



Ceremonies of Degradation: Strip-searching in Women's Prisons

A policy paper regarding the impacts of strip-search procedures on women in correctional facilities

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Abstract

Strip-searches have been used in correctional facilities for decades as a means of detecting contraband and ensuring prison security. However, the policy of strip-searching has not been without controversy. Multiple authors have raised serious doubts about the efficacy of strip-searches in uncovering contraband and have highlighted the serious psychological and emotional impacts that such searches have on women in prison. As a population with one of the highest rates of physical and sexual victimisation, women in prison can find the process of strip-searching especially traumatising. In many ways, strip-searches replicate the dynamics of abuse by incorporating elements of coercion, degradation and invasion of personal privacy. For women who have been victims of abuse, the process can be unbearable as they are once again placed in a position of helplessness and lack of control. Given the humiliating and harmful nature of strip-searches, it is recommended that more efficient and humane means of detecting contraband are used. This paper recommends the introduction of electronic body scanners in women's prisons, which would revolutionise the way in which prison safety is achieved by minimising trauma to inmates, while maximising security. Through the adoption of such technology, a more gendered approach towards the treatment of women in prison can be achieved.

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Ceremonies of Degradation:¹ Strip-searching in Women's Prisons

1. Introduction

Strip-searching has long been a mainstay of everyday prison procedure. Predicated on notions of safety and contraband detection, it is considered a necessary part of prison policy. Despite its widespread use, there is little empirical evidence to show that it is an efficient means of discovering illicit implements and substances. Even more concerning is its potentially traumatic impacts on women. For the many women in prison who have been victims of physical and sexual abuse, strip-searching represents a form of revictimisation – one which they are subject to on a regular basis. As this report will show, the highly degrading and invasive nature of strip-searching, coupled with its harmful psychological effects on women in prison, make it a wholly inappropriate and outdated method of ensuring prison safety. Additionally, this paper calls for a reconsideration of the rights and risks debate in order to develop a more balanced and effective approach for achieving security in correctional facilities.

2. The Statutory Scheme

The power to search men and women in prison is contained in both statute and regulation. Section 79(r) *Crimes (Administration of Sentences) Act 1999* (NSW) allows for regulations to be made in relation to the use of body searches. Pursuant to this, reg 46 *Crimes (Administration of Sentences) Regulation 2014* (NSW) sets out the rules governing the searching of men and women in prison, and their cells.²

A strip-search is defined as ‘a search of a person or of articles in the possession of a person that may include requiring the person to remove all of his or her clothes, and an examination of the person’s body (but not of the person’s body cavities) and of the clothes’.³ The regulation confers on correctional officers the authority to conduct body searches, including strip-searches, on men and women in prison in two circumstances: firstly, when the general manager directs that it

¹ Harold Garfinkel, ‘Conditions of Successful Degradation Ceremonies’ (1956) 61(5) *American Journal of Sociology* 420.

² For legislation and regulations dealing with the search of men and women in prison in other states and territories, see: *Corrective Services Act 2006* (Qld) and *Corrective Services Regulation 2006* (Qld); *Correctional Services Act 1982* (SA); *Corrections Act 1997* (Tas); *Corrections Act 1986* (Vic) and *Corrections Regulations 2009* (Vic); *Prisons Act 1981* (WA) and *Prisons Regulations 1982* (WA); *Corrections Management Act 2007* (ACT).

³ *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(5).

be done, or secondly, when a correctional officer considers it appropriate.⁴ This test of appropriateness sets a low threshold for body searches. In fact, it is arguably a lower standard than the 'reasonable suspicion' test imposed on police officers wanting to conduct body searches without a warrant.⁵ Moreover, the test of appropriateness is one that is highly subjective and open to abuse. What is or is not considered 'appropriate' is likely to differ between correctional officers and the relevant circumstances.

