

OFFICE OF THE INSPECTOR
OF CUSTODIAL SERVICES

Australia's youth justice and incarceration system

Submission

October 2024

The Inspector of Custodial Services and staff acknowledge 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.

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General information

The Office of the Inspector of Custodial Services

The Office of the Inspector of Custodial Services (the Office) was established in 2000 under an amendment to the *Prisons Act 1981 (WA)*, and later as an independent statutory agency governed by the *Inspector of Custodial Services Act 2003 (WA)* (the Act). The intention was to:

- establish an independent inspection regime for places where prisoners, detainees and other persons in custody are held
- review certain 'custodial services'
- administer an independent visitor service for prisons and places of detention.

The Inspector is appointed by the Governor for a term of up to seven years, which can be extended (s.6). The current Inspector, Mr Eamon Ryan, was appointed in May 2019 for a five year term and reappointed in May 2024.

Except as provided by the Act, the Inspector is not subject to direction by the Minister for Corrective Services or any other person in the performance of the Inspector's functions (s.17).

Further information about the role and function of the Office can be found in Appendix B.

Submission background

The information provided in this submission is based on our reflections within the Western Australian context, and more specifically within the custodial environments of Banksia Hill Detention Centre (Banksia Hill) and Unit 18 at Casuarina Prison.

Following closure of Rangeview Remand Centre in October 2012, Banksia Hill became the sole youth custodial facility in Western Australia. However, as soon as January 2013, the centre was beset by a major riot. The centre has had a troubled history since then, culminating in its current crisis (OICS, 2023). Negative youth behaviours, largely in reaction to increasing lockdowns due to short staffing, built up in early 2022 to the extent that a decision was made in July 2022 to remove a cohort of young people to a separate facility for which Unit 18 at Casuarina Prison was used. That unit was gazetted as a youth detention facility under the *Young Offenders Act 1995 (WA)* and efforts were made to prevent any contact between young people and adult prisoners.

However, our 2023 inspection of both sites found Unit 18 has failed to operate sufficiently since opening, and in October 2023 was the site of the first death in Western Australia youth detention. A second death occurred at Banksia Hill in August 2024, meaning the first two deaths in youth detention occurred within the last 12 months. The experience for young people in custody in Western Australia has deteriorated significantly to the point of crisis (OICS, 2023).

While similar factors, issues and perspectives may cut across the national environment, this submission expressly relates to Western Australia.

1 Outcomes and impacts of youth incarceration in jurisdictions across Australia

The outcomes and impacts of youth incarceration are well researched, with evidenced influence throughout the developmental lifespan. We consistently find many of the young people in custody at Banksia Hill and Unit 18 are impacted by mental health issues, backgrounds and histories of grief, trauma, familial neglect or abuse, and intergenerational trauma (OICS, 2023). Often early childhood experiences have already impacted young people before they make contact with the justice system, increasing the need for supports and services. A 2018 study at Banksia Hill found the prevalence of neurodevelopmental impairment was almost 90 per cent, while more than a third of young people had Foetal Alcohol Spectrum Disorder (Bower, et al., 2018). Detaining young people has numerous, long term detrimental effects, which are enhanced when considering those living with disadvantage, trauma, or disability. Outcomes and impacts include:

Systemic re-traumatisation. Backgrounds of disadvantage and trauma result in complex vulnerabilities which are exacerbated by corrective practices such as solitary confinement, use of force, and strip searching (Clancey, Wang, & Lin, 2020; Mackay, 2023). This is compounded by the limited access to mental health services, supports and programs at Banksia Hill and Unit 18. Increased mental ill health during detention is evidenced in increased rates of self-harm and attempted suicide at Banksia Hill (OICS, 2022), and the first two deaths in custody in Western Australian youth detention within the last 12 months (OICS, 2023).

