

# **ombudsman** VICTORIAN

**The death of Mr Carl Williams at HM Barwon Prison  
- investigation into Corrections Victoria**

**April 2012**

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## Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into the death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria.



G E Brouwer

**OMBUDSMAN**

17 April 2012

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## CHRONOLOGY

The following is a chronology of key events regarding Corrections Victoria's management of Mr Carl Williams at Barwon Prison:

9 June 2004	Mr Williams received into Barwon Prison after being charged with conspiracy to murder.
October 2007	Mr Matthew Johnson moved to the Melaleuca Unit at Barwon Prison and noted by prison staff to be talking with Mr Williams and his father.
December 2007 – July 2008	Mr Williams and Mr Johnson noted to be interacting with each other intermittently while located in the Melaleuca Unit.
October – November 2008	Mr Williams elects to become a witness in relation to murder charges against a former police officer and another individual.
22 – 30 December 2008	Mr Williams removed from Barwon Prison by Victoria Police on an Administration of Justice Permit to assist with giving evidence as a witness.
6 January 2009	Email sent by Mr Rod Wise, Acting Commissioner Corrections Victoria to Ms Penny Armytage, Secretary of the Department of Justice, regarding the placement of Mr Johnson with Mr Williams.
20 January 2009	Decision made by Sentence Management Panel to approve the placement of Mr Williams, his father and Mr Johnson in the Melaleuca Unit.
23 January 2009	Mr Johnson moved to the Melaleuca Unit to be placed with Mr Williams and his father.

13 May 2009	Mr Williams, Mr George Williams and Mr Johnson moved to Unit One of the Acacia Unit.
20 June 2009	Mr George Williams released from Barwon Prison on parole.
29 July 2009	Mr Thomas Ivanovic moved into Unit One of the Acacia Unit with Mr Williams and Mr Johnson.
27 - 28 February 2010	Mr Williams removed from Barwon Prison by Victoria Police on an Administration of Justice Permit to assist with giving evidence as a witness.
19 April 2010	The death of Mr Williams.
29 September 2011	Mr Johnson convicted of the murder of Mr Williams.
8 December 2011	Mr Johnson is sentenced to a minimum of 32 years in prison for the murder of Mr Williams.

## EXECUTIVE SUMMARY

1. On Monday 19 April 2010 at 12.48 pm, Mr Carl Williams, a high profile prisoner being held in custody at the maximum security HM Barwon Prison Acacia Unit, was assaulted and killed. He was struck several times on the head by fellow prisoner, Mr Matthew Johnson, with a metal bar removed from the seat section of an exercise bike. The incident was captured on the prison's closed circuit television (CCTV) system.
2. Mr Johnson was subsequently charged with the murder of Mr Williams. He was found guilty in the Supreme Court on 29 September 2011, and later sentenced to a minimum of 32 years in prison.
3. Mr Williams' death raises important questions as to how it is possible that a high profile prisoner in Victoria's highest security prison unit could be killed with an unsecured metal pipe from an exercise bike, and that prison staff did not find out about the incident for some 27 minutes. This raises important concerns about the monitoring systems in place at Barwon Prison.

***Mr Williams' death raises important questions as to how it is possible that a high profile prisoner in Victoria's highest security prison unit could be killed with an unsecured metal pipe from an exercise bike, and that prison staff did not find out about the incident for some 27 minutes. This raises important concerns about the monitoring systems in place at Barwon Prison.***

4. In the aftermath of Mr Williams' murder, there was considerable public speculation about the circumstances of, and possible motives for, his killing.
5. Immediately following Mr Williams' murder, the Office of Correctional Services Review (OCSR), within the Department of Justice, commenced an administrative investigation into the incident. As the OCSR is a business unit within the Department of Justice and does not publicly report the findings of its investigations, I decided that it was in the public interest to conduct an investigation into Corrections Victoria's management of Mr Williams while in custody at Barwon Prison. I also examined the OCSR's investigation into issues arising from Mr Williams' death.
6. As a result of my investigation, I consider that Corrections Victoria failed in its statutory duty to ensure Mr Williams' safety. This case also highlights several shortcomings which need to be addressed by Corrections Victoria in its administration of Victoria's correctional system.
7. My investigation focused on correctional matters that I am empowered to investigate under the *Ombudsman Act 1973*.

8. The publication of my investigation report was delayed due to Mr Johnson's trial in September – November 2011.

## Placement decision – risk assessment

9. In December 2008, Mr Johnson formally requested that Corrections Victoria allow him to be accommodated with Mr Williams as they had formed a friendship. Mr Williams also wrote to Corrections Victoria requesting Mr Johnson be placed with him.
10. Corrections Victoria's Sentence Management Panel approved the placement of Mr Johnson with Mr Williams on 20 January 2009. In arriving at this decision, the Sentence Management Panel took into consideration support for the proposal received from:
- the Secretary of the Department of Justice
  - the Acting Commissioner Corrections Victoria and
  - a Detective Inspector, Victoria Police.
11. Earlier in January 2009, the Secretary, Ms Penny Armytage, and the then Acting Commissioner, Mr Rod Wise, had been consulted regarding the risks to Mr Williams' safety posed by Mr Johnson being placed with him.

### ***Corrections Victoria failed in its statutory duty to ensure Mr Williams' safety.***

12. In an email sent to Ms Armytage dated 6 January 2009, Mr Wise identified significant risks to Mr Williams' safety should Mr Williams and Mr Johnson be placed together, stating that 'there is little doubt that Johnson is capable of causing Williams harm if he were to find out the true nature of Williams' cooperation with Police'.
13. Mr Wise cited three reasons as to why Mr Johnson might want to harm Mr Williams:
- financial incentives – potentially offered by people against whom Mr Williams was giving evidence
  - an opportunity for Mr Johnson to enhance his reputation within the prison population
  - Mr Johnson was facing a [2007] murder charge, and any sentence for a second serious offence would run concurrently.
14. Notwithstanding these identified risks, Mr Wise and Ms Armytage supported the placement of Mr Johnson with Mr Williams. However, this was conditional on the basis the placement be carefully monitored. Both Mr Wise and Ms Armytage said at interview that Victoria Police's support for the placement of Mr Johnson with Mr Williams was an important factor in Corrections Victoria's decision-making.

15. Members of Victoria Police's Taskforce Petra<sup>1</sup> supported the proposed placement of Mr Johnson with Mr Williams. Mr Williams was a witness cooperating with police in relation to murder charges against a former police officer and another person. Mr Williams had requested that Mr Johnson be transferred to his unit, and had threatened to withdraw his testimony if this did not occur. Victoria Police wished to ensure Mr Williams' cooperation as a witness, and therefore that his wishes as regards his placement in prison be accommodated.
16. Victoria Police considered Mr Johnson's criminal history and noted that he was not aligned with any key members involved in Melbourne's then long-running gangland violence. They formed the view that Mr Johnson did not pose a threat to Mr Williams arising from any gangland allegiances and supported the proposed co-placement.
17. However, Victoria Police did not undertake a comprehensive risk assessment in relation to Mr Johnson and the potential harm he posed to Mr Williams. For example, Victoria Police did not fully consider Mr Johnson's conduct in prison. That was the responsibility of Corrections Victoria.
18. Victoria Police has since stated:

Victoria Police believe that this [the requirement to conduct a risk assessment] is a shared responsibility between Corrections Victoria and Victoria Police and recent government reforms in the area of custodial witnesses reflect this.

...

Victoria Police has now established a Committee which undertakes such duties in conjunction with Corrections Victoria and the Australian Federal Police – Interdepartment Custodial Witness Management Committee.
19. Mr Johnson was a leader of the notorious 'Prisoners of War' gang, a group of prisoners operating within Victoria's correctional system responsible for a series of violent assaults on prisoners and prison officers, with a hatred for police informers. Mr Johnson was known to Corrections Victoria to have participated in two serious assaults on fellow prisoners in the past, with one assault in retribution for a prisoner's cooperation with police.
20. It was this history to which Mr Wise referred in his email of 6 January 2009. The concerns raised there were substantial. As Acting Commissioner he should have exercised caution and not recommended that Mr Johnson could be placed with Mr Williams. In my view, the placement decision relied too much on: police advice; Mr Williams' perception of his own safety; and his wish to be accommodated with Mr Johnson. It gave too little weight to knowledge Corrections Victoria had about Mr Johnson that mitigated against the co-placement request.

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<sup>1</sup> A Victoria Police Taskforce established to investigate the murder of Mr and Mrs Terrence and Christine Hodson.

21. During a pre-sentencing hearing following the murder conviction of Mr Johnson, Justice Lex Lasry commented that it was ‘breathtaking’<sup>2</sup> that Corrections Victoria had placed Mr Johnson with Mr Williams.

***The placement decision relied too much on: police advice; Mr Williams’ perceptions of his own safety; and his wish to be accommodated with Mr Johnson. It gave too little weight to knowledge Corrections Victoria had about Mr Johnson.***

22. While Mr Williams was not killed by Mr Johnson until some 15 months after they were placed together, this is no excuse for substituting Victoria Police’s advice for Corrections Victoria’s own responsibility to reach an informed decision about the risk Mr Johnson posed to Mr Williams. The statutory duty of Corrections Victoria was to protect Mr Williams. I consider that Corrections Victoria failed in its objective to protect Mr Williams from real and appreciable danger both in January 2009 and subsequently.

## **Monitoring of the placement decision**

23. Mr Wise and Ms Armytage in their emails dated 6 January 2009 gave clear instructions that the co-placement should be monitored and reviewed by Corrections Victoria.
24. Monitoring of the placement was conducted by a Sentence Management Panel – the Major Offenders Review Panel. The placement was reviewed monthly, quarterly and annually, and where Mr Williams was interviewed he expressed satisfaction with the placement. The Major Offenders Review Panel also had regular contact with Taskforce Petra. Mr Williams’ placement with Mr Johnson was continued.

***A number of events occurred between January 2009 and April 2010 which indicated that the dynamic between Mr Williams and Mr Johnson was changing.***

25. The panel thus relied on information from Victoria Police and Mr Williams himself, and failed to give proper weight to other significant factors, some of which were misjudged and others not even conveyed to the panel. A number of events occurred between January 2009 and April 2010, intensifying in the period December 2009 – February 2010, which indicated that the dynamic between Mr Williams and Mr Johnson was changing. Yet Corrections Victoria’s monitoring of the placement either failed to identify the warning signals or, where alerts were raised, responded in a way that demonstrates a failure to apprehend the significance of those events and the danger Mr Williams faced from Mr Johnson. These included:

<sup>2</sup> *R v Johnson* [2011] VSC 633.

**(a) Information Report:**

26. On 14 March 2009, Prison Officer A submitted an Information Report recording that a prisoner at Barwon Prison had told him: ‘everybody knows that [Mr Williams] is cooperating with Victoria Police in exchange for a reduction in his sentence and other benefits’. In this report, Prison Officer A commented:

These views ... may be a cause for concern to the safety of prisoner Williams and may be the cause of some sort of attempt to harm prisoner Williams or those around him.

Receipt of the report was confirmed by a senior officer, but it was not placed on the prison’s PROTEL (intelligence) system, was not referred to the Intelligence Unit for further review, nor conveyed to the panel charged with monitoring Mr Williams’ placement. No account was taken of this report in the ongoing reviews of Mr Williams’ placement.

***Corrections Victoria either failed to identify the warning signals or, to apprehend the significance of those events and the danger Mr Williams faced from Mr Johnson.***

**(b) Introduction of Mr Thomas Ivanovic:**

27. In July 2009, Corrections Victoria approved the placement of Mr Thomas Ivanovic with Mr Johnson and Mr Williams, following requests from Mr Ivanovic and Mr Williams. Mr Ivanovic was a close associate of Mr Williams. In December 2009, Mr Johnson’s relationship with a former prisoner and associate deteriorated. The former prisoner was also a close associate of Mr Ivanovic. A Senior Prison Officer noted in an email that ‘this may eventually lead to an impact on Tommy Ivanovic’s placement in Unit One Acacia with Johnson & Carl [Williams]’.

**(c) Death threat:**

28. On 23 December 2009, Victoria Police provided the Corrections Victoria Intelligence Unit with information it had received indicating that an associate of a high security prisoner would be murdered at Barwon Prison. Mr Williams and Mr Ivanovic had been associates of the high security prisoner. Mr Ivanovic was moved out of the Acacia Unit for a period of time. Mr Johnson and Mr Williams were also isolated from each other for eight days. However, all three were allowed to resume their placement together in the Acacia Unit in January 2010, following a decision made by the Sentence Management Unit that the threat was not substantiated.

**(d) Mr Williams removed from prison to speak to Victoria Police:**

29. On 27 – 28 February 2010, Mr Williams was removed from prison under an Administration of Justice Permit by members of Taskforce Petra, to prepare his witness testimony. Prisoners who are known to be assisting police are often subject to retribution by other prisoners. Mr Johnson had a history of this behaviour. Mr Wise and Ms Armytage in their emails of 6 January 2009 gave express instructions that Mr Williams’ placement

should be reviewed by Corrections Victoria in the event that Mr Williams was removed from the prison by Victoria Police. However, I was unable to identify any evidence or supporting documentation indicating that Corrections Victoria had ascertained whether Victoria Police conducted a risk assessment prior to applying to remove Mr Williams. There was also no evidence to support that Corrections Victoria had conducted its own risk assessment.

**(e) The pressure placed on Mr Ivanovic by a criminal associate:**

30. On 14 February 2010, Mr Ivanovic telephoned an associate. The associate referred to a 'lot of people being unhappy' with Mr Williams 'giving evidence to Victoria Police'. He described Mr Williams as a 'dog'. The associate urged Mr Ivanovic to separate himself from Mr Williams. While this telephone call was entered onto the prison's PROTEL system on 15 February 2010, no further action was taken. It was not reported to the panel monitoring Mr Williams' placement.
31. On 18 April 2010, Mr Ivanovic again telephoned this associate. The associate was recorded telling Mr Ivanovic:

You haven't got like one friend out here ... you've chosen to like accept it mate, it's not good. You're not the same as you were three months ago. You put yourself in that position, keep on making weak decisions.

This call took place the day before Mr Williams' death. No PROTEL entry was made in relation to this telephone call until 14 May 2010.

**(f) Mr Johnson's warnings to others:**

32. I identified several other examples of telephone calls and correspondence in the months leading up to the death of Mr Williams which should have raised concerns for his safety. However, these were either not recorded in PROTEL; not recorded until after his death; overlooked; or not acted upon. For example, a letter from Mr Johnson dated 5 April 2010 to his cousin, two weeks prior to the death of Mr Williams, states 'there will be media attention soon', 'just don't want you to worry ... I'll be sweet so don't stress'. No entry was made of this letter in PROTEL until after the death of Mr Williams.

***Corrections Victoria missed a number of opportunities to conduct comprehensive risk assessments following events that had the potential to change the dynamic between Mr Williams and his fellow prisoners.***

33. Given Mr Williams' cooperation with Victoria Police and his vulnerable status as a witness, his placement should have been more actively monitored. It is clear that Corrections Victoria missed a number of opportunities to conduct comprehensive risk assessments following events that had the potential to change the dynamic between Mr Williams and his fellow prisoners, and it failed to take into account or give proper weight to events that indicated he may be in danger.

34. The situation for prisoners in jails is always highly fluid and potentially volatile. This is even more so when the inmates in question are high profile or extremely violent. Mr Williams, possibly the highest profile prisoner in the state at that time, and a key witness in a case alleging police corruption and murder, could not be protected by Corrections Victoria. The reasons for that failure are explored in some detail in this report.

### **Monitoring systems and response to Mr Williams' death**

35. The metal bar used by Mr Johnson to kill Mr Williams was removed from the seat section of the exercise bike. It was unsecured. This was despite a similar piece of equipment having been used in a violent assault in Barwon Prison in the past, in which Mr Johnson had been involved.

### ***While a prison officer was monitoring the CCTV, she did not see Mr Williams being assaulted.***

36. Mr Williams' murder was captured on the CCTV system. While a prison officer was monitoring the CCTV, she did not see Mr Williams being assaulted.
37. The CCTV system in the Acacia Unit was unfit for purpose. There were five monitors, three of which displayed live vision from numerous cameras simultaneously, rotating through different source material. Each small split-screen image was displayed for four seconds only, before the image cut to another source. It is difficult if not impossible to monitor these screens and take in all the information they transmit. Understandably, the console operator did not observe Mr Williams' assault. Repeated complaints about the CCTV system had been made over several years by officers prior to Mr Williams' death, but no action was taken to remedy it.

### ***The incident scene was also poorly managed: more than 40 staff were allowed to enter the unit following the incident, thereby compromising the integrity of the scene.***

38. As a result, no officer knew of his death until Mr Ivanovic and Mr Johnson reported it 27 minutes later. I consider that 27 minutes for prison staff to become aware of a serious assault on a prisoner is far too long.
39. The incident scene was also poorly managed: more than 40 staff were allowed to enter the unit following the incident, thereby compromising the integrity of the scene.

### **Comrie Review**

40. In my 2008 parliamentary report, *Investigation into contraband entering a prison and related issues*, I identified shortcomings with Corrections Victoria's intelligence systems. In response to my report, Corrections Victoria commissioned former Chief Commissioner of Victoria Police, Mr Neil Comrie,

to conduct a review of its intelligence systems (the Comrie Review) in late 2008. This review resulted in 32 recommendations being made – aimed at improving Corrections Victoria’s intelligence systems and processes.

41. I identified a Corrections Victoria briefing note concerning the Comrie Review dated 25 February 2009, titled *Review of Operations of the Corrections Victoria Intelligence Function and Structure*. The briefing included a handwritten note by the Secretary, Ms Armytage, stating that she is ‘very concerned about the results of this review’ and that the briefing note ‘understates the seriousness of the risks’.

***Despite the Secretary’s concerns in February 2009 about the serious risks identified by the Comrie Review, some two and a half years later, only 12 of the 32 Comrie recommendations had been implemented.***

42. Despite Ms Armytage’s concerns in February 2009 about the serious risks identified by the Comrie Review in relation to Corrections Victoria’s intelligence systems, some two and a half years later, only 12 of the 32 recommendations had been implemented as at July 2011. For example, one key recommendation not yet implemented is:

- that all intelligence reports generated within prisons be provided to the Intelligence Unit.

This did not occur with Prison Officer A’s report.

43. I consider that Corrections Victoria’s failure to implement the recommendations of the Comrie Review had an impact on the safety of Mr Williams.

## **Underlying culture at Barwon Prison**

44. I found an unprofessional culture amongst prison officers, particularly in the Acacia Unit. This included:
- the use of offensive and derogatory language amongst prison staff
  - distribution of sexually explicit and/or inappropriate material and images amongst prison staff and management, which shares some characteristics with many of the personal logos used by prisoners in outgoing correspondence sent from Barwon Prison
  - a Unit Supervisor offering staff ‘rewards’ via email of sexually suggestive images in return for performing their duties.
45. While the culture I identified at Barwon Prison has not been demonstrated to have contributed to Mr Williams’ death, it certainly did not contribute to his safety. Such a culture creates a distraction from professional duties. I am concerned that any lowering of professional standards in a high security prison creates an environment where vigilance may be compromised and opportunities for inappropriate conduct may well arise.

## The Office of Correctional Services Review

46. The OCSR was established in 2007 as a separate business unit within the Department of Justice, reporting to the Secretary of the department on the effectiveness of Corrections Victoria's management of the Victorian prison system. The department described the OCSR as '... an internal review and quality assurance mechanism'.

***While the culture I identified at Barwon Prison has not been demonstrated to have contributed to Mr Williams' death, it certainly did not contribute to his safety.***

47. In my view, the OCSR has been unable to address the underlying issues which I identified in my review of its predecessor, the Corrections Inspectorate, which included:
- a lack of separation from those who undertake correctional roles the OCSR is monitoring and reviewing
  - limited transparency and accountability
  - investigations that vary in quality
  - a failure to complete investigations in a timely manner.

***The OCSR has been unable to address the underlying issues which I identified.***

48. The OCSR provided my office with information on the commencement of its investigation and subsequent progress reports. However, I identified the following issues in relation to its investigation:
- a failure to pursue a line of enquiry concerning Prison Officer A's Information Report which raised concerns for Mr Williams' safety in March 2009
  - the involvement of a senior Department of Justice officer who edited the executive summary of the OCSR investigation report
  - the Secretary was not formally interviewed as part of the OCSR's investigation, despite her role in the decision-making process of Mr Johnson's placement with Mr Williams.
49. Although not formally interviewed, the Secretary was questioned by OCSR investigators about her involvement in and knowledge of the decision-making process in relation to Mr Williams.

## Recommendations

50. Given the seriousness of the matters raised in my report, I have made a number of recommendations aimed at improving Corrections Victoria's management of high security prisoners and the safety and

security of prisoners across the Victorian correctional system. These recommendations include that the Department of Justice:

- develop guidelines to assist Sentence Management Panels in making and reviewing prisoner placement decisions
- develop guidelines in conjunction with Victoria Police regarding the management and placement of prisoners who are witnesses
- arrange for an independent review of all CCTV systems in Victoria's correctional system to ensure their adequacy
- ensure that the outstanding recommendations of the Comrie Review are implemented without further delay
- develop clear policies and procedures regarding the introduction of equipment into high risk units and ensure that they are complied with
- provide refresher training to prison staff regarding the management of serious incidents
- conduct an audit of all prison staff emails and take appropriate action against offending staff identified.

51. I have also recommended that the Minister for Corrections consider amending the *Corrections Act 1986* to provide that Administration of Justice Permits be only approved by a judge or magistrate.

## Response from the Department of Justice

52. I made 57 recommendations in this report. One recommendation is a matter for the Minister for Corrections to consider. The department has accepted 54 of the remaining 56 recommendations. The department accepted in principle two of my recommendations. The department has already implemented 17 of my recommendations.

53. The Secretary of the department also made the following comments about my report:

... The department accepts that, ultimately, Corrections Victoria was unable to protect Mr Williams from harm. However it is also important to acknowledge Mr Williams' profile and offending history, and the challenges this presented for the corrections system.

Mr Williams was a dangerous, well-connected criminal serving three life sentences with a non-parole period of 35 years, after being convicted of four counts of murder, conspiracy to murder, and numerous drug trafficking offences. A number of his enemies and rivals were accommodated in other units of Acacia and Barwon, and he was providing evidence against former associates within the prison.

...

All non-natural deaths in custody are deeply regrettable and warrant a high level of scrutiny and reflection. Since the death of Mr Williams on 19 April 2010, I have carefully considered the circumstances surrounding the incident, and the extent to which Corrections Victoria met its obligations under the *Corrections Act 1986* to achieve the safe custody and welfare of prisoners and the proper operation of correctional services. There are clearly many areas where the system can, and must, improve.

... there are important lessons to be learned about the level of caution required in cases involving high security prisoners, and indeed, the tragic events that can unfold from a succession of collective errors, inefficiencies and misjudgements. Your report clearly highlights a number of critical occasions, where, with the benefit of hindsight, opportunities were missed to handle Mr Williams' case in a different way, or at the very least, to re-evaluate his circumstances. We have learnt and will continue to learn from these system failures and miscalculations.

54. The Secretary further stated:

At the time of Mr Williams' death, the system was ill equipped to manage the full range of challenges and complexities posed by sophisticated and often inter-linked groups of major offenders. Given his notoriety and involvement in the Melbourne gangland murders, Mr Williams presented immediate placement, security and management issues.

... In a prison system operating above ideal occupancy levels, it has been very difficult to accommodate high profile major offenders in locations where they cannot cause harm to others and cannot be harmed themselves, while still preserving their human rights and physical and mental wellbeing.

... Your report highlights clear lessons for senior officers with operational responsibility to follow through on commitments and to drive system reforms and improvements. This report also provides a valuable opportunity to build on the enhancements we have already implemented, as we establish a strong and sophisticated corrections system that will enable effective management of the complexities posed by high security prisoners.

55. As a result of my report, the department proposes to make a number of positive changes, which will improve the future administration and management of high security prisoners such as Mr Williams. These include:

- the appointment of an Executive Director, Corrections, Health and Crime Prevention and the use of an Audit and Risk Management Committee to oversee the implementation of the recommendations in this report
- the introduction of a new database system to replace the existing intelligence database PROTEL
- an independent workplace culture review of the Acacia Unit
- the establishment of a High Risk Management Advisory Panel to provide advice to the Commissioner Corrections Victoria concerning major offenders who pose critical risks
- the creation of a Deputy General Manager, High Security to oversee the management of high security units at Barwon Prison
- an independent review of the Sentence Management Branch.

## 1. BACKGROUND

56. On Monday 19 April 2010 at 12.48 pm, Mr Carl Williams, a high-profile prisoner being held in custody at the maximum security, HM Barwon Prison, was killed by fellow prisoner, Mr Matthew Johnson, by being struck several times to the head with a metal bar removed from the seat section of an exercise bike. The assault on Mr Williams was captured on the prison's closed circuit television (CCTV) monitoring system.
57. Mr Johnson was subsequently charged by Victoria Police with the murder of Mr Williams. Following a Supreme Court trial in September 2011, Mr Johnson was convicted of the murder of Mr Williams on 29 September 2011.
58. At the time of the incident, Mr Williams was accommodated in the high security Acacia Unit at Barwon Prison, with fellow prisoners, Mr Johnson and Mr Thomas Ivanovic. Mr Williams was allowed to mix with Mr Johnson and Mr Ivanovic in a common-room in the unit and an adjoining recreation yard, for up to six hours per day. Further information on the Acacia Unit is at Appendix 1. The correctional history of Mr Williams, Mr Johnson and Mr Ivanovic is at Appendix 2.
59. Prison officers responded to the assault on Mr Williams at approximately 1.15 pm, some 27 minutes after the incident, when notified by Mr Johnson and Mr Ivanovic that Mr Williams had sustained a head injury. At 1.46 pm Mr Williams was declared deceased by the attending medical staff.
60. Following the death of Mr Williams, several investigations were initiated, including:
- Victoria Police's homicide investigation into the murder of Mr Williams
  - Victoria Police's investigation into possible motives for the death of Mr Williams
  - the Office of Police Integrity's (OPI) review and oversight of the police investigations
  - the Office of Correctional Services Review (a business unit within the Department of Justice) administrative investigation into issues arising from the death of Mr Williams
  - the State Coroner's inquest into the death of Mr Williams, to follow the conclusion of criminal proceedings.
61. Further information about Corrections Victoria and Barwon Prison is at Appendix 1.

### Reasons for conducting my investigation

62. Each year, I receive a large number of complaints either from or in relation to prisoners. Deprived of their liberty, prisoners often have limited capacity to represent their own interests effectively. It is my role to investigate complaints about the administrative decisions made by agencies responsible for the management of prisoners.

63. In recent years, I have conducted several investigations highlighting both the conditions for persons held in custody and the poor management of detainees.<sup>3</sup>
64. In the aftermath of Mr Williams' death, there was considerable speculation in the media and the wider community regarding the circumstances of, and possible motives for, his death. Immediately following the death of Mr Williams, the Office of Correctional Services Review (the OCSR) commenced an administrative investigation into the incident.
65. On 25 January 2011, the Secretary of the Department of Justice wrote to me advising of the completion of the OCSR's administrative investigation into issues arising from the death of Mr Williams. The Secretary advised me that any publication of its investigation report would constitute a contempt of court owing to the then ongoing criminal proceedings.
66. The OCSR was established in 2007 as a separate business unit within the Department of Justice, reporting to the Secretary of the department. The OCSR provides monitoring and advice on the operations, conduct and performance of Victoria's correctional system. Its role includes conducting an investigation of each prisoner death in Victoria and preparing a report for the State Coroner.
67. I considered it in the public interest that there be an independent administrative investigation into Corrections Victoria's management of Mr Williams while in custody at Barwon Prison.

***I considered it in the public interest that there be an independent administrative investigation into Corrections Victoria's management of Mr Williams.***

68. Having consulted with the State Coroner and having established that my investigation would be of assistance to the Coroner's office, I decided to initiate on my own motion an investigation into issues arising from the death of Mr Williams.
69. In my report, I have chosen not to provide a detailed account of the circumstances of, and cause of, Mr Williams' death. The death of a person in custody or care is one of the categories of reportable deaths that must be investigated by the State Coroner. It is the role of the State Coroner to identify the manner and cause of death.
70. This report does not address any possible involvement Mr Williams may have had in the Witness Protection Program, as my investigation focused on correctional matters. The OPI is conducting an own motion investigation into the circumstances of Carl Williams' death, focused on any deficiencies in Victoria Police practices, policies and procedures. I understand that the OPI will report its findings to the Chief Commissioner and State Coroner in the near future.

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<sup>3</sup> See for example my reports to Parliament: *Investigation into the handling, storage and transfer of prisoner property in Victorian prisons*, December 2005; *Conditions for persons in custody*, July 2006; *Investigation into the use of excessive force at the Melbourne Custody Centre*, November 2007; *Investigation into prisoner access to health care*, August 2011.

## 2. INVESTIGATION

71. On 24 February 2011, I informed the Secretary of the Department of Justice, the Minister for Corrections, the State Coroner and the Chief Commissioner of Police, of my intention to commence an own motion investigation into matters arising from the death of Mr Williams at Barwon Prison on 19 April 2010.
72. When conducting an own motion investigation pursuant to section 14 of the Ombudsman Act, I have the power to summons witnesses, require the production of documents and interview any person under oath or affirmation who has information relevant to my investigation.
73. During the course of my investigation, my officers formally interviewed 34 witnesses and examined extensive documentation and computer records obtained from various government departments and agencies. It was necessary to issue three summonses. Two witnesses requested legal representation at interview, which I agreed to.
74. I consider it essential that all witnesses are treated equally, fairly, and professionally by my investigators. All witnesses cooperated with my investigation and all were interviewed on oath or affirmation. All interviews from my investigation were audio recorded and quotations used in this report were taken from this source.
75. Interviews with prison officers were generally conducted within close proximity to Barwon Prison so as to minimise any inconvenience for witnesses.
76. My investigators also had access to all documentation and material gathered by the OCSR in its investigation of matters arising from the death of Mr Williams.
77. During the investigation, my officers also visited Barwon Prison on several occasions to gain a first hand appreciation of the operations of the prison and the Acacia Unit.
78. The publication of my investigation report was delayed due to Mr Johnson's trial in September – November 2011.

### 3. PLACEMENT DECISION – RISK ASSESSMENT

79. During my investigation, several witnesses including experienced prison staff, raised concerns about Corrections Victoria's decision to allow Mr Johnson to be placed with Mr Williams. They said that they were 'never comfortable with the placement decision' and 'were not surprised' when they heard that Mr Williams had been killed by Mr Johnson.

***Several witnesses said that they were 'never comfortable with the placement decision' and 'were not surprised' when they heard that Mr Williams had been killed by Mr Johnson.***

80. Their concerns related to Mr Johnson's history of violence within the prison system as a leader of the 'Prisoners of War' gang and Mr Williams' decision to give evidence as a witness in relation to murder charges against a former police officer and another person.<sup>4</sup>
81. Given Mr Williams' standing as a witness and his conviction for several 'gangland' murders, his placement in Victoria's correctional system was a decision that required careful consideration and a comprehensive risk assessment process.
82. My investigation identified that:
- Corrections Victoria's Sentence Management Panel approved the placement of Mr Johnson with Mr Williams on 20 January 2009 following consideration of advice received from the Secretary of the Department of Justice, the Acting Commissioner Corrections Victoria and a Detective Inspector from Victoria Police
  - as early as January 2009, both the Secretary and the Acting Commissioner were aware of the risks to Mr Williams' safety as a result of Mr Johnson being placed with him
  - Corrections Victoria accepted the risks of proceeding with this placement despite the potential for Mr Williams to be harmed by Mr Johnson
  - the importance of Mr Williams giving evidence as a witness weighed heavily on Corrections Victoria's decision-making regarding the placement of Mr Williams
  - Corrections Victoria placed considerable emphasis on Mr Williams' perceptions of his own safety and his wishes in relation to Mr Johnson being accommodated with him on the basis that they were friends
  - Victoria Police supported Corrections Victoria's decision to allow Mr Johnson to be placed with Mr Williams; however it did not have access to all relevant information regarding Mr Johnson's violent history in the correctional system. This support influenced Corrections Victoria's decision to place Mr Williams and Mr Johnson together

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4 I cannot name this person, due to a current suppression order.

- Corrections Victoria failed to review Mr Williams' placement arrangements at critical milestones, such as following his return to Barwon Prison in late February 2010 after cooperating with Victoria Police
- Corrections Victoria failed to address major shortcomings in its intelligence systems, thereby resulting in important information regarding Mr Williams' safety being overlooked or not acted upon.

***Corrections Victoria failed to review Mr Williams' placement arrangements at critical milestones and failed to address major shortcomings in its intelligence systems.***

## Prisoner placement decisions

83. Under the *Corrections Regulations 2009* (the *Corrections Regulations*) it is the responsibility of a Sentence Management Panel, including the Major Offenders Review Panel to review remand and sentenced prisoners to determine appropriate prisoner placement and security classifications. Further information on the Major Offenders Unit, which managed Mr Williams and Mr Johnson, is at Appendix 1.
84. The *Corrections Regulations* also provide that the Secretary may at any time carry out the functions of a Sentence Management Panel.<sup>5</sup> The Secretary also has the power to vary any decision made by a Sentence Management Panel in relation to prisoner placement.
85. The *Corrections Regulations* outline a number of factors that a Sentence Management Panel or the Secretary may take into consideration when making prisoner placement decisions, including:
- any risk the prisoner poses to the welfare of himself/herself or any other person
  - any prison or other relevant institutional history.<sup>6</sup>
86. Sentence Management Panels meet with major offenders monthly and annually to review their progress and address any issues relevant to their ongoing management.
87. Recent Victorian Supreme Court judgements have had an impact on the decision-making of Sentence Management Panels, with regard to the placement of major offenders with 'compatible' prisoners rather than in isolation from other prisoners. In the 2008 case *R v Benbrika & Ors*<sup>7</sup>, the Court noted that a number of prisoners were held in the Acacia Unit isolated and locked in their cells for up to 23 hours a day. Justice Bongiorno commented that these conditions affected the prisoners' right to a fair trial.

<sup>5</sup> *Corrections Regulations 2009*, regulation 23.

<sup>6</sup> *ibid*, regulation 26.

<sup>7</sup> *R v Benbrika & Ors* (Ruling No 20) [2008] VSC 80.

88. At interview on 28 June 2011, Mr Brendan Money, Director of the Sentence Management Unit, said that where possible, Sentence Management Panels seek to place prisoners with other prisoners rather than in isolation.

### **The role of intelligence information in prisoner placement decisions**

89. Corrections Victoria relies on intelligence information to assist it in determining whether the safety of a prisoner, or other prisoners, may be at risk as a result of a prisoner placement decision.
90. Corrections Victoria's Intelligence Unit (the Intelligence Unit) centrally manages and coordinates all intelligence information in relation to major offenders in the Victorian correctional system. Intelligence information is gathered from a variety of sources, including prisoner telephone calls, prisoner mail, prison incidents and information provided by Victoria Police.
91. All Victorian prisons also have prison collators who are prison officers responsible for monitoring and analysing intelligence information. It is a requirement that both prison collators and officers of the Intelligence Unit record intelligence information in a central database system. This system, known as PROTEL, was introduced by the Department of Justice in the 1980s.
92. Access to information reports in the PROTEL system is shared by the Intelligence Unit staff, prison collators, senior staff at the prison and some senior officers in the Sentence Management Unit. Access is limited to individuals depending on their level of authority.
93. Corrections Victoria has a statutory obligation to provide a safe and secure environment to minimise the risk of harm to staff, visitors and prisoners in Victoria's correctional system.<sup>8</sup> In my view, Corrections Victoria failed in this respect for reasons I detail as follows.

### **Background to the placement of Mr Johnson and Mr Ivanovic with Mr Williams**

94. In June 2007, Mr Williams wrote to Mr Ivanovic in an attempt to locate the whereabouts of Mr Johnson within Victoria's correctional system. In October 2007, following Mr Johnson's transfer to the Melaleuca Unit in Barwon Prison where Mr Williams was then placed, prison staff noted that Mr Williams and Mr Johnson had commenced talking to each other from separate, but adjoining exercise yards in close proximity.
95. On 18 December 2008, a Corrections Administration of Justice Permit (the permit) was granted by the then Commissioner Corrections Victoria, Mr Kelvin Anderson, allowing Mr Williams to be removed from Barwon Prison and placed in the custody of Victoria Police between 22 and 30 December 2008 to assist with police enquiries as a witness.

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<sup>8</sup> Corrections Victoria, Director's Instruction No. 1.1, Safety and Security, 11 May 2009.