Nevertheless, there are some safeguards in place. Regulation 46(2) states that strip-searches must not be conducted by, or in the presence of, a member of the opposite sex, except in the case of an emergency.⁶ As to what qualifies as an emergency is unclear. The regulation also requires that searches be conducted 'with due regard to dignity and self-respect and in as seemly a way as is consistent with the conduct of an effective search'.⁷ This is reiterated in the Corrective Services NSW Operations Procedures Manual.⁸ While the standard arguably minimises the trauma of ordinary body searches, it is difficult to reconcile with strip-searches. As the account of many women in prison reveal, strip-searching is a humiliating process in and of itself, regardless of whether the search is done in accordance with the regulations. Requiring correctional officers to protect the dignity of these women when conducting what is an inherently degrading exercise is not only paradoxical, but impossible. Furthermore, by framing the standard in this way, the regulation erroneously implies that there is an appropriate and correct method of conducting strip-searches. In doing so, it fails to recognise the realities of strip-searching, that are the deep emotional and psychological impacts it has on women in prison.

It should be noted that it is not open to men and women in prison to refuse to participate in body searches. Resistance and non-compliance is considered a correctional centre offence.⁹ Further, reg 131(4)(a) allows correctional officers to have recourse to force to search when necessary.¹⁰ This reinforces the power imbalance between women in prison and correctional officers. To some extent, it also transforms strip-searching into a form of institutionalised sexual coercion, as traditional requirements of consent are abandoned in favour of security goals, many of which are not met despite these harmful policies.

⁴ Ibid reg 46(1).

⁵ See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 21, 31.

⁶ *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(2).

⁷ Ibid reg 46(3).

⁸ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 10 Reception of Inmates* (December 2014) Corrective Services, 13 [10.1.5], 24 [10.2.2], 41 [10.3.2.3]

<http://www.correctiveservices.justice.nsw.gov.au/_data/assets/pdf_file/0019/294040/OPM-sec-10-reception-of-inmates-v1.15.pdf>.

⁹ *Crimes (Administration of Sentences) Regulation 2014* (NSW) reg 46(4).

¹⁰ Ibid reg 131(4)(a).

2.1. Strip-searching in Practice

Unfortunately, there is little readily accessible information on how these regulations are translated into everyday practice. The latest known *publicly* available version of the Corrective Services NSW Operations Procedures Manual makes no statement on the official procedures involved in body searches of men and women in correctional facilities. Section 12.4 of the manual, which relates to the search of men and women in prison, and correctional centres, has been removed from the online version of the manual for what appears to be security reasons.¹¹ An attempt by WIPAN to gain formal access to the section pursuant to the *Government Information (Public Access) Act 2009* (NSW) was similarly denied on grounds of security.

The difficulties in accessing prison strip-search procedures creates practical difficulties in terms of accountability and oversight. Not only does it make it hard for members of the public to determine if adequate protections are being afforded to women in prison, but it also restricts the ability of these women to understand and assert their rights. It is worth noting that, unlike NSW, Queensland's strip-search procedures are publicly available on the Queensland Corrective Services (QCS) website.¹² The procedures outline both the steps that have to be taken to ensure that a proper search is conducted, as well as actions that are prohibited.¹³

In highlighting this disparity, WIPAN is neither condoning, nor supporting the strip-search procedures adopted by QCS. Rather, WIPAN hopes to draw attention to the lack of procedural transparency surrounding the strip-searching of women in NSW correctional facilities. The fact that such procedures are publicly accessible in Queensland, casts doubt on the security considerations that underpin the non-disclosure of NSW's procedures. If the publication of strip-search procedures are such a threat to correctional centre security, why has Queensland seen fit to authorise their publication?

¹¹ See Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres*, Corrective Services
<http://www.correctiveservices.justice.nsw.gov.au/_data/assets/pdf_file/0008/294074/sec-12.4-Searching-Inmates-and-Correctional-Centres-2010-Public-Version.pdf>.

¹² See Queensland Corrective Services, *Custodial Operations Standard Operating Procedure: Search – Prisons and Corrective Services Facilities* (11 April 2012) Queensland Corrective Services, [3.4]
<http://www.correctiveservices.qld.gov.au/Resources/Procedures/Safety_and_Security/documents/sasprosearchprisoner.shtml>.

