



QUEENSLAND
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The Strip Searching of Female Prisoners Report



*An investigation into the strip search
practices at Townsville Women's
Correctional Centre*

September 2014

Report of the Queensland Ombudsman

The Strip Searching of Female Prisoners Report

An investigation into the strip search practices at Townsville Women's Correctional Centre

September 2014

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ISBN 978-0-9807523-4-2

ISBN 978-0-9807523-6-6 (online format)

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30 September 2014

The Honourable Fiona Simpson MP
Speaker
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam Speaker

In accordance with s.52 of the *Ombudsman Act 2001*, I hereby furnish to you my report, *The Strip Searching of Female Prisoners Report: An investigation into the strip search practices at Townsville Women's Correctional Centre*.

Yours faithfully

A handwritten signature in blue ink, appearing to read "Phil Clarke".

Phil Clarke
Queensland Ombudsman

Enc.

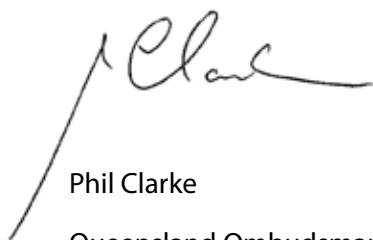
Foreword

This report represents the findings of an investigation into Townsville Women's Correctional Centre's practice of conducting strip searches on female prisoners receiving a certain class of restricted medication between June 2013 and March 2014. The investigation revealed that the practice was both unreasonable and contrary to law, and was not reviewed by the Centre or Queensland Corrective Services during the 10-month period during which it was implemented.

I have decided to report to Parliament on my investigation because it is in the public interest that there is transparency in respect of closed environments, such as prisons, particularly where an unlawful and unreasonable practice has been identified. Publication of this report will promote improved oversight of activities that significantly impact upon the rights of individuals in correctional centres.

The findings and recommendations in the report are aimed at ensuring that unlawful and unreasonable strip search practices do not occur in Queensland correctional centres in future. They were accepted without reservation by the Director-General of the Department of Justice and Attorney-General (within which QCS operates).

I would like to thank the departmental officers who cooperated with the investigation and particularly acknowledge Senior Investigator Lauren Zanetti and Investigator Kimberley Pettigrew of my Office for their hard work and professionalism in conducting the investigation and preparing the report.

A handwritten signature in black ink, appearing to read 'Phil Clarke', is written over a thin, light-colored diagonal line that starts from the bottom left and extends towards the top right.

Phil Clarke

Queensland Ombudsman

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Dictionary

the Act	<i>Corrective Services Act 2006</i> (Qld).
ADCQ	Anti-Discrimination Commission Queensland.
the ADCQ report	Anti-Discrimination Commission Queensland, <i>Women in Prison</i> , 2006, Chapter 7.
BWCC	Brisbane Women's Correctional Centre.
the Centre	Townsville Women's Correctional Centre.
Director-General	The Director-General of the Department of Justice and Attorney-General.
DJAG	Department of Justice and Attorney-General.
Health Centre	A part of a corrective services facility where medical treatment is provided and medication is dispensed.
Interim Instruction	Memorandum from the Acting General Manager to all staff at the Centre, 'Medication Issue – Interim Instruction' dated 10 July 2013, which provided procedures for dispensing medication and preventing its diversion. It adds to those practices described in an internal Centre email dated 31 May 2013. The Interim Instruction was formalised by the Medication Direction.
Medication Direction	The General Manager's Direction, Medication Issue to Prisoners dated 13 August 2013, which provided procedures for dispensing medication and preventing its diversion. The Medical Direction formalised the Interim Instruction of 10 July 2013.
officers	Correctional officers.
Official Visitors	Officers who work for the Office of the Chief Inspector. They are appointed by the Director-General of DJAG under the Act but must act independently of (but collaboratively with) correctional centres. They regularly visit correctional centres to hear, investigate and resolve prisoners' complaints.
Ombudsman Act	<i>Ombudsman Act 2001</i> .
Practice Directives	Directions from the QCS Commissioner about the operations of correctional centres.
QCS	Queensland Corrective Services.
QH	Queensland Health.
Reception	The area in the Centre where prisoners are received into the Centre in the first instance.
the Regulation	Corrective Services Regulation 2006.
s.35 Direction	A written direction made in 2011 by the QCS Commissioner under s.35, titled 'Direction for a search of prisoner requiring the removal of clothing'. The s.35 Direction sets out the range of circumstances when strip searches must be conducted on prisoners such as contact visits, but does not include prior to or after receiving S8 medication.
S8 medication	'Controlled drugs' listed in Schedule 8 of the Poison Standard 2013, which is established by the <i>Therapeutic Goods Act 1989</i> (Cth). The supply and use of S8 medication has restrictions placed upon it by the Health (Drugs and Poisons) Regulation 1996 (Qld) due to its dependence-forming nature and potential for abuse.
S8 strip search practice	All prisoners receiving S8 medication were subjected to strip searches before and after receiving their daily dose of S8 medication between June 2013 and January 2014. From February 2014 to March 2014 strip searches were only conducted after S8 medication was dispensed.
SOP	QCS Custodial Operations Standard Operating Procedure – Search – Prisoners and Corrective Services Facilities, version 1, 11 April 2012. This document was superseded by the Custodial Operations Practice Direction – Search, version 1, 31 March 2014 (COPD). The requirements of the SOP are essentially the same as the COPD.
strip search	Removal of clothing searches conducted under ss.35 to 38 of the Act.
strip search register	The Centre's removal of clothing search register maintained pursuant to s.40 of the Act and s.11 of the Regulation.

Executive summary

In June 2013, staff at the Townsville Women's Correctional Centre (the Centre) commenced a practice of conducting strip searches (also known as removal of clothing searches) on any prisoner receiving medication that was listed in Schedule 8 of the *Uniform Scheduling of Medicines and Poisons No 3* (called S8 medication). This practice was introduced due to concerns that S8 medication was possibly being diverted by a small number of prisoners. However, the practice was applied to up to nine prisoners at any one time, and a total of at least 18 prisoners over the relevant period.

Between June 2013 and January 2014, prisoners receiving S8 medication were strip searched both before and after receiving the medication. Therefore, prisoners who received S8 medication twice a day were subject to four strip searches a day. From February 2014 to late March 2014 prisoners were only strip searched after receiving their S8 medication, after the practice came to the attention of the Acting General Manager.

This Office received a complaint about the practice in early 2014. Following inquiries by this Office with the Centre, the practice ceased. Notwithstanding that the strip searching practice ceased in late March 2014, having regard to the seriousness of the matter, I decided to investigate the lawfulness and reasonableness of the 10-month long practice. The investigation was undertaken informally under s.24(a) of the *Ombudsman Act 2001*, without the need to invoke my coercive powers¹ and with the cooperation of the Centre.

The investigation found that although the *Corrective Services Act 2006* (the Act) authorised strip searching in certain circumstances, the practice at the Centre was both contrary to law and unreasonable. I found that the practice was contrary to law because:

- it had not been authorised by either the Director-General or Commissioner
- while certain other QCS officers had the power, on a case-by-case basis, to order strip searches, in this case the necessary preconditions under the Act (for example, holding a reasonable suspicion that each prisoner is concealing a prohibited thing) did not exist.

I found that the practice was unreasonable for a range of reasons including:

- that the Centre failed to consider the range of other less invasive measures available to address the suspected diversion
- no other correctional centre in the state was routinely strip searching prisoners receiving S8 medication
- the Centre did not take into account the known potential negative impacts of strip searches on the female prisoners.

I considered that the search before the receipt of medication was particularly unreasonable and disproportionate to the Centre's concerns regarding diversion.

I was also concerned that this strip searching practice endured for some 10 months without any review by the Centre or Queensland Corrective Services (QCS), and only ceased when Ombudsman investigators made inquiries. I found that QCS does not have sufficient oversight mechanisms in place to ensure that all strip searches undertaken at correctional centres are appropriately authorised and reasonable, and that this lack of oversight is unreasonable.

The report makes recommendations to the Centre and to DJAG to ensure that unlawful and unreasonable strip searches of prisoners do not occur in future. All my findings and recommendations were accepted unconditionally by the Director-General of the Department of Justice and Attorney-General, under which QCS operates. These include, in particular, a review of QCS' oversight of strip searches in correctional centres across Queensland. I am encouraged that QCS has acted quickly to implement my recommendations.

¹ Under part 4 of the Ombudsman Act.

Opinions

I have formed the following opinions:²

Opinion 1

The Centre's practice of conducting strip searches on all prisoners receiving S8 medication:

- a) both before and after receiving their S8 medication daily during the period June 2013 to January 2014 and
- b) after receiving their S8 medication daily from February 2014 to March 2014

was not authorised under the Act. Therefore, the S8 strip search practice constituted administrative action that was contrary to law within the meaning of s.49(2)(a) of the Ombudsman Act.

Opinion 2

The Centre's practice of conducting strip searches on all prisoners receiving S8 medication:

- a) both before and after receiving their S8 medication daily during the period June 2013 to January 2014 and
- b) after receiving their S8 medication daily from February 2014 to March 2014

constituted administrative action that was unreasonable within the meaning of s.49(2)(b) of the Ombudsman Act.

Opinion 3

QCS does not have sufficient oversight mechanisms in place to ensure that all strip searches undertaken at correctional centres are appropriately authorised and reasonable in the circumstances, and this is unreasonable administrative action within the meaning of s.49(2)(b) of the Ombudsman Act.

Recommendations

I have made the following recommendations:³

Recommendation 1

The Director-General ensure that refresher training is conducted for those officers (including the General Manager) with delegations to order strip searches at the Centre regarding:

- a) the circumstances in which strip searches may be ordered and the relevant requirements of the Act and the Regulation
- b) the potential negative effects of strip searches on female prisoners and the importance of considering alternative search techniques
- c) the requirements of the Act regarding the need to complete the strip search register after each strip search.

² For the purposes of part 6, division 1 of the Ombudsman Act.

³ Under s.50 of the Ombudsman Act.

Recommendation 2

The Director-General ensure orders for strip searches are properly authorised and documented at the Centre, including how the circumstances of the order meet the requirements of the Act and include a review date for re-evaluation of any ongoing strip searches.

Recommendation 3

The General Manager of the Centre document a procedure for dealing with menstruating prisoners who may be subject to strip searches and ensure that all staff conducting strip searches are made aware of the procedure.

Recommendation 4

The Director-General review the current oversight mechanisms (at QCS and correctional centre level) to ensure that strip searches undertaken at all correctional centres are appropriately authorised and reasonable in the circumstances.

Chapter 1: Introduction

1.1 Background

This report considers the lawfulness and reasonableness of Townsville Women's Correctional Centre's (the Centre) practice of conducting strip searches (also known as removal of clothing searches) on female prisoners receiving a certain class of medication (called 'S8 medication') between June 2013 and March 2014. This report also considers the adequacy of the Centre and Queensland Corrective Services' (QCS) governance and oversight mechanisms in place to review this practice.

The complaint

The investigation was initiated in response to a complaint to the Ombudsman, received in early 2014, on behalf of a prisoner at the Centre (the complainant) that alleged that those prisoners receiving S8 medication, including the complainant, were subject to strip searches before and after receiving their medication. The prisoner complained that this practice was unreasonable and negatively affected the complainant and the other affected prisoners. This Office also received allegations that there were instances where corrective services officers (officers) conducted strip searches in a way that failed to appropriately safeguard prisoners' dignity.

