

OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES

# Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

## Statement of Information

August 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.*

## General information

### 1. Provide a brief description of your role and functions including your professional background and qualifications

1. The Office of the Inspector of Custodial Services (OICS) was established in 2000 under an amendment to the Prisons Act 1981, and later as an independent statutory agency governed by the *Inspector of Custodial Services Act 2003* (WA) (the Act). The intention was to:
  - establish an independent inspection regime for places where prisoners, detainees and other persons in custody are held;
  - review certain “custodial services”; and
  - administer an independent visitor services for prisons and places of detention.
2. The Inspector is appointed by the Governor for a term of up to 7 years, which can be extended (s6). My appointment commenced in May 2019, for a term of 5 years.
3. OICS staff are appointed under Part 3 of the *Public Sector Management Act 1994* (WA) (s16).
4. Except as provided by the Act, the Inspector is not subject to direction by the Minister for Corrective Services (the Minister) or any other person in the performance of the Inspector’s functions (s17).

### Functions and Powers

5. At least once every three years the Inspector must inspect each prison, detention centre, court custody centre and certain lock-ups (s19). Following each inspection, the Inspector is to prepare an inspection report containing such advice and recommendations as appropriate to the findings (s20). The Inspector can also inspect a place at any other time and on any number of occasions (s21).
6. Under s22 of the Act, the Inspector may at any time review a “custodial service” (or any aspect of a custodial service) in relation to a prison, detention centre or court custody centre; including a custodial service in relation to one or more particular prisoners, detainees or persons in custody. The Inspector carries out regular liaison visits to custodial facilities in between formal inspections and reviews.
7. The Inspector may at any time prepare a report to the Minister on an occasional inspection (s21) or review (s22) and give advice or make a recommendation as appropriate to the findings (s23).
8. For the purpose of performing the Inspector’s functions, the Inspector (or any person authorised by them) “at any time and with any assistants and equipment” may have “free and unfettered access to” a wide range of people, places and documents or information relevant to prisons, detention centre, court custody centres and lockups (ss 28, 29, and 30).
9. The Act requires the Inspector to deliver all inspection reports (s.20) and occasional inspection reports and review reports (that the Inspector decides to table) to each of the Speaker and President who are required to hold the report for 30 days and then table it on the next sitting day (s34 and 35)

10. The Inspector also administers the Independent Visitor Service (Part 6). Independent Visitors (IVs) are appointed by the Minister, having regard to the advice of the Inspector, for every prison and detention centre for a period of 2 years (s39). Our IVs are a diverse group of community volunteers whose duties are to visit and inspect prisons and detention centres at intervals of not more than 3 months and furnish a written report to the Inspector after each visit including a record of each prisoner complaint received (s40). The Inspector is required to review each report received and follow-up, report and take action as required (s43).

### Professional background and qualifications

11. My recent professional background is as follows:

- Executive Director, Integrity and Risk, Western Australian Public Sector Commission (2018 – 2019)
- Executive Director, Professional Standards and Conduct, Western Australian Department of Education (2011 – 2018)
- Director, Standards and Integrity, Department of Education (2009 – 2011)
- Management Consultant (2006 – 2009)
- Director, Office of Health Review (2002 - 2005)

12. My qualifications and affiliations are as follows:

- BA (Legal Studies)
- Diploma in Business Administration
- Practitioner's Certificate in Mediation and Conciliation
- Certificate IV in Training and Assessment
- Member Australian Institute of Company Directors

2. In exercising your functions under the *Inspector of Custodial Services Act 2003* (WA) (the Act), including the inspection of prisons and detention centres:

a. Do you have any special obligation to have regard to the needs of people in custody with disability?

13. The Act empowers the Inspector to 'inspect certain places where prisoners, detainees or other persons in custody are held'. The *Prisons Act 1981* defines a prisoner as 'a person committed to prison for punishment, on remand, for trial' (s3), while the *Young Offenders Act 1994* defines a detainee as 'a person who is detained in a detention centre' (s3).

14. The Act, the *Prisons Act* and the *Young Offenders Act* are each silent regarding the identification of cohorts of people in custody with disabilities. The Inspector is under no special statutory obligation to consider the needs of people in custody with disability, but their needs and experiences are considered as part of our broader analysis of how the prisons and detention centre provide for all people in custody. Because of the vulnerability of certain marginalised groups in custody, as an agency, the Office (we) has specific regard for their needs. People in custody with disability are one of these groups.

15. We rely on analysis of Department of Justice (the Department) data (e.g. Guardianship alerts) to identify that some prisons have larger cohorts of prisoners with disability than others. This is then reflected in our planning for each inspection, and time is reserved during the inspection to speak with relevant stakeholders such as health care providers, welfare and programs staff, as well as seeking out individual prisoners or groups to hear from those with lived experience.