¹³ Ibid.

2.1.1. The relevant procedures

Despite the difficulties in obtaining prison strip-search procedures, WIPAN was ultimately able to gain access to a legal brief, unrelated to this matter, which contained the relevant policies.¹⁴ Section 12.4.6 of the Corrective Services NSW Operations Procedures Manual ('the procedures manual') contains the official procedure relating to the strip-searching of men and women in prison. It is important to note that the section is dated September 2012 and as such, may not contain the most updated strip-search policies of Corrective Services NSW. Nevertheless, it remains useful in providing some context for understanding the processes and safeguards involved in strip-searching in correctional facilities.

Perhaps the most notable feature of the section is its recognition of the routine nature of strip-searching in correctional facilities.¹⁵ According to the procedures manual, men and women in prison are searched upon their return from any place where they may have come in contact with members of the public or inmates from other facilities.¹⁶ This includes situations where a man/woman in prison has returned from court, other correctional facilities or external leave programs.¹⁷ In fact, the procedures manual requires that at least 10% of persons returning from external leave programs, such as education leave or work release, be randomly strip-searched each day.¹⁸ The frequency of strip-searches is concerning, given their invasive and dehumanising nature, particularly for women in prison.

Consistent with the regulatory scheme, the procedures manual requires strip-searches to be conducted by a member of the same sex, unless there is an emergency or where exceptional circumstances apply.¹⁹ However, the procedures manual makes the added stipulation that strip-searches be supervised by a senior officer.²⁰ Additionally, all strip-searches must be performed by a minimum of two correctional officers, with one giving the

¹⁴ Section 12.4.5 of the Corrective Services NSW Operations Procedures Manual, which relates to the strip-searching of men and women in prison, was contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison. Following the completion of the inquest, Justice Action, a community-based advocacy group, was authorised by the NSW Coroner's Court to access the brief. WIPAN has since been granted permission by Justice Action to view and utilise the relevant contents of the brief, in particular, Section 12.4.6 of the Corrective Services NSW Operations Procedures Manual, for the purposes of this report.

¹⁵ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (September 2012) s 12.4.6, contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

relevant directions and the other observing the search.²¹ Generally, strip-searches are not to be video-recorded.²² However, this rule may be waived in situations where the person has been non-compliant or has a history of aggression towards staff members.²³

Prior to conducting a strip-search, correctional officers are to ensure that the search area affords the man/woman in prison with sufficient privacy and space.²⁴ In cases where a woman in prison is participating in the Mothers and Children's Program, and is residing with her child/children, staff must ensure that the search is conducted away from any children.²⁵ Furthermore, officers must provide men and women in prison with clear instructions on how the search will be conducted, as well as given them the opportunity to surrender any contraband before the search.²⁶ Not only does the procedures manual explicitly prohibit officers from touching men and women in prison during strip-searches, but it also requires them to wear surgical-type gloves.²⁷

Under this procedural scheme, men and women in prison are asked to remove their clothing.²⁸ It is important to note that more stringent rules apply to the strip-searching of women in prison. Unlike men in prison, who may be asked to remove all of their clothing at once, strip-searches of women are performed in two stages, with only one half of the body (either the top or bottom half) exposed at any one time.²⁹ The stricter procedural requirements represents recognition of the more serious emotional and psychological impacts that strip-searches can have on women in prison. While they certainly help to reduce the trauma of strip-searches for these women, they do not completely protect against the humiliating nature of such searches. The inherently demeaning character of strip-searches continues to be evident, particularly in aspects of the procedures

²¹ Ibid.

²² Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching of Inmates and Correctional Centres* (September 2012) s 12.4.6.1, contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison.

²³ Ibid.

²⁴ Ibid.

²⁵ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (September 2012) s 12.4.6.2, contained in a brief of evidence complied by the NSW Police for the coronial inquest into the death of a woman in prison.

