



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Directed Review of Allegations
made by Amnesty International
Australia about ill-treatment at
Banksia Hill Detention Centre

June 2018

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This report is available on the Office's website and will be made available, upon request, in alternate formats.

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Inspector's Overview

Why we did this review

On 14 December 2017 Amnesty International Australia (Amnesty) wrote to Western Australia's Minister for Corrective Services, Hon Fran Logan MLA, alleging that a young person (whom we call 'John') had been ill-treated in the Intensive Support Unit (ISU) at Banksia Hill Detention Centre (Appendix A). On 12 January 2018, Amnesty again wrote to the Minister, alleging that 'Richard' had also been ill-treated in the ISU (Appendix A).

Two working days later, on 16 January 2018, Amnesty launched a concerted media campaign. It alleged that the ISU regime amounted to torture and prolonged solitary confinement, drew parallels with the disgraced Don Dale Detention Centre in the Northern Territory, and called for the ISU to be closed. Amnesty headlined its campaign with details of its allegations about John and Richard.

On 19 January 2018, the Minister for Corrective Services Hon Fran Logan MLA directed me to review Amnesty's allegations about John and Richard's treatment. I accepted the direction on agreed terms of reference (Appendix B).

Amnesty's allegations relate to the period following some serious incidents of disorder at Banksia Hill on 4 and 5 May 2017 through to the end of 2017. The May 2017 incidents involved 16 boys who threatened staff and other young people, and caused fires and other substantial damage (Chapter 1). Many other young people at Banksia Hill, both male and female, were frightened by these events. The incidents were only brought to an end when the Department of Justice (the Department) deployed its Special Operations Group who used flash bombs and chemical agent to regain control.

The damage was such that the site was unsafe for young people and staff for some days until broken glass and debris could be cleaned up. One unit was totally uninhabitable and another was badly damaged. The site was also not secure as cells and fences had been breached.

These events came on top of numerous other serious incidents in the second part of 2016 and the early part of 2017. The situation was high risk, high cost, and completely unsustainable (Chapter 2; OICS, 2017). One of the responses to the May 2017 incidents was to introduce an 'Intensive Support Unit' (ISU) to separately manage the small number of young people who had been involved in multiple incidents, and who were identified as 'ringleaders' or 'troublemakers'. They included John and Richard. The Department also transferred responsibility for the centre from its youth justice branch to its prisons branch, and abandoned a very poorly managed 'Banksia Hill Transformation' project (OICS, 2018; OICS, 2017).

In order to restore stability, ensure the safety of young people and staff, and rebuild staff morale and confidence after the May 2017 incidents, the new management team imposed a restrictive regime across the whole site. Activities and programs for all young people were limited, and their movements and interactions were tightly controlled. The regime was particularly tight in the ISU. The aim was to loosen the restrictions as the centre stabilised (OICS, 2018). Most of the young people had not been involved in the incidents, and they paid a high price for the misbehaviour of a few.

Given the events of 2016–2017, a restrictive regime was the only prudent short term option, and it undoubtedly helped to improve stability (OICS, 2018). It was also better to take measures that would ensure the young people could stay at Banksia Hill rather than run the risk of further damage that might have led to young people being transferred to an adult prison, as happened in 2013 (OICS, 2013). However, benefits for a majority of detainees could never justify any abuses of a minority. I was therefore keen to undertake this review despite having already reported on Banksia Hill, on average, more than once a year in recent years.

What we found

Amnesty's allegations involve a number of specific claims about each young person (Chapter 4) and a general claim that they have been held in conditions of prolonged solitary confinement, in breach of state legislation and international law (Chapter 5).

The evidence does not support the majority of these allegations. However, we have identified areas for improved record keeping and communication. It is also clear that a comprehensive review of legislation and other governance documents is required in relation to the use of special regimes and confinement.

In summary, our findings and recommendations, and the Department's responses, are as follows:

1. The ISU is not separate or remote from the rest of Banksia Hill. It is in the North-West corner of the site, close to the education centre, the health centre and other accommodation (paras 3.1 – 3.2).
2. Advocates have likened the cells in the ISU to dog kennels and parking bays, and said they are just five square metres in size. With the exception of crisis case and short term stay cells (which are around 7 square metres) almost all the cells are 8.4 square metres in size, the same as those in standard accommodation units. Nobody would pretend they are spacious, but cells in adult prisons are often smaller, and the majority are now occupied by two adults (OICS, 2016). No cells in Banksia Hill are currently double- bunked (para 3.3).
3. The evidence does not support the claim that John attempted self-harm more than 100 times from May to December 2017. His level of self-harm has in fact fallen markedly from 2016 and early 2017. Banksia Hill is not blasé about self-harm, or failing to identify and monitor risk (para 4.1).
4. There is no evidence that Banksia Hill failed to inform John's mother of a large number of self-harm attempts from May to December 2017. However, we cannot say when she was contacted, how often, or why (para 4.1). The Department has accepted and actioned our recommendation to improve its processes for notifying caregivers and recording those notifications (Recommendation 2).
5. Education has been substandard for all detainees for too long. It was particularly restricted immediately after the May 2017 incidents (OICS, 2018). However, there is no evidence that John and Richard have been 'denied' education. Both have completed some courses (para 4.2).

6. Like all detainees, Richard might well have benefitted from greater access to programs, services and psychological counselling. However, there is no evidence to support claims that he was 'denied' access (paras 4.3 – 4.4).
7. There is no evidence that John was regularly strip-searched during his time in the ISU (para 4.5).
8. In response to concerns in our earlier reports, Banksia Hill has greatly reduced the use of strip-searching and has improved its processes. We commend this, and strongly support its proposal to trial full body scanners (para 4.3).
9. Departmental records on the use of restraints are inadequate, but we have concluded that, for a significant time, John and Richard were handcuffed when they were out of cell. Poor records meant that the Department cannot show its use of restraints was justified (para 4.6). It has accepted and actioned our recommendation that all uses of restraints, and the reasons for their use, should be recorded (Recommendation 3).
10. There is no evidence of John being 'deprived' of meals (para 4.7).
11. There is no evidence that Richard was fed through a 'grille'. However, if a young person is disruptive, it is standard practice for meals to be passed through a hatch or for the young person to stand at the back of the cell. This is necessary and appropriate if properly regulated. However, there is no specific evidence of when and why these processes were used for Richard (para 4.7).
12. There are no records to support or refute the claims about bedding in relation to John or Richard (para 4.8). The Department has accepted that the removal of bedding should only occur when a young person is at risk or in a short term holding cell (Recommendation 4).
13. On some days Richard did not shower, but it is not clear whether he declined to shower or was denied access (para 4.9).
14. There is no evidence that Richard was held in cell without electricity for two weeks (para 4.10) and there is no ability for the detention centre to turn off the electricity for individual cells.
15. A comprehensive review is required of the legislation and governance documents relating to confinement and all forms of restricted management regimes. *The Young Offenders Act 1994* (the Act) and the *Young Offenders Regulations 1995* (the Regulations) that govern confinement are obsolete, outdated, and inconsistent. They fail to meet international standards and do not prevent the application of regimes that are equivalent to (or more onerous than) confinement provided they are badged differently. This leaves government, as well as children, exposed (para 5.4). The Department has agreed that it is 'timely to review the legislation' (Recommendation 5).
16. For around ten days after the May 2017 incidents, John and Richard's time out of cell fell short of what is required for young people in 'confinement' under the Act and Regulations. However, as a matter of law, these protections did not apply to John and Richard because they were not being held in 'confinement' under the Act. They were, instead, being held on a 'Personal Support Plan'. Their placement in the ISU did not therefore breach the technical requirements of state law (paras 5.2 – 5.3 and 5.5).

17. For around ten days after the May 2017 incidents, John and Richard were probably being held in conditions that amounted to 'solitary confinement' under international law as they did not have at least two hours out of cell per day (para 5.9).
18. John and Richard have not been held in 'prolonged' solitary confinement as defined by international law (solitary confinement for more than 15 consecutive days) (para 5.10).
19. The Minister and his office staff acted promptly and appropriately in response to Amnesty's allegations. Amnesty's correspondence was immediately forwarded to the Department for investigation. (paras 1.4 – 1.6). The Minister and I were also in regular contact and he was genuinely concerned to know if there had been abuses and breaches of law.
20. Some of the commentary has suggested the Minister was unresponsive. That would be unfair. Only two working days elapsed from Amnesty's letter about Richard to their media release. A month had elapsed since their letter about John, but the nature and extent of the allegations were such that it would take time to investigate and reply. And once the Minister had decided to refer the matter formally to me, it would not have been appropriate for him to respond in detail (paras 1.5 – 1.6).
21. The Department immediately referred the allegations about Richard to its Investigation Services Branch (ISB). However, it did not refer Amnesty's mid-December 2017 letter about John to the ISB for two months. It said that this was because it was already conducting an inquiry into similar allegations raised by John's mother in a letter dated 4 December (para 1.4). It has accepted that it needs to improve its record keeping in relation to both investigations and outcomes (Recommendation 1).

Some broader reflections

This review has shown the value of Ministers being able to direct a review by an independent body with an intimate knowledge of the issues and a reputation for apolitical public reporting. As a courtesy, I have kept the Minister informed of our progress but, as required by the *Inspector of Custodial Services Act 2003*, we have had complete autonomy in how we have conducted the review and how we will report.

Unfortunately, passions in this case have run high, and many people have already formed opinions. As a result, there is a risk that our findings will be disregarded by those who do not like them. However, we are confident in our evidence, analysis, and findings. We have also given all parties the opportunity to provide more detail.

That said, we are not a court of law. We have examined documents, independently probed Departmental records, interviewed people, held meetings, and received submissions (para 1.11). But we have not examined witnesses under oath, or had the benefit of submissions from legal counsel on issues of fact or law. Nor are we privy to full details of any legal advice that the Department has because it declined to provide it to us, citing legal professional privilege (para 5.2). If John and Richard's treatment reaches the courts (and it has been suggested that it may), the evidence will be further tested, and the court may adopt a different interpretation of the law and of the facts (para 1.12),

It has been unusual and discomforting to be reviewing the deeply personal circumstances of two vulnerable and troubled young people alongside a running social media commentary. Advocates have every right to advocate, but the boundaries of social media are notoriously blurred and risky. We have been particularly concerned at the content and tone of some of the social media. The young people's anonymity has been compromised, allegations have been presented as facts, and some of the commentary has been inappropriate and threatening (paras 1.8 – 1.9).

Initially, we had reservations about publishing some of the details in this report because we did not want to compromise the young people's privacy. However, all the most sensitive matters have already been made public in mainstream and social media, especially in relation to John, so we have reported in full. But it is vitally important that young people are not stigmatised and are able to 'get on with their lives'. When we spoke with John and Richard, it was clear that they wanted their concerns to be heard, but they were also concerned that the outside commentary might impact on them after release.

This report needs to be read alongside our other reports. Banksia Hill has made positive progress in stability, safety, morale, and governance since May 2017. This is a tribute to staff and management, and everyone who spoke to us, including the young people's advocates, recognised this. But the centre still faces serious challenges. Most of these can be traced back to the decision of the former government in 2009 to make Banksia Hill the state's only juvenile detention centre. Since that time, it has never enjoyed a significant period of stability or strong performance. One centre cannot adequately cater for so many young people, so much diversity, and such high levels of need. The recommendations of our other recent reports remain relevant and need to be actioned (OICS, 2018; OICS, 2017).

At the time of writing, John (who will be 19 in August) has just been transferred to an adult prison, after receiving further custodial sentences for his role in the incident on 5 May 2017. In many respects, he has 'outgrown' Banksia, and some of his supporters have welcomed the move. However, the reality is that he will have less space, less privacy, less personal attention, and less to do in the adult setting. The state does not have a comprehensive strategy for addressing the needs of young men and women in prison, and more needs to be done in this space (OICS, 2017a; OICS, 2017b).

Finally, I am disappointed that we have not been able to report earlier. We provided the draft report to the Department in mid-April 2018 (three months after the Minister directed the review). We then received feedback from the Department and finalised the substance of this report in May. However, the *Inspector of Custodial Services Act 2003* requires that our reports sit in Parliament for a minimum of 32 days after we have lodged them, and that, as far as possible, our reports should be tabled on a sitting day. The earliest this could be arranged was mid-August 2018, seven months from the date of the direction.

Neil Morgan
14 June 2018

Recommendations

Page

Recommendation 1 – Ensure that allegations of misconduct, abuse or poor treatment are prioritised for internal assessment and investigation. 4

Recommendation 2 – Amend Departmental policies to: 23

- require caregivers to be notified whenever a young person has:
 - self-harmed
 - attempted self-harm
 - threatened self-harm
- ensure notifications are recorded on the young person's departmental notes

Recommendation 3 – Ensure that all uses of physical and mechanical restraints are recorded, including those prescribed in a plan, and that the records include reasons for their use. 29

Recommendation 4 – Ensure that any removal of a young person's bedding from cell occurs only when the young person is at risk or in a short term holding cell, and that both the removal and reason for removal are recorded. 31

Recommendation 5 – Amend the *Young Offenders Act 1994* and the *Young Offenders Regulations 1995* by: 36

- repealing the provisions governing 'confinement';
- enacting a framework for managing special regimes such as the ISU, including adequate protections for young people; and
- ensuring that all young people are entitled to a minimum of two hours out of cell each day

1 Scope and context of this Review

1.1 Serious incidents on 4 and 5 May 2017 led to major change at Banksia Hill

On 4 and 5 May 2017, two very serious incidents occurred at Banksia Hill Detention Centre (Banksia Hill).

On 4 May 2017, seven young people extensively damaged an accommodation unit and some of them threatened staff. Flash bombs and chemical agent were used to regain control.

The following day, 10 young people scaled the roof of another unit. From there, they gained access to the rest of the site, including a tool shed. They got hold of a buggy and power tools. They threatened staff and other young people, and caused fires and other damage. Many of the other young people at Banksia Hill, both male and female, were frightened by these events.

