



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Routine restraint of people in custody in Western Australia

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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

This review has been a difficult one to undertake and complete, primarily for two reasons. First, there was a lack of reliable system level data recording instances and frequency of routine restraint use across the prison estate. Second, there was an element of ambiguity in existing Departmental policies and procedures, particularly as they related to the issues examined in this report.

Despite these limitations, we could rely on some data and case studies to form useful conclusions and make three recommendations. We were pleased that the Department supported our recommendation around better record keeping and supported in principle our recommendations around restraint use being aligned to individual risks and the use of restraints on pregnant women.

We accept that the routine use of restraints is a reasonable and understandable strategy to maintain community safety and the security and good order of prisons. We did, however, identify some exceptions to this general rule. The use of restraints should be based on specific risks in circumstances where a prisoner:

- is unconscious
- has a terminal illness
- is elderly or frail
- has significant mobility issues
- is pregnant.

The Department in their response to this report advised us that they have recently undertaken a review of relevant policies as part of their Custodial Operational Policy and Procedures Project (COPP). We were told that the revised restraints policy had recently been approved for implementation. This and other related policies are now in the implementation phase but we understand that they are not yet fully operational.

Further analysis of the suite of draft policies identified several that relate to the issues covered in this report around restraint use during prisoner movements and escorts. Specifically, one of the draft policies stipulates that during external escorts, prisoners from maximum and medium security prisons should be restrained at all times with limited exceptions (e.g. a medical condition dictates otherwise, the prisoner is more than 6 months pregnant, the prisoner is rated at minimum security following completion of a risk assessment). Similarly, in certain circumstances prisoners from minimum security prisons may be escorted unrestrained (e.g. where a risk assessment has been undertaken, on the authority of the Superintendent, or where other assessments authorise the prisoner to be outside the prison).

The exceptions identified in the draft policies would allow prisoners of a kind contemplated in Recommendations 2 and 3 of this report to be escorted outside of a prison without restraints.

The only difficulty we see is that although discretion will exist to exercise these exceptions, it still requires some motivation on the part of a Superintendent or other staff member to trigger the process of seeking or implementing an exemption. We fear that the reality is that there will be

inconsistent application of these policies between facilities and, over time, the norm will be that all prisoners are restrained.

Ultimately, it is a matter for the Department when and how they use restraints. The intent of our report and recommendations was to highlight circumstances where restraints ought not be routinely used and our hope is that this will be the effect of the exemptions available in the new policies. The absence of a specific requirement to consider the risks identified above prior to the routine use of restraints leaves us less confident that this is what will come to pass.

I want to acknowledge the cooperation and assistance we have received from key personnel in the Department in replying to our many requests for information and clarification over the course of the review. It is also important to acknowledge the people within our office who have made a significant contribution, particularly Erica Giles (who has now returned to her home agency) and Rowena Davis for their work in undertaking the review and drafting this report.

Eamon Ryan
Inspector

11 May 2020

Executive summary

Introduction

The purpose of this review was to examine the policy and practice governing routine restraint use in custody, including when people are outside custodial facilities, when they are being transported, and attending court or medical appointments.

The use of routine restraint is rarely recorded by the Department of Justice (the Department). Therefore this review was limited by the lack of records. Instead case studies have been used to illustrate issues with policy and practice.

Background

For the purposes of this review we are defining routine restraint as restraints used in a preventative manner to reduce the risk of escape or reduce the likelihood that a prisoner will harm themselves or others.

This differs to restraint use in response to an incident, which is considered a use of force. Specific rules and reporting arrangements apply to the later, but do not apply when restraints are used as part of standard operating procedure.

The use of handcuffs and leg restraints can be used routinely inside and outside a facility. People who regularly refuse to follow instructions, or are frequently violent could be routinely restrained inside a prison. This is risk driven and done to ensure the safety of the facility, other prisoners and staff.

More commonly, restraints are applied routinely when people are required to leave the secure custodial facility and enter an unsecure environment. This occurs when people attend medical appointments, hospital treatment, or access leave on compassionate grounds to attend a funeral. Often restraints are applied as a matter of practice rather than individual risk assessment.

Another common cause for a person to leave the facility is to transfer between facilities or attend court. However, given they are being escorted from a secure facility to another secure location (secure court sally port) people are generally not required to be routinely restrained to be transferred.

Key findings

There is no uniform policy guidance on routine restraint use

The authority for the use of restraint is clearly outlined in legislation, but there is no specific Department policy dealing with routine restraint. Some guidance on restraint use is provided in policy about use of force and further guidance is in policy on prisoner movements but it is difficult to know what does and does not apply when routinely applying restraint. Supporting documentation is fragmented leading to limited guidance or uniform practice from facility to facility.

The Department restrains prisoners who present little or no risk of escape or harm

Restraining people in custody who are attending outside medical appointments is routine practice. This is to prevent escape and mitigate risks the person may pose to themselves or others. However, routine application does not take into consideration individual risk. The approach assumes every person in custody can escape without considering age, illnesses, and immobility.

The *Prisons Act 1981* (section 42) only allows the Department to restrain people to prevent them escaping from custody, or to prevent a person from injuring themselves or another person. However, people who are unconscious, frail, or with severely restricted mobility are routinely restrained. Such restraint appears to be disproportionate to the risk they pose and may even be unlawful.

There is an imbalance between restraint use and risk for pregnant women

Routinely restraining pregnant women may be unnecessary and may increase risks of injury. Restraint increases the risk of falls and decreases the woman's ability to protect herself and the foetus if she does fall. The Department recognises this risk. It also recognises that pregnant women are less likely to use violence to facilitate an escape, or having escaped, generally pose a minimal risk to the public in terms of violent offending. Despite this, current policy requires women who are less than six months pregnant to be routinely restrained when attending external appointments. Given the requirement for external medical care during pregnancy, these women are subject to multiple routine restraints.

We also found examples of women who were more than six months pregnant being routinely restrained. This was usually a result of confusion regarding the term of pregnancy. Women coming into custody may not have an accurate timeframe of their pregnancy. Even if this information is known, it is stored in medical records which are not available to custodial and escorting staff. Information that is passed across to systems accessible to custodial and escorting staff becomes quickly outdated and inaccurate.

Inadequate record keeping prevents monitoring and full review of routine restraint use

The Department rarely records when routine restraints are applied. Good records support good decision making. Without these records the Department cannot be assured that restraints are being applied as per policy and legislation, that their use is justified, or that harm is minimised.