The S8 strip search practice – June 2013 to March 2014

The Centre's practice of conducting strip searches on all prisoners receiving S8 medication (the S8 strip search practice) was introduced in June 2013 to address concerns about the diversion of S8 medication. 'S8 medication' refers to a class of medication⁴ subject to particular restrictions under state and federal legislation due to its dependence-forming nature and potential for abuse.⁵

The S8 strip search practice affected up to nine prisoners at any one time, and a total of at least 18 prisoners over the relevant period. Between June 2013 and January 2014 prisoners receiving S8 medication were subject to strip searches both before and after receipt of their medication. Therefore during this period, the prisoners who received S8 medication twice a day were subject to four strip searches a day. From February 2014 to late March 2014 prisoners receiving S8 medication were subject to strip searches only after receipt of their medication. The S8 strip search practice was not reviewed by the Centre or QCS during the 10-month period it was implemented. It ceased in late March 2014 after an internal review that was undertaken following inquiries made to the Centre by the Ombudsman's Office upon receipt of the complaint.

1.2 Issues for investigation

Strip searches may be lawfully ordered under the relevant legislation for a range of reasons. I decided to investigate the S8 strip search practice due to:

- the extent of the search practices
- the length of time the practice continued without review
- the blanket nature of the practice
- the intrusive nature of the search practice
- questions in relation to the lawful authority of the practice in the circumstances.

The investigation considered the following issues:

- the impact of strip searches on the female prisoner population and the background to the introduction of the S8 strip search practice (Chapter 2)
- the practices in place to prevent diversion of medication and the introduction of the S8 strip search practice (Chapter 3)
- the lawfulness of the S8 strip search practice (Chapter 4)
- the reasonableness of the S8 strip search practice (Chapter 5)

⁴ Found in Schedule 8 of *The Uniform Scheduling of Medicines and Poisons No 3*, June 2012 (SUSMP).

⁵ *Therapeutic Goods Act 1989* (Cth) and the *Health (Drugs and Poisons) Regulation 1996* (Qld).

- the allegations about the treatment of prisoners during the S8 strip search practice (Chapter 6)
- the Centre and QCS' compliance and oversight regime (Chapter 7).

1.3 Ombudsman jurisdiction

The Queensland Ombudsman is an officer of the Queensland Parliament empowered to investigate complaints about the administrative actions of Queensland public sector agencies. As Queensland Government departments are 'agencies' for the purposes of the *Ombudsman Act 2001*⁶ (the Ombudsman Act) it follows that I may investigate the administrative actions of:

- the Centre which is administered by QCS
- QCS which is a part of the Department of Justice and Attorney-General (DJAG)
- DJAG.

Under the Ombudsman Act,⁷ I have authority to:

- investigate the administrative actions of agencies on complaint or on my own initiative
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

The Ombudsman Act outlines the matters on which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency.⁸ These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.⁹

Although the Ombudsman is not bound by the rules of evidence,¹⁰ the question of the sufficiency of information to support an opinion of the Ombudsman requires some assessment of weight and reliability. The standard of proof applicable in civil proceedings is proof on the balance of probabilities. This essentially means that, to prove an allegation, the evidence must establish that it is more probable than not that the allegation is true. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance.¹¹

'Unreasonableness' in the context of an Ombudsman investigation

It is important to note that, in expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', I am applying the meaning of the word in the context of the Ombudsman Act. In this context, 'unreasonable' bears its popular or dictionary meaning.

1.4 Investigation methodology

This investigation was conducted informally under s.24(a) of the Ombudsman Act and included:

- review and analysis of relevant legislation, including the *Corrective Services Act 2006* (the Act) and the *Corrective Services Regulation 2006* (the Regulation)
- a visit to the Centre on 1 and 2 May 2014 to conduct interviews with prisoners as well as a range of Centre staff, including Supervisors, the Acting Deputy General Manager and Acting General Manager, the former Deputy General Manager, an intelligence analyst and a nurse
- review of incidents and breaches relating to diversion of medication within the Centre during the relevant period
- research regarding S8 medication and academic literature relating to the impact of strip searches on the female prisoner population

6 Section 8(1), Ombudsman Act.

7 Section 12, Ombudsman Act.

8 Sections 49 and 50, Ombudsman Act.

9 Section 49(2), Ombudsman Act.

10 Section 25(2), Ombudsman Act.

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

- analysis of relevant QCS and Centre documents, including relevant standard operating procedures, directives, instruments of delegation, Chief Inspector review reports, internal audits, and other documents related to QCS' governance and oversight compliance framework
- providing the Director-General of DJAG a proposed report dated 29 July 2014
- considering the Director-General's response to the proposed report dated 27 August 2014
- providing relevant QCS officers with a copy of the proposed report dated 29 July 2014 for their (optional) comment.

The period between June 2013 and March 2014 was selected as the scope for the investigation because the Centre advised that the S8 strip search practice continued until late March 2014.

1.5 The Centre's response

The Centre was very cooperative with this investigation and has already taken a number of proactive steps in response to concerns raised about the S8 strip search practice. These include:

- immediately conducting an internal review of the S8 strip search practice and ceasing the practice following that review
- conducting a review of strip searches at the Centre to ensure officers were accurately following the relevant procedures when conducting strip searches on prisoners. This was already underway when investigators visited the Centre.

1.6 DJAG's response

The Director-General unconditionally accepted all the opinions and recommendations I have made in this report in his response to the proposed report dated 27 August 2014. I am pleased to note that the Director-General also reported on the steps being taken by DJAG to implement my recommendations. The Director-General's response to my opinions and recommendations is set out throughout this report, as well as the steps being taken to implement the recommendations.

Chapter 2: Strip searches

This chapter outlines what strip searches lawfully involve and the extent to which they were used by the Centre as part of the S8 strip search practice. It also highlights the importance of only using strip searches where necessary due to the potential adverse impact of strip searches on female prisoners.

2.1 Why are strip searches used in prisons?

The use of strip searches is governed by the Act and the Regulation. The Explanatory Memorandum to the Act explains that strip searches serve an important function in correctional centres, particularly with respect to the issue of illegal drug use.¹² According to QCS, the predominant objective of conducting a strip search is to assist in the detection of contraband, including preventing the entry of illegal drugs and other prohibited items into a correctional centre that could be used to assist escape or for self or other types of harm.¹³ Furthermore, while QCS has acknowledged that ‘many people find the idea of strip searching an affront to their personal dignity’,¹⁴ it regards strip searches ‘as a critical operational requirement to ensure the security and good order of secure facilities and the safety of persons therein.’¹⁵

2.2 What a strip search lawfully entails

The Act and the Regulation are highly prescriptive about what officers may do, and what they may ask prisoners to do, during a strip search (see Appendix 1). QCS specified these requirements in its now superseded QCS Custodial Operations Standard Operating Procedure – Search – Prisoners and Corrective Services Facilities, version 1, 11 April 2012 (SOP).¹⁶

Under the legislation (and the SOP),¹⁷ a strip search involves the prisoner being asked:

- first, to take off all their clothes above the waist. The clothes are searched and returned to the prisoner who puts the clothes back on
- then, to remove their clothing below the waist (the prisoner may face away from the officer while doing so). These clothes are searched and then returned to the prisoner.

An officer conducting a strip search may also require a prisoner to:

- run his or her fingers through his or her hair
- allow his or her mouth to be inspected by an officer
- raise each foot and wiggle their toes
- hold his or her arms in the air
- stand with his or her legs apart.

Manoeuvres such as asking a prisoner to squat or asking a female prisoner to lift their breasts are not authorised. Strip searches must be carried out by at least two officers (of the same sex as the prisoner), but no more officers than are necessary to carry out the search. The officer conducting the search must not make physical contact with the prisoner. Prior to the strip search, the officer must tell the prisoner why the search is necessary and how it will be conducted. Following the search, it must be recorded in the correctional centre’s strip search register.

¹² Corrective Services Bill 2006, Explanatory Notes, pp.58.

¹³ Anti Discrimination Commission Queensland, *Women in Prison*, 2006, p.71 quoting the Queensland Department of Corrective Services ‘Searches consultation paper’ *Legislation Review: Corrective Services Act 2000* (October 2004), p.8.

¹⁴ Queensland Government, *Department of Corrective Services response to the Anti-Discrimination Commission Queensland Women in Prison Report*, 2006, p.10.

¹⁵ *ibid*, p.11.

¹⁶ The SOP was replaced by the *Custodial Operations Practice Direction – Search, version 1, 31 March 2014* (COPD). The requirements of the SOP are essentially the same as the COPD; however, the SOP covers the use of video cameras to monitor search areas and other monitoring devices, which the COPD does not. Also the COPD mentions additional considerations relating to transgender prisoners, which the SOP does not.

¹⁷ Section 3.4, SOP; section 10, Corrective Services Regulations; s.38 of the Corrective Services Act.

2.3 The extent of the strip searches conducted as part of the S8 strip search practice

Based on entries in the Centre's strip search register it is apparent that on 5 June 2013 the Centre introduced the S8 strip search practice¹⁸ following concerns about the diversion of S8 medication. The S8 strip search practice involved all prisoners receiving S8 medication being subjected to strip searches before and after receiving their daily doses of S8 medication between June 2013 and January 2014. From February 2014 to March 2014 strip searches were only conducted after S8 medication was dispensed. Investigators reviewed entries in the Centre's strip search register across a sample of months. Based on the investigators' review:

- at least 18 prisoners were subjected to the S8 strip search practice during the period it was in place
- up to nine prisoners were receiving S8 medication at any one time
- at least three prisoners were consistently taking S8 medication during the whole or close to the whole 10-month period of the practice, and at least one of these prisoners was taking S8 medication at least twice a day (and at times, three times a day). This meant the prisoner was strip searched up to six times a day during certain periods.

A prisoner taking medication twice daily for the full period during which the S8 strip search practice was implemented would have been searched approximately 1,000 times.¹⁹

2.4 The impact of strip searches on the female prisoner population

There is an extensive body of literature finding that the female prisoner population has experienced significant levels of sexual abuse (both as children and adults).²⁰ Relevantly, in 2006 the Anti-Discrimination Commission Queensland (ADCQ) published the *Women in Prison Report* (ADCQ report) noting that research indicates that female prisoners report having been sexually abused before the age of 16 (37%) at more than four times the rate of the general female population in Queensland (8.8%).²¹ Similarly QCS' own 2011 research found that the average female prisoner in Queensland has been affected by domestic violence and sexual abuse.²²

Importantly, research also suggests that, due to the high levels of past sexual abuse among female prisoners, strip searches have the capacity to negatively impact (including re-traumatise) female prisoners more significantly than other parts of the population²³ and may jeopardise attempts at rehabilitation.²⁴

The ADCQ report reflects other research and standards²⁵ when it explained:

Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating

18 Based on the entries in the Centre's strip search register. However, an email from the Centre's Acting General Manager to the Ombudsman dated 24 March 2014 outlining the findings of the Centre's internal review into the practice suggested that the practice was introduced in May 2013.

19 While the Centre's strip search register did not appear to have been consistently filled out, there was no suggestion by any of the prisoners or Centre officers interviewed that the practice was conducted sporadically.

20 ADCQ (2006) pp. 69-76; Australian Human Rights Commission, *Australian Study Tour Report Visit of the UN Special Rapporteur on Violence Against Women 10-20 April 2012*, Sydney, 2012, p.16; UK Home Office, *A report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London, 2007, p.3; M Stathopoulos, 'Addressing Women's Victimization in Custodial Settings', *Australian Institute of Family Studies Australian Centre for the Study of Sexual Assault*, ACSSA Issues No 13, 2012, which notes at p.7:

Whether the studies are Canadian, Scottish, British, American or Australian, a similar profile of female prisoners is identified. In no particular order, characteristics include: histories of childhood victimisation, particularly sexual abuse; re-victimisation as adolescents and adults, such as sexual assault and family and domestic violence (e.g., Corston, 2007; Gelsthorpe, 2010; Ogloff, Davis, Rivers, & Ross, 2006; Salisbury & Van Voorhis, 2009) ...