The incidents left the site unsafe for young people and staff for some days until broken glass and debris could be cleaned up. One unit was uninhabitable and another unit, which was significantly damaged, had to accommodate 38 young people in a period of restrictive regime. The site was not secure as cells and fences had been breached.

The 16 young people who were involved in the two separate incidents presented a risk. In the immediate aftermath of the incidents, the centre decided that they could only be let out of cell one at a time. The centre was also facing significantly reduced staffing as a result of the incidents, staff booking off shift and workers' compensation claims. These circumstances presented major operational challenges.



Photo 1 and 2: Damage caused during the May 2017 incidents

The May 2017 incidents came on top of numerous other major incidents in the previous 12 months, especially in the second half of 2016. The situation was unacceptable, unsustainable, high risk and high cost (OICS, 2018; OICS, 2017). Banksia Hill had also been unstable for most of the preceding seven years.

Immediately after the May 2017 incidents, the government announced major management and governance changes at Banksia Hill. The short-term goal was to stabilise the centre, and to improve

safety and security. The longer-term goal was to improve services and programs for the young people, and to reduce disruption, damage, and discord (OICS, 2018).

One of the strategies was to separately manage the small number of young people who had been involved in multiple incidents, and who were identified as key 'troublemakers'. They were to be placed in the Harding Unit.

This review arises out of allegations made in relation to the long-term placement of two young people ('John' and 'Richard') in the Harding Unit.

1.2 Banksia Hill has been more settled since May 2017 but still faces significant challenges

We recently tabled a report on Banksia Hill which found that the centre has been calmer and more settled since May 2017 (OICS, 2018). However, it also found serious shortfalls in some services and that the centre still has some major challenges ahead. Nothing in this report changes those findings and messages (see Chapter 2).

Everyone we spoke to for this review agreed that Banksia Hill has improved markedly since May 2017, especially since around September 2017. That included the two young men at the centre of this review, parents, advocates, Amnesty International Australia representatives, staff at Banksia Hill, lawyers, and other accountability agencies.

However, improvements for the majority could never justify abuses of individuals, if they have occurred.

1.3 The Harding Unit has been re-named the Intensive Support Unit (ISU)

The strategy of separating some young people from the rest is nothing new, and Harding Unit (Harding) has long been used for this purpose. It was re-badged the Intensive Support Unit (ISU) in August 2017.

The layout and functions of the ISU are discussed in Chapter 3. It has several conflicting roles, including crisis care, 'time out' after an incident, and preparing young people to return to 'mainstream' accommodation.

Harding did not have a good history. In 2012 we expressed serious concerns about behaviour management practices at Banksia Hill, including the use of Harding. Poor policies and procedures, poor record keeping, and lack of transparency had created the environment for potential abuse (OICS, 2012).

In 2017 we published a review of behaviour management practices at Banksia Hill, including the use of Harding, up to the May 2017 incidents. We concluded that practices were 'inconsistent, inexplicit and ineffective' (OICS, 2017, p. 3). There were also still major accountability and record keeping failures.

1.4 Amnesty International Australia has written to the Minister alleging the ill-treatment of two young people in the ISU from May 2017

Most young people who spend time in the ISU move out within a few days. However, John and Richard have been placed there for substantial periods.

On 14 December 2017, Amnesty International Australia (Amnesty) wrote to Hon. Fran Logan MLA, Minister for Corrective Services (the Minister) claiming John had been ill-treated in the ISU. The allegations related to the period from May 2017 to that date.

On 12 January 2018, Amnesty wrote to the Minister raising allegations of ill-treatment of Richard in the ISU. Again, the allegations related to the period from May 2017 to that date.

The text of the two letters, with names redacted, is at Appendix A. A third young person, 'David', also spent an extended period in the ISU before moving to an adult prison. Amnesty have not written to the Minister about David, but have referred to his case in media releases and other public comment.

Allegations in relation to John

Amnesty's concerns in relation to John are both specific and general.

The specific allegations relate to bedding and food, education, the use of handcuffs, strip searching, and self-harm (see Chapter 4).

The general claim is that John has been held for prolonged periods in conditions of 'practical isolation' in breach of state legislation and international law (see Chapter 5).

Amnesty asked the Minister to confirm whether legislation had been breached. They also asked for John to be immediately released from the ISU and reintegrated into the main population, with physical and mental health support.

Allegations in relation to Richard

Amnesty's concerns about Richard are also both general and specific.

Specific allegations relate to bedding and food, access to education, programs and services (including a psychologist), the use of handcuffs, and denial of access to showers and electricity (see Chapter 4).

The general claim is that Richard has been held for prolonged periods in conditions of 'isolation' in breach of state legislation and international law (see Chapter 5).

Amnesty's demands in the second letter went further than the earlier letter. In addition to calling for Richard to be moved out of the ISU, they wrote:

'We call for the Government to ... launch an independent public investigation into these allegations and the operation and practices of the Harding Unit. Any staff members suspected of involvement in these acts breaching the rights of children in detention must

be immediately suspended from duty until the independent investigation is complete. The results of the investigation must be made public and the Government is obligated to provide a remedy to [Richard] if his human rights have been breached. Further, where sufficient, admissible evidence is sound (sic), staff members suspected of responsibility for such acts should be brought to justice in fair proceedings.'

The Minister's and Department's response to the letters

The Minister's Office forwarded the letter about John to the Department of Justice (the Department) without delay in December 2017. However, the Department did not send the letter to its Investigation Services Branch (ISB) until 14 February 2018. This was two months after it was received, four weeks after Amnesty's media release, and two weeks after we asked the Department for details of actions taken in response to the allegations.

The Minister's Office sent the letter about Richard to the Department on the day it was dated and received (12 January 2018). On the same day, the Department referred it for investigation to the ISB. Given the nature of the allegations, this was appropriate.

In responding to a draft copy of this report, the Department advised it reviewed the records relating to Amnesty's letters being referred to the ISB. The Department acknowledged that improvements in record-keeping within the branch were required. There was a failure to adequately document ISB involvement and actions.

The Department informed us that on receipt of Amnesty's letter about John on 14 December 2017 an investigation was already underway in relation to a letter received from John's mother on 4 December 2017. The issues raised by Amnesty were of a similar nature to those in the letter from John's mother and so it was put on hold and investigated alongside John's mother's letter.

On 12 January 2018, Amnesty's letter about Richard was received by the Department. That day the Amnesty letters for John and Richard were referred to the ISB. However, the letter relating to John was recorded as 14 February 2018.

Recommendation 1 – Ensure that allegations of misconduct, abuse or poor treatment are prioritised for internal assessment and investigation.

1.5 Amnesty launched a media campaign on 16 January 2018

On Tuesday 16 January 2018, Amnesty launched a sustained media campaign. Their media release repeated many of the matters raised in the letters to the Minister. But they went further in their demands, and used much stronger language.

The media release was headed 'Concerns of Torture in WA Youth Prison: "I felt like a dog".' It called for the ISU to be 'closed immediately, and drew parallels with the Northern Territory's disgraced Don Dale Detention Centre. The latest allegations, it said, were 'just the latest in an avalanche of horrors spilling out from Banksia in the past six months alone' (in other words, since August 2017) (AIA, 2018).

It also suggested that the government had been unresponsive:

'Amnesty International made initial contact with the Minister... about one case in December 2017, and a second case last week. No formal response has been received but it is understood that the Department is looking into the individual claims.'

No complaint could possibly be made about responsiveness in Richard's case. Amnesty's letter was dated Friday 12 January 2018 and their media release was on the morning of Tuesday 16 January 2018. No agency, public or private, could possibly have responded in that time.

In its response to a draft copy of this report, the Department indicated the investigation relating to Amnesty's letter was being run alongside an investigation arising out of a letter from John's mother received 4 December 2017. It was optimistic to expect an investigation to have been completed and a response sent to Amnesty by 16 January 2018. The Department's response to this draft indicated that the assessment report for John's mother's letter was not completed until 6 February 2018 while the investigation of the Amnesty allegations was completed on 15 February 2018.

The timing makes it clear that Amnesty were planning a public campaign about Banksia Hill before they wrote their letter about Richard, and that John and Richard's personal circumstances were to be at the forefront of that campaign.

Views differ widely on the appropriateness of this. Amnesty, and a number of others, told us they felt they had no choice because of the serious and urgent nature of the claims. Others expressed misgivings that the very personal circumstances of two young people were being launched into the public domain, especially as the main allegations appeared to relate to the situation several months earlier.

1.6 The Minister announced this Review on 19 January 2018

The Inspector of Custodial Services is independent, and accountable to Parliament not to the Minister. Section 17 of the *Inspector of Custodial Services Act 2003* allows a Minister to issue a written direction to the Inspector to review any aspect of a custodial service. However, the Inspector does not have to follow such a direction if, in the Inspector's opinion, there are 'exceptional circumstances for not complying'.

This is a useful power. It preserves the Inspector's autonomy but allows the Minister to formally seek advice on issues of concern. It is not commonly used and the last one also involved Banksia Hill (OICS, 2013).

After discussion, the Minister and the Inspector agreed that Amnesty's allegations were an appropriate case for a Directed Review. On 19 January 2018, the Minister announced that he had directed us to review the allegations and to provide an opinion on their contents. The text of the direction and our response are at Appendix B.

1.7 This Review is limited in scope and must be read with our other reports

This is a review of the allegations involving John and Richard

This is a review of allegations made in relation to John and Richard and matters that are incidental or relevant to those allegations.

David's case has also been mentioned in media releases and commentary, and Amnesty told us we should be considering his case too. But Amnesty did not write to the Minister about him, and the details of his case are not in scope. However, we are well aware of David's case through our normal oversight activities, and have spoken with him a number of times since May 2017. The Ombudsman's office has also examined his concerns.

This is not a full review of the ISU or of behaviour management

The terms of reference involve specific allegations, not a full review of the ISU or of behaviour management at Banksia Hill. If we considered it to be necessary or appropriate, we would undertake a full review under our general powers, and outside this Directed Review. However:

- Only six months before this review was called, we tabled a comprehensive report on behaviour management (OICS, 2017).
- We recently published the report of an inspection of Banksia Hill conducted in July 2017. It includes commentary on the ISU at that time, and subsequent developments (OICS, 2018).
- The Department responded positively to both of these reports. It has been making significant improvements to operations, services and accountability at Banksia Hill as a whole, and the ISU specifically.
- Everyone who spoke to us for the purposes of this review, including Amnesty, parents and advocates, have told us that they believe both the ISU and Banksia Hill have improved significantly.
- It will take time before the new ISU model is fully operational.
- We will conduct another full inspection of the centre no later than July 2020.
- We have access to the Department's offender management database. Through this, we monitor incidents at custodial facilities every 1–2 days.
- We conduct regular monitoring visits to Banksia Hill, and administer the Independent Visitor Service.

1.8 Allegations are being presented as facts

Not surprisingly, Amnesty's 16 January 2018 media release attracted some coverage.

On 22 January 2018, they issued a second media release. It welcomed our inquiry but increasingly presented the concerns as facts, not allegations (AIA, 2018a). It talked of 'the abuses of young people at Banksia Hill'; the use of 'prolonged solitary confinement'; the 'damaging environment'; and 'young people ... being held in the harmful Intensive Support Unit, at acute risk of further trauma.'

These statements were no longer qualified by words such as 'allegations'. Other advocates are also presenting the concerns as facts. It follows that there is a real risk that the findings of this report will be disregarded by those who do not like them.

The most significant new dimension to media commentary cases since January 2018 is that it is now public knowledge that John faces deportation to New Zealand on release. His mother and other

supporters are worried that John will not cope without family support. Deportation is a federal government, not a state government responsibility, but John's alleged ill-treatment will no doubt form part of his appeal against deportation.

1.9 Young people's anonymity has been compromised and some social media commentary has been inappropriate

In addition to engaging proactively with mainstream media, both Amnesty and the boys' supporters have been active on social media. There have also been public meetings at which their cases have been discussed.

Advocates have every right to advocate. But publicity can be a double-edged sword. And the boundaries of social media are blurred and risky. We have been concerned at the content, tone, and potentially harmful consequences of some of the debates.

One problem is that John's identity is now known. For a period of time in January–February 2018, his full name was on Facebook. His mother told us that she and John had not authorised its release, and that she was unhappy about it. However, in recent stories on New Zealand television and online media, she has used his full name, and also provided footage of him recorded during a 'Skype' link from Banksia Hill.

The identities of Richard and David are also now quite widely known, or can be easily tracked down.

We are particularly concerned that some of the allegations (such as those about self-harm and high risk behaviour) involve deeply personal matters. It is vitally important that young people are not stigmatised and are able to 'get on with their lives'.¹

When we spoke with John and Richard, it was clear that they wanted their concerns to be heard, but they were also concerned whether the outside commentary would impact on them after their release.

Social media has also, at times, carried inappropriate and potentially threatening comments. Most of these appear now to have been removed.

1.10 We must balance the interest in public reporting with risks to privacy and potential harm

This review is being undertaken in a difficult, emotionally-charged climate in which traditional boundaries no longer apply. Some people have already formed conclusions, and some vulnerable young people's circumstances are under a disconcerting degree of public scrutiny.

¹ Section 17 of the *Young Offenders Act 1994* makes it an offence for anyone to 'directly or indirectly' divulge personal information they have obtained 'by reason of any function that person has ... in the administration of this Act', unless there are exceptional circumstances or the young person consents. However, s 17 does not apply to family or to members of the community.

Amnesty and others have called for our findings to be made public. The *Inspector of Custodial Services Act 2003* does not in fact require a public report in the case of Directed Reviews, or other 'occasional reviews' that we undertake. However, we operate on the basis of transparency and the public interest in John and Richard's cases requires a public report.

But the public interest in a public report must be balanced against the potential for a report on sensitive personal matters to cause harm or risk to people in custody. And John, Richard and David need to be able to get on with their lives.

Initially, we had strong reservations about publishing some of the details in this report. However, most of them, including all the most sensitive matters, have already been made public in mainstream and social media, especially in relation to John.

