



OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

People in custody with an intellectual disability

July 2024

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 or present.

People in custody with an intellectual disability

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Inspector's Overview

Early identification of people in custody with intellectual disability is essential to providing appropriate care

There has been a welcomed focus on issues faced by people living with disability since the publication of findings from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Many of these findings related to the experience of people with intellectual disability who come into contact with the criminal justice system, particularly those held in some form of custodial environment.

Research shows that people with intellectual disabilities are over-represented amongst people in custody. It is estimated that between 15 and 30 per cent of people in custody have an intellectual or cognitive impairment (Baldry, Clarence, Dowse, & Troller, 2013). This compares to approximately two to three per cent in the general population (AIC, 2017).

Intellectual disabilities are particularly prevalent in the youth custodial estate. A 2018 study of young people in Banksia Hill Detention Centre found 89 per cent had at least one domain of severe neurodevelopmental impairment, and 36 per cent were diagnosed with FASD (Bower, et al., 2018).

This research underpins much of our own work and experience in this area. It also highlights the importance of recognising the challenges people with intellectual disabilities may face while in custody, including being at greater risk of exploitation and abuse. Early identification of people in custody with an intellectual disability is a key safety factor and helps ensure they are provided with appropriate supports and services.

This review examined the identification, management and supports available to people with intellectual disabilities in Western Australian custodial facilities.

In responding to the draft of this report, the Department of Justice agreed that early identification of people in custody with an intellectual disability was a key factor to providing appropriate supports aimed at ensuring such disability does not unfairly disadvantage individuals throughout their rehabilitation journey. They said, and we agree, that identification of people with disability can be complex and often intellectual disability may not be obvious or easily detected.

The Department has commenced several initiatives aimed at addressing some of these challenges. Notably, the introduction of the Functional Impairment Screening Tool (FIST) has resulted in an increase in the numbers of individuals identified with possible cognitive impairment. This is a positive initial step, but it still needs to be developed further. The Department advised us that more work was being done on identifying secondary screening tools for cognitive impairments to help improve identification, and that a longer-term project was looking at validation of the FIST as a reliable screening tool.

The Department's Disability Coordination Team (DCT) is the central liaison point for disability information in the adult custodial environment. But as outlined later in this report, our review found that they are under-resourced for the size and scope of the work they are required to do. Although,

we understand that a recent business case for funding was unsuccessful, this should not be the end of the issue. In response to Recommendation 1 of this report, the Department noted that the findings and recommendations of the Royal Commission are being considered by Government, this is an ideal opportunity for the Department to push for improvements in the resourcing of the DCT.

The Department's acceptance of Recommendation 3 relating to the development of a policy framework for the identification of intellectual disability in young people was very positive. We have already seen some early signs of improvement with the presence in Banksia Hill and Unit 18 of the onsite health team from the Child and Adolescent Forensic Health Service. This initiative is to be commended and encouraged.

These initiatives are positive and a good start on the reforms badly needed to improve early identification and supports available to people in custody with intellectual disability.

An area that requires immediate improvement is the sharing of information between the various disciplines involved in the care of young people and adults with intellectual disability in custody. Our report identifies several limitations around information sharing and silos across different areas in the Department. For example, we identified issues around information transfer when a young person transitions to, or is received into, an adult custodial facility. More generally, there are issues around the sharing of meaningful information about individuals with an identified disability and the complexities this creates for staff managing their behaviour.

Given the research showing the prevalence of intellectual disability in people who come into contact with the criminal justice system, there is an imperative to respond quickly. This point is important because many of the structural reforms identified in our review and elsewhere will take time to implement. Once an intellectual disability is identified in someone received into custody, appropriate information needs to be shared with the staff who are responsible for their day-to-day care. Similarly, those people need to have appropriate knowledge and skills to understand and manage them. Otherwise, many of the issues and challenges identified in this report will remain unaddressed for the foreseeable future.

ACKNOWLEDGEMENTS

It is important to acknowledge the contribution and assistance we received in undertaking this review from key personnel at the Department of Justice and at Serco, the private operator of Acacia Prison.

I acknowledge the contribution and hard work of the team in our office who were involved in undertaking this review. I would particularly acknowledge and thank Scott Young for his work in leading this review and as principal analyst and drafter of this report.

Eamon Ryan
Inspector of Custodial Services

15 July 2024

Executive Summary

Background

No consistent definition of intellectual disability

There is no consistent definition for the term 'intellectual disability'. However, it can be broadly defined as a condition that affects the intellectual functioning and adaptive behaviour of an individual (American Association on Intellectual and Developmental Disabilities, n.d., para, 1). People with an intellectual disability may have trouble with 'communication, memory, understanding, problem solving, motor skills and self-care' (Dew & Gaskin, 2020, p. 5).

It is important to note that intellectual disability is also not a homogenous category. People with intellectual disability have diverse needs and abilities (Cluley, Fyson, & Pilnick, 2019; McSherry, et al., 2017). Some will exhibit mild affects in some areas, whilst others will be severely affected. Comorbidities are also common, particularly for those with an intellectual disability who are in places of custody (Hellenbach, Karatzias, & Brown, 2017). As a result, prisoners or youth detainees with intellectual disability may be at an increased risk of bullying, abuse, and exploitation (Gromley, 2021).

For the purposes of this report, intellectual disability will be used as the collective term for various developmental and cognitive disorders including Fetal Alcohol Spectrum Disorder (FASD), Autism Spectrum Disorder, Attention Deficit Hyperactive Disorder (ADHD) and Acquired Brain Injuries (ABI).

Intellectual disability is over-represented in places of custody

There is growing evidence to suggest that intellectual disability is over-represented in places of custody (Hellenbach, Karatzias, & Brown, 2017; Dodd, Doyle, Dickinson, Buick, & Yates, 2022; Dowse, Rowe, Baldry, & Baker, 2021). However, issues around identification have limited the ability to estimate the prevalence of intellectual disabilities among adult prisons and youth detainees (Dowse, Rowe, Baldry, & Baker, 2021). The invisible nature of intellectual disabilities – where there may be no overt signs of impairment – exacerbate identification issues (Pakunwanich & Mazurek, 2020). Where knowledge is lacking, signs of intellectual disability may also be confused with other disorders (Jonker, Didden, Goedhard, Korzilius, & Nijman, 2021).

Better outcomes for people in custody with an intellectual disability who are identified early but challenges remain

If identification and management of intellectual disabilities occur early, research suggests this can benefit individuals. For instance, McCausland et. al. found with early support and intervention, individuals can avoid prison or at worst reduce their time in custody (2013). The costs to the individual, community and government are then reduced. It is estimated it costs the Department of Justice (the Department) approximately \$408 a day to house a prisoner in Western Australia (DOJ, 2023).

People with an intellectual disability often struggle with solving everyday problems and exhibit high levels of stress that can manifest into anti-social behaviour (Jonker, Didden, Goedhard, Korzilius, & Nijman, 2021; Gromley, 2021). As a result, people in custody with intellectual disabilities often attract unnecessarily high levels of security and are often isolated or excluded from activities aimed at improving rehabilitation outcomes (Hellenbach, Karatzias, & Brown, 2017). Similarly, we previously identified that people in custody with intellectual disabilities were having disproportionate levels of force used against them (OICS, 2021).

A study across prison estates in Victoria, New South Wales, and the Australian Capital Territory found people with disabilities were often housed in protection units or sometimes management units (Dodd, Doyle, Dickinson, Buick, & Yates, 2022). In theory, protection units offer safety for those with a disability. However, in practice they are often placed alongside people with sexual offending histories which could leave them vulnerable to abuse or harm (Dodd, Doyle, Dickinson, Buick, & Yates, 2022). Placement in management units offers a more supervised environment. But, the conditions are more restrictive and are often similar to separate confinement, with limited time out of cell and limited contact with others (Dodd, Doyle, Dickinson, Buick, & Yates, 2022).

These challenges outline the importance of early identification of people in custody with an intellectual disability, and the need for appropriate supports to ensure their disability does not unfairly disadvantage them throughout their rehabilitation journey.

Key findings

The need for an overarching model for people in custody with a disability

Development of an overarching model for people in custody with a disability will help embed disability-aware policies and practices at the various stages of a person's custodial journey. We believe this will help prevent discrimination and disadvantage, improve opportunities for rehabilitation and reintegration, and enable the Department to demonstrate it is meeting its human rights obligations.

Few people have been identified with an intellectual disability, but numbers are increasing

Between 2018 and October 2023, only six per cent of the adult and youth custodial populations were identified as having an intellectual disability or cognitive impairment, which is significantly lower than research estimates. This suggests there could be many people in custody who have not been identified by the Department, and therefore may not receive the supports they require.

However, the number of people identified by the Department as having an intellectual disability or cognitive impairment is increasing and trending upwards, which is encouraging.

Identification of people in custody with an intellectual disability is over-reliant on self-reporting

While there are several avenues available to identify an intellectual disability, the Department is still overly reliant on self-reporting. Consequently, there are almost certainly more persons in custody with an intellectual disability than has been identified. The introduction of a functional impairment screening tool, however, has assisted in identifying more people with cognitive impairments.

Inadequate information-sharing practices within the Department compound the issue of identification. This includes delays in transferring youth detention records promptly and poor sharing of relevant disability-related information across different aspects of the custodial estate.

There are challenges in effectively managing people in custody with an intellectual disability

There are several ongoing challenges in effectively managing people in custody with an intellectual disability. Infrastructure limitations across the custodial estate mean there are few dedicated living areas for people with high needs, and those areas have very limited capacity. There is also a lack of consideration given to known and suspected impairments in behaviour management policies. This is compounded by a lack of ongoing training opportunities for adult and youth custodial staff on intellectual disabilities and potential behavioural signs. However, the Department has indicated their plans to increase training within the youth custodial estate.

