

The Inspector's Overview

MOVING FROM RIOT AND DISARRAY TO A BETTER FUTURE

INTRODUCTION

On the evening of Sunday 20 January 2013, an extremely serious incident of mass disorder erupted at Banksia Hill Juvenile Detention Centre ('Banksia Hill'). It was by far the most serious incident of this type in Western Australia since the Casuarina Prison riot of Christmas Day 1998 and can fairly be described as a 'riot'.

On 21 January 2013, the then Minister for Corrective Services Hon Murray Cowper MLA directed me to undertake a review of the incident. The terms of reference included the context of the incident and its contributing or causal factors; security infrastructure and practices; the adequacy of emergency management planning and responses; and the subsequent housing of detainees at Hakea Prison. He also asked me to review staffing levels at Banksia Hill and the impact of the incident on staff.ⁱ

This report makes some strong criticisms and wide-reaching recommendations. However, it is important to emphasise that many staff in the Department of Corrective Services ('the Department') demonstrated courage, strength of character and good judgement at the time of the riot and have continued to do so. They deserve the community's respect, admiration and gratitude.

It is also important to emphasise that this is not a report about the individual responsibility of detainees on the night. That is a matter for the Western Australia Police (WAPOL) and the Department. WAPOL has carried out investigations and a number of charges have been laid as a result. I have found that Banksia Hill's problems have many dimensions and had been escalating over the 18 months preceding the riot, but this does not justify destructive behaviour.

REPORT AND ACKNOWLEDGMENTS

This report contains 35 recommendations. Some involve matters that lie within the control of the Department but many involve broader questions for government. The recommendations are essentially directed at outcomes rather than processes. They aim not only to enhance safety and security for staff and detainees at Banksia Hill but also to improve community protection, the treatment of detainees, efficiency and accountability.

This report is accompanied by a number of Review Papers. These papers examine issues such as security, infrastructure, governance, emergency management and staffing in more detail than this report and each one is a significant resource in its own right. In order to provide additional expertise and 'fresh eyes', a number of consultants assisted in the review. Their knowledge, experience and insights have been invaluable.

Contemporaneously with this review the Auditor General conducted a performance audit of the project to redevelop Banksia Hill in the period from 2009 to 2012. His audit was fully independent of my Inquiry but the findings of the two reports are consistent in every respect.ⁱⁱ

i The Inspector of Custodial Services is accountable to Parliament, not to the government, and can therefore decline to undertake a direction. However, I readily agreed to undertake this Inquiry.

ii See www.audit.wa.gov.au

I would like to acknowledge the active and positive engagement in this review by a large number of people in the Department of Corrective Services, especially during a tumultuous time for the Department. I have shared the key findings of this Inquiry with the Department throughout, and it has had opportunity to comment on the draft report. Those inputs and engagement are greatly appreciated. I have also held meetings with representatives from a number of other government departments.

In the course of this review we received a number of submissions from professional bodies, advocates and other interested parties.ⁱⁱⁱ In addition, we consulted with families and key service providers. Again, I am most appreciative of these valuable contributions.

A PLEA FOR RATIONAL DEBATE

There has been a good deal of media and political interest in the events of 20 January and their aftermath. In addition, over the past month, the Department has been the subject of unprecedented media criticism. This report contains many negative findings and it is likely in the current climate, that these will gain the most attention. However, I urge commentators, politicians and readers to approach the report with a sharp and objective focus on its recommendations about future improvements. It is important to understand and reflect on past failings but sensationalism and point-scoring will do nothing to improve community safety, the circumstances of young people in detention, or the morale and safety of youth justice staff and management. Nor will they contribute to future improvement.

WHAT HAPPENED AND WHAT DIDN'T HAPPEN ON 20 JANUARY?

In understanding events on the night, and in developing a balanced response, it is important to bear some fundamental points in mind. The damage caused by the detainees, especially to their cells and living areas, was unacceptable, affronting and costly, and many people were traumatised, including detainees as well as staff. However, the detainees did not target staff with violence and essentially avoided any such contact. They did not attempt to escape and did not light fires, and there is no evidence of detainee on detainee violence or of gang related violence.

