dispensed.
>
> Of 11 prisons in which OSTP programs operate, in May 2011, five dispensed an average daily number of doses that was higher than the baseline rate, four dispensed fewer doses than the nominal baseline, and two dispensed the baseline number. I would note that this data does not support an assertion that there is an across the board issue accessing OSTP.
>
> My review of the data on delivery of OSTP services does not support the assertion that a "cap" still operates.
>
> I would also note that transfers of prisoners will not be routinely held up because the destination prison has reached a "cap" on their OSTP places. Sentence Management Branch at Corrections Victoria liaise [*sic*] on a regular basis with Justice Health to ensure that additional places are funded as necessary.
>
> Your comment regarding staff of [*sic*] the ground is surprising to me, as General Managers of prisoners are provided with monthly data on the number of doses funded. It may be that Justice Health needs to do more to explain to our stakeholders how the OSTP funding regime now operates since the inception of Justice Health, as it would appear there is some confusion on the ground.

55. Mr Hastings, Commissioner Corrections Victoria advised that Fulham Prison had introduced the OST Program to 'take some pressure off the front-end' prisons. However, he noted that the physical capacity limits of Fulham Prison placed limitations on the scale of the OST Program.

Conclusions

56. Victoria is one of a few Australian states which does not provide condoms to male prisoners. Despite the prevalence of communicable diseases; the risks to the wider community; and the legality of consensual sexual activity in prison, Corrections Victoria failed to accept my 2006 recommendation until my 2011 investigation was underway.

Victoria is one of a few Australian states which does not provide condoms to male prisoners, despite the prevalence of communicable diseases and the risks to the wider community.

57. The numbers of prisoners requiring OST Programs will continue to grow in proportion to the increase in prison population, making it increasingly difficult for health services providers to deliver the program effectively without additional resources.

58. I am satisfied that the lack of OST Program places at some prisons is restricting prisoner movements and placing unnecessary pressure on metropolitan prisons. I consider that this is inappropriate and a review of this program is required to ensure effective and efficient health care is provided to prisoners.

59. My investigation identified that the insufficient treatment of Hepatitis C within prisons is a major concern among medical staff and it is likely that this virus could unduly burden the public health care system in the future.

60. There is effective treatment for Hepatitis C and general practitioners are accredited to prescribe it. I consider it should be provided to prisoners who are eligible to receive the treatment.

The insufficient treatment of Hepatitis C within prisons is a major concern among medical staff and it is likely that this virus could unduly burden the public health care system in the future.

Recommendations

I recommend that Justice Health:

Recommendation 1

Immediately make condoms available in all male prisons and dental dams in all female prisons.

In response to my draft recommendation, then Director, Justice Health wrote:

> The Department is pursuing a staged introduction of condoms. Initial implementation will be accompanied by a process review, the findings of which will inform the mechanism of rollout elsewhere in the system. This measure is in part to alleviate occupational health and safety concerns raised by correctional staff.

Department's response:

> **Accepted** … [I]mplementation to commence at two male and female prisons in September. It will be fully implemented in the female prison system by September, with roll-out to the remaining prisoners to follow a process evaluation at the first sites.

Recommendation 2

Liaise with each prison to ascertain if they have the capacity to provide the required number of OST Program places. If they do not, take steps to ensure that they do have the required resources.

In response to my draft recommendation, then Director, Justice Health wrote:

> … Justice Health plans to conduct a review of OSTP programs in the second half of 2011, and this will likely go some way towards addressing your recommendations.

Department's response:

> **Accepted** … Justice Health will liaise with prisons as recommended… the department will continue to review demand and look to incorporate OSTP program places into funding proposals for the health care component of permanent beds.

Recommendation 3

Provide the necessary resources for eligible prisoners to access Hepatitis C treatment, including hepatitis vaccinations.

Department's response:

> **Accepted – subject to funding availability** … Hepatitis C treatment is lengthy, being of 24 or 48 weeks duration … Full implementation of this recommendation is unlikely to be feasible given the resources currently available to the department.

Recommendation 4

Prioritise the development and introduction of a comprehensive 'Communicable Disease Policy' and provide monthly updates to my office on its progress until this policy is implemented.

Department's response:

Accepted ... [The Department] accepts that there is a need for an overarching communicable diseases policy framework.

Mental health services

61. The Department of Justice's 2010 mental health strategy[13] notes that:

> About 28 per cent of Victoria's male prisoners have diagnosed mental health conditions, with the prevalence of schizophrenia and bipolar disorder almost 10 times greater than the community.

About 28 per cent of Victoria's male prisoners have diagnosed mental health conditions, with the prevalence of schizophrenia and bipolar disorder almost 10 times greater than the community.

62. These medical conditions can be compounded by drug addiction, drug withdrawal and the isolation and fear associated with imprisonment.

63. Victorian prisoners who present with psychiatric risk are classified with the following ratings:
    - P1: Serious psychotic requiring intensive and/or immediate care
    - P2: Significant ongoing psychiatric condition requiring psychiatric treatment
    - P3: Stable psychiatric condition requiring an appointment or continuing treatment
    - PA: Suspected psychiatric condition requiring assessment.

64. Justice Health provided my investigators with the following information which identifies that more than one third of all prisoners in 2009-10 required some form of mental health treatment, assessment or care. This information does not include prisoners transferred to the Thomas Embling Hospital.

Table 1: Daily average of classified 'P' prisoners 2009-10*

P Category	Male	% of prison population	Female	% of prison population
P1	40.3	1%	0.8	0.25%
P2	170.8	4%	22.4	7.2%
P3	1372.3	32.5%	68.1	21.8%
PA	1.9	0.04%	3.9	1.25%
Total	**1585.3**	**37.54%**	**95.2**	**30.5%**

* Data provided by Justice Health 26 November 2010

13 Department of Justice, Justice Mental Health Strategy, 2010.

65. The previous table demonstrates that on any average day, in addition to the Thomas Embling hospital patients, more than 210 male prisoners within the Victorian system in 2009-10 had a rating of a P1 or P2 category.

66. To service the serious mental health requirements of prisoners with psychological risk, the Victorian corrections system has a:

- 16 bed inpatient service at the Acute Assessment Unit at Melbourne Assessment Prison
- 32 bed psychiatric ward at Port Phillip Prison
- 118 bed forensic hospital at the Thomas Embling Hospital for male and female offenders requiring involuntary mental health treatment
- number of observational cells which can be used for those on suicide watch (as well as prison management). A photograph of one observation cell is included below:

Observation cell at Melbourne Assessment Prison

67. Health staff informed my investigators that there is up to a three month waiting period to access treatment at the Port Phillip Prison psychiatric ward.

68. In response to my draft report, then Director, Justice Health wrote:

> In 2010 there were 374 admissions to St Paul's, and the average bed occupancy was 93%. Of the prisoners discharged in 2010, the average length of stay in St Paul's was approximately 38 days.
>
> In my experience, an occupancy rate of 93% does not accord with lengthy wait times for admission. 93% occupancy suggests that on any given day, 2 of St Paul's 33 beds are not occupied.
>
> Nonetheless, I understand that at PPP, there are sometimes delays in securing appointments with psychiatrists – it may be that this is what health staff referred to. I note that in cases of acute psychiatric need, patients will be transferred to MAP to receive urgent treatment out of the AAU.

