



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Management of prisoners requiring protection

March 2022

The Office of the Inspector of Custodial Services acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of this country, and their continuing connection to land, waters, and community throughout Australia. We pay our respects to them and their cultures, and to Elders, be they past, present, or emerging.

Reader advice: The following review contains discussions on self-harming and suicide. Some people may find the content of this report distressing.

ISBN: 978-0-6453582-0-9

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

Unsustainable growth of the protection prisoner population needs to be better managed

Over the past 10 years the number of prisoners requiring protection in Western Australian prisons increased by 275 per cent, but during the same period the adult male prison population only increased by 42 per cent. There are now over 700 protection prisoners held in dedicated protection units in Acacia, Casuarina and Hakea prisons. We commenced this review because of concerns about the significant growth in numbers and the capacity of individual prisons to offer protection prisoners a range of services comparable to mainstream prisoners.

There are no specialised protection units for women or young people, and we were told that vulnerable individuals are instead managed on a case by case basis.

Historically, prisoners were placed in protection due to the nature of their offence and the risks to their safety that arose if they were placed within the mainstream population. But in recent years that profile is changing. Although offence type is still the major reason for protection placement (comprising 47 per cent, consisting mostly of people with sexual offence histories), we identified that an increasing number of protection placements are due to alerts and threats (for example debts owed to other prisoners or gangs, gang affiliations or conflicts, or links to high profile offences or crimes). Our report has identified several issues arising from these changes, including how protection units are managed, the relationships between protection prisoners, individuals not feeling safe due to threats and standovers, and the capacity of prisons to offer a meaningful daily regime.

It was clear during our review that the Department of Justice is genuinely committed to ensuring the safety of prisoners who require protection. This, perhaps understandably, has led to a degree of risk aversion which may partly explain the significant growth in the protection population. The policy that was in place during the time of our review was not sufficiently robust to ensure that the initial protection assessment was adequate and periodic reviews were being used to critically assess a prisoner's ongoing need for protection or potential to be returned to the mainstream population.

The Department, acknowledging these difficulties, implemented a new policy (COPP4.10) in December 2021. This has more robust assessment and review processes, including a comprehensive review of each individual every six months by a multi-disciplinary team. This commendable initiative has also introduced a level of governance and head office oversight that was previously missing. However, there remains a lot of uncertainty as to whether this new policy will lead to a reduction in the protection population. It is too early to form any judgments, but it will be one of our focus areas in our ongoing inspection work.

Our review has also identified that protection often comes at a price. Many prisoners we spoke to during our review told us of their feelings of isolation and boredom, their reduced sense of safety, their fear of other protection prisoners, their lack of access to services, and the negative impact this was having on their mental health and wellbeing.

There is no doubt that many prisoners genuinely require protection. The reality is that protection units must be isolated from other units. Unfortunately, this often means protection prisoners will

have less access to mainstream services such as: education and training; employment; recreation; and programs. There have been attempts in some prisons to improve access to these types of services, for example the laundry at Acacia Prison has recently been relocated to the protection precinct providing more jobs, but more needs to be done.

Many prisoners expressed to us the difficulties they experience trying to access services in protection and the impact this has on their life. For instance, the review found that only 24 per cent of protection prisoners were able to complete their recommended treatment programs prior to being released. As a result, many in protection could reasonably assume that their parole applications would be denied for unmet treatment needs. Protection status ought not be an excuse for a lesser standard of service and the Department and individual prisons should maintain a focus on addressing the gaps identified in this report.

Our report contains ten recommendations for improvement, the majority of which the Department supported (2), supported-in-principle (1), or supported as a current practice or project (5). Only two recommendations were not supported. Although this was generally a positive response, we were a little confused by the response to Recommendation 3, which relates to “increasing” the range of employment opportunities for protection prisoners and “investigating” adaptive approaches that can be implemented. The thrust of the recommendation necessarily would require the Department to do something in addition to what is already being done now (i.e. increase and investigate), but the Department’s response supported the recommendation as a current practice or project, articulated essentially what is already being done, and then closed the recommendation.

Similarly, Recommendation 2 related to mental health training for peer support prisoners, which the Department supported as a current practice or project, noting that the training had been delivered at Casuarina Prison and was planned elsewhere, but the recommendation was then closed despite not being completed.

Notwithstanding these responses, these are areas we will continue to monitor to see if there are any meaningful changes or improvements.

Consistent with our standard practice we also provided a copy of the draft report to Acacia Prison, which is privately operated by Serco, and invited a response. We did not receive a detailed submission beyond a brief response noting that it was a “fair and solid report”.

ACKNOWLEDGEMENTS

It is important to acknowledge the contribution and assistance we received in undertaking this review from key personnel in the Department and at Acacia Prison.

I also want to specifically acknowledge the input we received from many protection prisoners, both in our discussions with them and in correspondence we received during the review, which gave us an insight into their life in protection and their thoughts, feelings, and concerns.

Finally, I want to recognise and acknowledge the hard work and significant contribution of the team within our office in planning and undertaking this review. I would particularly acknowledge the work of Ryan Quinn in leading this review and as principal drafter of this report.

Eamon Ryan
Inspector

24 March 2022

Executive Summary

Background

Regulation 54c of the *Prison Regulations 1982* allows for the separation of prisoners

Regulation 54c of the *Prison Regulations 1982* provides the Department of Justice (the Department) with the ability to separate a category of prisoners in order to maintain control and security of the prison. The regulations stipulate that the Department can prepare an instrument to separate prisoners that they determine fit the category and make provisions for the ongoing management of those prisoners separated. It is under this framework that the prison estate has established the protective custody units.

Operational Instruction 4 is the primary procedural policy for protection prisoners

Operational Instruction 4 (OI4) *Management of Prisoners Requiring Protection* established procedures for the identification and management of prisoners requiring protection (DCS, 2010). Under the policy, a protection prisoner is defined as a prisoner who is either:

- a) directly/indirectly threatened by another prisoner/s
- b) a possible target for vengeance or retribution due to the nature of their offence or other activities inside or outside the prison
- c) giving or has given information to prison officers, police or evidence in court concerning other prisoners, relatives or associates
- d) able to demonstrate that protection is necessary.

Acacia Prison, Albany Regional Prison, Casuarina Prison, Hakea Prison and West Kimberley Regional Prison have also developed their own Local Orders for locally relevant procedures (DOJ, 2012; Serco, 2021; DOJ, 2015; DCS, 2013; DCS, 2013a).

OI4 is in the process of being updated as part of the Department's broader Commissioner's Operating Policy and Procedures (COPPs) project. The Department advised that COPP 4.10 will implement a new management strategy for protection prisoners, based on risk management principles. The COPP seeks to implement a more structured and clear review process. Each facility will need to review their Local Order following the completion of the new COPP, which is due to go live at the end of 2021.

Protective custody limited to Acacia Prison, Casuarina Prison and Hakea Prison

Only three adult male prisons in Western Australia provide dedicated units for prisoners requiring protection. Acacia Prison has capacity for 303 protection prisoners in Juliet and India Blocks, and a further 33 in the assisted care units in Foxtrot Block. However, placement in Foxtrot is assessed on need and ability to self-care and may also include non-protection prisoners.

Casuarina Prison has capacity for 104 protection prisoners in Unit 6 and a further 15 placements in the Special Protection Unit (SPU). Placement in the SPU is limited to those requiring additional protection above a standard protection regime.

Hakea Prison has capacity for 138 prisoners in Unit 6 and recently converted Unit 7 into a second protection unit, creating 121 additional placements. Some protection prisoners remain in Unit 1 or the Critical Care Unit, as required.

There are no dedicated protection units in regional facilities. Albany Regional Prison previously catered for protection prisoners, but recently closed the unit for renovations. If regional facilities have a prisoner that requires protection, they will typically hold them in a management unit with restricted access to other mainstream prisoners, prior to the prisoner being transferred to a metropolitan facility. This is not ideal, particularly for Aboriginal prisoners who would be taken off country in order to obtain protective custody. However, in regional facilities there appears to be greater tolerance for offenders who would typically require protection due to the nature of their offences. Thus, the need for dedicated protection units in regional facilities is reduced.

Protective custody is not an option available to prisoners in the women's estate. The Department argues that the needs of female prisoners are different to male prisoners, and as a result the approach is to address complex and individual needs on a case by case basis using a trauma informed approach (DOJ, 2021a). Mediation, the use of peer support, and other internal support mechanisms are used to subdue interpersonal conflicts. As a last resort, a prisoner may be transferred to a different facility.

There are also no protective custody units in youth detention.

The profile of a protection prisoner is changing

Between 2015 and 2021, most protection prisoners sought protection as a result of their offences, which would put them at risk if they were placed into the mainstream population. Most of these prisoners with sexual offence histories. This cohort was reduced to less than half (47%) of the protection population by 2021. In its place, there has been an increase in mainstream prisoners seeking protection due to threats they are receiving. This may be because they have a debt with other prisoners, are involved in a high-profile case, or are at-risk from Outlaw Motorcycle Gangs (OMCGs) or other gangs. The latter has increased from seven per cent to 12 per cent since 2015. Vulnerable prisoners, including those with physical or cognitive vulnerabilities, may also be placed into protection.

Proportionally, there are more older prisoners residing in protection than within mainstream units. As of 1 July 2021, 14 per cent of the adult male prison population in Western Australia were aged over 50, including two per cent who were aged over 70. Of those with a protection alert, 26 per cent were aged over 50 and five per cent were over the age of 70. The average age of a protection prisoner in 2021 was 41.8 years compared to 37.1 across the entire adult male population. However, the gap has reduced from 9.5 years in 2014 to a low of 4.7 years in 2021. This is likely linked to the increase in OMCG and other gang-related placements, who tend to be younger.

The protection population is predominantly comprised of non-Aboriginal prisoners. However, this is slowly changing. Since 2018, the number of Aboriginal prisoners residing in protection units at Acacia, Casuarina and Hakea has increased from 11 to 19 per cent. The increase again likely reflects the evolving criminogenic profile of protection prisoners.

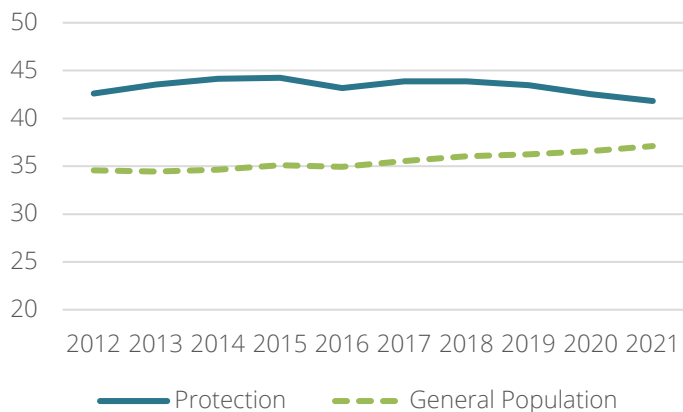


Figure 1: The age gap between mainstream and protection prisoners is narrowing.

Protection Prisoners are Older

The average age of a protection prisoner was 41.8 years, compared to 37.1 years in the mainstream population.

Age Gap is Decreasing

The age gap between protection and mainstream prisoners is decreasing. The gap has reduced from 9.5 years in 2014 to 4.7 years in 2021.