1.11 How did we go about this Review?

Our aim was to sift fact from fiction and to assess the allegations against the evidence available to us.

Amnesty's evidence

We asked Amnesty to provide a summary table of their evidence in respect of each of the allegations. They said their allegations were based on:

- concerns expressed by family members, especially John's mother
- letters written by David (August 2017) and John (October 2017)
- interviews conducted at Banksia Hill by Ms Tammy Solonec, Amnesty International Indigenous Rights Manager, with John on 9 January 2018 (attended by his mother); and with Richard on 10 January 2018 (attended by his caseworker from the Department of Communities)
- concerns expressed by a former employee of Banksia Hill
- comments by the President of the Children's Court in a case involving Richard that was heard in November 2017.

In assessing the allegations, we have taken all this evidence into account. However, we note that Amnesty did not in fact interview John until some weeks after their letter. That interview did not, therefore, form part of the evidence for the letter.

Our approach

In summary, we

- asked the Department to provide a written response to the allegations and to some specific questions we asked of them
- requested evidence to support those responses
- asked Amnesty to provide a summary table of their evidence
- undertook our own checking and analysis of Departmental records

- met with the people who had provided most of Amnesty's evidence:
 - John and Richard
 - John's mother
 - the former Banksia Hill employee
- spoke with Amnesty and other interested parties (including Deaths in Custody Watch Committee, Aboriginal Legal Service)
- consulted the Ombudsman and the Commissioner for Children and Young People
- met the President of the Children's Court
- considered any other submissions and comments
- continued to regularly visit Banksia Hill and to engage with detainees, staff and management
- monitored developments at the centre several times a week through our direct access to the Department's offender database
- analysed relevant legislation and other laws.

Validity and extent of Departmental records

During this review, there have been claims that records have been lost, destroyed, or falsified. There is no evidence to suggest this has occurred. In fact, record keeping at Banksia Hill has improved since May 2017. However:

- record keeping was very poor before and immediately after the May 2017 incidents
- as a matter of routine practice, CCTV is overridden after 28 days unless there is an identified need to retain it (OICS, 2017)
- Banksia Hill and the Department acknowledge there is room for improvement, and are working towards this.

It is important to recognise that most staff at Banksia Hill genuinely care for the young people being held there. They have stayed committed despite all the problems over recent years. We are confident that they would not routinely falsify documents. We are also confident that we would have heard if this was occurring.

In short, the records are not as complete as they should be, especially in the aftermath of the May 2017 incidents, but we have no evidence to support claims of loss, destruction or falsification.

1.12 Some of the allegations considered in this Review may be the subject of judicial proceedings

We have analysed the allegations in light of the evidence that we have directly available to us, and also what has been provided by the Department, Amnesty and others. As directed, we have expressed an opinion based on the totality of that evidence.

In considering Amnesty's claims about potential breaches of state and international law, we have necessarily expressed opinions about the interpretation and application of the law. However, we are not a court of law and do not have the benefit of counsel, or the power to examine or cross-examine witnesses. Nor are we bound by the rules of evidence.

It is possible that some of the allegations we examine in this report will be raised in future court cases. If that is the case, the court may adopt a different interpretation of the law, and of the facts.

1.13 Resources for this Review

We face continuing resourcing pressure (OICS, 2017a). However, we have not requested or received additional funding for this review. This means we have had to adjust the timelines for some other reports. More generally, the constant focus on Banksia Hill in the last five years has reduced our ability to undertake other work.

2 Banksia Hill's recent history

2.1 This is our seventh report in six years

The period since May 2017 cannot be understood without some understanding of Banksia Hill's recent history. It has been unsettled and under-performing for most of the last seven years, and was highly volatile in the second half of 2016 and the first months of 2017.

We are only required to report to Parliament about Banksia Hill once every three years but the issues have been such that this is now our seventh report in six years (OICS, 2012; OICS, 2013; OICS, 2013a; OICS, 2015; OICS, 2017; OICS, 2018).

No other facility in Australia has been subject to so much ongoing oversight. In addition to our work, the President of the Children's Court has maintained active oversight through court-ordered reports and visits to the centre. Both the Ombudsman and the Commissioner for Children and Young People have also had a presence.

2.2 The centre has been unstable for most of the last seven years

In the last seven years, Banksia Hill has lurched with depressing regularity – and predictability - from crisis to partial recovery, and back into crisis:

- *2009/2010: uncertainty.* The government announced that the former Rangeview Remand Centre (Rangeview) would be re-purposed and that Banksia Hill would become the state's sole youth custodial facility by late 2011.
- *2011: instability.* Serious incidents of damage and assaults increased, and the project to 'amalgamate' Rangeview and Banksia Hill lost focus and ran behind schedule.
- *2012: high risk and staff disenchantment.* Serious incidents continued at an alarming rate, including damage, assaults, and an escape. The building project was poorly managed (OAG, 2013) and staff were increasingly disenchanted. The Department of Corrective Services was increasingly defensive and out of touch. Despite warnings by this Office and others, the amalgamation went ahead in late 2012 (OICS, 2013).
- *2013: riot, repair and organisational change.* A major riot on 20 January 2013 led to most of the centre being unusable. Most young males were moved to Hakea Prison, only returning to Banksia Hill in the last quarter (OICS, 2013). The riot prompted an overhaul of youth justice services.
- *2014 and 2015 partial recovery.* The centre, under new management, was more stable and started to rebuild. Signs were promising but progress was slow (OICS, 2015).
- *2016: high risk and staff disenchantment.* Serious incidents increased, especially in the second half of the year. They included damage, assaults on staff, and self-harm by young people. The Department increasingly relied on its tactical response capacity to regain control, using flash grenades, chemical agents and firearm laser sights. At the same time, it was driving an unclear and poorly-managed 'transformation' project. Staff felt increasingly unsafe, alienated and disempowered, and there was another change in management (OICS, 2017).

- *Early 2017: continuing unrest and yet more organisational change.* There were fewer serious incidents in early 2017 than in 2016, but the underpinning problems remained. The situation was high risk and unsustainable. The incidents of 4 and 5 May 2017 were the 'line in the sand'. The Department abandoned the transformation project, and transferred responsibility for Banksia Hill to its prisons branch (OICS, 2017).

2.3 Management imposed a restrictive regime after the May 2017 incidents

The new management's priorities after the May 2017 incidents were to ensure the safety of young people and staff, restore stability, and build staff morale and confidence. To that end, they imposed a restrictive regime across the whole site. Activities and programs for all young people were limited, and their movements and interactions were tightly controlled. The aim was to loosen the restrictions as the centre stabilised.

Given the events of 2016–2017, a restrictive regime was the only prudent short term option and it undoubtedly helped to improve stability. But most of the young people had not been involved in the incidents. In fact, many of them had been afraid for their safety. They were all paying a high price for the misbehaviour of a few.

The problems were exacerbated by the lack of alternative placement options. If Banksia Hill is damaged or unstable, the whole facility has to be clamped down.

2.4 Major challenges remain despite recent improvements

Our recent inspection report on Banksia Hill charts some significant improvements since May 2017 (OICS, 2018). It has been more settled, safe, and stable. There have been some incidents but they have not been on anything like the scale and frequency of 2016 and early 2017. Staff are more positive and confident, and there have been improvements to procedures, record keeping, and accountability. The Department also has a far more realistic sense of the problems and challenges.

Importantly, during this review, everyone who has spoken to us has commented on the improvements, including families, pressure groups, Amnesty, and staff on-site.

However, these improvements must not blind government to the challenges still facing Banksia Hill. If they are not addressed, it will again descend into chaos and dysfunction. Key issues include:

- the complexity of the young people (aged 10 to 18; male and female; sentenced and remanded; regional, remote and metropolitan; 70% Aboriginal)
- high needs (90% have significant 'neurodevelopmental impairment': (Bower, Watkins and Mutch et al, 2018))
- having only one centre for over 150 young people
- inadequate core services (especially in education, training, programs, and other activities).

Our recent report argued that the Department and the government need to focus on six core elements if recent positive momentum is to be maintained (OICS, 2018, pp. vi-vii):

- increase and diversify placement options for young people

- invest in additional infrastructure at Banksia Hill
- have a plan and stick to it
- ensure clear, consistent leadership and management
- meet need
- deliver on promises.

This review reinforces all the conclusions and recommendations of that report.

3 The ISU and John and Richard's time in custody

3.1 The ISU is in the North-West corner of the site

The ISU is not separate or remote from the rest of Banksia Hill. It is in the North-West corner of the site, close to the education centre, the health centre and other accommodation units.



Figure 1: Site map of Banksia Hill Detention Centre

3.2 The ISU serves multiple functions in four distinct wings

The ISU has four wings. They differ in function, layout and infrastructure. It follows that generalised comments about a person being 'isolated in the ISU' will be misleading. Much will depend on which part of the ISU they are being held in, why they are being held there, and what regime is in place.

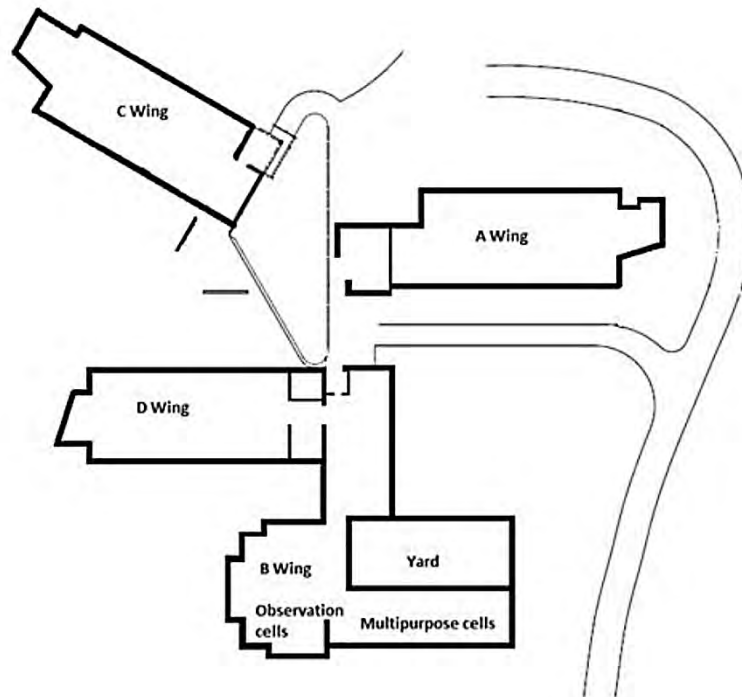


Figure 2: Intensive Support Unit

B wing has two sections comprising:

- four glass fronted observation cells with continuous in-person and CCTV monitoring providing short term placement for young people at risk of self-harm, requiring detoxification or other medical attention, or presenting a security risk
- four multipurpose (MPU) cells with continuous CCTV monitoring providing short term placement of young people post-incident, pending investigation.

D wing provides short term accommodation such as overnight stays post arrest or for young people requiring a higher level of supervision and observation via CCTV.

A and C wings are largely identical in design and size to wings in other accommodation units. They are intended for longer-term stays and have fulfilled a number of different roles over the years.

For many years, A wing was used for reception and orientation. For around four months from late 2016, A and C wings were used for girls. This was totally inappropriate given its lack of self-contained services, its location adjacent to volatile male wings, and the male graffiti tags throughout the wing (OICS, 2017).

3.3 The ISU cells are similar to standard cells

Some advocates have likened the cells in the ISU to dog kennels and parking bays. The cells have also been described as just five square metres in size. Exercise areas have been called 'caged dog runs'.

The actual measurements of the cells in the four wings are as follows:

B wing (observation cells) – 2.9 m x 2.5 m = 7.25 m²

B wing (MPU cells) – 3.0 m x 2.4 m = 7.2 m²

D wing – 2.9 m x 2.9 m = 8.4 m²

A and C wings – 2.9 m x 2.9 m = 8.4 m²

The cells in A, C and D wings are:

- the same size as those in standard accommodation units
- similar in size or larger than most of the cells in adult prisons (OICS, 2016). And while cells in adult prisons are routinely double-bunked, no cells in Banksia Hill are currently double-bunked.

There is one caged outdoor recreation yard adjacent to B wing, which contains a telephone and a punching bag. There is a recreation yard fenced in with C wing, which includes a small grassed area, and a small concrete area with basketball ring. The largest recreation area is similar to those in standard accommodation units, and includes an open grassed space surrounding a large concrete area with a basketball ring.

The following photographs show ISU units and cells, and standard accommodation (Karakin Unit) for comparison.

