

1 Inspector's overview

Introduction

Western Australia's prison population has risen very rapidly over recent years. Two new prisons have opened in the last four years (West Kimberley and Eastern Goldfields Regional Prisons) but the system has largely absorbed the extra numbers by adding bunk beds to single cells and by adding new accommodation units to existing prisons.

This has led the Opposition and the WA Prison Officers Union (WAPOU) to claim our prisons are overcrowded to the point of crisis, posing risks to staff and prisoners. However, the government and the Department of Corrective Services (the Department) say the system is not overcrowded, the risks are overstated, and there is actually still spare capacity.

Based on a snapshot date of 30 June 2016, this report evaluates:

- different tests of prison capacity
- prison occupancy rates
- whether prisoners' living conditions meet Australian and international standards
- risks arising from current population levels.

Our conclusions

This review is supported by the evidence contained in our inspection reports on individual prisons. It concludes that:

- most of our prisons are very crowded (too many prisoners for the available space and facilities)
- the Department's method of reporting has hidden the extent of the problem
- too many prisoners are held in cells that do not comply with Australasian standards and even International Committee of the Red Cross (ICRC) standards
- occupying cells above intended capacity is:
 - compromising prisoners' rights to privacy and decent treatment
 - generating risks to safety and rehabilitation
- services to prisoners are increasingly stretched
- staff, management and prisoners deserve the community's appreciation for the way they have coped with these pressures.

Some of the pressures at some sites will be temporarily relieved when the new Eastern Goldfields Regional Prison is filled and when the 'new' women's prison at the Hakea site ('Melaleuca') opens in December. However, most prisons will continue to operate above intended capacity and the new facilities will not meet future demand.

A new prison is needed. It should be designed with the flexibility to cater for different groups but the most obvious need is for a large metropolitan remand prison for men.

The system is paying the price for a decade of poor planning

It was obvious by the mid-2000s that another new prison was required. Planning and investment should have started then. In 2010-11 a large amount of money was made available – in excess of \$640 million – for new accommodation units and a double-bunking program.

West Kimberley Regional Prison has been a proven success and Eastern Goldfields has promise but, as I have said before, some of the decisions taken in 2010-11 were questionable. The biggest error was that virtually none of the money was directed to women despite their rising numbers and the impoverished state of the primary female prison (Bandyup).

The system has paid a price for this and the Department now faces a weekly challenge of managing prisoner numbers. For example, converting parts of Hakea to a women's prison has removed 256 beds for males on remand and created serious population pressures in the male estate.

It is time for a comprehensive long term custodial plan. This should assess the optimal use of every custodial site (including Banksia Hill Detention Centre) and should better target the needs of different groups of prisoners and juveniles.

The Department needs to be more accountable

This report contains a number of recommendations that call for greater transparency and accountability in Departmental planning and reporting. The Department also needs to improve the way it engages with accountability agencies who have a legislative duty to report to Parliament.

We send our draft reports to the Department so they can give feedback and responses to our recommendations and so we can incorporate this in the tabled report. These processes are vital to public understanding, Parliamentary accountability, and due process. Unfortunately, this report does not include the Department's feedback as they failed to respond, despite having ample opportunity:

- on 14 April 2016 we informed them we were undertaking the Review
- on 7 September 2016 we gave a briefing on our key findings
- on 30 September 2016 we sent the draft report, requesting a response by 28 October 2016 (a more generous time for feedback than other accountability agencies typically give)
- it is now 6 November and we have received nothing.

I cannot delay this report any further if I am to meet my legislative mandate.

The Commissioner for Corrective Services has spoken passionately about the importance of Parliamentary accountability. I do not doubt his personal and intellectual

commitment. However, the fact is that the Department's processes and practices are not meeting his aspirations or the reasonable expectations of Parliament and independent accountability agencies.

In the past two years, we have been consistently delayed or frustrated in our efforts to get detailed, accurate and timely information (OICS, 2016c). The Auditor General (Office of the Auditor General Western Australia, 2016) and the Economic Regulation Authority (ERA, 2015) have publicly expressed similar concerns. Members of all political parties on the Legislative Council Standing Committee on Public Administration recently weighed in. Expressing dismay and irritation at bureaucratic secrecy and obfuscation, they took the unprecedented step of demanding new responses to their report on prisoner transport (WA Legislative Council Standing Committee on Public Administration, 2016).

I urge the Department to improve its processes and practices. The current situation is generating unnecessary reputational damage and scepticism (both internal and external). The last fifteen years have also shown that when accountability and responsiveness wane, operational risks increase.