Older Population Has Tripled

Despite the decreasing age gap, the number of protection prisoners aged over 50 has tripled since 2012.

Fewer Aboriginal Prisoners in Protection

Aboriginal prisoners are under represented in protection units. However, their numbers are increasing. This reflects a broader changing criminogenic profile of protection prisoners.

Increase in OMCG Placements

Between 2015 and 2021, the proportion of protection prisoners at risk of OMCGs increased from 7 per cent to 12 per cent.

Most People Require Protection Due to the Nature of Their Offences

More than half of current protection prisoners require protection due to the nature of their offence, which would put them at-risk if placed in mainstream.

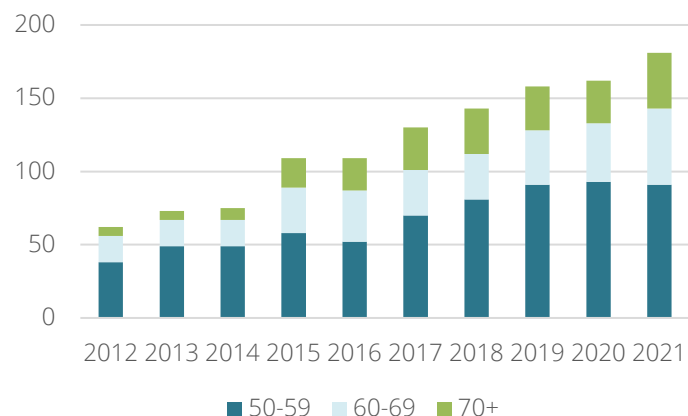


Figure 2: The number of older prisoners in protection has progressively increased since 2012.

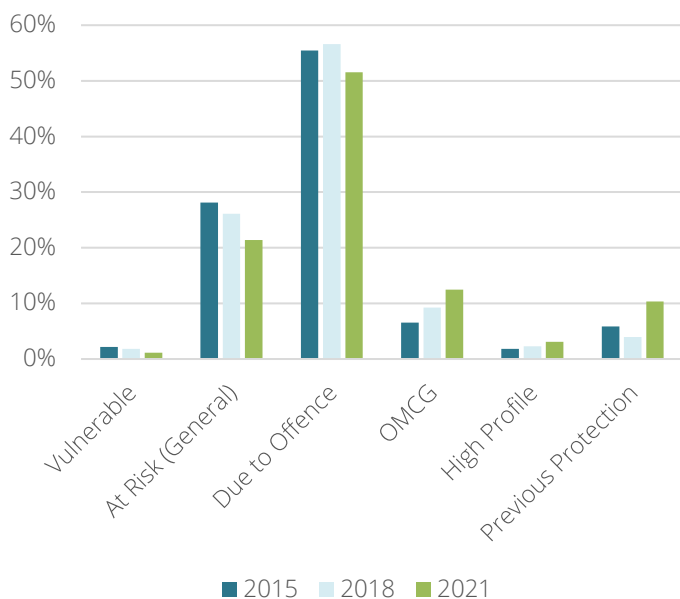


Figure 3: The reasons for protection placements have shifted in recent years to include more prisoners at-risk from OMCGs and gangs.



Key findings

Ineffective processes are placing protection prisoners at risk

The processes used to approve and review placements of prisoners into protection are not effective. Prisoners who could be managed within the mainstream population, or those who no longer require protection, are not being screened out or reviewed for transition back into mainstream. This has led to an unsustainable growth in the number of prisoners living in protective custody, requiring the estate to find additional capacity to house them. Ineffective screening processes have also led to a wider range of prisoners being placed into protection, some who may not genuinely require protection. Notably, there has been an increase in OMCG or gang-related protection placements, which has led to greater instances of verbal and physical abuse towards more vulnerable protection prisoners. Effective processes could assist in both reducing the population and creating a safer protection environment.

Protection prisoners are vulnerable to mental ill-health

The restrictive life in protection may be exacerbating the mental ill-health of prisoners. While mental ill-health is common across the prison estate, prisoners have told us that the isolation and boredom they experience in protection significantly impacts their wellbeing and outlook. Our analysis showed there were fewer self-harm and attempted suicide incidents within protection units when compared to mainstream areas. However, protection prisoners are more frequently referred to the At-Risk Management System for observation and more often have a history of self-harming. Protection prisoners continue to feel that the mental health supports they require are not being provided as they require them.

Life in protection is not conducive to rehabilitation

The separation of prisoners for protective custody often comes at the expense of their ability to participate in rehabilitation programs, education, employment, and other activities. These restrictions are often detrimental to their wellbeing, their ability to rehabilitate and, for some, their ability to obtain parole. The Department is generally aware of these restrictions, but a lack of data means it has little oversight of the problem and its extent.

Department is reforming protection processes

Throughout the review the Department was establishing a new policy for the assessment and review of protection prisoners. The Department argued these reforms would enable more rigorous assessments of prisoners, which would give it a better understanding of prisoners' risks and needs. The reforms also introduce a six-monthly review process, undertaken by a multi-disciplinary committee at Acacia, Casuarina, and Hakea prisons.

However, we understand that issues with data collection and extraction will not be addressed under the proposed changes. An opportunity exists for the Department to improve data availability by developing a protection module on the offender database and by digitising paper-based protection-related documents.

Conclusion

The Department takes its commitment to the safety and security of prisoners seeking protection seriously. However, poor assessment and review processes have led to the unsustainable growth of this cohort over the past decade. The Department has recognised this issue and developed new processes in response.

As an isolated population, prisoners in protection are in effect living in a prison within a prison. This isolation limits their access to meaningful daytime activities, programs, and some supports. Prisoners who seek safety and protection should not have to sacrifice their access to these services. It is incumbent on the Department to provide all prisoners with the best opportunity for rehabilitation while under its care.

Recommendations

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Recommendation 1 – Develop procedures for the use of self-harm alerts on the offender database.	8
Recommendation 2 – Expedite the delivery of mental health training for peer support prisoners. If this training cannot be rolled out before the end of 2022, provide peer support prisoners with interim mental health first aid training.	10
Recommendation 3 – Increase the range of employment opportunities available to protection prisoners and investigate adaptive approaches that can be implemented in periods of protection population growth to ensure employment equity does not deteriorate as numbers increase.	13
Recommendation 4 – Urgently review the placement options of protection prisoners at Hakea Prison who are sentenced and have incomplete treatment needs.	17
Recommendation 5 – Investigate opportunities to improve access to criminogenic treatment programs for protection prisoners, and other offenders more broadly, including:	17
<ul style="list-style-type: none">• Identifying programs that may be suitable for cohorts that are smaller in number• Investigating the use of modularised and open-ended programs• Identifying for trial potential modularised and open-ended programs• Investigating the re-establishment of sex offender treatment programs at Casuarina Prison• Investigating the availability of voluntary programs (criminogenic or non-criminogenic) for remand prisoners and those serving sentences less than six months.	
Recommendation 6 – Improve data input and extractability in the offender database to enable greater oversight of prisoner cohorts and the delivery of services.	19
Recommendation 7 – The Department to consider exempting Serco of their contractual requirement to complete fortnightly reviews of protection alerts at Acacia Prison.	21
Recommendation 8 – Establish an agreed process, timeline, and reporting mechanism with Acacia, Casuarina, and Hakea prisons to review all existing protection alerts using COPP 4.10. Identify priority groups of prisoners to be reviewed first and set deadlines for their completion.	21
Recommendation 9 – Conduct a 12-month post-implementation review of COPP 4.10 and its effectiveness in reducing the population of the protection prisoner cohort.	21
Recommendation 10 – Develop a protection module on the offender database and digitise paper-based protection-related documents.	22

1 Ineffective processes are placing protection prisoners at risk

The processes in place to assess and review protection alerts are not effectively screening out prisoners who could be managed within the mainstream population, or those who no longer require protection. As a result, the population of protection prisoners has surged in recent years. Increases in prisoners at-risk from other prisoners, gangs and OMCGs are also shifting the dynamics in the protection units. More vulnerable protection prisoners, such as older prisoners, those with cognitive issues, and people with sexual offence histories, are increasingly being subjected to verbal and physical abuse by mainstream prisoners entering protection. Effective processes could assist in both reducing the population and creating a safer protection environment.

1.1 Risk averse protection placements have resulted in a burgeoning population

Prisons are taking a risk-averse approach when assessing protection placements. OI4 provides a simple but sound process for the identification of, or self-identification by, prisoners requiring protection. Generally, placement of protection prisoners appears to be relatively swift, minimising the risk of violence. While this ensures the safety of prisoners is prioritised, it has also led to an increasingly swollen protection population. The process also does not mandate a rigorous assessment of security concerns. As a result, the safety concerns of protection prisoners are not always verified or managed prior to a prisoner being placed in protection. The stigma attached to protection prisoners then makes it difficult for them to reintegrate back into mainstream.

The Department acknowledged that a recent surge in the protection population is attributable to a lack of thorough assessments and follow-up reviews. Between 1 July 2011 and 1 July 2021, the protection population increased 275 per cent from 189 to 709 prisoners. The adult male prison population increased by 42 per cent in the same period. Most protection placements continue to relate to prisoners with adult or child sex offences. This cohort has increased in number year-on-year. However, their percentage as a proportion of the protection population has decreased to below 50 per cent as more prisoners seek protection from members and associates of OMCGs and other gangs. Since 2015, the proportion of this cohort has increased from seven per cent to 12 per cent. A risk-averse approach to prisoners claiming to be at-risk, and a lack of policy guidance under OI4 in assessing the validity of those risks, have led to the escalating population.

The prompt assessment of protection placements ensures prisons are acting dutifully in their commitment to safeguard prisoners from harm. However, they must be careful they do not become complacent in their assessment of a prisoner's ongoing need for protection or the ability to manage safety concerns in an alternative way. Under OI4 the Department has little oversight on how facilities approve and review protection placements. The Department has little control over who is and is not placed into protection. The Department anticipates the introduction of a new policy in late 2021 will formalise a more structured assessment process, assist in verifying security concerns, and result in better understanding the risks and needs of individual prisoners.