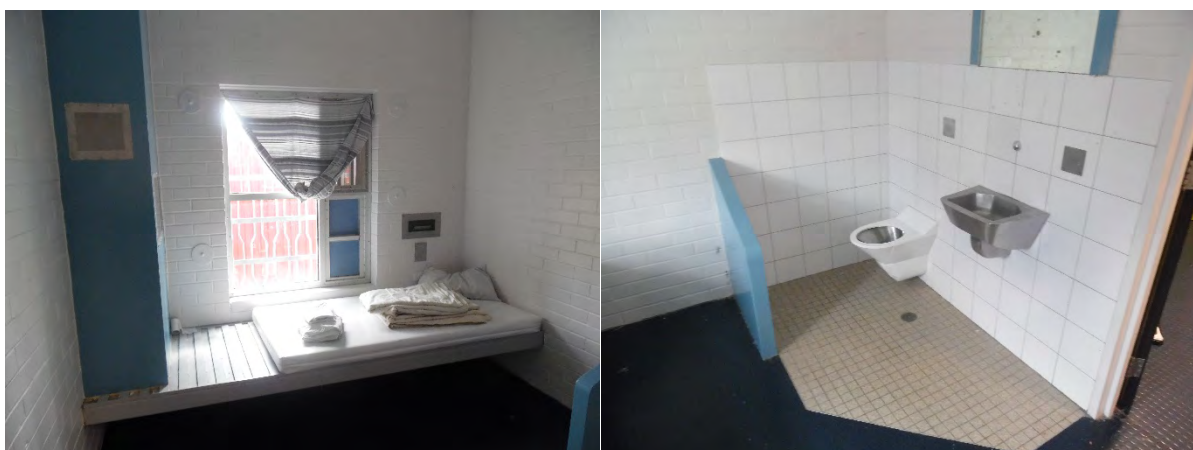


Photo 3 and 4: ISU D Wing cell and ablutions – no shower in cell



Photo 5 and 6: ISU A Wing cell and ablutions

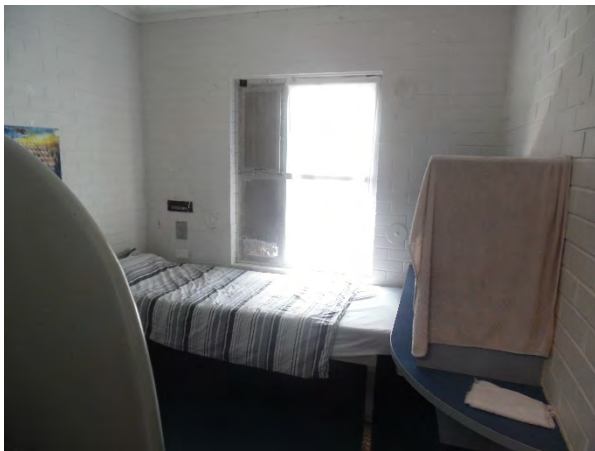


Photo 7 and 8: Standard accommodation (Karakin Unit) cell and ablutions



Photo 9 and 10: ISU A Wing day room and kitchen



Photo 11: Standard accommodation (Karakin Unit) day room and kitchen

3.4 New crisis care infrastructure is needed

We have made comment multiple times about the inadequacies of the ISU infrastructure (OICS, 2018; OICS, 2017; OICS, 2015). The crisis care cells, in particular, are unfit for purpose. They are stark, counter-therapeutic, and too close to the MPU and D wing cells.

Having one unit serving so many functions also creates serious operational challenges.

Nothing in this report changes our view that new purpose-built infrastructure is needed (OICS, 2018).

3.5 John and Richard's time in custody

John and Richard have both spent substantial periods in Banksia Hill but they have very different 'patterns'. Richard has been in and out of custody multiple times, which is common in youth custody. John's case is more unusual. He has only had two admissions to Banksia Hill but both have involved long stays.

John

John turned 18 in August 2017. He faces deportation to New Zealand on release. Apart from three months in 2016, he has been in custody at Banksia Hill since he was 15 years and 3 months old:

- in custody from 20 November 2014 to 18 February 2016 (15 months)
- in the community from 18 February to 15 May 2016 (3 months)
- in custody since 15 May 2016 (21 months to mid-April 2018).

John's offences include aggravated armed robbery (x1), aggravated burglary (x1), criminal damage (x5), assaulting a public officer (x5), stealing a motor vehicle (x10), and being armed or pretending to be armed in order to cause fear (x1). John still has time to serve on his current sentences (to June 2018).

John is also facing charges arising from the incident on 5 May 2017. Although these alleged offences were committed when John was under 18, he will be sentenced as an adult as he is now over 18

(*Young Offenders Act 1994* s 50B). If the alleged offences are proved, he is likely to receive a prison sentence and be sent to an adult jail.

While in custody, John has been involved in over 160 recorded incidents. From August 2016 to May 2017, he was involved in six critical incidents, including serious damage, roof ascent, barricading a wing, assaulting staff, and the 5 May 2017 incident.

Richard

Richard will turn 18 in November this year. His pattern of admissions is completely different from John's:

- aged 12: two new admissions and a total of three days in custody
- aged 13: seven new admissions and around 220 days in custody
- aged 14: four new admissions and around 120 days in custody
- aged 15: one new admission and around 170 days in custody
- aged 16: ten new admissions and around 125 days in custody
- aged 17: in custody since his birthday.

Richard's offences include burglaries and aggravated burglaries (x10), assaults (x3), offences relating to stolen motor vehicles and reckless driving (x3), damage (x2), threats (x2) and being armed or pretending to be armed in order to cause fear (x3).

Like John, Richard still has time to serve on his current sentences (to August 2018) and faces charges arising from the incidents of 4 and 5 May 2017. If he receives a custodial sentence for these offences, this will almost certainly take him past his 18th birthday.

While in custody, Richard has been involved in over 150 recorded incidents. Four of these have been critical incidents, including those of 4 and 5 May 2017.

3.6 John and Richard have spent substantial time in the ISU before 4 May 2017 and afterwards

John

As of 22 March 2018, John had spent 1,131 days in custody since his first admission in November 2014. He had spent almost half this time in the ISU (547 days).

Amnesty's allegations relate to the period after 4 May 2017. However, John had already spent significant periods in the ISU before then. In the nine months from May 2016 to January 2017, he spent 72 per cent of his time there (199 days). We think it very likely that the allegations relating to self-harm date to these earlier periods (see Chapter 4).

John was not involved in the damage incident in Urquhart Unit on 4 May 2017. However, he was moved to the ISU that evening, along with many other uninvolved young people, because the Urquhart Unit was unfit for use. He was then heavily involved in the incident on 5 May 2017.

John has been accommodated in the ISU since 5 May 2017. We analysed his placements within the ISU up to 3 March 2018. He spent most of the time in A and C wings (282 days). He also spent a total of 12 days in D wing over five occasions. He spent one night in an MPU cell, and a total of 11 days over eight occasions in observation cells. Some of his admissions into observation were for less than a day, three were overnight and another three were for multiple nights.

Richard

Between his first admission in March 2013 and 22 March 2018, Richard spent a total of 759 days in Banksia Hill.

Prior to 4 May 2017, he had spent 35 per cent of this time in the ISU (182 days). His stays there were frequent, but generally short.

Richard was moved to the ISU again after his involvement in the 4 May 2017 incident in Urquhart Unit. He became involved in the 5 May 2017 incident when other young people managed to break him out of the caged recreation area. However, youth custodial staff resecured him soon afterwards.

Since May 2017, Richard has moved in and out of custody five times. On each occasion, he has been placed in the ISU. Between 4 May 2017 and 20 February 2018 when he moved to Jasper Unit, Richard spent a total of 20 days in observation on 11 different occasions. He also spent two days in an MPU cell. For most of his time in custody he was placed in either A or C wings (160 days) but he was also admitted to D wing 16 times for a total of 28 days.

4 Specific allegations

This chapter examines the specific allegations that have been made about denial of services and basic requirements. Chapter 5 then examines the claims that legislation and international standards have been breached and that the young people's treatment amounts to torture.

Some of the allegations in this chapter relate only to John or Richard (for example, self-harm). However, some relate to both of them (for example, education, food and bedding). We have therefore arranged the chapter by issue not by name.

4.1 Self-harm

Allegations and evidence

- *John attempted self-harm over 100 times from 5 May 2017 to 14 December 2017; and*
- *his mother was only informed about these attempts twice.*

Amnesty's summary table of evidence shows the main sources for this allegation as John's letter of 21 August 2017, their 9 January 2018 interview with John, John's mother, and a former Banksia Hill employee.

Self-harm involves the intentional harming of the body, and includes self-injury and self-poisoning (DCS, 2015). It is usually done without suicidal intentions and is not uncommon among young people (Hawton, Saunders and O'Connor, 2012). Rates of self-harm at Banksia Hill are likely to be above average because of the complex profile of the young people.

Amnesty did not define 'attempted' self-harm. We have taken it to mean that John was taking steps to try to self-harm, not just thinking about it or verbalising threats.

John had a serious history of self-harm before May 2017, but the evidence does not support claims of 100 attempts since then

It is notoriously difficult to measure actual or attempted self-harm because it may be hidden. Even taking this into account, the evidence does not support the claim. In fact, it shows that John's self-harm greatly reduced over the period in question.

John had a serious history of self-harm at Banksia Hill in 2016 and the first three months of 2017. Departmental records show 12 incidents of actual self-harm in 2016, and four in the first three months of 2017. There was also one in 2015.

The figures are particularly concerning as John was in custody for only nine months of 2016. In 2016 and the first quarter of 2017, he was therefore self-harming, on average, every three weeks. He also had six recorded incidents of threatening self-harm between 2015 and April 2017.

By contrast, from May 2017 to 1 March 2018, John had no recorded incidents of actual self-harm and just one of threatening self-harm (on 17 May 2017).

We examined John's departmental notes to see if there was any other evidence of self-harm. We found that on two occasions (October and November 2017) he was moved to observation cells (B

wing) due to thoughts of self-harm. The timing of these placements is consistent with his letter of 2 October 2017 where he said he had been thinking about self-harm while in the ISU.

We note, too, that while Amnesty saw scars on John's arms at their interview on 9 January 2018, they said they were 'not fresh wounds'.

We have previously expressed concern that not all incidents of self-harm are being accurately recorded (OICS, 2017). However, if a high profile young person with a known history of self-harm at the centre had attempted self-harm 100 times in 223 days, it is implausible to think there would be no records of any of this.

John was also twice placed in observation cells for *thoughts* of self-harm over the period in question. This does not suggest a facility that is blasé about self-harm, or failing to identify and monitor risk.

Our own observations and our discussions with John align with these findings.

The evidence does not support the claim that John's mother was not notified about a large number of self-harm incidents from May to December 2017

Through Amnesty, John's mother has said that she was only contacted twice about over 100 attempted self-harm incidents from May to December 2017.

As noted, the records show three self-harm related matters from May to December 2017 (one threatened self-harm and two observation cell placements because of thoughts of self-harm). According to John's mother, she was contacted twice about self-harm from May to December 2017. The evidence does not therefore support the allegation that Banksia Hill failed to contact John's mother about a large number of known self-harm attempts in the period from May 2017.

However, due to weaknesses in notification procedures and recording, we cannot confirm when John's mother was contacted, how often, or why.

The procedures for notifying caregivers of self-harm are inadequate

The Department's current policies do not require a caregiver to be notified when a young person causes, attempts, or threatens self-harm, unless this results in placement in an observation cell.

Standing Order 9b states that if a young person is placed in an observation cell, caregivers are to be notified 'as soon as practicable' (DOJ, 2017). However, there is no requirement for notifications to be recorded.

John had eight observation cell placements from May to December 2017, two because of thoughts of self-harm. The Department has no information to confirm whether his mother was contacted, as required by policy, about all eight placements.

More importantly, it is impossible to know if or when John's mother was contacted from 2015 to March 2017 when he was repeatedly self-harming (17 actual self-harms and six attempts). From our discussions with John and his mother, it seems most unlikely that she was fully aware of the extent of self-harm until after May 2017.

Recommendation 2 – Amend Departmental policies to:

- require caregivers to be notified whenever a young person has:
 - self-harmed
 - attempted self-harm
 - threatened self-harm
- ensure notifications are recorded on the young person's departmental notes

4.2 Education

Allegations and evidence

- *John had 'not had access to education whilst in isolation' from May to December 2017.*
- *Richard was denied access to education during periods of isolation.*

Amnesty's summary table of evidence shows the main sources for these allegations as their interview with Richard, David's letter of 21 August 2017, John's mother, and a former Banksia Hill employee.

Education for all young people has been substandard

In Western Australia, all children have a right to education. They are also required to attend school to the age of 16. Young people aged 16 and 17 must be in training or employment if they are not attending school.

In assessing these allegations, it must be understood that education services at Banksia Hill have fallen well below community standards for many years (OICS, 2018). Resources and developmentally appropriate programs have been lacking, and management and strategic drive have been poor. The needs of older youth have been particularly neglected.

The events of 4 and 5 May 2017 caused further disruption as the centre needed to be made safe and stabilised. All the young people, including those not involved in the incidents, paid a high price for the misdemeanours of a few (OICS, 2017).

John and Richard have accessed education while in the ISU

The evidence is that:

- both John and Richard have accessed some education during their time at Banksia Hill, and placement in the ISU
- from Friday 5 May to Tuesday 9 May 2017 there was no school anywhere in the centre due to the incidents
- for 'operational' reasons, there was no school for the ISU from Friday 5 May to Monday 15 May 2017.²

² In its response to the draft of this report, the Department advised that the operational reasons were that the ISU was significantly damaged and had to accommodate 38 young people in a period of restricted regime. The centre was also facing significantly reduced staffing because of the incidents on 4 and 5 May 2017 after which the site was assessed as an occupational health and safety risk for both staff and young people.

In assessing education contact hours, it should be noted that John turned 18 in August 2017 and has been beyond compulsory school age. However, during his time in the ISU he has completed three units of a Certificate III in General Education. He has also chosen, on occasion, not to participate in education services, preferring to work in the centre's painting and maintenance group.

Richard has worked towards a Certificate I in General Education completing three units of mathematics and two of literacy.

The Department provided the following:

Table 1: Education contact hours for John and Richard (May 2017 – January 2018)

| Month | John | | Richard | |
|----------------|--------------------|-----------------------|---------------|-------------|
| | Days Accessed | Total Hours | Days Accessed | Total Hours |
| May 2017 | 5 | 8 | 4 | 9:20 |
| June 2017 | 12 | 11:25 | 1 | 1 |
| July 2017 | 9 | 7:20 | 0 | 0 |
| August 2017 | 17 | 22:40 | 5 | 4:25 |
| September 2017 | 14 | 17:30 | 10 | 20 |
| October 2017 | 17 | 11:35 | 16 | 17:15 |
| November 2017 | 18 | 22:20 | 15 | 19:55 |
| December 2017 | 6 | 13:05 | 16 | 38:35 |
| January 2018 | 11 (to 25/01/2018) | 16:45 (to 25/01/2018) | 15 | 35:45 |

In summary, John and Richard, like all the other young people at Banksia Hill, would probably have benefited from greater access to education and training. But the evidence does not support claims that they were 'denied' or had 'no' access to education.

Our observations more recently are that education services in the ISU have greatly improved. They are better than Harding previously offered, and possibly better than services to some of the other young people at the centre.

