

Report on the balance of recommendations arising out of previous Commission reports on the Department of Corrective Services

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Corruption and Crime Commission

| | | | |
|-----------------------|--|---------------------|--|
| Postal Address | PO Box 330 Northbridge Post Shop WA 6865 | Email | info@ccc.wa.gov.au |
| | | Website | www.ccc.wa.gov.au |
| Telephone | (08) 9215 4888 1800 809 000 (Toll Free for callers outside the Perth metropolitan area.) | Twitter | @CCCWestAus |
| | | Office Hours | Monday to Friday 8.30 am to 5.00 pm |
| Facsimile | (08) 9215 4884 | | |

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TABLE OF CONTENTS

| | |
|--------------------------|----|
| INTRODUCTION | 4 |
| CHAPTER ONE | 5 |
| Past investigations..... | 5 |
| CHAPTER TWO | 6 |
| Recommendation 4 | 6 |
| Recommendation 6 | 7 |
| Recommendation 10 | 7 |
| Recommendation 25 | 9 |
| Recommendation 26 | 10 |
| Recommendation 29 | 10 |
| Recommendation 30 | 11 |
| Recommendation 36 | 12 |
| Recommendation 37 | 13 |
| Recommendation 39 | 13 |
| Recommendation 41 | 14 |
| Recommendation 42 | 15 |
| Recommendation 43 | 16 |
| Recommendation 51 | 17 |
| CHAPTER THREE | 19 |
| Conclusion..... | 19 |

INTRODUCTION

- [1] The prison population of Western Australia is housed in prison and work camp facilities (known as the custodial estate) covering WA's vast geographical area. Each facility poses unique risks based on size, location, security classification and population. The Department of Justice (DoJ) is responsible for the custodial estate.
- [2] Between 2016 and 2018, the Corruption and Crime Commission (the Commission) conducted a series of investigations into the serious misconduct risks associated with the custodial estate.
- [3] The Commission investigations exposed a large number of unmanaged risks including but not limited to; poor governance, conflicting policies, lax supervision, and deceptive and deficient use of force reporting.
- [4] In 2018, six reports were tabled in Parliament and in total, 51 recommendations were made to DoJ for action.¹
- [5] The following year, the Commission commenced a review of DoJ's response to all recommendations. The review acknowledged the significant amount of work undertaken by DoJ and 37 recommendations were closed.²
- [6] This report outlines the actions taken by DoJ to address the remaining 14 recommendations.
- [7] Significant changes have been implemented across the DoJ and the custodial estate. While risks of serious misconduct can never be completely removed, DoJ has responded positively in managing the risks.
- [8] The Commission considers all 51 recommendations closed.

¹ Corruption and Crime Commission, *Report into inadequate supervision of prisoners whilst in the community*, 11 May 2018; Corruption and Crime Commission, *Report on corrupt custodial officers and the risks of contraband entering prisons*, 26 June 2018; Corruption and Crime Commission, *Report into inadequate force reporting at Hakea Prison on 21 March 2016*, 27 June 2018; Corruption and Crime Commission, *Report into the inadequate use of force reporting at Eastern Goldfields Regional Prison on 27 March 2017*, 27 June 2018; Corruption and Crime Commission, *Reporting into inadequate use of force reporting in May 2017*, 27 June 2018; Corruption and Crime Commission, *Report into misconduct risks in WA prisons*, 26 October 2018.

² Corruption and Crime Commission, *Review of recommendations made to the Department of Justice arising from six reports*, 25 June 2020.

CHAPTER ONE

Past investigations

- [9] In 2016, the Commission commenced a cooperative investigation with DoJ and the WA Police Force.³
- [10] This investigation exposed five incidents of serious misconduct involving prison officers and vocational support officers. The Commission undertook separate investigations into these matters.
- [11] In 2018, the Commission reported to Parliament on each of those incidents.
- [12] The Commission's investigations uncovered widespread serious misconduct risks across the custodial estate. On 26 October 2018, a sixth report was tabled in Parliament and outlined the need for DoJ to enhance its ability to identify, manage and responds to serious misconduct.
- [13] The Commission made 51 recommendations to DoJ and committed to review actions DoJ had taken in response to the recommendations in 12 months' time.