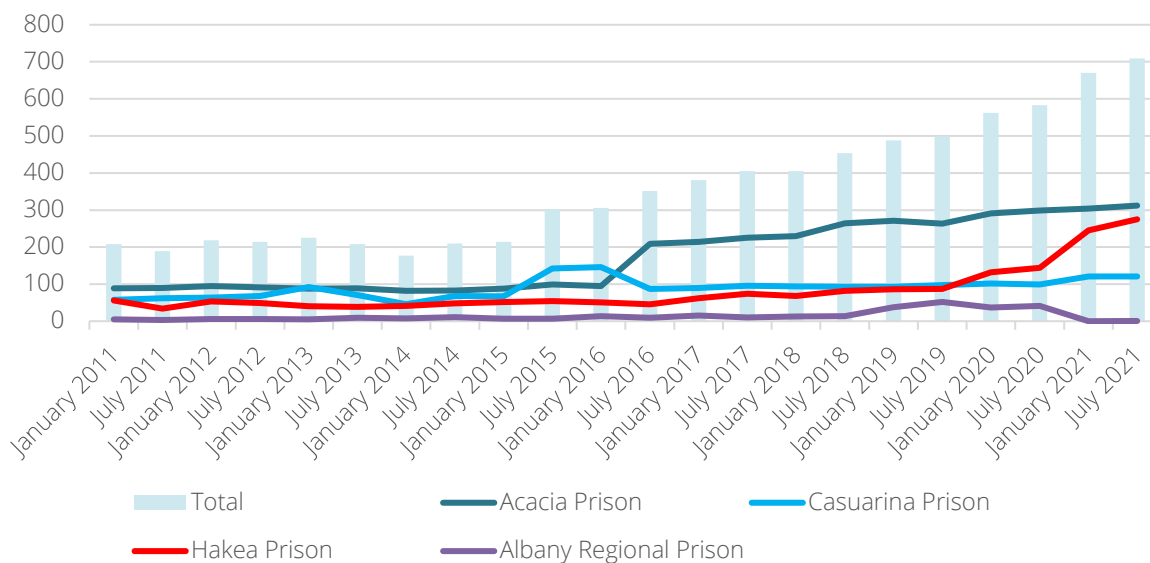


Figure 4: The whole-of-estate population of protection prisoners has tripled since July 2011.

1.2 No evidence meaningful reviews of protection placements are occurring

A requirement for weekly reviews of protection alerts under OI4 is onerous and appears to have largely become a ‘tick and flick’ exercise. We analysed a sample of protection alerts that were active at Acacia, Casuarina, and Hakea prisons on 1 July 2021. We found Acacia Prison to be the most consistent with their reviews and the most compliant with OI4. The average length of time between reviews of an individual prisoner at Acacia was 14.5 days, with a range between a low of six days and a high of 28 days. In comparison, the average at Casuarina Prison was 21 days, with the slowest occurring nearly six months after the prisoner’s previous review. Hakea Prison on average was the slowest, recording an average review period of 70 days. The fastest review at Hakea was 14 days, and the slowest was 119 days. Acacia Prison was the only facility to be compliant with its relevant Local Order on the management of protection prisoners (DOJ, 2012; DOJ, 2015; Serco, 2021).

There is little evidence that quality reviews of protection alerts are occurring. At Casuarina Prison, 81 per cent of the sample we analysed were reviewed by officers in a single day. If this rate of review was applied to the entire protection population at Casuarina, 98 protection prisoners would be reviewed in a single day. This task would have been completed in addition to the standard duties of a custodial officer. Similarly, 53 per cent of the Acacia sample was reviewed on one day and the remaining 46 per cent were reviewed on a different day. Further analysis identified two officers at Acacia completing their reviews in October 2021 at an average pace of 54.6 and 57 seconds. Both officers entered identical comments into the Department’s offender database for each review conducted, providing no indication that meaningful reviews had taken place. Hakea performed its reviews in a less systematic manner over seven different days. While not compliant with policy, it is suggestive that more meaningful reviews may be occurring.

"Protection alert reviewed, status remains unchanged"

OFFICER B CONDUCTED

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REVIEWS AT AN AVERAGE PACE OF 54.6 SECONDS, ENTERING IDENTICAL COMMENTS FOR EACH PRISONER.

The Department could not provide documents and information used to complete reviews. We requested the review paperwork for a dozen protection prisoners from Acacia, Casuarina and Hakea for a six-month period to verify the quality of reviews undertaken. The Department explained reviews are undertaken by officers, considering the circumstances of each individual prisoner. Officers make a recommendation electronically on the offender database for the prisoner to either remain in protection or be considered for removal. The information entered is often brief and typically does not explain what the officer reviewed, the method of review, and any specific findings. There are also no formal processes requiring officers to discuss with a prisoner their current circumstances, or to confirm with security or intelligence services if a previous security risk is still valid. The onerous requirement for weekly reviews has, it would appear, turned the review process into an exercise of compliance rather than a genuine review.

The Department concedes that the existing requirements under OI4 are not practical and do not reflect that most protection prisoners are long-term, thus making weekly reviews an ineffectual practice. Failure to meaningfully review a prisoner's requirement for protection results in unnecessarily long placements, adding pressure to the estate's protection population capacity.

1.3 Poor review practices may be compromising the safety and wellbeing of protection prisoners

With no evidence of meaningful reviews occurring, we are concerned that some prisoners are being kept in protection to the detriment of others. We analysed the review notes of protection prisoners who had assaulted other protection prisoners throughout 2020. There is no evidence that these prisoners' protection placements were being meaningfully verified prior to and after their incidents.

One prisoner remains in protection despite their involvement in several incidents, including allegations of physical and sexual assaults while in protection. Following his involvement in a string of alleged sexual assault incidents, he was transferred to a protection unit at another prison where he has been involved in further incidents. His initial protection alert was activated at Hakea, due to intelligence suggesting he was at risk from mainstream prisoners at that facility. Since that time, the prisoner has been reviewed 37 times. There are no comments in any of these reviews referring to his ongoing risk despite no longer residing at Hakea, any updated intelligence to confirm he is still at risk, or reference to his behaviour while in protection. It is unclear how this prisoner's ongoing eligibility for protection has been verified. It is important to note that we are making no judgment about whether his protection status is warranted. The point is that the impact of his behaviour on other protection prisoners does not appear to have been considered and documented. His ongoing placement in protection has clearly undermined the safety and wellbeing of other protection prisoners, demonstrating the flaws with existing processes.

Prisons have a duty of care to safeguard all prisoners from the risks they may be facing within the prison system. As such, the behaviour of a protection prisoner may not result in their removal from protection. Rather, prisons use risk alerts to help manage interpersonal conflicts between protection prisoners and place them in other facilities or units. But as demonstrated, this may then affect the safety of protection prisoners in other units or facilities. It also adds to the complexity of managing the protection cohort. Conducting regular meaningful reviews of protection placements will assist in verifying prisoners with genuine needs for protection.

2 Protection prisoners are vulnerable to mental ill-health

Over the years, protection prisoners have consistently raised concerns with our office about the mental health of their fellow inmates. While mental ill-health is common across the prison estate, the restrictions experienced in protection may be exacerbating declines in mental wellbeing. The isolation of protection, the boredom experienced throughout the day, and the bullying associated with stigma are commonly cited as contributors to this decline. Statistically, protection prisoners also appear to be at greater risk of self-harm and suicidality than their mainstream counterparts. Despite these factors, protection prisoners continue to feel they are not receiving the supports they need.

2.1 Isolation, boredom and bullying can exacerbate mental ill-health in protection

The restrictions in place to safeguard prisoners in protective custody can lead to isolation, boredom and an increased risk of mental ill-health. Protection units restrict their occupant's movements and limit their abilities to engage in typical prison activities. Access to employment in industries is limited, access to the broader suite of education courses and the library is reduced, recreation outside of the unit is limited and the wait for treatment programs is lengthier. While the protection they receive may help alleviate the fear and anxiety they may otherwise experience in mainstream, we have heard from many about the frustrations they experience being in protection and the impact this has on their emotional wellbeing. One prisoner commented:

Most men wake in the morning (every morning for some) wondering how they are going to find meaning in their day. They have nothing to fill their day. This has a major impact on mental health and wellbeing. Welcome to "nothingness" and "meaninglessness". These are the ingredients of mental illness... This traumatising will then be transferred back into the community impacting on ex-prisoner families.

We have also heard how bullying occurs regularly within protection units, causing anxiety and stress. Prisoners have told us about acts of intimidation, sexual harassment, threatening behaviour, verbal abuse, and even physical and sexual assaults. Often these incidents occur unnoticed by officers or prisoners are too fearful to report the incident. Prisoners with sexual offence histories are often targeted, particularly if there has been media attention. This appears to have worsened as the diversity of protection prisoners has shifted. Other vulnerable prisoners including older prisoners, young offenders, gay prisoners and those with pre-existing mental ill-health are also vulnerable. In a letter to us, an Acacia protection prisoner commented:

It should be emphasised that on a daily basis in both Juliet and India Blocks vulnerable prisoners suffer on a continuing basis because of prisoner to prisoner intimidation and bullying which is rarely reported to staff because of fear of further intimidation or staff will take the victim to the Detention Centre for "safety reasons" which is quite an awful place. Often the perpetrator is left in the unit. Where is the logic here? ... Rarely are there consequences for identified bullying and intimidation.

A protection prisoner at Hakea Prison also commented:

People who are placed in protection for allegedly serious crimes are at risk. Some are assaulted but others have the door of their cell kicked, are shouted at after lock-up, or

endure micro aggressions such as being spat on, pushed, sworn at, or have their personal space invaded.

Some prisoners have expressed dismay at the support officers provide them. Prisoners have told us that some officers are less proactive in offering support, building relationships with offenders, and observing the units. Prisoners have told us they cannot rely on officers to help them if they have issues with bullying or aggressive behaviour by others. Some claim that reports of sexual assaults are dismissed, and the victim accused of lying. Those with sexual offences have also reported that some staff are biased and treat them differently. Other prisoners have also told us they have heard staff openly discussing their offences within earshot of other staff and prisoners. These issues may have a cumulative impact on the emotional wellbeing of prisoners.

Protection prisoners are also cognisant of being targeted by mainstream prisoners due to their protection status. Prison staff appear to take great care in escorting protection prisoners when moving outside of protection units to ensure their safety. However, some protection prisoners remain anxious. Some have told us they have experienced verbal abuse. At Hakea Prison, we heard anecdotally that food being delivered to the protection units had on occasion been tampered with, including being contaminated with urine. More recently, two such incidents occurred within a fortnight. Another protection prisoner found metal shavings in their bread roll. These incidents were formally reported, and kitchen staff and prisoner employees were counselled. Protection prisoners told us they felt such behaviour was intentionally directed at them. Hakea Prison management had previously argued the food trolleys were not labelled and food tampering could not be intentional. However, to our knowledge no other units have experienced the same issue.

The very nature of 'protective custody' is to provide protection from harm for prisoners assessed as being at risk or vulnerable. As such, it would be understandable if these prisoners had a greater degree of anxiety and fear than mainstream prisoners. For some, this fear may not be wholly alleviated by being placed into protective custody. For these prisoners, perception is their reality and if they are afraid or are experiencing bullying or harassment then this will impact their mental health, rehabilitation, and the tension levels within the unit.

It is important to note that not all protection prisoners feel unsafe. Some said they felt much safer in protection and were enjoying its quietness and calmness. Some also told us their relationship with staff was good and they were respectful.

2.2 Protection prisoners are more frequently referred to ARMS and more often have a self-harm history

Protection prisoners are overrepresented in referrals to the At-Risk Management System (ARMS) at Acacia and Casuarina. Despite protection prisoners representing approximately 20 per cent of Acacia's total population, they accounted for 32.9 per cent of ARMS alerts raised in 2020. Similarly, of the 361 ARMS alerts raised at Casuarina, 18 per cent were for protection prisoners. This is despite the protection population only representing approximately 12 per cent of the facility's total population. There were also several ARMS alerts across these facilities that were activated for prisoners who had recently re-entered mainstream after serving time in protection. The ARMS system is a tool for managing prisoners at-risk of self-harm and suicide (DOJ, 2021b). These results

indicate a correlation between those seeking protection and mental ill-health but does not necessarily infer causation.

