



PO Mr RICE?

CA Thank you, Commissioner. I call Elaine PEARSON. Ms PEARSON will be represented by a solicitor, I understand.

PO Thank you.

10 Ms PEARSON, do you take an oath or would you prefer an affirmation?

W Either is fine.

PO Use the oath, I think.

HRO Could you please take the Bible in your right hand and repeat after me.

W The evidence which I shall give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help me God.

20 PO Would you just announce your appearance for the record, please?

SN May it please the Commission, my name is NEAN, initial S. I am a solicitor at Norton Rose Fulbright. I appear as the legal representative for Ms PEARSON.

PO Thank you. Yes, Mr RICE.

CA Thank you. Is your name Elaine PEARSON?

30 W Yes, it is.

CA You are the Australian Director of Human Rights Watch Australia; is that correct?

W That's right.

CA Have you been given a notice to appear at the inquiry today?

W I have indeed.

40 CA Can I show you a copy of that.

W Yes. I have a copy of it. Yes, that's it.

CA Is that a copy of your attendance notice?

W It is.

50 CA For how long have you occupied the position of Australian Director of - I'll call it HRW for short?

W Sure. Almost five years now.

CA Before that?

W Before that, I worked for Human Rights Watch in New York, I was the

Deputy Director of the Asia division for five years.

CA So you're a long-term officer of that organisation?

W I am.

CA Could you just give an overview of Human Rights Watch's work internationally?

10 W Yes. Human Rights Watch is an international organisation. We investigate human rights abuses all around the world, in some 90 countries. We conduct fact-finding investigations. We speak to victims. We speak to witnesses. We gather evidence and we publish that information in reports. We do that across a range of human rights violations.

CA What about your content as Australian Director, the content of that role?

20 W Our work in Australia is a mixture of conducting research and investigations like this. We've done so with regard to refugee rights, also with regard to people with disabilities in prisons. However, we also do a lot of advocacy on foreign policy issues. So my work is a range of - it's a mix of supporting the research, but also conducting advocacy across a range of issues that we're working on globally.

CA You have a law degree, am I right?

W I do.

30 CA From Murdoch University?

W That's right.

CA And Arts also from that university?

W Yes.

CA You have a Masters degree in Public Policy from Princeton; is that correct?

40 W Yes, I do.

CA Do you involve yourself, as Director, in the investigation and reporting of the various kinds of issues you've mentioned?

50 W From time to time. I have led investigations twice that we've done on Manus Island with regard to refugees. However, with regard to people with disabilities, we often will invite a researcher that has particular technical experience in doing that research, and they will take the lead on that project. With regard to the disabilities project, while I participated in some of the interviews and prison visits, I was not the lead researcher or author of the report.

CA You're aware that the inquiry is interested in the work of Human Rights Watch in the production of that report on abuse and neglect of prisoners with disabilities in Australia?

- W I am, yes.
- CA Could I just show you, then, a copy of that.
- W Yes, that's our report.
- CA Could you just confirm that's a copy of the HRW report that I mentioned?
- 10 W Yes, that's a copy of our report.
- CA I tender that.
- PO Mr RICE, I'll just have marked the attendance notice as exhibit 48.
- ADMITTED AND MARKED EXHIBIT 48
- PO And the report as exhibit 49.
- 20 ADMITTED AND MARKED EXHIBIT 49
- CA Thank you. Could I start by asking you something about the methodology of the report. There is some description of that from about page 10, and feel free to refer to it, if you want.
- W Great.
- CA But perhaps you might just give us an overview of the level of effort and the method behind its production?
- 30 W Yes. This was based on research that was done from September 2016 until January of this year. We conducted research across Western Australia, Queensland and New South Wales. We visited 14 prisons in WA and Queensland. We interviewed 275 people for this report. This was a mixture of prisoners who were currently in prison and who had been recently released, prison officials, guards, psychologists, counsellors, social workers, government officials, as well as lawyers and NGOs providing support to people in prison.
- 40 Of those 275 interviews, 136 were with prisoners themselves across Queensland and WA, and much of those interviews took place within prisons, so corrective services did provide very good cooperation to Human Rights Watch in order to visit these prisons. All of those interviews were done confidentially and prisoners were given an opportunity whether or not they wished to participate in the interview.
- CA For a project of that size, was it done by an individual or more than one, can you explain?
- 50 W Yes. It was led by a researcher in our disability rights division. Her name is Kriti SHARMA. She has led similar investigations in other parts of the world - India, Indonesia. She has supported work on this issue in France, and now in Australia. It was supported by myself, so I accompanied her to some of the prisons in WA and Queensland, and by a third staff member in our Australia office.

