

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

**INQUIRY INTO THE MONITORING AND ENFORCING
OF CHILD SAFE STANDARDS**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 20 MARCH 2019**

Members

**Hon Dr Sally Talbot, MLC (Chair)
Mr K.M. O'Donnell, MLA (Deputy Chair)
Hon Donna Faragher, MLC
Mrs J.M.C. Stojkovski, MLA**

Hearing commenced at 9.40 am**Professor NEIL ANDREW MORGAN****Inspector of Custodial Services, Office of the Inspector of Custodial Services, examined:****Mr DARIAN FERGUSON****Deputy Inspector, Office of the Inspector of Custodial Services, examined:****Ms ROWENA DAVIS****Director Reviews, Office of the Inspector of Custodial Services, examined:****Mr KIERAN ARTELARIS****Inspections and Research Officer, Office of the Inspector of Custodial Services, examined:**

The CHAIR: On behalf of the committee, I would like to thank all for agreeing to appear today to provide evidence in relation to the Joint Standing Committee on the Commissioner for Children and Young People's inquiry into the monitoring and enforcing of child safe standards. I think you are well acquainted with the members of the committee, so I will not go through the formal introductions. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you may say outside today's proceedings.

Before we start our questions, do you have any questions about your attendance here today?

Prof. Morgan: No. We have put in a submission to you which followed up on our conversations last year. I do not think there is anything that I would especially wish to add to that. I would highlight, I suppose, the amount of work we have done in the youth custodial space, especially in the last few years, with the interests of the safety and protection of children in mind, and we have talked about that. In terms of the child safe standards, perhaps I should have also included in our submission something about the fact that we have a code of inspection standards that we use within the office, which is on our website. We have one set of standards for adult prisoners, we have a set of standards for Aboriginal prisoners and a set of standards for young people. When we look at our standards, we have traditionally drawn on the international standards and, obviously, the Young Offenders Act. Those international standards include the Convention on the Rights of the Child, obviously. There are some specific standards that apply to the protection of juveniles in contact with the justice system. One is called the Beijing rules, and their official title is the Standard Minimum Rules for the Administration of Juvenile Justice, from 1985. There are also the Havana Rules of 1990, which are called the Protection of Juveniles Deprived of their Liberty. So when we draw up our standards for what we expect to see within a custodial environment, we will draw on those sorts of conventions and standards as well. Obviously, now that the child safe standards are assuming greater significance, then once we come to revise our inspection standards, we will make sure that they do, in fact, accord and align with those child safe standards. They do actually align already—they are just probably rather differently structured—but if you were to go through those, you would end up doing a bit of a tick-a-box. So what we are looking at from the Department of Justice in terms of their service delivery would align with the child safe standards. Internally, I also believe that our office structure—a very small organisation, as we talked about last time—our principles and our behaviours also align with those child safe standards.

The CHAIR: Our questions of you today are in three different sections. First of all, we would like to ask you a couple of questions that arise from the previous hearings, to which you gave us additional information by way of questions on notice; then we will move to a couple of questions about your submission to the inquiry; and, finally, some specific questions that arise from the commission's 2017 oversight report. So if we could take them in that order. The last time you appeared before the committee, the members of the committee raised concerns particularly about education. I think you had made some recommendations around October 2017, was it?

Prof. Morgan: I think that would have been around the time of the inspection report.

The CHAIR: You had made some recommendations.

Prof. Morgan: We had a report published in February 2018 of an inspection done in the middle of 2017 of Banksia Hill.

The CHAIR: That is the one I am referring to, yes. You made several recommendations in that, and we were asking you, basically, what the outcome of those recommendations had been. Since that time, we saw in, I think, January this year, the Productivity Commission report on government services that indicates that about 30 per cent of school-age children in detention in this state did not get an education in 2017–18. I guess, looking at the evidence you gave us a few months ago, that would not be a surprise to you. I assume it is those observations that informed your recommendations. Could you start by talking us through the Productivity Commission report, what the implications are, and whether we can seriously expect to see any change?

Prof. Morgan: Obviously, I have looked at the Productivity Commission report, but without advance notice it is difficult for me to talk in any detail about that. Clearly, their findings in a whole number of areas were of concern, both for adults and juveniles. The figure you have given, as I say, is no surprise to us. I think your question was, "Do we have the prospect of seeing improvement?", which is the main question. It is difficult for me to see much change at this stage. I am not aware of any major initiatives. As we talked about last time, I think the critical things needs to be for the education department to be involved in the whole journey for children, through community, into custody and then out again. I am not aware—it would be a question for the Department of Justice—of any substantial initiatives in that space at this stage. Kieran may be able to comment.

Mr Artelaris: I am a bit more positive, having been at Banksia Hill recently—I was actually there on Friday. There certainly has been quite a lot of progress in the education area, I think. One of the biggest concerns around the time of that inspection that we are talking about was that they simply did not have enough teachers —

The CHAIR: They did not have any, did they?

Mr Artelaris: No. They certainly have plenty of teachers. I am a bit confused. I am not sure how the Productivity Commission comes to a figure like that—how they define a child at Banksia Hill not receiving an education.

The CHAIR: While you raise that, I will point out that apparently there is some question about the data that was provided to the Productivity Commission. They themselves remark on the fact that they found it hard to get data from Western Australia. I think that was specifically about children who were self-harming, and a couple of other categories. I wonder whether, on notice, you could take a question about the issue of the provision of data to the Productivity Commission. Do we have a problem in Western Australia

Prof. Morgan: I think the Productivity Commission has a problem across the board. Quite a number of jurisdictions simply do not bother to provide any information. Western Australia at least tries. I forget whether it was in relation to youth or adults, but there are a lot of blank pieces in the

Productivity Commission report. I will not quote the states, but two or three states never provided any information.

The CHAIR: Western Australia does participate?

Prof. Morgan: It does participate. There are a couple of issues. I believe Western Australia tries to comply with the Productivity Commission's requests. Sometimes there are definitional issue. When I look at things, the best example is not from the youth space but from the adult space, where the Productivity Commission's records on overcrowding in adult prisons make no sense whatsoever on an objective basis, because the state changed the way it was reporting, so it ended up saying that our prisons were at 95 per cent capacity, when everybody in the system and us were saying it is actually 135 per cent. Even though the Productivity Commission comes up with broad definitions, I think, with the best will in the world sometimes, the states find it difficult to comply, or sometimes choose to count things in a way that may not meet the Productivity Commission's expectations. In this case, I do not know that I am really able to add to that. I think across the board we always feel there should be more data on things. I think the department has been very good at counting certain things but probably not very good at putting some of that together in a more strategic way. What I mean by that is they are quite good at counting, for instance, the number of people who do programs but not quite so good at working out what the effect of those programs might be. Does that make sense? They can count numbers, and I think they are probably reasonably good at that.

[9.50 am]

Ms Davis: They have certainly cleaned up a lot of that over the last two years. They have actively looked at how to make sure that the information that is going in predominantly to the main database, which is TOMS, is actually cleaner, more easily searchable and, I believe that particular unit will probably be responsible for pushing out information to various bodies. They are certainly trying to standardise it and get the information together better but without knowing what the Productivity Commission was asking for—you can only ask it what is in there, so if the question is slightly off, they will struggle to necessarily pull back the information that is interesting to others.

The CHAIR: Perhaps I could give you some terms for a specific question about the data. The Productivity Commission noted that that Western Australian data was limited, particularly relating to instance of self-harm or suicide in custody and community-based sentence orders. They have reported on that data. They say data relating to incidences of self-harm or suicide has been reported by the inspector in previous years, so not by your office. What the committee would like some clarification about is why that data was unavailable to the Productivity Commission. If you could take that as a question that is separate to our questions about the education —

Ms Davis: I can probably actually answer that. It will depend on what the Productivity Commission asked for. We have a very intricate and very close relationship with the department's data so we know how to ask the right question to get the information we want back out, and it takes two or three goes sometimes to get what we are looking for. If the Productivity Commission asked for something that they did not really understand, they are not necessarily going to get the information they would want.

