

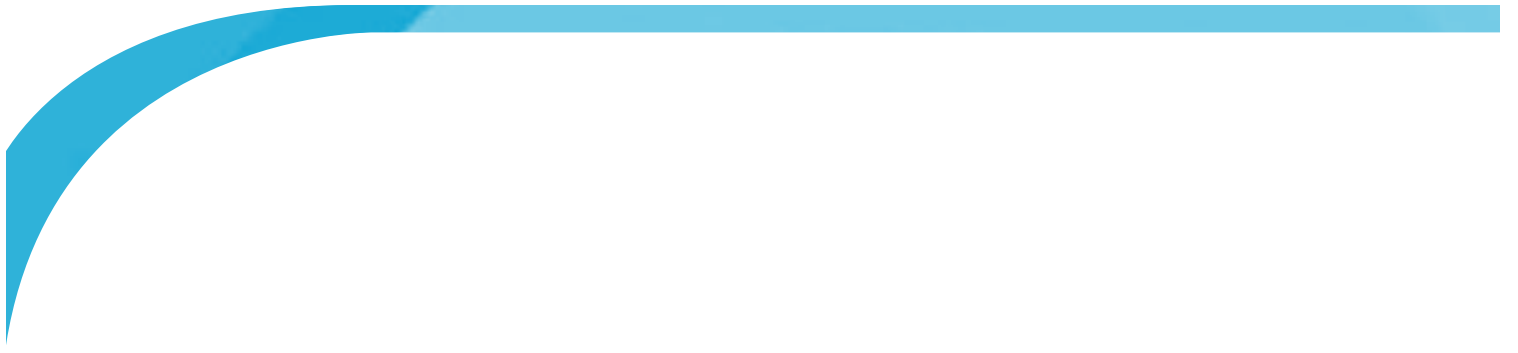
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**Investigation into the use of excessive force at
the Melbourne Custody Centre**

November 2007

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

November 2007
Ordered to be printed
Victorian government printer
Session 2006-07
P.P. No. 54



LETTER OF TRANSMITTAL

To

The Honourable the President of the Legislative Council

and

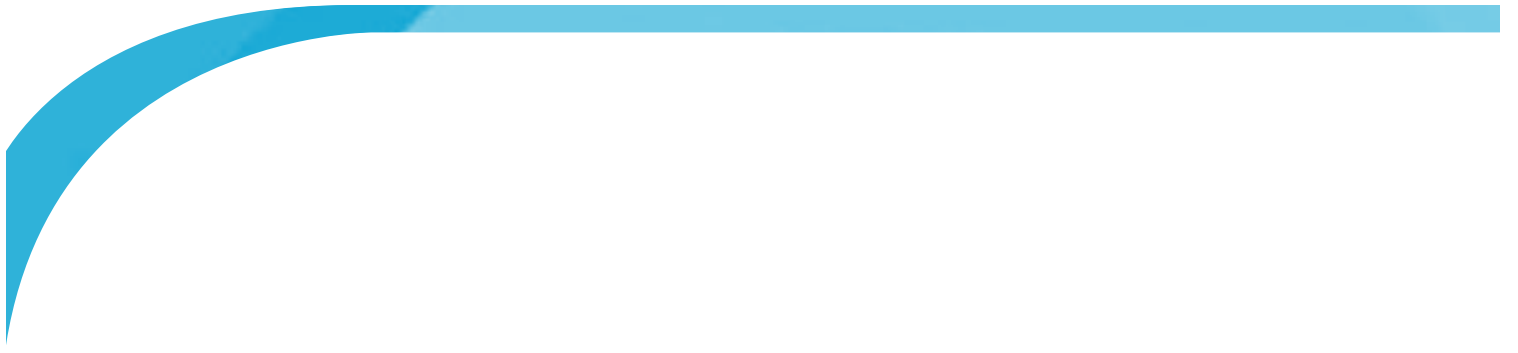
The Honourable the Speaker of the Legislative Assembly

Pursuant to section 25 of the *Ombudsman Act 1973*, I present to the Parliament the report on my investigation into the use of excessive force at the Melbourne Custody Centre.



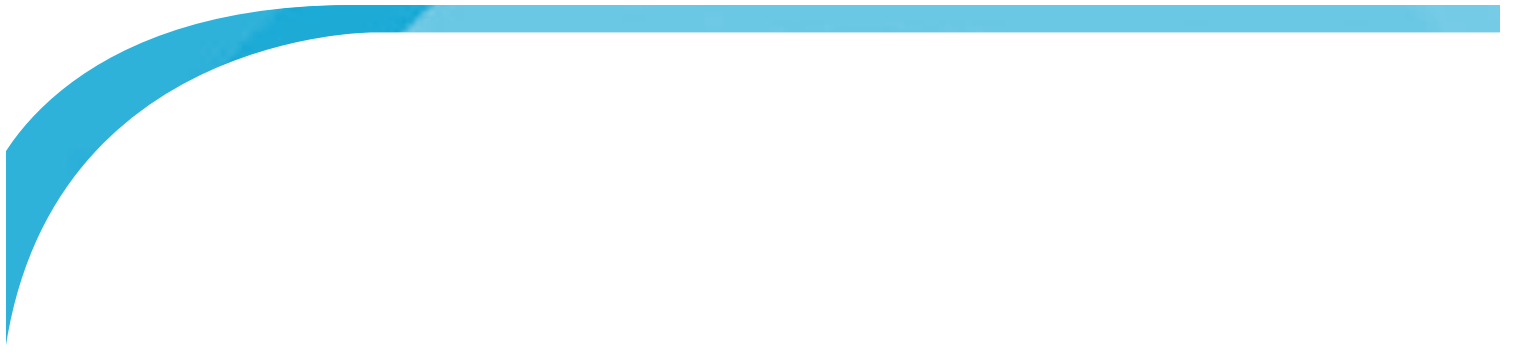
G E Brouwer

OMBUDSMAN



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EXECUTIVE SUMMARY

I have previously expressed my concerns about conditions at the Melbourne Custody Centre (MCC) in my 2006 report to the Victorian Parliament titled *Conditions for persons in custody*. There has been a long history of public denouncing of conditions at the MCC including comments from the judiciary. This report highlights these concerns.

The MCC is an underground facility with no access to fresh air and daylight. It is unsuitable for holding prisoners for longer than overnight or a weekend, yet it continues to be used as a de facto prison, with prisoners often held there for up to 28 days.

