

41ST PARLIAMENT



Report 38

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Consultation with Statutory Office Holders

Presented by
Hon Pierre Yang MLC (Chair)
February 2023

Standing Committee on Public Administration

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Government response

This report is subject to Standing Order 191(1):

Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.

The 2 month period commences on the date of tabling.

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EXECUTIVE SUMMARY

- 1 In August 2022 the Standing Committee on Public Administration (Committee) conducted hearings with the following statutory office holders:
 - Information Commissioner
 - Inspector of Custodial Services
 - Public Sector Commissioner
 - Parliamentary Commissioner for Administrative Investigations (Ombudsman).
- 2 The main issues considered in this report and the Committee's recommendations to address them are summarised below.

Information Commissioner

- 3 The timeliness of processing applications to review freedom of information requests is an area of ongoing concern for the Information Commissioner. The Committee has made the following recommendations to address this:
 - The Attorney General undertake a review of the *Freedom of Information Act 1992* and table a report in the Parliament of Western Australia within 3 years of the tabling of this report.
 - The Attorney General consider increasing the budget of the Office of the Information Commissioner.
- 4 The Committee has also recommended the Office of the Information Commissioner upgrade its information technology systems in order to be able to facilitate online conciliation conferences and improve the interrogation of freedom of information data.

Inspector of Custodial Services

- 5 In 2021 the Inspector of Custodial Services reported the following issues in relation to custodial services in Western Australia:
 - Banksia Hill Youth Detention Centre is not fit for purpose
 - Melaleuca Women's Prison lacks sufficient infrastructure to operate as a fully functional prison
 - Bandyup Women's Prison is overcrowded with many facilities too small or no longer fit for purpose.
- 6 The Committee has made the following recommendations to address these concerns:
 - The Minister for Corrective Services conduct a review of the *Young Offenders Act 1994* and the *Young Offenders Regulations 1995*.
 - The Department of Justice recruit additional welfare-focused staff at Banksia Hill.
 - The Department of Justice address infrastructure deficiencies at Melaleuca Women's Prison.
 - The Department of Justice undertake a comprehensive review of infrastructure at Bandyup Women's Prison.

Public Sector Commissioner

- 7 The Public Sector Commission is currently undertaking a number of reviews into the public sector and other government agencies including:

- review of Part 6 of the *Public Sector Management Act 1994*
 - review of recruitment practices in the public sector
 - review of the organisational capability of 8 government departments (Agency Capability Review Program).
- 8 The Committee has made a recommendation that the Minister for Public Sector Management consider undertaking a review of the Public Sector Commissioner's role as State Recovery Controller.

Ombudsman

- 9 This report considers the following aspects of work undertaken by the Ombudsman:
- reviewing complaints about decisions made by public authorities
 - investigating deaths of children known to the Department of Communities
 - 2021 Ombudsman investigation into preventing child suicide
 - investigating family and domestic violence fatalities
 - 2021 Ombudsman investigation into the role of the Public Advocate to notify family members upon the death of a person under her guardianship.
- 10 The Committee has not made any recommendations in relation to the Ombudsman.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 4

The average age of external reviews at the Office of the Information Commissioner has increased from 99 days in June 2018 to 224 days in July 2022. In 2021–22 the Office experienced a 20.5% increase in the number of external review applications from the previous year. The increasing average age of external reviews can be attributed to growth in demand of matters outstripping resources.

RECOMMENDATION 1

Page 5

The Office of the Information Commissioner upgrade its information technology systems in order to facilitate online conciliation conferences and improve the interrogation of freedom of information data.

RECOMMENDATION 2

Page 7

The Attorney General undertake a review of the *Freedom of Information Act 1992* and table a report in the Parliament of Western Australia within 3 years of the tabling this report.

RECOMMENDATION 3

Page 8

The Attorney General consider increasing the budget of the Office of the Information Commissioner.

RECOMMENDATION 4

Page 14

The Minister for Corrective Services conduct a review of the *Young Offenders Act 1994* and the *Young Offenders Regulations 1995* to investigate:

- whether to repeal the provisions governing 'confinement'
- whether to enact a framework for managing special regimes such as the Banksia Hill Intensive Support Unit, including adequate protections for young people
- measures to ensure that all young people are entitled to a minimum amount of out of cell time each day having regard to the United Nations *Minimum Rules for the Treatment of Prisoner* which requires detainees be provided 2 hours out of cell each day
- exposure to potential legal risks following the decision of *VYZ by next of friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274.

RECOMMENDATION 5

Page 15

The Department of Justice recruit additional welfare-focused staff at Banksia Hill Youth Detention Centre to help deliver a trauma-informed model of care, de-escalate volatile situations, alleviate the emotional burden on staff, reduce staff resignations, enable staff to feel safe in the workplace and reduce distress in detainees.

RECOMMENDATION 6

Page 23

The Department of Justice address concerns regarding infrastructure at Melaleuca Women's Prison raised by the Inspector of Custodial Services in the 2021 inspection report.

RECOMMENDATION 7

Page 26

The Department of Justice undertake a comprehensive review of infrastructure at Bandyup Women's Prison and provide a response to each infrastructure deficiency identified by the Inspector of Custodial Services in the 2021 inspection report.

RECOMMENDATION 8

Page 34

The Minister for Public Sector Management consider undertaking a review of the role of State Recovery Controller, including reviewing any issues in relation to concurrently performing the role of Public Sector Commissioner, and whether this arrangement is appropriate going forward.

CHAPTER 1

Introduction

Terms of reference

- 1.1 Under its terms of reference the Standing Committee on Public Administration (Committee) is required to regularly consult with the following statutory office holders:
- Information Commissioner
 - Inspector of Custodial Services
 - Public Sector Commissioner
 - Parliamentary Commissioner for Administrative Investigations (Ombudsman).¹

Procedure

- 1.2 In August 2022 the Committee held public hearings with the Information Commissioner, the Inspector of Custodial Services, the Public Sector Commissioner and the Ombudsman. The witnesses who appeared at these hearings are listed in Appendix 1.
- 1.3 The Committee extends its appreciation to the statutory office holders and their staff for their assistance.
- 1.4 The Committee has focussed its attention on statutory office holder reports published in the 2020–21 reporting period. The Committee has not scrutinised reports published after the hearings conducted in August 2022 (including 2021–22 Annual Reports).

Structure of this report

- 1.5 This report is structured in the following way:
- chapter 2 considers matters relevant to the Information Commissioner
 - chapter 3 considers matters relevant to the Inspector of Custodial Services
 - chapter 4 considers matters relevant to the Public Sector Commissioner
 - chapter 5 considers matters relevant to the Ombudsman.

¹ Legislative Council of Western Australia, [*Standing Orders*](#), sch 1, 5.3.

CHAPTER 2

Information Commissioner

Introduction

2.1 This chapter begins with an explanation of the role of the Information Commissioner before considering the following aspects of her work:

- timeliness of external reviews
- satisfaction with the external review process
- information technology systems and conciliation of external reviews
- preliminary views issued by the Information Commissioner
- Early Intervention Program
- percentage of applications reviewed (compared to other jurisdictions)
- legislative review of the *Freedom of Information Act 1992* (FOI Act)
- staffing levels.

Functions of the Information Commissioner

2.2 The Information Commissioner is an independent parliamentary officer appointed under the FOI Act.

2.3 The main functions of the Information Commissioner are to deal with:

- complaints about decisions regarding access to information held by government agencies
- requests to amend personal details in government records.²

2.4 Other functions of the Information Commissioner include:

- ensuring government agencies are aware of their responsibilities under the FOI Act
- ensuring the public is aware of their rights under the FOI Act
- assisting the public and government agencies on matters relevant to the FOI Act
- recommending legislative or administrative changes that could help achieve the objects of the FOI Act.³

2.5 The Office of the Information Commissioner provides support in performing these functions.

Applications to the Information Commissioner

2.6 The FOI Act provides a general right of access by the public to documents held by state government agencies, ministers and local governments (subject to certain exceptions).⁴ It also allows individuals to apply to update or amend personal information about themselves in government documents.⁵ The effective operation of these functions has implications for transparency and accountability.

² *Freedom of Information Act 1992* s 63(1).

³ *Freedom of Information Act 1992* ss 63(2)(d)–(f), 111(4).

⁴ *Freedom of Information Act 1992* s 10.

⁵ *Freedom of Information Act 1992* s 45.

- 2.7 A person who is unhappy with a decision can lodge an application for review with the Information Commissioner.⁶ Applications are resolved by conciliation wherever possible.⁷
- 2.8 If initial efforts to resolve a matter by conciliation are unsuccessful, the Information Commissioner will initiate an 'external review' of the decision. After considering all of the material the Commissioner may issue a non-binding 'preliminary view' to facilitate resolution.
- 2.9 The Information Commissioner can also issue binding determinations that confirm, vary or set aside a decision.⁸

Timeliness of external reviews

- 2.10 The Office of the Information Commissioner's 2020–21 Annual Report notes that the timeliness of processing external reviews is an 'ongoing concern and a significant area of focus'.⁹
- 2.11 The average age of external reviews has increased from 99 days in June 2018 to 224 days in July 2022.¹⁰ During the Committee's previous statutory office holder consultation in November 2020 the Information Commissioner attributed the increasing average age of external reviews to 'growth in demand of matters outstripping resources'.¹¹
- 2.12 The number of external reviews received by the Office of the Information Commissioner has continued to grow. In 2021–22 the Office experienced a 20.5% increase in the number of external review applications from the previous year. Tony Pruyn, Manager at the Office of the Information Commissioner noted this represents a 'significant' increase in work for the organisation.¹²
- 2.13 Under the FOI Act the Information Commissioner is required to make a decision on an external review within 30 days unless it is impracticable to do so.¹³ The Information Commissioner advised the Committee 'it was apparent from the outset of the establishment of the Office of the Information Commissioner that it was impracticable, in the majority of external reviews dealt with by this office, that they could be finalised within the 30 day period'.¹⁴ The Information Commissioner referred the Committee to the 1995–96 Annual Report in which the incumbent Commissioner stated 'the statutory timeframe is not sufficient to give effect to procedural fairness, the rights of all persons and to enable proper consideration of the issues that arise in a complaint'.¹⁵

⁶ [Freedom of Information Act 1992](#) s 65.

⁷ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 62.

⁸ [Freedom of Information Act 1992](#) s 76.

⁹ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 3.

¹⁰ Office of the Information Commissioner (OIC), [Age of external reviews on-hand](#), OIC, accessed 19 August 2022.

¹¹ Standing Committee on Public Administration, report 34, [Consultation with Statutory Office Holders](#), Western Australia, Legislative Council, 24 November 2020, p 15.

¹² T Pruyn, Manager, Complaints, Office of the Information Commissioner, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, p 4.

¹³ [Freedom of Information Act 1992](#) s 76(3).

¹⁴ C Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 3.

¹⁵ Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 3.

FINDING 1

The average age of external reviews at the Office of the Information Commissioner has increased from 99 days in June 2018 to 224 days in July 2022. In 2021–22 the Office experienced a 20.5% increase in the number of external review applications from the previous year. The increasing average age of external reviews can be attributed to growth in demand of matters outstripping resources.

- 2.14 The number of outstanding external reviews at the end of 2021–22 increased by 46% from the previous year.¹⁶ The Information Commissioner advised this is due to the high number of applications received and a decline in the number of external reviews completed.¹⁷
- 2.15 The ability of the Office of the Information Commissioner to clear this backlog and complete external reviews in a timely manner is integral to the effective operation of the FOI Act. The Committee is of the view that the timeliness of external review requires attention from the Office of the Information Commissioner and the State Government.

Satisfaction with the external review process

- 2.16 One way the Office of the Information Commissioner measures its performance is by conducting a post-review questionnaire of parties to external reviews. The questionnaire seeks feedback on whether the review was independent, objective, fair and user-friendly.
- 2.17 The target satisfaction rate has not been achieved since 2016–17.¹⁸ When satisfaction rates fell between 2018–19 and 2019–20 the Information Commissioner advised the Committee that the timeliness of external reviews was likely to be a contributing factor.¹⁹
- 2.18 The Office of the Information Commissioner could implement strategies to achieve its target satisfaction rate in the future. The Committee looks forward to receiving an update during the next round of statutory office holder consultation.

Information technology systems and conciliation

- 2.19 During the Committee's previous consultation in 2020 the Information Commissioner advised information technology (IT) systems need to be updated to improve analysis of 'what is going on in the broader public sector with FOI data'.²⁰ In 2022, the Information Commissioner advised the current systems 'do not adequately support the Office of the Information Commissioner to efficiently deal with external reviews or resolve external reviews in a timely way'.²¹ Alison McCubbin, Coordinator of Education and Communication at the Office of the Information Commissioner explained the current system is not able to generate reports to undertake granular data analysis.²²
- 2.20 In 2022 the Committee was advised that IT systems have not been updated:

¹⁶ Pruyn, Manager, OIC, [\[transcript of evidence\]](#), 8 August 2022, p 4.

¹⁷ C Fletcher, Information Commissioner, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, p 2.

¹⁸ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 61; M Fitzgerald, Executive Officer, Office of the Information Commissioner, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, pp 7–8.

¹⁹ C Fletcher, Information Commissioner, [\[transcript of evidence\]](#), Legislative Council, 21 October 2020, accessed 19 August 2022, p 12.

²⁰ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 21 October 2020, p 2.

²¹ Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 3.

²² A McCubbin, Coordinator, Education and Communication, Office of the Information Commissioner, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, p 13.

we continue to operate with a legacy IT system, or IT environment, that has limited functionality and reporting tools, all of which are long overdue for an upgrade and therefore the focus of considerable attention for our office for the next 18 to 24 months.²³

- 2.21 The Committee supports the Office of the Information Commissioner upgrading its systems to improve the interrogation of freedom of information data.