Labelling and stigma. Labelling and stigmatisation are widely considered to play a role in the formation of young people's offending trajectories, being whether young people persist with, or desist from crime (Richards, 2011). Contact with the criminal justice system stigmatises young people and initiates a process that redefines one's self-concept, reduces prosocial opportunities, and leads to changes in interpersonal relationships conducive to criminal behaviour. The stigma attached to detention can further contribute to institutional and interpersonal exclusion (Rowan, Fine, Steinberg, Frick, & Cauffman, 2023).

'Cross-over kids'. Most youth in detention are also involved in the child protection system and enter the correctional system after committing crimes of necessity or crimes reflective of behavioural issues (Walsh, 2019). Continued needs-based offending leads to more severe sentences and the normalisation of detention, which becomes embraced as an alternative to homelessness or residential living and can result in further criminality through peer contagion (Richards, 2011).

Increased risk of recidivism. All above identified outcomes and impacts increase both criminogenic and non-criminogenic needs; empirical risk factors directly relevant to an increased likelihood of reoffending (Andrews & Bonta, 2007). Conversely, research consistently finds youth detention has little influence in reducing recidivism and should be used only as a last resort (Clancey, Wang, & Lin, 2020).

2 Over-incarceration of First Nations children

The over-incarceration of First Nations children within Western Australian detention facilities is well documented and long standing. Our most recent inspection of Banksia Hill and Unit 18 found the over-incarceration of First Nations young people increased, from 73% of the total population in 2020 to 82% in 2023 (OICS, 2023). There was also an increase in the number of First Nations young people who were off Country, with 49% from the Perth metropolitan region, as opposed 69% in 2020.

At the time of writing (October 2024), there is a record low youth population. The daily average number of young people in detention in Western Australia is 63. Of those 60% identify as First Nations young people. This is a positive reduction, however, there is a concerning level of disproportion apparent when the data is broken down by facility - all the young people placed at Unit 18 identify as First Nations.

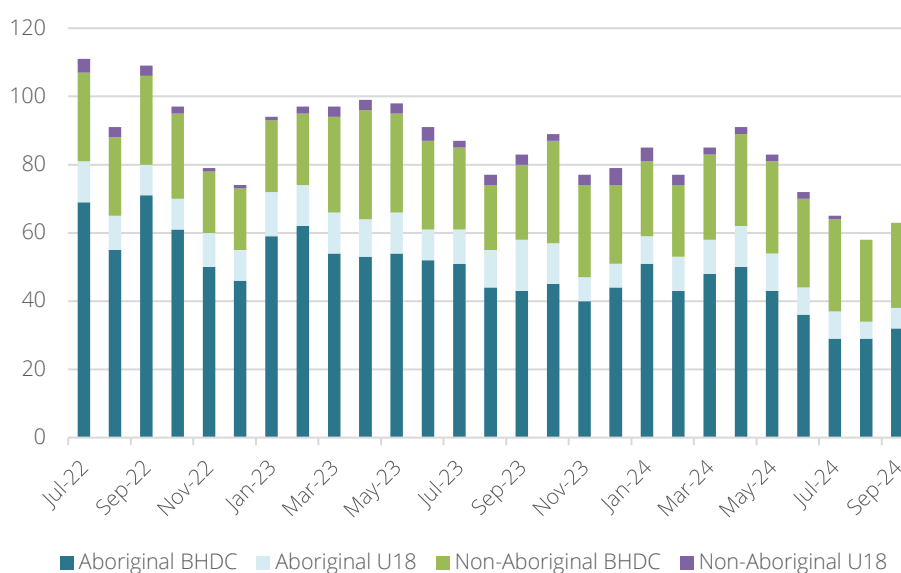


Figure 1: The daily average youth detention population in Western Australia, by facility and Aboriginality (2022-2024)

The overrepresentation of First Nations children in youth detention reflects a shared history of trauma and the stressors that have affected their parents, families, and communities (AIHW, 2023). Disconnection from family and kinship systems, from Country, from spirituality and cultural practices, as well as the loss of parenting practices, are sources of trauma experienced by First Nations detainees.