96. After being moved to the Acacia Unit in December 2008 for less than a month, Mr Johnson formally requested that Corrections Victoria allow him to return to the Melaleuca Unit to be accommodated with Mr Williams and his father as they had formed a friendship. Mr Williams also wrote to Corrections Victoria requesting Mr Johnson be placed with him.
97. Following a request from Mr Williams, on 20 January 2009, a Sentence Management Panel approved the accommodation of Mr Johnson with Mr Williams and his father in the Melaleuca Unit.
98. On 13 May 2009, Mr Williams, his father and Mr Johnson were relocated to Unit One in the Acacia Unit. On 20 June 2009, Mr George Williams was released from Barwon Prison after serving his sentence.
99. At Major Offenders Review Panel Meetings on 30 June 2009 and 7 July 2009, Mr Ivanovic also made requests to be placed in the Acacia Unit with Mr Williams.
100. A decision was subsequently made by a Sentence Management Panel on 29 July 2009 to allow Mr Ivanovic to be placed with Mr Williams and Mr Johnson in Unit One of the Acacia Unit.

### **Placement decision – January 2009**

101. At 4.45 pm on 6 January 2009, Mr Rod Wise, Acting Commissioner Corrections Victoria sent an email to the Secretary of the Department of Justice, Ms Penny Armytage, alerting Ms Armytage to a decision that needed to be made in relation to the placement of Mr Williams (copy of the email at Appendix 3).

***In his email to the Secretary, the Acting Commissioner  
Corrections Victoria identified significant  
risks to Mr Williams' safety.***

102. In his email to Ms Armytage, Mr Wise discussed the placement of Mr Johnson with Mr Williams and identified significant risks to Mr Williams' safety should he and Mr Johnson be placed together. Mr Wise stated:

... [Mr] Johnson, as you may be aware, has been a prisoner of some influence in the past, having (amongst other things) been one of the leaders of the Prisoner of War gang ... There is little doubt that Johnson is capable of causing Williams harm if he were to find out the true nature of Williams' cooperation with Police ... Police have advised (via email) that they know of no reason not to allow the two to mix, and Carl has requested mixing with Johnson in writing. Indeed, it is thought that if Carl is allowed to mix only with George [Williams], he might withdraw his cooperation with Police, which would clearly not be a good outcome.

... If Johnson were to learn more of the Williams family's time with the Police, there is an undeniable risk that he could harm Williams.

103. In an email dated 6 January 2009 at 9.30 am, Detective Inspector Steve Smith of the Victoria Police's Taskforce Petra advised Mr Peter Hutchinson, Operations Manager of the Intelligence Unit at Corrections Victoria, that Taskforce Petra had considered the option of Mr Johnson being placed with Mr Williams. Detective Inspector Smith's email stated that Taskforce Petra had 'no objection to this occurring' and 'were not aware of any issues' between Mr Johnson and Mr Williams. The email further advised that 'if there should be any change to this circumstance, Corrections Victoria will be immediately informed'.

***Taskforce Petra 'were not aware of any issues' between Mr Johnson and Mr Williams.***

104. At interview on 28 June 2011, Mr Wise explained the background to his decision to email Ms Armytage:

... Carl Williams ... was getting anxious about not being able to mix with people his own age. He was already mixing with his father but was struggling to cope with placement in a high-security environment with very little contact with people who shared his interests and from his own age group. So, he was seeking the placement of someone in his unit so that it would lighten the burden of his imprisonment ... The matter was reported through to me and I saw that it was something that I ought to advise the Secretary of.

105. In his email, Mr Wise also provided three reasons as to why Mr Johnson might want to harm Mr Williams:
- financial incentives – potentially offered by people Mr Williams was giving evidence against
  - an opportunity for Mr Johnson to restore lost credibility with the prison population
  - Mr Johnson was facing a [2007] murder charge and any sentence for a second serious offence would run concurrently.

106. Despite these risks, Mr Wise recommended to Ms Armytage that the placement be allowed, unless Ms Armytage had any 'major concerns'. He also suggested that the placement be monitored 'very closely' and reviewed if Mr Williams was to be taken out of prison in the future to assist Victoria Police.

***Despite the risks, the Acting Commissioner recommended that the placement be allowed.***

107. Ms Armytage responded to Mr Wise's email at 5.27 pm on 6 January 2009, approximately 43 minutes after receiving it, stating:

I feel reasonably comfortable with your proposal and note the fact that you have consulted the Police and they have no concerns about

it. Balancing all considerations it appears appropriate to accede to Carl Williams request on the basis that we will monitor the situation and review it as soon as any new factors emerge, especially with respect to further meetings with Vic Pol [Victoria Police].

108. At interview on 21 June 2011, Ms Armytage explained her views on Mr Wise's email and her response:

Rod's [Mr Wise] email explained about the fact that Carl [Mr Williams] had been requesting to have access to share accommodation with Johnson, and he spelt out what he thought were the risks of that and I noted the information he gave me and said that I thought it was reasonable for them to accede to his request provided they monitored any changes in his circumstances, and given the fact that the Petra Task Force had indicated they were comfortable with his placement.

109. Since this interview, Ms Armytage has stated that her reference to 'balancing all considerations' in her email meant that she took into account the following matters:

Firstly, at the time of the placement decision I was conscious of the complexities the Corrections systems [*sic*] was facing in handling a high number of major offenders in its maximum security facilities ... No high security placement of any prisoner is made easily and many competing pressures need to be balanced in making a decision.

... I was mindful of the fact that Mr Williams had many enemies in the prison system who could either directly or indirectly inflict harm upon him and, furthermore that he could do likewise to many others ... I was conscious that there were many prisoners in the prison system who feared and/or revered him. As a result I knew that there were few suitable placement options available to SMU [Sentence Management Unit] vis-a-vis his placement. This was exacerbated by the fact that his father, Mr George Williams, with whom he had been accommodated as of December 2008, was eligible for parole in June 2009.

I was conscious that both Mr Wise and other senior personnel in CV [Corrections Victoria] and SMU [Sentence Management Unit] were aware of these complexities as illustrated by the comments made in the CV Major Offenders in High Security/Management Units updates. I believed that they would know that, as a result of his role in the 'gangland wars', Mr Williams had the capacity to be both an aggressor and a victim in this environment.

110. Ms Armytage further stated:

... I was mindful that no placement involving Mr Williams was risk-free, other than a placement in total solitary confinement. I was conscious that the latter was not a viable option for Mr Williams who, irrespective of any involvement he had with Victoria Police as a ... [w]itness, was facing a minimum period of imprisonment of life with a non-parole period of 35 years ... I was also aware, based on correspondence Mr Williams sent to me between 2007 and 2008 of his desire to ensure he was given the same entitlements as other high security prisoners.

...

... To my personal knowledge very few prisoners have been held in long-term separation unless they were perceived to be a very real and immediate threat to staff and/or other prisoners ... It was not put to me by CV [Corrections Victoria] that Mr Williams should be held in such a regime for his safety or the safety of others.

... I was aware that the SMU [Sentence Management Unit] - Major Offenders Unit regularly reviewed all placements in the high security units to accommodate changing circumstances, allegiances and other factors. I believed SMU would monitor Mr Williams' circumstances closely.

Taking all of these matters into consideration it was clear to me that appropriate monitoring was essential for the on-going management of this placement.

111. Mr Williams and Mr Johnson continued to pursue their requests to be placed together. The minutes of the Major Offenders Review Panel Meeting on 31 December 2008 and a letter from Mr Johnson dated 6 January 2009, reflect that Mr Johnson requested placement with Mr Williams and his father.

***The Secretary stated ... 'I was mindful that no placement involving Mr Williams was risk-free, other than a placement in total solitary confinement'.***

112. In a letter dated 7 January 2009, Mr Williams also wrote to the Sentence Management Unit requesting that Mr Johnson be accommodated with him and his father.
113. Mr Williams also made several requests to Victoria Police to be placed with Mr Johnson and stated that his cooperation with Victoria Police was dependent on this placement. At interview on 30 June 2011, Detective Inspector Smith said that 'Mr Williams was adamant that he would withdraw his cooperation with Victoria Police unless he was placed with Mr Johnson'.

***A Detective Inspector said 'Mr Williams was adamant that he would withdraw his cooperation with Victoria Police unless he was placed with Mr Johnson'.***

114. At the Sentence Management Panel Meeting on 20 January 2009, a decision was made to approve the placement of Mr Johnson with Mr Williams. The minutes of this panel meeting state:

Carl [Mr Williams] was interviewed the previous day - 19/1/09 - by the GM SMU [General Manager of Sentence Management Unit] and the Manager of the SESG [Security and Emergency Services Group of which the Corrections Victoria Intelligence Unit is a subset] in response to a letter he had written asking that his father George be able to transfer to the Acacia Unit so together they could run out with prisoner Matthew Johnson.

After relevant authorities/business units were consulted with regard to the safety/advisability of Carl and his father running-out with prisoner Johnson the request was supported by CV/DOJ [Corrections Victoria/Department of Justice].

Carl was advised that rather than he and his father transferring to Acacia prisoner Johnson was to transfer to their unit in Melaleuca. Carl appeared to be happy with this advice. Prisoner Johnson subsequently transferred to unit 2 in Melaleuca on 23 January 2009.

115. The minutes of the Sentence Management Panel Meeting on 23 January 2009 with Mr Johnson, also state:

Matthew Johnson has been assessed as suitable for placement in the Melaleuca HSU [High Security Unit] Unit 2 and to associate with other prisoners currently accommodated in unit 2 [Mr Williams and his father].

### **Mr Williams' placement – the role of the Secretary and the Acting Commissioner**

116. Under the *Corrections Act 1986*, the Secretary has legal custody of prisoners<sup>9</sup> and:

... is responsible for monitoring performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.<sup>10</sup>

117. Similarly, the Commissioner of Corrections Victoria is responsible for:

... assessing performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.<sup>11</sup>

118. Pursuant to regulation 23(5) of the Corrections Regulations, the Secretary of the Department of Justice has the power to carry out the functions of a Sentence Management Panel in determining the placement of each prisoner. When asked at interview whether she was exercising her decision-making powers at the time of her email dated 6 January 2009, Ms Armytage said:

... I didn't see this as being him [Mr Wise] asking me to approve it [Mr Johnson's placement with Mr Williams]. It was him telling me that this was a decision that they [Corrections Victoria] were going to have to make and I responded that I felt comfortable with his proposal ...

119. At interview, Mr Wise provided the following evidence regarding his view as to whether he or Ms Armytage was the decision-maker in relation to Mr Williams' placement:

Neither, I think. I think it's a Sentence Management [Unit] function and they have made the decision. And then it was – it was forwarded up the line to check that we didn't have any concerns.

9 *Corrections Act 1986 (Vic)*, section 6A.

10 *ibid*, section 7.

11 *ibid*, section 8A.

120. The risks identified by Mr Wise in his email to Ms Armytage dated 6 January 2009 raised significant concerns for Mr Williams' safety should Mr Johnson be placed with him. My investigators asked Mr Wise why he did not simply refuse the placement of Mr Johnson with Mr Williams given the risks he had identified. He said:

Erring on the side of caution? The issue in relation to not allowing him to mix at that stage was that we had a degree of confidence that he [Mr Williams] would cease cooperating with the police. And that was a significant risk. And the risk to his [Mr Williams'] safety at that stage we thought could be managed because Johnson already knew of some of the contact that he'd had with the police and - and was not expressing any concern about it. And both Johnson and Williams were keen ... to mix.

121. Ms Armytage was also asked why she had not erred on the side of caution and refused the proposed placement. She said:

Well I think there is a note of caution there because I say you'll have to closely monitor it, and I think I do say 'requested on the basis that we will monitor the situation and review it if new factors emerge, especially with respect to future meetings with police'.

122. While the decision was supported by the Acting Commissioner and the Secretary, a Sentence Management Panel made the final decision on 20 January 2009 to approve Mr Johnson's placement with Mr Williams.

### **Victoria Police consultation**

123. In their emails dated 6 January 2009, both Mr Wise and Ms Armytage refer to Victoria Police having been consulted about the placement of Mr Johnson with Mr Williams, and Victoria Police having raised 'no objections' to the placement. This advice was a factor which influenced Corrections Victoria's decision-making.
124. However, when Detective Inspector Smith was asked at interview how Victoria Police reached the conclusion that it had 'no objection' to the placement of Mr Johnson with Mr Williams, he said:

We made what enquiries we could ... [such as] LEAP [Law Enforcement Assistance Program] ... conversations with Williams ... [it was] quite clear he [Mr Johnson] had a propensity for violence, but we weighed that up against that he'd been with Williams for so long ... had no allegiances or involvement in the so called underworld ... killings ... he [Mr Johnson] wasn't aligned to either side ... there was nothing that shone out that he had any particular allegiances to Williams or against Williams ... we felt that didn't jump out at us to say why they shouldn't be together ... and Williams' insistence that he stay with Johnson.

125. Detective Inspector Smith also said that he consulted with Mr Peter Hutchinson from the Intelligence Unit to obtain some background information regarding Mr Johnson.

126. In response to my draft report, Mr Hutchinson stated:

I was in regular contact (every couple of weeks on average by phone, email or in person) with Detective Inspector S. SMITH and he provided me with information in regard to WILLIAMS and JOHNSON and I provided him with any information that I had.

127. Other members of Taskforce Petra advised my investigators that they had no knowledge of Mr Johnson's history of violence within the correctional system, and would have raised concerns about the placement with Mr Williams had they known. At interview with my office, a member of Taskforce Petra said that after the death of Mr Williams he was 'shocked' to find out about Mr Johnson's violent history including his involvement in the 'Prisoners of War' gang.

***Members of Taskforce Petra advised my investigators that they had no knowledge of Mr Johnson's history of violence within the correctional system.***

128. In response to my draft report, Detective Inspector Smith stated:

... Mr Johnson had already [his emphasis] been placed with Carl Williams for a period of approximately 11 months before January 2009, commencing in February 2008.<sup>12</sup> I consider that the final report ought to make clear where it is stated (explicitly or implicitly) that in January 2009 Victoria Police supported a co-placement of Mr Johnson and Carl Williams, that Victoria Police's support was in effect for the continuation of the existing [sic] co-placement.

... I sent that email [on 6 January 2009] following discussions with Mr Hutchinson – discussions in which Mr Hutchinson had requested that I provide advice in writing on the co-location in light of information within Victoria Police's possession or control – and in response to Mr Hutchinson's request ... the advice in my email was based on information within the possession or control of Victoria Police.

... In light of my discussions with Mr Hutchinson, the advice in my email was given on the understanding that Corrections Victoria would undertake (or had already undertaken) a risk assessment of the co-location, based on information within its possession [sic] or control.

... At the time I sent the email, Victoria Police had taken steps to protect Carl Williams including by placing him into the Witness Protection Program, and by seeking and obtaining orders from the Supreme Court suppressing any publication of his status as a witness in the Hodson matters.

## Conclusions

129. The decision to approve the placement of Mr Johnson with Mr Williams in January 2009 was made by a Sentence Management Panel on 20 January 2009.

<sup>12</sup> During this time, Mr Johnson and Mr Williams were placed in the Melaleuca Unit, however were not in the same unit. They were noted to be interacting with each other in adjoining exercise yards.

130. While the Secretary has the power to make a placement decision under the Corrections Regulations, I am satisfied that Ms Armytage was not exercising her powers under the Corrections Regulations on 6 January 2009 when she supported Mr Wise's recommendation to allow the placement.
131. However, I consider that Ms Armytage should have erred on the side of caution and not supported Mr Wise's recommendation to approve the placement of Mr Johnson with Mr Williams in light of the considerable risks identified by Mr Wise in his email dated 6 January 2009.
132. The concerns raised by Mr Wise were substantial. While Mr Wise exercised caution and raised concerns about the placement, he placed more emphasis on Mr Williams' role as a police witness, rather than his safety as a reason to place Mr Johnson with Mr Williams. In my view it was not appropriate for Corrections Victoria to accept such a heightened risk to Mr Williams' safety, simply to ensure his cooperation with Victoria Police, given Corrections Victoria's statutory imposed duty to protect Mr Williams while he was incarcerated.

***While the Acting Commissioner exercised caution and raised concerns about the placement, he placed more emphasis on Mr Williams' role as a police witness.***

133. In response to this issue, Mr Wise stated:

... I can well appreciate how this view is arrived at with the benefit of hindsight, but suggest that there were a number of contextual factors to which your report might not have been [*sic*] given sufficient weight. These include:

*a. the complexity of finding compatible prisoners in restrictive environments with whom other prisoners might associate* ... it is important to note that Mr Johnson was not seen to have any allegiance to Mr Williams' enemies;

...

*b. the rationale for mixing prisoners in order to reduce the negative psychological impacts of solitary confinement* ... It was accordingly not seen to be a sustainable option to manage Mr Williams on his own for the remainder of his 35 years in prison, or even a large part of that sentence; nor, it is contended, would such an option be consistent with Section 22 of the Human Rights Charter; and

*c. Mr Johnson's own circumstances* ... It should perhaps not be forgotten that ... Mr Johnson, too ... could not be easily placed with other 'mainstream' prisoners.

*d. the duration of the arrangement* ... it may be that insufficient weight had also been given to the fact that ... [Mr] Williams and [Mr] Johnson lived together for 15 months. While their association ended tragically, there was a sustained period in which the decision to mix the two could have been (and was) perceived as appropriate.

134. The department also responded:

The department accepts that it had a statutory obligation to protect Mr Williams while he was incarcerated, and that the co-placement of Mr Williams and Mr Johnson presented certain risks. In hindsight, there were shortcomings in the way that these risks were monitored and managed. Clearly, the assessment at the time of the placement needed to be constantly reassessed as the sentence management plan developed, to ensure that the original decision remained appropriate. However, the department maintains that the personnel involved in the placement decision did exercise caution in recommending, approving and endorsing the placement of Mr Williams ...

... In January 2009, there were insufficient grounds to form a reasonable belief that the risk Mr Johnson posed to Mr Williams was so grave and immediate that it warranted an alternative placement arrangement. While Mr Johnson's history of violence was known to Corrections Victoria, as you have acknowledged in your report, there was no animosity evident between Mr Williams and Mr Johnson at the time. On the contrary, both prisoners had asked to be placed together. The pair had run out together in 2007-08<sup>13</sup> without incident, and in requesting that they be allowed to mix again in January 2009, Mr Williams assured Corrections Victoria that Mr Johnson was aware of his involvement with police and did not pose a threat to his safety.

135. I consider that Corrections Victoria placed too much emphasis on Mr Williams' perception of his own safety and his wishes in relation to being accommodated with Mr Johnson, without considering the cumulative effect Mr Williams' cooperation with Victoria Police may have had on Mr Johnson, knowing Mr Johnson's violent history regarding police 'informers'. The statutory duty to manage Mr Williams' placement was always the responsibility of Corrections Victoria, not Victoria Police.

***The statutory duty to manage Mr Williams' prison placement was always the responsibility of Corrections Victoria, not Victoria Police.***

136. Mr Wise stated in response to this issue:

... it is true that Mr Williams' threats to withdraw his cooperation with the Police was a factor in the placement decisions, but it was just one factor, and to infer that he was left with Mr Johnson and Mr Ivanovic 'simply' ... to ensure his ongoing cooperation with Police is misleading.

... Had Corrections Victoria believed at any stage that Mr Williams' safety was seriously threatened, it would have moved him, irrespective of the potential impact on ... [Victoria Police's] case. Had this eventuated, attempts would have been made to find another prisoner or prisoners with whom he could mix so as not to commit him to protracted solitary confinement.

<sup>13</sup> During this time, Mr Johnson and Mr Williams were placed in the Melaleuca Unit, however were not in the same unit. They were noted to be interacting with each other in adjoining exercise yards.

137. Mr Wise further stated:

... [t]he more important question to be asked, I believe, is whether it was reasonable to place as much emphasis on those perceptions as was done at the time. I remain of the view that it was, and in saying this I note the following:

- a. Mr Williams was as aware of Mr Johnson's violent background and moral code as anyone, yet he actively sought to associate with him, notwithstanding his intent to cooperate with Police. His was far from an uninformed view.
- b. If the decision to place them together was so flawed, as many have suggested, and if Mr Williams were such an unreliable judge of his own safety, it must be asked why those who were closest to him, including his ex-wife Roberta, his father George and his lawyer Mr Robert Stary, all of whom were similarly aware of prisoners' dislike of Police informers in general and Mr Johnson's antecedents ... critically did not raise alarm either ... If the decision was so patently wrong, as one is perhaps entitled to conclude with hindsight, why was the outcome not foreseen not just by Mr Williams, but also his legal adviser and those closest to him?
- c. Mr Williams was arguably better placed than anyone to know (a) the justification for his actions that he put to Mr Johnson, and (b) Mr Johnson's attitude and response. Mr Williams could at any time have sought to be removed from Mr Johnson if he believed himself to be at risk.

138. The failure of Corrections Victoria to ascertain whether Victoria Police had undertaken a comprehensive risk assessment in relation to Mr Johnson was a critical oversight.

139. In response to this issue, the department stated:

... Corrections Victoria twice sought and obtained written advice from police, which confirmed that they had no objections to the two prisoners mixing. This was a conscious effort by Corrections Victoria to exercise caution by consulting relevant parties before proceeding with the placement. While you suggest that Victoria Police did not have access to information about Mr Johnson's violent history in the correctional system ... it should be recognised that at least some of this information would have been available to police via a search of the LEAP database.

... to the extent that Corrections Victoria would have expected police to draw on their own information sources before endorsing the placement of Mr Williams, the department has concerns that your finding ... may place undue responsibility on Corrections Victoria to question the basis and veracity of advice provided by police, and in this case, by experienced taskforce members.

The department acknowledges your finding that the placement decision relied too heavily on police advice, and on Mr Williams' perception of his own safety. Corrections Victoria was well intentioned in seeking to support Mr Williams' cooperation with police; moreover, the consideration of prisoners' views is and will remain an important

feature of the placement process. Nonetheless, the department recognises that in seeking to balance the many competing interests underlying a placement decision of this complexity, the prisoner's safety must ultimately be the paramount consideration.

***The department stated it 'acknowledges your finding that the placement decision relied too heavily on police advice, and on Mr Williams' perception of his own safety'.***

140. Victoria Police also stated:

Victoria Police believe that this [the requirement to conduct a risk assessment] is a shared responsibility between Corrections Victoria and Victoria Police and recent government reforms in the area of custodial witnesses reflect this.

...

Victoria Police has now established a Committee which undertakes such duties in conjunction with Corrections Victoria and the Australian Federal Police - Interdepartment Custodial Witness Management Committee.

141. The Sentence Management Panel should also have a risk assessment template to enable it to consider all key issues when making a placement decision.

***Despite the stipulation of the Secretary and the Acting Commissioner, Corrections Victoria failed to adequately monitor the placement of Mr Johnson with Mr Williams.***

142. Despite the stipulation of Ms Armytage and Mr Wise, Corrections Victoria failed to adequately monitor the placement of Mr Johnson with Mr Williams, following the Sentence Management Panel's decision of 20 January 2009 to allow the placement. This shortcoming is discussed in greater detail in the following section.

## **Recommendations**

I recommend that the Department of Justice:

### **Recommendation 1**

Develop a risk assessment template to assist Sentence Management Panels in making prisoner placement decisions.

### ***The department's response***

**Accepted**

## **Recommendation 2**

Develop guidelines detailing the circumstances when prisoner placement decisions should be referred to the Secretary for a decision.

### ***The department's response***

**Accepted**

## **Recommendation 3**

Develop guidelines in conjunction with Victoria Police regarding the management and placement of prisoners who are witnesses.

### ***The department's response***

**Accepted**

## **Inadequate monitoring of the placement decision**

143. Corrections Victoria failed to carefully monitor and review the placement of Mr Johnson and Mr Ivanovic with Mr Williams at several critical milestones. For example:

- the introduction of Mr Ivanovic into the Acacia Unit with Mr Johnson and Mr Williams
- the removal of Mr Williams from Barwon Prison to assist Victoria Police in February 2010
- the fact that Mr Johnson and Mr Williams had been placed together for over 12 months.

144. Following Ms Armytage's advice that Mr Williams' placement be monitored on an ongoing basis, monthly updates were provided to Ms Armytage between November 2008 and February 2010, in relation to the reviews undertaken by Sentence Management Panels, including the Major Offenders Review Panel.

145. However, these updates, which include references to Mr Williams, do not make any specific comments regarding the placement arrangements for Mr Johnson.

146. In response to this, Mr Brendan Money, Director of the Sentence Management Branch stated:

The purpose of the Major Offenders Updates to the Secretary each month ... were to provide general information on any significant issue relating to particular major offenders. The updates typically reported on 6 or 7 major offenders, and discussed court appearances, media coverage, and other key issues.

The updates were never intended to provide the Secretary with monthly review information unless it was exceptional and/or significant. There was not something overwhelmingly significant to report to the Secretary in relation to Johnson's placement.

147. At interview on 20 June 2011, a Manager of the Major Offenders Unit said that the placement was monitored in the following manner:

... we [the Major Offenders Unit] would continue to ask Carl [Mr Williams] at each review - you know, was there any ... [problems] with his run out, should anything change?

... And ... [no problems] would come up for us to - to change [his placement] ...

148. Mr Money also stated:

... In my view Williams' placement in Acacia with Johnson and Ivanovic was subject to ongoing monitoring and review. He was reviewed every month by the Major Offenders Unit, and was subject to Quarterly and Annual Reviews chaired by senior staff of the Sentence Management Branch. In addition, there were regular discussions between Intelligence staff and the Petra Taskforce.

... Williams was reviewed formally, a total of 17 times in a 17 month period between December 2008 and April 2010 ... All the reviews mentioned above continued to maintain that the environment was safe. This was demonstrated during the 15-month period in which Williams and Johnson were together and of which Ivanovic was present in the [Acacia] Unit for nine months.

149. On 23 February 2010, the Commissioner Corrections Victoria, Mr Robert Hastings, approved a second request from Victoria Police allowing the removal of Mr Williams from the prison for a two day period (27 - 28 February 2010), to prepare Mr Williams to give evidence as a witness at a committal hearing.

***Mr Williams' second removal from Barwon Prison in February 2010 meant that the circumstances of Mr Williams' placement had altered and should have required closer examination.***

150. At interview, Mr Money said that Mr Williams' removal from the prison in February 2010 by Victoria Police was an important milestone which could have triggered a review of Mr Williams' placement by Corrections Victoria. He said:

Absolutely important milestone. And you know, I think that the - that was a time when the review was important, and clearly we chose to leave him where he was. And I think that was particularly persuaded by the fact that had we withdrawn [and removed Mr Williams from his placement], then they [Victoria Police] may've lost a statement [Mr Williams would have provided to Victoria Police].

151. The Major Offenders Review Panel conducted its final review of Mr Williams on 24 March 2010. At this time, the Major Offenders Review Panel identified no specific concerns regarding the placement of Mr Johnson and Mr Williams together.

152. However, Mr Williams' second removal from Barwon Prison in February 2010 meant that the circumstances of Mr Williams' placement had altered and should have required closer examination.

153. Mr Money said that 'the placement of Mr Ivanovic in the [Acacia] unit' with Mr Williams and Mr Johnson in July 2009 was another significant event that the Sentence Management Unit should have actively considered during its monitoring of the placement. Mr Ivanovic was an associate of the former police officer about whom Mr Williams was providing information to Victoria Police. However, the Sentence Management Unit did not actively consider the risks to Mr Williams when deciding to place Mr Ivanovic in the Acacia Unit.

154. Mr Money stated:

I would submit that the Sentence Management [Review] Panel did review the circumstances at the time Ivanovic was placed in Acacia [Unit] ... the planning in respect of his ... transfer into Acacia High Security Unit in July 2009 [was recorded and] ... All of the Monthly meetings are recorded for the nine-month period in which Ivanovic was living in the [Acacia] Unit ...

### **Lack of communication with the Major Offenders Unit**

155. My investigation identified concerns regarding a lack of communication between the Major Offenders Unit and prison staff. Several prison officers with experience working in the Acacia Unit informed my investigation that the Major Offenders Unit often failed to consult with them directly before making prisoner placement decisions.

156. Several prison staff said at interview that a representative from the prison collators and/or prison officers should be allowed to attend the Major Offenders Review Panel meetings to listen and provide local knowledge and information regarding prisoner placement decisions.

157. While my investigators were advised by the Major Offenders Unit that prison officers are welcome to attend the Major Offenders Review Panel meetings, prison officers said that this was not an accepted practice. Prison officers also said that members of the Major Offenders Unit should be available more regularly at Barwon Prison to enable prison officers to consult with them.

158. Mr Money, Director of the Sentence Management Branch stated:

I would not consider the views of several prison officers ... sufficient to form a view that there is a 'lack of communication with the Major Offenders Unit'. In my opinion there is actually a significantly healthy communication system between the Major Offenders Unit and Barwon Management. Communication can always be improved, however everyone's perspective needs to be considered ... It is true that the placement issues of major offenders are complex and often involve a range of confidential or classified information, which, at times, can make it difficult for the unit staff to understand the decisions that are made. Nevertheless, the opportunity for them to attend meetings and have discussions with their Management or Major Offenders Unit is always available to them.

159. In response to this, the department stated:

While there are opportunities to improve prison officers' access to the MOU [Major Offenders Unit], the chain of command in prisons remains an important element of prisoner management. Prison officers are encouraged to speak with senior officers about their observations and concerns, and in turn senior officers are expected to pass all relevant information onto the MOU, to whom they have direct and regular access. In light of the issues raised in your report, Corrections Victoria will reinforce with prison staff the need to comply with these arrangements.

...

Corrections Victoria has implemented a range of measures to strengthen communication between the SMB [Sentence Management Branch] and CVIU [Corrections Victoria Intelligence Unit], including:

- SMB attendance at fortnightly intelligence supervisor meetings;
- CVIU participation in panel reviews regarding high profile prisoners; and
- development of a new prisoner intelligence profile report that allows staff to view a prisoner's incident reports, sentence management panel comments, SMB notes and intelligence reports in the one location.

160. The department further stated:

In addition, the following measures have been introduced to improve communication between MOU [Major Offenders Unit] staff and Barwon Prison staff:

- the responsible Barwon Operations Manager attends all MOU meetings and panels where decisions are made about prisoners in high security and management units;
- MOU representatives attend the prison at least twice a week to liaise with Operations Managers;
- MOU discusses all critical or sensitive placement and management issues with the General Manager, Barwon Prison; and
- MOU and the General Manager, Barwon Prison are developing individual management contracts for prisoners in high security units, which will clearly define agreed actions and expectations regarding the responsibilities of the prisoner, MOU staff and prison staff.

Corrections Victoria has commenced the process to engage an independent agency with expertise in business process reviews and organisational design, which will review the existing model and develop a new sentence management structure by July 2012.

## Conclusions

161. Corrections Victoria failed to adequately monitor Mr Williams' placement. Given his vulnerable status as a witness, Mr Williams' placement should have been more actively monitored than it was with a view to analysing Mr Johnson's point of view with regard to Mr Williams' cooperation with Victoria Police and how Mr Johnson would come to view Mr Williams as a result of what he would learn through being placed with him. In relation to this conclusion, Mr Wise stated:

It is agreed that some valuable intelligence was either not accessed or not fully understood but there were around 30<sup>14</sup> formal reviews of Mr Williams' circumstances through the sentence management process, and around 19 similar reviews of Mr Johnson's case over the same period – quite apart from the daily informal interactions both prisoners had with staff from Barwon, and the countless discussions that the Sentence Management Unit or Major Offenders Unit had with Police, family members, lawyers and others ... I do not believe that the nature and frequency of those formal and informal processes can reasonably be said to constitute a failure to 'appropriately monitor the arrangement'.

162. The department also stated;

... One of the clearest lessons to be learned from Mr Williams' death is that decisions involving this [high security] group of prisoners demand additional vigilance, coordination and oversight.

...

The decision to place Mr Williams and Mr Johnson together was not taken lightly. It was predicated on assurances that the situation would be closely monitored, and reconsidered if new information was identified. In retrospect, the department agrees that the level of monitoring undertaken was not sufficient to fulfil these initial assurances, and that consequently, Corrections Victoria either did not detect or did not act upon certain indicators of a changing dynamic between Mr Williams and Mr Johnson.

### ***Corrections Victoria either did not detect or did not act upon a changing dynamic between Mr Williams and Mr Johnson.***

163. While the Major Offenders Review Panel conducted monthly reviews of Mr Williams and Mr Johnson throughout 2009 and early 2010, these reviews were limited and placed too much weight on Mr Williams' and Mr Johnson's reassurances that the placement was appropriate.
164. Mr Money stated:

In relation to the 'weight' placed on information from Johnson and Williams [regarding their wish to be placed together] I can say that prisoner participation is a highly valued part of the risk assessment process. There are however a range of other factors that are also considered as part of that process, as was the case here.

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14 This figure differs from the number of reviews cited by Mr Money at paragraph 148 and Ms Armytage at paragraph 166.

165. Corrections Victoria failed to conduct a comprehensive ongoing review of the risks to Mr Williams. Notwithstanding this ongoing monitoring, my investigation identified that the reviews conducted on Mr Williams were routine, not in depth and did not take into account relevant advice from Victoria Police and senior departmental officers such as the March 2009 Information Report.

***Reviews conducted on Mr Williams were routine, not in depth and did not take into account relevant advice.***

166. Ms Armytage also stated:

I made explicit my expectation that the placement be closely monitored. I believed that this would occur and expected that, had issues arisen through the monitoring of Williams' placement, this would be brought to my attention ... I assumed that if concerns had arisen regarding Mr Williams they would have been managed by CV [Corrections Victoria] and included in the Major Offender Updates.

... I therefore did not view his placement as enduring but rather one which could change if SMU [Sentence Management Unit] deemed it necessary and appropriate to do so.

... The SMU in fact met with Mr Williams on seventeen occasions from December 2008 until Mr Williams [*sic*] death in April 2010.

167. In response to my conclusions, the department stated:

... Despite affirming the requirement for strong monitoring of the placement, this did not occur in a manner appropriate to the circumstances.

... Consequently, the department has significantly reformed its approach to the management of major offenders. A newly-established High Risk Management Advisory Panel will provide advice to the Commissioner, who will have non-delegable decision-making authority with respect to major offenders who pose critical risks (for example, high public profile prisoners, certain custodial witnesses, and those who pose high risks to the operation of the prison system and/or community safety). The panel, made up of the Deputy Commissioner, Offender Management, the Deputy Commissioner, Operations, a senior Victoria Police representative, and an independent member (to be appointed), will provide recommendations to the Commissioner related to the prisoner's classification, placement, association with other prisoners, and temporary absences from the prison.

... To improve the management of high risk custodial witnesses, the department has established an Inter-departmental Custodial Witness Committee, comprised of the Director, Sentence Management Branch, Corrections Victoria, and representatives from Victoria Police, the Australian Federal Police and Australian Crime Commission.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 4

Ensure that prison officers and prison collators have the opportunity to contribute to and attend Sentence Management Panel/Major Offenders Review Panel Meetings.

#### *The department's response*

**Accepted**

### Recommendation 5

Ensure that a Major Offenders Unit staff member is on site at Barwon Prison each week to enable consultation with prison officers.

#### *The department's response*

**Accepted**

## Poor record-keeping practices of Corrections Victoria

168. Accountability requires that government agencies are able to demonstrate and justify their decision-making. In this regard, the failure of an agency to maintain adequate records compromises the agency's functions, undermines its credibility and impacts negatively on the public's perception of it.
169. In accordance with section 13(a) *Public Records Act 1973*, there is a statutory obligation on all Victorian public sector agencies to 'make and keep full and accurate records'. The Public Records Office Standard (PROS) 97/002 also requires public officers to 'make adequate records of their administration for the purposes of government accountability and the purposes of future government'.
170. I examined the record-keeping practices of Corrections Victoria in relation to the prisoner placement decisions involving Mr Williams.
171. The decision to place Mr Johnson with Mr Williams is detailed in the minutes of the Sentence Management Panel Meeting on 20 January 2009. These minutes state that 'after relevant authorities/business units' were consulted, Corrections Victoria approved the placement of Mr Johnson with Mr Williams.
172. These minutes are brief; do not record which relevant authorities/business units were consulted; nor detail what information was considered by the panel in arriving at its decision, such as:
  - the advice received from Ms Armytage and Mr Wise as detailed in their emails dated 6 January 2009

- the advice received from Detective Inspector Smith in his email dated 6 January 2009 that Victoria Police had 'no objections' to the placement
  - the intelligence information available such as Mr Johnson's involvement with the 'Prisoners of War' gang.
173. While the responsibility for placement decisions is that of the Sentence Management Panel, the brief minutes of the Sentence Management Panel show that the recommendation of Mr Wise and the support of Ms Armytage was accepted without further evaluation.
174. By way of contrast, my investigation identified documentation concerning a recommendation made by the Sentence Management Unit in 2004 to place Mr Williams in a long-term placement with two other major offenders in the Acacia Unit. In support of this placement, the Sentence Management Unit prepared a five page memorandum which weighed up various factors such as offence history, any prison incidents, prior placements, alerts and the circumstances of the prisoners' relationships.
175. My investigators could not find any evidence of a similar report prepared by the Sentence Management Unit in relation to Mr Johnson's placement with Mr Williams in January 2009, despite the concerns expressed by Mr Wise in his email of 6 January 2009.
176. In relation to this issue, Mr Money stated:
- These reports are otherwise known as 'long term placement reports' [s]uch relatively lengthy and formalised reports are standard procedure for prisoners who are to become long term placements in High Security or Management units. This is not the case for prisoners moving from one High Security Unit or Wing to another. It is also not the case for changes in Unit 'run outs or mixing regimes'. These are considered to be authorised and recorded through the Sentence Management Panels.
177. On 13 May 2009, Mr Williams, his father and Mr Johnson were moved to Unit One in the Acacia Unit. My investigation was unable to locate any minutes or documentation detailing the rationale for the decision to transfer these prisoners to the Acacia Unit.
178. At interview, Mr Money confirmed that the minutes of a Sentence Management Panel are required to detail all reasons for a prisoner placement decision and the risk assessment process undertaken, including consultation with relevant stakeholders.
179. My investigation identified several examples of minutes taken by Sentence Management Panels, including the Major Offenders Review Panel, which contained limited information in relation to the decision made or the rationale for the decision. For example, on 11 August 2009 Mr Williams met with the Major Offenders Review Panel. The minutes of this meeting state:

Carl [Mr Williams] was seen for his annual/quarterly MOU [Major Offenders Unit] review chaired by the Assistant Commissioner. The panel discuss the recent reception of Tommy Ivanovic in the Unit and Carl stated that having three running out in the unit together makes a difference and the unit is working well.

