
Maximum security: “Being in the belly of the beast”

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Very little information or research is available about the operation of maximum security units (MSUs) in Queensland prisons. These units were developed within existing prisons in the early 1980s to deal with the incarceration of prisoners considered to be the “worst” and highest risk. Drawing on a number of interviews with prison visitors and on published documents and cases, this article examines the purpose and possible shortcomings of MSUs in Queensland in light of the Standard Guidelines for Corrections in Australia (1996).

OVERVIEW AND GENERAL THEME

Very little information or research is available about the operation of maximum security units (MSUs) in Queensland prisons.¹ These units were developed within existing prisons in the early 1980s to deal with the incarceration of prisoners considered to be the “worst and highest risk”.² There are two prisons in Queensland which currently hold prisoners in MSUs, these are the Arthur Gorrie Remand and Reception Centre and Sir David Longland Correctional Centre.³ There are also MSUs at Woodford Correctional Centre and Capricornia Correctional Centre.⁴ These two centres currently have no prisoners in their MSUs. Prisoner numbers in the units fluctuate but there are usually around 20 prisoners placed in solitary confinement in Queensland prisons at any time. Drawing on a number of interviews conducted by the authors and on published documents, this article examines the purpose and possible shortcomings of MSUs in Queensland in light of the *Standard Guidelines for Corrections in Australia* (1996).⁵ It is acknowledged that these guidelines do not have the force of

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¹ See Fletcher K, “The Myth of the Supermax Solution” (1999) 24 Alt LJ 274 on the Woodford Riot of 1997 and Gibney J, “Maximum Duress – Inside the Culture of Prison Security” (Paper presented at the “Inside the Warehouse: Young People in Queensland Prisons” conference convened by Justice Studies Department, QUT Faculty of Law, 28 November 2000), which is an historical study. In Australia, other recent discussions include a paper concerning the legal implications of solitary confinement, see Foley K, “Solitary Confinement: A Violation of International Law?” (2001) 3(1) *E-Law* <http://www.murdoch.edu.au/elaw/> viewed 14 October 2005. There is a brief mention of “special handling units” and the use of isolation as punishment in the 2000 report of the Deaths in Custody monitoring committee, see Deaths in Custody Watch Committee, Report to the Committee Against Torture for Consideration together with Australia’s Reports to the Committee Pursuant to Article 19 of the *Convention Against Torture* (Deaths in Custody Watch Committee, Ascot, 2000) <http://www.deathsincustody.com> viewed 7 March 2006.

² Queensland, Legislative Assembly, *Debates* (18 November 1997) at 247 “Ministerial Statement: Sir David Longland Correctional Centre Escape” Hon TR Cooper.

³ At the time of writing it is understood that the majority of maximum security prisoners are incarcerated at Arthur Gorrie Remand and Reception Centre. The centres are located at Wacol near Brisbane (Arthur Gorrie centre is privately operated by Australian Correctional Management – its parent company is the United States company Wackenhut).

⁴ Woodford is based on the Sunshine Coast Hinterland and Capricornia is based in Rockhampton.

⁵ These are available at http://www.aic.gov.au/research/corrections/standards/aust-stand_2004.pdf viewed 31 August 2005. These standards do not have the force of law. The Australian standards reflect the *United Nations Standard Minimum Rules for the Treatment of Prisoners*, http://www.unhchr.ch/html/menu3/b/h_comp34.htm viewed 31 August 2005. Groves notes that such international standards should be considered to be “a legitimate and important influence on the development of the common law of Australia”: Groves M, “International Law and Australian Prisoners” (2001) UNSWLJ 1 at [34] <http://www.austlii.edu.au/cgi-bin/disp.pl/au/journals/UNSWLJ/2001/11.html?query=mathew+groves+and+international> viewed 18 October 2005.

law and probably do not have any practical relevance to prisoners.⁶ However, as Groves has noted, such standards provide “a legitimate and important influence on the development of the common law of Australia”.⁷

PART ONE: BACKGROUND

Methodology and its justification

This study began as an investigation into the functions, purposes and overall operation of MSUs in Queensland. Our original intention was to analyse documentation concerning these units and to interview both those in charge of operational matters and those subject to its regime. This original goal was later abandoned owing to a lack of documentary materials provided by the correctional services authorities and by the difficulties of interviewing those most directly affected by the maximum security arrangements. Instead, our primary source of data was a series of interviews with those associated with prisoners kept in the maximum security units.

The direction of this article flows from the concerns raised by those we interviewed. We spoke to 12 interviewees from diverse backgrounds.⁸ At the time of their interview, the interviewees had recently visited prisoners in Queensland MSUs. Those to be interviewed were selected after discussions with a key respondent, Jim Gibney, a lawyer employed by Legal Aid Queensland. Gibney has a long history of experience in prison issues in Queensland. This form of respondent-driven sampling, where key personnel are identified and they subsequently identify other key interviewees to form a focus group, has been employed principally in the sociological field.⁹ Those interviewed for this study ultimately included seven lawyers, two of whom had worked as “official visitors”,¹⁰ four counsellors and one interviewee who had visited MSU’s in a government policy role.¹¹

The interview data has its limitations. The comments of our interviewees embody a prisoner’s perspective to a greater degree than one that might have been obtained through interviews of correctional services officers or management. However, we believe that it is both important to present this perspective of the operation of MSUs and that this standpoint highlights a number of important issues.¹² This is particularly the case given the paucity of public awareness and debate about the issues involved in the internal operations of prisons.¹³ As one interviewee pointed out:

the issues [in] these units can never be exposed because ... it’s not aired in an arena where the public can be made aware of it. And I don’t think we can rely on the media to give an unbiased view about prisoners.¹⁴

Historical and functional considerations

The interviewees emphasised that the development of the MSUs in Queensland reflects a range of interests and concerns. Political concerns, questions of practical operation, community perceptions of purpose and the expected functions of MSUs have all influenced the development of MSUs.