Conciliation

- 2.22 The Office of the Information Commissioner encourages dispute resolution through informal processes such as conciliation.²⁴ The FOI Act allows the Information Commissioner to require parties to attend compulsory conciliation.²⁵
- 2.23 Conciliation is a confidential dispute resolution process facilitated by a neutral third party. Its purpose is to clarify the issues in dispute, consider possible options for settlement and resolve disputes without recourse to litigation or a final administrative review decision.
- 2.24 The rate of external reviews resolved by conciliation is a key performance indicator of the Office of the Information Commissioner. In 2020 and 2021, the Office was unable to meet its target rate of external reviews finalised by conciliation.²⁶
- 2.25 The Office of the Information Commissioner did not conduct formal face-to-face conciliation conferences during the COVID-19 period.²⁷ It does not have IT systems to facilitate online conciliation conferences.²⁸
- 2.26 The Committee considers that the Office of the Information Commissioner should implement strategies to achieve its target rate for conciliation. This should include upgrading its IT systems to facilitate online conciliation conferences.

RECOMMENDATION 1

The Office of the Information Commissioner upgrade its information technology systems in order to facilitate online conciliation conferences and improve the interrogation of freedom of information data.

- 2.27 The Information Commissioner advised she has committed to reinstating in-person conciliation conferences in 2022.²⁹ The reinstatement of in-person conciliation conferences is a positive step towards achieving the target rate of external reviews finalised by conciliation.

Preliminary views

- 2.28 In some cases the Information Commissioner will issue a non-binding preliminary view. The purpose of a preliminary view is to give the parties an opportunity to review the Commission's understanding of the matters in dispute and identify any factual errors.³⁰ This

²³ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 8 August 2022, pp 2–3.

²⁴ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 62.

²⁵ [Freedom of Information Act 1992](#) s 71.

²⁶ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 62.

²⁷ OIC, [Annual Report 2020–21](#), p 11.

²⁸ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 11.

²⁹ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 11.

³⁰ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 18.

allows parties to reconsider their application or provide additional material in support of their position.

- 2.29 The number of preliminary views increased from 57 in 2019–20 to 86 in 2020–21.³¹
- 2.30 The difficulties of conducting in-person conciliation conferences during COVID–19 is likely to have contributed to the increased number of preliminary views issued in 2020–21.³² The Committee will review the Information Commissioner’s reliance on preliminary views during the next round of statutory office holder consultation.

Early Intervention Program

- 2.31 In September 2019 the Office of the Information Commissioner introduced the Early Intervention Program to address the backlog of outstanding external reviews.³³ The Program involves an experienced officer issuing an informal view of the issues in dispute. It is a process of attempting resolution without having to go through the more formal steps involved in the Information Commissioner issuing a preliminary view or final determination.³⁴
- 2.32 In its first full year of operation, 72.2% of matters actioned within the Early Intervention Program were resolved by conciliation.³⁵
- 2.33 The success of the Early Intervention Program in finalising external reviews is encouraging however the growing backlog of outstanding external reviews remains a concern to the Committee.

Percentage of applications reviewed compared to other jurisdictions

- 2.34 In 2020–21 Western Australia had the lowest rate of applications reviewed by an Information Commissioner or Ombudsman in Australia.³⁶ The Information Commissioner advised these figures should be considered in light of Western Australians making the most applications per capita.³⁷ She noted jurisdictions with ‘first-generation’ legislation such as Western Australia report low rates of review; while jurisdictions that have reformed their freedom of information legislation are more proactive with disclosure and report higher rates of review.
- 2.35 The current legislative model of the FOI Act is less proactive with disclosure compared to ‘second generation’ models used in other jurisdictions. This contributes to high rates of external review applications and low rates of external review in Western Australia.

Review of the *Freedom of Information Act 1992*

- 2.36 The Information Commissioner is required to recommend legislative and administrative changes to help achieve the objects of the FOI Act.³⁸
- 2.37 The Committee made the following observations in its previous report:

³¹ OIC, [Annual Report 2020–21](#), p 17.

³² Pruyn, Manager, OIC, [\[transcript of evidence\]](#), 8 August 2022, p 16.

³³ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 16; Pruyn, Manager, OIC, [\[transcript of evidence\]](#), 8 August 2022, p 14.

³⁴ Pruyn, Manager, OIC, [\[transcript of evidence\]](#), 8 August 2022, p 15.

³⁵ Office of the Information Commissioner (OIC), [Annual Report 2020–21](#), OIC, 16 September 2021, accessed 19 August 2022, p 3.

³⁶ Information and Privacy Commission NSW (IPC), [Utilisation of Information Access Rights 2020–21](#), IPC, June 2022, accessed 8 August 2022, metric 6.

³⁷ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 7.

³⁸ [Freedom of Information Act 1992](#) s 111(4).

- none of the amendments recommended in the 2018–19 Annual Report have been legislated
 - the FOI Act is overdue for review.³⁹
- 2.38 The Committee recommended the Attorney General undertake a review of the FOI Act and table a report in Parliament by the end of 2023.⁴⁰ The Attorney General advised this recommendation was not formally accepted by the Government due to the prorogation of Parliament shortly after tabling of the report.⁴¹
- 2.39 The Information Commissioner advised she recently provided a comprehensive submission to the Attorney General to undertake a 'wholesale review' of the FOI Act.⁴²
- 2.40 The Commissioner's submission recommends adopting a legislative model that is more proactive with disclosure and facilitates 'open government'.⁴³ Open government is a Federal Government policy to improve access to government information, transparency, accountability and public participation.⁴⁴
- 2.41 The Commissioner's submission also recommends legislative amendments to accommodate requests for digital information.⁴⁵
- 2.42 The FOI Act is due for review after 30 years of operation without significant amendment. As previously recommended in 2020, the Committee is of the view that a review of the FOI Act should be tabled in Parliament. The review should consider the benefits of introducing a legislative model that is more proactive with disclosure and able to accommodate requests for digital information.
- 2.43 The Committee wrote to the Attorney General to ask what period of time would reasonably be required to table a review of the FOI Act. The Attorney General advised a review could be undertaken within 3 years from the date of a recommendation being made.⁴⁶

RECOMMENDATION 2

The Attorney General undertake a review of the *Freedom of Information Act 1992* and table a report in the Parliament of Western Australia within 3 years of the tabling this report.

Staffing levels

- 2.44 The Information Commissioner advised low staffing levels have resulted in a reduction in the completion of external reviews in 2021–22.⁴⁷
- 2.45 The Office of the Information Commissioner has experienced difficulty recruiting new staff. Only 4 applications were received after recently advertising for a new principal legal officer.⁴⁸

³⁹ Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, pp 19–20.

⁴⁰ Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, recommendation 4.

⁴¹ Hon J Quigley MLA, Attorney General, *Letter*, 22 November 2022, p 1.

⁴² Fletcher, Information Commissioner, *[transcript of evidence]*, 8 August 2022, p 10.

⁴³ Fletcher, Information Commissioner, *[transcript of evidence]*, 8 August 2022, pp 10–11.

⁴⁴ Department of the Prime Minister and Cabinet (DPMC), *Open Government National Action Plan 2018–20*, DPMC, Australian Government, accessed 26 September 2022. A new action plan was recently submitted to the Federal Government for final consideration.

⁴⁵ Fletcher, Information Commissioner, *[transcript of evidence]*, 8 August 2022, pp 10–11.

⁴⁶ Hon J Quigley MLA, Attorney General, *Letter*, 28 November 2022, p 1.

⁴⁷ Fletcher, Information Commissioner, *[transcript of evidence]*, 8 August 2022, p 16.

⁴⁸ Fletcher, Information Commissioner, *[transcript of evidence]*, 8 August 2022, p 5.

- 2.46 Delays in appointing new staff can be caused by a legislative requirement that the Governor in Executive Council authorise the appointment of staff.⁴⁹ The Information Commissioner has previously recommended legislative amendments to allow her to appoint new staff directly.⁵⁰
- 2.47 The Office of the Information Commissioner advised an additional 5.5 FTE staff are required to deal with the existing backlog of matters.⁵¹
- 2.48 Low staffing levels have reduced the capacity of the Office of the Information Commissioner to deal with its workload.
- 2.49 The Office of the Information Commissioner has not received any additional funding for staff since 2011–12.⁵² Over the past 10 years the number of external reviews it has received has increased by 50.4%. The Information Commissioner advised:
- While my office continues to explore ways to decrease the time taken to deal with external reviews, this trending increase in the number of external reviews received presents an ongoing and significant challenge to the timeliness of external reviews, particularly when the resources of my office have remained largely static over the same period.⁵³
- 2.50 The Committee is of the view that consideration should be given to increasing the budget of the Office of the Information Commissioner.

RECOMMENDATION 3

The Attorney General consider increasing the budget of the Office of the Information Commissioner.

⁴⁹ *Freedom of Information Act 1992* s 61(1).

⁵⁰ Fletcher, Information Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 10; Office of the Information Commissioner (OIC), *Annual Report 2019–20*, OIC, 24 September 2020, accessed 19 August 2022, p 35.

⁵¹ Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 6.

⁵² Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 6.

⁵³ Fletcher, Information Commissioner, [Letter](#), 22 November 2022, p 6.

CHAPTER 3

Inspector of Custodial Services

Introduction

3.1 This chapter begins with an explanation of the role of the Inspector of Custodial Services (Inspector) before considering the following aspects of custodial services in Western Australia:

- 2021 inspection of Banksia Hill Youth Detention Centre
- transfer of Banksia Hill detainees to Unit 18 Casuarina Prison
- Banksia Hill being the only youth detention facility in Western Australia
- 2020 inspection of Melaleuca Women's Prison
- 2020 inspection of Bandyup Women's Prison
- mental health services for prisoners
- 2022 United Nations visit.

Functions of the Inspector

3.2 The Inspector is an independent parliamentary officer appointed under the *Inspector of Custodial Services Act 2003*.⁵⁴

3.3 The Inspector is required to inspect all prisons, detention centres, court custody centres and prescribed police lock-ups in Western Australia every 3 years. Reports of each inspection are tabled in Parliament.⁵⁵

3.4 Other functions of the Inspector include:

- conducting reviews of issues that arise in relation to custodial services
- providing advice to Parliament and the Minister for Corrective Services on criminal justice policy issues
- administration of the independent visitor service.⁵⁶

3.5 The Office of the Inspector of Custodial Services provides support in performing these functions.

Banksia Hill Youth Detention Centre

3.6 Banksia Hill Youth Detention Centre (Banksia Hill) is the only juvenile custody facility in Western Australia.⁵⁷ It is a maximum security facility that holds boys and girls from all regions of Western Australia.

⁵⁴ *Inspector of Custodial Services Act 2003* s 6.

⁵⁵ *Inspector of Custodial Services Act 2003* s 19–20.

⁵⁶ *Inspector of Custodial Services Act 2003* ss 20, 22–23 and Part 6.

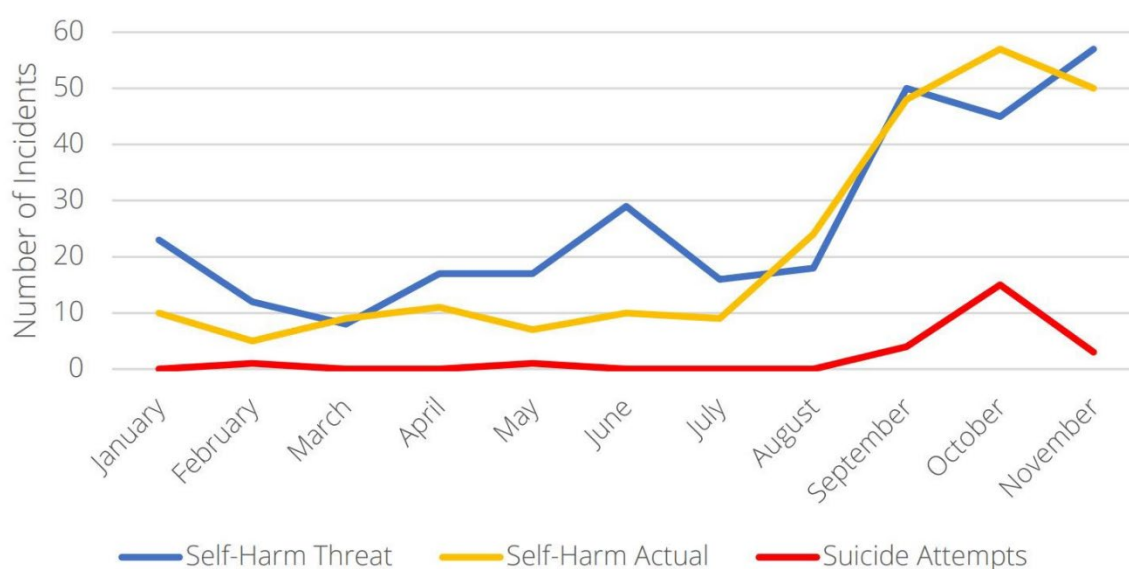
⁵⁷ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p xi.

- 3.7 On 1 December 2021 the Office of the Inspector of Custodial Services announced it would conduct an inspection of the Intensive Support Unit (ISU) at Banksia Hill. The ISU offers intensive support and therapeutic care to detainees with the greatest needs.⁵⁸
- 3.8 The ISU inspection concluded that Banksia Hill is not fit for purpose. As a result, the Inspector issued a 'show cause notice'⁵⁹ to the Minister for Corrective Services (Minister).⁶⁰

Reason for inspection

- 3.9 The inspection of the ISU was conducted outside the normal 3 year review cycle because of an increasing number of critical incidents, staff assaults, self-harm incidents and suicide attempts.⁶¹
- 3.10 Between January and November 2021 detainees at Banksia Hill attempted suicide on 24 occasions.⁶² Figure 1 provides a breakdown of self-harm incidents over this period. ISU detainees accounted for 63% of self-harm threats and 71% of self-harm incidents.

