

INTRODUCTION AND CONTEXT

The *Inspector of Custodial Services Act 2003* ('the Act') makes it mandatory for the Inspector to inspect each prison, detention centre, court custody centre and lock-up within its jurisdiction at least once every three years.¹ He may also conduct inspections at any other time or number of occasions.² A review of custodial services provided under the terms of the *Court Security and Custodial Services Act 1999* ('the CSCS Act'), some of which occur within police lock-ups, may also be undertaken.³

The definition of 'lock-up' for the purposes of the Act limits the jurisdiction of the Inspector to lock-ups as defined in the CSCS Act section 3, that is, those that are individually prescribed by regulations under the CSCS Act where services are provided by a contractor. Importantly, section 3 of the CSCS Act expressly states that a lock-up *does not* include one that 'is managed or controlled by the Commissioner of Police'.

It has been within this legislative framework that over the past 13 years the Office of the Inspector of Custodial Services (OICS) has had limited scope to enter, observe and assess certain aspects of the custodial arrangements in police lock-ups in Western Australia. The status of individual lock-ups has changed over time, but the Inspector has had access to nine separate lock-ups over the years. The most recent comprehensive inspection of lock-ups occurred over four months commencing in November 2012 and included Albany, Carnarvon, Geraldton, Kununurra and South Hedland. It is intended that the report will be published later in 2013. The other facilities that have been inspected on other occasions are Bunbury, Halls Creek, Fitzroy Crossing and Kalgoorlie.

Despite the legal right of access to some of these lock-ups altering over the years, the Inspector has accessed some sites that have been removed from the regulations following permission being granted by the Commissioner of Police following a request from the Inspector to do so.

Finally, staff from the Inspector's office have also recently visited the new Perth Central lock-up in Northbridge, but did not formally assess any aspect of its operations.

Due to the limited access that the Inspector has had to police lock-ups, this submission will only address those terms of reference that it is believed the Office can express an informed and properly investigated view. Submissions regarding terms 1, 2, 3 and 4 will be addressed in reference to those limited number of facilities to which the Office has had jurisdiction. Terms of reference 5 falls directly within the expertise of the Inspector and will therefore be addressed.

¹ *Inspector of Custodial Services Act 2003*, s19.

² *Ibid.*, s21.

³ *Ibid.*, s22.

Term of Reference 1

Compliance with the Optional Protocol to the Convention against Torture (OPCAT)⁴

OPCAT has been signed by the Federal government but not yet ratified. In essence, OPCAT requires all State Parties to ensure that places of detention are subject to independent inspection regimes. Police lockups are undoubtedly covered by OPCAT definitions.

OPCAT requires two forms of inspection of places of detention. First, the UN Subcommittee against Torture must be allowed access. In practice, SPT engagement is likely to be infrequent and sporadic.

Secondly, 'National Preventive Mechanisms' must be established (NPMs). These would be far more important in practice and should be more proactively and frequently involved. Ideally each State and Territory should have its own coordinating 'NPM' with powers similar to OICS.

The current inspection systems for police lockups in Western Australia are not comprehensive and do not meet OPCAT requirements.

It is also important to note that OPCAT is limited to 'cruel, inhuman or degrading punishment or treatment'. OICS' jurisdiction with respect to prisons and detention centres extends further. It can include examining a whole range of improvement opportunities and efficiencies. As such it offers an 'OPCAT-Plus' model of inspections with consequential benefits for government.

Term of Reference 2

Access to Medical Services

Police will generally take persons in custody to the nearest hospital if it is decided that they require medical attention. Interviews with Department of Corrective Services ('DCS') and contractor staff have provided anecdotal evidence that there have been occasions, however, when police have tried to sign over custody of individuals when the staff members believed they required medical attention or were under the influence of substances and therefore not medically stable. It is not possible to assess the actual extent of this problem.

There are frequently occasions where persons come into custody who require essential medications, and it is important that processes are in place to facilitate access to these. This requires mechanisms to ensure (i) that the medication is, indeed prescribed to that individual in custody; (ii) appropriate dosing is confirmed; (iii) access is facilitated; and (iv) records are kept.

OICS has observed contractor staff facilitate access to medications. However there are occasions when dispensing medications is problematic, such as when the prescribing information is not present on the bottles and it cannot be confirmed what the medication is and who it is prescribed for.

⁴ See R Harding and N Morgan, *Implementing the Optional Protocol to the Convention against Torture* (2008); report to the Australian Human Rights Commission;
http://www.hreoc.gov.au/human_rights/publications/opcat/index.html

Legal Services

OICS has observed some difficulties for arrested persons accessing legal services on occasions in some lock-ups. It has been observed that some police lock-ups do not allow representatives from the Aboriginal Legal Service or other lawyers into the lock-ups to speak to clients, rather advising them to wait and speak to them when the client arrives at the courthouse. With already stretched resources for many of the publicly funded legal representatives, restricting such access is arguably a restriction on an accused's right to legal representation. In the Office's experience there is not a standard policy and practice across lock-ups with regard to allowing accused the right to see a lawyer, rather access is ad hoc and dependant on the attitude of the office in charge of each lock-up.