The use of MSUs in Queensland is of relatively recent origin. The Woodford Correctional Centre was commissioned in March 1997 and was the first correctional unit to provide a twenty-cell block

⁶ Groves, n 5 at [35].

⁷ Groves, n 5 at [60], [88].

⁸ We also received one facsimile statement from a lawyer who could not find time to be interviewed.

⁹ This technique of focus group identification is described in Heckathorn D, “Respondent-driven Sampling: A New Approach to the Study of Hidden Populations” (1997) 44 *Social Problems* 174.

¹⁰ Official visitors are independent statutory officers appointed by the Director General with responsibility for hearing and investigating prisoner complaints and grievances. See *Corrective Services Act 2000* (Qld), ss 211-216 for clarification of appointment and role.

¹¹ The interviewees identities were coded by letter to preserve confidentiality. Interviews were audio-taped and transcribed. This article refers to the transcriptions by their letter code

¹² We have supplemented the interview data with material gathered from case law, articles, government documents and newspaper articles.

¹³ Groves has previously made this point. See Groves M, “The Purpose and Scope of Prison Discipline” (2002) 26 *Crim LJ* 10 at 10.

¹⁴ Interview Transcript G at 5.

originally called a "Special management Unit"¹⁵ The MSUs at Sir David Longland and Arthur Gorrie Corrections Centres followed three years later.¹⁶ According to interviewees, the general reason for the development of the Woodford MSU stemmed from a perceived need, at least in part from within the prison service, to replace the unacceptable conditions found in certain forms of solitary confinement then in use.¹⁷ In its initial stages, the Woodford MSU was created to satisfy a number of objectives. It is important to highlight two in particular. One goal lay in replacing ad hoc solitary confinement regimes with a more formalised and carefully managed regime. This purpose could be said to be the perpetuation, under a differently administered regime, of selective incapacitation of prisoners deemed to be "intractable" or of special concern to prison authorities.¹⁸ Another goal was to establish a unit where prisoners having behavioural problems could be treated using specialised treatments under what might be called a "therapeutic" model of incarceration.¹⁹ Clearly, these two purposes could overlap to some extent, the primary difference between them residing in their recommendation for the treatment of prisoners *after* they had been admitted to a maximum security area.

While Woodford Correctional Centre MSU was under construction, a policy document titled "Special Management Unit Policy" was circulated to various stakeholders for comment.²⁰ Fletcher, then a solicitor at the Prisoners Legal Service, commented on the policy and drew attention to an existing provision, s 39 of the *Corrective Services Act 1988* (Qld), which already allowed for the segregation of prisoners for finite periods with certain procedural safeguards. According to Fletcher, shortly after her comments were given, the name of the proposed unit changed from "Special Management" to "Maximum Security", Fletcher suggests that this change was made in attempt to circumvent the operation of s 39.²¹ According to a number of our interviewees, the policy to govern the original MSU at Woodford was developed in a relatively consultative fashion.²² Thus, in the beginning the approach to managing the new unit was developed under the auspices of a committee of interested parties (a "reference group"), many from outside the governmental department system. However, some interviewees suggested that the consultative nature of this committee altered substantially a short time after its formation.²³

Interviewees highlighted a number of possible reasons for this change. Two interviewees pointed to the dual roles played by some members of the committee. For example at least one member of the reference group was involved in adversarial legal proceedings about the operation of the MSU. These same interviewees suggested that this might have lead to the adoption of a more adversarial role towards the reference group.²⁴ The interviewees reported that the department had then disbanded the reference group for a period of time, reinstating it sometime later.²⁵ Another relevant point is the small numbers contained in the MSUs at any time. Given these small numbers, discussions of general

¹⁵ Note Braddy MP's comments about the construction of the Woodford MSU: Queensland, Legislative Assembly, *Debates* (18 November 1997) p 4325. See also Fletcher, n 1 at 274. This unit was completed in response to the recommendations of the "Kennedy Report", see Kennedy J, *Final Report: Commission of Review into Corrective Services in Queensland* (Goprint, 1988).

¹⁶ The escape of five prisoners (including Brendan Abbott) from Sir David Longlands Correctional Centre on the 4th November 1997 appear to have precipitated the proposed development of further MSUs. See Queensland, Legislative Assembly, *Debates*, n 2, p 4247.

¹⁷ See Interview Transcript I at 2, Interview Transcript E at 5. See also Gibney, n 1 at 4.

¹⁸ See the comments of Mr Lucas, Member for Lytton, during discussion of the *Corrective Services Amendment Bill*; in responding to claims that Woodford MSU was a "black hole" for prisoners, he noted that the MSU was for "intractables": Queensland, Legislative Assembly, *Debates* (24 March 1999) p 772.

¹⁹ See the comments of Mr Littleproud, Member for Western Downs, during discussion of the *Corrective Services Amendment Bill*: Queensland, Legislative Assembly, *Debates* (24 March 1999) p 776.

²⁰ Fletcher, n 1 at 275.

²¹ Fletcher, n 1 at 275.

²² Interview Transcript E at 2-3, Interview Transcript C at 7, Interview Transcript I at 2.