The CHAIR: Are you happy that that is the final answer or do you want to check that that was the case?

Ms Davis: I would not know how to check that because without knowing what the Productivity Commission asked for, we are sort of the third party to what was happening to that.

The CHAIR: Okay, so the Department of Justice might be able to tell us.

Prof. Morgan: I think the question, with respect, might be for the Department of Justice to say, “What did the Productivity Commission ask and what were you able to give them?” whereas, as Rowena said, I do not know what we could do really. We are a separate party to that.

The CHAIR: If we could go back to the question about education; we are not doubting the data here; they clearly got data and this was the conclusion that does not surprise you. One of the things that we tried to follow-up, and I must say that the committee was a bit disappointed by the answers to the questions we gave you on notice because they are a little bit sparse. We did ask you specifically about the update on the implementation of the recommendations relating to education at Banksia Hill, and specifically recommendation 11, which was the implementation of a strategic plan for education service at Banksia Hill. The answer we got from you on notice was basically what you told us in the hearing, which was that an interim strategic plan has been place since October 2017 with the newly appointed principal currently developing a new strategic plan. When we last spoke to you, that was about 12 months old; it is now going on 18 months. Can you give us a more detailed response to that question about what is actually happening?

Hon DONNA FARAGHER: Can I just add to that in part—I appreciate what you have said with respect to statistics and how they are all undertaken—but I do note that with respect to the Productivity Commission, which indicated only 73 per cent of school-aged children were attending an education course, the previous reporting year it was 94.5 per cent, so there has been a significant decrease, albeit we discussed earlier, with respect to 70 per cent you might not be surprised at. If the figure was 94.5 per cent, there would appear to be a significant decrease in the two reporting periods. I am interested in your views with respect to that and then in line with respect to this strategic plan because that would appear very concerning.

Prof. Morgan: The drop in education is also noted in relation the adults in the Productivity Commission, which was concerning as well.

Hon DONNA FARAGHER: This relates to school-aged children and young people.

Prof. Morgan: Yes, I appreciate that. I am just mentioning that there was also a marked decline in relation to adult participation in education according to the Productivity Commission. Clearly, education services across the board are a matter of concern. Kieran, I do not know whether you are able to add anymore to what you just said or what we responded on paper there.

Mr Artelaris: No, look, we are really not. We have not looked in detail at what is going on in terms of developing a strategic plan at Banksia Hill. That is the sort of question that probably needs to be asked of the Department of Justice because we are unlikely to be looking in detail at that sort of thing until we undertake another full inspection, which is not until next year.

Prof. Morgan: Our difficulty is we are not there. We oversight and we have a presence, but we do not run it. So some of our difficulty is unless we have specifically gone in recently about that particular issue, then we will not have any further information to bring.

The CHAIR: Have I misunderstood you, then, that you did go in specifically in relation to your recommendations in October 2017? You did go in specifically and look at the education facilities.

Prof. Morgan: When we did the inspection in 2017, we looked specifically at the education and we try to keep a watching brief, but the detailed analysis that we are touching on today is not something that we are able to do constantly because we have a whole load of other activities to do. I mean, we are publishing 12 reports a year, we have got 17 staff. It is simply not possible to be constantly present and constantly monitoring absolutely everything that we have recommended. I think, as Kieran said, we have a sense that there is some progress there but we can perhaps go away and look at that again, but it would be interesting for us to be able to know what the department believes

its progress has been and then for us to go out and see well, okay, is what they are saying—because they deliver the service; their people deliver the service—matching what we are seeing?

The CHAIR: So in the commissioner's oversight report, he identifies three or four agencies with oversight responsibility for juvenile detention facilities of which you are clearly a primary one. If it is not something that you do as part of your ongoing brief—you are saying you would only go in there if something particularly attracted your attention—is it the responsibility of one of the other agencies to do this work?

Prof. Morgan: I guess it depends on how much oversight and monitoring there can be. It could be that the children's commissioner has a role in some of these areas themselves. I have spoken with Colin about some of these aspects before. When we have been out together to Banksia Hill on occasions, we have talked about the issues with education, the fact that when you go into—certainly two years ago, I remember going down there, and I think we talked about it last time, the education is what I had at school, pencils and paper and erasers and drawing. It really was not modern-type education. Colin certainly was considering at that time whether there was an opportunity for the children's commissioner to look at the question of education and age-appropriate and twenty-first century-appropriate education. Our role is so broad at Banksia Hill. In the last few years, we have been having to deal with situations in which we have had allegations of torture by Amnesty International. That is a report we had to do. We had to do a review of what is called behaviour management, which is a very bland title but it actually included issues around the use of firearms by the special operations group when they went onsite. So a lot of our energy is being pulled into necessarily some of those high-profile areas.

[10.00 am]

Banksia Hill, actually in the past, particularly up till 2017, was pulling away from our ability to do work at other sites, such as its risk. What tends to happen in those situations, unfortunately, is that while we will be looking in broad terms at education, we are not going to be drilling down into detail in it because we are being pulled into some of these very specific exercises. We simply do not have the resources to be able to cover off every aspect of operations. You could do the same, for example, with health services. So will we need a more in-depth review of and constant monitoring of access to health services? It is partly a question of resources. As I say, if they go into that, they are pulling away from elsewhere and, as you would be aware, there have been serious incidents at a number of adult prisons recently too, so it is: how do we best manage? If I am not answering the question, it is, we just have not had the resources to be able to go in and go in-depth.

The CHAIR: That was going to be my next question. I was going to ask you whether you could make it very clear for the committee whether what we are talking about is a resource issue. In other words, in an ideal world where you are able to carry out the functions that you take on yourselves by virtue of those codes of practice or principles of guidelines that we have referred to already from the United Nations Convention to Beijing and the other protocols you referred to, that you would indeed be overseeing the education of children in detention. So, it is simply a resources issue, or is it that you, as an oversight body, simply do not see this as part of your job?

Prof. Morgan: Oh, no, you can see from our reports how seriously we treat education and health and areas like that—absolutely. It is critical. We have commissioned specialist reports in the past. We have brought X people in to do reports specifically on education. As I say, it is not something I can do every six months. Those are inspections every three years. With Banksia Hill, our obligation is to report to Parliament once every three years. We have actually been reporting on youth custody issues more than once a year, but it does not mean we are going to cover off on every aspect. If we are given allocated specific resources that can be dedicated to more intensive and oversight of areas

of youth justice, well we can do it. But it is simply not possible at this stage, so it is not a will issue; it is a resources issue. But bear in mind that education, critical though it is, is one part of the total package of what we end up having to look at, and that ranges through from other services like health but through to issues of basic safety, security, decency of treatment and issues around staff as well as detainees.

The CHAIR: Are those priorities determined by what the department or the minister or government asks to you do, or do you determine your own priorities?

Prof. Morgan: No; determine my own priorities, but, obviously, there are regular meetings with ministers and they will also assist in advising what some of their interest areas are. But, by and large, because we are independent, we set our priorities. But, clearly, you want what we look at to be relevant and pertinent to the priorities of the department and of the minister.

Hon DONNA FARAGHER: Can I just ask one question with respect to the various reports that you undertake? We will specifically look at this particular report. I hear what you are saying with respect to resourcing but you make a number of recommendations for action so I am a little unclear still, notwithstanding issues with regard to resources, you make recommendations in reports. What is the feedback mechanism or whatever way it happens, to ensure that those recommendations are being considered and worked on by the various departments. Obviously, the Department of Education is one and the Department of Justice is another. There is a whole range of others as well. We are asking you those questions now. I am keen to understand whether there is someone asking those questions outside of this process to make sure these recommendations are being fulfilled and, if not, why not?

Prof. Morgan: Okay, we are not an enforcement agency, so we cannot —

Hon DONNA FARAGHER: I appreciate that but at the same time you make recommendations. I think you would be keen to see how they are being implemented.

