

Overview

On the evening of Sunday 20 January 2013, an extremely serious incident of mass disorder occurred at Banksia Hill Juvenile Detention Centre ('Banksia Hill'), a facility managed by the Department of Corrective Services ('the Department'). This was by far the most serious incident of this type in Western Australia since what is generally known as the 'Casuarina Prison riot' of Christmas Day 1998. Although the incident had some very specific dynamics and features which set it apart from previous prison 'riots' in Western Australia (for example, staff and detainees were not targeted with violence), the term 'riot' is an apt description of the incident.

Banksia Hill is the state's only juvenile detention centre and at the time, housed 185 males and 21 females. The incident began just before 6.00 pm when three male detainees absconded from one of the units and then used some loose pavers and debris to break another detainee out of his cell. After the first assisted break out, the situation escalated with more and more detainees being assisted to break out of their cells.

The consequences for the detainees were dramatic, with 73 of the male detainees being immediately transferred in the early hours of 21 January 2013 to a nearby adult prison, Hakea Prison ('Hakea'). Within the next three weeks the majority of the remaining male detainees at Banksia Hill were subsequently transferred to Hakea while the damage caused by the riot was repaired and security upgrades implemented. The female detainees continued to be housed at Banksia Hill along with a small number of male detainees under 15 years of age and some older male detainees who needed to be held there for specific purposes.

There is a real risk that during the examination of the substance and detail of a major incident of this sort, that basic principles and governing legal frameworks can be overlooked. There is evidence to suggest that the Department has lost sight of legal frameworks on occasions. In addition, there is also a risk that reactions to riot at Banksia Hill on 20 January 2013 will lead to an erosion of accepted legal principles and standards, either in the short term or in the longer term.

During the course of this Inquiry, however, there has been a sustained focus and attention placed on legal and custodial issues arising from the decision taken by the Department to transfer the male detainees to Hakea and to declare Units 11 and 12 within that facility to be a detention centre. The detention centre at Hakea is known as the Hakea Juvenile Facility ('Hakea JF'). The nature of the detention at Hakea JF and considerable reduction in programmes and recreation for the detainees attracted considerable media attention and resulted in other action being taken which included:

- Landmark proceedings commenced in the Supreme Court of Western Australia, by the legal guardian of one of the detainees who was transferred from Banksia Hill to Hakea. These proceedings challenged the lawfulness of the various decisions made by the Department in transferring the detainees to Hakea and sought prerogative relief and declarations of invalidity with respect to those decisions;
- Unprecedented action taken by the President of the Children's Court of Western Australia to clarify whether, as a matter of law, the harshness of the conditions under which a young offender has been held on remand/and or would serve a sentence of detention at Hakea JF

could be taken into account when sentencing young offenders. In each case coming before the Children's Court in the months following the transfer to Hakea JF, the Judge or Magistrate concerned has sought specific evidence and material from the Department to enable a decision to be made about the extent of harshness caused to the particular child concerned; and

- Concerns expressed to the Department by the Chairman of the Supervised Release Review Board that the functions of the Review Board were affected by the lack of availability for detainees of necessary assessment, treatment, remedial and educational programs.

Many of the findings from this Inquiry about the conditions of detention for the detainees at Banksia Hill and Hakea JF and the need for compliance with both law and practice have been echoed in the course of the legal proceedings above, in submissions to this Inquiry and more generally.

The Department accepts that the management of its youth custodial facilities shall be consistent with the principles of international standards which are reflected in the *Young Offenders Act 1994* (YOA). It has developed a complicated array of Youth Custodial Rules, Standing Orders, Operational Procedures and other notices and instructions, designed to provide guidance to youth custodial officers. However, the layer upon layer of these rules and procedures can be difficult to unravel for those who must apply them, let alone the detainees who are subject to them.

The usefulness and reliability of the rules and procedures is not assisted by the apparent lack of regular review. Youth Custodial Services is currently operating with Standing Orders which are dated 30 June 2009 and are still headed so as to apply to 'Banksia Hill Detention and Rangeview Remand'. The current Youth Custodial Rules are expressed as being 'effective from 27 August 2012'. However, they were not published by the Department and readily available to staff and detainees until 5 March 2013.

Although some steps have been taken by the Department to review its rules and procedures, the Inquiry has shown that there remains cause for considerable concern about the efficacy of those reviews and whether some of the rules and procedures are in fact compliant with the law and national and international practice.