**b. How do you have regard to the vulnerabilities of people in custody with disability, including intellectual disability?**

16. Our **Revised Code of Inspection Standards for Adult Custodial Services** has regard to a range of international standards and human rights documents (OICS, 2020A, pp. 4-5). Our standards list measures to assess treatment and conditions across the prison estate against international good practice. In revising our inspection standards, we included a set of specific standards for prisoners with disability. These were developed following peak body stakeholder consultation and feedback.
17. We understand that people with disability are vulnerable and often at increased risk in a custodial setting. So, in defining disability within these standards we have taken a broad approach inclusive of people with long-term, physical, mental, intellectual or sensory impairments, and with short term impairments, such as mental illness. We adapted the definition from the 2008 United Nations **Convention on the Rights of Persons with Disabilities** in line with research which indicates that short-term impairments can be exacerbated by periods of imprisonment (People with Disability Australia, 2017).
18. These standards ensure we look at all aspects of the prisoner journey through their custodial stay, starting with early days in custody, duty of care, managing behaviour, daily life, health, security, rehabilitation and reparation, and governance. We consider to what extent prison systems, supports and services facilitate the full participation of people with disability. For example, we consider the absence or efficacy of screening processes on entry to prison, violence reduction strategies, and how disability is considered in behaviour management.
19. We also conduct voluntary, confidential and anonymous pre-inspection survey questionnaires with prisoners to get a snapshot of the prisoner experience. Prisoners are asked if they identify as a person with disability, or if they prefer to not to say. Our staff offer to read and explain questions to prisoners to mitigate literacy deficits, and visual or cognitive impairment. From these surveys, we can see how safe people feel, how usefully they think they spend their time, and how supported they feel.
20. We understand that the proportion of Aboriginal prisoners with disability is high and so we will meet with a sample of Aboriginal prisoners to hear first-hand how they experience the justice system and what could be improved (ADNIP, 2021; ABS, 2021; Shepherd, 2017). And we talk to peer support prisoners who have a welfare and wellbeing focus, and who support vulnerable prisoners. We also spend time in units and prison workplaces talking informally with prisoners about their experiences in custody.

### 3. In relation to the preparation of inspection reports under s 20 of the Act:

#### a. Are you able to make findings or recommendations in relation to the conditions of custody, including the safety, care or welfare, of people in custody with disability?

21. The Act allows the Inspector to make findings following a review or an inspection and include such advice or recommendations as the Inspector considers appropriate in relation to these findings (Part 4). During an inspection, we run focus groups with prisoners and staff to understand the day to day experience of those who live and work there. We gather a wide range of information and data and seek a broad and balanced evidence base. We seek to corroborate such evidence before making a finding. At the conclusion of each inspection or review, we prepare a report comprising evidence, findings and recommendations as per s20 and/or s23 of the Act. We are guided by our standards, but the measures are not prescriptive, and a prison can present evidence that it meets the standard through other means.

#### b. Do you make findings and/or recommendations specifically related to the conditions of custody, including the safety, care or welfare, of people with disability?

22. We regularly make findings and recommendations about the conditions, safety, care and wellbeing of people with disability who are held in custody. For example, during our **2021 Inspection of Hakea Prison**, we made findings and recommendations to address deficits in screening, treatment and amenities for people with disability (OICS, 2022A, pp. 24-25, 58). We were concerned that people with cognitive impairment may not be identified or even self-identify during the initial screening. We recommended the initial health screen be revised to include identification of intellectual disability and cognitive impairment. The Department supported this recommendation (OICS, 2022A, p. 91).

23. We also recommended Hakea address the lack of access to involuntary mental health care which the Department supported. However, our recommendation to renovate cells to support the living requirements of elderly, infirm and disabled prisoners was not supported. The Department responded that it intended to 'house prisoners assessed as elderly, infirm, disabled and those requiring specific living requirements to more suitable prison accommodation such as the dedicated unit at Casuarina and/or Acacia prisons' (OICS, 2022A, p. 86). While this might be a viable alternative in the future, particularly with respect to Casuarina where the unit referred to is still under construction, it does not address the immediate need for prisoners with disability presently accommodated at Hakea Prison.

### 4. Do the Inspector's powers include the power to scrutinise the provision of health services to, and/or access to (and the suitability of) programs, education and work by, people in custody with disability?

24. Under Part 4 of the Act, the Inspector has free and unfettered access to all areas and aspects of prisons and detention centres, including staff, people in custody, documents and infrastructure. An inspection or review can assess all or any aspect/s of the prisoner or detainee experience and available services, including health, mental health, addictions programs, the quality of rehabilitation and reparation opportunities, including as they relate to prisoners with disability.

Following any inspection, we publish a report that addresses each of the areas covered by our inspection standards.

25. In addition, Part 6 of the Act provides for an additional source of external scrutiny through the IV Service. IVs inspect all aspects of prison or detention centre life and report to the Inspector on their findings. They can raise individual issues of concern with prison management, and give voice to vulnerable prisoners, including those with disability.
26. Our Review function conducts thematic reviews and makes systemic findings and recommendations based on analysis of departmental data and documents and through engaging with prisoners and staff. In 2021, in response to the aging prison demographic, we released a review report, **Older Prisoners**, in which we recommended the Department create a policy specific to age related needs and ensure staff are trained in age related mental health approaches (OICS, 2021B, pp. 6, 16).
27. In 2022, we released a review report into the **Management of Prisoners Requiring Protection** and found this group were more vulnerable to mental ill health, self-harm and suicidality compared to mainstream prisoners (OICS, 2022B, pp. 4-8).
28. As well as facing the usual challenges associated with imprisonment and loss of liberty, people with disability face challenges that the rest of the prison population do not. Specifically, in Western Australia, people may be at risk of indefinite detention if they are assessed as unfit to plead. In 2014 we concluded that the treatment of mentally impaired prisoners was unjust and made nine recommendations to improve treatment and outcomes for those deemed unfit to stand trial because of mental impairment (OICS, 2014, pp. iii, vi-vii).