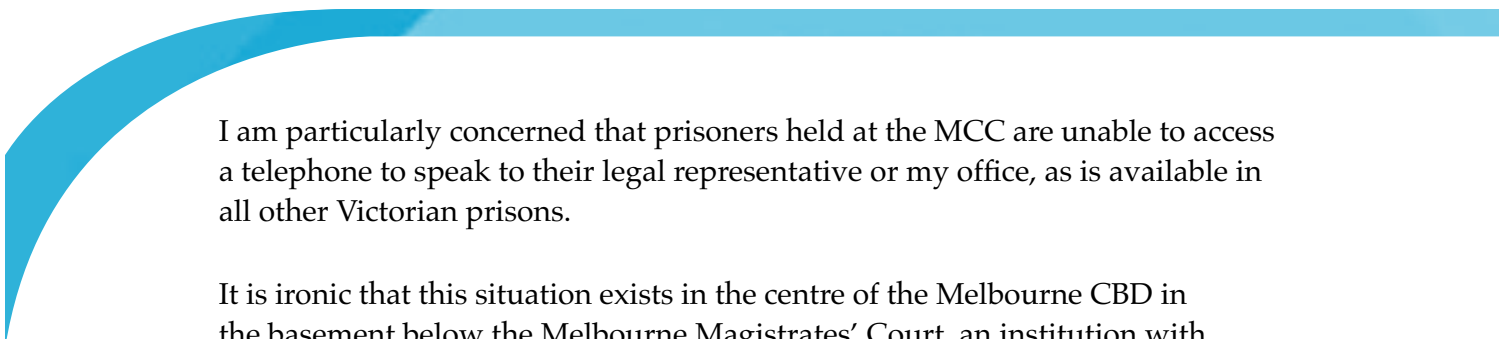
On 22 June 2007 I received a complaint from a prisoner, Mr A, regarding alleged mistreatment by staff at the MCC. On 13 June 2007 Mr A was lodged by Victoria Police at the MCC. He alleges shortly after his admission he was taken to the strip search room to be searched and was then assaulted by MCC officers.

My investigation included examination of CCTV footage and relevant documentation and interviews of MCC officers. My investigators also sought opinion from Victoria Police personnel.

My investigation found that excessive force was used on Mr A by MCC officers which I considered was unwarranted in the circumstances. I am satisfied that MCC Officer X overreacted in the incident and used excessive force upon Mr A and that fellow Officer Z struck him to the head. I also consider that this treatment was a breach of the values set out in the *Charter of Human Rights and Responsibilities Act 2006*. As a result of this incident Mr A received a cut to the head.

Having regard to the MCC being a closed environment with prisoners not having access to a telephone, with limited opportunity to complain, it is most important that The GEO Group Australia (GEO), the contractor, provide a safe environment where malpractices are not tolerated. I am encouraged by GEO's assurances that misconduct will be dealt with and that training of staff will be reviewed, in conjunction with Victoria Police.

The MCC appears to operate with only limited oversight by both GEO and Victoria Police and in my opinion the system in place to monitor incidents is unsatisfactory. GEO has assured me that it will review its practices in this regard.



I am particularly concerned that prisoners held at the MCC are unable to access a telephone to speak to their legal representative or my office, as is available in all other Victorian prisons.

It is ironic that this situation exists in the centre of the Melbourne CBD in the basement below the Melbourne Magistrates' Court, an institution with a mandate for providing justice for the people of Victoria. Many detainees held there have not been convicted of any crime and are awaiting a court appearance, as was Mr A.

The Victorian community should be able to have confidence in what happens behind the doors of a prison – that prisoners held therein are managed in a just and fair way; that there are no abuses, or inhumane, cruel or unfair treatment and that proper accountability is in place. This is particularly relevant in the context of Victoria's Charter of Human Rights and Responsibilities, which will come into effect in 2008. It is my view that the MCC will fail to meet its Charter obligations unless major reforms are implemented.

I have made the following recommendations that:

1. GEO review the suitability of Officer X, Officer Z and Officer Y for employment at the MCC in light of their conduct.

GEO response

EO has identified some areas of shortcomings of its staff and it has indicated that discipline proceedings will be taken against Officers X and Z. At the time of finalising my report Officer Y was absent overseas. GEO has also referred this incident to Victoria Police to determine whether criminal charges should be laid.

2. GEO undertake a comprehensive review of the operations of the MCC including:
 - operational procedures
 - organisational culture
 - incident reporting
 - use of force
 - staff training
 - quality assurance procedures
 - HR practices
 - complaints handling processes
 - management and leadership.

GEO response

GEO has provided its Defensive Tactics training doctrine to Victoria Police for review.

3. The Arunta telephone system is installed in the MCC.

Victoria Police response

Victoria Police will examine this recommendation further with a view to providing greater telephone access to prisoners held at the MCC.

4. Victoria Police review its supervision of the MCC.

Victoria Police response

While Victoria Police state that it contractually supervises the MCC, it has acknowledged that some aspects of the contract were established in 1998. As a result of my investigation Victoria Police will review its supervision of the MCC in today's current operational environment with a view to improving it where deemed necessary.

5. Victoria Police ensure that my recommendation of July 2006 that the MCC is used as a daytime holding centre where prisoners are only held overnight or over a weekend is implemented.

Victoria Police response

Victoria Police agrees in principle with this recommendation.



INVESTIGATION INTO THE USE OF EXCESSIVE FORCE AT THE MELBOURNE CUSTODY CENTRE

Complaint

On 22 June 2007 I received a complaint from a prisoner, Mr A, regarding alleged mistreatment by staff at the Melbourne Custody Centre (MCC). On 13 June 2007 Mr A was lodged by Victoria Police at the MCC. He alleges shortly after his admission he was taken to the strip search room to be searched and was then assaulted by MCC staff.

Background

The MCC

The MCC is the main reception point for people arrested by Victoria Police with more than 11,000 admissions processed every year. It is located in the lower level of the Melbourne Magistrates' Court in the central business district. Since March 1999 it has been run by private contractors, the GEO Group Australia (GEO), on behalf of Victoria Police.

The MCC has multiple roles including housing intoxicated members of the public taken into custody by the police and held for a few hours, as well as prisoners remanded with pending court appearances. It is also a transition point for offenders dealt with by the Courts and awaiting transport to Victorian prisons and remand centres. The MCC houses up to 100 offenders during the day and 67 at night.

The facility has 30 cells, a control room, a medical room and an administration area. Twenty-one cells open into three exercise yards, a further two are padded cells, and three are for the intoxicated. The remaining four cells separate different categories of inmates. The facility is underground with no access to fresh air or daylight.

The MCC services 14 magistrates' courts on four levels. Two of these levels have a further seven cells to hold prisoners awaiting court appearances.

I have previously stated my concerns about the MCC in my 2006 report to the Victorian Parliament titled 'Conditions for persons in custody'. At that time I recommended that it be used as a daytime holding centre where prisoners are only held overnight or over a weekend. Victoria Police agreed to this recommendation. In addition, I note that there have been concerns raised about the conditions in the MCC by the judiciary. I am concerned that the unsatisfactory situation of the MCC continuing to be used as a place where prisoners are held for up to 28 days has not improved.

The investigation

Following receipt of the complaint my investigators took possession of a copy of the CCTV footage of the incident. My investigation included interviews with custodial and medical officers from the MCC, Victoria Police, GEO management and the complainant, Mr A.

My investigators also examined the following:

- Melbourne Custody Centre Operating Manual
- incident reports prepared by MCC staff regarding the incident
- relevant legislation.