²⁶ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (September 2012) s 12.4.6.1, contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (September 2012) s 12.4.6.2, contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison.

that emphasise coercion and loss of privacy. For example, women in prison who are on their period are asked to remove their tampons or sanitary pads as part of the search.³⁰ This can be an especially demeaning exercise for women when performed in the presence, and under the behest, of correctional officers.

Once the person's clothing has been removed, an officer will search his/her garments.³¹ Following this, the hair, mouth, ears, armpits, hands, pubic regions, toes, feet and legs of the man/woman in prison are visually searched.³² In the event that a person attempts to hide contraband in his/her body cavity or skin fold/crevice during the course of a strip-search, correctional officers may restrain the person's hands.³³ Officers are also allowed to use force in order to retrieve contraband on a person.³⁴ However, this power is limited to circumstances where contraband is secreted *on* a person, and does not extend to situations where a person has secreted contraband *in* a body cavity or skin fold/crevice.³⁵ Nevertheless, where the latter scenario applies, correctional officers may instruct the person to lift their breasts, scrotum or skin folds in order to reveal suspected contraband.³⁶ To this extent, the NSW scheme differs from that of Queensland, where 'historical practices', such as requesting that women lift their breasts, are prohibited.³⁷

2.1.2. The experiences of women in prison

It would be inaccurate to describe the scheme contained in the procedures manual as completely ignorant of the needs and experiences of women in prison. The incorporation of procedural protections relating to privacy, physical contact and the partial removal of clothing reflect an attempt by Corrective Services to make the strip-searching process less distressing for women. Yet, the continued use of strip-searches ignores the fact that even the most stringent protections cannot adequately guard against the damaging effects that strip-searches can have on women in prison, particularly those who have experienced sexual abuse and coercion. While strip-searching procedures may appear rational, and even necessary when set out in writing, they become less so when put into practice:

'What does that [a "dignified" strip-search] actually mean you may be thinking? Top half of your clothes off, lift your breasts, flick your hair, hold your arms above your head and turn around, open your mouth. Then put

³⁰ Ibid.

³¹ Corrective Services NSW, *Corrective Services NSW Operations Procedures Manual: Section 12.4 Searching Inmates and Correctional Centres* (September 2012) s 12.4.6.1, contained in a brief of evidence compiled by the NSW Police for the coronial inquest into the death of a woman in prison.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Queensland Corrective Services, above n 12, [3.4].

your bra back on. Now remove the bottom half of your clothing, turn, raise your feet. If you are menstruating, you can also be requested to remove your tampon or pad. This is what a “dignified” strip-search is and what women [in prison] today, who may have to visit with their children, family and friends, would have to do after their visits’ – Kat Armstrong, Ex-prisoner³⁸

As the account reveals, it is crucial to contextualise strip-searches within the unique lived experiences of women in prison. The process of strip-searching does not merely exist as a straightforward security policy for correctional facilities, but interacts with the distinct personal histories of women in prison. It is this complex interaction between the experiences of abuse, trauma, coercion and revictimisation that makes strip-searching such a damaging and harmful practice.

3. Rights vs. Risks

Like any other criminal justice policy, the use of strip-searches in correctional facilities require a careful balancing of the rights of men and women in prison, and the potential risks involved. This section considers the rights and risks debate that underpins strip-searching in women’s prisons.

3.1. The rights of women in prison

Article 7 of the International Covenant of Civil and Political Rights (ICCPR) protects against ‘cruel, inhuman or degrading treatment or punishment’.³⁹ Similarly, art 17 states that individuals should not be subject to arbitrary or unlawful interference with their privacy, and enshrines the right to legal protection against such interferences.⁴⁰ As a signatory to the ICCPR, Australia has committed to the observance of these standards. However, as some authors have noted, the use of strip-searches in women’s prisons contravenes these commitments.⁴¹

It is important to recognise that a significant portion of women in prison have histories of physical and sexual abuse. According to statistics, 45% of women in

³⁸ Kat Armstrong, ‘Women in Prison’ (Speech delivered at the Mothers, Sisters, Daughters: Women in Prison Forum, Parliament House, Sydney, 13 August 2014).

³⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1996, 999 UNTS 171 (entered into force 23 March 1976) art 7.

⁴⁰ *Ibid* art 17.

⁴¹ Kat Armstrong, Eileen Baldry and Vicki Chartrand, ‘Human Rights Abuses and Discrimination Against Women in The Criminal Justice System’ (2007) 12(2) *Australian Journal of Human Rights* 203, 212; Debbie Kilroy, ‘Stop the State Sexually Assaulting Women in Prison: Strip Searching’ (Paper presented at Expanding Our Horizons: Understanding the Complexities of Violence Against Women, Sydney, 18-22 February 2002) 19.

prison have reported being abused and/or controlled by their partners or spouses within the year prior to their incarceration.⁴² In addition, 49% of all female offenders were victims of at least one form of abuse as a child.⁴³ By subjecting women in prison to regular strip-searches, authorities are replicating the dynamics of coercion and abuse. Women in prison already live in a hyper-regulated reality, where their every move is under strict control by correctional officers.⁴⁴ Strip-searching represents a further form of oppression, wherein feelings of powerlessness and loss of esteem are invoked. Moreover, strip-searches have the potential to reinforce concepts of learned helplessness among women who have been abused.⁴⁵ The process can be particularly traumatising when performed by, or in the presence of, male correctional officers, especially for women who may come from certain Indigenous or other cultural backgrounds where relationships with men are restricted.⁴⁶ This can have seriously adverse impacts on the emotional and psychological states of women in prison, and can serve to increase the risk of self-harm and further substance abuse.⁴⁷ As such, strip-searches exacerbate existing health and safety issues instead of addressing them.

Furthermore, the humiliating nature of strip-searching can aggravate feelings of isolation. It is not uncommon for women in prison to tell their families and friends not to visit them as they are unable to endure the strip-search that inevitably follows such visits.⁴⁸ In this way, strip-searching discourages women

⁴² Devon Indig, Libby Topp, Bronwen Ross, Hassan Mamoon, Belinda Border, Shalin Kumar and Martin McNamara, '2009 NSW Inmate Health Survey: Key Findings Report' (Report, Justice Health, 2010) 70.

⁴³ Lubica Forsythe and Kerry Adams, 'Mental Health, Abuse, Drug Use and Crime: Does Gender Matter?' (Trends and Issues in Crime and Criminal Justice, No 384, Australian Institute of Criminology, 2009) 5.

⁴⁴ Amanda George, 'Strip-searches: Sexual Assault by the State' (Paper presented at Without Consent: Confronting Adult Sexual Violence, Melbourne, 27-29 October 1992) 2

<http://www.aic.gov.au/media_library/publications/proceedings/20/george.pdf>.

⁴⁵ Cathy Pereira, 'Strip Searching as Sexual Assault' (2001) 27(2) *Hecate* 187, 189.

⁴⁶ For an example, see Melissa Lucashenko and Debbie Kilroy, 'A Black Woman and a Prison Cell: Working with Murri Women in Queensland Prisons' (Research Paper, Sisters Inside, 2005) 17.

⁴⁷ Jude McCulloch and Amanda George, 'Naked Power: Strip Searching in Women's Prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009) 107, 115.

⁴⁸ Debbie Kilroy, 'Stop the State Sexually Assaulting Women in Prison: Strip Searching' (Paper presented at Expanding Our Horizons: Understanding the Complexities of Violence Against Women, Sydney, 18-22 February 2002) 15; Anti-Discrimination Commission Queensland, 'Women in Prison' (Report, Anti-Discrimination Commission Queensland, March 2006) 73; Holly Harner and Suzanne Riley, 'The Impact of Incarceration on Women's Mental Health:

from having prison visits. This can have damaging impacts on the rehabilitation of women in prison, as they are unable to forge positive relationships with the very people who can support them after their release into the community. The psychologically detrimental impacts of strip-searching should not be underestimated. Some women in prison have even called for the provision of more comprehensive medical services within prisons in order to avoid leaving the compound for medical treatments and be subject to strip-searches upon their return.⁴⁹ To the extent that strip-searches are also performed on women in prison returning from external leave programs, they may act as a disincentive for those seeking to take up further work, education and other personal development opportunities.