69. At interview, then Director, Justice Health said:

> Look, AAU [the Acute Assessment Unit, at Melbourne Assessment Prison] if I had my way I'd completely rebuild AAU. It is, it's not an ideal mental health facility, um, for the men. It is full, predominately, most of the time. We also have St Pauls, at Port Phillip and... we can always do with some more.

70. My officers obtained the number of hours that consulting psychiatrists are contracted to provide services within Victorian prisons. This data demonstrates that (given an average consulting time of 30 minutes) 132 male prisoners a month would have access to a psychiatrist in prison.

71. I note that 1,585 male prisoners within the prison system have a psychiatric 'P' rating at any one time.[14]

72. My investigation also identified that prisons use segregation as a behavioural management response to behaviours that are attributable to a mental health condition.

73. Misdiagnosis of personality disorders can lead to confusion about irrational and compulsive behaviours and should this go unchecked, can lead to verbal or physical confrontations between prisoners and staff.

74. These confrontations can also lead to institutional charges, management, and isolation which can further exacerbate a prisoner's underlying mental health issues.

75. Female prisoners can access a 20 bed psychiatric facility located at the Dame Phyllis Frost Centre. This facility opened in 2007 and has a staff of 10 senior registered nurses, three consultant psychiatrists, two of whom occupy full time positions, and a social worker.

14 As evidenced by Table 1: Daily Average of classified 'P' prisoners 2009 / 2010; data provided by Justice Health 26 November 2010.

Conclusions

76. The female prison system in Victoria provides a psychiatric bed for every one in 16 prisoners; however the male system only supplies one bed for every 88 prisoners. Untreated mental health issues can adversely impact the greater community when offenders are released; it has also been shown to increase the likelihood of re-offending and adversely affect the internal security of prisons.

77. On average nearly one third of the prison population is classified as being of mental risk, making mental health a significant issue for Victorian prisons. My investigation identified that the level of mental health services available for the male prison population is grossly inadequate.

78. The Department of Justice provided my office with its Mental Health Strategy which notes that new correctional staff receive training about suicide and self-harm as a part of their induction. I am of the view that the training should be widened to allow staff to identify mental health behaviour and be aware of the need for staff to draw any mental health concerns to the attention of health professionals.

Recommendation

I recommend that Justice Health, in conjunction with Corrections Victoria:

Recommendation 5

Review male prisoner access to psychiatric services within Victoria, with a view to immediately increasing the amount of:

- dedicated mental health accommodation for male prisoners and
- consultant psychiatrist hours within prisons.

In response to my draft recommendation, then Director, Justice Health wrote:

> … Justice Health is partnering with Monash University to undertake research over the next 12 months on pathways of care for men with mental illness in the prison system. We are also undertaking a separate study focused on the specific needs of Koori prisoners with mental health concerns.

Department's response:

> **Accepted – subject to funding availability** … The department has recently incorporated the findings of a review into the access to mental health services in the male system and included the proposal for an enhanced mental health treatment model as part of a funding proposal under development for a new male prison.
>
> Funding proposals for permanent beds will also include appropriate mental health services as part of the health component of permanent beds.

Comprehensive medical assessments

79. Medical assessments are vital because of the complete dependence that prisoners have on prisons for their health care. If a prisoner is incorrectly assessed or there is delay with their assessment, they could be denied important medical treatment which could lead to adverse health consequences or even death.

80. All prisoners are required to be assessed by a doctor within 24 hours of entering the prison system or entering a new prison after being transferred.

81. My investigation established that prisoners are generally assessed within the appropriate time frame, however serious concerns have been raised about the time allocated for each assessment.

82. A doctor at Dame Phyllis Frost Centre described the prisoner assessments as 'comprehensive' and said 'they are rarely simple and straightforward'.

83. A doctor at Melbourne Assessment Prison said that prisoner assessments are, in general, more complex than the initial consultations taken in the mainstream community because prisoners can be quite demanding and exhibit drug-seeking behaviour.

84. Every doctor interviewed by my officers said that medical assessments should take between 20 and 40 minutes per prisoner. Justice Health's then Director said at interview:

> … [I] would expect that the initial assessments would take 30 to 40 minutes, I wouldn't be surprised about that. Some people have higher needs than others; some young fit people might be 10 minutes …

85. Doctors consistently advised that due to time constraints, inadequate resources and the number of prisoners entering prison they often had to perform assessments within five to ten minutes.

86. Justice Health's then Director said at interview that assessment time constraints had not been raised with her. Then, in response to my draft report she wrote:

> This is of concern to Justice Health. Comprehensive assessments are an essential to [*sic*] ground subsequent health care planning. In an effort to support the health screening and ongoing care planning, Justice Health has increased nursing services at the MAP by an addition [*sic*] 160 hours per week effective from 1 April 2011.

87. Prisoners often arrive at a prison late in the day and this can have adverse effects on the timing of an assessment. One doctor said that if a prisoner arrived late and had to spend the next day in court, 'there is a potential for them to go a whole day without medication or without attending to their health needs'. In this regard, Justice Health's then Director advised that:

> I can now confirm that Justice Health has added specialist mental health nursing hours at the MAP, whose role includes, but is not limited to conducting assessments of offenders who present at risk of suicide or self harm[.]

88. Another doctor said that due to late receptions, he would complete medical assessments over the telephone from home on 'almost a nightly basis'.

89. In response to my draft report, Justice Health's then Director wrote:

> Prisoners who arrive late and who have court dates should have medication orders phoned through by doctors and dispensed. It is the expectation of Justice Health that prisoners should not go without medication in the circumstances described in this paragraph...
>
> All health contracts have overtime or call back provisions, and Justice Health funds any necessary after hours health care. This principle extends to assessments. It is the expectation of Justice Health that all new receptions are physically assessed by a medical practitioner within 24 hours of transfer, or sooner where clinically indicated. An additional doctors [*sic*] clinic has been funded by Justice Health at the Dame Phyllis Frost Centre to review late receptions on a Friday evening.

Conclusions

90. I am concerned that doctors do not have enough time to conduct appropriate assessments on prisoners. This could result in adverse health consequences.

91. Late arrival of prisoners at prisons cause doctors to conduct assessments from home or outside of their working hours. This poses a risk because the doctor does not have access to the prisoner in person nor a complete medical record.

Recommendation

I recommend that Justice Health:

Recommendation 6

Conduct a review of all prisons to ensure that doctors have suitable time to assess prisoners; this may include the provision of additional resources and/or the appointment of suitably qualified nursing staff to assist in conducting the medical assessments.

Department's response:

Accepted … The department will review reception health assessment processes and the time allotted to them.

