



Government of **Western Australia**
Department of **Justice**
Corrective **Services**

Response to Review:

**Use of force against prisoners in Western
Australia**

May 2021

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Response overview

Review undertaken by the Office of the Inspector of Custodial Services - 2020-21

Introduction

The Department welcomes all reviews and inspections undertaken by the Office of the Inspector of Custodial Services (OICS) and is open to comments and recommendations that allow the Department and its contractors to initiate improvements and provide a better service to those being cared for by the Department.

The review *Use of force against prisoners in Western Australia* (the 'use of force' review) was announced on 29 May 2020. As per usual process, a wide range of documentation and access to systems, policies, processes, custodial facilities, staff, prisoners and contractors were made available to OICS upon request for the purposes of the review.

On 9 March 2021, the Department received a draft report from OICS for review and comment. The draft report has highlighted key findings and made eight recommendations. The Department has reviewed the draft report and provides comments and responses to the recommendations as below.

Appendix A contains further comments linked to sections in the report for your attention and consideration.

Review Comments

- **Restraints data used to undertake 'use of force' review**

The Review is based on statistical data provided by the Department on the number of 'use of force' incidences in Western Australia (WA) prisons (Table 2 of the draft report). The table shows a total of 11,440 recorded incidences of force used in WA prisons between 2016 and 2020 (five years).

The Department would like to clarify that the figure of 11,440 incidences is a combination of routine and non-routine use of restraints. All use of restraints are authorised by the Superintendent of each prison, however only the non-routine use of restraints constitute a 'use of force' and are to be reported as such. The 11,440 incidences therefore would not all be classified as 'use of force'. The data extracted is from the Corrective Services Reporting Framework 'Reporting Data Mart' which OICS has access to, and represents a single instance of the application of an approved restraint type on a prisoner. A single incident therefore can have multiple counts or incidences of restraints and includes scenarios such as:

- One incident where a prisoner is sprayed with chemical agent, physically restrained and then put in handcuffs to be escorted to a unit/cell – this is recorded as a total of three counts of restraints;
- One incident where three prisoners are put in handcuffs – this is recorded as a total of three counts of restraints;
- A prisoner is escorted or being moved from one area of the prison to another and is handcuffed according to policy – this is recorded as a total of one count of routine restraint (does not constitute a 'use of force').

The total of 11,440 'use of force' incidences in WA prisons between 1 January 2016 and 31 December 2020 includes the scenarios mentioned above. A further analysis of the data shows 96% of the 11,440 restraint occurrences represents restraint type "handcuffs".

Whilst the Department is confident that the figure 11,440 is undoubtedly an inaccurate representation of 'use of force' in WA prisons, the Reporting Data Mart is unable to, at this stage, accurately identify from the 96% occurrences of restraint type 'handcuffs', the number / percentage that would be classified as non-routine occurrences and hence actual 'use of force' incidences. A manual interrogation of the data suggests that 77% of the 96% were from routine escort purposes and not during use of force incidents.

Corrective Services has been aware of the reporting issues, including policy gaps and system shortfalls. Significant changes have been made and continue to progress towards reviewing and revising Departmental policies, including the development of a data capture methodology for 'use of force' with the ability to record and disseminate the data for accurate monitoring and reporting.

- **Related review - 'Routine restraint of people in custody in Western Australia'**

OICS undertook a review into 'Routine restraint of people in custody in Western Australia'. The review was announced in February 2019 and concluded in May 2020. The review into 'Use of force against prisoners in Western Australia' was announced in May 2020, immediately following the completion of the 'routine restraints' review. Reference is being made to the 'routine restraints' review in the context of the 'use of force' review as they are both derived from a review of restraint type data and information and share the same policy platform.

In the final report of the 'routine restraints' review, OICS *accepted that the routine use of restraints is a reasonable and understandable strategy to maintain community safety and the security and good order of prisons*; however did highlight the *'lack of reliable system level data recording instances and frequency of routine restraint use across the prison estate'* and *'elements of ambiguity in existing Department policies and procedures'*. The 'routine restraints' review made three recommendations.