4.3 Programs and services

Allegation and evidence

Richard was denied access to programs and services while in the ISU.

Amnesty's summary table of evidence shows the main sources for this allegation as their interview with Richard on 10 January 2018, and David's letter of 21 August 2017.

Richard has completed some programs in the ISU

As noted earlier, Richard has been in and out of custody over the period in question. At the time of the allegation (12 January 2018), he had participated in three programs in the ISU:

- Art Program (10 sessions)
- Positive Communication (1 session)
- Emotional Management (9 sessions)

Since 12 January 2018, he has continued to participate in these and other programs:

- Art Program (2 sessions)
- Positive Communication (1 session)
- Moorditj Ngoorndiak – individual mentoring (1 session)
- Individual Support (2 sessions)

Richard has accessed support services and activities

It is difficult to assess this allegation as it does not say exactly what services were denied. Richard's departmental notes indicate he has:

- accessed recreation (at least 53 days of the 216 days he was in custody between 6 May 2017 and 14 February 2018)
- accessed the centre's Aboriginal Welfare Officers (at least 79 days)
- met with the Aboriginal Visitor's Service, the Chaplain and the nurse
- had regular contact with his lawyers
- had contact with psychological services (see below)
- had regular contact with his Senior Case Manager at Banksia Hill.

Richard is in the care of the CEO of the Department of Communities (DOC). He has had regular contact with his DOC case officer. His Senior Case Manager at Banksia Hill has also maintained regular contact with DOC.

In summary, as with education, Richard (like all the other young people) would no doubt have benefited from better access to recreation, programs, services, and activities. But the evidence does not support the claim that he was 'denied' any of these.

4.4 Psychology

Allegation and evidence

Richard was denied access to a psychologist for at least 2 weeks after 5 May 2017.

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, and David's letter of 21 August 2017.

Richard saw a psychologist twice between 5 May and 16 May 2017, and another 43 times up to 20 February 2018

Richard was referred to the centre's at-risk management system on 5 May 2017 after threatening to harm himself. He was seen by his psychologist on 9 May and again on 15 May 2017. He was released from custody on 16 May 2017.

During his subsequent admissions to the centre (a total of 196 days in custody up to 20 February 2018), Richard engaged with Psychological Services 43 times (once every four and a half days on average).

Psychological Services staff said it was difficult to see any young people immediately after the May 2017 incidents due to the extensive damage across the site and the hazards to both young people and staff. They said that it was possible that a young person had requested to see a psychologist but was unable to see them immediately. However, they said they had no evidence that access was 'denied' and that no young person had advised them of this.

4.5 Strip searching

Allegation and evidence

John was regularly strip searched.

Amnesty's summary table of evidence shows the main source for this allegation as John's mother.

There is no evidence that John was regularly strip searched during his time in the ISU

Searches at Banksia Hill can involve a 'pat-down' search akin to airport screening or a strip search. Departmental policies require all searches and their findings to be recorded (DCS, 2014).

There is provision in the Department's policy for a strip search to be conducted if the Superintendent considers it necessary to ensure the good order, security and safety of the centre and the wellbeing of young people and staff (DCS, 2016).

According to Departmental records, John was searched a total of 71 times in the ten months from 4 May 2017 to 1 March 2018. Four are recorded as strip searches and 67 as pat down searches. No contraband was found in any of the 71 searches.

There is no evidence to suggest that searching records have been falsified and no evidence of John being regularly strip searched.

Two of the four strip searches were conducted in July 2017. One was because the centre had received intelligence and the other because John was being placed into an observation cell.

The other two strip searches occurred in September and November 2017. Both are simply recorded as 'routine'. One followed a social visit and the other followed participation in a vocational program. Unfortunately, there is no information in incident reports or John's notes to indicate why the centre considered a strip search to be necessary.

Amnesty and John's mother said that the fear of being strip searched prevented John from having physical contact with his family during social visits. This is impossible for us to assess, but we note that between 5 May 2017 and 1 March 2018, John had social contact visits on 74 days. Only one strip search was recorded after a social visit.

Banksia Hill has reduced strip searching and is trialling alternatives

In discussions, Amnesty said they said they could not quantify 'regular' and focused more on the indignity and impact of strip searching.

Over recent years, we have made extensive comment about the strip searching of children and young people at Banksia Hill. It was at its most excessive and pointless after the January 2013 riot (OICS, 2013; OICS, 2015). The Department has subsequently responded to our concerns:

- the total number of strip searches at the centre dropped from over 9,000 in 2015 to 2,445 in 2017
- the centre has changed its method of strip searching, from a fully unclothed search to a 'half-and-half' method (OICS, 2018)
- it is set to trial a full body scanner to eliminate strip searches.

These are all much-needed steps to reducing the frequency, indignity and trauma of strip searching. We especially welcome the trialling of scanners.

4.6 Restraints

Allegations and evidence

- *John was handcuffed whenever outside the ISU, including to attend visits, until October 2017.*
- *Richard was handcuffed and accompanied by up to four guards during out of cell time.*

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, David's letter of 21 August 2017, and John's mother.

Use of restraints must be recorded as a 'use of force' unless the young person is on a Personal Support Plan (PSP) requiring restraints when out of cell

Standing Order 18 (SO 18) governs the use of restraints on young people. Generally, it treats the application of physical restraint holds and mechanical restraints, such as hand cuffs, as a use of force. This means they are to be reported as such.

Between 4 May 2017 and 28 February 2018, reportable restraints on John and Richard were as follows:

Table 2: Recorded restraint use for use of force incidents

| | Physical | Mechanical | Total |
|---------|----------|------------|-------|
| John | 1 | 5 | 6 |
| Richard | 6 | 9 | 15 |

The length of time handcuffs were used was short, ranging from 2 minutes to 4 minutes for John, and 3 minutes to 10 minutes for Richard.

However, the use of handcuffs is not considered a use of force under SO 18 if a young person is on a PSP which requires the use of restraints when out of cell. This means it is not reportable and not recorded. PSPs must be approved by the Superintendent.

For a significant period of time, handcuffs appear to have been routinely use of John and Richard when they were out of cell

John

Between May 5 and 31 October 2017, John was placed on six PSPs. None of these PSPs specifically mentioned mechanical restraints. However, they did set requirements for unlock and supervision by officers, depending on John's progress on the plan.

In response to this allegation, the Department told us that after the incident on 5 May 2017 John was deemed to be a risk to the good order and security of the centre. Consequently, 'for a period' - which the Department did not quantify - John was handcuffed during escorts as prescribed in his Detainee Management Plan.

A Detainee Management Plan is different from a PSP. We were given four Detainee Management Plans for John. The first began on 29 September 2017. It stated that:

- if John was moving outside the ISU with no other young people, handcuffs were not a requirement, but could be used at the unit manager's discretion
- if John was moving outside the ISU with other young people, handcuffs were required.

There was no requirement to record the use of handcuffs during these escorts.

Richard

Between 5 May and 31 October 2017, Richard was placed on five PSPs. As with John, none of the PSPs specifically mentioned mechanical restraints. However, they did set requirements for unlock and supervision by officers depending on Richard's progression through his plan.

It appears that, like John, Richard was also handcuffed during escorts in the centre. The Department advised that he was escorted by two officers as per his PSP. Therefore, the use of restraints would not be recorded.

The Department added that due to Richard's highly problematic behaviour, the centre's response team would often follow closely in case an incident occurred.

Records on the use of restraints are inadequate

Given the requirements imposed on John and Richard's movements, the evidence presented by Amnesty appears substantially correct. Certainly, the Department has no evidence to rebut the allegation because it has no records for the use of handcuffs during escorts and there was no requirement for such records to be kept.

As the Department is dealing with children, it needs robust policies for the use of force and restraints. It must also keep proper records. Currently, the records are incomplete, inconsistent, and confusing.

As a result, the Department cannot say when, why and how often restraints are being used on young people on PSPs. It follows that it cannot assure itself or external parties that restraints are being used on the basis of objective risk, and not as a matter of habit, or for punishment or deterrence.

Recommendation 3 – Ensure that all uses of physical and mechanical restraints are recorded, including those prescribed in a plan, and that the records include reasons for their use.

4.7 Meals

Allegations and evidence

- *John was deprived of meals on occasion*
- *Richard was fed via a grille without cutlery, or ordered to go into a corner of the cell/face the wall with his hands on his head before food was brought in.*

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, David's letter of 21 August 2017, John's mother, and a former Banksia Hill employee.

There is no evidence that John has been deprived of meals

During interview, representatives from Amnesty said the crux of this allegation was not that John had been 'deprived' of food, but that he had not received the same meals as those issued to the young people in mainstream units. This is confirmed by their summary table of evidence.

In the ISU, according to the claim, John had been receiving sandwiches and bread rolls, and other foods not requiring cutlery. This meant that during the winter months he was not receiving hot meals.

Our recent review of behaviour management practices at Banksia Hill raised concerns about the possible use of dietary restrictions as a behaviour management technique prior to May 2017 (OICS, 2017). The Department claimed it had not used diet in this way. Soft food meals not requiring cutlery were provided to those young people in the ISU who were presenting as at-risk. While we found no evidence that John had self-harmed during the timeframe, he did have a substantial self-harm history.

We have not received any further complaints from young people or staff that the centre has continued to use diet as a behaviour management tool. Reliable sources who had expressed concern in early 2017 said that complaints about food were now more minor.

If a young person is disruptive, it is standard practice for meals to be passed through a hatch or for them to stand at the back of the cell

There is no evidence of Richard or any other young person being fed through a grille. However, many of the cell doors in the ISU have a hatch through which meals and other items can be passed if

a young person is unsettled, disruptive or posing a risk to others. The aim is to reduce the risks to all parties.

It is not uncommon for meals to be issued in this manner. While not ideal, it is an appropriate practice provided it is properly regulated.

Some cells in the ISU do not have a hatch in the door. If a young person in such a cell is unsettled, disruptive, or posing a risk to others, they may be asked to stand at the back of the cell while food is brought in. Again, the aim is to reduce the risk of an incident.

There is no specific evidence of when and why these practices were used

The Department told us that there were occasions when Richard's meals were either issued through the door hatch or by asking him to stand at the back of the cell because his behaviour was considered disruptive or risky.

However, there is no evidence how often this occurred and whether the centre's assessment of risk at the time was well-founded. We are therefore unable to say whether these practices were used appropriately to manage risk, or whether they were used in an excessive and punitive way.

4.8 Bedding

Allegations

- *John had to earn access to a mattress every day until October 2017*
- *Richard was subjected to having his bed stripped each morning, leaving only a mattress until 3pm, requiring him to earn the privilege of bedding.*

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, and John's mother.

John and Richard have both spent time in different wings of the ISU. As the different wings serve different purposes, the rules about bedding vary.

There are no records to support or refute the claim that John had to earn access to a mattress every day until October 2017

Between 5 May and 1 October 2017, John spent:

- *Six days in observation and MPU cells.* Bedding may be removed if the young person has threatened, or is considered at risk of self-harm. The mattress may also be removed if the young person uses it to obscure the cell camera. The mattress should be returned once the risk is mitigated.
- *Five days in D wing cells.* Bedding may not be provided in these cells if the young person is placed there after an incident and it is expected that the placement will only last a few hours.
- *John spent 138 days in A and C wing cells.* Standard bedding is to remain in these cells.

We are unable to form an opinion about these allegations as there is no evidence to support or rebut them. However, we are concerned that, with tensions high and the centre under stress after the May 2017 incidents, there may not have been full compliance with requirements.

There are no records to support or refute the claim that Richard had his bedding stripped each morning and had to earn it throughout the day

Richard has been held in different cells in the four ISU wings during his times in custody since May 2017. In clarifying the details of this allegation, Amnesty advised that it largely related to the first two weeks after the May 2017 incidents.

From 5 May 2017 till his release on 16 May 2017, Richard spent one day in observation, eight days in D wing cells and three days in C wing:

- bedding may have been removed in the observation cells if Richard had threatened, or was considered to be at risk of self-harm
- as he was in D wing for eight days, not just a few hours, bedding should have been provided
- bedding should have been provided during his days in C wing.

As with John, we are unable to form an opinion about these allegations as there is no evidence either way. However, we are concerned that, with tensions high and the centre under stress after the May 2017 incidents, there may not have been full compliance with requirements.

Although there is no clear evidence either way on these allegations, we would be most concerned if bedding was treated as a privilege that a young person must earn. Bedding is a right not a privilege. Unless the young person is being held in an observation cell because they are at risk of self-harm, or is in 'transit' in a short term holding cell, bedding must be provided.

Recommendation 4 – Ensure that any removal of a young person's bedding from cell occurs only when the young person is at risk or in a short term holding cell, and that both the removal and reason for removal are recorded.

4.9 Showers

Allegation

Richard was denied access to a shower on some days.

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, David's mother, and a former Banksia Hill employee.

On some days Richard did not shower, but it is not clear whether he declined or was denied

As discussed, the ISU comprises four wings serving different functions. Observation cells (B wing) do not have showers because they require continual observation. D wing cells also have no showers as they were originally intended for short stays. Cells in A and C wings do have showers.

Between 4 May 2017 and 1 March 2018, Richard spent 161 days in A and C wings where he had in-cell access to a shower. Quite rightly, staff do not monitor or make records of the showering habits of young people in these cells.

For another 48 days, Richard was in B or D wings. As far as possible, we have examined his PSP Checksheets for these days. There were 16 days for which no PSP Checksheet was provided. The Checksheets do not record Richard accessing a shower on seven of the other 32 days.

While it appears that Richard did not access a shower every day he was in B and D wings, it cannot be said that he was 'denied' access. On at least one occasion, records show he declined the opportunity to shower. On another occasion, the 'shower' checkbox on the PSP was not filled in, but text comments referred to him showering. There is no record of Richard asking for a shower and his request being refused.

4.10 Access to electricity

Allegation

Richard was held in the ISU without any electricity for approximately two weeks.