²³ Interview Transcript E at 2-3, Interview Transcript I at 2.

²⁴ Interview Transcript I at 2, Interview Transcript E at 2-3. Note also the reference group included Karen Fletcher of the Prisoners Legal Service (PLS). In 1999 the PLS initiated judicial review of the segregation of seven prisoners at Woodford Correctional Centre MSU. They argued that the segregation conflicted with s 39 of the *Correctional Services Act 1988* (Qld) and Justice Moynihan found in their favour. See *Farr v Queensland Corrective Services Commission* [1999] QSC 86 at [9].

²⁵ Interview Transcript E at 3-4.

principle sometimes became difficult to distinguish from issues particular to certain prisoners. The department was unwilling to entertain such appeals or argument at the reference committee level.²⁶

Important though these reasons be, to our interviewees the primary cause of the changes in MSU policy from an interest in rehabilitation to a more managerial position was the change in political environment caused by the events surrounding the escape of Brendan Abbot on 4 November 1997.²⁷ To the interviewees, it was relatively clear that following the escape of Abbott, the process of policy formation became less consultative and the purpose of incapacitation and punishment received increasing weight while the therapeutic model received correspondingly less emphasis.²⁸ Abbott's escape subjected the Queensland Coalition government of the time to significant criticism. The Corrections Minister at the time responded by asserting that once Abbott was recaptured he would be placed in an MSU "forever".²⁹

One early indication of this ultimate shift is embodied in a change of terminology. At the beginning of the consultation period, the units were referred to as "special management units". This was later changed to a terminology that was more focused on punishment and incapacitation, it became the "maximum security unit". Other important shifts in policy in this general direction – towards incapacitation and punishment and against therapy – can be detected. For example, the Royal Commission on Deaths in Custody had recommended that a maximum security area exclude indigenous prisoners.³⁰ While this was a tenet of the early policy for the units, at some point this principle was dropped from the operation principles governing the units.³¹ Since MSUs have been introduced they have held indigenous prisoners. None of the people we interviewed thought that the current aims of MSUs included the goal of having a rehabilitative effect. One interviewee stated that there was "no rehabilitation attached [to these units] at all".³² When asked about the current purpose of MSUs some of the interviewees answers were disturbing. A number of interviewees suggested that at least part of the purpose of the MSUs was to "break" the spirit of the prisoner.³³ Specifically one interviewee commented that MSUs provided: "a systematically adverse environment by design, both physical and psychological and it's all about the breaking of the prisoner."³⁴

Below we outline the current legislative framework that governs the operation of MSUs in Queensland.

Current operation

According to the *Corrective Services Act 2000* (Qld) (the Act), a "maximum security order" (MSO) can be made where a prisoner is classified as a maximum security prisoner and where the chief executive believes on reasonable grounds that there is a high risk that the particular prisoner will escape and/or inflict death or serious injury on other prisoners or persons or generally that the particular prisoner is a substantial threat to security or good order in the prison.³⁵ Although MSOs must not be longer than six months³⁶ there is provision in the Act for consecutive orders to be made and there is no limit on the number of consecutive orders that can be made.³⁷ The Act requires that MSOs include directions about the extent to which the particular prisoner should be segregated from others, the privileges that the prisoner is to receive and the programs, services and counselling to

²⁶ Interview Transcript E at 2.

²⁷ Discussed in the *Courier Mail* (6 November 1997) p 15.

²⁸ Interview Transcript I at 2, Interview Transcript B at 5, Interview Transcript E at 5, Interview Transcript F at 7.

²⁹ Minister, Russell Cooper. See Robson F, "Cruel and Unusual Punishment" *Good Weekend (The Age)* (16 December 2000) p 29. Abbott was recaptured later in 1997 and has been held in Queensland MSUs ever since.

³⁰ Interview Transcript E at 12. Garland, an indigenous prisoner, has been in an MSU for at least seven years, his indigenous background was discussed in relation to his continued holding in an MSU, see *Garland v Chief Executive, Department of Corrective Services* [2004] QSC 450 at [22] (White J).

³¹ Interview Transcript K at 6-7.

³² Interview Transcript G at 6.

³³ For example, Interview Transcript A at 21, Interview Transcript B at 6, Interview Transcript E at 8, Interview Transcript F at 8.

³⁴ Interview Transcript I at 18.

³⁵ *Corrective Services Act 2000* (Qld), s 47.

³⁶ *Corrective Services Act 2000* (Qld), s 47(3).

³⁷ *Corrective Services Act 2000* (Qld), s 48.

which the prisoner is allowed access.³⁸ Although prisoners may request the official visitor to review MSOs in certain circumstances, the chief executive is not bound by the official visitor's recommendation.³⁹

In 2004, the Queensland government, as part of a review the Act, produced a consultation paper that raised some concerns about the current operation of MSOs.⁴⁰ Issues raised by the consultation paper included whether orders should be standardised, problems with reintegration of prisoners and review procedures.⁴¹ These issues were raised by our interviewees and are discussed further below. A consultation report was released by the Queensland in August 2005. The report noted a range of possible responses to the concerns but no clear direction.⁴² The final report has yet to be produced.

For the remainder of this article we draw on our interview material to discuss the purpose and possible shortcomings of MSUs in Queensland in light of the *Standard Guidelines for Corrections in Australia* (1996) (the Guidelines).⁴³

PART TWO: HUMAN RIGHTS AND MSUS

As well as setting out a number of guiding principles for the management of prisoners, the Guidelines are presented in a number of sub-groups. The relevant sub-groups for this discussion include custody, care and wellbeing, rehabilitation and reparation. The discussion below is organised to reflect the structure of the Guidelines.