21 ADCQ (2006), p.72.

22 Queensland Corrective Services, *Profile of Women in Custody in Queensland 2011*, (former) Department of Community Safety, dated 2011 but published on Queensland Corrections blog 28 February 2013, p.33, accessed at <http://qldcorrections.wordpress.com/2013/02/28/the-profile-of-women-in-custody-in-queensland-may-2011/>. The study involved a series of interviews with 68 women incarcerated at Brisbane Women's Correctional Centre and the Centre and notes at p.30:

86% of the women interviewed during this study had self disclosed that they were the victim of Domestic Violence, Sexual Abuse or Childhood Sexual Abuse. The majority of these women (66%) had self disclosed that they had been affected by all three.

Queensland Government, Office of the Chief Inspector, *Full Announced Inspection of Townsville Women's Correctional Centre – 2010*, p.60 states '(i)t is widely acknowledged that a large number of female offenders have been victims of domestic violence and/or sexual abuse.'

23 ADCQ (2006) Chapter 7; Stathopoulos (2012), p.10; D Ha, 'Blanket Policies for Strip Searching Pretrial Detainees: An Interdisciplinary Argument for Reasonableness', *Fordham Law Review*, Vol. 79, Issue 6, Article 9, 2011, p.2742; United Nations Office On Drugs And Crime, *Handbook on Women and Imprisonment 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules), United Nations, Vienna, March 2014, p.44; UK Home Office (2007), p.5.

24 Stathopoulos (2012), p.11; ADCQ (2006) pp.72-73.

25 See research cited at footnote 22 and 23 above.

experience for any human being, male or female ... However, for a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatise women who have already been greatly traumatised by childhood or adult sexual abuse. The vast majority of female prisoners who spoke to ADCQ said strip-searching diminished their self-esteem as human beings and greatly emphasised feelings of vulnerability and worthlessness. Strip-searching can greatly undermine best attempts being made by prison authorities to rehabilitate women prisoners, through programs and counselling to rebuild self-esteem, cognitive and assertive skills.²⁶

In light of the known adverse impacts of strip searches on the female prisoner population, the relevant literature and standards recommend that strip searches should only be used when necessary and in the absence of an alternative.²⁷

²⁶ ADCQ (2006), pp.72-73.

²⁷ ADCQ (2006), p.75 UK Home Office (2007) p.5; United Nations General Assembly, Sixty-fifth session, Third Committee, Agenda item 105, Resolution adopted by the General Assembly [on the report of the Third Committee (A/65/457)] 65/229; *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) (discussed further in Chapter 5 of this report).

Chapter 3: S8 medication, preventing medication diversion and the S8 strip search practice

The S8 strip search practice was introduced to prevent the diversion of S8 medication at the Centre. This chapter examines the extent of the S8 medication diversion prior to the introduction of the S8 strip search practice, the lack of documentation around the practice and how it interacted with other medication diversion prevention measures in place at the Centre.

3.1 What is S8 medication?

The Centre's S8 strip search practice applied to all prisoners receiving a particular class of medication, called 'S8 medication'. S8 medication refers to 'controlled drugs' listed in Schedule 8 of the *Poison Standard 2013*²⁸, which is established by the *Therapeutic Goods Act 1989* (Cth). S8 medication includes substances such as Codeine (where it is not compounded with another therapeutically active substance), Oxycodone, Methadone, Morphine, Pethidine and Benzodiazepine. The supply and use of S8 medication is subject to legislative restrictions due to its dependence-forming nature and potential for abuse.²⁹

S8 medication is prescribed by authorised medical practitioners who attend the Centre. S8 medication is generally administered between once and twice daily at the Centre, depending on a prisoner's prescription. Most medication at the Centre is dispensed to prisoners by a registered nurse³⁰ from Queensland Health (QH) at a medication parade in prisoners' accommodation units or near prisoners' places of work. However, S8 medication is only dispensed by a registered nurse³¹ at the Centre's Health Centre under supervision of an officer or officers.

3.2 S8 medication diversion: the reason for the introduction of the S8 strip search practice

There is no formal documentation of the S8 strip search practice. The Centre advised further that its internal review found that, from what can be ascertained, the direction to commence the S8 strip search practice came via an email from a Supervisor after discussion with other Supervisors, the Accommodation Manager and the Deputy General Manager at the time.³² Investigators were unable to interview any of the Supervisors or the Manager who were involved in making the decision to commence the S8 strip search practice due to leave, rotation to roles outside the Centre and shift arrangements.

The Centre also advised that the S8 strip search practice was introduced 'due to some significant medication diversion confirmed through Queensland Government Laboratory urine test reports'.³³ However, the Centre's records of drug test results from January 2013 until the commencement of the S8 strip search practice in June 2013 showed that only one of these drug test results (conducted 19 April 2013) related to an S8 substance (from a prisoner who did not receive S8 medication).³⁴ On 10 May 2013, three weeks prior to the commencement of the S8 strip search practice, two prisoners receiving S8 medication were subject to a strip search on the basis of 'intel provided' which revealed 'nothing to report'.³⁵ An internal Centre email dated 31 May 2013 reported an alleged attempt to divert S8 medication by a prisoner receiving S8 medication which was identified by an officer's visual scan of the prisoner's mouth.³⁶

The consistent advice from Centre Supervisors and management interviewed was that the S8 strip search

28 Section 52D, *Therapeutic Goods Act 1989* (Cth), which creates the *Poison Standard 2013* also known as the *Standard for the Uniform Scheduling of Medicines and Poisons* (SUSMP); Health (Drugs and Poisons) Regulation 1996 (Chapter 2).

29 *Poisons Standard 2013*, p.vii; Health (Drugs and Poisons) Regulation 1996 (Qld).

30 Section 3, Medication Direction, *Provision, Supply and Administration of Pharmaceuticals*, Procedure No. OHS/POL0050, dated 29 March 2012, s.3.1.

31 Health (Drugs and Poisons) Regulation 1996, s173(2)(c); Offender Health Services, *Controlled and Restricted Drugs of Dependence*, Procedure No. OHS/POL/0056, version 2, 29 March 2012, s.4.

32 Email from the Centre's Acting General Manager to the Ombudsman, 24 March 2014. However, investigators' interviews with the Deputy General Manager at the Centre at the time suggests that he was unaware of the inception of the S8 strip search practice (see 7.1 of this report).

33 Email from the Acting General Manager to the Ombudsman, 24 March 2014.

34 Information regarding drug tests at the Centre from 1 January 2013 to 28 February 2014 under email from the Centre's Acting General Manager to the Ombudsman, 27 May 2014.

35 See the Centre's strip search register dated 10 May 2013.

36 Email from the Centre's Secure Supervisor to officers involved with S8 medication, 31 May 2013.

practice was introduced due to intelligence about S8 medication diversion by a small group of prisoners, and in particular, one alleged 'ringleader'.³⁷ For example, the Centre's internal review found staff 'confirm[ed] the process was put in place around the middle of 2013 to mitigate some significant medication diversion and made particular mention of a previous prisoner being central to the diversion'.³⁸ This is also reflected in the intelligence provided by the Centre which suggests there was a significant likelihood of diversion of S8 medication by a single prisoner (the alleged 'ringleader') who subsequently left the Centre in October 2013. The intelligence also raises, to a lesser extent, concerns about the behaviour of approximately three other prisoners receiving S8 medication which may have suggested involvement in S8 medication diversion.³⁹

3.3 Lack of documentation about the S8 strip search practice

The Centre was unable to provide formal documentation of:

- the initial decision to order the S8 strip search practice
- which officer/s ordered the S8 strip search practice
- the section of the Act the S8 strip search practice was made pursuant to
- the rationale behind the S8 strip search practice
- the actual procedure for the S8 strip search practice.

The absence of formal documentation does not necessarily affect the lawfulness of the order giving rise to the S8 strip search practice. However, given the seriousness and the ongoing nature of the strip searches conducted as part of the S8 strip search practice, the lack of documentation is a significant concern. This was conceded by both the Acting General Manager and the former Deputy General Manager during interviews with investigators. Both advised investigators that they would have expected a practice of this nature to have been documented and signed off by the Deputy General Manager at the Centre.⁴⁰

Due to the lack of formal documentation around the S8 strip search practice, investigators gathered information on the details of the strip search process from a range of sources, including:

- an email from the Acting General Manager of the Centre setting out the findings of the Centre's internal review of the S8 strip search practice⁴¹
- two internal emails from a supervisor⁴² from late August and mid-October 2013 that provide directions to officers involved in the S8 strip search practice
- the Centre's strip search register. However, investigators' review of the strip search register found that compliance with the requirement in the Act that officers complete the register after each strip search⁴³ was sporadic
- interviews with prisoners and Centre officers (at management and supervisor level).⁴⁴

Accounts of the process for the S8 strip search practice varied and the process appears to have changed slightly throughout its duration to cope with operational restraints.⁴⁵

3.4 The interaction of the S8 strip search practice with other measures in place to prevent the diversion of S8 medication

Prior to the S8 strip search practice, few strip searches were conducted on prisoners receiving S8

37 Interview with Supervisors 1 and 2, 2 May 2014; Interview with current Deputy General Manager, 2 May 2014 (refers to three or four others being involved); Interview with former Deputy General Manager, 2 May 2014.

38 Email from the Acting General Manager to the Ombudsman, 24 March 2014.

39 Email from Intelligence Office to the Ombudsman, 5 May 2014.

40 Interview with former Deputy General Manager, 2 May 2014; Acting General Manager, Transcript of interview, 2 May 2014, lines 505-510.

41 Email from the Centre's Acting General Manager to the Ombudsman, 24 March 2014.

42 Email from Secure Supervisor to officers involved with S8 medication, 27 August 2013; Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013.

43 Section 40, Corrective Services Act; Section 11, Corrective Services Regulation.

44 Complaint, 17 January 2014; Interview with prisoners, 1 May 2014; Email from the Centre's Secure Supervisor to officers involved with S8 medication, 31 May 2013; Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013; Acting General Manager; Transcript of interview, 2 May 2014; Email from the Centre's Acting General Manager to the Ombudsman, 24 March 2014; Email from Secure Supervisor to officers involved with S8 medication, 27 August 2013.

45 Email from Secure Supervisor to officers involved with S8 medication, 27 August 2013; Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013.

medication.⁴⁶ A range of medication diversion prevention practices (aside from strip searches) were in place and continued to be carried out on prisoners receiving S8 medication during the 10 months the S8 strip search practice was in place. These practices remained fairly consistent throughout the period.⁴⁷ The daily dosing process for prisoners receiving S8 medication (as far as investigators were able to ascertain) is described in the table below. The table also notes how existing medication diversion prevention measures interacted chronologically with the S8 strip search practice.