The 2020 review

- [14] In April 2019, the Commission commenced its 12 month review into DoJ's response to each recommendation.⁴
- [15] The Commission received comprehensive submissions from DoJ, outlining the initiatives being implemented, or proposed, to address each recommendation.
- [16] Review activities were also undertaken by Commission officers to consider and evaluate the initiatives implemented. Private and public examinations were conducted to assess DoJ's progress. Throughout the review, DoJ encouraged Commission engagement and demonstrated a positive and continued commitment for change.
- [17] In June 2020, the Commission tabled a report in Parliament outlining its review findings. Of the 51 recommendations, 37 were closed.
- [18] DoJ was commended on the initiatives implemented. However, the report acknowledged that some would take more time to complete.

³ *Corruption, Crime and Misconduct Act 2003* s 33(1)(b).

⁴ *Corruption and Crime Commission, Review of recommendations made to the Department of Justice arising from six reports*, 25 June 2020.

CHAPTER TWO

Recommendation 4

Given the obvious risks associated with s 95⁵ prisoners spending time outside of prison, DoJ carefully consider the disciplinary record of staff appointed to these duties. Where failure of supervisory duties is identified, consideration should be given to the offending staff member/s being removed from high risk duties.

DoJ Response

- [19] DoJ implemented a new process to deal with staff working in custodial settings who are also subject to disciplinary action.
- [20] Staff can now be demoted or transferred out of high risk environments. For example, an officer may be transferred so they are not involved in the high risk duty of supervising s 95 prisoners in the community.
- [21] Staff training has also been reinvigorated and strengthened, with the introduction of:
- Offender Manipulation and Deception training which educates staff on potential 'red flags' for grooming behaviours by prisoners.
 - Mandatory Accountable and Ethical Decision Making training to be completed every 12 months.
- [22] Additionally, DoJ updated its screening policy and procedure to require re-screening of staff on a regular basis to identify new or emerging risks or vulnerabilities.

Commission review

- [23] DoJ has made significant progress in implementing and updating training to educate staff and set clear behavioural expectations.
- [24] The introduction of re-screening and ability of DoJ to transfer staff out of high risk environments should provide DoJ with greater visibility and control in identifying and responding to serious misconduct risks.
- [25] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

⁵ The *Prisons Act 1981* (WA) s 95 provides for activity programmes for the well-being and rehabilitation of prisoners.

Recommendation 6

Random search of DoJ vehicles after delivery runs be initiated.

DoJ Response

- [26] Policy and procedures have been updated to minimise the risk of illegal items (contraband) entering a prison or prison farm facility via vehicles.
- [27] The procedures ensure all vehicles returning to prisons, including prisoner vehicles used for approved external activities, are routinely searched by an independent officer. Further, all vehicles parked outside to the secure perimeter fence and on prison gazetted lands, can now be searched.
- [28] In addition, record keeping has been improved. All vehicle searches are recorded in the Total Offender Management System (TOMS) and the completion of key information fields are mandatory, to ensure accurate and consistent reporting.

Commission Review

- [29] The Commission was provided with copies of updated policy and procedures, as well as completed Vehicle Search Checklists used by officers when searching a vehicle. The documentation demonstrated the separation of duties and improved TOMS reporting for vehicle searches
- [30] While the Commission acknowledges the improvements made, the effectiveness of policy and procedures remains dependent on the governance of officer compliance. This remains an issue for DoJ to manage.
- [31] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 10

Periodic professional review of frontline prison staff be provided to identify vulnerabilities with a view to providing support and managing risk.

DoJ Response

- [32] Employment Screening policy and procedures have been updated to include improved processes for identifying any potential staff risks and vulnerabilities. A major change to the policy was the requirement for staff re-screening every three years.

- [33] Integrity and Ethics Committees have also been formed and implemented in each custodial facility. The Committees primary focus is to identify staff who may be at risk of engaging in misconduct, and where appropriate, to implement early intervention strategies. The Committees meet on a regular basis and consult with superintendents and unit managers. Staff and facility vulnerabilities are discussed and decisions made to mitigate any identified risks.
- [34] The Committees work collaboratively with DoJ's Professional Standards Division (PSD) in dealing with any staff subject to early intervention. This collaborative approach aims to assist in identifying any emerging trends and issues.