Custody

We noted at the outset of this discussion that corrections departments generally (despite their name) were moving away from any objective of rehabilitation of prisoners and that the interviewees in our study did not perceive the objective of MSUs as rehabilitative.⁴⁴ However, this raises the question of how the role of the MSU is perceived. The Guidelines specify that imprisonment is punishment and "prison systems should ensure that prisoners are not further punished for their crimes over and above the sentence imposed by the Court".⁴⁵ Further, the security classification of a prisoner should be based on "an objective assessment of dangerousness and a risk management strategy that takes into consideration the nature of their crime, risk of escape and their behaviour in custody".⁴⁶

On one level MSUs can be understood as a management tool designed to deal with high-risk prisoners. However our interviewees had a different view about how MSUs are being used. First, while MSUs are clearly utilised as a tool to deal with high-risk prisoners, a view that emerged was that this risk was in some cases concerned with "political embarrassment",⁴⁷ rather than objective assessments of dangerousness. Second, our interviewees overwhelmingly viewed MSUs as a punishment tool.⁴⁸ One respondent noted that the MSU:

services a punishment culture. It's another way in which prisoners can be categorised and segregated and treated differently ... to further punishment within the [prison] system, and that's to me apparently the function of an MSU.⁴⁹

The Guidelines advise that requests and complaints by prisoners should be able to be "made at any time and shall be handled promptly and effectively by the prison".⁵⁰ While complaints and

³⁸ *Corrective Services Act 2000* (Qld), s 49.

³⁹ *Corrective Services Act 2000* (Qld), s 50.

⁴⁰ Department of Corrective Services, "Separation Consultation Paper" (Goprint, 2004).

⁴¹ Department of Corrective Services, n 40 at 15, 16, 18.

⁴² See Department of Corrective Services, "Review of the Corrective Services Act 2000: Consultation Report" (Goprint, 2005).

⁴³ See *Standard Guidelines for Corrections in Australia*, n 5 and Groves, n 5 at 14, see fn 155.

⁴⁴ A prison delegate, Hunter, recognised the negative impact of MSU incarceration on rehabilitation prospects: see *Garland v Chief Executive, Department of Corrective Services*, [2004] QSC 450 at [19] (White J).

⁴⁵ *Standard Guidelines for Corrections in Australia*, n 5 at [1.21].

⁴⁶ *Standard Guidelines for Corrections in Australia* n 5 at [1.38].

⁴⁷ Interview Transcript E at 6.

⁴⁸ Interview Transcript B at 5, Interview Transcript D at 3, Interview Transcript G at 5, Interview Transcript A at 21, Interview Transcript I at 18, Interview Transcript E at 8.

⁴⁹ Interview Transcript I at 2.

⁵⁰ *Standard Guidelines for Corrections in Australia*, n 5 at [1.23].

requests may be able to be made, there was concern that such concerns are not handled effectively by prison authorities. We have already noted that the Act allows for an official visitor to review MSOs, however, the legislation also confirms that the chief executive is not bound by the official visitor's decision.⁵¹ Some of the interviewees expressed frustration about the lack of power that could be exercised by the official visitors.⁵² This concern is reflected in a recent Consultation Report that noted concerns about the official visitors scheme including a lack of coordination of the program and a perception by prisoners that it is too closely linked to the Department of Corrective Services.⁵³

Currently, prisoners can apply for a reconsideration of a decision about their classification.⁵⁴ Such decisions are decided internally by the chief executive.⁵⁵ Although the interviewees accepted that avenues were available for prisoners to make complaints about conditions within the prison system, they suggested that often MSU prisoners perceived there were risks involved in making complaints. Some interviewees suggested that prisoners in MSUs may be reluctant to make complaints in an effort to avoid making a fuss or being perceived to be a trouble-maker, fearing that their complaints will be weighted against them when the review of their MSO takes place and a history of complaints will cause adverse outcomes.⁵⁶

Theoretically prisoners can also seek to have certain decisions judicially reviewed⁵⁷ and some have pursued this option. The decision of the chief executive to make an MSO pursuant to the Act is a decision to which judicial review applies.⁵⁸ Fletcher has noted the limitations of this process. Judicial review often takes more than six months for a decision to be made,⁵⁹ it is expensive, prisoners usually require legal representation to manage the process and the court can only return the decision to the original decision-maker to reconsider according to law.⁶⁰ One of the interviewees described the practical availability of judicial review to prisoners in MSUs as an "illusion ... a mirage".⁶¹ Another limitation of judicial review is that generally courts have expressed a reluctance to interfere with prison discipline processes on the basis that the disciplinary regime may be compromised and corrections staff would be undermined.⁶² Ironically, this approach effectively reinforces the managerialist culture of prisons, focusing on management concerns rather than prisoner wellbeing. More particularly, as Groves has pointed out, this approach leaves prisoners, who are usually already isolated and under-resourced, in a particularly vulnerable position with respect to breaches of the principles of natural justice.⁶³ Groves also points out that there are few other areas of public law where the courts pay such high regard to an administrator's decisions.⁶⁴

⁵¹ See *Corrective Services Act 2000* (Qld), s 50. For example, note McQueen's case where the view of the official visitor was overridden by the chief executive: *McQueen v Chief Executive, Department of Corrective Services* [2002] QSC 421 at [7] (Mullins J).

⁵² Interview Transcript K at 4, Interview Transcript A at 11.