Measure	Daily procedures for prisoners receiving S8 medication
Existing medication diversion prevention practices	Prisoners receiving S8 medication were advised prior to leaving their accommodation unit that they were not to bring anything with them (e.g. lollies, jumpers, socks) to the Health Centre. ⁴⁸
	Officers locked the waiting room toilets in the Health Centre prior to arrival of the prisoners. ⁴⁹
	Upon arrival, prisoners were held in waiting rooms at the Health Centre (grouped separately according to whether they were accommodated in a secure or residential unit). ⁵⁰ The prisoners remained in the two separate accommodation groups throughout the process. ⁵¹
S8 strip search practice: the 'before search'	The prisoners were taken from the Health Centre waiting rooms to the nearby Reception Centre in their accommodation group (usually around four prisoners) and were each subjected to a strip search one by one in a holding cell. ⁵² Searches occurred in accordance with the process set out in section 2.2 above.
	Prisoners waiting to be strip searched sat on chairs in sight of a reception store officer outside the cell where the strip searches occurred for their turn to be searched. ⁵³

46 Interview with a prisoner, 1 May 2014; Review of the Centre's strip search register for the month of May 2013.

47 At the time of the introduction of the S8 strip search practice (5 June 2013) there was no documented Centre procedure for dispensing medication and avoiding the diversion of medication. See email from the Centre's Acting General Manager to the Ombudsman, 5 June 2014. According to the Centre's Acting General Manager the only documented procedure that appeared to be in place at that time was generated by Queensland Health and was titled *Provision, Supply and Administration of Pharmaceuticals*, Procedure No. OHS/POL0050, 29 March 2012 (QH Procedure). However, the practice at the time can be ascertained from an internal Centre email from a Secure Supervisor to officers involved with S8 medication dated 31 May 2013, relevant legislation and the QH procedure. In July 2013 the Centre's practices around dispensing medication at the Centre and avoiding its diversion were captured and added to in the Memorandum from the Acting General Manager to all staff at the Centre titled 'Medication Issue – Interim Instruction', dated July 2013 (the Interim Instruction) and then formalised in the General Manager Direction, *Medication Issue to Prisoners*, implemented 13 August 2013 (the Medication Direction). These practices continued concurrently with the S8 strip search practice.

48 Email from Secure Supervisor to officers involved with S8 medication, 31 May 2013; Interview with a prisoner, 1 May 2014.

49 Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013; Email from the Centre's Secure Supervisor to officers involved with S8 medication, 31 May 2013.

50 Information provided verbally to investigators during their inspection of the Health and Reception centres at the Centre on 1 May 2014.

51 Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013; Interview with a prisoner, 1 May 2014.

52 Emails from Secure Supervisor to officers involved with S8 medication, 27 August and 17 October 2013; Interview with a prisoner, 1 May 2014; Complaint, 2014.

53 Interview with a prisoner, 1 May 2014.

Measure	Daily procedures for prisoners receiving S8 medication
Existing medication diversion prevention practices	<p>Prisoners were then either immediately escorted to the Health Centre (in an adjacent room) or held in a holding cell waiting to be called to the Health Centre where they received their S8 medication.⁵⁴ When doing so, the Interim Instruction and the Medication Direction required that:</p> <ul style="list-style-type: none"> • a minimum of two officers were in attendance with the QH nurse • prisoners could only bring clear plastic cups or water bottles • prisoners presented for medication with sleeves rolled above the elbow • prisoner identification checks were undertaken by an officer for the nurse • officers stood on either side of the prisoner • the nurse handed the prisoner the medication by placing it in the centre of their flat open palm and one officer directly observed the prisoner ingest the medication⁵⁵ • a cup of water was provided to prisoners and they were required to swish the water around their mouth and expel the water into the basin⁵⁶ or drink two cups of water after taking their S8 medication⁵⁷ • after receiving their medication prisoners were required to run their fingers around the inside of their gums, lift their tongue, spread their fingers, show their mouth is completely clear of any item and that their clear plastic cup contains nothing but water or is empty.⁵⁸
S8 strip search practice: the 'after search'	Straight after receiving their S8 medication, prisoners were taken back to the Reception Centre where officers conducted a second strip search on each prisoner one by one in the same cell where the initial search occurred. ⁵⁹
Existing medication diversion prevention practices	<p>Prisoners were returned one by one to a 'clean' holding cell in the Reception Centre immediately after each strip search, to wait with the other prisoners from their accommodation group under observation for a half hour.⁶⁰</p> <p>Once the final prisoner's half hour period for each accommodation group had expired, and an officer was available, the prisoners were escorted back to their accommodation.⁶¹</p>

Between February 2014 and late March 2014 the same process occurred except without the strip search being conducted before receipt of the S8 medication. At least some, if not all, areas where prisoners wait during the S8 strip search practice were also monitored by cameras.⁶²

One of the Supervisors interviewed suggested that the process of conducting the S8 strip search practice on prisoners receiving S8 medication was time consuming for staff involved.⁶³ The prisoners and one of the Supervisors interviewed suggested that the process of dispensing S8 medication along with the S8 strip search practice and the other medication diversion prevention measures took between one and a half hours and two hours.⁶⁴ Given that prisoners who received S8 medication twice a day were at the Health Centre for up to four hours a day, the S8 strip search practice impacted adversely on prisoners' capacity to engage in employment, vocational and educational activities.

54 Email from Secure Supervisor to officers involved with S8 medication, 27 August 2013; Interviews with prisoners, 1 May 2014.

55 Sections 3 and 6, Medication Direction, 13 August 2013; Interim Instruction, July 2013.

56 Email from the Centre's Secure Supervisor to officers involved with S8 medication, 31 May 2013.

57 Interview with a prisoner, 1 May 2014.

58 Email from the Secure Supervisor to officers involved with S8 medication, 31 May 2013; sections 3 and 6, Medication Direction, 13 August 2013; Interim Instruction, July 2013.

59 Interviews with prisoners, 1 May 2014; Emails from Secure Supervisor to officers involved with S8 medication, 27 August and 17 October 2013; Complaint, 2014. However, one of the Supervisors interviewed suggested that the prisoners waited half an hour pursuant to the Medication Direction before their second strip search (Supervisor 2, Interview, 2 May 2014).

60 Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013; Interview with a prisoner, 1 May 2014; sections 3 and 6, Medication Direction, 13 August 2013; section 3.10, Interim Instruction, July 2013.

61 Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013.

62 Interview with a prisoner, 1 May 2014; Supervisor 1, 1 May 2014; Interview, Intel Officer, 2 May 2014.

63 Interviews with Supervisors, 1 May 2014.

64 Interviews with prisoners, 1 May 2014; See also Supervisor 2, Interview, 2 May 2014.

Chapter 4: Was the S8 strip search practice contrary to law?

Officers cited a range of sections (ss.35 to 37) of the Act as the authority for the S8 strip search practice. This chapter examines the legislative basis for strip searches and whether the S8 strip search practice was authorised under the Act.

I acknowledge at the outset that the Centre is mandated to ensure the security of the Centre and the welfare of the prisoners in its care. This includes ensuring the diversion of medication does not occur. I also acknowledge that strip searches may in certain circumstances be lawfully ordered under the Act to this end. Notwithstanding this, having regard to the invasive nature of such a search and the impact that it may have on a prisoner, it is paramount that each strip search is properly authorised under the Act.

4.1 What is the legislative and procedural framework for strip searches?

Under the Act, a strip search may be lawfully authorised by the Chief Executive (currently, the Director-General of DJAG) in three ways: under ss.35, 36 and 37. These sections are set out in full in Appendix 2. The table below (with emphasis added) sets out each power and the QCS officers⁶⁵ to whom these powers were delegated at the relevant time.⁶⁶

Section	Strip search ordered	On who	Power delegated to
s.35	Pursuant to the Chief Executive's written direction	'prisoners'	QCS Commissioner
s.36	Pursuant to the Chief Executive's order, where the Chief Executive is <i>satisfied the search is necessary</i> for the security or good order of the corrective services facility and/or the safe custody and welfare of prisoners at the facility	'1 or more prisoners'	QCS Commissioner, General Manager, Regional Manager, Deputy General Manager, <i>Manager/Duty Manager</i>
s.37	Pursuant to the Chief Executive's order, where the Chief Executive <i>reasonably suspects</i> the prisoner has a prohibited thing concealed on the prisoner's person	'a prisoner'	QCS Commissioner, General Manager, Manager, Deputy General Manager, <i>Manager/Duty Manager, Supervisor (only when a Manager is not present in the correctional centre), Dog Squad</i>

4.2 Lack of clarity around which section of the Act was intended to have authorised the S8 strip search practice

It is unclear which section of the Act the officers at the Centre who introduced the S8 strip search practice considered to be the authorising section for the strip searches. Section 35 was entered as the authority for the strip searches in the strip search register on 5 June 2013, the day the S8 strip search practice began. However, investigators found that at different times throughout the period the S8 strip search practice was in place officers had noted a range of sections ('s.35', 's.36' and 's.37') in the strip search register as authorising the relevant strip searches. In my view the uncertainty around the authorising sections used by officers (and Supervisors reviewing the register) is symptomatic of:

- the lack of formal documentation about the practice
- a lack of knowledge of the specific requirements of the Act.⁶⁷

Given the uncertainty about which section of the Act was the authorising section for the S8 strip search practice, I will consider below whether the S8 strip search practice could have been authorised under ss.35, 36 or 37 of the Act.

⁶⁵ Section 271(1), Corrective Services Act.

⁶⁶ Instrument of Delegation of Chief Executive Powers (Department of Community Safety) dated 8 March 2013, p.6.

⁶⁷ This view is supported by investigators' interviews with Centre officers and to some extent by the Acting General Manager, Transcript of interview, 2 May 2014, lines 360 to 380.

4.3 Was the S8 strip search practice authorised by s.35 of the Act?

Under s.35 of the Act the Chief Executive may give a written direction to an officer to carry out a strip search of prisoners. This section is different to the authorisations under ss.36 and 37 because it does not require a condition precedent to direct a search (such as 'satisfaction the search is necessary' in the circumstances under s.36 or 'reasonable suspicion' under s.37). A strip search is simply authorised if it is directed by the Chief Executive or his delegate in writing. In this sense it allows for a blanket direction.

The s.35 power has only been delegated to the QCS Commissioner. Therefore, for the S8 strip search practice to have been lawfully authorised pursuant to this section, it would have to have been implemented by Centre officers pursuant to a written order of the Chief Executive or the QCS Commissioner under s.35. In 2011, the QCS Commissioner made a written direction under s.35 titled 'Direction for a search of prisoner requiring the removal of clothing'⁶⁸ (the s.35 Direction). The s.35 Direction sets out a range of circumstances when strip searches must be conducted on prisoners, such as after a prisoner has had a contact visit with a personal visitor. However, the s.35 Direction does not require strip searches be conducted on prisoners to prevent medication diversion, either before or after medication being provided.⁶⁹ Therefore, s.35 did not authorise the strip searches involved in the S8 strip search practice.

4.4 Was the S8 strip search practice authorised by s.36 of the Act?

The power to order a strip search under s.36 of the Act had been delegated down to Manager (but not Supervisor) level at the time the S8 strip search practice commenced. QCS was unable to provide any written evidence that a Manager ordered the practice. However, even if the search was authorised by a Manager, s.36 cannot be used to authorise the S8 strip search practice in the circumstances.

Section 36 allows strip searches of 'one or more prisoners' if the chief executive or his delegate 'is satisfied the search is necessary for the security or good order of the corrective services facility and/or the safe custody and welfare of prisoners at the facility'. This section therefore allows for strip searches to be ordered on a group of prisoners where it is necessary for the safe custody and welfare of prisoners at the Centre.

However, I do not consider that s.36 can be relied upon to establish a blanket practice that applied for an indefinite period of time to all prisoners. The Act includes an example to illustrate the operation of s.36 which provides some insight into the application of the section (emphasis added):

Example—

A knife is missing from the kitchen of a corrective services facility. The chief executive may be satisfied that a search requiring the removal of clothing of each prisoner who worked in the kitchen *that day* is necessary for the security or good order of the facility or for the safe custody and welfare of prisoners at the facility.

While the *Acts Interpretation Act 1954* (Qld) specifically provides that an example in legislation is not exhaustive nor does it limit the meaning of a provision, it also states that the example and the provision are to be read in the context of each other and the other provisions of the Act.⁷⁰ In this case, the example illustrates that a s.36 order for conducting strip searches on a group of prisoners is incident specific when necessary in the circumstances, but is not suggestive of an ongoing and indefinite order such as is allowed under s.35. Relevantly, s.37 of the Act provides for targeted strip searches on individuals based on a reasonable suspicion. Thus, ss.35 to 37 can be seen to provide increasingly more narrowly focused orders for strip searches, as

⁶⁸ Dated 21 March 2011.