Even if routine restraint use is recorded it is stored in various locations (movement data, written regimes, and handwritten and electronic notes) making detailed analysis virtually impossible. Additionally, some records that are kept appear to contain inaccurate information.

Without accurate records the Department is vulnerable to claims of mistreatment. This has already occurred in the juvenile estate after allegations were made about the mistreatment of two young men, including excessive restraint. The Department was unable to demonstrate that use was justified given the lack of records. The Department responded by improving record keeping in youth detention, but this needs to also apply to this to the adult estate.

Conclusion

The lack of records about the use of routine restraint make it almost impossible to determine with certainty if restraints are being used appropriately. However several case studies have highlighted that the use of routine restraint is not aligned with the risk the person poses of escape, or harm to themselves or others. These are the only circumstances in which the Department is authorised to used routine restraint.

The Department requires better alignment between the risks presented and the routine use of restraint, particularly when there are medical reasons which decrease risk, such as when the person is unconscious, terminal ill, or pregnant. Record keeping must improve in order to measure whether the right balance is being maintained between security and the health and dignity of prisoners.

Recommendations

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1 Restraint use is increased because of unclear policy

The power to use restraint is clearly set out in relevant legislation. Authority for the use of restraint on adults is found in the *Prisons Act 1981*, and use on young people is found in the *Young Offenders Act 1994*. Use of restraint while people are being transported is governed by the *Court Security and Custodial Services Act 1999*. All three Acts are largely consistent and provide that restraints can only be used:

- to prevent a person in custody injuring themselves or any other person
- upon considering advice from a medical practitioner, on medical grounds
- to prevent escape.

In addition, the *Court Security and Custodial Services Act 1999* also allows restraint to be used to prevent damage to property.

While the legislation governing restraint use is clear and concise, the Department's policies are not. Where this is ambiguity, the default is to apply restraints.

1.1 There is no specific policy guiding the use of routine restraint

There is no specific policy guiding the use of routine restraint. However, the policy governing use of force has an appendix which provides general instructions on restraint use which should apply.

These general provisions are:

- Prisoners should not be held in instruments of restraint for any longer than is necessary to control their behaviour.
- Only approved instruments of restraint are to be used and other items should not be used or improvised.
- Instruments of restraint shall be applied in such a manner that they are effective but every care shall be taken to ensure that the method of application and the continued application does not cause undue physical injury to prisoners or other persons.
- Holding instruments, such as handcuffs, ankle cuffs, and security chain links may be applied for extended, and at times unsupervised periods.
- Prisoners held in approved holding instruments shall be checked at least once every hour by a prison officer in order to ensure both the security of the prisoner and that undue injury is not being caused by the restraint.
- At no time is a prisoner to be handcuffed, or otherwise attached to any part of a moving escort vehicle.

This appendix also outlines other requirements, such as the need for records to be kept and medical staff to conduct an initial check of the restraints as soon as practicable after the restraint has been applied. Presumably this does not apply to routine restraint use as this does not appear to happen in practice. However, given information on the use of routine restraints is interspersed into the policy on use of force it is difficult to tell what does and does not apply.

There is also a policy on prisoner movements, which contains an appendix providing further guidance on restraint use during escort. This document repeats the instructions from the policy on

use of force, for all restraints to be approved instruments, and for restraints to be checked every hour during escort. It states that all prisoners are to be restrained when escorted outside the prison unless a medical condition dictates otherwise, or the prisoner is minimum security and has been risk assessed. The officer is instructed to seek advice about the use of restraint when:

- a prisoner has a significant injury where restraints cannot be secured
- a medical officer specifically advises against the use of restraints on medical grounds.

The appendix also states the escorting officer may remove restraints if a prisoner is seriously ill to the extent that it is apparent that security will not be breached.

1.2 Secondary documents increase fragmentation around routine restraint use

There are multiple secondary documents governing routine restraint use, including:

- state-wide Prison Orders
- local orders such as Standing Orders, Director's Rules and Prison Operating Manuals
- external movement risk assessments.

Each facility interprets and uses these documents differently.

Currently, a state-wide Prison Order stipulates each custodial facility must have in place its own documented local instructions guiding the restraint of prisoners during external escorts. Boronia Pre-Release Centre, Pardelup Prison Farm and Wandoo Rehabilitation Prison have an exemption. These facilities are required to complete an external movements risk assessment prior to escort and the decision not to use restraints must be approved by the designated Superintendent (DCS, 2017c).

We requested copies of all local documents relating to routine restraint use. Some prisons had no local orders and others provided multiple documents. In total we reviewed 26 local orders, from 12 of the 17 facilities. This included Pardelup and Wandoo, who have their own Standing Orders despite having an exception in the Prison Order from needing one.

Boronia did not require local orders and therefore there were none to review. Eastern Goldfields, West Kimberley, Roebourne and Karnet do not have local instructions relating to routine restraint use. Instead these facilities advised *'there are no local instructions and use of restraint is in accordance with PD 5'*, a policy which provides information about use of force and not routine restraint use (DCS, 2017a) (DCS, 2017b).

The Standing Orders are unique to each facility and are mostly incomparable. Some provided clear in-depth information but others were vague and provided little guidance. Several referred to outdated departmental policies.

Excessive and unclear policies and supporting documents have been a risk for the Department for some time (OICS, 2015). The Department has commenced a policy and procedure review project (CCC, 2018). This project aims to streamline the current large volume of written rules and provide clear instructions for staff. Restraint use policies have been identified as requiring priority review.

The current policy revision project may clean up some of this confusion but until this is finalised the guidance around routine restraint use will remain fragmented and unclear, as it has for many years.

1.3 Contract performance measures increase the use of unnecessary restraint

The Department uses contractors to conduct most transports of people in custody. The current contractor, Broadspectrum conducts the majority (64% in 2018) of escorts of prisoners to hospital. It also provides staff for 'hospital sits' to provide security for someone admitted to hospital.

Service provision by Broadspectrum is set out in the Court Security and Custodial Services contact. The contract sets out key performance indicators and an abatement regime that imposes financial penalties for specified events or performance failures. Events such as an escape result in an abatement. Given that escapes are most likely to occur when a person is outside a custodial facility (OICS, 2015), the pressure to mitigate this risk is high.