Primary health care

92. Primary health care refers to the first level of health services provided to prisoners. It is available at every prison and includes general practitioner services, nursing (including psychiatric nursing), pharmacy, pharmacotherapy, dentistry, podiatry, physiotherapy and other health promotion and prevention services.[15]

93. To access prison doctors, prisoners complete a medical request form which is submitted to nurses who 'triage' the requests. This process is contingent on patients being literate. At interview one nurse advised my officers that prisoners will often rely on prison officers to assist with their requests to 'justify why they need to go to medical'.

94. Some prisoners (such as protection prisoners in the Melbourne Assessment Prison) are unable to put medical requests in the medical box due to the segregation of their unit and they rely on prison officers doing this on their behalf.

95. A number of health practitioners said at interview it would be beneficial for nurses to be able to collect prisoner health forms from prisoner units directly. They said this would give them time to talk to prisoners which would improve access to treatment and allow nurses to better understand prisoner health complaints and triage them accordingly.

15 Justice Health 'Background and Overview' 26 October 2010, Chapter 3, page 7.

Conclusions

96. My investigation received evidence that segregated prisoners, prisoners in high security management areas or prisoners with limited English or literacy will rely on prison staff to complete and submit medical request forms on their behalf.

97. I have concerns that this process may risk a prisoner's medical confidentiality and I do not consider it appropriate for prison officers to assist prisoners to complete medical request forms. This role should be undertaken by medical professionals.

98. In my view increased communication between medical professionals and prisoners would resolve the issues of confidentiality and may also provide an opportunity for nurses to talk with prisoners to discuss their medical needs.

Recommendations

I recommend that Corrections Victoria and Justice Health:

Recommendation 7

Consider having nursing staff attend prisoner units to collect medical request forms.

Department's response:

> **Agree to review and consider** ... The department will consider this recommendation, giving priority to prisoners in segregation or who have literacy/language difficulties. Expansion across the system will require the consideration of the most efficient use of nursing resources.

Recommendation 8

Ensure that all prisoners can access medical request boxes.

Department's response:

> **Accepted** ... the department agrees to review the process through which prisoners in segregation make health requests, with a view to ensuring confidentiality.

Secondary and tertiary health care

99. Secondary health care refers to diagnostic and treatment services for patients with conditions which require more complex and specialised skills and facilities.[16] It is mostly provided for men at 'St Johns', an inpatient medical facility located at Port Phillip Prison, operated by St Vincent's Hospital.

100. Tertiary health care services generally involve specialist care and are generally provided by St Vincent's Hospital.

16 Justice Health, 'Background and Overview' 26 October 2010, Chapter 4, page 5.

Medical transportation

101. As treatment is provided either at Port Phillip Prison or an external location, male prisoners must be transported from their allocated prison to receive medical treatment and specialist consultancies. This process is coordinated and funded by Corrections Victoria.

102. During my investigation concerns were repeatedly raised that Corrections Victoria does not provide sufficient resources to adequately transfer prisoners to scheduled appointments. A representative from one health provider said:

> … at the Melbourne Assessment Prison, they've got one car and two officers rostered to move prisoners out to their appointments during the day… If you have an [prison] emergency in that day all of those appointments get cancelled. So cancelling appointments is an everyday occurrence driven by Corrections Victoria not having the staff or the vans to get these people to their appointments.

103. Failure to attend for appointments results in medical treatments being deferred and specialists not being utilised because their patient has not arrived.

104. My investigation received evidence that prisons are currently 'absorbing' costs to facilitate extra transports from their own operating budgets.

105. Every General Manager interviewed by my investigators said this occurs in their prison. One reported that they were required to call in extra staff on a 'daily' basis to assist Corrections Victoria with the provision of medical transports. They described it as a 'very expensive logistical exercise'.

106. Elsewhere in Australia, medical transports are contracted by independent bodies thereby relieving the prison of the need to call in extra staff. One health provider stated:

> In Queensland for example you've got a model where that's contracted out so they will come and collect the prisoners and there is never a problem and they will all get to their appointments when they are booked.

107. A number of people interviewed by my investigators also expressed concerns about communication issues with transport to Port Phillip Prison. One doctor said:

> … there will be some confusion about the appointment or the doctor will be sick or something like that so they have travelled all that way for nothing.

108. Concerns were raised that security precautions about prisoners knowing their transport timetable and attempting escape have unnecessarily overridden necessary communication between health providers, prisons and prisoners.

109. The requirement to attend external locations for medical treatment places a large financial toll on the prison system. At interview, Mr Hastings acknowledged the costs involved in sending individual prisoners out for treatment. However, he referred to community perceptions and expectations and said:

> If I'm in a small country town … I've got to go to Melbourne and incur the cost of doing that in making appointments with my specialist … [They] rarely come to a little country town and see me.

Prisoner refusal to attend Port Phillip Prison for medical treatment

110. A large number of prisoners refuse medical treatment as they do not wish to be transferred to Port Phillip Prison. Some reasons for this include:

- loss of places in prison employment and work programs
- cessation of rehabilitation programs, which could affect future parole opportunities
- difficulties of transfer
- concern about losing their current cell placement
- fear of maximum security prisoners at Port Phillip Prison
- fear of being permanently transferred to Port Phillip Prison
- not wanting to return to a maximum security prison after being classified a lower security risk elsewhere
- length of stay required at Port Phillip Prison.

A large number of prisoners refuse medical treatment as they do not wish to be transferred to Port Phillip Prison. Some reasons for this include:
• loss of places in prison employment and work programs
• cessation of rehabilitation programs
• concern about losing their current cell placement
• fear of maximum security prisoners at Port Phillip Prison.

111. At interview, one doctor said:

> People travel back for just a five minutes [*sic*] appointment and you have had to explain to them 'look, you might have a hernia. I know you need an operation. You know you need an operation but you have to go and see the surgeon first before they will put you on the operating list.' What this means is that someone at Barwon or Fulham would have to travel all the way back to Port Phillip, they might be stuck therefore for a few days or a week … They'll then see a surgeon for 5 minutes who says 'yes, you need an operation I'll put you on the list' and then they go back. A lot of the guys just say, 'I'll wait until I get out'.

112. One doctor said at interview:

> … they would literally rather die than go to Port Phillip [Prison] so they are refusing medical management.

113. In electing not to attend Port Phillip Prison for medical treatment, prisoners are advised about the reasons for the proposed treatment and any adverse consequences which may arise from not receiving it. If they continue to decline the treatment, they must sign a form confirming this.

114. Despite this process, prisoners still regularly decline treatment. Data from 12 of the 14 Victorian prisons[17] collected by Justice Health identified that in 2010, 1,157 prisoners refused health care treatment involving a transfer between prison locations.

115. In response to these statistics, Justice Health asked Pacific Shores Healthcare (one of the three contracted health care providers) to provide monthly reports on the reasons for refusal of medical treatment between August and December 2010. This data demonstrated that 31 per cent of the 200 prisoner sample refused treatment because 'they did not want to travel to Port Phillip Prison, the Dame Phyllis Frost Centre or any other site'.

116. My 2006 report, 'Conditions for Persons in Custody', raised this same issue and recommended that Corrections Victoria ensure that prisoners attending medical appointments do not lose their cell/bed and work related privileges.

