



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

The use of confinement and management regimes

October 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: 978-0-6453582-1-6
This report is available on the Office's website and will be made available, upon request in alternate formats.

Table of Contents

Inspector's Overview.....	iv
Executive Summary.....	vi
1 Confinement and management regimes are mostly consistent with policy	1
1.1 Acacia Prison's use of s.36(3) was often non-compliant.....	1
1.2 S.43 placements declined when the Disruptive Prisoner Policy was introduced.....	3
1.3 Prisoners on DP3 were often confined longer than those on s.43	4
1.4 Punishment processes are governed well, but almost all charges are found guilty	5
1.5 Close Supervision a double punishment with limited focus on behaviour	6
1.6 Long-term confinement of the acutely unwell is inhumane, but prisons are left with few alternative options.....	9
2 The management of prisoners in confinement is often limited to the delivery of basic entitlements.....	11
2.1 Access to meaningful human contact is limited in separate confinement	11
2.2 Some yards provide limited opportunities for fresh air and exercise	12
2.3 Limited cell-based activities and stimulation	14
2.4 Management units are volatile spaces, particularly at Hakea Prison	15
2.5 There are high numbers of prisoners threatening or actually self-harming.....	16
2.6 Department's policy now more responsive to mental health considerations	17
2.7 Officers in management units are not provided with any additional training	19
3 Good governance overall, but transparency and oversight are poor in some areas.....	21
3.1 New COPPs strengthen confinement and management regimes governance.....	21
3.2 Data errors reduce transparency and oversight.....	22
3.3 Some confinement and management regime placements are undocumented.....	22
3.4 Poor record keeping of prisoners' access to entitlements while in COVID-19 isolation.....	24
3.5 Record-keeping practices need improvement	25
3.6 Internal monitoring practices assist in holding prisons accountable.....	28
Appendix A The Department's response to recommendations	30
Appendix B Serco's response to recommendations.....	37
Appendix C Methodology	40
Appendix D Bibliography	41

Inspector's Overview

A solid policy and governance framework could be supported by improved practice in prisons

We commenced this review to examine how well the Department and individual facilities are managing a range of interconnected risks arising from the use of confinement and management regimes. Our review highlighted the potential risks that could arise from an unregulated use of confinement and management regimes and the potential to impinge the rights and harm the wellbeing of individuals who are subject to restrictions.

What we found was that, broadly speaking, the Department had established a comprehensive policy framework around the use of confinement and management regimes. This has been strengthened by the recently released revised suite of policies. With a few exceptions, which are detailed in this report, we found that the governance around confinement and management regimes was reasonably good. Our report identified several areas where administrative practice and record keeping could be improved to better reflect policy requirements. But overall, the review recognised many positive improvements the Department has achieved in this area.

The revised policy framework provides prison management with suitable response options to manage situations and prisoner behaviour that warrants intervention. The different options available are generally well understood and used appropriately, but there were some exceptions. Notably, we identified concerns about the use in Acacia Prison of multiple consecutive confinement orders, under section 36(3) of the *Prisons Act 1981*, for the good government, order and security of the prison. Although, there may have been some pragmatic justification for this situation, the extent of use was clearly outside of the intention set out in the policy framework. Pleasingly, both Serco, the private operator of Acacia Prison, and the Department acknowledged these concerns and agreed to examine the issue to ensure better compliance.

We also found that the use of separate confinement orders under section 43 of the *Prisons Act 1981*, had declined to negligible numbers in recent years following the introduction of the *Disruptive Prisoner Policy*. Following a legal challenge and departmental review the *Disruptive Prisoner Policy* was rescinded in December 2021, but the use of section 43 orders has not increased. We found that despite the low rate of use, there were generally sound governance and accountability mechanisms in place for these orders.

This review also highlighted, once again, concerns we have held for quite some time about how prisoners who have significant mental health issues are managed within prisons. This issue arises in the context of this review by way of us examining the framework for observation and monitoring regimes for such prisoners, many of whom ought to be in an acute hospital setting. It is well documented, however, that the absence of enough bed space in the State's only secure forensic hospital, the Frankland Centre, means many very unwell prisoners must be managed in a prison setting.

Our review identified that the long-term confinement in prison of individuals who are acutely unwell with mental illness is not therapeutic and often inhumane. Prisons simply cannot provide appropriate infrastructure, access to adequate clinical care, and access to appropriate clinical interventions. Day to day care of such prisoners is left to custodial staff working in management

units. These custodial staff have limited specialised training, significant other demands on their time, and their attention is regularly drawn to other critical incidents. Despite these challenges, most of them do a very good job in difficult circumstances. Sadly, their focus must be the prevention of self-harm and suicide rather than any sort of therapeutic intervention. Some relief has been found for female prisoners since the opening of the 29-bed Bindi Bindi mental health unit at Bandyup Women's Prison. Help is on the way for men with the planned 32-bed mental health unit as part of the Casuarina Prison expansion. Development of both units by the Department is a commendable initiative, but it does not replace the need for acute beds in a suitable hospital setting.

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.

Finally, I want to also acknowledge and commend 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

29 September 2022

Executive Summary

Background

All Australian jurisdictions have legislative provisions for the confinement of prisoners

The practice of confinement and separate confinement of prisoners is used in every Australian state and territory. However, the parameters of the practice vary, and it is often described using different terms such as isolation, separation, seclusion or segregation (HRLC, 2020).

The *Guiding Principles for Corrections in Australia* defines 'separation/segregation' as:

Separate confinement of a prisoner deemed necessary following evidence based assessments for the protection and safety of others where there is no other reasonable way to manage the risk/s to safety, security, or good order and discipline of the correctional centre (CSAC, 2018, p. 36).

In Western Australia, the term 'separate confinement' is used in the *Prisons Act 1981* (the Act) and in departmental policy. This is not to be confused with the 'separation' of prisoners, as permitted under r. 54C of the *Prison Regulations 1982*, which is used to separate categories of prisoners, such as those requiring protection or those placed in the Special Handling Unit.

Confinement for management purposes and for punishment are both permitted under the *Prisons Act 1981* in Western Australia

In Western Australia, the Act and supporting departmental policy allows prisoners to be confined or separately confined (where socialisation is restricted) under three distinct scenarios, namely:

- s.36(3) – the Superintendent of a prison may issue orders to prisoners as necessary for the good order, good government and security of the prison.
- s.43 – separate confinement for the purposes of maintaining good government, good order or security of the prison.
- s.77–79 – a penalty of confinement to sleeping quarters or separate confinement in a punishment cell imposed following a disciplinary hearing or conviction.

S.36(3) of the Act has been interpreted by the Department as Superintendents having the authority to order a prisoner into temporary separate confinement following 'sudden, unexpected events or matters which (although predictable) could not otherwise be dealt with' (DOJ, 2021, p. 4). The Department's policy provides the framework for when a s.36(3) order should be used. This includes following incidences of serious assaults, security threats or where a prisoner is diagnosed with a contagious disease, such as COVID-19. The policy notes this form of confinement should end as soon as possible and generally not exceed 48 to 72 hours (DOJ, 2021).

S.43 separate confinement orders are used for management purposes for prisoners deemed to pose an unacceptable security risk or threat (DOJ, 2021; DCS, 2003). This is otherwise known as administrative segregation and should not be used as a form of punishment. A s.43 order cannot exceed 30 days, but consecutive orders can be issued.

Confinement as outlined in s.77–79 of the Act is used for the purposes of punishment as a penalty imposed for a prison offence. If a charge of a prison offence is proven, a Visiting Justice can order a prisoner into seven days separate confinement per offence. For multiple offences, the cumulative total cannot exceed 21 days and the prisoner is required to spend 48 hours out of confinement after every seven days. If the charge of a prison offence was determined by a Superintendent, they may also order a prisoner to serve up to 72 hours confined to their sleeping quarters.

Prisoners may also be placed on management regimes

Prisoners may be confined to a management unit and have their daily routine restricted when placed on a management regime under policies developed to maintain the good order of prisons. This includes prisoners who:

- have regressed to a Basic or Close Supervision regime following a period of poor behaviour (DOJ, 2022; DCS, 2009)
- have been placed onto an Observation regime where it is considered they are at-risk of self-harm or suicide (DOJ, 2021b; DCS, 2013)
- have been placed onto a Medical Observation regime due to a medical condition, drug and alcohol withdrawal, a psychological condition or to manage voluntary starvation (DOJ, 2021b; DCS, 2013)
- were placed onto Level 1, Level 2 or Level 3 of the Disruptive Prisoner Policy, prior to it being rescinded in 2021 (DOJ, 2019).

The Department's policy does not set a maximum time period that a prisoner can be placed on Close or Basic Supervision. However, all placements are required to be reviewed at least every seven days, and approval from the Assistant Commissioner Custodial Operations (ACCO) or Assistant Commissioner Women and Young People (ACWYP) is required if a Close Supervision placement is planned to go beyond 21 days. The policy does not mandate where prisoners on Close Supervision should be placed. In practice, most prisoners are confined to their facility's management unit and a confinement supervision plan is prepared. Prisoners on Basic Supervision should remain in their usual unit, where possible.

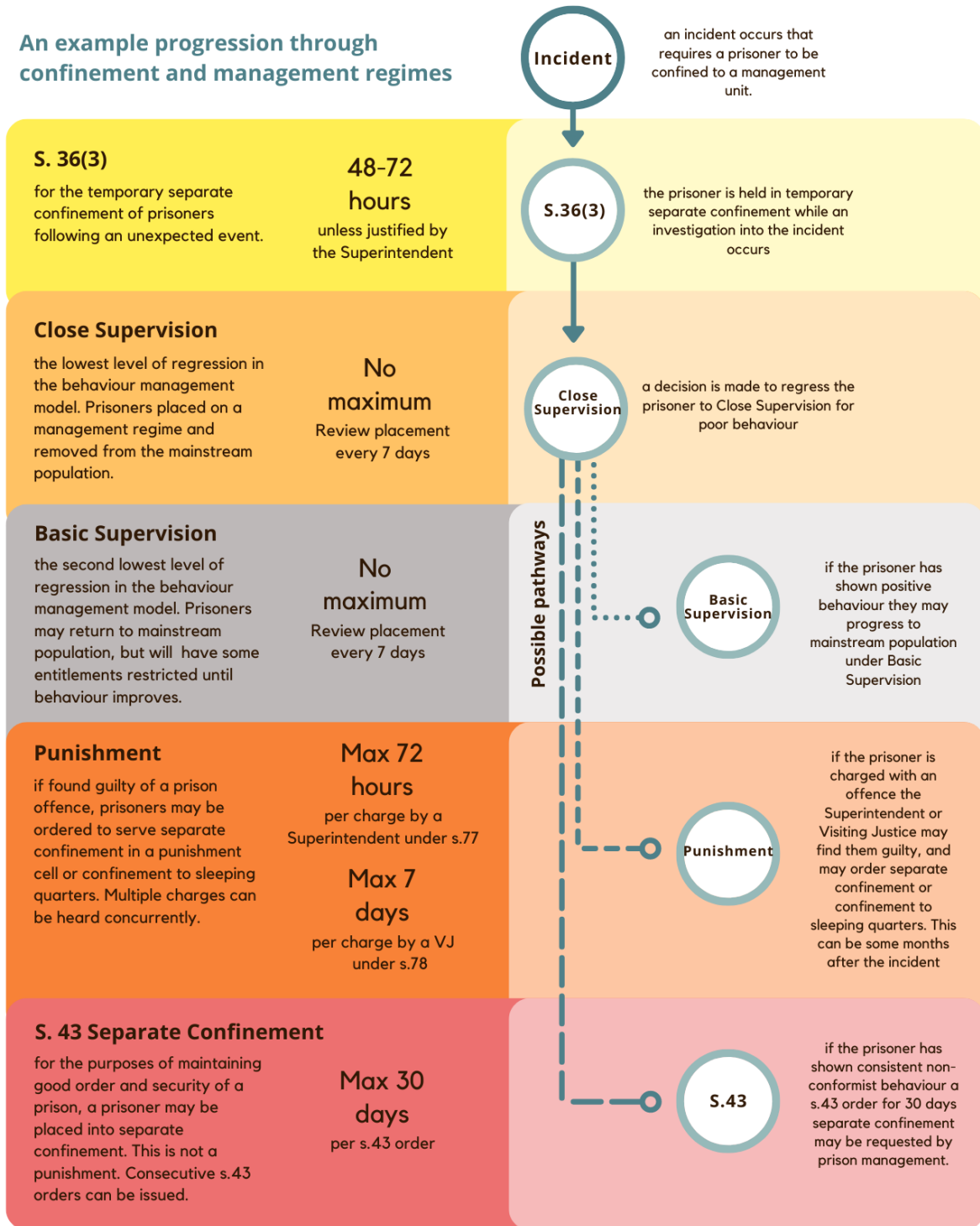
The daily regime of a prisoner placed into an observation cell should mirror that prisoner's normal routine as much as is practicable or safe to do so, given the individual circumstances (DOJ, 2021b). At times, for the safety of the prisoner and staff they may be managed under relatively restrictive conditions in a management unit, crisis care unit or a safe cell.

The Disruptive Prisoner Policy (DPP) was prepared by the Department as an additional tool they could use to manage prisoners whose behaviour was considered disruptive or a negative influence on others (DOJ, 2019). The entitlements of prisoners were progressively restricted as they moved from Level 1 to Level 3. Once on Level 3, prisoners were confined to a management unit and may have been subject to transfers to a different prison every 28 days.

This review excludes the Special Handling Unit

The Special Handling Unit is a dedicated unit where disruptive prisoners are held under r.54C. It functions as a standalone unit with specific policies and therefore is not included in this review.

An example progression through confinement and management regimes



Other restrictive regime options

Medical Observation

for prisoners with a medical condition, those withdrawing from drugs or alcohol, those with a psychological condition, and those on voluntary starvation.

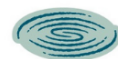
Max duration: No maximum. Duration dependent on health assessments.

Observation

for prisoners considered at-risk of self-harm or suicide, or those who have ingested, injected or secreted an unknown or harmful substance.

Max duration: No maximum. Duration dependent on health assessments.