A FRAGILE FACILITY WHERE A MAJOR SECURITY INCIDENT WAS ENTIRELY FORESEEABLE^{iv}

Western Australia previously had two juvenile detention centres, Banksia Hill and Rangeview Remand Centre. In early 2009, the government announced that Rangeview would be converted to a minimum-security prison for young adult men and that Banksia Hill would become the sole detention centre. The last of the Rangeview detainees moved to Banksia Hill on 5 October 2012 and the privately operated Wandoo Reintegration Facility opened at the old Rangeview site in November 2012.

iii These are not separately published but are available at www.oics.wa.gov.au

iv See Chapters 2 and 3.

Unfortunately, the project to amalgamate Rangeview with Banksia Hill was fraught with difficulty. There were promising signs in the early stage, though progress in developing key documentation was too slow. In mid-2011 the Centre appeared reasonably well-placed but there were significant fragilities including staff shortages, excessive lockdowns of detainees in their cells, poor responses to detainee misbehaviour and an increasing disconnect between management and staff regarding amalgamation.^v Had these issues been addressed at the time, the risks would have been reduced.

During the remainder of 2011 and through to amalgamation in October 2012, the risks increased markedly. Further building delays and the difficulty of managing a detainee population alongside a construction site compounded the problems but did not cause them. This period saw an escalation in serious incidents, including assaults on staff, numerous roof ascents, and a violent high-risk escape involving the stealing of a contractor's vehicle in August 2012.

Over the same time period, the Department made too many changes to the management of youth custodial services, both onsite and at head office level. This led to a lack of clear leadership, a lack of continuity and increasing instability. Ultimately, the amalgamation project became a case study in how not to manage change.^{vi}

By October 2012 the Department was in a difficult position. It needed to balance the risks and costs associated with deferring the handover of Rangeview against the risks at Banksia Hill. I have concluded that it placed insufficient weight on the risks at Banksia Hill and did too little to address those risks as they became increasingly evident.^{vii} It is of particular concern that the Department failed to follow through on some specific 'risk mitigation strategies' to which it committed in formal advice to the then Minister for Corrective Services in April 2012. I am also unable to find any rational explanation for how the Department could have allowed amalgamation to proceed in early October when, on 26 October 2012, its security directorate considered that Banksia Hill was 'at crisis point and the risk of a major incident is very real'. The fundamental risk factors were essentially no different on 26 October than they had been for the preceding nine to twelve months.

A new management team which started in November 2012 made immediate efforts to address the problems and had begun to make some progress. However, the issues and risks were so fundamental that they could not be addressed by January 2013.

In summary, the precise events of 20 January were not predictable. However, given the risks at Banksia Hill itself and the lessons to be learned from earlier reports into prison riots in Western Australia, a major security incident was entirely predictable.

v OICS, *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre*, Report No. 76 (Mar 2012).

vi See Chapter 6.

vii In August 2012 I had advised that because of the risks, amalgamation should be deferred by an absolute minimum of one month, with the injection of resources to allow Banksia Hill and the staff at both Rangeview and Banksia Hill to be better prepared. This would not necessarily have prevented the riot but it would have reduced the risks: see Chapter 2.

STABILITY, SAFETY AND SECURITY^{viii}

In the aftermath of the riot, there has been a strong focus on ‘hardening’ the facility by installing bars, and grilles and fences. However, as evidenced in the state’s adult prison system, stability reflects a balanced approach between physical security, procedural security (systems and procedures) and dynamic security (a busy regime and positive professional engagement between staff and detainees).

This report has identified numerous weaknesses in terms of the security culture at Banksia Hill. Fortunately some things are not rocket science and should be capable of resolution with good will and good management. First, idle, bored children will invariably become frustrated and are very likely to act out their frustrations. Bars and grilles will not stop this and it is essential that Banksia Hill returns to providing a full and active regime including rehabilitative programs and recreation.^{ix}

Secondly, there is a lax security culture. For example, we found that some staff have been taking items such as phones, wallets, lighters, keys, tinned food and medications into the centre’s operational areas. This is simply not acceptable. Thirdly, the detainees had easy access to rubble, debris and building materials during the riot and had also used it in previous incidents. Some of this was the result of recent construction activity but the rest had been there for some time. Again this is basic and not acceptable.