Limited adjustments or supports available for people in custody with an intellectual disability

We identified some issues with providing the necessary adjustments and support to prisoners with an intellectual disability who require it. These included barriers preventing both adults and young people from receiving National Disability Insurance Scheme (NDIS) supports while in custody; no tailored criminogenic treatment programs; and poor governance around the use of prisoner carers.

Some supports are provided during education and training, and there is evidence of easy-to-read documentation being used. Prisoners with an intellectual disability were also regularly employed.

Conclusion

Not all people with intellectual disabilities who enter custody in Western Australia are identified or adequately catered for or supported. While improvements to identification processes have occurred, the number of people identified as having an intellectual disability remains low in comparison to research estimates. An over reliance on self-reporting and inadequate information sharing practices compound this issue. As a result, there are likely to be many people in both adult and youth custody with an intellectual disability who are yet to be identified.

For those who are identified, there are limited adjustments or supports available. There are few dedicated living areas available and custodial staff are provided with limited training. The Department would benefit from developing an overarching model or framework to support people in custody with any form of disability to ensure they receive the supports they require throughout their custodial journey of rehabilitation and reintegration.

List of Recommendations

Recommendation	Page	DOJ Response
<p>Recommendation 1</p> <p>Establish an overarching model to guide the custodial journey for people living with a disability.</p>	1	Supported in Principle
<p>Recommendation 2</p> <p>The Government should commit additional resources for the expansion of the Disability Coordination Team within the Department of Justice.</p>	6	Noted
<p>Recommendation 3</p> <p>Develop a policy framework for identifying disabilities in young people who enter custody.</p>	7	Supported
<p>Recommendation 4</p> <p>Commit to sharing Functional Impairment Screening Tool results with custodial staff on the offender database in a manner that respects patient privacy but enables better day-to-day care of people in custody.</p>	9	Supported in Principle
<p>Recommendation 5</p> <p>The Department to review how disability information is captured and shared throughout the estate and identify opportunities to remove information silos and improve consistency of information between different systems and processes.</p>	11	Supported – Current Practice/Project
<p>Recommendation 6</p> <p>Identify and reduce potential barriers that may be preventing people with an intellectual disability from accessing minimum-security facilities.</p>	14	Supported in Principle
<p>Recommendation 7</p> <p>Collaborate with the National Disability Insurance Agency to expand the presence of Justice Liaison Officers across the custodial estate in Western Australia.</p>	20	Noted
<p>Recommendation 8</p> <p>Introduce criminogenic treatment programs tailored for people with an intellectual disability and explore opportunities to adapt existing programs that could also suit their needs.</p>	21	Supported in Principle
<p>Recommendation 9</p> <p>Develop policy guidance to establish the expectations of the prisoner carer role, selection processes, and gratuity arrangements.</p>	23	Supported in Principle

Recommendation 10

Develop a policy to offer prisoners with more severe impairments, who are unable to work or participate in constructive activities, a reasonable base level of income.

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Supported in Principle

1 The need for an overarching model for people in custody with a disability

Throughout this review it was evident that disabilities can impact every stage of a person's custodial journey. We have explored various aspects of this journey in this report – from the perspective of those with an intellectual disability – and highlighted both good practices and areas for improvement. However, often the processes and practices underpinning each stage of this journey are performed in isolation of each other and often without a disability lens. To prevent discrimination and disadvantage, and to provide an equal opportunity for successful rehabilitation and reintegration, there is a need for the Department to develop a holistic and overarching model to guide the custodial journey for people in custody living with a disability.

This model should include:

- An operating philosophy that ensures adults and young people in custody with a disability are treated and managed in a non-discriminatory, non-punitive, and therapeutic way.
- Mapping of key custodial processes such as, but not limited to, reception and induction, security classification, placement decisions, education and training, treatment programs, and preparation for release, and any disability related issues to be considered and relevant policies to be adhered to when undertaking these processes.
- Consideration of particular health and mental health care needs and access to supports.
- Promotion of a culture of collaboration and cooperation to improve information sharing within the Department.
- Promotion of greater integration and collaboration with the NDIS and disability service providers for people within custody, and for people approaching release.
- Disability awareness training requirements for custodial and non-custodial staff.

Such a model would help demonstrate the Department is meeting its human rights obligations to people with disabilities under the *Convention on the Rights of Persons with Disabilities* and the *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*. The Department's existing *Disability Awareness Manual* (2020) and operating procedures for prisoners with a disability (2021) do not provide this overarching framework.

An appropriately resourced Disability Coordination Team could be charged with responsibility for developing and monitoring the implementation of such a model.

Recommendation 1

Establish an overarching model to guide the custodial journey for people living with a disability.

2 The number of people identified with an intellectual disability remains low

Few people in custody have been identified with an intellectual disability in comparison to research estimates. Between 2018 and October 2023, the Department identified 1,786 adult prisoners and youth detainees with either an intellectual disability or cognitive impairment. This represents just six per cent of adult and youth custodial populations during that time.

However, research suggests these figures are not an accurate reflection of the number of people in custody with an intellectual disability. For example, it has been estimated that 25 – 30% of prisoners have a borderline intellectual disability and 10% have a mild intellectual disability (Disability Royal Commission, 2023a). A 2018 study at Banksia Hill Detention Centre found 89% of young people at that time had severe neuro-disabilities and just over one-in-three were also found to have Fetal Alcohol Spectrum Disorder (FASD) (Bower, et al., 2018).

These findings suggest many people in custody with an intellectual disability or cognitive impairment are not identified by the Department, and therefore may not receive the supports they require.

2.1 Adult prisoner intellectual disability population has increased by four per cent

While there have been fewer than expected people identified in custody, we found that the adult intellectual disability population had increased. Between 2018 and 2022, the daily average adult prisoner population declined by around 9%¹. In the same period, the intellectual disability population increased by approximately four per cent and was trending upwards, except for 2021. The reason for this increase is unclear, but could be linked to improvements in identification, such as the introduction of the Functional Impairment Screening Tool (FIST) in late 2021 (discussed in Chapter 3), and improved disability awareness.

Still, it is likely this figure under-represents the true number of people in custody with an intellectual disability. In 2022, 395 prisoners had an intellectual disability representing just under five per cent of the total prison

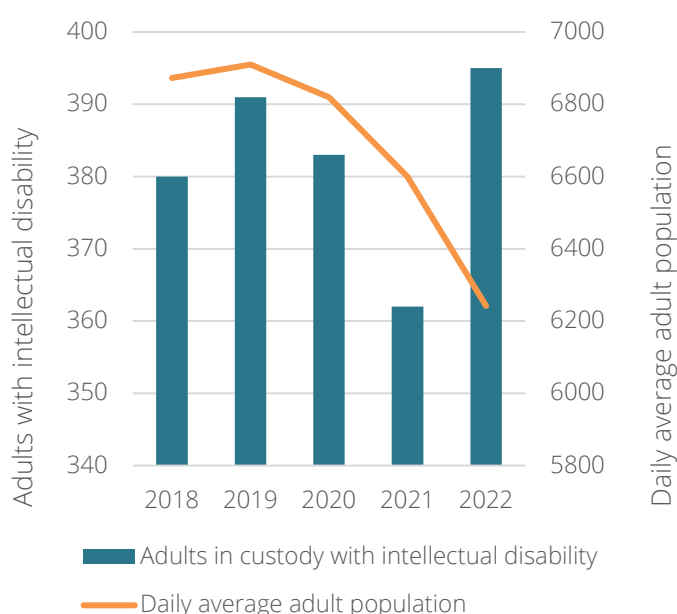


Figure 1: Adult intellectual disability population has increased since 2018.

¹ It should be noted that since 2022 the daily average adult population has increased significantly. We anticipate the number of people in custody with an intellectual disability would have experienced similar growth.

population. This still falls below the estimates outlined in the Disability Royal Commission (Disability Royal Commission, 2023a).

2.2 Identified intellectual disabilities in the youth estate has increased by 44 per cent

Between 2018 and 2022, there was a 44% increase in identified intellectual disabilities among young people in detention. Concurrently, the daily average youth detention population decreased by 27%. In comparison to adult prisons, this is a significant increase in the identification of young people with an intellectual disability.

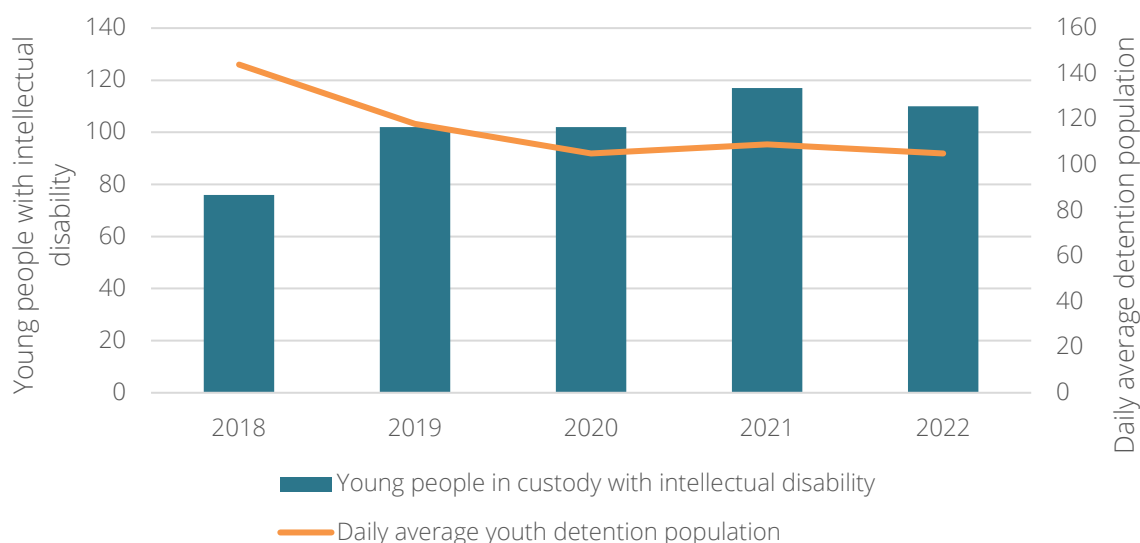


Figure 2: Young people identified with an intellectual disability has increased by 44% in recent years.