The incident

Sergeant B, from Victoria Police, informed my investigators that on 13 June 2007 he had executed a search warrant on Mr A's home. He arrested, interviewed and charged him with criminal offences before transporting him to the MCC. He stated that Mr A did not appear to be substance affected and had not behaved in an aggressive or threatening manner. He described him as 'cocky and arrogant' and said he made 'smart comments' in an attempt to provoke police.

A number of MCC officers gave evidence that Mr A was 'verballing' the police when lodged at the reception area of MCC, suggesting he was behaving in an aggressive manner.

Mr A informed my investigators that he was not drug or alcohol affected and had not behaved in a violent manner towards the police. He said that he was unhappy that he had to be strip searched again, claiming the police had already searched him. Mr A stated that shortly after being placed in the strip search room he complained to the MCC officers that he had already been subject to a search and opened his arms slightly whilst saying this. Mr A claimed that at this point he was assaulted by MCC officers.

CCTV Footage

The CCTV footage of the incident was obtained from the MCC and is a graphic visual account of the incident. It lacks audio recording. A copy of the relevant CCTV footage is on the DVD attached to this report. A frame by frame analysis was undertaken by my investigators.

Following viewing of the CCTV footage the following MCC officers were identified as being involved in the incident:

- Officer X
- Officer Y
- Officer Z.

Officer X was the Shift Manager. The room within which the incident took place is used for strip searches. The CCTV is obscured in one corner for privacy reasons. At times, this obscurity limits the viewing of some of the incident. However, the key actions of the MCC officers can be seen on the CCTV footage.

Mr A sustained an injury to his head during the incident and is obviously bleeding at the conclusion of the incident. Blood can also be observed on the floor of the strip search room.

Mr A alleged that the actions of MCC officers were unprovoked and unnecessary. He said he was not behaving in a physically aggressive manner and did not struggle throughout the incident. At interview Mr A stated that a female officer, Officer Z, had used excessive force on him:

And then this other lady came in and just jumped on me...put me hands behind my back and bending my fingers back and that, nearly broke my wrists both of them. And while I'm on the ground she smacked my head into the ground and blood started coming out and that and she's just slapping me across the head and that and just being really violent, she was.

Reporting of the incident at MCC

The Incident Report dated 13 June 2007 and completed by Officer X in relation to the incident states:

[Mr A] started to undress and hand his shoes to [Officer X]. All of a sudden [Mr A] started to become agitated and yell 'I've been searched before you fucking dogs and you can get fucked'. [Mr A] threw his arm up at [Officer X]. [Officer X] pushed [Mr A] in the upper chest area and yelled 'settle down'. [Mr A] continued to be aggressive and grabbed [Officer X]. [Officer Y] helped [Officer X] take [Mr A] to the ground and restrain him with arm locks. [Mr A] was then stood up and the search continued. [Mr A] was told to get dressed and was taken to see [Nurse C] where he refused all medical treatment [see med report]. [Mr A] had some blood over his left eye. There were no apparent injuries to staff. Minimum force was used.

In the narrative of Officer Y's Incident Report, dated 13 June 2007 he states:

He then took a swing at [Officer X]. We then moved in restraining him and took him down to the floor. He then became more violent and we had to put more restraints on him with the help of [Officer Z] who had his right hand I had his L/hand and [Officer X] had his torso.

Officer X

Officer X was interviewed on oath at my offices on 21 August 2007. Officer X stated that he had been employed at the MCC for approximately seven years, the last three in the role of Shift Manager. Officer X said he had no other custodial experience prior to his employment at the MCC.

When asked to provide his version of events Officer X said:

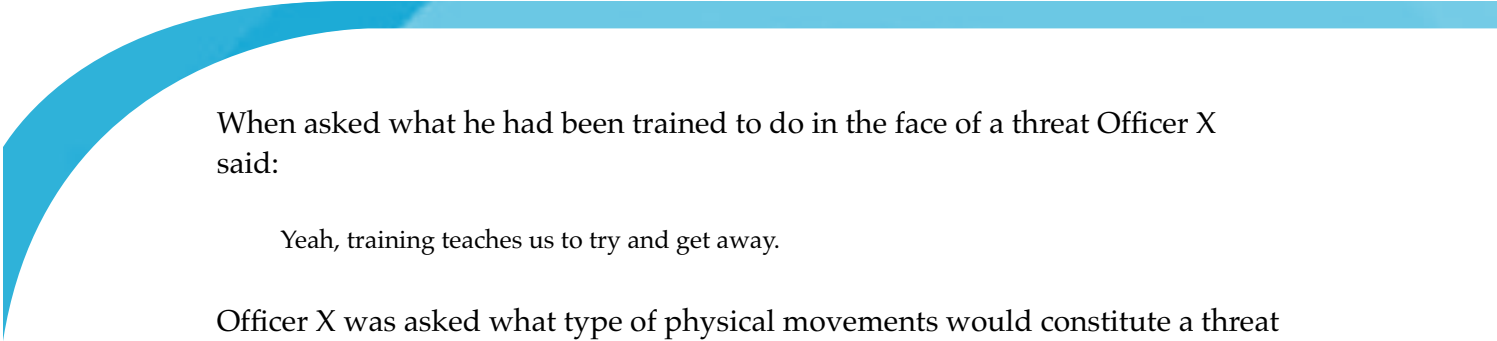
And then the next minute he just went from whoa to flat out and just started screaming and sort of threw his arms up, and I got a bit of a fright and – because it just happened so quick. And I went to push him away and yelled, 'Stop', and he grabbed me by the shirt and tried to grab me in, and that was when I just pulled him down to the floor and then tried to put an arm lock on but he was on top of me. Then other officers came in and assisted me, took the – to get him off of me.

Officer X stated he had been trained to use restraint:

When I'm threatened.

When asked what constituted a threat Officer X replied:

It can be a verbal threat, but more likely a physical threat. Another threat could be someone trying to hurt themselves.



When asked what he had been trained to do in the face of a threat Officer X said:

Yeah, training teaches us to try and get away.

Officer X was asked what type of physical movements would constitute a threat he stated:

If someone has gone from standing here talking to you quietly and then all of a sudden they throw their arms up and start to yell at you, to me that is a threat. You get a fright and you...

When asked what he had been trained to do in such a situation. Officer X stated:

I'd be trying to push them away and get out of there if I could.

He was asked if he believed the use of force was proportional to the threat. Officer X stated:

I felt it was when – at the time and at the heat of the moment I felt, yes, it was...and I still do. I still feel it was warranted.

Officer X also stated:

He seemed to come forward and throw his arms up as he was, as he was lifting his jumper and sort of threw his arm out and I – and started yelling.

Later in the interview he said:

The thought that – I got a fright. I got a fright. I honestly got a fright.

When asked what his view was of Mr A when he was 'verballing' the police Officer X stated:

I didn't think very much of him. To be quite honest, I didn't think very much of him.