- CA In the selection of people to be interviewed, there's 275 across a number of categories-
- W Yes.
- CA -how did you go about selecting those who were to be interviewed? Was that targeted in some way? Can you explain the method behind that interviewee selection?
- 10 W For the prisoners that we interviewed or more generally?
- CA Really in all categories.
- W Okay.
- CA Various things underlie the integrity of the report. That's why I'm asking you about the method behind it.
- 20 W Sure.
- CA I just want to understand on what basis you selected the category of people and the extent to which they were targeted.
- W Sure. We were particularly interested in interviewing prisoners with disabilities. These included people with physical disabilities, sensory disability, cognitive impairments, intellectual disability, as well as mental health conditions. When we entered prison, often we would take a tour of the facility. In some cases, we were able to identify people during the course of that tour who we would select for interview. In other cases, prison staff also identified individuals that they felt would be worthwhile for us to interview.
- 30
- Also in the course of doing this research in a period of days, prisoners would then identify other prisoners who would be suitable for us to interview. So it was really a mixture in terms of how we identified the prisoners to be interviewed for this report.
- CA The target presumably was to identify those who had or appeared to have some form of disability?
- 40 W That's right.
- CA But was there any targeting beyond that?
- W The targeting was to interview prisoners with disabilities. That was the targeting. We were quite clear that we wanted to interview those that prison staff had identified for us, but we also wanted to go beyond that, so often we would identify people based on some of the existing interviews that we'd had with other prisoners, or people that we identified ourselves who had disabilities that were quite easily identifiable, that we could see.
- 50
- CA What was the catalyst for this undertaking?
- W We undertook this research because we felt this is a really hidden population. Despite the fact that according to Australian Government

statistics more than half the prison population has a disability, if you include mental health conditions, our prisons really are not equipped or set up to provide support to prisoners with disabilities. This was something that we had discussed with a number of partner organisations as an issue that was worth further research.

10 We had also done similar investigations in the United States and in France, also looking at the situation of people with disabilities inside prisons. For Human Rights Watch, it was a way of extending the work that we'd done in other countries and examining what is the situation in Australia, and for each three countries, the issues are somewhat different.

CA The other categories of interviewees beyond prisoners - staff, mental health professionals, lawyers, and so forth - how were they identified to be interviewed?

20 W These were all identified generally by our researcher who led the research. Some of these interviews were conducted inside the prisons, so we would sometimes have a list of people that we would like to speak to working in specific departments where we felt they would be most likely to come into contact with prisoners with disabilities. So in particular health staff providing support, social workers, people working in units that work with prisoners who have special needs, and so on.

30 In addition, our researcher identified people largely also through talking to groups that provide support and assistance to prisoners on a regular basis, so through talking to a number of these service providers, that usually led to additional interviews, with lawyers, with other support staff, and then with government officials.

CA What was the focus? Was it to identify difficulties and disadvantages that people with disability might suffer, or did it extend beyond that to what might be done about it?

40 W It was definitely both. I think, first of all, we wanted to understand what are the issues faced by prisoners with disabilities in Australian prisons, and then we were also interested in seeing what are some of - our report has a series of recommendations, so we also try and address the way in which the situation could be improved. We certainly highlight the problems, but we also tried to highlight instances of good practice and recommendations of how these problems could be best solved.

CA Interviewees are quoted heavily in the report, as I suppose might be expected. Did you have regard also to prison records that might bear upon some of the stories you were being told?

50 W Not to my knowledge. I don't think we had access to prison records. In some cases, we had access to legal records or court proceedings, but we needed obviously to get consent of prisoners before we could access that information.

