



OFFICE OF THE
CUSTODIAL INSPECTOR
TASMANIA

Annual Report 2020-21



About this report

This report describes the functions and operations of the Custodial Inspector for the year ending 30 June 2021.

It is available in print or electronic viewing format to optimise accessibility and ease of navigation. It can also be made available in alternative formats to meet the needs of people with a disability.

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I From the Custodial Inspector

This has been the fifth year of operation for the inspectorate. As I have reported in previous years, the work continues to be demanding and this is especially so given the inspectorate's limited resources.

Due to COVID-19 the Physical Health Care and Mental Health Care inspections that had been cancelled in 2019-20 were unable to be rescheduled as expert consultants could not be released from their duties and border restrictions prevented them coming to Tasmania.

In 2020-21, inspections were undertaken against the full suite of Food and Nutrition and Environmental Health and Hygiene inspection standards, for both adults and young people, at all six custodial centres. These inspections considered whether custodial centres were compliant with all relevant environmental health regulations, and with regard to food and nutrition, that food provided to prisoners is high quality, nutritionally adequate, varied and allows for special dietary foods to meet vegetarian, religious and medical requirements. The inspection standards also require that menus be developed in consultation with a qualified dietitian and that prisoners should be educated about healthy eating and its benefits.

My office has also been working on a number of reviews. Apart from mandatory inspections, section 6 of the *Custodial Inspector Act 2016* sets out the broad range of my functions, including reviewing particular issues:

6. **Functions**

(1) *The Inspector has the following functions:*

.....

(b) to carry out an occasional inspection and review of any custodial centre at any time, of his or her own accord or as requested by the responsible Minister;

.....

(e) to report to the responsible Minister or Parliament on any particular issue or general matter relating to the functions of the Inspector if, in his or her opinion, it is in the interest of any person or in the public interest to do so;

.....

One of the reviews that was undertaken related to lockdowns at Tasmania Prison Service and this was tabled in Parliament in June 2021. Considerable time has been spent working on a review of prison capacity and utilisation, with the report to be finalised and tabled in the 2021-22 financial year.

Unfortunately, due to inadequate staffing, a planned inspection of the Mary Hutchinson Women's Prison was postponed and is yet to be rescheduled. A number of issues of concern relating to that facility have, however, been raised with the Department of Justice (DoJ) as they were too significant to wait for inspection.

My 2019-20 Annual Report contained details of stakeholder responses to recommendations contained in all my inspection reports tabled in Parliament at that time. As I flagged then,

progress reports will no longer be included in my annual reports. Rather, there will be a dedicated section on the Custodial Inspector website for these reports. In accordance with section 26(2)(b) of the Act, I have included an evaluation of the response of relevant authorities to my recommendations in this report.

Richard Connock
Custodial Inspector

August 2021



2 Overview

2.1 Background

The *Custodial Inspector Act 2016*, which establishes the office of Custodial Inspector, was passed by the Tasmanian Parliament, received Royal Assent on 9 September 2016 and was proclaimed by the Governor to commence on 16 November 2016.

The Custodial Inspector is an independent statutory officer appointed by the Governor. When performing his functions, the Inspector must act independently, impartially and in the public interest.

The Custodial Inspector provides oversight of all aspects of prison and youth detention centre services in Tasmania. External scrutiny is provided through onsite inspections, and the subsequent publication of reports detailing findings and recommendations, and regular monitoring of custodial centre systems and records. The Inspector's focus is on issues relating to the management, control and security of the State's prisons and youth detention centre as well as the care and welfare of prisoners and detainees.

As noted, the Act provides that each custodial centre must be inspected against all inspection standards at least once every three years.

2.2 Staffing and Resources

2.2.1 Staff

The permanent staffing establishment of the office is the Inspector, one Principal Inspection Officer (0.9 full time equivalent) and one Senior Inspection Officer (0.8 full time equivalent). Thanks to the generosity of Tasmania Prison Service, a correctional officer was seconded to assist my office for approximately nine months of 2020-21 financial year. Due to this additional resource, the inspectorate was able to progress a number of reviews and particularly, the Lockdowns Review 2021.