Note: the progression through confinement and management regimes may not be as linear as the example above.



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

The use of confinement and management regimes is common in Western Australia

Between 1 July 2018 and 31 December 2021 (the sample period) there were 25,029¹ individual confinement or management regime supervision plans created for 6,841 unique prisoners across Western Australia. The number of supervision plans created has generally remained stable, with peaks and troughs mostly coinciding with the prison system's daily average population (DAP).

Of the 6,841 prisoners placed onto a regime, 85.4 per cent accumulated no more than 25 non-consecutive days on a restricted regime. Just under four per cent received cumulative totals between 51 and 100 days. Thirteen individuals accumulated greater than 200 days.

Metropolitan medium- and maximum-security facilities recorded the highest use. Acacia Prison recorded almost double the usage of Casuarina Prison, which recorded the second highest use. Minimum-security facilities such as the Boronia Pre-Release Centre, Pardelup Prison Farm and the Wandoo Rehabilitation Prison did not record any supervision plans.

While the total number of supervision plans created has been steady, the types of confinement and management regimes being used has shifted slightly:

- Casuarina Prison increased its use of s.36(3) orders, coinciding with an increase in recorded incidents from 2,915 in 2019 to 4,292 in 2021, and an increase in population over the same period.
- Hakea Prison has halved its use of Close Supervision, and Melaleuca Women's Prison has reduced from 228 in 2019 to only 51 in 2021.
- The use of s.43 has decreased across the estate from 38 in the July – December half of 2018 to only six being issued throughout all of 2021.
- The use of medical observation has increased from 189 in the second half of 2018 to 919 throughout 2021, as a result of COVID-19.

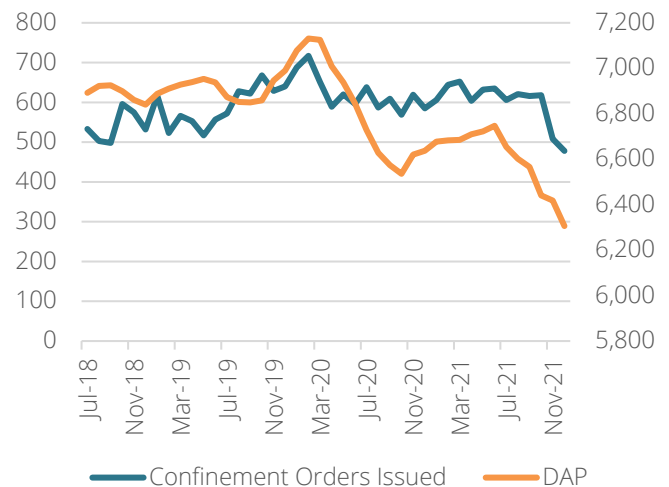


Figure 1: The issuing of confinement orders has been stable and consistent with population growth.

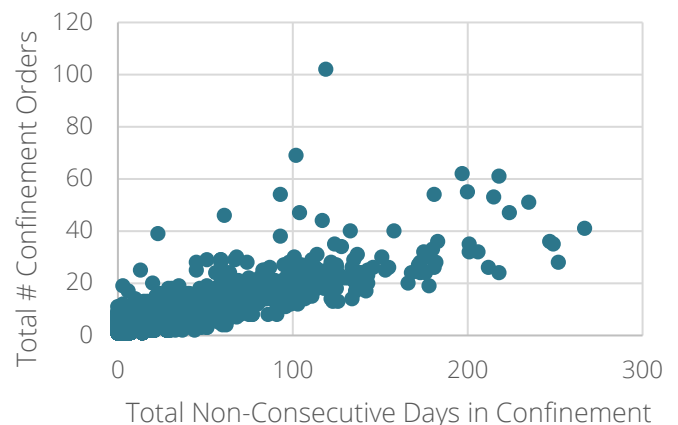


Figure 2: Most prisoners receive few confinement orders but there are notable outliers.

¹ The Department explained that the data provided to us is based on supervision plans known as Confinement Regime Rules being recorded in the Department's offender database. The data is subject to human error including data input errors, duplications and missing entries.

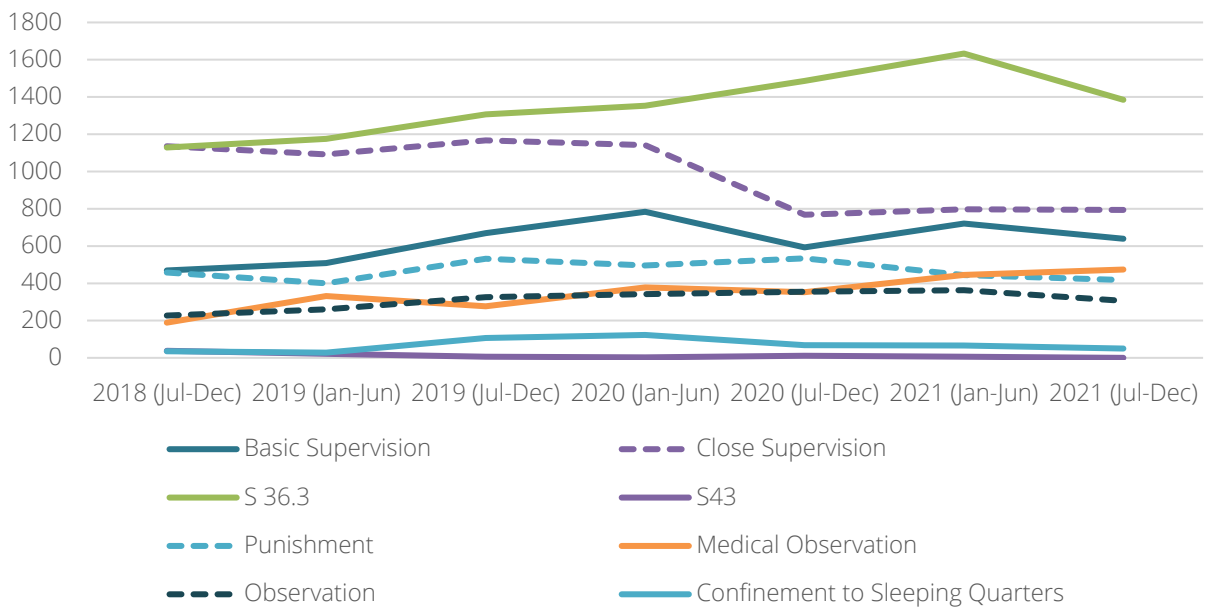


Figure 3: Most forms of confinement have been consistently used since July 2018.

Although prisoners are placed under confinement orders due to their behaviour, younger prisoners and Aboriginal prisoners are more regularly placed under confinement orders or onto management regimes. Since July 2018, 43 per cent of supervision plans created were for prisoners aged 25 to 34 years old, and a further 22 per cent were issued for 18 to 24-year olds.

Fifty-nine per cent of prisoners placed on a supervision plan identified as Aboriginal or Torres Strait Islander despite only constituting about 40 per cent of the prisoner population. Aboriginal prisoners were overrepresented across all types of restricted regimes. And, of the 110 prisoners who had served in excess of 100 non-consecutive days of confinement since July 2018, 72 of them were Aboriginal (65%).

Prisoners with a known disability were not over-represented in confinement statistics. In the sample period, 14 per cent of supervision plans were created for prisoners who had been assessed by the Department's Disability Services Unit as having a known disability. As of April 2022, 19 per cent of the adult prison population had a known disability.



Figure 4: Aboriginal prisoners were over-represented in every form of confinement during the sample period.

Key findings

Confinement and management regimes are mostly consistent with policy

We found confinement and management regime practices across the custodial estate were typically compliant with legislation and policy. However, we identified some discrepancies. The use of s.36(3) orders for temporary separate confinement were often non-compliant at Acacia Prison. And, across the estate we found little evidence to suggest Close Supervision was being used effectively to manage the behaviour of non-conformist prisoners.

Reviews of separate confinement practices both under s.43 and as a punishment found good governance and oversight existed. And, the use of observation management regimes was also generally compliant with policy. However, we reiterate arguments made in previous reports that the long-term confinement of acutely unwell mental health prisoners is inhumane.

The management of prisoners in confinement is often limited to the delivery of basic entitlements

We have no evidence to suggest that there are any systemic issues in the delivery of basic entitlements to confined prisoners, as required in legislation or the Department's policy. However, the management of prisoners in confinement does not typically extend beyond the delivery of essential needs. We observed limited meaningful human contact being available for prisoners in separate confinement, a lack of in-cell activities for stimulation, and limited opportunities for fresh air and exercise in some cell yards. Mental healthcare is also typically reactive rather than proactive.

Good governance overall, but transparency and oversight are poor in some areas

The Department generally has a good system of governance in place for the use of confinement and management regimes. Policies and local standing orders reflect statutory requirements, establish clear approval and review processes, and outline delegated authorities and reporting requirements.

Despite this, we argue that there is room for improvement with oversight and transparency. Transparency on what entitlements are restricted or removed, to which prisoners, for what time period, and for what reasons are integral to ensuring there is a confident and expansive degree of oversight by the Department.

Conclusion

The use of confinement and management regimes can be harmful. The deprivation of entitlements and social isolation experienced by prisoners in confinement can have a significant impact on their wellbeing. While improvements can be made to mitigate some of these negative impacts, it was reassuring to find that the use of restrictive regimes across the custodial estate was generally consistent with policy and legislation.

Improvements in transparency will assist the Department's oversight of confinement and management regime practices in Western Australian prisons. This will also help ensure a high standard of compliance is maintained when using restrictive regimes and areas for improvement are readily identified.

Recommendations

Page

Recommendation 1 – Ensure Acacia Prison uses s.36(3) in accordance with departmental policy.	2
Recommendation 2 – Ensure behaviour management practices are being implemented in compliance with COPP 10.1 Prisoner Behaviour Management	9
Recommendation 3 – Ensure all yards in management units are compliant with the Act and improve access to fresh air and exercise for prisoners in confinement	13
Recommendation 4 – Increase cell-based activities to prisoners in confinement to reduce the negative effects of limited stimulation	14
Recommendation 5 – Include mental health assessments by a qualified mental health practitioner in applications to place prisoners on a s.43 separate confinement order	19
Recommendation 6 – Enforce the requirement to create supervision plans for every prisoner placed onto a confinement or management regime	24
Recommendation 7 – Ensure all supervision plans outline clear reasons for a prisoner’s confinement, clearly state all minimum entitlements, and include a proposed end date	25
Recommendation 8 – Ensure all prisons use electronic supervision logs on the offender database for all prisoners placed into confinement or on a management regime	26
Recommendation 9 – Improve the level of detail recorded in supervision logs and occurrence books for prisoners held in confinement or on management regimes	27
Recommendation 10 – Regularly test confinement and management regime compliance for placements other than s.43 placements	29

1 Confinement and management regimes are mostly consistent with policy

Our analysis of confinement and management regime practices found prisons across the custodial estate were typically compliant with legislation and policy. However, we identified some discrepancies. The use of s.36(3) orders for temporary separate confinement were often non-compliant at Acacia Prison. And, across the estate we found little evidence to suggest Close Supervision was being used effectively to manage the behaviour of non-conformist prisoners.

Reviews of separate confinement practices both under s.43 and as a punishment found good governance and oversight existed. Notably, the use of s.43 declined after the introduction of the Department's Disruptive Prisoner Policy (DPP). By design, the DPP closely replicated the purpose and intent of s.43 but with less oversight. We argued the DPP enabled the Department to circumvent the provisions of the Act specifically designed for managing disruptive prisoners through separate confinement.

The use of observation management regimes was also generally compliant with policy. However, we reiterate arguments made in previous reports that the long-term confinement of the acutely unwell is inhumane. Prisons are not an appropriate place for prisoners who are acutely unwell with a mental illness. But, they are often held in such conditions due to a lack of secure hospital beds and inadequate facilities in prisons.

1.1 Acacia Prison's use of s.36(3) was often non-compliant

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.

Further, 26 of the 29 instances where consecutive s.36(3) orders were used were created at Acacia Prison. The Department's policy allows the use of consecutive s.36(3) placements where justification is provided by the Superintendent (DOJ, 2021; DCS, n.d.). The supervision plans we examined provided no explicit justification or explanation for the need to issue consecutive orders and prolong the prisoner's confinement period. In 2021 alone, we identified at Acacia:

- nine occasions of prisoners held between 5–10 days on consecutive s.36(3) orders
- four occasions of prisoners held between 11–20 days on consecutive s.36(3) orders
- three occasions of prisoners held between 21–30 days on consecutive s.36(3) orders

- three prisoners held between 56–59 days on four s.36(3) orders, a Close Supervision order, and a further four s.36(3) orders.

Only non-specific reasons were provided for the ongoing confinement of these prisoners. This included that they were under threat in the mainstream population, under investigation or were being held 'for the good order and security of the prison'.

The use of consecutive s.36(3) orders at Acacia has been raised with our office before. In 2021, the Independent Visitors received a complaint from a prisoner that they had been held for 43 days in the Detention Unit, allegedly without being informed of the reason for their confinement. Over that period, Acacia Prison prepared seven consecutive s.36(3) orders for the prisoner, with each simply stating the placement was for the security and good order of the prison. The prisoner had not been involved in any incidents prior to their placement.

In response to the Independent Visitor's report, prison management explained the prisoner had been held in the Detention Unit pending the outcome of an investigation into illegal activities and was awaiting a transfer to a different facility. This transfer did not eventuate, and the prisoner was eventually reintegrated back into the mainstream population at Acacia Prison.

The prison told us that holding prisoners for extended periods of time in the Detention Unit is not ideal. However, it noted that the Detention Unit is the only placement option for prisoners found to be a risk to the security or good order of the facility and requiring transfer to another prison. At other facilities, prisoners who cannot remain in mainstream units, sometimes reside in management units for lengthy periods. While they may be more restricted than usual, officers will strive to provide them with as close to a normal routine as possible. The physical infrastructure of Acacia's Detention Unit makes this difficult, and as a result even long-term placements are required to live in confinement conditions. Acacia attempt to provide these prisoners with greater access to entitlements, such as a TV or canteen spends, where possible.