117. In its 2009 progress report on the implementation of my recommendations, Corrections Victoria advised that it had not accepted this recommendation, specifically that:

> It is not possible, at present, for prisoners attending medical appointments to retain their cells/beds/work-related privileges. To ensure numbers of prisoners in police cells are kept to a minimum, it is not viable to have vacant cells at country prisons, waiting for prisoners to return from medical appointments. As it is not always known how long the prisoners will be away, their critical work position must be filled, at least temporarily. In the meantime, prisons try to enable returning prisoners to 'fast-track' their way back to their original cells or work positions.

17 Except Fulham and Tarrengower which Justice Health advised had 'anomalies in the reported data that at the date of writing have not been resolved'.

118. At interview, Justice Health's then Director said that the Victorian system revolves on the 'centralisation of expertise' where the expert is located in the metropolitan areas rather than regional areas; she referred to this as a 'hub and spoke' model of care. Justice Health's then Director said that getting surgeons to attend regional prison centres 'would not happen' due to a lack of incentive to attend; however, she did say that a consultant psychiatrist is funded to attend regional centres.

Conclusions

119. There are not enough resources given to each prison to allow them to facilitate the number of medical transfers required which results in:

- treatment being delayed
- specialists and other medical practitioners waiting for patients
- prisons providing resources for transportation, and moving resources from other provisions.

120. It is also clear that the transfer to Port Phillip Prison results in prisoners failing to accept medical treatment. Any patient, whether a person in custody or not, has the right to refuse treatment. However, the review of the data showed that over one third refused medical treatment because they did not want to go to Port Phillip Prison, Dame Phyllis Frost Centre or any 'other site'.

121. Five years ago, I recommended that those prisoners who attend medical appointments not lose their allocated cell/bed and work related privileges. That recommendation was not accepted and little has changed. Prisoners continue to lose their privileges if they consent to have medical treatment at Port Phillip Prison.

122. A regional secondary medical facility would ease the burden on prisoner transports as prisoners would not need to travel so far for treatment. Alternatively, consideration should be placed on sourcing external medical facilities or resources closer to each regional prison.

123. The expense of transporting a prisoner to another site (involving a vehicle and escorts) is significant and in my view it would be significantly more cost effective to send the specialist practitioners from prison to prison as required to view a group of prisoners at a time.

Recommendations

I recommend that Corrections Victoria:

Recommendation 9

Consider utilising more regional medical centres to negate the requirement for transportation to Port Phillip Prison.

Department's response:

Alternative proposed ... Placing prisoners in regional medical centres for secondary or tertiary care has significant security and resource considerations, as there would be a need for 24-hour escorts. Other cost-effective alternatives (such as telemedicine) are also being considered.

As a result, priority is being given to expanding in-prison health facilities. For example, the Ararat prison expansion includes establishment of a 24-hour medical centre at Ararat, including in-patient beds. This will reduce the need for some prisoners requiring secondary care to be transferred to PPP.

Recommendation 10

Ensure that prisoners attending medical appointments, wherever possible, do not lose their cell/bed and work related privileges.

Department's response:

Accepted in-principle but not feasible ... Any effective decrease in the number of available beds in the prison system (which is a consequence of 'holding' beds) will have a flow on impact. This may, for example, result in more prisoners being detained in police cells for longer periods.

I recommend that Justice Health:

Recommendation 11

Consider sending specialist practitioners from prison to prison as required to reduce the expenses involved with transporting prisoners to external locations.

Department's response:

Agree to review ... The department will undertake a feasibility and cost-benefit analysis of this proposal.

In response to my draft report, Justice Health's then Director wrote:

The Victorian Justice Health Services Project will review the model for the integration and coordination of health care across prisons and the possibility of the provision of specialist services.

Resources

124. The Corrections Research Strategy 2009-2012, Department of Justice identified that between 2005 and 2009, the total prison population had risen by 17.8 per cent. As at 5 June 2011 there were 4,698 prisoners in Victoria.

125. Witnesses interviewed by my officers consistently raised concerns about accommodating the rising population. Mr Robert Hastings, Corrections Commissioner said:

> …We're saying by 2016 we won't cope.

126. The General Managers of Melbourne Assessment Prison and Port Phillip Prison echoed Mr Hastings' views. Mr John Myers, General Manager of Port Phillip Prison said 'there would come a point when Port Phillip [Prison] won't be able to put another bed in it' and that consideration must be given to establishing a new metropolitan reception prison.

127. The recent state budget did not provide Corrections Victoria with funds to establish a new prison, however did provide funding of $2,000,000 to commission a business study on whether an additional prison is required.

128. As well as impacting on bed capacity, the increasing prisoner population has placed a significant burden on the health services provided in prisons. My officers were advised that while extra beds are being added to prisons, the corresponding health services are not being updated.

As well as impacting on bed capacity, the increasing prisoner population has placed a significant burden on the health services provided in prisons.

Facilities and staffing

129. Site inspections completed by my officers demonstrated that the physical medical facilities were generally of a high standard however were unable to service the growing number of prisoners. In particular, I have concerns about the confined nature of health service facilities provided at the Melbourne Assessment Prison.

130. Nursing staff at the prisons consistently raised concerns about being under-resourced and said that they require more nursing 'hours' to be able to provide an adequate standard of health care to the prison population.

131. Due to the lack of nursing hours, a number of prisons have used Health Service Officers to deliver prisoner medication in the past. A Health Service Officer is a prison officer who has a first aid certificate. This practice was later deemed inappropriate from a health perspective and stopped.

132. The health provider at Barwon Prison was given funding to extend nurse hours from about 154 hours a week to 224 hours a week. At interview, the provider said they had been working 310 hours a week to keep up with demand on the service however was unable to absorb the extra cost long term and the hours were cut again to 224 hours a week and they had concerns that this caused 'a major disruption to the health care provided to the prisoners'.

133. Another nurse said that while improvements in the health care system had been implemented by Justice Health, such as incident reporting and confidentiality, they had not provided extra hours to accommodate the administrative requirements accompanying those improvements. Specifically, she said:

> [T]he problem is these improvements have come at a cost, and the cost is that prisoners' access to health care has decreased, in my opinion, because we're doing a lot of these admin paperwork roles. No managers are [surplus] so the time they spend filling in forms etc… they are not spending with prisoners. …. There would be scope for supernumerary positions such as Admin Staff.

134. In response to my draft report, Justice Health's then Director wrote:

> I note that health services contracts contain baseline funding plus escalation clauses which come into effect where muster numbers increase. Consequently, significant increases in prisoner population will result in increased funding for direct service provision.
>
> I would also note that Justice Health funds specific service extensions where there is a demonstrable need.
>
> Finally, I would observe that Justice Health is pursuing the Victorian Justice Health Services Project, which is for the future delivery of health services across the system. As part of the service specifications element of this project, required service levels have been (and will continue to be) assessed.

Records management

135. Under the *Health Records Act 2001* medical information must be stored confidentially to protect the privacy of individuals.