As well as being Custodial Inspector I also hold a number of statutory appointments including that of Ombudsman, Health Complaints Commissioner, Principal Mental Health Official Visitor and Coordinator of the Prison Official Visitors Scheme. I am primarily responsible for receiving Public Interest Disclosures and Right to Information external reviews. As a result, I can only dedicate a portion of my time to the inspectorate. I have therefore formally delegated all of my functions and powers under section 6 and 8 of the *Custodial Inspector Act* to both members of staff.

As I have consistently reported, having now completed a three-year cycle of inspections it is overwhelmingly apparent that additional staff are required. The inadequacy of staffing is reflected by the long delays between onsite inspections and the publication of reports, as well as the need to cancel the scheduled inspection of the Mary Hutchinson Women's Prison.

With a total of 1.7 fulltime equivalent (FTE) staff the inspectorate has six custodial centres and transport vehicles to inspect. Considering custodial centres only, that is a ratio of 3.5



prisons to each staff FTE, but this calculation does not take into account transport vehicles. As reported in the *Custody Inspection Report*, there are eight transport vehicles and to adequately inspect those alone would involve a significant workload.

All inspections at all custodial centres are undertaken by both staff, together. Inspectorate staff have unfettered access to custodial centres and prisoners and detainees and for safety and security reasons, inspection activities are never undertaken by one staff member alone. This restricts the time that at least one staff member could be using to undertake other tasks such as report writing, research etc. The absence of one or the other of the two staff members has a significant impact on productivity.

Sick leave, recreation leave and long service leave are unable to be covered with the current staffing establishment. Additional staff resources would ensure that the inspection and reporting schedule could continue year round to ensure the Inspector's legislative mandate is met, despite any leave taken.

My staff have undertaken only one research task since the inspectorate commenced. This is simply due to workload demands from inspection tasks. There are many research tasks which would assist the inspectorate in its understanding of best practice to provide well researched advice and recommendations. Other administrative tasks such as budget management, records management, website maintenance and planning have also been given less priority than required due to inspection workload demands.

Regrettably, due to resourcing constraints, a planned inspection of the Mary Hutchinson Women's Prison had to be postponed, and no further inspections have been planned for 2021-22 at this stage. Priority is being given to finalising the inspections that were completed in 2020-21 and a review of prison capacity and utilisation. Monitoring tasks have also been negatively impacted by the inspectorate's inadequate staffing, with the following tasks being undertaken far less frequently than best practice would dictate:

- monitoring of the vulnerable units at Tasmania Prison Service (TPS) – Crisis Support Unit, Mersey, Inpatients, Tamar, Franklin and the Royal Hobart Hospital;
- reading and analysis of daily and weekly reports from custodial centres – for example, TPS daily reports, facility briefs, management summary reports, record of lockdowns, and Ashley Youth Detention Centre (AYDC) weekly Centre Support Team Minutes;
- reviewing of Use of Force documentation and CCTV footage;
- reviewing random samples of searches of young people accommodated in adult custodial centres;
- auditing of Tamar and Franklin units separation orders;
- reviewing of random samples of prisoner case notes in the Custodial Information System (CIS) database; and
- electronic records management of business documents.

In an effort to address the resourcing constraints that the inspectorate operates with, I have highlighted staffing as an issue with the Department of Treasury and Finance in requests for funding through the budget process. I have also advised the Minister for Corrections on a number of occasions in our regular meetings.



2.2.1 Budget

Under section 36 of the Act, “the administration of this Act is assigned to the Minister for Corrections”. Administration of the Act includes providing adequate funding for staff and other resources reasonably needed for the inspectorate to fulfil its functions.

The inspectorate started in 2016 with an initial “establishment budget” which has since continued as the funding model. It was, and continues to be, inadequate for the inspectorate to adequately function.

As I have reported on a number of occasions, through the inspectorate’s budget submissions I have requested an increased allocation for adequate funding to allow it to fulfil its ongoing responsibilities. Regrettably, these have all been declined. I am hopeful that funding requests will be considered favourably for the 2021-22 financial year.