CA The report talks about having made every effort to corroborate claims, of which there are many in the report. Can you explain what efforts are made to find support, if there was support, for the kinds of things that are referred to?

- W Yes. I mean, if we uncovered particularly a case - for instance, a case of violence, we would try to corroborate that with information from other witnesses who may have been present or also, indeed, if there were other corroboration from staff who may be familiar with that particular incident.
- CA The report mentions that one of the challenges, or a key challenge, as it is described, was to identify interviewees with disabilities. In terms of cognitive disability, or worse, were you by any method able to be clear that persons you were interviewing did have disabilities? I mean, what was the criteria to identify satisfactorily that a person did suffer such a disability?
- 10
- W We generally would ask people if they had a disability, but for people with intellectual disabilities, cognitive impairments, sometimes they would answer, "I don't know", or they would answer "No". However, we would then ask follow-up questions, "Are you on any medication? Have you ever been institutionalised?" We would ask a series of follow-up questions that would help us ascertain. We would ask them exactly what medication they were on, and so on. Sometimes that information was supported by information that we gathered from other sources, by speaking to other staff in the prison, who were familiar with those cases.
- 20
- CA The report strongly references those with either a cognitive disability or psychosocial disability, perhaps, less so, those with physical disability. Do you accept that?
- W Yes, I would say probably the majority of the interviewees had psychosocial disabilities. There were a number of cases of people with physical or sensory disabilities, but they were in the minority.
- 30
- CA Was it the mental impairment that was of particular focus?
- W Yes, a lot of people had cognitive impairments, acquired brain injuries or other intellectual disabilities.
- CA Was that known to be a focus when you set out?
- W No, we didn't. We didn't set out to specifically look at people with cognitive impairments. However, the reality is that for a lot of prisoners we interviewed, that was their disability.
- 40
- CA Did you find persons with some, I'll call it mental disability as a generic description-
- W Sure.
- CA -who you were satisfied had not been known as such within the prison, that is to say, by the prison management?
- 50 W There were instances where people's disability initially had not been diagnosed but had only come to the attention of prison authorities later. Particularly in the case of Aboriginal and Torres Strait Islander prisoners with mental health conditions, often they're quite reluctant to say that they have a mental health condition or a cognitive impairment, so these were often under-reported.

- CA How do you ascertain, given their reluctance or inability to self-report?
- W Yes. In these cases often what had happened was while they were initially not diagnosed, by the time that we had interviewed them, they were on medication, they'd been talking to mental health staff on a regular basis, and often that's how they were identified to us as people with cognitive impairments.
- 10 CA From very early, in fact page 1 as I look at it of the report, the reporters identify that almost 50 per cent of people entering prison suffer from disability, particularly cognitive or psychosocial disability. How would HRW support that figure, because it colours the whole report, doesn't it?
- W Well, that's an Australian Government figure. Can I just refer to my notes?
- CA By all means. For example, on page 1, I notice it's not referenced. There's further mention of that figure on page 18. It appears not to be referenced, either, if I read it correctly.
- 20 W It's an Australian Government figure from the Australian Institute of Health and Welfare, and the figure was 49 per cent of prisoners have a psychosocial disability, or are identified with a psychosocial disability, based on that report which came out in 2015.
- CA Just have a look, if you don't mind, at page 18.
- W Sure.
- 30 CA Do you see the first paragraph there, like on page 1, makes mention of that figure again?
- W Yes.
- CA There is a footnote 24.
- W Oh, yes, that's the footnote.
- 40 CA If we were to drill down into that, would we find that figure supported by one or more of those references?
- W Yes. That is the report that I mentioned, the Australian Institute of Health and Welfare, "Mental Health of Prison Entrants", a report that came out in 2015.
- CA So it's not a figure that derives from your research project, except insofar as it is gleaned from other sources?
- 50 W Yes, because we didn't - I mean, in our report, it was more qualitative interviews that were conducted. We didn't have the capacity to do sort of a broad-
- CA But its authenticity is a matter relevant to the report, do you agree?
- W Yes, it's a government report.

CA The risks, I think, are summarised from page 3 onwards. If you wouldn't mind, you might just give us your overview of those categories of risk that were referred to in the report?