Amnesty's summary table of evidence shows the main sources for this allegation as their interviews with Richard and John, David's mother, and a former Banksia Hill employee.

There is no evidence to indicate that Richard was held in cell without electricity for two weeks

We sought clarification from Amnesty about this allegation. They claimed that power was turned off to Richard's cell in the immediate period following the May 2017 incidents.

Banksia Hill has experienced a number of power outages in the last 12 months. Some have taken time to fix. However, there has been no reportable loss of power to the centre for such a prolonged period since May 2017.

There is also no ability to turn off the electricity to individual cells. Power at Banksia Hill can only be turned off at the unit level via an RCD switch.

As discussed earlier, Richard was in custody for 11 days from the 5 May 2017 incident to his release. Departmental records are not complete for this time.

The PSP consists of stages where the young person earns more privileges. From 5 May to 10 May 2017, Richard was in the first stages and was not entitled to access a television or radio. However, he progressed to milestone two on 11 May 2017, supposedly granting him access to a television, and therefore electricity.

In summary, there is no information to indicate a loss of power in cells, or the removal of power for Richard.

5 Allegations of isolation / solitary confinement and breach of law

5.1 The allegations

Allegations and evidence

- *John has been held in 'practical isolation' / 'isolation in the Harding Unit' since May 2017*
- *Richard has been held in 'isolation in the Harding Unit' for*
 - *at least two weeks from 5 May 2017*
 - *at least two weeks in August 2017*
 - *at least two weeks in September 2017*
 - *other variable periods of time between May 2017 and January 2018.*

Amnesty's summary table of evidence shows the main sources for this allegation as John's letter of October 2017, David's letter of August 2017, Amnesty's interviews with John and Richard on 9 and 10 January 2018, and John's mother.

As discussed earlier, later media commentary, including Amnesty's media releases, has used stronger language, such as 'solitary confinement' and 'prolonged solitary confinement'.

Amnesty made two specific legal claims arising out of these allegations:

- John and Richard's isolation breach s 173(2)(e) of the *Young Offenders Act 1994* (the Act) and rr 76, 77 and 79 of the *Young Offenders Regulations 1995* (the Regulations)
- the conditions breach international conventions and constitute torture under international law.

As Amnesty's claims involve alleged breaches of specific legislative provisions, we must form an opinion on the law and apply that law to the evidence available to us. It is important to reiterate that we are not a court of law and have not had the benefit of hearing arguments by counsel. A court might therefore reach a different conclusion from us (see also Chapter 1).

To assist, we asked the Department to provide 'copies of requests for legal advice or legal advice received' in relation to the ISU or to John, Richard and David. It refused to do so, citing legal professional privilege.³ However, after receiving our draft report, it did provide a letter which assisted our understanding of the law. It also advised that it had 'not sought legal advice in regards to the terms "solitary confinement" or "isolation" in the context of the Act or Regulations', and that it was awaiting advice on a new draft Standing Order 9d 'Intensive Support Unit'.

³ The *Inspector of Custodial Services Act 2003* states that this Office is entitled to all Departmental documents other than those certified as Cabinet in Confidence. However, the State Solicitor has provided an opinion which states that we are also not entitled to copies of legal advice because our Act does not override the common law principle that legal advice is privileged between lawyer and client. On this view, we are not 'entitled' to copies of legal advice. But it is always open to a client (in this case, the Department) to 'waive' privilege. Privilege does not attach to the advice but to the client, the better descriptor being 'client legal privilege' (ALRC, 2005).

5.2 The Young Offenders Act and the Regulations allow short-term ‘confinement’ for punishment or risk management

Amnesty claim that s 173(2)(e) of the Act and rr 76, 77 and 79 of the Regulations have been breached. The Department did not address these provisions but referred to a range of Standing Orders and policy documents.

Sections 173 and 196 of the Act and Part 9 of Division 3 of the Regulations allow the ‘confinement’ of a young person ‘to sleeping quarters or a designated room’ in restricted circumstances.

Detention offence confinement is governed by s 173 of the Act and regulations 75–77. It is a punishment that can be imposed by a Superintendent or a Visiting Justice (VJ) when a young person is found to have committed a ‘detention offence’. The maximum period is 48 hours in the case of a VJ, and 24 hours in the case of the Superintendent.

Young people held in detention offence confinement are entitled to 30 minutes out of cell every three hours during unlock hours. As Banksia Hill’s unlock hours are under 12 hours a day (7.45 am to 7.00 pm), this requirement is met by three 30 minute sessions a day (for example, 9.30 am to 10.00 am, 1.00 pm to 1.30 pm, and 4.30 pm to 5.00 pm). The legislation also prescribes a regular monitoring regime for any young person on detention offence confinement.

Good order confinement (our shorthand term) is governed by s 196 of the Act and regulations 74 and 78–80. The Superintendent can place a young person in confinement for a maximum of 24 hours for the good order, good government or security of the centre. This is not a punishment, but a management decision based on risk.

Young people on good order confinement are entitled to one hour of exercise every six hours of unlock hours. As Banksia Hill’s unlock hours are less than 12 hours a day, this requirement is met by just one hour out of cell a day.

The out of cell entitlements for both good order confinement and detention offence confinement are less than required by internationally accepted standards (2 hours every 24 hours).

We also see no justification for young people on good order confinement having a lower entitlement than those on detention offence confinement.

5.3 John and Richard have been placed in the ISU under ‘Change of Accommodation Personal Support Plans’ (PSPs)

Change of accommodation PSPs are an option of last resort

The Department’s submissions said that John and Richard have been in the ISU on PSPs:

[T]he management of all young people in the ISU is determined by their Personal Support Plan (PSP), which addresses a range of factors specific to the individual young person, including case management and interventions. PSPs have been developed for [John and Richard].’

PSPs have no formal legislative basis, but are governed by the Department's Standing Order 9a (SO9a). However, Standing Orders derive their authority from legislation and must be compatible with it.

SO9a has three types of PSP: the 'Special Needs' PSP, the 'Unit-based PSP', and the 'Change of Accommodation' PSP.

John and Richard have been on Change of Accommodation PSPs (CAPSPs). Section 12 of SO9a reads as follows:

The management of a young person on a Personal Support Plan (Change of Accommodation) (Change of Accommodation PSP) shall be used as a last resort to manage the resulting risks from a Critical Incident ... and segregation from peers is required to remove negative peer influences and an audience for inappropriate behaviour, or to manage ongoing inappropriate behaviour when every other available option has been exhausted.

CAPSPs are therefore a 'last resort' for two situations: to manage 'ongoing inappropriate behaviour'; or to manage 'the resulting risks from a Critical Incident' when 'segregation from peers' is required.

There are no time limits on CAPSPs. However, as a 'last resort', the centre must implement policies, programs and regimes to support young people to move back to 'mainstream' accommodation. SO9a does provide for this and, as discussed later, 'graduated transfer plans' have been developed for both John and Richard.

Policies governing CAPSPs overlap with legislation governing confinement

PSPs must not be used to apply a regime equivalent to 'confinement' under the Act and Regulations. To do so would undermine Parliament's intent in enacting the Act and Regulations. Unfortunately, while the intent of CAPSPs is to provide a regime that differs from confinement in duration and intent, some of the boundaries are blurred:

- The justification for CAPSPs is to manage risks arising from inappropriate behaviour or critical incidents. This seems virtually indistinguishable from the justification for imposing good order confinement ('good order, good government or security of the centre').
- SO9a draws legislative authority for key aspects of CAPSPs from the regulations on confinement:
 - r 79 is given as the legal basis for young people on CAPSPs having a minimum out of cell time of 'one hour every six hours during unlock hours'
 - r 78 is given as the legal basis for designating cells to be used for CAPSPs. And the cells that have been designated under SO9a are the same as those that would be used for good order confinement.
- Even though CAPSPs can be of much longer duration, young people on such PSPs only have the same entitlement to out of cell time as those in good order confinement (60 minutes a day). This is less than young people in detention offence confinement (3 x 30 minutes) and less than internationally accepted standards (2 hours every 24 hours).

- The word 'segregation' in SO9a is confusing. To many people working in youth justice and the human rights field, 'segregation' is synonymous with 'confinement'.

5.4 There is a good case for legislative reform

Youth detention centres must be able to separate some individuals from others on a 24–48 hour basis to address immediate risk. They must also be able to operate longer-term regimes to address the risks and needs of different young people or different cohorts. This is especially important at Banksia Hill as the state provides no alternative placement options.

At times, this will require some young people to be placed in conditions that limit peer interaction and are more restrictive than normal. However, it is vital that all such regimes, short or long, are backed by robust governance requirements and protections. Without this, it will be hard to distinguish the lawful application of separation practices from abuse. This leaves governments exposed.

It follows from the previous discussion that a comprehensive review of legislation and other governance documents is required:

- The confinement provisions in the Act and Regulations are dated and inconsistent on basic matters such as out of cell time.
- The confinement provisions are practically obsolete and unnecessary. Confinement is not often used for detention offences as other punishments can be imposed. Good order confinement is effectively displaced by CAPSPs.
- The Act and Regulations do not meet international minimum standards for out of cell time.
- CAPSPs arguably undermine the spirit of the Act and Regulations. They can be authorised on almost identical grounds to good order confinement, but allow an indefinite regime with only the same out of cell hours as good order confinement. This means that conditions that would breach the Act may be permissible under the guise of CAPSPs, which have no legislative basis.
- Improved legislation, that is anchored to international standards, will improve legality, clarity and consistency. Currently, too many different terms are being used (HRLC, 2018; CCYP, 2017). As discussed, the Act and Regulations refer to 'confinement', and SO9a to 'segregation'. Other terms that are used include 'practical isolation' (Amnesty's letter about John); 'isolation' (Amnesty's letter about Richard); 'solitary confinement' (public commentary and Amnesty media releases); and 'prolonged solitary confinement' (public commentary and Amnesty media releases).

Recommendation 5 – Amend the *Young Offenders Act 1994* and the *Young Offenders Regulations 1995* by:

- repealing the provisions governing 'confinement';
- enacting a framework for managing special regimes such as the ISU, including adequate protections for young people; and
- ensuring that all young people are entitled to a minimum of two hours out of cell each day.

5.5 John and Richard's placement in the ISU has not breached legislation

For around 10 days after the May 2017 incidents, John and Richard's time out of cell fell short of what would be required for a young person being held in 'confinement' under the Act and Regulations (see 5.6 below).

However, we have concluded that, as a matter of law, the protections afforded to people in 'confinement' did not apply to John and Richard because they were not being held in confinement under the Act:

- They were not in 'detention offence confinement' after being found guilty of a detention offence. Section 173(2)(e) of the Act and rr 76 and 77 have therefore not been breached.
- Regulation 79 has not been breached as John and Richard were not placed in the ISU on the basis of 'good order confinement'.

However, under SO9a, young people on CAPSPs have the same minimum out of cell entitlements as those in good order confinement (a minimum of 60 minutes a day).

5.6 For around ten days after the May 2017 incidents, John and Richard were not given their entitlements to fresh air and exercise

'Out of cell time' is one of the Department's key measures but recording practices have been flawed for years (OICS, 2017; OICS, 2015; OICS, 2012; OICS, 2009).

Our review of behaviour management practices up to 4 May 2017 found that there had been multiple breaches of r 79. We also found major gaps in record keeping, credible evidence that records had been altered and that CCTV footage was destroyed after we had requested it for verification (OICS, 2017).

Given this history, we were not at all surprised to find poor or non-existent record keeping in the period following the May 2017 incidents. Importantly, the new management team has already implemented some improvements, with PSP Checksheets commencing on 10 May 2017.

John

There are no out of cell time records for John for 5–7 May 2017.

John's notes for 8 May 2017 indicate that he had some time out of cell to clean his cell and shower, but the length of time was not recorded. Notes for the other young people in the ISU that day are to the same effect.

There is no indication John spent any time out of cell on 9 May 2017.

These records, and lack of records, can only lead us to conclude that John's legislatively required time out of cell was not met for the five days from 5 to 9 May 2017.

On 10 May 2017, when the centre started using PSP Checksheets, John was recorded as out of his cell for one hour and 30 minutes. However, up to the end of May 2017, while the new Checksheets

were bedding in, there were four days without records. There were also two days where John was recorded as only out of his cell for 45 minutes. For the days in May 2017 for which records are available, John spent an average of three hours out of cell.

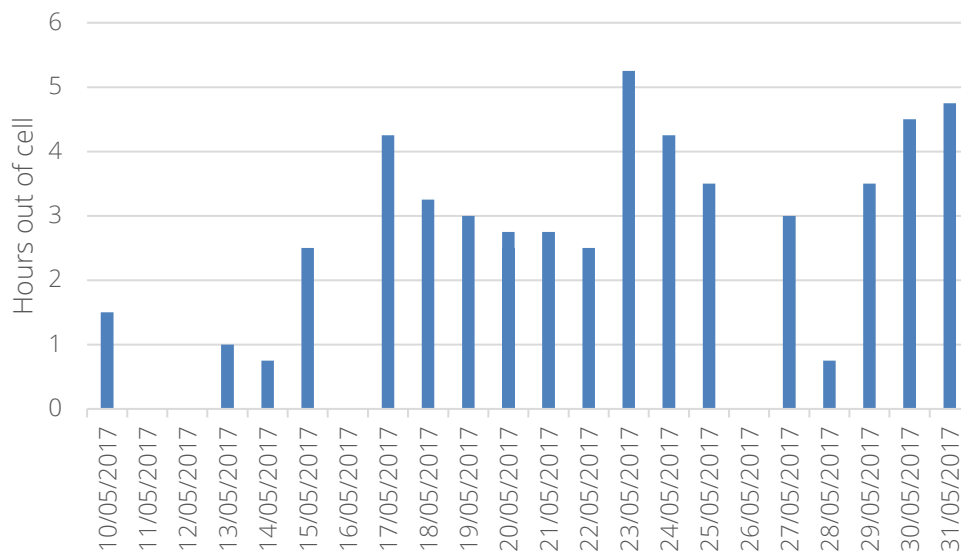


Figure 3: Recorded time out of cell in May 2017 as per PSP Checksheets (John)

Amnesty’s allegation goes beyond May 2017, and says that John was in practical isolation up to 14 December 2017. In fact, his out of cell time had increased significantly:

Table 3: Average recorded time out of cell, June–December 2017, as per PSP Checksheets (John)

| Month | Average hours out of cell |
|-----------|---------------------------|
| June | 5 hours 12 minutes |
| July | 4 hours |
| August | 6 hours 36 minutes |
| September | 8 hours 18 minutes |
| October | 7 hours 10 minutes |
| November | 8 hours 30 minutes |
| December | 8 hours 18 minutes |

Richard

Amnesty has alleged that Richard was subject to periods of isolation in May, August and September 2017.