The continuation of the establishment budget has negatively impacted the inspection process, and the monitoring and review functions of the inspectorate. A physical inspection provides a snapshot of a custodial centre at a particular time, whereas ongoing monitoring of systems and processes provides a broader picture and better identifies systemic issues. This is because patterns and repeat behaviours are more easily identified through desktop audits. Because the inspectorate is inadequately resourced, monitoring is undertaken on an ad hoc basis, which limits ability to proactively identify systemic issues which may otherwise go undetected during an inspection.

Monitoring by my staff consists of the interrogation of TPS systems and registers to identify areas of concern which require further analysis, and liaison with TPS staff to ascertain level of risk. After completing the first three year cycle of inspections, it has become clear that monitoring supports the inspection process as it identifies areas of focus.

Reviews are undertaken when significant issues are identified, either during an inspection or through monitoring, that are so concerning that they should not be left to be addressed through the inspection cycle.

In my 2019-20 Annual Report, I identified several significant issues for review which the inspectorate was unable to undertake due to resources. The Lockdowns Review was completed and some others have been commenced and are in varying stages of progress. Additionally, a number of new issues have been identified and these are outlined at 6 Key Observations. Ideally, any work in this regard should be done around inspections due to the legislated three year time frame. In 2020-21, however, priority was given to progressing some reviews as they are significant issues that have remained unaddressed for a period of time.

The work of the inspectorate is only set to increase with the construction of the Southern Remand Centre at the Risdon site nearing completion, and the announcement that a new prison will be built in northern Tasmania. These new facilities will increase the number of custodial centres in Tasmania by a third, from six to eight.

The existing staff establishment with current financial constraints is stretched to its limits and will not meet its three year legislative timeframe for inspection of all custodial centres against all standards.



2.2.3 Consultants

Engagement of consultants by prison inspectorates is an accepted practise both nationally and internationally, with other custodial inspectorates in Australia and Her Majesty's Inspectorate of Prisons for England and Wales using expert consultants.

The use of consultants is vital to provide independent expert advice and opinion to assist with and support inspections. To enhance the capacity of the office to inspect specialised areas in custodial services, expert consultants have been engaged.

Each consultant engaged by the inspectorate is named in the relevant inspection report. I acknowledge the contribution of these consultants and am extremely grateful for the expertise they provide.

Fees associated with consultancies are a major but necessary expense for the inspectorate, given the broad range of expertise required to inspect against all standards. To date, expert consultants with the following specialties have been engaged:

- physical health care;
- mental health care;
- diet and nutrition;
- hygiene and environmental health;
- custody;
- education; and
- resources and systems.

The engagement of expert consultants to assist with inspections continues to highlight the inspectorate's funding limitations, specifically with regard to consultancy fees. It is not always possible to locate a local consultant with relevant expertise and the inspectorate has engaged specialists from interstate. Doing so incurs extra costs for travel and accommodation. Consultancy fees continue to increase and funding will require continual reassessment for adequacy.

As previously reported, the inspectorate completed the first three year inspection cycle in 2019. Consultants were engaged to assist with the next inspection cycle for inspections against the Care and Wellbeing suite of inspection standards including mental health care, physical health care, food and nutrition and hygiene and environmental health. These were postponed due to the outbreak of COVID-19 and it has not been possible to reschedule the mental health care and physical health care inspections as the consultants are from interstate and are affected by State border restrictions. Food and Nutrition and Environmental Health and Hygiene inspections have been undertaken in this financial year and are discussed further below.

2.3 Functions and Powers

2.3.1 Jurisdiction of the Inspector

The Custodial Inspector has jurisdiction over all custodial centres in Tasmania. A custodial centre is defined as a prison within the meaning of the *Corrections Act 1997*, and a detention



centre within the meaning of the *Youth Justice Act 1997*.

The sites currently included in the Custodial Inspector's jurisdiction are:

- Risdon Prison Complex, medium and maximum security (RPC);
- Ron Barwick Prison (RBP)¹;
- Mary Hutchinson Women's Prison (MHWP);
- Hobart Reception Prison (HRP); and
- Launceston Reception Prison (LRP)

which are operated by TPS.