W Sure. Yes. In terms of the findings of the report, we found that prisoners with disability are particularly vulnerable to abuse in prison, whether that is by other prisoners or, in some cases, it's violence also perpetrated by officers. This could be sexual violence. It also can be physical violence, beatings, and so on. We found that these prisoners are more likely to be bullied by other prisoners. They're more vulnerable because they're seen as easy targets, so they may be bullied for their possessions, food, belongings; in some cases medication.

10 We also found that prisoners with disability, in some cases, particularly prisoners who have a physical disability, will be provided a carer, which will be another prisoner. This prison-carer model was used in Queensland and was something that we found to be quite problematic. In addition, we were quite concerned about the disproportionate use of solitary confinement for prisoners with disabilities, because we found that holding them in conditions of solitary confinement, in some cases, or in many cases, often exacerbates their mental health conditions.

20 Those are, I guess, some of the key findings. There was also the lack of a proper screening mechanism to identify prisoners with disability upon entry into prison, and then the lack of adequate and appropriate services and support and a lack of trained staff to deal with prisoners with disabilities.

CA In terms of the different kinds of abuse - sexual violence, physical violence, bullying, and so on - what did you find were the barriers to reporting that kind of treatment of the prisoners?

W Prisoners with disabilities, they already feel very vulnerable in prison, and if they experience this kind of abuse, if they're beaten by other prisoners, if they are raped, often they're very fearful of what will be the repercussions, and I guess the golden rule in prison is that you don't report to the officers what happens. For a lot of these prisoners, they don't feel comfortable to report those claims. They have limited options to also report, I guess, to independent investigators, because it's quite rare for groups like ours to be able to enter prison and to interview them.

CA The researchers went to primarily two states - Queensland and Western Australia - and to a number of prisons within each. Was there any differentiation in terms of the findings that you made as between states, or particular centres within states?

W With regard to the physical and sexual violence, I would say that was really across the board in nearly every prison that we visited. There was no big difference. The prison-carer model that I referred to, that we found quite problematic, was something that was only used in Queensland, not in Western Australia. In solitary confinement, again we found issues with this in all the prisons, but I would say probably with the exception of the low-security prison, I think it's Helana Jones.

CA In terms of non-reporting, in addition to fear of reprisal, the report makes mention of what might be described as a credibility gap. Did you find

that on a recurring basis?

W We did find that, that repeatedly prisoners were worried that they wouldn't be believed or, in some cases where they had reported incidences, they said they were not believed, particularly if they have an intellectual disability, because other prisoners were able to simply claim that what had happened wasn't true. This was also a challenge, which prevented, I guess, prisoners from taking forward cases of rape and assault that had occurred inside prison.

10

CA In terms of ATSI and non-ATSI prisoners, was there any differentiation in the kinds of reports that you got, or was the mistreatment that you have described prevalent to an equal degree in both categories?

W We documented, yes, similar cases of physical and sexual violence against both ATSI and non-ATSI prisoners. I guess the difference for the ATSI prisoners was that, in some cases, there was also an element of racial discrimination. So while they were being beaten, they were also being told, you know, that they were black dogs or, you know, there were other sort of racial taunts that were being called out to them as they were being beaten, but, no, I mean, I think in a number of these cases, it's similar issues as regards solitary confinement. I would say for the ATSI prisoners, it was particularly debilitating for a lot of them to be held in solitary confinement. That was one thing that we noticed.

20

CA The racial discrimination, I think the word "persistent" may have been applied to that. To what extent did you find that it was persistent?

W It was persistent. It was really across the board in pretty much all the prisons that we visited in Queensland and also in Western Australia. It was very prevalent.

30

CA The kind of discrimination that is referred to, was that at the hands of prisoners or staff?

W It was both, both staff and prisoners, making derogatory comments, offensive comments. Also in some cases it was things - like, ATSI prisoners in particular would be reluctant to come forward and get services because of certain racial stereotypes. For instance, they wouldn't come forward and ask for medication because they were being repeatedly told, "Oh, you're making it up. You just want to get drugs, but you don't have a serious issue." So we found that particularly amongst the ATSI prisoners, that was an issue where, even if they had an illness, they were unwilling to come forward for medical assistance in a number of cases.