Broadspectrum receives information from the Department on who and how to transport people. The Department does not specifically state whether restraints are, or are not required. Rather the instruction is 'restraints are available'. This is, in practice, unhelpful information given in a custodial setting restraints should always be available. Without clear direction, the contractor then needs to absorb the risk of not using restraints. Given the abatement regime and risk to their reputation of an escape, the contractor is naturally risk adverse.

In 2017, a 60-year-old minimum security prisoner at Bunbury Regional Prison was taken to hospital for a health emergency. This escort was conducted without restraints by a single officer. At this point in time he was approved to undertake rehabilitation activities outside the facility with minimal supervision. Within the year, he transferred to Karnet Prison Farm. In 2018, he was later transferred back to Bunbury for administrative purposes.

Due to the transfers, his external activity approvals were suspended. In 2018 he required a number of health-related escorts. During all of these escorts he held his minimum-security status. One escort was conducted by Karnet and done so via a single officer with no restraints. The remaining were conducted by Broadspectrum who used two officers and restrained him via handcuffs and ankle cuffs.

The above case study illustrates the different approach by Department officers and Broadspectrum contractors. The risks remained the same but there was inconsistency in the use of restraints.

Consequently, it appears that restraint use by contractors can be comparatively elevated when measured against departmental use.

2 Record keeping could be improved

A lack of detailed records impacted this review as we were unable to do a detailed data analysis of restraint use and had to rely on case studies.

There are reporting obligations when restraints are applied in response to an incident. However when restraints are routinely used the same reporting obligations do not apply. Sometimes the information is recorded such as during the initial stages of an external movement. But most records during transport show that restraints were available, without indicating whether they were actually used.

Even if routine restraint use is recorded it is stored in various locations (movement data, written regimes, and handwritten and electronic notes) making it virtually impossible for the Department to accurately analyse use.

During a court escort, records are kept but they may not be accurate. The physical transfer of a person between secure facilities, like going from prison to a court custody centre, may not ordinarily warrant the use of any restraints. There are, however, exceptions based on security risk assessments. Prisoners get onto a secure vehicle within the prison or detention centre, and they will typically disembark in the secure confines of a court custody sally port. Further to this, appearing in court in handcuffs can appear prejudicial so it is not standard practice. Consequently, under section 12 of the *Court Security and Custodial Services Act 1999* special approval must be sought from the person presiding over a court for someone to appear in front of a judge or magistrate in restraints.

There have been almost 50,000 temporary placements to court since 2014, the Department recorded that 80 per cent of those (39,027) required the person to be in handcuffs. And of those, 16,275 also required leg irons. We observed some of these placements and found these records do not reflect actual practice. This level of restraint is not occurring. Broadspectrum confirmed our observations.

Confinement regimes and personal support plans provide authorisation for routine restraint, but are likewise lacking in records to show actual use. Units which hold people for management purposes can have local orders which authorise the use of routine restraint. This would apply to anyone held in that unit. Usually people cycle in and out of these units as their behaviour improves or regresses.

Individual support plans are generated to provide closer supervision, management and safety of a specific prisoner. They should be tailored to the specific needs of the prisoner and may include authorisation for a person to be routinely restrained.

While both of these situations provide clear authorisation for routine restraint use, there are little or no records which show the frequency of restraint. In 2019 the recording of restraint use via individual regimes came under criticism in a report published by the Coroner's Court of Western Australia (Coroner's Court WA, 2019). The Court highlighted restraints can be applied as a standard escorting procedure based on the behaviour of the individual prisoner. The deceased had been placed in the Special Handling Unit (SHU). The Coroner reported his family claimed that the deceased was routinely restrained and had made telephone calls whilst in restraints. The

Department advised the Court that a record is made when restraints are used in this unit. However, in the case before the court, no entries had been made for the deceased.

Good records support good decision-making, effective business practice, and improve accountability and efficiency (OAG, 2019). The importance of reporting and managing routine restraint use include:

- identifying rates and patterns where restraints are used such as specific locations or effected cohorts
- identifying adverse events that occurred while the person was restrained such as common injuries sustained from specific restraint types
- the ability to implement contemporary and innovative changes such as new restraint types, to mitigate adverse findings
- identifying any instances where restraint use is unnecessary or could be minimised
- the ability to make meaningful changes to policy and practice based on data.

Without accurate records the Department is vulnerable to claims of mistreatment. This was recently highlighted when Amnesty International made allegations that some young people in Banksia Hill had been mistreated including that the two young people were subject to excessive restraint. We found the records about restraint use to be inadequate and that the Department could not show that its use of restraints was justified (OICS, 2017b). Even if the Department is using restraints appropriately there is an onus on them to have adequate records to prove they are doing so and alleviate any public concern.

2.1 Recording routine restraint use can be done

At the privately operated Acacia Prison, the Department operates a team of on-site Monitoring and Compliance Officers to ensure service delivery requirements are met. Feedback from the team assists in assessing compliance and performance, as well as ensuring continuous improvement by the contractors. The team conduct many checks in varying circumstances involving the contractors including the prison environment and hospital sits.

Staff at Acacia prison document all restraint use, including routine restraint, via their physical '*Use of Force and Restraints Register*'. The register is inspected by Monitoring and Compliance Officers and can be used in annual service agreement reporting.

Since the beginning of 2019, Banksia Hill has implemented reporting standards for routine use of restraints (DCS, 2019). This was in response to repeat negative attention and recommendations made by this office following mistreatment allegations made by Amnesty International (OICS, 2018b).

Currently routine restraint use at Banksia Hill document:

- date/time
- location
- officers participating in the routine restraint use
- authorising officer
- young person subject to restraints
- restraint type
- total restraint time.

While the reporting is new, it is already providing a source of data which is easily accessible.

One of the barriers to recording routine restraint use is the time taken to do so. However the recent improvements to recording out of cell hours for young people at Banksia Hill shows that this barrier can be managed. In response to allegations of mistreatment made by Amnesty International and our subsequent review (OICS, 2018b), the Department moved from inefficient record keeping practices, relying on written logbooks, into online recording. This allows for more accurate, transparent records to be kept. During our inspection of Banksia Hill in 2018 the improvement of recording time in cell was noted.

Continued improvements to TOMS were being made to ensure the new recording system was adequate and built into TOMS (OICS, 2018a). Initially it was believed time constraints was preventing accurate recording from being achieved, but the use of technology was able to mitigate this barrier. This is good practice.