180. On 29 July 2009, Mr Ivanovic was placed with Mr Johnson and Mr Williams in the Acacia Unit. However, apart from these minutes, there was no information recorded by the Major Offenders Review Panel regarding the reasons why a decision was made to place Mr Ivanovic in the Acacia Unit. The minutes of the Major Offenders Review Panel meeting with Mr Ivanovic on 29 July 2009 also do not provide an adequate explanation of the rationale for the decision to place Mr Ivanovic with Mr Johnson and Mr Williams. The minutes state:

Tom was seen today ... for transfer from Banksia Management Unit to Acacia High Security Unit, Unit One placement. Tom has previously requested this placement given the relationship with the inmates housed in this area. MOU [Major Offenders Unit] have now supported and instructed Barwon to initiate this change of placement.

181. I note that the Sentence Management Unit Manual does not provide guidance on how decisions of Sentence Management Panels, including the Major Offenders Review Panel, should be recorded.

## Conclusions

182. It is concerning that documentation relating to Mr Williams' placement decisions made by Sentence Management Panels, including the Major Offenders Review Panel, does not detail any of the information considered in arriving at the panel's decisions, nor the rationale for these decisions.
183. The manner in which Sentence Management Panels record placement decisions is inadequate and their decision-making should clearly set out the risk assessment conducted. Sentence Management Panels should also accurately record all stakeholder advice considered and any meetings attended with the affected prisoner.

### ***The manner in which Sentence Management Panels record placement decisions is inadequate.***

184. This failure of Sentence Management Panels to document their decision-making is not restricted to Mr Williams' case.
185. Corrections Victoria may have failed to comply with its statutory record-keeping obligations under the Public Records Act and the Public Records Office Standard.
186. In response to this issue, Mr Money stated:

In relation to your comments regarding the Sentence Management Panel not providing a sufficient level of detail in their minutes of meeting, I understand your concern. However, it is important to acknowledge that the Panel will not necessarily record every detail of what is often a lengthy and complex history of each individual each time they meet. Rather, the [Sentence Management] Panel will record any updates relating to the individual's situation and discuss current issues ... Whilst I acknowledge that the notes of 20 January 2009 [by the Sentence Management Panel], in hindsight, may have been better crafted, the broadness of the notes are often a result of having to protect sources, the need to protect the confidentiality of those consulted and/or in some circumstances having to protect system/organisational issues.

...

It is acknowledged that a specific report that summarised the rationale behind the placement of Williams and Johnson was not completed, but rather, the rationale is documented throughout a number of methods including, the Sentence Management Panel notes and a number of emails that detailed the considerations and consultation processes, that is, discussions with the Commissioner, advice to the Secretary and discussions with Victoria Police.

187. The department also stated:

Your report raises concerns about the practices of the SMB [Sentence Management Branch] and Major Offenders Unit (MOU) in Mr Williams' case, including record-keeping practices, panel reviews ... To address identified shortcomings in record-keeping practices, Corrections Victoria has strengthened the protocols applicable to the SMB and MOU, ensuring that staff maintain full and accurate records of meetings and reviews.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 6

Develop guidelines for Sentence Management Panels identifying what information must be considered and recorded in relation to prisoner placement decisions.

#### *The department's response*

**Accepted**

### Recommendation 7

Ensure that minutes of Sentence Management Panels detail the following to record their decision-making concerning all major offenders and high security units at Barwon Prison:

- the decision

- the proposed action
- the rationale behind the decision
- the information considered as part of the decision-making process
- the parties consulted and the advice provided
- the outcome of meetings with the affected prisoner or proposed prisoners to be introduced to the placement.

### ***The department's response***

**Accepted**

### **Recommendation 8**

Review file management practices in relation to Sentence Management Panels to ensure that standards meet the requirements of the Public Records Act and the Public Records Office Standard.

### ***The department's response***

**Accepted**

## **Failure to consider intelligence information and key events**

188. My investigation identified intelligence available to Corrections Victoria prior to the death of Mr Williams which should have raised serious concerns regarding his safety. This revealed critical information, which in each instance did not appear to be considered nor did it cause Corrections Victoria to reassess Mr Williams' placement. In this regard, I identified a series of missed opportunities by Corrections Victoria to review Mr Williams' placement and perhaps ultimately to save his life.

### **Previous assaults on prisoners involving Mr Johnson**

189. On 1 October 1998, Mr Johnson and four other prisoners (some of whom were members of the 'Prisoners of War' gang) severely assaulted another prisoner in the Acacia Unit. Mr Johnson and others broke through a window in the Acacia Unit into a day-room. The prisoner disassembled and used the seat from an exercise bike to defend himself during the assault.

190. In 2004, a prisoner who was a close associate of Mr Williams was assaulted at Barwon Prison by members of the 'Prisoners of War' gang. It was believed that Mr Johnson ordered this assault. This prisoner was providing information to Victoria Police. At interview on 17 June 2011, a Supervisor of the Intelligence Unit said:

... one of their [the Prisoners of War gang] first victims was [a prisoner who was] ... a close associate of Carl Williams ... If I had any concerns with Johnson - and you know you'd go back through his POW [Mr Johnson's Prisoners of War] days ... and his friend [Mr Williams' close associate] ... had his face slashed from ear to mouth

... Wouldn't something tick in your head saying, 'Oh, we better not put Williams with Johnson because Williams being the convicted murderer may get back at Johnson because of what he did to my mate [Mr Williams' close associate who was assaulted by the Prisoners of War gang] ... ?'

### **Mr Ivanovic's placement in the Acacia Unit with Mr Williams and Mr Johnson**

191. Mr Ivanovic was an associate of the former police officer about whom Mr Williams was providing information to Victoria Police. Mr Ivanovic allegedly introduced Mr Williams to the former police officer. The former police officer visited Mr Ivanovic in jail and also offered to provide character evidence for Mr Ivanovic during his criminal trial in October 2003, however this offer was later declined.
192. In a letter dated 16 June 2009 from Mr Ivanovic to Mr Williams, Mr Ivanovic requested to be placed with Mr Williams in the Acacia Unit due to his relationship with the former police officer being made known to the prison community.
193. On 29 July 2009, Mr Ivanovic was placed with Mr Johnson and Mr Williams in the Acacia Unit.
194. Mr Ivanovic's introduction into the Acacia Unit was a significant change for Mr Williams and Mr Johnson, as they had only been associating with each other since Mr Williams' father left the prison on 20 June 2009.
195. Given the introduction of a new prisoner into the unit who was allied with Mr Williams and previously allied with the former police officer, Corrections Victoria should have reviewed the placement between Mr Williams and Mr Johnson at this time to determine whether it remained safe in light of the addition of Mr Ivanovic. Corrections Victoria did not review the placement on these terms and it remained unchanged.

### **Information Report – March 2009**

196. Prison officers have an obligation to report and document information where it is significant to the security of the prison, prisoners or staff.<sup>15</sup>
197. On 14 March 2009, Prison Officer A submitted a *Collator Information Report* (see Appendix 4) to the prison collators at Barwon Prison via email in relation to information he had received from another prisoner about the safety of Mr Williams.
198. Prison Officer A's Information Report was corroborated by another Prison Officer. Prison Officer A emailed the Information Report on 14 March 2009 to nine prison staff, including Operations Manager, Mr Gavin Martin; the then General Manager, Mr Russell Reed; a Senior Prison Officer in the Collators Unit and other prison collators.

<sup>15</sup> Corrections Victoria, Director's Instruction No. 1.10, Security – Prisoner, 11 May 2009.

199. In this report, Prison Officer A identified that the information contained in the report had the potential to affect the safety of Mr Williams. Prison Officer A stated that a prisoner had made reference to Mr Williams giving evidence against the former police officer and another individual, and had said that 'everybody [at Barwon Prison] knows that Mr Williams is cooperating with Victoria Police in exchange for a reduction in his sentence and other benefits'. In the Information Report, Prison Officer A commented on the safety of Mr Williams, as follows:

These views [of the prisoner], no matter how true or unfounded, may be a cause for concern to the safety of prisoner Williams and may be the cause of some sort of attempt to harm prisoner Williams or those around him.

***A prisoner had said that 'everybody [at Barwon Prison] knows that Mr Williams is cooperating with Victoria Police'.***

200. A Senior Prison Officer in the Collators Unit responded to Prison Officer A's email on 15 March 2009 by stating:

Thanks ... [Prison Officer A],

I appreciate the info & concur with your belief ...

201. At interview, Prison Officer A said that he believed that no action was taken on the Information Report by Barwon Prison senior managers who received the Information Report, including a Senior Prison Officer in the Collators Unit who acknowledged the safety concerns identified.

202. Operations Manager Mr Martin stated:

... I claim that I had not received or recall the document [Prison Officer A's Information Report] on this day. I'm not sure whom the nine staff were as Barwon had at the time three Collators. I'm also wondering was the email addressed to the correct Gavin Martin if in fact [Prison Officer A's] statement is correct.

203. The then General Manager Mr Reed also stated that he does not recall receiving Prison Officer A's Information Report.

***Prison Officer A's Information Report was not placed on the PROTEL intelligence system.***

204. My investigation found that:

- Prison Officer A's Information Report was not placed on the PROTEL intelligence system by Barwon Prison managers or intelligence staff who received the email.
- The Information Report was not referred to the Intelligence Unit for further review.

- Corrections Victoria failed to review the placement of Mr Johnson with Mr Williams, in light of the Information Report.

205. At interview on 12 April 2011, the Senior Prison Officer in the Collators Unit said that he could not recall seeing Prison Officer A's Information Report.
206. Since this interview, the Senior Prison Officer in the Collators Unit stated:
- I am correctly quoted as saying that I do not recall receiving the email. However, I accept that I did receive it as I responded to it by email at the time and my response is quoted in your report. I note that the email went to a number of other people ... Those persons were just as or more responsible than me for taking any necessary action ... I held no senior or supervisory role at the time the email was sent or at the time of Carl Williams's [*sic*] death.
207. When Prison Officer A's Information Report was discussed at interview with Mr Peter Hutchinson, Operations Manager of the Intelligence Unit on 20 May 2011, he said:
- ... That's [Prison Officer A's Information Report] the information that should go on [PROTEL]. Even if you don't consider it to be true, the person's that next up the line, which is us, may have more information that it just ties in with. Yeah, it actually disturbs me that it didn't go on. I wasn't - that's actually the first time I've heard of it ... I'm not aware of it at all. And that is disturbing.
208. Since this interview, Mr Hutchinson confirmed that ' ... [t]here is not an Information Report currently on the system that relates to a ... [Prison Officer A] on or about March 2009 that could be related to the WILLIAMS death'.
209. On 27 July 2010, following the death of Mr Williams, Prison Officer A emailed the Information Report to Mr Gavin Martin, Operations Manager of Barwon Prison, and the then Acacia Unit Supervisor. At interview, Prison Officer A said that he felt he needed to re-highlight the contents of the Information Report and his concerns regarding the safety of Mr Williams. Prison Officer A told my investigators:
- ... [T]o my surprise, he [Mr Martin] made mention that was the first time he'd even laid eyes on - on that [information] report ... And he asked me flat out did I really think he [Mr Williams] was in trouble, and I said, 'Well, I wouldn't have written the report unless, you know - I'm not gonna waste people's time with allegations that are just a maybe'.
- ... And that was - that was it. That's the last I've ever heard of it [the Information Report].
210. At interview on 21 April 2011, Operations Manager, Mr Martin said that he only became aware of Prison Officer A's Information Report after the death of Mr Williams and that he could not recall whether any action had been taken in response to the report.

211. I am satisfied that the Information Report was sent by Prison Officer A. It was a key piece of information relating to concerns raised by a prisoner regarding the perceptions of the prison community about Mr Williams' safety. The information supports the view that the placement of Mr Johnson with Mr Williams was becoming increasingly risky because of Mr Williams' cooperation with Victoria Police. At this time, Corrections Victoria should have re-evaluated the placement. However, this did not take place and was another lost opportunity.

### **Key events occurring in December 2009**

212. In December 2009, Mr Johnson's relationship with a former prisoner and criminal associate deteriorated. The criminal associate was also a close associate of Mr Ivanovic. In an email to then Operations Manager, Mr Russell Reed, dated 22 December 2009, a Senior Prison Officer in the Collators Unit stated that:
- ... some mail from Matt Johnson in Acacia to ... [the associate] today reveals a big rift between the two ... I'll keep you informed as this may eventually lead to an impact on Tommy Ivanovic's placement in Unit One Acacia with Johnson & Carl [Williams].
213. On 23 December 2009, Victoria Police provided the Intelligence Unit with information it had received indicating that an associate of a high security prisoner would be murdered at Barwon Prison. As a result, Mr Williams and Mr Ivanovic were identified by the Intelligence Unit as persons at risk.

### ***Victoria Police provided the Intelligence Unit with information that an associate of a high security prisoner would be murdered at Barwon Prison.***

214. A decision was made by the Sentence Management Unit to move Mr Ivanovic out of the Acacia Unit. Mr Johnson and Mr Williams were also isolated from each other for a period of eight days owing to the death threat.
215. However, Mr Williams, Mr Johnson and Mr Ivanovic were allowed to resume their placement together in the Acacia Unit in January 2010, following a decision made by the Sentence Management Unit that the threat was not substantiated.
216. At this time, the placement of Mr Johnson with Mr Williams had remained unchanged for approximately ten months. This separation gave Corrections Victoria an opportunity to reassess the placement of Mr Johnson with Mr Williams, in light of the threats to Mr Williams' safety.
217. In response to this issue, Mr Money stated:
- ... By way of clarification, Ivanovic was removed from the Acacia unit for approximately 3 weeks in December 2009 and January 2010. This resulted from Johnson appearing to be drug affected at one point, whilst around the same time, Johnson wrote a threatening letter to ... [the associate's] mother. Given Johnson's apparent state, and Ivanovic's close relationship with [the associate], Ivanovic was removed from the Unit.

Corrections made a re-assessment of the situation and Ivanovic was returned to the Unit on 21 January 2010.

The incident relating to the death threat [that an associate of a high security prisoner would be killed] resulted in numerous areas of the prison being locked down whilst intelligence was analysed and searches conducted.

### **Prison staff views regarding the placement of Mr Williams**

218. During my investigation several witnesses, including experienced prison staff, expressed concerns regarding the placement of Mr Johnson with Mr Williams. For example, a Senior Prison Officer in the Collators Unit said at interview:

... My experience with Matt [Johnson] was ... he was a self proclaimed leader of the prison gang [the Prisoners of War gang] ... Matt comes across as a person to me that hates authority, doesn't like people that inform on others, you know, regards them as a dog ... I suppose Carl [Williams] went down the path that he did and when Carl sort of went down that path [by providing information to Victoria Police] I probably started to feel a little uneasy how that relationship would end up.

219. The Senior Prison Officer in the Collators Unit did not take any action on his concerns regarding Mr Johnson's placement with Mr Williams. The Senior Prison Officer in the Collators Unit stated that the above statement made at interview regarding Mr Williams and Mr Johnson's placement reflected:

... views I held but which were not supported by specific evidence. I did not then and do not now consider that I had evidence available to me at the time, that could have justified taking action.

220. A Supervisor of the Intelligence Unit expressed the view at interview that:

He [Mr Williams] was very high profile but at the end of the day he had no prison sense ...

... And then all of a sudden Johnson comes out of nowhere. And Johnson wasn't part of the gangland setup; he was a prison thug ... [H]ow they [Corrections Victoria] ever let it happen I will not know. Because basically as soon as Johnson found out that Williams was cooperating with police to either get years off his own sentence or help his father out, he was doomed. 'He appointed his own assassin' are the words that I've used, and I stick by it.

***A Supervisor of the Intelligence Unit expressed the view at interview that as soon as Johnson found out that Williams was cooperating with police he was doomed.***

### **Concerns raised by Mr Ivanovic**

221. In a monthly review by the Major Offenders Unit Review Panel on 17 December 2009, Mr Ivanovic reported that there had been arguments between himself, Mr Johnson and Mr Williams. The minutes state:

... The [Major Offenders Unit Review] panel questioned if he [Mr Ivanovic] has any issues with his placement, Tommy [Ivanovic] stated that there have been a few arguments in the unit as usual but has no issues with his current placement.

222. The Sentence Management Unit did not pursue this matter further with Mr Ivanovic, the Intelligence Unit or the Barwon Prison management team.

### **Telephone calls between Mr Johnson and a criminal associate**

223. On 6, 8, 12 and 18 April 2010 Mr Johnson made a series of telephone calls to a criminal associate, concerning rumours of an assault involving this associate. In these telephone calls, Mr Johnson sought to establish whether the associate had been physically assaulted by members of the motorcycle gang, the Hells Angels. Mr Johnson refers to Mr Williams' family members as being the source of these rumours. Mr Johnson states that he is very upset about the rumours and from the tone of his voice and the language used, appears keen to find the source of the rumours. Mr Johnson seems increasingly angry during each of these phone calls with this associate when the involvement of the Williams family is discussed.

224. Following the death of Mr Williams, the Intelligence Unit conducted a review of all available intelligence holdings from June 2007 to 19 April 2010, related to the safety of Mr Williams and his relationships. The resulting Intelligence Briefing dated 3 May 2010, concluded that 'there are no reports to explicitly suggest that it [the telephone calls made to the criminal associate] contributed to any issues between Johnson and Carl Williams'.

225. In an email dated 23 April 2010, a Supervisor of the Intelligence Unit, raised concerns with the General Manager of Barwon Prison, Mr David Prideaux<sup>16</sup>, and the Operations Manager of the Intelligence Unit, Mr Hutchinson, about these telephone calls. In this email it stated:

... Johnson continually asks [the criminal associate] of this supposed incident to which [the criminal associate] denied anything ever happened. Over this period Johnson appears to get more and more upset on hearing of the bashing of [the criminal associate] ... Eventually Johnson is convinced that these rumours were spread by ... [Mr Williams' family members] ... [A member of Mr Williams' family] confirmed this information with Carl Williams during a ... visit on the 31st March [2010] and a contact visit on the 7th April 2010.

226. At interview, the Supervisor of the Intelligence Unit commented further on these telephone calls:

... my interpretation of it [the telephone calls between Mr Johnson and the criminal associate] was that there was word out there that [the criminal associate] had been bashed and the Williams' people were running with that story. And to me, Johnson was getting irate that he was hearing on the inside that his mate, [the

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<sup>16</sup> Mr David Prideaux was the General Manager at Barwon Prison from the time Mr Williams was received into Barwon Prison in 2004 until 14 June 2009 and between 7 May 2010 and 5 June 2011. From 5 June 2011, Mr Prideaux went missing while deer hunting in a national park near Mansfield, Victoria.

criminal associate], on the outside was being bashed by the Hell's Angels ... And these rumours were being circulated by ... [members of Mr Williams' family] ... And the tension, to me, could have been mounting between the two [Mr Williams and Mr Johnson] over Williams' family spreading those rumours.

227. Mr Hutchinson stated in relation to the Supervisor's email:

While I am aware of the email sent by [the] Supervisor ... on the 23rd April 2010, I did not receive the email until after my return from leave on 10 May 2010. I believe that I read the email sometime during the week after my return to work. I don't recall any specific conversation but believe I would have discussed the substance of that email at some stage after returning to work with [the] supervisor ... I was also on leave during the telephone calls which were the subject of the email, so [the] Supervisor ... was not and could not have been critical of me regarding any action or inaction as a result of them.

### Mr Johnson's correspondence

228. My investigation reviewed Mr Johnson's outgoing mail in the months leading up to the death of Mr Williams to determine whether there were any comments providing an indication of what was to occur.

229. Several statements made by Mr Johnson regarding his placement with Mr Williams, relevant to Mr Williams' security, were identified. A number of Mr Johnson's written comments were not recorded on the PROTEL system, while other entries were not made until after the death of Mr Williams. For example:

- In a letter from Mr Johnson dated 5 April 2010 to his cousin, he states 'there will be media attention soon', 'just don't want you to worry ... I'll be sweet so don't stress'. There was no PROTEL entry made in the system until 23 April 2010.
- In a letter from Mr Johnson dated 12 April 2010 to another prisoner, he states 'I know the Khoon [Mr Williams] is getting baked everywhere, he doesn't believe it or care? I told you the bloke [Mr Williams] has gone insane. He's [Mr Williams] not well in the head'. There was no PROTEL entry made in the system until 23 April 2010, after Mr Williams' death.
- In a letter from Mr Johnson dated 18 April 2010 (one day before Mr Williams' death) to another prisoner, he states 'as for myself I think that now I'll have to hang around for a while longer. Doesn't matter but coz I love this shit. I am the true general so I must keep things in good order true'. There was no PROTEL entry made regarding this letter nor any other action taken.

230. In relation to Mr Johnson's correspondence, Mr Hutchinson stated:

... the information in the letters of 5, 12 and 18 April 2010, in my opinion was not enough to separate the prisoner [Mr Williams].

... I am aware my Unit believed the mail dated 5 April 2010 from JOHNSON to his cousin which refers to media attention, could be as a result of the commencement of the upcoming WILLIAMS testimony against [a former police officer] ... in the Supreme Court or the mention of the charges for armed robbery against JOHNSON set for early May in the County Court.

Both of these events would show JOHNSON in a bad light.

231. The failure to create a PROTEL entry in a timely manner means that information which could have been linked to risks to Mr Williams was unknown to relevant stakeholders such as the Intelligence Unit, prison collators, the Major Offenders Unit and the Barwon Prison management team.

232. Mr Hutchinson stated in relation to this issue:

... there is no information to suggest that Corrections [Victoria] would have acted any differently even if PROTEL reports have been placed on the system in a timelier manner.

The interpretation of information when reviewed with hindsight may have led to a change in the way we used the information but the information in the letters of 5, 12 and 18 April 2010 was not enough to separate the prisoners [Mr Johnson and Mr Williams].

The mail dated 12 April 2010 ... to JOHNSON discusses the attitude of others towards WILLIAMS due to the rumours that WILLIAMS was giving evidence.

The attitude that a prisoner portrays to other prisoners is not always the true one, especially when the prisoner they are conversing with has a differing attitude ... At the time of the April 2010 letters, JOHNSON was also not popular in the criminal world due to the armed robbery charges he was facing.

### **Telephone calls between Mr Ivanovic and his criminal associates**

233. On 14 February 2010, Mr Ivanovic made a telephone call to a close criminal associate. The close associate was a former co-leader of the 'Prisoners of War' gang. The close associate had previously been an associate of Mr Johnson, however the relationship had deteriorated following a falling-out.

### ***In a telephone call on 14 February 2010, the close associate describes Mr Williams as a 'dog'.***

234. In a telephone call on 14 February 2010, the close associate refers to a 'lot of people being unhappy' with Mr Williams 'giving evidence to Victoria Police' and describes Mr Williams as a 'dog'. The close associate also states that Mr Ivanovic's association with Mr Williams will see him 'tarred with same brush' by the prison community and urges him to separate himself from Mr Williams as a matter of priority.

235. At interview, a Supervisor of the Intelligence Unit said that this telephone call raised serious concerns for Mr Williams' safety as:

... there's no doubt that if not straight away, not long after that Ivanovic would have gone back to Johnson and told him exactly what went on through that conversation.

... It's quite obvious that ... [the close associate's] putting the word inside Barwon [Prison] that the criminal world on the outside, not only being Victoria but interstate ... are not happy with the word that Williams is giving information [to Victoria Police].

236. The Supervisor said that he had not listened to this telephone call prior to Mr Williams' death and was not aware of any action taken in response to Mr Ivanovic's telephone call. A PROTEL entry was created on 15 February 2010 about the telephone call.

***The Supervisor said that he had not listened to the telephone call from the close associate prior to Mr Williams' death.***

237. At interview, a Senior Prison Officer in the Collators Unit said that he was not aware of this telephone call prior to his interview with my investigators and it was not brought to his attention by other prison collators. On listening to the telephone call played to him at interview by my investigators, the Senior Prison Officer in the Collators Unit stated that his reaction to the telephone call was that it was 'pretty significant' and:

... if I was to hear that phone call I'd certainly need to have an immediate discussion with the operations manager and the general manager at the prison, probably about the current placement situation [with Mr Williams].

238. In response to my report, Mr Hutchinson stated:

The comment [made by the close associate to Mr Ivanovic that he would be] 'tarred with the same brush' was not of concern to Corrections ...

It is incorrect to say there was no further action taken in relation to this telephone call. I have since checked both PROTEL and the information report register and I am aware that the telephone call of 14 February 2010 was monitored by [a] Senior Prison Officer ... who also created the 4 Information Reports that were passed to Victoria Police. I can conclude from this that the information was entered onto PROTEL at the time.

239. While four information reports were provided to Victoria Police, my investigation was unable to identify that any further action was taken by Corrections Victoria in relation to the content of the telephone call.

240. On 18 April 2010, Mr Ivanovic made a further telephone call to the close associate, in which the close associate again raised further concerns regarding Mr Ivanovic continuing to associate with Mr Williams:

You haven't got like one friend out here ... you've chosen to like accept it mate it's not good. You're not the same as you were three months ago. You put yourself in that position, keep on making weak decisions.

241. No PROTEL entry was made in relation to this telephone call until 14 May 2010.
242. Mr Wise stated in response to these issues:

I also had confidence that the close monitoring of Messrs Williams', Johnson's and Ivanovic's mail and phone calls was continuing. I now know that there was some key phone calls that were either not listened to, or the substance of which was not understood at the time but became much clearer in retrospect. I also note that the real meaning of some of those phone calls was able to be discerned only after OCSR [Office of Correctional Services Review] staff replayed all the prisoners' recorded calls over some time ... this was an exercise that could not have been achieved contemporaneously by the Intel [Intelligence Unit] staff with the resources that the Intel unit had to draw upon at that time ...

***There were some key phone calls that were either not listened to, or the substance of which was not understood.***

## Conclusions

243. In the intelligence examples cited in my report, several critical events prior to and during Mr Johnson's placement with Mr Williams were identified which indicate that the risks to Mr Williams' safety were increasing. However, Corrections Victoria failed to conduct a comprehensive review of Mr Williams' placement at any of these times. For instance, Corrections Victoria should have, as a minimum, conducted a comprehensive review of Mr Williams' placement arrangements following:
- the information received from Victoria Police in December 2009 concerning a possible attempt to kill an associate of a high security prisoner at Barwon Prison
  - Prison Officer A's March 2009 Information Report that a prisoner at Barwon Prison had stated that 'everybody' was aware that Mr Williams was cooperating with Victoria Police
  - Mr Williams' return to the prison in late February 2010, after assisting Victoria Police
  - Mr Johnson being accommodated with Mr Williams for 12 months
  - Mr Ivanovic being moved into the Acacia Unit in July 2009
  - Mr Johnson's and Mr Ivanovic's telephone calls in February and April 2010
  - Mr Johnson's correspondence in April 2010.

244. My investigation has identified failings with the intelligence systems and processes used by Corrections Victoria. I identified several examples involving important intelligence information which was available in relation to Mr Williams' situation, which were overlooked or not acted upon by the prison collators and the Intelligence Unit.

***It is concerning that no action was taken in relation to Prison Officer A's Information Report of March 2009.***

245. The intelligence examples in my report show that the dynamic between Mr Johnson, Mr Ivanovic and Mr Williams had changed as Mr Williams' involvement with Victoria Police increased. It is clear that the prison community was well aware of Mr Williams' cooperation with Victoria Police as a witness and this growing knowledge placed Mr Williams at a heightened risk. In addition, Mr Williams' close ally Mr Ivanovic was being pressured to dissociate himself from Mr Williams.

246. In response to this, the department stated:

Your report demonstrates that the intelligence systems and processes operations at the time of Mr Williams' imprisonment lacked the sophistication required to support the management of high security prisoners. The department agrees with this assessment. The roles and responsibilities of key Corrections Victoria and Barwon intelligence staff were not sufficiently clear, and agreement does not appear to have been reached about when, how and what information need to be communicated between those involved in Mr Williams' management. A number of key telephone calls, letters, information reports and events were either not recorded or not acted upon.

247. Prison collators and the Intelligence Unit have a crucial role to play to ensure that prisoner safety and the security of the prison is protected. I consider that these intelligence groups failed to adequately assess the extent of risk Mr Johnson posed to Mr Williams' safety based on the intelligence information available.

248. In response to this, the department stated:

... Corrections Victoria has created a new position of Deputy General Manager, High Security, to oversee the management of high security units at Baron Prison and lead the coordination of internal and external intelligence sharing in relation to high security prisoners.

249. It is concerning that no action was taken in relation to Prison Officer A's Information Report of March 2009, which raised early concerns in relation to the impact Mr Williams' cooperation with Victoria Police could have on his welfare in jail. While subsequent events show that Mr Williams was not killed by Mr Johnson until some 15 months into their placement, this is no excuse for no action being taken on an Information Report which recorded that the safety of the highest profile prisoner in Victoria and a key police witness may be at risk. I consider that Corrections Victoria failed in its statutory obligation to protect Mr Williams from real and appreciable danger in January 2009 and subsequently.

### **Poor coordination of intelligence information**

250. A number of prison staff informed my investigators that while they held concerns regarding the placement of Mr Johnson with Mr Williams, they felt they did not have the power to affect the placement decision-making process. Prison staff also said that they did not receive any feedback in relation to information provided to prison collators, the Intelligence Unit or the Major Offenders Unit.
251. My investigation identified a number of deficiencies regarding how:
- intelligence information is gathered and recorded and the practices of prison collators and the Intelligence Unit
  - intelligence information is shared and coordinated between the prison collators and the Intelligence Unit and the major stakeholders such as the Sentence Management Unit and Victoria Police.

### **Delays with recording intelligence**

252. There were several instances where prison collators and the Intelligence Unit failed to record and respond to available intelligence information in a timely manner. For example, the intelligence information detailed in my report, obtained from Mr Johnson's mail, was not entered on the PROTEL system until after the death of Mr Williams. Similarly, no action was taken in relation to Prison Officer A's Information Report in March 2009.
253. The Barwon Prison's local operating procedure, 2.10.1 – Information Management Systems, states that the prison collators must enter data into PROTEL as soon as possible after the staff member obtains the information. Once intelligence information is received, prison collators or the Intelligence Unit staff assess the level of reliability, relevance or risk of the intelligence information when recording it in the PROTEL system.
254. At interview, a Senior Prison Officer in the Collators Unit said that the collators were up to a week behind in listening to prisoner telephone calls and up to three days behind in reviewing prisoner mail.

### ***Collators were up to a week behind in listening to prisoner telephone calls and up to three days behind in reviewing prisoner mail.***

255. Mr Hutchinson also confirmed at interview that there were delays in the Intelligence Unit in assessing and recording prisoner mail and telephone calls. Both the Senior Prison Officer in the Collators Unit and Mr Hutchinson said that the delay was due to a lack of resources.
256. Mr Hutchinson stated in response to this issue:

The issues with reading mail ... was compounded by the transferring of the documents by mail/DX. The process was that all incoming and outgoing mail was to be photocopied and forwarded to us (Corrections Victoria Intelligence Unit) on a regular basis but there was a number of factors that effected the timeliness of the mail being received.

There were delays in the photocopying at Barwon [Prison] and the forwarding of the mail.

Mail was not always forwarded to Corrections Victoria Intelligence Unit on a daily basis but stored and forwarded in bulk with us receiving, in some instances a weeks worth of mail at once.

Some delays were also caused by the mail and DX service itself with mail sometimes taking 3 days to get from Barwon to our office.

... Prisoner mail is usually very cryptic and for this reason most gangland related mail was read by [a] Supervisor [of the Intelligence Unit] ... as [he] ... had the experience and the background knowledge to, in most cases understand the meaning of the mail.

This could also lead to a delay in actioning mail if [the Supervisor] ... was on days off. In the ideal world we would have a number of staff devoted to gangland management but our staffing levels prevent this.

257. The Intelligence Unit and prison collators do not have the capacity to listen to more than one prisoner telephone call live at a time. Officers of the Intelligence Unit and prison collators stated that this causes significant difficulties for intelligence staff to action multiple live prisoner telephone calls. At interview, a Senior Prison Officer in the Collators Unit said:

... the system parameters don't allow us to have ... multiple collators listening to live calls all at once. We can only listen to one live call at a time, so we're always sort of catching up and going over recordings.

258. Mr Hutchinson advised that:

The benefit of listening to a prisoners telephone call once the call has been completed where you have the ability to stop, replay, slow down the call and vary the call volume are immense.

... If a staff member was listening to a live call and identified a part of the call that may contain information the collator would wait to the end of the call and then listen to the call possibly several times before formulating a report that accurately reflects the information contained in the telephone conversation ... I do not believe that any collator would place a report onto the system after only listening to the call live it is simply not good work practice ... This delay is not a significant delay in accurately and effectively analysing information.

259. On 28 April 2010, Mr Ivanovic made a telephone call to an associate, in which he mentioned that he would have expected prison collators to have been listening to his phone calls live immediately following the death of Mr Williams on 19 April 2010. My investigation identified that the telephone calls made by Mr Ivanovic shortly after the attack on Mr Williams on 19 April 2010 revealed crucial information about Mr Williams' welfare. These telephone conversations are as follows:

### Mr Ivanovic's telephone calls on 19 April 2010

At 12.54 pm, approximately six minutes after Mr Williams was assaulted by Mr Johnson, Mr Ivanovic telephoned his sister and said:

Mr Ivanovic: ... I can't talk for long ... something's happened here ... I think he's [Mr Johnson] ... [just] done something to him [Mr Williams] ... he [Mr Johnson] just went crazy ... he's alright with me we're good friends ... I don't know what happened, he just went crazy.

Sister: What did he do to him?

Mr Ivanovic: Oh he [Mr Johnson] hit him, I don't know what happened, I wasn't looking. I don't know ...

At 12.58 pm, Mr Ivanovic telephoned an associate:

Mr Ivanovic: I'm shocked mate ... something just really terrible just happened. I think Carl's dead ... I think Carl's dead mate ... Matty just went crazy ...

Associate: What happened?

Mr Ivanovic: I don't know mate, the screws [prison officers] haven't come yet or nothing, so we're going to get locked in ... I think he [Mr Williams] just started threatening Matty ... I just heard some noise and I turned over and seen Carl on the floor ...

260. Neither prison collators, nor the Intelligence Unit staff, were listening to Mr Ivanovic's telephone calls on 19 April 2010. Mr Williams was not found by prison officers until 1.15 pm.
261. Since his interview, Mr Hutchinson provided a comment on the resources required to listen to all high security prisoners' phone calls:

Each telephone call can be up to 12 minutes, this allows prisoners to make up to 1,540 phone calls per hour and up to 12,320 per day ...

... If you prioritise the calls to ... high security and management prisoners, which is currently about 200 prisoners and if they are contained in high security and management units on telephone restrictions (34 calls per week) then there would still be 81,600 minutes (1,360 hours) of calls to monitor.

... If the Intelligence Unit was to concentrate on only those prisoners on the high security list, which is at present about 30 prisoners, the Intelligence Unit would need to monitor approximately 122,240 minutes (204 hours) of calls per week.

It would take 340 hours to monitor 204 hours of actual telephone calls (of high security and management prisoners) this would equate to 8 staff listening to calls 40 hours a week each.