⁵³ Department of Corrective Services, "Review of the Corrective Services Act 2000: Consultation Report" (Goprint, 2004) pp 27, 29.

⁵⁴ *Corrective Services Regulations 2001* (Qld), s 4 (2).

⁵⁵ *Corrective Services Regulations 2001* (Qld), s 4 (3).

⁵⁶ Interview Transcript L at 6, 22, Interview Transcript I at 14.

⁵⁷ Pursuant to the *Judicial Review Act 1991* (Qld).

⁵⁸ *Judicial Review Act 1991* (Qld), s 4, see also Land WB and Young S, *Administrative Law in Queensland* (Lawbook Co, 2001) p 68.

⁵⁹ See, eg *Masters v Chief Executive, Department of Corrective Services* (2001) 121 A Crim R 173; [2001] QSC 55.

⁶⁰ Fletcher K, "Avenues for Review of Decisions Affecting Prisoners in Queensland" http://www.hreoc.gov.au/human_rights/prisoners/internal_merits_review.html viewed 31 August 2005. See *Judicial Review Act 1991* (Qld), ss 20, 21.

⁶¹ Interview Transcript L at 4.

⁶² Groves M, "Proceedings for Prison Disciplinary Offences: The Conduct of Hearings and Principles of Review" (1998) 24 Mon LR 338 at 350. *Flynn v The King* (1949) 79 CLR 1 at 8 (Dixon J). The point is echoed by Douglas J in *Masters v Chief Executive, Department of Corrective Services* (2001) 121 A Crim R 173 at [14]; [2001] QSC 55.

⁶³ Groves, n 62 at 351.

⁶⁴ Groves M, "Administrative Segregation of Prisoners: Powers, Principles of Review and Remedies" (1996) 20 MULR 639 at 687.

Further, an overarching principle set out in the Guidelines is that prisoners should be managed fairly and openly.⁶⁵ One of the recurring concerns of the interviewees was that prisoners were frequently uncertain about what had led to their placement in the MSU. Interviewees pointed out that although prisoners were usually aware of the prison authority's stated reason for their placement in the MSU, because of concerns of security risk they were often not advised of the evidence or foundation for the reason.⁶⁶ This lack of information makes it difficult for prisoners to contest the claims made in relation to risk. An MSO requires that the prisoner is considered, on reasonable grounds, to present a high risk of escape or violence.⁶⁷ Interviewees were concerned that the question of risk was not required to be examined in any systematic manner which in turn left a broad discretion for prison authorities to make MSOs. Interviewees suggested that the MSO could be based on rumour, innuendo and stories circulated by other prisoners.⁶⁸ For example, one interviewee suggested that it would not be difficult to start a rumour that a specific prisoner was developing an escape plan and such a rumour could form the basis of the reasonable grounds for risk of escape and thus for the making of a MSO.⁶⁹ It has been held by the Queensland Supreme Court that there must be reasonable grounds to support a view that the relevant high risk is continuing.⁷⁰ In *Kidd v Chief Executive, Department of Corrective Services* [2001] 2 Qd R 393; 117 A Crim R 201 White J pointed out that there should be independent support for any relevant information obtained from an informant.⁷¹ It may however be difficult to contest the reasonable ground alleged without resorting to judicial review. We have already mentioned the problems associated with this approach.

Once a decision has been made to place a prisoner on an MSO, the order may be difficult to displace. This links to another concern expressed by the interviewees, that prisoners can never be sure of the duration of their placement in an MSU.⁷² The underlying policy in relation to MSUs is that they should be utilised only as a short-term placement option in response to breaches of discipline.⁷³ However, although the initial order can only be for a maximum period of six months, these orders can be rolled over on consecutive occasions potentially indefinitely.⁷⁴ In this sense it has characteristics of being a form of indefinite sentence.⁷⁵ In fact, in the view of interviewees, the majority of MSOs will be "rolled-over".⁷⁶ For example McQueen⁷⁷ had been placed on an MSO in 1997 and was subsequently convicted of further offences in 1998. McQueen's MSO was reviewed by official visitors in 2001 on two occasions. In the second review the official visitor reported that:

Inmate McQueen has been a MSU prisoner for 4 years. Every six months his MSO is renewed through an unvaried process of written communication with the Office of Sentence Management ... The content is the same – only the dates change ... (Prisoners tell me these letters are distressing, depressing and offer little hope for the future.)⁷⁸

A decision was made by the executive officer to renew McQueen's MSO yet again in 2002. McQueen appealed the decision. Although there was some evidence that McQueen's behaviour had substantially improved over a period of time the chief executive officer and the presiding Judge appeared to accept that McQueen had not reached the stage where his past history was displaced by

⁶⁵ *Standard Guidelines for Corrections in Australia*, n 5, at [12].

⁶⁶ Interview Transcript I at 6-7, Interview Transcript L at 1.

⁶⁷ *Corrective Services Act 2000* (Qld), s 47(2)(b).

⁶⁸ Interview Transcript F at 4, 10, Interview Transcript I at 3-4. It may also be difficult for a prisoner to obtain reasons for placement on an MSO. See, for a good example, *Masters v State of Queensland* (2001) 121 A Crim R 173 at [19]; [2001] QSC 55.

⁶⁹ Interview Transcript I at 4.

⁷⁰ *Kidd v Chief Executive, Department of Corrective Services* [2001] 2 Qd R 393 at [29]; 117 A Crim R 201.