Notwithstanding these challenges and counter efforts, Acacia Prison is using s.36(3) contrary to departmental policy. It is inhumane to hold prisoners in confinement for extended periods of time while administrative decisions are being made about their future placement.

In response to this report, Serco advised that they had taken steps to address our concerns. This included holding a case conference three days a week to assess their use of confinement and its compliance with policy and legislation. We acknowledge this as a positive move.

Serco also advised they are often required to rely on consecutive s.36(3) placements when prisoners are no longer suitable for placement at Acacia Prison but are yet to be accepted for a transfer to another facility. Still, the use of s.36(3) in this way is non-compliant and, at the time of writing, the practice continued.

We encourage the Department to work with Serco to address their use of s.36(3) and the challenges they face with inter-prison transfers.

Recommendation 1 – Ensure Acacia Prison uses s.36(3) in accordance with departmental policy.

1.2 S.43 placements declined when the Disruptive Prisoner Policy was introduced

The use of s.43 separate confinement orders has declined in recent years. In the second half of 2018, the Department created 38 s.43 supervision plans for 34 individual prisoners. Three years later it issued zero. When queried on this, the Department claimed the introduction of the Disruptive Prisoner Level 3 (DP3) policy resulted in the decline. However, the use of s.43 has remained low even when DP3 was not actively being used, and after the policy was rescinded. The Department did not provide any further explanation or commentary on this finding. Some prison leaders have expressed to us that s.43 placements are too rigid, require too much paperwork, and they prefer the flexibility of managing a prisoner on Close Supervision.

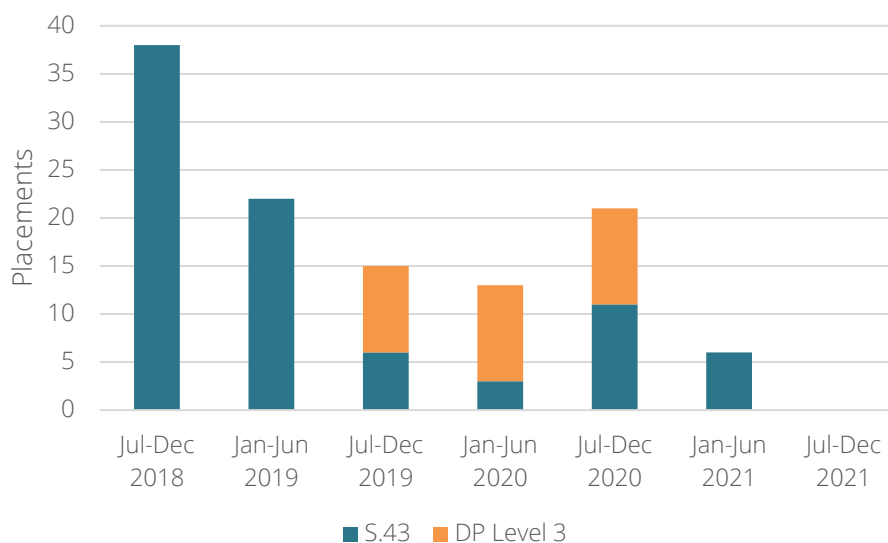


Figure 5: The Department claims DP3 placements were used instead of s.43 orders until the Disruptive Prisoner Policy was rescinded.

Notwithstanding the recent decline in use, we found there was generally a good level of procedural governance in place for the approval, including current delegations, and review of s.43 orders. In contrast to s.36(3) and management regimes, which can be authorised at the facility-level, orders for s.43 separate confinement require sign-off from a delegated Assistant Commissioner or Deputy Commissioner (DCS, 2003; DOJ, 2021). Applications to place a prisoner on s.43 are submitted by the Superintendent, or their delegate, outlining the prisoner's circumstances and justifying their recommendation. Approval is also required for the exit plans developed to transition prisoners back into the mainstream population.

We randomly selected 10 s.43 case studies to review and generally found their applications to be rigorous and the placement of the subject prisoners onto s.43 justifiable against the provisions of the Act. However, one application was not signed by the Assistant or Deputy Commissioner, one exit plan was also not signed off, and another exit plan could not be located by the Department. It's unclear whether these documents were prepared and signed off but not appropriately retained, were retained but have since become lost, or were simply not signed off at all. Regardless, identifying document control issues with three out of 10 randomly selected case studies suggests there may be systemic issues with document management. The Department acknowledged this issue and noted it would seek to ensure record keeping practices are adhered to in future.

1.3 Prisoners on DP3 were often confined longer than those on s.43

The Department's DPP resulted in the most 'disruptive' prisoners being held in confinement longer than the average placement on s.43. In total, nineteen prisoners were placed on DP3. More than half (58%) of these people identified as Aboriginal. On average, they spent 60.5 consecutive days in confinement, in comparison to an average of 31 days for those on s.43 during the sample period. One DP3 prisoner was confined for 137 consecutive days while the longest s.43 placement was half this, at 69 consecutive days.

According to the Act, a s.43 order for separate confinement cannot exceed 30 days. While the Department can issue subsequent s.43 orders, most prisoners only served one 30-day period before progressing back into the mainstream population. Further, the Commissioner for Corrective Services, the Director General of the Department of Justice, and the Minister for Corrective Services are all required to be informed when a prisoner is placed on a s.43 order, providing oversight at the highest levels within the Department (DOJ, 2021).

In contrast, the DPP did not specify a maximum time period for a DP3 placement. Rather, the DPP simply required the Department to review a prisoner's DP3 placement every 21 days (DOJ, 2019). As a result, the use of DP3 enabled the Department to place a prisoner into confinement longer than what is enshrined in the Act. Additionally, the DPP had less oversight with no reporting requirements to the Commissioner, Director General or the Minister. The Commissioner only became involved at the exit stage, with a requirement that they endorse the prisoner's exit plan (DOJ, 2019).

In many ways, DP3 mirrored the purpose and intent of s.43 placements. The DPP was designed to 'manage and control prisoners' who had the potential to 'impact on the good order and security of the prison' (DOJ, 2019, p. 1). Similarly, s.43 is intended to maintain good government, good order or security in a prison. Both processes require Superintendents to prepare an application for placement which must be approved at the executive level. And DP3 effectively resulted in a prisoner being placed in separate confinement, with similar restrictions on entitlements as a prisoner placed on a s.43 order.

In response to a Question On Notice in the Legislative Council, the Department disputed that prisoners on DP3 were held in separate confinement conditions. They noted that prisoners on DP3 'continued to have access to entitlements such as time out of the cell to exercise, medical services, mental health services, mail services, authorised study material, weekly gratuity and spends, phone calls, chaplaincy, social and official visits and visits with their lawyers' (Legislative Council of Western Australia, 2020). However, except for study materials, similar entitlements are also available to prisoners in separate confinement on a s.43 order (DOJ, 2021). Though, DP3 prisoners were permitted additional exercise time, one social telephone call, and greater socialisation with others (although it's unclear how much and with whom). DP3 prisoners were also subjected to transfers to a different facility every 28 days to disrupt their influence on others and ability to form relationships (DOJ, 2019). S.43 prisoners are not subjected to this.

Table 1: Comparison of entitlements for prisoners placed on s.43 and DP3 (DOJ, 2021; DOJ, 2019).

Entitlement	Section 43	Disruptive Prisoner Level 3
Exercise	Access to open air for a minimum of 1 hour per day	Access to open air for minimum of 3 hours per day
Meals	In cell	In cell
Visits	Normal visits	Normal visits
Socialisation	Nil	Daily (does not specify with whom)
Telephone	Calls to legal representatives for matters before the courts	Calls to legal representatives for matters before the courts, and one social call per day
Writing materials	Paper and pen/pencil	Paper and pen/pencil

Given all of this, the Department could have been accused of creating policy that circumvented the provisions of the Act that were legislated for the very purpose of setting an agreed set of parameters for the separate confinement of prisoners deemed disruptive to the good order and security of a prison.

In addition to the 19 prisoners placed on DP3, 92 prisoners were placed on Level 2, and 235 prisoners were placed on Level 1. These levels did not involve placing prisoners into confinement. The Department rescinded the DPP in December 2021.

1.4 Punishment processes are governed well, but almost all charges are found guilty

In the sample period there were 10,177 incidents where a charge was laid against a prisoner. Of these, 43.7 per cent were dealt with by Superintendents. The remaining 56.3 per cent were referred onto a Visiting Justice (VJ) where most (87.8%) were found guilty. Three quarters (75.3%) were subsequently placed into separate confinement. The most common offences were the possession or use of an illicit drug (43.2%), assault (12.7%), and failing to submit for a sample (12.6%). On average, 4.4 days of separate confinement were issued per charge. However, prisoners may have multiple charges heard in one session, resulting in multiple penalties of separate confinement being served consecutively.

Placing prisoners into separate confinement as a penalty for a prison offence is a well-established practice with a good level of governance. The VJ is an independent adjudicator brought into a prison to hear prison charges, form a position on the facts and determine the matter, and when appropriate impose penalties in accordance with the Act. The use of VJs creates a layer of separation between the prisoner, the prison's administration, and the Department. The VJ is supported administratively by the prison's prosecutions officer, who maintains a record of prison charges on the offender database and in the 'punishment book', as required under the s.80 of the Act. This review does not have the scope to interrogate the veracity and procedural fairness of this process or the extremely high guilty rate. Though, overall, we found the governance was sound and there was no evidence of inconsistencies with legislation or departmental policy (DCS, n.d.; DOJ, 2021a).

We also found no evidence to suggest that prisoners serving time in a punishment cell were being deprived of their entitlements. Prisoners were also consistently released for 48 hours after every seven days in confinement, as per the Act.

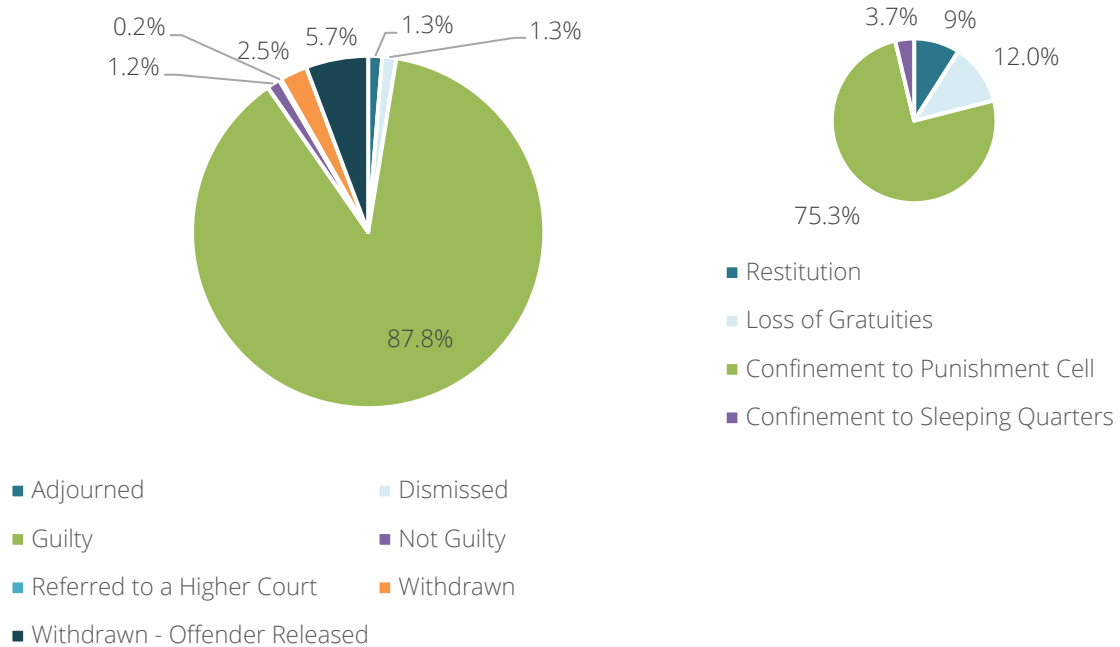


Figure 6: Most prison offences heard before a VJ are found guilty and the prisoner ordered into separate confinement to a punishment cell.

1.5 Close Supervision a double punishment with limited focus on behaviour

Our analysis of Close Supervision placements found they can easily be confused as an additional punishment. If a prisoner is involved in an incident or misbehaves, it is not unreasonable for them to be placed onto a behaviour management plan that restricts access to some entitlements. In theory, the giving and removal of entitlements should form part of an effective incentive-based behaviour management system. If the prisoner has also committed an offence, then a Superintendent or VJ may later find them guilty and order them to serve time in confinement as a formal punishment. Used appropriately, these two mechanisms run on separate tracks and form part of the broader strategy to maintain the good order and security of a prison.

However, in practice we found Close Supervision often looked like a punishment, served in addition to any punishment later issued by a VJ or a Superintendent.

Analysis of a sample of placements between 2019 and 2021 found the conditions of Close Supervision were also similar to punishment. While 84 per cent of the sample were able to exercise with others, only six per cent of supervision plans permitted the three hours of exercise time allowed under the Department’s policy (DOJ, 2022). Policy also restricts prisoners on Close Supervision from accessing employment and requires their gratuities to be reduced to Level 5. They are not permitted cell-based hobbies or materials, but they can make social calls on the telephone system.

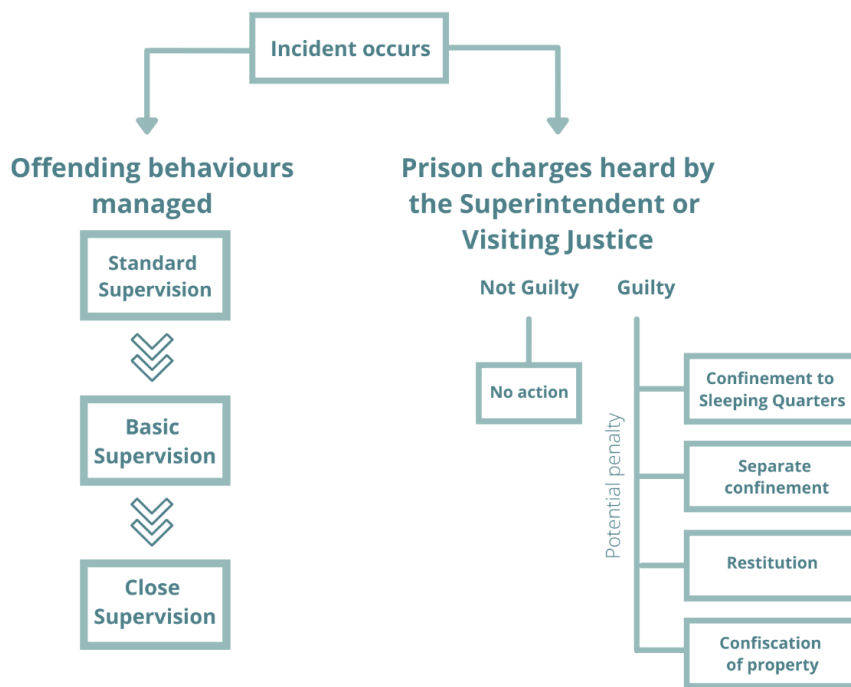


Figure 7: Following an incident, a prisoner may be managed under the behaviour management system and may also be found guilty of a prison charge.

