



YOUR REF:

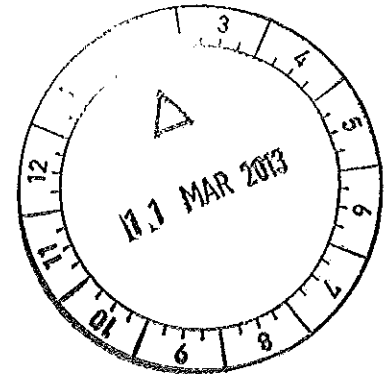
OUR REF:

REPLY TO: PERTH  
FAX (08) 9221 0224

REFER TO: Mr George Turnbull  
(08) 9261 6307

7 March 2013

Mr Neil Morgan  
Inspector of Custodial Services  
Banksia Hill Directed Review  
Albert Facey House  
Level 5  
469 Wellington Street  
PERTH WA 6000



Dear Mr Morgan

### **BANKSIA HILL RIOT INQUIRY**

As you are aware Legal Aid WA has a specialist team of lawyers working as part of the Youthlaw Team within the Criminal Law Division. These lawyers have years of experience working in the Children's Court and have a strong focus on juvenile justice. They specialise in providing legal assistance to young people and over the last few weeks, have been working with clients affected by the fallout of the Banksia Hill Detention Centre riot.

The Youthlaw Team welcome the opportunity to provide you with our thoughts on some of the terms of reference in the enquiry to be conducted by you. In particular, three aspects of the enquiry are relevant to us.

- The context of the incident.
- The facts of any contributing/causal factors.
- Temporary housing of juvenile detainees at Hakea Prison

The context of the incident is to some extent inseparable from the underlying causes and contributing factors and have been dealt with in our submission as one item.

#### **1. The context of the incident, and the facts of any contributing/causal factors.**

In late 2012, Banksia Hill Detention Centre became the sole juvenile detention centre in Western Australia. It is responsible for all male and female detainees ranging from as young as ten years old to some over eighteen years, on remand and sentenced to detention. Previously Rangeview Remand Centre had been the juvenile remand centre for male juvenile offenders, and it had also been the sole detention centre for juvenile females, both on remand and sentenced to detention.

### Amalgamation of Rangeview Remand Centre & Banksia Hill Detention Centre

It is in our view not advisable to have detainees on remand in the same facility as young people serving sentences of detention.

Detention is a sentence of last resort. Juveniles serving sentences of detention tend to be young people who have either committed extremely violent offences or those who have been in the justice system to such an extent that the extent and seriousness of their offending history or lack of compliance with court orders has resulted in a detention sentence. In contrast, juveniles on remand may be newcomers to the justice system or may be vulnerable young people for whom safe and stable accommodation is not available. For many years, children in the care of the CEO of DCP, and other young people who are homeless but not regarded by DCP as being in need of protection and care have spent periods of time in custody on remand because they have been difficult to place in suitable accommodation. These young people frequently suffer from mental health issues or have substance addictions which result in them spending time on remand whilst accommodation is sourced.

Young offenders on remand generally have serious and multiple welfare issues. Many of these young people have not committed offences which in themselves would warrant sentences of detention. They are extremely vulnerable and should not be in detention alongside juvenile offenders serving sentences of detention.

Whilst the conditions for the female detainees at Rangeview had not been ideal, as the girls were cramped into one unit and had less access to recreational facilities, Rangeview, as a Remand Centre, functioned reasonably well.

### Lack of Liaison Unit at Banksia Hill

Rangeview had a Liaison Unit which was able to answer queries from parents, relatives and also lawyers, for a wide range of issues about the detainees. The Liaison Unit assisted with: court information; arranging visits; ensuring access to legal advice; ensuring that any concerns they had about the young people were passed on to the appropriate person and maintaining open communication with the Youthlaw Team at Legal Aid WA.

When detainees on remand were transferred to Banksia Hill Detention Centre, Case Planning was the contact point for enquiries. Due to a different shift structure and the changed nature of the role of Case Planning, it was not possible to speak to someone in Case Planning outside office hours. This meant that it was more difficult to arrange legal appointments or to speak to clients on the telephone out of hours as there might be no one available to transfer calls to the units.