⁷¹ *Kidd v Chief Executive, Department of Corrective Services* [2001] 2 Qd R 393 at [30] and [31]; 117 A Crim R 201.

⁷² Interview Transcript K at 3, Interview Transcript G at 2, Interview Transcript B at 4, Interview Transcript I at 7, Interview Transcript L at 11, 27.

⁷³ See Department of Corrective Services, "Procedure, Offender Management- Maximum Security Units" (1 July 2001) Policy Document at [3.14].

⁷⁴ *Corrections Act 2000* (Qld), ss 47, 48.

⁷⁵ Interview Transcript I at 7. See, eg *Penalties and Sentencing Act 1992* (Qld), Pt 10.

⁷⁶ Interview Transcript I at 7.

⁷⁷ *McQueen v Chief Executive, Department of Corrective Services* [2002] QSC 421.

⁷⁸ Extracted in *McQueen v Chief Executive, Department of Corrective Services* [2002] QSC 421 at [8] (Mullins J).

his current acceptable behaviour.⁷⁹ The MSO was allowed to continue. Garland is another prisoner whose MSO has been extended at each review. When he last appeared before the Supreme Court to apply for judicial review of the latest “roll-over” of his MSO, he had been in the MSU for seven years⁸⁰ – clearly not a short-term placement in his case. Relevantly, judges have expressed concern that the renewal of an MSO should not become a “rubber-stamp” exercise.⁸¹

The physical safety of prisoners within MSUs has not been a specific focus of the Act. Although a recent consultation paper distributed by the Office of Corrective Services noted that MSUs are designed to “provide a safe and secure environment for the management of high risk and dangerous prisoners”,⁸² their effectiveness in this regard is perhaps questionable in light of recent events. In spite of the high security within MSUs, in 2003 Mark Day was murdered in the exercise yard of the MSU at Sir David Longlands prison. According to news reports of the incident Day was bashed for 14 minutes without any interruption from prison staff.⁸³ This clearly runs contrary to the Standard Guidelines that prescribe that: “Prisons should provide for the personal safety of staff and prisoners by ensuring a prison environment that protects the physical, psychological and emotional well-being of individuals.”⁸⁴ Personal wellbeing is not restricted to physical safety. As the Guidelines make clear, “[a] prisoner who is under punishment should be provided with information concerning the duration and nature of the punishment ... [p]rolonged solitary confinement ... sensory deprivation ... should not be used”.⁸⁵

Interviewees expressed concern about the high level of isolation experienced by prisoners in the MSUs. One interviewee pointed out that the cell doors in one MSU were off-set in such a way that the prisoners can not see each other.⁸⁶ Another interviewee made the comparison between the design of one MSU with the solitary confinement units of the Port Arthur prison designed in the 1800s as a solitary confinement unit.⁸⁷ According to some interviewees the severe restrictions placed on social interaction in the MSU’s was particularly devastating to prisoners’ wellbeing.⁸⁸

Care and wellbeing

A number of the interviewees commented on what they saw as unacceptable standards relating to care and wellbeing for prisoners within MSUs. A number of interviewees commented on the lack of natural light,⁸⁹ as well as a lack of mental stimulation, be it from a lack of variety in food, the limitations on visitors, or on limitations stemming from the small size of MSU cells.

Interviewees pointed out that many prisoners in MSUs are required to spend up to 23 hours a day in their cell.⁹⁰ Perhaps it was this factor that caused interviewees to complain that prisoner’s cells in

⁷⁹ *McQueen v Chief Executive, Department of Corrective Services* [2002] QSC 421 at [23], [28] (Mullins J).

⁸⁰ See *Garland v Chief Executive, Department of Corrective Services* [2004] QSC 450 at [8] (White J). Garland is a serial sex offender who has committed many of his prior sexual offences whilst in custody.

⁸¹ See *Abbott v Chief Executive, Department of Corrective Services* [2000] QSC 492 at [32] (Williams J). See also Interview Transcript B at 4.

⁸² Department of Corrective Services, “Separation Consultation Paper” (Goprint, 2004) at 10.

⁸³ See especially Doneman P, “Jail Film Captures 14 minute Yard Fight”, *The Courier Mail* (24 October 2003) p 3. See also Macfarlane D, “Killers Battle in Prison-Yard Fight to Death”, *The Australian* (9 October 2003) p 3; Doneman P and Wardill S, “Jail Bashing Brings Murderer’s Life of Violence to a Bloody End”, *The Courier Mail* (9 October, 2003) p 2. It was reported that although two guards were held responsible and sacked as a result of the killing they were later reinstated in response to industrial action. See Finnilla R, “Guards Reinstated After Strike”, *The Courier Mail* (21 July 2004) p 15. See also Interview Transcript F at 7.

⁸⁴ *Standard Guidelines for Corrections in Australia*, n 5 at [1.27].

⁸⁵ *Standard Guidelines for Corrections in Australia*, n 5, see [1.74] – [1.75].

⁸⁶ Interview Transcript H at 10.

⁸⁷ Interview Transcript I at 17, Interview Transcript K at 6. For a discussion of prison design see also Gibney, n 2. See also Finnane M, *Punishment in Australian Society* (Oxford University Press, 1997) p 22, for a discussion of the design of the Port Arthur Penitentiary.

⁸⁸ Interview Transcript I at 15 and Interview Transcript L at 7.

⁸⁹ Interview Transcript I at 13, 17, Interview Transcript F at 4 and Interview Transcript G at 6.