Further, 88 per cent of prisoners served their Close Supervision confined to the facility's management unit and, in some rare cases, in the crisis care unit. Only 12 per cent were completed in the prisoner's unit. Sending a prisoner 'down the back' to a management unit following an incident has clear overtones of a punishment. This is understood well by prisoners. Intentions to use Close Supervision as a behaviour management tool are clouded when the conditions look and feel like a punishment.

Little evidence of behaviour being managed while on Close Supervision

We found little evidence that Close Supervision was being used to modify behaviour. Analysis of a sample of supervision plans found they did not explicitly state the types of behaviour expected of the prisoner for them to progress to a lower supervision level. Access to some entitlements, such as electrical devices or hobby materials, were at times noted as being available to a prisoner subject to their behaviour, but often the plan did not elaborate on what that expected behaviour was or looked like. The Department's policy explicitly states that each prisoner's supervision plan should contain proposed behavioural management strategies (DOJ, 2022; DCS, 2009).

The Department told us that prisoners are 'advised' of the 'purpose and intent of their regression, and what behaviour must be observed by staff to enable their return to a standard supervision level'. It may be that officers have verbal discussions with prisoners on behavioural expectations, but we could not identify evidence of this in documents or supervision logs. The behavioural expectations of the prisoner should be clearly stated in the supervision plan that they are required to sight, understand and sign at the start of their restricted regime.

Further, it appears that most prisoners are serving their full Close Supervision period regardless of the behaviour they demonstrate. Sixty per cent of the supervision plans we analysed only required a

review of the prisoner's behaviour and placement at the end of their Close Supervision period, reducing prospects for an early release even if they had behaved well. Thirty per cent of the Close Supervision placements analysed did not include a review requirement at all.

Ten per cent of the sample required a review half way through the restricted regime period. Most of these were for 14-day placements, and only four of these prisoners were released early following their review. Of the rest, only one had a review which noted their ongoing poor behaviour, warranting completion of the full 14 days. Others had reviews but the officers simply recommended that they complete the full 14 days given the nature of the incident they were involved in. There was no explicit comment on the behaviour of the prisoner throughout the duration of their Close Supervision placement.

The Department's policy notes that a prisoner shall only remain on Close Supervision while they pose a threat to people, the good order of the prison, or while they continue to demonstrate poor behaviour (DOJ, 2022; DCS, 2009). It further states that Superintendents should not hold a prisoner on Close Supervision longer than is necessary (DOJ, 2022; DCS, 2009). Using Close Supervision to hold a prisoner in confinement for a pre-determined period with no behaviour modification strategies, and no review of behaviour improvements, is inconsistent with policy. It is not surprising that prisoners view Close Supervision as a form of punishment. Moreover, taking a 'set and forget' approach may act as a disincentive for a prisoner to proactively improve their behaviour.

Where possible, Close Supervision placements may benefit from remaining in their usual place of residence where their behaviour can be managed by the staff who have a pre-existing relationship with them. This would also remove the 'punishment' connotations that come with confining Close Supervision placements to a prison's management unit.

Evidence suggests few prisoners progress from Close Supervision to Basic Supervision

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.

In response to this report, the Department noted that the progression of prisoners on management regimes is not based on a tiered system. They argued that there is no requirement to progress a prisoner from Close Supervision to Basic Supervision, before returning them to Standard Supervision. And, the intention of their behaviour management policy is not to enforce a rigid path of progression but to provide flexibility in management options.

We acknowledge that flexibility is important. However, an over-reliance on direct progression from Close Supervision to Standard Supervision, without a tiered-based incentive system, likely contributes to prisoners' perceptions that Close Supervision is akin to a punishment that is to be served for a discrete period following an incident or poor behaviour.

Recommendation 2 – Ensure behaviour management practices are being implemented in compliance with COPP 10.1 Prisoner Behaviour Management

1.6 Long-term confinement of the acutely unwell is inhumane, but prisons are left with few alternative options

Prisoners with acute psychological or psychiatric conditions are frequently confined under Observation regimes to safeguard themselves and others. Often these prisoners would be more appropriately managed in an external mental health facility. However, due to a shortage of beds at the Frankland Centre – Western Australia's only forensic mental health unit – these prisoners are required to be managed in prison. Due to limited resources they often remain untreated and separately confined to an observation cell for long periods. We acknowledge these instances were often out of the control of the facility and staff do their best to provide a safe environment for the prisoner and others.

However, the conditions that many of these unwell prisoners are required to endure while imprisoned is inhumane. This was once again noted in our recent inspection of Hakea Prison, where most of the adult prisoners assessed as a P1 – those with serious psychiatric conditions requiring intensive or immediate care – are imprisoned (OICS, 2022). While the placement of these prisoners into an observation cell may be necessary, or the only safe option, in a prison system that was not designed to manage them, it does not extinguish the argument that such treatment is counter-therapeutic and inhumane.

Case Study: Adrian (*pseudonym used*)

Adrian spent 153 days confined under observation at Hakea Prison before receiving a placement at the Frankland Centre. Prior to this transfer, staff noted that he had become mute, uncooperative, was not eating, and was living in squalor amongst rotting food and faeces. This example arose simply because of the absence of appropriate hospital beds and cannot be allowed to continue.

Adrian was clearly unwell and was a living example of the unacceptable shortage of forensic hospital beds that we have been reporting on for several years.

In response to the Hakea inspection report, the Department noted that it intends to transfer acutely unwell male prisoners to Casuarina Prison's mental health unit when it becomes operational. The recently established Bindi Bindi unit at Bandyup Women's Prison offers a similar function for the female estate. While the development of dedicated mental health facilities within the adult prison estate is positive, these facilities cannot replace, or be a substitute for, the level of care and expertise offered by the Frankland Centre.

Rule 45 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)* also prohibits the confinement of prisoners with mental health conditions that could deteriorate further under such conditions (UNODC, 2015).

In addition to the acutely unwell, many prisoners are placed into an observation cell for a short period of time after threatening self-harm or following an actual self-harm incident. This is a common practice across the custodial estate to protect the safety of prisoners. Once placed into observation, prisoners will usually be managed through the At-Risk Management System (ARMS) processes, including when and how they will progress out of the observation safe cell. As such, supervision plans do not typically specify an exit date. We found no evidence to suggest that such prisoners were being held for unjustifiably long periods.

Most prisoners were only placed into an observation cell on a few occasions. Throughout the sample period we identified 2,180 Observation supervision plans for 1,149 prisoners. Each prisoner averaged 1.89 placements. Only 16 prisoners were placed onto an Observation regime on more than 10 occasions – three had over 20 placements, one had over 30 placements, and one had in excess of 70 placements. The latter is detailed below in the case of Brenda and included multiple short stays to help manage her self-harm tendencies.

Case Study: Brenda (pseudonym used)

Brenda has an extensive history of incarceration stretching back to 1992. Since July 2018, Brenda has been issued 102 individual confinement orders – the most of any adult prisoner across Western Australia. Seventy-six of these have been for placements into an observation cell.

Brenda has a long history of self-harm and is regularly placed in the Crisis Care Unit. Most of her attempts to self-harm have been superficial. However, there have been three serious self-harm attempts.

Due to her self-harm history, when Brenda is involved in an incident, she will usually be placed into an observation cell rather than a management cell so staff can closely observe her. At times she also voluntarily asks to be placed into observation for 'time out' or when she informs staff that she's having thoughts of self-harm.

The frequency of Brenda's placements into an observation cell highlights the complexity of her ongoing difficulties with mental health and the challenge to staff in managing this in a custodial setting.

2 The management of prisoners in confinement is often limited to the delivery of basic entitlements

We have no evidence to suggest that there are any systemic issues in the delivery of basic entitlements to confined prisoners, as required in legislation or departmental policy. This includes access to:

- daily meals
- showers
- time out of cell for exercise and fresh air, and
- the telephone system.

Despite the volatility often experienced in management units, officers are adept at equitably balancing the varying needs and entitlements of the prisoners held under their care. Staffing absences and disturbances within the unit or the broader facility can prevent some prisoners receiving all their entitlements. Where this occurs, officers make a record in the relevant log books and supervision logs. Records are also kept when an entitlement is offered but declined.

However, the management of prisoners in confinement does not typically extend beyond the delivery of these essential entitlements. We observed limited meaningful human contact being available for prisoners in separate confinement, a lack of in-cell activities for stimulation, and limited opportunities for fresh air and exercise in some cell yards. Mental healthcare is typically reactive rather than proactive. As such, it is perhaps not surprising that management units experience a disproportionate number of incidents, including prisoner self-harm, cell-fires and the use of force.

2.1 Access to meaningful human contact is limited in separate confinement

Prisoners in separate confinement are provided with few opportunities to engage meaningfully with other people. Prisoners serving a period of separate confinement as a punishment and those on a s.36(3) or s.43 order are not permitted to socialise with other prisoners. These prisoners will typically be provided with their meals alone inside their cell and be provided with exercise and fresh air alone in a unit yard or in their private cell yard, where these are available. Prisoners serving a period of punishment are not permitted social visits but can make one 10-minute phone call to friends and family per day (DOJ, 2021a; DCS, 2002). Prisoners on a s.36(3) or s.43 order are permitted a restricted number of social visits per week but can only make phone calls to legal representatives for matters currently before the courts (DOJ, 2021). These prisoners experience significantly limited opportunities for social interactions and physical contact with others.

The physical infrastructure of management units can both increase and limit opportunities for social interactions. Some management cells are fully self-contained, with showers, ablutions and a private yard. This set-up ensures that prisoners will always receive a daily shower, and often the yard is opened for several hours. But there are almost no opportunities for these prisoners to leave their cell or to speak with other prisoners. Conversely, other management units have separate outdoor areas where prisoners are given their allocated time. This reduces the amount of time in fresh air, the yards are often in poor condition and sparse, and access may be restricted if staff cannot facilitate the movement on the day.

Despite limited socialisation with peers, prisoners in separate confinement can request a visit from the Chaplain, a Prison Support Officer, an Aboriginal Visitor, and health or mental health staff members. However, we heard at several prisons that staffing shortages often restrict the focus of mental health clinicians to the acutely unwell and high-risk. The Department also advised that, as of March 2022, 15 of the 27 funded Aboriginal Visitor Scheme positions across the estate were vacant and they were having difficulty recruiting. At the discretion of the Superintendent or at the request of Prisoner Risk Assessment Group (PRAG), a prisoner may also be allowed time with a peer support prisoner.

Prisoners in separate confinement are also permitted time with official visitors such as lawyers, the police and other officials. Daily interactions with officers including mandated 'welfare checks' from senior officers or management also occur but the detail of these discussions is not recorded and therefore we cannot verify the benefit of these policy-directed interactions.

Enabling prisoners to associate and interact with other people may alleviate the harmful physical and mental health effects of confinement. Long-term isolation through separate confinement can result in prisoners emotionally withdrawing and developing dysfunctional social skills, which may go on to negatively affect their lives in the community and their likelihood of re-offending (Shalev, 2008). Even short periods in separate confinement have been shown to have a detrimental impact on the wellbeing of a prisoner (UN, 2011). Interactions with staff and official visitors cannot replace meaningful socialisation with peers. Prisoners in separate confinement should be provided with greater opportunities to interact and engage with non-custodial staff as much as possible.

2.2 Some yards provide limited opportunities for fresh air and exercise

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.

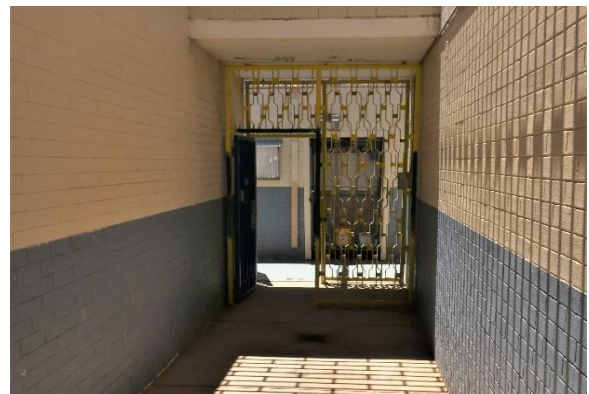


Figure 8: A private yard in the management unit at Greenough Regional Prison provides no visibility of green spaces.

Facilities that use common yards for prisoners in confinement generally have better access to fresh air, may include some grass and gym equipment, are much larger and may have better visibility out of the unit. Though this is not always the case. D-wing in Unit 1 of Hakea Prison has two common

yards for prisoners who are required to exercise separately. Each yard is enclosed by large concrete walls and a concrete floor, with translucent roof sheeting that provides minimal light and little fresh air. There is no access to or visibility of nature. These yards are effectively larger cells that provide no meaningful benefit to prisoners, other than the ability to exit their cell for a moment.

The requirement for a prisoner in separate confinement to have access to fresh air and exercise was recently tested in the Supreme Court of the Australian Capital Territory (ACT). The plaintiff, a prisoner who had been held in separate confinement for 63 days, argued that restricting his exercise time to the yard attached to his cell, and not permitting him access to a much larger common yard, was in contravention of the requirement to give him access to open air and exercise under the *Corrections Management Act 2007 (ACT)* (Davidson v Director-General, Justice and Community Safety Directorate, 2022). The court agreed with the prisoner and found that the cell yard, which was enclosed by concrete walls and covered with a metal mesh ceiling, gave the impression of being indoors. The mesh ceiling obstructed a clear view of the sky and blocked access to natural light. There was also a lack of natural air flow, and the size impeded any meaningful attempt to exercise.