In its response, the Department supported the Inspector's comments that *'good records support good decision-making, effective business practice, and improve accountability and efficiency'*. The Department advised of a Departmental review of relevant policies as part of the Custodial Operational Policy and Procedures Project (COPP) being undertaken. The revised policy, COPP 11.3 – Use of Force and Restraints, had been approved for implementation in October 2019 and the implementation phase had commenced. This includes improved processes around the use of restraints and system changes to support improved record-keeping and reporting practices.

- **Department's internal review – 'Use and recording of routine restraints'**

In response to the recommendations made in the 'routine restraints' review and parallel to the implementation of COPP 11.3, the Department undertook an internal review of the use and recording of routine restraints in WA prisons. The internal review identified specific problem areas linked to the recommendations and proposed further policy and system changes to address the issues.

- **Policy and system changes**

Significant work has been undertaken to date to change policy and amend the Department's Total Offender Management Solution (TOMS) to address the intent of the recommendations made in the 'routine restraints' review and to ensure officers accurately record the use of restraints. This work is ongoing and expected to tie in with the review of COPP 11.3 scheduled to commence in May 2021.

Improvements in the recording of restraints has started to show in the total restraint numbers in TOMS, which is positive. Changes however are also required to the Reporting Data Mart to incorporate the changes made to policy and restraints recording which will enable the separation of routine and non-routine restraints and report on use of force data as a separate report. This can only occur once policy and system changes are completed.

Conclusion

The Department acknowledges the operational policies and procedures that govern the custodial operations in WA have been fragmented and unclear for some time causing a level of confusion amongst staff and contractors. This has been highlighted in both back to back reviews, 'routine restraints' and 'use of force' undertaken by OICS during 2019-20 and 2020-21.

In 2018 the Department undertook to review and update all operational policies and procedures as part of the Custodial Operational Policy and Procedures Project (COPP). To date 60 of 128 COPPs (25 prison related and 35 youth related -Banksia Hill) have been implemented, revoking 71 existing corporate operational policies. 176 Standing Orders have been developed and implemented. The project is due to be completed in December 2021.

The Department's offender management system TOMS is an old legacy system which is also known to have some serious shortfalls and the Department has progressively over the years implemented, and continues to implement patches and system changes to address the shortfalls.

At the time of the 'routine restraints' review and the 'use of force' review, the policy that governs both reviews, COPP 11.3 – Use of Force and Restraints, was undergoing a Departmental review as part of the COPP project and progressed through to implementation in 2020. This was combined with some gradual changes to TOMS to support the new policy. Work on refining the policy and TOMS continues as the Department approaches a scheduled follow up review of the new COPP 11.3 expected to commence in May 2021.

Although the 'use of force' review is based on the restraints data and recommendations from the 'restraints review' continue to be addressed, the Department acknowledges the findings from the 'use of force' review and will constructively use the findings to further inform and refine COPP 11.3 and enhance TOMS to maintain good records that will support good decision-making, drive effective business practices and improve accountability and efficiency.

Response to Recommendations

- 1. Clarify the use of force and restraints policy to remove doubt and ensure accurate and reliable reporting.**

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Business Area: Operational Support
Proposed Completion Date: 31 December 2021

Response:

COPP11.3 – Use of Force and Restraints (COPP11.3) outlines the different legislative requirements, circumstances and authority required when using force and restraints on prisoners. Further to this, COPP11.3 outlines the different types of force and restraint options available to prison officers.

A review of COPP11.3 is scheduled to commence in May 2021 and will consider the intent of this recommendation and feedback within the review report to ensure the policy provides clear guidance to staff when using and recording the use of force and restraints.