Prof. Morgan: Absolutely.

Hon DONNA FARAGHER: What is the mechanism to allow that to occur?

Prof. Morgan: The most formal mechanism—it is a long time between these inspections—is that the next inspection obviously would go back to that as a three-year gap. But in the interim, we will be following up with the department and others. They would have put in their responses to these recommendations. Off the top of my head, I do not know what their response was to the particular recommendation that you are referring to.

The CHAIR: The department's response?

Prof. Morgan: The department's response but I imagine it would have been that they supported it in principle and that they are already actioning it. As Kieran has indicated, you go back and you get a general sense of the progress but we are not in a position to get down into the hard detail at the in-between stages. If we become aware of a major issue, then we would go back and look at it. If we, as in education, believe that there are signs of some progress, we will keep watching it but we are not doing a specific audit assessment of that at that stage. We may well go back at the next inspection and say, "You committed to plan; you committed to deliver." I have to say, I am a bit over commitment to plans. I would rather see commitment to action. But that would be part of the test next time. It is frustrating beyond belief that education has not been nurtured at Banksia Hill in the way that one would have expected over the years. That dates back, really, probably to at least the 2011 period. In 2011–12, when they started the merger between Rangeview and Banksia, you started to see the dilution of the focus. Things became focused on risk management rather than so much on the delivery of services, so the concept was that with the amalgamation of the two, you

would have a greater critical mass, you would be able to deliver services more effectively and more efficiently. Unfortunately, Banksia Hill's history tells us that has not really happened but the stability they have had there since around mid-2017 is leading to some improvement. But I cannot itemise for you today precise improvements around education.

The CHAIR: What is your view about what led to that dramatic reduction in the percentage of children who were being educated in detention?

Hon DONNA FARAGHER: That would be the 94.5 to 73.

Ms Davis: Can I ask what time periods those two were?

Hon DONNA FARAGHER: The advice I have is that 94.5 was in the previous reporting year, so that would be 2016–17.

Ms Davis: And this is 2017–18?

Hon DONNA FARAGHER: The 73 per cent is 2017–18.

Prof. Morgan: I would probably have to go away and try to dig a little bit more. I am concerned by those figures. I am not entirely sure that they represent the reality because during 2016–17—we have reported on this—the place was chaotic. They were in constant lockdown. There was a period of time when the Special Operations Group was going on monthly to put out serious disorder. The kids were being locked down frequently. They were being moved around the site. It was like a Tetris game because when one place got smashed up and was no longer inhabitable, you had to move the young people around. It is actually a little bit hard for me to believe that there was such a dramatic drop in the real delivery of education services, but I am happy to take that away and do a bit more digging. Kieran, what is your sense?

Mr Artelaris: From my practical knowledge of Banksia Hill, I cannot understand that result at all. It does not make any sense to me.

The CHAIR: That would be a question on notice about the Productivity Commission's reported reporting of a dramatic drop in the number of children who were receiving education.

Prof. Morgan: Could I respectfully suggest you ask that of the department as well because they are the ones that put the numbers together. As I said earlier in response to Ms Faragher's question, I am pretty confident, from memory, that the Productivity Commission showed a marked decline in adult access to education. What I am wondering is whether are they counting things differently.

The CHAIR: I think we are collating a list of questions for the department as we go along. Nevertheless, I will go back to your original comment that you were not surprised by the criticism from the Productivity Commission and certainly the recommendations that you made indicate that you know that there is a problem.

[10.10 am]

Prof. Morgan: I think it is fair to say that we would be of the view that there is still a way to go to get Banksia Hill education to where one would like it to be, and it is a difficult task. We have talked about this previously, so I will not repeat it, but Banksia Hill has got a huge problem. The problem is that there are too many young people there and they are too different. You are trying to deal with a handful of eleven or twelve-year-olds, usually from the Kimberley; you have got young people from the lands, so different language groups, for a start; and male and female. There is a lack of a critical mass. Amongst the young women it is really hard—there are sometimes only five of them there, sometimes 10, and they are often there roll-in-roll-out, short term. It is a very difficult ask, and I think we talked about that previously, but we still believe that—hopefully—it is on the way to

improvement, but it should be doing a better job than it has been doing. The other thing I should have mentioned is the age difference. You have got 18–19-year-olds who are post-school age.

The CHAIR: You did mention that in our previous hearing.

Prof. Morgan: Working out how you deliver—when you have only got a total number of 140 young people there—is a difficult ask, and this is why I think that the other government departments probably need to be more drawn into it in the same way that I believe that the health department probably ought to be more drawn into a holistic approach to the health care of young women and men once they get into contact with the justice system. At the moment, it tends to be seen as a Department of Justice problem while they are inside, but it is actually a community and whole-of-government issue.

The CHAIR: Young people in detention, as you would know, have always been identified by the Commissioner for Children and Young People as amongst the most vulnerable population in Western Australia. If I can just come quickly, still under the subject of the Productivity Commission—no, I am sorry, from the questions from the previous hearing—about the protective behaviours program. Now, again, in your response to us you said that there is no distinct protective behaviours program in the curriculum at Banksia Hill. Now, this was a Blaxell recommendation from 2013. I know that if Banksia Hill does not have a protective behaviours program in place, they will be far from alone. There are many state-run schools that do not have it. What is the current situation there?

Prof. Morgan: Can we take that one on notice, and we can go and make inquiries?

The CHAIR: Yes, please. That would be good.

Mr Artelaris: You understand that all I am going to do is ask Banksia Hill about this. To me, it feels like you are getting it second-hand via us when perhaps you could just directly ask Banksia Hill, because that is all I am going to do. So, if I take it on notice, all I am going to do is call Banksia Hill and say, “Have you got a protective behaviours program?”

The CHAIR: We can certainly do that, but from our point of view, you are the oversight agency, and your responsibility as an oversight agency—as I understand your statutory responsibility—does not stop at monitoring the self-reporting of your agencies. You have got to actually go in and have a look. You have to satisfy yourself about those conditions, so it is not just a matter of you picking up the phone and asking them.

Mr Artelaris: Yes, but our legislation tells us to do that every three years, and that is what we are resourced to do.

The CHAIR: OK, well if that is a problem, talk to us about it. That is what our inquiry is about.

Mr Artelaris: I do not think it is a problem because we are meeting our statutory requirements.

Prof. Morgan: There is always more to be done, put it that way. Of course, we could do more with more resources. That is blindingly obvious. We are stretched to the max. I am not pleading poverty, but the reality is that our budget has gone down in absolute and real terms, but we are still producing the same outputs. Now, there is only so far you can stretch. If, for instance, there was a decision to give a dedicated resource—if it was a decision of government that youth justice was such a priority—and it is a very good argument to make—that the office needs additional dedicated resources for that type of work, then we would do it.

Mrs J.M.C. STOJKOVSKI: Have you put in a budget bid for that?

Prof. Morgan: No, we have not put in a budget bid for it. We are in a system where, being a small agency, we were granted a small amount of additional funding each year on the proviso that we

would not put in any budget bids. If we put in any budget bids, we lose that funding. So, I have taken the line of caution at the moment that I prefer the money in the bank, albeit that it is only \$35 000. It started off as \$70 000, and then it was slashed in half.

The CHAIR: So what is that finding for?

Prof. Morgan: Basically, the ERC, I think it was, they wanted to—it was partly a paperwork-reduction exercise for small agencies, rather than us putting in budget bids. The reality is that we get lost among the big agencies.

The CHAIR: This is for cost savings across agencies?

Prof. Morgan: Yes. The deal was that if you do not put in budget bids, then you will get a bit of a top-up each year. I thought that was a fair compromise, actually, when it was \$70 000.

The CHAIR: Because you have got certainty.

