

## **WHY IT IS IMPORTANT TO HAVE INDEPENDENT OVERSIGHT OF THE VICTORIAN PRISON SYSTEM – 6 November 2014**

### **Role of the Victorian Ombudsman**

The Victorian Ombudsman has been in existence since 1973. Complaints from prisoners have always been a significant source of complaints to the Ombudsman.

### **The last ten years**

During the last ten years, the Ombudsman has conducted numerous investigations into issues relating to prisons. Most arose from complaints from prisoners themselves. Some were systemic reviews, following the identification of issues affecting more than one prisoner. For example prisoner property.

See:

- Conditions for persons in custody – July 2006
- Investigation into the use of excessive force at the Melbourne Custody Centre – November 2007
- Investigation into contraband entering a prison and related matters – June 2008
- Investigation into prisoner access to health care – August 2011
- The death of Mr Carl Williams at HM Barwon prison – April 2012
- Investigation into children transferred from the youth justice system to the adult prison system – December 2013
- Investigation into death and harm in custody – March 2014

In addition, we conducted many other investigations arising from complaints about prisons, which were not reported to Parliament. These matters were addressed by Corrections and/or the Department of Justice direct.

### **Criticisms of Prisons Inspectorate and Office of Correctional Services Review**

- Corrections Inspectorate

In 2003 the Department of Justice created an internal unit called the Corrections Inspectorate, whose role was to provide advice on the operation of the Victorian Corrections system. This included monitoring and reporting on the compliance of public and private prisons and the prisoner transport provider. It also managed the Official Prison Visitors Scheme.

We had concerns about the lack of independence of the Corrections Inspectorate and in our 2006 report, stated that we would review the performance of the Corrections Inspectorate.

The subsequent review of the Corrections Inspectorate identified a range of problems, including:

- it did not operate independently, taking direction from a range of stakeholders
- acted without external accountability
- had difficulty at times providing proactive and timely advice
- demonstrated poor record-keeping
- was not transparent, with none of its reports being published or any information about prison inspections being made public.

As a result of a draft report from the Ombudsman, the Secretary of the Department at the time created a new unit called the Office of Correctional Services Review through an amalgamation of the Corrections Inspectorate and the Corrections Victoria Performance Review and Development Unit.

- Office of Correctional Services Review (OCSR)

Despite the rebadging of the old Corrections Inspectorate, the same issues around the lack of transparency and independence continued to be identified in subsequent investigations.

All three of our major systemic reviews conducted in the past two years in relation to Victorian prisons identified serious shortcomings in the way OCSR performed, as follows:

### ***Investigation into the death of Mr Carl Williams in Barwon Prison – April 2012***

The OCSR's role was to investigate issues arising from the death of Mr Williams. While another prisoner had been charged with his murder there were questions about how the murder took place and why the killer was sharing the same cell with Mr Williams. Our investigation found a number of shortcomings in the OCSR investigation including:

- Failure to pursue an obvious line of enquiry regarding an information report on the risks to Williams made by a Prison Officer over a year before.
- The involvement of a senior Justice Department officer who edited the executive summary of the report.
- The failure to interview the Secretary, a key witness.

### ***Investigation into children transferred from the youth justice system to the adult prison system – December 2013***

In late 2012 we investigated the circumstances surrounding the transfer of a 16 year old Aboriginal boy from the Parkville Juvenile Detention Centre to Port Phillip Prison and held in solitary confinement for several months. During that investigation we identified that over the preceding five years, 24 children had been transferred to adult prison.

The OCSR became aware of the placement of children in Port Phillip Prison and commenced an "inquiry". This involved no more than passively monitoring the children. No questions were asked about the lawfulness of detaining children in an adult prison or the consequences of this. OCSR then conducted a review and subsequently made a number of recommendations, one of which was that dates of birth should be cross-checked. Corrections did not accept the recommendation. It was clear that OCSR had limited influence over Corrections Victoria and lacked independence.

### ***Investigation into deaths and harm in custody – March 2014***

This own motion investigation was commenced because of the significant number of complaints about overcrowding in prisons and the flow on effects. The investigation identified that prisoners are being placed in overcrowded and at times substandard conditions leading to increased tensions and violence.

The investigation again identified that OCSR lacked independence from Corrections Victoria; lacked transparency in its operations; and has repeatedly failed to take appropriate action in relation to systemic issues affecting the Victorian prison system, including deaths. As a result, the Ombudsman recommended that the Minister for Corrections and the Minister for Community Services give consideration to establishing an independent custodial inspectorate reporting to parliament which should have responsibility for monitoring and overseeing Victorian prisons and juvenile justice detention centres. The recommendation is still under consideration.