Figure 1. *Threats of self-harm, self-harm incidents and attempted suicide at Banksia Hill Youth Detention Centre from January to November 2021*



[Source: Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 9.]

- 3.11 Between January and June 2022 there were 251 critical incidents at Banksia Hill. This includes incidents that:
- resulted in a staff member or detainee requiring hospitalisation
 - resulted in a staff member or detainee requiring immediate or ongoing medical treatment
 - involved the use of a weapon

⁵⁸ C Wyatt, Director, Review, Office of the Inspector of Custodial Services, [\[transcript of evidence\]](#), Legislative Council, 10 August 2022, accessed 19 August 2022, p 7.

⁵⁹ *Inspector of Custodial Services Act 2003* s 33A.

⁶⁰ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p iv.

⁶¹ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p vi.

⁶² OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 8.

- posed a significant threat to good order and security of the facility or any person.⁶³
- 3.12 This is an increase of 129 critical incidents over the same period in 2021.
- 3.13 The 251 critical incidents in 2022 accounted for approximately 25% of critical incidents across all prisons in Western Australia over this period.⁶⁴
- 3.14 Between January and June 2022 there were 530 incidents of cell damage at Banksia Hill compared to 260 incidents over the entire 2021 calendar year.⁶⁵
- 3.15 On 5 July 2022 more than 100 of the 260 cells at Banksia Hill were found to have been seriously damaged and more than 30 cells were unfit for use.⁶⁶
- 3.16 Between January and June 2022 there were 35 assaults on staff and 127 'other assaults' at Banksia Hill. Over the previous 12 months there were 37 assaults on staff and 201 'other assaults'.⁶⁷
- 3.17 The number of critical incidents, incidents of cell damage, assaults, self-harm incidents and suicide attempts at Banksia Hill has been increasing since July 2021. The continued increase of incidents following publication of the Inspector's report indicates ongoing attention to these issues is required from the Department of Justice (Department).

Minimum time out of cell time not being met

- 3.18 An ordinary day for ISU detainees is scheduled to include 11 hours and 15 minutes of unlock time for education, training, programs, welfare support, socialisation, visits and recreation.⁶⁸ Under Corrective Services Standing Order 9a (SO9a) detainees are entitled to at least one hour out their cell for every 6 hours of unlock time.⁶⁹ This means detainees are entitled to a minimum of one hour out of their cell per day.
- 3.19 SO9a was rescinded shortly after the inspection of the Banksia Hill ISU. The requirement for minimum out of cell hours is now provided by Commissioner's Operating Policy and Procedure 5.2 and 6.2.⁷⁰
- 3.20 The United Nations *Minimum Rules for the Treatment of Prisoners* (Mandela Rules) requires detainees be provided at least 2 hours out of cell per day. Although these rules have been ratified by Australia they are not legally enforceable in Western Australia.⁷¹
- 3.21 During the initial site visit the Inspector found there were several days in November 2021 that ISU detainees did not receive at least one hour out of their cell.⁷²
- 3.22 Figure 2 shows the out of cell hours of 3 detainees who spent considerable time in the ISU in November 2021. The number of days in November 2021 these detainees received less than 2 hours out of their cell ranged from 8 to 11 days.

⁶³ *VYZ by next of friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274 [36].

⁶⁴ *VYZ by next of friend XYZ* [2022] WASC 274 [36].

⁶⁵ *VYZ by next of friend XYZ* [2022] WASC 274 [37].

⁶⁶ Department of Justice (DOJ), *Gazettal of temporary youth detention facility needed to stop disruption*, [media release], DOJ, 5 July 2022, accessed 18 August 2022.

⁶⁷ *VYZ by next of friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274 [38].

⁶⁸ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p iii.

⁶⁹ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 1.

⁷⁰ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 28.

⁷¹ E Ryan, Inspector of Custodial Services, [transcript of evidence], Legislative Council, 10 August 2022, accessed 19 August 2022, p 5.

⁷² Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, p 5.

Figure 2. Out of cell hours of 3 detainees at Banksia Hill Intensive Support Unit in November 2021



[Source: Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 2.]

- 3.23 Limited out of cell time is not unique to these 3 detainees. Another ISU detainee spent less than 2 hours out of their cell in 15 out of 27 days.⁷³ This included one period of 5 continuous days and a second period of 6 continuous days with less than 2 hours out of their cell.
- 3.24 In 2018 the Inspector reported similar findings in relation to out of cell hours in the ISU.⁷⁴
- 3.25 The limited out of cell hours reported at Banksia Hill impacts the ability of detainees to access education, training, programs, welfare support, socialisation, visits and recreation. The following section considers how extended periods of detention led to the Supreme Court of Western Australia making a declaration of unlawful confinement in August 2022.

Unlawful confinement of detainees in the Intensive Support Unit

- 3.26 The *Young Offenders Act 1994* and the *Young Offenders Regulations 1995* contain provisions that allow detainees to be 'confined' to their sleeping quarters or a designated room. The confinement of detainees is permitted in the following circumstances:
- where the detainee has committed a detention offence
 - in order to maintain good order and security of the facility.⁷⁵
- 3.27 The Inspector expressed concern that the placement of detainees in the ISU under SO9a instead of the relevant legislative provisions may create a regime equivalent to 'confinement' without the legislative protections and limitations.⁷⁶

⁷³ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 2.

⁷⁴ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 4.

⁷⁵ *Young Offenders Act 1994* ss 173(2)(e), 196(2)(e); *Young Offenders Regulations 1995* reg 74, 75–80.

⁷⁶ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 4.

- 3.28 On 25 August 2022 the Supreme Court of Western Australia made a declaration that an ISU detainee who was locked in his cell for extended periods had been unlawfully confined.⁷⁷ The applicant was found to have been unlawfully confined over 26 days between 21 January and 13 June 2022 in which he was locked in his cell for more than 20 hours per day.
- 3.29 In October 2022 the President of the Children’s Court of Western Australia warned that by continuing to use lockdowns the State Government was ignoring the Supreme Court declaration, as well as repeated orders made in the Children’s Court, and therefore risked being found in contempt of court.⁷⁸
- 3.30 The Inspector previously reported his concerns about confinement of ISU detainees in 2018 and recommended the following legislative amendments:
- repealing the provisions governing ‘confinement’
 - enacting a framework for managing special regimes such as the ISU, including adequate protections for young people
 - ensuring that all young people are entitled to a minimum of two hours out of cell each day.⁷⁹
- 3.31 The Department supported these recommendations in principle but is yet to introduce legislation to achieve their implementation.⁸⁰
- 3.32 The Committee wrote to the Minister to ask if a legislative review has been undertaken to investigate these recommendations. The Minister responded that he has instructed the Department to review the *Young Offenders Act 1994* to determine whether it is continuing to effectively achieve its objectives regarding contemporary youth justice issues and trends.⁸¹ The Minister confirmed the review will investigate the Inspector’s recommendations outlined in paragraph 3.30.
- 3.33 The Committee is of the view that limited out of cell hours is detrimental to detainees and may expose the Department to further legal challenges. The Minister should conduct a legislative review to investigate these concerns.

⁷⁷ [*VYZ by next of friend XYZ v Chief Executive Officer of the Department of Justice*](#) [2022] WASC 274 [88]. See also: [*Garlett v Susan Rowley in her capacity as Assistant Commissioner Custodial Operations*](#) [2021] WASC 120.

⁷⁸ J Menagh, ‘[Judge issues WA government contempt of court warning over children detained in adult prison](#)’, *ABC News*, 21 October 2022, accessed 26 October 2022.

⁷⁹ Office of the Inspector of Custodial Services (OICS), [2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre](#), OICS, March 2022, accessed 26 September 2022, pp 4–5.

⁸⁰ OICS, [2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre](#), p 5.

⁸¹ Hon B Johnston MLA, Minister for Corrective Services, [Letter](#), 13 December 2022, p 1.

RECOMMENDATION 4

The Minister for Corrective Services conduct a review of the *Young Offenders Act 1994* and the *Young Offenders Regulations 1995* to investigate:

- whether to repeal the provisions governing 'confinement'
- whether to enact a framework for managing special regimes such as the Banksia Hill Intensive Support Unit, including adequate protections for young people
- measures to ensure that all young people are entitled to a minimum amount of out of cell time each day having regard to the United Nations *Minimum Rules for the Treatment of Prisoner* which requires detainees be provided 2 hours out of cell each day
- exposure to potential legal risks following the decision of *VYZ by next of friend XYZ v Chief Executive Officer of the Department of Justice* [2022] WASC 274.

Staffing shortages

- 3.34 In November 2021 the ISU was understaffed on 17 out of 30 days. On one particular day in November 2021 the ISU was short 6 of the normally required 10 staff members.⁸²
- 3.35 The Department has initiated a bulk recruitment campaign to increase staffing levels of youth custodial officers at Banksia Hill. Thirty-nine youth custodial officers completed training and were recruited to work at Banksia Hill between March and April 2022.⁸³ Twenty-four youth custodial officers resigned between 1 January and 30 June 2022.⁸⁴ Further recruitment is underway with additional training courses scheduled in May, June and September 2022.
- 3.36 Full-time equivalent staff vacancies at Banksia Hill decreased from 43.5 FTE to 36.7 FTE between 22 February and 10 August 2022.⁸⁵
- 3.37 The Inspector explained low staffing levels have impacted the amount of time detainees spend out of their cells.⁸⁶
- 3.38 The Committee is of the view that adequate staffing at Banksia Hill is required to ensure detainees receive meaningful time out of their cells.

⁸² Office of the Inspector of Custodial Services (OICS), [2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre](#), OICS, March 2022, accessed 26 September 2022, p 3.

⁸³ [Answer to question without notice 628](#) asked in the Legislative Council by Hon Peter Collier MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 10 August 2022.

⁸⁴ [Answer to question without notice 628](#).

⁸⁵ [Answer to question without notice 628](#); [Answer to question without notice 91](#) asked in the Legislative Council by Hon Peter Collier MLC and answered by Hon Alannah MacTiernan MLC, *Parliamentary Debates (Hansard)*, 22 February 2022.

⁸⁶ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 4.

Staff resignations

- 3.39 In 2021, 44 staff members resigned from Banksia Hill.⁸⁷ A further 33 staff resigned between 1 January and 31 July 2022.⁸⁸
- 3.40 The Inspector heard anecdotal evidence from staff that the working environment at Banksia Hill has led to many of these resignations.⁸⁹ In his view additional welfare support staff are needed to address volatility within the ISU and avoid further resignations.⁹⁰
- 3.41 The Inspector recommended hiring additional welfare focussed, non-custodial staff to supplement the existing workforce:
- The use of additional welfare-focused, non-custodial staff on the ground, working alongside custodial staff, may help deliver a trauma-informed model of care, de-escalate volatile situations, alleviate the emotional burden on staff and reduce distress in young people.
- Failure to radically shift the operations of the ISU will risk a continued deterioration of conditions for both detainees and staff, creating an environment not conducive to rehabilitation.⁹¹
- 3.42 The State Government has budgeted \$3.6 million towards staffing an Aboriginal Services Unit at Banksia Hill to provide cultural support for Aboriginal detainees. This includes funding to increase the number of Aboriginal welfare officers and Aboriginal medical and mental health workers from 4 to 12.⁹²
- 3.43 The Committee considers that recruiting additional welfare-focused staff at Banksia Hill may reduce the impact of low staff levels on the amount of time detainees spend out of their cells. It will also facilitate a trauma-informed model of care, de-escalate volatile situations, alleviate the emotional burden on staff, reduce staff resignations, enable staff to feel safe in the workplace and reduce distress in detainees.

RECOMMENDATION 5

The Department of Justice recruit additional welfare-focused staff at Banksia Hill Youth Detention Centre to help deliver a trauma-informed model of care, de-escalate volatile situations, alleviate the emotional burden on staff, reduce staff resignations, enable staff to feel safe in the workplace and reduce distress in detainees.

Adult custodial officers at Banksia Hill

- 3.44 Adult custodial officers have had to be brought in to assist staff at Banksia Hill due to recent staff shortages:

⁸⁷ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 3.

⁸⁸ *Answer to question without notice 628* asked in the Legislative Council by Hon Peter Collier MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 10 August 2022.

⁸⁹ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 3.

⁹⁰ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, pp 12–13.

⁹¹ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 13.

⁹² *Answer to question without notice 352* asked in the Legislative Council by Hon Peter Collier MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 10 May 2022.

[Banksia Hill] looks like, and in many respects runs like, an adult prison. Even to the point where there are adult prison officers stationed there to assist in maintaining order and security.⁹³

- 3.45 Adult custodial officers are not trained in youth custody. They support youth custodial officers perform their duties but do not work directly with detainees.⁹⁴ This limits their usefulness at Banksia Hill.⁹⁵
- 3.46 Unlike youth custodial officers, adult custodial officers have the ability to carry defensive weapons.⁹⁶
- 3.47 The Committee considers the placement of adult custodial officers at Banksia Hill is not a long-term solution to staffing shortages at Banksia Hill.

Infrastructure not capable of facilitating support programs

- 3.48 The Inspector found the ISU infrastructure is not capable of facilitating support programs for detainees:

The idea is theoretically that in the Intensive Support Unit they get those intensive level of intervention through welfare and through those sorts of supports. The reality is that those services are not available.

...

