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12 August 2022

Office of the Inspector of Custodial Services  
Level 5 Albert Facey House  
469 Wellington Street  
Perth WA 6000

Dear Mr Ryan

**Draft Review – The use of Confinement and Management Regimes**

We wish to acknowledge the Office of the Inspector of Custodial Services (OICS) for the opportunity to provide comment on the "Confinement and Management Regimes" review.

As Contract representative for Acacia Prison, I wish to provide comment on a few items which directly relates to Acacia Prison.

Please see attached document.

Yours sincerely

A handwritten signature in black ink, appearing to be "John Harrison". The signature is written in a cursive, flowing style. Below the signature, the name and title are printed in a clean, sans-serif font.

John Harrison  
Superintendent  
Acacia Prison

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OICS Review into the Use of Confinement and Management Regimes

Responses to Recommendations

Rec. No.	Recommendation	Basis of Recommendation	Level of Support	Comments	Proposed Completion Date
1	Ensure Acacia Prison uses s.36(3) in accordance with departmental policy.	Acacia Prison was the only facility we identified that consistently used s.36(3) in ways that were inconsistent with the Department's policy. This included using s.36(3) for longer periods, using multiple consecutive s.36(3) orders, and providing little or no justification for its use. The volume of s.36(3) orders issued at Acacia makes these findings more pertinent. Acacia recorded 4,405 s.36(3) supervision plans in the sample period. This was double the volume of Casuarina Prison, which recorded the second highest use with 2,238. We found Acacia Prison was the only facility to place prisoners on s.36(3) for longer than the three days prescribed under departmental policy. We observed supervision plans with placement lengths of four, seven and 10 days, with no justification provided. The average placement length was 3.52 days. In comparison, the average across all adult facilities was 2.5 days, which reduced to 1.65 days when Acacia was excluded.	Supported - Current Practice / Project	Acacia Prison has taken steps to address the overuse of s.36(3) placements. A case conference is held 3 days a week to assess separate confinements and to ensure we are compliant with legislation, and that policy stipulations are met. Moreover, this section does not highlight what is an anomaly not found at the same frequency as other prisons. At Acacia, prisoners requiring placement at other prisons are routinely rejected and can spend lengthy periods of time in isolation. For example, there have been numerous cases whereby prisoners assessed as maximum security have had transfer requests rejected, meaning they can only be placed in separate confinement conditions. In the absence of policy provision to address this need, the default has often been s.36(3).  The absence of a Management Unit at Acacia does not readily allow for removal of prisoners from the mainstream population and management under a Close Supervision Order. In the absence of a Management Unit, the Detention Unit is utilised for this purpose resulting in increased use of s.36(3). A proposal is currently being developed for the reconstruction/repurposing of a section of Kilo Block to become a Management Unit and this will be submitted to DOJ in due course.  It is acknowledged that s.36(c) has historically in some instances been utilised for longer periods, these instances are primarily whilst prisoners are awaiting placement in other facilities due to re-classification or alerts. In order to address this anomaly, future delays in placement will be managed under s.43. In addition, there is another policy gap that results in s.36(3) placements being used incorrectly. There is no provision for 'elective separation'. This is commonplace in that it occurs when a prisoner requests protection when there are not beds available and transfers are routinely rejected. Prisoners end up in a state of limbo as there are no placement options and with no policy coverage available, s.36(3) is often applied, albeit incorrectly.  This statement regarding a prisoner being held for 43 days in the Detention Unit without being informed of the reason for his confinement is incorrect. The case referred to relates to a prisoner who was being held as a result of Operation Shakespeare. This operation was significant disruption activity in relation to drug trafficking. Numerous requests were made to have this prisoner transferred to another prison have been unsuccessful.	N/A