136. All prisoner medical records at Melbourne Assessment Prison are held on site. Although these records are monitored by medical staff, one of their physical locations is in a thoroughfare and accessible to all staff.

137. The following photograph was taken by my officers during the investigation and shows medical records stored at Melbourne Assessment Prison on open shelves.

Prisoner medical records storage at Melbourne Assessment Prison

138. A witness told my investigators that in 2009, then Director, Justice Health was advised of concerns about the confidentiality of medical records at Melbourne Assessment Prison. It was also drawn to her attention during a 'walk through' of the prison in 2010. A nurse advised that then Director, Justice Health has 'promised filing cabinets, but they still haven't arrived'.

139. In response to my draft report, Justice Health's then Director wrote:

> At the time of interview, Justice Health was in the process [*sic*] designing the refurbishment of office space and storage in the medical clinic at the MAP. Since this time, I can advise that lockable cupboards are now in place for the storage of medical records in the medical centre.

140. In 2003, the Department of Human Services began developing an electronic health care record program, HealthSMART to manage the health care records of the general public.

141. In 2009, Justice Health awarded a tender to supply and implement a similar electronic health record software package known as CareRight.

142. HealthSMART has been substantially rolled out in selected health authorities. CareRight was due to be implemented in 2010 however was 'pushed back' to ensure functionality. During my investigation the project was introduced at the Dame Phyllis Frost Centre.

143. All health staff interviewed said that the introduction of such a system would improve health care within the prison system; most significantly it would allow for electronic prescriptions and speed up the reception process by enabling health providers to access historical health records.

144. In response to my draft report, Justice Health's then Director wrote:

> HealthSMART does not have the necessary clinical functionality to make it fit for purpose in the justice health environment. Justice Health has continually worked with the Department of Health's HealthSMART project to ensure that the Justice Health EHR is compatible with any future system HealthSMART may implement.

Conclusions

145. Medical amenities for prisoners are insufficient to meet the increasing needs of the expanding prison population and nursing hours need to be reflective of this increasing need.

146. The need and usefulness of an electronic health records system is paramount to providing security of health records, clarity of information and faster test results for medical professionals. I have concerns that this is still yet to be introduced.

147. It is unclear why two substantially similar electronic medical record systems would be created for the Victorian public in parallel.

Recommendations

I recommend that Justice Health:

Recommendation 12

Annually review all medical facilities, in consultation with medical staff, to assess whether they are functional, suitable and sufficient and provide a report of this review to the Department of Justice.

In response to my draft report, then Director, Justice Health wrote:

> All health services are required to maintain Accreditation with the Australian Council of Healthcare Standards, a process which provides strong external validation of facilities against external standards.

Department's response:

> **Accepted …** Justice Health is developing an audit program for all prison health services, and this will provide further opportunities to identify and consider a response to any inadequacies in the physical environment.

Recommendation 13

Liaise with health providers to determine if there is a need to increase nursing hours, and if there is, to consider the implementation of this increase.

Department's response:

Accepted … Justice Health has already increased general nursing hours at MAP, Dhurringile and the Dame Phyllis Frost Centre, and psychiatric nursing hours at Dhurringile.

Recommendation 14

Ensure the prompt implementation of the electronic health records system.

Department's response:

Accepted … The department remains committed to the introduction of an electronic health record system.

Recommendation 15

Conduct an audit of medical records held in all prisons to ensure compliance with the *Health Records Act 2001*.

Department's response:

Accepted … Justice Health will review storage of medical records in all prison locations to ascertain compliance with the *Health Records Act 2001* as part of a program of scheduled audits.

Oversight of health care provided to prisoners

148. Transparent and rigorous oversight of contracted health care providers is vital because prisoners are dependent on Corrections Victoria for the provision of their health care. There are a number of ways prisoners can raise concerns about the provision of heath care, predominantly via Justice Health, the Health Services Commissioner and my office.

Access to oversight bodies

149. The Health Services Commissioner, Ms Beth Wilson has the statutory function to investigate complaints relating to health services.[18] At interview, she described her role as ‘receiving and resolving’ complaints and noted that her function is more aligned to conciliation and mediation than to investigation.

150. Justice Health’s role is to monitor the bodies contracted to provide health care services in Victoria’s corrections system. At interview, Officer A at Justice Health advised my officers that Justice Health does not review the clinical decisions made by health practitioners however it does monitor the treatment provided to ensure it is consistent with clinical decisions.

151. Justice Health and the Health Services Commissioner can refer matters of professional accountability or conduct to medical review boards. These bodies can deregister medical practitioners however do not alter the medical decision concerning a patient.

152. My office received 1,838 complaints from prisoners during 2010, 16 per cent of these complaints were about medical issues. 84 per cent of complaints I received from prisoners in 2010 were via the telephone.

153. Following my 2006 report, ‘Conditions for Persons in Custody’, a dedicated telephone line was made available to all prisoners where they may telephone my office during office hours at no charge.

154. It is important there are procedures in place that allow prisoners to raise health concerns to independent bodies in a way that is fast and effective. Prisoners should be able to access oversight bodies by both telephone and written communication.

155. My office has received a number of complaints from prisoners that they were unable to access the Health Services Commissioner and Justice Health by telephone in a timely fashion.

156. In the Victorian prison system, prisoner telephone access is restricted and prisoners have a ‘telephone call list’ with limited numbers on it that they are allowed to call. There is a set process to add a number to a telephone call list which involves getting consent from the owner of the telephone number.

18 *Health Services (Conciliation and Review) Act 1987* s9 (1) (a).

157. My investigation established that all Victorian prisoners (with the exception of prisoners at Port Phillip Prison) are unable to call the Health Services Commissioner unless she first gives approval for her number being added to their telephone call list.

158. My investigation also established that prisoners may only nominate the Commissioner on their telephone call list if they have not already exceeded the ten contacts on their telephone call list.

159. While the Commissioner does have a 1800 toll-free number, 1800 toll-free numbers are prohibited from being added to prisoner telephone call lists.

160. In response to my draft report, the Health Services Commissioner noted that she receives approximately five telephone calls a week from prisoners. She also said:

> While the Act 1987 [the Health Services Act] requires complaints to be confirmed in writing, prisoners do have access to HSC via telephone calls. Corrections policies allow prisoners to have 10 people on their telephone list at any one time. If as a consequence of the HSC being added to a prisoner's telephone list the 10 caller limit is exceeded they must remove someone else from the list.
>
> At Port Phillip Prison (where most complaints originate from) there is an agreement between prison authorities and the HSC that our number is added as a matter of course to the phone lists and the prison does not need to seek further HSC permission. HSC regularly receives complaint telephone calls from prisoners.
>
> Prisoners can and do call HSC if they have an urgent matter. The person taking the call will assess whether it is something that can be dealt with informally, for example by ringing the prison health provider and explaining the complaint and obtaining a verbal response. In these cases prisoners are encouraged to telephone HSC later to obtain an answer. If the issue appears complex or complicated they will be encouraged to write to us. In some urgent cases the Commissioner intervenes personally to obtain prompt action without requiring a written complaint.