That then escalates their behaviour, so it is a stimulus and response, and any attempts to bring in that welfare is limited or restricted by the fact that there are more critical incidents taking place within the unit so there is less ability to bring in noncustodial people. It is almost like spiral.⁹⁷

- 3.49 The State Government has allocated \$25.1 million towards funding infrastructure works at Banksia Hill over the next 5 years.⁹⁸ This includes \$7.5 million to build a crisis care unit that operates on a trauma-informed model of care. This facility will be designed to provide a safe and therapeutic environment for detainees.
- 3.50 The Inspector considers the development of a trauma-informed facility to be the most important reform currently underway at Banksia Hill.⁹⁹
- 3.51 The Committee agrees the construction of a trauma-informed crisis care unit at Banksia Hill is an important development in addressing the ISU infrastructure deficiencies identified by the Inspector.

⁹³ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p iv.

⁹⁴ *Answer to question without notice 685* asked in the Legislative Council by Hon Brad Pettitt MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 17 August 2022.

⁹⁵ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 3.

⁹⁶ Ryan, Inspector of Custodial Services, *[transcript of evidence]*, 10 August 2022, p 4.

⁹⁷ Ryan, Inspector of Custodial Services, *[transcript of evidence]*, 10 August 2022, pp 7–8.

⁹⁸ Department of Treasury (DOT), *Western Australian State Budget 2022–23 Budget Paper No 3*, DOT, May 2022, accessed 18 August 2022, p 193; Hon B Johnston MLA, Minister for Corrective Services, *\$25.1 million committed for Banksia Hill Detention Centre*, [media statement], Government of Western Australia, 18 April 2022, accessed 18 August 2022.

⁹⁹ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, pp iv–v.

Show cause notice

3.52 The Inspector stated in his report:

Considering the preliminary findings of this inspection, the Inspector of Custodial Services formed a reasonable suspicion that:

1. There was a serious risk to the care or welfare of detainees held in the ISU at Banksia Hill Detention Centre.
2. That detainees were being subjected to cruel, inhuman or degrading treatment in the ISU at Banksia Hill Detention Centre.¹⁰⁰

3.53 The Inspector noted that many of the same factors affecting service delivery at Banksia Hill existed prior to a riot in 2013 and significant disturbances in 2017.¹⁰¹

3.54 On 17 December 2021 the Inspector issued a show cause notice to the Department due to concerns about the welfare of detainees and the overall operation of the facility.¹⁰² The Department responded with a detailed submission outlining plans to address the Inspector's concerns. The Department anticipated increased staff numbers, infrastructure upgrades and greater support to reduce stress would facilitate more meaningful time out of cell.

3.55 The Inspector considered the Department's response to be over reliant on security mechanisms with a limited focus on the social, emotional and welfare needs of detainees.¹⁰³ As a result the Inspector took the unprecedented step of referring the show cause notice to the Minister on 21 January 2022.¹⁰⁴

3.56 The Inspector advised the Minister that an immediate welfare focused circuit breaker was required to supplement the custodial and security efforts being pursued by the Department. The Inspector recommended:

- implementing minimum out of cell times
- providing additional welfare support including access to psychologists and welfare workers.¹⁰⁵

3.57 The Minister responded to the notice. He recognised the infrastructure deficiencies and the impact of staffing shortages. He noted the Department continues to investigate ways to improve the operation of the facility and enhance the quality of life for detainees.¹⁰⁶

3.58 The Inspector's recommendation for an immediate welfare focused circuit breaker was not implemented. The Inspector advised the Committee this 'would have made a difference'.¹⁰⁷

¹⁰⁰ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 2.

¹⁰¹ OICS, *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, p 19.

¹⁰² Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, pp 5–6; *Inspector of Custodial Services Act 2003* s 33A.

¹⁰³ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p 20.

¹⁰⁴ Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, p 6.

¹⁰⁵ Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, p 6.

¹⁰⁶ Office of the Inspector of Custodial Services (OICS), *2021 Inspection of the Intensive Support Unit at Banksia Hill Detention Centre*, OICS, March 2022, accessed 26 September 2022, p iv.

¹⁰⁷ Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, p 6.

- 3.59 Conditions have continued to deteriorate since publication of the Inspector's report.¹⁰⁸ This has lead to a decision to transfer a number of detainees to an isolated unit at Casuarina Prison.
- 3.60 The continued deterioration of Banksia Hill following publication of the Inspector's report indicates to the Committee that ongoing efforts are required by the Minister and the Department to address underlying issues.

Transfer of Banksia Hill detainees to Unit 18 Casuarina Prison

- 3.61 On 20 July 2022, 17 detainees were transferred from Banksia Hill to a unit at Casuarina Prison (Unit 18).¹⁰⁹ These detainees were identified as causing significant damage and persistent disruption at Banksia Hill.¹¹⁰

Reason for relocating detainees

- 3.62 Dr Adam Tomison, Director General of the Department of Justice explained that the decision to relocate detainees to Unit 18 was made due to an escalation in extreme behaviour and critical incidents at Banksia Hill.¹¹¹
- 3.63 The Director General believes the Department was left with no option other than to relocate the detainees.¹¹² By relocating the detainees the Department hopes to allow other Banksia Hill detainees to return to normal education, programs and recreation activities.¹¹³
- 3.64 The Inspector described the relocation of detainees to Unit 18 as the 'least worst' option. He considers the events leading up to the decision had 'been coming for many years'.¹¹⁴
- 3.65 The Committee is of the view that the decision to transfer detainees to Unit 18 provides an opportunity to restore stability to Banksia Hill.

Declaration of Unit 18 as a youth detention facility

- 3.66 On 13 July 2022 the Minister made an order for Unit 18 to be designated a youth detention centre.¹¹⁵
- 3.67 In 2013 a similar order was made to transfer 73 Banksia Hill detainees to a unit at Hakea Prison. This order was made after a riot at Banksia Hill resulted in extensive damage to the facility.¹¹⁶ The Supreme Court of Western Australia endorsed the lawfulness of this order.¹¹⁷

¹⁰⁸ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 6.

¹⁰⁹ Department of Justice (DOJ), [Gazettal of temporary youth detention facility needed to stop disruption](#), [media release], DOJ, 5 July 2022, accessed 18 August 2022.

¹¹⁰ DOJ, [Gazettal of temporary youth detention facility needed to stop disruption](#).

¹¹¹ Department of Justice (DOJ), [Disruptive detainees relocated to temporary facility](#), [media release], DOJ, 20 July 2022, accessed 18 August 2022.

¹¹² DOJ, [Disruptive detainees relocated to temporary facility](#).

¹¹³ Department of Justice (DOJ), [Gazettal of temporary youth detention facility needed to stop disruption](#), [media release], DOJ, 5 July 2022, accessed 18 August 2022.

¹¹⁴ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 8.

¹¹⁵ Department of Premier and Cabinet (DPC), [Government Gazette No 102](#), DPC, 13 July 2022, accessed 18 August 2022, p 4111.

¹¹⁶ Department of Justice (DOJ), [Gazettal of temporary youth detention facility needed to stop disruption](#), [media release], DOJ, 5 July 2022, accessed 18 August 2022.

¹¹⁷ [Wilson v Joseph Michael Francis, Minister for Corrective Service for the State of WA](#) [2013] WASC 157.

Current conditions

- 3.68 The Department considers the relocation of detainees to Unit 18 to have improved conditions at Banksia Hill in the following ways:
- unscheduled lockdowns have decreased
 - critical incidents and self-harm events have decreased
 - out of cell hours are back to normal.¹¹⁸
- 3.69 Between 20 July and 8 August 2022 there were 39 incidents of self-harm and one suicide attempt at Banksia Hill.¹¹⁹
- 3.70 Over the same period there were 13 incidents of self-harm and 3 suicide attempts among detainees at Unit 18.¹²⁰ The Minister has also confirmed a detainee was taken to hospital following an incident in which 4 detainees told authorities they had swallowed shards of glass.¹²¹
- 3.71 The detainees at Unit 18 engaged in an informal education program from 25 July to 29 July 2022 for more than one hour per day. Education services were suspended on 30 July 2022 following a disturbance at the facility.¹²² On 10 August 2022, Hon Matthew Swinbourn MLC advised the Legislative Council that full-time education would recommence 'as soon as possible'.¹²³
- 3.72 Support services including on-site psychologists, Aboriginal support officers, health and mental health services and case management staff have been consistently provided at Unit 18.¹²⁴
- 3.73 In October 2022 the President of the Children's Court of Western Australia made the following comments about conditions at Unit 18 while sentencing 2 detainees who had been transferred to the facility:
- There is no access to education, recreation, visits ... there is very little human interaction, the cells are bare, with a mattress on the floor ... the detainees are starved of stimulations.
- ...
- Unit 18 is not a suitable place to detain young people. The conditions are cruel and arbitrarily punishing and clearly have no rehabilitative effect.¹²⁵
- 3.74 The Department's reporting of improved conditions at Banksia Hill is promising however ongoing incidents of self-harm, suicide attempts and the suspension of the education program at Unit 18 highlights the need for continued improvement.

¹¹⁸ Department of Justice (DOJ), [*Banksia Hill getting back on track*](#), [media release], DOJ, 19 April 2022, accessed 18 August 2022.

¹¹⁹ [*Answer to question without notice 647*](#) asked in the Legislative Council by Hon Brad Pettitt MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 11 August 2022.

¹²⁰ [*Answer to question without notice 647*](#).

¹²¹ [*Answer to question without notice 647*](#).

¹²² [*Answer to question without notice 617*](#) asked in the Legislative Council by Hon Brad Pettitt MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 10 August 2022.

¹²³ [*Answer to question without notice 617*](#).

¹²⁴ [*Answer to question without notice 617*](#).

¹²⁵ J Menagh, [*'Judge issues WA government contempt of court warning over children detained in adult prison'*](#), ABC News, 21 October 2022, accessed 26 October 2022.

3.75 Unit 18 is an isolated unit separated from the rest of Casuarina Prison. Figure 3 shows Unit 18 shaded in black.

3.76 Unit 18 detainees are accommodated in a way to avoid contact with adult prisoners at Casuarina Prison. Strategies to avoid contact include:

- hanging thick mesh on the fence to reduce the opportunity for young people to see adult prisoners
- scheduling recreation time for Unit 18 detainees while Casuarina Prison is in lunchtime lockdown
- transporting Unit 18 detainees to the visit centre in a vehicle that travels along the external perimeter fence.¹²⁶

3.78 The Committee is of the view that the Department should monitor the effectiveness of these strategies to prevent contact between juvenile detainees and adult prisoners.

¹²⁷ Ryan, Inspector of Custodial Services, [transcript of evidence], 10 August 2022, p 11.

Timeline to return detainees to Banksia Hill

- 3.79 On 18 August 2022, only 7 of the original 17 detainees remained at Unit 18.¹²⁸
- 3.80 The Department is expediting infrastructure upgrades and repairs to damaged cells to enable the detainees to return to Banksia Hill at the earliest opportunity.¹²⁹ The Inspector anticipates this process will take 12 to 18 months but was unable to provide this estimate with certainty.¹³⁰
- 3.81 The Committee is of the view that Unit 18 detainees should be returned to Banksia Hill at the earliest opportunity.

Banksia Hill is the only youth detention facility in Western Australia

- 3.82 Banksia Hill has been the only juvenile detention centre in Western Australia since 2012 following the closure of the Rangeview Remand Centre.¹³¹ The Inspector advised this model has significant problems and advocated for multiple youth detention facilities.¹³²
- 3.83 In 2017 the Premier Hon Mark McGowan MLA announced the Government would examine options for detaining young people from the Pilbara, Kimberley and the Goldfields in their local region rather than Banksia Hill:
- We're investigating ways of making sure young people from the Pilbara, Kimberley and the Goldfields if they're required to be incarcerated can remain in their own areas to be incarcerated — I think that would be good for them, it'd be good for the budget and hopefully it would stop them learning the bad habits of a bigger prison.¹³³
- 3.84 This announcement was made following publication of the Inspector's 2018 report on Banksia Hill.¹³⁴ That report noted 39% of Banksia Hill detainees did not live in the Perth metropolitan area.¹³⁵ Twelve per cent of detainees were from the Midwest–Gascoyne region, 9% from the Kimberley and 7% from the Pilbara.
- 3.85 In the 2022–23 State Budget the Government allocated \$15 million for an on–country residential youth diversionary facility in the Kimberley.¹³⁶ This funding is subject to approval of a business case.¹³⁷

¹²⁸ [Answer to question without notice 709](#) asked in the Legislative Council by Hon Peter Collier MLC and answered by Hon Matthew Swinbourn MLC, *Parliamentary Debates (Hansard)*, 18 August 2022.

¹²⁹ Department of Justice (DOJ), [Disruptive detainees relocated to temporary facility](#), [media release], DOJ, 20 July 2022, accessed 18 August 2022.

¹³⁰ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 10.

¹³¹ Office of the Inspector of Custodial Services (OICS), [2017 Inspection of Banksia Hill Detention Centre](#), OICS, February 2018, accessed 26 September 2022, p iii.

¹³² Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, pp 4–5.

¹³³ D Caporn, [‘McGowan tackles detention centre and police pay concerns’](#), *The West Australian*, 20 July 2017, accessed 19 September 2022.

¹³⁴ Office of the Inspector of Custodial Services (OICS), [2017 Inspection of Banksia Hill Detention Centre](#), OICS, February 2018, accessed 26 September 2022.

¹³⁵ OICS, [2017 Inspection of Banksia Hill Detention Centre](#), p 5.

¹³⁶ Department of Treasury (DOT), [Western Australian State Budget 2022–23 Budget Paper No 1](#), DOT, May 2022, accessed 18 August 2022, p 13.

¹³⁷ Department of Treasury (DOT), [Western Australian State Budget 2022–23 Budget Paper No 3](#), DOT, May 2022, accessed 18 August 2022, p 117.