Ashley Youth Detention Centre (AYDC), which is managed by Child and Youth Services, an operational unit of the Department of Communities Tasmania (CT) is also within the jurisdiction of the Custodial Inspector, as are prisoner and detainee transport vehicles.

As noted above, the Tasmanian Government has announced plans for a new prison in northern Tasmania and work on the Southern Remand Centre at the Risdon site is currently underway with expected completion in 2022. Once completed, these facilities will also come within the Custodial Inspector's jurisdiction.

The Inspector does not respond to individual complaints but where appropriate, may refer complaints received to relevant agencies and/or oversight bodies for resolution.

2.3.2 Functions of the Inspector

The functions of the Inspector are set out in section 6 of the *Custodial Inspector Act* as follows:

6. Functions

(1) The Inspector has the following functions:

- (a) to carry out a mandatory inspection of each custodial centre at least once every 3 years;*
- (b) to carry out an occasional inspection and review of any custodial centre at any time, of his or her own accord or as requested by the responsible Minister;*
- (c) to prepare and publish guidelines and standards in relation to the conduct of inspections;*
- (d) to report to the responsible Minister or Parliament on the various inspections carried out by the Inspector;*
- (e) to report to the responsible Minister or Parliament on any particular issue or general matter relating to the functions of the Inspector if, in his or her opinion, it is in the interest of any person or in the public interest to do so;*
- (f) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector if requested to do so by either House of*

¹ Formerly known as the Ron Barwick Minimum Security Prison. In 2019 TPS advised that Ron Barwick Prison is now a medium security prison.

Parliament or a Committee of either House of Parliament;

- (g) to provide an annual report to Parliament;*
 - (h) to include in any report such advice or recommendations as the Inspector thinks appropriate including, but not limited to –*
 - (i) advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees; and*
 - (ii) information relating to education and programs to assist in the rehabilitation of prisoners and detainees;*
 - (i) such other functions as may be conferred or imposed on the Inspector under this or any other Act.*
- (2) The Inspector may from time to time amend the guidelines and standards prepared and published under subsection (1).*

2.3.3 Powers of the Inspector

The powers of the Inspector are set out in section 8 of the *Custodial Inspector Act*:

6. Powers

Section 8 provides that the Inspector has the following powers:

- (a) to visit and examine any custodial centre, and any vehicle, equipment, container or other thing in a custodial centre, at any time the Inspector thinks fit;*
- (b) to obtain full access to all documents, including health records, that –*
 - (i) are in the possession of a Department, public authority or any other body or person prescribed by the regulations; and*
 - (ii) relate to any custodial centre or persons in custody or detained, or residing, at a custodial centre –*

and to make copies of, or take extracts from, those documents or records and to remove and retain those copies or extracts;
- (c) to require, in any reasonable manner that the Inspector considers appropriate, a person whose work is concerned with the operation of a custodial centre to provide any information that is relevant to the performance or exercise of the Inspector's functions or powers under this Act;*
- (d) to enter and examine any equipment or container outside a custodial centre which is used in connection with the custodial centre, and any vehicle used to transport prisoners or detainees, at any time the Inspector thinks fit and with any assistance or equipment that the Inspector thinks is reasonably necessary;*
- (e) to require any member of the staff of the custodial centre or other person who provides services to prisoners or detainees to –*
 - (i) supply information or produce documents or other things relating to any matter, or class of matters, concerning the custodial centre's operations; and*
 - (ii) attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations;*



- (f) *to refer matters relating to a custodial centre to an appropriate agency for consideration or action;*
- (g) *to obtain access to, and communicate with, persons in custody or detained or residing at a custodial centre;*
- (h) *to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this Act.*

2.4 Relationships

2.4.1 Primary Stakeholders

The office of the Custodial Inspector maintains regular communication with TPS, Correctional Primary Health Services² and Children and Youth Services. Inspectorate staff also liaise closely with appropriate officers in these agencies when planning and undertaking inspections. Information sharing occurs between the office and stakeholder agencies to support the functions of the office.