40

CA The prison-carer arrangement, I think you mentioned earlier that was a feature that was peculiar to Queensland?

W Yes.

50

CA What did you find? First of all, how did you find that system operated; then I'll ask you about the quality of it.

W The prison-carer system, I guess, is a bit of a response to the fact that there's not enough staff in prisons to care for prisoners who have special needs.

- CA Is that an opinion?
- W It's an opinion, but, I mean, it's informed on the basis of interviews that we did with staff in prisons.
- CA Okay.
- 10 W So it becomes a job inside prison for which prisoners are paid to provide support and assistance to prisoners with special needs, with disabilities.
- CA Is that on a volunteer basis or how are the carers selected, did you find?
- W They volunteer, I guess, for the job. But the job is quite competitive, so they are selected, they are recruited, and then that becomes their job for which they are paid in prison.
- CA And what is the job?
- 20 W The job is to provide assistance to a prisoner with disabilities. The exact nature of it will depend on the disability, but it often includes things like assistance in bathing, assistance in taking people to the toilet. It basically puts that prisoner really in quite a situation of close proximity and dependence upon the person who is taking care of them.
- CA You referred to it earlier I think as being problematic.
- W Yes. We find this extremely problematic.
- 30 CA In what ways?
- W It puts the prisoner with the disability or with the special needs in a position of extreme vulnerability and dependence on the other prisoner.
- 40 We were particularly concerned to find out from one of the interviews that we had conducted with staff in a prison that six out of eight of the prison-carers in one prison had a history of sexual offences. So we think that putting someone with a history of sexual offences in charge of another prisoner that has a disability is creating a situation where, of course, there is a likelihood, if not a grave risk, that there will be further violence or sexual violence.
- In one case, we discovered in our research a prisoner had actually been systematically and repeatedly raped by the prison-carer who was taking care of them, and that was only uncovered because of a random cell search, where blood and faeces were discovered on the bed sheets. Now, that prisoner with the disability had been too terrified to speak out and so had never said anything, and yet they had been repeatedly raped.
- 50 CA Doubling-up is reasonably common now in Queensland. Did you find that?
- W Yes, we found it extremely common. In all the prisons, there was an issue with overcrowding.
- CA In the carer and disabled person scenario, were they likely to be doubled

up?

W As I understand it, in some cases, they were doubled up. I don't think in every case, but in many cases, because obviously if the person has to go to the toilet in the middle of the night, there's long periods of lockdown, it makes sense for that person, I guess, to be in the cell. But it also puts them at an extreme amount of vulnerability.

10 CA What kinds of abuses of that carer system were unearthed in the course of the interviews?

W In the course of the interviews, we uncovered one case where a prisoner was repeatedly raped by the carer that was taking care of them, and as I mentioned, we found the fact that six out of eight carers in one prison had a history of sexual offences to be extremely troubling.

20 CA In the section dealing with sexual and physical violence, page 30, the report reads in terms that some women with disabilities in prison report experiencing sexual violence perpetrated by other prisoners or prison officers, with little or no accountability. What was the lack of accountability?

W I think this was cases where women had been assaulted by other prisoners or, in some cases, groped, unwanted touching; sexual harassment also by officers. Often those cases went unreported because they were too scared to speak up about it, or they felt that they wouldn't be believed, and they were worried about reprisals.

30 CA So that such accountability mechanisms as may exist were not triggered by a failure to report; is that the typical scenario?

W Exactly. Yes.

CA Just in terms of the data, at least the report notes 32 documented cases of sexual violence and 41 of physical violence. Are they separate categories?

40 W Yes. But some prisoners may have faced both sexual violence and physical violence.

CA So there might be some overlap between those two categories?

W Yes. And I should say, I mean, I feel like those numbers are really a bare minimum, because a lot of prisoners who we spoke to, I think, were reluctant to talk about their experiences with us. I think this issue of under-reporting means that there are certainly a lot more cases there. These are just the ones that we found to be credible and that we included in the report where people spoke to us.

50 CA When they're referred to as documented, does that convey some kind of threshold of stringency to accept the claims?

W Yes.