Melaleuca Women's Prison

- 3.86 In November 2020 the Office of the Inspector of Custodial Services conducted an inspection of Melaleuca Women's Prison (Melaleuca).
- 3.87 Melaleuca is the main prison for remand and newly sentenced female prisoners in Western Australia.¹³⁸

Infrastructure

- 3.88 Melaleuca was established in December 2016 by re-purposing 2 units at Hakea Prison.¹³⁹ A dividing fence was constructed between Melaleuca and Hakea Prison along with other supporting infrastructure including a gatehouse, kitchen, visits centre, medical centre, offices and workspaces.¹⁴⁰
- 3.89 In 2021 the Inspector reported Melaleuca 'lacks sufficient infrastructure to operate as a fully functional prison'.¹⁴¹ These concerns were previously reported in 2018 with a recommendation to address infrastructure shortfalls.¹⁴²
- 3.90 The Inspector reported many of the issues previously identified remain unchanged.¹⁴³ He identified the following aspects of existing infrastructure requiring attention:
- there is no dedicated education centre
 - there are limited employment workshops beyond the kitchen
 - there is no specifically designed laundry workshop
 - there are no private interview rooms where confidential conversations can take place
 - there is no functioning cultural meeting place
 - there is no gym or indoor recreation facility
 - there are only 4 program rooms which are constantly booked out for different activities including therapeutic programs, art, education, library, counselling, meetings, peer support, chaplaincy and staff training.¹⁴⁴
- 3.91 The Department supported this recommendation subject to funding and prioritisation of capital expenditure.¹⁴⁵
- 3.92 The Inspector advised there have been minor improvements to infrastructure however fundamental problems remain since publication of the latest report.¹⁴⁶
- 3.93 The Committee is of the view that the State Government should allocate funding to address the issues identified by the Inspector to enable it to operate as a fully functional prison.

¹³⁸ Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Melaleuca Women's Prison](#), OICS, July 2021, accessed 26 September 2022, p iii.

¹³⁹ Department of Premier and Cabinet (DPC), [Government Gazette No 196](#), DPC, 1 November 2016, accessed 18 August 2022, p 4947.

¹⁴⁰ Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Melaleuca Women's Prison](#), OICS, July 2021, accessed 26 September 2022, p xii.

¹⁴¹ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 8.

¹⁴² OICS, [2020 Inspection of Melaleuca Women's Prison](#), recommendation 3.

¹⁴³ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 8.

¹⁴⁴ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p iii.

¹⁴⁵ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 56.

¹⁴⁶ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 13.

RECOMMENDATION 6

The Department of Justice address concerns regarding infrastructure at Melaleuca Women's Prison raised by the Inspector of Custodial Services in the 2021 inspection report.

Dividing fence between Melaleuca and Hakea Prison

3.94 The Inspector recommended upgrading the fence between Melaleuca and Hakea Prison.¹⁴⁷ The Inspector previously made this recommendation in 2017 and 2018.¹⁴⁸ On each occasion the Department has not supported the recommendation.

3.95 In 2019 two male prisoners from Hakea Prison breached the fence and entered Melaleuca. Another Hakea prisoner climbed over the fence with the intention of entering Melaleuca during the most recent inspection.¹⁴⁹

3.96 In its decision to 'not support' the Inspector's latest recommendation the Department noted improvements have been made to the fence which it deems suitable to meet operational requirements.¹⁵⁰ The Inspector noted the following concerns with this response:

Considering this history, it was quite surprising that the Department did not support our recommendation for another upgrade to the perimeter fence between Hakea and Melaleuca. The response simply noted what had been done to date; but we were not sure if any of these things had been done subsequent to our site visit in November 2020. It appears that the Department is confident that these steps are sufficient to mitigate the risk, but if nothing has changed since our inspection then we may not share that confidence.¹⁵¹

3.97 The potential consequences of male prisoners gaining access to Melaleuca highlights the need for ongoing review of the adequacy of the dividing fence.

Health care

3.98 Access to health care was the most frequently reported concern among detainees during the 2021 inspection of Melaleuca.¹⁵² Two-thirds of detainees who completed the Inspector's pre-inspection survey thought health services were 'poor'.¹⁵³

Work-flow efficiency of the health centre

3.99 The Inspector recommended the Department implement measures to 'improve efficiencies and effectiveness of the health centre' at Melaleuca.¹⁵⁴ This recommendation was made due to:

- duplication of work

¹⁴⁷ Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Melaleuca Women's Prison](#), OICS, July 2021, accessed 26 September 2022, recommendation 14.

¹⁴⁸ Office of the Inspector of Custodial Services (OICS), [2017 Inspection of Melaleuca Remand and Reintegration Facility](#), OICS, April 2018, accessed 26 September 2022, recommendation 8; Office of the Inspector of Custodial Services (OICS), [2018 Inspection of Hakea Prison](#), OICS, February 2019, accessed 26 September 2022, recommendation 12.

¹⁴⁹ Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Melaleuca Women's Prison](#), OICS, July 2021, accessed 26 September 2022, p 44.

¹⁵⁰ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 62.

¹⁵¹ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p iv.

¹⁵² OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 35.

¹⁵³ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 35.

¹⁵⁴ OICS, [2020 Inspection of Melaleuca Women's Prison](#), recommendation 9.

- doctors performing tasks that could be done by administrative or nursing staff
 - appointments not being scheduled during the 2 hour lunchtime lockdown
 - detainees frequently being double-booked for appointments
 - staff spending a significant amount of time re-organising schedules
 - detainees requiring lengthy consultation times.¹⁵⁵
- 3.100 These inefficiencies often result in delays in attending to detainees requiring urgent attention.¹⁵⁶
- 3.101 The Department supported the Inspector's recommendation and committed to improve health services at Melaleuca by 'identifying pathways of care that will reduce the duplication and provide the level of support the patients need for their holistic health and well-being'.¹⁵⁷

Dental care

- 3.102 The Inspector recommended the establishment of a full dental service at Melaleuca based on the following observations:
- dental services are not available at Melaleuca
 - Melaleuca detainees are required to travel to Bandyup Women's Prison for dental care (up to 4 detainees per week)
 - Melaleuca staff heavily prescribing pain medications such as paracetamol and ibuprofen for detainees experiencing dental pain
 - detainees requiring transfer to hospital for treatment of sepsis and dental infections.¹⁵⁸
- 3.103 The Department supported this recommendation in principle and made the following commitments to improve dental care at Melaleuca:
- requesting additional dental services through the Department of Health
 - giving consideration to accommodating Melaleuca detainees at the planned dental suite at Wandoo Rehabilitation Prison.¹⁵⁹
- 3.104 The Department should monitor the effectiveness of these measures to ensure Melaleuca detainees have access to adequate dental care.

Antenatal care

- 3.105 There were 6 pregnant detainees at Melaleuca in December 2021. The Inspector reported all 6 detainees had complex antenatal histories and were experiencing high risk pregnancies.¹⁶⁰ He found antenatal care for these women was inadequate and recommended the Department ensure antenatal care at Melaleuca is 'at least equivalent to the standard of care in the community'.¹⁶¹
- 3.106 The Department supported this recommendation in principle. It advised pregnant detainees 'are now safely accommodated at Melaleuca and their pregnancy managed with access to

¹⁵⁵ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 37.

¹⁵⁶ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 37.

¹⁵⁷ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 59.

¹⁵⁸ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 37, recommendation 10.

¹⁵⁹ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 60.

¹⁶⁰ OICS, *2020 Inspection of Melaleuca Women's Prison*, p 42.

¹⁶¹ OICS, *2020 Inspection of Melaleuca Women's Prison*, recommendation 13.

the same services as the Bandyup cohort through the shared care model with King Edward Memorial Hospital'.¹⁶² The Department's reporting of improved antenatal care for pregnant detainees at Melaleuca is encouraging.

- 3.107 The Committee is of the view that the Department should continue to monitor antenatal care for Melaleuca detainees given the risk of inadequate care to detainees and their children.

Mental health – Crisis Care Unit

- 3.108 Detainees who are mentally unwell are housed in the Crisis Care Unit at Melaleuca.¹⁶³ The Inspector reported the 'biggest challenge for mental health at Melaleuca is the Crisis Care Unit which is still not fit for purpose'.¹⁶⁴ He recommended the Department undertake a review of crisis care facilities across the state and develop an action plan to ensure they are suitable to provide both safety from self-harm and a therapeutic environment for patients.¹⁶⁵
- 3.109 The Department did not support this recommendation. In its response the Department advised it 'is not aware of any concerns from prisoners relating to crisis care facilities across the state'.¹⁶⁶
- 3.110 The Department also advised detainees with diagnosed mental illness at Melaleuca will be managed in the newly established mental health unit at Bandyup from mid-2021. The Inspector considers this will 'potentially offer some relief'.¹⁶⁷
- 3.111 The Committee is of the view that the Department should monitor the adequacy of the mental health unit at Bandyup to accommodate Melaleuca detainees who are mentally unwell.
- 3.112 Paragraphs 3.123 – 3.128 contain further information about mental health services for prisoners in Western Australia.

Bandyup Women's Prison

- 3.113 Between May and June 2020, the Office of the Inspector of Custodial Services conducted an inspection of Bandyup Women's Prison (Bandyup).¹⁶⁸ Bandyup is the main prison for female prisoners who are serving a term of imprisonment in Western Australia.

Infrastructure

- 3.114 The Inspector reported almost all prisoner accommodation at Bandyup is overcrowded with many facilities described as too small or no longer fit for purpose. The Inspector recommended the Department undertake a comprehensive review of infrastructure and develop a plan to prioritise and address the deficiencies identified in Appendix 2.¹⁶⁹ The Department supported this recommendation in principle and noted a number of items in Appendix 2 have been incorporated into the Custodial Infrastructure Plan 2021–23 including:
- Bandyup has been identified as a high priority site for maintenance to be undertaken

¹⁶² OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 62.

¹⁶³ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p viii.

¹⁶⁴ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p iv.

¹⁶⁵ OICS, [2020 Inspection of Melaleuca Women's Prison](#), recommendation 12.

¹⁶⁶ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p 61.

¹⁶⁷ OICS, [2020 Inspection of Melaleuca Women's Prison](#), p iv.

¹⁶⁸ Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Bandyup Women's Prison](#), OICS, July 2021, accessed 26 September 2022, p 70.

¹⁶⁹ OICS, [2020 Inspection of Bandyup Women's Prison](#), recommendation 1.

- a sub-acute mental health facility was recently established at Bandyup.¹⁷⁰
- 3.115 The Department's response also noted 'further items may be considered upon completion of the Prison Services Evaluation under the Network Design Project'.
- 3.116 The Inspector advised he was not satisfied with the Department's response and considers a comprehensive review is required to develop a plan to address infrastructure inadequacies.¹⁷¹
- 3.117 The Committee supports the view that the Department should conduct a comprehensive review of infrastructure at Bandyup and provide a response to each infrastructure deficiency identified by the Inspector.

RECOMMENDATION 7

The Department of Justice undertake a comprehensive review of infrastructure at Bandyup Women's Prison and provide a response to each infrastructure deficiency identified by the Inspector of Custodial Services in the 2021 inspection report.

Antenatal care

- 3.118 In 2020 the Committee reported an incident involving a Bandyup detainee who had given birth while locked in her cell.¹⁷² The Committee made a commitment to monitor the conditions for pregnant detainees at Bandyup.
- 3.119 The Inspector's latest report on Bandyup notes the Department conducted an investigation of the incident and implemented the following changes:
- Unit 6 has been designated as accommodation for pregnant women
 - Bandyup now publishes a Custodial Daily Handover for custodial staff which includes details of all pregnant detainees and clear instructions on how to respond if something arises
 - nurses are required to consult with a more senior clinician on any unscheduled presentation by a pregnant detainee.¹⁷³
- 3.120 The Inspector reported Unit 6 provides better accommodation for pregnant detainees than was previously available. However, he noted the cells are double-bunked and therefore not ideal if in-cell medical assistance is needed.
- 3.121 As a result the Inspector recommended the Department provide single-bed accommodation for pregnant detainees. This recommendation has been supported in principle.
- 3.122 The Committee is pleased with the steps that have been implemented to improve conditions for pregnant detainees at Bandyup. The Department should continue to assess this situation to ensure the health and safety of detainees and their children are not compromised.

¹⁷⁰ OICS, *2020 Inspection of Bandyup Women's Prison*, p 63.

¹⁷¹ Ryan, Inspector of Custodial Services, *[transcript of evidence]*, 10 August 2022, pp 12–3.

¹⁷² Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, p 10.

¹⁷³ Office of the Inspector of Custodial Services (OICS), *2020 Inspection of Bandyup Women's Prison*, OICS, July 2021, accessed 26 September 2022, pp 24, 30.

Mental health services for prisoners

- 3.123 In 2021 the Inspector reported mental health services for prisoners are 'generally inadequate and often in crisis'.¹⁷⁴
- 3.124 Many prisoners who are referred to the State's only forensic mental health facility (Frankland Centre) are not accepted due to lack of available beds.¹⁷⁵ The Inspector advised 'supply is far outstripped by demand' with approximately 20 prisoners requiring care in an acute hospital setting on a daily basis.¹⁷⁶
- 3.125 The Inspector also reported prisons are not able to provide the necessary level of acute care for detainees with mental health issues.¹⁷⁷
- 3.126 In July 2021 the State Government opened a mental health facility at Bandyup Women's Prison.¹⁷⁸ It provides 23 sub-acute beds for prisoners whose mental health needs cannot be safely managed in mainstream units and 6 beds for women who are acutely unwell. The State Government has also announced that a 34 bed mental health unit is scheduled to be opened at Casuarina Prison in 2024.¹⁷⁹
- 3.127 The Inspector considers these announcements to be positive steps 'but they are not meant to, nor should they, replace the need for hospitalisation of prisoners who are acutely unwell'.¹⁸⁰
- 3.128 The State Government's investment in mental health facilities at Bandyup and Casuarina Prison will hopefully improve mental health services for prisoners. However, consideration should also be given to increasing the number of beds at the Frankland Centre to accommodate prisoners who require acute hospital care.