At lock-ups where access has been observed to occur, this has sometimes had to take place under very inappropriate conditions. A lack of purpose built facilities means that conversations between clients and lawyers sometimes occur in hallways or through the cell door, in full earshot of other arrested persons or police. There is an inability to provide the privacy that would generally be expected for such consultations due to the poor facilities.

Access to other third parties

OICS has observed a lack of consistent policy across lock-ups with regard to police permitting access by family and friends to arrested persons. Again, there is a lack of proper facilities in most lock-ups to properly permit such access (with many visits taking place through cell doors) and often insufficient staff to supervise such visits.

Particularly concerning is anecdotal evidence that there have been occasions when juvenile arrestees have been denied access to family when in lock-ups.

Term of Reference 3

Most of the lock-ups visited by OICS have been in regional and remote areas of Western Australia. As is often the tendency with infrastructure and services in these areas, they have not been properly maintained nor had adequate upgrading as they are distant from the wider public view and concern. As a result the appropriateness of the facilities themselves and the ability for services to be delivered properly in them suffers.

It is outside OICS jurisdiction to have examined in detail the day-to-day operation of the lock-ups under when under police control. The facilities and operations have generally been inspected only in the context of persons in custody being under the care of contractors. The Office has, however, been able to make assessment of the general conditions and observations of police personnel whilst there.

OICS has generally found that the age of infrastructure has a significant impact on the conditions for those in custody, with the older lock-ups tending to be no longer fit for purpose and unable to properly support contractors and police personnel in providing a decent standard of care. The expected design standards that we have today are also therefore absent in the older facilities. While it would be cost prohibitive to rebuild all the older lock-ups in a short time frame, there are steps that can be taken to ameliorate the problems caused by the age of the facilities that could improve standards. These could include options such as installation of cameras, vents and windows, the

addition of rooms such as interview and visits spaces, and also the introduction of process and procedures to improve standards of decency.

The most recently built police complex has been the new Police Complex in Northbridge, during which a set of *Western Australian Police Building Code Custodial Guidelines* was developed.⁵ The high level of these standards is reflected in the final outcome of the complex and the lock-up within it. OICS staff were consulted during the design phase of the project and also toured the centre prior to opening and have a preliminary view that it allow a high standard of service delivery to be achieved.

Perhaps the most notable example of unacceptable standard of conditions and care was an inspection of Carnarvon lock-up in 2006. At the time of the inspection, the Department of Corrective Services (DCS) used the lock-up as a stopover point for transporting prisoners between Greenough and Roebourne Prisons. Contractor staff took over management of the entire lock-up and all its occupants, whether they were the prisoners on its escort or other individuals who had been detained by police. The inspection found the cells to be totally unacceptable, and despite further visits and notification to DCS and police over the next 12 months, no significant improvements occurred. Issues identified by the inspection included:

- Cells not being cleaned for months at a time, and included dried human faeces left to accumulate in cells.
- Cockroach infestations in kitchen areas.
- Stoves dripping oil and fat onto the floor.
- Accumulation of dried spit within cells.
- Rust problems with multiple cell doors, windows and bars.
- Offensive materials being sold at public service counters to fund raise for police social club activities.
- Filthy foam mattresses with no covers issued to prisoners for overnight stays.
- Issuing blankets to persons in cell without being washed between uses.

The matters identified indicated not just issues with infrastructure and resourcing, but also questions about attitudes and culture within some districts towards standards of decent and respectful treatment of individuals who come within police care.

After the 2009 Inspection, the Carnarvon lock-up cells were permanently closed for health and safety reasons. Four new portable cells were brought in, which are clean and tidy, with a toilet and running water.⁶

⁵ It should also be noted that in response to the Royal Commission into Aboriginal Deaths in Custody, the Australian Police Ministers Council endorsed an indicative model for the design and operation of custodial facilities in all jurisdictions, the *Standard Guidelines for Police Custodial Facilities in Australia*. The Western Australian Guidelines are based on these.

⁶ Contractor staff no longer operate any aspect of operations at Carnarvon lock-up, with all services being provided by police. While it remains a Gazetted facility, it is no longer used as a stopover point for road transport. Rather prisoners who have to appear in court locally are flown in and left in the care of police at the lockup for the duration of their required stay. Local police reported they have restricted control over the scheduling of prisoners and are forced to remove police officers from front line duties and assign them to

Term of Reference 5

Oversight Mechanisms

OICS is the only independent agency that has a legislatively based right to access any police lock-ups in Western Australia for the purpose of inspecting standards of decency, infrastructure, services and processes. As has been stated previously, that legal right is restricted to specific lockups by a combination of statutes, but has been permitted outside the terms of the legislation by the Commissioner of Police upon request of the Inspector.