CA Did you accept all self-reports as truth?

W No, we didn't.

CA How would the researchers discriminate?

W In some cases, if we didn't feel that the person was a credible - if we had some concerns, I guess, about the interview, we would ask additional follow-up questions to try and ascertain if the person was telling the truth. In some cases, we would try to gather information also from other sources. It might be from other prisoners or from prison staff. If we had questions about the veracity of the interview, we just left it out. There were some cases where it was just inconclusive, so we just did not want to include cases like that where we felt there was some concern about the credibility of the person.

CA When the report refers to documented cases, we can take it those are ones that were accepted?

W These are the ones that were accepted by Human Rights Watch.

20 CA With there likely to be some support beyond self-report?

W Yes.

CA On the subject of bullying and harassing, what kinds of consequences does that have for disabled people when that behaviour occurs that they are a victim of?

W I guess often for prisoners with disabilities, they may be bullied by other prisoners because they're seen as easy targets, so they may have their possessions taken away from them. Often this is cigarettes. It's food. In some cases it's medication. We had a number of cases where prisoners told us how they were forced to give up their medication, to spit it out, or in some cases regurgitate it. If they failed to comply with the people who were bullying them, often the bullying would escalate and it would become violent. We had repeated cases of prisoners with disabilities who were bashed, kicked and mistreated by other prisoners, often the person who was sharing the cell with them, but not only that.

40 CA The conditions of solitary confinement, to use the term in the report, were they similar across the various centres and across states?

W I guess there's different types of units in which prisoners were held in solitary confinement. There were the maximum-security units, of which I think there's only two in Queensland, where people are held. This is where people are held for three to six months on a rolling basis. They can be held there for months. They can be held there for many years, with very little human interaction at all.

50 Then there's detention units or punishment units where people are sent for infractions or breaking the rules of the prison, often for fights or disobedience or, in some cases, violent incidents.

Then there's also the safety or crisis care units. These are units where people are sent if there's a risk of self-harm or suicide or concerns, I guess, about the mental health and wellbeing of the prisoner.

In each case, we considered it to be solitary confinement if they were held for 22 hours or more in these units, without meaningful human interaction.

CA To what degree were people with disabilities represented in these various forms of segregated accommodation?

10 W Prisoners with disabilities are disproportionately represented in these units, particularly in the detention units and the safety units. We did not have access to visit the maximum-security units, although we had wanted to. Based on evidence that we collected from other sources, I think it was 15 out of 22 cases of people in maximum-security units had psychosocial disabilities. Certainly there is a real concern that these units in particular are being used to house people with disabilities, especially psychosocial disabilities, even where those conditions may exacerbate their mental health condition.

20 CA The report refers to inadequate staff training. How was that conclusion reached?

W We spoke with the staff and the superintendents of all of the prisons that we visited. We asked many questions about the training, the level of training, that was provided. For many of the staff, they acknowledged that this was a gap and they wanted to have more training. Training was often provided on a once-off basis, and it certainly did not go, in our view, deep enough to provide them with the proper types of skills to handle different types of psychosocial disabilities that would give them the skills to de-escalate certain incidents without requiring, I guess, sending someone down the back or sending someone to a punishment unit.

30 CA The behaviours that can be manifested, would you accept, do raise a practical problem as to what's to be done? Can I take an example. A prisoner is displaying aberrant behaviour, self-harming, and/or threatening harm to others, thus disrupting the order of a unit.

W Yes.

CA It raises a practical question as to what is to be done.

40 W Yes.

CA How would you answer that?

W Yes, I mean, I totally acknowledge that and I think prison staff - it's very stressful and it can be very difficult dealing with these types of prisoners, because they can be more difficult, they can be more oppositional, they don't follow the rules, and they can be more likely to have altercations with other prisoners or, indeed, staff. We certainly agree that something needs to be done.

50 While we have called for an end to the use of solitary confinement for these types of prisoners in our report, we do not think that that means abolishing or doing away with detention units altogether. However, we would ask that there would be appropriate types of mental health services that are provided to these prisoners if they're held in those units and that there really needs to be more time out of cell and more meaningful human

interaction, and that is the problem; we feel that that is not happening right now in the prison system.