Recommendation 1 – Improve record keeping practices to ensure accurate, transparent records are kept about all use of restraint

3 The practice of routine restraint is not driven by individual risk

There are some prisoners that present a very low or no risk of escape, injury to themselves or injury to others, such as people who are unconscious or have poor mobility. Tradition and inconsistent policy and supporting documentation may be influencing the use of restraint which is not aligned to the prisoner's actual risk.

Prisoners moving outside secure facilities to attend court, medical appointments or on compassionate leave are not left alone. Escort staff or contractors are assigned and remain with them when they are outside of a secure environment. Policy requires that at least one custodial officer or contractor escort a prisoner rated as minimum security. At least two staff are required to escort a medium or maximum security prisoner (DCS, 2018). This presence adds a layer of additional security to prisoner movements based on security rating.

For some prisoners who have health issues that reduce the likelihood of escape (e.g. prisoners who are incapacitated, elderly or frail), the impact and presence of the escorting officers may well be sufficient to mitigate potential security risks during the escort.

3.1 There is no risk of escape or injury when a prisoner is unconscious

It seems logical to assume that an unconscious prisoner presents little or no risk of escape or injury. A person coming out of a state of unconsciousness is unlikely to recover in a way or at a speed that cannot be managed by escorting officers in consultation with medical professionals. Should risk factors exist, restraints could be reapplied if and when the person regains consciousness.

The *Prisons Act 1981* only allows restraints to be used to reduce the possibility of escape or to reduce the likelihood of injury to the prisoner or to others. Arguably, when a person is unconscious none of these risks are present, and the use of restraint may well be unnecessary and even unlawful.

There are case examples which suggest a risk averse approach to restraint use.

The use of restraints has previously gained media attention in Western Australia. In 2016 an article revealed a seriously ill person in custody was restrained by his hands and ankles while in a coma (Wahlquist, 2016). The article highlighted the imbalance between security and humane, dignified treatment. The article also emphasised the distress the family was put through not only witnessing their loved one in a coma, but also seeing them restrained (which they requested be removed).

In 2019 a 68-year-old medium security prisoner became suddenly ill. He collapsed in prison and was in and out of consciousness. Staff were able to stabilise him and he was taken to hospital where he remained for over a week.

His profile notes he is morbidly obese, right leg amputee, requires a wheelchair and is a high risk of falls.

Despite this, it is recorded both handcuffs and leg irons were used during the escort. The escort notes depict two officers being present throughout the hospital sit, and the prisoner being restrained during the entirety of the escort.

Even if the need to remove restraints is recognised, the process for removal is too slow. It requires someone to recognise a change of restraint is required. Then the medical staff must ask the escorting officer to seek approval to remove restraints from the superintendent of the facility where the prisoner is normally held. Approval is then relayed back to the escorting officer and only then can restraints be modified. The timeliness of this process is dependent on the availability of the key players.

In April 2019, a 65-year-old maximum-security prisoner was seriously assaulted by another inmate. He was transported from prison to hospital where he was placed in an induced coma. He did not regain consciousness following surgery. At various times during his medical treatment restraints were removed, then reapplied. Despite the prisoner posing no risk of escape or harm to himself or others, it took over 10 hours before restraints were permanently removed. His family arrived while he was still restrained.

The process can be overridden in an emergency. If this occurs, the Superintendent is to be advised immediately (DCS, 2018). For example, escorting officers could immediately remove restraints to enable medical staff to use a defibrillator on a prisoner experiencing a cardiac emergency.

3.2 Frail and terminally ill prisoners present a low risk of escape

As the prison population grows and ages, there is an increased likelihood of people in custody having chronic and terminal medical conditions. While most care is delivered within the prison, some people periodically need to be hospitalised for acute or specialised care.

The Department defines a terminal medical condition (terminal illness) as a person having one or more medical conditions that on their own or as a group, may significantly increase a person's potential to die in custody (DCS, 2014a). Between 2014 and 2018 the Department recorded holding 102 people (95 male, 7 female) in custody with a terminal illness.

Currently restraint and escort policies allow the routine use of restraints to be overridden when a person is seriously ill (DCS, 2018). Logically, a terminal illness should be considered a serious illness. However, discussions with staff and case studies show this policy is not applied to terminally ill prisoners. Restraints are routinely used (regardless of the prisoner's security rating) until the person's health has deteriorated beyond repair. Staff indicated this provision was more commonly used to alter restraints, such as using less 'points' of restraint, rather than removing them entirely.

There is currently no process for predetermining that a frail or terminally ill person does not require restraint when attending medical appointments. Instead the Department has made provisions for exceptions to be made. But this process is slow and requires:

- prior knowledge of the escort
- inclusion and ratification of health opinions
- timely approval from high ranking officers.

The process is then repeated for subsequent movements.

Some facilities such as Karnet Prison Farm, have good processes and are able to make these exceptions in a more timely manner. They identify frail and terminal ill prisoners and assess the need for modified or no restraints during transports. This assessment affects all further movements at Karnet, but the assessment does not transfer from one facility to another.

A 71-year-old, minimum-security prisoner was placed at Karnet Prison Farm between 2016 until late 2018 when he transferred to Casuarina due to his medical needs (terminally ill). Whilst at Karnet he attended nine external medical escorts to metropolitan hospitals. On each occasion a risk assessment was completed endorsing no restraints required given his low risk. He was escorted to the appointments unrestrained by one officer from Karnet.

In late 2018 as his health deteriorated he transferred to Casuarina Prison which was better able to support his ongoing health needs. Since arriving at Casuarina he has attended more than double the number of medical escorts he attended while at Karnet. During these escorts, he has been routinely restrained via two points and escorted by two officers. He has been attending the same hospital he was attending when at Karnet.

We met this prisoner. He was visibly frail, had slow mobility and required assistance via a walking frame for stability. Although he was accepting of the prison regime, he found it hard to comprehend how he could be unrestrained for medical appointments at one facility, but restrained at another.

His illnesses and immobility reduces his ability to escape. Should he attempt to do so he could easily be controlled by escorting officers.

In the United Kingdom, after much criticism from the Prisons and Probations Ombudsman (Samuel, 2012), the prison service introduced an external escort policy that caters for aged and terminally ill prisoners. Restraints are deemed not appropriate and are therefore not normally used on advanced aged prisoners. Prisoners with a terminal illness also require sensitive handling to ensure that the needs of security are balanced against their clinical needs. Decisions regarding restraints must be proportionate to the risks posed in individual cases and supported by fully completed risk assessment documentation. When completing the risk assessment, prison management must also take into account factors such as the advanced age, infirmity, disability or advanced chronic condition of the prisoner, which might (in the absence of security intelligence to the contrary) diminish the need for the routine use of restraints (NOMS, 2015).