In many ways, strip-searches are status degradation ceremonies that emphasise shame and powerlessness.⁵⁰ While search powers are often qualified by the need to maintain individuals' dignities and self-respect, these 'safeguards' often fail to recognise the inherently demeaning nature of strip-searches. As some authors have noted, strip-searches constitute a form of legally permitted sexual assault, where the unwanted invasion of the body is the defining characteristic.⁵¹ Likening strip-searching to sexual assault makes sense once it is acknowledged that if an individual, who was not an officer of the police or corrective services, performed the same act, his/her conduct would amount to a sexual or indecent offence.⁵² While strip-searching may be justified on grounds of prison safety, it also reflects the fact that women in prison are not afforded the same human rights protections as those in the community. The issue is best encapsulated by George:⁵³

'And why is this sexual assault and humiliation legal? Because the victim is a prisoner. She may be in for social security fraud, drugs, spouse murder, credit fraud or another offence, but she loses her humanity, her individuality, her right to freedom from assault, humiliation and fear, and her right to resist those assaults'.⁵⁴

Reponses from Women in a Maximum-Security Prison' (2013) 23(1) *Qualitative Health Research* 26, 31.

⁴⁹ Anti-Discrimination Commission Queensland, 'Women in Prison' (Report, Anti-Discrimination Commission Queensland, March 2006) 104.

⁵⁰ Garfinkel, above n 1.

⁵¹ Amanda George, 'Strip Searches: Sexual Assault by the State' (Paper presented at Without Consent: Confronting Adult Sexual Violence, Melbourne, 27-29 October 1992)

<http://www.aic.gov.au/media_library/publications/proceedings/20/george.pdf>; Debbie Kilroy, 'Stop the State Sexually Assaulting Women in Prison: Strip Searching' (Paper presented at Expanding Our Horizons: Understanding the Complexities of Violence Against Women, Sydney, 18-22 February 2002) 10-1.

⁵² See George, above n 44.

⁵³ Ibid 4.

⁵⁴ Ibid 4.

The idea that women in prison are less worthy of individual protection because of their offence/s is both erroneous and contrary to accepted human rights principles. Although they are subject to certain restrictions as punishment for their crimes, they remain human beings with inherent rights. For convicted offenders who have received custodial sentences, the loss of liberty represents the totality of their punishment. Anything that goes beyond that is unwarranted. Thus, in interfering with the privacy rights of women in prison, strip-searching constitutes a form of gratuitous punishment that is at odds with basic understandings of human rights.

3.2. Why strip-search?

Despite its invasive nature, strip-searching has continued to be a part of standard prison procedure. Its use has largely been justified in terms of ensuring inmate, staff and visitor safety. One of the main issues that strip-searching has been targeted at is prison drug culture.⁵⁵ In this context, strip-searching is seen as a necessary means of detecting contraband, and stamping out the use and trade of illicit drugs in correctional facilities. There is no doubt that substance abuse is a serious problem in prisons – particularly in female correctional facilities, where a significant portion of inmates have histories of illegal drug use. Statistics show that 61% of women in prison reported using illicit drugs within the year prior to their imprisonment.⁵⁶ 56% of women entering prison also reported injecting an illicit drug at some point in their lives.⁵⁷ As such, there is an overrepresentation of illegal drug use among female prison entrants, highlighting the need for prisons to deal with the health and safety risks that it presents.

Although strip-searching is aimed at containing these risks, there is little evidence to show that it is effective in reducing the distribution and accessibility of illicit drugs in prison.⁵⁸ According to a study conducted by Sisters Inside, of 41,728 strip-searches performed on women in prison in Queensland prisons from 1999 to 2002, only 2 uncovered drugs.⁵⁹ Similar studies have produced comparable results.⁶⁰ Further research has even suggested that the use of strip-

⁵⁵ Pereira, above n 45, 190.