Commission Review

- [35] DoJ is responsible for identifying and managing staff who may be vulnerable to misconduct. Since its creation, PSD has taken on some responsibility for identifying staff considered at risk of engaging in misconduct.
- [36] Nonetheless, the primary role in the professional review of frontline staff ultimately remains with each custodial facility, which has greatest visibility of staff behaviour and risks.
- [37] Improved collaboration between PSD and custodial facilities through the implementation of Integrity and Ethics committees, is a promising sign in DoJ's continued efforts to identify at risk employees and any wider misconduct trends or issues.
- [38] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 25

Conduct mandatory training for prison officers in relation to independent, accurate and factual reporting of use of force incidents that includes:

- ***The use which can be made of a prison officer's reports in legal, administrative, disciplinary and prison offence proceedings;***
- ***The consequences of colluding, making false or inaccurate statements or omitting material matters; and***
- ***The interrelation between reporting on use of force incidents and a prison officer's duties and oath under the Prisons Act 1981.***

DoJ Response

- [39] A new mandatory Use of Force online training module has been developed and implemented to assist officers to remain up-to-date with the theory component. The module includes information about officer responsibilities when reporting use of force incidents; how to report incidents; the level of information required; and the consequences for non-compliance, such as criminal and disciplinary proceedings.
- [40] All staff training records are managed through the Justice Education Management System (JEMS). JEMS tasks upcoming training to staff and monitors progress and completion. All custodial facilities have access to JEMS and can view training compliance. Where appropriate, superintendents will take action if staff have outstanding training requirements.
- [41] Monthly training compliance dashboards are also produced and provided to the DoJ Executive team for consideration.

Commission Review

- [42] The Commission was provided with use of force training compliance records from 2021. They demonstrated a marked improvement across most areas. The exception was one regional area, due to a lack of available trainers.
- [43] Maintaining training compliance and minimum staffing numbers at custodial facilities has been a challenge for DoJ. The ability for officers to complete training in a more flexible and accessible online environment, will assist in managing these competing priorities.
- [44] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 26

Take action against prison officers who make inaccurate statements or material omissions from Incident Description Reports, or who do not submit an Incident Description Report when required to do so. Maintain a register of the action taken.

DoJ Response

- [45] PSD is responsible for taking action, including disciplinary action, against officers who make false statements, material omissions or fail to complete incident reporting when required to do so.
- [46] A register of the action taken by PSD is managed through DoJ's internal Online Misconduct Reporting portal.

Commission Review

- [47] The Commission received documentation which demonstrated PSD's methodical approach in the assessment and investigation phases when dealing with allegations of inaccurate reporting. The actions taken and final outcomes were clearly documented on each case file.
- [48] The Online Misconduct Reporting portal provides DoJ with an accountability tool to accurately record actions taken and monitor the consistency of outcomes being achieved.
- [49] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 29

Update, monitor and audit systems (including TOMS), processes and physical spaces to reduce the opportunity for prison officers to collude about their IDRs or otherwise view or copy the Incident Description Reports of others.

DoJ Response

- [50] In May 2020, TOMS was upgraded to remove the ability of users to copy and paste text or view other officer's reports or statements. In addition, an automated warning message was created to remind officers of their reporting responsibilities and the possible consequences of inaccurate reports.
- [51] In addition to the system changes in TOMS, the following initiatives have been implemented:

- Requirement for an independent officer to approve reports, with officers involved in an incident no longer able to endorse the reports of other involved officers.
- Checklists for incident reports to guide officers in the effective and timely writing of reports.
- Auditing of TOMS to target certain cohorts, such as officers subject to disciplinary action.

[52] As part of a wider Custodial Operational Policies and Procedures Project, new policy and procedures relating to incident reporting have also progressed from draft to finalisation.

Commission Review

[53] The upgrades and system changes to TOMS are a marked improvement. Although the changes will not eradicate the risk of officers colluding, it will make it more difficult to do so.

[54] Additionally, the new policy and procedures drafted specific to the reporting of incidents, supports the closure of this recommendation.

[55] The Commission notes the reactive auditing of TOMS and encourages DoJ to consider conducting more proactive audits.

[56] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 30

Take action against prison officers who use force against prisoners in circumstances where they have not completed a DoJ approved training program or have not discharged mandatory requirements to refresh their annual training.

DoJ Response

[57] Prison officer training and compliance is a risk managed locally by the facility where the officer is employed.

[58] New functionality in JEMS allows superintendents to view compliance reports for use of force training and take action against those who are non-compliant.