These results reflect an improved awareness of cognitive impairments within the youth custodial estate. This has likely been assisted by the 2018 study conducted at Banksia Hill, and efforts by management to engage with external agencies to help identify disabilities. The introduction of the FIST would also have assisted from late 2021 onwards.

2.3 Aboriginal people in custody more likely to have an intellectual disability

In the period reviewed, 60% of adults and 73% of young people in custody with a known intellectual disability or cognitive impairment identified as Aboriginal or Torres Strait Islander. This is despite this population representing only 37% of the total adult population and 65% of the youth population during this time. This demonstrates a significant over-representation of Aboriginal people with an intellectual disability.

This over-representation aligns with findings made by the Disability Royal Commission. It found that the rates of intellectual and psychosocial disability in Aboriginal people in contact with the justice system was disproportionately high. It was also noted that, as of 2015, almost one in four Aboriginal

young people aged 14–21 in detention were estimated to have an intellectual disability compared to only one in 12 non-Aboriginal young people (Disability Royal Commission, 2023a).

These findings highlight the need for culturally appropriate disability identification processes and supports.



73% of young Aboriginal people in custody and 60% of adult Aboriginal prisoners have been identified as having an intellectual disability.

2.4 Number of young people with FASD low compared to research

Between 2018 and 2022, only three per cent of young people who entered custody were recorded in departmental data to have Fetal Alcohol Spectrum Disorder (FASD). This number is considerably lower than the results of a 2018 study at Banksia Hill, which clinically diagnosed 36% of young people at that time with the disorder (Bower, et al., 2018). This suggests many more young people in detention could have undiagnosed FASD, or they have a confirmed diagnosis, but that information has not been effectively recorded on departmental systems.

While these numbers are low, we recognise that FASD can be difficult to diagnose due to limited awareness among health professionals and the limited number of clinicians trained for diagnosis (University of Western Australia, 2022). Furthermore, the clinical signs of FASD can sometimes present like other intellectual disability types (Ergun, Schultz, & Rettig, 2021).

Despite this, FASD remained the most common intellectual disability identified in young people who entered custody between 2018 and 2022, representing 41% of all known intellectual disabilities.

Overall, this suggests there is work to be done in improving awareness and developing better diagnostic tools to identify FASD in young people who are in contact with the justice system.

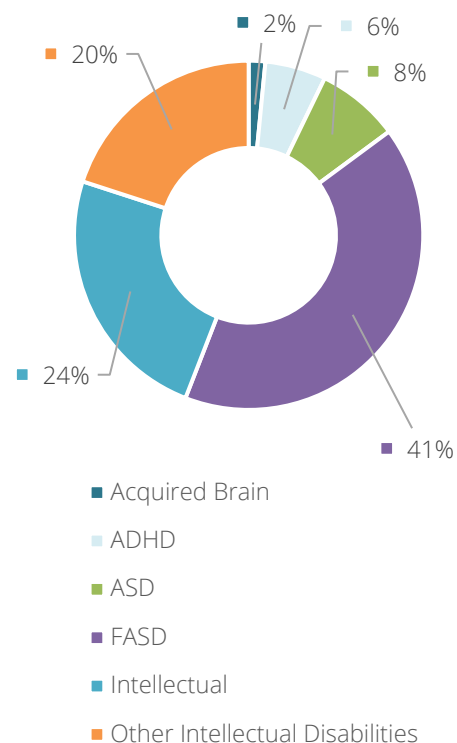


Figure 3: FASD was the most common intellectual disability identified in young people in custody.

3 Identification of intellectual disabilities over-reliant on self-reporting

The Department has systems in place for identifying intellectual disabilities, including the development of the FIST. However, challenges remain with capturing the true number of persons with an intellectual disability in both adult prisons and youth detention. Part of this relates to an over-reliance on self-reporting and issues with the sharing of information on disabilities between non-custodial and custodial staff.

3.1 The Department is over-reliant on prisoners self-reporting their intellectual disability

While there are several ways an adult person in custody can be identified as having an intellectual disability, including contact with external agencies, the Department remains overly-reliant on self-reporting. Typically, self-reporting occurs during the reception in-take process where prisoners are asked if they identify as having a disability or if they are registered with the NDIS.

There are several challenges associated with self-reporting. The reception process can be an emotionally fraught environment, and people entering custody may not feel comfortable disclosing known disabilities. Self-reporting also relies on people in custody having self-awareness, which at times may be lacking, and there may be fear of stigma (DOJ, 2020; Dodd, Doyle, Dickinson, Buick, & Yates, 2022; Rowland, 2022).

In the absence of self-reporting, the Department is reliant on custodial and non-custodial staff referring suspected disabilities to the Disability Coordination Team. However, custodial staff are provided with limited training for identifying cognitive impairments and intellectual disabilities. The introduction of the FIST has also assisted clinical staff in identifying functional cognitive impairments, which may be indicative of an intellectual disability.

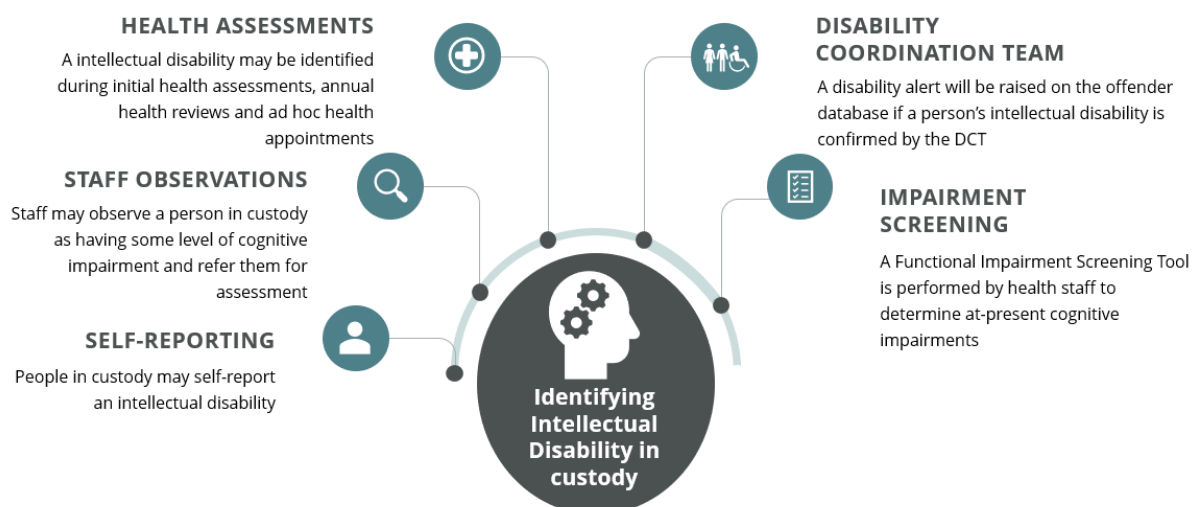


Figure 4: The different ways an intellectual disability can be identified for an adult person in custody.

3.2 Efficiency of the Disability Coordination Team hampered by lack of resources

The Disability Coordination Team (DCT) is the central liaison point for disability information in the adult custodial space but is significantly under-resourced. It is responsible for raising all adult disability alerts on the offender database, providing custodial staff with information regarding a person's disability including support strategies to manage complex needs. The DCT is also responsible for identifying prisoners with intellectual disabilities. The identification of other disability types is managed by the Department's Health Services and Mental Health Alcohol and Other Drugs teams.

We found that despite the DCT's best efforts it is not functioning as intended, is under-resourced and over-stretched. There are only two full-time equivalent (FTE) employees and one 0.5 FTE manager managing disability matters across a custodial estate with a population more than 7,000 people. Referrals to the DCT have increased from 454 in 2012–2013 to 1,384 in 2022–2023. As of May 2023, the DCT had approximately 250 outstanding reviews to conduct on people in custody to confirm suspected disabilities. These reviews can be complex and timely, requiring an assessment of available evidence and liaising with relevant stakeholders. The limited resources available to conduct this work is an additional barrier to intellectual disabilities being identified promptly.

We also found that just over half (51%) of all disability referrals are manually generated by the DCT. Manually generated reports are designed to capture people in custody who were not identified through normal referral channels. This, however, places additional strain on the workload of the DCT and suggests other identification methods are not working.

In January 2023, the Department temporarily increased the DCT manager position to a whole FTE, to assist in progressing the identification of disabilities and access to disability services across the estate. The Department has also advised they are exploring new models to manage disability matters, acknowledging the increasing workload.

The Department has supported in principle a recommendation to expedite development of a well-resourced disability services team for adult prisoners and has prepared a business case for funding (OICS, 2023). An expanded DCT would also take on greater responsibility for assisting people in custody access the NDIS.

Recommendation 2

The Government should commit additional resources for the expansion of the Disability Coordination Team within the Department of Justice.

3.3 No coordinated approach to disability identification in youth custody

Unlike adult custody, there is no coordinated approach to identifying disabilities in young people who enter custody. No central coordinating team exists to review information, liaise with external agencies, and add disability alerts to the offender database. And, no information exists in policy or through the Department's intranet about referral pathways for identifying a disability.