The Intelligence Unit is currently staffed by 3 permanent members with 4 secondees and 2 part time staff, as such, we provide phone and mail monitoring within our current capabilities.

262. My investigation was advised that at the time of Mr Williams' placement in the Acacia Unit with Mr Johnson, prison collators were required to analyse all prisoner mail to maintain the security of the prison and then forward this to the Intelligence Unit for assessment.
263. However, at interview Mr Hutchinson said that prisoner mail was not consistently forwarded to the Intelligence Unit by prison collators. He said:
- ... we [the Intelligence Unit] found that it [prisoner mail] wasn't coming through regularly ... we continually had to ask, you know. We were hearing – we were getting some mail. And it was referring to something that was in a previous letter, that we're going 'hang on minute, there's a bit missing'. And we'd say, 'Where is it?' And they'd say, 'Well, don't know' ... we have changed the system where it's now scanned and sent to us. I'm still not 100 per cent convinced that we're getting all the mail.
264. Mr Hutchinson stated:
- ... I believe that as a result of modifications to the process that we now receive all relevant mail from the prison collators.

### **Lack of understanding of the PROTEL system**

265. There appeared to be some uncertainty and inconsistency between the prison collators and the Intelligence Unit staff in relation to what information is recorded as intelligence information on the PROTEL system.
266. At interview, my investigators provided prison collators and staff of the Intelligence Unit with examples of Mr Johnson's mail and played audio recordings of Mr Johnson's and Mr Ivanovic's telephone calls, which are detailed in this report.
267. There were differing views between prison collators and staff of the Intelligence Unit regarding what intelligence information should be recorded on the PROTEL system. Prison collators expressed the view that intelligence information needs to be relevant before it is placed on the PROTEL system. For example, when shown Mr Johnson's letter dated 5 April 2010 to his cousin referring to future 'media attention', a prison collator did not agree that Mr Johnson's comments should be recorded on the PROTEL system.
268. However, an Intelligence Unit Supervisor advised that all examples of Mr Johnson's mail shown at interview, including Mr Johnson's reference to 'media attention' should have been recorded on the PROTEL system. He said:
- ... my personal advice to all collators when I undertake [PROTEL] training ... is "Record everything". Because the bit of information that they feel may not be of any relevance could be of relevance to something that's already on the system.

269. The Intelligence Unit Supervisor also said that his view was supported by the PROTEL operational manual and training provided to prison collators by Corrections Victoria.

270. Mr Hutchinson stated that:

... [The] issue of varying opinions of what should go on PROTEL is partly due to the view of the collators. They are responsible to the [prison] who they believe may not be in favour of all information being entered onto the system as it may be held against the Prison at a later date.

... the general rule is that everything that is not recorded in some other part of the system should be recorded in PROTEL as it may not be seen as relevant now but at a later date it may help to piece an information jigsaw together.

### **Lack of coordination between intelligence bodies**

271. My investigation identified several instances of a lack of coordination between the intelligence bodies (prison collators and the Intelligence Unit) and sources of intelligence information such as Victoria Police, the Sentence Management Unit and prison staff.

272. Sentence Management Unit staff have access to the PROTEL system which enables them to review all available intelligence information and make PROTEL entries regarding any intelligence information in their possession. However, Mr Hutchinson said at interview that there is a lack of intelligence information sharing between the bodies, as follows:

... [the Sentence Management Unit and Major Offenders Unit] will very, very rarely put information into the [PROTEL] system ... they spend – especially the Major Offenders Unit, spend all of their time talking to the high security prisoners with their reviews. And the information that comes on those one-on-ones is gold to us. Sometimes it's passed on, sometimes it isn't.

273. My investigators identified emails between the Intelligence Unit and Sentence Management Unit which refer to a lack of communication from the Sentence Management Unit in passing on important intelligence information.

274. For example, on 27 August 2010, a Supervisor of the Intelligence Unit sent an email to the Sentence Management Unit alerting it to intelligence information relating to the safety of two prisoners. Mr Money, the then Acting Commissioner responsible for the Sentence Management Unit responded to this email and confirmed that the information was received several weeks ago and a strategy to monitor telephone calls and mail had been implemented. On the same date, Mr Hutchinson responded to Mr Money's email stating:

... if SMU [Sentence Management Unit] was aware of the information and has had it for several weeks it would appear that nothing has been learnt from the Williams incident. CVIU [Corrections Victoria Intelligence Unit] has not been monitoring mail or phones in relation to the ... person of interest but we could have been if SMU had notified CVIU of the information.

... I now believe the good relationship between SMU and CVIU is a figment of my imagination.

## Conclusions

275. My investigation identified major deficiencies in relation to how intelligence information is gathered, coordinated and shared within Corrections Victoria. These deficiencies meant that significant intelligence information was either not recorded in the PROTEL system in a timely manner, or not recorded at all. This limited Corrections Victoria's ability to identify risks to Mr Williams' safety prior to his death.

***My investigation identified major deficiencies in relation to how intelligence information is gathered, coordinated and shared within Corrections Victoria.***

276. In response to this, the department stated:

Prison and intelligence staff read all mail from prisoners in the Acacia and Melaleuca units. Nonetheless, the department accepts that in Mr Williams' case, some relevant mail was not entered onto PROTEL, or was only entered onto the system after an unacceptable delay. This points to the need for more targeted and rigorous monitoring of correspondence between high security prisoners.

277. I am concerned that PROTEL reports were not entered until after the death of Mr Williams, and that there are significant delays in Corrections Victoria's intelligence bodies recording and assessing intelligence information. Delays of up to a week for staff to listen to telephone calls and read prisoner mail, which in turn lead to further delays in appropriate action being taken, are unsatisfactory. The Intelligence Unit staff and prison collators should have the ability to monitor several prisoner telephone calls live.

278. The department responded:

... Reciprocal information sharing arrangements were not in place – rather, information was scattered between different areas within Corrections Victoria, and was not adequately collated to enable a complete appreciation of Mr Williams' circumstances.

... Currently, there are few restrictions on high security prisoners making telephone calls to approved numbers during their time out of cells, providing they can afford it. In order to enable live monitoring of key prisoner calls, this will need to change. Corrections Victoria has purchased a software upgrade for the ARUNTA [Access Controlled Telephone System] telephone system that will enable multiple calls at the one location to be monitored simultaneously.

279. It is essential that prison collators and the Intelligence Unit be adequately staffed and resourced to perform their important role efficiently. This is clearly lacking, and should be actioned promptly by Corrections Victoria.

280. In response to this, the department stated:

... To enhance analytical capability, an area that was lacking prior to Mr Williams' death, the department has established three intelligence analyst positions.

... The roles and functions of intelligence staff have also been clarified.

281. I also consider that the PROTEL system should be updated by Corrections Victoria.

282. The department stated:

The replacement of PROTEL with a new intelligence database will also strengthen communication between the various intelligence units and staff. The new system, currently used in Western Australia, allows for electronic input of information reports by all prison staff, automatic generation of receipts to staff members who submit information reports, and a reporting function that enables collators and central intelligence unit staff to ensure they have assessed and actioned all incoming items. The new system will minimise prison officers' reliance on intelligence staff to manually enter, refer and assess paper information reports, and reduce delays in the recording of intelligence. The department has reviewed and reprioritised internal resources to implement the new intelligence database and the other features of the revised intelligence services model.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 9

Amend the PROTEL manual and Sentence Management Manual to require Sentence Management Unit staff to record information in the PROTEL system, including its minutes.

#### *The department's response*

**Accepted**

### Recommendation 10

Develop guidelines to ensure that all prisoner mail in high security and management units is assessed by prison collators before forwarding to the Intelligence Unit.

#### *The department's response*

**Accepted**

### **Recommendation 11**

Develop procedures to ensure that information reports are entered into the PROTEL system within two days of receiving the intelligence information.

#### ***The department's response***

**Accepted**

### **Recommendation 12**

Provide training for prison collators and Sentence Management Unit staff regarding the consistent use of the PROTEL system.

#### ***The department's response***

**Accepted**

### **Recommendation 13**

Upgrade the telephone systems used by prison collators and the Intelligence Unit to ensure that multiple prisoner telephone calls can be listened to simultaneously.

#### ***The department's response***

**Accepted**

### **Recommendation 14**

Consider implementing a requirement that collators and Intelligence Unit staff listen to key prisoner telephone calls live.

#### ***The department's response***

**Accepted**

## **Failure to implement the Comrie Review**

283. In 2008, Corrections Victoria commissioned former Chief Commissioner of Victoria Police, Mr Neil Comrie, to conduct a review of Corrections Victoria's intelligence systems titled, *Review of Operations of the Intelligence Unit*, December 2008 (the Comrie Review). This report was commissioned in response to my report, *Investigation into contraband entering a prison and related issues*<sup>17</sup>, which identified major shortcomings in Corrections Victoria's intelligence system.

284. Mr Comrie made 32 recommendations aimed at improving Corrections Victoria's intelligence system. These included that:

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<sup>17</sup> Victorian Ombudsman, *Investigation into contraband entering a prison and related issues*, June 2008.

- The management of intelligence functions within Corrections Victoria should be coordinated through an Intelligence Services Unit that reports through the General Manager of the Intelligence Unit to the Deputy Commissioner, Prisons and Transitional Services.
- All functions currently performed by the Intelligence Unit that are not directly related to intelligence processes should be reallocated to the Security Emergency Services Group Operations Support Unit.
- Corrections Victoria direct that each prison in Victoria have adequate numbers of trained intelligence officers to deliver a professional intelligence service.
- Corrections Victoria acquire high level intelligence skills through the employment of at least three professionally trained and experienced intelligence experts:
  - A Manager of Intelligence Services
  - At least two intelligence analysts.

285. My investigation identified a Corrections Victoria briefing note regarding the Comrie Review dated 25 February 2009, titled *Review of Operations of the Corrections Victoria Intelligence Function and Structure*. The briefing included a handwritten note by the Secretary, Ms Armytage, dated 10 March 2009 stating that she is 'very concerned about the results of this review and Mr Comrie's conclusion' and that:

... The covering brief from C/V [Corrections Victoria] appears to understate the seriousness of the risks identified - he [Mr Comrie] states that these risks are serious and unacceptable to CV/DOJ [Corrections Victoria/Department of Justice] and the Government.

286. At interview on 21 June 2011, when asked by my investigators about her level of concern expressed in her handwritten note, Ms Armytage said:

... there were a series of recommendations that Neil [Comrie] made in terms of the improvements that he thought were required, and there was an implementation plan developed by Corrections in terms of that response, and I presume they responded to me again after this note to them in March of 2009, but I don't know.

287. As a result of my enquiries, in a letter dated 8 June 2011, Ms Armytage provided my office with an update regarding the implementation of the Comrie Review's recommendations. Ms Armytage stated that of the 32 recommendations, six had been completed and implemented.

288. Ms Armytage provided the following information regarding the recommendations which have been implemented:

- a Manager of Intelligence Services was appointed on 4 January 2010
- revised roles, functions and duties for the collators have been implemented

- the Intelligence Unit is undergoing a restructure
- the majority of the Intelligence Unit staff were provided training in basic information analysis techniques
- an information analytical tool known as Analyst Notebook has been purchased and used in the Intelligence Unit.

289. Following her interview, Ms Armytage provided my office with a further update on the status of the Comrie Review recommendations dated 1 July 2011, indicating that by that stage, 12 of the recommendations had been implemented. She stated:

... a number of the recommendations identified as being incomplete, for example because ongoing monitoring was still occurring, have in fact been completed. As a result, I asked Corrections Victoria to provide an update which more accurately reflects the current position ... 12, rather than six recommendations have been implemented in full. Another seven recommendations are close to completion.

290. My investigation was advised that a funding submission made by Department of Justice to implement the Comrie Review recommendations was put on hold in December 2010. At interview on 30 May 2011, the Manager of Intelligence Services said:

... without the budget and funding I requested, we can't improve the overall function of the Intelligence service greatly.

291. In her letter dated 1 July 2011, Ms Armytage stated that a further funding submission would be made in 2012-2013.

292. In relation to the delay in Corrections Victoria implementing the recommendations of the Comrie Review, Ms Armytage has also said:

... it is disappointing that a substantial number of the Comrie Review recommendations took so long to be implemented and have yet to be fully implemented. In part, this delay is attributable to a loss of momentum and continuity arising from staffing changes at senior levels within Corrections Victoria from late 2008 - to mid 2009 ...

293. Ms Armytage also stated that an interim strategy was implemented providing internal funding to implement the Comrie Review recommendations, including staffing and additional resources.

***Senior staff stated that they had not read the Comrie Review nor had they been provided with information on its conclusions.***

294. My investigation also identified a lack of understanding by the Intelligence Unit staff in relation to the Comrie Review and its recommendations. Senior staff of the Intelligence Unit and prison collators stated to my investigators that they had not read the Comrie Review nor had they been provided with information on its conclusions or recommendations.

295. At interview, the Manager of Intelligence Services said:

When I first arrived [at Corrections Victoria], I was advised that it was generally known ... what [the] Comrie [Review] was about and what had been done. I've since found out that it'd been released to the General Managers only it hadn't gone down lower ...

## Conclusions

296. As of July 2011, only 12 of the 32 recommendations had been implemented by Corrections Victoria. This is despite Ms Armytage noting in February 2009 the importance of Corrections Victoria implementing these recommendations as a matter of priority.
297. Corrections Victoria's failure to implement the recommendations of the Comrie Review has impacted on the intelligence systems used to monitor Mr Williams and ultimately his safety. Arguing a lack of resources and the failure of the Government to fund changes is an abrogation by the Department of Justice to act on the Comrie Review. In my view, the key recommendations which go to the management and security of the prison system, should have been addressed promptly and if necessary from current appropriations.
298. I am concerned that there is no foreseeable funding to implement the remaining recommendations of the Comrie Review until a funding proposal is made by Corrections Victoria in 2012-13.
299. Education should also be provided to the Intelligence Unit staff and prison collators about the Comrie Review and its recommendations.
300. In response to my conclusions, the department stated:

As you point out, the inadequacy of the intelligence system at the time of Mr Williams' death was partly due to Corrections Victoria's failure to promptly implement the recommendations of the Comrie Review. As at 14 March 2012, Corrections Victoria has fully implemented 22 of the 32 recommendations. A further eight are close to completion ...

... The new intelligence services model, recently approved by the Commissioner, establishes a stronger governance structure through the appointment of a Director, Security and Intelligence Services, based at Corrections Victoria head office, who will manage the CVIU [Corrections Victoria Intelligence Unit] and the Security and Emergency Services Group and report directly to the Commissioner.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 15

Ensure that it implements the outstanding recommendations of the Comrie Review without further delay.

***The department's response***

**Accepted**

**Recommendation 16**

Provide quarterly updates to my office on the implementation of the Comrie Review recommendations.

***The department's response***

**Accepted**

## 4. MONITORING SYSTEMS

301. Mr Williams' death raises important questions as to how it is possible that a high profile prisoner in Victoria's highest security prison unit could be killed with an unsecured metal pipe from an exercise bike, and that prison staff did not find out about the incident for some 27 minutes. This raises important concerns about the monitoring systems in place at Barwon Prison.
302. My investigation identified that a number of inadequate monitoring systems existed at Barwon Prison which compromised the safety of prisoners and staff, as well as the security of the Acacia Unit. The following concerns point to the failure of monitoring systems at Barwon Prison:
- Mr Williams was struck several times to the head by Mr Johnson with a metal pipe removed from the seat section of an exercise bike
  - the assault on Mr Williams was captured on the prison's closed circuit television monitoring system, however it took prison officers 27 minutes to respond to the incident
  - prison staff only responded to the incident after being notified by Mr Johnson and Mr Ivanovic
  - prison staff who responded to the incident did not appropriately manage the scene of the incident
  - inadequate controls are in place in relation to the monitoring of prisoner communications, including prisoner access to legal documentation.

### Closed circuit television coverage of the Acacia Unit

303. A closed circuit television (CCTV) system is used at Barwon Prison to monitor prisoner movements. Corrections Victoria's *Correctional Management Standards for Men's Prisons in Victoria* dated May 2009, states that prisons are to 'ensure that the location of all prisoners is known at all times and that the movement of all prisoners within the prison is controlled at all times'.
304. Prison officers monitoring the CCTV system in the Acacia Unit rely on its availability as there is limited capacity for officers to observe prisoners through direct line of sight into the units, because of their layout.
305. The CCTV system in the Acacia Unit was installed in the mid 1990s, with 37 cameras monitoring the interior and exterior of the Unit. The system has five monitors with three monitors which display live images:
- the first monitor displays live images from the exterior of the Acacia Unit for three seconds at a time
  - the second monitor displays live split screen images from eleven cameras inside the Acacia Unit for four seconds at a time, rotating in a pre-figured sequence between a number of cameras inside and outside the Acacia Unit

- it is difficult if not impossible to monitor the first and second monitors and take in all the information they display
  - the third monitor displays a blank screen, until an alarm is activated in the Unit, at which time the monitor displays vision from a camera in the affected area
  - a fourth monitor displays live vision from a single camera inside the Unit, as selected by the console operator.
306. The fifth monitor does not display images from the cameras; it is a map of the Acacia Unit which is connected to alarms in the Unit.

***It is difficult if not impossible to monitor the first and second monitors and take in all the information they display.***

307. At interview, a prison officer described the size of the pre-figured sequence of live images on the monitors in the Acacia Unit as 'no bigger than a cigarette packet' [approximately 9cm high and 7cm wide]. The following photographs show the CCTV system operator station in the Acacia Unit before 19 April 2010:

**Figure 1 – The console operator's station in the Acacia Unit as at 19 April 2010**



### **The role of the console operator**

308. The prison officer responsible for monitoring the CCTV system at Barwon Prison is known as the 'console operator'. My investigators were informed by prison staff that the console operator was often a junior prison officer, with limited experience.
309. My investigation was unable to identify a position description outlining the role of the console operator in the Acacia High Security Unit Manual or in any policy and procedure at Barwon Prison existing at the time of Mr Williams' death.

310. However, the role of the console operator was explained in a document prepared by Corrections Victoria dated 13 May 2010.<sup>18</sup> This document listed the console operator's duties as follows:

- monitoring the CCTV monitors
- answering intercom calls from prisoners' cells
- answering telephone calls from reception
- actioning morning requests from prisoners
- liaison for staff movements and prisoner movements.

***The prison officer responsible for monitoring the CCTV system was often a junior prison officer, with limited experience.***

311. At interview on 20 April 2011, a senior prison officer discussed the difficulties in relation to the role of the console operator:

... the console operator, in my personal opinion, did too much ... Answering the phones, answering the console phone or the inter-cell phone ... watching the monitors but then ... making sure that someone went here or someone went there and all that. It was a lot - a lot of responsibility for that person on that given time. And too many - for me, personally, too many distractions for that person.

312. In a briefing prepared by Corrections Victoria dated 15 July 2010 titled 'Response to death of Carl Williams – 2nd Edition', Corrections Victoria provided its view on the role of the console operator in the Acacia Unit:

... the [CCTV] system had often proved effective in identifying incidents or the build up to incidents, notwithstanding the short period of time spent on each image ... while ... some might consider the presence of other staff in the area distracting ... the regular movement of staff around the console ... provide[d] welcome stimulus, opportunities to share helpful information about prisoners, and relief for the operator for tea and toilet breaks.

**The console operator's actions on 19 April 2010**

313. On 19 April 2010, a prison officer was rostered as the console operator at the time the fatal assault occurred on Mr Williams. At interview on 14 April 2011, this prison officer said that at the time of the incident, she had directed the self-controlled monitor to view Acacia Unit staff taking a prisoner to another area of Barwon Prison:

From what I've been able to work out, at the time the assault [on Mr Williams] happened initially, we [Acacia Unit staff] were taking a prisoner down to Stores and Reception for a telelink with his solicitor. So, prison officers would go into Unit 2 [of the Acacia Unit]. So I'd have the one monitor that I had control over easily on them [in Unit Two], as was procedure. He [the prisoner] was brought out

<sup>18</sup> Corrections Victoria, Formal debrief and Action plan, Death of Carl Williams on 19 April 2010 in Acacia High Security Unit at Barwon Prison, 13 May 2010.

of Unit 2, taken down to Stores and Reception. Now, I don't know if I then switched it on to a different unit and had a - I can't remember that ... when Johnson initially told PO [a Prison Officer] that there was a problem [with Mr Williams], I had it on Unit 2 again because that prisoner from Stores and Reception had been brought back only perhaps minutes earlier - two minutes earlier. So I had it on Unit 2 again because staff were going in there with prisoners.

314. In the formal debrief of the incident conducted by Barwon Prison on 29 April 2010, prison staff raised concerns about whether it was appropriate procedure for the console operator to use the CCTV system to follow prison staff entering the units in Acacia, rather than monitoring prisoners. In the minutes of this debrief dated 13 May 2010, the console operator and the then Acacia Unit Supervisor, Mr Andrew Mackenzie, said that the monitoring of staff was not policy but normal practice in the interests of staff safety.
315. My investigators could not identify a policy or procedure at Barwon Prison which authorised the practice of monitoring staff via the CCTV system. Rather, the Director's Instruction No. 1.10, Security – Prisoners, section 3.0, states that:

Staff are to ensure regular day to day surveillance of prisoners to ensure the security of the prison, staff, visitors and prisoners. This should include vigilance in viewing, patrolling and interacting to monitor prisoners movements around the facilities and in their activities and accommodation across the facility.

316. In relation to this issue, Mr Mackenzie, the then Acacia Unit Supervisor stated that:

I agree that it was the normal practice of the console operators to monitor staff who entered the Unit in the interests of staff safety, however I confirm that console operators did not solely monitor staff, but also monitored prisoners.

... The Director's Instruction No.1.10 Security – Prisoners, section 3.0 was being followed, and the practice of monitoring staff when they entered the Unit does not contradict this Instruction, and the console operators also monitor prisoners to ensure their safety and security.

### Concerns regarding the CCTV system

317. Prison staff raised concerns that the functionality of the CCTV system in place in the Acacia Unit at the time of Mr Williams' death was both 'inadequate' and 'faulty'. Prison staff used words such as 'antiquated', 'pathetic' and 'abysmal' to describe the CCTV system. Prison staff also said that the CCTV system:
- had numerous black spots and blind spots
  - monitors would regularly freeze
  - was difficult to control and manoeuvre
  - caused staff to fear for their safety when entering units in the Acacia Unit.

318. At interview, a prison officer described the functionality of the CCTV system in the Acacia Unit, as follows:

... But those TV cameras, prior to the incident, were definitely not up to date nor were the amount of cameras and the locations the cameras were pointing at. There was a lot of blind spots ... [H]ad things have been as they should have been this would have been picked up a lot quicker. I'm not saying it would have saved Carl's [Williams] life but it would have stopped the questions as to why it took us so long to find him.

319. Several Acacia Unit staff said that they had consistently raised concerns about the CCTV system to prison management, however no action had been taken in response. At interview on 21 April 2011, the then Acacia Unit Supervisor, Mr Mackenzie, was asked what action was taken by prison management in response to staff concerns regarding the CCTV system. He said:

... we [Acacia Unit management] did express a concern [to prison management] that it [the CCTV system] was inadequate ... [however it's] balanced with budget, was essentially the answer quite often. At the time there was no budget for it, there was no scope to improve it [the CCTV system] necessarily, although it was on the radar to do such.

320. At interview on 3 May 2011, Mr David Prideaux, a former General Manager of Barwon Prison, advised that he was not aware of any staff members raising concerns to prison management regarding the adequacy of the CCTV system in place in the Acacia Unit at the time of the death of Mr Williams.

### ***Monitors would regularly freeze.***

321. Following a review of the CCTV footage on 19 April 2010, my investigators identified discrepancies in the timing of the CCTV cameras. For example, one of the cameras, which monitors the Acacia Unit yard, had a different time setting to the two other cameras monitoring the Acacia Unit day-room. The cameras were out of synchronisation by up to 10 to 15 minutes. When asked about these discrepancies, a Senior Prison Officer in the Collators unit said at interview:

... I've highlighted numerous times about cameras around the place that aren't in sync with others ... Yeah, that wouldn't surprise me, you know, because these are issues that I've highlighted when I come across them through monitoring that hey, look, that camera's out by 20 - some of them I've found to be an hour and 20 minutes out.

322. The deficiencies identified in my investigation demonstrate that the CCTV system in place prior to 19 April 2010 was not fit to adequately monitor the safety and security of prisoners and staff in the Acacia Unit. Concerns were raised by prison staff in relation to the CCTV system and were brought to the attention of the Barwon Prison management team however Corrections Victoria did not act on these concerns.

## Twenty-seven minute delay

323. My investigators reviewed the relevant CCTV footage of the fatal assault on Mr Williams. They noted that prison officers responded to the incident at approximately 1.15 pm, some 27 minutes after the assault, and only after being notified by Mr Johnson and Mr Ivanovic that Mr Williams had sustained a head injury.

324. My investigators questioned staff and prison management about how such a delay in becoming aware of a serious assault on a prisoner could occur in the Acacia Unit. At interview, a former General Manager, Mr Prideaux said:

... I think 26 minutes<sup>19</sup> without contact or visual contact in a high security unit is too long, so there's no doubt I think that we'd been found a bit wanting in relation to the incident occurring and staff not being aware for 26 minutes and being alerted by the people that had committed the, you know, the incident. And there's been steps taken since to, you know, ensure more frequent interaction between men in units like Acacia and the staff that are in the unit.

325. In a briefing prepared by Corrections Victoria dated 15 July 2010 titled *Response to death of Carl Williams - 2<sup>nd</sup> Edition*, Corrections Victoria provided its views on the delay:

There is no direct line of sight from the officers' station in Acacia Unit 1, where Williams was held. At the time of his death, the console operator in the Acacia officers' station monitored five screens, including two screens which scrolled through vision from Acacia's 37 cameras, pausing on each image for just 4 seconds.

Corrections Victoria notes that in the death of Williams there are only two very small pieces of action from the whole incident where an alert observer might see that something is very awry - firstly when Johnson is striking Williams, and later when he is dragging the body to the cell. As each camera view reappears at approximately 45-second intervals, there may have only be [sic] one or two four second images in the 74 seconds for the officer monitoring the CCTV screen to have observed anything.

326. At interview, a prison officer said:

... we [the prison officers in the console operator role] were doing the registers, the phone, the intercom. And the way it [the CCTV system] was set up ... if you have to answer that [the telephone or intercom] you're not going to be looking at that [the CCTV monitors]. And yeah, you wouldn't - you know, obviously, you know how the body was dragged into the cell ... there's just no way you would have seen anything on the floor ... the image stays up for like that, four seconds. So, yeah, look, it didn't - not once have I thought, 'Well, you know they probably should have picked that up.' I've never, ever thought that because you know the instruments that we've been given to deal with just weren't up to scratch.

<sup>19</sup> At the time this interview was conducted, the delay was believed to have been 26 minutes. It has since been established that 27 minutes elapsed before prison staff attended to Mr Williams.

327. The inadequacy of monitoring systems and processes in place in the Acacia Unit at the time of Mr Williams' death contributed to the delay in identifying the assault on Mr Williams. This system failure raises concerns about Corrections Victoria's ability to ensure the safety and security of prisoners and staff in the Acacia Unit.

### **Review of the Acacia Unit**

328. Following Mr Williams' death on 19 April 2010, Barwon Prison conducted an internal review of the Acacia Unit led by Mr Nick Selisky, the then Acting General Manager of Barwon Prison. This review resulted in a number of recommendations aimed at improving the monitoring systems and procedures in the Acacia Unit.

329. A number of Acacia Unit staff complained that the recommendations and conclusions reached by Mr Selisky were made without adequate consultation with staff and with little operational knowledge of how the Acacia Unit operated.

330. At interview, the then Acacia Unit Supervisor Mr Mackenzie said:

... I'm not saying it [Mr Selisky's review] was unwarranted but there was very little consultation with myself or any of my staff and I believe there was little consultation with Gavin Martin [Operations Manager] ...

331. Mr Selisky stated in response to my draft report:

... This review was co-led by [a Project Manager at Barwon Prison] who assisted through the review and staff consultative process ... During the review and staff consultative process, we retained evidence of the extensive consultative process we undertook with staff in regards to changes proposed to the Acacia Unit ... This [evidence] will clearly set out ... that extensive consultative process took place with all the Acacia Unit staff.

Mr Selisky subsequently provided the above mentioned evidence. In particular, written feedback received from staff was provided and a memorandum from the Unit Supervisor concerning preferred CCTV system camera views. However, the written feedback did not indicate which officers provided the feedback or how many officers were consulted.

332. As a separate initiative, Barwon Prison issued a General Manager's instruction on 17 May 2010 to all staff relating to the role of the console operator and the monitoring of prisoners. The instruction made the following changes:

#### Unit patrols

- [Prison] Officer will conduct a routine patrol of each unit every 30 minutes during prisoner out-of-cell hours.

#### Console operator

- Where practicable, only one officer will be seated at the Acacia Console at any one time.

- The CCTV Monitors are primarily to monitor staff and prisoners movements. When there are no movements occurring, the CCTV monitors will be randomly observed as much as is practicable.
- The console operator is also responsible for:
  - acknowledgement and monitoring perimeter alarms
  - answering and directing unit telephone calls
  - maintaining the unit muster board
  - coordinating prisoner run-outs, formal counts and escorts
  - responding to cell intercom calls.

333. As a consequence of this review, one of the most significant changes to the role of prison officers in the Acacia Unit involved routine patrols of each unit every 30 minutes during prisoner out-of-cell hours.

***Despite formalising the duties of the console operator, a prison officer indicated that since the death of Mr Williams, the duties remained largely unchanged.***

334. The Acacia High Security Unit Manual (July 2010) now includes a new position description for the console operator<sup>20</sup>, which lists the following duties, to:

- observe prisoner movement via the CCTV system
- observe prisoners' behaviour via the CCTV system and promptly report any suspicious or unusual behaviour
- acknowledge and respond to cell intercoms in a professional manner and report any faults to the Officer in Charge
- coordinate unit counts and report total count to Officer in Charge
- coordinate unit patrols ensuring that staff enter all prisoner occupied areas a minimum of once every half hour, and record patrols in the Daily Patrol Register
- coordinate external escorts/movement of prisoners and communicate with relevant post in adjacent area
- ensure all incident reports have been completed and handed to the officer in charge of the Acacia Unit.

335. Despite formalising the duties of the console operator, a prison officer indicated that since the death of Mr Williams, the duties remained largely unchanged. At interview, she said:

[After the death of Mr Williams] I was trained in that area [to operate the console]. I didn't see the lack of phone calls stopping [sic]. I thought that was a big distraction. You could be on the phone five minutes. What are you going to see? Like, you're going to miss anything.

20 The Acacia High Security Unit Manual, (July 2010), Appendix 19.

## Upgrade of the CCTV system

336. In its discussion paper entitled *Management of High Risk Offenders* dated 27 September 2010, Corrections Victoria raised concerns and made several suggestions to improve the existing CCTV system in the Acacia Unit, including:
- the CCTV technology, monitors and programming of the current systems are limited in functionality
  - the version of the Security Management System that is used by the console operator to monitor the CCTV system had not been upgraded in 10 years
  - camera coverage in Unit Two could be improved, and a camera in the foyer area of Unit Four is necessary
  - a CCTV monitor in the foyer of the Acacia Unit should be introduced
  - the console operator's viewing station would be better positioned at the current officer's workstation, rather than its present location.
337. Corrections Victoria proposed an overhaul of the CCTV system in the Acacia Unit. Three options were proposed by Corrections Victoria to upgrade the CCTV system:
- the most expensive upgrade - \$281,600
  - mid range upgrade - \$200,800
  - the cheapest upgrade - \$96,800.
338. Following the reprioritisation of internal funding, Corrections Victoria implemented the most expensive of these upgrades to the Acacia Unit CCTV system which was finalised in June 2011. Following the provision of additional funding, the final cost of the new CCTV system is approximately \$500,000.
339. The new CCTV system in the Acacia Unit has the following improvements on the previous system:
- creation of a dedicated console area by relocating the console and all security monitoring to what was the officer's workstation
  - an upgrade of the Security Monitoring System
  - installation of two 42 inch LCD (liquid crystal display) monitors and four 27 inch monitors.
340. My investigators conducted a site visit to view the upgraded CCTV system in the Acacia Unit. My investigators noted that the console operator is now isolated from other staff in the Acacia Unit, and has a dedicated area to monitor the CCTV coverage. The screens are much larger, and there are more cameras inside the Acacia Unit and the visibility has improved. My investigators were advised by staff operating the console at the time of the site visit that they were impressed with the new system and found it easy to operate.

341. Training on the new CCTV system has since been provided to Acacia Unit staff, whereas prior to the death of Mr Williams, no formal CCTV system training had been given to staff.

## Conclusions

342. Corrections Victoria has a statutory duty to all prisoners to ensure that their safety and security is maintained while incarcerated at Barwon Prison. With regard to prisoners such as Mr Williams, who require a higher level of protection from the prison community, Corrections Victoria must ensure that the systems in place to monitor prisoners and staff provide adequate controls to meet the risks involved with accommodating prisoners in high security units.

343. The CCTV system in place at the time of Mr Williams' death was:

- lacking in functionality
- unable to provide prisoner and staff security
- of limited value.

344. Acacia Unit staff identified deficiencies in the CCTV system and raised their concerns with prison management. However, they were advised that Barwon Prison's budget restricted an upgrade of the CCTV system. This placed the safety and security of prisoners and staff working in the Acacia Unit at risk.

345. While Corrections Victoria has upgraded the CCTV system in the Acacia Unit since Mr Williams' death, it is disappointing that a fatal assault had to occur before Corrections Victoria took steps to address its inadequate CCTV system.

346. The issues I have identified in my investigation regarding the poor CCTV system in the Acacia Unit and the role of the console operator, have wider implications for the Victorian correctional system. Immediate action should be taken by Corrections Victoria to review CCTV systems in all prisons in Victoria so as to determine whether CCTV upgrades are warranted.

347. In response to my conclusions regarding the CCTV system, the department stated:

The department agrees that the closed circuit television (CCTV) system operating at the time of Mr Williams' death was inadequate.

...

The department agrees that console operators should be monitoring prisoners. However, there are also sound safety reasons for monitoring the movements of staff, particularly in high security prisons. Understanding how individual prisoners will react to staff presence provides important safety and security information. As the physical security of prisons increases, the risk of hostage taking increases. The department considers that the two functions are not mutually exclusive, and will ensure that all training reinforces the importance of monitoring prisoners, as well as staff.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 17

Review the informal practice at Barwon Prison that the console operator primarily monitors the movements of prison staff in the Acacia Unit, as opposed to prisoners.

#### *The department's response*

**Accepted**

### Recommendation 18

Amend the position description of the console operator in the Acacia High Security Unit Manual to reflect the outcome of the above review.

#### *The department's response*

**Accepted**

### Recommendation 19

Ensure that camera timings in the upgraded CCTV system are synchronised.

#### *The department's response*

**Accepted**

### Recommendation 20

Conduct a review of all CCTV systems in Victoria's correctional system to ensure that CCTV systems are functional and up to date in light of the issues identified in this report.

#### *The department's response*

**Accepted**

## Failure to conduct a risk assessment of equipment

348. From 2007 onwards, the incentive-based regime at Barwon Prison for high security prisoners placed a focus on improving the conditions in high security units, including the Acacia Unit. This included the introduction of exercise and recreational equipment such as pool tables and table tennis tables.
349. The Barwon Prison's Local Operating Procedure, No. 3.6.1 – Fitness, Sport and Recreation, states that prisoners in the Acacia Unit will be provided with the following equipment:

- gymnasium
- pool table
- table tennis
- boxing equipment
- board games.

350. On 19 April 2010, Mr Johnson used the unsecured stem of an exercise bike in the Acacia Unit to assault Mr Williams. A review of the CCTV footage from 19 April 2010 shows that, earlier in the day, Mr Johnson placed his mattress in front of the exercise bike, obscuring its view from the CCTV camera, apparently to remove the stem of the exercise bike and place it in his cell.

***Earlier in the day, Mr Johnson placed his mattress in front of the exercise bike, obscuring its view from the CCTV camera.***

351. My investigation identified that there was no clear policy and procedure at Barwon Prison to monitor and assess the risk of equipment placed into high security units. My investigators consulted prison staff about the ease with which Mr Johnson was able to disassemble the exercise bike. A Senior Prison Officer said at interview that:

... my experience is those things [exercise bikes] are generally welded, you know, or they're fixed in some manner, so I was - I was a little concerned reviewing the [CCTV] footage later at the ease that Matt [Johnson] just unscrewed the ... stem [of the exercise bike] and was able to take it straight out.

352. At interview, Mr Prideaux said:

I was unhappy about it and surprised about it [Mr Johnson's use of the exercise bike stem] ... there has always been equipment in high security units ... so I was disappointed that a) an item or a design that had a metal shaft on it made its way into the unit, and it was going to make its way into the unit because that's the model that was the best to purchase, why that hadn't been assessed and secured so that the stem couldn't have been removed from the bike [?]