3.3 Insufficient weight is given to health advice

Often health staff recognised and raised their concerns about the need for reduced restraint in advance of a transport, particularly if the person is regularly escorted to medical appointments. Usually this was because the prisoner had reduced mobility. Logically when someone has poor mobility, their ability to escape or be a security threat is diminished. Despite this and the request for restraints not to be applied by health staff, the standard restraint regime prevailed. Even for some prisoners deemed minimum security.

Even if an alert is placed on the Total Offender Management System (TOMS), where it is visible to custodial staff, restraints may still be applied. Without searchable data it is difficult to determine how often this occurs, but during our review we found a TOMS prisoner profile stipulating handcuffs were not to be used. We spoke with this prisoner, and he claims handcuffs were used during escorts despite the alert.

On 7 May 2019, a 79-year-old minimum security prisoner with a terminal illness and severe arthritis in both hands was admitted to hospital for treatment. He was placed in the Intensive Care Unit (ICU) where he was routinely restrained. During the early stages of the escort the restraints were removed for medical examinations and then reapplied. The escorting officers noted he was in severe pain to the point where they assisted him to drink water.

On 8 May 2019, the treating doctor requested in writing the restraints be removed. It was expected the prisoner's health would continue to deteriorate and death was likely. Permission for restraints to not be applied was granted. Eight days later he passed away.

In total the prisoner was restrained for approximately 19 hours. This was despite his poor health and low risk of security or escape. Given his limited physical ability, the presence of escort officers should have been adequate from the start of the escort.

We also examined several other case studies and found the imbalance between health and security concerns typically appeared when the person was terminal ill, was frail or had low mobility. However, restraint use was generally altered if a person has an obvious injury which prevented restraints from being secured, such as a broken arm.

3.4 Prisoners assessed as low risk are still being routinely restrained during medical escorts

The 'minimum security' classification applies to people in custody who have been assessed as requiring a low degree of supervision and control within the facility. They can be reasonably trusted in open conditions. An advantage of holding a minimum-security classification is the possible eligibility for external activities, employment programs, and reintegration leave which are conducted in the community.

People suitable for external activities and programs undergo a further risk assessment examining attitudes, behaviours, risks associated to the person and others, medical issues, the nature of their offences, and risk of escape. If the assessment is positive they are eligible to undertake extra work and programs, some of which are outside the prison. These are known as Section 95 activities.

Between 2014 and 2017 the Department required all people to be restrained when they attended medical appointments (OICS, 2015). This included people who were minimum security, even those assessed to undertake Section 95 activities. In 2017, a prisoner order was enacted which enabled facilities to conduct risk assessments on minimum security prisoners and reduce the level of restraints during escorts. But the change has not been consistently applied.

Table 1: Variation in routine restraint use on section 95 approved prisoners after policy change

Facility	Year	Person in Custody	Escort reason	Escort conducted by	Restraint use
Boronia Pre-Release	2019	Female, s 95 approved	Health appointment	Single Department officer	No restraints
Bunbury Regional Prison	2019	Male, s 95 approved	Health appointment	2x contracted transport officers	Yes, handcuffs and leg irons
Karnet Prison Farm	2019	Male, s 95 approved	Health appointment	Single Department officer	No restraints
West Kimberly Regional Prison	2019	Female, s 95 approved	Health appointment	2x Department officers	Yes, handcuffs only
Wooroloo Prison Farm	2019	Male, s 95 approved	Health appointment	Single Department officer	No restraints

Not using restraints is permitted by policy allowing the Superintendent to order exceptions for minimum-security prisoners. Like the exceptions allowed for medical reasons this process is not always timely. It requires:

- early identification that a potentially eligible individual is due for an escort
- a request to be made
- the Superintendent to be available to consider an exception.

Recommendation 2 – Change practice to ensure routine restraint is more closely aligned with individual risk, with particular consideration given to:

- people who are not conscious
- people who are terminally ill
- the elderly or frail
- people with significant mobility issues

4 Use of routine restraint on pregnant women

Department policy requires women in custody who are less than six months (26 weeks) pregnant to be routinely restrained during escort outside of the prison. Between 2014 and 2018, 67 pregnant women were held in custody. Most of these women were Aboriginal (80%).

Pregnant prisoners attend many external ante-natal appointments and therefore when they are less than six months pregnant, they are subject to multiple routine restraints. They travel to access specialised health services in addition to travel for court hearings. Over half the pregnant women held between 2014 and 2018 attended multiple external medical appointments related to their pregnancy.

The Department has recognised the low risk of escape or injury posed by pregnant women in its *Women in Prison Prisons Standard*. It states that pregnant women are less likely to use violence to facilitate an escape, or having escaped, generally pose a minimal risk to the public in terms of violent offending (DCS, 2016c). Other departmental prison orders specifically identify pregnant women as a particularly vulnerable cohort who require a delicate balance between security, safety, and decent and humane treatment (DCS, 2016a).

This is in line with other western countries who have moved away from restraining pregnant prisoners (Dignam & Adashi, 2014) (Ombudsman SA, 2012) given restraint use:

- is not always aligned with risk
- is demoralising
- can reignite trauma
- increases the risk of falls and decreases the woman's ability to protect herself and the foetus if she does fall.