United Nations visit

- 3.129 On 16 October 2022 the United Nations Subcommittee on Prevention of Torture arrived in Australia to monitor adherence to *the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* (OPCAT).¹⁸¹ Under OPCAT the Subcommittee has unrestricted access to inspect Australian prisons, youth detention, immigration detention, mental health facilities, police cells and social care environments.
- 3.130 On 23 October 2022 the Subcommittee suspended its visit after being prevented from visiting facilities in New South Wales and Queensland.¹⁸² The Subcommittee has conducted 81 visits since OPCAT was approved and suspended its visit on 3 occasions.¹⁸³ Two of those

¹⁷⁴ Office of the Inspector of Custodial Services (OICS), [Annual Report 2020–21](#), OICS, 9 November 2021, accessed 18 August 2022, p 16.

¹⁷⁵ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 12.

¹⁷⁶ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 12.

¹⁷⁷ Ryan, Inspector of Custodial Services, [\[transcript of evidence\]](#), 10 August 2022, p 12.

¹⁷⁸ Hon B Johnston MLA, Minister for Corrective Services, [Bindi Bindi unit to help prisoners spread their wings](#), [media statement], Government of Western Australia, 23 July 2021.

¹⁷⁹ Hon B Johnston MLA, [Bindi Bindi unit to help prisoners spread their wings](#).

¹⁸⁰ Office of the Inspector of Custodial Services (OICS), [Annual Report 2020–21](#), OICS, 9 November 2021, accessed 18 August 2022, p 17.

¹⁸¹ United Nations (UN), [Countries visited under the Optional Protocol of the Convention against Torture](#), UN, accessed 20 September 2022.

¹⁸² United Nations (UN), [UN torture prevention body suspends visit to Australia citing lack of co-operation](#), UN, 23 October 2022, accessed 7 November 2022.

¹⁸³ D Carrick, *Damien Carrick interviews Judge Aisha Shujune Muhammad: UN experts suspend detention visits; and the use of secret evidence in court*, ABC News, 25 October 2022, accessed 7 November 2022.

suspensions were revoked shortly after the Subcommittee was given assurances of unfettered access to detention facilities. The third suspension resulted in the visit being terminated on the grounds of systemic non-compliance.

- 3.131 The Subcommittee will provide a confidential report of its visit to the Federal Government.¹⁸⁴ The Subcommittee will encourage that this report be made public.¹⁸⁵
- 3.132 The Committee looks forward to reviewing the Subcommittee's report in relation to prisons in Western Australia.

¹⁸⁴ United Nations (UN), [*Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*](#), UN, 18 December 2002, accessed 20 September 2022, article 16.

¹⁸⁵ United Nations (UN), [*UN torture prevention body announces visits for 2023*](#), UN, 30 June 2022, accessed 20 September 2022.

CHAPTER 4

Public Sector Commissioner

Introduction

- 4.1 This chapter begins with an explanation of the role of the Public Sector Commissioner (Commissioner) and the composition of the Western Australian government sector. It then considers the following aspects of the Commissioner's work:
- statutory review of Part 6 of the *Public Sector Management Act 1992*
 - review of public sector recruitment practices
 - review into the organisational capability of government departments (Agency Capability Review Program)
 - census of public sector employees
 - converting public sector employees to permanent employment
 - Commissioner's appointment as State Recovery Controller¹⁸⁶
 - dealing with allegations of minor misconduct
 - client perception survey
 - diversity in the public sector.

Functions of the Commissioner

- 4.2 The Commissioner is an independent statutory officer established under the *Public Sector Management Act 1994*. The Commissioner is independent of the public sector.
- 4.3 The general functions of the Commissioner are to:
- promote the overall efficiency and effectiveness of the public sector
 - plan for the future management and operation of the public sector
 - advise ministers, chief executive officers and chief employees of changes, improvements and management practices.¹⁸⁷
- 4.4 Other functions of the Commissioner include:
- issuing human resource standards for the public sector
 - issuing mandatory instructions for the public sector on matters such as administration, official conduct and disciplinary proceedings
 - facilitating machinery of government changes
 - conducting reviews, inquiries and investigations of public sector bodies
 - recruiting and managing the performance of public sector chief executive officers.¹⁸⁸
- 4.5 The Commissioner also has a number of functions with respect to the broader government sector. These include:

¹⁸⁶ The State Recovery Controller is responsible for developing and implementing the State Government response to COVID-19.

¹⁸⁷ *Public Sector Management Act 1994* s 21A.

¹⁸⁸ *Public Sector Management Act 1994* ss 21(1), 22A, 22B, 24B, 24H, 24, 35, 41, 45, 77.

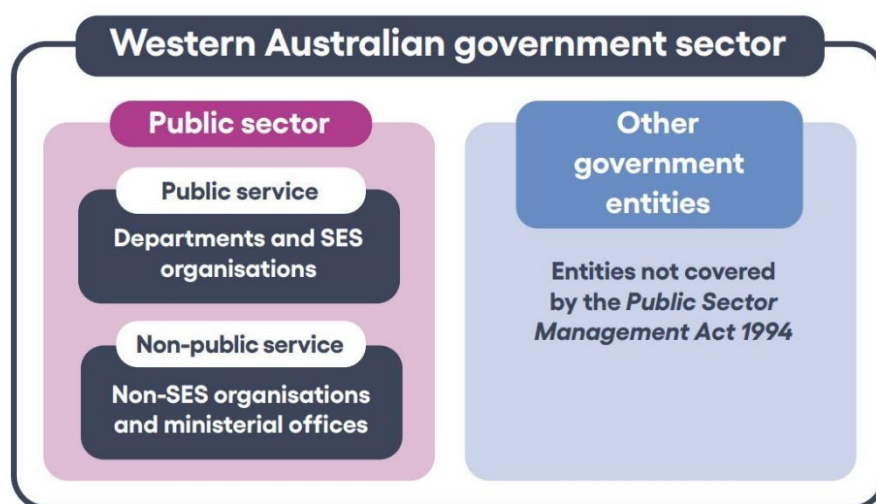
- dealing with allegations of minor misconduct and providing education about minor misconduct¹⁸⁹
- assisting public authorities and officers comply with the *Public Interest Disclosure Act 2003*¹⁹⁰
- supporting the Director of Equal Opportunity in Public Employment with her responsibility to assist public authorities to develop equal opportunity management plans¹⁹¹
- maintaining a register of lobbyists and publishing a code of conduct in accordance with the *Integrity (Lobbyists) Act 2016*¹⁹²
- making recommendations regarding the remuneration of government boards and committees.¹⁹³

4.6 The Public Sector Commission supports the Commissioner in performing these functions.

Composition of the government sector

4.7 The Western Australian government sector is comprised of the public service, non-public service and other government entities. Figure 4 provides an overview of this structure.

Figure 4. *Composition of Western Australian government sector*



[Source: Public Sector Commission (PSC), [State of the WA Government Sector Workforce 2020–21](#), PSC, 18 November 2021, accessed 19 August 2022, p 9.]

4.8 The number of employees in the public sector has increased from 138,307 in June 2017 to 150,522 in June 2021. The number of employees in other government entities has remained relatively stable over this period.¹⁹⁴

¹⁸⁹ [Corruption, Crime and Misconduct Act 2003](#) ss 45A, 45B.

¹⁹⁰ [Public Interest Disclosure Act 2003](#) s 19.

¹⁹¹ [Public Sector Management Act 1994](#) s 8(1)(d); [Equal Opportunity Act 1984](#) s 143.

¹⁹² [Integrity \(Lobbyists\) Act 2016](#) ss 10, 16.

¹⁹³ Department of Premier and Cabinet (DPC), [Premier's Circular 2021–18](#), DPC, accessed 19 August 2022.

¹⁹⁴ Public Sector Commission (PSC), [State of the WA Government Sector Workforce 2020–21](#), PSC, 18 November 2021, accessed 19 August 2022, p 10.

- 4.9 The Commissioner advised the Committee that a number of public sector agencies are struggling with skills shortages. This includes shortages in nursing, education, project management, contract management, workforce planning and information technology.¹⁹⁵
- 4.10 The Committee notes that although the number of employees in the public sector has steadily increased over recent years a number of agencies are experiencing skills shortages.

Review of the *Public Sector Management Act 1992*

- 4.11 During the previous round of consultation in 2020 the Committee noted a statutory review of Part 6 of the *Public Sector Management Act 1994*, which was due to be conducted in July 2018 had not been completed.¹⁹⁶ Part 6 of the *Public Sector Management Act 1994* includes provisions governing involuntary severance and redeployment of public servants.
- 4.12 The Committee recommended the Public Sector Commission expedite the review and table a report in Parliament by the end of 2022.¹⁹⁷ In 2022 the Committee was advised that the report is on track to be completed in accordance with the Committee's recommendation.¹⁹⁸
- 4.13 Given that Part 6 of the *Public Sector Management Act 1994* has significant implications for public sector employees and that the review was due to be conducted in 2018, the Committee will be pleased to see this work completed.

Review into public sector recruitment practices

- 4.14 In 2020–21 the Commissioner drafted terms of reference to review recruitment practices in the public sector in accordance with the Public Sector Civil Service Association Agreement 2019.¹⁹⁹ The review will look at:
- compliance with Commissioner's Instruction 2 (filling a public sector vacancy)
 - common or systemic problems and patterns in recruitment
 - examples of good practice.²⁰⁰
- 4.15 The Commissioner advised the review is scheduled to be finalised in 2022.²⁰¹
- 4.16 The Committee looks forward to receiving an update on this work during the next round of statutory office holder consultation.

Agency Capability Review Program

- 4.17 In 2018–19 the Public Sector Commission commenced work on the Agency Capability Review Program (Program) to elevate organisational capability and drive performance improvement

¹⁹⁵ S O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, p 4.

¹⁹⁶ Standing Committee on Public Administration, [Consultation with Statutory Office Holders](#), p 39; [Public Sector Management Act 1994](#) s 96B.

¹⁹⁷ Standing Committee on Public Administration, [Consultation with Statutory Office Holders](#), recommendation 8.

¹⁹⁸ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 5; L Warner, Executive Director, Workforce Policy and Diversity, Public Sector Commission, [\[transcript of evidence\]](#), Legislative Council, 8 August 2022, accessed 19 August 2022, p 5.

¹⁹⁹ Public Sector Commission (PSC), [Annual Report 2020–21](#), PSC, 9 September 2021, accessed 19 August 2022, p 22.

²⁰⁰ PSC, [Annual Report 2020–21](#), p 22.

²⁰¹ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 5.

in the public sector.²⁰² The Program involves reviewing management and administration practices against 21 performance criteria.

- 4.18 The Program emanated from a lack of proactive, consistent, regular and comprehensive health checks or reviews of publicly funded agencies.²⁰³
- 4.19 Eight government departments will be reviewed under the Program. The Commissioner advised 3 reviews have been completed, 3 are currently underway and 2 will be announced in late 2022.²⁰⁴
- 4.20 The Program is a sensible initiative to assess whether government agencies operate under appropriate management and administration practices. The Committee looks forward to reviewing the outcome of this work during the next round of statutory office holder consultation.

Census of public sector employees

- 4.21 In March 2021 the Commissioner conducted a census of 17 public sector agencies.²⁰⁵ Most information about public sector employees is currently obtained from payroll systems which are not designed to capture all the information needed to make decisions about the future of the workforce.²⁰⁶
- 4.22 The 2021 census achieved a response rate of 47.5% and gathered information about public sector employees including staff disabilities, how close staff live to the office, sexual harassment and staff plans about leaving or moving to another agency.²⁰⁷
- 4.23 The Commissioner advised she is trialling a census across the whole government sector.²⁰⁸
- 4.24 The Committee is of the view that a census of the whole government sector will allow the Commissioner to collect information required to make informed decisions about the future of the workforce.

Converting public sector employees to permanent positions

- 4.25 In August 2018 the State Government announced public sector employees who satisfied the following criteria would be eligible for permanent positions:
- currently employed on a casual or fixed-term basis
 - has held the same, or similar role, for at least 2 years
 - not facing formal disciplinary or substandard performance action
 - there is ongoing funding for the position.²⁰⁹
- 4.26 The policy objectives of this announcement include:

²⁰² Public Sector Commission (PSC), [Annual Report 2020–21](#), PSC, 9 September 2021, accessed 19 August 2022, p 26; Public Sector Commission (PSC), [Annual Report 2018–19](#), PSC, 13 September 2019, accessed 19 August 2022, p 20.

²⁰³ PSC, [Annual Report 2020–21](#), p 26.

²⁰⁴ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 3.

²⁰⁵ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, pp 5–6.

²⁰⁶ Public Sector Commission (PSC), [Annual Report 2020–21](#), PSC, 9 September 2021, accessed 19 August 2022, p 23.

²⁰⁷ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 6.

²⁰⁸ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 3.

²⁰⁹ Hon M McGowan MLA, Premier, Minister for Public Sector Management, Hon B Johnston MLA, Minister for Industrial Relations, [Thousands of State Government workers to receive job security](#), [media statement], Government of Western Australia, 9 August 2018, accessed 19 August 2022.