This overrepresentation does not appear to be reflected at Hakea Prison. The reason for this is unknown. However, it is likely explained by Hakea's function as the primary remand facility. There is a high turnover of prisoners at Hakea and many arrive off the streets and in a distressed state. There is a greater degree of volatility and vulnerability across Hakea's population, which is likely diluting the representation of protection prisoners in ARMS referrals. This dilution does not necessarily mean the mental wellbeing of protection prisoners at Hakea Prison is better than those residing at Acacia or Casuarina prisons.

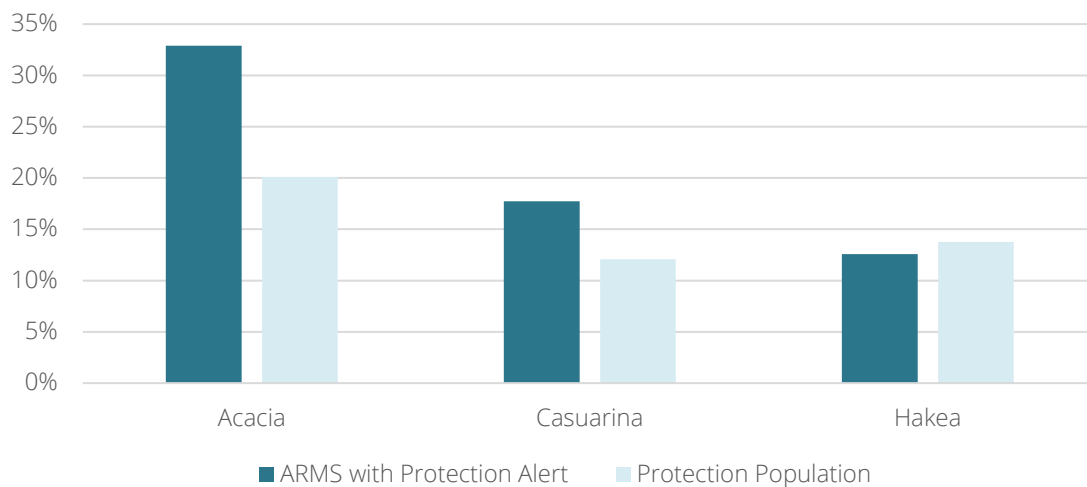


Figure 5: Protection prisoners are disproportionately placed on ARMS (2020).

Protection prisoners are also overrepresented in offenders recorded with a history of self-harming. We analysed prisoners in custody over a five-year period who held simultaneous 'self-harm history' and protection alerts. We found the proportion of prisoners with both alerts was higher and often double the proportion of protection prisoners for that facility. For instance, 20 per cent of prisoners with a 'self-harm history' alert at Hakea Prison in 2017 were protection prisoners. This is despite the protection population representing only seven per cent of the facility's total population at the time.

However, this overrepresentation has narrowed. By 2021, both Acacia and Casuarina had fewer protection prisoners recorded with 'self-harm history' alerts. While the proportion at Hakea has increased by nine per cent, this mirrors the protection population's recent growth at the facility. In fact, Hakea was the only facility to have a protection population underrepresented in prisoners with 'self-harm history' alerts. Again, this could be explained by Hakea's role as the primary remand facility and the increased vulnerability of their mainstream population in comparison to Acacia and Casuarina.

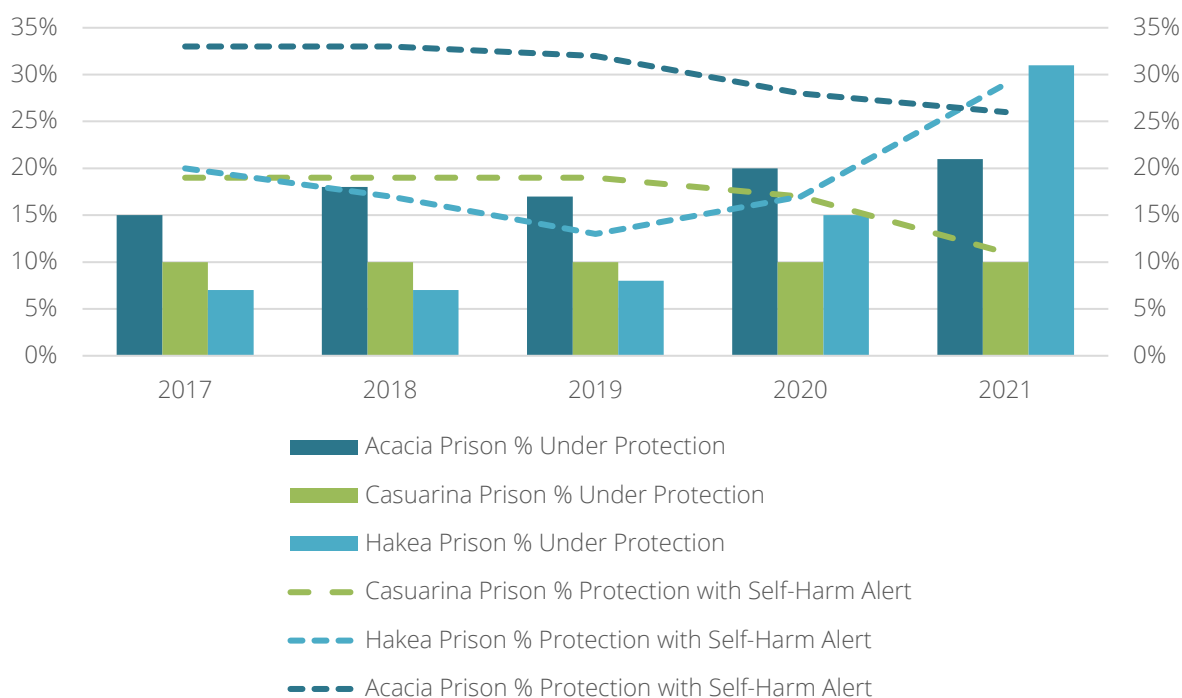


Figure 6: Protection prisoners have been overrepresented in offenders with a history or an active risk of self-harming.

Concerningly, poor data management may explain this narrowing rather than an improvement in the mental health of protection prisoners. The use of self-harm alerts appears to have declined considerably. We analysed 32 incidents from the protection units at Acacia, Casuarina and Hakea in 2020 where 'self-harm' was contained in the incident summary. Of these:

- 19 of the subject prisoners had an active self-harm alert prior to the incident. However, none of these were updated following their most recent incident.
- 13 did not have an active alert prior to the incident, and only two of these had an alert activated following their incident.
- Three of the 32 incidents were classified as critical incidents, involving significant self-harm or attempts at suicide. The three prisoners had alerts activated in 2009, 2013 and 2014 but were not updated following their most recent incidents.

There are two notable examples that highlight these data issues. One protection prisoner has had 55 separate self-harm incidents since their previous self-harm alert was deactivated in 2016. This includes threats to self-harm and actual self-harm incidents, and an attempted suicide. In a recent incident, the prisoner lit their clothes on fire resulting in burns to their hands and legs, requiring hospital treatment. The self-harm history alert was not reactivated following this incident. Similarly, another prisoner has had 17 self-harm incidents since 2016 when their last self-harm history alert was deactivated. Since this time, they have attempted self-strangulation and serious self-injury, among other incidents. Inconsistent use of these alerts not only hinders the Department's data collection and analysis processes but fails to alert custodial officers of a prisoner's propensity to self-harm, which may place that prisoner at greater risk.

The Department could not provide us with a policy that guides staff in the use of self-harm alerts. They confirmed that 'self-harm history' alerts can be placed on a prisoner's profile at any time, by any staff member. The alert is not automated following a self-harm incident. The Department also

confirmed that 'self-harm actual' and 'self-harm potential' alerts have been discontinued. The ARMS process is used in its place. However, the ARMS process is used for prisoners currently at-risk. Once that risk has passed, the ARMS alert is deactivated and not listed under current alerts. The ARMS manual also does not instruct staff to activate a 'self-harm history' alert following an act or threat of self-harm from a prisoner (DOJ, 2016).

The use of a self-harm alert would enable staff and custodial officers to be alerted to a prisoner's history of self-harm and the circumstances behind that history. This will ensure staff are aware of the risk, which may alter the way staff engage with that prisoner when they receive bad news or have a difficult day. The inconsistent use of the 'self-harm history' alerts is detrimental to the staff's understanding of the people under their care and custody.

Recommendation 1 - Develop procedures for the use of self-harm alerts on the offender database.

2.3 There are fewer recorded self-harm and suicide incidents in protection units

Analysis of incidents between 2018 and 2020 indicate there are fewer self-harm and suicide incidents in protection in comparison to mainstream units. This is despite protection prisoners being more likely to be flagged as at-risk or with a history of self-harming. The protection units at Casuarina and Hakea each recorded fewer incidents than their mainstream counterparts. At Acacia, India Block recorded low numbers and Juliet Block was higher but not the highest.

Inconsistent data entry practices have affected the quality of the analysis. The Department's offender database allows for the filtering of incidents by tags. There are specific tags for incidents involving threats of self-harm and actual self-harm. However, there appears to be only one tag to address any type of suicidal incident. No delineation is made between actual attempts, threats, or thoughts of suicide. Key word searches can be used to identify incidents with summaries that mention self-harm and suicidality. This relies on incident descriptions accurately describing incidents and using these key words accurately, which is not always the case. Officers appear to often conflate self-harm and suicidality, describing a prisoner as threatening to 'self-harm/suicide' without clarification. Further, the location of incidents is not consistently reported making it difficult to identify patterns across units. As a result, some incidents may be missed, and non-relevant incidents may inadvertently be included in analyses.

2.4 Protection prisoners feel they are not getting enough access to mental health supports

Protection prisoners have told us they feel they are not getting enough access to mental health supports. Throughout this review, previous inspections, and through the Independent Visitors Service we have consistently heard from protection prisoners who are concerned about the lack of mental health supports available to them and their fellow inmates. During the recent Hakea inspection, we were told that half of the referrals to Psychological Health Services (PHS) come from protection prisoners. It is reasonable to assume that protection prisoners may experience greater distress if the need for their protection was causing considerable anxiety or worry. In some instances, being placed in protection may not be enough to quell such concerns. Prisoners and staff have told us there are some protection prisoners who are simply too afraid to leave their cells. This

level of angst may be detrimental to the wellbeing of an individual and any attempts to complete rehabilitation.

In particular, the mental health of protection prisoners at Acacia Prison is frequently raised with us. Bullying, harassment and a spate of recent sexual assaults and violent incidents have been cited as triggers for low morale and mood. In the Acacia pre-inspection surveys, one prisoner noted:

... systemic problems leading to prisoner intimidate (sic), bullying, assaults, prisoner needs not being addressed and the mental health and wellbeing of prisoners massively deteriorating.

A lack of engagement from custodial staff and wait times for psychological services have also been raised as contributors to a deterioration in the mental health of protection prisoners at Acacia Prison. Others noted in the survey:

... mental health is badly needed. 1/3 of prisoners are in bad mental health or in need of psychiatric care.

No help at all and I have asked for counselling.