Intergenerational trauma increases the likelihood of high risk experiences including homelessness, poverty, disengagement from education, abuse, neglect, and substance use (Ewing & Sarra, 2023). As a result, many young people enter detention with pre-existing trauma, neurocognitive impairments, and mental ill health. An emerging theme in the literature is that psychological distress and suicide are increasing within the population of First Nations young people (Russ-Smith & Green, 2023). Whilst in detention, owed to chronic under staffing, First Nations youth are unlikely to receive the services and treatments needed to disrupt the cycle of disadvantage, increasing the risk of continued offending in adulthood (OICS, 2023).

3 Degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention

Compliance with human rights of children and young people in detention in Western Australia has been consistently low. Following our 2020 inspection of Banksia Hill, the experience for young people in custody in Western Australia deteriorated significantly to the point of crisis (OICS, 2023). In 2021, we were concerned enough to issue a Show Cause Notice under Section 33A of the *Inspector of Custodial Services Act 2003*. Subsequently, Unit 18 was gazetted within Casuarina Prison as a detention centre for young people with behavioural issues (OICS, 2022). However, our 2023 inspection of both sites found this facility has failed to operate sufficiently since opening. Two young people have tragically taken their lives in custody since that time.

As a result of the continued crisis, in May 2024 we announced a follow-up review of both Banksia Hill and Unit 18. Our preliminary findings of this review are showing some improvements at both Banksia Hill and Unit 18, including an increased number of custodial staff which is in turn increasing young people's time out of cell. Consequently, there is also improved access to a variety of support services. This report is expected to be published before the end of 2024 and will be available on our website – oics.wa.gov.au

Areas of non-compliance highlighted by our office since 2020 include:

Lockdowns restricting out of cell hours. In our 2023 inspection we found young people spent an average of 7.5 hours out of cell at Banksia Hill and 3.3 hours out of cell at Unit 18, though some young people could also spend a whole weekend in cell if staffing was short (OICS, 2023). Extended lockdowns as consequence of staff shortages contravene the right to daily recreation, exercise, and leisure under s. 47 of the *United Nation Rules for the Protection of Juveniles Deprived of their Liberty* and were found to be in contravention of the *Young Offenders Act 1994 (Part 9)*. Banksia Hill also came to the attention of the United Nations in 2022, with the concluding observations of the UN Committee Against Torture in Australia specifically mentioning the practice of solitary confinement in this facility to be a serious concern (Mackay, 2023).

Ongoing reduction or absence of education and rehabilitation programs. Lockdowns have meant most non-custodial workers are compromised in what work they could do to support and meet the needs of young people in custody (OICS, 2023). Educators, health workers and programs officers have been unable to provide direct services, while case managers and Aboriginal Youth Support Officers were unable to conduct assessments, plan interventions or refer cases. The last evidence based clinical program to run at Banksia Hill was in 2021. An absence of education and rehabilitation fails to meet s. 79 of the *United Nation Rules for the Protection of Juveniles Deprived of their Liberty*, the right of young people to access programs and services to assist with reintegration.

Poor living conditions. Low levels of cleanliness and hygiene, coupled with extensive damage to cells and common areas, were noted in our most recent inspection (OICS, 2023). Work has since been undertaken to improve conditions. However, there was significant non-compliance with the right to

facilities that meet all the requirements of health and human dignity as per s. 31 of the *United Nation Rules for the Protection of Juveniles Deprived of their Liberty*. This included on-site vermin (an infestation occurring in large part due to detainee meals being issued in cell during extensive lockdowns), soiled laundry, and units so extensively damaged they were deemed unusable.