As with John, there are no out of cell time records for Richard in the days immediately after the May 2017 incidents. He is recorded only as out of cell for 30 minutes on 7 May 2017; for an unknown time to clean his cell and shower on 8 May 2017; and not at all on 9 May 2017.

We have concluded that Richard’s legislatively required time out of cell was not met from 5 to 9 May 2017.

From 10 May 2017, when the PSP Checksheet practice commenced, until Richard’s release on 16 May 2017, his time out of cell each day ranged from no time at all to three and a half hours.

The second period outlined in the allegations was August 2017. Richard spent two separate periods in custody in August 2017. The first period lasted 18 days, and PSP Checksheets were completed for 15 of these days. They show that, on average, Richard spent five and a half hours out of cell.

Richard was released from custody but returned late in August 2017 for five days. On the first day of his return he was only out of cell for 45 minutes. Incident reports and notes say he was extremely unsettled and irrational, and 'raging' on occasion. He was due to appear at court but was involved in an incident preventing this. He also refused to see the centre's nursing staff. For the remaining days in August 2017, he spent between one hour, and five and a half hours out of cell each day.

The third period outlined in the allegations was 9–22 September 2017. In this time, Richard averaged seven and a half hours out of cell each day. The shortest was four hours 15 minutes, and the longest was nine hours 15 minutes.

5.7 In exceptional circumstances, the risks may be such that a facility cannot safely meet the full entitlements of people in custody

In exceptional circumstances, the risks and operational realities may be such that the entitlements of people in custody cannot be safely met. For example, if there is a riot that lasts 24 hours, it may be necessary and appropriate to keep some people locked in their cells for their own protection. It may also be the case that after a fire, a riot or serious storm damage, parts of a facility may be too unsafe to use.

In 2013, the Supreme Court of Western Australia examined the legality of the decision to transfer young males from Banksia Hill to Hakea Prison after the January 2013 riot. Chief Justice Martin held:

'On the evidence available to me, the decisions that have been made with respect to the management of detainees since the riot have been made with the best interests of the detainees strongly in mind, having regard to the risk that detainees might harm themselves or each other, but also taking appropriate account of the need to ensure the safety of staff and the protection of the community.

Those decisions have resulted in arrangements for the detention of young offenders which are clearly less than optimal ... However, the limited options for alternative accommodation available following the riot ... constrained the department's capacity to provide optimal facilities and services.' (Wilson v Joseph Michael Francis, Minister for Corrective Services for the State of Western Australia, 2013).

During this review, similar arguments have been raised with us.

However, such arguments depend on the facts of the particular case. To succeed, the Department would have to establish that it was too unsafe or too risky for the young people to have an hour out of cell each day, and that the lockdowns were not punitive.

5.8 Amnesty claim that John and Richard's treatment breaches United Nations conventions and standards

Amnesty's letter claims that John has been held in solitary confinement in breach of the Mandela Rules (United Nations Standard Minimum Rules for the Treatment of Prisoners) and the Havana Rules (United Nations Rules for the Protection of Juveniles Deprived of their Liberty).

In the case of Richard, Amnesty have gone further and claimed he has been held in *prolonged* solitary confinement, and that this constitutes cruel, inhuman and degrading treatment' under the United Nations Convention against Torture.

However, the two cases are closely linked, and John's advocates have also talked of him being in 'prolonged solitary confinement' and of a breach of the Convention against Torture. We will therefore assess this claim in relation to John as well as Richard.

As with the allegations of breaches of state law, the Department's submission did not directly address Amnesty's claims.

The Convention and the Rules are not part of domestic law

The Mandela Rules and the Havana Rules are part of a suite of 'minimum rules' laid down by the United Nations to guide the administration of justice in all countries. They are not part of Australian domestic law but are an important benchmark for assessing the decency and appropriateness of treatment in prisons.

Australia ratified the Convention against Torture in 1989 and the Optional Protocol to the Convention against Torture (OPCAT) in December 2017. The Convention outlaws 'cruel, inhuman or degrading' treatment, not just 'torture' (in the sense of deliberately inflicting pain to obtain information).

OPCAT requires Australia to allow the United Nations Subcommittee on the Prevention of Torture to visit places of detention. It also requires governments across the country to establish domestic 'preventive mechanisms' to prevent cruel, inhuman or degrading treatment.

The main preventive mechanism is likely to be Inspectorate bodies like us, who have the power to make announced and unannounced visits to places of detention. Western Australia has long had the most 'OPCAT-compliant' system in the country (Harding and Morgan, 2008).

5.9 For ten days after the May 2017 incidents, John and Richard were probably held in 'solitary confinement' as defined by international standards

Rule 44 of the Mandela Rules defines solitary confinement as 'confinement ... for 22 hours or more a day without meaningful human contact.' Rule 45 states that solitary confinement is only to be used 'in exceptional cases as a last resort, for as short a time as possible'.

Rule 67 of the Havana Rules applies to children. It states that 'placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health

of the juvenile concerned' constitutes 'cruel, inhuman or degrading treatment'. As such, it is 'strictly prohibited.'

In its submission to this review, the Human Rights Law Centre helpfully summarised the principles as follows:

'Solitary confinement is the isolation of detainees for 22 hours or more a day without any meaningful human contact. It involves the involuntary placement of a child in a room (often with limited ventilation and natural light) from which they are unable to leave, denying the child meaningful contact with peers, therapeutic professionals or family.' (HRLC, 2018).

Applying these criteria, we note that the cells in which John and Richard were held were not without ventilation or natural lighting. We also note that Richard saw therapeutic professionals on two occasions between 5 and 16 May 2017, and had a visit from his Department of Communities caseworker on 11 May 2017.

Nevertheless, for around ten days after the May 2017 incidents, John and Richard were in a very restrictive regime. As discussed earlier, the evidence is that they did not even get one hour out of cell every 24 hours. Contact with peers and other people was extremely limited and, at least in the early days, they had no access to television or radio and, it appears, little or no access to reading or writing material.

Although poor record keeping makes it difficult to draw firm conclusions, we have concluded that for around ten days after the May 2017 incidents, John and Richard were probably being held in conditions that constituted solitary confinement under the Mandela Rules. If so, the Department was also in breach of the Havana Rules and the Convention against Torture.

The Department might argue that, for reasons of risk, they could not comply with international standards. However, as with the allegations about state law, they would need to provide evidence of this.

5.10 John and Richard have not been held in 'prolonged' solitary confinement

'Prolonged solitary confinement' means 'solitary confinement for a time period in excess of 15 consecutive days' (Rule 44 of the Mandela Rules). It is prohibited on the basis that it amounts to torture or other cruel, inhuman or degrading treatment (Rule 43).

Although John and Richard were arguably in solitary confinement for around ten days after the May 2017 incidents, their out of cell time and access to education, services and other supports increased markedly after that. It follows that John and Richard have not been held in prolonged solitary confinement.

5.11 Richard has successfully moved back to mainstream accommodation but John remains in the ISU

Some of the commentary has assumed that John and Richard were simply left in the ISU without any serious effort to move them out. That is not the case.

'Graduated transfer plans' were developed for both young people. The plans involved them splitting their time between the ISU and a mainstream unit. Their time in the mainstream unit was to gradually increase until they were deemed ready to transfer permanently.

The plans pre-dated Amnesty's allegations but it did take several months before they were developed. The reasons for this were slightly different for each of the boys.

John

John's progression to a graduated transfer plan was delayed by risks identified in intelligence reports. We have reviewed these reports and they outline credible risks to staff, young people and the centre. The details will not be provided here, but we are satisfied that it was reasonable for the Department to have relied on them.

John is still in the ISU. His first graduated transfer plan was created on 27 November 2017, but repeated attempts to progress him through the plan have failed. His behaviour has sometimes been erratic and problematic, and reports show this escalated at the times he was moving towards a possible exit from the ISU.

- John commenced his first graduated transfer plan on 4 December 2017. He intermittently refused to participate in the plan. The plan was abandoned on 22 December 2017 due to intelligence received.
- The plan was reinstated on 23 January 2018, but on 25 January 2018, John refused to participate any further.
- A new graduated transfer plan commenced on 15 February 2018. Progress was limited because of staff shortages, and John's refusal to participate. John was then involved in several serious incidents in early March 2018. As a result, he had to start over with his transfer plan.

Positively, by late March 2018, John had progressed to the point where he was spending most of his days outside of the ISU. His activities included working with an officer on painting and maintenance, and working in the canteen.

Richard

It took a long time for Richard to be placed anywhere other than the ISU because he was in and out of custody, and because when he was in custody, his behaviour was erratic and problematic.

We have reviewed intelligence reports that show the Department identified a number of risks relating to Richard. The details will not be provided here, but we are satisfied that it was reasonable for the Department to have relied on these reports.

Richard's graduated transfer plan was created on 9 January 2018 and he began spending time in a mainstream unit the same day. He moved full-time to a mainstream unit on 20 February 2018.

Appendix A Amnesty International Australia's Allegations



14 December 2017

The Hon Fran Logan MP
Minister for Corrective Services
10th Floor
Dumas House
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WEST PERTH WA 6005

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Dear Minister,

I write to you in regards to the case of [REDACTED], a young person in the State's care at Banksia Hill Detention Centre, after being approached by his mother [REDACTED] about his care.

We understand that [REDACTED] has been held in practical isolation since 5 May 2017 - 223 days from today.

It has been reported to Amnesty International Australia that:

- a) [REDACTED] was moved into isolation in the Harding Unit on 5 May 2017 following an incident on that day
- b) He has been deprived of meals on a number of occasions
- c) He had to earn access to a mattress in his cell each day until October
- d) He was handcuffed whenever outside of the isolation unit, including to attend family visits, until October
- e) He was regularly strip-searched
- f) He has not had access to education whilst in isolation
- g) He has attempted self-harm over 100 times, and we are informed that [REDACTED] mother was only informed about these attempts twice

Amnesty International Australia is concerned that the above claims contravene the *Young Offenders Act 1994 (WA)* specifically:

- a) s173(2)(e): that detention offences can be dealt with by confining a detainee to sleeping quarters or a designated room for a period not exceeding 24 hours if the order is made by the superintendent; or for a period not exceeding 48 hours if the order is made by a visiting justice.

Furthermore, Amnesty International Australia is concerned that the above claims contravene the *Young Offenders Regulations 1995 (WA)*, specifically:

- a) s76(3): A detainee confined under this Division is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours.
- b) s79(4): A detainee whose confinement is for 12 hours or longer is entitled to at least one hour of exercise each 6 hours during unlock hours.
- c) s77: A detainee placed in confinement must be subject to continuous monitoring for the first 30 minutes of that confinement, and after the first 30 minutes of confinement, a confined detainee must be subject to regular monitoring carried out in accordance with a written management regime that has been endorsed by the superintendent.

The *Standard Minimum Rules for the Treatment of Prisoners* (known as the Mandela Rules) and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* strictly prohibit the use of solitary confinement for children in detention. The UN Rules state that: "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned."

The isolation of [REDACTED] clearly contravenes international standards.

The Office of the Inspector of Custodial Services in its report, *Behaviour management practices at Banksia Hill Detention Centre*, found that "isolation is overused as a behavior management strategy". It stated that the use of isolation conflicts with any concept of trauma-informed care, and is likely to promote further behaviour problems.

We request that [REDACTED] be immediately released from isolation, undergo an urgent mental health assessment and subsequently receive relevant assistance. [REDACTED] should be re-integrated into the detention centre and have access to therapeutic services that will assist with his rehabilitation.

We also request written confirmation that *Young Offenders Regulations 1995 (WA)* have been adhered to [REDACTED] case, particularly Part 9: Confinement of detainees, including s79(1) that states the superintendent must make and maintain a record of an order to confine a detainee.

We also understand that [REDACTED] has possible injuries to his ankle and knee that require medical testing. We request that he receives the required medical attention for this injury, and for his mother to be kept up-to-date regarding this.

I would be happy to meet with you or relevant staff to discuss [REDACTED] case in more detail. I thank you in advance for considering this urgent and important matter.

Yours sincerely,



Tammy Solonec
Indigenous Rights Manager

**AMNESTY
INTERNATIONAL**



12 January 2018

The Hon Fran Logan MP
Minister for Corrective Services
10th Floor
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Dear Minister,

I write to you in regards to the case of [REDACTED], a 17-year-old boy in the State's care at Banksia Hill Detention Centre. Please note that this letter follows the letter to you on the 14 December 2017 regarding the case of [REDACTED] to which we have not yet received a formal response.

We understand that [REDACTED] has been held in the Harding Unit, away from the general population of the centre, during his three periods of detention at Banksia Hill, between May 2017 until present. Amnesty International has concerns that [REDACTED] was held in isolation in Harding Unit for:

- at least two weeks from 5 May 2017, being moved there after an incident;
- at least two weeks in August 2017 after his re-admission;
- at least two weeks in September 2017 after his re-admission; and
- other variable periods of time between May 2017 and January 2018.