- allowing departments and agencies to better retain quality staff
- making the public sector more efficient
- improving services to the community
- reducing expensive outsourcing and consultancies.²¹⁰

- 4.27 Since the government announcement in 2018, 15,496 public sector employees have been converted to permanent employment.²¹¹
- 4.28 At the end of June 2021, over 99% of eligible employees had been reviewed under Commissioner's Instruction 23.²¹² Of the 47,254 employees that were reviewed under this instruction, 11.4% have been converted to permanent positions.²¹³ In 2020 the Commissioner advised the low rate of conversion was mainly driven by the requirement that there is ongoing funding for the position.²¹⁴
- 4.29 The Commissioner has reviewed the relevant Commissioner's Instructions and considers them to have been effective in achieving conversion to permanency.²¹⁵
- 4.30 Table 1 shows the percentage of public sector employees with fixed terms contracts has slightly increased since the policy was announced in 2018–19:

Table 1. *Types of employment contracts in Western Australian public sector workforce from 2016–17 to 2020–21*

Contract	2016–17	2017–18	2018–19	2019–20	2020–21
Permanent	75.3%	76.1%	77.4%	77.8%	76.9%
Fixed term	18.9%	18.3%	16.9%	16.4%	17.3%
Casual	5.5%	5.2%	5.2%	5.2%	5.2%
Other	0.4%	0.4%	0.5%	0.6%	0.6%

[Source: Public Sector Commission (PSC), [State of the WA Government Sector Workforce 2020–21](#), PSC, 18 November 2021, accessed 19 August 2022, p 19.]

- 4.31 The Commissioner is conducting reviews of human resource practices and developing toolkits to provide ongoing assistance to agencies in this area.²¹⁶
- 4.32 The Committee is of the view that the successful conversion of 15,496 employees to permanency is a positive outcome however ongoing reviews should be undertaken to ensure eligible employees are offered permanency.

Commissioner's appointment as State Recovery Controller

- 4.33 In 2020 the Commissioner was appointed to the following additional roles to support the State Government's response to COVID-19:
- Public Sector Coordinator (appointed March 2020)

²¹⁰ Hon M McGowan MLA, Hon B Johnston MLA, [Thousands of State Government workers to receive job security](#).

²¹¹ Public Sector Commission (PSC), [State of the WA Government Sector Workforce 2020–21](#), PSC, 18 November 2021, accessed 19 August 2022, p 19.

²¹² PSC, [State of the WA Government Sector Workforce 2020–21](#), p 18.

²¹³ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 7.

²¹⁴ Standing Committee on Public Administration, [Consultation with Statutory Office Holders](#), p 33; S O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), Legislative Council, 26 October 2020, accessed 19 August 2022, p 2.

²¹⁵ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, p 7.

²¹⁶ O'Neill, Public Sector Commissioner, [\[transcript of evidence\]](#), 8 August 2022, pp 3–4.

- State Recovery Controller (appointed April 2020).²¹⁷
- 4.34 In these roles the Commissioner is required to:
- oversee the public sector response to COVID–19
 - develop and oversee implementation of the Western Australian Impact Statement
 - develop and oversee implementation of the Western Australian Recovery Plan
 - accompany the Premier as an adviser to National Cabinet meetings.
- 4.35 During the previous consultation in 2020 the Committee noted there was no designated end date for the Commissioner performing the role of State Recovery Controller.²¹⁸ The Committee also noted the Commissioner was unable to attend 2 Corporate Executive meetings in 2020 due to the additional role and expressed a view that arrangements should be in place to ensure that leading the public sector remains a standalone priority.
- 4.36 The Committee recommended a review be undertaken to consider any issues in relation to performing the dual roles and whether this arrangement is appropriate going forward.²¹⁹ In 2022 the Committee was advised that a formal review has not been undertaken.²²⁰
- 4.37 The Commissioner considers her appointment as State Recovery Controller to be complementary to her role as Public Sector Commissioner. She does not consider there is a need for a review of her ongoing role as State Recovery Controller.²²¹
- 4.38 The Committee remains of the view that a review of the Commissioner’s role as State Recovery Controller should be undertaken to ensure that leading the public sector remains a standalone priority.

RECOMMENDATION 8

The Minister for Public Sector Management consider undertaking a review of the role of State Recovery Controller, including reviewing any issues in relation to concurrently performing the role of Public Sector Commissioner, and whether this arrangement is appropriate going forward.

Minor misconduct in the government sector

- 4.39 The Public Sector Commission is responsible for dealing with allegations of minor misconduct in the government sector.²²²
- 4.40 The Public Sector Commission received 612 allegations of minor misconduct in 2021–22 (at 31 March 2022).²²³ This represents a significant increase from the 445 allegations received in the previous financial year.
- 4.41 The increased number of allegations received in 2021–22 includes 252 allegations of minor misconduct regarding compliance with mandatory vaccination.²²⁴

²¹⁷ Public Sector Commission (PSC), *Annual Report 2020–21*, PSC, 9 September 2021, accessed 19 August 2022, p 7.

²¹⁸ Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, p 41.

²¹⁹ Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, recommendation 9.

²²⁰ O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 4.

²²¹ O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 9.

²²² *Corruption, Crime and Misconduct Act 2003* s 45B.

²²³ Public Sector Commission (PSC), *State of the WA Government Sector Workforce 2020–21*, PSC, 18 November 2021, accessed 19 August 2022, p 58; O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 9.

²²⁴ O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 9.

- 4.42 The Committee is of the view that allegations of misconduct regarding mandatory vaccination may continue as the policy remains in place for employees in the Western Australian health system.²²⁵ The Committee will review the number of misconduct allegations during the next round of statutory office holder consultation.

Client perception survey

- 4.43 The Public Sector Commission conducts an annual client perception survey to measure performance against key effectiveness indicators. The survey asks respondents to rate how the Commission assisted them to promote integrity, effectiveness, efficiency, diversity and inclusion.
- 4.44 In 2020–21 the Public Sector Commission exceeded its target for all 3 of its key effectiveness indicators based on the results of its annual client perception survey.²²⁶ The survey responses included suggestions that the Public Sector Commission strengthen the way it communicates with its core clients.²²⁷
- 4.45 The 2020–21 client perception survey was sent to 115 core clients.²²⁸ The core client group previously included 279 entities however the composition of the group was changed in April 2021 to exclude local governments, regional councils, public universities and government trading enterprises.²²⁹
- 4.46 During the previous consultation in 2020 the Committee noted the Public Sector Commission ‘needs to do more to develop relationships with all organisations comprising the public sector’.²³⁰ In 2022 the Commissioner advised a number of strategies have been implemented to address this including conducting regular meetings with the Public Sector Leadership Council, government departments and Regional Development Commissioners.²³¹
- 4.47 These initiatives to improve relationships with public sector agencies are encouraging. However, the Committee notes that 59% of entities that previously participated in the Commissioner’s client perception survey are no longer invited to provide a response. The Committee is of the view that ongoing attention should be given to improving relationships, and communication, with government agencies.

Diversity in the public sector

- 4.48 In September 2020 the State Government published the *Workforce Diversification and Inclusion Strategy for WA Public Sector Employment 2020–25* (Strategy).²³² The Strategy includes aspirational targets for representation of diversity groups in the public sector.
- 4.49 Table 2 shows actual representation of these groups compared to the aspirational targets.

²²⁵ Department of Health (DOH), *COVID 19 Mandatory Vaccination and Vaccination Program Policy*, DOH, 13 January 2022, accessed 7 November 2022.

²²⁶ Public Sector Commission (PSC), *Annual Report 2020–21*, PSC, 9 September 2021, accessed 19 August 2022, p 87.

²²⁷ O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 8.

²²⁸ Public Sector Commission (PSC), *Annual Report 2020–21*, PSC, 9 September 2021, accessed 19 August 2022, p 86.

²²⁹ PSC, *Annual Report 2020–21*, p 86.

²³⁰ Standing Committee on Public Administration, *Consultation with Statutory Office Holders*, p 40.

²³¹ O’Neill, Public Sector Commissioner, *[transcript of evidence]*, 8 August 2022, p 8.

²³² Public Sector Commission (PSC), *Workforce Diversification and Inclusion Strategy for WA Public Sector Employment 2020–2025*, PSC, 4 September 2020, accessed 19 August 2022.

Table 2. Representation of diversity groups in the public sector in March 2021

Group	2025 Target	March 2021
Women	–	72.7%
Women in the Senior Executive Service (SES)	50%	43.5%
Aboriginal and Torres Strait Islander people	3.7%	2.8%
Aboriginal and Torres Strait Islander people in the SES	–	1.6%
People with disability	5%	1.6%
People with disability in the SES	–	2.4%
Young people	5.8%	4.3%
Young people in the SES	–	N/A
Culturally and linguistically diverse people	15.5%	15.9%
Culturally and linguistically diverse people in the SES	–	7.8%
People of diverse sexualities and genders	–	<0.1% of government sector
People of diverse sexualities and genders in the SES	–	N/A

[Source: Public Sector Commission (PSC), [Workforce Diversification and Inclusion Strategy for WA Public Sector Employment 2020–2025](#), PSC, 4 September 2020, accessed 19 August 2022, p 6; Public Sector Commission (PSC), [State of the WA Government Sector Workforce 2020–21](#), PSC, 18 November 2021, accessed 19 August 2022, pp 35, 41, 42, 46.]

- 4.50 The Committee is pleased to see the target for representation of culturally and linguistically diverse people in the public sector has been achieved. The Committee is of the view that ongoing work is required to reach the remaining targets by 2025.

CHAPTER 5

Ombudsman

Introduction

- 5.1 This chapter begins with an explanation of the role of the Ombudsman before considering the following aspects of his work:
- reviewing complaints about decisions made by public authorities
 - investigating deaths of children known to the Department of Communities
 - 2021 Ombudsman investigation into preventing child suicide
 - investigating family and domestic violence fatalities
 - 2021 Ombudsman investigation into the role of the Public Advocate to notify family members upon the death of a person under their guardianship.
- 5.2 The purpose of this chapter is to inform the Legislative Council about the functions of the Ombudsman and provide a summary of recent investigations. It does not include any Committee recommendations.

Functions of the Ombudsman

- 5.3 The Ombudsman is an independent parliamentary officer established under the *Parliamentary Commissioner Act 1971*.²³³
- 5.4 The Ombudsman's principle functions include:
- investigating complaints about public authorities including state government agencies, local governments and universities
 - reviewing certain child deaths
 - reviewing family and domestic violence fatalities
 - undertaking own motion investigations.²³⁴
- 5.5 Other functions of the Ombudsman include:
- receiving appeals from overseas students who are unsatisfied with the handling of a complaint by a public educational or training facility²³⁵
 - receiving public interest disclosures about matters of state and local government administration²³⁶
 - handling complaints about public authorities in Christmas and Cocos (Keeling) Islands²³⁷
 - receiving complaints about administrative matters in relation to a person detained under the *Terrorism (Preventative Detention) Act 2006*

²³³ *Parliamentary Commissioner Act 1971* s 5.

²³⁴ *Parliamentary Commissioner Act 1971* ss 16, 17, 19B; Ombudsman Western Australia (OWA), *Annual Report 2020–21*, OWA, 28 September 2021, accessed 19 August 2022, p 118.

²³⁵ *National Code of Practice for Providers of Education and Training to Overseas Students 2018* (Cth).

²³⁶ *Public Interest Disclosures Act 2003*.

²³⁷ *Indian Ocean Territories (Administration of Laws) Act 1992*; *Christmas Island Act 1958* (Cth); *Cocos (Keeling) Islands Act 1955* (Cth).

- inspecting records of the Western Australian Police Force and the Corruption and Crime Commission to ensure compliance with telecommunications intercept legislation²³⁸
- monitoring the exercise of powers conferred on the Commissioner of Police and police officers under the *Criminal Organisations Control Act 2012*
- resolving complaints about electricity, gas and water service providers²³⁹
- acting as a member of the State Records Commission.²⁴⁰

5.6 The Office of the Ombudsman provides support in performing these functions.

Complaints about public authority decisions

- 5.7 The Ombudsman is authorised to investigate complaints about decisions made by public authorities including state government agencies, local governments and universities.²⁴¹
- 5.8 In 2020–21 the Ombudsman received 2,119 complaints. This included 617 complaints not within the Ombudsman’s jurisdiction.²⁴²
- 5.9 In 2020 the Ombudsman advised the high proportion of out of jurisdiction complaints was likely to be an outlier due to COVID–19.²⁴³ However, the proportion of out of jurisdiction complaints has continued to increase. The Committee is of the view that the Ombudsman should implement strategies to raise public awareness about where complaints should be directed.
- 5.10 In 2020–21 the Ombudsman finalised 2,062 complaints. This included:
- 168 complaints not within the Ombudsman’s jurisdiction
 - 337 complaints referred back to the relevant public authority
 - 774 complaints referred to a more appropriate body to handle the complaint
 - 243 complaints in which an investigation was considered unwarranted
 - 428 complaints resolved after investigation
 - 1 complaint sustained after investigation
 - 52 complaints not sustained/could not be determined/discontinued
 - 59 complaints withdrawn.²⁴⁴
- 5.11 This breakdown shows a significant percentage of complaints received by the Ombudsman are finalised after an initial assessment and determined not to require investigation.

²³⁸ [*Telecommunications \(Interception and Access\) Western Australia Act 1996; Telecommunications \(Interception\) Act 1979 \(Cth\).*](#)

²³⁹ [*Economic Regulation Authority Act 2003; Electricity Industry Act 2004; Energy Coordination Act 1994; Parliamentary Commissioner Act 1971; Water Services Act 2012.*](#)

²⁴⁰ [*State Records Act 2000.*](#)

²⁴¹ [*Parliamentary Commissioner Act 1971* s 17.](#)

²⁴² Ombudsman Western Australia (OWA), [*Annual Report 2020–21*](#), OWA, 28 September 2021, accessed 19 August 2022, pp 31, 250.

²⁴³ Standing Committee on Public Administration, [*Consultation with Statutory Office Holders*](#), p 24.