⁶⁹ The Chief Executive's power to direct a search requiring the removal of clothing under s.35 was delegated to the QCS Commissioner in 2009 (see *The Instrument of Delegation of Chief Executive Powers* pursuant to s.271(1) of the Act dated 18 December 2009, p.4). Schedule 2 of s.35 Direction which relates to prisoners at a high security facility states (with my emphasis) that:

(t) *the prisoner must be searched requiring the removal of clothing ... when the prisoner enters the Health Centre, safety unit or S4 accommodation unit at the Brisbane Women's Correctional Centre under a safety order and in accordance with any requirements for searching included in that order.*

I understand from the wording of this direction that it is not suggesting that a prisoner at a high security facility must be subject to a strip search each time they enter a Health Centre (as borne out by practice at the Centre and other correctional centres). Rather it means that any prisoner who enters a Health Centre (or a safety unit or S4 accommodation at Brisbane Women's Correctional Centre) *under a safety order* must be subject to a strip search. The reference to prisoners entering a safety unit or S4 accommodation at Brisbane Women's Correctional Centre suggests the target of this provision is prisoners who are under a safety order due to self-harm risks.

⁷⁰ Section 14D, Acts Interpretation Act

reflected by the different levels of seniority of officers delegated to exercise the powers in each of these sections.

Further, in my view, there is insufficient evidence to establish, in accordance with the requirements of s.36, that the relevant officer who ordered the S8 strip search practice was '*satisfied*' that for the safe custody and welfare of prisoners / good order and security at the Centre it was *necessary*:

- to conduct strip searches on *all* S8 prisoners (including those in respect of whom there was no concern that they were diverting medication)
- *both before and after* receipt of their medication
- *every day* for an *indefinite period*.

This view is supported by a range of factors including:

- the advice from Supervisors and management who were interviewed, as well as intelligence from the Centre, that the concerns about S8 medication diversion only related to a certain, small group of prisoners
- the fact that the alleged ringleader of the medical diversion left the Centre in October 2013
- the other practices and procedures at the Centre safeguarding against medication diversion
- a range of factors set out in the next chapter regarding the unreasonableness of the S8 strip search practice in the circumstances.

This view is also supported by the comments of the current Acting General Manager who said that the blanket nature of the practice was '*concerning*'⁷¹ and described the practice as '*over aggressive*'. She stated that she stopped the strip searches occurring before S8 medication was dispensed (in January 2014 after resuming the role of Acting General Manager) because she thought they were not a logical approach, and did not align with known issues about the impact of strip searches on female prisoners.⁷² She further conceded that she should have looked more closely at the whole practice then and stopped it. However, she assumed the practice must have had some basis.

Similarly, the former Deputy General Manager, who worked in this role during various periods when the S8 strip search practice was in place, suggested that it was not a practice he would have implemented and in hindsight, targeted searches of a particular prisoner about whom there was information should have been conducted rather than blanket searches.⁷³

Finally, one of the Supervisors involved with implementing (but not introducing) the S8 strip search practice indicated that she had raised concerns about the '*before search*' at a management meeting but this went unheeded.⁷⁴

Therefore, in my view, the S8 strip search practice was not necessary for the safe custody and welfare of prisoners or the good order at the facility in the circumstances and therefore was not authorised by s.36 of the Act.

4.5 Was the S8 strip search practice authorised by s.37 of the Act?

Section 37 of the Act is narrower than s.36 and allows for targeted strip searches of individuals. Like ss.35 and 36, s.37 also provides that a less intrusive search can be carried out prior to a search requiring the strip search.⁷⁵ This section allows a prisoner to be subjected to a strip search only where the delegated officer has a reasonable suspicion that the prisoner is concealing a prohibited thing on their person.

For the S8 strip search practice to have been consistent with s.37, the officers who made the decision to order the S8 strip search practice must have had a reasonable (and ongoing) suspicion that *each* prisoner receiving S8 medication was potentially concealing a prohibited thing *before and after* receipt of their medication (or just after from February 2013), *every day* from June 2013 through to January 2014, for some prisoners twice a day.

71 Interview with Acting General Manager, 2 May 2014, lines 21-36.

72 Acting General Manager, Transcript of interview, 2 May 2014, lines 66-68, 196-202 and 714-721.

73 Interview with former Deputy General Manager, 2 May 2014.

74 Interview with Supervisor 1, 2 May 2014.

75 Section 37(2), Corrective Services Act. This is also the case in respect of ss.35 and 36.

As noted above, it is clear that strip searches were conducted on prisoners about whom there was no suspicion that they were diverting medication. Clearly s.37 requires that there be a condition precedent to a strip search (i.e. a reasonable suspicion that attaches to an individual prisoner on a particular day), and therefore this section cannot support a blanket practice. Therefore in my view, the S8 strip search practice was not authorised by s.37 of the Act.

4.6 Conclusions

The only section of the Act that provides an enduring authorisation of strip searches is s.35 and, as stated above, no such authorisation was made by the delegate at the time the S8 strip search practice was in place.

Therefore, I form the following opinion:

Opinion 1

The Centre's practice of conducting strip searches on all prisoners receiving S8 medication:

- a) both before and after receiving their S8 medication daily during the period June 2013 to January 2014 and
- b) after receiving their S8 medication daily from February 2014 to March 2014

was not authorised under the Act. Therefore, the S8 strip search practice constituted administrative action that was contrary to law within the meaning of s.49(2)(a) of the Ombudsman Act.

DJAG response:

In his response to the proposed report, the Director-General accepted my opinion.

Chapter 5: The reasonableness of the S8 strip search practice

This chapter examines a range of factors impacting on the reasonableness of the S8 strip search practice. These factors include practices at other correctional centres, the importance of only conducting strip searches when necessary, the alternative practices available to prevent medication diversion, the efficacy of the strip searches in the circumstances and concerns relating to prisoners' dignity.

5.1 S8 strip search practice not mirrored in other correctional centres

Diversion of medication by prisoners has been identified as a problem at the Centre,⁷⁶ as it is at other correctional centres in Queensland.⁷⁷ However, the Acting General Manager of the Centre confirmed that the S8 strip search practice is not mirrored in relation to male prisoners receiving S8 medication (or other medication) at the adjacent Townsville Men's Correctional Centre.⁷⁸ Investigators are not aware of this practice occurring at any other correctional centre.

5.2 The impact of the S8 strip search practice on prisoners

Section 2.4 above highlighted the extensive research into the adverse effects of strip searches on female prisoners. QCS has previously specifically acknowledged the research⁷⁹ and in 2011 trialled steps to mitigate the effects of compulsory strip searches after contact visits through a 'Visits Search Control Trial' at Brisbane Women's Correctional Centre (BWCC). During the trial alternative search methods were used after contact visits such as electronic scanning and drug dog scanning. The existence of the trial at BWCC and its rationale was acknowledged by the Acting General Manager at the Centre.⁸⁰ Unfortunately, I understand that, despite there being no increase in contraband into BWCC during the trial period, the trial did not result in any new permanent alternative practice to strip searching being introduced.

Prisoners interviewed reported that the S8 strip search practice was a very negative experience and echoed the concerns about re-traumatisation of female prisoners noted in the literature (see 2.4). One prisoner reported that she found the practice demeaning and she came away from it feeling like she had been sexually abused, bringing back memories of her own past abuse. Prisoners also reported that they (or other prisoners they knew of) considered coming off their medication to avoid the strip searches.⁸¹ This also reflects a finding of the 2006 ADCQ report which commented that compulsory strip searches after contact visits⁸² led to some women electing not to have contact visits because of their strong objections to being strip searched.⁸³

I am concerned that the Centre did not take into account the known potential negative impact of repeated and ongoing strip searches on the female prisoner population when creating and implementing the S8 strip search practice.⁸⁴ The Acting General Manager at the Centre conceded that the practice was inconsistent with the QCS Women's Strategy.⁸⁵

5.3 Strip searches should occur in the absence of alternatives due to adverse impact on female prisoner population

Literature on the effect of strip searches on women recommend that alternatives to strip searches should be used where possible (see 2.4). This recommendation is reflected in Rule 20 of the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (the Bangkok Rules) adopted

76 Interview with former Deputy General Manager, 2 May 2014; Interview with Supervisor 1, 2 May 2014; Interview with Intelligence Officer, 2 May 2014.

77 Interview with former Deputy General Manager, 2 May 2014.

78 Email from the Centre's Acting General Manager to the Ombudsman, 24 March 2014.

79 QCS, Custodial Operations, 'Womens Program, Visits Search Control Trial, Information Sheet' June 2011 states: 'Research reflects that compulsory strip searching ... has potential for women to feel victimised as a significant number of women prisoners have experienced physical and sexual abuse in their lives.'

80 Acting General Manager, Transcript, 2 May 2014, lines 196-202.

81 Interviews with prisoners, 1 May 2014.

82 Which is an ongoing requirement pursuant to the s.35 Direction (see 4.3 of this report).

83 ADCQ (2006), p.73 commented that '(t)his is almost an impossible choice for women with children, who, in their attempts to maintain their relationships with their families, must have contact visits.'

84 Acting General Manager, Transcript of interview, 2 May 2014, lines 196-202.

85 Acting General Manager, Transcript of interview, 2 May 2014, lines 196-202, 483-488.

by the United Nations General Assembly⁸⁶ in 2010:⁸⁷

Rule 20: Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.⁸⁸

I am not satisfied that the S8 strip search practice was the only search avenue available to the Centre to achieve the goal of avoiding diversion of S8 medication. During interviews, Centre staff acknowledged there are other options available to detect medication diversion, such as urine tests or targeted strip searches of prisoners of concern.⁸⁹ Sections 35 to 37 of the Act provide that '(a) search requiring the removal of clothing under this section may be preceded by another less intrusive search'. Thus the Act makes it clear that it may be appropriate to use a series of increasingly intrusive searches depending on the circumstances.

5.4 The efficacy of strip searches in the circumstances

I also question the efficacy of strip searches in the circumstances of this case. My understanding is that the S8 strip search practice did not identify any instances of S8 medication diversion and the only instances of diversion have been identified through urine tests or visual inspection as part of alternative search processes.

While I acknowledge the potential deterrent effect of strip searches (and I note that this argument was raised by QCS in its 2006 response to the ADCQ report)⁹⁰ the legislation does not allow for strip searches under ss.36 and 37 to be conducted in a blanket and ongoing manner simply for a deterrent effect.

5.5 Conducting strip searches before dispensing S8 medication

I am particularly concerned about the use of strip searches before S8 medication was dispensed. The explanation for the strip searches conducted prior to prisoners receiving S8 medication was that S8 medication may have been diverted by using a cigarette filter or sponges in a prisoner's mouth to absorb liquid S8 medication to then be passed on.⁹¹ The 'before search' is alleged to allow officers to identify these instruments before they were used to divert medication. However, it is unclear why, if all the other safeguards in place to avoid medication diversion failed (see 3.4) an effective search after dispensing S8 medication would not identify any device being used to divert medication. One suggestion provided was that the instruments used to absorb the S8 medication could be swallowed and later regurgitated.⁹²

From at least 10 July 2013,⁹³ following the implementation of the Interim Instruction, there was already a practice whereby prisoners who received S8 medication were required to wait for half an hour under direct observation after taking medication. This practice continued throughout the S8 strip search practice period. This measure is required to ensure prisoners do not suffer any adverse reaction to S8 medication⁹⁴ but also serves a dual purpose of ensuring the medication is digested⁹⁵ (and therefore cannot be regurgitated).