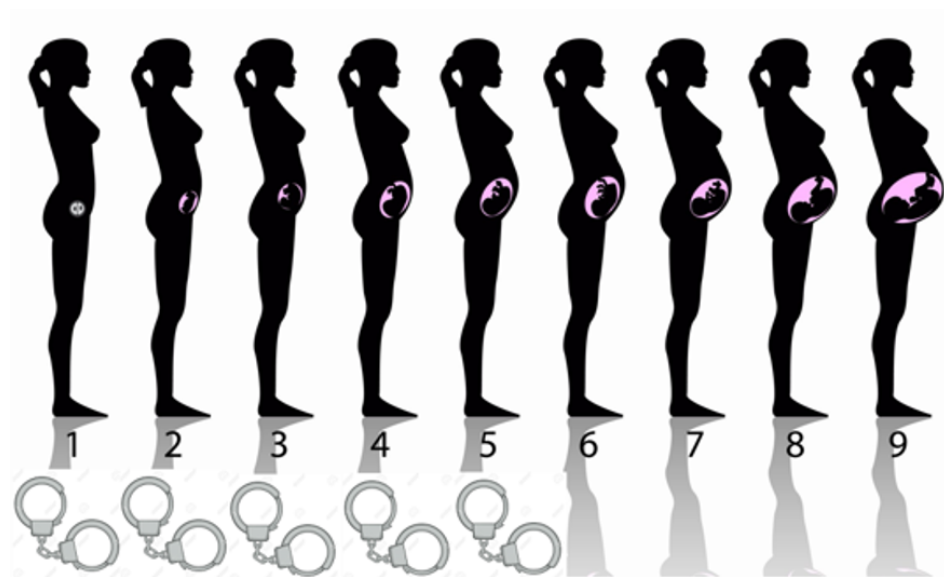


Figure 1: Routine restraint use of women during pregnancy

Up until 2016, pregnant women were escorted unrestrained regardless of their term of pregnancy (DCS, 2014b) (DCS, 2014d). This policy was changed in response to a woman, who was four months

pregnant, escaping custody outside of King Edward Memorial Hospital. At the time of the escort, the woman was rated maximum-security and had been in custody for approximately five days. She was not restrained during the escort. The media reported the escape was opportunistic and her motive was to attend her child's birthday (Campbell, 2016).

Despite the Department acknowledging the escorting officers did not keep the woman within an appropriate distance and observation, the rules regarding external escort restraint use was tightened. This change meant pregnant women who are less than six months pregnant must at a minimum be handcuffed to an officer while being taken from the vehicle to the medical facility.

Between 2009 and 2018 seven per cent of prisoners absconding, attempting to escape or escaping from custody were female. The only case involving a pregnant female was the one that triggered the policy tightening. There have been no escapes involving pregnant women since.

There is an exception in the policy. Women who are less than six months pregnant do not need to be routinely restrained if they meet the following three criteria:

- are minimum-security rated
- have approval for unsupervised external activities
- are subject to an external movement risk assessment.

There were no women meeting all these criterion between 2014-2018.

Boronia Pre-Release Centre for Women is the only dedicated minimum-security and pre-release facility for women in Western Australia. Boronia is a unique facility and is purpose built to reflect life in a community setting. Accordingly, routine restraint use is at the discretion of the Superintendent. Analysis of movement data shows Boronia does not routinely restrain their residents, and therefore does not restrain pregnant women.

4.1 Medical information determining restraint use can be inaccurate or unavailable to escorting staff

The current policy has a defined timeframe in the pregnancy when different restraint rules apply. However, often women coming into custody do not have an accurate timeframe of their pregnancy. In addition, this information may be stored in medical records and systems which are not available to custodial staff and escorting staff.

Medical information is confidential and without the correct permission is not easily accessible. Information about the stage of pregnancy is often documented in hard copy External Movement Risk Assessments. There appears to be no requirement to record this information electronically. To aid the escort process, staff record medical information ad hoc in TOMS movement data. This is problematic, given it is not updated and is often not consistent. This office identified escort data entries for pregnant females that recorded inconsistencies with some entries containing conflicting pregnancy terms.

When an accurate stage of pregnancy is not easily identifiable in records, the process to determine whether restraints should be used involves coordinating escort staff to individually contact health

and custodial staff to update records. The right people need to be identified to provide further information, the person must be available, and it may take time to determine the correct information. This is a time consuming and cumbersome process. Additional information may not be obtained before the escort is needed. The default is to use restraints. This ultimately leads to restraints being used on some women who are more than six months pregnant.

If the Department chooses to continue restraining women in the early stages of pregnancy more robust systems are required to ensure accurate information is available to staff making decisions about restraint requirements. Alternatively, if medical records, including pregnancy information is kept confidential, the policy governing the use of restraints cannot be linked to this information.

The difficulty of using medical records for security purposes is illustrated by the following case studies.

Case study 1

In late 2018 a pregnant women was held in Bandyup Women's Prison. Information on her stage of pregnancy was not consistent during her time in custody.

- **26 September 2018**, Escort to King Edward Memorial hospital for an antenatal appointment. Additional information; 'From 26/09/2018 09:00 to 11:30. **24 weeks pregnant**, soft sedan secure vehicle required. Single handcuffs only required'
- **19 October 2018**, Escort to King Edward Memorial hospital for an antenatal appointment. Additional information; 'From 19/10/2018 09:45 to 11:45. **20 weeks & 1 day pregnant**, sedan required. Single handcuffs only required'

Either information was entered into TOMS incorrectly, or the information was significantly updated during her time in custody. Regardless, the decision to restrain her was made on inaccurate data at least once.

Case study 2

In 2018 a female prisoner was remanded in custody at Melaleuca Remand and Reintegration Facility. Departmental records indicated she was more than 26 weeks pregnant, utilises prosthetic legs (bilateral amputee) and had no history of escape or attempted escape.

She was escorted by a contractor to medical appointments on three occasions. Inexplicably records show on the second transport restraints were required.

- On 9 May 2018, it is documented that she was 28 weeks pregnant. Records state restraints were not required.
- On 11 May 2018, it is documented that she was 29 weeks pregnant. Both handcuffs and leg irons are selected as required.
- On 1 June 2018, it is documented that she was 31 weeks pregnant. Restraints were once again recorded as not required.

The entries are inconsistent, and if accurate, the use of restraint was not aligned with policy or risk, especially given her physical abilities.

Case study 3

In 2019 another female prisoner was remanded at Melaleuca Remand and Reintegration Facility. Records are not clear, but it appears that she was approximately 24 - 25 weeks pregnant on her arrival. This case study illustrates the difficulty in using the stage of pregnancy to determine restraint use.

The first entry is on 27 March, where it was documented she was 2-3 months pregnant (8-13 weeks). Based on other reporting we estimated her pregnancy term to be more accurately 28 weeks. The subsequent entries do not stipulate her pregnancy term, but depict the earliest delivery date (EDD). It would have been necessary for the person deciding whether restraints were required, to calculate the term of pregnancy back from the earliest delivery date.

The current transport contractor Broadspectrum Pty Ltd (Broadspectrum) conducted the escorts. Their escort documentation provides no further clarity about her pregnancy term and restraint use. The notes state the restraint use was as per the standard pregnancy procedure. It is unclear what pregnancy term information Broadspectrum was provided, and if the escorts were in fact conducted in line with pregnancy escort procedures.

