

OICS Ref: 0611

Ms Kathryn McMillan QC
Youth Detention Review
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Dear Ms McMillan QC

The Independent Inquiry into the operation of the Cleveland Youth Detention Centre and the Brisbane Youth Detention Centre seeks to review specific allegation of the mistreatment of young people in detention in Qld and is also examining the oversight of these centres. The Office of the Inspector of Custodial Services provides independent oversight of juvenile and adult places of custody in WA and may provide a comparison for your review.

Our office provides independent oversight of juvenile and adult places of custody

The Office was established in 2000 to provide an independent inspection regime for all the State's prisons, both public and private, and for a number of other custodial services including court custody centres, prisoner transport, and a small number of police lockups. In 2003, jurisdiction was extended to include juvenile centres.

Our legislation requires us to formally inspect each facility at least once every three years, and more frequently should we believe it is required. We also conduct reviews into specific custodial services. Reports from inspections and reviews are provided directly to Parliament, providing a high level of transparency and accountability.

Recently, the importance of independent oversight in the corrections system was clearly outlined by a presentation from the Victorian Ombudsman.¹ In Victoria an internal Inspectorate within the Department of Justice provides oversight of the Corrections system. Citing concerns about the lack of independence of the Inspectorate, in 2006 the Ombudsman conducted a review of this Inspectorate and found it:

- did not operate independently, taking direction from a range of stakeholders
- acted without external accountability
- had difficulty at times providing proactive and timely advice
- demonstrated poor record keeping practices
- was not transparent, with none of its reports being published or any information about prison inspections being made public.

As a result of this review a new unit was created, but this was still internal and the problems persisted.

¹ Victorian Ombudsman (2014, November). Why it is important to have independent oversight of the Victorian Prison System. <https://www.ombudsman.vic.gov.au/Publications/Presentations/Why-we-need-independent-oversight-of-the-Victorian>

The Ombudsman found serious shortcomings in three major reviews conducted by the new unit including during the review of a high profile death in custody. The Ombudsman determined during this review there was a failure to pursue an obvious line of enquiry, the executive summary of the report was edited by a senior Justice Department Officer and there was a failure to interview the Secretary who was a key witness.

The Ombudsman concluded, that in lieu of an independent office such as ours in WA, the only independent oversight in Victoria is being provided by the Ombudsman, placing a significant resource strain on the Office.

Inspections are carried out using clear and publically available standards

We have has a strong focus on performance standards in custodial facilities and the rights of staff and people in detention. Our focus includes issues of safety, security, rehabilitation, cost and contract management.

The standards with which we measure adult and youth facilities are publically available on our website at <http://www.oics.wa.gov.au/how-we-inspect/>. The publication of these standards represents an important contribution to consistency and transparency of prison inspection in Western Australia. The standards were developed taking into account the full range of relevant international treaties, covenants, and the *Standard Guidelines for Corrections in Australia*. They have also drawn upon the UK Prison Service's *Decency Agenda*, the UK Inspector of Prisons' *Expectations*, the national correctional reporting framework, observed practice, community standards and relevant research. We are currently reviewing our standards to ensure they are up to date and align with changes in the operational environment.

WA reviews and inspections may provide insight into the incidents being reviewed

We have inspected and monitored the juvenile detention facilities and treatment of young people in custody continuously in WA over the past 16 years. In addition, the Inspector of Custodial Services, Professor Neil Morgan, has visited juvenile centres throughout Australia to expand our knowledge and understanding of juvenile justice practice.

This experience was essential in being able to examine the circumstances that lead to a riot in WA's Banksia Hill Juvenile Detention Centre in 2012. Our inquiry examined the causes and aftermath of the riot, including the treatment of young people in detention and their treatment after the riot, when most of the males were transferred to an adult prison. Many of our findings may be relevant to your review, specifically:

- Prior to the riot Banksia Hill was at high risk and had been for well over 12 months. There were innumerable weaknesses in terms of direction, leadership, management and staffing. These were compounded, but not created, by the physical redevelopment of the site.
- The regime offered to the detainees was not sufficiently active or positive. This led to understandable restlessness and frustration.
- Serious incidents can never be completely prevented at custodial facilities but the risks must be actively assessed, intelligently analysed and mitigated. The Department had taken too little proactive action to mitigate the risks and to provide central support. Its failure to follow through on commitments had further exacerbated the risks.
- There was a lax security culture at Banksia Hill with staff taking items such as phones, wallets, lighters, keys, tinned food and medications into the centre's operational areas.

- The detainees had easy access to rubble, debris and building materials during the riot and had also used it in previous incidents. Some of this was the result of recent construction activity but the rest had been there for some time.
- In the aftermath of the riot, there has been a strong focus on 'hardening' the facility by installing bars, and grilles and fences. Idle, bored children will invariably become frustrated and are very likely to act out their frustrations. Bars and grilles will not stop this and it is essential that Banksia Hill returns to providing a full and active regime including rehabilitative programs and recreation.

We concluded that the incident was entirely foreseeable. In fact, we had raised concerns about the risks with the Department of Corrective Services and successive Ministers throughout 2012. This included detailed and explicit advice and warnings in August 2012. In response, the Department committed to take proactive action to mitigate the risks but failed to do so. If the issues had been addressed, the risk of such an incident would have been reduced.

The full report and sub reports from this inquiry are available on our website, along with each inspection report that has been conducted since 2006 (<http://www.oics.wa.gov.au/facility/banksia-hill-juvenile-detention-centre/>).

The report recommended, amongst other things, that the philosophy and regime at the Centre should be re-engineered. The government accepted and has been acting on that recommendation, though there is still some way to go.

Our work is proactive, continual and ongoing

Our work is proactive, continual and ongoing, not reactive, occasional or ad hoc. This sets it apart from the work undertaken by agencies such as the Ombudsman in Victoria.

Since our Inquiry into the riot, we have published two more reports on Banksia Hill:

- a report on the management of young women and girls - <http://www.oics.wa.gov.au/reports/86-management-young-women-girls-banksia-hill-detention-centre/>
- a follow-up inspection 18 months after the riot - <http://www.oics.wa.gov.au/reports/97-report-announced-inspection-banksia-hill-juvenile-detention-centre/>

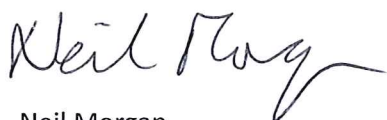
In addition:

- we are currently undertaking a review of behaviour management at Banksia Hill
- in 2017 we will undertake another full inspection of the Centre.

Further information

Should you believe it would be of value, I am available to provide further assistance that may be useful. I will be available from the second week of November through December.

Yours sincerely



Neil Morgan
Inspector of Custodial Services

25 October 2016