⁹⁰ Such levels of confinement are also reported in other jurisdictions, see *Bekink v The Queen* (1999) 107 A Crim R 415 at 416 (Ipp J). This was a Western Australian matter.

the MSUs were too small.⁹¹ However, it is presumed that the cells are actually at least the minimum size recommended by the Guidelines.⁹²

The Guidelines also recommend that:

prisoners should be allowed access to open air for at least one hour everyday ... [when] possible, prisoners should be allowed access to a range of sports, recreational and cultural activities ... [and] to a library adequately stocked with ... resources ... [and] to computers for legitimate study purposes.⁹³

Some interviewees suggested that MSU prisoners were never allowed access to "open air" in any true sense. Several interviewees explained that the exercise yards in the MSUs that they had visited were concrete areas covered with security mesh which allowed only a "speckled light" to filter through the mesh.⁹⁴ The United Nations *Standard Minimum Rules for the Treatment of Prisoners* notes that prisoners should have sufficient access to natural light to read or work by.⁹⁵ Although this requirement does not appear to be mirrored in the Guidelines, many of the interviewees we spoke to were concerned about the lack of natural light available to MSU prisoners.⁹⁶ One interviewee noted:

They have a window [in their cell] but it's quite high, so I imagine they could see the sky, but that's all they could see. The prisoners all looked grey because they couldn't get any sun.⁹⁷

According to the interviewees, sports, recreational and cultural activities were almost non-existent for MSU prisoners.⁹⁸ Most interviewees understood that MSU prisoners were released from their cells from one to four hours each day.⁹⁹ Although one hour per day is the minimum required pursuant to the Guidelines, interviewees suggested that the isolation this imposed on prisoners was akin to a form of sensory deprivation¹⁰⁰ and dangerous to prisoner's mental health.¹⁰¹ Several interviewees commented that the MSUs they had visited appeared to be designed so that prisoners would not be able to see other people in the hallways.¹⁰² Generally, interviewees reported that MSU prisoners were allowed extremely limited human contact.¹⁰³ According to interviewees some prisoners were allowed to have contact with only one or two specific individuals for years on end.¹⁰⁴ One interviewee commented that "entire social lives revolve around one person".¹⁰⁵

Rehabilitation and reparation

The Guidelines stipulate that case plans and classifications should be regularly reviewed.¹⁰⁶ As a result of the six-month maximum period allowed for an MSO, they must be reviewed at least every six months. We have earlier pointed out concerns with the uncertainty of the duration of MSOs and the concern that some reviews are merely a "rubber-stamp" process.¹⁰⁷ Related to the concerns noted

⁹¹ Interview Transcript K at 7, Interview Transcript I at 3, 13.

⁹² The Guidelines require that "cells ... should be consistent with the [recognised] standards relating to size, light, ventilation etc", see *Standard Guidelines for Corrections in Australia*, n 5, at [2.3]. Reference is made to the Standard Guidelines for Prison Facilities in Australia and New Zealand (1990).

⁹³ *Standard Guidelines for Corrections in Australia*, n 5, see [2.47] – [2.50].

⁹⁴ Interview Transcript B at 8, see also Interview Transcript I at 17, Interview Transcript F at 4, Interview Transcript K at 6.

⁹⁵ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, Rule 11(a) http://www.unhcr.ch/html/menu3/b/h_comp34.htm viewed 31 August 2005.

⁹⁶ Interview Transcript I at 13 and 17, Interview Transcript G at 6, Interview Transcript B at 8, Interview Transcript H at 7, Interview Transcript K at 7.

⁹⁷ Interview Transcript F at 4.

⁹⁸ Interview Transcript I at 15, this interviewee pointed out that MSU prisoners do not have access to the oval or gym and limited to activity in a concrete exercise yard.

⁹⁹ Interview Transcript K at 6, Interview Transcript B at 6, Interview Transcript F at 4

¹⁰⁰ Interview Transcript H at 10, Interview Transcript I at 3.

¹⁰¹ Interview Transcript G at 6.

¹⁰² Interview Transcript F at 4, Interview Transcript H at 2, Interview Transcript I at 13, Interview Transcript K at 6.

¹⁰³ Interview Transcript I at 15, Interview Transcript F at 4, Interview Transcript G at 6.

¹⁰⁴ Note *Abbott v Chief Executive, Department of Corrective Services* [2000] QSC 492 at [32] (Williams J). Abbott was allowed to have contact with two other prisoners.

¹⁰⁵ Interview Transcript L at 7.

¹⁰⁶ *Standard Guidelines for Corrections in Australia*, n 5, see [3.5].

¹⁰⁷ See *Abbott v Chief Executive, Department of Corrective Services* [2000] QSC 492 at [32] (Williams J).

above, the interviewees noted that monotony and boredom within MSU's was a serious concern.¹⁰⁸ One interviewee reported that life in the MSU was so tedious for prisoners that they: "unthread their clothing so that they can make patterns out of the threads and count [them]."¹⁰⁹

The Guidelines state that: "particularly longer-term prisoners should be provided with programmes ... that will assist them to make a successful transition ... to community life."¹¹⁰ However, interviewees were concerned that access to courses and programmes for prisoners in MSUs was severely restricted and most had very little access to computers and library facilities.¹¹¹ Further, although the Guidelines also require that all sentenced prisoners should be required to work,¹¹² interviewees reported that there is very little employment provided to prisoners within the MSUs; presumably this is because of security concerns.¹¹³ One interviewee explained: "there's nothing else going on and it's just an environment of boredom punctuated by absolute terror, and paranoia."¹¹⁴