86 United Nations General Assembly, Sixty-fifth session, Third Committee, Agenda item 105, Resolution adopted by the General Assembly [on the report of the Third Committee (A/65/457)] 65/229.

87 Australian Human Rights Commission, *Human rights standards for immigration detention*, Sydney, 2013, p.7 explains that the Bangkok Rules are 'key interpretive human rights instruments' which '(a)lthough not legally binding, these key instruments provide the most persuasive interpretation of our international human rights treaty obligations towards immigration detainees'.

88 United Nations Office on Drugs and Crime (2014), p.44 explains:

The Bangkok Rules are explicit in requiring that alternative methods of searching should be developed to replace strip searches and intimate body searches. ... Alternative screening methods, such as scans, may also be introduced. Where permitted at all, internal searches and *strip searches should only be carried out if absolutely and legally necessary, and never on a routine basis* ... Special sensitivity should be demonstrated in the case of women, however, since they are likely to feel the humiliation of undergoing intimate searches particularly. The experience may be extremely distressing and traumatizing if they have been victims of sexual abuse in the past. [My emphasis].

89 Acting General Manager, Transcript of interview, 2 May 2014, lines 229-30; Supervisors' interviews, 1 May 2014; Interview with former Deputy General Manager, 2 May 2014.

90 Department of Corrective Services (2006), pp.10-11.

91 Interview, Supervisor 2, 2 May 2014; Interview, Intel Officer, 2 May 2014; Interview with former Deputy General Manager, 2 May 2014.

92 Interview with former Deputy General Manager, 2 May 2014.

93 One Supervisor suggested that prisoners were already waiting for half an hour after receiving S8 medication prior to the introduction of the S8 strip search practice.

94 Interview, Unit Nurse Manager, 1 May 2014.

95 Interview, Intel Officer, 2 May 2014.

5.6 Safeguarding prisoners' dignity

Relevantly, the Act enshrines in its purpose the importance of protecting prisoners' rights and dignity,⁹⁶ by recognising:

- 'that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment ... should be safeguarded'⁹⁷
- the need to respect an offender's dignity⁹⁸ and 'the special needs of some offenders by taking into account an offender's sex'.⁹⁹

The Act's purpose reflects a range of international standards that specifically comment on the need to safeguard the dignity of prisoners, and indeed all individuals, for example, *The International Covenant on Civil and Political Rights*,¹⁰⁰ and the *UN Standard Minimum Rules for the Treatment of Prisoners*.¹⁰¹ While these standards do not have the force of law in Australia they are relevant benchmarks against which it is reasonable to consider the treatment of prisoners in Queensland. The Explanatory Memorandum to the Act highlights 'the intrusive and potentially embarrassing nature of a search requiring the removal of a prisoner's clothing'.¹⁰² As noted previously, QCS has acknowledged that 'many people find the idea of strip searching an affront to their personal dignity'.¹⁰³ In my view, the intrusive, blanket and ongoing nature of the S8 strip search practice would likely have impacted upon prisoners' dignity without justification in the circumstances.

5.7 Conclusions and recommendations

In light of my comments above, there was no reasonable basis in the circumstances for the S8 strip search practice. Furthermore, having regard to the adverse impacts of strip searching on female prisoners and having regard to the acknowledgement in the Act of the need to respect an offender's dignity and consider the special needs of certain offenders,¹⁰⁴ strip searching should only be undertaken where no other reasonable alternatives exist.

I do not consider the S8 strip search practice was necessary to address the concern about potential diversion of medication. I consider the Centre failed to properly consider the range of other measures that were being applied and which could have been applied to address the suspected diversion of S8 medication, and failed to evaluate the effectiveness and reasonableness of the S8 strip search practice during its implementation. Serious questions remain in relation to the efficacy of such a practice as a means of identifying diversion attempts. No other Centre has a similar practice in relation to the dispensing of medication.

My view in relation to the unreasonableness of the practice applies to searches both before and after the receipt of S8 medication. However, I consider the search before receipt of medication was particularly unreasonable and disproportionate to the Centre's concerns regarding diversion.

I am particularly concerned with the situation where prisoners, about whom there was no intelligence suggesting there was cause for suspicion about diversion, were subjected to an ongoing strip search practice despite the likelihood of adverse impacts on them.

96 Section 3, Corrective Services Act.

97 Section 3(2), Correctives Services Act.

98 Section 3(3)(a), Corrective Services Act.

99 Section 3(3)(b)(i), Corrective Services Act.

100 Article 7 of the United Nation's *International Covenant on Civil and Political Rights* 1966 (ratified by Australia on 13 August 1980) proclaims that '(n)o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment ...'. The United Nations' Human Rights Committee has interpreted Article 7 (General comment 20/44 of 3 April 1992): 'The aim of the provisions of Article 7 is to protect both the dignity and the physical and mental integrity of the individual ...' (UN Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992).

101 *UN Standard Minimum Rules for the Treatment of Prisoners* adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Rule 60 reaffirms that prisoners are entitled to respect due to their dignity as human beings.

102 Corrective Services Bill 2006, Explanatory Notes, p.61 (re s.38).

103 Queensland Government, *Department of Corrective Services response to the Anti-Discrimination Commission Queensland Women in Prison Report*, 2006, p.10.

104 Section 3(3)(a) and (b)(i), Corrective Services Act.

Therefore, I form the following opinion:

Opinion 2

The Centre's practice of conducting strip searches on all prisoners receiving S8 medication:

- a) both before and after receiving their S8 medication daily during the period June 2013 to January 2014 and
- b) after receiving their S8 medication daily from February 2014 to March 2014

constituted administrative action that was unreasonable within the meaning of s.49(2)(b) of the Ombudsman Act.

DJAG response:

In his response to the proposed report, the Director-General accepted my opinion.

In light of Opinion 1 (see 4.6) and Opinion 2, I make the following recommendations:

Recommendation 1

The Director-General ensure that refresher training is conducted for those officers (including the General Manager) with delegations to order strip searches at the Centre regarding:

- a) the circumstances in which strip searches may be ordered and the relevant requirements of the Act and the Regulation
- b) the potential negative effects of strip searches on female prisoners and the importance of considering alternative search techniques
- c) the requirements of the Act regarding the need to complete the strip search register after each strip search.

DJAG response:

In his response to the proposed report, the Director-General accepted recommendation 1 and advised:

Refresher training will be conducted by all officers at the Townsville Correctional Centre who are authorised delegates in accordance with sections 36 and 37 of the Corrective Services Act 2006.

The Acting Assistant Director-General, Statewide Operations, QCS, will ensure a written instruction is forwarded to all centres to ensure compliance with this proposed recommendation.

Recommendation 2

The Director-General ensure orders for strip searches are properly authorised and documented at the Centre, including how the circumstances of the order meet the requirements of the Act and include a review date for re-evaluation of any ongoing strip searches.

DJAG response:

In his response to the proposed report, the Director-General accepted recommendation 2 and advised:

QCS (Statewide Operations) will review the current process in relation to authorisation and recording of associated documentation for removal of clothing searches at all centres.

Chapter 6: Allegations regarding the treatment of the prisoners subject to the S8 strip search practice

Officers are required to respect prisoners' dignity during the conduct of strip searches. This chapter considers two allegations made by prisoners about the treatment of the prisoners subject to the S8 strip search practice.

6.1 Officers' obligations while conducting strip searches

The Act's purpose notes 'the need to respect an offender's dignity'.¹⁰⁵ The Explanatory Memorandum to the Act explains that a 'number of safeguards have been built into the provisions to ensure the powers regarding searches requiring the removal of clothing are not misused and that officers exercising such powers remain accountable'.¹⁰⁶ Along with the requirements in the Act on officers conducting strip searches outlined in section 2.2 of this report, s.38 of the Act also obliges officers to:

- take reasonable care to protect the prisoner's dignity
- cause minimal embarrassment to the prisoner
- carry out the search as quickly as reasonably practicable
- allow the prisoner the opportunity to remain partly clothed during the search
- allow the prisoner to dress as soon as the search is finished.¹⁰⁷

6.2 Allegation of failure to ensure sanitary material available between strip searches

An allegation was made that on occasion menstruating prisoners receiving S8 medication were unable to access sanitary material between the first strip search (when they would be required to remove any sanitary pad) and the second strip search, and that prisoners found this humiliating.¹⁰⁸

The allegation was corroborated by the observations and personal experiences of other prisoners but was not alleged to be a frequent or recent issue.¹⁰⁹ The prisoners advised investigators that the bathroom door (where I understand sanitary material was kept)¹¹⁰ was locked before prisoners arrived for their S8 medication or that the prisoners were not allowed to use the bathrooms.¹¹¹ This is corroborated by the two internal Centre emails from May and October 2013 from a Supervisor to officers involved in the S8 medication process which states that the bathroom is to be locked.¹¹²

The Supervisors and Centre management interviewed advised that no formal complaint was made by prisoners about this issue at the Centre.¹¹³ However, prisoners advised investigators that informal complaints were made at the time of the incidents to the officers conducting the searches.¹¹⁴ When the allegation was put to a Supervisor (who was not involved in the actual S8 strip search practice, but oversaw the officers who were), she advised that sanitary material should have been provided to prisoners between the strip searches.¹¹⁵ The prisoners who were affected by this issue were unable to provide the names of the officers involved so their comment was not sought.

On the evidence before me, during the seven-month period when prisoners receiving S8 medication were subject to strip searches both before and after receiving their medication, there was a practice of locking the bathrooms accessible to the prisoners at the reception or Health Centre. Thus, in my view, on the balance of probabilities there may have been occasions where menstruating prisoners were not given access to

105 Section 3(a), Corrective Services Act.

106 Corrective Services Bill 2006, Explanatory Notes, p 61 (re s.38).

107 Section 38(4) and (5), Corrective Services Act.

108 Interview with a prisoner, 1 May 2014.

109 Interviews with prisoners, 1 May 2014.

110 Interview with a prisoner, 1 May 2014.

111 Interviews with prisoners, 1 May 2014.

112 Email from the Secure Supervisor at the Centre to officers involved with S8 medication, 31 May 2013; Email from Secure Supervisor to officers involved with S8 medication, 17 October 2013.

113 Acting General Manager, Transcript of interview, 2 May 2014, lines 329-330; Interview with former Deputy General Manager, 2 May 2014.

114 Interview with a prisoner, 1 May 2014.

115 Interview with Supervisor 1, 1 May 2014.

sanitary material between strip searches. In my view, this would be unreasonable and inconsistent with the requirements of s.38(4) of the Act as failure to provide sanitary material between the two strip searches could cause significant embarrassment to prisoners, impact on the prisoner's sense of dignity and does not allow the prisoner to properly and sufficiently dress as soon as the search is finished.¹¹⁶

The allegation was raised with the Acting General Manager who advised that sanitary material is freely available around the Centre¹¹⁷ and that failure to provide prisoners with sanitary material between strip searches was unacceptable and would have been dealt with had it come to her attention.¹¹⁸ While it is unlikely that successive strip searches such as those in the S8 strip search practice are currently being conducted at the Centre, in my view the Centre should consider documenting the correct process for dealing with menstruating prisoners who may be subject to strip searches in future to avoid any officer confusion about their obligations in similar circumstances.

Therefore, I make the following recommendation:

Recommendation 3

The General Manager of the Centre document a procedure for dealing with menstruating prisoners who may be subject to strip searches and ensure that all staff conducting strip searches are made aware of the procedure.