PHS provide services as required to prisoners, regardless of their protection status. However, access to mental health supports can be hindered for protection prisoners when safety escorts are required. Often, there are no rooms available within protection units that are suitable for mental health appointments. A growing protection population, particularly at Hakea Prison, is also proving a challenge for mental health teams. However, the Department assures that every effort is made to provide equitable services for protection prisoners. At the time of writing, 16 per cent of PHS referrals at Casuarina and 40 per cent of referrals at Hakea were for protection prisoners. Twenty-four per cent of referrals at Acacia were for protection prisoners.

Difficulties accessing mental health care in prison is not limited to protection prisoners. Inspection reports for Acacia, Casuarina and Hakea have consistently reported that mental health staff are under-resourced and face demanding workloads (OICS, 2019; OICS, 2020; OICS, 2019a). Due to resourcing constraints, priority access to counselling is given to prisoners at greater risk of self-harming or those with an active ARMS alert. For general referrals to PHS, initial intake contact assessment wait times are between six to eight weeks at Casuarina and Hakea. During this assessment, a recommendation will be made for the prisoner's clinical needs. If counselling is required, there is a further six to eight weeks wait. Other support services available to prisoners include the Chaplain, unit staff, the Aboriginal Visitors Scheme, prison support officers, and peer support prisoners.

However, at the time of writing, none of the peer support prisoners employed in the protection units at Casuarina or Hakea had received mental health training. Only two at Acacia had received training. Given the mental health vulnerabilities of protection prisoners and the often-lengthy wait times for counselling, the lack of mental health training for peer support prisoners diminishes the effectiveness of their counselling. Untrained peer workers may also be ill-equipped in having challenging conversations, helping to de-escalate issues, and offer trauma-informed care. This may

further increase the risk of protection prisoners developing acute mental ill-health and may increase the stress and anguish experienced by peer workers.

The Department previously provided peer support prisoners with access to the Mental Health Commission's Gatekeeper course. They have confirmed a new mental health course will become available in 2022, with train-the-trainer training being the initial focus. It is expected the course will then be rolled out to peer support prisoners but could not provide a timeline.

Recommendation 2 - Expedite the delivery of mental health training for peer support prisoners. If this training cannot be rolled out before the end of 2022, provide peer support prisoners with interim mental health first aid training.

3 Life in protection is not conducive to rehabilitation

The restrictions prisoners in protective custody experience limits their ability to rehabilitate and address offending behaviours. Inequitable access to education, treatment programs, and meaningful employment, leads many to have purposeless days with limited activity. The daily life of a protection prisoner is arguably not conducive to effective rehabilitation. A ‘set and forget’ approach is evident. This is detrimental to the wellbeing and rehabilitation of protection prisoners. Despite the Department’s awareness of these restrictions, it appears to have little oversight of them.

3.1 Protection prisoners have limited access to meaningful employment

Unemployment is lower in protection units, but under-employment is high

Generally, unemployment is lower in protection units. As of September 2021, each of the protection units recorded lower unemployment rates than their facility-wide average. Unit 7 at Hakea Prison was the only exception.

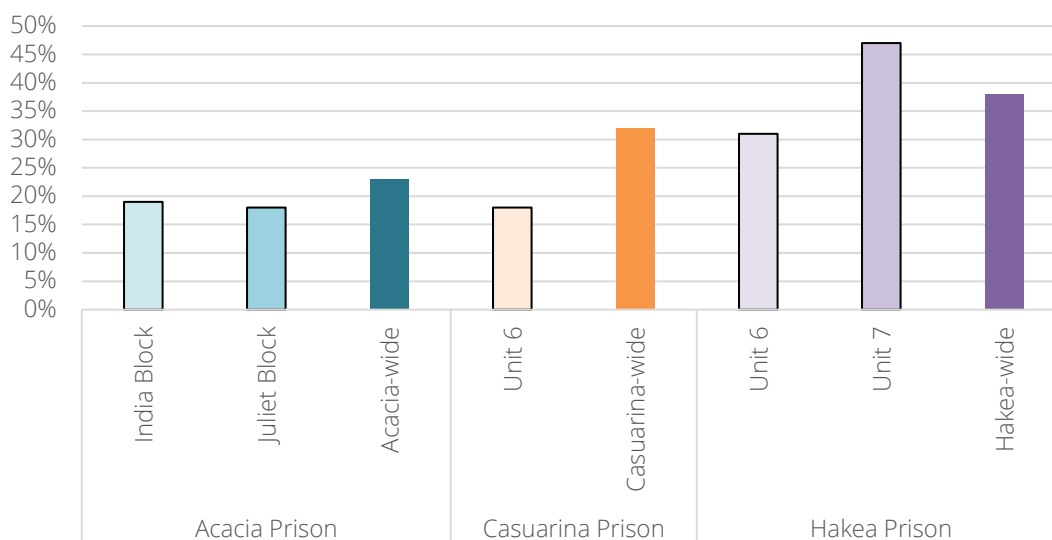


Figure 7: Unemployment is generally lower in protection units, except for Unit 7 at Hakea Prison.

Despite this, access to meaningful work is limited and under-employment is high. As a segregated cohort, employment opportunities for protection prisoners are limited to those available within the unit or within industries dedicated to protection employment. As a result, many protection prisoners are provided with relatively tedious, unskilled positions with few opportunities for skill growth. However, this issue is not isolated to protection units. Successive inspections at Acacia, Casuarina and Hakea have commented on the lack of meaningful employment opportunities for prisoners and a failure to provide new opportunities as populations increase (OICS, 2019a; OICS, 2019; OICS, 2020).

The frustration caused by a lack of purposeful activities is reflected by prisoners in our inspection surveys. Seventy-one per cent of India Block survey respondents felt they had no useful activities throughout the day, with several commenting that access to employment was a significant issue.

'If the government [is] serious about rehabilitation - why is there a lot of boys just lingering due to lack of education/programs/work - Work here is basically nothing.'

'Because the prison is 100% over capacity and while the buildings can accommodate the bodies. The minds are being destroyed. This is demonstrated by recidivism.'

'Been here for 4 months and still no job I have applied for jobs many times. No education for treatment, even no voluntary course relation my offences. Bored all the time and makes me more depressed.'

Figure 8: Protection prisoners have commented in pre-inspection surveys about a lack of meaningful activities during the day.

As at September 2021, 81 per cent of India Block residents received Level 3 or lower gratuities. Just over a quarter of these were paid to attend education classes, and the remaining three quarters were either unemployed or employed in low-level unit positions.

Similar discontent was expressed in Juliet Block, but the situation is slightly better. Fifty-eight per cent of respondents felt there were no useful activities, and 73 per cent were receiving Level 3 or lower gratuities. In comparison, Casuarina's protection unit had 56 per cent of residents on Level 3 or lower, and Hakea's Unit 6 and Unit 7 were 56 per cent and 61 per cent respectively.

Employment equity has worsened as protection population has grown

Access to meaningful employment and an equitable share of gratuities worsens as the protection population grows within a facility. Analysis of employment in protection as at June 2015, 2018 and 2021 illustrates a trend between population and employment equity. As the population grows, the proportion of protection prisoners in high-paid roles decreases and low-paid unit workers and unemployment increases. This suggests prisons are not adapting to growing protection populations by creating new meaningful employment opportunities as they are needed. As a result, there has been a greater number of prisoners either unemployed or employed in menial positions.

The correlation between population and employment is evident at Hakea. In June 2015, Hakea had 85 protection prisoners and one third (33%) of these received Level 1 gratuities. By June 2021, there were 272 protection prisoners and the proportion on Level 1 had reduced to 19 per cent. Conversely, the proportion of protection prisoners on Level 5 gratuities had more than doubled from 16 per cent in 2015 to 40 per cent in 2021. This meant the equitable distribution of positions had worsened as the protection population increased.

These shifts also brought the distribution of gratuities to protection prisoners in line with mainstream prisoners at Hakea. Parity among different prisoner cohorts may help alleviate any resentment between groups or a perception that protection prisoners receive more favourable

treatment. However, given their limited access to education, programs, and other day-time activities, unemployment may be more impactful on protection prisoners than mainstream prisoners. The opportunity to engage in more meaningful employment activities may help offset the frustrations and boredom protection prisoners face as a result of their restricted access to other day-time activities.

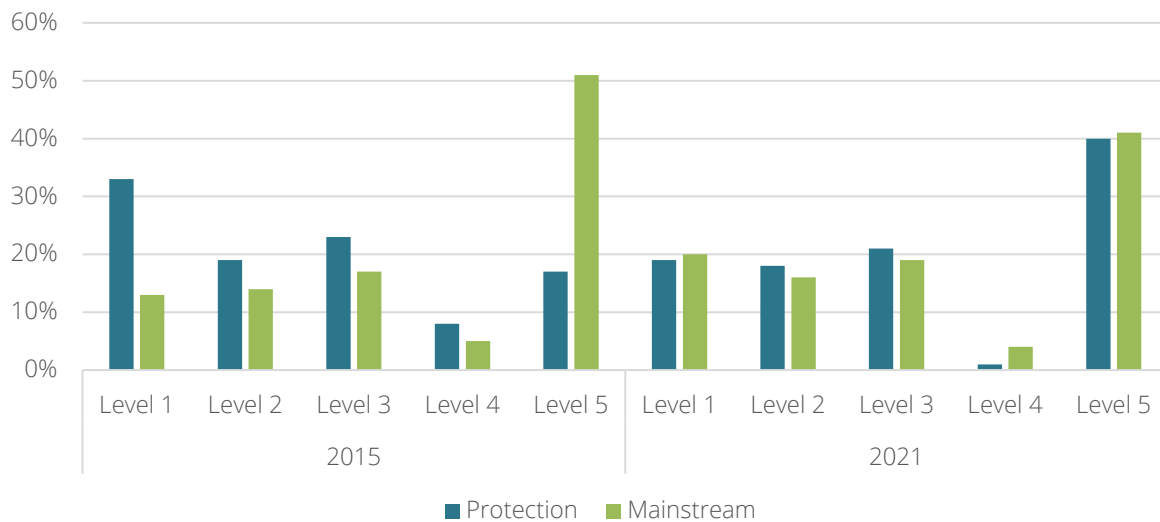


Figure 9: Level 1 and 2 gratuities have decreased, and Level 5 increased in protection at Hakea Prison as the population has grown.

Similar employment patterns are also evident at Acacia Prison. Since 2015, Level 1 gratuities have decreased from 15 per cent to six per cent as the population grew. Level 5 gratuities also increased from 11 per cent to 31 per cent between 2015 and 2018, before stabilising at 17 per cent.

However, in comparison to Hakea, Acacia has progressively increased employment opportunities. In 2015, only 32 protection prisoners were employed in industries (OICS, 2016). By 2018 this had increased to 61 (OICS, 2019). And, as of November 2021 there were 104 employed with an additional 36 positions becoming available with the relocation of laundry services to the protection industry block. These positions provided protection prisoners with an increased range of employment opportunities, and helped to decrease the number of unit workers or unemployed on Level 5 gratuities. The addition of the laundry will further assist in providing more meaningful and higher-paid employment opportunities.

Recommendation 3 – Increase the range of employment opportunities available to protection prisoners and investigate adaptive approaches that can be implemented in periods of protection population growth to ensure employment equity does not deteriorate as numbers increase.