## Hearing from people with disability

### 5. During the Inspector's evidence gathering process, how does the Inspector (and his staff) ensure that its communication with people in custody with disability is effective?

29. While, neither the Inspector or any OICS staff have undertaken specific training in communicating with people with a disability, in undertaking our work, we are always mindful of the communication needs of individuals we encounter, not just those with disability. We follow robust processes for interviewing or meeting with people in custody. We are flexible as to time and place where we meet. We engage in active listening, show respect, patience and understanding, and obtain consent to use people's names or other identifiers in our follow-up of issues. We also check expectations and outcomes, explain our role and what we can and cannot do. And where we can we allow a support person to accompany an individual in our discussions with them.
30. We also ascribe to plain English principles for clear and concise written communication in all our published materials. These are available to people in custody in printed form through the prison and detention centre libraries. Similarly, any direct mail correspondence with them is also drafted in line with these principles.

### 6. In respect of people in custody with hearing impairments, what access, if any, do such people have to interpreting services when communicating with the Inspector or staff?

31. The Inspector does not have a standalone policy in relation to the rights of prisoners with hearing impairments to access interpreting services. However, there are no impediments to accessing such services as under the Act, the Inspector has the 'power to do all things necessary or convenient to be done for or in connection with the performance of the Inspector's functions' (s27). Further, the Inspector has the authority to draw on 'any assistants' for the purpose of carrying out the functions of the office (s28, s29 and s30). The Inspector relies on these powers should the assistance of an interpreter be required by a person in custody when communicating with the Inspector and/or OICS staff.

### 7. Are the Inspector or staff required to undertake disability competency training? If so, what is the content of the training?

32. As part of the Office's employee induction process, all permanent staff are enrolled in the (online) **SBS Inclusion Program** which is designed to give all staff core skills and knowledge around inclusion in general, and specifically around different diversity dimensions. Completion of the **Aboriginal and Torres Strait Islander**, **Core Inclusion**, and **Culture** courses is a mandatory requirement within three months of commencement. Completion of the remaining four courses: **LGBTIQ+**, **Gender**, **Disability**, and **Age** are also strongly encouraged.
33. The Disability course takes approximately 1 hour and 50 minutes to complete in an online format, and it is split into three modules.



34. The mandatory Core Inclusion course also covers the concept of 'intersectionality' and explains the additional or overlapping disadvantage that may affect people with complex social identities, and conversely the positive effect of increasing the capability of a workforce by providing an inclusive environment that allows all people to freely be their authentic selves and have their particular skills be able to be capitalised on.
35. Included below are the learning objectives and outcomes provided by SBS for both the Disability and Core Inclusion courses (SBS and IES Digital, 2022):

### Disability course - Learning objectives

36. Upon completion of the Disability course, you should have:

- *A broad awareness of the many types of disability and the social model of disability*
- *Knowledge of best practices to foster inclusion of disability in the workplace*
- *An understanding of how employing people with disability is good for the bottom line*
- *An understanding of barriers in the workplace preventing inclusion of people with disability*
- *Awareness of the effects of neurodiversity and mental health on inclusion*

37. *The Disability course is designed to improve your understanding of disability in all its guises, and to show how employment options for people with disability can be improved and embraced. The course has been created in collaboration with the Australian Network on Disability (AND). We are indebted to the many people with lived experience who generously gave us their time, to the Workforce Diversity and Inclusion team at the University of Queensland for their invaluable insights and for access to their leading researchers, and to Northcott Disability Services.*

### Core Inclusion course - Learning outcomes

38. Upon completion of the Core Inclusion course, you should be able to:

- *Describe 'diversity' and 'inclusion'*
- *Describe the four key elements, found from DCA's research, that need to be experienced by individuals in order to achieve inclusion in the workplace*
- *Explain the concept of 'intersectionality' and its impact on inclusion*
- *Give examples of the benefits of having an inclusive organisational culture*
- *Recognise the differences between stereotypes and generalisations and relate these to your own behaviour*
- *Recognise that everyone has unconscious biases, and that workplace practices and decision making can be negatively affected by unconscious bias and assumptions*
- *Explain the concept of 'groupthink' and its impact on decision making*
- *Apply different strategies to reduce the impact of unconscious bias*
- *Utilise core inclusion skills or 'people skills' - such as curiosity, respect and open-ended questions*
- *Describe strategies an organisation can take to create a truly inclusive environment*
- *Recognise the role of workplace flexibility as a key enabler of inclusion*
- *Describe the concepts of universal and inclusive design*

**8. Does the Inspector have power to conduct private interviews with a person in custody in the exercise of the Inspector's functions? Do private interviews occur? Are there any impediments to the ability to conduct private interviews?**

39. The Inspector and OICS staff have the power to conduct interviews in private and these frequently occur during inspections and reviews. As noted previously, the Act provides us with free and unfettered access, and this includes access to an individual prisoner or detainee (ss 28(1)(b), 29(1)(b) and 30(1)(b)). In practice, the access provisions in the Act are well understood and we rarely, if ever, experience any impediments to conducting private interviews. Should they arise, they are quickly managed and overcome.

40. Where there may be concerns around the safety or security of our staff, then these can usually be managed by having custodial staff well out of hearing range.