In comparison, individual case managers play a central role in identifying disabilities in the youth estate. Youth Justice Officers and Senior Case Managers are a central point of contact for a young person, maintain contact with a young person's family, have access to legacy information, and coordinate referrals for specialists. They also prepare court reports for sentencing and bail processes, which bring together all the known information about a young person. Through this individualised case management approach disabilities can be identified, and the relevant disability alert added to a young person's profile on the offender database. But this is not a coordinated or systemised approach.

Disabilities can also be identified during the reception in-take process if a young person self-identifies as having a disability or an approved NDIS plan. Custodial staff can also raise concerns with case managers if they suspect a young person has a disability. And, the recent introduction of health specialists at Banksia Hill, including neuropsychologists, is anticipated to have a positive influence on identifying disabilities.

While we recognise the benefits of the case management approach, the lack of coordination risks creating inconsistent and inefficient practices. Developing a policy framework will help embed consistency in how disabilities are identified in young people and outline key roles, responsibilities, and referral pathways. This aligns with a recommendation we made in our review into people in custody with a hearing impairment, which the Department did not support (OICS, 2023). Since that time, the Department advised that interim guidelines have been developed to support case managers raising disability alerts.

Given the prevalence of intellectual disability in young First Nations people, and their over-representation in youth custody, the Department should reconsider developing a policy framework to guide youth disability identification processes.

Recommendation 3

Develop a policy framework for identifying disabilities in young people who enter custody.

3.4 Not all cognitive impairments identified with new functional impairment screening tool

The introduction of the FIST has helped identify more cognitively impaired people. In 2021, the FIST was developed by the Department to assess people in custody against ten domains of functional

impairment. A scoring system is used to reflect severity of impairment from 0 (nil impairment) to 3 (severe impairment). The assessment occurs as part of the initial medical screening with a nurse or doctor early in a person's stay to help staff identify any impairments that may require additional supports or management. Follow-up assessments occur during annual health reviews, providing a point of comparison. In theory, all people entering custody should be screened at some stage. The objective of the FIST is to improve the identification of impairments and potential disabilities and provide the Department with prevalence data across the custodial estate.

Cognitive impairments not always identified using the FIST

Some staff have raised concern that the FIST is likely under-representing the true number of persons in custody with a cognitive impairment. During our review, we identified 355 persons in custody with a known intellectual disability, but who had been assessed under the FIST as having no functional cognitive impairment. This suggests the FIST may not be reliably identifying people in custody with a cognitive impairment.

There are several reasons why this might be the case:

- The FIST is an observational assessment conducted by clinical staff. To establish if an impairment is present, clinical staff need to build rapport with the patient, ask probing questions, and observe how they behave and interact. The effectiveness of this is dependent on the relative experience of the clinician and the patient's willingness to engage.
- The time at which the assessment is conducted can also be a contributing factor. Staff informed us that the FIST assessment is better administered when a person in custody is more settled rather than during the reception process or within the first few days of custody.
- Cognitive impairments can also be difficult to identify. For some intellectual disabilities, there may be no obvious indications of a disability (Pakunwanich & Mazurek, 2020). For instance, some people in custody with FASD show few signs of a functional impairment.

To improve the identification of cognitive impairments with the FIST, the Department has provided additional training to clinical staff on insight and awareness. The Department is also exploring secondary assessment tools for cognitive assessments to help improve identification.

Despite some limitations we acknowledge that the introduction of the FIST has helped improve the identification of people in custody with intellectual impairments. Continued refinements of the tool will help improve its efficacy and usefulness for the Department.

FIST results have not been shared effectively with non-clinical staff

Whilst the FIST has improved the Department's awareness of cognitive impairments across the custodial estate, this information has not been effectively shared beyond clinical staff. As of November 2023:

- FIST results were not being imported into the offender database or manually recorded alongside each person's medical status on the offender database.

- The Department advised that FIST information was available through disability alerts, although we found no evidence of this. And, the DCT (responsible for adding disability alerts) informed us that they did not have access to the FIST results.
- The Department also advised that outcomes from the FIST were recorded in 'release of information' forms provided to external providers, and this was available for viewing by all staff. We were later advised that this was an informal process: the outcomes from the FIST could be shared via conversations with medical staff, medical alerts on the offender database and disability flags. Although we have found inconsistencies with how information is shared across these areas.

The Department also provided conflicting information to us regarding its intent to share FIST results with non-clinical staff. The Department informed us the FIST was designed with the purpose of sharing the results with non-clinical staff to help support the management of people in custody. Knowledge of a person's functional capacity could be used to inform their accommodation needs, support requirements and suitability for placement at other facilities. This aligns with statements Department staff made before the Disability Royal Commission (2022).

However, senior Department staff advised us there was no intention of sharing FIST results with custodial staff. It was argued that this information was not required for custodial staff to perform their work, and they were too time poor and managed too many adult prisoners or youth detainees to consider such information.

Overall, we believe FIST results should be shared with custodial staff who are responsible for the day-to-day care and management of people in custody. Information from the FIST will assist custodial staff to understand individual vulnerabilities and support needs, which will make the management of the people under their care easier.

The Department's Health Services advised it was progressing various options for sharing FIST results on the offender database, including the use of a traffic light system to indicate severity of impairments. High-level summary reports have also been made available to prison management to help them understand the prevalence of impairments across their facility. However, these reports do not contain individualised information to help with the day-to-day care of people in custody. The department should commit to sharing FIST results in a format that assists custodial staff in managing the daily living needs of people in custody with an intellectual disability.

Recommendation 4

Commit to sharing Functional Impairment Screening Tool results with custodial staff on the offender database in a manner that respects patient privacy but enables better day-to-day care of people in custody.

3.5 Information silos prevent the sharing of disability information

Throughout this review it became evident that information silos were preventing the communication of known disabilities or support strategies between different parts of the Department. This was particularly evident when a young person transitioned into adult custody.

During this process, any disability information about the young person would not automatically be transferred with them. Under the *Young Offenders Act 1994 (WA)* the DCT are required to contact the youth services team within the Department to obtain any relevant information before raising a disability alert on their adult profile on the offender database. However, the DCT would only be alerted to do this work if triggered by a referral during the reception in-take process. As a result, even if the Department knew a young person had a disability, that information would not always be transferred across to their adult profile if they later entered adult custody.

Admission officers in the adult estate can also submit a written request to transfer information about an individual between youth and adult custody. This can include known medical conditions or disabilities, recent mental health care, any known behavioural concerns, and any other relevant information (DOJ, 2022a).

However, the quality of the information received from Banksia Hill can vary. We were told reports received were often brief, overemphasised security-related information and ignored other information, such as disabilities. In response to this issue, Banksia Hill advised that case managers are now completing this task to improve the quality of reports provided. Though, they noted it was incumbent on the admissions officers to share that information with the appropriate staff within the adult facility, which does not always occur.

More recently amendments to the *Young Offenders Act 1994 (WA)* have helped streamline the transfer of information. Where a young person transfers directly into adult custody, information held by the Department's youth services team can be shared automatically with the adult estate. The Department have also informed us that it is currently reviewing all information sharing processes in relation to young offenders.

We also identified examples of inconsistencies in how information is shared throughout the prison estate. We found many areas within the custodial estate, including reception, health, management and placement, education, and in the transition to release, do not reliably share information with each other creating information silos.

For example, the Department's Electronic Health Online (ECHO) system has a single profile for everyone. This means if a young person later enters adult custody, ECHO retains one profile for the individual and it contains all their relevant health information. However, this information, including diagnosed disabilities, is available to clinical staff only.

To demonstrate the impact of information silos we have provided a case study. It shows how information about a person's disability was not effectively shared throughout their first year within the adult custodial estate. A pseudonym has been used to protect their identity. We encourage the Department to breakdown information silos to help improve the identification and management of people in custody with disabilities.

Recommendation 5

The Department should review how disability information is captured and shared throughout the estate and identify opportunities to remove information silos and improve consistency of information between different systems and processes.

CASE STUDY: MAX

Transfer from Banksia Hill to Hakea

27TH MAY 2022

Arrived at Hakea, after direct transfer from Banksia Hill with extensive juvenile record, FASD diagnosis and support strategy. This information was not transferred.



Reception at Hakea

Max does not disclose his FASD diagnosis to staff during the reception in-take process. As a result, there is no automated referral to the Disability Coordination Team.

Management and Placement

30TH MAY 2022

Staff complete his management and placement assessment. Under the medical section, his FASD diagnosis is not included.



Treatment Assessment

10TH JUNE 2022

Max's treatment assessment details his FASD diagnosis, language disorder, and learning difficulties but this information does not appear on any other form or database.

Transferred to Albany

18TH JULY 2022



Education and Vocational Training Checklist

13TH SEPTEMBER 2022

Max's education assessment is completed. It finds no evidence of any learning difficulties, despite it being noted in his treatment assessment.

Transfer to Casuarina

18TH OCTOBER 2022



Transfer to Albany

22ND MAY 2023

Medical records incomplete

JUNE 2023

We reviewed Max's Electronic Health Online records and find no information regarding his FASD diagnosis, despite this being known to the Department.



Transitional Manager

13TH JUNE 2023

As Max is coming up for release, the transitional manager makes an inquiry to health for any medical-related information to support a referral to a reintegration provider. Health finds mental health related issues, including self-harm, but no indication of FASD or learning difficulties.

Disability flags raised on offender database

21ST JUNE 2023

Max's disability flags and support strategies are finally raised on the offender database, more than one year after transferring to adult prison.



4 There are challenges in effectively managing people in custody with an intellectual disability

There are several concerns raised around the appropriate management of people in custody with an intellectual disability. There are limited dedicated or specialist living areas, behaviour management and prison charge policies do not provide enough guidance for custodial staff, and current ongoing training options for staff in disability is limited.