To our knowledge, the yards in the management units of Western Australian prisons, and their ability to provide a prisoner with the means of taking air and exercise, have not been tested in court. However, we would suggest there are concerning similarities between the yard tested in the Davidson case and some of the yards used for prisoners in separate confinement in Western Australia. The findings of the ACT Supreme Court, therefore, warrant the attention of the Department.

Shalev argued that exercise yards in management units should be sufficient in size to allow prisoners to exert themselves, should have appropriate exercise equipment, and efforts should be made to lessen the 'bleakness', such as by painting walls or adding greenery (2008, p. 44).

Recommendation 3 – Ensure all yards in management units are compliant with the Act and improve access to fresh air and exercise for prisoners in confinement



Figure 9: One of two D-wing yards from Unit 1 at Hakea Prison with no visibility of the sky.

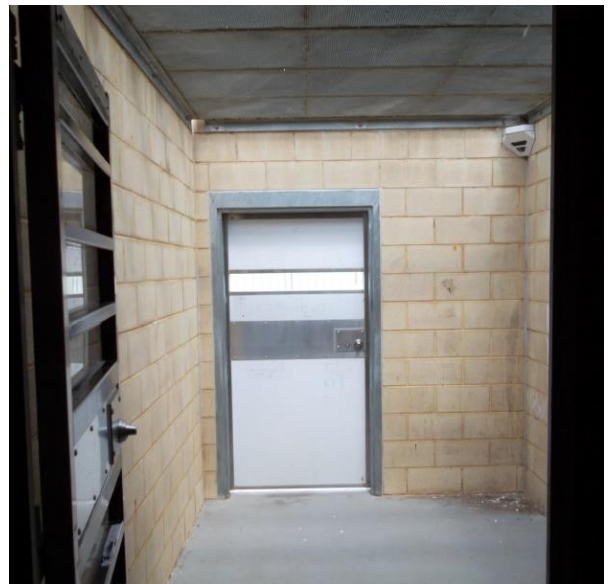


Figure 10: The cell yard at the Alexander Maconochie Centre in the ACT subject to the case that went before the Supreme Court (Davidson v Director-General, Justice and Community Safety Directorate, 2022).

2.3 Limited cell-based activities and 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:

- electrical equipment (radio and television may be permitted subject to behaviour)
- personal possessions, except legal papers relating to any matter before the court
- study materials (except those on Close Supervision)
- musical instruments
- external recreation activities
- education or programs
- employment opportunities.

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, & Antar, 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).



Figure 11: The library in Unit 1 at Hakea Prison was very limited and in poor condition.

A lack of meaningful, purposeful activities can be torturous for any person. Most prisoners placed into confinement come from the mainstream population where they had some access to employment, programs, training and education in addition to cell-based activities. The Department stresses in policy that most forms of confinement are not intended to be a punishment (DOJ, 2021; DOJ, 2021b; DOJ, 2022). However, stripping prisoners of any meaningful activity to keep their minds occupied while confined is antiquated and punishing.

Prisons can use their discretion and provide additional entitlements, including cell-based activities or electrical items, as a good behaviour incentive or in other circumstances they see fit. We would argue there are opportunities to raise the minimum standard of safe and secure cell-based activities for prisoners in confinement.

Recommendation 4 – Increase cell-based activities to prisoners in confinement to reduce the negative effects of limited stimulation

2.4 Management units are volatile spaces, particularly at Hakea Prison

Management units at Acacia, Bandyup, Casuarina and Hakea prisons recorded a disproportionately high number of incidents. The Detention Unit at Acacia (1.9%), the Multi-management Unit (MMU) at Bandyup (2.7%), the Multi-purpose Unit (MPU) at Casuarina (0.8%), and Unit 1 at Hakea (6.4%) each represent only a small fraction of their facility's total population. Yet, analysis of incidents throughout the sample period found these units, which house prisoners on confinement or management regimes, were disproportionately involved in incidents:

- requiring the use of force
- requiring the use of restraints
- where prisoners damaged their belongings, cell or other infrastructure
- where prisoners caused a fire.

In particular, Unit 1 at Hakea Prison recorded a high proportion of incidents. With a capacity of 80 prisoners, Unit 1 represents 6.4 per cent of the facility's total capacity. However, prisoners residing in Unit 1 were involved in:

- 45 per cent of all cell fire incidents at the facility
- 37.8 per cent of use of force incidents
- 29.5 per cent of incidents where a prisoner damaged their cell or belongings.

Similar results were recorded at Acacia, Bandyup and Casuarina, demonstrating the volatility of management units across the estate.

Research has found that prisoners placed into confinement or with restrictions that limit their social interactions and sensory experiences often have violent and unprovoked outbursts (Shalev, 2008). These can be directed at staff, other prisoners or include self-harm. Incidents are also disruptive to the daily routine of a unit. This can prevent other prisoners from receiving their entitlements, which can raise tension levels and lead to further incidents. Management units can also be high traffic spaces that are noisy, unpredictable, and stressful.

Further, research has found that placing prisoners into confinement for misconduct has little impact on their future conduct (Labrecque, 2015). The high proportion of incidents within management units would also suggest that confinement has not been an effective preventative measure against future poor behaviour.

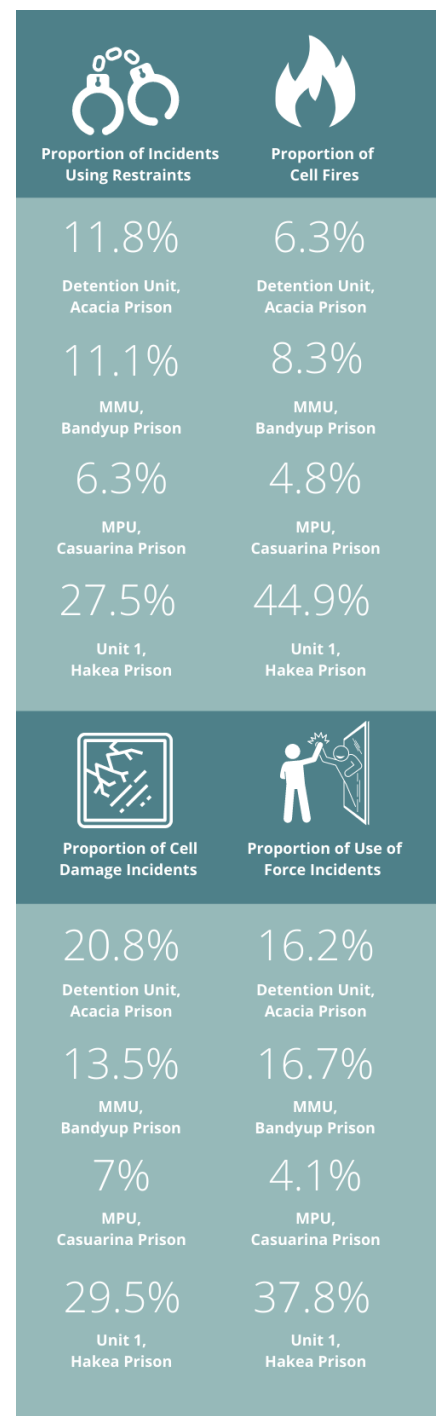


Figure 12: Management units recorded a disproportionate number of incidents, relevant to their proportion of the total facility's population.

2.5 There are high numbers of prisoners threatening or actually self-harming

The management units at Acacia, Bandyup, Casuarina and Hakea prisons also recorded disproportionately high numbers of prisoners threatening or actually self-harming or threatening suicide. This includes prisoners:

- threatening or actually cutting themselves
- swallowing harmful substances or items
- banging their head against walls and doors
- wrapping ligatures around their necks.

In many cases these incidents occurred while prisoners were showing signs of agitation or distress, including being verbally abusive to staff, threatening or assaulting staff, or damaging their cell.

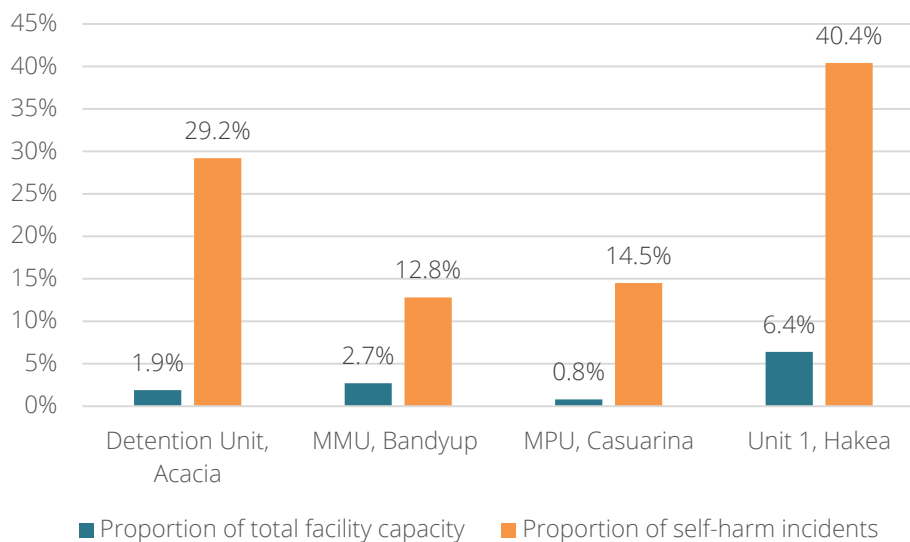


Figure 13: Management units at Acacia, Bandyup, Casuarina and Hakea each recorded high numbers of self-harm incidents.

Despite this, only 10 per cent of prisoners in confinement during the sample period were placed on ARMS. Of those with active ARMS alerts, 20 per cent were activated in the days prior to their confinement and 68 per cent were activated at the time the confinement placement began. Most of these were for prisoners being placed onto Observation regimes (43%), which is most frequently used to secure the safety of a prisoner threatening harm.

Only 13 per cent of prisoners had an ARMS alert activated in the days after they were confined. One third (35%) of these were placed in s.36(3) temporary separate confinement and 29 per cent were placed on Close Supervision. This suggests that any deterioration that is occurring is not being identified by the staff supervising them, or is not considered significant enough to warrant placement on ARMS.

Prisoners in confinement have been known to self-harm as a coping mechanism against the sensory and social deprivation they experience (Walsh, Blaber, Smith, Cornwell, & Blake, 2020). This was evident in a prisoner who started self-harming after a couple of days into a 14-day Close Supervision order being served in Unit 1 at Hakea Prison. The prisoner superficially stabbed himself multiple

times with a fork and intentionally hit his head against the door. In discussions with mental health staff afterwards, he stated that all he could think about while confined was his sister's suicide a year prior, for which he blamed himself. He struggled to distract himself from negative thoughts while alone in his cell.

Our review of incidents also identified instances where officers alleged that prisoners were using threats of self-harm to manipulate their placement or to gain access to more entitlements, such as cigarettes or time out of cell. For instance,

Unit 1 - Prisoner N appears to have attempted to self-harm in order to manipulate his cell placement.

While this may occur on occasions, threats of harm cannot be dismissed. Some prisoners placed into confinement or on a restrictive regime struggle to cope with the isolation. Poor coping skills and limited cell-based activities for distraction may increase stress levels or lead to excessive rumination, which in turn can lead to prisoners acting out and threatening to self-harm. The Department's ARMS Manual instructs staff not to dismiss such threats, but rather see them as an attempt by that prisoner to escape the situation or to communicate their frustration or distress (DOJ, 2016). It also notes,

There is a tendency to dismiss acts of self-harm as manipulative, rather than as genuine cries for help and a sign of potential suicide risk. Most self-harmers are distressed and have some thoughts of suicide. **A judgemental response to self-harm only increases their distress** (DOJ, 2016, p. 8) (emphasis added).

The dismissal of self-harm threats as simply manipulative may also affect how officers respond to future self-harm threats. The 2019 published findings of the coronial inquest into the death of a prisoner at Casuarina Prison made this point. It found that the Prison Counselling Services and PRAG records made clear that the prisoner's repeated reports of self-harm and suicidal ideation were being interpreted by staff as an attempt to manipulate his placement in the prison system (Jenkin, 2019). The inquest found that while the prisoner's behaviour created a challenging management issue for staff, it was of concern that on the day of his death he was placed in a cell that was not ligature minimised and without a cell mate who might have observed his behaviours and raised alarm. These decisions were contrary to the plan prepared to manage him.

2.6 Department's policy now more responsive to mental health considerations

In its recently revised policies, the Department has strengthened its commitment to considering the effects of confinement on the mental health of prisoners. As part of the current process for separate confinement under s.36(3) and s.43, implemented in May 2021, the Department's policy states that:

A mental health assessment is to occur at the earliest reasonable opportunity and at latest within 72 [hours] of separate confinement. A psychiatrist assessment is required for all prisoners separately confined for 7 days or more (DOJ, 2021, p. 3).

And,

Consideration shall be given to the impact separate confinement may have for prisoners with vulnerabilities (i.e. disability, mental health conditions) (DOJ, 2021, p. 5).

The Department told us these requirements were inserted into the policy following consultation and support from the Mental Health, Alcohol and Other Drug (MHAOD) Directorate and the State Forensic Mental Health Services. These are positive inclusions. However, we were told by staff at Casuarina and Hakea prisons that the requirements were unrealistic and not achievable due to a lack of mental health staff. As far as they were aware, they had not been implemented.

The Department's policy also outlines requirements for:

- officers to monitor and remain alert to a prisoner's physical and mental health
- Superintendents, on advice from health or mental health staff, to consider recommending the immediate removal of a prisoner from separate confinement where considered necessary for that prisoner's health (DOJ, 2021).