3.2 Protection prisoners have increased barriers to criminogenic programs

The Department concedes there are a range of barriers preventing some protection prisoners from accessing criminogenic programs. This includes a lack of demand, a lack of suitable rooms available for protection prisoners, difficulties with escorting protection prisoners to program rooms not located in protection units, difficulties obtaining custodial officers to conduct these escorts, and a lack of suitably trained program facilitators. Poor access to programs has also been raised by

prisoners for several years through the ACCESS complaints system, the Independent Visitors Service, through pre-inspection surveys, and during inspections (OICS, 2019).

These barriers have led to few programs being delivered for protection prisoners. In 2020, 44 per cent of criminogenic programs recommended for protection prisoners were either ‘unavailable’ or ‘not currently offered’, in comparison to 29 per cent of mainstream prisoners. Over a third of protection prisoners were recommended to complete a sex offending program. Despite this, the intensive course was listed as ‘unavailable’ to 38 per cent of protection prisoners required to complete it, and the medium course was ‘unavailable’ to a third. Of the 16 protection prisoners recommended for the deniers’ program, only two had completed the course. It was ‘unavailable’ to 11 of the 16. Four prisoners were recommended to complete the intellectual disabilities sex offender program, but it was not available to any of them. Similar disparities were observed for violent offending courses, with two thirds of programs being ‘unavailable’ to protection prisoners compared to only 39 per cent for mainstream.

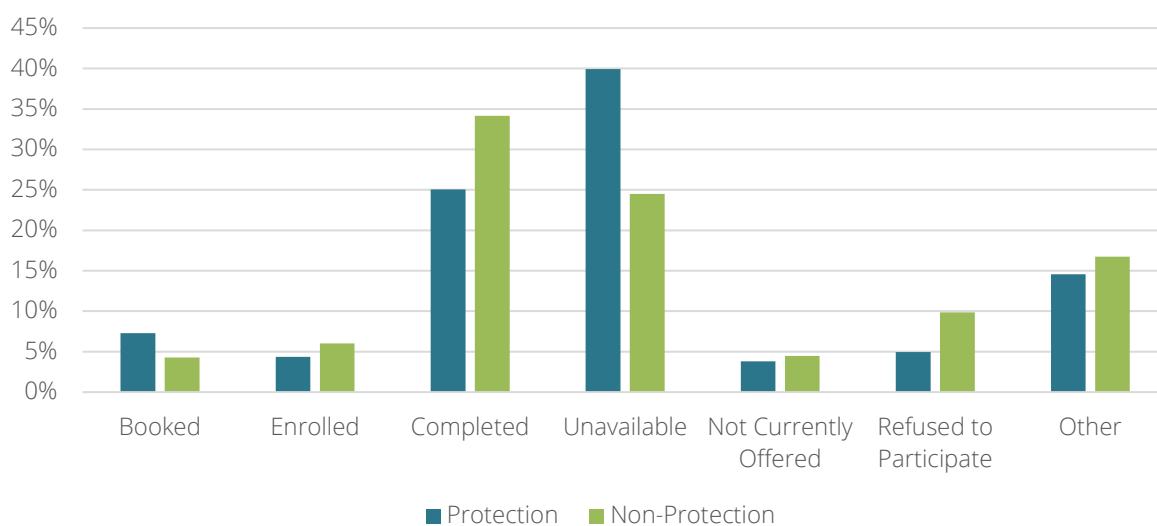


Figure 10: Comparison of program enrolments, completions and availabilities for protection and mainstream prisoners in 2020.

The Department acknowledged that finding enough protection prisoners at the same time and in the same facility was a substantial barrier to running a program. Typically, a criminogenic program will not run if there are less than seven offenders booked. For programs in protection, they will run with as little as six bookings. Fewer than this will affect the efficacy of the program. The Department also argues that individual counselling, in lieu of group programs are not as therapeutically or cost effective. This is supported by peer-reviewed literature, particularly for sex offender programs (Howard, 2021; Ware, Mann, & Wakeling, 2009). However, the Department could not outline any actions it had taken to address the issue of low demand, or any of the other barriers, to improve access for protection prisoners.

A review into the Department's programs recommended investigating the use of open-ended programs (Tyler, 2019). Open-ended programs allow participants to start programs at different times and complete modules at their pace. Research has shown that open-ended criminogenic programs for people with sexual offences have proven to be as effective as closed-group formats, allows for greater individualisation of treatment, and are more flexible (Ware, Mann, & Wakeling, 2009; Howard, 2021; Ware & Bright, 2008). Participants can also be enrolled at short notice, which may benefit those on short sentences. Currently, the programs offered by the Department are closed-group, requiring a specific number of participants to be booked and ready to go at the same time.

'I wish to be able to do my programs - Pathways, VOTP [Violent Offender Treatment Program]. I can't because of protection status. There is a dedicated room for programs but they are not run.'

'Education and rehabilitation not available whilst on protection custody.'

'Being in protection we have next to no access to programs or education. It makes it hard to better yourself and break away from bad habits.'

Figure 11: Many prisoners commented in pre-inspection surveys about the lack of programs in protection.

Protection prisoners are more often required to transfer facilities to access their programs

Not all criminogenic programs are offered at facilities with protection units. Nearly 80 per cent of program bookings for protection prisoners in 2020 required a transfer to another facility. This included transfers to Acacia, but also to Bunbury Regional Prison and Karnet Prison Farm where prisoners are required to live in the mainstream population. While some feel safe doing this, others choose not to transfer, and some are unable to transfer due to their security rating or ongoing security concerns. For some, a transfer means being further away from family. These are additional barriers protection prisoners experience.

Further, prisoners undertaking sex offender treatment programs at Bunbury Regional Prison told us they felt unsafe living among the mainstream population. Those who had transferred to Bunbury to undertake the programs were usually housed together, providing opportunities for support. However, this co-location has also resulted in prisoners being stigmatised and targeted. Prisoners told us they experience verbal abuse from other prisoners and often felt unsafe. Many chose to isolate themselves within their respective house. Some custodial officers described these prisoners to our office as 'fly-in, fly-out residents' with 'knocking knees' because they were no longer in protection. Protection prisoners appear to transition better into mainstream at Karnet Prison Farm.

This issue is systemic across the estate. More than half (57%) of mainstream prisoners also required a transfer to access their recommended program. The review into the Department's program offerings recommended taking 'programs to individuals rather than moving individuals to programs' (Tyler, 2019, p. 224). The review argued that moving prisoners around the estate required time and effort, may be a barrier for program completion, and may prevent individuals from being released at their earliest opportunity. This is an unjust outcome for the prisoner.

More protection prisoners are released with unmet treatment needs than mainstream prisoners

Analyses of criminogenic program recommendations, enrolments, and completions show protection prisoners are less likely to complete recommended programs prior to being released. In 2020, 24 per cent of recommended programs for protection prisoners had been completed before the offender was released, in comparison to 34 per cent for mainstream prisoners¹. Further, 40 per cent of recommended programs were listed as unavailable at the time protection prisoners were released. Only 25 per cent were unavailable for mainstream prisoners. This was the first year since 2016 that the completion rate was lower than the unavailable rate for protection prisoners at the time of their release. This is likely a result of continued delays in treatment assessments being completed, the impacts of COVID-19, and an increase in sentenced protection prisoners at Hakea, which does not offer criminogenic programs following the closure of Albany Regional Prison's protection unit.

Incompletion of recommended criminogenic programs is detrimental to a prisoner's parole application. Prisoners have consistently advised us that their paroles are being affected by unmet treatment needs. When queried on this, the Department advised they could not verify these claims because parole decisions are not effectively recorded on their offender database or extractable for analysis. However, in conversation the Department acknowledged that protection prisoners could reasonably assume their parole would be denied due to unmet treatment needs, given the restrictions they experience. Failure to provide programs prior to their release is failing to provide these prisoners with the best opportunity for rehabilitation. It impedes one of the key objectives of imprisonment; to rehabilitate offenders to reduce the risk of reoffending and improve community safety.

There is also a cost impact to consider when prisoners are refused parole. If parole is refused the prisoner may then be required to serve the full length of their sentence in prison. The Productivity Commission recently calculated it cost the Department \$322 per day for each individual prisoner in Western Australia (PC, 2021). In 2020, there were 20 individual protection prisoners who had unmet treatment needs when being released after serving their full term. The programs they were required to complete were either not currently offered or not available to them. Collectively, they spent an additional 6,393 days in custody beyond their earliest possible release on parole. Failure to obtain parole for these 20 individuals cost the Department just over \$2 million. Parole decisions are complex and consider multiple factors other than just completion of treatment needs. However, the example demonstrates the potential cost when prisoners cannot access their treatment programs. Given the Department's lack of analysis on parole decisions, this is a cost they are unable to accurately calculate. The cost, of course, would also be much higher when including mainstream prisoners in the calculation.

¹ Data is status of recommended criminogenic programs listed as required at the time of the relevant offender's release, filtered by whether the offender had an active protection alert at the time of release or not, for prisoners residing at Acacia, Casuarina and Hakea prisons.

Sentenced prisoners at Hakea Prison have no access to criminogenic programs

Sentenced prisoners residing at Hakea Prison, including those under protection, have no access to criminogenic programs. As a remand facility, Hakea does not offer criminogenic programs. However, some sentenced prisoners requiring protection may be placed at Hakea if, due to the nature of the protection they require, it is the safest option for them. As of mid-August 2021, 30 per cent (81) of protection prisoners at Hakea were sentenced. These prisoners will not be able to receive their recommended treatment needs without transferring elsewhere. And it will likely have a negative effect on their parole applications at a later stage. We have raised this issue previously and recommended that sentenced prisoners be moved out of Hakea as soon as possible (OICS, 2019a). We reiterate the need to transfer sentenced prisoners to facilities where they can access their treatment programs.

Recommendation 4 – Urgently review the placement options of protection prisoners at Hakea Prison who are sentenced and have incomplete treatment needs.

Short sentences and long remand periods a barrier to accessing programs

The Department has also argued that long remand periods and short sentences are preventing both mainstream and protection prisoners from accessing their required treatment needs. Prisoners with sentences less than six months are not assessed for treatment programs. In many cases, they would also be unable to start and complete the programs offered by the Department in such a short timeframe. Treatment programs can also be emotionally taxing for individuals. Incompletion of the treatment process may be more detrimental to a prisoner, than not starting the program at all.

Remand prisoners are also not provided access to criminogenic programs in Western Australia. This is particularly detrimental to people who spend long periods on remand, and who are provided with a short or backdated sentence which limits their access to treatment programs. It has been argued that undertaking a criminogenic program while on remand could also be an admission of guilt and raises ethical concerns about presumptions of innocence (ALRC, 2018).

Voluntary programs are available to remandees and short-sentence prisoners in the Australian Capital Territory, South Australia, and New South Wales (Tyler, 2019; ALRC, 2018). Both New South Wales and South Australia provide these programs as part of a broader effort to reduce recidivism (DCS, 2016; NSW Government, 2021). Increasing the availability of voluntary programs may be beneficial to both mainstream and protection prisoners on remand or serving short sentences.