EMERGENCY MANAGEMENT PLANNING AND RESPONSES^x

We have concluded that the response to the unfolding emergency on the night was generally good and in many respects exemplary. Incident management was marked by intelligent and pragmatic decision making, with a strong focus on staff safety, and collaboration between the Department and WAPOL was good. It is a credit to all that nobody was seriously injured in such a volatile situation. However, there are some areas of concern and opportunities for improvement in terms of incident management. In particular, there were insufficient welfare checks of those detainees who remained in their cells, some of whom were vulnerable. In addition, key decisions were not properly recorded and some aspects of incident control require consideration.

Whilst the response on the night was generally good, Banksia Hill was very poorly placed in terms of its emergency preparedness. The emergency management plan was out of date, there was no viable contingency plan for evacuation, and staff training was seriously deficient. The report makes a number of recommendations to address these matters.

viii See Chapter 4.

ix This is not only good sense, it is in line with the principles of the *Young Offenders Act 1994*.

x See Chapter 5.

STAFFING AND MANAGEMENT^{xi}

It has become public knowledge since the riot that Youth Custodial Services is facing major staff shortages through high levels of workers compensation claims and unscheduled absenteeism through sick leave. This cultural malaise must be addressed for welfare and financial reasons as well as operational reasons. I make a number of recommendations in this regard.

JUVENILES AT HAKEA PRISON^{xii}

Given the extent of the damage to Banksia Hill and the lack of any alternative juvenile facility, the Department transferred the majority of the detainees to Hakea Prison during the two weeks following the riot. They are still there six months later and at this stage it is not clear when they will start to return to Banksia Hill.

I have reached two primary conclusions. First, after taking full account of the difficult circumstances faced by the Department in the aftermath of the riot, I have concluded that the initial three week period of almost total lockdown of detainees was not reasonable and was not necessary by way of risk management.^{xiii} Secondly, I have concluded that the regime in place subsequently at the Hakea Juvenile Facility has fallen sort of a suitable level of service to young people in detention because of shortfalls in education, programs and recreation, and because of continuing lockdowns. Importantly, as the Chair of the Supervised Release Review Board has told the Inquiry, the lack of programs has also escalated community risk.

In addition, I have recommended that the Department alters its current practices with respect to the use of restraints and strip-searching. Use of both practices has become in many instances routine when it should be based on an individual risk assessment.

THE FUTURE

The immediate challenge facing the Department is the safe and prudent return of detainees to Banksia Hill. It is currently targeting the return to begin in late August 2013 but there is no certainty. The capital works program at Banksia Hill is not yet complete and Youth Custodial Services is still afflicted by serious staff shortages. Realistically, unless there is a sudden and unforeseeable change, it is likely to be several months before all detainees are back at Banksia Hill. It is therefore essential that, despite the physical deficiencies at Hakea, the Department provides a better regime.

Chapter 8 contains a series of recommendations relating to the future. Some of these are matters that the Department must address, including improved record keeping and improvements to the services offered to young people aged 18 to 25 in the adult prison system. Other recommendations will require broader government consideration and direction.

xi See Chapter 6.

xii See Chapter 7.

xiii In a Supreme Court challenge to the legality of the initial transfer of the detainees and the subsequent decisions to declare parts of Hakea Prison to be a juvenile facility, Chief Justice Martin upheld those decisions given the emergency circumstances in which they were made (*Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia* [2013] WASC 157). My findings are not inconsistent with His Honour's views.

As the Inquiry proceeded I formed the view that a fresh approach is required and that responsibility for youth justice services should lie with an agency whose primary responsibility is youth justice, not adult imprisonment. Currently, youth justice services accounts for \$100 million of the Department's total budget but reliable estimates suggest that another \$200 million or more is spent across government on services for youth at-risk. There are strong arguments in favour of a establishing either a new government department or a Youth Justice Commission (along the lines of the Mental Health Commission) to oversee this expenditure and to drive youth justice into the future. Key outcomes should be a sharper focus on regional youth, Aboriginal youth and mental health.

It is clear that more diverse options are required for managing young people in custody, including regional placements. It is striking that Banksia Hill is the largest juvenile detention centre in Australia and that other jurisdictions generally have a range of options. It is also important not to forget the pressing needs of women prisoners. I have therefore recommended that a master plan for the use of all existing custodial facilities, adult and juvenile, should be developed to better inform future investment decisions.

Neil Morgan
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