

OICS Ref: 0208 Vol.2

Hon. Jacqui Boydell MLC
Deputy Chair
Standing Committee on Public Administration
Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005



Dear Ms Boydell

QUESTIONS ON NOTICE

Please find attached a response to the questions placed on notice following the appearance by the Inspector of Custodial Services before the Standing Committee on 6 May 2019.

1. To what extent does the Department consult with the Department of Education regarding the provision of education services at Banksia Hill Detention Centre?

It is my understanding that the Department of Justice (DoJ) has a Memorandum of Understanding (MOU) with the Department of Education (DoE) in relation to the educational support for students in the care of DoJ. The MOU was developed following consultation between the two departments and the aim is to ensure the educational needs of children and young people, who are clients of both agencies, are supported.

The key deliverables in the MOU relate to:

- The sharing of information between the parties in relation to children in the care of DoJ to enable continuity in each student's educational program.
- Resourcing arrangements where DoJ supplies essential educational resources and materials to deliver educational programs at BHDC. DoE provides the funding to support the provision of these resources as well as funding the costs for three full time teachers.
- The support for both DoJ and DoE staff to be able to participate in professional learning offered by either department.

A copy of the MOU would be available from DoJ.

At a more practical level, the Principal at Banksia Hill Detentions Centre (BHDC)

- Works closely with the Associate Principal of the School of Special Needs: Behaviour and Engagement within DoE to coordinate and improve the transition of young people back to education in the community.
- Sits on a cross-agency working group to address the issue of violence in schools.

- Works with the A/Assistant Executive Director, Teaching and Student Support Services (A/AEDTSSS) to progress professional development for BHDC teachers. In 2019, BHDC teachers were given access to DoE digital resources and professional learning opportunities.

Furthermore, Youth Transition Coordinators from DoE visit BHDC on a daily basis to engage with sentenced young people to encourage re-engagement in education and training.

2. **At the 2018 hearing, it was indicated that there was a resource within the Attorney General's Department being dedicated to reducing prisoner numbers which was supposed to be completed by the end of the 2017/18 financial year, and that the Inspector would be given a briefing. Did that briefing occur and if so, what did it advise?**

We can confirm that the former Inspector did not receive a formal briefing on the work that was undertaken to reducing prisoner numbers.

3. **Please refer to page 11 of the Annual Report under 'We have the highest rate of Aboriginal incarceration in Australia and the numbers are still rising'. Is the OICS aware of any strategies in place to reduce the number of aboriginal prisoners, including community justice mechanisms (as referred to earlier on page 11)?**

Obviously DoJ is best placed to answer this question in detail, particularly in relation to more recent announcements.

Strategies to reduce the number of Aboriginal prisoners in prison are complex and require a multi-agency approach. Prisons are the last link in the criminal justice system and it is difficult, in isolation, for corrections to significantly influence the numbers of Aboriginal people who are incarcerated.

The Department has recently led an inter-agency working group to develop the Kimberley Juvenile Justice Strategy. This is a strategy to address the issue of juvenile offending and to improve youth justice outcomes in the Kimberley region.

As well as the broader strategies, prisons offer programs to assist prisoners deal with their criminogenic behaviour. For example, most prisons will deliver high intensity addictions programs (Pathways), medium intensity family violence programs (Not Our Way), violent offender treatment programs (VOTP), and cognitive skills (Think First). Prisons also offer literacy programs to assist prisoners develop skills that would assist them to be able to operate in the community.

However, our inspection work often identifies issues with program delivery. The Department has a backlog of assessments of prisoners which means that there are delays in determining which programs they are required to undertake. Often programs may not be culturally appropriate for Aboriginal prisoners; the extent to which prisons can deliver culturally appropriate programs is often linked to the resources they have available to develop them.

4. **Please refer to page 5 of the report of the OICS 'Prisoner access to secure mental health treatment' dated September 2018. As a result of recommendation 2 of that report, is the OICS aware of any arrangements to allow non-serious offenders on hospital orders to be diverted to other authorised hospitals?**

This recommendation called for DoJ to work with judicial officers and the Department of Health (DoH) to make arrangements for diversion. It was supported in principle by DoJ who indicated they would participate in discussions with other agencies.

However, implementation of this recommendation is largely outside the immediate control of DoJ and possibly even beyond our jurisdiction. People coming from the courts on hospital orders may not become part of the corrective services system. They are often not held under the Prisons Act, and as such are not recorded on the Total Offender Management System and corrective services has very little information on them.

DoJ emphasised the above point when we asked for an update about any action that may have been taken in regards to this recommendation. DoJ noted that only the DoH authorities can decide the placement of patients in mental health facilities.

5. Please refer to page 10 of the Report on the Birth at Bandyup. At what number of weeks' gestation are pregnant women transferred from Melaleuca Remand and Reintegration facility to Bandyup Women's Prison?

The following responses to questions 5, 6, 7, and 8 are provided noting that the information in the relevant pages of this report were not made public.