DJAG response:

In his response to the proposed report, the Director-General accepted recommendation 3 and advised:

QCS (Statewide Operations) will review the current practices in place at all female centres in relation to removal of clothing searches conducted on menstruating prisoners, and will provide staff with a consistent process in relation to the conducting of such searches. I expect, consistent with your opinions, the process will ensure no recurrence of a practice that compromises the dignity and appropriate hygiene for prisoners.

6.3 Allegation of humiliating postures required during strip searches

It was alleged that on occasion, during the strip searches when prisoners had nothing covering the bottom half of their body, they were asked to turn around and bend forward slightly, a practice prisoners found humiliating and reminded prisoners of past sexual abuse.¹¹⁹

The posture described above is outside the actions allowed by the legislation and the SOP.¹²⁰ Only some of the prisoners interviewed said that they had been asked to assume this posture as part of the S8 strip search practice. The prisoners reported that the request had only happened a few times, had not happened recently and was not requested by all officers but was a humiliating experience. The prisoners that identified this as an issue which had affected them were unable to name officers that were involved or remember when the requests were made.

The Centre's response

The Acting General Manager confirmed that the alleged posture (bending forward unclothed from the waist while facing away from the officers conducting the strip search) would be unacceptable and goes beyond what is authorised.¹²¹ The Acting General Manager also advised that if such requests were made of prisoners and the matter had been raised through the normal complaints management system within the Centre and

116 Section 38(4) (a), (b) and (d), Corrective Services Act.

117 Acting General Manager, Transcript of interview, 2 May 2014, lines 448-451.

118 Acting General Manager, Transcript of interview, 2 May 2014, lines 350-354.

119 Interview with a prisoner, 1 May 2014.

120 Section 3.4, SOP.

121 Acting General Manager, Transcript of interview, 2 May 2014, lines 350-355.

brought to her attention she would have addressed the matter.¹²²

Before investigators attended the Centre to conduct interviews, the Centre's Acting General Manager had implemented an audit of strip searches at the Centre.¹²³ The audit was based around a checklist that set out the procedural requirements of the Act and the requirements on officers relating to safeguarding prisoners' dignity (see 2.2 and 6.1). Supervisors¹²⁴ were required to observe officers conducting a total of 25 strip searches across different areas of the Centre over a three-week period. The Centre's Acting General Manager advised that the aim of the audit was to ensure that the reasons the search was conducted were correct and that the search was conducted in a manner that preserves the dignity of the individual but also the safety and security at the Centre.¹²⁵

Following discussions with investigators, the Acting General Manager amended the audit checklist to specifically ensure that officers do not ask prisoners 'to bend forward in any way' during a search.¹²⁶ In my view, frequent audits of this nature are required to ensure that strip searches at the Centre remain compliant with legislation and are only undertaken when necessary.

122 Acting General Manager, Transcript of interview, 2 May 2014, lines 638-640.

123 Acting General Manager, Transcript of interview, 2 May 2014, lines 298-323. See also the email from the Acting General Manager to the Ombudsman, 5 May 2014, enclosing the amended checklist and original audit instruction email to Centre Management dated 22 April 2014.

124 The instructions on the audit from the Centre's Acting General Manager noted: '(t)he Supervisor does not necessarily need to observe the prisoner, they may be able to confirm compliance by watching the officers only. Of course, practically speaking this may mean that the Supervisor will in fact see the prisoner in which case gender requirements will need to be observed.' See the email from the Centre's Acting General Manager to the Ombudsman dated 5 May 2014 enclosing the amended checklist and original audit instruction email to Centre Management dated 22 April 2014.

125 Acting General Manager, Transcript of interview, 2 May 2014, lines 309-312.

126 The update to the checklist occurred on 5 May 2014.

Chapter 7: The compliance and oversight regime in place at the Centre and QCS

The S8 strip search practice continued for 10 months without either the Centre or QCS identifying its lack of legal authorisation or unreasonableness. This chapter considers the adequacy of the compliance and oversight regime in place at the Centre and by QCS.

7.1 No review of the S8 strip search practice by the Centre during the period it was implemented

Investigators were informed that the responsibility for oversight and compliance at the Centre rests with the General Manager and Deputy General Manager.¹²⁷ Prior to October 2012, each Centre had a compliance manager. However, under the new compliance model (current at the time of the S8 strip search practice) there is no specific manager to perform the compliance function locally.¹²⁸ The Centre has its own governance framework; however, the majority of compliance at the Centre flows from conducting QCS-directed self-assessments across a range of themes, which are then used at the Centre as ongoing internal cross-checking tools.¹²⁹

The Acting General Manager of the Centre confirmed that the S8 strip search practice was not reviewed by the Centre during its existence.¹³⁰ The current Acting General Manager explained that had the practice been properly documented there would have been an in-built review date and evaluation of the practice.¹³¹ It is unclear when, or if, the S8 strip search practice would have been reviewed by the Centre but for the Ombudsman's inquiries.

Investigators were advised that significant turnover had occurred at the Centre at both management (General Manager and Deputy General Manager) levels and Supervisor level prior to and during the period when the S8 strip search practice commenced and throughout its implementation.¹³² The current Acting General Manager (who acts in this role for both the Centre and the nearby Townsville Men's Correctional Centre) was not working at the Centre between late May 2013 and early June 2013¹³³ and was not aware of the inception of the S8 strip search practice.¹³⁴ The Deputy General Manager for the Centre, at the time the S8 strip search practice commenced, also advised that he was not aware of its inception.¹³⁵ When both became aware of the S8 strip search practice (for the Acting General Manager around September 2013¹³⁶ and sometime earlier in the year for the former Deputy General Manager), they assumed that it had been properly authorised and was based on appropriate reasons.¹³⁷ Investigators did not interview other officers who rotated through senior management roles (including that of General Manager and Deputy General Manager at the Centre) during the 10-month period the S8 strip search practice took place.

I am concerned that both the Acting General Manager and Acting Deputy General Manager (along with other officers at senior Centre management level) became aware of the S8 strip search practice but did not fully appreciate the problems associated with its legal authorisation or reasonableness. I do acknowledge that the Acting General Manager did at some later stage reduce the practice to only one search but I consider that this did not go far enough.

In the absence of a proper review of the practice, the primary means by which issues with the S8 strip search practice could have been raised internally at the Centre was through a complaint to the General

¹²⁷ Acting QCS Commissioner, Transcript of interview, 12 May 2014, lines 251-253.

¹²⁸ Email from the Centre's Acting General Manager to the Ombudsman, 4 June 2014.

¹²⁹ Acting General Manager, Transcript of interview, 2 May 2014, lines 254-264.

¹³⁰ Email from the Centre's Acting General Manager to the Ombudsman, 24 March 2014.

¹³¹ Acting General Manager, Transcript of interview, 2 May 2014, lines 47-50, 163-168.

¹³² Supervisor 1, Interview, 1 May 2014. Acting General Manager, Transcript of interview, 2 May 2014, lines 52-55; see also advice in email from Acting General Manager to the Ombudsman, 4 June 2014.

¹³³ Email from the Centre's Acting General Manager to the Ombudsman, 4 June 2014. Investigators were unable to interview the person working as the General Manager of the Centre at the relevant time.

¹³⁴ Acting General Manager, Transcript of interview, 2 May 2014, lines 58-68.

¹³⁵ Interview with former Deputy General Manager, 2 May 2014.

¹³⁶ Acting General Manager, Transcript of interview, 2 May 2014, lines 58-68. The current Acting General Manager became aware of the practice around September 2013 while working at Townsville Men's Correctional Centre in a different role.

¹³⁷ Acting General Manager, Transcript of interview, 2 May 2014, lines 714- 721; Interview with former Deputy General Manager, 2 May 2014.

Manager. Prisoners may write 'blue letters' directly to the General Manager (i.e. without having to complain through the officers with whom they have contact). The current Acting General Manager advised that no complaints were received by the General Manager's office about the S8 strip search practice through the blue letter system.¹³⁸ One prisoner interviewed, however, suggested there were plenty of informal protests by prisoners receiving S8 medication to officers about various aspects of the S8 strip search practice.¹³⁹

7.2 No review of the S8 strip search practice by QCS

The Governance Compliance and Risk Area at QCS has responsibility for oversight and compliance with legislation and QCS policies and procedures in Queensland's correctional centres. QCS' oversight regime includes centrally directed self-assessments carried out by correctional centres across a range of topics each calendar year (12 in 2013, eight in 2014) such as 'Prisoner Communication', 'Breaches of Discipline', 'Admission and Induction' and 'Safety and Security Processes'.¹⁴⁰ The Acting General Manager suggested that this process is efficient, contributing to improvements at the Centre and also helps new managers become acquainted with the relevant procedural and legislative requirements.¹⁴¹ However, the compliance and oversight regime during the period the S8 strip search practice was implemented did not include a review of S8 medication processes or strip searches.

The results of the correctional centres' self-assessments are reported to QCS and reviewed by QCS' internal audit team. QCS did not require correctional centres to conduct a self-assessment of strip searches at correctional centres as part of the 2013 schedule of audit topics,¹⁴² nor was it a component of the self-assessment topics slated for 2014.¹⁴³

QCS' most recent review of the Centre's strip search procedures was the QCS' July 2010 'Custodial self assessment – Prisoner Searches'. Relevantly, the self-assessment included consideration of whether correctional centres met the procedural requirements for recording the relevant details of strip searches in strip search registers.¹⁴⁴ QCS instructed that the audit sample be chosen by:

... obtain[ing] the register for Prisoner Removal of Clothing Searches for the previous 3 months (March to May 2010). Randomly select 6 samples (by week) over the period.¹⁴⁵

As part of the self-assessment, the Centre reported occasional failures by Supervisors to review the strip search register.¹⁴⁶ Strip searches are conducted for a wide range of reasons at correctional centres, including for new prisoners and after contact visits. In my view, it is unlikely a sample of the size used in the 2010 QCS self-assessment and a review of this nature (i.e. of recordkeeping practices) would have highlighted the concerns detailed in this report had the S8 strip search practice existed at the time the 2010 self-assessment was conducted.

QCS advised that as part of its oversight regime, in July 2011 Queensland correctional centres were required to complete a self-assessment on the topic of 'Search Prisoners and Facilities'.¹⁴⁷ While this self-assessment was mandatory, QCS advised that the Centre was not recorded as having completed the assessment and there was no established process at that time for follow up of non-submission of self-assessments.¹⁴⁸ A subsequent QCS report suggests that five of the 12 correctional centres (including the Centre) did not complete the 2011 self-assessment.¹⁴⁹ QCS advised that its Governance Compliance and Risk area, which is now responsible for

138 Acting General Manager, Transcript of interview, 2 May 2014, lines 348-350.

139 Interview with a prisoner, 1 May 2014.

140 See letter from QCS to the Ombudsman, 7 May 2014.

141 Acting General Manager, Transcript of interview, 2 May 2014, lines 245-276.

142 Letter from QCS to the Ombudsman, 5 May 2014; Attachment to letter from QCS to the Ombudsman, 7 May 2014.

143 Attachment to letter from QCS to the Ombudsman, 7 May 2014.

144 The self-assessment was undertaken by the Centre pursuant to QCS' internal audit regime, which asked the Centre to verify for each sample whether the register notes the location where the search was conducted, the reason, the prisoner's name, if any incidents occurred during the search, the names of all persons conducting and present at the search and whether the search register was reviewed by a supervisor or manager. See letters from QCS to the Ombudsman, 24 April 2014 and 5 May 2014.

145 See attachments to letters from QCS to the Ombudsman, 24 April 2014 and 5 May 2014.

146 The Centre provided QCS with the 'remedial action taken' (dated 4 August 2010) stating that 'Supervisors now review registers/Line Manager audits strip search register weekly, examples of registers attached'. See attachments to the letter from QCS to the Ombudsman, 5 May 2014.