**Risk assessment process for recreational equipment before 19 April 2010**

353. During my investigation I received conflicting advice from Corrections Victoria regarding the process for risk assessments of exercise equipment prior to 19 April 2010. For example, at interview Mr Prideaux said:

[Prior to 19 April 2010] [i]t's [the risk assessment of exercise equipment] meant to go through the Security [Emergency] Management Committee at Barwon [Prison] who have been in place for many, many years, way before my arrival at the jail [Barwon Prison]. And equipment that's purchased should always be assessed by, you know ... that [Security Emergency Management] committee.

354. The role of the Security Emergency Management Committee was to conduct a risk assessment on each piece of equipment. However, my investigators were advised by the Programs Manager<sup>21</sup> at Barwon Prison at interview on 26 May 2011, that there was no clear policy or procedure at Barwon Prison to assess the risk of equipment placed into high security units.
355. The Programs Manager said that prior to the death of Mr Williams, new equipment would be approved by recreational officers - based on need and the prison's budget.

***Barwon Prison management did not act in accordance with any process when introducing new recreational equipment.***

356. At interview, the Programs Manager said that Barwon Prison management did not act in accordance with any process when introducing new equipment, instead making ad-hoc decisions without consulting her or the recreation team. She said:

... [Corrections Victoria] might make a decision, you're to remove this [piece of equipment], you're to put this in ... sometimes we [the Recreation Team] would know about that and sometimes we wouldn't.

... [the] Operations manager responsible for that area had a request from the unit and decided independently, for that to be purchased and brought in and we would not know.

357. As discussed earlier in my report, Mr Johnson and a number of other prisoners assaulted a prisoner in the Acacia Unit in 1998. During this assault, the disassembled seat of an exercise bike was used by the prisoner to defend himself. This was a warning that the equipment was dangerous and could be used as a weapon, however this was not taken into account at the time the exercise bike was re-introduced into the Acacia Unit.

**Risk assessment process for recreational equipment after 19 April 2010**

358. Following the death of Mr Williams, a new process was introduced to assess equipment intended for use in high security units. This process requires the applicant to complete a recreational request form, specifying the equipment requested and an explanation of why the equipment is needed.
359. The Security Emergency Management Committee is then responsible for conducting a risk assessment on each piece of equipment before making its recommendation to the Executive. This recommendation will provide advice as to the appropriateness and safety of the equipment for the Unit. The Executive then makes the final decision whether the equipment is to be introduced into the Unit. The Executive is comprised of senior management at Barwon Prison.

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<sup>21</sup> The Programs Manager worked at Barwon Prison in the period before and after Mr Williams' death until May 2011. The Programs Manager is responsible for managing recreation programs and equipment.

## Monitoring recreational equipment

360. There are ongoing concerns about how equipment is recorded and monitored at Barwon Prison within the various units. While the Programs Manager stated that recreational officers are required to complete an inventory of all equipment within units at Barwon Prison twice a year, according to the Programs Manager equipment cannot always be accurately counted and monitored due to the practices of unit staff.
361. For example, the Programs Manager stated that when all equipment was removed from the Acacia Unit following the death of Mr Williams, her team was provided with a list of the removed equipment by unit staff. The Programs Manager stated that this list did not match an inventory of equipment held by her team. An explanation for the discrepancy was offered by the Programs Manager who stated that equipment may be 'hoarded' by unit staff who were concerned that other equipment would not be purchased.
362. Since the death of Mr Williams, there have been several changes relating to equipment in units at Barwon Prison, such as:
- the removal of all the exercise bikes at Barwon Prison for a short period of time to secure their stems
  - the creation of a master inventory database.<sup>22</sup>

## Conclusions

363. At the time of Mr Williams' death, Corrections Victoria exercised little effective control over what equipment was introduced into the Acacia Unit, as there was little or no risk assessment conducted and inadequate documentation outlining the correct process to follow.
364. While I note that, since Mr Williams' death, Barwon Prison has introduced a new process to ensure that equipment is vetted and risk assessed through the Security Emergency Management Committee, problems in relation to the adequacy of communication between the recreation officers, Barwon Prison management and unit staff could prevent this new process from being effective. All prison staff and management should comply with the new process to ensure that all equipment in units is accounted for, thoroughly reviewed and deemed appropriate for use by the prisoners.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 21

Develop a policy regarding the introduction of recreational equipment into the Acacia Unit, requiring:

<sup>22</sup> The Acacia High Security Unit Manual (July 2010), section 4.14 makes reference to Unit staff's obligation to maintain an up to date and complete inventory of all items in the Unit.

- the submission of a completed recreational equipment request form
- a recommendation and full risk assessment from the Security Emergency Management Committee

and ensure that all Barwon Prison staff comply with the policy.

***The department's response***

**Accepted**

**Recommendation 22**

Ensure that the Security Emergency Management Committee documents its risk assessments in relation to new recreational equipment introduced into Barwon Prison.

***The department's response***

**Accepted**

**Recommendation 23**

Ensure that a master inventory database of all recreational equipment in units at Barwon Prison is completed.

***The department's response***

**Accepted**

**Recommendation 24**

Appoint an independent third party to conduct a review of all recreational equipment used in all Victorian prisons to ensure that it is adequately assessed for the risk.

***The department's response***

**Accepted**

**Recommendation 25**

Ensure that the Recreation Team conducts quarterly audits of all recreational equipment used by prisoners in units at Barwon Prison.

***The department's response***

**Accepted**

**Incident response**

365. After Mr Johnson and Mr Ivanovic alerted a female prison officer to Mr Williams' having sustained an injury at approximately 1.15 pm – the then

Unit Supervisor Mr Mackenzie and two other staff members entered the unit and attended to Mr Williams, calling a 'Code Black' incident. This means that a serious medical incident has occurred.

366. A review of the CCTV footage showed that within a matter of minutes, a large number of prison staff responded to the incident. While Barwon Prison staff appear to have generally acted in accordance with its internal policy and procedures in responding to the incident, my investigation identified the following concerns in relation to the incident response:
- too many prison staff were allowed to enter the scene of the incident (Unit One of the Acacia Unit) compromising the forensic integrity of evidence at the scene of the incident
  - a lack of separate holding cells in which to secure Mr Ivanovic and Mr Johnson after the incident to ensure that evidence was not contaminated through discussion or collusion
  - forensic contamination of the incident scene when Mr Ivanovic and Mr Johnson were moved through it to adjoining cells in Unit One of the Acacia Unit.
367. Notwithstanding these issues, my investigation acknowledges the actions of prison staff who rendered first aid treatment in an effort to save Mr Williams' life.

### **Staff attending the incident**

368. On 19 April 2010, eight staff were working in the Acacia Unit, including Mr Mackenzie as Unit Supervisor, two senior prison officers and five prison officers. When my investigators questioned these staff members as to whether they had concerns with the response to the incident, several prison staff advised that too many staff attended the scene of the incident.
369. A review of the Crime Scene Log prepared by a prison officer on the date of Mr Williams' death shows that, between 1.25 pm and 2.40 pm, over 40 Barwon Prison staff, health professionals and law enforcement representatives attended the incident.
370. Mr Prideaux said at interview that he could not criticise the incident response; however he said that, after a crime scene was established, the flow of people in and out of the Acacia Unit could have been better regulated.
371. My investigators examined the Director's Instruction No. 1.20 – Deaths in Prison and Barwon Prison's Emergency Management Plan dated November 2008, which contains information as to how prison officers should respond to a Code Black incident. These documents do not provide staff with guidance on how to manage or control the number of staff responding to an incident.

## Securing Mr Johnson and Mr Ivanovic after the incident

372. As part of the incident response, Mr Ivanovic and Mr Johnson were removed from the scene of the incident and secured by prison staff in adjoining empty cells numbered 5 and 6 in the Acacia Unit. In order to secure them in these cells, prison staff walked Mr Johnson through the scene of the incident to the side of the day room, past Mr Williams and staff rendering medical assistance to him and secured Mr Johnson in cell 6. Mr Ivanovic was also walked to the cell on the opposite side of the day-room and secured in cell 5.

### *Prison staff walked Mr Johnson through the scene of the incident.*

373. The Director's Instruction, No. 1.20 – Deaths in Prison, states that the first officer on the scene will 'protect the scene (primary and secondary crime scenes); ensuring the location is not disturbed by unauthorised persons'. My investigation identified that Mr Johnson and Mr Ivanovic were speaking to each other in these adjoining cells, discussing Mr Williams, as staff continued to render medical assistance, including asking each other whether Mr Williams had died.

374. In response to whether the placement of Mr Johnson and Mr Ivanovic in these cells was an appropriate practice, Mr Prideaux said:

... best practice, you know, [would it] dictate that the two men who obviously had been mixing with Williams and who had alerted staff to the incident be walked back through there? No, it wouldn't be. But I can understand that in the heat of the moment and the way in which the incident was responded to, why they were - why they were quickly secured in available cells.

375. Prison staff interviewed by my investigators were of the view that the placement of Mr Johnson and Mr Ivanovic in empty cells 5 and 6 in Unit One of the Acacia Unit, was adequate in the circumstances because no other appropriate cells were available.

376. The Acacia Unit does not have a holding cell to secure and isolate a prisoner during a serious incident. My investigators questioned Barwon Prison staff regarding whether consideration had been given to the creation of a holding cell in the Acacia Unit. Barwon Prison management advised that a holding cell had been considered, however an interview room and strip search room had been constructed in the Acacia Unit instead.

## Incident debrief

377. The Director's Instruction, No. 1.19 – Incident reporting and monitoring, section 12.0 states that 'a formal debrief should be held within three to seven days after the incident, and should be chaired by a senior person who is independent of the location'. My investigators noted that the post incident briefing in relation to the death of Mr Williams was conducted on 29 April 2010, ten days after the incident.

## Conclusions

378. Further training should be provided to staff in responding to 'Code Black' incidents. This should include managing the scene of the incident and securing prisoners involved in any incident. It is clear there were too many people allowed into the unit. Up to 40 persons attending an incident in a small unit, some of whom were not required to be there, is clearly chaotic, unnecessary and can compromise the integrity of the evidence in the scene of the incident.
379. Corrections Victoria should also create a holding cell in the Acacia Unit, to prevent prisoners colluding in relation to evidence.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 26

Provide Barwon Prison staff with refresher training in the management of 'Code Black' incidents.

#### *The department's response*

**Accepted**

### Recommendation 27

Amend Barwon Prison's Emergency Management Plan, relating to 'Code Black' incidents to:

- address the number of staff attending 'Code Black' incidents
- address the securing of prisoners involved in an incident
- include a requirement that where possible staff avoid walking prisoners through the scene of an incident.

#### *The department's response*

**Accepted**

### Recommendation 28

Create a holding cell in the Acacia Unit.

#### *The department's response*

**Accepted**

## Other systems used to control prisoner communication

380. My investigation identified a number of deficiencies in the monitoring systems used at Barwon Prison to control prisoner communications. For example, there was no procedure in place to control a prisoner's ability to

access legal documentation. If prisoners have unrestricted access to each other's legal documentation, this can breach confidentiality obligations in relation to legal material, or endanger witnesses; for example, police informers who are named in court documents.

***Prisoners have unrestricted access to each other's legal documentation. This can breach confidentiality obligations or endanger witnesses.***

381. In particular, I identified the following concerns:

- unmonitored telephone calls made by prisoners to Victoria Police
- unmonitored three way telephone calls made by prisoners to individuals
- unrestricted prisoner to prisoner mail
- illegal use of listening devices in Barwon Prison
- unmonitored distribution of newspapers to prisoners
- lax regulation of prisoners' use and management of their legal documentation, permitting its distribution to other prisoners.

**Telephone calls to Victoria Police**

382. The Director's Instruction No. 4.18 – Prisoner Telephone System, states that 'all calls that do not fall into the exempt category may be recorded, and monitored should it be necessary'. This is done via the ARUNTA (Access Controlled Telephone System) telephone system. Telephone calls to the following are exempt and are not monitored or recorded:

- the Victorian Ombudsman
- the Office of the Health Services Commissioner
- the Victorian Privacy Commissioner
- the Office of Police Integrity
- the prisoner's legal representatives.

383. While the Director's Instructions do not provide that telephone calls to sworn members of Victoria Police are exempt telephone calls, my investigation identified that telephone calls between Mr Williams and members of Victoria Police's Taskforce Petra were not monitored or recorded by the prison as they were considered 'legal' telephone calls.

384. Detective Inspector Smith said that Mr Williams would telephone him on an almost daily basis with various requests, including seeking information about the committal hearing he was due to give evidence at as a witness. In addition, Mr Williams discussed his frustration with Victoria Police's investigation and his regime at Barwon Prison.

### Telephone calls in non-English languages and to third parties

385. My investigators identified that a number of telephone calls are made by prisoners in non-English languages. For example, Mr Ivanovic regularly spoke in a non-English language to his family members.
386. This should be a concern for staff of the Intelligence Unit and the prison collators, if they are unable to understand the content of these telephone calls. While some prison collators speak second languages, telephone calls made in non-English languages are not always translated and therefore an opportunity is missed to identify important intelligence information.
387. Mr Williams also engaged in several three way telephone conversations via the ARUNTA system. There were instances where Mr Williams contacted his father, who then telephoned Ms Roberta Williams or others, making a three way telephone call. For example:
- On 13 April 2010, Mr Williams calls his father on a landline telephone number. While on the telephone call, Mr George Williams called Ms Roberta Williams on his mobile phone and a three way telephone call was established. This was repeated again that afternoon.
  - On 15 April 2010, Mr Williams called his father on a landline telephone number. While on the telephone call, Mr George Williams called Ms Roberta Williams on his mobile phone and a three way telephone call was established.
  - On 17 April 2010, Mr Williams called his father on a landline telephone number. While on the telephone call, Mr George Williams called a media representative on his mobile phone, concerning the media article regarding Victoria Police's payment of Mr Williams' daughter's school fees. A three way call was thereby established.
388. This practice is prohibited under the Director's Instruction No. 4.18 – Prisoner Telephone System. Active monitoring of the ARUNTA System would have identified this misconduct by a high profile prisoner. However, this was not consistently done by the prison and as a result Mr Williams' three way calls continued.

### Prisoner to prisoner correspondence and telephone calls

389. Mr Johnson, Mr Ivanovic and Mr Williams communicated by correspondence with a number of their associates who were currently in prison.
390. The Director's Instruction No. 4.07 – Prisoner Communications states that there is no restriction on prisoner to prisoner mail in relation to what can be discussed or to whom a prisoner may write. However, the Director's Instruction No. 4.18 – Prisoner Telephone System states that 'only prisoners with a confirmed long-standing close personal relationship with another prisoner will be eligible to apply for intra-prison<sup>23</sup> telephone calls'.

<sup>23</sup> Intra-prison telephone calls are telephone calls between prisoners in prison.

391. However, unless all communications between prisoners, including correspondence and telephone calls, are closely monitored the risk to prison safety and good order can be compromised.

### **Listening devices at Barwon Prison**

392. Following the death of Mr Williams, a search of the Acacia Unit identified several inoperable listening devices<sup>24</sup> in the roof cavity of the day-room in Unit One of the Acacia Unit. In total, nine listening devices were located in Unit One of the Acacia Unit and one listening device was located in the Banksia Unit.

### ***Nine listening devices were located in Unit One of the Acacia Unit.***

393. Until 1999, the placement of listening devices was governed by the *Listening Devices Act 1969*. The placement of listening devices is now governed by the *Surveillance Devices Act 1999*. Both Acts require that the consent of the surveillance subject or a warrant from a Supreme Court judge be obtained before a listening device can be installed.
394. In a meeting between the OCSR and members of Taskforce Driver<sup>25</sup> on 3 June 2010, the location of listening devices in the Acacia Unit was discussed. The following comments were made by Victoria Police:
- It would appear that Barwon Prison installed and monitored listening devices without the necessary warrant or consent, between the opening of Barwon Prison in 1990 and 2004, to enable the prison collators to monitor 'security and good order' of the Barwon Prison.
  - The listening devices were not used to monitor Mr Williams in the Acacia Unit and were not used on 19 April 2010.
395. In a memorandum dated 11 June 2010, Mr Rod Wise, Deputy Commissioner Corrections Victoria advised the Secretary, Ms Armytage, that the placement of listening devices in the Acacia Unit was unlawful. He stated:

It appears that the installation of a number of listening devices across the prison system pre-2000 may not have been done fully in accordance with the law at that time.

... It is now not clear why the Prison Services believed that it could act outside the *Listening Devices Act 1969*. Many [of the listening devices] it seems, were installed with Police knowledge and it is not now known whether the Police obtained proper authority from the Magistrates' or Supreme Court, as required; these records no longer exist. Some [of the listening devices], it seems clear, were initiated by the SESG [Security and Emergency Services Group of which the Corrections Victoria Intelligence Unit is a subset] and there was no authority obtained ... there may have been a view that Section 21 of

24 Under the *Surveillance Devices Act 1999* (Vic), a listening device means any device capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in a conversation.

25 A Victoria Police Taskforce established to investigate the motives behind the death of Mr Williams at Barwon Prison on 19 April 2010.

the *Corrections Act 1986* was sufficient to override other legislation in that it was seen to authorise the Governor to take whatever steps were necessary to ensure the good order and security of the prison.

396. Mr Wise further stated that ‘from 2000 onwards, it would seem that listening devices were installed at Barwon Prison ... upon a warrant being obtained and sighted’.
397. Given that the actions of prison collators were potentially in breach of the Listening Devices Act and the current Surveillance Devices Act, during its investigation the OCSR sought advice from General Counsel of the Victorian Government Solicitor’s Office regarding the legal implications concerning the detection of listening devices in the Acacia Unit between 1990 – 2004.

***The actions of prison collators were potentially in breach of the Listening Devices Act and the current Surveillance Devices Act.***

398. In an email dated 11 May 2010, General Counsel advised that legal proceedings for this type of offence must generally be brought within 12 months after the date on which the offence is alleged to have been committed. As such, no criminal action can be pursued owing to the length of time elapsed since the installation of the listening devices in the Acacia Unit.
399. In a subsequent memorandum dated 28 September 2010, from Mr Wise to Ms Armytage, Mr Wise outlined that the following action was taken to ensure that the unlawful use of listening devices does not recur:
- The Intelligence Unit was reminded of the need to ensure that no listening device is installed in any Victorian prison without proper authorisation.
  - The General Manager, Barwon Prison put procedures in place to be notified of any listening device within the prison, and of any approach by Victoria Police or other law enforcement agency to have a listening device installed within Barwon Prison.
  - The General Manager, Barwon Prison has raised the issue at the local risk management meetings, which are attended by the prison collators, and will continue to impress upon existing, relieving, and any new collators the need to ensure that no listening device is to be installed without a proper warrant.
  - All General Managers were encouraged at the General Managers’ meeting on 7 October 2010 to put similar procedures in place, and to have similar discussions with their collators.
  - The General Manager of the Intelligence Unit listed the matter as an agenda item at the next collators conference to ensure that all collators across Victoria are aware of their obligations regarding listening devices.

- Managers and collators were warned that any unlawful activation of listening devices will lead not only to departmental misconduct proceedings, but will also render them personally liable for prosecution pursuant to section 6 of the Surveillance Devices Act.

### Newspapers provided to prisoners

400. The Acacia High Security Unit Manual *Prisoner orientation booklet*<sup>26</sup> states that prisoners may order newspapers from their own funds.
401. On the morning of Mr Williams' death on 19 April 2010, Mr Williams was provided with a copy of the Herald Sun newspaper. Mr Williams was permitted by the prison to receive a copy of the Herald Sun newspaper daily, through his prison money account.
402. The front page of the Herald Sun newspaper on 19 April 2010 carried the headline 'You pay killer's school fees'.<sup>27</sup> The article referred to the payment of Mr Williams' daughter's school fees by Victoria Police, as part of an apparent agreement with Mr Williams for giving evidence as a witness. A review of the CCTV footage shows that Mr Williams, Mr Ivanovic and Mr Johnson all examined the Herald Sun newspaper on the morning of 19 April 2010.
403. My investigators questioned Acacia Unit staff and Barwon Prison management about the impact of this article on Mr Williams and other prisoners.
404. My investigators were informed that newspapers are routinely shared amongst prisoners. In the Acacia High Security Unit Manual, the *Prisoner orientation booklet* states that prisoners 'may exchange newspapers, magazines, CDs, Cassettes or Books'.
405. At interview, Operations Manager, Mr Gavin Martin said that Barwon Prison management had decided to discuss the newspaper article with Mr Williams on the morning of 19 April 2010, as follows:
- ... Nick Selisky [the then Acting General Manager] rang the [Acacia] unit and said, 'How's he [Mr Williams] going over the newspaper's [?] ... ' And they [Acacia Unit staff] said, 'Fine' ... I was in his office when he did that.
406. A Senior Prison Officer discussed the newspaper article with Mr Williams on 19 April 2010. At interview on 20 April 2011, this Senior Prison Officer said:
- ... we [prison staff] don't read the paper or check the paper or anything ... it's Carl's [Williams'] paper, Carl gets his paper. And that's every day. And I just said to him ... 'Look, I mean you've done well, Carl, you've made the front page today not - - -' - and he [Mr Williams] goes, 'Well ... [i]t's either page - you know it's page 3, page 5. It's just which page I'm going to be on'. And I said, 'Well, you've made the front page, hey?' ... And he said, 'Yeah, I'm fine. I'm fine with it'.

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<sup>26</sup> *Prisoner orientation booklet*, The Acacia High Security Unit Manual (July 2010,) Appendix 7.

<sup>27</sup> Mr Padraic Murphy, 'You pay killer's school fees', *Herald Sun*, 19 April 2010.

407. Since the interview, the Senior Prison Officer provided further detail on his discussion with Mr Williams on 19 April 2010:

Whilst I escorted Mr Williams to the visitors centre, I again asked him how he was doing in relation to the newspaper article. He mentioned that he had no issues with the article and was looking forward to the visit with his father George.

408. My investigators asked Acacia Unit staff and prison management whether newspapers are assessed before they are provided to the prisoners to determine whether there are any articles which could place a prisoner at risk of harm from other prisoners. At interview, a former General Manager, Mr Prideaux said:

... there's not a formal process or formal ... policy that ... we [prison staff] scrutinise what's in the Herald Sun on a given day before we agree to issue the paper to a prisoner or to a unit ... Carl's [Williams] been in the media I don't know how many times, you know, hundreds. And you know the men [the prisoners] have access to televisions and radios and if that was front page of the Herald Sun that day it would have been all over the radio and probably the TV anyway, so there would have been no real way to have sheltered the prisoners from that story ...

... Mr Williams had been the subject of, you know, media focus numerous times. It was nothing new that Carl was making headlines ... [and I did not have] any real concerns about the environment within the unit or the relationships within the unit.

409. The Senior Prison Officer also stated:

I agree with then General Manager Mr Prideaux that restricting access to newspapers will not be effective ... I am also concerned that restricting prisoners' access to newspapers will cause prisoners to become confrontational or even physical. For example, I have witnessed a prisoner become very aggressive and frustrated towards staff because his daily paper was not delivered. Prisoners might also claim that prison staff had infringed their human rights if they were denied access to newspapers.

410. My investigators also sought to determine whether there was a practice within the prison of restricting access to certain information in the media on the basis that the information could affect the safety of a prisoner. At interview, the then Acacia Unit Supervisor Mr Mackenzie said:

... I think there's certainly has been occasions in the past where Barwon [Prison] has restricted media ... So it has happened in the past, yes, but it's not something that my unit staff have done or would be normal procedure, no.

411. On this occasion no further action was taken by Corrections Victoria staff.

## **Inadequate control over prisoners' legal documentation**

412. My investigators were advised by prison staff that it is an accepted practice at Barwon Prison for prisoners to share each other's legal documentation. My investigation identified the following issues of concern with regard to this practice:

- the lack of appropriate storage systems for prisoner legal documentation
- the opportunity for potential breaches of confidentiality to occur if legal documents are shared between prisoners
- the risk of harm to prisoners named as police informers in legal documentation
- the unauthorised use of legal documentation belonging to prisoners.

413. Following the death of Mr Williams, on 21 April 2010 Victoria Police seized a computer disc from Mr Johnson's cell containing a statement made by Mr Williams to Victoria Police. This statement related to Mr Williams' status as a witness and was intended for use in the committal hearing at which he was due to give evidence.

414. Three months later, a memorandum dated 27 July 2010 to the Secretary Ms Armytage from the Commissioner Corrections Victoria Mr Hastings, discussed information Barwon Prison had received from a prisoner suggesting that medical CT (computed tomography) scan images of Mr Williams, which were part of the legal brief provided to Mr Johnson concerning the murder of Mr Williams were in the possession of a former prisoner who had been released on parole.

415. It was alleged that the former prisoner was handed the images by Mr Johnson in the high security Melaleuca Unit, with the intention that the former prisoner provide them to the media. In response to this information, the memorandum states that Barwon Prison took the following action:

- Prison officers removed two computers from the Melaleuca Unit that were routinely used by a number of prisoners. These computers were searched for unauthorised material, with pornographic material found on one computer.
- Barwon Prison confirmed that Mr Johnson was in possession of a CD containing the CT scan images of Mr Williams.
- A search was conducted of the Melaleuca Unit to determine whether other prisoners were in possession of legal material not belonging to them.
- A new copy of a CD containing his legal brief was provided to Mr Johnson by Victoria Police in a format that cannot be copied or printed.

416. When asked at interview about the practice of prisoners sharing legal documentation, Operations Manager Mr Gavin Martin said:
- ... it's a tough one, that one, because when we're searching we're not there to read the content either ... We're [prison staff] not there to scan through whose [legal] files are what ... I've got briefs and stuff hanging around in everyone's cells that belongs to someone else ... It used to be a big thing when you had someone else's transcripts or legal - not any more. Just that there's nothing private any more.
417. A review of the Director's Instruction No. 1.50 - Searches and Patrols and the July 2010 version of the Acacia High Security Unit Manual does not specify a requirement for prison staff to review documentation in a prisoner's cell during a routine search of the units to determine whether there is legal material belonging to another prisoner. There is also no provision in the Director's Instruction No. 4.80 - Prisoner Property, for a prisoner's legal documentation to be stored by the prisoner securely inside their cell or securely outside the unit.
418. When asked at interview what processes are in place at Barwon Prison to control the sharing of legal documents by prisoners, Operations Manager Mr Martin said that there was no clear process. He said:
- ... it's just - but they're [the legal documentation is] being given to them legally. You know what I mean? ... they're not filtered through the [Barwon Prison] system.

## Conclusions

419. The telephone calls between Mr Williams and Detective Inspector Smith should have been monitored and recorded by the prison. Detective Inspector Smith informed my investigators that Mr Williams discussed his frustration with Victoria Police's investigation; his request to be placed with Mr Johnson; and his regime at Barwon Prison. These telephone calls may have assisted prison collators and the Intelligence Unit.
420. In response to this, Mr Hutchinson stated ' ... I believe that relevant information received by Detective Inspector Smith from WILLIAMS [his emphasis] was passed onto me'.
421. The practice of not monitoring prisoner telephone calls to and from police officers should cease. It leaves the parties involved open to allegations of inappropriate conduct and is potentially a breach of prison security.
422. In response to this, the department stated:
- The department agrees with your finding that telephone calls between Mr Williams and Detective Inspector Steven Smith might have yielded important intelligence had they been monitored by Corrections Victoria. Since the death of Mr Williams, Corrections Victoria has amended its policy on the classification, recording and monitoring of prisoner phone calls. Under the new policy, all phone calls to and from police are recorded. The department will treat these calls in the same way that it treats other calls, listening to them live if they are considered "key prisoner calls"

423. Victoria Police also stated that it has ‘... made amendments to the handling of such calls. Accordingly, such calls are not listed as ‘privileged’ and are recorded via the ARUNTA [prisoner telephone] system’.
424. It is unsatisfactory that there is no restriction on whom prisoners can correspond with, in terms of prisoner to prisoner mail. This enables prisoners to write to their associates or other prisoners for reasons that may be linked to criminal or other activities or as an inappropriate attempt to obtain information. This practice should be reviewed by Corrections Victoria.
425. On this subject, Mr Hastings stated that:
- ... [The] prison has specific rules that determine whether mail will be scrutinised. There is a need to find a sensible balance in monitoring the good order and security of the prison and respecting prisoners’ rights pursuant to s 15 of the Victorian Charter of Human Rights and Responsibilities.
426. It would appear that listening devices were illegally placed in the Acacia Unit. The discovery of unauthorised listening devices at Barwon Prison has wider implications for other Victorian prisons which may have also installed unauthorised listening devices in the past. Corrections Victoria should take immediate action to review all Victorian prisons in this regard.
427. Barwon Prison should formalise its approach in relation to the control and risk management of media publicity relating to prisoners such as Mr Williams. Currently, the approach taken by Unit staff is ad-hoc and informal, involving discussion with the affected prisoner. This approach should be reviewed by Corrections Victoria and documented as an internal policy.
428. I also consider that it is inappropriate for prisoners to share legal documentation, as this can contain highly confidential information such as medical records, the identity of witnesses, informants and information concerning other prisoners. Corrections Victoria should develop a formal policy regarding the management and security of prisoner legal documentation.
429. In response to this, the department stated that it would ‘... consult with prosecuting authorities about developing protocols for particularly sensitive material to be provided in this form [i.e. unable to be copied or distributed to other prisoners]’.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 29

Develop guidelines to ensure that all printed and electronic copies of sensitive material held by prisoners cannot be distributed to other prisoners. The guidelines should ensure that it is a discipline offence for a prisoner to copy, share or distribute such documentation.

***The department's response***

**Accepted in principle**

**Recommendation 30**

Strengthen procedures in relation to searches of prisoner cells and units by prison staff to enable staff to search for unauthorised documentation held by prisoners.

***The department's response***

**Accepted**

**Recommendation 31**

Amend the Director's Instruction No.4.18 – Prisoner Telephone system to:

- address how telephone calls by prisoners in non-English languages should be monitored by the collators and the Corrections Victoria Intelligence Unit
- ensure that all prisoner telephone calls to and from members of Victoria Police or any other police force are monitored and recorded
- ensure there are adequate controls in place to identify and prevent telephone calls being made by prisoners to third parties and/or conference calls.

***The department's response***

**Accepted**

**Recommendation 32**

Conduct a review of all Victorian prisons to ensure that any listening devices installed are authorised in accordance with the Surveillance Devices Act.

***The department's response***

**Accepted**

**Recommendation 33**

Remind all relevant staff in Victorian prisons about the correct use of listening devices and the penalties under the Surveillance Devices Act concerning the unlawful installation of listening devices.

***The department's response***

**Accepted**

**Recommendation 34**

Develop a risk management policy relating to prisoners' access to media.

***The department's response***

**Accepted**

**Recommendation 35**

Review prisoner telephone and written communication protocols and amend the Director's Instruction 4.18 - Prisoner Telephone System and Director's Instruction 4.07 - Prisoner Communications.

***The department's response***

**Accepted**

## 5. ADMINISTRATION OF JUSTICE PERMITS

430. A Corrections Administration Permit allows a prisoner to be removed from custody by the police. The Secretary of the Department of Justice may issue a permit for the purpose of assisting the administration of justice.<sup>28</sup> It is also commonly referred to as a Community Custodial Corrections Permit.
431. In late 2008, Mr Williams agreed to become a witness in relation to murder charges against a former police officer and another individual.
432. In December 2008 and February 2010, Victoria Police applied to Corrections Victoria seeking Administration of Justice Permits to allow them to remove Mr Williams from Barwon Prison to a secure location for several days, to assist with their enquiries.
433. Corrections Victoria's Operational Guidelines<sup>29</sup> (the guidelines) provide that the permit must be approved by the Commissioner for Corrections and the General Manager of the relevant prison.
434. Permits to remove Mr Williams from Barwon Prison for a total of 11 days were granted by:
- the then Commissioner Corrections Victoria, Mr Kelvin Anderson in December 2008
  - Commissioner Corrections Victoria, Mr Robert Hastings in February 2010.
435. When issuing these permits, Corrections Victoria failed to:
- conduct an adequate risk assessment
  - follow its internal policies and procedures in relation to the approval of both permits
  - consider Mr Williams' safety on his return to the prison
  - ensure that their decision-making in relation to both permits was well documented
  - maintain accurate records of the permits granted.

### Corrections Victoria's granting of the December 2008 permit

436. On 15 December 2008, Victoria Police made applications to remove Mr Williams and his father, Mr George Williams, from the prison on Administration of Justice Permits. In both applications, Victoria Police sought to remove Mr Williams and his father from Barwon Prison for three days to a secure location 'known to Victoria Police'.
437. In a joint letter to Mr Hutchinson, Operations Manager of the Corrections Victoria Intelligence Unit, dated 15 December 2008, Detective Inspector Steven Smith and then Deputy Commissioner of Victoria Police Simon Overland, outlined the rationale behind their request to remove Mr Williams from the prison. This letter advised:

<sup>28</sup> *Corrections Act 1986*, section 57A(b).

<sup>29</sup> Corrections Victoria's Operational Guidelines – *Corrections Administration Permits, Rehabilitation and Transition Permits & Interstate Leave of Absence*, November 2007.

It is further intended to have Williams taken to a secure location where he will be spoken to with the intention of having him provide statements ... Williams has agreed to this occurring.

438. On 16 December 2008, the Deputy Commissioner Corrections Victoria Mr Wise handwrote on the back of the above letter that he supported Victoria Police's request. The applications were subsequently approved by the then Commissioner Corrections Victoria, Mr Kelvin Anderson, the then General Manager of Barwon Prison, Mr David Prideaux, and Mr Hutchinson, on 18 December 2008.

### **Corrections Victoria's granting of the February 2010 permit**

439. By letter dated 4 February 2010, Detective Inspector Smith and Assistant Commissioner Mr Luke Cornelius sought a second permit to remove Mr Williams from Barwon Prison for the period 27 - 28 February 2010, to prepare him for giving evidence at a committal hearing scheduled for March 2010. The permit was approved by the Commissioner Corrections Victoria, Mr Robert Hastings, on 23 February 2010.

### **Permit decision-making process**

440. The removal of Mr Williams from Barwon Prison to assist Victoria Police meant that there was a high risk that the prison community, the media, Mr Johnson and Mr Ivanovic would learn of his cooperation with Victoria Police. As prisoners who assist Victoria Police are considered disloyal to the prison community, Mr Williams' absence from Barwon Prison placed him at risk of harm from other prisoners.

### ***There was a high risk that the prison community, the media, Mr Johnson and Mr Ivanovic would learn of Mr Williams' cooperation with Victoria Police.***

441. As such, a decision by Corrections Victoria to remove Mr Williams from Barwon Prison to assist Victoria Police needed careful consideration and warranted a detailed risk assessment.

### **Permit approval process**

442. Section 57A (1) of the Corrections Act provides for the Secretary to issue an Administration of Justice Permit to a prisoner. Despite this statutory requirement, my investigation established that Corrections Victoria incorrectly issued permits relating to Mr Williams to Victoria Police instead of direct to Mr Williams.

443. Corrections Victoria's guidelines also state that once a request for a permit is received from Victoria Police, the Prison General Manager will:

Interview the prisoner and if the prisoner consents to the request, assist the prisoner to complete Schedule 1.1 - Prisoner application form. If the prisoner is consenting to be placed under police protection, the prisoner is required to put in writing, in the form of Schedule 1.1 that he or she is willing to be placed on a permit for this purpose.

... The General Manager, SESG [Security and Emergency Services Group of which the Corrections Victoria Intelligence Unit is a subset] is then required to provide the Commissioner [of Corrections Victoria] with the Request, Schedule 1.1 and Schedule 1.2 [Security and Risk Assessment of Prisoner Application], to be used in determining approval of the permit. Schedule 3.1, Individual Prisoner Permit is to be signed by the Commissioner to record approval of the permit.

444. Contrary to the guidelines, Schedule 1.1 of the permit was not completed by Mr Williams or his father in relation to either the December 2008 or the February 2010 permits. Also, Schedule 1.1 was not provided to the Commissioner for consideration.
445. My investigation could not locate any documentation which demonstrated that Mr Williams was interviewed by the General Manager of Barwon Prison before either permit was approved.
446. At interview, the then General Manager, Mr Prideaux stated that he was not consulted during the permit approval process in December 2008.
447. My investigation also identified a number of deficiencies in Schedule 3.1 - Individual Prisoner Permit, completed by Corrections Victoria relating to Mr George Williams and the December 2008 and February 2010 permits relating to Mr Carl Williams. In particular, the appropriate signatures from the prisoners had not been obtained; signatures were not witnessed by the relevant authorities; and the 'special conditions' section had not been completed by Corrections Victoria.
448. In response to this, Mr Hastings stated:

While signatures may be missing from the permit documents, I do not consider this supports a general finding of failure to follow internal policies and practices.