4.1 Limited dedicated living areas for prisoners with complex needs

Across the custodial estate there are limited dedicated living units for adult prisoners with an intellectual disability or other complex needs. At the time of writing, this included:

- Unit 16 A Wing at Casuarina Prison (32 beds)
- the Bindi-Bindi unit at Bandyup Women's Prison (23 beds), and
- Foxtrot Unit at Acacia Prison (20 beds).

While the infrastructure and design of these units are similar to mainstream units, they often provide a consistent workforce. This provides staff an opportunity to develop better relationships with the prisoners and better understand their needs. This helps create a more supportive, stable, and predictable environment. Predictable environments are generally more therapeutic for people with an intellectual disability, as frequent changes can increase stress, anxiety, depression and withdrawal (Vetri, et al., 2021).

However, there is limited capacity in these units and beds are not readily available. As a result, many prisoners with an intellectual disability – who would benefit from a more supportive environment – are housed in the general population where they are less likely to have their needs met and may be at an increased risk of bullying and exploitation.

Further, custodial staff working in these environments are not provided additional training. Instead, we were advised officers are selected for their empathy, compassion, and capacity to deal with prisoners with complex needs. For instance, one prison officer informed us he was selected because of his background in mental health. All officers working in these environments should be provided with additional specialist training in recognition of the complex cohort they are working closely with.

4.2 Few prisoners with an intellectual disability were placed at minimum-security facilities

As at March 2023, only 25 prisoners with a known intellectual disability were placed at minimum-security prisons and prison farms. We re-tested the data in October 2023 and again found only 23 prisoners at these facilities. This suggests that prisoners with an intellectual disability are not regularly gaining access to the rehabilitation and reintegration opportunities available at these minimum-security facilities.

The barriers preventing access to these facilities is unclear. Anecdotally, some staff noted there is an expectation that prisoners will be able to work unsupervised at minimum-security prison farms. Some prisoners with a severe intellectual disability may require more care and supervision which is not always available at these minimum-security facilities. However, some prisoners with an intellectual disability are high functioning and therefore would not be disadvantaged in this way.

We acknowledge that placement decisions and security ratings are complex and consider several factors. We encourage the Department to explore the potential barriers that may be preventing people with an intellectual disability from accessing minimum-security facilities. And, where possible, prisoners with an intellectual disability should be given the opportunity of placement at prison farms, or other low-security or enhanced privilege facilities, where there are greater opportunities to engage in rehabilitation and reintegration activities.

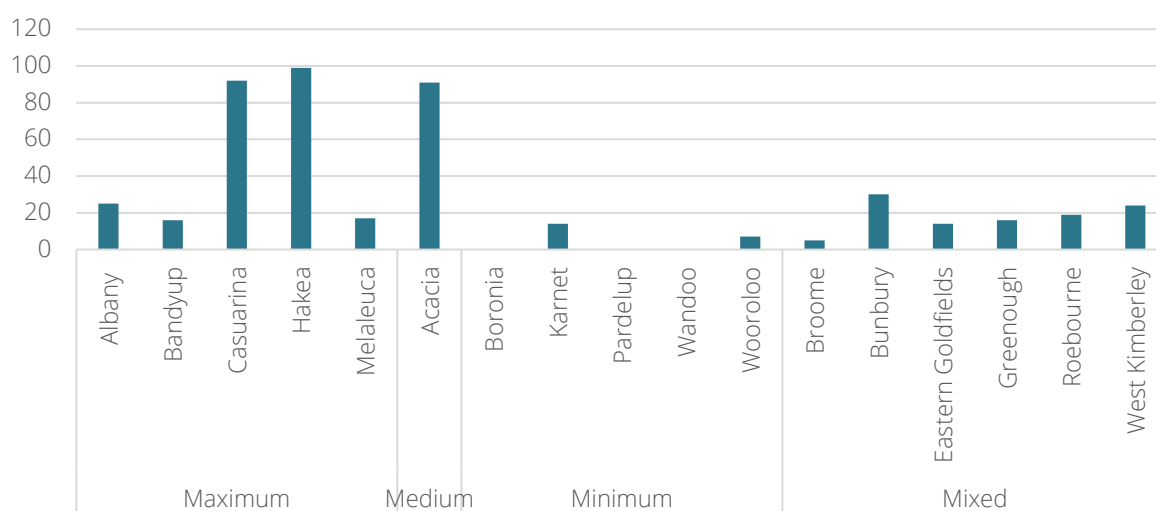


Figure 5: Placement of prisoners with an intellectual disability as of October 2023 mostly excluded minimum-security facilities.

Recommendation 6

Identify and reduce potential barriers that may be preventing people with an intellectual disability from accessing minimum-security facilities.

4.3 Behaviour policies need to consider known or suspected impairments and disabilities

Adult and youth behaviour management policies were found to lack clarity and did not provide enough guidance around managing known or suspected cognitive impairments or intellectual disabilities. When considering disciplinary action for a prisoner with an intellectual disability the Department advised that staff must consider the operating policy for prisoners with a disability, which reinforces a need for procedural fairness, the right to a support person and clear

communication principles. However, the policy does not include any explicit provisions around disability-aware behaviour management principles.

The Department's adult behaviour management policy recognises that unusual behaviour may be a sign of a cognitive impairment (DOJ, 2022b). However, there is no further mention throughout the document or guidance for decision-makers to consider how a known or suspected impairment or disability may relate to, or partly explain, the misconduct or how to manage it.

Similarly, the Department's policy on prison charges gives superintendents discretion to withdraw a charge for an adult prisoner with a cognitive impairment. It states:

The Superintendent might consider it appropriate to withdraw a charge, utilising alternative prison management options, where in their individual assessment of a prisoner with a recognised cognitive impairment or mental health condition, the impact of proceedings or the imposition of a penalty may be overly detrimental (DOJ, 2021c, p. 8).

The use of the word 'might' in this context suggests the Superintendent may or may not be inclined to consider how a penalty, such as separate confinement, may be detrimental to a prisoner with a cognitive impairment. The same discretion is not provided to Visiting Justices if they hear the charge on behalf of the Superintendent. Where a cognitive impairment is known, it is our view that Superintendents and Visiting Justices *must* consider the impact of a prison charge penalty in the context of prisoner's impairment or disability.

Similarly, behaviour management policy in the youth estate acknowledges the role cognitive impairments may play in contributing towards disordered behaviour (DOJ, 2021a). In practice, as part of Banksia Hill's model of care implementation, staff are encouraged to participate in reflective practice. This involves staff reflecting on decisions made and how behaviour management plans are implemented.

However, there is no mention of cognitive impairment or intellectual disability under the detention centre charges policy (DOJ, 2021b). As such, no guidance is provided to superintendents to withdraw or suspend a charge if there is a known or suspected impairment, or if the penalty may be overly detrimental to the wellbeing of the young person (DOJ, 2021b). It would seem reasonable to apply the same discretion allowed in the adult estate to withdraw charges where there is a cognitive impairment or mental health condition.

All decision-makers and custodial staff should be encouraged to take a disability-aware approach to behaviour management, recognising where behaviour is linked to an impairment or disability. In response to our review into hearing-impaired people in custody, the Department supported a recommendation to amend custodial policies to encourage staff to consider how impairments or disability may help explain poor behaviour (OICS, 2023). We will monitor the Department's progress in making these changes.

Building better relationships can also lead to more effective behaviour management in practice, addressing behavioural issues which presents a challenge for both prison and youth custodial

officers. Some people in custody with an intellectual disability may struggle to understand or comply with instructions, which is often interpreted as showing disrespect or being deliberately non-compliant (OICS, 2021). The Disability Royal Commission heard evidence that this often results in custodial staff responding with punitive measures (Disability Royal Commission, 2023a). Staff have also told us they often find it difficult to identify whether behaviour is linked to a disability or impairment. This lack of understanding, and reliance on a securitised response, is demonstrated in our previous finding that 30% of use of force incidents involved prisoners with an intellectual disability (OICS, 2021).

In the absence of possessing clinical knowledge, custodial staff would benefit from more regular disability awareness training. Custodial staff should also be encouraged to observe behaviour and develop more effective working relationships with prisoners and detainees. This may help staff identify signs of escalating behaviour and take early mediating action.

4.4 Prison Officers and Youth Custodial Officers receive no ongoing disability training

Disability awareness training for custodial staff is fundamentally inadequate. The Department informed us that disability training is provided as part of the entry-level training program for custodial staff, including:

- 1.5 hours of disability awareness training for trainee prison officers, and
- 1.5 hours of disability awareness training and 3 hours of FASD training for trainee youth custodial staff.

There is no ongoing refresher training thereafter.

The current training regime is wholly inadequate for the Department to manage the needs and wellbeing of people with a disability in custody safely and respectfully. Given the extent of disability across the adult and youth custodial populations, it is unacceptable that this has been allowed to occur.

Staff also expressed that disability training was inadequate. In 2023, 61% of 115 prison officers we surveyed believed they had not received adequate training in the management of prisoners with an intellectual disability. This sentiment was also reflected in many conversations we had with officers.

In response to the Disability Royal Commission, the Department has recognised the lack of ongoing disability training for custodial staff. They advised there are plans to introduce a four-module suite of disability training for all existing adult custodial staff, and ongoing refresher requirements. The Department is also in conversation with the Telethon Kids Institute and No FASD to significantly increase training opportunities for youth custodial staff. These are positive steps that we will continue to monitor.

Nearly two thirds of prison officers surveyed felt they did not receive adequate training on managing prisoners with an intellectual disability.

5 Limited adjustments or supports available for people in custody with an intellectual disability

We found limited adjustments had been made for people in custody with an intellectual disability across the various aspects of daily life in custody. Accessing the NDIS and supporting prisoners with an approved NDIS plan remains a barrier. Though, we were pleased to find education and treatment program staff assess for functional impairments, and the Department does provide some communication support to prisoners. Although, some easy-to-read documentation could be made clearer and used more frequently.