Officer X was shown the CCTV footage of the incident which clearly shows him grabbing the prisoner in the region of the throat. He was asked if he believed he had overreacted. Officer X replied:

I could have, but in the heat of the moment I could – in the heat of the moment I don't think I have. Going back then, I didn't come out and sort of think 'Well, I've done something wrong', and I still don't think I've done something wrong. Do you know what I mean? I just was trying to do the right thing. I was trying to do me job.

In regards to my investigation Officer X made the following comment:

Yeah I just – I don't know – I really can't understand, you know, why this has snowballed to this extent or anything. I- yeah, I don't know.

Officer Y

Officer Y was interviewed on oath at my offices on 21 August 2007. Officer Y stated that he had been employed at the MCC for approximately two and a half years in the role of a Custody Officer. Officer Y said he had no other custodial experience prior to his employment at the MCC.

Officer Y was shown the CCTV footage. The CCTV footage shows that Officer Y grabbed Mr A's upper body after Officer X had instigated physical contact with him. When asked what had happened Officer Y stated he had seen movement:

out of the corner of my eye and then I saw my manager moving...Instinct just – I just did the same.

When asked if he felt threatened Officer Y stated:

Through his language and others, yes.

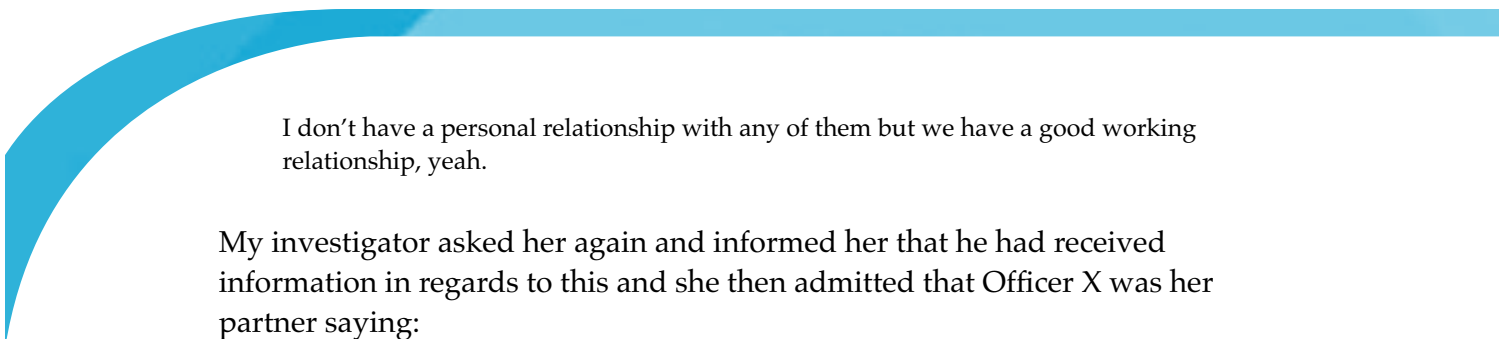
However, when asked if he felt threatened enough to make a forward movement towards Mr A Officer Y stated:

Not at that stage but I sort of had one eye on him and one on the T-shirt.

Officer Z

Officer Z was interviewed on oath on 23 August 2007. Officer Z stated she had been employed at the MCC for five years, currently working in the reception area which involves lodging prisoners coming into the centre. Officer Z stated she had no other custodial experience.

Officer Z was shown the CCTV footage. From examination of the CCTV footage, approximately 90 seconds after Mr A enters the search room Officer Z enters the room and immediately becomes involved in the physical altercation which is occurring. At the commencement of her interview my officer asked Officer Z about her relationships with the MCC staff on duty:



I don't have a personal relationship with any of them but we have a good working relationship, yeah.

My investigator asked her again and informed her that he had received information in regards to this and she then admitted that Officer X was her partner saying:

He is my partner.

Officer Z was the staff member at reception when Mr A was lodged by police. She stated:

The Police did say to me that he had – and I'll repeat what they said to me—assaulted a female and been verbal with them the whole time he was in their custody.

The allegation that she had pushed Mr A's head into the floor causing a split above his eye was put to Officer Z and she stated:

I don't recall pushing his head at all. I certainly didn't intend to go anywhere near his head. I was more concerned about controlling the arm that was free – no.

Mr A's allegation that Officer Z had struck him is supported by the evidence of another witness, who was unaware of Mr A's statements to my officers. The witness said:

It looked like she punched, but she could have slapped him.

The witness went on to say:

She was like a little whirlwind. She just flew over the top of the guys and just took over.....And what I saw that day floored me.

Other GEO staff

One officer stated that when entering the room Officer Y and Officer X had Mr A in arm locks on his stomach on the floor. When asked if he was behaving in a violent manner the officer stated 'not at that stage' and agreed that he had been subdued.

Another stated that when they first came to the strip search room they stood at the door as they were of the impression that the two male staff had the situation under control:

I didn't go straight in because there's two big officers in there and the guy wasn't, like,

this big. So I felt they had it under control.

The officer described the following:

I remember lots of noise and commotion. They were trying to get the prisoner to roll over. Another prisoner officer [sic] then come in and – female prisoner officer [Officer Z], pretty much took over what the guys were doing, and grabbed the prisoner's arm and put it behind his back with quite a bit of force. I believe I then grabbed his – his legs with another female officer.

But the guy was – the prisoner was twisted. So he's got three people on his top half and he's got two people holding the bottom of his body that way. So of course he can't roll over. So I've said 'He can't roll over', because they're all screaming at him, 'Fucking roll over, roll over, roll over'. And I've said, 'He can't roll over', and I've said it a couple of times. The female officer, I don't know whether she – It's all a bit blurry now – slapped the prisoner in the face or punched him in the face and said, 'how does that feel, and that's coming from a woman'. She still had his arm behind his back, and [Officer X] – I remember [Officer X] saying 'Be careful, you're going to break his arm'. I think I then let go of his legs and it just – they had it under control then.

When asked if they were of the view that excessive force had been used against Mr A one officer stated:

Yes...I think it was uncalled for...The size of this prisoner, that the two male officers had it under control...I believe what the female officer did was not correct.

My investigators put to other officers the eye witness account provided during the investigation that Officer Z had physically assaulted Mr A and said 'how does that feel, and that's coming from a woman'. One witness stated they did not see Officer Z hit Mr A but heard her say:

What she said was 'how does that feel coming from a sheila', not a woman.

During the course of my investigation my investigators showed the CCTV footage to other MCC officers and asked for their view on what they observed. When asked if the actions by Officer X were consistent with training, one officer stated:

They don't train you to go for a person's throat like that.

When asked their opinion as to whether Officer X had a lawful purpose for taking the action he did, a number of MCC officers made the following comments:

This is just a situation that's got out of hand...I don't think he deserved to be grabbed

around the throat.

Just my view I would say no.

I don't think [Officer X] needed to fly at him...I would say, from what I can see – and I know he was a shit of a prisoner and he had attitude, but he was being compliant from what I can see....I don't see the prisoner lunging himself at [Officer X] at all. I would say that was very much uncalled for...I would say when [Officer X] has lunged at him, at the start. I don't see that as called for. I see that as mistreatment. What I saw [Officer Z] do, I see that as mistreatment. I see the fact that we didn't have communication between us as officers with me saying 'He can't roll over', that is mistreatment because physically he couldn't.