Recommendation 5 – Investigate opportunities to improve access to criminogenic treatment programs for protection prisoners, and other offenders more broadly, including:

- Identifying programs that may be suitable for cohorts that are smaller in number
- Investigating the use of modularised and open-ended programs
- Identifying for trial potential modularised and open-ended programs
- Investigating the re-establishment of sex offender treatment programs at Casuarina Prison
- Investigating the availability of voluntary programs (criminogenic or non-criminogenic) for remand prisoners and those serving sentences less than six months.

3.3 Protection prisoners have fewer opportunities to engage in education and traineeships

Protection prisoners have limited access to education and traineeships. At Casuarina and Hakea education classes for protection prisoners are limited to one teaching period per week. This is either a morning or afternoon period on a single day. This restricts the number of people who can participate in general education and art classes. At Hakea, protection prisoners are also not granted access to the education centre. Rather, tutors bring resources and equipment to the protection units. This minimises the need for escorts but results in a teaching environment less conducive to learning and limits the types of education classes offered. Prisoners may also enrol in external higher education courses. Additional time with education staff can be provided, but this is staffing dependent. Acacia protection residents have access to protection-only education facilities, improving their access. However, the range of options may be limited if there is insufficient demand.

There are also fewer opportunities to be engaged in short courses and traineeships. This is primarily due to protection prisoners having limited access to most prison industries. However, there are positive steps being achieved at Acacia Prison. In 2020, eight protection prisoners participated in traineeships, compared to 83 in mainstream. While the numbers are low, it is encouraging to see the first traineeships being completed in protection since 2018. The relocation of the prison's laundry services into the protection industries block will also create new opportunities for traineeships. Protection prisoners have also regularly completed pre-employment courses at Acacia Prison in reading safety signs and obtaining white cards.

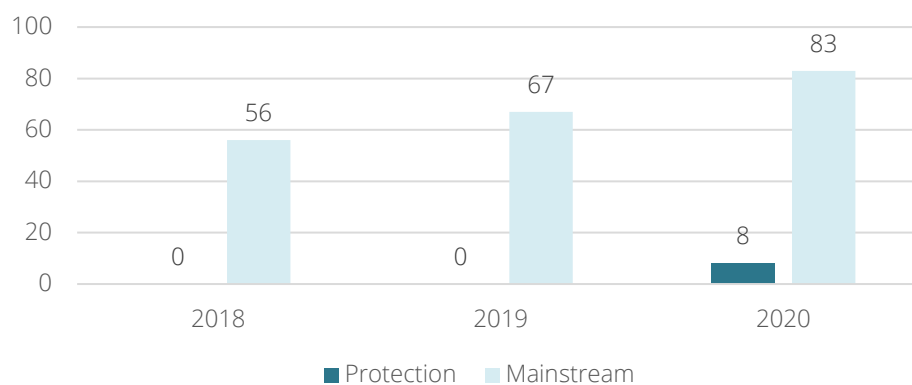


Figure 12: Participation in traineeships at Acacia Prison included protection prisoners in 2020.

The Department does not track or have access to data on the number of protection prisoners engaged in education at Casuarina and Hakea prisons. When requested, the Department claimed the enrolment data available to them for self-paced learning, short courses, or traineeships does not distinguish prisoner unit locations, or protection versus mainstream status. Only total numbers per course per facility are available. Accordingly, the Department has no statistical evidence of the disadvantage, or otherwise, protection prisoners experience in accessing education. Anecdotally, we are aware that some protection prisoners are engaged in laundry traineeships at Hakea Prison.

3.4 Department acknowledges life in protection is restricted but has little oversight

The Department has acknowledged to us that life in protection is restricted. Regulation 54C of the *Prisons Regulations 1982*, under which protection units are established, expressly permits the Department to 'confine' a category of prisoners to a separate part of a prison. The restrictions associated with this confinement are also expressed in the declaration prisoners are supposed to sign before moving into protection (DCS, 2010). Despite this, the Department has little oversight into the many restrictions experienced by protection prisoners, or the impact of those restrictions.

Throughout this review we have found it difficult to obtain data to verify claims of restrictions that prisoners and staff have raised with us. Acacia, Casuarina, and Hakea are each responsible for the management of the protection prisoners in their custody. At the facility-level, there is a greater awareness of the restrictions that protection prisoners experience. However, limitations with the recording, storing, and extraction of data impedes the Department's ability to understand these restrictions at a systemic level. These limitations include:

- no data available on parole denials and the reasons for parole denials
- no data available on the number of protection prisoners engaged in self-paced learning at Casuarina and Hakea
- no data available on the number of protection prisoners engaged in short courses or traineeships at Casuarina and Hakea
- no data available that distinguishes the wait time for counselling for protection prisoners at Casuarina and Hakea
- inconsistent use of self-harm alerts affecting data quality
- unreliable programs data.

With a lack of data, or data that can distinguish protection prisoners from mainstream prisoners, the Department is unable to gain a quantitative understanding of the restrictions that protection prisoners experience. As such, it cannot wholly understand how these restrictions effect the quality of life for protection prisoners and their ability to rehabilitate. Further, their ability to undertake monitoring and quality-control checks on the delivery of services to specific cohorts of prisoners is severely limited.

Recommendation 6 – Improve data input and extractability in the offender database to enable greater oversight of prisoner cohorts and the delivery of services.

4 Department is reforming protection processes

The Department acknowledges the limitations of OI4 and is progressing reforms to the approval and review processes for protection prisoners. These reforms will assist the Department in better understanding the risks and needs of individual prisoners, within the protection and mainstream populations. However, they note these reforms may not necessarily result in a reduced protection population. Issues with data and paper-based processes will also continue to hinder the Department's oversight of this population.

4.1 Draft COPP proposes a more structured approval and review process

COPP 4.10 proposes a more robust and accountable process for assessing protection placements. While the pathways to protection generally remain the same, officers will be provided with a more detailed process to follow when assessing a prisoner's requirement for protection. The COPP introduces a risk matrix which will be utilised by a facility's Protection Multi-Disciplinary Team (PMDT) (DOJ, 2021). The matrix assists the PMDT in making an informed, risk-management decision based on the perceived likelihood and potential consequences of a violent incident occurring. In assessing the risk, the PMDT will be instructed to consider the following:

- a) type and severity of the offence(s)
- b) the likelihood of any risk to the safety of the prisoner
- c) current placement
- d) length of sentence remaining
- e) any previous custodial history
- f) any intelligence received
- g) external risks to the prisoner while on escort
- h) links to organised crime or gang related activities

PMDT Committee

Under the draft COPP, the PMDT Committee is local to each facility and should comprise of:

- a) Assistant Superintendent Operations / Principal Officer (PMDT Chair);
- b) relevant Senior Officer;
- c) security representative; and
- d) other staff as required.

The draft COPP does not mandate how frequently the PMDT Committee should meet. The Department anticipates monthly meetings will occur, but this will be determined by each facility.

The Department anticipates the new process will improve the understanding of a prisoner's risks and genuine need for protection. They expect this will assist in improving their ability to manage the needs of prisoners, both within protection and mainstream populations. However, they concede this may not necessarily reduce the number of protection prisoners. A lack of understanding of these risks and needs under the existing OI4 has resulted in prisons taking a risk averse approach and placing prisoners into protection on a precautionary basis without rigorous assessment.

The draft COPP also proposes a shift to six monthly formal reviews of each protection prisoner by the PMDT committee. This shift will ease the burden of reviews for facilities. The use of a multidisciplinary team should improve the quality and thoroughness of reviews and include security or intelligence information to verify ongoing risks and safety concerns. This information, in theory, will give management greater confidence when signing-off on the removal of a protection alert and the reintegration of a prisoner back into mainstream population.

Despite this shift in review timelines, the Department's contract with Serco still requires them to complete fortnightly reviews. To comply with their contractual requirements, Serco intends on completing both fortnightly and six-monthly reviews. The latter will comprise of more detailed risk-based assessments using the PMDT, and less detailed reviews will occur fortnightly by custodial officers. This contractual requirement defeats the intent of the COPP and is an ineffective use of staff time. Further, this requirement will hinder efforts to dislodge the culture of apathy that has developed as a result of the onerous mandate for fortnightly reviews.

The Department anticipates the draft COPP going live by the end of 2021.

Recommendation 7 – The Department to consider exempting Serco of their contractual requirement to complete fortnightly reviews of protection alerts at Acacia Prison.

4.2 Department has no formal plans or targets to reduce the protection population

Despite the Department conceding the implementation of COPP 4.10 may not reduce the protection population, they have not conducted any formal modelling or population projections for the cohort. Neither have they formally agreed to any targets for reducing the population. The Department has noted that the implementation of a more robust assessment and review process can only assist in improving the management of meeting prisoners needs. The Department has no intentions to expand the capacity of the protection population across the estate.

Given the restricted lifestyles of protection prisoners, the Department should be proactively attempting to minimise this cohort. Critical to this is ensuring facilities implement the new COPP effectively, and systematically and promptly review long-term placements to verify their ongoing eligibility. Establishing timelines and reporting requirements with Acacia, Casuarina and Hakea prisons will ensure this process is implemented efficiently.

Recommendation 8 – Establish an agreed process, timeline, and reporting mechanism with Acacia, Casuarina, and Hakea prisons to review all existing protection alerts using COPP 4.10. Identify priority groups of prisoners to be reviewed first and set deadlines for their completion.

Recommendation 9 – Conduct a 12-month post-implementation review of COPP 4.10 and its effectiveness in reducing the population of the protection prisoner cohort.

4.3 Data issues will not be fixed under the new COPP

The limited data on protection placements available for extraction and analysis is not expected to improve under COPP 4.10. The Department advised that it had intended to digitise information relating to protection alerts using a custom module on the offender database. Similar modules exist for the ARMS process. This would have provided the Department and custodial staff with greater

access to information about a prisoner's ongoing requirement for protection, relevant documentation and review assessments. However, these plans have not come to fruition. Rather, the existing protection alert framework remains and all documents relating to protection placements will continue to be paper-based and stored inside the prisoner's unit. Outcomes of reviews conducted by the PMDT will be recorded as they currently are. This will continue to impede the Department's ability to extract and analyse meaningful data on the protection population. And means the Department will continue to have limited oversight of this cohort.

The Department has very limited data available for internal analyses and strategic planning of its protection population. When requested, the Department advised that they were unable to extract data on the number of protection requests made, how many were approved and how many were rejected. The Department can only view active protection alerts and alerts that have been deactivated, the dates of activation and deactivation, and the facilities the prisoner was held at when the alert was activated or deactivated. The lack of useful data on the number of approvals and refusals would make it difficult for the Department to easily track population growth and conduct population projections. Alerts are also not routinely deactivated when a prisoner is released to freedom. Data extraction on active alerts will therefore include prisoners no longer in custody. This further complicates the Department's ability to understand its existing protection population and to conduct statistical analyses of, for example, the average length of time prisoners spend in protection.

The Department is unable to track the reasons why prisoners seek protection. When an alert is activated, officers will enter the reasons for protection into a text field. Some provide a good level of detail, and others do not. While this clarifies the circumstances of individual prisoners, this data cannot be extracted for meaningful analyses to ascertain broader trends across the protection population. The lack of detailed record keeping also hampers future efforts to conduct meaningful reviews, which may result in prisoners remaining in protection longer than they are required. In lieu of extractable data, some prisons have prepared their own tracking spreadsheets to help understand their own protection cohorts. Similarly, as part of our review we manually classified the reasons individual protection prisoners sought protection.