This year the coronial inquiry into the 2023 death of Master Dodd at Unit 18 highlighted consistent non-compliance with human rights. Our evidence to the inquiry showed we had forewarned circumstances at both Banksia Hill and Unit 18 had de-stabilised to a point of 'acute crisis'. Among concerns raised above, there had been a rise in recorded incidents of self-harm and attempted suicide since September 2021, and reports from staff that they were burnt out, demoralised, and felt unsafe. We highlight the death of Master Dodd, and the second death of a young person in August 2024, as markers of the consequences of a failure to protect children and young people from harm and afford the most basic of rights in closed environments.

In August 2024, the Western Australian Commissioner for Children and Young People released a report titled [Hear me out: inquiry into implementation progress for Banksia Hill's model of care instruction](#). This recent report includes important findings and recommendations relating to youth detention in Western Australia, which the Committee may wish to explore further.

4 Benefits and need for enforceable national minimum standards for youth

Our cyclical inspections and liaison visits are underpinned by a set of youth and adult standards, which we have developed to guide findings and recommendations in accordance with human rights. As our office already has a set of minimum standards for youth, we will speak to the benefits of having an agreed set of minimum standards at a national level.

- Uniform national standards would provide clarity and consistency to guide both a state-wide and nation-wide approach to oversight, that is aligned in understanding, focus and benchmarks.
- Transparent, accessible, consistent, and agreed national standards would provide guidance for practice and policy, for staff both working within and managing facilities across each state.
- Agreed national minimum standards would provide a consistent best practice mechanism for evaluations, recommendations and follow up actions for all state-wide oversight bodies.
- A shared set of minimum standards across Australia would allow for directly translatable and cross-applicable methodologies, findings, and recommendations across state-wide oversight bodies.

The question of enforceability is far more complex because youth justice is a state and territory responsibility. There would have to be agreement between all States and Territories on the form and content of national standards, including some measure of codifying them to ensure enforceability in each jurisdiction. Such reforms and agreements have proved to be difficult in the past.

Appendix A Bibliography

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Appendix B Our functions and powers

The Office of the Inspector of Custodial Services (the Office) was established in 2000 under an amendment to the *Prisons Act 1981* (WA), and later as an independent statutory agency governed by the *Inspector of Custodial Services Act 2003* (WA) (the Act).

At least once every three years the Inspector must inspect each prison, detention centre, court custody centre and certain lock-ups (s.19). Following each inspection, the Inspector is to prepare an inspection report containing such advice and recommendations as appropriate to the findings (s.20). The Inspector can also inspect a place at any other time and on any number of occasions (s.21).

Under s.22 of the Act, the Inspector may at any time review a 'custodial service' (or any aspect of a custodial service) in relation to a prison, detention centre or custodial service (relating to a court custody centre); including a custodial service in relation to one or more particular prisoners, detainees or persons in custody.

The Inspector may at any time prepare a report to the Minister on an occasional inspection (s.21) or review (s.22) and give advice or make a recommendation as appropriate to the findings (s.23).

For the purpose of performing the Inspector's functions, the Inspector (or any person authorised by them) 'at any time and with any assistants and equipment' may have 'free and unfettered access to' a wide range of people, places and documents or information relevant to prisons, detention centres, court custody centres and lockups (s. 28, 29, and 30).

The Act requires the Inspector to deliver all inspection reports (s.20), occasional inspection reports and review reports (that the Inspector decides to table) to each of the Speaker and President who are required to hold the report for 30 days and then table it on the next sitting day (s.34-35).

The Office also administers the Independent Visitor Service (Part 6). Independent Visitors (IVs) are appointed by the Minister, having regard to the advice of the Inspector, for every prison and detention centre for a period of 2 years (s.39). Our IVs are a diverse group of community volunteers whose duties are to visit and inspect prisons and detention centres at intervals of not more than 3 months and furnish a written report to the Inspector after each visit including a record of each prisoner complaint received (s.40). The Inspector is required to review each report received and follow-up, report and act as required (s.43).