

Inspector's Overview

The Department's understanding of the problems arising from FDV must be translated into effective actions for the rehabilitation of people in custody

Family and domestic violence (FDV) is an extraordinarily complex subject involving many concepts and principles and a myriad of intersecting causes and consequences. The Department of Justice's (the Department) response to our draft report highlighted the difficulties in trying to summarise such a complex issue in a few introductory pages. The response also identified that FDV is a key priority area, with the Department having a broad system-wide leadership focus beyond just prisons and the youth detention centre. So, the Department is well placed to address the issues in an informed and meaningful way.

We acknowledge the complexity of the issue and the broad challenges and role that the Department has in this area, but this was not the focus of our review. The review was bound by the scope and published terms of reference and, ultimately, by the limits of our legislative remit which, relevantly, allows for a review of a "custodial service" in relation to a prison or a detention centre. A custodial service in relation to a prison or detention centre includes: the management, control or security of the facility; or the security, control, safety, care or welfare of a prisoner or detainee.

The scope for our review noted the intention to examine the supports, including programs, psychological services and transitional care available to adult FDV offenders and survivors. We also intended to examine the supports available to young people in detention, as FDV offenders, survivors and witnesses.

The terms of reference posed three questions, namely:

1. Does the Department provide adult perpetrators of FDV adequate support to help address their offending, including programs, psychological support, and transitional through care?
2. Does the Department appropriately identify adult survivors of FDV in order to be supported while they are in custody?
3. Do young people in custody, who are witnesses, survivors, or perpetrators of FDV get appropriate access to FDV supports?

In undertaking this review, we had to first consider how well the Department identified perpetrators, survivors and witnesses of FDV when they enter prison or detention.

Our review found that the processes in place for the identification of perpetrators were generally sound. They consisted of a range of security measures and proactive security practices, such as information sharing. This was evidence of good practice. However, advice received from the Department during the review was that they had not been able to undertake reliable long-term trend analysis because they only started accurately collecting data in 2019. Prior to that it appears that the data had been manually recorded but it was unreliable and not tracked.

The identification of survivors and witnesses was more problematic and largely reliant on self-disclosure. This may occur, for example, during individual assessments, while partaking in treatment programs or during other welfare supports. We found that while this may be understandable, better

disclosure would require a safe environment for a disclosure to take place in a trauma informed model that offered people in custody support, respect, and dignity.

Once identified, the next challenge for the Department is providing access to suitable criminogenic treatment programs for perpetrators, victims and witnesses of FDV. Difficulties experienced by prisoners accessing programs, including FDV programs, has been an issue we have identified in many previous reports. Problems accessing programs have been compounded by a long-standing backlog in treatment assessments. Over the past few years the Department has put significant resources into addressing this problem and it has improved substantially since 2019. In its response to the draft of this report, the Department advised that, as at December 2021, only 13 per cent of eligible sentenced prisoners requiring an Individual Management Plan were outstanding. This equated to 554 prisoners who had, at that time, not yet been assessed for their program needs. But this is only one component of the problem as it does not include the number of prisoners who have been assessed but have still not accessed their required program.

Other barriers acknowledged by the Department included how programs were structured and delivered. Issues that commonly arose included: insufficient numbers of suitably assessed prisoners in the one facility to effectively deliver a program; short sentences not allowing enough time to complete the program; prisoners' being unwilling to transfer to other facilities to undertake programs; or prisoners' refusal to undertake the program. The first two reasons are particularly significant barriers in youth detention.

The Department has a good understanding of the problem of FDV, and the disproportionate overrepresentation of certain categories of people in prison as perpetrators and survivors of FDV. The Department's response to the draft of this report also noted its unique position to work closely with those impacted by FDV. We agree wholeheartedly with them on this point.

However, the Department's response also acknowledged that during the review it had not provided us with the full extent of their current strategic priorities relating to FDV. The response highlighted several system-wide leadership initiatives that are being developed or planned. Several of these initiatives, once finalised and implemented, have the potential to improve the supports provided in prisons to perpetrators and/or survivors of FDV. Most notably, the development of an FDV Strategic Framework and the development of an Aboriginal Family Safety Strategy were identified as being particularly relevant.

All our recommendations have been “completed”

We made seven recommendations arising from this review which the Department either supported as a current practice/project or supported in-principle with each recommendation closed as “completed”.

The first five of these recommendations were closely aligned with recommendations contained in the independent review of criminogenic treatment programs commissioned by the Department in 2019 (Tyler, 2019). As noted in our report, there did not appear to have been much progress towards implementing the 20 recommendations made in the Tyler Report. However, in response to our draft report and recommendations, the Department provided more detail about this and noted that it was “in the process of developing a program of works to prioritise and update the suite of

programs as per the review outcomes.” The response also advised, among other things, that initiative 4.1 of the draft FDV Strategic Framework highlighted “the Department’s commitment to review the suite of FDV criminogenic programs to ensure they are evidence based, culturally responsive and effective”.

The Department’s understanding of the challenges it faces delivering criminogenic programs is evident from the 2019 Tyler report which was a comprehensive body of work with 20 recommendations. Most, if not all, of the initiatives that were identified in the Department’s response to our review were either under development or planned and we are yet to see those initiatives come to fruition across the system. Although these five recommendations were listed in the Department’s response as “Completed”, there is obviously a considerable amount of work yet to be done before we can expect to see impacts on the ground for people in custody.

The aim of criminogenic program delivery must be to provide individuals with rehabilitative opportunities, and ultimately, reduce their rate of reoffending and involvement in the criminal justice system. It must follow then, that it is only when those programs are effective and actually being delivered to offenders and, in the context of this review, victims and witnesses, that the work will truly be completed. This an area we will continue to monitor during our inspection work and routine follow-up of recommendations.

The final two recommendations from our review related to adequately resourcing counsellors from the Psychological Health Service (PHS) and staff from the Aboriginal Visitors Scheme (AVS). The Department’s response noted that the AVS service model was being reviewed as part of the Department’s 2022-2024 Reconciliation Action Plan (RAP), but on examination no specific reference to this could be found in the RAP and we have sort clarification on this point. The Department’s response also acknowledged difficulties in the attraction and recruitment of suitable staff to these two vital support areas, but it did not identify any new initiatives to address the concerns we raised. Both recommendations were also listed as “Completed”. This suggests to us that nothing more would be done. Yet, we understand that there are a significant number of vacancies in both the AVS and PHS. Given their importance as broad support mechanisms, we expected to see further efforts to address the acknowledged difficulties.

CONCLUSION

People in custody are more likely to have histories of exposure to FDV, either as perpetrators, survivors or witnesses, or a combination of the three. Some populations that have an increased risk of exposure to FDV, also have higher rates of incarceration. This includes Aboriginal Australians, especially Aboriginal women, people who come from socially or culturally disadvantaged backgrounds, and people with disability.

It is incumbent on the Department to provide effective treatment programs to perpetrators of FDV offences, to reduce both recidivism and future harm to the community. It is also crucial that the Department provides other supports, including psychological and welfare services, to perpetrators, survivors and witnesses.

ACKNOWLEDGEMENTS

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

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 Cherie O'Connor in leading this review and as principal drafter of this report.

Eamon Ryan
Inspector

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