Similarly, the Department's revised policy on prison offences and charges, implemented in December 2021, includes new provisions on prisoner mental health. Under the policy, Superintendents are given the authority to withdraw charges where they are of the opinion that proceeding may be detrimental to that prisoner (DOJ, 2021a). Between 2018 and 2021, there were 1,494 prison charges withdrawn across the estate under the previous policy. Most of these were because the prisoner had either been released or there had been an excessively long wait for the charge to be heard. We only identified six charges which were withdrawn after considering the prisoner's mental health. We are hopeful that, under the new policy, greater consideration will be given to a prisoner's mental health before proceeding with charges, but only time will tell whether this comes to pass.

In addition to these policy provisions, prisoners in confinement continue to have access to a range of supports at their request or if staff assess a prisoner as requiring assistance. This includes, where available, access to the Chaplain, the Aboriginal Visitor Scheme, Prison Support Officers, and mental health and health staff. These supports are equally available to prisoners in management units as they are for prisoners in the mainstream population.

A prisoner in confinement may also be given access to a peer support prisoner at the request of PRAG or at the discretion of the Superintendent. While these are beneficial services, they are generally provided reactively at the request of staff or the prisoner. Reliance on prisoners self-referring or staff observations creates a risk that deteriorations in wellbeing are not identified or identified too late.

Additionally, staff in management units are encouraged to check-in with prisoners and senior management conduct daily welfare checks. Staff at Hakea noted they have supported officers in building their skills and confidence in having these conversations with prisoners. This is a positive and proactive approach. Though, welfare checks by officers are not always ideal – they are not trained as mental health workers, it can place additional stress on officers, and the existing security-focussed relationship with prisoners may prevent them from opening up. However, officers do play an important role as part of a multi-pronged approach alongside health professionals and we encourage any effort to increase supports to prisoners.

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 s.43 order.

Recommendation 5 – Include mental health assessments by a qualified mental health practitioner in applications to place prisoners on a s.43 separate confinement order

2.7 Officers in management units are not provided with any additional training

Officers assigned to management units are not provided with any additional training to assist them in their management of prisoners in confinement or on management regimes. This is despite management units often being volatile spaces, that house prisoners who may be more vulnerable or prone to acting out. During their entry level training program, officers are trained and assessed to a minimum standard in knowledge and skills as they relate to custodial operations. As noted in our review into the use of force, all officers at every facility have the same training responsibilities regardless of the specific needs of their individual facility (OICS, 2021). There is no tailoring of training requirements to fit the circumstances of where the officer will be working.

Despite this, some specialised units hand-select officers that meet a desired set of criteria. For instance, the Bindi Bindi mental health unit at Bandyup Women's Prison and the Special Handling Unit at Casuarina Prison each select specific officers. This enables these facilities to staff these areas with officers who fit the philosophy or approach of these specialised units, and who have the right mix of skills and experience. During our inspection of Hakea Prison, we also heard that there was an expression of interest process for officers seeking to work in Unit 1. Officers had to demonstrate a good working knowledge of the unit's operations and functions, and policies on management regimes. Unit 1 officers are also provided with informal training on model behaviours, report writing and the use of force – each developed by the staff in Unit 1 in lieu of any additional formal training offered by the Department.

The selection of officers in this manner demonstrates that there are different expectations in knowledge and skills for some specialised units across the estate. Consideration should be given to exploring whether officers placed in management units or other highly volatile spaces would benefit from additional training or be subject to a higher standard in their knowledge and skills.

The Department also requires officers to undertake regular refresher training for select courses or skills. This includes three-yearly refresher training in generic workplace skills such as occupational safety and health awareness, record-keeping practices and ethical decision-making. Officers are also required to complete three-yearly refresher training on suicide prevention and mental health skills, and yearly face-to-face refresher courses in core use of force skills. Superintendents are required to dedicate adequate time for staff to complete their refresher training, and staff are responsible for maintaining their own currency. However, as noted in our use of force review, compliance levels vary across facilities despite their recognised importance (OICS, 2021).

We requested data on the currency of training for staff rostered onto management units, but the Department did not provide this. Instead, facility-level data was provided. This data found that, as of March 2022, less than half of Hakea officers were current with five out of six use of force modules. Casuarina officers were more compliant, ranging between 52 and 79 per cent across all modules. Almost all Bandyup officers were current with three out of six modules. As point-in-time data, we are unable to determine if these findings are reflective of any broader trends with each of these facilities or simply reflect the current status quo. We are also unable to determine if the officers more regularly involved in the use of force, for instance in more volatile units, were better or worse at maintaining their currency.

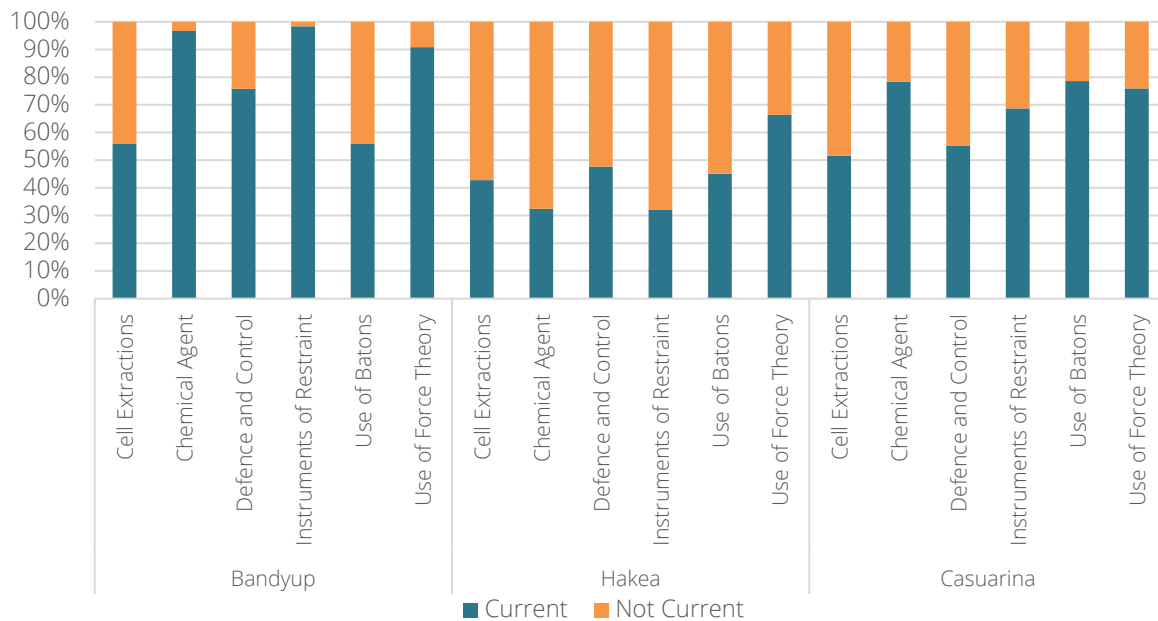


Figure 14: As of March 2022, officers at Bandyup were generally up to date with their refresher training requirements.

3 Good governance overall, but transparency and oversight are poor in some areas

The Department generally has a good framework of governance in place for the use of confinement and management regimes. Policies and local standing orders reflect statutory requirements, establish clear approval and review processes, and outline delegated authorities and reporting requirements. However, in any process there are risks of standards slipping and this is evident occasionally in the use of confinement and management regimes. This risk is amplified by the frequency and volume in which decisions around the use of confinement and management regimes are made across the adult custodial estate.

Noting that the deprivation of entitlements can have a significant impact on the wellbeing of a prisoner, it is incumbent on the Department to ensure that there is a high level of transparency, oversight and accountability in the use of these practices. Transparency on what entitlements are restricted or removed, to which prisoners, for what time period, and for what reasons are integral to ensuring there is a confident and expansive degree of oversight by the Department.

3.1 New COPPs strengthen confinement and management regimes governance

The introduction of a suite of new Commissioner's Operating Policy and Procedures (COPPs) have strengthened the governance for confinement and management regime practices. The COPPs provide greater detail than previous policies, establish consistent language, and clarify processes. This is a positive outcome, which we commend the Department for.

The introduction of these COPPs forms part of the Department's broader update to operational policies for all public and private prisons in Western Australia. Those relevant to the use of confinement and management regimes include:

- COPP 5.2 Observation Cells – published 8 November 2021
- COPP 10.1 Prisoner Behaviour Management – published 24 January 2022
- COPP 10.5 Prison Offences and Charges – published 28 December 2021
- COPP 10.7 Separate Confinement – published 3 May 2021

Facility specific Local Orders have also been replaced with Standing Orders that reflect the requirements of the new COPPs.

The COPPs have been prepared with consideration of the *Guiding Principles for Corrections in Australia* (the Guidelines) (CSAC, 2018). The Guidelines do not explicitly outline provisions for the use of confinement practices, and instead outline key principles. This includes:

- taking into consideration the physical or mental health of prisoners placed into confinement
- managing prisoners placed into confinement or in a management or high-security unit in the least restrictive way, consistent with the reasons for their confinement
- informing prisoners of the reasons for their confinement in a form and language they understand.

The Guidelines serve as an agreed set of principles and intentions for the management of prisoners in Australia. States and territories use the principles as a guide when developing their own practices and policies. International human rights frameworks such as the Mandela Rules were considered in the development of the Guidelines, which were last updated in 2018.

3.2 Data errors reduce transparency and oversight

Data available to the Department on the use of confinement and management regimes is subject to a high-risk of human error. The data provided to us was extracted from supervision plans created in the offender database. When reviewing the data, we observed a high volume of errors by staff:

- incorrectly selecting the wrong confinement type
- inputting the incorrect confinement period
- leaving fields blank
- creating duplicate confinement orders
- making general errors in information provided.

This was evident in our review of s.43 placements. Only 28.5 per cent of the s.43 placements identified in the Department's data were confirmed as correct. Often s.43 was selected by staff incorrectly or chosen as the closest alternative for prisoners placed onto DP3.

Errors and gaps in the data weakens transparency, affects the Department's ability to monitor the use of confinement and management regimes, and their ability to accurately assess long-term trends. We have made similar points about data in several previous reviews (OICS, 2022a; OICS, 2021a; OICS, 2021; OICS, 2020).

3.3 Some confinement and management regime placements are undocumented

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 5,535² 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.

² Data excludes prisoners who were being monitored and observed at an external hospital, such as the Frankland Centre. Data was not available after July 2021.

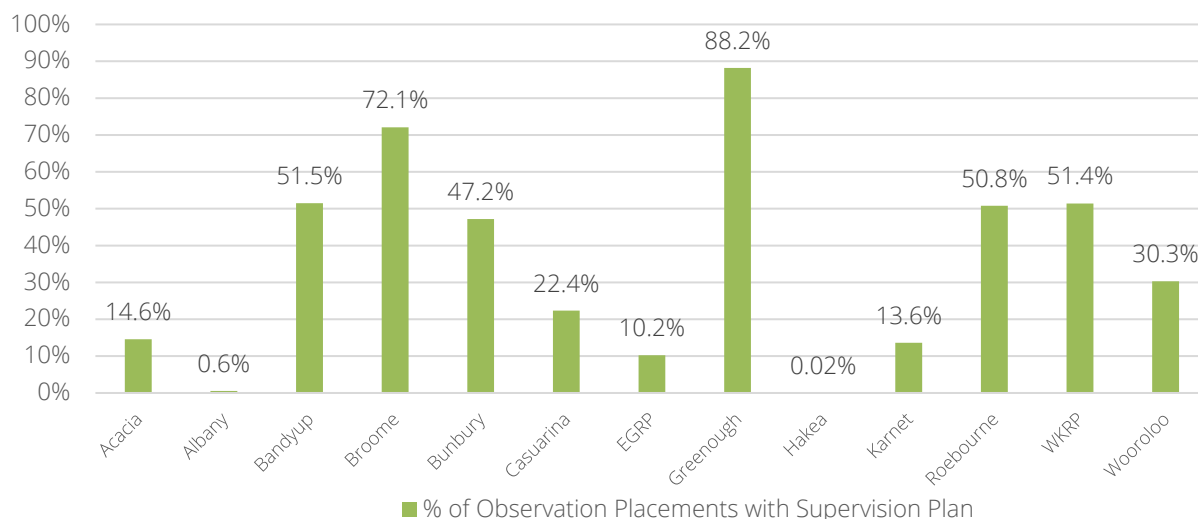


Figure 15: Analysis found Hakea Prison only created supervision plans for 0.02 per cent of the observation cell placements that occurred between 1 July 2018 and 30 June 2021.

These undocumented placements contradict the Department’s requirement for all observation placements to have an accompanying supervision plan that outlines the reasons for the placement and the prisoner’s minimum entitlements (DOJ, 2021b; DCS, 2013). Hakea’s local policy also required officers to prepare a supervision plan for all prisoners placed into observation cells (DCS, 2015).

We recognise that Hakea Prison is a volatile facility with a high volume of prisoners requiring observation. Rightly so, Hakea’s immediate priority is to guarantee the prisoner’s safety and provide the care they require. And, of the 5,535 placements only 1,312 extended beyond 48 hours. But many were held for several days, and some for several weeks. One prisoner was held in an observation cell in the Crisis Care Unit for 94 days without a supervision plan documenting what entitlements he was allowed through that period.

In the same data provided by the Department, Hakea only created 76 supervision plans for s.36(3) placements. In comparison, Acacia Prison recorded 3,860 supervision plans, Casuarina Prison recorded 1,777 and West Kimberley Regional Prison recorded 420. This is despite West Kimberley having a capacity one fifth the size of Hakea.

We again queried the Department on this figure. It explained the discrepancy by noting that the customary practice at Hakea was not to use s.36(3) placements. Rather, Hakea’s preference is to place prisoners onto Close Supervision in the first instance because remand prisoners often only stay at the facility for a short period and are more volatile. However, when we inspected cell placement data for the same period, we found 5,079 prisoner movements to Unit 1 under the reason *‘Section 36.3 Prison Act 1981 (Investigation)’*. This reason represented 32 per cent of all placements into Unit 1, and the average length of stay under that reason was two days, which is consistent with the policy on the use of s.36(3).

Therefore, the data suggests Hakea does frequently move prisoners to Unit 1 on s.36(3) orders, but rarely creates supervision plans for these. Only 76 of Hakea’s 5,079 s.36(3) placements (1.5%) were appropriately documented.