**9. Does the Inspector or staff liaise with any disability support officers employed in prisons?**

41. The Inspector is not aware of any specific disability support officers employed in Western Australian prisons or detention centres. The Act provides the Inspector with free and unfettered access to individuals whose work is concerned with a prison or detention centre. In practice, this means we regularly engage with all staff and this includes staff who provide welfare or other supports to prisoners or detainees, including those with disability. This also includes staff from contracted services.

## Recommendations

10. Does the Inspector have a discretion to request a response from a relevant agency to recommendations made by the Inspector in a report to Parliament, including why steps have not or are not proposed to be taken?
42. It is a standard part of the inspection and review processes to seek a response from the Department (or other relevant agency) to each recommendation in any report, this is required under the Act (s37). This response is sought before the report is published and is included as an appendix to the published document. If a recommendation is not supported or no action is proposed, then an explanation for this is provided in the response.
43. Following an inspection report's publication, progress against recommendations is actively (but informally) monitored in regular liaison visits to custodial facilities (between 2 and 6 times a year, depending on size and risk). Before the next inspection of that custodial facility (required at least once every three years under s19), we request a report on progress against recommendations from the previous report, including an explanation for any lack of action. A similar report on progress against recommendations is requested annually for review reports published in the previous financial year.
44. The Inspector has the discretion to request information of any kind at any other time and this happens often, not necessarily in relation to specific recommendations.
45. In all these cases, although the Inspector is required to give affected parties the opportunity to respond, the Inspector does not have the power to compel a response. The responses we receive are the result of longstanding agreement and cooperation with the Department and formalised through our current **Memorandum of Understanding** (DOJ, 2022C).

## Complaints and Independent Visitor Service

### 11. Noting s 18 of the Act, how does the Inspector ensure that people in custody and staff are able to speak openly and confidentially during the Inspector's evidence gathering process?

46. The Inspector has not historically had issues arise in relation to keeping specific information confidential from the Minister. Likewise, there have been no issues arise in relation to being able to speak openly and confidentially with staff or people in custody.
47. One of the outcomes from the establishment of the Inspector's office is to provide an alternative source of information to the Minister, which is achieved through regular briefings and meetings between the Inspector and the Minister. Confidentiality is a paramount consideration during such discussions. If a request from the Minister for access to confidential information under s18 were to cause the Inspector concerns, then s18(3) could be relied on to resist such a request where 'in the Inspector's opinion, it would not be in the public interest to provide the information'.
48. There are several other provisions in the Act that protect confidentiality and promote open communication from people in custody and staff. Section 47 imposes an obligation not to disclose information except for specified purposes and s48 allows the Inspector to issue a non-disclosure direction to a person who is sent a document in writing. Both provisions attract penalties of up to \$6,000 and imprisonment for two years. Also, s50 creates an offence to victimise a person for providing information to the Inspector with penalties of up to \$8,000 or imprisonment for two years.
49. It is our practice to always ensure that people in custody can speak to us without being overheard by staff. Where necessary, we can arrange to meet with them individually in a private setting. Similarly, staff can request a private meeting if they are not comfortable about speaking with us in front of colleagues. Unless we have agreement from the person we speak to, we do not disclose their identity in any follow up or reporting of the issue they raised.
50. Further, s67 of the *Prisons Act 1981* provides that letters from prisoners that are properly addressed to the Inspector, and other statutory officers, are not to be opened or read by the Superintendent of a prison.

### 12. Please provide a brief description of the Independent Visitor Service.

51. As previously noted, IVs are community volunteers appointed by the Minister to inspect prisons and detention centres. Part 6 of the Act covers the process for their appointment, duties and the Inspector's responsibilities once a report is received from an IV following a visit.
52. The Independent Visitor Service provides another form of inspection of places of detention in addition to the work of the Inspector and OICS staff. The work of IVs in visiting and inspecting also gives people in prisons and detention centres the chance to voice complaints and concerns to help improve standards in custodial places. It is an integral part of the State's accountability mechanisms for people in prison or detention. Under the Act, the Minister appoints Independent Visitors (IVs) on the advice of the Inspector. The Inspector administers and

supports the service on behalf of the Minister. IV reports assist the Inspector to provide advice to the Minister and to inform the work of the Office. The IVs are an experienced and diverse group of community volunteers who bring skill, insight, and common sense to the role. They make a valuable contribution to resolving issues and improving oversight.

### 13. Are communications between an independent prison or detention centre visitor and a person in custody confidential? Is there any legal or other mechanism to protect the confidentiality of such communications?

53. Discussions between IVs and a person in custody generally occur in private and not within earshot of staff. Under the Act, one of the duties of IVs is to make a record of any complaint made by or on behalf of a prisoner or young person in detention. As a matter of practical administration to address issues as quickly as possible, at the end of each visit the IV will debrief with Senior Management with a view to having local issues resolved. After the visit, IVs submit a report to the Inspector outlining the issues that were raised during the visit, this may include local actions already taken by the prison. That report is then forwarded to the custodial facility who is required to provide a response to each issue raised.
54. At times prisoners or detainees may raise issues in confidence with the IVs. That information is not divulged during the debrief but will be still submitted directly to the Inspector. We also ensure that the information is not included in the report submitted to the facility for comment. The protections and confidentiality requirements under the Act, outlined above, also apply.