Commission Review

- [59] Increased visibility of training compliance by custodial facilities will assist in the management of risks associated with non-compliance of mandatory training.
- [60] However, in the absence of any adverse actions such as the removal of staff from custodial duties until mandatory training requirements are met, the risk of non-compliance will remain. This remains a risk for DoJ to manage.
- [61] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 36

Review policies and procedures, orders and directions, giving priorities to PDs 26 (Searching) and 41 (Reporting of Incidents).

DoJ Response

- [62] The Custodial Operational Policies and Procedures Project sought to address and rectify conflicting policies and procedures across the custodial estate.
- [63] The review and update of policies and procedures specific to searching and reporting of incidents has been completed. The changes aim to improve consistency across the custodial estate by providing a framework for facilities to mirror in their own local instructions (standing orders).
- [64] Implementation is being rolled out to facilities in a staged approach.

Commission Review

- [65] The Commission acknowledges the scope of work involved in the review of all policy and procedures across the custodial estate. While the implementation phase is ongoing, the Commission commends DoJ on its continued commitment to mitigate the risks associated with voluminous and contradictory instructions to staff.
- [66] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 37

Continue to remodel and refine the triage and assessment process, giving consideration to implementing a corruption prevention early intervention model for 'at risk' staff.

DoJ Response

- [67] PSD continues to embed and refine its assessment and investigation processes to provide clear pathways for disciplinary proceedings.
- [68] The refinement process involved the introduction of an early intervention model, to identify and manage staff who may be at an increased risk of engaging in misconduct.
- [69] The model is managed by the Corruption Prevention and Education Directorate (CPE) within PSD and more broadly, the Integrity and Ethics Committees based across the custodial estate.

Commission Review

- [70] Since its formation, PSD has continued to develop and refine its processes to better align with early intervention principles.
- [71] The Commission commends the continued commitment demonstrated by DoJ.
- [72] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 39

Continue to review the current search and screening procedures used on entry to prisons, assess compliance and measure effectiveness of those systems and trial, assess and implement new technologies where appropriate.

DoJ Response

- [73] New search and screening policy and local procedures (standing orders) have been drafted and are currently being implemented across the custodial estate.
- [74] The Operational Compliance Branch is an independent area responsible for conducting audits and reviews of compliance with procedures. Effectiveness of the standing orders will continue to be measured.

- [75] DoJ are committed to exploring and implementing new technologies where possible. An example is new x-ray technology which is currently being considered for searching purposes.

Commission Review

- [76] The Commission was provided with copies of audits conducted. In custodial facilities where local searching procedures have been implemented, a rise in compliance was noted.
- [77] The Commission acknowledges the fiscal considerations associated with the implementation of new technologies. The allocation of funds to source, test and implement search and screening technologies across the custodial estate, remains an issue for DoJ.
- [78] The review considers DoJ has adequately responded and this recommendation be **closed**.

Recommendation 41

Facilitate sharing of key information from all relevant systems to the investigations unit and the respective prisons, including but not limited to, CCTV footage, drug testing, PTS, TOMS audit and intelligence databases.

DoJ response

- [79] All critical and sensitive information about investigations and the custodial estate is stored in a centralised intelligence database. Key personnel from across the custodial estate and PSD, can access this database to view and share, evidentiary material.
- [80] Additionally, the following initiatives had been implemented to improve information sharing:
- Regular circulation of intelligence broadcasts to inform relevant directorates of key information, such as drug test trends and results.
 - Key information about PSD investigations, such as serving a letter of allegation, is now shared with the Superintendent responsible for the daily management of an officer subject to investigation.

Commission review

- [81] The Commission acknowledges the improvements made by DoJ to communicate and share information between areas, in an effort to mitigate and manage misconduct.

- [82] The ability of the custodial estate to view and share documentation in a centralised database, has improved the level of information sharing.
- [83] Improved communications between PSD and superintendents about misconduct risks or allegations involving their staff, has improved the ability of superintendents to better manage their serious misconduct risks.
- [84] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 42

Review DoJ's drug testing regime and implement performance measures to gauge impact and effectiveness over time.

DoJ Response

- [85] Management of the risks associated with drugs and alcohol in the custodial estate is outlined in the Drug and Alcohol Testing Strategy 2021-2026.
- [86] The strategy involves conducting regular, random, mandatory and targeted drug and alcohol testing. DoJ has zero tolerance for illicit drugs and a maximum permissible alcohol level for officers of 0.02% breath alcohol content.
- [87] PSD has taken over responsibility for drug and alcohol testing across DoJ. New policy and procedures have been implemented accordingly.
- [88] From January to March 2021, PSD conducted 841 drug and alcohol tests, of which 764 were random. From those tests, 18 were positive presumptive for alcohol and/or drugs, and 14 were confirmed positive.