Crowding is not just about beds

Debates about prison 'overcrowding' tend to descend into a tediously unproductive discussion of how many prisoners are being forced to sleep on mattresses on the floor. The issues run much deeper and wider than that.

In the last five years the Department has reduced the number of people sleeping on the floor by installing bunk beds in prison cells. That has averted some negative media but has not addressed the real issues. As the landmark report into the 1998 riot at Casuarina Prison put it:

'The term 'overcrowding' is an oxymoron, because the condition that spells mismanagement is 'crowding' – that is *too many people in a facility or space*. It accurately describes the conditions that existed at Casuarina Prison on Christmas Day and in the days leading up to it - *too many prisoners for the available facilities*.' (Smith, 1999, p. 5.2.4.6 *emphasis added*).

The same can be said of schools or hospitals: we cannot add more beds to hospital wards or more desks to classrooms without compromising privacy, facilities and quality of services.

Our prisons are very crowded

WA prisons were at 148% of design capacity on 30 June 2016

There is no perfect way to measure the extent of crowding at a prison. However, we concluded that the most accurate 'rule of thumb' is to compare the number of prisoners

in the prison with the number it was designed to hold ('design capacity'). This includes both the original design capacity of the prison and the design capacity of any additional accommodation.

Our approach aligns with common sense, with Productivity Commission benchmarks, with the Economic Regulation Authority (ERA, 2015), and with the New South Wales Inspector of Custodial Services (NSW Inspector of Custodial Services, 2015).

On 30 June 2016:

- the system as a whole was at 148 per cent of capacity
- Pardelup Prison Farm was the only prison at or below capacity
- Other prisons ranged from 120 per cent to 190 per cent of capacity.

The Department says that prisons are under capacity

As prisoner numbers and double bunking have increased, the Department has changed its measures of capacity. The terminology is very confusing. Different Departmental documents use different terms, including 'operational', 'modified' and 'total' capacity. Sometimes the terms are defined, sometimes they are not.

We decided to use 'modified capacity' to assess the WA prison population on 30 June 2016 as this appears to be the basis on which the Department is reporting to the Productivity Commission. Modified capacity differs from design capacity as it includes additional beds that have been installed in cells over and above design capacity, such as bunk beds.

Using this test, we calculated the prison system to be at 97% of capacity.

The Department's reporting methods obscure the extent of crowding

Each year, the Productivity Commission publishes a Report on Government Services (ROGS). This includes data on prisons for all States and Territories.

ROGS reports for 2009-10 and 2010-11 revealed serious crowding, putting WA prisons at well over 130 per cent of capacity. But the 2011-2012 report put the figure at around 100 per cent, where it has stayed ever since.

This dramatic drop was not due to new prisons coming on line or to any objective improvement in prison conditions. It was just a statistical mirage. The Department had chosen to report on the basis of modified capacity not design capacity. In our view, this breaches ROGS guidelines as well as obscuring the extent of crowding.

People who live and work in our prisons know they are crowded

We are confident in our data but it is possible that the Department may dispute some technical aspects of our counting and conclusions. However, that will not in any way

detract from our key messages, and it is important not to fall into the trap of just debating technical definitions and precise numbers.

It is important also to listen to how those who live and work in prisons regard the situation. In the course of our prison inspections, we conduct staff and prisoner surveys and engage with management, staff and prisoners on-site. In most prisons, the evidence is all one way. They believe there are too many prisoners for the space, facilities and services, and are very concerned about the consequences for prisoners and staff. They appreciate the fact that the Department faces budget constraints but do not appreciate being told that an overcrowded system is not overcrowded.

The UK government apologised for using a similar test to that used by the Department

For six years, the UK government used a test that was very similar to that now used by the Department. In fact I was told in 2010 that WA had drawn directly on the UK approach in moving to ‘modified capacity’.

However, in June 2015, the Prisons Minister apologised for misleading Parliament and the public by using this test, and withdrew its use. He said it was wrong that doubled-up single cells had not been regarded as crowded: it was ‘unacceptable’, he said, that ‘incorrect figures’ had been published. He concluded: ‘publication of clear, reliable figures on how many prisoners we hold in crowded conditions is an important element of making sure we can be held to account’ (Travis, 2015).

There is no emergency or management buffer

Commentators and official reviews agree that prison systems need a buffer of 5-15 per cent to cater for emergency situations (such as the aftermath of the 2013 Banksia Hill riot), to allow ongoing repair and refurbishment, and to manage different prisoner cohorts. Even on the Department’s measures, there was only a three per cent buffer on 30 June 2016. This is too little.