### Difficulties with Appointments

The difficulties experienced in trying to see clients were exacerbated by the lack of readiness for the move of all detainees to Banksia Hill DC. The building works were not completed and the changed roles for staff did not appear to have been properly sorted out. For example, whilst the new interview rooms were an improvement on what had been available at Rangeview RC, there were only four rooms available at

any time. Visiting times for lawyers were vastly reduced. The timetable for visits on week days was as follows:

Monday: 9am -10am (3 x visitor slots); 10am -11am (3 x visitor slots); 1pm – 2pm (2x visitor slots); 2pm – 3pm (2x visitor slots)

Tuesday, Thursday and Friday 9am -10am (2x visitor slots); 10am -11am (2x visitor slots); 1pm – 2pm (2x visitor slots); 2pm – 3pm (2x visitor slots)

Lawyers were not permitted to visit over weekends or outside the official visiting hours and there were no visiting times officially available on Wednesdays due to the Supervised Release Board Meetings.

As these visiting hours had to cater for staff from every agency (for example, Youth Justice, Court Assessment Treatment Service (CATS), DCP, Metropolitan Youth Bail Service, Victim Mediation, and legal representatives) who needed to interview the young people, this meant that the availability of appointments was limited.

Most criminal lawyers who practise in the Children’s Court are in Court on weekday mornings. When detainees are appearing in court via a video link from Banksia Hill DC in the afternoon, one of the interview rooms available is occupied for that purpose. It is common for lawyers to attend the Detention Centre to appear next to their clients over the video link, so that they can take instructions and explain the proceedings in person if necessary.

The lack of interview space and the restrictions on interview opportunities have been extremely frustrating for detainees who were stressed about their Court appearances, and for their lawyers who need privacy and time to explain sensitive and complex legal issues in an appropriate way. The inadequacy of the detention accommodation and interview facilities at the Perth Children’s Court has, for many years, been continually raised at interagency meetings with management and the Clerk of Courts at the Perth Children’s Court. It is of concern that young people should have to rely on receiving detailed advice from their lawyers at court on the day of their court appearance, because their lawyers cannot access urgent appointments at Banksia Hill DC.

It is an accepted interpretation of one of the general principles of the *Young Offenders Act 1994* that children have to be dealt with in the shortest possible time frame (“... a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person’s sense of time... s7 (k) *Young Offenders Act 1994*).

### Lockdown

Young detainees in Banksia Hill were spending an unreasonable amount of time in ‘lockdown’. This appears to have been attributable to a number of factors including the need for security whilst building works were being carried out on site, and reduced staff numbers due to a high proportion of staff being absent for various reasons since the amalgamation of Rangeview and Banksia Hill Detention Centres.

It is our view that if young people are not involved in organised structured activities, but made to sit in their cells most of the day with very little to do, it is highly likely that tensions will increase. Lockdown is contrary to the principles of rehabilitation. Access to an education, participation in drug and alcohol misuse programs or the opportunity to gain life skills is not possible whilst locked in a cell all day.

*"I particularly recall one visit to Banksia Hill shortly after the amalgamation of the detention centres to visit and interview a client, on a very hot day. At the end of the interview, my client asked me whether we could just have a chat. I asked him whether he wished to discuss anything in particular. He said, "No, I just don't want to go back to my cell. I have been in there all day and it is very hot and boring."*

Solicitor Youthlaw Team Criminal Law Division, Legal Aid WA

Young people need exercise. For adolescents within the community it is recognised that participation in physical activity brings many benefits both to physical health and also to mental well being.

The negative impact of being in lockdown was noted by the Office of the Inspector of Custodial Services' Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre ("2012 Report number 76"). See in particular the Overview of Findings of the Current Inspection at pages 3-4 para 1.17; Living Conditions p18 para 3.21; Recreation p21 para 3.34). It was also noted in that report that young people had reported the length of lockdowns was a cause of anger and aggression among detainees, as well as contributing to leading to feelings of vulnerability (p25 para 3.46).

The frequency and length of lockdowns was reported as being a concern in relation to the health and wellbeing of the young people in detention as well as a contributing factor to tension and stress within Banksia Hill DC before the amalgamation of the two facilities. Some of our clients in detention on remand are very young and reported feeling vulnerable in Banksia Hill DC. Once Rangeview was closed, the frequency of lockdowns increased.