Commission Review

- [89] The transition of drug and alcohol testing from Corrective Services to PSD provides DoJ with an independent and agency wide function for the objective management of misconduct risks associated with drugs and alcohol.
- [90] The Commission acknowledges the outcomes achieved by PSD since taking over this function. The new policy and procedures governing who, when, and how the results are dealt with, has improved.
- [91] Notwithstanding this, the ongoing effectiveness of the Drug and Alcohol Strategy and associated policy and procedures, remains an area for DoJ to continue to review and manage.

- [92] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 43

Improve security screening processes for current and potential new employees, giving consideration to more regular screening of staff and better sharing of screening information.

DoJ Response

- [93] In June 2020, new policy and procedures were implemented for the security screening of new and existing employees.
- [94] The policy prescribes a 'no screening, no start' rule and the re-screening of employees every 3 years or every year, if they have access to firearms or are a contractor.
- [95] An Employment Screening Review Committee has been implemented and meet on a monthly basis to discuss any adverse screening results.
- [96] PSD has also taken over responsibility for managing staff compliance with compulsory screening and renewal of working with children checks.

Commission Review

- [97] The Commission acknowledges the changes implemented by DoJ to require the re-screening of existing employees.
- [98] Employees working in custodial facilities are vulnerable to misconduct risk due to their operational environment. The re-screening of long term employees will improve DoJ's ability to identify any potential risks.
- [99] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

Recommendation 51

Introduce a system to track and measure the effectiveness of serious misconduct strategies that can be used for high level and operational reporting, to measure staff performance and compliance, to inform staff training and to identify where early intervention is needed to fill knowledge or security gaps and measure effectiveness of policies and procedures.

DoJ Response

- [100] Since the Commission's first review, various systems and initiatives have been implemented to track, measure and report serious misconduct strategies.
- [101] A key initiative has been the creation and implementation of Integrity and Ethics Committees across the custodial estate. They aim to achieve to following:
- Identify staff who may be at risk of engaging in misconduct and if identified, implement early intervention strategies.
 - Discuss individual misconduct files as well as identify broader risks and trends.
 - Generate a collaborative approach between PSD (including CPE) and the facilities, to better identify, respond to and manage misconduct and any associated risks.
 - Improve visibility over staff performance, compliance, trends and identify training and education deficits and opportunities.
- [102] In addition, PSD produce a monthly report to measure the effectiveness of misconduct strategies, staff performance and compliance. The reports are provided to DoJ's Director General.
- [103] The DoJ internal intelligence database is also used to track effectiveness of misconduct measures. The system allows for reports to be established on particular themes, locations or time periods and is a mechanism for DoJ to analyse trends and measure effectiveness of newly implemented strategies, such as training.

Commission Review

- [104] The Commission acknowledges the complexities of implementing a single system to track and measure the effectiveness of all serious misconduct strategies.

- [105] The implementation of monthly integrity reporting coupled with the Integrity and Ethic Committees, provides DoJ with greater agency wide level visibility of potential misconduct risks.
- [106] DoJ has demonstrated a continued commitment to improve its internal processes, systems and training in an effort to better identify employees who may require early intervention. The work of CPE (within PSD) supports this direction.
- [107] While there will never be a single solution to this complex issue, the Commission commends the efforts of DoJ to date.
- [108] The Commission considers DoJ has adequately responded and this recommendation is **closed**.

CHAPTER THREE

Conclusion

- [109] The Commission's reports in 2018 highlighted the nature and prevalence of serious misconduct risks throughout the custodial estate. The severity of risks identified, resulted in 51 recommendations being made to DoJ for changes across the agency and specifically, the custodial estate.
- [110] A subsequent commitment was made by DoJ to take action and implement change. That commitment has been met.
- [111] The Commission's reviews have outlined significant improvements implemented by DoJ to identify, manage and where possible, mitigate the misconduct risk. It is appropriate to acknowledge the substantial progress made by DoJ over four years.
- [112] **The Commission considers DoJ has taken appropriate steps to address the remaining 14 recommendations.**
- [113] **The Commission considers all 51 recommendations now closed.**