Prof. Morgan: Then, as night follows day, it got halved. It does mean that we are at risk, and we run absolutely to the margins each year financially, so we have got very tight budget management. I believe that we should not be going over budget. And if you look, we are very tight budget managers, but this is where we could put up a budget bid. I have got a feeling it would get lost; I doubt it would get up against the competing objectives of the big agencies at a time of massive financial constraint, so that is the logic behind why we have not put up a budget bid for that or, indeed, for other things where we might have an objective case. I think the risks are that we will simply lose the money in the bank and not get funded for additional work.

Mrs J.M.C. STOJKOVSKI: How long has that process been in place?

Mr Ferguson: It is part of the streamlined budget process that has been in place for three or four years.

Prof. Morgan: Three or four years, I think.

Ms Davis: Can I also say that the three-year cycle actually tends to work because—although it sounds like it is three years and then three years—the planning that starts to go into inspections happens many months beforehand and these sorts of questions start to get asked then. In some ways, there is a little bit of bleed-out while the report is written from the debrief, so there is a lot of intensive activity every three years, but the build-up to that actually squishes what is in between. It takes a while for the department to actually be able to action any of the recommendations that we have, so within six months, most of the time, you would not really expect to see a major bit of movement on many of the recommendations that we arrive at across the board. Some of them, yes—some of them are pretty quick and can be implemented very quickly, but for some of them it takes time to figure out how they are going to do it, resource it and get into it. I am not too sure that you get a lot of bang for your buck by trying to get in a lot earlier.

Prof. Morgan: One of the issues that the department has had as well, of course, is they are going through the massive restructure. They have only just run the recruitment process for the people underneath the commissioner. You have now not got not a standalone department; you have Corrections within the mega-department. Adam Tomison is the director general of Justice and Tony Hassall is the commissioner. Underneath Tony—underneath that position when it was one department—you had a whole load of deputy commissioners and assistant commissioners, and under the mob changes that has been streamlined and stripped back somewhat. Most of the people who were in positions previously have gone; they have either moved to other departments or have moved to other jobs, so that layer—and they are the people who would need to be driving some of these changes—they have not been in place. My understanding is that the recruitment process is

just being finished and that people will be expected to start soon. There will be a new role, which I think is going to be called assistant commissioner for women and young people, so the department has chosen in its new structure—I should say that Corrective Services has chosen as part of its new structure—that they will have an assistant commissioner responsible for women and young people. That is telling you also that they do not have the resources to have a dedicated person for young people and a dedicated person for women. They are putting the two together because they do not have the money and resources to separate them. I personally believe that there should be two positions: one to drive women's correctional issues, which are different from men's, and one specifically for children.

The CHAIR: Which are different from women's.

Prof. Morgan: Which are different from women's. It means that you will have one assistant commissioner who will be straddling those two absolutely critical areas. It will, no doubt, work to some degree, but I think that everybody would be saying that in an ideal world you would actually have a dedicated young people's assistant commissioner and a dedicated women's assistant commissioner.

[10.20 am]

Hon DONNA FARAGHER: Was that the case previously, prior to those changes?

Prof. Morgan: Previously—I do not want to sound flippant but this is a department that undergoes such regular overhaul that it is really hard to work out at times. At one point, going back many, many years—it led to some fantastically positive initiatives—there was a position as the director of women's services. It was under that position that a lot of the drive for things like Boronia, the women's pre-release facility, got going. It was given a real high level of importance within the department. We are going back now 10 years or more. That position was abolished and along with that various others were abolished and things started to get merged together. For a long time—Kieran can correct me if I have this wrong—youth was run with community corrections. There was a deputy commissioner responsible for community corrections for adults and all of youth. Again, the outsider would be saying, "Why are you putting those two together? Don't you need one person to drive each?" They go through constant restructure. It is really hard to work out at times who is driving out. They constantly go through—in my time in this job, in 10 years I think I have had five ministers and four commissioners. My office in 20 years has had just two inspectors. That brings a stability that is lacking in some of these government agencies unfortunately. The responsibility in authority gets dispersed. My personal view is that it is unfortunate that we do not have an assistant commissioner being appointed specifically for youth and a separate one for women.

The CHAIR: Thank you for being so frank about that. That is a very interesting point of view. I have to say that I do not think there has ever been a question about the fact that OISC complies with its statutory responsibilities. You have been a very fine agency over many years and you have done some fantastic work. I suppose that with the reporting of the royal commission, the thing that everybody is interested in now is whether agencies that may be complying with their statutory obligations may yet be compromising improved outcomes for children. I am not saying anything controversial am I? Within the next decade there is clearly going to be a shift in emphasis so that we start giving genuine regard to improved outcomes for children. If I put it like that, do you have anything more to say on that topic? I am not asking you to go outside your brief, but Professor Morgan, you are coming to the end of 10 years in the job: do you see improved outcomes for children as being an outcome of your monitoring role, your oversight role, with juvenile justice?

Prof. Morgan: I think we have brought about a lot of significant improvements. Some of those are operational and very basic. Forgive me if I have used this example before with you: it is probably the

most telling one. Going back some years I saw the children at Rangeview being taken to court, and they had no shoes. They were shuffling along the concrete floor to the truck and I thought, “These young people are appearing in court. It is a significant matter. Why haven’t they got shoes on?” I asked an officer and he said, “Oh well, that’s just the rule.” I said, “Okay, but do you know why the rules are that way? I am not accusing you of breaching procedure or anything like that.” He said, “I don’t know.” He turned to his friend and he said, “Do you know why the kids don’t have shoes?” He said, “Ah, no, I don’t really know, but some kid tried to harm himself with shoelaces in the back of a truck.” I asked when that was. He said, “Dunno mate—must’ve been 10 years ago now.” I thought, so for all that time they did not think that they could actually provide children with shoes that did not have shoelaces? We now have trucks with closed circuit cameras to transport people and you can observe what is happening. Some of those little things are about basic decency. On one level that example is really mundane, but it is like the broken window: people in the system do not see it and do not question it, and they are not breaching procedure, and they are in a hierarchical organisation in which they are told to follow procedure.

I think through the very difficult periods, the January 2013 major riot at Banksia Hill ended up with most of the boys being transferred to Hakea Prison and the whole facility basically able to hold a handful of children for a while, our report there was significant. I think we helped to change the dialogue. When that riot happened the then leaders of the department were pushing the argument that those were a bunch of really bad children: “What do you expect? They are bad kids.” Well, they had done bad things, that is why they were in Banksia Hill, but I think our contribution there was to try to change that dialogue around and then the dialogue became very much more focused on rehabilitation as it should be and the provision of services. Unfortunately I keep coming back to the fundamental problem which is, as long as you have all those young people with all those different backgrounds in the one place, and often out of country, there can be limits to the ability of that to produce the best outcomes. My personal view—it has been on record in some of our reports—is that we need different facilities for the different youth, and that actually our custodial system has the planning the wrong way around. We keep planning around adult males because they are the biggest number of people. The numbers drive the planning. We have this tsunami wave of blokes coming in: What are we going to do? Where are we going to find them a bed? My personal view is that we should be starting by planning for women and children in our custodial facilities. Get that right and then some of the rest will fall out of that. There may be an alternative use for Banksia Hill perhaps as a women’s prison in the event that government is prepared to put the money into a more diverse range of youth facilities. It would not be a wasted asset, it is just that I do not see how you can make a silk purse out of a sow’s ear. Unfortunately, having one juvenile detention centre, it is always going to hit you. It is going to run you up against those problems.

The CHAIR: We might move now to some questions arising from your submission to our inquiry. Our first question is about child safe standards. In your submission you made the comment that child safe standards are still evolving. I think you said that they are not yet a concrete benchmark. Michele is about to put up on the screen the list of the royal commission recommendations about child safety. It seems that there is now, I am going to say complete consensus. I have not heard any dissent from the idea that we adopt those 10 standards. Is that what your office is intending to adopt as the benchmark in the future? We were a little surprised to see the comment that nobody really knows what child safe standards are yet; that we have not landed on it.

