



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

Response to Review:

The use of confinement and management regimes

August 2022

Version 1.2

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.

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.