### 14. How does the Inspector deal with complaints received from people in custody including through the independent visitor scheme?

55. As noted above, prisoners and detainees have access to a confidential mail system (s67 *Prisons Act 1981*). This enables them to write letters to a range of agencies including the Inspector without those letters being opened. The Inspector occasionally receives letters of complaint from people in custody. Under sub-section 26(2) of the Act, the Inspector is prevented from dealing with individual complaints but can refer them to the Ombudsman or any other government agency with the authority to deal with them. The Inspector can deal with a matter raised in a complaint in the context of an inspection or review. Our response to a complainant may include: an outline of the Inspector's role; suggestions for resolution within the facility; or we may confirm that their complaint has been referred to the appropriate agency.
56. However, occasionally issues, or a collection of issues, are raised that are of concern or appear to be systemic in nature. In such cases we may act to address the issue raised through an occasional inspection or a review. Otherwise, it becomes information that informs the Inspector's work that may need to be monitored in the particular facility or across the system more generally as part of our continuous inspection process.
57. In the case of IVs, after each visit they submit a report on their findings (including complaints) to the Inspector. We assess the report and, where necessary, send it to the Department with our comments and requests for additional information. The Department then returns the report with its responses, which we follow up as appropriate.

## Reception screening and assessment of people with disability

15. Has the Inspector inquired into the effectiveness of processes applied when a person with disability comes into custody, related to screening for disability, access to assessments and/or specialist screening or treatment?
58. The Inspector has not undertaken a specific review into the effectiveness of screening processes applied when an individual with disability comes into custody.
59. In December 2020 the Inspector published the **Revised Code of Inspection Standards for Adult Custodial Services** (OICS, 2020A). These are measures used to assess the treatment of and conditions for prisoners in Western Australia. Section 6 of the revised standards specifically address what the Office should look for across all services within the prison environment in providing for the needs of prisoners with a disability. The standards in relation to screening tools are contained in '6.1 Early days in custody' (OICS, 2020A, p. 68).

### *Disability screening*

#### *Standard*

*167. Prisoners are systematically screened for various types of disability on entry to prison and processes are initiated to address their needs.*

#### *Measures*

- *The prison offers a safe and supportive environment, so prisoners feel at ease to disclose any impairments they have, not only those that are diagnosed disabilities.*
  - *The prison has an appropriate, community equivalent range of valid and reliable assessment tools to identify types of disabilities so identification does not rely solely on prisoner self-reporting.*
  - *Screening is prompt, occurring within the first 72 hours of reception to prison. It is conducted by appropriately qualified staff and results are accurately recorded.*
  - *If a disability is diagnosed in prison, due care is taken to communicate details to the prisoner in a language and format they understand.*
  - *If a prisoner's disability will affect their management, including due to communication difficulties and hearing impairment, appropriate information is given to relevant staff and accounted for in the prisoner's individual management plan, subject to privacy considerations.*
60. We have found through our general inspection and review work that prisons use a generic screening tool applied to all adult prisoners received into each facility. This includes questions that address some disability issues. However, we have also found that the tool overly relies on self-reporting by prisoners. It also relies on prior system knowledge, in that records and information from prior periods of imprisonment will be used to identify need.
61. With regard to young people in custody, the Inspector has long stated that processes for the identification of cognitive impairments are inadequate (OICS, 2017, pp. 9-10; OICS, 2013, p. 129). While awareness within the youth estate has increased, screening remains poor and lacks consistency.

## 16. To your knowledge, what disability screening and assessments are undertaken and/or available in Western Australian prisons and detention centres?

62. We are not aware of any formal disability screening or assessments being undertaken on a systemic level. As noted above, there are some limited questions included in the standard intake assessment process.
63. Individual screening for disability would require a referral through the facility's health centre, which may be prompted by a prisoner or detainee self-referring, being referred by other staff (e.g. program or education staff), or the need being identified by health centre staff during their interactions with the individual.
64. Screening for mental health disorders and illness are performed by qualified mental health professionals once an individual has been identified and referred. Referrals can be generated through admission screening or referral from health centre staff.
65. In 2017 our Office was briefed on screening tools used for young offenders to assess Fetal Alcohol Spectrum Disorder (FASD) once a young person has been identified as possibly impacted by the condition upon health screening on admission to Banksia Hill Detention Centre (Banksia Hill). This formed part of significant research by the Telethon Kids Institute which found that more than a third of the young people at Banksia Hill had FASD (Bower C, 2018). The research also found that almost 90 per cent of detainees had at least one domain of severe neurodevelopmental impairment (Bower C, 2018). Since the research project has ended, young people at Banksia Hill have continued to be assessed for neurological impairments where concerns are raised.

## 17. What disability units operate in prisons and detention centres in Western Australia? Do your functions include examining capacity to meet demand and the consequences of unmet demand?

66. Due to a lack of strategic planning for prisoners and detainees with disability, there are few options to appropriately accommodate individuals with disability. Most facilities will have one or two cells designed to accommodate people with a physical disability requiring mobility aids, but not much beyond that. For individuals with cognitive and intellectual disability, there are limited specialist accommodation options. Many end up placed in general population units. Some are placed in prison protection units with the intention to safeguard their particular vulnerabilities. However, these are often not operated with specific policies or procedures in place to manage people with disability. Experience has shown that many are not always safe or appropriate places for particularly vulnerable prisoners or detainees (OICS, 2022B, pp. 3-4).
67. It is part of our routine practice to make findings about the Department's capacity to meet demand. Below are some instances where those findings and observations have been made.