147 Letter from QCS to the Ombudsman, 5 May 2014, stated: '(t)his Self Assessment was co-ordinated by the former Systems Assurance and Compliance area of the Custodial Operations Directorate'.

148 Letter from QCS to the Ombudsman, 5 May 2014.

149 Systems Assurance and Compliance Quarterly Report dated July 2011, 'Procedural Review: Search Prisoners and Corrective Services Facilities', provided under letter from QCS to the Ombudsman, 5 May 2014.

the self-assessment reviews, has in place a comprehensive process for dealing with these types of matters.¹⁵⁰

7.3 Oversight by the Chief Inspector's Office

The Chief Inspector's Office is part of QCS, but its role is to provide independent scrutiny of correctional centres' compliance with legislation and QCS practices and treatment of prisoners.¹⁵¹ The Chief Inspector is authorised under the Act to undertake inspections and reviews of the operations of correctional centres (as well as probation and parole offices).¹⁵² Inspections of correctional centres in Queensland were historically conducted by the Chief Inspector's Office approximately every three years. These inspection visits take several days and involve a team of experienced personnel who assess correctional centres against a range of factors set out in QCS' *Healthy Prisons Handbook*. In relation to strip searches, the *Healthy Prisons Handbook*¹⁵³ requires the Chief Inspector's Office to look for confirmation that strip searches are conducted in accordance with procedure and policy around searches, to ask prisoners for complaints about strip searches and to check that strip searches are authorised, logged and regularly checked.¹⁵⁴

In 2010, the Chief Inspector inspected the Centre. The Chief Inspector's report noted that:

... On reception, the prisoners are required to participate in a search requiring the removal of clothing. However during the period of inspection no prisoners were received into the centre so this process could not be observed. Searches requiring the removal of clothing for drug detection testing were conducted in accordance with the Agency's policies and procedures.¹⁵⁵

Given the three-year gap between inspections, the ability of the Chief Inspector to have identified the issues with the S8 strip search practice is limited.

Official visitors

The final aspect of Queensland's oversight regime for correctional centres that may have identified the issues raised in this report is the Official Visitors program, overseen by the Chief Inspector. Official Visitors make regular visits to correctional centres and their primary role is to hear, investigate and resolve prisoners' complaints. They are appointed by the Director-General of DJAG under the Act but must act independently of correctional centres.¹⁵⁶ The Chief Inspector advised that his office did not receive any complaints from prisoners in relation to strip searches during the period the S8 strip search practice was implemented.¹⁵⁷

7.4 Findings about adequacy of oversight regimes of prisons in Queensland

I am concerned that a strip search practice, which was neither authorised under the Act nor reasonable in the circumstances, continued for such a long period of time and only ceased after involvement by the Ombudsman's Office. I have outlined the detrimental impacts that such searches may have on female prisoners and the need to ensure that searches occur only if lawfully approved and only where necessary. I have found that it is possible that some of these prisoners may have been subject to up to 1,000 such searches when receiving S8 medication. Neither the Centre's internal oversight processes nor QCS external mechanisms were equipped to identify this as a problem.

The failure of the Centre and QCS' oversight mechanisms to identify an unlawful and unreasonable practice is concerning.

150 Letter from QCS to the Ombudsman, 5 May 2014.

151 QCS, *Office of the Chief Inspector*, viewed 10 June 2014, undated, accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/Chief%20Inspector.pdf

152 *ibid.*

153 *ibid.*

154 QCS, *Healthy Prisons Handbook Version 1*, November 2007, pp.22, 42, 67, viewed 10 June 2014.

155 Office of the Chief Inspector, *Full Announced Inspection of Townsville Women's Correctional Centre – 2010*, 2010, p.44.

156 QCS, *Official Visitors*, Department of Justice and Attorney-General, Queensland, 14 October 2010, viewed 10 June 2014, accessed at www.correctiveservices.qld.gov.au/Resources/Visitors/Official_Visitor/index.shtml; QCS, *Queensland Corrective Services – An Overview*, Department of Justice and Attorney-General, Queensland, December 2007, viewed 10 June 2014, accessed at http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/QCS.pdf.

157 Email from the Office of the Chief Inspector to the Ombudsman, 12 June 2014.

Therefore, I form the following opinion and make the following recommendation:

Opinion 3

QCS does not have sufficient oversight mechanisms in place to ensure that all strip searches undertaken at correctional centres are appropriately authorised and reasonable in the circumstances, and this is unreasonable administrative action within the meaning of s.49(2)(b) of the Ombudsman Act.

DJAG response:

In his response to the proposed report, the Director-General accepted my opinion and advised:

I am particularly concerned by the lack of dignity afforded to the prisoners involved in this process and accept your opinion that QCS did not have sufficient oversight mechanisms in place to ensure all searches requiring the removal of clothes were [sic] undertaken at correctional centres were appropriately authorised and reasonable. I note once the Acting General Manager was advised by investigators that this unlawful and unreasonable search procedure was occurring, it was ceased.

I wish to formally note QCS has recently increased the operational capacity of the Office of the Chief Inspector, to provide greater resources for investigation into the systemic operations of Queensland's correctional centres and broader operations.

Accordingly, with respect to the concerns raised in your investigation at 7.3, I advised the Office of the Chief Inspector is to commence a Healthy Prisons Inspection of the Townsville Correctional Complex, to examine all aspects of custodial operations and male and female prisoner management at the Complex.

Recommendation 4

The Director-General review the current oversight mechanisms (at QCS and correctional centre level) to ensure that strip searches undertaken at all correctional centres are appropriately authorised and reasonable in the circumstances.

DJAG response:

In his response to the proposed report, the Director-General accepted recommendation 4 and advised:

In October 2014, QCS (Statewide Operations) will be issuing a self-assessment to be conducted at all centres in relation to removal of clothing searches. It is expected that the outcomes of the self-assessment will be finalised in November 2014.

Following the finalisation of the self-assessment, consideration will be given to any amendments which may be required to relevant Practice Directives, or whether any further attention is necessary.

Chapter 8: Conclusion

The failure of the Centre and QCS' oversight mechanisms to identify an unlawful and unreasonable practice occurring over a 10-month period is concerning.

The Act recognises the need to respect prisoners' dignity¹⁵⁸ and that every member of society has certain basic human entitlements, and that a prisoner's entitlements, other than those that are necessarily diminished because of imprisonment, should be safeguarded.¹⁵⁹ Prisoners have limited means to advocate for themselves about breaches of their rights and issues that impact on their dignity, such as the S8 strip search practice. In light of this vulnerability, it is important that QCS meets the duty of care owed to prisoners through proper monitoring and oversight of correctional centre practices. As this investigation demonstrates, practices that have the potential to impact on the dignity of prisoners require particularly close attention and in my view warrant frequent refresher training for correctional officers.

It is encouraging that DJAG has acted swiftly to address the issues raised in this report, including increasing the operational capacity of the Office of the Chief Inspector. I intend to monitor the implementation of my recommendations in the coming months.

158 Section 3(3)(a), Corrective Services Act.

159 Section 3(2), Corrective Services Act.

Appendix 1 The Act and the Regulation: Requirements during strip searches

Corrective Services Act 2006

38 Requirements for search requiring the removal of clothing

- (1) A search requiring the removal of clothing of a prisoner must be carried out by at least 2 corrective services officers, but by no more officers than are reasonably necessary to carry out the search.
- (2) Each corrective services officer carrying out the search must be of the same sex as the prisoner.
- (3) Before carrying out the search, one of the corrective services officers must tell the prisoner—
 - (a) that the prisoner will be required to remove the prisoner's clothing during the search; and
 - (b) why it is necessary to remove the clothing.
- (4) A corrective services officer carrying out the search—
 - (a) must ensure, as far as reasonably practicable, that the way in which the prisoner is searched causes minimal embarrassment to the prisoner; and
 - (b) must take reasonable care to protect the prisoner's dignity; and
 - (c) must carry out the search as quickly as reasonably practicable; and
 - (d) must allow the prisoner to dress as soon as the search is finished.
- (5) A corrective services officer carrying out the search must, if reasonably practicable, give the prisoner the opportunity to remain partly clothed during the search, including, for example, by allowing the prisoner to dress his or her upper body before being required to remove clothing from the lower part of the body.
- (6) If a corrective services officer seizes clothing because of the search, the officer must ensure the prisoner is left with, or given, reasonably appropriate clothing.
- (7) A regulation may prescribe other requirements and procedures for ensuring the effective carrying out of searches requiring the removal of clothing of prisoners.

40 Register of searches

- (1) The chief executive must establish a register, for each corrective services facility, recording the details of each search carried out at the facility requiring the removal of clothing, and each body search, of a prisoner.
- (2) The details must include the following—
 - (a) the reason for the search;
 - (b) the names of the persons present during the search;
 - (c) details of anything seized from the prisoner.
- (3) The chief executive must make each register available for inspection by an official visitor.

Corrective Services Regulation 2006

10 Requirements for searches requiring the removal of clothing—Act, s 38(7)

- (1) A search requiring the removal of clothing of a prisoner must not be carried out in the presence of anyone who is not carrying out the search.
- (2) Subsection (3) applies if a video camera or other device (monitoring device) monitors the area where the prisoner is searched and a person viewing the image produced by the monitoring device is not a corrective services officer of the same sex as the prisoner.
- (3) A corrective services officer carrying out the search must—
 - (a) ensure either or both of the following are turned off while the search is carried out—
 - (i) the device on which the image is produced;
 - (ii) the monitoring device; or

- (b) carry out the search out of view of the monitoring device.
- (4) A corrective services officer carrying out the search may require the prisoner to do either or both of the following—
 - (a) hold his or her arms in the air;
 - (b) stand with his or her legs apart.
- (5) A failure to comply with a requirement under this section in relation to a search does not invalidate the carrying out of the search.

Appendix 2 The Act: Circumstances when strip searches may be undertaken

Corrective Services Act 2006

35 Search requiring the removal of clothing of prisoners on chief executive's direction

- (1) The chief executive may give a written direction to a corrective services officer for the carrying out of a search requiring the removal of clothing of prisoners as stated in the direction, including, for example, at the times stated in the direction.
- (2) The search must be carried out as required under the direction.
- (3) However, a direction under subsection (1) does not apply to a particular prisoner if the chief executive reasonably considers it unnecessary for the search to be carried out on the prisoner because of the prisoner's exceptional circumstances.

Example for subsection (3)—

A direction requires a search requiring the removal of clothing of a prisoner to be carried out when a prisoner enters a corrective services facility. A pregnant prisoner returns to the facility from an escorted antenatal visit and the corrective services officer who escorted the prisoner advises that the prisoner had no likely opportunity to obtain a prohibited thing while on the visit. The chief executive may consider it unnecessary for the search to be carried out on the prisoner.

- (4) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

36 Search requiring the removal of clothing of prisoners on chief executive's order—generally

- (1) The chief executive may order a search requiring the removal of clothing of 1 or more prisoners if the chief executive is satisfied the search is necessary for either or both of the following—
 - (a) the security or good order of the corrective services facility;
 - (b) the safe custody and welfare of prisoners at the facility.

Example—

A knife is missing from the kitchen of a corrective services facility. The chief executive may be satisfied that a search requiring the removal of clothing of each prisoner who worked in the kitchen that day is necessary for the security or good order of the facility or for the safe custody and welfare of prisoners at the facility.

- (2) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

37 Search requiring the removal of clothing on reasonable suspicion

- (1) The chief executive may order a search requiring the removal of clothing of a prisoner if the chief executive reasonably suspects the prisoner has a prohibited thing concealed on the prisoner's person.
- (2) A search requiring the removal of clothing under this section may be preceded by another less intrusive search.

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