Establishing more detailed data entry procedures would assist with oversight and good governance over the management of protection prisoners. Mandating minimum reporting requirements for:

- the reasons a prisoner has requested or is being recommended for a protection placement
- any security information or intelligence used to verify safety concerns
- the information used to verify the ongoing need for a protection placement
- recording any conversations with the offender about their placement in protection.

Recommendation 10 – Develop a protection module on the offender database and digitise paper-based protection-related documents.

Appendix A The Department's response to recommendations

Response Overview

Introduction

The review into *Protection Prisoners* was announced by the Office of the Inspector of Custodial Services (OICS) on 15 July 2021. A wide range of documentation, statistics and access to systems, policies, processes, custodial facilities including staff, prisoners and contractors were made available to OICS upon request for the purpose of the review.

On 12 January 2022, the Department of Justice (the Department) received a draft report on the *Management of prisoners requiring protection* from OICS for review and comment. The draft report has highlighted key findings and made ten recommendations. The Department has reviewed the draft report and provides comments and responses to the recommendations as outlined below.

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

Review Comments

The Department is committed to the safety and security of all prisoners in its care and provides protection placement options to prisoners who need protection from others.

The Department acknowledges there has been an increase in protection prisoners over the years for a number of reasons, including an increase in the number of prisoners requesting protection, prisoners not wanting to give up their protection status, increased complexities of the prisoner cohort coming through the system and an inconsistent assessment and review process.

A new policy for protection prisoners has now been introduced. *COPP 4.10 Protection Prisoners* was implemented in December 2021 which provides clear policy on protection referrals, assessment and review processes. The COPP also calls for the establishment of a Protection Multi-Disciplinary Team (PMDT) based at each of the protection prison sites.

The role of the PMDT is to risk assess and make decisions on all new referrals for protection and to establish processes for the ongoing review of the protection status of prisoners already on protection. It is expected this will allow the Department to better manage protection prisoners in its care.

The Department's priority is keeping prisoners safe and at times this may lead to restrictions placed on prisoners in protective custody such as limited access to a range of employment opportunities, access to programs, education and recreation. However, as the report rightly points out, prisons have a duty of care to safeguard all prisoners, and every effort is made to provide this cohort with the same opportunities as mainstream prisoners where it is safe to do so.

The report claims protection prisoners are vulnerable to mental health due to isolation, boredom and bullying, and that protection prisoners are more frequently referred to the At Risk Management System (ARMS). This premise is not supported by prisoner data. Protection prisoners are not isolated as they are placed in units with other protection prisoners. Data extracted as at 15 February 2022 also shows only 2.9% of the protection prisoners (19 of 698) have active ARMS alerts. There is no distinction made between protection prisoners and mainstream prisoners. Irrespective of a prisoners' circumstances and placement, if they are at risk to themselves, immediate

action is taken in the interest of their safety and they are placed on ARMS. The risk assessment commences at reception and is used to assess the potential for suicide/self-harm behaviours throughout a prisoner's sentence, and all prisoners are afforded the same levels of mental health supports regardless of their placement.

The report has correlated parole denial (due to unmet treatment needs) and cost per prisoner per day. As is pointed out in the report, parole decisions are complex and take into consideration multiple factors, not just completion of treatment needs. The decision to approve or deny parole will take into account poor responses to prior community supervision orders, convictions for breaches of the orders, prior criminal history, non-compliant and abusive behaviour whilst incarcerated and failure to comply with prison rules. It is also not uncommon for parole to be denied at the prisoners' request.

However, the Department acknowledges that the provision and delivery of criminogenic programs is challenging, not only across the prisons in Western Australia, but across national jurisdictions. The geographical spread of the prisons in Western Australia can also impact program delivery and the Department has made significant efforts to resolve the issue. It is currently investigating modularised programs that could provide prisoners improved access to criminogenic programs and a better chance of program completion.

The Department expects the new COPP 4.10 to bring about positive change in the management of protection prisoners in its care. A review of the COPP scheduled to occur in 2023 will provide further opportunity to assess and refine the policy as part of the Department's continuous improvement processes.

The Department supports the majority of the recommendations made by the Inspector as they align to current practice and projects that have been initiated by the Department.

Response to Recommendations

1 Develop procedures for the use of self-harm alerts on the offender database.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Offender Services
Proposed Completion Date: 30 June 2023

Response:

The Department acknowledges there should be clear understanding and procedures for the use of alerts on the offender database.

An initial examination of the data shows prisoners who self-harm are primarily managed under the ARMS process with ARMS alerts activated and subsequently deactivated as part of this process. History of deactivated ARMS alerts are easily accessible by all custodial staff and this is a reliable indication of a prisoner's self-harm history.

The self-harm history alert is mostly activated by the PRAG (multidisciplinary team) on a case-by-case basis upon deactivation of the ARMS alert.

Following the review of At-Risk Management in WA custodial facilities, a working group has been established to focus on improvements to the ARMS and SAMS processes. Scope of this work will be expanded to include a review of the use of the self-harm history alert. Progress will be monitored under the governance of the Suicide Prevention Steering Committee.

2 Expedite the delivery of mental health training for peer support prisoners. If this training cannot be rolled out before the end of 2022, provide peer support prisoners with interim mental health first aid training.

Level of Acceptance: Supported - Current Practice/Project
Responsible Division: Corrective Services
Responsible Directorate: Offender Services
Proposed Completion Date: Closed

Response:

Gatekeeper training for the Peer Support Team took place on 20 and 21 December 2021 at Casuarina Prison facilitated by internal DoJ staff. Additional training for staff and prisoners is planned for other sites in 2022. Managers from MHAOD are also exploring the suitability of alternative programs for use in 2022.

Additional training and dates have been identified at several other sites during 2022 and covers a range of topics including Understanding the Assessment and treatment programs process, Cert IV in Mental Health, Communication and PST Training.

3 Increase the range of employment opportunities available to protection prisoners and investigate adaptive approaches that can be implemented in periods of protection population growth to ensure employment equity does not deteriorate as numbers increase.

Level of Acceptance: Supported - Current Practice/Project
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: Closed

Response:

The Department's priority is to keep prisoners safe. Employment opportunities are made available to protection prisoners within the units and external to the units where possible.

Protection prisoners generally remain within the units for safety reasons and the Department remains committed to the safety and welfare of all prisoners.

4 Urgently review the placement options of protection prisoners at Hakea Prison who are sentenced and have incomplete treatment needs.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: 31 December 2022

Response:

The Department agrees sentenced prisoners should not be accommodated at Hakea Prison, being a remand facility, and alternative accommodation is generally sourced. The Department's priority however will always be the safety and welfare of the prisoners.

There are several impediments to moving sentenced prisoners to alternative locations. These include: risk to and from alerts, OMCG issues, intelligence, security classification, etc. The Department will continue to review the sentenced protection prisoners at Hakea to determine alternative placement.

5 Investigate opportunities to improved access to criminogenic treatment programs for protection prisoners and other offenders more broadly, including;

- Identifying programs that may be suitable for cohorts that are smaller in number;
- Investigating the use of modularised and open-ended programs;
- Identifying for trial, potential modularised and open-ended programs;
- Investigating the re-establishment of sex offender treatment programs at Casuarina Prison; and
- Investigating the availability of voluntary programs (criminogenic or non-criminogenic) for remand prisoners and those service sentences less than six months.

Response to Review:
Management of prisoners requiring protection

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Offender Services
Proposed Completion Date: 30 June 2023

Response:

The Department's intent is to change program delivery through modularised treatment programs. Work will be undertaken to investigate options that will enable this to occur.

6 Improve data input and extractability in the offender database to enable greater oversight of prisoner cohorts and the delivery of services.

Level of Acceptance: Supported - Current Practice/Project
Responsible Division: Corrective Services
Responsible Directorate: Corporate Services
Proposed Completion Date: Closed

Response:

The Department considers enhancements to the offender management system (TOMS) on a regular basis and acknowledges the need for improvements to data input and extractability. Currently the Department's capability for data analysis necessitates information harvesting from separate silo systems and inefficient manual and paper-based processes.

The importance of integrating these systems and digitising manual paper-based processes has been recognised and identified as a key initiative in the Department's Long-Term Custodial Technology Strategy. The work will require significant resources and funding.

Separate budget submissions to fund individual components of the strategy are being made to Treasury to access the Government's Digital Capability Fund under the WA Digital Strategy 2021-2025.

7 The Department to consider exempting Serco of their contractual requirement to complete fortnightly review of protection alerts at Acacia Prison.

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

Response:

The Acacia Prison Services Agreement requires Serco to regularly assess, at least fortnightly, protection arrangements for these prisoners. This obligation is completed by a Case Management Officer rather than the Protection Multi-Disciplinary Team which the COPP requires for the six-monthly reviews. Because this requirement imposes a greater standard or higher requirement than the COPP, Serco is contractually required to deliver both the fortnightly and six-monthly reviews.

8 Establish an agreed process, timelines and reporting mechanism with Acacia, Casuarina and Hakea prisons to review all existing protection alerts using COPP 4.10. Identify priority groups of prisoners to be reviewed first and set deadlines for their completion.

Level of Acceptance: Supported - Current Practice/Project
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: Closed

Response:

Part of COPP 4.10 includes a new management system through the establishment of a Protection Multi-Disciplinary Team (PMDT) based at prison sites. All referrals will be reviewed and recommendations made by the PMDT.

PMDT will add, remove and update protection alerts and shall review all referrals at the next scheduled PMDT meeting or within 28 days of receipt of referral form, whichever is earliest.

9 Conduct a 12-month post-implementation review of COPP 4.10 and its effectiveness in reducing the population of the protection prisoner cohort.

Level of Acceptance: Supported - Current Practice/Project
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: Closed

Response:

Review of all COPPs forms part of the Departments already established policy review process.

COPP 4.10 was implemented on 28 December 2021 and forms part of the review schedule. Consultation will be undertaken with relevant business areas between January - March 2023.

10 Develop a protection module on the offender database and digitise paper-based protection-related documents.

Level of Acceptance: Not Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: N/A

Response:

COPP 4.10 Protection Prisoners was implemented on 28 December 2021. The current management of the protection prisoners is in line with the new COPP. Developing a specific module for protection prisoners on the offender database at this stage will not provide any enhancements.

Digitisation of paper-based processes will occur as part of the Department's Long-Term Technology Strategy - refer recommendation 6 above.

Appendix B Methodology

Data sets for this review were obtained from the Department's offender database through a series of extractions using SQL Server Management Studio. We also used a series of pre-constructed reports from the Department's Reporting Framework and from the offender database. We examined data between 2011 and 2021.

We examined Western Australian legislation and departmental documentation including policy, strategy documents, and evaluations. As part of the review we also conducted site visits to Acacia, Casuarina, and Hakea prisons.

We received 15 written submissions from prisoners in protection at Acacia Prison and Hakea Prison. No submissions were received from prisoners at Casuarina Prison.

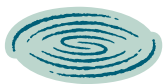
A key findings briefing was presented to the Department in November 2021.

The draft report was sent to the Department on 12 January 2022 and a response was received 28 February 2022.

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