2	Ensure behaviour management practices are being implemented in compliance with COPP 10.1 Prisoner Behaviour Management.	We found Close Supervision was often not being implemented in a manner that encouraged positive behaviour changes in non-conformist prisoners. This was because most prisoners placed on Close Supervision are not progressed through the tiered behavioural management system. Sixty-one per cent of the Close Supervision placements we analysed progressed directly to Standard Supervision following their restricted regime. Only 22 per cent moved on to Basic Supervision for a period and, after demonstrating good behaviour, further progressed to Standard Supervision. This suggests the incentive-based behaviour management system is not being used as intended. This approach appeared to be more prevalent at Acacia, Hakea and Melaleuca prisons. Each of these facilities recorded significantly fewer Basic Supervision placements than other adult custodial facilities. They also recorded far fewer Basic Supervision placements than Close Supervision placements, suggesting the hierarchy is not being used as intended. Hakea used Close Supervision six times more frequently than they did Basic Supervision.	Supported in Principle	Whilst this is generally supported in principle, it must also be highlighted that part of the problem links to the gap in the policy. Where a prisoner is subject to elective separation, the absence of policy provision results in Close Supervision Orders being used as a default setting for managing the period of isolation. Therefore, when the prisoner returns to standard accommodation, he will progress to Standard level as he is not being managed on behavioural grounds. Further, the absence of a Management Unit directly correlates to this.	N/A
3	Ensure all yards in management units are compliant with the Act and improve access to fresh air and exercise for prisoners in confinement.	The yards available to prisoners in confinement are not always conducive to providing access to open air and exercise, as required under s.43 and s.82 of the Act. At some facilities, prisoners in confinement are placed in a cell with an attached private yard where they can receive fresh air and exercise. However, often these yards are enclosed on all sides with high walls limiting access to sunlight and air flow. Metal grilles are often used as a ceiling which may restrict visibility to the sky. Often these yards also have concrete floors and no visibility of any green spaces. The yards are also not usually large enough for a prisoner to engage in any meaningful exercise, and often no equipment is provided.	Supported in Principle	Acacia Prison Detention Unit has a small purpose built yard that is used by all prisoners subject to separate confinement on a daily basis. Each cell has an individual yard area that is accessible to the prisoner for large parts of the day. The installation of exercise equipment poses a risk to the good order and security of the facility and to the safety of the prisoners and is typically not installed within Detention Units. Careful consideration is needed to agree on what is made available in an area set aside for managing prisoners in a state of crisis or distress.	31-Dec-24
4	Increase cell-based activities to prisoners in confinement to reduce the negative effects of limited stimulation.	Prisoners placed in separate confinement and those on Close Supervision are provided with very few cell-based activities and stimulation. According to the Department's policies, these prisoners can access pencil and paper and write social and official letters (DOJ, 2021; DOJ, 2021a; DOJ, 2022). Reading materials from the unit library may also be facilitated, but often these resources are extremely limited and in poor condition. Prisoners are not permitted access to: <ul style="list-style-type: none"> <li>• electrical equipment (radio and television may be permitted subject to behaviour)</li> <li>• personal possessions, except legal papers relating to any matter before the court</li> <li>• study materials (except those on Close Supervision)</li> <li>• musical instruments</li> <li>• external recreation activities</li> <li>• education or programs</li> <li>• employment opportunities.</li> </ul> As a result, prisoners are often held in their cells for 20-23 hours a day with little sensory or mental stimulation. The effects of this deprivation vary. Studies have shown that reduced sensory input may lead to a reduction in brain activity resulting in an inability to concentrate, and reduced alertness and motivation (Shalev, 2008). This can lead to apathy and lethargic behaviour, which may not be reversible if the prisoner is held in those conditions for an extended time (Tayer, Einat, & Antler, 2021). Other prisoners may become agitated and stressed, leading to outbursts in abusive language, damage to their cells, assaults on staff or even self-harm (Labrecque, 2015). Such behaviours may then be used as justification to further extend their period of confinement, creating a harmful cycle (Digard, Vanko, & Sullivan, 2018).	Supported in Principle	It is agreed that cell-based activities are important for mental stimulation. Activities must be purposeful and constructive; however, we would argue against the blanket issuing of electrical equipment. Providing these items can erode the difference between mainstream accommodation and that used to manage behaviour and risk, resulting in prisoners inappropriately seeking confinement places.  It is suggested that in-cell activities are structured, reorientation-type activities that support behaviour modification. Incentives can be built in, but should not be standard electrical items, such as TVs, etc.	31-Dec-24