Prof. Morgan: If that is the choice of wording in the letter I certainly did not mean to imply that nobody knows what they are or to dismiss them. That was not the intent. They are serious things. As you know, I gave evidence to the royal commission. Nothing is closer to my heart and head than what they were talking about. It is absolutely vital. I was simply going off—perhaps it is the academic

in me, but I simply said, "Go and have a look what they are." I found that the children's commissioner in WA was slightly different. In particular, they got nine, and these were 10. I was probably being a bit overly academic about it. The standards are absolutely clear and I did not mean to imply that they are not important.

The CHAIR: Okay, so we should not give undue weight to that observation.

Prof. Morgan: If it came across as flippant —

The CHAIR: No, I think we took it very seriously. Clearly the first thing to do is get your definitions in place. As you say, it is not just the academic in you; there are a few of us with those genes.

Prof. Morgan: Where the 10 standards that are coming out of the royal commission, you also have the slightly differently worded human rights commission —

[10.30 am]

The CHAIR: The UN convention?

Prof. Morgan: The Australian Human Rights Commission has also put out its own 10 standards, which are basically those, but they are worded slightly differently. Again, the academic in me gets a bit frustrated by that because words carry meaning. I thought it was important that standard 4 was made explicit, whereas in the current CCYP standard 9, that one is not. It is implicit in everything, but I think it is a good thing that it has been made explicit there. Going back to what I said earlier, how are these relevant to us? I mentioned at the start that we need to be looking at standards for inspection, which are now the best part of 10 years old. We need to be layering these into that, alongside those international conventions. Obviously, we need to be making sure that we are internally compliant with these, too, so that what we do complies with these expectations.

The CHAIR: Were you seeking to table that document? I think it probably would be useful. You did say it was on your website.

Prof. Morgan: I am happy to —

The CHAIR: If there is a hard copy there —

Prof. Morgan: I have some writing over mine, but we will happily —

The CHAIR: Is that okay?

Prof. Morgan: Yes, of course.

The CHAIR: That would be great.

Prof. Morgan: If you look at just the table of contents and the headings, I think it will give you a lot of assurance that what we did 10 years ago is actually going to basically tick off these boxes, but we need to go back to it with these particular standards in mind.

The CHAIR: Is this document due for a rewrite? It is from February 2010.

Prof. Morgan: It needs to be done at some point. Again, it is a resourcing issue. It is fairly resource intensive to do it. Maybe my successor will take a different view, but I have taken the view, in the last two years when I have been thinking about priorities for the office, that I would like the standards to be not just driven by us in Western Australia but to have kind of a national input, because there are now inspectorates in other jurisdictions. New South Wales has an Inspector of Custodial Services who looks at youth justice. Tasmania has an inspector located in the Ombudsman's office who has already done some reports on youth justice. The Northern Territory has the Children's Commissioner. South Australia has, I think, the advocate for children and young people doing an equivalent role. We also have the Victorian children's commissioner. What I am

thinking is that rather than us firstly having to do all the work that other people have done and then just adopt it, there is some benefit in sharing the workload, but also sharing the standards around so that we have something closer to national consistency, rather than something just driven out of WA. What has happened up until now is that other people have basically picked up ours—the new bodies—and simply said they will tweak them and run with them. There is really a more substantial piece of work involved.

The CHAIR: I am gathering from what you are saying that it would be your intention that those 10 child-safe standards would form the framework around which this was revised.

Prof. Morgan: What we would have to do is sit down and really work through it. They will be clearly embodied in it, I believe, because if you go through it now, you will see they are. We have to say, “These are critical but so are those international conventions.” How do we best meld this into a workable document? One of my concerns with this at the moment is that it is actually quite useful as a practical guide but it is 80 pages. This is a very dense piece of work, so we need to work out how we make it accessible and practically useful at the same time, or whether there are two levels to it—one of them being the 80-pager and the other being a 10-pager. These are things that, in the evolution of the office, were done 10 years ago. I am well aware that the adult ones also need to be revised.

The CHAIR: Does your office take responsibility for that?

Prof. Morgan: We take responsibility for —

The CHAIR: Do you have that on the work program now, recognising that it is a significant resource issue?

Prof. Morgan: It is on a forward set of options, but we do not have a time on it. The reason I am saying that is I want the other jurisdictions to come on board a little bit as well. We have provided a lot of support to other people. I think we need to be drawing them in to help us get these standards, as I say, up to what we might regard as a national benchmark. We will always need certain things to be specific to Western Australia. The Aboriginal dimension is different here from what it would be in, say, Victoria, so we need to make sure that whatever we have is relevant to our very specific dynamics here. But I still think there is work to be done around a national approach.

The CHAIR: We always have the geographical challenge in the west.

Prof. Morgan: The worst outcome would be that we have a set of national standards that dumbs down to what might be relevant in the big, eastern states’ jurisdictions that do not have the geographical diversity that we have.

The CHAIR: It lowers all the bars, yes.

Standard 2 is the one that many agencies find quite novel. I am sure that will not be the case for OICS, but it is the idea of children participating in decisions affecting them. Can you see that being a challenge for your agency?

Prof. Morgan: I suppose there are two levels to it. I will call it the internal and external. Externally, we would and do report on this. Are children participating in decisions affecting their lives while they are in custody, which is while they are actually in the care of the department? That is one aspect we would need to look at. We would also need to look at it internally. Because we are an oversight agency rather than a service delivery one, we will have to work out what this actually means to an agency like ours. In other words, how do we talk to and get feedback from children in custody about the way we do our job and whether they have ideas for how we might do it better?

We probably do that informally, but it may be that this starts to lead to some more formal reflection internally on that.

The CHAIR: If I could refer you again to the commissioner's oversight report from 2017, he makes it clear in the report that, in his view, part of the oversight responsibility is individual advocacy and the implementation of child-safe standards. Presumably, those ideally would be part of that function of oversight. When the commissioner talks about an oversight function, he includes advocacy as the constituent parts of that oversight function—both systemic advocacy and individual advocacy—and also the development, implementation and monitoring of child-safe standards.

Prof. Morgan: We would certainly see that we would be monitoring child-safe standards. We probably do it implicitly already through what I have just given to you. We just do not frame it in that way, but the content will be there. Individual advocacy is an interesting one. We are not really an individual advocacy agency for people in custody. If we come across their concerns while we are doing inspections and while we are on site, we will raise those. I will give you another example—a little example, but an important one—from the last inspection in 2017. I remember the young women at Banksia Hill were telling us that if they wanted to see a doctor, they had to say why it was.

The CHAIR: Yes, you referred to this in the previous hearing.

Prof. Morgan: We stopped that.

The CHAIR: There was also an issue about when they were shaving and so on.

Prof. Morgan: Shaving and so on. They might be individual, but they are more likely to be little group causes. We are not really an advocacy service in the way, for example, that the Mental Health Advocacy Service would be.

The CHAIR: You actually have a proscription, do you not, on investigating individual complaints? I will just draw your attention to page 70 of the commissioner's oversight report. I quote —

The inspector, —

That is, you —

while proscribed from investigating individual complaints, is permitted to receive and refer complaints to an appropriate external complaints handling body with jurisdiction over juvenile detention:

The ones he names are the Ombudsman, the Health and Disability Services Complaints Office or the Equal Opportunity Commission. Have you made referrals to those other agencies in the last few years?

[10.40 am]

Prof. Morgan: Yes, we will make referrals. They will also share with us their information, because what they receive by way of individual complaints may help inform our focus on more systemic issues. But, as I say, there is a lot of those things, like the health one for the girls at Banksia Hill, that might otherwise become formal complaints that you can actually resolve simply by being present.

Hon DONNA FARAGHER: With respect to the agencies that Sally has just referred to—I suppose I am talking in terms of previous examples where issues have arisen or been identified—are they formal referrals that you pass on to those relevant authorities or are they a combination of formal and informal; and, therefore, if they are formal, are they documented? I presume, yes.

Prof. Morgan: We would document any formal referrals. We also need to make sure that we have the permission of the people who refer. By and large, within the custodial environment, people will

fire off their complaints to a number of agencies anyway. The chances are that if it has got to us, it has probably already got to the Ombudsman and the department's internal access complaints mechanism.