A manager, Mr D, who conducts the use of force training made the following comment:

Well, the contents itself, in dealing with what we deal with on a regular basis, was fairly standard for what would happen in a wrestle situation. You notice that none of the officers there, in my mind – and I've looked at the tape from all angles as you have – I couldn't see an officer do anything untoward except grapple with the guy and try to get a wrist lock on him and a hold on him to get him to cease and comply, as per standard practice.

My investigators asked female MCC officers how often they had been involved in instances which required them to use force. One officer estimated that in her seven years of employment she had been involved in four incidents. Another who had been employed for four years estimated 'once or twice', another employed for nine months had not been involved in any. Officer Z estimated she had been employed at the MCC for six and a half years. When asked how many times she had been involved in incidents where force was used she stated:

Maybe 20 or 30 times.

Other evidence

Some MCC officers when interviewed by my investigators described their own discomfort at what they had witnessed during this incident. One officer stated:

Yeah, it was wrong. It was just all wrong...I – it floored me for about a week. I got some advice from some fellow officers. I didn't speak to any – I didn't speak to the operationals [sic] manager.... just people that I work with. I was advised not to do anything as far as writing reports go because it would make my job uncomfortable, because of who was involved...Being [Officer Z] and [Officer X]...It may affect shifts. Yeah, just my income, basically.

MCC officers described an environment where incidents escalate unnecessarily, sometimes at the deliberate instigation of staff themselves:

You've got people there that are wanting to punch on. I have to be honest...there's staff members that want to get at the prisoner that's on the floor simply because the prisoner wouldn't listen in the first instance.

This same officer was asked if custody officers used excessive force, including striking a prisoner and the officer replied:

Yes, and once again yes, they do, unnecessarily...They thrive on aggression.

When asked if it was a common occurrence one officer replied:

Well, I would say – say what in a situation where there's one in 10 incidents I would say about four that would be, yeah, there's no need for the excessive force that they do all this stuff with. Okay, you get the odd person who's going to play up and he will fight back, you know, so everybody goes in.

Another officer commented:

It's more comments that will be made to prisoners, where they're – they're almost badgered. I see that happen occasionally....but they're just remarks that are degrading: 'You're a fucking scumbucket. You deserve to be in here', that type of thing.

My investigators questioned how officers who witness such behaviour responded and were informed:

They just keep quiet.

No I don't feel it would have been heard, to be honest. I think it would have been brushed off.

Officers referred to a clique of MCC officers who dominate the work place and culture of the facility:

The family, I believe is what they're referred to as.

Procedures at MCC

Searches

The Melbourne Custody Centre Operating Manual (the Manual) policy number 3.2.11 states:

Prisoners are to be searched whenever they are:

- received into the Centre
- suspected of transporting contraband
- involved in a disturbance, escape or attempted escape.

For sentenced and remanded prisoners the search includes stripping of all clothing. Intoxicated people are subject to a 'pat down' through clothing rather than a full search.

The Manual refers to the following legislation as providing for lawfully conducting a search:

- *Children and Young Persons Act 1989*
- *Corrections Act 1986*
- *Corrections (Police Gaols) Regulations 2005*

My investigators asked the MCC officers interviewed during my investigation to explain where the power to conduct searches was derived from. MCC officers variously answered:

Under the Police Code

From my bosses

Police Gaols Regulations

The Gaols Act

The Police Act

The police legislation type of rule.

None of these responses are correct and several references were to non-existent legislation.

Policy 3.2.11 within the Manual provides for the process by which a prisoner will be searched and states:

Prisoners will be requested to stand in the designated area of the search room, which is pixilated, to protect their privacy.

Ensure two officers of the same sex as the prisoner conduct the search.

In this instance the officers involved failed to adhere to basic procedures. The CCTV footage shows that the strip search of Mr A commenced with only one officer, Officer X, the Shift Manager, present. He is joined 23 seconds later by colleague, Officer Y. Mr A is not placed in the designated area of the search room where the CCTV film is pixilated.

At interview Officer X stated that he commenced the search on his own as Mr A was involved in a verbal altercation with Victoria Police at reception and he wanted to remove him from this conflict situation. A number of MCC staff who viewed the CCTV footage commented on his actions:

That is a no-no, even though he's the shift manager....He should know better.

I'm surprised that [Officer X] is the only one in there.

GEO has acknowledged that Officer X did not follow its procedures in relation to strip searches.

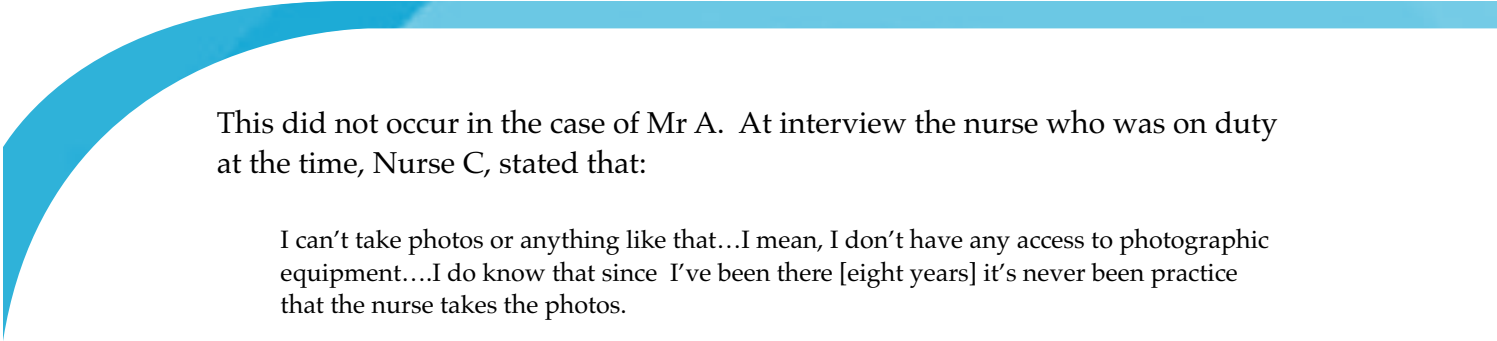
Lodging of Mr A

Officer Z explained to my investigators her role on reception and the process she undertakes when a prisoner is lodged. She referred to checking an electronic database for any relevant information regarding the prisoner. Officer Z advised that the database revealed a 'violence flag' in relation to Mr A. However she said she discovered this information after he had been taken to the search room.

Medical policies

The Manual policy number 3.7.1 titled 'Incident reporting' requires the nurse to:

Take a clear photograph of any injuries that may have been a result of an assault or alleged assault.



This did not occur in the case of Mr A. At interview the nurse who was on duty at the time, Nurse C, stated that:

I can't take photos or anything like that...I mean, I don't have any access to photographic equipment....I do know that since I've been there [eight years] it's never been practice that the nurse takes the photos.