Further, Hakea Prison advised us that they do use s.36(3) placements and are cautious not to hold them for longer than the 72 hours outlined in policy. They further advised that prisoners are typically placed on s.36(3) after an incident, before proceeding to Close Supervision once an investigation by the security team had occurred. This confirms the use of s.36(3) at Hakea. Failure to create supervision plans for these placements is inconsistent with policy, means these placements are undetectable in the Department's own data, and prisoners are being confined without sighting their supervision plans and minimum entitlements.

Hakea's culture of not preparing supervision plans for every confinement and management regime placement reduces the Department's oversight. Without forensically analysing the data, the Department cannot easily ascertain how many prisoners had their entitlements restricted, to what extent, whether it was justifiable, and whether the rights of prisoners were breached. This is a concerning low level of transparency and accountability and may signal broader non-compliance across the adult custodial estate in this area.

Recommendation 6 – Enforce the requirement to create supervision plans for every prisoner placed onto a confinement or management regime

3.4 Poor record keeping of prisoners' access to entitlements while in COVID-19 isolation

Record-keeping practices of prisoners isolating due to COVID-19 are not to the same standard as those in confinement. Following the first known positive cases of COVID-19 in Western Australian prisons in March 2022, we have heard anecdotal comments about prisoners failing to receive minimum entitlements while isolated. This has included media reports that isolated prisoners at Acacia Prison were not provided clean clothing for seven days and many were provided with less than one hour out of cell per day (Trigger, 2022). We heard prisoners isolated at Hakea Prison could expect to not receive daily showers. And, we received reports from the Independent Visitor at Bandyup Women's Prison that a prisoner was only allowed 10 minutes out of cell per day for showering and phone calls. However, a lack of record-keeping has hindered our ability to verify these claims.

The Department's policy on s.36(3) temporary separate confinement enables the confinement of prisoners 'diagnosed with a contagious disease and required to be immediately isolated to minimise the risks to the wider prison environment' (DOJ, 2021, p. 4). All s.36(3) placements are required to have an accompanying supervision plan and a supervision log activated in the offender database (DOJ, 2021). We found no evidence that either of these record-keeping requirements were being met. This has created a complete lack of transparency around what entitlements prisoners in isolation are provided.

When we raised these concerns with the Department, we were advised that paper-based occurrence books were being used to record prisoners' access to entitlements. However, given the risks presented by COVID-19 as a communicable disease, our analysis has been restricted to desktop observations. We have been unable to inspect paper-based records. We remain concerned at the lack of transparency.

3.5 Record-keeping practices need improvement

Throughout this review we assessed the quality of records being maintained for prisoners being held in confinement or on management regimes. Several areas of improvement across a range of record-keeping mediums have been noted.

Supervision plans often lack specificity

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.

Recommendation 7 – Ensure all supervision plans outline clear reasons for a prisoner’s confinement, clearly state all minimum entitlements, and include a proposed end date

Digital supervision logs expanded to increase accountability, but they are not being consistently used

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:

- s.36(3) orders for temporary separate confinement
- s.43 separate confinement orders
- those serving periods of confinement as a punishment
- those restricted to an observation cell
- those separated for the purposes of protection
- those separated to the Special Handling Unit.

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.

This is a positive step for improving accountability and transparency and has been enacted by most facilities. However, there remain some teething difficulties. Some facilities are not activating the logs consistently. Others are activating the logs but not keeping regular records. And, some facilities are making notes about the prisoner's activities in the general notes section of the offender database, rather than in the supervision log. Acacia Prison was the only facility identified to be consistently not using the logs, except for Close and Basic Supervision.

Recommendation 8 – Ensure all prisons use electronic supervision logs on the offender database for all prisoners placed into confinement or on a management regime

In addition to the digital logs, facilities continue to maintain written occurrence books for units to track movements and access to entitlements. The completion of both paper-based and digital logs provides a fail-safe mechanism for the Department, should one of these records get lost or destroyed. During this review the Department was unable to locate an occurrence book we requested for the MPU at Casuarina Prison. This meant we were unable to verify if prisoners received their entitlements. Without conducting a thorough review, it is unclear how many paper-based occurrence books from recent years are missing.

Failure to maintain records that demonstrate the delivery of minimum entitlements to prisoners in confinement opens the Department to considerable risk should the conditions of a prisoner's confinement ever be tested or queried in court.

Supervision logs lack detail

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.

Entries are also often depersonalised and provide little insight into the wellbeing of a prisoner. Terms such as 'defeed' – meaning to

04/02/2022 07:38	Medication issued.
04/02/2022 07:40	Breakfast taken, yard opened
04/02/2022 09:27	Cell cleaned and de feed. Social phone call made.
04/02/2022 10:50	Lunch issued and yard secured.
04/02/2022 15:08	Social phone call made.
04/02/2022 15:43	Dinner issued.
04/02/2022 16:11	Medication issued.
04/02/2022 17:02	Defeed.
05/02/2022 08:07	Accepted breakfast but declined his yard time.
05/02/2022 09:16	Cell clean, defeed and shower @ 0900
05/02/2022 09:23	Successful phone call @ 0912 hrs
05/02/2022 10:42	Lunch accepted.
06/02/2022 08:05	Has accepted breakfast but declined his yard time.
06/02/2022 09:31	Cell clean, shower and unsuccessful phone call.
06/02/2022 10:50	Seen by P/O
06/02/2022 11:04	Accepted lunch
06/02/2022 14:58	Successful phone call.
06/02/2022 15:43	Has accepted dinner
07/02/2022 07:53	Prisoner received breakfast
07/02/2022 10:11	Prisoner received a shower, cell clean and a successful phone call
07/02/2022 11:02	Prisoner received lunch
07/02/2022 15:55	Prisoner Received dinner
08/02/2022 07:50	Breakfast issued.
08/02/2022 11:09	Lunch issued.
08/02/2022 13:40	Cell cleaned and showered, declined to have yard. Social phone call made.
08/02/2022 15:50	Dinner issued.
08/02/2022 17:06	Defeed.

Figure 16: A digital supervision log for a prisoner being held under a s.43 separate confinement order at Casuarina Prison.

remove leftover food and cutlery from a cell after mealtime – dehumanise prisoners by diminishing interactions with officers down to a monotonous task required to be completed. Similarly, details of daily welfare-checks are often reduced to a handful of words that give no details but merely confirm the policy-mandated requirement to check-in on the prisoner was completed. These tasks provide opportunities for officers to meaningfully engage with prisoners – perhaps the only people the prisoners may engage with that day – and record valuable insights on the prisoner’s wellbeing.

Observations of the prisoner’s mood or changes in behaviour are also rarely recorded in supervision logs. Such information may help indicate a deterioration in physical or mental health, or a prisoner’s ability to cope while confined. Occasionally, some officers will enter an offender note to describe behaviour or conduct issues, but these are typically written from a security perspective. More detailed and consistent record-keeping requirements across all forms of confinement and management regimes will improve the Department’s oversight and care of prisoners.

Banksia Hill Detention Centre (BHDC) generally provides more detailed notes and descriptions than what we have observed in the adult custodial estate. This follows several years of criticism from the Inspector and recommendations to change their monitoring systems and record-keeping practices. This was particularly relevant for detainees segregated to the Intensive Support Unit (ISU), who are often locked in cell for large parts of their day (OICS, 2018a; OICS, 2018; OICS, 2017; OICS, 2009; OICS, 2012; OICS, 2015). Digital logs regularly provide details of a detainee’s mood, or behaviours that illustrate their level of unrest, such as banging on doors or yelling out. Access to entitlements are logged clearly, and justifications for the denial of entitlements are noted. Out of cell hours are logged in writing, and visually on the offender database through a matrix. While not perfect, this level of detail provides a greater degree of accountability and oversight over the management of detainees confined to the ISU.

Recommendation 9 – Improve the level of detail recorded in supervision logs and occurrence books for prisoners held in confinement or on management regimes

Inconsistent formatting of paper-based log books

The use of paper-based occurrence books also differs across facilities. We observed log books from Acacia, Bandyup, Casuarina and Hakea prisons. The format of the log book and the level of detail varied across the four facilities. For instance:

- Acacia Prison used a single log book for the Detention Unit, which listed movements and individual prisoner’s access to basic entitlements with a tick-box matrix.
- Bandyup and Casuarina had a single log book for their management units that described movements and delivery of entitlements line by line but without specific reference to individual prisoners.
- Hakea used a combination of the two methods and had a dedicated log for the unit, as well as logs for separate wings, providing a good level of detail.
- Bandyup, Casuarina and Hakea only referred to prisoners by their names and not their IDs, making any form of audit or verification difficult to undertake.
- Acacia’s log book had a space for prisoner IDs, but they often did not fill it in.

Log books should provide enough detail to be able to easily identify prisoners and determine if all their entitlements have been met. This, again, presents a risk to the Department should the conditions of a prisoner's confinement be tested in court. Most prisons also complete individual daily entitlement logs, which are located at a prisoner's cell door.

3.6 Internal monitoring practices assist in holding prisons accountable

The Department's operational compliance function forms part of a suite of internal monitoring mechanisms that seek to assure confinement and management regimes are used compliantly. This includes live monitoring of s.43 placements to ensure a high degree of integrity with departmental policies and statutory requirements is maintained.

As part of this process, the Department monitors the management of s.43 placements on-site and reviews documents, occurrence books and supervision logs to verify if all minimum entitlements are being met. It also examines the care and management of s.43 prisoners to assess compliance with relevant policies. Quarterly compliance reports are then prepared, outlining any non-compliant findings to be addressed by the relevant prison. We reviewed a range of s.43 compliance reports and found they act as a good accountability mechanism.

The monitoring and compliance function also conduct directed reviews, which in recent years has included monitoring the management regimes of three high profile prisoners over a year-long period. Individualised monitoring plans were created for each prisoner, which included desktop and in-person monitoring of the management of each prisoner. Monthly and quarterly reports were prepared, outlining areas of non-compliance or areas of concern. We found these processes to be rigorous and provided an increased level of oversight and accountability.

Yearly compliance reviews of metropolitan prisons and bi-yearly reviews of regional prisons are also conducted but are limited to a set of pre-determined risk priorities. These are developed in conjunction with stakeholders and are individualised to each facility. Depending on the agreed set of priorities, they may or may not include a focus on the use of confinement and management regimes. Since 2018, the Department confirmed that separate confinement was reviewed in compliance monitoring activities at:

- Acacia Prison in January 2020 and September 2021
- Casuarina Prison in April 2021
- Hakea Prison in May 2021.

Each facility is also responsible for undertaking its own assurance and risk management practices. The Corrective Services branch of the Department is also subjected to internal audits. These three review functions create the suite of internal monitoring mechanisms operating to ensure the practices of prisons are in accordance with relevant statutory requirements and departmental policy.

Notwithstanding the above, the primary focus on s.43 placements severely limits the level of oversight over the remaining, and more commonly used, forms of confinement. The Department has taken the view that with the limited resources of the operational compliance function, s.43 placements are a higher risk than other forms of confinement and therefore deserve a higher degree of oversight.

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.

Recommendation 10 – Regularly test confinement and management regime compliance for placements other than s.43 placements

Appendix A The Department's response to recommendations

Response to Review:
The use of confinement and management regimes

Response Overview

Introduction

The review into *the use of confinement and management regimes* was announced by the Office of the Inspector of Custodial Services (OICS) on 13 January 2022. 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 4 July 2022, the Department of Justice (the Department) received the draft report from OICS for review and comment. The draft report 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 *Prisons Act 1981* (the Act) provides the legislative authority to issue orders of separate confinement for the good order, good government, and security of a prison. Confinement orders can be issued under section 36(3), section 43 and section 77-79 of the Act. Section 36(3) and section 43 orders are only issued as a last resort, where all other behaviour management options have been exhausted for managing a prisoner with adverse or disruptive behaviour. Confinement under section 77-79 is a form of punishment imposed following a disciplinary hearing or conviction.

The Department conducts separate confinement in accordance with Departmental policies, which are informed by the *Guiding Principles for Corrections in Australia* (CSAC, 2018). The guiding principles are in turn informed by the International human rights frameworks.

As acknowledged by OICS, the Department has introduced new Commissioner's Operating Policy and Procedures (COPPs) which has strengthened the governance for confinement and management regime practices. The COPPs provide greater detail, consistent language and clarify processes making them simpler for staff to understand and reduces the likelihood of misinterpretation.

OICS further notes that prisons across the custodial estate are typically compliant with legislation and policy relating to prisoner behaviour management, although some non-compliance issues have been identified. The Department has since increased its compliance monitoring activities to ensure behaviour management practices are in accordance with legislation and policy, and record keeping practices are being adhered to.

Enhancements are also being made to systems and processes that will assist in the monitoring and oversight of prisoners under confinement orders and on management regimes and will improve document management. A modified supervision plan will identify the behaviours expected of each prisoner on confinement and the entitlements available to them. This will provide prisoners with a clear pathway to progress to standard supervision level.

The use of confinement and management regimes is complex and often requires a level of discretion within policy to effectively reinforce behavioural expectations and manage recurring poor behaviour that impacts on the good order and security of a prison. Judgement calls are made based on the nature and severity of incidents and decisions made as required within the confinement rules to modify a prisoner's poor behaviour.

Prisoners on separate confinement are provided with basic minimum entitlements in line with policy, including the provision of meals, shower access, time out of cell for exercise and fresh air, and social contact via telephone calls and visits.

Where a prisoner declines access to a minimum entitlement, such as time out of cell for exercise, this is recorded by officers managing the prisoner. In addition, prisons can use their discretion to provide prisoners with additional entitlements, including cell-based activities or electrical items, as a good behavior incentive as they see fit.

The excessive use of s.36(3) orders at Acacia Prison (Acacia), privately operated by Serco, will be investigated and the Department will work with Acacia to address any issues identified. The Department's Private Prison Contract Management team has approached Acacia to review the use of s.36(3) orders to ensure compliance with policy and report back on progress at the monthly Contract Management Meetings. In addition, Acacia has commenced case conferences three days per week to assess prisoners on separate confinement regimes and to ensure compliance with legislation and policy is met. Alternative management placement options are also being investigated.