The CHAIR: Would that be the case for children as well?

Prof. Morgan: Well, children do not complain. That is one of the problems. I have spoken with the Ombudsman in the past on a number of occasions, because they wondered why they did not get complaints from children and why they did not get complaints from regional—what I call—Aboriginal prisons. I said that it was obvious. Those are not groups of people who tend to complain. What we find very effective is trying to get a group conversation around what the issues are. People are not necessarily going to say, "I've have got a particular health issue or I've got a particular problem." You will see this with the kids. They will open up. They might be talking about themselves, but you do not really know; they will deflect it and say that they are talking about their friend. You know, "My friend, he was treated badly by the officers", or, "My friend could not get to health service when he got a headache." Some of it is what I call the deflection. That is often the same with Aboriginal people particularly up north and in the regions. They talk about what has happened to somebody else. The disrespect shown to an elder is never going to manifest in a formal complaint to the Ombudsman, but what it will come up as, when we go in, they will say, "Staff don't not know who that fella is. He's an important man. They treat him disrespectfully." He will not tell me, but others do; so, it is that networking. When it comes to the treatment of children, I think—the royal commission, certainly, when I gave evidence, was really questioning me on this as well about how do we get to the bottom of young people's issues when they are in a closed environment. Often, it is not going to be through that formal complaint network. It is going to be by being proactive, being visible, by people coming up to you.

The CHAIR: That would be the mechanism by which you would get the information that you can then refer to those other agencies?

Prof. Morgan: We could refer on to the Ombudsman.

The CHAIR: Would you be able to give us just a numerical chart of the list of what referrals you have made to those agencies over, say, the last three years?

Prof. Morgan: We probably could. It will be very small.

The CHAIR: You also have a referral function to the CCC for misconduct?

Prof. Morgan: Absolutely, yes.

The CHAIR: Have I captured them all with those four: Equal Opportunity Commission, HADSCO, the Ombudsman and the CCC? Maybe you could confirm that that is a comprehensive list and then give us —

Prof. Morgan: That is a comprehensive list. I am hesitating because I am not sure I am even supposed to tell you if I have referred things to the CCC.

The CHAIR: No, you might not be, but in relation to those other three, you might be able to give us the numbers for, say, the last three years.

Prof. Morgan: We can do and I can say now it will be very small.

The CHAIR: Thank you for that. You did mention in your submission the issue of 18 to 25-year-olds. I think we have probably covered that subject, have we, comprehensively already in this hearing, because you talked about diversity and the challenges associated with providing education services to a diverse group of people?

Prof. Morgan: I think it is probably something we touched on at the last hearing. I forget now. My point really is that once young people transition into adulthood, you do not change when you turn 18. You are still the same kid you were the day before. But the system thinks you do, so the system puts you in an adult prison if you have turned 18. What I am thinking is partly about what we have talked about, but it is a broader point that I think we need to be saying that within our adult prison system, because people have turned 18, what are we doing for young people? What are we doing for them that is any different from what we do for older people, because they are still different? At 18, 19, 20, they are different from what they are at 45. In my view, we do not have a strategic focus on that age group, and that is where I think if we can start to reduce recidivism, returns to prison, from that cohort, you are going to have massive cost savings apart from everything else, apart from all the obvious social and family benefits of that. Wandoo is going well as a facility for women undergoing drug rehab programs, but it was also going well as a young men's re-entry facility. I would like to see some of those initiatives coming in on, say, how to improve the chances of young men and young women, particularly, actually keeping out of our prison system.

The CHAIR: I am turning now to some questions associated with the commission's oversight report. I know we have covered a number of aspects of it, but he did talk at some length about the fact that you were only permitted to visit six of the police lock-ups. We have 125 police lock-ups and your brief is to visit only six of them. He goes on to say the jurisdiction of OICS should be amended to include all lock-ups operated under the mandate of the Commissioner of Police. Would you agree with that?

Prof. Morgan: Yes. Everybody agrees, and it is not just about children, of course; it is about adults in those facilities but children are particularly vulnerable. Everyone agrees. Karl O'Callaghan when he was commissioner wrote an opinion piece the best part of 10 years ago, saying he thought that we should do it. There have been, I think, two state parliamentary reports—one was the Community Development and Justice Standing Committee, chaired by Margaret Quirk at the time, which recommended that we had it, but it is a resourcing issue. I think everybody agrees in principle and nobody wants to find the money.

The CHAIR: It is a resourcing issue.

Prof. Morgan: Yes.

The CHAIR: Have you spoken to the new police commissioner about it?

Prof. Morgan: I have in his previous role, but not in his current role.

The CHAIR: I wonder if I could ask Michele to put on the board one of the six recommendations from the report, the one that relates to juvenile justice. Would you like to make some comments about that recommendation or about the report more generally? Obviously, it will not surprise you to know in light of the previous questions that the committee is interested to know whether any of that has actually happened in the 18 months or so since the commissioner reported.

[10.50 am]

Prof. Morgan: I would say that we do offer within the resources a robust and comprehensive system of oversight for young people in detention. The youth justice system is much broader. We have no jurisdiction outside custody. Another area that has always struck me as an unfortunate limitation on what we do is that we stop at the prison door, and we stop at the door of Banksia Hill. Really, there might be some merit in this office, if not across the board, certainly in the youth space, having a broader remit to say: how can we track these young people through their journey in the justice system? For a lot of them, that will potentially include supervision after they are released, but also how they got into custody in the first place and the adequacy of the programs and so on that they

were on prior to that. I think we do our bit in terms of custody. I do not really want to repeat what I said earlier, but when you look at the sheer volume of reports, it is difficult to see there could be that much more. Could there be more follow-up on detail? Yes, we have talked about that. Access to an independent advocate: that is, I would suggest, not our role, but it is an important provision.

The CHAIR: Is that not catered for under your provisions of referral to other agencies?

Prof. Morgan: No, it is not. They are not advocates, either. We are getting into the meaning of the word, I suppose, but to me, an advocate is a person who, like the mental health advocacy service, stands up for the individual and actually gets actively involved in their case. That is not our role. It is not, I suspect, the children's commissioner role, but it might be a part of that role as it evolves. The outcomes for children and young people under the care and supervision of the youth justice system: yes, we all need to do better on monitoring outcomes. As I say, the youth justice system needs to be looked at holistically. Unfortunately, we are just one little part of that. We are the hard end, if you like, but we are not able to spread our wings more broadly.

The CHAIR: Your comments about the importance of advocacy are interesting. Do you see any conflict between individual advocacy and systemic advocacy? The reason I am asking you is that there is quite a firm opinion that you can have the same agency doing both, because one informs the other.

Prof. Morgan: I think there are challenges. I am going to annoy you because I am not going to be definitive. If you think about the report that we did, which is here, the "Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre", which related to alleged torture of young people at Banksia Hill by prolonged isolation et cetera.

The CHAIR: Did it also include the question of the firearms and where they were aimed?

Prof. Morgan: No, that was the previous one.

The CHAIR: That was the riot, was it?

Prof. Morgan: That was the report on—we called it behaviour management at Banksia Hill. That was the one where, yes, we viewed some quite disturbing footage. I guess, on the question of advocacy, this one raises, interestingly, that question. Amnesty International raised allegations. We were aware of these young people; in fact, we had many conversations with them over time, prior to and after the allegations were raised. Was it our role to be their advocates given that we had a role to investigate and assess the allegations? Depending on your meaning of "advocacy", we had advocated for those young people in the sense that when they talked to us and raised concerns, we had raised those concerns with Banksia Hill management on occasions. But that was not a formal advocacy; that was just us doing our job. If we were put into the advocacy role, then that would presumably conflict with my ability to actually undertake an investigation—an inquiry into what were incredibly serious allegations. We liaised very regularly with the people who I would call the advocates for those young people, who were not only Amnesty International, but a number of people in the community and a number of interested relatives. So we spoke to them through part of that review, but we were not the advocate. Is that helping you see —

The CHAIR: Yes.