...

These forms have been developed with care and been in use for a considerable period of time without any significant issue arising. Whilst there may have been a technical shortcoming in Mr Williams' permit documentation, this shortcoming had no substantive effect on the parties' understanding of the approval that had been granted or on a third parties' ability to scrutinise the record.

## Risk assessments

449. In Mr Wise's handwritten note dated 16 December 2008 on the back of Victoria Police's letter requesting the granting of a permit, he noted a number of conditions subject to his support of Victoria Police's request, as follows:
- We [Corrections Victoria] receive, either from the prison or through the prisoners legal representatives, written advice that they [Mr Williams and Mr George Williams] are willing to participate in the CCPP's [corrections administration permits]

- That we give approval in principle to the rolling over of 3 day permits, subject to advice from the Police prior to the expiry of each permit that their [Mr Williams and Mr George Williams] participation is still required and that the prisoners are prepared to continue in their [Victoria Police's] custody
  - That the prisoners acknowledge certain requirements – eg no alcohol, no driving, supervised visits only etc.
450. The guidelines state that for every request for an Administration of Justice Permit there must be a completed *Security and Risk Assessment of Prisoner Application*<sup>30</sup> submitted to Corrections Victoria for approval. The General Manager of the Intelligence Unit is required to ensure completion of the Security and Risk Assessment of Prisoner Application. Examples of the risks considered in this application are as follows:
- whether up to date information regarding the prisoner's recent behaviour, prisoner incidents and intelligence reports have been reviewed
  - whether a risk assessment has been conducted on the proposed permit location by Victoria Police
  - whether there are other factors relevant to the consideration of the application.
451. The Security and Risk Assessment of Prisoner Application submitted by Victoria Police in relation to the February 2010 permit was not completed. In particular:
- In the section relating to the suitability of the permit location, Victoria Police answered 'Victoria Police deem location suitable' – no further information was provided regarding the suitability of the permit location.
  - In the section concerning whether up to date information regarding intelligence and the prisoner's recent behaviour had been obtained, Victoria Police answered that 'Victoria Police have conducted a full risk assessment'. No documentation concerning the risk assessment was submitted by Victoria Police with the application.
452. I was unable to identify any evidence which demonstrates that Corrections Victoria ascertained whether Victoria Police conducted a risk assessment in its Security and Risk Assessment of Prisoner Application. There was no supporting documentation to demonstrate that a risk assessment had been conducted by Victoria Police. There was also no evidence to support that Corrections Victoria had conducted its own risk assessment.

***There was no supporting documentation to demonstrate that a risk assessment had been conducted by Victoria Police.***

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<sup>30</sup> Corrections Victoria's Operational Guidelines – *Corrections Administration Permits, Rehabilitation and Transition Permits & Interstate Leave of Absence*, November 2007.

453. In relation to this, Mr Wise stated:

In relation to the first permit, I recall quite clearly that I did not seek further information from Victoria Police about the details of its risk assessment – for to have done so would have required the disclosure of details of the permit ... about which I was curious but formed the view that I personally did not need to know. I did indeed accept the Deputy Commissioner Overland’s advice that a risk assessment had been done.

454. In light of this I was unable to establish a clear rationale for Corrections Victoria’s decision to approve the permits.

455. Mr Wise also stated:

... I reiterate that the risks involved in removing Mr Williams *from* [Mr Wise’s emphasis] Barwon Prison were, in most respects, no greater than if he had been visited by Police *at* [Mr Wise’s emphasis] the prison. One of the risks of having the interviews inside the prison was that he may not have been as open in his statements, as he may have been fearful that someone could have been listening on the other side of the door, another was that other prisoners may have been more suspicious about him leaving the unit every day ...

456. At interview on 17 August 2011, Mr Hastings provided his view on the risk assessments conducted in relation to permits as follows:

I think it [the decision to approve a permit] was probably done between people who were making the application [such as Victoria Police] and also there was probably [no] ... oversight ... I know there’s probably some good intent [by Corrections Victoria] to cooperate with Police ... I think there was some probably informal arrangements and some conversations that took place around what was going on [concerning risks involved in the permit] ... but I suspect that they probably weren’t as ... rigorous as they are now.

457. Since the interview, Mr Hastings provided a further comment in relation to his approval and risk assessment of the February 2010 permit:

I did not make my decision lightly nor was my decision exclusively based on the material provided by Victoria Police in the application ... I took account of considerable information relevant to any adverse impact on Mr Williams in approving the application, including information concerning risk in considering the application for an Administration of Justice Permit.

... whilst there was no formal risk assessment conducted for the purpose of approving the application, it is inaccurate to conclude there was no risk assessment ... When I made my decision, I had current information from Victoria Police and officers of Corrections Victoria relevant to Mr Williams’ placement and risk profile.

... Key amongst this is the information that comes out of monthly briefings between officers within the major offender unit and each prisoner in the Acacia Unit ... there are also formal quarterly and annual reviews ... No information was coming through to indicate Mr Williams was uncomfortable or at particular risk because of his placement with Mr Johnson.

I also note that at the time there were frequent (almost daily) briefings between high ranking officers within Corrections Victoria and Victoria Police where safety, placement and other issues relevant to Mr Williams were discussed and I was briefed on relevant matters.

... In Mr Williams' case, if I did not grant approval on this occasion the consequence would be either:

- a. the OPP [the Office of Public Prosecutions], including barristers and other legal staff, would attend the prison and attempt to prepare Mr Williams for trial within the prison ...
- b. Mr Williams would not continue to cooperate with the OPP. In circumstances where there was no material before me suggestive of any new or particular issue around Mr Williams' cooperation with the authorities, it was appropriate to give some weight to the community interest in assisting the authorities to prosecute high level corrupt activity by a serving police member. I maintain this was not the only issue I considered in deciding the permit application.

458. Mr Hastings further stated:

... Risk analysis is a complex task and "the risk" associated with any particular act is unlikely to crystallise at a single moment in time. Accordingly, a risk assessment conducted for a specific purpose (such as in the assessment of an Administration of Justice Permit application) is unlikely to result in comprehensive, independent or credible risk analysis.

### **Meeting between Victoria Police and Corrections Victoria**

459. On 17 February 2010, Mr Hastings held a meeting with representatives from Victoria Police and Corrections Victoria to discuss whether Victoria Police's request dated 4 February 2010 for a permit should be approved. The following persons attended this meeting:

- Mr Tony Leech, Executive Director, Police Emergency Services and Corrections, Corrections Victoria
- Assistant Commissioner, Mr Luke Cornelius, Ethical Standards Department, Victoria Police
- Detective Inspector Smith, Victoria Police
- Mr Wise, Deputy Commissioner, Prisons and Transitional Services, Corrections Victoria
- Mr Brendan Money, Acting Assistant Commissioner, Offender Management, Corrections Victoria
- Manager of Media, Department of Justice.

460. At interview on 17 August 2011, Mr Hastings said:

... I think everyone knew that he'd [Mr Williams] gone out previously with Police over an extended period of time; I was concerned that we perhaps didn't want that happening necessarily again. And I really wanted to understand why they [Victoria Police] needed to take him [Mr Williams] out of our care. So, as a consequence I arranged a meeting [on 17 February 2010] ... my idea was I needed to be satisfied there was justification to take Williams out of prison ... They [Victoria Police] argued fairly strongly ... [that] the process ... within the prison environment wouldn't be suitable and wasn't probably appropriate ... so after this meeting ... we [Corrections Victoria] then made a decision ... that we would release him [Mr Williams] into their [Victoria Police's] custody but only ... over that two day period ... So, what I was trying to do was ultimately put some more rigour around testing of police on why they wanted to do this and what was the consequences of doing this.

461. Since this interview, Mr Hastings has further stated:

When Victoria Police submitted their application I did not consider the material provided to be sufficient to approve the application. This was my reason for calling a meeting on 17 February 2010. As far as I am aware, a meeting of this type was unprecedented. I considered the meeting to be justified because I needed to understand the reasons why approval was sought to take Mr Williams out of prison.

The meeting was comprehensive and frank. A number of other options were raised and discussed, with a view to testing whether the permit was required.

462. When asked whether Corrections Victoria had considered the impact of granting a permit on Mr Williams' safety within the prison and on his relationship with Mr Johnson and Mr Ivanovic, Mr Hastings said at interview:

... I had my two senior people [Mr Rod Wise, the then Deputy Commissioner and Mr Brendan Money, Acting Assistant Commissioner of the Sentence Management Unit] there [at the meeting on 17 February 2010] with me ... who were pretty much across what was going on [with Mr Williams and Mr Johnson] ... my understanding was ... there was no threat between Williams and Johnson being mentioned ... so we considered all that and ... what that meant for Williams on his return ... and was there any risks around anything as a consequence ... but he [Mr Williams] came back in on the Sunday morning [on 28 February 2010] and there was nothing that was brought to our attention ... that said he [Mr Williams] was at any greater risk than when he was out [on the permit].

... I think at [the] outset everyone understands what Johnson's history is and his reputation. And ... that was always part of the ... consideration.

463. There were no minutes of this meeting documenting what was discussed, or the outcomes. At interview, Mr Hastings confirmed that this meeting was not minuted.

464. Given the lack of documentation relating to this meeting, it is unclear to what extent the safety of Mr Williams was considered in granting the permit for him to be removed from the prison and how this was balanced against the benefits of Mr Williams' cooperation with Victoria Police.

***It is unclear to what extent the safety of Mr Williams was considered in granting the permit.***

465. Mr Hastings stated that:

... While I recognise the importance of transparency, at the time there was no reason to minute the meeting that took place on 17 February 2010 or to record the reasons for my decision. I say there was no reason to minute the meeting because the issues discussed were resolved clearly, there were no indications of confusion, disagreement or doubt amongst the attendees and no action list came out of that meeting that would justify taking the further step of creating formal minutes.

I am not required and do not give written reasons for decisions on permit applications.

**The Ministerial Community Advisory Committee**

466. Corrections Victoria's guidelines state that all applications relating to Major Offender prisoners for Administration of Justice Permits must be referred via the prison General Manager, to the Ministerial Community Advisory Committee for a recommendation on the appropriateness of granting a permit.<sup>31</sup> Following this recommendation, the application is then forwarded to the Sentence Management Unit for a final decision.
467. The Advisory Committee comprises senior representatives of Corrections Victoria and Victoria Police, as well as community representatives.
468. In Mr Williams' case, a recommendation from the Ministerial Community Advisory Committee was not sought by the prison in relation to either permit. My investigation identified an email sent by Mr Brendan Money, dated 4 November 2010, in which he advised that the requirement for the Ministerial Community Advisory Committee to provide a recommendation for the permits in relation to Mr Williams, had not been complied with. In this email, Mr Money stated:

... not sure of the history of the decision [not to formally notify the Ministerial Community Advisory Committee], we think perhaps due to the sensitive nature of the information [in the permits regarding Mr Williams]. The information about the number of permits [but not any details of the permits] are presented to MCAC [the Ministerial Community Advisory Committee] on a monthly basis, and any other information considered relevant to MCAC.

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<sup>31</sup> Corrections Victoria's Operational Guidelines – *Corrections Administration Permits, Rehabilitation and Transition Permits & Interstate Leave of Absence*, November 2007.

469. Corrections Victoria clearly failed to comply with its own guidelines regarding the requirement to refer permit applications in relation to Mr Williams, to the Ministerial Community Advisory Committee for a recommendation.

### Safety concerns in relation to Mr Williams

470. During my investigation, I identified evidence that Mr Williams had expressed safety concerns in February 2010 regarding the risks of being removed from Barwon Prison by Victoria Police. In a telephone call on 13 February 2010, Mr Williams said to his father:

Mr Williams:                      When you speak to Steve [Detective Inspector Steve Smith] tell him there's no headaches or anything but it's too risky to do it out there [outside the prison] that's all ... but you agree don't you - it's too risky?

471. In a telephone call on 20 February 2010, Mr Williams raised further concerns with his father about the impact his removal from Barwon Prison may have on Mr Johnson and Mr Ivanovic:

Mr Williams:                      He [Detective Inspector Steve Smith] wanted to do this thing out [of prison], but I think it's too much Dad. He wants to work it out ... you know rather than here. Yeah but I think it's too much, what do you reckon?

Mr George Williams:          He said that to me.

Mr Williams:                      I think when it affects ... for me it doesn't really, but the other two [Mr Johnson and Mr Ivanovic] it does, you know what I mean. I gotta respect their ... space you know a little bit.

472. In response to my draft report, Detective Inspector Smith stated:

... Between 29 January 2010 and 22 February 2010, I spoke with George Williams on 7 occasions - either face-to-face or by telephone. On none of those occasions did George Williams mention any concern in relation to Mr Johnson, Mr Ivanovic or Carl Williams' removal from Barwon Prison ... Between 2 February 2010 and 22 February 2010, I spoke with Carl Williams on 6 occasions [sic] - either face-to-face or by telephone. On none of those occasions did Carl Williams mention any concern in relation to Mr Johnson, Mr Ivanovic or his removal from Barwon Prison ... In early February 2010, Carl Williams asked if his preparation by the prosecutors could be conducted at Barwon Prison. However, Victoria Police advised him that its preference was for the preparation to occur outside Barwon Prison; Carl Williams was agreeable to this.

473. In a telephone call on 24 February 2010, Mr Ivanovic also spoke with an associate and former prisoner regarding the potential impact Mr Williams' removal from the prison may have on himself and Mr Johnson. Mr Ivanovic said:

I had a fight with the handler [Detective Inspector Steve Smith] ... I jumped on the phone yesterday ... they [Victoria Police] wanted to take him [Mr Williams] out on the weekend ... to do a bit of prep for this committal that's coming up and I'm saying to him don't go ... and Carl told his handler 'listen mate ... I live with Matty [Mr Johnson] and Tommy [Mr Ivanovic] and if Tommy is not happy if I go away it's going to look bad for him' ... he goes 'I gotta live with people ... it's going to be more pressure for him'.

... they [Victoria Police] don't care about us, at the end of the day they could care less about us but at the end of the day we all gotta work together mate because ... Carl lives with us, I live with him, Matty lives with him and it's a reflection on all of us at the end of the day.

474. The above telephone calls made by Mr Williams and Mr Ivanovic were recorded on the ARUNTA telephone system and available to the Intelligence Unit and prison collators. However, the telephone calls do not appear to have been taken into consideration by Corrections Victoria when deciding whether to approve the permit in February 2010.

475. In response to my draft report, Detective Inspector Smith stated:

... the suggestion in Mr Ivanovic's statement to [an associate] that Carl Williams had said to me 'listen mate ... I live with [Mr Johnson] and [Mr Ivanovic] and if [Mr Ivanovic] is not happy if I go away it's going to look bad for him' and 'I gotta live with people ... it's going to be more pressure for him' is incorrect. Carl Williams never made any statements to this effect to me, nor did Mr Ivanovic.

In this context, I note that on 23 February 2010 I received a call from Carl Williams, and he put Mr Ivanovic on the line. In the conversation that I then had with Mr Ivanovic, he did not mention the proposed removal of Carl Williams [from] Barwon Prison. Rather, we discussed his and Carl Williams' regime conditions, and their concerns at not having access to cooking facilities in light of their cooperation in the Hodson matter ...

### **Supervision of Mr Williams during the permits**

476. Mr Williams' removal from the prison in December 2008 for the purpose of assisting Victoria Police was widely reported in the media. In January 2009, a number of media articles speculated on the benefits Mr Williams was receiving in exchange for his cooperation with Victoria Police and the circumstances of his removal from Barwon Prison. The following are examples of matters concerning Mr Williams which were reported in the media from January 2009, up until his death:

- the removal of Mr Williams and his father from the prison by Victoria Police to another location for eight days<sup>32</sup>

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32 Australian Associated Press Pty Limited, 'Carl Williams helps corrupt cops probe', *The Age*, 10 January 2009.

- the payment of Mr Williams' daughter's school fees by Victoria Police<sup>33</sup>
- the payment of Mr George Williams' \$750,000 tax debt by Victoria Police.<sup>34</sup>

477. It was also reported in the media that Mr Williams and his father had received visits from prostitutes and/or their partners and girlfriends while under the supervision of Victoria Police.<sup>35</sup>

***Mr Williams' removal from the prison in December 2008 was widely reported in the media.***

478. My investigators interviewed officers from Victoria Police's Taskforce Petra who were present with Mr Williams during his removal from the prison during both permits.

479. At interview, Detective Inspector Smith denied that prostitutes visited Mr Williams, however confirmed that Mr Williams' then girlfriend and his father's partner had a supervised visit at the permit location. He said:

He [Mr Williams] had one visit while he was there [on the December 2008 permit] ... where he met with ... his then girlfriend ... and George [Williams] was taken there and met with [Mr George Williams' partner] ... and that was a supervised and monitored visit, they weren't left alone.

480. In response to my draft report, Detective Inspector Smith stated:

... By letter dated 3 March 2011 the OPI [Office of Police Integrity] informed me that '[i]t has not identified any evidence which supports allegations that Carl Williams was provided prostitutes by Victoria Police', and that '[i]n fact, OPI's investigation failed to validate any of the allegations proposed by the media, to any degree'.

... it ought to be noted that the visits which both Carl and George Williams were allowed in December 2008 while on removal simply accommodated and reflected their existing privileges at Barwon Prison, and were allowed at the request of Corrections Victoria so to ensure that both prisoners enjoyed a continuation of their existing privileges while on removal.

481. While Mr Hutchinson, Operations Manager of the Intelligence Unit visited the secure locations where Mr Williams was held by Victoria Police in December 2008 and February 2010, he was not present during the entire time that Mr Williams was under the supervision of Victoria Police. No other staff from Corrections Victoria were present during either permit period.

<sup>33</sup> Mr Padraic Murphy, 'You pay killer's school fees', *Herald Sun*, 19 April 2010.

<sup>34</sup> Australian Associated Press Pty Limited, 'Police 'offered deal' for Williams' help, *The Age*, 5 February 2010.

<sup>35</sup> Mr Liam Houlihan, 'Prison bosses treated me to hookers - Carl Williams' last boast, *Herald Sun*, 16 May 2010.

## Corrections Victoria's record-keeping

482. It is the responsibility of Corrections Victoria to maintain accurate and up-to-date records concerning Administration of Justice Permits issued. A prisoner's association with Victoria Police or status as a witness should be protected by Corrections Victoria and the records kept confidential and secure in the relevant prison, but not withheld from appropriate authorities such as the Ministerial Community Advisory Committee.
483. My investigators reviewed the records held by Corrections Victoria regarding the permits relating to Mr Williams. This review identified the following issues of concern:
- inaccurate records kept by Corrections Victoria concerning the permits, which were found to be lacking in detail and contained incorrect information
  - the original permit documentation relating to the Administration of Justice Permit in February 2010 was missing for a period of time, and later found stapled to another prisoner's paperwork.

### December 2008 permit

484. In December 2008, Victoria Police's written application for a permit advised that it would remove Mr Williams and his father from Barwon Prison for three days: 24 – 27 December 2008.
485. However, my investigation identified an entry in Corrections Victoria's Prisoner Information and Management System (PIMS<sup>36</sup>) under Mr Williams' name which states that Mr Williams was removed from Barwon Prison for seven days: 22 – 29 December 2008.
486. In an email dated 10 June 2010, Mr Hutchinson, Operations Manager of the Corrections Victoria Intelligence Unit, confirmed that Mr Williams was absent from the prison on two separate roll-over<sup>37</sup> permits from:
- 24 – 27 December 2008
  - 27 – 29 December 2008.
487. In his email, Mr Hutchinson's explanation for the discrepancy in dates was:
- ... there may have been several delays once the Permit was actually agreed, perhaps causing some confusion with dates. It is not possible to confirm who entered the different dates on PIMS, as the information is overwritten by subsequent activity.
488. Examination of the register of permits held by the Corrections Victoria Intelligence Unit revealed that Mr Williams was removed from the prison from 22 December 2008 – 30 December 2008.
489. My investigation identified a further email from Mr Hutchinson on 30 September 2010 providing advice that Mr Williams was removed from the prison on the following dates:

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<sup>36</sup> An electronic database used by Victorian prisons to record prisoner movements and classifications.

<sup>37</sup> A roll-over permit can be issued if an extension of time from the original Administration of Justice Permit is required.

- 22 – 24 December 2008
- 24 – 27 December 2008
- 27 – 30 December 2008.

490. Based on the relevant databases, evidence and advice from Corrections Victoria, I am satisfied that Mr Williams was removed from Barwon Prison for the period 22 – 30 December 2008. However, the records held by Corrections Victoria are inconsistent with:

- the initial advice provided by Mr Hutchinson
- the original documentation submitted by Victoria Police
- the register of permits
- the PIMS database.

### Missing documentation

491. After the death of Mr Williams, my investigation identified that Corrections Victoria was unable to locate original documentation relating to a roll-over permit issued on 27 to 30 December 2008.

492. In an email from Mr Hutchinson to Mr Wise, dated 10 June 2010, Mr Hutchinson said:

[At the end of the Administration of Justice Permit] ... the Police hand over the current permit and staff return both the prisoner and the CCPP [corrections administration permit] ... back to the prison ... for some unknown reason the staff who picked up Williams [in December 2008] did not ask for [the permit] paperwork ... The SESG [Security and Emergency Services Group of which the Corrections Victoria Intelligence Unit is a subset] staff then returned Williams back to the prison without the correct paperwork where the prison in turn accepted Williams back without paperwork.

493. Mr Hutchinson further stated that he consulted with Taskforce Petra and Special Operations Group of Victoria Police who advised that it did not have the permit documentation.

494. In a subsequent email dated 30 September 2010, Mr Hutchinson advised that the documentation had been located by Corrections Victoria. Mr Hutchinson stated:

... the misplaced paperwork was located stapled to the back of another prisoner's documents.

All documents of this nature are secured in a safe with restricted access and at no point was the document in danger of destruction.

A new process of filing has been implemented that all ... [Corrections Administration Permit] documents are correctly stored with regard to their security classification.

495. Mr Hutchinson stated:

The paperwork was never at risk of destruction and was always securely stored in a security classified safe with only two persons having access.

It was human error on my part that saw me attach the rollover permit to another prisoners administration permit. This was after the permit had expired and did not impact on decisions made in relation to WILLIAMS or his safety.

496. This is a further example of Corrections Victoria's poor record-keeping.

### **Letter of agreement between Victoria Police and Corrections Victoria**

497. Following the death of Mr Williams, Corrections Victoria and Victoria Police entered into an agreement concerning the 'removal of High Risk Prisoners by Victoria Police for the purpose related to the administration of justice (under the Custodial Community Permit Program as provided for pursuant to sections 57, 57A, 57D, 58 & 58A of the *Corrections Act 1986*)'. The letter of agreement was signed by the Commissioner Corrections Victoria, Mr Hastings, on 14 December 2010 and by the then Deputy Commissioner of Victoria Police, Sir Ken Jones, on 30 November 2010.

498. The letter of agreement details the level of risk assessment now required to approve an Administration of Justice Permit, as follows:

- A Joint Management Operations Team comprising a Detective Inspector of Victoria Police; Inspector of the Special Operations Group; and a member of the Security and Emergency Services Group is responsible for a full risk assessment being conducted prior to the prisoner being removed from the prison.
- Corrections Victoria and Victoria Police are to notify each other of all known or potential risks, intelligence or concerns that may impact on the welfare or management of the prisoner by either agency before, during or after the permit.
- At the conclusion of the permit, Victoria Police are to provide Corrections Victoria all details which may impact on the safety of the prisoner, such as their status as a witness and the details of the accused (and associates).
- A comprehensive debrief is to be conducted by Victoria Police when a prisoner is returned to the prison at the conclusion of the permit.

499. While the letter of agreement is a positive step in improving the Administration of Justice Permits between Corrections Victoria and Victoria Police, I consider that further action is required to ensure greater transparency and accountability in the permit process.

500. In this regard, I note that the Northern Territory's *Prisons (Correctional Services) Act 1980*, requires a prisoner to be:

... brought before a court or taken to such other place as required may only be removed from the prison on the order of a Judge of the Supreme Court or at the written direction of the General Manager of the prison.<sup>38</sup>

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38 *Prisons (Correctional Services) Act 1980* (NT), section 58.

## Conclusions

501. While responsibility for the approval of Administration of Justice Permits rests with Corrections Victoria, my investigation identified poor decision-making and record-keeping by Corrections Victoria in its decision to approve the permits involving Mr Williams in December 2008 and February 2010.
502. The decision-making process of Corrections Victoria in relation to the permits for Mr Williams lacked detail, once Victoria Police's requests were received. Given the risks associated with removing Mr Williams from Barwon Prison, this decision warranted close consideration, consultation with all involved parties, intelligence information gathering and consideration of all relevant risks.
503. Corrections Victoria's approval process for the December 2008 and February 2010 permits was also deficient, as it failed to properly authorise and obtain the required signatures in the permit documentation. Corrections Victoria also failed to ensure that necessary documentation such as the Schedule 1.1 – Individual Prisoner Application, which outlined Mr Williams' consent in writing to be placed on a permit to assist Victoria Police, was submitted for the Commissioner's consideration.
504. Corrections Victoria simply accepted at face value Victoria Police's statement that it conducted a risk assessment in relation to both permits, without further consultation with Victoria Police or review of any supporting documentation to demonstrate the risk assessment conducted by Victoria Police.

### ***Corrections Victoria simply accepted at face value Victoria Police's statement that it conducted a risk assessment.***

505. Corrections Victoria also accepted two Security and Risk Assessment of Prisoner Applications from Victoria Police which were not properly completed. In future, Corrections Victoria should ensure that applications for permits are fully completed. For example, sections of the application should not be left blank, and supporting documentation should be submitted with the application.
506. Since Corrections Victoria holds the majority of intelligence information on prisoners (such as information about prison incidents or prisoner behaviour), it is concerning that my investigation found no evidence of Corrections Victoria conducting its own risk assessment of the permit granted in December 2008. As responsibility for approving a permit rests with Corrections Victoria, it is critical that Corrections Victoria conduct its own risk assessment to ensure that all risks are comprehensively addressed. Similarly, Corrections Victoria should also ensure that a prisoner remains in the custody of Corrections Victoria throughout the course of the permit and that responsibility is not passed on to Victoria Police.

507. In response to this, Victoria Police stated that changes have since been made to ensure that a prisoner who is removed from prison by Victoria Police remains in the custody of Corrections Victoria.
508. In several telephone calls in February 2010, it is clear that Mr Williams and Mr Ivanovic expressed concerns about the risks associated with the permit being approved and the impact that Mr Williams' absence would have on Mr Ivanovic and Mr Johnson. Corrections Victoria does not appear to have considered or been aware of the concerns raised in these telephone calls.

***It is clear that Mr Williams and Mr Ivanovic expressed concerns about the risks associated with the permit being approved.***

509. Corrections Victoria also failed to maintain accurate and secure records. There were no notes or minutes taken after the meeting held on 17 February 2010 and in general in relation to Corrections Victoria's decision-making process concerning Administration of Justice Permits. It should maintain accurate and consistent records in relation to the details of the permits on its databases and register.
510. Also, the fact that highly sensitive documents in relation to these permits were missing and later found stapled to another prisoner's paperwork, which reflects poorly on Corrections Victoria's administration and record-keeping practices. It is particularly concerning given that this error was identified many months after the death of Mr Williams.
511. Corrections Victoria also failed to follow its internal guidelines in relation to the requirement for the Ministerial Community Advisory Committee to provide a recommendation on the permits.
512. There were high risks involved in removing Mr Williams from Barwon Prison in February 2010, such as: the increasing media scrutiny; Mr Williams' dwindling reputation in the prison community; and the views of Mr Johnson and Mr Ivanovic. Given the lack of documentation to show Corrections Victoria's decision-making, it is my view that Corrections Victoria cannot demonstrate that it balanced and considered all of the risk factors when deciding to approve this permit. In this regard Corrections Victoria failed in its statutory obligations to Mr Williams.

***Corrections Victoria cannot demonstrate that it balanced and considered all of the risk factors.***

513. I consider that a Judge or Magistrate should be responsible for making an order to remove a prisoner from prison. Corrections Victoria has demonstrated its inability to responsibly manage its permit process.
514. In response to my conclusions, the department stated:

The department accepts your finding that Corrections Victoria has an obligation to conduct its own formal risk assessments prior to the approval of Administration of Justice permits. While there is a clear public interest in Corrections Victoria facilitating interaction between police and prisoners to help solve and prosecute serious criminal offences, these benefits must be carefully balanced against the potential risks to the prisoner's safety.

... You raise a number of valid concerns about Corrections Victoria's handling of the permit process in Mr Williams' case. However, the department questions your conclusion that 'Corrections Victoria has demonstrated its inability to responsibly manage its permit process' ... Each year, Corrections Victoria administers around 2,300 – 2,400 custodial community permits ... Most permits administered under the [Corrections] Act are straightforward and do not involve the same risks and sensitivities associated with those issued in Mr Williams' case.

## Recommendations

I recommended that the Minister for Corrections:

### Recommendation 36

Consider introducing amendments to the *Corrections Act 1986* to provide that Administration of Justice Permits be approved by a Judge or Magistrate.

I recommended that the Department of Justice:

### Recommendation 37

Develop guidelines to ensure that future Administration of Justice Permit documentation is kept secure and confidential.

### *The department's response*

**Accepted**

### Recommendation 38

Ensure that prisoners remain in the custody of Corrections Victoria during Administration of Justice Permits.

### *The department's response*

**Accepted**

### Recommendation 39

Develop and implement policy which requires Corrections Victoria to conduct its own risk assessment in addition to the applicant's risk assessment for every permit application, and submit this in writing with the original permit application.

***The department's response***

**Accepted**

**Recommendation 40**

Develop and implement guidelines which require that Corrections Victoria documents its decision-making to approve or refuse Administration of Justice Permits, including details of:

- the rationale for the decision
- the risks considered
- any intelligence information obtained
- which parties were consulted and the advice provided
- the outcome of the decision.

***The department's response***

**Accepted**

**Recommendation 41**

Ensure that Corrections Victoria takes into account the impact of the Administration of Justice Permit on the affected prisoner's placement.

***The department's response***

**Accepted**

## 6. MANAGEMENT OF THE ACACIA UNIT

515. The Acacia Unit accommodates some of the most dangerous prisoners in Victoria. A high standard of professionalism is therefore expected of all correctional staff while working in this high security unit. In light of the considerable public interest in the death of Mr Williams, I decided to examine the management of the Acacia Unit and the conduct of its staff.
516. I found an unprofessional culture in the Acacia Unit at the time of Mr Williams' death which included:
- the use of offensive and derogatory language
  - distribution of sexually explicit and/or inappropriate material
  - a prison officer being instructed by a prison manager to approach Mr Ivanovic in the days following the death of Mr Williams to obtain information about the killing, despite a homicide investigation having been commenced by Victoria Police
  - prison officers complaining of sleep deprivation on the night shift and one instance where a prison officer was disciplined after being found sleeping while on duty
  - inadequate recruitment processes and staff training.
517. Such a culture is unprofessional as it creates a distraction from professional duties. Any lowering of professional standards in a high security prison creates opportunities for inappropriate conduct to occur.
518. In April 2010, Mr Andrew Mackenzie, the then Acacia Unit Supervisor was responsible for the day-to-day management of the Acacia Unit. Mr Mackenzie reported to Operations Manager, Mr Gavin Martin. At the time of Mr Williams' death, Mr Mackenzie had been the Acacia Unit Supervisor for approximately six months.
519. During a day shift in the Acacia Unit, eight staff were rostered to work, including two senior prison officers and five prison officers. The Unit Supervisor was rostered to the Acacia Unit nine days a fortnight.
520. The expected level of professionalism required of prison staff in performing their duties is outlined in the Victorian Public Sector Code of Conduct, which states:
- Public sector employees promote an environment that encourages respect.
- Public sector employees are fair, objective and courteous in their dealings with the Government, community and other public sector employees.
521. Corrections Victoria's Conduct and Ethics Policy requires prison officers to demonstrate professional values, including:

... responsiveness, integrity, impartiality, accountability and respect. It is also an expectation of the values that employees demonstrate leadership in implementing and supporting these attributes as well as respecting human rights.

522. The Conduct and Ethics Policy also requires prison staff to act as role models for prisoners. The policy states that:

... Employees working in a correctional environment serve as role models for prisoners and offenders, acting as a reference point or guide from which prisoners and offenders may learn acceptable forms of behaviour. To be an effective role model, employees must act in accordance with these values at all times both in their words and their conduct.

523. Any culture which exists in prisons is particularly influenced by the relationships built between prison staff and prison management. Should these professional relationships be underdeveloped, inappropriate or lacking in trust, this may have a flow on effect on the management of prisoners. Similarly, the failure of prison management to manage staff adequately has the potential to adversely affect the efficient operation of the prison.

### **Building rapport with prisoners**

524. By virtue of their role, prison officers are required to interact with prisoners daily. Because of the amount of time prison officers spend with prisoners in confined environments such as the Acacia Unit, a professional relationship is invariably formed between prison officers and prisoners. During my investigation, prison officers referred to a positive relationship with prisoners as 'rapport'.

525. The Acacia High Security Unit Manual, dated July 2010 provides some guidance to prison staff on interactions with prisoners. It states:

[The] Acacia High Security Unit affords Staff an opportunity to interact and communicate with Prisoners and creates an environment of proactive and dynamic security, whilst maintaining integrity and professionalism aligned with the Department of Justice values.

526. The Corrections Conduct and Ethics Policy states that prison staff must maintain professional boundaries from prisoners. It provides:

... Employees must ensure that they maintain appropriate professional boundaries. This means that a professional distance from prisoners and offenders is necessary in order to contribute effectively to the maintenance of security, the safety of any person, and the good order of any correctional program.

... Social relationships between employees and current or former prisoners ... may give rise to similar concerns regarding conflicts of interest, potential breaches of security and capacity to fulfil the inherent requirements of the job.

527. There appeared to be uncertainty amongst prison officers regarding what constitutes appropriate 'rapport' with prisoners. At interview with prison staff, several different meanings were offered, in relation to the concept of 'rapport'.
528. While prison staff are provided with professional boundaries training upon induction into the prison, several prison officers expressed the view that this did not adequately address the variety of situations faced by prison staff when interacting with prisoners, or when attempting to build rapport. For example, a prison officer said at interview that:
- ... to be honest with you, we were basically just given a plastic card which was ... colour-coordinated saying, 'if you touch the prisoner that's considered inappropriate behaviour and it's a red colour'. There wasn't really anyone say to come in there and go, 'Okay, you know, this is what they might do ... don't put yourself in those situations' ... [But] that would've been maybe - maybe two hours, a two hour discussion.
529. At interview on 10 May 2011, a Staff Development Manager at Barwon Prison confirmed there is no specialist training or ongoing training provided to prison staff regarding how to build rapport or interaction with prisoners or how prisoners may attempt to manipulate prison staff. There is also no training provided to prison staff regarding how a prison officer's communication style may affect a prisoner.

### **Discussion between Prison Officer B and Mr Ivanovic**

530. On 20 April 2010, a day after the murder of Mr Williams, Operations Manager, Mr Michael Trotter, asked Prison Officer B to speak with Mr Ivanovic, out of 'curiosity' to obtain information from Mr Ivanovic about the death of Mr Williams and Mr Ivanovic's wellbeing.
531. It was alleged by a Senior Prison Officer (who had witnessed the conversation and notified the Barwon Prison management team) that Prison Officer B had spoken with Mr Ivanovic for approximately 40 minutes in a non-English language. Prison Officer B denied that she had spoken with Mr Ivanovic in a non-English language, stating that some words were spoken in a non-English language, such as 'thanks' or 'goodnight'.
532. My investigation identified a lack of policy and procedure concerning staff speaking in a non-English language with a prisoner.

### **Alleged disagreement between Prison Officer B and a Senior Prison Officer**

533. Following Prison Officer B's conversation with Mr Ivanovic, the professional relationship between Prison Officer B and the Senior Prison Officer (who had reported her conduct) deteriorated, leading to a dispute and involved the two staff members being spoken to by prison management. My investigation was unable to locate any documentation or file notes on the personnel files of Prison Officer B or the Senior Prison Officer pertaining to their disagreement in June 2010.