[REDACTED] has reported to Amnesty International Australia in an interview held at the centre that, during these periods of isolation [REDACTED] was:

- a) held in his cell for more than 22 hours per day, continuously for at least two weeks;
- b) denied access to shower for on some days;
- c) held in the Harding Unit without any electricity for approximately two weeks;
- d) subjected to having his bed stripped each morning, leaving him only with a mattress until 3pm at the earliest, requiring him to earn the privilege of the return of sheets, doona and a pillow;
- e) denied access to his psychologist for at least the first two weeks after the 5 May incident;
- f) denied access to education;
- g) denied access to programs and services;
- h) fed via a "grill" in the cell, without cutlery, or ordered to go into a corner or face the wall with his hands on his head before food was brought in;
- i) handcuffed and accompanied by up to four guards during out-of-cell time; and
- j) only allowed out of the cell:
 - i) during May isolation: for 10-minutes out of his cell each day to make a phone call;
 - ii) during August isolation: for 30 minutes per day to make a phone call or to exercise;
 - iii) during September isolation: for 30 minutes per day to exercise, and further time to have a shower.

Amnesty International Australia is concerned that the above claims contravene the *Young Offenders Act 1994 (WA)* specifically:

- a) s173(2)(e): that detention offences can be dealt with by confining a detainee to sleeping quarters or a designated room for a period not exceeding 24 hours if the order is made by the superintendent; or for a period not exceeding 48 hours if the order is made by a visiting justice.

Furthermore, Amnesty International Australia is concerned that the above claims contravene the *Young Offenders Regulations 1995 (WA)*, specifically:

- a) s76(3): A detainee confined under this Division is entitled to fresh air, exercise and staff company for a period of at least 30 minutes every 3 hours during unlock hours.
- b) s79(4): A detainee whose confinement is for 12 hours or longer is entitled to at least one hour of exercise each 6 hours during unlock hours.

- c) s77: A detainee placed in confinement must be subject to continuous monitoring for the first 30 minutes of that confinement, and after the first 30 minutes of confinement, a confined detainee must be subject to regular monitoring carried out in accordance with a written management regime that has been endorsed by the superintendent.

The *Standard Minimum Rules for the Treatment of Prisoners* (known as the Mandela Rules) and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* strictly prohibit the use of solitary confinement for children in detention. The UN Rules state that: "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." The Mandela Rules define solitary confinement as: "the confinement of prisoners for 22 hours or more a day without meaningful human contact."

Amnesty International is concerned that [REDACTED] treatment meets the definition of "prolonged solitary confinement" (solitary confinement for at least 15 consecutive days) which constitutes cruel, inhuman and degrading treatment, and may amount to torture, under the *Convention Against Torture*, which Australia has ratified.

Further, there are a number of potential breaches of [REDACTED] human rights, including denial of basic rights such as hygiene, exercise and human contact, denial of education, programs and services, denial of access to adequate medical treatment including mental health care, excessive use of force and disproportionate use of restraints. Amnesty International is also concerned about the degrading treatment inflicted on [REDACTED] including methods of accessing his food and the stripping of bed materials.

The claimed isolation of [REDACTED] during his three periods of detention at Banksia Hill, between May 2017 until present, as outlined above, clearly contravenes international standards.

The Office of the Inspector of Custodial Services in its report, *Behaviour management practices at Banksia Hill Detention Centre*, found that "isolation is overused as a behavior management strategy". It stated that the use of isolation conflicts with any concept of trauma-informed care, and is likely to promote further behaviour problems. Amnesty International is concerned about the prolonged and continued separation of [REDACTED] from the other children at Banksia Hill.

We call for the Government to immediately move [REDACTED] out of the Harding Unit and no longer subject him to isolation practices in breach of international law; and to launch an independent public investigation into these allegations and the operation and practices of the Harding Unit. Any staff members suspected of involvement in these acts breaching the rights of children in detention must be immediately be suspended from duty until the independent investigation is complete. The results of the investigation must be made public and the Government is obligated to provide a remedy to [REDACTED] if his human rights have been breached. Further, where sufficient, admissible evidence is sound, staff members suspected of responsibility for such acts should be brought to justice in fair proceedings.

We also request written confirmation that *Young Offenders Regulations 1995 (WA)* have been adhered to [REDACTED] case, particularly Part 9: Confinement of detainees, including s79(1) that states the superintendent must make and maintain a record of an order to confine a detainee.

I would be happy to meet with you or relevant staff to discuss [REDACTED] case in more detail. I thank you in advance for considering this urgent and important matter.

Yours sincerely,



Tammy Solonec
Indigenous Rights Manager

Appendix B Minister's Direction and Inspector's Response



Minister for Emergency Services; Corrective Services

Our Ref: 65-03261

Professor Neil Morgan
Inspector
Office of the Inspector of Custodial Services
Level 5, Albert Facey House
469 Wellington Street
PERTH WA 6000

Dear Professor Morgan, *Neil,*

ISSUES RAISED BY AMNESTY INTERNATIONAL AUSTRALIA REGARDING BANKSIA HILL DETENTION CENTRE

Please find attached two letters from Ms Tammy Solonec, Indigenous Rights Manager at Amnesty International Australia dated 14 December 2017 and 12 January 2018. These letters relate to allegations of the treatment of [REDACTED] and [REDACTED] while detained in Banksia Hill Detention Centre.

I understand that these issues were also conveyed to you at the same time.

I ask that you provide an opinion on the contents of the letters and direct you to investigate the authenticity of the statements and allegations, specifically in accordance with Section 17 (2)(b) to:

- i) review the allegations made in Ms Solonec's letter to me dated 14 December 2017 (attached) as they relate to the treatment of [REDACTED]
- ii) review the allegations made in the Ms Solonec's letter to me dated 12 January 2018 (attached) as they relate to the treatment of [REDACTED] and
- iii) review any other matters you believe are incidental or relevant to these allegations.

I ask that you carry out the above review in a timely manner and report back directly to me both verbally and in writing.

Yours sincerely

HON FRANCIS LOGAN MLA
MINISTER FOR EMERGENCY SERVICES; CORRECTIVE SERVICES

Att.

19 JAN 2018

Level 10, Dumas House, 2 Havelock Street, West Perth, Western Australia, 6005
Telephone: +61 8 6552 6300 Facsimile: +61 8 6552 6301
Email: minister.logan@dnc.wa.gov.au



OICS Ref: 0642

Hon F M Logan BA (Hons) MLA
Minister for Emergency Services; Corrective Services
Level 10, Dumas House
2 Havelock Street
WEST PERTH WA 6005

fran
Dear Minister:

ISSUES RAISED BY AMNESTY INTERNATIONAL AUSTRALIA REGARDING BANKSIA HILL DETENTION CENTRE

Thank you for your letter dated 19 January 2018 in relation to the matters raised by Amnesty International in their letters to you dated 14 December 2017 and 12 January 2018.

I can advise as follows:

1. I accept the Directed Review under s 17(2)(b) of the *Inspector of Custodial Services Act 2003* on the terms set out in your letter.
2. I will provide you with a report as soon as possible. Given the number and specificity of the allegations that have been made, and the need to ensure due process to the Department and others, the complete report is unlikely to be finalised before mid-March 2018.
3. In the interim, I will report back to you as part of our fortnightly meetings. I will include it as a standing Agenda item.
4. Please note that s 17(4) states that the 'text of each direction ... is to be included in the Inspector's Annual Report'. Our Annual Report will do this, but will redact the individuals' names.
5. There is no legislative obligation for OICS to report to Parliament in relation to a Directed Review under s 17(2). There are also issues of confidentiality given the allegations relate to individuals. However, given the level of public and political interest in this, I anticipate releasing a significantly redacted report.

Thank you, again, for the opportunity to be involved.

Yours sincerely

Neil Morgan
Inspector

22 January 2018

Appendix C Department's response to recommendations

Response to the Directed Review:
Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention

Section 3 – Department's Response to Recommendations

OICS Recommendation 1

Ensure that allegations of misconduct, abuse or poor treatment are prioritised for internal assessment and investigation.

Department's Response:

The Department of Justice (the Department) takes the allegations of misconduct, abuse and poor treatment of detainees, staff and/or visitors seriously.

Suspected breaches of conduct are referred to the Corrective Services Investigation Services Branch (ISB), for assessment. Referrals are triaged in accordance with Corrective Services' Policy and can be dealt with in one of a number of ways including:

- Referred to external agency (for example Corruption & Crime Commission, Western Australia Police)
- Referred for internal investigation
- No Action required
- Referred to intelligence for consideration
- Managerial Intervention (Local Management)
- Complaints may also be received by the Corrective Services' ACCESS area and where allegations of misconduct are disclosed, they are forwarded to Investigation Services for assessment

The Department acknowledges that improvements to record-keeping within the ISB are required and appropriate action to address this is being implemented to ensure matters under investigation – and outcomes – are adequately recorded.

Responsible Business Area: Regulation and Operational Services
Proposed Completion Date: In progress
Level of Acceptance: Supported

OICS Recommendation 2

Amend Departmental policies to:

- require caregivers to be notified whenever a young person has:
- self-harmed
- attempted self-harm
- threatened self-harm
- ensure notifications are recorded on the young person's departmental notes

Department's Response:

The Department has made significant enhancements in managing and reporting on a young person's mental health and wellbeing. The reduction in self-harm incidents at Banksia Hill is testimony to the enhancements made.

A Superintendent Notice (SN 14/2018 – April 2018) has been issued to all staff at Banksia Hill to reiterate that the detainees' parent(s) and/or care giver is to be informed at all times and as soon as practicable in the event of an attempted or actual self-harm incident. This will be recorded in minutes and the Department's Total Offender Management System (TOMS) database.

In addition, the Department has prioritised the review of all Youth Custodial Rules, Policies and Procedures to ensure they are contemporary, streamlined and consistent, and aligns with the legislative framework. A project team comprising of six FTE has been approved for a period of 18 months to carry out this work together with prison-based rules, supported by the State Solicitors Office. The recruitment process for the project team is in progress.

Responsible Business Area: Regulation and Operational Services
Proposed Completion Date: 31 December 2019 (or earlier)
Level of Acceptance: Supported

OICS Recommendation 3

Ensure that all uses of physical and mechanical restraints are recorded, including those prescribed in a plan, and that the records include reasons for their use.

Department's Response:

A Superintendent Notice (SN 14/2018 – April 2018) has been issued at BHDC to remind all staff of their obligations to record all uses of mechanical restraints together with reasons for its use. This will apply to both, internal and external escorts. The Notes page within TOMS will be used to record this information with immediate effect.

In parallel, enhancements are being made to TOMS to specifically record and report on the use of the mechanical restraints.

Responsible Business Area: Banksia Hill Detention Centre
Proposed Completion Date: Completed
Level of Acceptance: Supported

OICS Recommendation 4

Ensure that any removal of a young person's bedding from cell occurs only when the young person is at risk or in a short term holding cell, and that both the removal and reason for removal are recorded.

Department's Response:

The Department notes that there was no evidence to support this allegation. It is existing practice at Banksia Hill to only remove bedding in circumstances where a young person has threatened or is considered at risk of self-harm, or when items of bedding are used to obscure the cell camera.

To reinforce this practice, the Superintendent has issued clear guidelines and instruction to staff on the removal of bedding, and for all instances to be recorded in TOMS.

Responsible Business Area: Banksia Hill Detention Centre
Proposed Completion Date: Completed
Level of Acceptance: Supported – existing Departmental initiative

OICS Recommendation 5

Amend the Young Offenders Act 1994 and the Young Offenders Regulations 1995 by:

- Repealing the provisions governing 'confinement';
- Enacting a framework for managing special regimes such as the ISU, including adequate protections for young people; and
- Ensuring that all young people are entitled to a minimum of two hours out of cell each day.

Department's Response:

The Department agrees it is timely to review legislation and will consider reviewing the Young Offenders Act 1994 and the Young Offenders Regulations 1995 as a priority, including provisions governing confinement.

Responsible Business Area: Strategic Reform
Proposed Completion Date: 31 December 2019
Level of Acceptance: Supported in principle

Appendix D Key Findings

| | |
|-----------------------------|--|
| Self-harm | John had a serious history of self-harm before May 2017, but the evidence does not support claims of 100 attempts at self-harm since that time. The evidence does not support claims that John's mother was not notified about a large number of self-harm incidents from May to December 2017. |
| Education | Education has been substandard at Banksia Hill for all young people for some time. But John and Richard have accessed education services while placed in the ISU. |
| Programs and services | Richard has completed some programs and accessed various support services and activities while in the ISU. |
| Psychology | Richard saw a psychologist twice between 5 May and 16 May 2017, and another 43 times up to 20 February 2018. |
| Strip searching | There is no evidence that John was regularly strip searched during his time in the ISU. Banksia Hill has significantly reduced strip searching and is also trialling alternatives to reduce trauma and indignity. |
| Restraints | The records of restraint use are inadequate but we concluded that, for a significant time, John and Richard were handcuffed when they were out of cell. Due to the lack of records, the Department could not show that its use of restraints was justified. |
| Meals | It is standard practice when a young person is disruptive that meals are passed through a hatch or for the young person to stand at the back of the cell when food is delivered. However, there is no specific evidence of when and why these practices were used for Richard. There is no evidence that John has been deprived of meals. |
| Bedding | There are no records to support or refute the claims about bedding in relation to John or Richard. But removal of bedding should only occur when a young person is at risk or in a short term holding cell. |
| Showers | On some days Richard did not shower, but it is not clear whether he declined to shower or was denied access. |
| Electricity | There is no evidence to indicate that Richard was held in cell without any electricity for approximately two weeks. |
| Breach of state legislation | For around ten days after the May 2017 incidents, John and Richard's time out of cell fell short of requirements for a young person being held in 'confinement' under the <i>Young Offenders Act 1994</i> and the <i>Young Offenders Regulations 1995</i> . However, the protections afforded to young people in 'confinement' did not apply because John and Richard were not being held in confinement under the Act. Their placement in the ISU has not breached state legislation. |
| Solitary confinement | John and Richard were probably held in solitary confinement for around ten days after the May 2017 incidents. John and Richard have not been held in 'prolonged' solitary confinement as defined by international law. |

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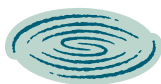
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