The atmosphere was negative and morale was low. It was evident that staff were also suffering as a result of continual staff shortages and inadequate resources.

### Summary

Many of the issues reported in 2012 were exacerbated by the hasty and disconnected planning of the amalgamation of Rangeview RC and Banksia Hill DC. Children were moved from Rangeview RC to Banksia Hill DC before buildings at Banksia Hill DC were completed. Staff were stressed and trying to cope with inadequate resources in a challenging environment. There was a lack of cohesion and coordination of services which had previously been available at Rangeview RC with what was available at Banksia Hill DC. Lockdowns increased rather than decreased.

In our submission all of these factors contributed to the incident, impacted negatively on the welfare of detainees and resulted in a growing underlying tension which made trouble inevitable.

## **2. Temporary housing of juvenile detainees at Hakea Prison**

### Lockdown

For a two week period after their transfer to Hakea Prison, young people were detained in 24 hour lockdown. This is unhealthy and we refer to the comments about lockdowns made in the context of the conditions at Banksia Hill before the incident. It is, in effect, a punishment, irrespective of whether it is imposed for security or management reasons. There is no oversight of lockdown by judicial authority and it was applied to young people irrespective of whether or not they took part in the incident which occurred at Banksia Hill DC on 20 January 2013. Since then, there have been frequent lockdowns in which young people were only given access to exercise for one hour a day.

*“Conditions at Banksia Hill DC have not improved with the shifting of the young males to Hakea. For example yesterday, I put through a morning telephone call to BHDC in an effort to speak to one of my [female] clients. I advised that the matter was urgent since the client's next court date was scheduled for 1 March 2013. Liaison didn't know what programmes my client was in and advised that I call again during the detainees' lunch hour, between 12.30 and 1.30 p.m. I called six times within that period and Liaison couldn't raise anyone from the unit to locate my client and get her to a phone. Eventually at 2.05 p.m. I made another call, and my client was brought to a phone. I advised my client that I had been trying to reach her all day, and she told me that she has had no phone calls or visits for the last week. This may or may not be the case, but I certainly experienced frustration trying to contact her. Lack of staffing and organisational management is not the responsibility of the detainees, but they impact negatively on the detainees.”*

Solicitor, Youthlaw Team Criminal Law Division, Legal Aid WA

### Food

Detainees have complained of receiving less food (smaller portions) than they received at Banksia Hill.

*One of my clients told me that he is 'so hungry'; I asked him whether he had enough to eat and he said, "Not really. I am hungry all the time." That child is sixteen years of age.*

Solicitor, Youthlaw Team Criminal Law Division, Legal Aid WA

### Negative atmosphere in the prison

The atmosphere at Hakea is unpleasant and negative. Prison officers have made it clear that they have no time for the juvenile detainees and their attitude is also

reflected in the derogatory way they talk about and refer to the staff from Banksia Hill DC. That this is done in the hearing of lawyers visiting their juvenile clients in our opinion reflects their disregard for any difference between children detained in a juvenile detention facility under the terms of the Young Offenders Act 1994, compared with adults in prison.

One of our clients commented that he was injured when he was thrown from the van onto the ground when he was taken to Hakea. He was being handled by Hakea staff and attended at court with cuts and bruises.

It appears that some of the Hakea staff regard the detainees and the Banksia Hill DC staff with contempt. Banksia Hill staff working at Hakea have acknowledged that they are aware of this attitude. This is an extremely unpleasant and potentially dangerous attitude as the lack of sensitivity permeates the facility.

Hakea Visit - 22 February 2013.