Related to the lack of work and study prospects in MSUs, interviewees expressed particular concerns with the lack of preparation given to prisoners for reintegration into the mainstream prison community¹¹⁵ and in some cases reintegration directly from the MSU into the community outside of prison. Given that most interviewees suggested that the MSU experience was a significant cause of psychological damage to prisoners,¹¹⁶ it is a particular concern that they are not provided with appropriate skills to assist in reintegration. It is of course especially disturbing that prisoners could be released directly from an MSU into the wider community; however, interviewees reported that this has in fact occurred.¹¹⁷

CONCLUSION

The central theme that emerges in our research is the divergence between the rhetoric associated with MSUs and their practical reality. Over time, the gap has narrowed. This is not because there have been substantial improvements in the operations of the MSUs, but primarily because the high-flown rhetoric of rehabilitation and other lofty goals has been abandoned for more pragmatic and, arguably, politically motivated statements of purpose. Thus, the more enduring trend is of the progressive discarding of rhetoric associated with core tenets of a more humane corrections policy and their replacement by a more instrumentalist policy. Others have also noted this shift in prison policy generally. Garland, for example, suggests that, with respect to corrections, we inhabit a "post-rehabilitative era"¹¹⁸ and that we are focused on managerialism.¹¹⁹

Another theme that is of some importance, and was emphasised by a number of interviewees to varying degrees, is the perceived shift in control and decision-making towards a more centralised, department-focused, process and away from local decision-makers at the prisons. As Garland notes, this trend towards increasing centralisation is consistent with a shift away from rehabilitation and characteristic of a move towards managerial methods of governance.¹²⁰ Garland suggests that such methods are adopted by politicians unwilling to devolve political power and increasingly concerned with fiscal responsibility and value for money.¹²¹ This centralisation is problematical in other ways as

¹⁰⁸ Interview Transcript B at 4, Interview Transcript J at 7.

¹⁰⁹ Interview Transcript H at 4.

¹¹⁰ *Standard Guidelines for Corrections* in n 5, at [3.14], see also [3.6].

¹¹¹ See Interview Transcript A at 6, Interview Transcript B at 6, Interview Transcript F at 6.

¹¹² *Standard Guidelines for Corrections in Australia*, n 5, see [4.4].

¹¹³ Interview Transcript I at 18, Interview Transcript L at 7. An interviewee noted that one MSU provided some cleaning positions, see Interview Transcript L at 7. See also *Abbott v Chief Executive, Department of Corrective Services* [2000] QSC 492 at [3] (Williams J), where Abbott makes reference to his cleaning duties in the MSU.

¹¹⁴ Interview Transcript J at 8.

¹¹⁵ Interview Transcript I at 10 and Interview Transcript L at 20.

¹¹⁶ Interview Transcript I at 8, Interview Transcript J at 8, Interview Transcript A at 21.

¹¹⁷ Interview Transcript E at 9.

¹¹⁸ Garland D, *The Culture of Control* (Oxford University Press, 2002) p 170, see also p 16. The trend away from rehabilitation is also discussed by Brown D and Wilkie M, "Introduction" in Brown D and Wilkie M (eds), *Prisoners as Citizens: Human Rights in Australian Prisons* (Federation Press, 2002) pp xx.

¹¹⁹ Garland, n 118 at 18. Similar comments were also made in Interview Transcript C at 5.

¹²⁰ Garland, n 118 at 188-190, 273.

¹²¹ Garland, n 118 at 188-190, 273.

well. As one of our interviewees notes, there is the "danger of linking the minister for police and minister for prisons, corrections and police should be separate portfolios, because of the link frank debate about the issues is difficult".¹²²

Also at issue is the question of whether it is appropriate for a government Minister to be placed in a position where they are required to think of policing and corrections as a single, seamless, entity, particularly given the close connection between policing, prosecution and incarceration. While perhaps this is an efficient combination of functions from a resource perspective, it is less obviously so when we turn to a consideration of issues of justice and fairness.

It is clear that many of the prisoners currently incarcerated in Queensland MSUs have committed some extremely serious crimes, frequently whilst they have been in custody in the general prison population. While this may underline the need for specialist management tools in their specific circumstances, it does not justify what we suggest is treatment which is simply inhumane. One of interviewees described Queensland's MSUs in the following way: "They're just very dangerous things – inhuman, and if you treat people inhumanly then they'll act like animals."

The picture painted by many of the interviewees we spoke to recalls images from the 1988 film *Ghosts of the Civil Dead*.¹²³ The film tracks the lives of prisoners who are subjected to escalating brutality, confinement and denial. We watch them become increasingly dehumanised. Most disturbingly though, the film concludes with one of the prisoners being released directly from this ordeal and into the community where we presume he will wreak his revenge. In the MSU environment it seems that prisoners are stripped of dignity and all practical and social skills, indeed of their humanity. It may be necessary to utterly curtail an individual's freedom for the safety of others in some circumstances. However it is not an inevitable consequence of this that all meaning and activity are removed from a prisoner's life. As one of interviewees concluded, in a comment reminiscent of the work of John Rawls:¹²⁴

an assessment of the humanity of the society is an analysis of how they treat their prisoners ... It's that fundamental – you judge a society by its tolerance – by how they treat their prisoners and in this case ... our society is treating him intolerably.¹²⁵

¹²² Interview Transcript G at 4.

¹²³ Directed by John Hillcoat.

¹²⁴ Rawls J, *A Theory of Justice* (Harvard University Press, 1971).

¹²⁵ Interview Transcript B at 11, 12, see also Interview Transcript J at 8.