Table 2: Restraint use on pregnant prisoner during medical appointments

Escort date	TOMS information	Restraint use	Pregnancy term estimated by OICS
27/03/2019	Pregnant soft vehicle required approx. 2-3 months	Handcuffs and leg irons	28 weeks
12/04/2019	Pregnant soft vehicle required EDD 14/06/19	Single handcuffs	30 weeks
18/04/2019	Pregnant soft vehicle required EDD 14/06/19	Single handcuffs	31 weeks
03/05/2019	Soft vehicle required pregnant EDD 14/06/19	Single handcuffs	33 weeks
10/05/2019	Soft vehicle required pregnant EDD 14/06/19	Single handcuffs	34 weeks

If a woman in the early stages of pregnancy poses a genuine escape or harm risk, identified through intelligence and these risks cannot be managed by other reasonable means (e.g. enhanced security measures in the area, increased staffing) then it would be reasonable to use restraints. But this means the use of restraints on a pregnant woman should be the exception rather than the rule. Ideally authorisation from the Superintendent should be sought to use restraints to ensure there is sufficient evidence of an imminent risk to justify their use. Given pregnant females make up such a small portion of the custodial population, the burden of doing a thorough assessment and seeking authorisation should not be overly demanding on time and resources.

Recommendation 3 – Do not routinely restrain any pregnant prisoner unless there is a documented specific risk which cannot be managed by other means.

5 Restraints can cause harm

While the importance of restraints is recognised and accepted, use of restraint still poses a risk of injury or harm. These risks include causing psychological harm, physical pain and injuries such as bruising, lacerations, blood clots and other serious medical complications.

5.1 Leg restraints used for long periods can cause injury and severe discomfort

The use of leg restraints for long periods of time is most common during hospital sits. When in hospital, the person in custody is routinely restrained via their ankles to the hospital bed. If departmental staff are conducting the escort, a security chain is used. If Broadspectrum are conducting the escort, ankle cuffs are used. Broadspectrum use these as they believe the chain and lock system used by the Department is less secure than ankle-cuffs, do not provide enough flexibility of movement, and often the chain was applied too tightly or too loosely depending on where the link landed on the person's ankle.



Figure 2: Chain and lock system used by the Department



Figure 3: Ankle-cuffs used by Broadspectrum

We spoke to a number of terminally ill people in custody. Each of the people had varying medical conditions and some were more frail than others. Common complaints were that restraints, particularly ankle cuffs, were uncomfortable during long escorts and caused bruising. The restraints were also heavy compared to their own diminished strength.

Broadspectrum staff acknowledged that people in custody found ankle restraints uncomfortable. In cases where the person may be required to wear the restraints for long periods of time, staff can attempt to provide comfort by allowing socks or compression bandages to be used. The use of socks or bandages mitigates the risk of injury caused by the constant pressure of restraints on the person's skin. This is assessed on a case by case basis.

Towards the end of our review some hospital staff raised concerns to this Office about pressure injuries caused by restraints. They cited a case study where nurses requested padding be applied, but this was refused. The padding requested was light gauze, which will tear if pulled. Unlike socks or compression bandages the gauze does not allow leverage for pulling against the restraint which potentially could allow someone to slip their limb from the restraint.

Nursing staff compared health practice to prison practice, noting that their health policy required restraints to be removed, one restraint at a time every two hours. When each restraint is removed,

the limb is manipulated to ensure good blood flow is maintained, then the restraint is reapplied. This prevents pressure injuries.

5.2 Complaints have been received but did not prompt change

Prisoners do not often complain about the restraints used. Some prisoners we spoke to had negative experiences about routine restraints, but minimised the value of their concerns by accepting they were just a part of prison life. Their experience was that the escorting officers would not remove the restraints but were confident that the escorting staff would loosen the restraints if they were too tight. Further, in their experience the restraints would only be altered (never fully removed) if requested by medical staff for treatment reasons.

However some complaints have been made. There does not appear to have been any action, review or change taken in response to these complaints.

Ankle chains causing swelling and bruising

A 72-year-old male prisoner had been housed in Casuarina's infirmary since 2011 to support his ongoing health needs (terminal illness). He was sentenced in the 1980's, and is serving an indefinite sentence for serious offences which means he is classified as medium security. Since being at Casuarina he has attended over 70 external medical escorts, many of which required him to spend more than one night in hospital.

He had very slow mobility and obvious respiratory issues which effect his speech. The prisoner noted he did not mind when the prison staff conducted medical escorts because they used security chain links to restrain his legs and do not apply handcuffs to his wrists as per his medical alert. When the contractor conducts the escorts ankle cuffs are used which caused swelling, cuts and bruises. They also applied handcuffs contrary to the medical alert. He bruises easily due to his treatment and is meant to avoid bruising but cannot do so when the restraints are causing the injuries. Previously, photos of his injuries were taken to support a complaint. He could not recall the outcome. Staff acknowledged the prisoner's resistance to attend escorts with the contractor due to their restraint use and confirmed he had refused treatment based on the escorting agency.

The complaint raised was submitted by staff via an incident report in 2014.

'Prisoner returned from his hospital appointment immediately directing staff to chain indentations to both his ankles. These indentations were obvious at the time of removal of his leg chains. His ankles were red coloured and swelling was obvious I requested security attend the area and photograph these markings.'



Figure 4: Injuries sustained by chain and lock restraint

The contractor who conducted the hospital sit (not the current contractor) provided their perspectives via an incident report. They stated that the restraints were not over tightened. Their report states the injuries were self-inflicted by the prisoner tensioning the restraints himself and pressuring them against his oxygen bottle which was situated at his feet.

The indentations on the prisoner's ankles are consistent with the outline of security chain link. Any effort to self-inflict such indentations with his oxygen tank would have taken some time. This should have been preventable by the escorting officers.

Ankle-cuffs causing visible injury

In 2018 while located at Greenough Regional Prison, a medium-security prisoner submitted a complaint regarding injuries he sustained during a hospital sit (see Figure 7).

He was incarcerated due to various violent crimes and held substantial intelligence alerts. He was admitted to hospital after suffering chest pains. Information suggests he may have suffered a stroke however his condition was stable. For these reasons the use of restraints during the hospital sit was likely to be appropriate.

During the hospital sit the Superintendent attended and spoke with escorting staff. No issues were identified at that point in time and the restraints were 'as per security rating for medium security prisoner'.