*Visit booked to see 5 clients at 9.00 a.m. A one hour wait before I was taken to the unit to see clients. Another professional - a speech therapist was also kept waiting for the same length of time. We walked in the scorching heat, over a kilometre to the unit. Clients not brought to us because when juveniles are in the official visiting interview rooms, adult prisoners are "locked down" and are unable to access their official visits. Atmosphere in official visiting area was very tense. Staff overseeing adult prisoners very unhappy with juveniles being at centre and voiced negative comments about juvenile detainees and detention centre security staff. In some areas, adult detainees are separated from juveniles by a cyclone fence, covered in places with hessian. Several of the juvenile security staff voiced their concerns to me that the adult prison officers treated them with disrespect and "treated them like s...." Adult prisoners have been verbally abusive, especially in view of the unit the juveniles are using had been used by them for only 2 weeks, then they (the adults) had to return to the sub-standard accommodation they had just left.*

*One juvenile detention officer pointed out to me that it was because they (the BHDC Staff) are so well trained to handle and care for juveniles that there were no serious incidents of assault on either detainees or officers at BHDC during the incident. I have no doubt that the Banksia Hill officers are more a more therapeutic approach rather than a punitive approach to the care of juveniles.*

*The interview facilities in the juvenile unit at Hakea are far from satisfactory - no small personal interview rooms - rather the use of large spaces obviously used for other activities and therefore cannot be used when clients are with their legal reps etc.*

Taken from note of Solicitor, Youthlaw Team Criminal Law Division, Legal Aid WA

### Legislative framework and Education and training

The relevant legislative provisions governing the treatment of young people who come into contact with the justice system is outlined in the Introduction to Chapter 4 of the 2012 Report number 76, at p30.

Young People's rights are enshrined in the legislative provisions of *The Young Offenders Act 1994*. Salient provisions include the following:

Section 6: Objectives

Section 7: General principles of juvenile justice - particularly paragraphs:

- (c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult,*
- (i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 may be held in a prison for adults but is not to share living quarters with an adult prisoner, and*
- (j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways.*

Section 46: Principles and considerations to be applied to young people, particularly subsection (5) -

- (b) giving the offender opportunities to engage in educational programmes (sic) and in employment, but the absence of such participation or opportunities is not to result in the offender being treated more severely for the offence.*

The changes in conditions experienced by young people at Hakea have been reported as being described as "privileges" rather than rights (Mr Sean Stocks, Prosecutor from the Office of the State Director of Public Prosecutions as reported in "The West Australian" 27 February 2013). If this is what was said by Mr Stocks, it contrasts with the summary of "Young People in Detention" found on the website of the Department of Corrective Services of Western Australia in which, under the heading of 'Constructive Day', it is stressed that '[w]hen young people are in detention, it is important that they take part in activities such as school and other activities, that would be expected of them in the wider community. Structured activities like this are known as a constructive day'.

Similarly, the "Standards for Youth Custodial Facilities" (Youth Custodial Rule 102 - Appendix 2) makes it clear that young people are entitled to: an abuse free environment (1.1); academic and vocational programs (4.2); offender programs (4.3); counselling services (4.3); and recreational and leisure activities (4.5). Thus these are promoted within the Department of Corrective Services subsidiary legislation and website as being requirements both of the custodial centre and the young person.

The 2012 Report number 76 found that in Banksia Hill DC under the conditions that existed at that time, “while some excellent interventions are provided to youth at Banksia Hill DC, they are significantly less than those provided to adult prisoners. A more intensive and sustained intervention strategy for detainees involved with substance misuse is warranted” (p4) and “There is nothing like the intensive addiction programs that are available in adult facilities.” (p57 para 6.10).

Similarly, it was noted at p56 of the 2012 Report number 76 that at that time, “work opportunities at Banksia Hill are quite limited in scope, especially when compared to an adult prison”. The provision of work, training education and rehabilitation programs are essential to any rehabilitation within a custodial setting.

If young people had fewer opportunities and less access to these programs in 2011/12 than adults in an adult prison, it contravenes a fundamental principle of *The Young Offenders Act 1994*. It appears that this is even more marked now that young people are being detained in Hakea Prison.

*“My client interview was conducted in the education room. My client had been to classes in the morning but seemed to have nothing to do in the afternoon.”*

*“The detainees have had reduced access to education and training. One client complained that when he went to the education area, they could hear adult prisoners making comments about them in the adjoining unit.”*

Solicitor, Youthlaw Team Criminal Law Division, Legal Aid WA

Should you require any further details or clarification on any aspect of our submission, please contact Maureen Kavanagh, Director, Criminal Law Division, on 9261 6404.

Yours faithfully



George Turnbull  
DIRECTOR OF LEGAL AID