The desirability of independent oversight of the operation of lock-ups was identified at the time the Office of the Inspector of Custodial Services was created in 1999. Then Attorney General Peter Foss clearly stated his Government's intent of expanding the jurisdiction of the Inspector to include a number of other functions, including police lock-ups. At that time he stated:

I also want to signal clearly the Government's intention to introduce in the spring session further legislation to expand the jurisdiction of the Inspector of Custodial Services to cover juvenile detention centres, community-based work release arrangements and home detention. A time frame will be established in consultation with the Police Service of Western Australia to expand progressively the jurisdiction of the inspector for all lockups over a five-year period.⁷

The commitment to the expansion of oversight was part of an undertaking given to the Australian Democrat members of the Legislative Council, in exchange for their votes to pass the necessary legislation for the privatisation of court security and custody services and a new prison facility.

While the powers of the Office have been expanded to include juvenile detention centres, none of the other amendments have yet been realised.

Superintendents of prisons also have an obligation to annually inspect police lock-ups where this responsibility is delegated to them by DCS. This obligation comes about because the Prisons Act⁸ and Prisons Regulations⁹ allow for prisoners to be held in lock-ups for various reasons, including working as trustees and long distance transport. Under DCS Policy Directive 4 (PD4) a schedule is provided of which lock-ups each prison superintendent is responsible for visiting.

PD4 requires the superintendent to visit lockups once every financial year. A report on the visit is supposed to be forwarded to the General Manager Public Prisons,¹⁰ and provide advice as to the lockups continued suitability for prisoner placement. The superintendent is also supposed to send a copy of the report to the Regional Superintendent of police and to the lockup keeper.

These inspections are essentially based on an audit-like viewing of the holding cells, consisting of a single page of tick-box assessments as to whether the lock-up is deemed suitable or unsuitable for

manage prisoners overnight in the lock-up. The police are also expected to provide the meals and additional bedding required to host the prison detainees.

⁷ Attorney General Hon Peter Foss MLC, *Hansard* (Wednesday 15 September 1999) 1183.

⁸ Section 16.

⁹ Regulation 85.

¹⁰ While this position no longer exists within the DCS management structure, it remains the designated position for reporting within the Policy Directive.

prisoners to reside there. The list of audit items relates mostly to the condition of the cells and security. This system does not address issues related to procedures, the management of persons in custody or decent treatment.

Comments from some superintendents have indicated they believe the process is tokenistic and wasteful of their time. In the past the Office has requested from DCS the reports from superintendent visits and found that:

- Often inspections had not taken place at all.
- Inspections had occurred but no reporting had been submitted.
- Some inspections and reports were incomplete.
- Some superintendents were not aware of the obligation for them to conduct the visits.
- Some superintendents did not know what to do with the reports once completed.
- Some reports had not been read, evaluated or actioned.
- Some of the reports had not been forwarded to the police for comment or action.

When the lack of coordinated management and assessment of the visits and reports was brought to the attention of DCS by the Inspector, it gave an undertaking to improve its processes.

The Inspector has not reassessed the situation recently but has requested update documentation from DCS and can report back to the Committee on this information. It is possible that the system has improved but, overall, these visits do not constitute an adequate oversight process: they apply only to selected sites, are limited in scope, and are undertaken by another government agency not an independent oversight body.

Resourcing

Adequate resourcing is a significant issue that would have to be considered in conducting inspections of police lock-ups. The number of facilities would be large, diverse and geographically wide and would necessitate a full time team of inspectors dedicated to the task. Consideration as to the frequency of inspections would also impact on the resources required.

Police lock-ups differ from prisons in that individuals are generally held for only short periods of time within them, so the standards are necessarily different from those applied by the Inspector in inspecting prisons.

Due to the limited nature of OICS access, the Inspector has not developed specific standards for the inspection of the lock-ups, but has endeavoured to apply general standards of decency and also looked to the standards expected of contractors provided services within court custody centres as guidance.

Disciplinary Processes

The Commissioner of Police is currently responsible for maintaining and implementing the disciplinary regime for police officers engaged in work at lock-ups. The Corruption and Crime Commission (CCC) also has a vital role to play. The Inspector considers this to be appropriate, and does not believe that an independent oversight agency responsible for promoting and inspecting against standards within lock-ups to be the appropriate body to also oversee discipline of officers.

Ideally, inspections reduce the need for disciplinary action. Obviously, if OICS was to undertake inspections of all police lockups, the Inspector would enter appropriate MoU arrangements with WAPOL and the CCC.