161. Justice Health does not allow prisoners to add its telephone number to their telephone call list, unless there are 'exceptional circumstances'.

162. When asked at interview why Justice Health refused to accept telephone complaints, Officer A said 'there is no reason why they could not' complain via the telephone however the resources would need to be 'set up'. She said that Justice Health had the following concerns with having prisoners contact Justice Health direct:

- Justice Health would not be able to verify the identity of the person on the telephone
- prisoners might be discouraged from resolving complaints via the health care provider in the first instance
- Justice Health would be 'inundated with calls' from prisoners.

163. Justice Health's then Director said at interview that there is a need for a dedicated telephone line however noted concerns about a lack of resources to answer any ensuing calls.

Complaint investigation

The Health Services Commissioner

164. The Health Services Commissioner derives her authority from the *Health Services (Conciliation and Review) Act 1987* (the Health Services Act). That Act states that she may investigate matters that she considers warrant investigation and are not suitable for conciliation or referral. She has the authority to summons people to attend investigation and produce documents.

165. At interview, Ms Wilson said that her office uses voluntary measures of conciliation and mediation and does not 'investigate' matters. She said that she would undertake a formal investigation if she did not receive cooperation, however she has never done so for the health care provided in public prisons.

166. Ms Wilson reported to my office some concerns she had with the Health Services Act. Specifically, she noted that the Act focuses largely on her undertaking a conciliating and mediating role however also contains provision for her investigating matters. In response to my draft report, Ms Wilson said:

> Investigations may be conducted where there is non-cooperation from health services providers or as recommended by Assessment Officers or Conciliators where information arises that warrants this course of action or where conciliation has not been successful and Investigation is appropriate. The vast majority of prison health complaints are mediated or conciliated. As far as prison health complaints are concerned HSC has never carried out a formal Investigation nor has the Minister or the Parliament requested formal Inquiries. However the powers do exist and would be used appropriately.

167. Ms Wilson reported concerns with the delay in resolving complaints. Specifically, she said:

> The biggest problem from my point of view from complaints resolution is time delays. That is getting responses to prisoner complaints.

Justice Health

168. My officers conducted an audit of complaint files from Justice Health's April – June 2010 Public Prison Quarterly report. 11 of the 35 complaint files were inspected. These file inspections identified that Justice Health had failed to:

- act in a timely manner
- ensure it was satisfied that the action taken by the service provider was reasonable

- address the substance of complaints
- maintain adequate record keeping
- verify the response of the service provider
- follow up responses to ensure an outcome was achieved
- record any action taken after complaints were substantiated.

169. In response to my draft report, Justice Health's then Director wrote:

> I understand that this assessment is based on a review of a small sample of files identified by and provide [*sic*] to your officers. I would welcome your review of random or consecutive complaints, and note that this will provide a better perspective on Justice Health's complaints performance.

170. In addition to this file inspection, my investigators sought documentation relating to a number of complaints received by my office which had previously been considered and closed by Justice Health. The following are two case studies of those complaints.

Case study one

On 14 September 2009 a prisoner was referred for haemorrhoid treatment to be completed 'within the next few months'. An appointment was scheduled for the prisoner to attend Port Phillip Prison for treatment on 20 April 2010 but when he arrived, no treatment was undertaken.

A complaint dated 25 May 2010 was lodged on his behalf by a legal representative who listed the above facts. The complaint said 'we therefore request that you make investigation into why this transport arrangement was made, when the diagnosis was clear and the operation was not performed'.

Eight weeks after receiving the complaint, Justice Health sought the medical progress notes of the prisoner from July 2010 (even though the initial appointment was in April 2010). An officer then wrote to the health care provider noting the prisoner had an appointment scheduled for 8 July 2010 and had been unable to undertake the procedure because he had not fasted, she then asked when the procedure was next booked to occur.

In response to this enquiry the health care provider wrote on 22 July 2010 that '[the prisoner] is currently waitlisted for haemorrhoid banding with no confirmed date at this stage'.

On 12 October 2010 (almost three months after receiving this information), Justice Health wrote to the prisoner and advised him that he was currently on a waiting list for the haemorrhoidectomy. No further action was taken and as at June 2011, the prisoner still had not received treatment.

171. My officers initiated contact with the prisoner who said that he was advised he had been booked for the wrong procedure at Port Phillip Prison and that is why he was unable to have the treatment. He noted that he is still suffering rectal bleeding however does not want to return to Port Phillip Prison for treatment.

172. There is no evidence on the file that Justice Health:

- clarified the prisoners complaint with him
- enquired why the scheduled April 2010 treatment was not undertaken
- sought medical records at dates relevant to the complaint
- ascertained if the prisoner was advised to fast prior to his July treatment
- took steps to ensure the operation was eventually undertaken
- resolved the complaint.

173. When asked about this complaint at interview, Officer A said:

> At the end of the day I can't account for why we weren't responsive enough.

174. In response to my draft report, Justice Health's then Director wrote:

> Correspondence in the file dated 16 July 2010 requests clarification from the health service provider as to why the procedure had been delayed. A review of the medical record identified that [the prisoner] had eaten food prior to the procedure. It is the understanding of Justice Health, as per the contracted health service provider's protocols and in accordance with the requirements of the booked procedure that [the prisoner] was advised to fast. Justice Health has since ensured that the process by which prisoners are advised to fast has been reviewed by the contracted health service provider and systems are now in place to ensure that there is documented evidence that prisoners are informed by nursing staff of their need to fast pre procedure.
>
> …
>
> It is the understanding of Justice Health that this procedure was not classified as urgent (in accordance with the public hospital waiting list criteria) and therefore was re-listed in the elective surgery waiting list.

Case study two

A prisoner underwent a hip replacement in July 2009 and was provided a medical chair to use in his cell. On 22 April 2010, Justice Health received a complaint from the prisoner's legal representative that the medical chair was removed from his cell without explanation. Approximately two and a half months after receiving consent from the prisoner to deal with the legal representative, Justice Health made enquiries with the health care provider and was advised that the chair was provided for three months post recovery however was 'not available for long term use by prisoners'.

A month and a half later (six months after the original complaint) then Director, Justice Health wrote to the prisoner, apologised for the delay in response and confirmed that he had originally been provided a medical chair.

175. There is no evidence on the file that Justice Health:

- attempted to contact the prisoner direct to clarify his complaint
- took steps to determine if the prisoner required a chair
- asked why the chair was removed
- asked why the chair was not available for long term use
- assessed the reasonableness of the service provider's response
- responded to the substance of the prisoner's complaint.

176. My office requested a further review of this complaint by Justice Health. In response to this request, Justice Health advised my office that:

> Justice Health did not receive any further feedback from either [the prisoner] or the prisoner's legal representative following our response to the health concerns raised. As such, Justice Health assumed that the outcome (i.e. physiotherapy regime) was acceptable, hence, our office closed the matter.