### Casuarina Prison

68. The infirmary for the male prison estate is located at Casuarina Prison. The infirmary performs many functions, including: as a step-down facility from acute hospital care; as a place for aged, infirm and terminally ill prisoners; and to accommodate prisoners with significant physical or

cognitive disabilities. It has some additional resourcing, but it is not designed or serviced as a specific disability unit (OICS, 2021B, p. 13; OICS, 2020B, pp. 21-22). An adjoining unit is also used to accommodate 'vulnerable' prisoners, which may include those with disability. Like the infirmary, it is not designed or serviced to provide services specifically for prisoners with disability (OICS, 2021B; OICS, 2020B).

69. Casuarina is currently undergoing a large-scale expansion project which includes the addition of a forensic mental health unit and high dependency unit. However, these units are not expected to be operational until at least 2024.

### Acacia Prison

70. Acacia is Western Australia's only privately-operated medium security prison. It has a specific assisted care unit that provides accommodation that is appropriate for individuals with a physical disability. It also offers a quieter environment that is more suitable for prisoners with other disabilities or infirmity. However, it is not appropriately staffed to specifically cater for the needs of all prisoners with disability and custodial staff do not receive special training to work in this unit (OICS, Pending).

### Female Prisoners

71. Bandyup Women's Prison has one cell designed to accommodate a prisoner with mobility needs and the crisis care cells at Melaleuca Women's Prison can accommodate women requiring the use of a wheelchair (OICS, 2021B, p. 18).
72. A recently refurbished unit, called the Bindi Bindi Unit, has been opened to provide better supports for women with mental health issues. It has been operating well as a step-up, step-down facility and has additional clinical staff allocated. Initial custodial staff allocated to the unit received mental health training.
73. Minimum security women close to release can also be accommodated at Boronia Pre-Release Centre for Women and this facility provides good access for prisoners requiring mobility assistance (OICS, 2021B, p. 18).



## Banksia Hill Detention Centre

### 18. To your knowledge is there any policy for the support and treatment of young people with disability (including cognitive impairment) at Banksia Hill Detention Centre?

74. The main policy framework for Banksia Hill is located in the Department of Justice, Commissioner's Operating Policy and Procedures (COPP). The COPP is the policy framework for all prisons, not just Banksia Hill. There is no specific policy for the support and treatment of young people in custody with disability, without which support and treatment appear somewhat fragmented. For example, there is no reference to disability in relation to youth detainees in **Placements COPP 2.3** (DOJ, 2020B) or **Health Services COPP 3.1** (DOJ, 2021A).
75. However, there are some references to disability in the policies covering admission, behaviour management and confinement. The **Admissions COPP 2.1** refers to whether an alert should be raised because the youth is known to the Western Australian Disability Services Commission or the NDIS (DOJ, 2020A).
76. The most comprehensive reference to disability is in the **Detainee Behaviour Management COPP 6.1** where one item (F) in a list of behaviour management principles is 'consideration of a disability, including cognitive needs' (DOJ, 2021B, p. 4). COPP 6.1 in referring to communication with detainees, states that custodial officers 'shall consider the detainee's age, gender, personal and social development (including any physical and/or cognitive impairments) when communicating and managing behaviours' (DOJ, 2021B, p. 4).
77. There are also references to disability in the **Confinement COPP 6.10** which instructs Superintendents that: 'Consideration of health requirements such as mental health, disabilities (inclusive of but not restricted to FASD, intellectual and physical) and pregnancy shall be taken into consideration prior to placing a detainee in confinement' (DOJ, 2021C, p. 3). If a youth is placed in confinement an Assistant Superintendent must: 'develop a detainee confinement management plan that is reflective of the detainees known disabilities including FASD, intellectual or physical and mental health risks and needs' (DOJ, 2021C, p. 7).

### 19. What disability support is provided to young people at Banksia Hill Detention Centre? 'Disability support' includes, by way of example, measures to accommodate specific sensory, environmental, behavioural and communication needs, measures to improve physical accessibility, access to medication and mental health care, staff trained in dealing with people with disability and reasonable adjustments.

78. Banksia Hill has few facilities and equipment for youth with physical disability. Only the non-residential admissions unit and specific cells in two general accommodation units (one male and one female) have accessible showers and toilets. Wheelchairs and ambulatory aids are available.
79. The mental health service has a sensory room where a young person can relax while waiting to see, or while seeing, a mental health professional.