Previously, we understood that pregnant women were transferred to Bandyup at 20 weeks. However, we were advised by the DoJ in a letter dated 12 February 2019 that when Melaleuca commenced operations in 2016, agreement between the Department and Sodexo was that only those pregnant women who had been assessed as being eligible to keep their baby with them would be transferred to Bandyup. This would occur at the commencement of the third trimester.

We were further advised there is no corrective services policy requiring that pregnant prisoners be routinely transferred from Melaleuca to Bandyup at 20 weeks' gestation. While it is understood this has occurred in some instances, it is not a Department requirement.

In practice, we now understand there is no set time for such a transfer. Decisions on transfers are made on a case by case basis by the Mothers and Babies Coordinating Committee based at Bandyup. The committee involves a multidisciplinary team which includes health services staff, custodial staff and a family links officer from the Department of Communities (DoC).

6. Please refer to page 12 of the Report on the Birth at Bandyup. Has the Department advised whether the Custodial Infrastructure Plan (including options to incorporate an infirmary for female prisoners) has been completed.

We have been advised by DoJ that an infirmary for Bandyup is on the Department's Custodial Infrastructure Plan. However, we have not been advised if planning for the establishment of the infirmary has commenced. The medical centre has two beds which are used as an infirmary on a temporary basis.

The Department has said that late stage pregnant women are housed in Unit 6. These rooms are air-conditioned and have a toilet and shower, but all rooms are double bunked, and they open onto an external walkway, which is not ideal should a medical emergency occur.

7. Please refer to page 17 of the Report on the Birth at Bandyup. Has the Department provided any feedback on the evidence outlined in the report that it took 7 – 12 minutes to open the cell door after the baby was born?

In its response, the Department simply outlined the activities undertaken by the Senior Office prior to departing for Unit 2 after the code red was called. However, the Department did not provide an explanation as to why it took so long to open the cell door.

8. Please refer to page 18 of the Report on the Birth at Bandyup. Has the Department advised that the issues about management of emergencies at night been addressed?

Bandyup has implemented several new processes to facilitate the better management of emergencies at night.

- The night Senior Officer is now positioned within the prison in the Unit 2 control room rather than the gatehouse. This will facilitate quicker access to the accommodation Units.
- Every unit office now has a break-glass box from which a cell key can be accessed.
- We have been advised that staff are encouraged to call a Code Red medical alarm at the earliest opportunity, even if they are uncertain that it is required.
- Staff are required to work a set number of day shifts per roster, to ensure training and skills are current.
- Senior Officers are to ensure that all staff are rotated through the night shift to ensure they are given the opportunity to work in all operational areas and units.
- Ongoing training has been provided to staff for emergency response and reporting requirements.

9. Please refer to page 13 – 14 of the Annual Report under ‘There is a growing national momentum for independent inspections’:

a) Is it correct that the implementation of OPCAT is due to occur within three years of ratification (ie. by Dec 2020)?

The Australian Government ratified the United Nations *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) in December 2017. At that time a declaration under Article 24 of the OPCAT was made to delay the obligation to establish or designate a National Preventive Mechanism (NPM) for up to three years. The NPM is not obligated to commence until December 2020, however, the United Nation’s Subcommittee on Prevention of Torture (SPT) can, as part of OPCAT, visit any Australian place of detention before this time.

b) What steps have been taken towards the implementation of OPCAT and how has the OICS been involved in this process?

Since the ratification of OPCAT the Office of the Commonwealth Ombudsman has commenced its role as the NPM Coordinator. As the Coordinator, the Commonwealth Ombudsman is responsible for facilitating and coordinating the Commonwealth, State and Territory NPMs. The Commonwealth Ombudsman will provide oversight for Commonwealth primary places of detention and the States and Territories will have NPM Bodies for their respective jurisdictions. The Commonwealth Ombudsman has undertaken an assessment of the extent to which OPCAT compliance is, or is not, currently being achieved in different places of detention, by different inspecting bodies. A public report of their findings will be made available in the second half of the year.

Concurrently, the Australian Human Rights Commission (AHRC) has been tasked with consulting with civil society on a range of matters regarding OPCAT implementation. After holding a number of roundtable consultations and receiving written submissions, the AHRC published an interim report in June 2018 and commenced a second phase of roundtables and submissions. A final report including recommendations is expected to be available in the second half of the year.

Most of the work on OPCAT implementation since ratification has remained at the Commonwealth level. We have participated in the AHRC's roundtable consultation and provided information to the Commonwealth Ombudsman as part of its assessment.

c) How will these obligations change the scope of the work of the Office?

We are unsure how the scope of work for the Office will be changed until the model for the implementation of OPCAT is determined in Western Australia. We are already one of the strongest OPCAT compliant bodies in Australia and the inspection standards we operate under are consistent with the United Nations rules for the treatment of prisoners, women prisoners and juveniles. We continue to participate in discussion on how the OPCAT arrangements are to apply and will monitor the potential impact on the Office.

Should you require any further information please do not hesitate to contact me or Mr Darian Ferguson, Deputy Inspector on 6551 4217 or via email at darian.ferguson@oics.wa.gov.au.

Yours sincerely



Eamon Ryan

INSPECTOR OF CUSTODIAL SERVICES

30 May 2019