Prof. Morgan: That is why I say I am not giving you a clear answer because I am not sure you can always be the systemic monitor and the individual advocate.

The CHAIR: Did you involve any of those agencies that we have just referred to, like HADSCO and the Ombudsman?

Prof. Morgan: Within this particular review, I cannot think of any reason we would have involved HADSCO. Certainly, Colin Pettit was aware of exactly what we were doing, and I was informing him of the processes that we went through.

The CHAIR: And the Ombudsman?

Prof. Morgan: The Ombudsman—Kieran, can you remember? I think we contacted the Ombudsman to ask what they were —

Mr Artelaris: They had been contacted as well, had they not?

Prof. Morgan: I am trying to reflect from memory. My recollection is that not only did I have meetings with Chris Field, the Ombudsman, but that Colin Pettit, Chris Field and myself also met around these allegations to see what everybody was doing.

The CHAIR: Because this will be of some interest to the committee, it might be worth you taking that on notice, and perhaps refreshing your memory about what contact was had with those agencies we have just named as your recourse to advocacy services.

Prof. Morgan: Yes.

Ms Davis: To be aware, though, that is a directive review, so it was the minister who was asking us to do that piece of work. Although there are others in the periphery, if the minister is asking us to do it.

The CHAIR: Yes, but you still have that relationship with people like the Ombudsman as the agency that can provide the individual advocacy for a child with a complaint. I think it is within the remit of our inquiry.

Prof. Morgan: We certainly did meet and we had contact. I cannot remember whether it is recorded in here. We will take that on notice and get back to you.

The CHAIR: Yes, thank you very much. Just to move to the last couple of questions, and then I will open up to other members to ask their questions. The commissioner has made a submission to us. We have also spoken to him on several occasions about this particular inquiry. You will be aware that the way that this committee has operated in the past is that we take some of the work of the commissioner and then see if we can develop it in terms of other agencies, including government. He is quite pessimistic about outcomes for children. I am not going to put words into his mouth, but you can see from the thrust of the oversight report that what he is saying is that there are a number of agencies with different statutory obligations, all of which have been complied with. Nevertheless, when you look at the outcomes for children, they do not give you any comfort about outcomes improving. What he has said to us is that —

... there have not been any discernible improvement in quality of care or wellbeing outcomes of these children and young people overall, with many oversight reports repeatedly highlighting the same concerns and recommendations over significant periods of time.

He is not making that observation about any individual agency; I stress that. How do you respond to that? Is that an observation you would share? What role does your office have in that ongoing monitoring with improved outcomes?

Prof. Morgan: In an ideal world, the primary outcome of what we do would be improved outcomes. That is a very clumsy sentence, I am sorry.

The CHAIR: It makes perfect sense, in an ideal world.

Prof. Morgan: However, a lot of the work actually ends up in what I would call damage limitation. You are focusing on reducing risk. If you look at a lot of the work around Banksia Hill, system

improvement should be what we are about, but a lot of what we are doing is holding the system to account for things that have gone wrong. I would prefer that more of our focus is on the outcomes. Unfortunately, particularly at Banksia Hill, since around 2012–13, it has just been an incredibly volatile place, where you have had periods of relative calm followed by spikes of disorder and disruption. If I focus only on my little bailiwick of youth custody—yes, I have said it before: you will not make a silk purse out of a sow’s ear. For me, it gets back to some of that systemic planning, and saying: what is it? Have a look at the young people that we have, break them down into those subgroups a little bit more, and try to cater a bit more for need within those cohorts. That is more likely to bring improved outcomes.

[11.00 am]

The CHAIR: I think that has come through very clearly in the last hour and a half, so thank you for that. My last question that the committee is interested in asking all the agencies that we will be talking to during the course of this review is just for their own assessment of their performance against a number of indicators, and these were the ones that the Australian Law Reform Commission talked about in 1997, which, albeit, was 22 years ago. It still feels like we are living in the same space. So they talk about eight measures of a good advocacy mechanism, and I will just quickly run through them. This is not as complicated as I might have made it sound in the preamble. So the first one they talk about is statutory independence. OICS clearly has statutory independence.

Prof. Morgan: Yes.

The CHAIR: The second one is adequate resources, and I think we have covered that in sufficient detail this morning. Investigative powers?

Prof. Morgan: We are not really investigative, but we have access powers to information. So we have direct access to the department’s database, so we can actually monitor events that are occurring, but we are not an investigative body. So that sounds more like ombudsman language to me.

The CHAIR: Yes, I suspect so. You do not have enforcement powers?

Prof. Morgan: No.

The CHAIR: I guess that the point here is: are there areas that you feel that you should be able to get into to investigate, but you cannot get into because of the statutory provisions?

Prof. Morgan: We have a right of access basically to document people and places. The nuances around that get quite complicated. We have had times when the Department of Corrective Services, in the past, was difficult to deal with and was slow in providing information and was trying to limit our access to information. Unfortunately, that is probably going to be something that happens at regular intervals with an office like mine. We are currently in a good space. We have access to what we need. Technical problems are getting in the way. Is there anything that you think that we —

Ms Davis: I think looking at the allegations from Amnesty is probably the best example that we have had of using, rather than a review methodology or an inspections methodology—it was looking at a specific incident. So there was nothing that stands out that got in the way of that except for exactly what the department actually had, and that is not in our powers to get information; that is just how well the department is holding the information.

The CHAIR: So you would consider your investigative powers were adequate to the task that has been set to you?

Prof. Morgan: Yes. You have to remind the agency of those powers every now and then.

The CHAIR: Yes. The fourth dot point is about active participation by children, and I think we have probably covered that. Accessibility to all children?

Prof. Morgan: Yes, we are accessible to children, but it is more through what we do, rather than them coming to us. Does that make sense? So it is more through the proactive. So I think, yes, we are accessible to children. If we go to Banksia Hill, we do not need to sit in the superintendent's office all day.

The CHAIR: I think at our previous hearing you outlined the role of the independent visitors.

Prof. Morgan: The independent visitors, the liaison visits, the inspections—like we have said all along, the more resources, the more you could do. I think what plays a critical role in that is we have got a few people in our office, one in particular, who is called the community liaison officer, who plays the pivotal role, actually, because he is seeing the families. He sees the families in the community. He will see them in the supermarket on Saturday and he will see them at the football. It is often those links that are really informal that actually help you get some assurance that you know a bit about what is going on and you are getting some accessibility, and it can be indirect. It can be the mother or carer saying, "I'm worried about my son down in Banksia Hill for this reason." And it is that kind of informal networking. It sounds a bit strange. It is a very non-government way of doing business, but it is kind of critical to how we, I guess, try to engage with and make ourselves accessible.

The CHAIR: A good relationship with decision-making bodies concerned with issues affecting children—I think you have spoken before about your contact with other agencies.

Prof. Morgan: Yes, the decision-making bodies. I guess they would include the justice department and Department of Communities. They would have a lot to do with the Department of Communities because, again, as I said earlier, our jurisdiction ceases at the prison walls, so it is really the justice department but other oversight agencies as well.

The CHAIR: And we have talked about the Kath French centre, which I think is another area of concern as far as oversight goes.

Regional and local representation—you talked in the previous hearing, I think, about some of the challenges of —

Prof. Morgan: Obviously, we have a regional and local presence. I cannot say that our staff represent every part of the state.

The CHAIR: So your regional representation is another resourcing issue, is it?

Prof. Morgan: It is a bit hard to answer that one. I mean, we are Perth based.

The CHAIR: Because of Banksia. Yes.

Prof. Morgan: Perth is where we are based.

The CHAIR: I guess that would change if you got oversight of police lock-ups. That would change quite substantially.

Prof. Morgan: In terms of regional representation we have, obviously, independent visitors, who report to us, who are regionally based. So the people who go out to West Kimberley Regional Prison in Derby or to Broome prison—they are Kimberley dwellers, if I can put it that way.