### **Conclusion**

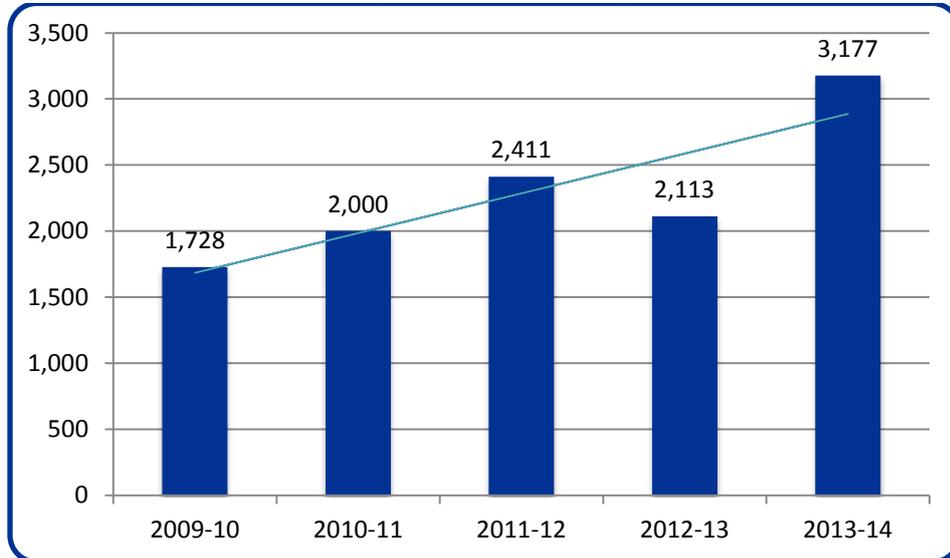
Unlike some other states in Australia like Western Australia and New South Wales, and in other countries such as England, Victoria does not have an independent prisons inspectorate responsible for overseeing prisons. This leaves the Victorian Ombudsman as the only independent oversighting agency. It also places a significant resource strain on the office.

### **Complaints made to the Victorian Ombudsman**

In 2013-14 the office concluded 3,117 complaints about prisons, an increase of more than 33% over the previous financial year. While some of the increase can be explained by the significant increase in prison numbers, the fact remains that the Ombudsman continues to receive high numbers of complaints about prisons,

with limited resources to investigate. This trend is likely to continue as additional prisoner numbers are predicted from the law and order changes to both the parole system and suspended sentences.

Chart 1: Complaints about prisons received by VO

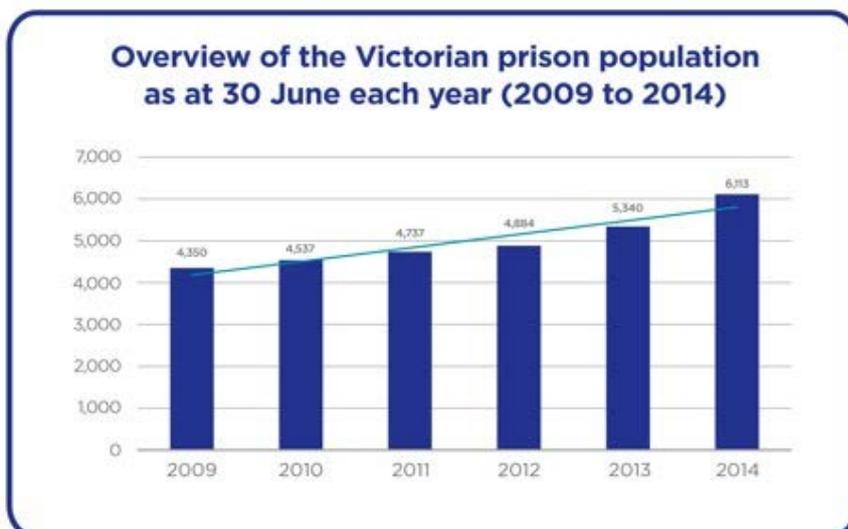


### Investigation into the rehabilitation and reintegration of prisoners

One of the challenges for the Victorian prison system is whether it is adequately ensuring that a prisoner's sentence appropriately addresses rehabilitation and post release support to prevent further reoffending, with its attendant cost and risk to the community.

For this reason the Ombudsman commenced an own motion investigation into the rehabilitation and reintegration of prisoners. As a part of this investigation, the Ombudsman has released a discussion paper, which may be found on our website at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au).

Chart 2



The increase in prisoner numbers illustrated in the above chart speaks for itself. Although the government has embarked upon a major building program to expand prisoner beds, the expansion in prisoner numbers has resulted in a backlog in assessments and has affected the availability of programs and support both before and after release.

It is also apparent that the reforms to the parole system are having unintended consequences. Prisoners are facing increased difficulty in obtaining parole with more prisoners leaving without any treatment, at the end of their sentences. Nor will they have necessarily attended programs designed to reduce offending behaviour, one of the requirements of parole.

The paper identifies the following challenges for both prisoners and the prison system in Victoria:

- Recidivism and the cost to the community

Just as the prison population is rising, so too is the rate of people returning to prison. Since 2012 there has been a significant increase in the number of prisoners who were in prison as an adult for a second or subsequent period. In 2013, 51 per cent of all Victorian prisoners had previously served a prison sentence as an adult. This compares to 48 per cent in 2012.