It is acknowledged the confinement of prisoners with acute psychological or psychiatric conditions within a prison environment is not ideal, however the Department has limited resourcing and infrastructure available to provide these prisoners with the required treatment. Prisoners with acute mental health conditions require special care and treatment in a mental health facility such as the Frankland Centre. Due to the shortage of available bedspace at the Frankland Centre, and as acknowledged by OICS there are few alternative accommodation options available, the Department does its best to provide quality care for these prisoners until suitable alternative external accommodation becomes available.

To further support prisoners requiring mental health treatment, the Department has established the Bindi Bindi mental health unit for women at Bandyup Women's Prison, operating for the past year. This 29-bed unit accommodates and treats women from across the custodial estate with a mental illness using clinical care alongside trauma-informed and recovery focused approaches. A further 32-bed mental health unit for men at Casuarina Prison that will be available for prisoners statewide, is also under construction and on track to open in 2024. It is expected male prisoners with acute mental health conditions across the custodial estate will be transferred to the new mental health unit at Casuarina once completed.

The Department's increased focus on the effects of confinement on the mental health of prisoners has resulted in revised policies that are more responsive to mental health considerations. For example, policy requires the involvement of mental health staff during the application process when placing a prisoner with mental illness on separate confinement and during the period of confinement to ensure their mental health is not exacerbated. In addition, policy for the management of prisoners on s.43 separate confinement orders requires a mental health assessment to occur within 72 hours of separate confinement. The requirements will be reinforced amongst staff in all prisons.

With regard to the Department's Disruptive Prisoner Policy (DPP), it should be noted that the DPP was introduced in August 2019 to better manage prisoners who had the potential to impact on the good order and security of the prison. In total, 19 prisoners had periods of confinement under the DPP. It was not the Department's intent to use the policy to replace confinement orders and it acknowledges that on average the DPP led to longer periods of confinement. The Department suspended the DPP in July 2020 in light of prisoner complaints and a review was undertaken. This subsequently led to the DPP being rescinded in December 2021.

In relation to comments in the report by OICS that suggests the Department more regularly places younger prisoners and Aboriginal prisoners under confinement orders or on management regimes, it should be noted that prisoners are placed under confinement orders to manage their behaviours in line with policy, and are not discriminated against due to their ethnicity, age or gender.

Despite the complexities and challenges in managing prisoners in confinement, the Department has supported all 10 (ten) recommendations made in the report and will continue to make further improvements through ongoing review of policies and procedures and the implementation of good governance processes around the use of confinement and management regimes.

Response to Recommendations

1 Ensure Acacia Prison uses s.36(3) in accordance with departmental policy.

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

Response:

The Department's Private Prison Contract Management team has approached Acacia to review the use of s.36(3) orders to ensure compliance with COPP 10.7 – Separate Confinement, and report back on progress at the monthly Contract Management Meetings.

The Operational Compliance Branch will conduct compliance checks to ensure Acacia is operating consistent with the Department's s.36(3) policy.

2 Ensure behaviour management practices are being implemented in compliance with COPP 10.1 Prisoner Behaviour Management.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: 31 July 2023

Response:

To effectively monitor behaviour management practices in accordance with COPP 10.1 – Prisoner Behaviour Management across all prisons, a new electronic supervision log has recently been developed within the Department's Total Offender Management Solutions (TOMS). This will assist in the oversight of prisoner management regimes.

Compliance with COPP 10.1 and the use of the supervision log will be communicated to all facilities and will form part of the Department's ongoing compliance monitoring activities.

The supervision log will also be referenced in COPP 10.1 at the next scheduled policy review.

3 Ensure all yards in management units are compliant with the Act and improve access to fresh air and exercise for prisoners in confinement.

Level of Acceptance: Supported
Responsible Division: Corporate Services
Responsible Directorate: Procurement, Infrastructure and Contracts
Proposed Completion Date: 30 June 2023

Response:

The Department will perform self-assessments of yards within management units at every site to ensure they are compliant with the Act.

The Procurement, Infrastructure and Contracts (PICS) Branch will specifically conduct the assessments for Hakea and Casuarina prisons.

A schedule of works will be prepared following completion of the assessments to address issues that may have been identified.

4 Increase cell-based activities to prisoners in confinement to reduce the negative effects of limited stimulation.

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

Response:

COPP 10.1 authorises Superintendents to provide prisoners on close, basic, standard or earned supervision levels with additional privileges above the minimum entitlements on recognition of modified behaviour.

COPP 10.7 Separate Confinement details the entitlements and privileges for prisoners on confinement regimes.

5 Include mental health assessments by a qualified mental health practitioner in applications to place prisoners on a s.43 separate confinement order.

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

Response:

The management of prisoners on s.43 separate confinement orders is governed under COPP 10.7 which includes that a mental health assessment is to occur at the earliest reasonable opportunity and at latest within 72 hours of separate confinement.

As detailed in section 5.1 - Application Process of COPP 10.7, Superintendents shall consider the impact separate confinement may have for prisoners with vulnerabilities (i.e. disability, mental health conditions), including those on the At-Risk Management System (ARMS) or Support and Monitoring System (SAMS), and those under medical observation. This should be reflected in the application, including management strategies for managing their mental health needs as part of their regime.

Superintendents will be reminded of the policy requirement and its application will form part of the Department's compliance monitoring activities.

6 Enforce the requirement to create supervision plans for every prisoner placed onto a confinement or management regime.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: 31 August 2023

Response:

Enhancements are being made to the existing Supervision Plan to clearly outline reasons for a prisoner's confinement, confinement clearly state minimum entitlements, include a proposed end date and identify behavioural expectations. This will improve the level of detail being recorded and provide prisoners with a clear pathway to progress to standard supervision.

Following implementation of the enhancements, the use of the Supervision Plan will be reinforced and included in compliance monitoring activities.

7 Ensure all supervision plans outline clear reasons for a prisoner's confinement, clearly state all minimum entitlements, and include a proposed end date.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: N/A

Response:

This recommendation will be addressed as part of the Department's response to Recommendation 6.

8 Ensure all prisons use electronic supervision logs on the offender database for all prisoners placed into confinement or on a management regime.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: 31 July 2023

Response:

COPP 10.1 requires the use of electronic supervision logs for prisoners on confinement or on a management regime. This requirement will be reinforced at facilities and included in compliance monitoring activities.

Response to Review:
The use of confinement and management regimes

9 Improve the level of detail recorded in supervision logs and occurrence books for prisoners held in confinement or on management regimes.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons
Proposed Completion Date: N/A

Response:

The recommendation will be addressed as part of the Department's response to Recommendation 8.

10 Regularly test confinement and management regime compliance for placements other than s.43 placements.

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

Response:

As from August 2022, the use of all confinement and management regimes (including the application of s36(3) and the use of observation/medical cells) is incorporated in the compliance monitoring schedule for regular compliance testing across prisons.

Appendix B Serco's response to recommendations



12 August 2022

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



Serco Acacia Prison
Great Eastern Highway
Wooloo WA 6558

Locked Bag 1
Wooloo WA 6558

T +618 9573 3300
F +618 9573 3350

www.serco.com

Dear Mr Ryan

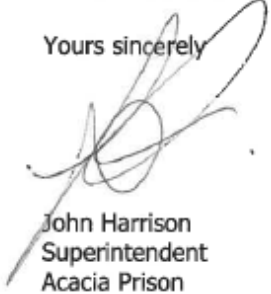
Draft Review – The use of Confinement and Management Regimes

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



John Harrison
Superintendent
Acacia Prison

Care Trust Innovation Pride

Serco Restricted and Sensitive
Serco Australia Pty Limited ACN 003 677 352
Registered office: Level 23, 60 Margaret Street Sydney NSW 2000 Australia

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 orders issued at Acacia makes things more permanent. 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 1.05 days when Acacia was excluded.	Supported - Current Practice / Project	Acacia Prison has taken steps to address the evidence 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 usage 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.	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-comforter 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 Close Supervision placements. 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	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
	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 or 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	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.	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: • electrical equipment (radio and television may be permitted subject to behaviour) • personal possessions, except legal papers relating to any matter before the court • study materials (except those on Close Supervision) • musical instruments • external recreation activities • education or programs • employment opportunities. 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 (Trayler, Ehsai, & Ardar, 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 behaviour may then be used as justification to further extend their period of confinement, creating a harmful cycle (D'Agard, Vankov, & Sullivan, 2016).	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 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 Hales 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 Hales 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.30(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 (COU, 2021c). This included: <ul style="list-style-type: none"> • s.30(3) orders for temporary separate confinement • s.43 separate confinement orders • those serving periods of confinement as a punishment • those restricted to an observation cell • those separated for the purposes of protection • those separated to the Special Handling Unit. 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 ordered 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.30(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

Appendix C 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 2018 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 Prison, Bandyup Women's Prison, Casuarina Prison, Eastern Goldfields Regional Prison, Greenough Regional Prison, Hakea Prison, and Wooroloo Prison Farm.

A key findings briefing was presented to the Department in May 2022.

The draft report was sent to the Department on 4 July 2022 and a response was received on 1 September 2022.

Appendix D Bibliography

- CSAC. (2018). *Guiding Principles for Corrections in Australia*. Corrective Services Administrators' Council.
- Davidson v Director-General, Justice and Community Safety Directorate, [2022] ACTSC 83 (Supreme Court of the Australian Capital Territory April 21, 2022).
- DCS. (2002). *Adult Custodial Rule 1: Management of Prisoners in Confinement*. Perth: Department of Corrective Services.
- DCS. (2003). *Policy Directive 1: Section 43 Placement*. Perth, WA: Department of Corrective Services.
- DCS. (2009). *Policy Directive 3 - Hierarchy of Prisoner Management Regimes*. Perth, WA: Department of Corrective Services.
- DCS. (2013). *Policy Directive 11: Prisoners Placed in Observation Cells and Medical Observation Cells*. Perth, WA: Department of Corrective Services.
- DCS. (2015). *Hakea Prison Local Order 62: Prisoner Placement into Observation, Safe or Multi-purpose Cells*. Perth, WA: Department of Corrective Services.
- DCS. (n.d.). *Operational Instrument 2: Prison Charges*. Perth, WA: Department of Corrective Services.
- Digard, L., Vanko, E., & Sullivan, S. (2018). *Rethinking Restrictive Housing: Lessons Learned from Five U.S. Jail and Prison Systems*. Vera Institute of Justice.
- DOJ. (2016). *At Risk Management System (ARMS) Manual*. Perth, WA: Department of Justice.
- DOJ. (2019). *Prisons Order - No 02/2019 Disruptive Prisoners*. Perth, WA: Department of Justice.
- DOJ. (2021). *COPP 10.7 Separate Confinement*. Perth, WA: Department of Justice.
- DOJ. (2021a). *COPP 10.5 Prison Offences and Charges*. Perth, WA: Department of Justice.
- DOJ. (2021b). *COPP 5.2 Observation Cells*. Perth, WA: Department of Justice.
- DOJ. (2021c). *Deputy Commissioner Broadcast 23/2021: Supervision Levels and Restricted Regimes*. Perth, WA: Department of Justice.
- DOJ. (2021d). *Deputy Commissioners Broadcast 27/2021: Deletion of Disruptive Prisoner Alerts*. Perth, WA: Department of Justice.
- DOJ. (2022). *COPP 10.1 Prisoner Behaviour Management*. Perth, WA: Department of Justice.
- HRLC. (2020, September 16). *Explainer: Solitary Confinement of people in prison*. Retrieved from Human Rights Law Centre: <https://www.hrlc.org.au/factsheets/2020/9/15/explainer-solitary-confinement-of-people-in-prison>

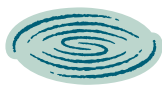
- Jenkin, M. (2019). *Record of Investigation into Death of Mervyn Bell, Bevan Cameron, Brian Honeywood, JS, and Aubrey Wallam*. Perth, WA: Coroner's Court of Western Australia.
- Labrecque, R. (2015). *The effect of solitary confinement on institutional misconduct: a longitudinal evaluation*. University of Cincinnati.
- Legislative Council of Western Australia. (2020, September 17). *Parliamentary Questions*. Retrieved from Parliament of Western Australia: <https://www.parliament.wa.gov.au/parliament/pquest.nsf/viewLAPQuestByDate/9A263B71B18EBF52482585E600218836?opendocument>
- OICS. (2009). *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2012). *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2015). *Report of an Announced Inspection of Banksia Hill Juvenile Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2017). *Behaviour management practices at Banksia Hill Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2018). *Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2018a). *2017 Inspection of Banksia Hill Detention Centre*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2020). *Routine restraint of people in custody in Western Australia*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2021). *Use of force against prisoners in Western Australia*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2021a). *Prisoner access to dental care in Western Australia*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2022). *2021 Inspection of Hakea Prison*. Perth, WA: Office of the Inspector of Custodial Services.
- OICS. (2022a). *Management of prisoners requiring protection*. Perth, WA: Office of the Inspector of Custodial Services.
- Shalev, S. (2008). *A Sourcebook on Solitary Confinement*. London, UK: Mannheim Centre for Criminology.
- Tayer, L., Einat, T., & Antar, A. Y. (2021, December 7). The Long-term Effects of Solitary confinement from the Perspectives of Inmates. *The Prison Journal*, pp. 652-674.

Trigger, R. (2022, March 29). COVID-19 lockdowns see WA prisoners go days without washing or exercise. *ABC News*, pp. <https://www.abc.net.au/news/2022-03-29/wa-prison-tensions-rise-as-covid-19-lockdowns-continue/100934616>.

UN. (2011). *Interim report on torture and other cruel, inhuman or degrading treatment or punishment*. United Nations General Assembly.

UNODC. (2015). *The United Nations Standard Minimum Rules for the Treatment of Prisons (the Nelson Mandela Rules)*. United Nations Office on Drugs and Crime.

Walsh, T., Blaber, H., Smith, C., Cornwell, L., & Blake, K. (2020). *Legal perspectives on solitary confinement in Queensland*. University of Queensland.



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Level 5, Albert Facey House
469 Wellington Street
Perth / Whadjuk Noongar Boodjar
Western Australia 6000
Telephone: +61 8 6551 4200

www.oics.wa.gov.au