## Conclusions

534. It was inappropriate for Mr Trotter to have requested that Prison Officer B obtain information from Mr Ivanovic 'out of curiosity', particularly in light of Victoria Police's investigation into the death of Mr Williams, and Mr Ivanovic being a witness in this investigation. This could have compromised Victoria Police's investigation.
535. A conversation with a prisoner in a non-English language, when both parties speak English, is clearly inappropriate and lacks transparency. The prison needs to set clear limitations when staff communicate with prisoners and prohibit staff speaking in a non-English language with a prisoner, particularly when English is their first language.
536. The lack of appropriate policy, procedure, training and staff understanding of the idea of building rapport with prisoners has blurred the line in the Acacia Unit between what is professional and what is unprofessional. The idea of rapport needs to be clearly defined in policy and procedure.
537. The disagreement involving the Senior Prison Officer and Prison Officer B should have been recorded in their respective personnel files as a formal incident, in light of the Senior Prison Officer's notification to management about Prison Officer B's conversation with Mr Ivanovic. As such, the prison's record-keeping practices were inadequate.
538. Mr Mackenzie stated in response to this issue in my draft report:
- ... I believe that the later disagreement between [Prison Officer B and the Senior Prison Officer] ... should have been recorded in their personnel files, however this disagreement occurred after I had left the Unit. I agree that the prison's record-keeping practices may be inadequate.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 42

Conduct a review of management at Barwon Prison, including the Acacia Unit.

#### *The department's response*

**Accepted**

### Recommendation 43

Provide training and education to prison supervisors and managers in the management of staff disputes, including recording incidents and maintaining appropriate documentation.

#### *The department's response*

**Accepted**

## Recommendation 44

Develop a policy regarding prison officers speaking to prisoners in a non-English language and disseminate this policy to all staff.

### *The department's response*

**Accepted**

## Rotation of staff in the Acacia Unit

539. The Acacia High Security Unit Manual, dated July 2010 provides guidance on how often staff should be rotated. It states:

Staff working in Acacia high security unit will experience interaction with prisoners who have been identified as difficult to manage and require a high degree of secure supervision and management. In light of the intense and at times difficult interaction ... staff will be rostered out of the unit for four weeks every 12 months and three months each second year, this will be in addition to allocated rostered leave.<sup>39</sup>

540. This policy was not always followed by prison management. At interview, a Senior Prison Officer said that staff are not rotated out of units every 12 months and that this is affected by resources and experience of staff.

541. Another prison officer said at interview that until the date of Mr Williams' death, he had been working in the Acacia Unit for two years without rotation.

542. I note that a Local Operating Procedure regarding High Security and Management Units Administration<sup>40</sup> was issued in October 2011 which addresses the rotation of staff. This procedure provides that:

... Staff who have worked in a high security or management unit for a consecutive period of two years (not including recreational leave), must be rotated to another operational area of the prison for a minimum of one month.

## Conclusion

543. I am concerned that the prison's staff rotation policy is not being consistently applied in the Acacia Unit, or across the prison.

## Recommendation

I recommend that the Department of Justice:

### Recommendation 45

Review the existing staff rotation policy at Barwon Prison and ensure that the policy is applied consistently.

### *The department's response*

**Accepted**

<sup>39</sup> The Acacia High Security Unit Manual (July 2010) page 5.

<sup>40</sup> Local Operating Procedure, High Security and Management Unit Administration, No. 10.3, 11 October 2011.

## Inadequate supervision of night shift staff

544. In the Acacia Unit, the night shift, which is referred to as the 'second watch', runs for 8 hours and 53 minutes, from 11 pm – 7.53 am. There are no scheduled meal breaks during these shifts.<sup>41</sup> Two prison officers are rostered on the night shift in the Acacia Unit.
545. My investigation identified several examples of prison staff complaining about sleep deprivation while working on the second watch shift at the prison. In particular, several prison officers pointed to the second watch shift or working a number of consecutive second watch shifts as the cause for failing to remain alert and responsive during their shift.
546. An email dated 30 March 2010, written by a Senior Prison Officer while working in the Acacia Unit, titled 'sleep withdraw', states:
- ... its been almost TEN [the Senior Prison Officer's emphasis] days now with no sleep ...
547. The Senior Prison Officer stated in response to this email in my draft report:
- As this email was sent over 20 months ago I cannot remember why I would have sent an email stating 'its been almost TEN days now with no sleep'. In March 2010 I only worked day shifts because I was an Acting Senior Officer in the Acacia Unit. I had not worked 10 days straight nor had I worked any night shifts during this period.
548. In an email from a Prison Officer to a Senior Prison Officer at 11.10 pm on 25 April 2011 titled 'keeping awake', the Prison Officer states:
- ... I'M ONE TIRED BIIIIITCH!!!!
- The Prison Officer also attached a picture of a woman sleeping on the keyboard of her computer to accompany this email.
549. In response to my draft report, the Prison Officer stated that:
- At the time I sent the email ... I was - indeed - tired. However, I do not accept any (implied) suggestion that I was incapable of performing my duties to the highest standard required. Sometimes, a light-hearted email sent to a colleague is just that.
550. An email from another prison officer dated 6 March 2009, also raises concerns with a member of the prison union about staff in the Acacia Unit being left by themselves during second watch shifts and first watch shifts (day shifts).
551. There are serious consequences for the security of the prison should a staff member fall asleep while on duty. This is particularly so in high security units such as the Acacia Unit. The following case study is an example involving a prison officer who was found asleep while working in the Banksia high security management unit at the prison:

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41 The Acacia High Security Unit Manual (July 2010), page 8.

### Case study: Prison officer sleeping on duty at Barwon Prison

On 13 February 2010, Prison Officer C was found sleeping while on duty in the Banksia Unit.

In a report submitted by the Unit Supervisor of the Banksia Unit, he states:

I approached the Door of Banksia Management and tapped on the door with my keys, there was no response from the officer at the post, Prison Officer C ... I then moved into the medical room and found Prison Officer C asleep on the medical bed. Prison Officer C then woke up, I then spoke to Prison Officer C about falling asleep at his post, at no stage did he apologise.

Prison Officer C was rostered to work the second watch shift in the Acacia Unit the following day.

In response to Prison Officer C's actions, the prison conducted a disciplinary investigation, notifying the Acting General Manager, Regional Director of the Department of Justice and the Commissioner of Corrections.

Prison Officer C responded to the investigation stating:

In hindsight, I should have spoken to my manager about the fact I was feeling tired ... I was on my fifth consecutive second watch. I had not been sleeping well during the day. From time to time it can be difficult to adjust to working second watch. It can throw my sleep patterns out, and my body clock. I normally feel okay for the first three second watch shifts, but the fourth and fifth are the hardest. It is a process of physical and mental adjustment.

The misconduct investigation against Prison Officer C resulted in the Acting General Manager issuing a final warning to Prison Officer C who was consequently removed from working a second watch shift in the Acacia Unit.

## Conclusions

552. I am concerned that staff working on the second watch shift in the Acacia Unit may not be alert during their duties and that the number of second watch shifts which are consecutively provided to prison officers in high security units is not adequately monitored.
553. The example of Prison Officer C falling asleep in the high security Banksia Unit is concerning particularly in light of the serious consequences this may have for the security of the prison. It is also concerning that Prison Officer C was rostered to work in the Acacia Unit the following night.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 46

Implement random night checks to be regularly conducted by a supervisor to ensure that prison staff are not sleeping while on duty.

#### *The department's response*

**Accepted**

### Recommendation 47

Conduct a review of staffing levels rostered to the second watch shift in high security units to ensure adequate staffing.

#### *The department's response*

**Accepted**

### Recommendation 48

Ensure staff are not rostered on consecutive night shifts for more than a few days at a time.

#### *The department's response*

**Accepted**

## The culture in the Acacia Unit

554. My investigation identified the existence of an unprofessional culture in the Acacia Unit at the time of the death of Mr Williams. This culture was largely influenced by the then Acacia Unit Supervisor, Mr Andrew Mackenzie.

### Inappropriate emails

555. The State Service Authority's 'Guidance for use of social media in the Victorian public sector', provides guidelines on how public sector employees should use social media such as email, as follows:

Whether using social media for official use, or in a private capacity, staff must not do anything that may adversely affect their standing as a public official or which could bring themselves or the public sector into disrepute.

556. My investigation identified that prison officers working at Barwon Prison and in the Corrections Victoria Intelligence Unit regularly sent sexually suggestive and violent images to their colleagues and managers via email using their Department of Justice email addresses. Some of these officers sent emails of this nature while on duty in the Acacia Unit.

Examples of the emails sent included:

- a video depicting a naked prisoner being whipped by prison staff in a Singaporean prison
- graphic photographs sent by prison staff to other colleagues of a deceased terrorist suspect killed by American armed forces
- a video of a man electrocuted on the roof of a train
- photographs of a car accident depicting deceased persons who had been decapitated
- sexually suggestive and explicit images.

557. The examples cited in my report are a small representation of many inappropriate emails sent and received by prison staff, including Unit Supervisors and the Barwon Prison management team.

558. While several of the emails sent and received by prison staff and managers were in the form of 'chain emails', staff in the Acacia Unit were actively involved in forwarding these emails to other colleagues throughout the prison and the Department of Justice. This demonstrates their approval and acceptance of the content of the emails that they had received.

559. At interview, Prison Officer B said that there was a lot of banter in the Acacia Unit amongst prison officers which she described as 'smut'. In response to being asked as to whether there was anything inappropriate that prison staff were saying, she said:

... yeah - I mean they would obviously talk about, like, the usual. I mean - I don't know - whether it be female anatomy or whether it be whatever, you know, just the usual banter that you would hear anywhere else. But to me it's like I wasn't - I wasn't necessarily offended, I just wasn't interested in being a part of it. It was simple as that.

560. Despite Prison Officer B stating at interview that she did not engage in such discussions with prison staff, I found evidence to the contrary. An email sent by Prison Officer B dated 2 November 2010, to a Senior Prison Officer in the Acacia Unit, states:

... man the fuck up cunt ...

561. In another case, Prison Officer B sent an email to the same Senior Prison Officer dated 15 October 2010, in which she states:

I thought id [sic] send you an updated version of my pic. this time it's with you in the background HAHAHAHA!!!!!!!!!!!!!! (see below)

The email contains the following image:

Figure 2 – An image sent by Prison Officer B



562. In response to this email referred to in my draft report, Prison Officer B stated:

I reject, in the strongest terms, the finding ... that my use of the expression “man the fuck up cunt” indicates that I engaged in smutty banter with prison staff. Despite its profanity, “man the fuck up cunt” means “toughen up!”. I used it in that context.

Needless to say, “man the fuck up” is not an expression that I will use again in an email to a colleague. Nor will I again share images ... or the like.

563. It is concerning to find that this type of image, which is sexually suggestive and includes images of firearms, shares some characteristics with many of the personal logos used by prisoners in outgoing correspondence sent from Barwon Prison. For example, below is one of the logos used by prisoner, Mr Johnson, on his outgoing correspondence:

**Figure 3 - Logo used by Mr Johnson on his correspondence**



564. The use of personal logos by prisoners appears to be an accepted practice at Barwon Prison and other prisons throughout Victoria. There is no policy or procedure which prohibits or regulates the use of such logos by prisoners in outgoing correspondence. These personal logos are used by prisoners to maintain their standing or reputation while in prison or to intimidate.
565. I identified that other emails sent by prison staff also contained inappropriate content. For example, a Prison Officer sent an email to a Senior Prison Officer dated 4 April 2010, which stated:

Please help, I have been violated by some of your staff but I can't name names!

Help me!

P.S. ... I'm just passing on the bad news mate, no involvement whatsoever.

The following photograph was attached to this email, which was taken by prison officers using the Senior Prison Officer's coffee cup. I note that the clothing depicted in the photograph appears to be the official prison officer uniform:

**Figure 4 - A photograph taken by a prison officer using a Senior Prison Officer's cup.**



566. In my view, this type of conduct is childish and indicative of an unprofessional culture in the Acacia Unit.

### **Emails from Mr Andrew Mackenzie**

567. My investigation established that Mr Mackenzie sent a large number of emails to junior prison officers and senior prison staff containing both offensive and derogatory language. For example, in an email dated 28 December 2009 to a junior Prison Officer, Mr Mackenzie stated:

Listen you soft ass ball toucher ... if you don't harden the fuck up and stop sooking about the little Cassia [Cassia Unit] pooftas hugging each other and the Melaleuca [Melaleuca Unit] homos licking each others testicles ... you just might find yourself working out the back with those soft cunts ... or better still ... transfer to Maggottcreek [Marngoneet Prison] where you can get all lovey dovey and touchy feely and bear huggy with those spazos.

PS Just kidding!!

568. Mr Mackenzie disagreed that he '... regularly sent emails that contained offensive and derogatory language'. Mr Mackenzie also stated that the emails were sent '... only on a few occasions'.
569. However, a large number of emails containing offensive and derogatory language were identified by my investigation as having been sent by Mr Mackenzie, spanning a number of years. On a number of occasions, Mr Mackenzie would send several emails a day containing offensive material.

570. Mr Mackenzie has denied that he influenced an unprofessional culture in the Acacia Unit at the time of Mr Williams' death:

I strongly disagree that the ability of prison staff to perform their duties in a professional manner was impaired. The staff in the Acacia Unit always put their professional duties first.

... I strongly disagree that there was an unprofessional culture in the Acacia Unit, and I strongly disagree that I influenced the staff to create such a culture.

571. In another case, Mr Mackenzie sent an email on 24 February 2010 to a Senior Prison Officer criticising the performance of his duties. Mr Mackenzie stated:

I know that you have been a Senior [Officer] for a while now ... and I know that you have done a good job but have you forgotten where you come from?? Have you forgotten how to do the role of a PO???? [prison officer] Have you forgotten how to fill out a fuckin register or are you too good for that shit now???

... What the fuck are you doing??? Who the fuck do you think you are???? ... INVINCIBLE???

PS THIS EMAIL WAS NOT INTENDED AS AN INSULT ... IT IS SIMPLY TO SATISFY MY NEED TO HAVE A LAUGH EVERYDAY [Mr Mackenzie's emphasis]

572. Mr Mackenzie stated that the above email ' ... was sent as a joke to ... [the Senior Prison Officer], who is a friend of mine, not as an insult, as he had failed to do a fairly simple thing. The email was not a representation of my management of staff'.

573. Mr Mackenzie also sent several emails which contained derogatory language to describe prisoners being held in the Acacia Unit. For example, he frequently referred to prisoners as 'cunts'. Mr Mackenzie stated that he accepts that he sent these emails but did not offer a justification as to why he did so.

574. In addition to sending emails to his staff which contained inappropriate language, Mr Mackenzie also received emails from his staff which used similar language. It appeared accepted practice for Mr Mackenzie and his staff to communicate in this unprofessional manner. For example, a Prison Officer sent Mr Mackenzie an email dated 4 February 2010, stating:

YOU ARE A FUCKIN PATHETIC CHIEF CUNT [her emphasis].

575. In response to this in my draft report, Mr Mackenzie stated that he could not recall receiving this email.
576. I also identified that Mr Mackenzie used sexually suggestive images as a means of rewarding his staff. For example, Mr Mackenzie sent sexually suggestive images to his staff in exchange for the completion of requested tasks. In an email dated 3 July 2010 to two male prison officers, Mr Mackenzie states:

Can you two groomers please do some work for me??? Can you put together ... a rough post order for the console position ... Thanks dudes

Scroll down for your thanks ...

The email contained a close up image of a female's cleavage as a reward for completing this work.

577. Mr Mackenzie also sent the two male prison officers a further email on 3 July 2010 with an inappropriate close up image of the buttocks of two females wearing bikinis as a means of reward.

578. Mr Mackenzie provided the following comments in relation to whether the emails were sent to his staff as 'rewards':

I strongly disagree that I sent emails with inappropriate images as a 'means of rewarding' my staff in Acacia Unit. This was not the intention of the emails. I agree that it was inappropriate and immature, however, they were never intended as a 'reward'.

579. I am most concerned that the then Acacia Unit Supervisor, Mr Mackenzie, was an instigator of offensive images and language used in emails sent from his Department of Justice email account.

***The then Acacia Unit Supervisor was an instigator of offensive images and language used in emails sent from his Department of Justice email account.***

580. In response to my draft report, Mr Mackenzie disagreed that he was the 'main instigator' of inappropriate emails in the Acacia Unit. He further stated:

... there is not an unprofessional culture amongst the prison officers in the Acacia Unit. I strongly refute that I have 'heavily influenced' an 'unprofessional culture'.

... I agree that offensive and sometimes derogatory language is used amongst prison staff and management, and I agree that it is not appropriate, however it is used as a result of the prison environment in which the staff work. I disagree that the language used created or contributed to an unprofessional culture.

... I agree that I sent by email, sexually explicit and/or inappropriate material distributed to a small group of staff. I should not have sent the images by email, and I accept that they were inappropriate and unprofessional. I did not send the emails to a large group of staff. I sent the email to a small group of staff members who are also my personal friends.

581. My investigation also revealed examples of other prison staff who acted in an overtly suggestive manner.

**Case studies:**

In April 2009, concerns were raised with prison management regarding Prison Officer D who had allegedly offered male prison officers oral sex and had also brought a 'vibrating condom/dildo' into the prison to show another officer. Prison Officer D was described in an email sent by senior prison management as a 'sexual predator'. Prison managers were concerned that prisoners may seek to exploit Prison Officer D if they were to become aware of this information. It was concerning to discover that Prison Officer D had at times worked in the Acacia Unit. At a meeting with prison management, Prison Officer D provided an apology, admitted to making comments to other officers of a sexual nature and admitted to bringing a vibrating condom into the prison. Prison Officer D was given a warning in relation to the conduct.

I also identified that the prison had been involved in investigating allegations made against Prison Officer E who had worked in the Acacia Unit and been in contact with Mr Williams and Mr Johnson, regarding the introduction of contraband into the prison. The allegations have been referred by the prison to Victoria Police for further investigation.

**Conclusions**

582. The prevailing culture in the Acacia Unit during Mr Mackenzie's time as Unit Supervisor was unprofessional and did not provide a healthy environment for prison staff to perform their duties. While I note that changes have since been made to staffing in the Acacia Unit, with several staff including Mr Mackenzie having been transferred to other areas of the prison, I am concerned that this type of culture may continue.
583. I consider the behaviour and language used by Mr Mackenzie towards members of his staff to be unprofessional. It demonstrates a poor understanding of his role as a leader. To offer his staff a 'reward' of sexually suggestive images in return for completing tasks, is totally inappropriate and potentially in breach of the Victorian Public Sector Code of Conduct. It depicts women as sexual objects and affects how male and female officers approach their duties in the prison environment.
584. In my view, there is a risk that a lowering of professional standards by prison staff in high security environments may lead to opportunities for improper practices to develop, or at worst corrupt conduct.
585. Mr Mackenzie's unprofessional conduct in the Acacia Unit had a 'domino effect' on his staff, who then reflected his conduct, language and behaviour. Such conduct is unacceptable, unprofessional and inconsistent with the prison's internal policies and the Public Sector Code of Conduct. In some instances, I consider that the interactions between some prison officers could also amount to bullying and harassment.

586. It is also concerning that my investigation found similarities between the images sent via email by prison staff and the logos used by prisoners on their mail. In my view, these images show parallels between prison staff and prisoners regarding the acceptability of firearms, male dominance and an inference of violence.

587. In response to my conclusions concerning the culture in the Acacia Unit, the department stated:

... The department neither condones nor tolerates inappropriate use of social media, and has a strong track record of taking decisive action against employees who misuse the email system. Moreover, employees in supervisory roles have an obligation to model the Department of Justice values and behaviours.

...

The department will engage an independent consultant to conduct a workplace culture review of Barwon Prison, which will aim to identify whether the cultural issues highlighted in the report are isolated to a small number of individuals or indicative of a broader problem across the prison. When the review is complete, measures will be implemented to ensure that a professional, service-focused culture is promoted and practised among staff at Barwon Prison.

588. The department further stated:

... The emails and images featured in your report contain derogatory and offensive material that demonstrates a lack of professionalism among the prison staff involved. The department rejects any suggestion that this lack of professionalism is a result of, or excused by, the environment in which prison officers work. Despite the challenges associated with working in this environment, prison staff are subject to the same expectations of courteous, respectful and professional conduct that apply to all employees of the Department of Justice.

...

... The department already has a policy defining acceptable staff email usage. The department will review this policy to ensure it remains current and appropriate.

...

... the department regularly conducts random audits of staff emails across the department, including staff based at prisons ... In light of the issues identified in your report, the department will undertake a random email audit of staff based at Barwon Prison and in the CVIU [Corrections Victoria Intelligence Unit], and a targeted audit of all those identified in your report as having sent inappropriate material.

589. In my view, the audit proposed by the department is not broad enough to address all inappropriate material identified in my investigation, which included the Barwon Prison management team and other prisons.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 49

Provide education to all prison staff regarding their obligations to reflect the Victorian Public Sector Code of Conduct and Corrections Ethics and Conduct Policy.

#### *The department's response*

**Accepted**

### Recommendation 50

Consider taking disciplinary action against Mr Andrew Mackenzie in light of the conclusions in this report.

#### *The department's response*

**Accepted**

### Recommendation 51

Conduct an audit of all prison staff emails and take appropriate action against offending staff.

#### *The department's response*

**Accepted in principle**

### Recommendation 52

Develop a policy regarding acceptable staff email usage, detailing the permissible content of emails sent by staff.

#### *The department's response*

**Accepted**

### Recommendation 53

Provide training and education to prison staff regarding the use of email.

#### *The department's response*

**Accepted**

## Recommendation 54

Consider implementing a policy governing the use of personal logos on outgoing prisoner mail.

### *The department's response*

**Accepted**

## Recruitment of prison officers

590. The recruitment of staff to Barwon Prison is conducted via a third party recruitment agency (the agency). The agency selects appropriate candidates for the position of prison officer in the first instance and then passes its recommendations to prison management.
591. At interview, an Operations Manager expressed concern that the prison was attracting less than qualified individuals to the role of prison officer. He stated that individuals are often recruited to the prison without any correctional experience, or any experience dealing with difficult persons.
592. My investigation confirmed that a number of staff were recruited to the entry level position of prison officer from employment backgrounds with no experience working in a correctional environment or similar.

### ***A number of staff were recruited from employment backgrounds with no experience working in a correctional environment.***

593. Mr Mackenzie raised concerns regarding the skills and experience of prison staff working in the Acacia Unit. At interview, he said:
- ... there are days where we have, for example, four out of seven staff who have never worked in the unit before, that's not appropriate and we've learnt that that shouldn't happen and we've put a procedure in place so it won't happen.
594. Mr Mackenzie stated that his concerns relate to the fact that '... staff in Acacia Unit must have specific knowledge to work in the Unit'.
595. Mr Mackenzie inappropriately documented his concerns regarding the proficiency of new staff in an email dated 5 June 2010, titled 'new prison officers' sent to other prison officers. The email states:
- Apparently we have exhausted the human resource allocation of the Geelong region ...
- These are our new recruits ...
- Scroll down ...
- Mr Mackenzie includes an attachment of a picture of an orangutan dressed in a female style prison guard uniform.

596. In response to my draft report, Mr Mackenzie stated:

I agree that this was an inappropriate email to send, however it was not in relation to any group of prison officers, or to any new recruits or in relation to the recruitment process. It was intended as a joke only.

597. My investigators interviewed the Staff Development Manager at Barwon Prison, regarding the level of training provided to staff in light of their employment backgrounds, to prepare them for their role as a prison officer at Barwon Prison. He said that the training provided to staff could be improved and that obtaining funding for staff training was an ongoing problem.

598. Barwon Prison also uses a casual pool of prison staff to cover staff absences, including the Acacia Unit. Several prison officers interviewed raised concerns regarding the use of casual prison officers in the Acacia Unit. They said that casual staff sometimes demonstrated an unhealthy interest in working in the Acacia Unit with high profile prisoners, the likes of Mr Williams.

599. When asked about casual staff working in units accommodating high profile prisoners, Mr Mackenzie said:

... we do occasionally have staff ... who are casual, who are newer, who don't work in the unit, who are a little bit excited or interested in these high profile guys and even on the day of April 19. I recall one staff member, perhaps an hour ... after the incident actually ask can I come down to the unit, I've never seen a serious incident. And the answer ... [was] no way, you know, you don't want to see this. This is not pleasant. You're getting wound up with the gig factor of it all, keep your distance ... so - yeah, there was a bit of that sometimes.

600. At interview, another prison officer also said:

There's a staff member at the moment who - I suppose, for want of a better word gets off being around certain prisoners and what not ...

...

And he likes to talk about things and embellish and, yeah ... He's a prison officer in Acacia at the moment ... He's only been in there for - oh, maybe a couple of months. He only just recently became an ongoing prison officer. Prior to that he was a casual.

601. Mr Hastings, Commissioner Corrections Victoria stated in relation to the use of casual staff that:

... Casual staff are used within the Acacia Unit on a needs basis. Casual staff are generally employed in less critical roles, for example, the screening of visitors ... I note we do have a practice of rotating staff through different units, including the Acacia Unit. This serves a number of purposes, including providing staff opportunities to obtain appropriate skills in a variety of environments, protecting staff from exposure to more challenging environments indefinitely and the grooming behaviours of prisoners. I maintain our staffing practices are appropriate ...

## Conclusions

602. Given the high security prisoners held in units such as Acacia, it is important that the prison employs and recruits staff that are suitable and trained for the role. I am concerned that some staff currently recruited by the prison may not have the requisite experience in correctional environments and are not provided with adequate training to prepare them for their roles.
603. The use of casual staff in the Acacia Unit should also be reconsidered. There are risks in having inexperienced casual prison staff working in this unit, given the nature of prisoners it accommodates. There should be more rigorous controls in place to ensure that casuals recruited to the Acacia Unit are of a high standard and that staff have had considerable experience working in other units at Barwon Prison, before working in the Acacia Unit.
604. In response to this, the department stated:
- ... The department agrees that the criteria for working in high security units should be strict, with consideration given to the individual's level of experience, qualifications, maturity and professionalism. Equally, the department accepts the need for more rigorous controls regarding the use of casual staff in the Acacia Unit and for a review of the training program for prison officer recruits.

## Recommendations

I recommend that the Department of Justice:

### Recommendation 55

Review the appropriateness of recruiting casual staff to work in high security units, such as the Acacia Unit.

#### *The department's response*

**Accepted**

### Recommendation 56

Conduct a review of the staff training program for new prison officer recruits.

#### *The department's response*

**Accepted**

## Cricket in the Acacia Unit

605. Following the death of Mr Williams, the media alleged that Acacia Unit staff were playing cricket at the time of Mr Williams' death.<sup>42</sup> In a Herald Sun article written by Mr Mark Buttler, dated 19 October 2010, Mr Buttler stated that:

An investigation into Carl Williams' death has been told guards at Victoria's highest-security prison played indoor cricket while they were supposed to be watching our worst criminals ... The Herald Sun understands stumps were drawn at the time of his slaying, on April 19.

606. My investigators questioned prison officers and managers regarding the allegations of staff playing cricket while on duty. A prison officer said at interview that prisoners and prison staff would play an annual Boxing Day cricket match in the Acacia Unit. He said:

... we were playing cricket in Acacia ... we used to go in - I think it was every sort of Boxing Day, the guys in Unit - Unit 3 would get the - the boys would come and ... mow the yard fairly short, and they'd play cricket.

607. Operations Manager Mr Martin, denied any knowledge of a Boxing Day cricket match involving prison staff and prisoners. At interview, he said:

No. I've never seen them [staff members] play cricket and I've never watched them on the footage playing cricket. Yeah, it'd give me the shits if they were.

608. When asked whether the existence of a staff cricket match was ever investigated by the prison, the then General Manager Mr Prideaux, said at interview:

Well, I don't think it was investigated ... when it surfaced in the media I didn't ask for an investigation to be initiated about it, there was already lots of investigations occurring ... I didn't think there was a need for me to have opened up an investigation.

... I sent Gavin Martin down to the unit to an Acacia team meeting or to talk to Acacia staff ... to just say you know the general manager's concerned about the allegation made by the Herald Sun and would never tolerate staff behaving like that ... in a high security unit. So it was a conversation of that nature, so no, I didn't investigate it and stand by that.

609. At interview, the then Acacia Unit Supervisor Mr Mackenzie, said that he was asked by Mr Prideaux about the allegations of Acacia Unit staff playing cricket. Mr Mackenzie said:

Yes, there was a bit of mucking around from time to time. Was there games or cricket? No, there wasn't. Was the occasional tennis ball getting chucked at one another or something like that? Perhaps there was.

<sup>42</sup> Mr Mark Buttler, 'High-security prison guards caught out in Carl Williams investigation', *Herald Sun*, 19 October 2010.

610. Since this interview, Mr Mackenzie stated:

I have no knowledge of any evidence that would support the allegation, raised in the media, that prison officers were playing indoor cricket at the time of Mr Williams' death. I have no knowledge of where the media got this information from, or how the media formed this view. The morning of Mr Williams' death was a very busy morning for the staff in the Acacia Unit, as we were conducting a review of our fire procedures. The staff had no time to do anything other than their professional duties, and I believe that the story of prison officers playing cricket has been fabricated either by the media or by the source of the information, and should not be relied upon by the Ombudsman in this report.

611. My investigation identified that on 20 September 2010, Mr Prideaux sent an email to Mr Rod Wise, Assistant Commissioner, Corrections Victoria, in response to allegations that staff were playing cricket in the Acacia Unit at the time of the death of Mr Williams. Mr Prideaux advised Mr Wise that he had made enquiries into the allegations and reported as follows:

... The follow up I have conducted has identified that on a rare occasions [sic] the staff would have a few minutes of cricket in the foyer. No cameras in this area and yes, I am following this up as I am not happy.

612. During my investigation I became aware that prison staff, including several staff in the Acacia Unit, had organised an indoor cricket team which was due to compete in the Police Games on 25 March 2010, representing Barwon Prison. Several emails between prison staff confirm that there was a great deal of discussion amongst staff about the team and the need for practice in preparation for the Police Games.

## Conclusions

613. I was concerned to establish that prison staff in Victoria's highest security prison unit had played cricket amongst themselves in the foyer area of the Acacia Unit on occasions. I consider this to be unprofessional.

614. I also have concerns about the evidence provided by one prison officer that prison staff engaged in organised cricket matches with maximum security prisoners in the Acacia Unit, particularly without the approval of prison management and where it may impact on the security of the unit.

## Recommendation

I recommend that the Department of Justice:

### Recommendation 57

Issue an instruction to all prison staff prohibiting them from playing cricket or other games amongst themselves or with prisoners while on duty or with prisoners in high security and management units.

### *The department's response*

**Accepted**

## 7. THE OFFICE OF CORRECTIONAL SERVICES REVIEW

615. Following the death of Mr Williams, the Office of Correctional Services Review (the OCSR) commenced an administrative investigation into the incident, focusing on Corrections Victoria. Located within the Department of Justice and reporting to the Secretary of the Department, the OCSR provides oversight and advice on the operations, conduct and performance of Victoria's correctional system.
616. In July 2006, I tabled a report in Parliament, titled *Conditions for persons in custody*.<sup>43</sup> In that investigation, I identified the need for a transparent and accountable system for monitoring Victoria's correctional system. In 2006, the Corrections Inspectorate (the Inspectorate) performed that role. The Inspectorate was established in 1 July 2003 as a separate unit within the Department of Justice.
617. Following my investigation into conditions in custody in 2006, I had concerns about the Inspectorate's ability to perform its functions in an independent and impartial manner. In 2007, my office conducted a review of the Inspectorate.<sup>44</sup> My review identified that the Inspectorate:
- did not operate independently: it took direction from a range of internal Department of Justice stakeholders, including the Commissioner Corrections Victoria
  - operated without accountability mechanisms in place outside the Department of Justice
  - had difficulty at times providing proactive and timely advice
  - demonstrated poor record-keeping
  - was not transparent, with none of its reports being published and information about prison inspections not available to the public.
618. Following my review, the Secretary of the Department of Justice, Ms Penny Armytage, established the Office of Correctional Services Review on 13 August 2007, as an amalgamation of the former Corrections Inspectorate and Corrections Victoria's Performance Review and Development Unit.

### The OCSR's role

619. The Department of Justice's website describes the OCSR as follows:
- An independent business unit of the Department of Justice - the Office of Correctional Services Review - reports independently to the Secretary to the Department of Justice on the effectiveness of Corrections Victoria's management of the Victorian prison system.

<sup>43</sup> Victorian Ombudsman, *Conditions for persons in custody*, July 2006.

<sup>44</sup> Victorian Ombudsman, *Annual Report*, 2006; Victorian Ombudsman, *Annual Report*, 2007.

620. In relation to the OCSR's role, the department has recently stated:

The OCSR was never intended to be an independent oversight agency ... the OCSR is, and has always been, an internal review and quality assurance mechanism ... The OCSR was not established to provide external oversight or to investigate allegations of serious maladministration or criminal conduct, which are properly the jurisdiction of the Ombudsman and police.

... It [the OCSR] plays a legitimate role in assisting the Secretary to fulfil his or her obligation under section 7(1) of the Corrections Act 1986 to monitor performance in the provision of all correctional services to achieve the safe custody and welfare of prisoners and offenders.

621. Unlike my office, the OCSR does not have any formal coercive powers, such as the power to summons witnesses and interview them on oath or affirmation.

622. When the OCSR conducts an investigation, it acts on delegated authority from the Secretary. Its investigation manual states that OCSR may undertake preliminary enquiries or investigations into the following:

- all notifiable incidents
- major incidents that occur within the corrections system
- serious complaints and allegations concerning the operation of the corrections system
- serious staff misconduct matters
- issues of high exposure to the corrections system.

623. The manual states that the investigation report is first provided to the OCSR's Director of Investigations and then:

A departmental briefing and Final Report are provided to the Secretary for consideration and endorsement. Once the report and findings have been endorsed by the Secretary, the OCSR will then provide a copy for Corrections Victoria and any other provider involved in the investigation.

624. When the death of a prisoner occurs in a Victorian prison, the OCSR prepares a report for the Coroner, monitors the coronial inquest, and monitors any recommendations from the Coroner.

625. The OCSR is also responsible for conducting regular inspections of Victorian prisons. In its Annual Report 2009-10, the Department of Justice included information about the activities of the OCSR. For instance, the OCSR is reported as having initiated 27 investigations in 2009-10 into incidents in the correctional system and:

Most were own motion investigations. Five were referred by the Secretary and three by Ombudsman Victoria. The investigations included escapes from custody, drug-related incidents, alleged assaults on prisoners by staff, the fatal assault of a prisoner in a high security unit and a major fire in a management unit.<sup>45</sup>

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<sup>45</sup> Department of Justice, *Annual Report 2009-10*, Appendix K.

626. The OCSR does not publish its investigation reports for public viewing nor does it report to Parliament.

## The OCSR's performance

627. I have continued to have concerns about the ability of the OCSR to perform its role effectively. As such, I have monitored the OCSR's performance in the handling of some complaints I referred to it for investigation.
628. During a review of matters I referred to it in 2010, I identified concerns with the OCSR's performance. For example:
- a failure to interview a number of key witnesses in one investigation I had referred to it
  - the timeliness and quality of the OCSR's investigations on several occasions
  - an eight month delay in finalising an investigation into a prisoner falling from a bunk bed at Port Phillip Prison.
629. In a letter dated 28 June 2010, Ms Armytage acknowledged that there had been unacceptable delays in relation to the OCSR's investigations. Ms Armytage advised that she had implemented measures to ensure that no further delays occurred in relation to future referrals by my office, such as additional resources in the OCSR investigations team and a greater degree of enquiries before initiating a full investigation.

## The OCSR's investigation concerning Mr Williams' death

630. On 20 April 2010, the OCSR commenced an investigation into issues arising from the death of Mr Williams.
631. The OCSR investigation team comprised: Ms Maria Vasilopolous, the then Deputy Director of Reviews and Investigations, two OCSR Senior Investigation Officers, and an external contractor, Mr William Stoll. The investigation team reported to the Director of the OCSR.
632. Mr Stoll was under contract to jointly manage the OCSR's investigation from 21 April – 30 May 2010 and from 4 August 2010 – 25 January 2011. Mr Stoll's contract with the Department of Justice ceased after 25 January 2011.
633. In its investigation plan, the OCSR listed its terms of reference as assessing the 'implications for the corrections system, offenders and staff, administration, policy and procedures and review relevant matters with a view to identifying and recommending to the Secretary what, if any, management action might be required'.
634. The department stated that '... [t]he Terms of Reference for the OCSR investigation properly directed Mr Stoll and the OCSR to examine the policies, procedures, processes and decisions of Corrections Victoria. This is consistent with the OCSR's mandate'.

635. Ms Armytage provided my office with a copy of the OCSR's investigation reports on 25 January 2011.
636. I reviewed the OCSR's investigation concerning Mr Williams. I noted issues in its investigation, including:
- the failure to pursue a line of enquiry concerning Prison Officer A's Information Report which raised concerns for Mr Williams' safety in March 2009. This is despite the OCSR having interviewed Prison Officer A<sup>46</sup>
  - the involvement of a senior Department of Justice officer who edited the executive summary of the report
  - the failure to formally interview the Secretary.

### **Interaction with Victoria Police**

637. During the OCSR's investigation, it was apparent that there was tension in the relationship between Victoria Police and the OCSR, as both agencies had differing views regarding what information could be shared relating to Mr Williams' death.