CA Again it comes back to perhaps a practical problem as to what's to happen with someone who may present, for example, as being in need of restraint and in need of segregation, where would such a person be put if it's not in a form of segregated accommodation?

10 W I think it's fine to put them in a detention unit or a crisis care unit for a short period of time. However, we would ask that that be accompanied by an appropriate level of care and mental health services.

20 Right now in those crisis care units, there is not adequate mental health support that is being provided. That was quite clear to me, even in the interviews that I conducted, in some of these units. I interviewed a prisoner, for example, who had lesions and bruises on his forehead from where he had been beating his head repeatedly against the wall. Now, I understand that those units are there to prevent people from taking further action from committing suicide or committing self-harm, but there is really not therapeutic interventions being made in that environment. Someone like that should really be in a forensic facility, but the problem is that there's a real lack of beds.

I think - well, from what I understand, the priority goes to people in the community, because there is a sense that people in prisons are already being cared for and there is accommodation, there are safety units or crisis care units. However, if someone is kept in those conditions for weeks or months, their mental health does not improve. In fact, it deteriorates.

30 CA Were you referring to a secure hospital environment?

W Yes, yes.

CA With mental health services support?

W Yes, that's right.

40 CA Under the heading of "Lack of adequate services and trained staff", the report refers on page 6 to staff responses to prisoners with disabilities are often experienced as punitive rather than supportive. Is that the conclusion there of the researchers?

W Yes. That is on the basis that for a lot of staff, they don't really distinguish between prisoners with disabilities, psychosocial disabilities, and regular prisoners. So if a prisoner is causing problems, the standard response, if they're breaking the rules of the prison, if they're violent, they are sent to a detention unit.

50 Our experience is that in some cases that can simply just exacerbate the mental health condition of the prisoner, rather than providing them a supportive environment that will actually help them address their mental health condition, which was the reason why they acted out in the first place.

CA Just getting back to these barriers to self-reporting, that is a barrier to really anything being done, isn't it?

- W It is.
- CA How could that be changed?
- W Getting staff properly trained, regular and proper staff training, on how to deal with prisoners with psychosocial disabilities I think is essential and is something that really needs to happen.
- 10 Secondly, I think ensuring that there is adequate mental health services that are provided, particularly to prisoners who are being housed in these solitary confinement units. What we find often is that instead - while there are daily checks on the prisoners often that are taken place by counsellors, it's often just a knock on the door and a standard question, "How are you feeling today? Are you having any suicidal thoughts?", and if the person doesn't want to talk, that's it. But really we are talking about providing a proper standard of mental health care to these prisoners in order to help address their disability.
- 20 CA To what depth did the researchers look into the availability of mental health services support, particularly in the segregated accommodation environment?
- W There is support that is provided, but certainly even from the conversations that we had with healthcare workers and staff, these units, in pretty much all the prisons that we visited, are overflowing. There's a real issue that these units are full and that they can't adequately provide an appropriate standard of care to the prisoners who are in these units, precisely because of the numbers. Again, I guess this all comes back to the overcrowding in prisons and the fact that the system is really dealing with a greater number of people. It's creating, then, an environment where there's more likelihood of fighting, of altercations, of violence, to take place, and so these units are really stretched, whether it's the detention units or the safety units, and there are not the adequate staff to deal with those numbers.
- 30
- CA Just on the subject generally of overcrowding, not only the use of segregated accommodation, did your researchers find any particular impact on the overcrowding, use of doubling-up, for example, on the disadvantages that people with disabilities already suffer?
- 40
- W As I said earlier, these prisoners with disabilities are more vulnerable to abuse by other prisoners. So when you place that person in a cell that's doubled up, or in some cases even three people to a cell, obviously it creates an environment where there's an increased likelihood that violence, physical violence or sexual violence, will occur, especially if it's someone with a cognitive impairment, an intellectual disability, they're spending longer periods under lockdown because of the overcrowding, so they're spending longer periods of time in cell, and I think this is one of the reasons why these abuses are happening.
- 50
- CA One of the recommendations made was that there be greater screening of persons who enter prison, to identify people with disabilities. Did the project find that there were people who were within the system who had not previously been identified, for example, as suffering some kind of cognitive impairment, or worse?