Similarly the Manual policy number 3.3.25 titled 'right to refuse treatment' states:

Prisoners refusing essential medical services must complete and sign a Refusal Form.

Mr A did not sign a refusal form and Nurse C stated that prisoners who are hostile frequently refuse to sign.

Mr A stated that he sustained a cut to his head during the incident and was bleeding as a result. He claimed he refused to wash the blood away and MCC staff refused to take him to court until he had done so. His appearance in court was delayed for two days as a result. There was no attempt by GEO staff to photograph Mr A's injuries.

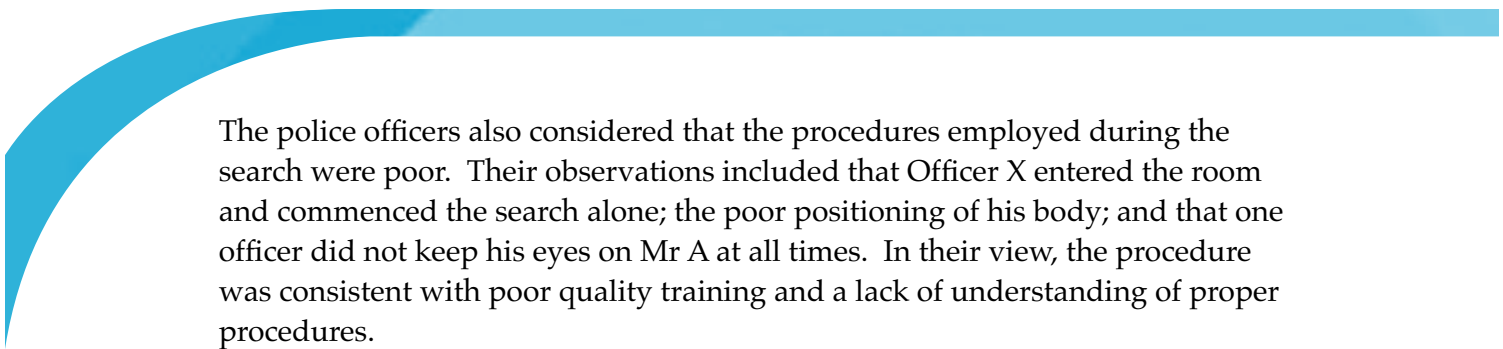
Training of staff

Training in use of force is conducted by Mr D, a manager. Mr D states he is a qualified martial arts instructor and has also undertaken specific training in the use of force on a fee for service basis with a private provider. He stated that the model he uses is based largely on this training however he has tailored it for the MCC.

Mr D said that the basic premise of his model is that the use of force should be used as a last resort but a reasonable use of force can be used to enforce a lawful order. He stated that only a minimal use of force can be used to gain compliance. Mr D explained:

Our object is to exhaust all communication before anything else.

Mr D explained that MCC officers are all trained in the use of force at the commencement of employment and then receive refresher training on an annual basis. The areas covered in the training include protective stances, strikes, locks and holds.

A blue decorative graphic consisting of a thick horizontal bar at the top, which curves downwards on the left side into a pointed shape.

The police officers also considered that the procedures employed during the search were poor. Their observations included that Officer X entered the room and commenced the search alone; the poor positioning of his body; and that one officer did not keep his eyes on Mr A at all times. In their view, the procedure was consistent with poor quality training and a lack of understanding of proper procedures.

As a result of my investigation GEO has sought a review of its Defensive Tactics doctrine by Victoria Police.

Monitoring of MCC by GEO

An employee at Fulham Correctional Centre, Mr G, reviews incidents which occur at the MCC. Mr G informed my investigators at interview on 31 August 2007 that he attends the MCC approximately once a month and reviews Incident Reports, which he receives the day an incident occurs, against the relevant CCTV footage. He described his role as checking that what is described in the report matches what he views on the footage:

Just to make sure – make sure what’s on the report is actually what’s on the screen.

Mr G stated that he had received training to be a collator and undertaken a Victoria Police intelligence practitioners course. However, he had no formal training in either the use of force or CCTV footage. Mr G stated he views the footage and looks for ‘something over the top’.

Mr G explained that he is currently working through a backlog of incidents and therefore has only reviewed incidents up to the end of May 2007 as at his August 2007 visit. Consequently he was not aware of the incident involving Mr A.

Mr G subsequently clarified the reason for the backlog:

I not only review incidents I also elect to view general recorded footage to ensure there are not any incidents which haven’t been reported by staff.

Mr G was asked his opinion on the potential consequences of the backlog of unreviewed incidents. Mr G said that MCC management would have already identified any incident where there were concerns as the manager is aware of all reported incidents.

When asked what steps he would take if he viewed an incident which caused him concern Mr G stated he would approach the manager at the end of the day at MCC and tell him:

Listen mate there is one here which I think you guys, you and [Centre Manager] need to look at, because the thing is, [Mr D] is the expert in staff response training.

Mr G stated he then expected them to review the matter and take any steps they saw as necessary. He said that as he did not have any training in the correct use of force it was not possible for him deal with this issue in his review.

My investigators showed the CCTV footage to Mr G and asked for his opinion. Mr G stated he did not see Mr A show any signs of physical aggression and could not identify why Officer X had used force. Mr G stated that he would have reported this incident to his manager and the manager at the MCC if he had reviewed the CCTV footage.

On 20 September 2007 my Deputy and investigators met with GEO's Acting General Manager, Fulham Correctional Centre (who oversees the MCC) and GEO's Investigations Manager. My investigators were advised that GEO did have a process in place to monitor Incident Reports from the MCC. The process involved reading a copy of the Incident Reports written by the officers involved. They also said that a copy was provided to Victoria Police.

Monitoring of the contract by Victoria Police

GEO has been contracted to run the MCC on behalf of Victoria Police since 1998. My investigators had discussions on 13 September 2007 with the Contract Manager, Superintendent H and Contract Monitor, Senior Sergeant I. They advised that all Incident Reports are forwarded to the Contract Monitor on a daily basis. The monitor assesses them in regards to any further action that is required. My investigators were informed that it is unusual for any action to be taken on the basis of the information provided in the Incident Reports. However if an incident referred to a serious injury this would be seen as a reason for further action to be taken.

My investigators were advised that Victoria Police has a regular presence at the MCC with one officer attending each week day morning to undertake audits. These audits generally focus upon financial matters such as checking the number of prisoner meals is consistent with the number of prisoners in custody. Otherwise, it would seem that very little is done by Victoria Police to ensure that the MCC provides a safe environment for prisoners.

CONCLUSIONS

The question I have considered during my investigation is whether the reaction of MCC officers to the behaviour of Mr A was reasonable and proportionate to any perceived threat and did it amount to mistreatment? It is my view that it was not proportionate and it did constitute serious mistreatment involving an excessive use of force upon him. I also consider that this conduct was a breach of Mr A's human rights.