⁵⁶ Ingrid Johnston and Jenna Pickles, 'The Health of Australia's Prisoners 2012' (Report, Cat. No. PHE 170, Australian Institute of Health and Welfare, 2013) 74.

⁵⁷ Ibid 78.

⁵⁸ Pereira, above n 45, 190.

⁵⁹ Sisters Inside, Submission to ACT Human Rights Commission, *Human Rights Audit and Review of Treatment of Women at the Alexander Maconochie Centre*, October 2013, 56.

⁶⁰ See: Jude McCulloch and Amanda George, 'Naked Power: Strip Searching in Women's Prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009) 107, 118; Susanne Davis and Sandy Cook, 'Women, Imprisonment and Post-release Mortality' (1998) 14 *Just Policy: A Journal of Australian Social Policy* 15, 19.

searches may actually exacerbate existing substance dependency problems.⁶¹ The link between the experience of abuse and substance dependency is well known, with the latter acting as a coping mechanism for women who have undergone substantial trauma.⁶² As previously stated, strip-searching constitutes a kind of revictimisation for women in prison who have suffered physical and/or sexual abuse. By subjecting them to continuous abuse in the form of routine strip-searches, prisons are increasing the potential for further substance abuse. This can have a detrimental impact on the efficacy of drug and alcohol programs that seek to rehabilitate women in prison.⁶³

Aside from eliminating the use of illicit drugs in prisons, strip-searches have also been justified on the basis that removing access to weapons and dangerous implements reduces inmate violence. The prevention of violence in prison is certainly a key priority, and one that should be treated with due seriousness. However, a 'one-size-fits-all' policy of strip-searching all inmates fails to distinguish between men and women in prison. As Pollock⁶⁴ notes, there are considerable differences in the way in which men in prison and women in prison express anger and frustration. Generally, rates of violence among women in prison are low.⁶⁵ In cases where violence is perpetrated, it tends to be confined to personal relationships and is less likely to involve the use of weapons.⁶⁶ Thus, there appears to be a sharp contrast between how men and women in prison experience and perform conflict, with violence posing a less serious risk in women's prisons as compared to men's prisons. This divergence gives strip-searching a discriminatory effect, as women in prison are made to endure serious psychological harm and humiliation despite the fact that they pose less of a threat.

In addition to illicit drugs and dangerous implements, strip-searches have also been used to detect other forms of contraband, such as cigarettes, lighters, as well as mobile phones and other electronic devices. Given the less serious nature of these items, the use of the highly invasive method of strip-searching to detect such contraband is both disproportionate and unnecessary. As such, its use in such scenarios cannot be justified.

4. Moving Forward

As this paper has shown, strip-searches are not only an ineffective way of ensuring prison safety, but also have harmful, long-term emotional and psychological impacts on women subject to them. The continued use of strip-

⁶¹ Pereira, above n 45, 189-90.

⁶² George, above n 44, 5.

⁶³ Pereira, above n 45, 190.

⁶⁴ Joycelyn Pollock, *Women, Prison and Crime* (Wadsworth Thomson Learning, 2002), cited in Anna Bogdanic, *Strip-searching of Women in Queensland Prisons* (Honours Thesis, Monash University, 2007) 44.

⁶⁵ Ibid.

⁶⁶ Ibid.

searches in correctional facilities can largely be attributed to the misconception that strip-searching is a necessary policy. The duty of care imposed on correctional facilities to guard the safety of its staff, visitors and inmates, makes prison security a paramount concern. However, it must be recognised that prison security can be achieved through alternative means that do not damage the psyches of women in prison.