- W Yes, we did find that, that they weren't identified upon entry into prison. I mean, upon entry into prison, I think there is an attempt to try to capture people with disabilities, but it's largely based on self-identification. If the person doesn't self-identify as having a disability - and this is particularly an issue for Aboriginal and Torres Strait Islander prisoners, who don't even consider it a disability, sometimes they don't even have the word for "disability" in their local language - they will not admit it. Sometimes it's weeks or months later that the disability is identified.
- 10 CA If such a person, take an ATSI, for example - that's a particular area of difficulty, on what you've found - say a person has come through life to adulthood without a form of disability being recognised, gone through the criminal justice system to the point of sentence, similarly-
- W Yes.
- CA -in that scenario, is it asking too much of corrections to identify the person's real problem upon entry to a prison?
- 20 W I mean, I think it's in the interests of corrections to be able to identify them early on, really, because if they can identify them early on, they can provide them the right types of support that they need. They can provide them the right medication that they need. So it's actually then going to generate less issues down the track. It is difficult. Granted, it is quite difficult, but I think there needs to be a way to systematically screen people for disabilities, to have access also to health records, to look at the history of individuals, so that those people can be provided appropriate levels of care and support. I think that's the best way of protecting them from further problems once they're inside prison.
- 30 CA The rigours, such as they are, of the criminal justice system, representation by lawyers, availability of access to families, and so on, are they not throwing up recognition of the kinds of problems that individuals have by way of cognitive impairment, and so forth, in the gaols?
- W I think in some cases, yes. But we had other cases, I guess, where someone, you know, an ATSI person would have a hearing impairment. It wasn't total deafness, but for that person, they've just gotten by, and it was not diagnosed until well into their prison sentence that they actually had that issue. But on the outside also, they hadn't been getting the appropriate levels of support and care in the community. I think we do need to find ways to try to identify and screen for these disabilities. At the end of the day, I think it will make the prison system better.
- 40 W The fact is that more than half the prison population has a disability, including psychosocial disabilities. It's a big population that the prison system is trying to cope with, so it's about ensuring that the treatment adequately fits the profile of the person.
- 50 CA As part of this project, was there any investigation of the use of strip searching?
- W No, I don't think - we didn't look into the issue of strip searching.
- CA You didn't look at the frequency with which that occurred for prisoners

- who may be in detention?
- W Not to my knowledge, no.
- CA Or any particular consequences for prisoners with disabilities of a regime of strip searching?
- W Not that I'm aware, no.
- 10 CA Okay. That's the evidence, thanks, Commissioner.
- PO Thank you. Ms NEAN, do you have any questions for your client?
- SN No, thank you, Commissioner.
- PO Thank you. Mr MURDOCH?
- CM Thank you, Commissioner.
- 20 Ms PEARSON, in the course of the inquiries that were made prior to the report being finalised, I understand that you sought some additional information from the Commissioner for Corrective Services; is that right?
- W Yes, we did.
- CM You received a response from him via a letter from Commissioner MARTIN of 15 January 2018?
- W Yes.
- 30 CM I think in a couple of places in the report, there's a footnote referring to that, isn't there?
- W Yes.
- CM Could I show you a copy of a letter, please.
- W Yes.
- 40 CM Just have a look at that letter. Can you confirm that that's the letter to which I've taken you to and that appends Commissioner MARTIN's response?
- W Yes, that is the letter.
- CM I tender that.
- PO Exhibit 50.
- 50 ADMITTED AND MARKED EXHIBIT 50
- CM They are the only questions, thank you.
- PO Thank you. Mr SMITH?
- AS Nothing arising. No questions, Mr Commissioner.

PO And Mr RICE?

CA And nothing arising. Thank you.

PO Thank you. Thank you, Ms PEARSON, for coming. You are excused.

CA The next witness, I think, is scheduled after lunch, Commissioner.

10 PO Okay. We will adjourn, then, until 2 o'clock. Is that convenient?

CA Thank you.

PO 2 o'clock.

LUNCHEON ADJOURNMENT

END OF SESSION

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