5	Include mental health assessments by a qualified mental health practitioner in applications to place prisoners on a s.43 separate confinement order.	Mental ill-health is complex and multifactorial. It is encouraging to see the Department introduce measures that seek to proactively consider a prisoner's mental health prior to, or soon after, their placement into confinement, in addition to the services available to them once in confinement. However, it is concerning to hear that these assessments are not occurring due to staff shortages. If this is the case, then the Department is continuing to accept an unknown level of risk with regards to the impact confinement may have on a prisoner's wellbeing. As a minimum, mental health assessments should form part of any application to place a prisoner onto a 30-day s.43 order.	Supported in Principle	N/A
6	Enforce the requirement to create supervision plans for every prisoner placed onto a confinement or management regime.	Our analysis identified some prisoners being placed into confinement or on a management regime without an accompanying supervision plan. For example, data provided by the Department only showed one instance between 1 July 2018 and 30 June 2021 where Hakea Prison created an observation supervision plan. When we queried this figure, the Department advised us to use cell placement data from the offender database. From that data we can see that prisoners were placed into the observation cells at Hakea on 5,532 instances in the same time period. Therefore, only one of 5,535 observation placements, or 0.02 per cent, were documented in a supervision plan. Similarly, Albany Regional Prison only prepared supervision plans for 0.6 per cent of placements into their observation cells. Greenough Regional Prison and Broome Regional Prison were the exception, creating supervision plans for 88 per cent and 72 per cent of all observation cell placements, respectively.	Supported in Principle	31-Dec-24
7	Ensure all supervision plans outline clear reasons for a prisoner's confinement, clearly state all minimum entitlements, and include a proposed end date.	We reviewed several hundred supervision plans and found they often lack detail and clarity. Staff will often use generic statements such as 'for the good order and security of the prison' or 'prisoner under investigation' to describe why a prisoner is being confined. Fields are also commonly left blank or contain irrelevant or unclear information. For instance, 67 per cent of the s.36(3) orders we reviewed did not state the minimum time the prisoner was allowed for exercise and fresh air. And, just under 13 per cent did not state a proposed placement length. While some prisons were better than others, these issues were generally observed to some degree across all facilities. It is unreasonable and unethical, to require prisoners to view and sign a supervision plan for confinement or a management regime that does not clearly state the proposed length of their confinement or guarantee their minimum entitlements. It also creates a lack of clarity for the prison officers responsible for ensuring prisoners are provided with their minimum entitlements as per their supervision plan.	Supported in Principle	31-Dec-24
8	Ensure all prisons use electronic supervision logs on the offender database for all prisoners placed into confinement or on a management regime.	In October 2021 the Department expanded the use of electronic supervision logs on their offender database to include prisoners confined or separated from others (DOJ, 2021c). This included: <ul style="list-style-type: none"> <li>• s.36(3) orders for temporary separate confinement</li> <li>• s.43 separate confinement orders</li> <li>• those serving periods of confinement as a punishment</li> <li>• those restricted to an observation cell</li> <li>• those separated for the purposes of protection</li> <li>• those separated to the Special Handling Unit.</li> </ul> Previously, the use of the electronic supervision logs was limited to only those who had regressed to either Basic or Close supervision. Information about the behaviour, entitlements or conditions of a prisoner in confinement would have been recorded across written occurrence books, daily prisoner logs on the cell doors, individual notes on the offender database, through incident reports, and on ARMS and Support and Monitoring System (SAMS) supervision logs where applicable. The broadened use of the restricted regimes log provides an opportunity to simplify recording practices by combining multiple sources of information into one individualised log for the period the prisoner is held in confinement. Digital supervision logs improve transparency by increasing access to information that historically have been paper-based.	Supported in Principle	N/A
9	Improve the level of detail recorded in supervision logs and occurrence books for prisoners held in confinement or on management regimes.	The detail in supervision logs and written occurrence books is often lacking and provide little insight into the wellbeing of the prisoner. We found logs typically contain basic information, such as movements of prisoners and staff, and when a prisoner was issued a meal, received a visitor, made a phone call, received recreation, or the reasons why such entitlements were not provided. However, the detail around the delivery of entitlements is often missing. For instance, the total amount of time given for exercise and fresh air is often not included. When an entitlement is offered but refused, such as recreation, often no information is provided around why it may have been declined or whether the prisoner was offered that entitlement again later.	Supported in Principle	31-Dec-24
10	Regularly test confinement and management regime compliance for placements other than s.43 placements.	While we acknowledge long-term confinement under s.43 is high-risk, it is concerning that other practices which can result in prisoners being held in their cell for up to 23 hours a day, for consecutive days – such as the use of separate confinement as a punishment, temporary confinement under s.36(3), and the use of observation cells – are not deemed high-risk. These forms of confinement are used more frequently than s.43 and are approved and managed wholly within the facility with no upward reporting requirements to the Department. When a practice is used daily, there becomes a risk that standards may slip or facility-specific nuances develop, which can slowly result in non-compliance over time. This warrants a more rigorous compliance monitoring process that is adequately resourced by the Department. We recognise that the resourcing of the operational compliance team has recently been affected by the COVID-19 pandemic. At the time of writing this report, eight out of 10 full time equivalent compliance positions had been redeployed to support the Department's response to COVID-19.	Supported - Current Practice / Project	31-Dec-24