Corrective Services is also implementing changes to COPP11.3 and TOMS to improve record keeping regarding the use of 'routine restraints'. These changes are in response to the recommendations from the OICS Report "*Routine restraint of people in custody in Western Australia*" which was released in May 2020.

- 2. Change policy so prisoners placed in a rip proof gown are only returned to mainstream following an assessment by a mental health professional.**

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Business Area: Offender Services
Proposed Completion Date: Completed

Response:

Prisoners placed in rip proof gown are generally identified as prisoners At-risk. When a prisoner is identified and assessed as At-risk and placed in the Crisis Care Unit (CCU) as part of the At-Risk Management System (ARMS) process, the prisoner is seen by a member of the Mental Health Alcohol and Other Drugs (MHAOD) team prior to the prisoner's ARMS rating being reduced and being transferred back to mainstream population or another part of the prison.

A prisoner's transfer out of the CCU is generally coordinated through the Prisoner Risk Assessment Group (PRAG) via their PRAG meeting where members from the MHAOD team are in attendance at all times.

3. Investigate the use of trained mental health first responders.

Level of Acceptance:	Supported subject to funding
Responsible Division:	Corrective Services
Responsible Business Area:	Offender Services
Proposed Completion Date:	Completed

Response:

The Department supports the intent of the recommendation however, it would be resource intensive for the MHAOD branch to establish a mental health first aid responder team. It should be noted that the MHAOD team has expanded over recent years with an additional 50 FTE providing greater MHAOD services as a whole. This includes an additional 18 permanent Aboriginal Visitors positions which hold an essential role in providing cultural support and interventions to Aboriginal Prisoners.

The MHAOD branch continues to evolve and improve service development in accordance with evidence based best practice and is working towards increasing capacity, through planned dedicated mental health units to support those who require intensive mental health care and management.

Prison officers are also provided mental health training to enable them to appropriately interact with prisoners with mental health issues and call upon the mental health professionals during mental health related incidents.

The Department is cognisant of the increasing prisoner population with mental health issues over the years and has committed to the following new initiatives to accommodate and care for these prisoners in the custodial estate. These are dedicated units that will have dedicated mental health staff who will be able to provide greater response and flexibility for prisoners with mental health related illness. This however does not replace the need for transfers to the Frankland Unit under the *Mental Health Act 2014* when necessary.

- Bandyup Women's Prison (BWP), the first prison in WA where a dedicated Mental Health Unit including 26 sub-acute mental health beds and six bed high dependency will be in operation mid-2021.
- A 30 bed Mental Health unit for male prisoners is being built as part of the current infrastructure program at Casuarina Prison with an expected completion date of 2023.

4. Provide mandatory training for Senior Officers including for their quality assurance role in incident reporting.

Level of Acceptance:	Supported
Responsible Division:	Corrective Services
Responsible Business Area:	Operational Support
Proposed Completion Date:	Completed

Response:

Learning and professional development for current (acting) and future Senior Officers is provided through the Assistant Senior Officer Program (ASOP) delivered by the Academy. The ASOP is a two year developmental position where selected Officers are provided the opportunity through on and off the job learning to develop the essential skills and knowledge for Senior Prison Officer roles within the custodial environment. The program includes learning experiences, mentoring, and professional development. Included in the three weeks off the job component delivered by subject matter experts at the Academy is eight hours training on Use of Force Reviews and Incident Reports Assessment Standards and Quality.

The Department has recently introduced the new Custodial Operating Policy and Procedures (COPPs) to provide a clearer and more streamlined operational policy framework. This includes the following COPP's related to use of force and incident reporting:

- COPP 11.3 - Use of Force and Restraint
- COPP 13.1 - Incident Reporting and Notifications

These COPPs are explicit in the requirements related to the reporting of incidents and the role Senior Officers play in providing regular assurance that the prison is accurately reporting incidents. The online completion rates for information and familiarisation for these COPPs by uniformed staff (including Principal and Senior Officers) is 95%.