GEO has argued that their frame by frame analysis of the CCTV footage depicts physically aggressive action by Mr A. However, I disagree and I have taken the step of including with my report a DVD copy of the incident caught on CCTV to facilitate a proper understanding of the incident. I have caused the faces of those involved to be digitally obliterated to conceal their identity. I have only included the footage of the incident up to, but not including when Mr A is stripped naked, for privacy reasons.

Conduct issues

Mr A may have behaved in a verbally provocative manner towards Victoria Police upon lodgement at the MCC and later towards MCC officers. However, verbal abuse alone does not justify the use of force as occurred in this matter. Mr A has acknowledged that he was complaining about being searched.

It is my view that Officer X overreacted to Mr A's complaints during the search. The information provided in the Incident Report he completed is not supported by the CCTV footage. There is no evidence to support Officer X's assertion that he believed Mr A posed a threat to him. Rather Mr A was complaining about being strip searched.

On 12 October 2007 I provided Officer X with an opportunity to respond to my preliminary concerns. Despite my agreeing to an extension of time to enable Officer X to seek legal advice, he did not address my concerns about his conduct. The only relevant portion of his written response stated:

In interview I strenuously denied any inappropriate conduct in respect to the imminent threat of assault posed by [Mr A].

In my view the CCTV footage does not support Officer Y's Incident Report that Mr A 'took a swing' at Officer X or that he became physically violent.

Despite being given the opportunity to respond to my preliminary concerns on 12 October 2007, Officer Y has not done so. I understand he went on leave overseas following being provided with my preliminary concerns in relation to his conduct.

I have also obtained the opinions of other experienced and trained staff both internal and external to the MCC. Most MCC officers interviewed and both experts from Victoria Police state the CCTV footage identified no indicators that Mr A was about to become violent. Indeed Officer Y, who was present when the altercation commenced, stated that he did not feel threatened by Mr A and said that he acted to assist his manager.

The actions of Officer Z warrant further comment. MCC officers were unaware of the allegation made by Mr A to my investigators that Officer Z had assaulted him. However, one officer described witnessing Officer Z strike Mr A to the head and make a statement to him about being assaulted by a woman. This evidence was corroborated by another witness with minor divergences regarding the precise words used. Officer Z denied striking Mr A. However, I consider her evidence lacks credibility. I am of the opinion that she did strike Mr A to the head.

On 12 October 2007 I provided Officer Z with an opportunity to respond to my preliminary concerns about her conduct. Officer Z stated in her written response that there is:

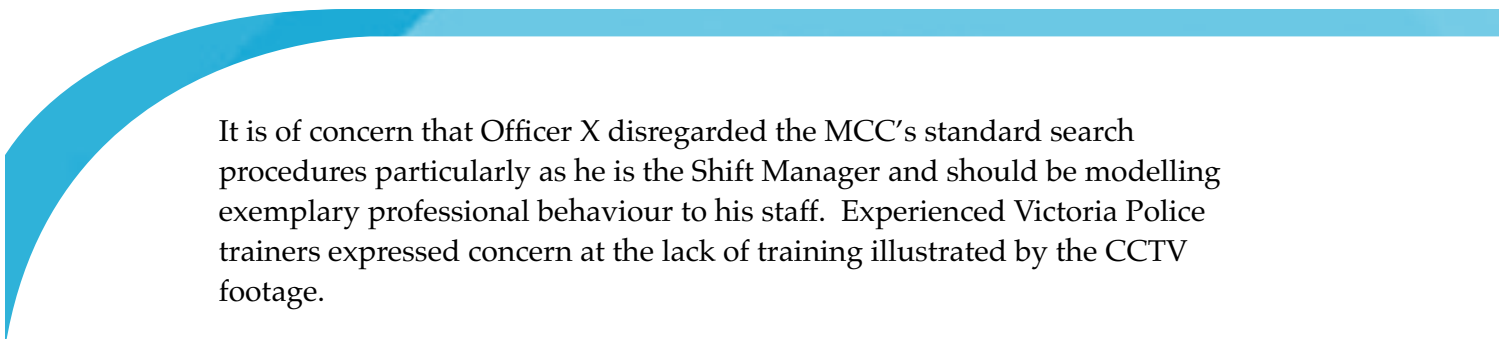
...no basis upon which an adverse finding as serious as an unwarranted strike upon a prisoner could be found.

She has since acknowledged in an internal review conducted by GEO that she used abusive language towards Mr A during the incident.

Lack of understanding of powers, training and compliance with procedures

I am of the opinion that MCC officers have resorted to the use of force as a first response to situations where verbal techniques aimed at de-escalation would have been more appropriate. The use of force must be a last resort. I am concerned that MCC officers do not appear to be provided with adequate training to deal with potentially difficult prisoners.

I note that MCC officers were unable to correctly identify the relevant legislation from which they drew their power to use force. It is my view that all staff exercising such powers should be able to do so.



It is of concern that Officer X disregarded the MCC's standard search procedures particularly as he is the Shift Manager and should be modelling exemplary professional behaviour to his staff. Experienced Victoria Police trainers expressed concern at the lack of training illustrated by the CCTV footage.

Policies regarding injury to prisoners and the provision of medical treatment could not be implemented. Nurse C highlighted the obvious difficulty in getting a noncompliant and hostile prisoner to sign a form stating they are refusing medical treatment. Similarly the policy requiring medical staff to take photos of injuries could not be carried out as he did not have access to a camera.

Culture at the MCC

I am mindful that the MCC is a closed environment where prisoners generally do not have access to a telephone to complain to my office, unlike prisons. I consider that in these circumstances it is most important that GEO ensure that the culture of the organisation at the MCC is professional and fair in its treatment of prisoners. It is of concern that witnesses spoke of a culture that involves: staff favouritism; the centre being dominated by a few staff; tolerance of abuse of prisoners; and an environment where speaking out means risking job loss.

GEO has argued that my investigators only interviewed a small number of staff and the comments made were 'not representative of the whole workplace' and that my concern about a 'culture' within the MCC were not accepted by GEO. However, its own internal inquiry identified the need to remind its staff of their obligations to report any suspected misconduct and re-publicise the mechanism for doing so. GEO has also assured me that it will actively work to address any such perceptions of an inappropriate culture.

Poor procedures

I consider that the training of officers in both search procedures and the use of force is inadequate. GEO has acknowledged that Officer X did not follow GEO policies in that he commenced search Mr A on his own. GEO has advised that it will arrange refresher training for all staff undertaking strip search procedures with safety. It will also remind staff of the requirement to photograph prisoner injuries. It has also referred its Defensive Tactics training doctrine to Victoria Police for review in light of my report.

CCTV footage of the incident depicts holds being used in order to gain compliance from the prisoner. Mr A complained that the force used to gain compliance was excessive and induced significant pain. He stated that the pain continued for a substantial period of time after the event. I am concerned that the application of excessive pressure has the potential to cause serious soft tissue damage, dislocation or fracture.

Officer Z identified Mr A as having a 'violence flag' on the electronic database after he has been taken to the search room. This is indicative of poor reception processes. If a prisoner has been assessed as violent then this information should be made available to staff as soon as possible – not after a staff member had already removed him to a more isolated area.