²⁴⁴ Ombudsman Western Australia (OWA), [*Annual Report 2020–21*](#), OWA, 28 September 2021, accessed 19 August 2022, p 250.

Child death reviews

- 5.12 The Ombudsman is responsible for reviewing ‘investigable’ child deaths.²⁴⁵ An investigable death occurs if a child dies in any of the following circumstances:
- the Chief Executive Officer of the Department of Communities (CEO) received information that raised concerns about the wellbeing of the child or a child relative of the child
 - the CEO determined action should be taken to safeguard or promote the wellbeing of the child or a child relative of the child pursuant to s 32(1) of the *Children and Community Services Act 2004* (CCS Act)
 - any of the actions listed in s 32(1) of the CCS Act were done in respect of the child or a child relative of the child
 - protection proceedings were pending in respect of the child or a child relative
 - the child, or a child relative of the child, is in the CEO’s care.²⁴⁶
- 5.13 An investigable death is one which meets the criteria above and does not necessarily mean the death was preventable by the Department of Communities.²⁴⁷
- 5.14 Information concerning the profile of children involved in child death reviews are included in the Ombudsman’s Annual Report. This is done to provide relevant stakeholders with information regarding what factors might relate to and co-exist with child deaths in Western Australia.²⁴⁸
- 5.15 The main circumstances of child death notifications between 30 June 2009 and 30 June 2021 include:
- sudden, unexpected death of an infant – 31%
 - motor vehicle accident – 20%
 - suicide – 16%
 - illness or medical condition – 14%.²⁴⁹
- 5.16 The main social and environmental factors of investigable child deaths between 2009 and 2021 include:
- family and domestic violence – 74%
 - drug or substance abuse – 49%
 - parenting – 60%
 - alcohol use – 46%.²⁵⁰

²⁴⁵ [Parliamentary Commissioner Act 1971](#) s 19B.

²⁴⁶ [Parliamentary Commissioner Act 1971](#) s 19A(3).

²⁴⁷ Ombudsman Western Australia (OWA), [Annual Report 2020–21](#), OWA, 28 September 2021, accessed 19 August 2022, p 59.

²⁴⁸ C Field, Ombudsman, [\[transcript of evidence\]](#), Legislative Council, 10 August 2022, accessed 19 August 2022, p 3.

²⁴⁹ Ombudsman Western Australia (OWA), [Annual Report 2020–21](#), OWA, 28 September 2021, accessed 19 August 2022, p 62.

²⁵⁰ OWA, [Annual Report 2020–21](#), p 70.

- 5.17 Aboriginal children are over-represented in child deaths. Between 2009 and 2021 Aboriginal children represented:
- 57% of investigable deaths
 - 19% of non-investigable deaths
 - 6% of the total population of children in Western Australia.²⁵¹
- 5.18 In 2016 the Ombudsman recruited a Principal Aboriginal Consultant to provide high level advice to staff conducting child death reviews.²⁵²
- 5.19 In 2022 the Ombudsman informed the Committee that his office has increased its engagement with Aboriginal Western Australians by undertaking regional access and awareness programs alongside other accountability agencies.²⁵³ This includes visiting regional and remote areas.
- 5.20 The Ombudsman also informed the Committee he has created a position for a Senior Assistant Ombudsman Aboriginal Engagement and Collaboration to lead outreach and engagement with Aboriginal Western Australians including in rural and remote areas.²⁵⁴
- 5.21 The Committee encourages the steps taken by the Ombudsman to improve his analysis of Aboriginal child deaths and increase engagement with Aboriginal people.

Recommendations

- 5.22 In 2020–21 the Ombudsman made a number of recommendations to prevent and reduce child deaths.²⁵⁵ All of these recommendations have been accepted by the relevant agencies.²⁵⁶
- 5.23 The Ombudsman should monitor the implementation of these recommendations to ensure they are effective in preventing child deaths in the future.

Investigation into preventing child suicide

- 5.24 In 2021 the Office of the Ombudsman tabled a report titled *Preventing suicide by children and young people 2020*.²⁵⁷
- 5.25 The Ombudsman's report notes children who experience 'cumulative harm' arising from abuse or neglect are at a higher risk of suicide and other mental health issues.²⁵⁸ The Ombudsman explained that interactions with children experiencing complex social issues requires inter-agency cooperation across departments to address their holistic needs.²⁵⁹
- 5.26 The Ombudsman advised that his office continues to monitor the progress of interagency cooperation in relation to child deaths.²⁶⁰

²⁵¹ OWA, *Annual Report 2020–21*, p 62.

²⁵² OWA, *Annual Report 2020–21*, p 129.

²⁵³ Field, Ombudsman, [transcript of evidence], 10 August 2022, p 4.

²⁵⁴ Field, Ombudsman, [transcript of evidence], 10 August 2022, p 4.

²⁵⁵ Ombudsman Western Australia (OWA), *Annual Report 2020–21*, OWA, 28 September 2021, accessed 19 August 2022, pp 94–95.

²⁵⁶ OWA, *Annual Report 2020–21*, p 26.

²⁵⁷ Ombudsman Western Australia (OWA), *Preventing suicide by children and young people 2020*, OWA, 30 September 2021, accessed 19 August 2022.

²⁵⁸ OWA, *Preventing suicide by children and young people 2020*, p 73.

²⁵⁹ Field, Ombudsman, [transcript of evidence], 10 August 2022, p 10.

²⁶⁰ Field, Ombudsman, [transcript of evidence], 10 August 2022, p 10.

- 5.27 The Ombudsman's investigations into child suicide represents a significant body of work that includes valuable data, analytics and information for relevant agencies to address child suicide.

Family and domestic violence fatality reviews

- 5.28 Since 2012 the Ombudsman has undertaken reviews of family and domestic violence fatalities in Western Australia.²⁶¹
- 5.29 The Ombudsman will conduct a review of a fatality if it involves people who are in a 'family relationship' as defined in the *Restraining Orders Act 1997*.
- 5.30 In 2020–21 the Ombudsman reviewed 9 family and domestic violence fatalities. The main circumstances of family and domestic violence fatalities were 'alleged homicide by physical assault' and 'stabbing'.²⁶²
- 5.31 Aboriginal people represented 33% of family and domestic violence fatalities between 1 July 2012 and 30 June 2021.²⁶³ The suspected perpetrator was also Aboriginal in all but 3 cases over this period.²⁶⁴

Recommendations

- 5.32 In 2020–21 the Ombudsman made a number of recommendations to prevent and reduce family and domestic violence fatalities.²⁶⁵ All of these recommendations have been accepted by the relevant agencies.²⁶⁶
- 5.33 The Ombudsman should monitor the implementation of these recommendations to ensure they are effective and preventing fatalities in the future.

Investigation into the Office of the Public Advocate

- 5.34 In July 2021 the Ombudsman published an investigation into the role of the Public Advocate in notifying family members of the death of a person under their guardianship.²⁶⁷
- 5.35 The Ombudsman's report investigates the deaths of Mrs Joyce Savage, Mr Robert Ayling and Mr Kenneth Hartley. The Public Advocate was appointed guardianship over these people and did not notify their families of their death.
- 5.36 The Ombudsman made 7 recommendations, all of which were agreed to by the Public Advocate.²⁶⁸ The Ombudsman believed that the recommendations addressed systemic issues

²⁶¹ Ombudsman Western Australia (OWA), *Annual Report 2020–21*, OWA, 28 September 2021, accessed 19 August 2022, p 118.

²⁶² OWA, *Annual Report 2020–21*, p 129.

²⁶³ OWA, *Annual Report 2020–21*, p 139.

²⁶⁴ OWA, *Annual Report 2020–21*, p 139.

²⁶⁵ OWA, *Annual Report 2020–21*, pp 149–150.

²⁶⁶ OWA, *Annual Report 2020–21*, p 26.

²⁶⁷ Ombudsman Western Australia (OWA), *An investigation into the Office of the Public Advocate's role in notifying the families of Mrs Joyce Savage, Mr Robert Ayling and Mr Kenneth Hartley of the deaths of Mrs Savage, Mr Ayling and Mr Hartley*, OWA, 8 July 2021, accessed 19 August 2022.

²⁶⁸ OWA, *An investigation into the Office of the Public Advocate's role in notifying the families of Mrs Joyce Savage, Mr Robert Ayling and Mr Kenneth Hartley of the deaths of Mrs Savage, Mr Ayling and Mr Hartley*, p 10; Field, Ombudsman, *[transcript of evidence]*, 10 August 2022, p 11.

at the Office of the Public Advocate and would ensure delays in notifying families would be unlikely to occur again.²⁶⁹

- 5.37 The Committee recognises the importance of the Ombudsman's investigation to ensure families of represented people are notified of their death.

A handwritten signature in black ink, appearing to read 'P. Yang', with a stylized flourish at the end.

Hon Pierre Yang MLC
Chair

²⁶⁹ Field, Ombudsman, [[transcript of evidence](#)], 10 August 2022, p 11.

APPENDIX 1

PUBLIC HEARINGS

Number	From
8 August 2022	Office of the Information Commissioner: <ul style="list-style-type: none">• Catherine Fletcher, Information Commissioner• Tony Pruyn, Manager, Complaints• Alison McCubbin, Coordinator, Education and Communication• Michelle Fitzgerald, Executive Officer
8 August 2022	Public Sector Commission: <ul style="list-style-type: none">• Sharyn O'Neill, Public Sector Commissioner• Lindsay Warner, Executive Director, Workforce Policy and Diversity• Dan Volaric, Executive Director, Integrity and Risk
10 August 2022	Office of the Inspector of Custodial Services: <ul style="list-style-type: none">• Eamon Ryan, Inspector of Custodial Services• Darrian Ferguson, Deputy Inspector• Natalie Gibson, Director, Operations• Christine Wyatt, Director Review
10 August 2022	Office of the Parliamentary Commissioner for Administrative Investigations (Ombudsman): <ul style="list-style-type: none">• Chris Field, Ombudsman• Mary White, Deputy Ombudsman• Rebecca Poole, Chief of Staff• Lara Miller, Research and Project Officer• Ella Italiano-Schmidt, Research and Project Officer

APPENDIX 2

BANDYUP WOMEN'S PRISON INFRASTRUCTURE DEFICIENCIES

Facility	Infrastructure deficiencies
Reception and visits	<ul style="list-style-type: none"> • Reception sallyport is too small. • Reception lacks interview rooms, work-flow or storage. • External visits centre is poorly located and in poor condition. • The social visits centre is too small to serve its purpose. • Official visits is in poor condition and of questionable safety.
Health and support services	<ul style="list-style-type: none"> • Medical centre is not compliant with health and hygiene standards. • The women's estate lacks a 24-hour residential infirmary. • A residential sub-acute mental health facility is needed. • Counselling, programs and prison support staff, Aboriginal Visitors, external facilitators and chaplains need more appropriate offices, interview rooms and programs rooms. • Bandyup lacks a multi-faith spiritual centre.
Administration and security	<ul style="list-style-type: none"> • Administration is dispersed, partly in unsuitable demountable buildings. • Security team needs more suitable accommodation and an incident control facility. • Meeting rooms are needed in administration. • Staff training facility is of poor quality. • Outdated scanning equipment is in use and CCTV coverage is inadequate.
Prisoner accommodation	<ul style="list-style-type: none"> • Suitable single-bed accommodation for all pregnant mothers is lacking. • Unit 1 has small crowded cells and is exposed to the elements. • Too many double-bunks are installed.
Industries and training	<ul style="list-style-type: none"> • A fit-for-purpose kitchen and training facility is needed. • Additional workshops are needed for skills training and cottage industries. • Additional training classrooms are needed. • Digital infrastructure for learning is too limited. • Horticultural nursery facilities need extension and modernising. • A supermarket facility is needed for self-care provisioning.

[Source: Office of the Inspector of Custodial Services (OICS), [2020 Inspection of Bandyup Women's Prison](#), OICS, December 2020, accessed 26 September 2022, p 12.]

GLOSSARY

Term	Definition
Bandyup	Bandyup Women's Prison
Banksia Hill	Banksia Hill Youth Detention Centre
CCS Act	<i>Children and Community Services Act 2004</i>
Commissioner	Public Sector Commissioner
Department	Department of Justice
FOI Act	<i>Freedom of Information Act 1992</i>
FTE	Full-time equivalent staff
Inspector	Inspector of Custodial Services
ISU	Banksia Hill Detention Centre Intensive Support Unit
IT	Information technology
Melaleuca	Melaleuca Women's Prison
Minister	Minister for Corrective Services
OIC	Office of the Information Commissioner
OICS	Office of the Inspector of Custodial Services
Ombudsman	Parliamentary Commissioner for Administrative Investigations
OPCAT	<i>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment</i>
OWA	Ombudsman Western Australia
Program	Agency Capability Review Program
PSC	Public Sector Commission
SES	Senior executive service
SO9a	Department of Corrective Services Standing Order 9a
Strategy	Workforce Diversification and Inclusion Strategy for WA Public Sector Employment 2020–25
Unit 18	Unit 18 Casuarina Prison

Standing Committee on Public Administration

Date first appointed:

17 August 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'5. Public Administration Committee

5.1 A *Public Administration Committee* is established.

5.2 The Committee consists of 5 Members.

5.3 The functions of the Committee are to —

(a) inquire into and report on —

- (i) the structure, efficiency and effectiveness of the system of public administration;
- (ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;
- (iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions; and
- (iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

(b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

5.4 The Committee is not to make inquiry with respect to —

- (a) the constitution, function or operations of the Executive Council;
- (b) the Governor's Establishment;
- (c) the constitution and administration of Parliament;
- (d) the judiciary;
- (e) a decision made by a person acting judicially;
- (f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or
- (g) the merits of a particular case or grievance that is not received as a petition.'



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