One alternative is the use of electronic body scanners. Electronic body scanners have been used in foreign airports as part of security screening procedures since 2007.⁶⁷ They are currently being used in international airports in Australia as well.⁶⁸ Not only are they non-intrusive, but they are also more efficient than strip-searches in detecting unauthorised items due to their use of advanced technology. Unlike strip-searches, which require women in prison to remove their garments, electronic body scanners will allow for women in prison to be thoroughly searched for contraband without them having to undergo the demeaning process of physically exposing themselves to correctional officers. Moreover, they are less likely to undermine the impact of rehabilitative treatments, as they are less harmful to the psyches of women in prison. The use of body scanners in women's prisons to detect contraband has been recommended by *The Bangkok Rules*⁶⁹ and supported by the NSW Labor Party.⁷⁰

A second alternative that has been proposed is the replacement of strip-searches with pat down searches.⁷¹ Such a policy would certainly minimise the adverse impacts of strip-searches on women in prison. However, given its less thorough nature, it may raise concerns regarding prison safety. Furthermore, while pat down searches are less invasive than strip-searches, they have been shown to have negative emotional impacts on women who have been abused.⁷² Thus, a policy that seeks to completely replace strip-searches with pat down searches

⁶⁷ Department of Infrastructure and Regional Development, *Airport Body Scanners: Frequently Asked Questions* (5 September 2014) TravelSECURE <<http://travelsecure.infrastructure.gov.au/bodyscanners/faq.aspx>>.

⁶⁸ Ibid.

⁶⁹ United Nations, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)*, A/RES/65/229, February 2013, r 20.

⁷⁰ Following the 2014 Mothers, Sisters, Daughters, Women in Prison forum, the NSW Labor Party expressed agreement with the recommendation that scanning machines be used as an alternative to strip-searches. See Community Justice Coalition, *Women in Prison Forum: Resolutions, Political Parties' Positions and Recommendations* (13 August 2014) Community Justice Coalition <http://www.communityjusticecoalition.org/images/Women_in_Prison_Forum/resolutions%20political%20parties%20positions%20and%20recommendations.pdf> for a summary of the political responses to the forum.

⁷¹ Anti-Discrimination Commission Queensland, above n 49, 75.

⁷² Holly Harney and Suzanne Riley, 'The Impact of Incarceration on Women's Mental Health: Responses from Women in a Maximum-Security Prison' (2013) 23(1) *Qualitative Health Research* 26, 31.

would not only be inadequate in ensuring prison safety, but also in protecting against the revictimisation of women in prison.

Nevertheless, WIPAN recognises that a scheme which depends wholly on the use of electronic body scanners carries with it certain practical difficulties. In particular, electronic body scanners remain bulky and difficult to transport, and as such, could pose issues in situations where their use is urgently required in areas of correctional facilities where they may not necessarily be readily available. In order to overcome this, WIPAN proposes a scheme in which pat down searches are used in conjunction with electronic body scanners. Under this scheme, electronic body scanners will be the principal means through which correctional facility security is maintained. However, in circumstances where a search is required to be performed, and electronic body scanners are not readily available within the vicinity, recourse may be had to pat down searches. It is important to note that pat down searches should only be used as a last resort, with strip-searches having no place in the scheme at all. By introducing a policy that uses electronic body scanners as the primary mode of searching women in prison, while limiting the use of pat down searches to 'last resort' instances, prison safety can be maximised in a manner that respects the human rights of women in prison.

5. Conclusion

Strip-searches, while justifiable in theory, have disastrous consequences in reality. There is little evidence to suggest that strip-searches are effective in detecting contraband, illicit drugs and weapons. In fact, as a great deal of literature has shown, strip-searching is a degrading and humiliating process for women in prison, akin to sexual abuse. Not only does it engender serious psychological harm, it also subverts the efficacy of rehabilitation programs by reinforcing feelings of helplessness and disempowerment. In many ways, the harmful effects of strip-searching far outweigh its potentially positive impacts, making it a completely inadequate policy. The recent advancements in security technology mean that strip-searches are no longer necessary in ensuring prison safety. As this paper has shown, there are now viable alternatives to strip-searching. In particular, the introduction of electronic body scanners in women's correctional facilities has the potential to enhance contraband detection, while reducing the psychological trauma that women in prison have to endure. It is time that we ended the abuse and discrimination of women in prison, and brought our criminal justice policies in line with accepted understandings of humanity and compassion.

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