### ***It was apparent that there was tension in the relationship between Victoria Police and the OCSR.***

638. In a letter dated 27 August 2010, Ms Armytage wrote to Sir Ken Jones, the then Deputy Commissioner of Victoria Police requesting information to assist the OCSR with its investigation. On 15 September 2010, Sir Ken Jones responded to Ms Armytage's request stating:

... I'm afraid that each and every one of the questions raised [by Ms Armytage] impinges directly or indirectly on aspects of the [Victoria Police's] investigation. You are no doubt aware that the actual homicide investigation into the death of Carl Williams is nearing completion, however it has spawned a number of other enquiries ... in these circumstances we [Victoria Police] are simply unable to help at this time with your specific requests ... we [Victoria Police] are very keen to continue to work with you [the OCSR] on the general aspects of the OCSR reviews but feel unable to assist with aspects of the OCSR review which touch directly on the homicide of Carl Williams.

639. In its second investigation report dated 25 January 2011, the OCSR discussed the relationship with Victoria Police as a factor which limited its investigation. The OCSR stated:

Access to the information sought in the 27 August 2010 request by the Secretary to Victoria Police was an important means of corroborating or rebutting the nature and extent of the information passed to Corrections Victoria by Victoria Police ...

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<sup>46</sup> Prison Officer A's Information Report is discussed in greater detail in the Placement decision chapter of my report.

...

As a result of the decision taken by Victoria Police, the OCSR investigation was left to arrive at some findings without the benefit of confirmation or otherwise of information said by Corrections Victoria officials to have been received from Victoria Police ...

...

There appears to be no further action open to the OCSR administrative investigation to secure the information sought from Victoria Police.

640. In response to this issue in my draft report, Detective Superintendent Mr Doug Fryer, Senior Investigating Officer of Taskforce Driver stated:

It was my opinion as the S.I.O [Senior Investigating Officer] that the answers to the DOJ [Department of Justice] questions [as detailed in Ms Armytage's letter dated 27 August 2010] should have been provided.

... On 2 December 2010 I received an email ... from Sir Ken Jones [former Deputy Commissioner]. This email contained two documents, one being his reworded letter ... to Ms Armytage, advising the [sic] Victoria Police were now in a position to answer the required questions, the other document ... being the answers to the nine questions.

... It is apparent from the [Ombudsman's] draft report that Ms Armytage never received Sir Ken Jones [''] 2 December 2010 response.

641. Similarly, Victoria Police appears to have taken the view that OCSR was holding back relevant information from the homicide investigation. In response to my draft report, Detective Superintendent Fryer stated:

Whilst agreement was made at senior levels of both Victoria Police and the Department of Justice for Victoria Police to carry primacy of both the homicide investigation and the coronial investigation, OCSR staff didn't seem to understand this primacy. This is highlighted by OCSR not understanding the ramifications of reinterviewing police witnesses, then not sharing with investigators those interviews (which may have contradicted the initial evidence).

642. On 31 December 2010, at the request of Victoria Police the Coroner issued a Coroner's Order under section 39 of the *Coroners Act 2008* authorising Victoria Police to attend at the OCSR's premises to enter, search and seize and copy particular documents relating to the OCSR's investigation into the death of Mr Williams. On that day, ten members of Victoria Police attended the OCSR's premises to enforce the Order.

***Victoria Police appears to have taken the view that OCSR was holding back relevant information from the homicide investigation.***

643. During a meeting with Victoria Police on 16 February 2011, Victoria Police advised my investigators that the Coroner's Order was issued owing to OCSR's continued failure to provide all relevant information to Victoria Police.
644. At interview on 22 March 2011, Mr Stoll said that Victoria Police's use of the Coroner's Order on the OCSR was 'quite outrageous' as 'there was no indication within OCSR ... which indicated any lack of will to cooperate [and share information with Victoria Police]'
645. Mr Stoll stated that:
- ... I am aware of only one issue allegedly raised by unspecified and unidentified members of Victoria Police and that related to ... [a] lack of understanding exhibited by police as to the constraints, nature and limitations of an OCSR administrative investigation in the sense that whatever interviews the OCSR investigation conducted would not be made available to police, *carte blanche* [*sic*], without the need for consideration by the Secretary and consent of the relevant interviewee.
646. Detective Superintendent Fryer also stated:
- Whilst some may view the execution of a Coroners Authorities [Order] on OCSR as heavy handed I still hold the view it was completely necessary as the Driver taskforce investigations were time critical (Johnson trial) and there had been several months of OCSR not being forthcoming with pertinent information.
647. Ms Armytage stated that:
- ... DOJ [Department of Justice] at all times accepted the supremacy of the Victoria Police homicide investigation and the Taskforce Driver investigation being over-sighted by the OPI [Office of Police Integrity]. DOJ also acknowledged the primacy of the role of the Coroner in directing the investigation of Mr Williams' death.
- It was in this context that I convened a range of meetings throughout the investigations involving senior Victoria Police led by Sir Ken Jones, Deputy Commissioner and Detective Superintendent Doug Fryer of Driver Taskforce, Paul Jetovic [*sic*], Deputy Director OPI and the Executive Directors ... Carolyn Gale ... as well as the Commissioner, Bob Hastings and senior staff of CV [Corrections Victoria] and Directors Liana Buchanan and Penny Croser of the OCSR and Investigators Bill Stoll and Maria Vasilopoulos.
- ... I respected that each stream of investigation had its own unique set of obligations and priorities and some matters of mutual interest. Notwithstanding this, it is acknowledged that there were incidents of misunderstanding and concern ...

### **The Executive Summary of the OCSR report**

648. Ms Armytage confirmed at interview that Ms Carolyn Gale, Executive Director of Community Operations and Strategy in the Department of Justice, was responsible for editing the executive summary of the OCSR report.

649. In relation to her role regarding the OCSR's report, Ms Gale stated that:

... I received a draft of this Summary section of the report prepared by Mr Bill Stoll in my capacity as the Executive Director with responsibility for the Office of Correctional Services Review. I believed the Summary could be drafted more concisely. I reordered and condensed the information in this section. All material remained in the full report. I did not include any new material or alter any findings. In short, I believe my role was editorial. The redrafted section was agreed to by Mr Bill Stoll and Ms Maria Vasilopoulos and included in the final report.

650. Ms Vasilopoulos stated that:

... [At] a meeting with the Executive Director ... the Executive Director made an offer to write the executive summary ... in an effort to assist the process and expedite the deliver[y] of the report, but that this offer was not accepted by the investigation team.

... it was the practice for all OCSR reports to go up the line from the Director to the Executive Director, whereupon comments and questions were received, which largely related to ensuring the quality of the reports and that information in the reports could be substantiated.

651. Despite Ms Vasilopoulos' comments that Ms Gale's involvement was rejected by the OCSR investigation team, I am satisfied that Ms Gale edited the executive summary.

### **Failure to formally interview the Secretary**

652. In spite of her role in the decision about Mr Williams' placement, the OCSR did not formally interview Ms Armytage in its investigation. At interview, Ms Vasilopoulos said that there was no specific reason why the OCSR did not interview Ms Armytage. She said:

... thinking back we [the OCSR] ... should have [interviewed Ms Armytage] actually. We [the OCSR] didn't discuss it.

653. In response to this issue in my draft report, Mr Stoll disagreed that the Secretary had not been 'interviewed' by the OCSR. He stated:

Prior to 30 May 2010 I attended at least two meetings with the Secretary, along with the Director OCSR, Ms Vasilopoulos and other OCSR team members ... I recall at one such meeting, early in the investigation and prior to the 30 May 2010, questioning the Secretary regarding her receipt and consideration of the 6 January 2009 'Deputy Commissioner Rod Wise' email, her recollection as to actions she may have taken ...

***The OCSR did not formally interview the Secretary in its investigation.***

654. Ms Vasilopoulos also stated that:

... the external contractor [Mr Stoll] who led the investigation ... [had] several discussions with the Secretary ... as a means of determining the Secretary's level of involvement and/or knowledge of matters relevant to the OCSR investigation. It would therefore be more accurate to state that the Secretary was not 'formally' interviewed.

655. In contrast, Ms Armytage stated:

... If they [the OCSR investigators] had asked to interview me I would have gladly co-operated with their request.

656. In my view it would have been preferable for the Secretary to have been formally interviewed, particularly in relation to the concerns raised by Mr Wise regarding Mr Williams' safety.

## The Secretary's roles

657. The Secretary of the Department Justice has three roles in the Victorian Correctional System:

- to have the legal custody of prisoners (section 6A of the Corrections Act);
- to monitor the performance of all correctional services in Victoria to achieve the safe custody and welfare of prisoners (section 7 of the Corrections Act); and
- to Chair the committee which governs the performance of the OCSR, the function of which is, according to the Department of Justice website<sup>47</sup>, to independently oversee the correctional system.

658. However, the three roles of the Secretary have the potential to be confused, particularly in ways which affect the function of the OCSR. It is important that the OCSR be at arms length from those who undertake correctional roles which the OCSR is monitoring and reviewing, as the risk of conflict of interest where this does not happen is evident.

659. I consider that such confusion occurred with the Secretary's involvement in matters relating to Mr Williams. This is apparent when it is appreciated that:

- Mr Williams was formally in the Secretary's custody while in custody at Barwon Prison
- the Secretary was consulted and provided advice on some decisions involving Mr Williams, including on Mr Johnson's placement with Mr Williams in January 2009
- the OCSR regularly briefed and reported direct to the Secretary during its investigation concerning the death of Mr Williams
- the Secretary reviewed and endorsed the OCSR's investigation report and its recommendations.

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<sup>47</sup> <http://www.justice.vic.gov.au/home/about+us/our+organisation/business+area+profiles/justice+-+office+of+correctional+services+review>.

660. I consider that the Secretary's numerous roles in the correctional system have led her to be involved in the review of decisions in which she played an active and significant part. I consider that as she played an active part in the decision to place Mr Johnson with Mr Williams, she could be perceived as having an interest in the outcome of any investigation into Mr Williams' death.
661. It should be noted however that the reports provided by the OCSR were comprehensive and detailed. From the outset, the Secretary was open, readily provided my office with information on the commencement of the OCSR's investigation and subsequent progress reports and acted professionally and in good faith throughout this process.
662. Nonetheless, it would have been preferable for another senior executive of the department to have undertaken responsibility in relation to the OCSR's investigation given the Secretary's involvement in the placement decision.
663. The Secretary was asked at interview whether she was in a position of conflict, in having reviewed and endorsed the OCSR's investigation report and also having been involved in the January 2009 decision to allow Mr Johnson to be placed with Mr Williams. She said:

I didn't edit any of these reports and Bill [Stoll], I don't think would have felt in any way curtailed in terms of the work that he did on our [the OCSR's] behalf. I believe that as a Secretary of the department I have an overarching responsibility to ensure that these sort of reviews are undertaken [by the OCSR] ...

I didn't perceive that I was conflicted ... but I was conscious that it was appropriate for us to have an external reviewer, and we had that with Bill Stoll.

664. Ms Armytage also stated that she believed she had addressed any perception of a conflict, in the following ways:

... OCSR reports to the Secretary through the Executive Director, Community Operations and Strategy [Ms Carolyn Gale]. CV [Corrections Victoria] reports to the Secretary through the Executive Director, Police & Emergency Services and Corrections ... This arrangement enables the Secretary to take on the dual roles you acknowledge in your report.

I acknowledge that this reporting arrangement meant I had a responsibility to put in place a reasonable and appropriate response to address any perception of a conflict resulting from my dual roles.

I believe I did so satisfactorily by:

- Ensuring a suitably qualified, experienced and independent person was engaged by OCSR to lead its investigation. Mr Stoll was engaged as a result ...
- Ensuring the Director OCSR and the Investigation Team reported day-to-day through Ms Gale, the responsible Executive Director [of the Department of Justice] ...

- Ensuring all correspondence, for example, between DOJ [Department of Justice] and Victoria Police was generated by or copied to OCSR ...
- Giving OCSR complete authority to determine the methodology and the conduct of the investigation.

I believe that this arrangement responsibly managed any perceived conflict of interest.

665. There has been criticism<sup>48</sup> that the OCSR is unable to perform its function effectively and that there is a need to reform the OCSR and establish an independent statutory body.

666. In a briefing paper contained within the Human Rights Law Centre Bulletin titled 'Reducing Offending and Strengthening Correctional Accountability for a Safer Victoria' the Human Rights Law Resource Centre also criticised the OCSR's role, as follows:

Victoria does not have an independent body responsible for monitoring and oversight of prisons and other places of detention ... The Victorian Office of Correctional Services Review, an internal business unit within the Department of Justice which reports to the Secretary of the Department [of Justice], is not sufficiently independent, empowered or publicly accountable to undertake this function. The OCSR's lack of independence is exacerbated by the fact that it does not publicly publish its reports or findings.<sup>49</sup>

## Conclusions

667. I have previously commented on the inability of the OCSR to perform its role as a body responsible for monitoring the effectiveness of Corrections Victoria's management of Victoria's prison system, given its location within the Department of Justice. It has not adequately addressed the issues I identified in my review of the Corrections Inspectorate in 2007 and a review of complaints referred to the OCSR in 2010, namely: a lack of separation from those who undertake correctional roles the OCSR is monitoring and reviewing; limited transparency and accountability; investigations that vary in quality; and a failure to complete investigations in a timely manner.

668. In response to this, the department stated:

In late 2010, independent management consultants undertook a systematic review of the OCSR's investigation process. Subsequently, OCSR introduced a range of business improvements. For example, the unit:

- redeveloped the Enquiries and Investigations Operations Procedures;
- formalised processes for the assessment and categorisation of incoming matters to ensure prompt triage and allocation;

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48 Ms Sue Pennicuik MLC, Member for Southern Metropolitan, Motion to the Legislative Council - 'Custodial services: independent statutory body', 6 October 2010.

49 *Human Rights Law Centre Bulletin*, No. 60, April 2011, page 26.

- introduced a new investigation report format to streamline processes and improve the timeliness of OCSR reports; and
- developed a new Prisoner Complaint Handling Guideline, which is consistent with the Communication Guidelines established between the Ombudsman and the OCSR in May 2010.

669. The department further stated:

... The unit [the OCSR] is not responsible for reviewing or investigating the decisions or actions of the Secretary of the department. Indeed, this would be wholly inappropriate given that the OCSR ultimately reports to the Secretary.

... As the actions of the Secretary were not – and would never be – the focus of an OCSR investigation, the department does not consider that there was any existence or reasonable perception of bias arising from the Secretary’s determination of OCSR recommendations in the Williams matter.

... Of course, the department recognises that the decisions and actions of the Secretary are and should be subject to scrutiny by the Ombudsman and other authorised agencies, and that transparency and accountability in public administration depend on such scrutiny.

## SUMMARY OF RECOMMENDATIONS

I made 57 recommendations in this report. One recommendation is a matter for the Minister for Corrections to consider. The department has accepted 54 of the remaining 56 recommendations. The department accepted in principle two of my recommendations. The department has already implemented 17 of my recommendations.

I recommend that the Department of Justice:

### Recommendation 1

Develop a risk assessment template to assist Sentence Management Panels in making prisoner placement decisions.

### Recommendation 2

Develop guidelines detailing the circumstances when prisoner placement decisions should be referred to the Secretary for a decision.

### Recommendation 3

Develop guidelines in conjunction with Victoria Police regarding the management and placement of prisoners who are witnesses.

### Recommendation 4

Ensure that prison officers and prison collators have the opportunity to contribute to and attend Sentence Management Panel/Major Offenders Review Panel Meetings.

### Recommendation 5

Ensure that a Major Offenders Unit staff member is on site at Barwon Prison each week to enable consultation with prison officers.

### Recommendation 6

Develop guidelines for Sentence Management Panels identifying what information must be considered and recorded in relation to prisoner placement decisions.

### Recommendation 7

Ensure that minutes of Sentence Management Panels detail the following to record their decision-making concerning all major offenders and high security units at Barwon Prison:

- the decision

- the proposed action
- the rationale behind the decision
- the information considered as part of the decision-making process
- the parties consulted and the advice provided
- the outcome of meetings with the affected prisoner or proposed prisoners to be introduced to the placement.

### **Recommendation 8**

Review file management practices in relation to Sentence Management Panels to ensure that standards meet the requirements of the Public Records Act and the Public Records Office Standard.

### **Recommendation 9**

Amend the PROTEL manual and Sentence Management Manual to require Sentence Management Unit staff to record information in the PROTEL system, including its minutes.

### **Recommendation 10**

Develop guidelines to ensure that all prisoner mail in high security and management units is assessed by prison collators before forwarding to the Intelligence Unit.

### **Recommendation 11**

Develop procedures to ensure that information reports are entered into the PROTEL system within two days of receiving the intelligence information.

### **Recommendation 12**

Provide training for prison collators and Sentence Management Unit staff regarding the consistent use of the PROTEL system.

### **Recommendation 13**

Upgrade the telephone systems used by prison collators and the Intelligence Unit to ensure that multiple prisoner telephone calls can be listened to simultaneously.

### **Recommendation 14**

Consider implementing a requirement that collators and Intelligence Unit staff listen to key prisoner telephone calls live.

### **Recommendation 15**

Ensure that it implements the outstanding recommendations of the Comrie Review without further delay.

### **Recommendation 16**

Provide quarterly updates to my office on the implementation of the Comrie Review recommendations.

### **Recommendation 17**

Review the informal practice at Barwon Prison that the console operator primarily monitors the movements of prison staff in the Acacia Unit, as opposed to prisoners.

### **Recommendation 18**

Amend the position description of the console operator in the Acacia High Security Unit Manual to reflect the outcome of the above review.

### **Recommendation 19**

Ensure that camera timings in the upgraded CCTV system are synchronised.

### **Recommendation 20**

Conduct a review of all CCTV systems in Victoria's correctional system to ensure that CCTV systems are functional and up to date in light of the issues identified in this report.

### **Recommendation 21**

Develop a policy regarding the introduction of recreational equipment into the Acacia Unit, requiring:

- the submission of a completed recreational equipment request form
- a recommendation and full risk assessment from the Security Emergency Management Committee

and ensure that all Barwon Prison staff comply with the policy.

### **Recommendation 22**

Ensure that the Security Emergency Management Committee documents its risk assessments in relation to new recreational equipment introduced into Barwon Prison.

### **Recommendation 23**

Ensure that a master inventory database of all recreational equipment in units at Barwon Prison is completed.

### **Recommendation 24**

Appoint an independent third party to conduct a review of all recreational equipment used in all Victorian prisons to ensure that it is adequately assessed for the risk.

### **Recommendation 25**

Ensure that the Recreation Team conduct quarterly audits of all recreational equipment used by prisoners in units at Barwon Prison.

### **Recommendation 26**

Provide Barwon Prison staff with refresher training in the management of 'Code Black' incidents.

### **Recommendation 27**

Amend Barwon Prison's Emergency Management Plan, relating to 'Code Black' incidents to:

- address the number of staff attending 'Code Black' incidents
- address the securing of prisoners involved in an incident
- include a requirement that where possible staff avoid walking prisoners through the scene of an incident.

### **Recommendation 28**

Create a holding cell in the Acacia Unit.

### **Recommendation 29**

Develop guidelines to ensure that all printed and electronic copies of sensitive material held by prisoners cannot be distributed to other prisoners. The guidelines should ensure that it is a discipline offence for a prisoner to copy, share or distribute such documentation.

### **Recommendation 30**

Strengthen procedures in relation to searches of prisoner cells and units by prison staff to enable staff to search for unauthorised documentation held by prisoners.

### **Recommendation 31**

Amend the Director's Instruction No. 4.18 – Prisoner Telephone system to:

- address how telephone calls by prisoners in non-English languages should be monitored by the collators and the Corrections Victoria Intelligence Unit
- ensure that all prisoner telephone calls to and from members of Victoria Police or any other police force are monitored and recorded
- ensure there are adequate controls in place to identify and prevent telephone calls being made by prisoners to third parties and/or conference calls.

### **Recommendation 32**

Conduct a review of all Victorian prisons to ensure that any listening devices installed are authorised in accordance with the Surveillance Devices Act.

### **Recommendation 33**

Remind all relevant staff in Victorian prisons about the correct use of listening devices and the penalties under the Surveillance Devices Act concerning the unlawful installation of listening devices.

### **Recommendation 34**

Develop a risk management policy on issues relating to prisoners' access to media.

### **Recommendation 35**

Review prisoner telephone and written communication protocols and amend the Director's Instruction 4.18 – Prisoner Telephone System and Director's Instruction 4.07 – Prisoner Communications.

I recommend that the Minister for Corrections:

### **Recommendation 36**

Consider introducing amendments to the *Corrections Act 1986* to provide that Administration of Justice Permits be approved by a Judge or Magistrate.

I recommend that the Department of Justice:

### **Recommendation 37**

Develop guidelines to ensure that future Administration of Justice Permit documentation is kept secure and confidential.

### **Recommendation 38**

Ensure that prisoners remain in the custody of Corrections Victoria during Administration of Justice Permits.

### **Recommendation 39**

Develop and implement policy which requires Corrections Victoria to conduct its own risk assessment in addition to the applicant's risk assessment for every permit application, and submit this in writing with the original permit application.

### **Recommendation 40**

Develop and implement guidelines which require that Corrections Victoria documents its decision-making to approve or refuse Administration of Justice Permits, including details of:

- the rationale for the decision
- the risks considered
- any intelligence information obtained
- which parties were consulted and the advice provided
- the outcome of the decision.

### **Recommendation 41**

Ensure that Corrections Victoria takes into account the impact of the Administration of Justice Permit on the affected prisoner's placement.

### **Recommendation 42**

Conduct a review of management at Barwon Prison, including the Acacia Unit.

### **Recommendation 43**

Provide training and education to prison supervisors and managers in the management of staff disputes, including recording incidents and maintaining appropriate documentation.

#### **Recommendation 44**

Develop a policy regarding prison officers speaking to prisoners in a non-English language and disseminate this policy to all staff.

#### **Recommendation 45**

Review the existing staff rotation policy at Barwon Prison and ensure that the policy is applied consistently.

#### **Recommendation 46**

Implement random night checks to be regularly conducted by a supervisor to ensure that prison staff are not sleeping while on duty.

#### **Recommendation 47**

Conduct a review of staffing levels rostered to the second watch shift in high security units to ensure adequate staffing.

#### **Recommendation 48**

Ensure staff are not rostered on consecutive night shifts for more than a few days at a time.

#### **Recommendation 49**

Provide education to all prison staff regarding their obligations to reflect the Victorian Public Sector Code of Conduct and Corrections Ethics and Conduct Policy.

#### **Recommendation 50**

Consider taking disciplinary action against Mr Andrew Mackenzie in light of the conclusions in this report.

#### **Recommendation 51**

Conduct an audit of all prison staff emails and take appropriate action against offending staff.

#### **Recommendation 52**

Develop a policy regarding acceptable staff email usage, detailing the permissible content of emails sent by staff.

#### **Recommendation 53**

Provide training and education to prison staff regarding the use of email.

**Recommendation 54**

Consider implementing a policy governing the use of personal logos on outgoing prisoner mail.

**Recommendation 55**

Review the appropriateness of recruiting casual staff to work in high security units, such as the Acacia Unit.

**Recommendation 56**

Conduct a review of the staff training program for new prison officer recruits.

**Recommendation 57**

Issue an instruction to all prison staff prohibiting them from playing cricket or other games amongst themselves or with prisoners while on duty or with prisoners in high security and management units.

## APPENDICES

### APPENDIX 1

#### The role of Corrections Victoria

670. Corrections Victoria is responsible for managing Victoria's adult correctional system. This includes responsibility for the management of 11 public prisons and 60 community correctional facilities, as well as oversight responsibilities for two privately operated prisons. The Melbourne Custody Centre is not managed by Corrections Victoria, but it is operated by a private provider under contract with Victoria Police.
671. Corrections Victoria is responsible for ensuring that prisoners are not only safely and securely contained while in custody, but that they also have access to appropriate programs and services to reduce the risk of re-offending. Corrections Victoria's stated aim is to achieve this through offender management practices which actively engage with offenders and the community to promote positive behavioural change and address social disadvantage.<sup>50</sup>

#### The Major Offenders Unit

672. Within Victoria's correctional system, responsibility for the management of major offenders rests with the Major Offenders Unit. Established by Corrections Victoria in 2005 to facilitate the management of high profile and high risk prisoners, the primary functions of the Major Offenders Unit include:
- administration and provision of briefings and advice to the Major Offenders Review Panel and to Corrections Victoria's Executive Management Team
  - participation in Sentence Management Panels
  - case management consultation
  - prison unit liaison – for management and high risk security units
  - management of information and briefings in relation to major offenders
  - routine and case specific liaison with Police and SESG [Security and Emergency Services Group] Intelligence Unit.<sup>51</sup>
673. Major offenders are defined as:
- dangerous or high risk offenders – prisoners who pose a significant risk to staff or other prisoners; prisoners who have undue or undesirable influence within the criminal community; prisoners who have a demonstrated history of escape from custody or whose escape would raise concern in the community; and prisoners who represent a danger to the State

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<sup>50</sup> Corrections Victoria, *Strategic Priorities 2010-11*.

<sup>51</sup> *ibid*.

- high public profile offenders – prisoners whose offences are viewed as abhorrent by the community or which have attracted significant and ongoing media attention
- prisoners on extended supervision and detention orders for sex offending or where a court deems them to be an unacceptable risk.<sup>52</sup>

674. As of 19 April 2010, there were 91 prisoners under management by the Major Offenders Unit, including Mr Williams and Mr Johnson. Following the death of Mr Williams, Mr Ivanovic was re-instated to the major offenders list.

### HM Barwon Prison

675. HM Barwon Prison is a maximum security prison for male prisoners managed by Corrections Victoria, located approximately six kilometres from the nearby township of Lara and 70 kilometres south-west of Melbourne. The prison was opened in 1990 and has an operational capacity of 425 prisoners.

676. The prison is separated into a number of units accommodating: high security prisoners; prisoners requiring close supervision and/or protection; and mainstream prisoners.

677. The Acacia and Melaleuca units accommodate a mix of high-security prisoners, long-term management and remand prisoners. The Banksia Unit predominately houses management prisoners, while the Hoya Unit is a specialist protection unit accommodating some of Victoria's high profile maximum security prisoners and difficult to place prisoners. The Cassia, Diosma, Illawarra and Eucalypt units accommodate mostly mainstream prisoners.

### The Acacia Unit

678. The Acacia Unit is a maximum security unit specifically designed for the management of up to 23 high security risk prisoners at Barwon Prison. All persons, including prison staff, and any property entering or leaving the Acacia Unit, are subject to security searches and protocols.

679. The Acacia Unit is locked down (i.e. no prisoners are allowed out of their cells) from 3.30 pm until 8.00 am every day.

680. The Acacia Unit comprises four separate units, all monitored by closed circuit television (CCTV). Three of the units include prisoner access to a common-room and exercise yards. The fourth is a loss of privileges unit, with each cell having a separate exercise yard. This unit is used to isolate prisoners owing to placement concerns or misconduct issues.

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<sup>52</sup> *ibid.*

681. Prisoners in the Acacia Unit are allowed out of their cells for up to a maximum of six hours per day. Strict rules apply in the Acacia Unit governing expected standards of prisoner behaviour and prisoner responsibilities. For example, prisoners are required to address prison staff in an appropriate manner and keep their cells clean and tidy at all times. The rules also govern: prisoner access to visitors; telephone communication and mail; medical treatment; education and clinical services; and prisoner property.
682. An Incentive-Based Regime Model applies to the management of prisoners in high security units such as the Acacia Unit. The incentive system is designed to achieve a balance between maintaining a high level of surveillance and separation of prisoners and providing a humane environment that is respectful of prisoners' human rights. There are three incentive regimes in operation providing for an increasing range of incentives, such as additional telephone calls and/or visits, increased access to facilities (e.g. exercise equipment), and participation in educational programs for prisoners demonstrating positive behaviour.

## APPENDIX 2

### Mr Williams' correctional history

683. Mr Williams' criminal history, which included involvement in drug trafficking and several high profile 'gangland murders' in Melbourne during the late 1990s and early 2000s, has been widely reported in the media. As a result, Mr Williams was a criminal figure of some notoriety in Victoria's correctional system.
684. At the time of his death, Mr Williams was serving three consecutive life sentences with a non-parole period of 35 years following convictions for: three murders; conspiracy to murder; and drug trafficking. Since being taken into custody in 2004, Mr Williams had been held at Barwon Prison.
685. During his incarceration at Barwon Prison, Mr Williams was accommodated in the high security Acacia and Melaleuca Units. Mr Williams was on Incentive-Based Regime 3 at the time of his death, which provides the highest level of incentives to a prisoner. He shared Unit One of the Acacia Unit with prisoners, Mr Johnson and Mr Ivanovic.

### Mr Johnson's correctional history

686. Mr Johnson was transferred to Barwon Prison in September 2007 after being remanded into custody following criminal charges for armed robbery, assault and other related matters. Mr Johnson was also charged with murder in May 2007, however he was acquitted of this offence in April 2009.
687. Mr Johnson's criminal history includes 119 prior convictions for offences including assault, armed robbery, aggravated burglary and theft. He has served ten previous terms of imprisonment.
688. Mr Johnson is a member of the notorious 'Prisoners of War' gang, a group of prisoners operating within Victoria's correctional system responsible for a series of violent assaults on prisoners and prison officers. Mr Johnson is one of the leaders of the 'Prisoners of War' gang and is known as 'The General'.
689. As of April 2010, Mr Johnson had a correctional history of 76 separate incidents, including:
- multiple assaults on prisoners and prison staff – several resulting in hospitalisation for stab wounds
  - starting a fire at the Metropolitan Remand Centre in September 2007
  - positive drug test results
  - threats against prisoners and prison staff
  - possession of contraband
  - property damage.

690. In December 2009, Mr Johnson returned a positive drug result for illegal use of benzodiazepine medication. Following this positive drug test, Mr Johnson was isolated in the 'loss of privileges' unit in Acacia for five days and banned from all contact visits.
691. As at 19 April 2010, Mr Johnson was on Incentive-Based Regime 3, which provides for the highest number of incentives to a prisoner.

### **Mr Ivanovic's correctional history**

692. Mr Ivanovic is serving a 20-year sentence, with a 15-year non-parole period, following his conviction for one count of murder in 2003. Mr Ivanovic was a known associate of Mr Williams and is the godfather of Mr Williams' daughter.
693. Mr Ivanovic was transferred to Barwon Prison in February 2004, after having spent periods of incarceration at Port Phillip Prison and the Melbourne Assessment Prison.
694. As at April 2010, Mr Ivanovic had been involved in a total of 17 reportable incidents at Barwon Prison, including:
- possession of contraband
  - positive drug test results.
695. Mr Ivanovic was also on the highest Incentive-Based Regime at the time of Mr Williams' death.

## APPENDIX 3

### Re: 88986 Carl Williams

**From:** penny.armytage@justice.vic.gov.au  
**To:** rod.wise@justice.vic.gov.au  
**Cc:** [REDACTED]  
**Date:** Tue, 06 Jan 2009 17:27:39 +1100

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Rod

I feel reasonably comfortable with your proposal and note the fact that you have consulted the Police and they have no concerns about it. Balancing all considerations it appears appropriate to accede to Carl Williams request on the basis that we will monitor the situation and review it as soon as any new factors emerge, especially with respect to further meetings with Vic Pol.

Penny

Rod Wise

Rod Wise

Sent by: Rod Wise

06/01/2009 16:45

**To:** Penny.Armytage@justice.vic.gov.au  
**cc:** [REDACTED]  
**Subject:** 88986 Carl Williams

Penny -

I thought I'd alert you to a decision that we must soon make in relation to Carl Williams.

## APPENDIX 3 – continued

Since returning from his 8 days assisting Police, Carl has mixed only with his father George - which, I understand, is starting to wear very thin indeed.

Carl has consistently asked to be permitted to associate with 73878 Matthew Johnson, with whom he trained every day in Melaleuca for many months prior to his Justice Administration CCPP commencing on 22 December. Carl has always maintained that Johnson would not pose a threat to him.

Johnson, as you may be aware, has been a prisoner of some influence in the past, having (amongst other things) been one of the leaders of the Prisoner of War gang. He is physically imposing and has a reputation for violence. He is currently committed for trial on murder and armed robbery charges.

There is little doubt that Johnson is capable of causing Williams harm if he were to find out the true nature of Williams' cooperation with Police. However he already knows some of it, it seems - believing, we understand, that Williams has met with the Police solely to talk about Police corruption - and all indications are that he's not uncomfortable with the action that Williams has taken.

Police have advised (via email) that they know of no reason not to allow the two to mix, and Carl has requested mixing with Johnson in writing. Indeed, it is thought that if Carl is allowed to mix only with George, he might withdraw his cooperation with Police, which would clearly not be a good outcome.

On the other hand, if Johnson were to learn more of the Williams family's time with the Police, there is an undeniable risk that he could harm Williams. There are perhaps three principal reasons why Johnson might be encouraged to do this:

- it might well be financially attractive given, one supposes, the resources at the disposal of the people against whom Williams is in a position to give evidence;
- to restore some credibility with the rest of the prisoner population - his credibility having been damaged to some extent, it is understood, as a result of him allegedly driving a car around (following the alleged murder) without noticing that there was a baby in it; and
- if he does get a sentence on the outstanding murder charge, a sentence for a second serious offence might run concurrently with it.

At this stage, however, there is nothing to suggest that Williams would be at immediate risk if Johnson were to be placed with him. This may change rapidly if - as expected - Williams makes a return trip to the Police in the next month or so.

Unless you have major concerns regarding the intended approach, arrangements will be made to allow the Williamses and Johnson to mix, with their situations monitored (eg via Arunta) very closely and reviewed in the event that another CCPP is issued.

I would of course be happy to discuss.

Rod

## APPENDIX 4

**COLLATOR INFORMATION REPORT**

DATE:14-03-2009

NAME: [REDACTED]

UNIT/AREA: Acacia HSU

INFORMATION DATE:14-03-2009

**INFORMATION TYPE** (Tick appropriate box)

DRUGS	<input type="checkbox"/>	STANDOVER	<input type="checkbox"/>	GENERAL INFO	<input checked="" type="checkbox"/>
ESCAPE	<input type="checkbox"/>	ASSOCIATES	<input type="checkbox"/>	ASSAULT	<input type="checkbox"/>
INCITMENT	<input type="checkbox"/>	OTHER	<input type="checkbox"/>		

**INFORMATION SOURCE** (Tick appropriate box)

PRISONER	<input type="checkbox"/>	STAFF MEMBER (UNIFORM)	<input checked="" type="checkbox"/>
STAFF MEMBER (NON UNIFORM)	<input type="checkbox"/>	VISITOR	<input type="checkbox"/>
OTHER	<input type="checkbox"/>		

**INFORMATION**

On Saturday the 14<sup>th</sup> of March 2009, PO [REDACTED] and myself were escorting prisoner [REDACTED] from Acacia unit 2 to the Acacia visits centre for his daily medications, when prisoner [REDACTED] asked if prisoner [REDACTED] was still housed in Acacia unit 1. PO [REDACTED] and myself diverted away from the topic and at this point prisoner [REDACTED] made comment that prisoner Carl Williams CRN 88986 had "dropped [REDACTED] in the shit when he ratted on the jack", "the jack" being in reference to prisoner [REDACTED].

Prisoner [REDACTED] began to explain that it was quite clear that prisoner Williams could not handle doing time in prison and "would rat on anybody to get his sentence cut". He then made mention that "everybody knows" the Victoria Police made a deal with prisoner Williams and that he had received a 10 year reduction of his sentence and a sum of 1 million dollars in return for information. He also stated "And they took him down to the coast at that fucking resort so he could fuck his girlfriend". He informed us that he was now aware of why prisoner [REDACTED] Matthew Johnson and himself were moved from the Melaleuca unit 2 to Acacia unit 2. "So Carl could be with his dad and he could start ratting on everybody because he can't hack doing time in prison". Prisoner [REDACTED] expressed disappointment in prisoner Williams stating "Carl said when he ratted in the jack that it wouldn't get near [REDACTED] and now look what's happened, [REDACTED] going for 2 murders". He then expressed anger that prisoner Williams "will only end up doing 5 to 7 years, just you watch, because he'll rat on everybody".

I have collaborated this report with PO [REDACTED] and wish to submit this information to you as I am of the belief that the views of prisoner [REDACTED] seem to be wide-spread, as he used the words "everybody knows" a lot. These views, no matter how true or unfounded, may be a cause for concern to the safety of prisoner Williams and may be the cause of some sort of attempt to harm prisoner Williams or those around him.

Regards

[REDACTED]

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Complaint handling guide for the Victorian Public Sector 2005

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Review of the Freedom of Information Act 1982

Discussion paper

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Review of complaint handling in Victorian universities

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

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Discussion paper on improving responses to sexual abuse allegations

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