We also found that a large number of ‘spare’ beds were not in practice usable: they were at the wrong security level or in the wrong place.

Too many prisoners are held in conditions that fall short of national and international standards

We assessed cell sizes and cell sharing practices in Western Australia against a range of national and international standards. We concluded that:

- only one third of prisoners can be held in conditions that comply with Australasian Standard Guidelines for Corrections for cell size
- in design, the more modern cells generally meet Australasian Standard Guidelines for single occupancy, but double-bunking breaches those standards

- 16% of cells in older prisons do even not meet the lower International Committee of the Red Cross (ICRC) standards for single occupancy. In addition, many of these cells are routinely double-bunked
- the practice of routinely double bunking single cells is in breach of the ‘Mandela Rules’ (the United Nations Standard Minimum Rules for the Treatment of Prisoners). These Rules state that the double bunking of single cells should only be an exceptional temporary measure.

These standards are not legally prescriptive, but nor were they intended to be given only lip-service.

It has also been suggested that the standards are only ‘aspirational’. However, if you say something is ‘aspirational’ there should be evidence that you are working towards it. The evidence is that WA is working away from the standards, not towards them.

Double-bunking creates risks to dignity and safety

Some prisoners prefer to share cells but the majority do not. We concluded that forced cell sharing:

- results in a loss of dignity and privacy
- impacts on the ability of remand prisoners to prepare for court
- impacts on prisoner rehabilitation

In terms of prisoner safety, there is some truth in the idea that cell sharing may reduce the risk of serious self-harm by prisoners who are stressed, unwell or at risk. However, if this is to happen, it should be in specially designed cells or ‘buddy cells’ (where there is a door between adjacent cells).

We are also very concerned at the level of unknown violence, bullying and ‘unexplained injuries’ in shared cells. Recorded incidents are not a true measure of the problem because many prisoners, like battered women, attribute their injuries to ‘falling in the shower’ or ‘walking into a door’.

The Department does conduct ‘multi-cell occupancy risk assessments’ and has a system of ‘not-to-share’ alerts, but we have recommended that these systems be evaluated and improved.

Crowding has compromised service delivery

Prisons deliver a human service not a warehouse function. It follows that cell space is only one part of the equation for a ‘healthy’ prison. Prisoners will be far more accepting of cramped cell conditions if they are treated respectfully, and if they have enough positive daytime activities, such as employment, education and training, rehabilitation programs and physical recreation. As many prisoners have significant physical and

mental health needs, they also need access to health services, counselling and other supports.

Appendix F summarises each prison by reference to crowding and service delivery. It shows that service infrastructure and staffing have generally not kept pace with the increase in prisoner numbers.

Riots reflect a range of factors, not just crowding

There is no direct causal link between overcrowding and serious incidents such as assaults on staff or riots. Such incidents reflect a confluence of causes, including a poor regime and poor culture. Good management can therefore reduce the risk. However, it is the case that the pressures created by crowding are a contributing factor.

Looking ahead

Our prisons are crowded and that needs to be recognised. Staff, management and prisoners also need to be recognised for the way they have tried to make crowded prisons work. However, services and dignity have been compromised.

At least one large new prison is required sooner rather than later. Planning for this prison should be based on a comprehensive review of the optimal use of existing facilities, and there is no reason why some of them could not change roles. The most obvious need is for a new metropolitan remand prison.

But at best it takes around three years before new prisons can come on line. There is little or no provision for new prison infrastructure in forward budget estimates, but the system is already unsustainably stretched. Plans and funding are urgently needed.

Neil Morgan

6 November 2016

2 Recommendations

- Recommendation 1:** That the Department commence planning and seek government approval for a new metropolitan prison catering primarily for male remandees.
- Recommendation 2:** That the government commit to a progressive replacement of old facilities, ensuring replacement facilities meet the *Standard Guidelines for Prison Facilities in Australia and New Zealand*.
- Recommendation 3:** That the Department commit to adhere to international standards and best practice in the use of single cells.
- Recommendation 4:** That the Department evaluates and improves the use of not-to-share alerts on TOMS.
- Recommendation 5:** That the Department return to using 'design capacity', as defined in this review, for reporting purposes.
- Recommendation 6:** That the Department commit to being open and accountable through full disclosure of procedures for modelling population projections and custodial infrastructure planning, and publication of its custodial infrastructure plan and contingencies.