5.1 Barriers prevent people in custody accessing and receiving NDIS supports

There are several barriers preventing people in custody with an intellectual disability from receiving NDIS supports. For those who enter custody without a pre-existing NDIS plan, the first barrier they experience is demonstrating they meet the eligibility criteria. Typically, this requires a neurocognitive assessment to determine the level of cognitive function. The Department advised adults in custody can access these assessments through the following pathways:

- privately funded by the prisoner or their family, or
- referral to the neuroscience service of Graylands Hospital, or
- referral to the neurodevelopment assessment team at the Department of Communities.

While these pathways exist, in practice they are often inaccessible for the following reasons:

- Most prisoners cannot fund their own assessments.
- Graylands Hospital accepts only a limited number of referrals and there is a waiting list of approximately 18 months for an assessment. The Department was unaware of any person in custody who had attempted this pathway.
- The neurodevelopment assessment team at Department of Communities does not take referrals from the Department.

Overall, it is highly unlikely that an adult prisoner with an intellectual disability will have an assessment completed during their custodial sentence. Further, the Department's DCT does not currently have the capacity to assist adult prisoners with a disability to apply for the NDIS. We understood the Department's proposed expansion of the DCT would include assisting people in custody to access the NDIS.

Pre-sentence reports can assist youth in custody access the NDIS

In the youth custodial estate, pre-sentence neurocognitive assessment reports can assist young people gain access to the NDIS. These reports are typically ordered by the courts prior to sentencing to determine the appropriate sentence. Under the *Sentencing Act 1995 (WA)*, the Department can request access to these reports to help inform their management and care of the young person while they are in custody.

Staff informed us that processes are in place to ensure access to neurocognitive assessments. Youth Justice Officers (YJOs), who are responsible for raising disability flags on the offender management database, are provided with all reports that are prepared by the courts. Typically, YJOs have had extensive contact with the young person and their family prior to admission so they are aware of any reports completed and the young person's specific needs.

However, we were advised in some instances the information contained in pre-sentence reports did not always meet the threshold for eligibility with the NDIS. Where this occurs, the Department will attempt to find other supplementary evidence about a young person from other sources. In some cases, however, there is not enough evidence available to support an application for the NDIS and this means further assessments will need to be completed. We were informed there was an effort from the Department to work with authors of pre-sentence reports to ensure the right information was being included.

Average time in youth custody a barrier to obtaining an assessment, but resources are improving

The average length of stay in youth custody continues to be a barrier for young people accessing neurocognitive assessments. As of August 2023, the average stay for a young person was approximately 27 days. But it takes approximately 18 months for a specialist appointment to conduct a neurocognitive assessment. This means often trying to follow-up with young people while in the community when their appointment nears, which can be difficult (Disability Royal Commission, 2022).

To help address this problem, in June 2023 the Western Australian government announced the introduction of a multi-disciplinary team (MDT) of health professionals embedded at Banksia Hill. The proposed MDT would include 'mentors, Aboriginal support officers, psychologists, and other specialists' (WA Government, 2023, para. 8). The introduction of the MDT will allow for some assessments to be completed in-house, which will reduce assessment wait times and help more young people to access the NDIS while in custody. This is a positive initiative that should result in more timely assessments being completed.

Barriers to people with an approved NDIS support plan

For people in custody with an approved NDIS plan, we were informed of several barriers that were preventing access to approved supports. This included:

- Applications for NDIS support specialists and coordinators to attend official visits were often delayed or in some cases denied, including visits via video link.
- NDIS staff not wanting to enter custodial facilities for safety reasons, instead only providing assistance via video and telephone services. This limits the support people in custody receive, especially for those with communication disorders.
- In some cases, NDIS external specialists only gaining access by accompanying established official visitors and service providers including lawyers, prison visiting services and reintegration providers.

- Some facilities having limited capacity in official visits to facilitate the demand for external NDIS support.
- NDIS not being notified when a person enters custody, delaying necessary supports.

In addition, we were informed that under Section 65 of the *Prisons Act 1981* (WA) a NDIS support worker can enter a prison facility to support a person in custody. However, a sponsor letter for each individual prisoner is required from the Director General of the Department, or their delegate. In a situation where a NDIS support person is assisting multiple clients at once, this would require multiple sponsor letters and multiple approvals. In addition, if a prisoner is transferred to another prison, this requires another application to be approved. These are administrative barriers that can prevent access to NDIS supports.

Where a NDIS support person is allowed access, there are also infrastructure limitations. Prisons are designed with a security focus and often have limited spaces available for delivering supports for prisoners with complex needs, such as physiotherapy. Often this results in NDIS supports being restricted to the official visits area, or not being provided at all.

For instance, an external NDIS funded occupational therapist advised that they were unable to assess the daily living and support needs of a prisoner in their unit because they were limited to meeting with them in the official visitor's area. This meant the prisoner would not have been provided with additional supports to help them with their day-to-day living needs while in custody.

Role of Justice Liaison Officer limited

The role and function of National Disability Insurance Agency (NDIA) Justice Liaison Officers (JLOs) in the custodial estate appears to be limited and underutilised. Introduced in 2020, their primary purpose is to 'assist current and prospective NDIS participants who are approaching release to have appropriate mainstream and NDIS supports in place as they commence transitioning to the community' (Neville, 2021, p. 7). In November 2023, we were advised that Western Australia had four JLOs for the entire custodial estate:

- one based at Banksia Hill
- one based at Bandyup Women's Prison, and
- two based at the NDIA head office.

Serco advised it was also in conversation with the NDIA to establish a permanent JLO presence at Acacia Prison.

However, some staff at Bandyup did not understand the role and function of the JLO. Staff told us they did not believe JLOs were important, and some were completely unaware of their existence. Still, it was recognised there was a need for staff who had knowledge of the NDIS and disability.

Conversely, the JLO at Banksia Hill appeared to have a more clearly defined role. There was an established relationship with the Banksia Hill staff, and they worked closely with management on NDIS-related issues.

Unfortunately, as of April 2024 we were informed that both JLOs at Bandyup and Banksia Hill were no longer present on-site. The JLO's presence at Bandyup was limited to a single point of contact who had since left the Department. As no relationship had been established beyond this point of contact, there was no longer a JLO presence at Bandyup. This resource has subsequently been moved to work alongside the DCT, which has proved to be useful. DCT staff informed us there was a push to restore the role at Banksia Hill.

With the prevalence of disability across the custodial estate, there is a need to improve disability awareness and better connect people in custody with the NDIS and other services. With the DCT limited in its resources and capacity to assist with NDIS matters, the Department would benefit from working more closely with the NDIS to increase the number of JLOs operating on-site at prisons and youth detention facilities.

Recommendation 7

Collaborate with the National Disability Insurance Agency to increase the number of Justice Liaison Officers across the custodial estate in Western Australia.

5.2 There are no criminogenic programs tailored for prisoners with intellectual disabilities

The Department currently has no criminogenic treatment programs designed to meet the specific needs of adult prisoners with an intellectual disability. Access to relevant treatment programs is an important component of rehabilitation, helping prisoners prepare for release and reintegration back into the community. In 2019, an internal review was conducted into the Department's suite of criminogenic programs and found the only program tailored for people with an intellectual disability had been discontinued (Tyler, 2019). Analysis of the success of the program found 75% of participants did not return to prison after two years of release (Tyler, 2019). While there were only four participants measured, it suggests the program demonstrated some success.

Research suggests there is both a need and benefit of having treatment programs for prisoners with an intellectual disability. Evidence suggests that individuals with an intellectual disability are more likely to commit sexual offences (Heppell, Jones, & Rose, 2020). Analyses of sexual offending treatment programs designed specifically for intellectual disabilities found a positive reduction in sexually abusive behaviours (Heppell, Jones, & Rose, 2020; Murphy, Sinclair, Melvin, & Langdon, 2023; Wormald & Melia, 2021).

There is also evidence to suggest that existing treatment programs could be adapted for people with an intellectual disability. Researchers found that an adapted thinking skills program for prisoners with an intellectual disability, who would otherwise have been excluded, showed improvements (Snoyman, Aicken, & Ware, 2020).

In September 2023, the Department advised us it was reviewing its sexual offending suite of programs and is expected to roll out new programs in 2024. This will include other group programs designed for those not suitable for mainstream programs due to cognitive impairments.

Recommendation 8

Introduce criminogenic treatment programs tailored for people with an intellectual disability and explore opportunities to adapt existing programs that could also suit their needs.

Some adjustments are made to improve access to treatment programs and education

We found intellectual disabilities and cognitive impairments are accounted for when assessing adult prisoners for education and treatment programs. Treatment assessments include questions that screen for impairments that may affect a person's capacity to engage and participate in a program. If booked into a program, the facilitators will conduct a second assessment before the program starts to determine what supports or adjustments are required. This may include seating the participant closer to the facilitators, checking comprehension levels, buddying up with other prisoners, or using additional written or visual materials.

Although, like other assessments, educational and vocational checklists are reliant on having knowledge of a prisoner's disability or impairment. If a prisoner does not have a disability flag, it is possible that learning difficulties may not be identified and not factored into necessary adjustments.

5.3 Written and visual supports are available, but some documentation could be clearer

The Department informed us, where possible, written and visual supports are provided to people in custody with an intellectual disability. This includes:

- easy-to-read documentation with increased spacing and appropriate fonts
- providing the opportunity for verbal conversations or providing oral feedback instead of written
- providing 3D models of body parts in health-related settings
- using flip charts of food groups and nutritional information, and
- adapting education delivery.

To verify how the Department provides easy-to-read documentation we reviewed various induction guides provided to prisoners. We found some of the documents were easy-to-read and adopted appropriate spacing and fonts, whilst some other documents could have been clearer. To highlight this, we have provided two examples (see Figures 6 and 7).