177. In response to my draft report, Justice Health's then Director wrote:

> In response to Case Study 2 and the concerns raised as to there be [*sic*] no evidence on file that Justice Health took steps to determine the requirement for the chair and the reasonableness of the service providers response, I can confirm that with all complaints there is a discussion between myself and the investigating officer and/or the Manager to review each complaint and the validity or substantiation of each complaint. At the time, this process of peer review was not formally documented. Systems have now been put into place to reflect documented outcomes of these discussions to ensure greater transparency in decision making.

178. Despite numerous reviews, it remains unclear whether Justice Health has ever queried if the prisoner requires the chair. This is concerning, given one review of the complaint was conducted by a Manager at Justice Health and the original outcome was signed by Justice Health's then Director.

Delay

179. My investigation established that after receiving a written complaint from a prisoner both Justice Health and the Health Services Commissioner write back to the prisoner to seek consent to access their medical file.

180. In one case reviewed by my office, a lawyer complained on behalf of a prisoner and provided a signed written authority from their client. Justice Health then wrote back to the lawyer and asked for the consent to be provided again, via their own prisoner consent form.

181. Both then Director, Justice Health and Ms Wilson advised at interview this was 'best practice' although it was not strictly necessary.

182. In response to my draft report, then Director, Justice Health wrote:

> Justice Health takes the confidentiality of patient health information extremely seriously, and seeks consent in the manner described based on advice from the Victorian Government Solicitor's Office. If a consent does not adequately detail the scope of the consent, or is inconsistent with the detail of the request, then our officers will seek to confirm the consent.

183. In response to my draft report, Ms Wilson said:

> HSC also administers the *Health Records Act 2001* and we are vigilant about obtaining written consent to view health information. Most health care providers, whether correctional or not, require a written consent to release health information. If the matter is urgent this can be waived. Obtaining written consent is a protection against complaints of unauthorised dealing with sensitive, confidential medical information.
>
> HSC seeks consent from prisoners to provide a copy of the complaint to Justice Health. They are provided with a written copy of the complaint. Justice Health does not routinely send us the complaints they receive.
>
> ...
>
> Prisoners can and do call HSC if they have an urgent matter. The person taking the call will assess whether it is something that can be dealt with informally, for example by ringing the prison health provider and explaining the complaint and obtaining a verbal response. In these cases prisoners are encouraged to telephone HSC again later to obtain an answer. If the issue appears complex or complicated they will be encouraged to write to us. In some urgent cases the Commissioner intervenes personally to obtain prompt action without requiring a written complaint.

184. At interview Officer A raised concerns about ensuring the identity of the prisoner. She stated that approximately two thirds of the complaints received at Justice Health were 'typed' and therefore was unable to know '100 per cent' that they had come from the prisoner affected.

185. Although Justice Health advised my office that it commences the investigation prior to receiving the consent, there was no record of this occurring on any file examined by my officers.

Information sharing

186. At interview both Ms Wilson and Justice Health's then Director said that if they obtain consent from a prisoner they can advise one another if they receive a complaint about a health service provider however do not share information about the nature of the complaints.

187. In response to my draft report, Ms Wilson said:

> HSC seeks consent from prisoners to provide a copy of the complaint to Justice Health. They are provided with a written copy of the complaint. Justice Health does not routinely send us the complaints they receive.

188. In response to my draft report, Justice Health's then Director wrote:

> Where a prisoner consents, JH and the HSC exchange information. Where a prisoner does not consent, only thematic issues are exchanged.

189. Then Director, Justice Health recognised the need to share information between Justice Health and the Health Services Commissioner, indicating that both agencies had developed a draft Memorandum of Understanding, however it had not yet been finalised.

Conclusions

190. Considering that prisoners are unable to seek alternative medical treatment to that provided in the corrections system, it is essential that they are able to make timely complaints to an appropriate body.

191. Mediation and conciliation are important and valuable tools for complaint resolution. However, I have concerns that there appears to be no independent health body (besides my office) which investigates complaints into the health care provided within Victoria's prisons.

192. I have concerns that the Health Services Commissioner has never carried out a formal investigation about prisoner health issues. The Commissioner advised that, '[t]he vast majority of prison health complaints are mediated or conciliated'. I note that there is some discordance between the role undertaken by the Health Services Commissioner and her role as outlined in the Health Services Act. I consider it would be timely for a review to be undertaken of her legislation and functions.

193. I am also concerned about the role that Justice Health plays when responding to and investigating complaints. In the files reviewed by my officers, Justice Health staff, including the then Director, did not appear to understand basic complaint handling principles such as responding to the substance of the complaint in an outcome letter. Then Director, Justice Health disputes this view.

194. Prisoners should be able to call the Health Services Commissioner or Justice Health, as they do with my office, in order to make direct complaints about health care provided. They should be provided this service at no cost and these numbers should not displace other numbers on their telephone call lists. In my experience this does not place an undue burden on resources and complaints can be resolved much faster over the telephone.

195. I do not accept Justice Health's concern that it would be unable to verify prisoner identity via the telephone or with a written letter. My office deals with prisoners daily and prisoners can cite their Corrections Record Number (CRN) for identification purposes. I consider that it is reasonable to accept that a letter received from a prisoner and signed by a prisoner is indeed from that prisoner.

196. The consent and verification processes used by the Health Services Commissioner and Justice Health are clearly unnecessary and add further delay to complaint management which is already unacceptably slow. This is particularly concerning where there is a genuine need for a timely response to a prisoner's health related complaint.

Recommendations

I recommend that Justice Health:

Recommendation 16

Establish a dedicated prisoner telephone complaint line, which may be accessed via the Corrections Arunta phone system.

In response to my draft report, then Director, Justice Health wrote:

> I note that this would require allocation of dedicated resources.

Department's response:

> **Agree to review and consider** … As part of a review into its complaints handling policy Justice Health will consult with the Ombudsman's office and the Health Services Commissioner on the appropriate use of existing facilities and referral mechanisms.

Recommendation 17

Review its complaint handling procedures to address delays in responding to prisoner health complaints in light of my concerns.

Department's response:

> **Accepted** … This will be addressed as a matter of priority.

Recommendation 18

Review its policy of requiring explicit consent to pursue a prisoner complaint. The following should be accepted as proof of consent:

- a signed legal authority
- a signed written letter
- a telephone call with appropriate identification details.

Department's response:

> **Accepted** … The department will review as part of its development of a complaints handling procedure.

Recommendation 19

Finalise a Memorandum of Understanding with the Health Services Commissioner to facilitate information sharing on prisoner health complaints.

Department's response:

Accepted … The department will finalise the draft MOU with the Health Services Commissioner.

Recommendation 20

Train staff members in complaint handling and investigation and ensure they are aware of the importance of good complaint handling principles.

Department's response:

Accepted.

I recommend that Corrections Victoria:

Recommendation 21

Amend its policy to include telephone calls to Justice Health and the Health Services Commissioner as exempt calls.

Department's response:

Agree to review and consider … as part of a comprehensive review of complaints management, Justice Health will review the mechanisms through which prisoners can make a complaint to Justice Health, including implementation of this recommendation.

Recommendation 22

Allow all prisoners telephone access to Justice Health and the Health Services Commissioner regardless of their phone access status or privileges.