80. Studies by the Western Australian Telethon Kids Institute in 2018 found that more than a third of youth at Banksia Hill at that time had FASD and 90 per cent had significant neurodevelopmental impairment (Bower C, 2018). Youth at Banksia Hill continue to be assessed for neurological impairments as the Western Australian Children's Court now request psychological reports for many young people at Banksia Hill about whom concerns are raised. These include general pre-sentence, fitness to plea, neuropsychological (on mental functioning) and multi-disciplinary neurodevelopmental reports (able to diagnose specific conditions such as FASD or autism spectrum disorder). Disability alerts have been added on the Department's offender database for many young people. These alerts include practical information for staff about how to communicate with and manage that particular young person.
81. Subsequent to this research project, many staff were provided training in working with those children with a diagnosis, but this training has since been incorporated in pre-service training.
82. Western Australia lacks adequate forensic mental health beds for young people, so access for acutely unwell youth in custody falls well short of demand. Services in Banksia Hill are limited. Although there is a small psychology team, there is only one mental health nurse and a visiting psychiatrist who provides a morning session once per week in person or through telehealth.
83. Through our inspection work we understand that social and mental pathologies have significant impact on areas of personal development for many youth at the centre. There are various programs to address aspects of these, including individual psychological counselling for some, and a school program that attempts to engage with young people at an appropriate level. We understand that there are some specialist literacy staff employed to support this.
84. We understand that case management staff both within and outside Banksia Hill (including Youth Justice Officers and Child Protection Workers) have a good awareness of disability systems and are increasingly engaging with NDIS in relation to the young people with disabilities.
85. These services, limited as they are, rely on young people being able to access them. It is well documented that staff shortages and critical incidents have significantly impacted the operational regime at Banksia Hill (OICS, 2022C, pp. 3, 6-7, 19; OICS, 2021A, p. 21; OICS, 2018B, pp. 12, 23).

## 20. In your view, what measures should be implemented to provide adequate disability support to detainees?

86. This office has consistently documented out of cell hours and the degree of confinement youth have experienced at Banksia Hill over several years (OICS, 2022C; OICS, 2021A, pp. 20-21; OICS, 2018B). We have reported that this confinement has exacerbated the mental health and wellbeing of young people, prevented their participation in positive and remedial activities, and caused increased resentment and a tendency to engage in destructive behaviours.
87. This level of confinement has been especially prevalent and damaging to young people held in the Intensive Support Unit (ISU) and Cue Unit (for female detainees), many of whom have disability alerts, and histories marked by trauma and abuse.

88. Our most recent report published in April 2022 noted that Banksia Hill was not fit for purpose as a youth detention centre. Many of the young people who end up there would qualify as having a disability of some kind (Bower C, 2018), so the findings in that report are relevant to this question.
89. At the most fundamental level, Western Australia needs to have more than one juvenile detention centre. Ideally, there would be facilities located in regions and facilities that are designed based on the specific needs of particular cohorts of detainees.
90. We have previously recommended that the Department should develop an operational model of care for Banksia Hill that is therapeutic and trauma-informed in its design, and where young people are primarily looked after by a workforce of civilian staff including mental health, occupational therapists, case work professionals, educators, therapists, welfare staff, and recreation officers, with a strong First Nations presence (OICS, 2021A, pp. 6-8). These should work alongside custodial staff.
91. Ideally, there would be a separation between a crisis care/infirmarium area and the area where those detainees exhibiting behavioural issues are housed.
92. In the short term, we would like to see a review of the existing physical infrastructure, available staffing supports and other materials to identify a baseline assessment of need which could be used to facilitate the identification and design of better supports to address the needs of young people with disability in detention.

## 21. To your knowledge, what access to medical and mental health services do detainees currently have in the ISU and Cue Unit?

93. The ISU is adjacent to the health centre and nursing staff are usually accessible. Nurses visit the ISU and Cue to dispense medication and check for injuries after critical incidents, including self-harm or use of force.
94. Many detainees from the ISU or Cue are required to be escorted to the health centre for other treatment which often requires escorts and the use of restraints. We hear that staff availability to undertake these escorts can be limited at times, particularly when there have been multiple incidents occurring around the same time.
95. Health staff, especially mental health and psychology often visit detainees in the ISU or Cue, but sometimes detainees have to be escorted down to the health centre or to the psychologist's office.

## 22. Please make observations as to whether in your opinion understandings of, and attitudes to, disability could play a role in improving conditions in custody for young people?

96. We believe that disability awareness would not only improve conditions for young people in custody but positively contribute to their health and re-socialisation. This should involve:

- a. Further efforts to embed disability-aware and trauma-informed practices in the operating philosophy and model of care for young people, and especially those exhibiting self-harm or other behavioural issues (OICS, 2022C, pp. 12-13; OICS, 2021A, pp. 6-8).
- b. Additional consideration of the diverse needs of detainees with physical disability and opportunities to extend access to spaces, aids and services within the centre (OICS, 2009, p. 20).
- c. Regularly repeat the testing for neurological disability and processes undertaken by Telethon Kids Institute to inform staff of individual needs (refer to questions 16 and 19 above).
- d. Change to the centre's schedule, rostering and staffing to ensure that young people are never confined in cells more than 12 hours in any 24 hours period, preferably much less. This will require an expansion of after school, domestic and recreation activities (OICS, 2021A, p. 21).
- e. Creating separate crisis care/infirmery and behavioural units which are designed on therapeutic principles, with strong connection with nature and culture. These should be capable of accommodating multi-disciplinary staff to provide an effective and engaging 7-day per week program that meets the diverse needs of all detainees, but particularly detainees with any form of disability (OICS, 2021A, pp. 30-34; OICS, 2018A, pp. 53-54; OICS, 2015, pp. 83-84).