Ms Davis: And if I can just add, part of the normal methodology for an inspection is to actually collect the local service providers for each facility as you go in to talk to them. So you do get all those issues in one hit, and good relationships have been formed over time with those various agencies and they

feed in not just during those times but to everything we work on, including the review side of the house when we need it.

The CHAIR: Are there any OICS staff in the regions?

Prof. Morgan: No.

The CHAIR: The final one is access to research and statistics relevant to children.

Prof. Morgan: Well, we have got access, obviously, to all published research. As I said earlier, we get access directly to the department's database. As you said earlier, there are some significant statistical limitations in what is there, but we have got access to it. Under the act, the department has to provide us documents when we request them, essentially. What we have got is more than that. We have got the ability to go and interrogate the TOMS—total offender management system database—ourselves. That is really important because otherwise you would not know what to ask for. So to give an example, as you would have read, probably, in the papers, there was a death in custody last week, and the man had been very seriously assaulted at Hakea Prison. He died two weeks later. We will do our own independent review and work around that. When we had the incidents going on at Banksia Hill, which is more directly of relevance to you, with the Special Operations Group going on site and the firearms et cetera, we were doing our regular monitoring of that. We were requesting and viewing some of the video footage. We get probably almost unique access. I do not think there is any other agency in Australia that has that level of routine daily access that we all do.

The CHAIR: Okay. Well, thank you very much. Jess do you have any questions? Kyran?

Mr K.M. O'DONNELL: Yes. I just have a few, please. My first one is a point, a comment, and a bit of perception. Mr Artelaris made a comment in relation to the question from the Chair, and the comment was, "We are meeting our statutory legislation requirements." To me that is a worry: "We are meeting them." To me, I would be trying to exceed. Now, it might just be on that one comment, but I cannot see your department growing if you are just "meeting". That is my perception, and I do not mean it to be rude. It is just a comment from just sitting here. It is a worry, to me.

[11.10 am]

Prof. Morgan: Could I say that if you get into the technical thing of meeting expectations and so on, we are actually exceeding what we were expecting to do; so, we exceed our KPIs every year. We are basically required to report to Parliament—there is a statutory obligation to report to Parliament at least once every three years on every juvenile detention centre, prison, court and custody facility. We do that and we do more. With Banksia Hill, it has actually been more—and with Acacia, because it is big and privately operated et cetera. Those are two examples where we have reported more regularly. Over and above that, the expectation is we do two or three review papers a year. That would give you a total of roughly nine reports a year. We are actually averaging 10 or 11 reports a year, so we are exceeding the expectations. The point you raise is important, because with the budget constraints, something has to give. I can exceed—I can drive this team really hard and they are fantastic; they are the best team I have ever worked with. I drive them really hard to outputs, but what will drop off is our ability—sometimes it is expensive to do these things—to visit regional facilities, for instance. Can we continue to do four visits a year to Kalgoorlie? They might have to drop back and it will have to be done on a risk-basis thing, because the budget will drive it—it has got to drive change somewhere. If we are not going to drop our number of reports, then what is going to give? That is where it is partly a resourcing issue.

I apologise for the answer being a bit long, and I am not being defensive, but it is important to place on record that we are exceeding that, but we are struggling to make sure that we are doing

everything that needs to be done. When Banksia Hill was in severe trouble, we had not only our independent visitors going out all the time; we did something like 16 liaison visits in a year. That is more than one a month, and these are the formal ones we write up, let alone drop-ins. It is how you manage that. We will be moving to, and have already moved to, a pretty sharp risk-based approach. This is dangerous territory at one level, but those places that appear to be less risk will have to get less by way of visits.

Mr K.M. O'DONNELL: Have you travelled with, say, the police department? They have a police plane, as an example. I do not know if the government then does this. They fly to various parts of the state. If you were able to get a partnership with them, if they have got room, they might make contact and say, "Next week we are going to Albany. We are going down for the day and back at five. Would you like one of your officers to hop on board?" That could save costs and things like that. The other thing is, because you are only allowed to see some police lock-ups—I thoroughly agree you should be seeing them—who makes that decision? My personal opinion is you should be allowed to and then it is up to you—if funding improves, you can just go.

Prof. Morgan: In essence, it has kind of come about because, under the act, the only police lock-ups that we get to go to are called the gazetted lock-ups. How do they get gazetted? It is basically where they double up for some reason as a court custody facility. That is why we have got only that limited number. We are not really viewing them so much as police lock-ups, so much as the way that they function in terms of their court custody functions. So if you take the case of Ms Dhu in Port Hedland—that terrible case—if we got into inspecting police lock-ups, then I would expect that we would be able to go in and say, "We need to be looking at what you, as police, are doing by way of your treatment of people like Ms Dhu in custody, rather than what you are doing by way of servicing the courts." Is that a fair summary? It is a bit hard to explain.

Ms Davis: It is more than just actually going there. One of the key benefits that Neil has already talked about is the fact that, from our desks, we can track all the notes as to what is happening during the day anywhere we particularly want to. So rather than being that hit-and-miss approach that I think people are thinking of with police lock-ups, we really need to get through all the logistics of getting that dataset straight on us so we can do the monitoring first and then go and find out whether they are actually doing what they are saying they are doing. Quite a lot of thought has gone into this over years. It will be a big exercise.

Mr K.M. O'DONNELL: How many employees do you have in your organisation?

Prof. Morgan: There are 18.

Mr K.M. O'DONNELL: If you make a recommendation and an organisation does not follow up with it—as you were saying, it could take a period of time—who would you go to? If they are just not listening to you and you can see an issue if they do not, where would you go?

Prof. Morgan: I have regular meetings with the Commissioner of Corrective Services. That is one forum where I could voice those concerns. I have to say that at the end of the day a lot depends on the culture of the department. Sadly, in 10 years, I have seen it wax and wane too many times. There are periods where people are wanting to do the right thing. Then there are times, for whatever reason, they have a "please go away" attitude, and there are times when you feel like you are banging your head on a brick wall. But there are also times when you get a really incredibly good, positive response. I want to repeat that, at the moment, I think there is a good interchange of concerns and information. The department will not necessarily follow up on all our recommendations, nor will it be able to, because some of our recommendations involve resources that it does not have, but it does not make the recommendation wrong, and you will go back to it. That is about all I can say. We are not enforcers.

Ms Davis: Sometimes we get lucky enough that other agencies also pick up our recommendations and staff to run with it, which we are seeing a bit happening now. We are saying, as has been said, “Let’s move on it”, so that has been incredibly useful—putting pressure from different directions.

Hon Dr SALLY TALBOT: Can you give us a specific example of that?

Prof. Morgan: The report we put out last year on the mental health transport. This was triggered by a woman who was transported naked from Bandyup to the Frankland Centre. We found out that that was exceptional; by and large, the transports were done well. But it opened up that whole area. The bigger issue is that people are able to access the mental health services that they need. That involved multiple agencies. That has been picked up now by a number of people, including the Chief Psychiatrist, who is actively following up on some of our recommendations and, himself, is trying to say, “Why can’t we do things a bit differently?” For me, that is ideal where we can stay involved; otherwise, we are a very small, lone voice. Having those other agencies come on and, particularly in that area, prod the health services people, whom I do not generally meet, is incredibly helpful. But it can be frustrating.

The CHAIR: That brings our hearing to a close. It would be remiss of me not to note that this may well be the last time that you appear as witness in front of us, Professor Morgan, at least with your current hat on. I am sure that you have several more great careers in front of you, so we may well see you again. Otherwise, I hope you enjoy retirement.

Prof. Morgan: Thank you very much, and thank you for the opportunity to engage with your committee, but more fundamentally with the Parliament. I mean, that is who I am accountable to and I treat that very seriously, and through the committees, that is the key role.

The CHAIR: You have done some very, very important work. I thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary document for the committee’s consideration when you return your corrected transcript of evidence. Thank you very much.

Hearing concluded at 11.19 am