Department's response:

Agree to review and consider.

I recommend that the Health Services Commissioner:

Recommendation 23

Establish a dedicated prisoner telephone complaint line which may be accessed via the Corrections Arunta phone system.

In response to my draft report, the Commissioner wrote:

> HSC agrees with the recommendation concerning a dedicated prisoner complaint line but this has resources implications.

I recommend that the Minister for Health:

Recommendation 24

Review the legislation and functions of the Health Services Commissioner in light of my conclusions.

Summary of recommendations

I recommend that Justice Health:

Recommendation 1

Immediately make condoms available in all male prisons and dental dams in all female prisons.

In response to my draft recommendation, Justice Health's then Director wrote:

> The Department is pursuing a staged introduction of condoms. Initial implementation will be accompanied by a process review, the findings of which will inform the mechanism of rollout elsewhere in the system. This measure is in part to alleviate occupational health and safety concerns raised by correctional staff.

Department's response:

> **Accepted** … [I]mplementation to commence at two male and female prisons in September. It will be fully implemented in the female prison system by September, with roll-out to the remaining prisoners to follow a process evaluation at the first sites.

Recommendation 2

Liaise with each prison to ascertain if they have the capacity to provide the required number of OST Program places. If they do not, take steps to ensure that they do have the required resources.

In response to my draft recommendation, Justice Health's then Director wrote:

> … Justice Health plans to conduct a review of OSTP programs in the second half of 2011, and this will likely go some way towards addressing your recommendations.

Department's response:

> **Accepted** … Justice Health will liaise with prisons as recommended… the department will continue to review demand and look to incorporate OSTP program places into funding proposals for the health care component of permanent beds.

Recommendation 3

Provide the necessary resources for eligible prisoners to access Hepatitis C treatment, including hepatitis vaccinations.

Department's response:

> **Accepted – subject to funding availability** … Hepatitis C treatment is lengthy, being of 24 or 48 weeks duration … Full implementation of this recommendation is unlikely to be feasible given the resources currently available to the department.

Recommendation 4

Prioritise the development and introduction of a comprehensive 'Communicable Disease Policy' and provide monthly updates to my office on its progress until this policy is implemented.

Department's response:

> **Accepted** … [The Department] accepts that there is a need for an overarching communicable diseases policy framework.

I recommend that Justice Health, in conjunction with Corrections Victoria:

Recommendation 5

Review male prisoner access to psychiatric services within Victoria, with a view to immediately increasing the amount of:

- dedicated mental health accommodation for male prisoners and
- consultant psychiatrist hours within prisons.

In response to my draft recommendation, Justice Health's then Director wrote:

> … Justice Health is partnering with Monash University to undertake research over the next 12 months on pathways of care for men with mental illness in the prison system. We are also undertaking a separate study focused on the specific needs of Koori prisoners with mental health concerns.

Department's response:

> **Accepted – subject to funding availability** … The department has recently incorporated the findings of a review into the access to mental health services in the male system and included the proposal for an enhanced mental health treatment model as part of a funding proposal under development for a new male prison.
>
> Funding proposals for permanent beds will also include appropriate mental health services as part of the health component of permanent beds.

I recommend that Justice Health:

Recommendation 6

Conduct a review of all prisons to ensure that doctors have suitable time to assess prisoners; this may include the provision of additional resources and/or the appointment of suitably qualified nursing staff to assist in conducting the medical assessments.

Department's response:

> **Accepted** … The department will review reception health assessment processes and the time allotted to them.

I recommend that Corrections Victoria and Justice Health:

Recommendation 7

Consider having nursing staff attend prisoner units to collect medical request forms.

Department's response:

Agree to review and consider … The department will consider this recommendation, giving priority to prisoners in segregation or who have literacy/language difficulties. Expansion across the system will require the consideration of the most efficient use of nursing resources.

Recommendation 8

Ensure that all prisoners can access medical request boxes.

Department's response:

Accepted … the department agrees to review the process through which prisoners in segregation make health requests, with a view to ensuring confidentiality.

I recommend that Corrections Victoria:

Recommendation 9

Consider utilising more regional medical centres to negate the requirement for transportation to Port Phillip Prison.

Department's response:

Alternative proposed … Placing prisoners in regional medical centres for secondary or tertiary care has significant security and resource considerations, as there would be a need for 24-hour escorts. Other cost-effective alternatives (such as telemedicine) are also being considered.

As a result, priority is being given to expanding in-prison health facilities. For example, the Ararat prison expansion includes establishment of a 24-hour medical centre at Ararat, including in-patient beds. This will reduce the need for some prisoners requiring secondary care to be transferred to PPP.

Recommendation 10

Ensure that prisoners attending medical appointments, wherever possible, do not lose their cell/bed and work related privileges.

Department's response:

Accepted in-principle but not feasible … Any effective decrease in the number of available beds in the prison system (which is a consequence of 'holding' beds) will have a flow on impact. This may, for example, result in more prisoners being detained in police cells for longer periods.

I recommend that Justice Health:

Recommendation 11

Consider sending specialist practitioners from prison to prison as required to reduce the expenses involved with transporting prisoners to external locations.

Department's response:

> **Agree to review** ... The department will undertake a feasibility and cost-benefit analysis of this proposal.

In response to my draft report, Justice Health's then Director wrote:

> The Victorian Justice Health Services Project will review the model for the integration and coordination of health care across prisons and the possibility of the provision of specialist services.

I recommend that Justice Health:

Recommendation 12

Annually review all medical facilities, in consultation with medical staff, to assess whether they are functional, suitable and sufficient and provide a report of this review to the Department of Justice.

In response to my draft report, Justice Health's then Director wrote:

> All health services are required to maintain Accreditation with the Australian Council of Healthcare Standards, a process which provides strong external validation of facilities against external standards.

Department's response:

> **Accepted ...** Justice Health is developing an audit program for all prison health services, and this will provide further opportunities to identify and consider a response to any inadequacies in the physical environment.

Recommendation 13

Liaise with health providers to determine if there is a need to increase nursing hours, and if there is, to consider the implementation of this increase.

Department's response:

> **Accepted ...** Justice Health has already increased general nursing hours at MAP, Dhurringile and the Dame Phyllis Frost Centre, and psychiatric nursing hours at Dhurringile.

Recommendation 14

Ensure the prompt implementation of the electronic health records system

Department's response:

Accepted … The department remains committed to the introduction of an electronic health record system.

Recommendation 15

Conduct an audit of medical records held in all prisons to ensure compliance with the *Health Records Act 2001*.

Department's response:

Accepted … Justice Health will review storage of medical records in all prison locations to ascertain compliance with the *Health Records Act 2001* as part of a program of scheduled audits.

I recommend that Justice Health:

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Ombudsman’s Reports 2004-11

2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood – Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman’s recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT’s School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria’s response to the Inspectors of Municipal Administration’s report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman’s recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
August 2009

An investigation into the Transport Accident Commission’s and the Victorian WorkCover Authority’s administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the *Freedom of Information Act 1982*
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004