**23. In Report 141, you recommended that the most important reform underway is the development of a trauma informed model of care. Please outline what minimum requirements this should entail.**

97. In our **Inspection of the ISU at Banksia Hill**, we noted that the most important reform underway by the Department was the development of a trauma informed model of care (OICS, 2022C, pp. iv-v). The Department told us that this was an existing initiative under development by them at the time we issued a **Show Cause Notice** (Appendix A). It had previously been the subject of specific recommendations in earlier inspection reports (OICS, 2021A, pp. 6-7; OICS, 2018A, pp. 10-11). We were pleased that this work had commenced, but we remained concerned that the Department's response to our broad concerns retained a strong security focus, rather than acknowledging the social, emotional and welfare needs of the young people.
98. If implemented effectively, a trauma informed model of care would provide the overarching strategy and philosophy to guide all staff in their management of young people. Fundamentally, it requires staff to be trained and to fully understand the source and drivers of trauma in young people and how that impacts individual behaviour. This foundation then needs to be at the centre of everything that takes place in the detention centre.
99. In our **2020 Inspection of Banksia Hill**, we noted that an attempt to revitalise the model of care at that time had largely failed (OICS, 2021A). We suggested that a model needed to be more than theoretical. The approach and principles must be clearly understood by staff, embedded in daily practices, and there needed to be a long-term commitment to allow the benefits to materialise. This has been absent at Banksia Hill in recent years.

100. Increasing the number of non-custodial, welfare-focused staff may assist in delivering a trauma informed model of care. In our recent report, we observed that the use of additional welfare staff on the ground, working directly alongside custodial staff, may help management and staff implement a trauma informed operating philosophy. Non-custodial staff with a welfare focus could assist youth custodial officers in de-escalating volatile situations, which in turn may reduce distress in young people. This may also help achieve a better balance between security and welfare, which we feel has been lacking. A non-custodial welfare workforce may also help alleviate the emotional burden on other staff.
101. The Department accepted our recommendation on this issue, and acknowledged a multi-disciplinary approach was necessary for an effective trauma-informed model of care. Progress to date has been slow.

## Appendix A Show Cause Notice



Our ref: ERTB/

17 December 2021

Dr Adam Tomison  
Director General  
Department of Justice  
David Malcolm Justice Centre  
28 Barrack Street  
PERTH WA 6000

Dear Dr Tomison

### **BANKSIA HILL DETENTION CENTRE – SHOW CAUSE NOTICE SECTION 33A *INSPECTOR OF CUSTODIAL SERVICES ACT 2003***

I refer to my letter dated 1 December 2021 in which I advised you that I was commencing an inspection of the Banksia Hill Detention Centre (BHDC) pursuant to section 21 of the *Inspector of Custodial Services Act 2003* (the Act).

Following our preliminary inspection work, which included data analysis, site visits, and interviews and discussions with detainees and staff, I have been provided with a draft preliminary inspection report. Having reviewed the contents of this draft report, I am concerned that a number of detainees held in the Intensive Support Unit (ISU) at the BHDC are being denied their statutory rights as set out in the *Young Offenders Act 1994* (YOA), relevant Departmental policy (i.e. BHDC Standing Order 9a) and the relevant United Nations Standards for the treatment of prisoners and detainees (i.e. the Mandela Rules, Beijing Rules, and the Havana Rules). Consequently, in accordance with section 33A of the Act, I have formed a reasonable suspicion that:

1. There is a serious risk to the care or welfare of detainees held in the ISU at the BHDC; and
2. That detainees are being subjected to cruel, inhuman or degrading treatment in the ISU of the BHDC.

Pursuant to section 33A(3) of the Act I am writing to you, in your capacity of Chief Executive Officer as defined in section 3 of the YOA, to issue a Show Cause Notice (the Notice) relating to my concerns outlined above. Specifically, I am concerned that detainees who are being held in the ISU of the BHDC are regularly not receiving their minimum rights for time out of cell, and further because of that failure they are being treated in a manner that is cruel, inhuman or degrading. Our analysis suggests that detainees have responded to this treatment with an increase in challenging and dangerous behaviours, including assaults, serious self-harm attempts and suicide attempts.

I have enclosed a confidential copy of my preliminary draft inspection report. This draft report is provided in the interests of being transparent with you about the grounds upon which I have formed the suspicion the rights of detainees are not being met. This draft preliminary report sets out analysis of average times detainees in the ISU are spending out of their cell and also uses several case studies for more in-depth analysis. In using these case studies, I have referred to the detainees using their initials and detainee numbers so you are aware of the identity of those cases examined, otherwise it would not be my intention to use any possible identifying details.


I am concerned that most of the factors evident in the current situation at the BHDC are very similar to those that existed prior to the January 2013 riot and the significant disturbances on 4 and 5 May 2017 that have been well documented in several reports by my Office.

Pursuant to section 33A(3)(b) of the Act, I require you to show cause why I should not refer these matters to the Minister. In accordance with section 33A(5) of the Act, you are required to respond to this Notice, either by way of oral or written submission or the provision of other evidence, on or before 1.00pm on Thursday 23 December 2021.

How you may choose to respond to this Notice is of course a matter for you. However, in responding to this Notice, you may wish to consider providing details of actions currently being taken to address the issues and concerns facing the BHDC, how you are planning to manage the ISU, and BHDC more generally, over the coming weeks and beyond into summer, and what timeframes and responsibilities you envisage for these actions.

Given my level of concern, I am seeking assurance that all possible steps are being taken to address the current situation at the BHDC.

Yours sincerely



Eamon Ryan  
Inspector of Custodial Services

Encl.



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