The rates of recidivism amongst indigenous prisoners are similar. In the *Victorian Government Aboriginal Affairs Report 2013*, 50.3 per cent of Aboriginal prisoners in Victoria returned to prison within two years of release (this study was based on prisoners who had been released in 2010-11 and looked at whether they had returned in 2012-13). Although the lowest proportion in Australia in 2013, the rate of imprisonment for Aboriginal and Torres Strait Islander adults in Victoria is almost 13 times higher than the rate for non-indigenous adults, according to aged standardised data.

Incarcerating people in prisons is also expensive. The average cost to keep a prisoner in a Victorian prison per day is \$270.12 or \$98,600 per year. The typical average sentence length for a Victorian sentenced prisoner is 3.3 years. On this basis, the average cost per prisoner sentence to the Victorian community is \$325,495.

- Assessment of prisoners

Corrections Victoria conducts a detailed assessment of each prisoner entering the prison system. This includes:

- a medical assessment
- a risk and needs assessment which includes assessment of psychiatric history, risk of self-harm and substance use

- o a security assessment.

The Victorian Intervention and Screening Assessment Tool (VISAT) is the risk and needs assessment instrument currently used in Victorian prisons. VISAT assessments are critical in determining prisoner eligibility for rehabilitation and education programs, for risk management and to identify a notional pathway for the prisoner's sentence period.

Although VISAT is being replaced in January 2015, there is a significant backlog of prisoners who have not been assessed to inform their sentence plans, need for offence related programs and overall rehabilitation plan. This may also impact on the ability to adequately plan and budget for program placements across prisons.

At 2 October 2014, there were 1,449 Victorian prisoners awaiting VISAT assessment. There is evidence that male prisoners are being transferred from the Melbourne Assessment Prison or Metropolitan Remand Centre, without having completed a VISAT assessment as required and outside of the recommended timeframes. For example, as of 12 August 2014, when investigators visited Fulham Prison in Sale, there were 237 prisoners still to be assessed, and therefore without a determination on such issues as the need for offending behaviour programs.

- Programs for prisoners

In general terms, the prison population has lower levels of literacy, numeracy and educational achievement. Of the voluntary assessments undertaken by Corrections Victoria across all prisons in 2013, 59.5 per cent of prisoners had literacy levels requiring intensive support and 57 per cent had numeracy levels requiring intensive support.

Corrections Victoria data suggests that the Year 12 completion rate of Victorian prisoners has varied between five and seven per cent in the past decade. In contrast, the Year 12 (or equivalent) completion rate for all Victorians between 20-24 years of age in 2013 was 90.1 per cent.

Assessment of a prisoner's language, literacy and numeracy skills upon reception is not compulsory. This is likely to impact on effective case management, appropriate program participation and therefore rehabilitation and reintegration planning.

As noted earlier, the prison population is rising above trend. As a result, the pressure on the system to meet the legislative requirements and correctional standards to provide appropriate and timely education and offending behaviour programs has intensified.

- Preparing prisoners for release

Given that there are only 25 beds in the one transition centre available in the State, the overwhelming majority of prisoners in Victoria do not have the opportunity to spend time in a transition centre. These prisoners are therefore released direct from prison back into the community.

The evidence to date suggests that pressure of numbers may prevent prisoners being held in the least restrictive environment possible. Rather than transitioning, some prisoners are being released straight from management units or maximum security prisons without the opportunity of a staggered adjustment to more independent living.

The lack of transition options is an issue for all prisoners, but even more so for women. There is no medium security correctional facility for women in the State.

- Indigenous and women

In 2013, the Victorian female prison population increased 11 per cent from the previous year.

As of 1 October 2014, the total number of indigenous prisoners in Victoria was 507, with 459 males and 48 females.

There is evidence that the delivery of indigenous cultural programs is inconsistent and intermittent. Port Phillip Prison is currently the location for the highest number of indigenous prisoners, and over the last two years a number of indigenous programs were not delivered there. For example, during 2012-13 the Koorie Faces, Marumali and Aboriginal Cultural Immersion Programs were not conducted; and in 2013-14 the Aboriginal Cultural Immersion Program was not delivered.

Although indigenous prisoners are generally represented in the population at all Victorian prisons, not all programs are delivered at all prisons. Eight Victorian prisons had no indigenous cultural programs conducted in 2013-14. The programs are designed to be run based on the numbers and needs of identified prisoners only and are currently scheduled six to 12 months in advance. Whether this is the most effective approach to ensuring the cultural and support needs of indigenous prisoners are met will be explored in greater detail in the ongoing investigation.

All prisoners face significant challenges in reintegrating into the community after their release from prison, however women are at particular risk. They may feel unsafe and vulnerable to abuse or harassment.

Women are at greater risk of homelessness than men. Two agencies which provide intensive support to prisoners in transition reported that 44 per cent of women compared with 22 per cent of men in 2013-14 were homeless at the end of their placement.

Submissions are sought from interested persons and organisations by 31 December 2014. They can be lodged on line at:

[prisons@ombudsman.vic.gov.au](mailto:prisons@ombudsman.vic.gov.au)

Or send to:

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