We found the orientation manual for prisoners arriving at Hakea Prison was very difficult to read. The manual does not use simple words to explain concepts and focusses on text rather than images

to convey meaning. An excerpt of the manual on bullying and racism is shown below (see Figure 6). In comparison, we found a different orientation guide on bullying and racism on the Department's intranet, which uses many of the easy read principles (see Figure 7). The guide was much easier to read, bolded key concepts, and used imagery effectively.

Providing access to information is crucial to addressing the disparity in health and mental health outcomes for prisoners with an intellectual disability (Newman, Fisher, & Trollor, 2023). Limited communication support can also prevent access to education, work and pre-release programs which can potentially delay release from prison (Yates, Dodd, Doyle, Buick, & Dickinson, 2022).

33. Bullying and Racism


Hakea Prison has a No Tolerance Policy to Bullying, Racism or any form of discrimination.

- No Physical Violence
- No Queue Jumping
- No Name Calling
- No Threats
- No Hitting or Slapping
- No Racism

- Remember - Telling isn't dobbing. Bullies aren't your friends.
- Bullies will be subject to transfer, disciplinary action and loss of privileges.
- Bullying or stand over tactics will not be tolerated.
- Don't accept it. Tell someone. Talk to a member of staff or someone from Peer Support.
- You will be listened to and taken seriously.
- Don't keep it a secret. Bullies depend on you keeping quiet.
- For your own peace of mind let someone know if you are being bullied.


Figure 6: Bullying and racism guide as part of Hakea orientation manual.

Bullying and Racism




Punching

- Bullying or standover tactics will not be tolerated.
- Don't accept it. Tell someone – talk to a member of staff or someone from peer support.
- Trust someone. You will be listened to and taken seriously.
- Don't keep it a secret. Bullies depend on you keeping quiet.



Queue jumping



Slapping

Bullying is...

Figure 7: Bullying and racism induction guide obtained from the Department.

The Department also advised that as part of its Custodial Technology Strategy it is developing a business case for the introduction of cell-based computer tablets. The tablets will digitise many paper-based processes and forms, helping prisoners with cognitive impairments navigate prison processes better. The tablets may also be able to be used for telehealth appointments, helping to increase access to external NDIS providers.

5.4 No clear policy on role of prisoner carers

Where necessary, prisoners with an intellectual disability who require more assistance with daily living may be supported by prisoner carers. Prisoner carers, who are often family members, are prisoners employed to provide extra support to other prisoners. They are selected and screened by security staff and regularly monitored by custodial and support services staff to help prevent bullying and exploitation.

However, we could not find a policy or any guidelines that establish the expectations of the carer role, selection processes, or gratuity arrangements. Staff at Hakea Prison informed us that their prisoner carers are provided Level 1 gratuity payments. But, we are unsure if this was a consistent practice throughout the prison estate because the position does not appear on any prisoner employment reports.

The Department was also unable to advise us how many prisoner carers there were across the estate. As of March 2023, the Department advised there were seven carers at Hakea, five at Eastern Goldfields Regional Prison, and one at Albany Regional Prison. We were advised there were carers working in the infirmary at Casuarina Prison, but the Department could not confirm how many. Similarly, the Department could not confirm how many carers were employed at Bandyup, Boronia Pre-Release Centre, Melaleuca Women's Prison, Roebourne Regional Prison and Wandoo Rehabilitation Prison.

There were no known carers employed at Broome Regional Prison, Bunbury Regional Prison, Greenough Regional Prison, Karnet Prison Farm, Pardelup Prison Farm, West Kimberley Regional Prison and Wooroloo Prison Farm.

Developing a policy on the role and expectations of prisoner carers will help standardise and embed the position across the custodial estate. The policy should also consider the risks of bullying, stand-over and exploitation when carers are used to assist prisoners with complex needs.

Recommendation 9

Develop policy guidance to establish the expectations of the prisoner carer role, selection processes, and gratuity arrangements.

5.5 Prisoners with an intellectual disability are regularly employed

We found no evidence to suggest that prisoners with an intellectual disability were being employed less or employed in more menial work than other prisoners. Overall, we found prisoners with an intellectual disability had an unemployment rate that was only fractionally worse than other prisoners. Most were employed in service industry positions, which are generally low-skilled, cleaning-related jobs that attract low gratuity levels. Between 2022 and 2023, we found:

- 49.9% of prisoners with an intellectual disability were employed in service industries, compared to 49.5% of other prisoners.
- The average gratuity level for a prisoner with an intellectual disability was 4.1, compared to 4.0 for other prisoners.
- 37.7% of prisoners with an intellectual disability were unemployed, compared to 36.7% of other prisoners.

This data suggests that prisoners with an intellectual disability were not disadvantaged in relation to employment outcomes.

Access to employment programs in prison is acknowledged as critical to effective post-release outcomes for prisoners with an intellectual disability (Rowe, Dowse, Newton, & Baldry, 2020).

Policy does not make reasonable adjustments for prisoners with severe impairments who are unable to work

We found there is no policy guidance to offer prisoners with more severe impairments, who are unable to work or participate in constructive activities, a reasonable base level of income. Under current policy, if a prisoner is willing but unable to find a constructive activity to participate in, the Superintendent can credit them with Level 5 gratuities (DOJ, 2021d). However, there are no policy provisions to provide prisoners with a reasonable income (i.e., greater than Level 5) where they are willing, but do not have the functional capacity, to participate in employment.

A complex needs unit at an adult male prison has tried to address this issue. The senior officer advised that some prisoners with complex needs did not have the capacity to work and therefore were being reduced to a low level of gratuities. Recognising they were willing, but could not be provided with suitable work, the senior officer decided to provide them with Level 3 gratuities. In lieu of a policy, this group of prisoners were only provided this increase because of the compassion of the senior officer and a recognition that these prisoners should not be financially disadvantaged due to their impairments.

Similar adjustments are made for women with residential children and expectant mothers. Under Bandyup's local standing orders, eligible women are paid Level 3 gratuities (DOJ, 2022c). Whilst this is a temporary measure, the prison has recognised these women should be provided with a reasonable base level of income while being unable to work.

What are gratuities?

Gratuities is the payment system which credits prisoners for performing prison-based employment. The Department's employment policy sets out gratuity levels for prisoners, ranging from Level 1 to Level 5. Level 1 is the highest gratuity level for highly skilled positions, and Level 5 is the lowest gratuity level for lower skilled positions (DOJ, 2021d). For instance, Level 5 gratuities are paid approximately a little over \$20 a week (OICS, 2023).

Recommendation 10

Develop a policy to offer prisoners with more severe impairments, who are unable to work or participate in constructive activities, a reasonable base level of income.

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Appendix B Acronyms

Term	Expansion of Abbreviation
ABI	Acquired Brain Injury
ADHD	Attention Deficit Hyperactive Disorder
ASD	Autism Spectrum Disorder
COPP	Commissioner's Operating Policy and Procedure
DCT	Disability Coordination Team
DOJ	Department of Justice
EcHO	Electronic Health Online
FASD	Fetal Alcohol Spectrum Disorder
FIST	Functional Impairment Screening Tool
FTE	Full-time Equivalent
HPMH	Hakea Prison Mental Health Services
JLO	Justice Liaison Officer
LOP	Loss of Privilege
MAP-S	Management and Placement-Sentence
MDT	Multi-disciplinary Team
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
OICS	Office of the Inspector of Custodial Services
TM	Transitional Manager



Response to OICS Draft Report:

Review into People in Custody with an Intellectual Disability

March 2024

Version 1.0

Response Overview

Introduction

On 14 February 2023, the Office of the Inspector of Custodial Services (OICS) announced the commencement of a review into *People in Custody with an Intellectual Disability* (the review).

To assist with the inspection, the Department of Justice (the Department) provided a range of documentation as well as access to systems, custodial facilities, staff and prisoners.

On 26 February 2024, the Department received the draft review report and has provided comments and responses to the 10 recommendations.

Appendix A contains comments linked to sections in the draft review for the Inspector's consideration when finalising the report.

Department Comments

Identification of people with an intellectual disability is complex and as per the research findings presented in the OICS report, intellectual disabilities can be invisible, can show no overt signs of impairment and be confused with other disorders.

Early identification can benefit individuals through the provision of early support and intervention and help them avoid prison or reduce their time in custody.

The research findings further indicate issues around identification have limited the ability to estimate the prevalence of intellectual disabilities among adult prisoners and youth detainees. For example, people in custody with foetal alcohol spectrum disorder (FASD) show few signs of functional impairment and therefore may go undetected¹.

The Department agrees early identification of people in custody with an intellectual disability is the key to providing appropriate supports aimed at ensuring their disability does not unfairly disadvantage them throughout their rehabilitation journey.

The introduction of the Functional Impairment Screening Tool has assisted the Department in identifying more people in custody with cognitive impairments. Additional training on insight and awareness has been provided to clinical staff and the Department is also exploring secondary assessment tools for cognitive assessments to help improve identification.

Work to improve the accuracy and effectiveness of the Functional Impairment Screening Tool is ongoing. The Department's Western Australian Office of Crime Statistics and Research (WACSAR) is working in partnership with leading experts and other interested jurisdictions to establish and undertake a validation study of Functional Impairment Screening Tool. Given the standard of evidence required to properly validate the tool, it is anticipated that the study will be undertaken over two to three years. Once validated, information sharing platforms will be explored to allow the information to be shared amongst staff, enabling them to better understand the prevalence of impairments across their facility.

Other identification avenues include self-reporting, health assessments, staff observations, the Department's Disability Co-ordination Team (DCT) and through contact with external agencies.