Inadequate contract supervision

It would appear that the MCC operates with only limited oversight by both GEO and Victoria Police. I am of the opinion that the system in place to monitor incidents is unsatisfactory. The staff member from Fulham Correctional Centre charged with this task is not qualified for the complexities of the role and is months behind in his reviews. He is also without authority and he simply reports any concerns back to MCC management.

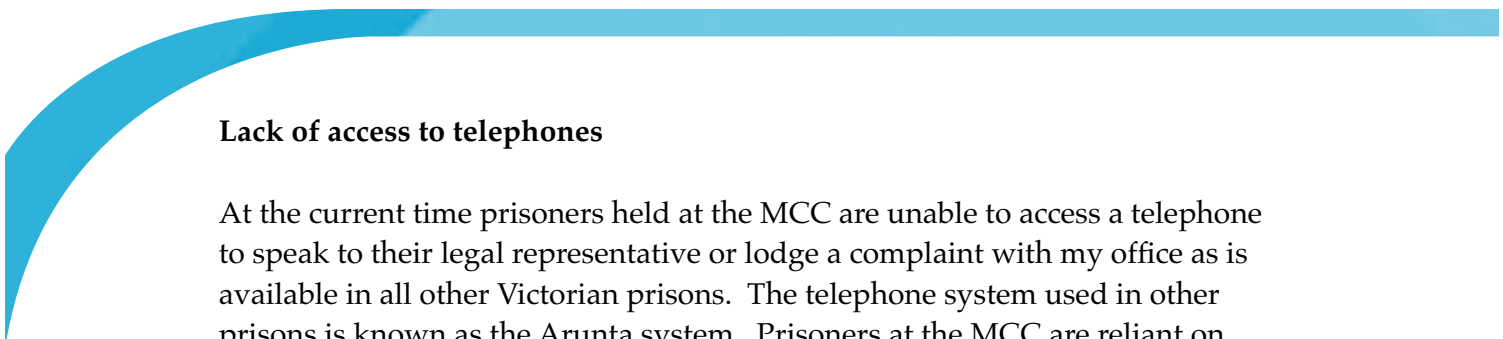
On 12 October 2007 I provided Mr G with an opportunity to respond to the relevant sections of my draft report. Mr G provided the following written response:

Whilst I acknowledge I do not possess any formal training in use of force I do believe I have the 'common sense' and years of correctional experience to determine if any action appears excessive/unwarranted or should be brought to the attention of others.

In regards to the time delay in conducting his reviews Mr G wrote:

There will always be a time delay of reviewing on my behalf, however we must acknowledge all incidents are immediately reported to both Victoria Police and MCC management – both agencies have the ability to review the same or following day....The primary objective of identifying any occurrence which needs review by management...has been achieved.

Victoria Police has a role in overseeing Incident Reporting but they are largely reliant on the unsatisfactory internal processes of GEO to ensure the veracity of the reporting system and identify matters requiring further action.



Lack of access to telephones

At the current time prisoners held at the MCC are unable to access a telephone to speak to their legal representative or lodge a complaint with my office as is available in all other Victorian prisons. The telephone system used in other prisons is known as the Arunta system. Prisoners at the MCC are reliant on Salvation Army staff facilitating forwarding a letter to my office. During the investigation my Deputy had preliminary discussions with senior GEO staff about the provision of an Arunta phone system with access to my office, as is available in other prisons. I consider prisoners held at the MCC should have access to the same phone system.

RECOMMENDATIONS

I recommend that:

1. GEO review the suitability of Officer X, Officer Z and Officer Y for employment at the MCC in light of their conduct.

GEO response

GEO has identified some areas of shortcomings of its staff and it has indicated that discipline proceedings will be taken against Officers X and Z. At the time of finalising my report Officer Y was absent overseas. GEO has also referred this incident to Victoria Police to determine whether criminal charges should be laid.

2. GEO undertake a comprehensive review of the operations of the MCC including:
 - operational procedures
 - organisational culture
 - incident reporting
 - use of force
 - staff training
 - quality assurance procedures
 - HR practices
 - complaints handling processes
 - management and leadership.

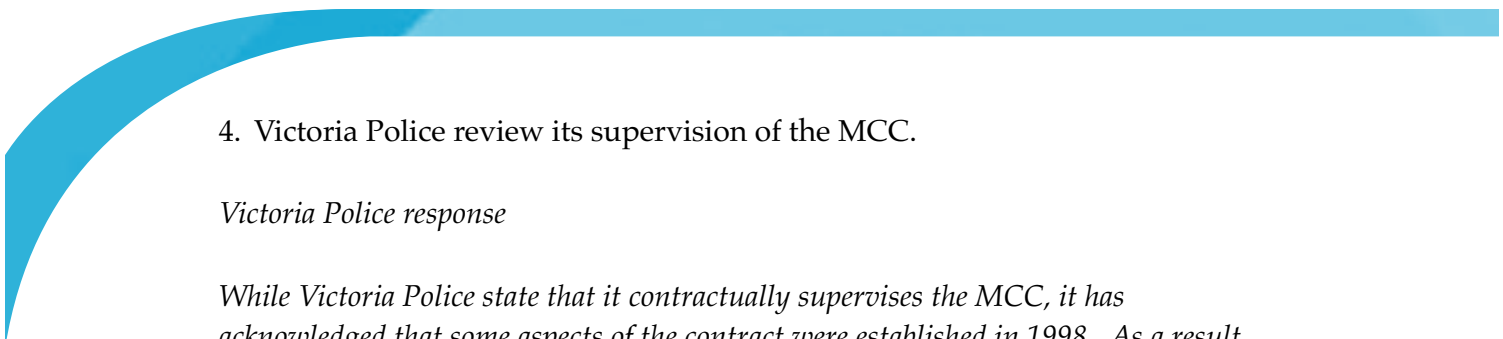
GEO response

GEO has provided its Defensive Tactics training doctrine to Victoria Police for review.

3. The Arunta telephone system is installed in the MCC.

Victoria Police response

Victoria Police will examine this recommendation further with a view to providing greater telephone access to prisoners held at the MCC.



4. Victoria Police review its supervision of the MCC.

Victoria Police response

While Victoria Police state that it contractually supervises the MCC, it has acknowledged that some aspects of the contract were established in 1998. As a result of my investigation Victoria Police will review its supervision of the MCC in today's current operational environment with a view to improving it where deemed necessary.

5. Victoria Police ensure that my recommendation of July 2006 that the MCC is used as a daytime holding centre where prisoners are only held overnight or over a weekend is implemented.

Victoria Police response

Victoria Police agrees in principle with this recommendation.

G E Brouwer
OMBUDSMAN



Ombudsman Victoria

Level 9, North Tower
459 Collins Street
Melbourne VIC 3000

Phone 03 9613 6222

Fax 03 9614 0246

Toll free 1800 806 314

Email ombudvic@ombudsman.vic.gov.au

www.ombudsman.vic.gov.au