Governance structures are in place and maintained with respect to the reporting, review and assessment of all incidents, including those resulting in use of force. This occurs at both the local prison level, by the Superintendent and local review committees, and through the Corrective Services Use of Force Review Committee for more serious incidents. These structures ensure accountability for any force used through an ability to impartially and independently report and review each incident to determine whether actions taken were reasonable and necessary in the circumstances.

5. Review the potential for investment in both body worn cameras and high quality CCTV.

Level of Acceptance: Supported subject to funding and prioritisation of capital expenditure
Responsible Division: Corrective Services
Responsible Business Area: Operational Support
Proposed Completion Date: 30 June 2022

Response:

The Department is supportive of enhancing CCTV capability throughout the custodial estate. A budget submission is currently being drafted to enhance the CCTV capability at Hakea Prison (Hakea). The plan is to upgrade CCTV at Hakea as part of a pilot project before expanding the program to other facilities. The Department expects to be advised of a decision from the Expenditure Review Committee in June 2021.

The Department acknowledges the additional investment in Body Worn Cameras (BWC) would significantly complement CCTV capability throughout the custodial estate. BWC footage is particularly beneficial in the review of Use of Force incidents to identify opportunities for continuous improvement. The feasibility of a new BWC trial, utilising cloud technology to manage digital evidence, is currently being explored noting that the investment of BWC and cloud storage would be a significant cost.

6. Investigate assessment testing in place of mandatory refresher training.

Level of Acceptance: Not Supported
Responsible Division: Corrective Services
Responsible Business Area: Operational Support
Proposed Completion Date: N/A

Response:

All new Prison Officers (PO's) are trained and assessed to the minimum standard in knowledge and skills related to custodial operations during the Entry Level Training Program (ELTP). The ELTP consists of 11 weeks 'off the job' training completed at the Corrective Services Academy (The Academy), followed by a further six months 'on the job' completed at the PO's parent prison. Due to operational risk, there is a need for PO's to preserve their knowledge and practical skills for work in accordance with their defined job requirements through ongoing refresher training. Refresher training includes refreshing previously acquired skills and knowledge and providing assistance, advice and feedback at the point of need.

An assessment only pathway does not provide for the delivery of critical information required to support the technical application of the skill within the operational environment, including underpinning legislation, policy and procedures.

The Academy is currently developing an up-to-date online Use of Force Theory Training Module to reduce the overall training impost. In line with continuous improvement, the current delivery model will also be examined to identify possible improvements and delivery efficiencies.

7. Operationally review all use of force and restraint tactics, techniques, and equipment every two years.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Business Area: Operational Support
Proposed Completion Date: Completed

Response:

The Department is committed to a continuous improvement cycle, rather than introducing a scheduled review cycle for all use of force and restraint tactics, techniques and equipment. The Department currently undertakes reviews as follows:

- After Action Reviews (AAR) to identify gaps and risks following an incident or operation;
- Proactive industry and jurisdictional scanning;
- Reported issues or faults with the current techniques and tactics and/or in-service equipment;
- Supply issues triggering the need to identify replacement equipment from an alternate supplier; and
- Improvement actions identified as a result of the tiered Use of Force incident review process.

8. Improve the prisoner complaints management system to provide the ability to effectively interrogate the data.

Level of Acceptance: Supported subject to funding and prioritisation of capital expenditure
Responsible Division: Corrective Services
Responsible Business Area: Operational Support
Proposed Completion Date: Completed

Response:

Reporting from the prisoner complaints management system was improved following a recommendation made by OICS in 2019. The reporting will continue to be monitored and reporting refine as part of continuous improvement.

The current complaints management system includes the ability for staff receiving and recording complaints to categorise these into category and subcategory (116 subcategories in total). The system allows for reports to be generated against these and other criterion, effectively filtering the complaints data. Free text word search reports are used as secondary reporting in order to provide an additional layer of assurance that all relevant complaints have been captured.