¹[Pakunwanich & Mazurek, 2020](#)

The DCT, is the central liaison point for disability information in the adult custodial environment, has created online training modules for Corrective Services staff working in prisons and Adult Community Corrections settings aimed at enhancing staff awareness of disabilities, breaking stereotypes, overcoming preconceptions and supporting custodial staff to more confidently work with adult inmates with a disability. The training is mandatory and covers the following modules:

- Understanding and Responding to Individuals with Disability
- Disability in the Criminal Justice System
- Government Services for Offenders with Disability
- Guardianship and Administration Orders

The Department welcomes the findings of the intellectual disabilities review, which highlights the issues faced by people with intellectual disabilities in the Department's care and will consider the recommendations made to address the issues.

Response to Recommendations

1 Establish an overarching model to guide the custodial journey for people living with a disability.

Level of Acceptance:	Supported in Principle
Responsible Division:	Corrective Services / Strategic Reform
Responsible Directorate:	Offender Services / Strategic Policy and Projects

Response:

The Department recognises the importance of supporting people in custody living with disabilities and strives to deliver the best care possible to this cohort.

The recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability are currently being considered by Government, which will inform how services and support provided to people in custody with disabilities can be improved and how the Department can work more collaboratively with other agencies in this regard.

The potential establishment of an overarching model of care for people in custody with disabilities will be informed by the above program of works and will be subject to Government support and resourcing.

2 The Government should commit additional resources for the expansion of the Disability Coordination Team within the Department of Justice.

Level of Acceptance:	Noted
Responsible Division:	Corrective Services
Responsible Directorate:	Offender Services

Response:

This recommendation is a matter for Government.

3 Develop a policy framework for identifying disabilities in young people who enter custody.

Level of Acceptance:	Supported
Responsible Division:	Corrective Services
Responsible Directorate:	Women and Young People

Response:

The Department adopts a number of methods and strategies for screening and assessing young people in custody for disabilities, which are undertaken by allocated Youth Justice Officers or Senior Case Managers.

It is acknowledged these methods and strategies are not formalised in policies and procedures and the Department is committed to developing a policy framework to underpin consistency in screening practices for young people.

The onsite health team under Child and Adolescent Forensic Services has commenced screening young people on a pilot basis. Screening processes will be refined throughout this pilot and embedded into operational delivery as appropriate.

Screening will also consider validation of assessment and screening tools for Aboriginal young people.

4 Commit to sharing Functional Impairment Screening Tool results with custodial staff on the offender database in a manner that respects patient privacy but enables better day-to-day care of people in custody.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Offender Services

Response:

The Department supports the sharing of information with custodial staff, including the results of functional impairment screening.

This observational assessment carried out by clinical staff is yet to be validated as a reliable tool for the identification of functional impairments in people in custody, although a collaborative validation study is currently in development within WACSAR.

The Department will look at the most practical and effective method of sharing functional impairment screening results with custodial staff should validation be supported.

5 The Department to review how disability information is captured and shared throughout the estate and identify opportunities to remove information silos and improve consistency of information between different systems and processes.

Level of Acceptance: Supported – Current Practice / Project
Responsible Division: Corrective Services
Responsible Directorate: Offender Services

Response:

This recommendation primarily relates to how information on the Total Offender Management Solution (TOMS) system is shared between youth and adult profiles when a person in custody transitions from youth to adult custody.

The Department has established the process of facilitating planning meetings prior to the transfer of a young person to adult custody. Attended by relevant stakeholders involved in the management of the young person, the planning meetings ensure relevant information captured on the young person's TOMS profile is identified for transfer to their adult profile.

Once information has been transferred between the TOMS profiles, any information held on that person's intellectual impairment will be captured on the TOMS Disability Module, which is a central point of information for staff to access, review and better understand the needs of prisoners with impairments and how best they can be managed and supported.

6 Identify and reduce potential barriers that may be preventing people with an intellectual disability from accessing minimum-security facilities.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons

Response:

People with intellectual disabilities are not automatically precluded from accessing minimum-security facilities. Placements are made following an assessment process which also takes into consideration an individual's level of functioning and the care and supports available at the facility to keep them safe.

The Department will review and assess potential barriers and the steps required to reduce them.

7 Collaborate with the National Disability Insurance Agency to expand the presence of Justice Liaison Officers across the custodial estate in Western Australia.

Level of Acceptance: Noted
Responsible Division: Corrective Services
Responsible Directorate: Offender Services

Response:

National Disability Insurance Agency (NDIA) Justice Liaison Officers (JLOs) are not client facing staff and do not interact with people in custody.

The purpose of the JLOs is to establish and facilitate communication between Department staff and external support services, to enable people in custody with impairments to access these support services.

The DCT serves as the Department's liaison with JLOs, with both the DCT and JLOs currently being co-located at the same work location, along with health services and mental health services.

8 Introduce criminogenic treatment programs tailored for people with an intellectual disability and explore opportunities to adapt existing programs that could also suit their needs.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Offender Services

Response:

The Department currently does not have the required expertise or resourcing to introduce criminogenic programs tailored specifically for people with intellectual disabilities, nor to adapt existing programs to meet the specific needs of this cohort.

The proposed expansion of the DCT will help provide the expertise and resourcing necessary to address this recommendation.

9 Develop a policy guidance to establish the expectations of the prisoner carer, selection process, and gratuity arrangements.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Operational Support

Response:

The Department will undertake a review and analysis of existing policies, procedures, and operational practices to determine the need for further policy guidance in relation to prisoner carers.

10 Develop a policy to offer prisoners with more severe impairments, who are unable to work or participate in constructive activities, a reasonable base level of income.

Level of Acceptance: Supported in Principle
Responsible Division: Corrective Services
Responsible Directorate: Operational Support

Response:

As with recommendation nine (9), the Department will undertake a review of current policies and procedures surrounding gratuities in relation to prisoners with severe impairments who are unable to work or participate in constructive activities.

Appendix D Serco's Response



2 April 2024

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Ryan,
Dear Mr. Quinn

DRAFT REPORT - PEOPLE IN CUSTODY WITH INTELLECTUAL DISABILITIES

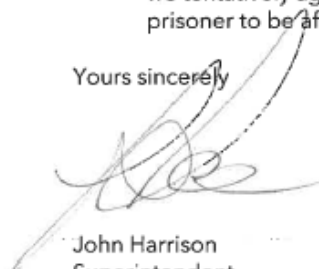
Thank you for the opportunity to review the draft report, *People in Custody With Intellectual Disabilities*. At Acacia Prison, we have been adjusting our service delivery to the needs of the increasing cohort of prisoners with disabilities. To this end, we welcome the report and agree in principle with the recommendations, notwithstanding our comments below:

- Recommendation 1. We agree with the concept of an overarching model for the management of prisoners living with a disability. In practical terms, this might be built into a review of existing policy and manuals.
- Recommendation 2. We agree with the recommendation for further resources being funded in the Disability Coordination Team with the commentary that both an assessment and services focus would be important
- Recommendation 3. We agree with this recommendation however suggest it is linked to Recommendation 1.
- Recommendation 4. We agree that there is opportunity to place more information on TOMS around management tips and guidance for individuals living with disability. Currently, the 'Disability' flag on TOMS may or may not provide a level of guidance to staff on managing individual prisoners, depending on the writer. A formatted guide that provides practical considerations may be of more use for correctional officers.
- Recommendation 5. Agreed.
- Recommendation 6. Agreed.
- Recommendation 7. Agreed.

Impact
a better
future

- Recommendation 8. Agreed. Noting that that we currently include prisoners with intellectual disability into our programs and Acacia facilitators are experienced at individualising program content. We also note that WA currently has limited programs tailored for prisoners living with intellectual disability. Provision of interventions for prisoners living with intellectual disability is an area that Acacia is exploring with Edith Cowan University.
- Recommendation 9. Agreed. Acacia is currently exploring the most suitable accredited vocational training courses for prisoner carers in order to provide the best level of care, due diligence and prisoner outcomes.
- Recommendation 10. Acacia has a positive history of finding meaningful work for prisoners living with severe impairment. We would be nervous about a 'disability pension' being an easy out as an engagement solution for such prisoners. To this end, we tentatively agree however any such policy should make it reasonably onerous for a prisoner to be afforded such a gratuity.

Yours sincerely



John Harrison
Superintendent
Acacia Prison

Appendix E Methodology

Data sets for this review were obtained from the Department of Justice’s (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 and data provided to us by the Department. We examined data between 2018 and 2023.

We examined Western Australian legislation and departmental documentation including policy, strategy documents, and evaluations. We also conducted site visits to Acacia Prison, Albany Regional Prison, Bandyup Women’s Prison, Banksia Hill Detention Centre, Boronia, Casuarina Prison, Hakea Prison, Karnet Prison Farm, Melaleuca Women’s Prison, Pardelup Prison Farm, and Wandoo Rehabilitation Prison. Site visits provide an opportunity to engage with people in custody, staff and to observe practices.

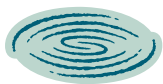
We also conducted surveys with staff at two adult prisons: one metropolitan and one regional prison. The survey obtained the perceptions of 115 prison officers on the adequacy of training in the management of prisoners with an intellectual disability.

In December 2023 the Department was presented with a key-findings briefing, providing an initial opportunity for feedback or clarification.

A draft version of this report was then sent to the Department and Serco in February 2024 for a five-week period to provide comments on any inaccuracies and to respond to recommendations. Responses were due on 2 April 2024. A formal response was received from Serco by 2 April 2024 and a late response was received from the Department on 3 July 2024.

This report was a review of a custodial service in accordance with Section 22 of the *Inspector of Custodial Services Act 2003*.

Key dates	
Review announced	15 February 2023
Key findings briefing to Department of Justice	11 December 2023
Draft report sent to Department of Justice and Serco	26 February 2024
Response received from Department of Justice	3 July 2024
Response received from Serco	2 April 2024
Declaration of prepared report	15 July 2024



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