The prisoner was injured by the restraints, which suggests either they were applied too tightly or the restraint type was inappropriate based on the prisoner's medical issues.

He submitted a complaint about his injuries via the department's complaint system, ACCESS. A response letter from the contractor to him stated the treatment from the escorting officers was not adverse and noted protective padding was applied to mitigate pressure from the restraints. This does not explain why he was injured.



Figure 5: Injuries sustained by prisoner

If these injuries were not as a result of incorrect application of the restraint, then both of these case studies show injuries developing over time. Therefore, restrictions should be placed on how long a person can remain in leg restraints during a hospital sit, based on their health issues and level of risk.

5.3 Other jurisdictions do not use leg restraints routinely

Research and publications concerning routine restraint use, specifically within the corrections industry is scarce. A scan of open source media articles and publications revealed Western Australia generally uses the same restraint methods as other states and territories across the nation. The South Australia Ombudsman reported the following commonalities between a number of Australian jurisdictions. Generally:

- minimum security prisoners when authorised to complete programs and activities in unsecure areas are not restrained.
- where a prisoner is being escorted from a secure to non-secure location, they are usually escorted in restraints. At a minimum that involves the application of handcuffs. In some instances, additional restraints are applied including leg shackles.
- the application of additional restraints is possible and based on assessed levels of risk (Ombudsman SA, 2012).

Through site visits we had discussions with various staff. A common theme brought to our attention was staff who had previously worked within corrections in the United Kingdom (UK), were surprised by the routine use of leg restraints. Many found the practice archaic, confronting, and demeaning.

The purpose of leg restraints is to restrict the persons stride and to prevent running and escape. The use of leg restraints in Australian corrections appears to be common practice. While the UK does not use leg restraints, they handcuff people to the escorting officer which also has significant issues. It means during some hospital sits the person in custody lays in the hospital bed while restrained to the escorting officer (NOMS, 2015) (PPO, 2013).

This suggests there is no best practice solution, therefore constant review is required. This can only be done if routine restrain use is recorded and any adverse outcomes are documented. This will allow limitations for each type of restraint to be seen and modifications to be made.

5.4 Restraint instruments become outdated

Over time, the Department has ceased to use certain restraint instruments which were degrading and/or painful or simply because better options became available. It is vital the Department remains contemporary by reviewing all restraint use types and practice. This will ensure the instruments are safe, humane, and fit for purpose.

The responsibility for testing, recommending and purchasing new restraint equipment lies with the Superintendent Special Operations Group. Recommendations for new equipment can be endorsed by the Assistant Commissioner Custodial Operations (DCS, 2017a). Over the last five years the Department has tested and reviewed three restraint types; nylon restraints for riot situations, ankle chains (compared to using ankle cuffs), and the restraint mattress.

Contractors can suggest new restraint types to the Department. It is ultimately the Department's decision whether any restraints will be approved or rejected. But this process may not be working well. Broadspectrum raised a concern to us about the currently used chain-link handcuffs, stating the age of this model of handcuff means they are becoming increasingly hard to repair or replace.

To mitigate this risk, Broadspectrum claimed it proposed a new handcuff type to the Department. But the suggestion for a newer, lighter model was allegedly rejected.

However, the Department has no record over the last five years that Broadspectrum had proposed new handcuffs.

In lieu of any new handcuff models being approved, Broadspectrum are using other approved handcuffs that are more rigid. The rigidness could be potentially harmful given they further restrict the prisoner's movement and potentially the escorting officer's movement.



SAF-LOK MK IV Chainlink Handcuffs



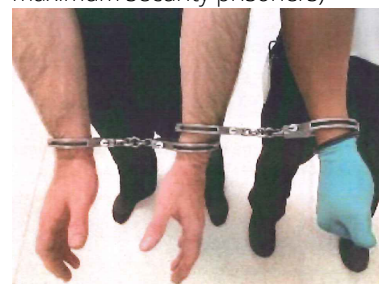
SAF-LOK MK V Hinged Handcuffs

Figure 6: Department approved handcuffs

Appendix A Variance of restraint points

The level of restraint used on a person will vary depending on the individual and the nature of the escort. The term point of restraint refers to a device being applied to a prisoner that restricts movement. More devices equal more points of restraint. Points of restraint increase as more security is needed. The different restraint points are depicted in department rules (DCS, 2017c) (DCS, 2017d).

Point/s	Example/s	Situations commonly used
One	A prisoner restrained by handcuffs wrist to wrist	<ul style="list-style-type: none"> • Pregnant females • Funerals (typically minimum security prisoners)
Two	<p>A prisoner is restrained by hand cuffs wrist to wrist AND by chain link ankle to ankle</p> <p>A prisoner is restrained by handcuffs wrist to wrist AND a second set of handcuffs from the prisoner's wrist to an officer's wrist</p>	<ul style="list-style-type: none"> • Hospital sits conducted by the Department • Funerals (typically medium and maximum security prisoners)



- High Security Escorts



Three

A prisoner is restrained by handcuffs wrist to wrist **AND** a second set of handcuffs from the prisoner's wrist to an officer's wrist **AND** chain link ankle to ankle

- Escorts in a non-secure vehicle (except pregnancy escorts)



- Hospital sits conducted by Broadspectrum



Appendix B Methodology

Where available, data for this review was obtained from the Department of Justice's TOMS database via extractions using SQL Server Management Studio. Data was also extracted from the Broadspectrum database ePEMS. The data was examined for trends in routine restraint use for both adult and juveniles while under escort inside and external of custodial facilities. We acknowledge the limited data available on routine restraint use. This has been highlighted in our findings.

We examined legislation, departmental documents including current policy, procedures and practices, and supporting documentation which outlines the risk being addressed through the routine use of restraints during:

- medical appointments and hospital attendance
- external activities
- court appearances
- transport
- high security escorts.

We assessed a number of individual cases and examined the practice, policy and outcomes of routine restraint use. Similar cases from different facilities were compared to one another.

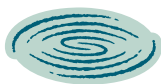
We conducted site visits to Casuarina, Acacia, Central Law Courts and Broadspectrum. We spoke to various staff and people in custody about routine restraint use, their own experiences and opinions. Discussions were held with representatives from teams within the Department of Justice such as the Monitoring and Compliance Team, Policy Review Team and the Special Operations Group.

We compared information to other jurisdictions (nationally and internationally) regarding routine restraint use. Including restraint types, practices and restraint use on specific cohorts.

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