Regular meetings are held with the Deputy Secretary (Director of Corrective Services) of the Department of Justice. My staff have also met with the Assistant Director, Communications, Engagement and Policy at TPS and having this direct point of contact is valued.

The Custodial Inspector is not in any way connected to, or influenced by, TPS or Children and Youth Services.

2.4.2 Other Stakeholders

Inspectorate staff meet, as and when needed, with the following stakeholders:

- the Secretary of the Department of Justice (DoJ);
- the Secretary and senior management of the Department of Communities Tasmania;
- staff from the offices of the Minister for Corrections and the Minister for Children and Youth;
- the Commissioner for Children and Young People and her staff; and
- various external service providers.

The office has ongoing communication with the Office of Ombudsman Tasmania, the Office of the Health Complaints Commissioner and the Prison Official Visitors regarding complaint trends and areas of interest for inspection.

Inspectorate staff also meet with prisoners and custodial centre staff, as individuals and groups, as and when required. This occurs during and outside the inspection process. Inspectorate staff consider it a privilege that both stakeholder groups consult with them and trust them with the information they provide. For custodial centre staff especially, it is important for them to know that the inspectorate's scope includes them, not just prisoners.

² Correctional Primary Health Services is part of the Tasmanian Health Service and is responsible for healthcare provision at all custodial centres in Tasmania.



It is recognised that fostering inter jurisdictional relationships through face-to-face visits assists in the exchange of information, and builds upon the expertise and knowledge of inspectorate staff. In May 2021, my staff visited Ravenhall Correctional Centre in Victoria as part of their professional development and were very impressed with that interstate custodial facility, and its programs. This opportunity was only possible with the current budget allocation because the expert consultants were not able to undertake the planned inspections due to COVID restrictions.

Staff from the inspectorate also maintain close relationships with similar inspection entities in other states. These relationships are a resource for learning about alternative processes and best practice in an evolving custodial environment. The Youth Detention Inspectors Network has been established as a cross jurisdictional working group to share knowledge, and meets online, quarterly. There were plans to hold an Australian and New Zealand Inspectors' Conference and networking meeting in 2020, but again, due to COVID it was not possible to meet face to face and this was put on hold.



3 Inspections, Reviews and Reports

Inspection standards are key to the inspection process and need to cover every aspect of each facility from reception to reintegration following release. Standards facilitate the assessment of performance against objective criteria to ensure facilities are operating safely and efficiently, and have a focus on positive outcomes and human rights.

When it was first established, the inspectorate's work included the development of two sets of inspection standards for Tasmania; one relating to adult custodial services and the other for custodial services for young people in detention.

All inspections of Tasmanian custodial centres are conducted against the Custodial Inspector's published inspection standards, which are based on international human rights instruments and cover matters considered essential to the safe, respectful and purposeful treatment of detainees and prisoners.

The inspection standards for Tasmania are in need of review to keep abreast of national and international changes, reflecting best practice. This is a task that must also be undertaken by my staff, but it is an example of the type of work that cannot be done with the current resources as priority has to be given to inspecting and report writing. For example, to incorporate the most up to date *United Nations Standard Minimum Rules for the Treatment of Prisoners* (The Mandela Rules), the *2018 Guiding Principles for Corrections in Australia* and Her Majesty's Inspectorate of Prisons' *Women's Prison Expectations*. Some references in the standards are now outdated, for example the *Standard Guidelines for Corrections in Australia Revised 2012* having been revised and re-branded as the *Guiding Principles for Corrections in Australia* in 2018. Best practice would be the development of a separate set of inspection standards for women's prisons.

During an inspection a number of sources of evidence are used to evaluate the custodial centre against the standards. These include: onsite visits; meetings with senior management; individual interviews and group discussions with staff, prisoners and detainees; survey results; examination of documentation, policies and procedures; and observation by inspectors. As noted, where relevant, and particularly when inspections cover specialised areas, the office engages external consultants to supplement internal expertise.

Tasmania is a small jurisdiction and many services at adult custodial centres, such as education and training courses, healthcare, catering and information management, are centralised. To respond to legislative obligations using its limited resources, the inspectorate has undertaken themed inspections of custodial centres, focussing on particular inspection standards. At the end of a three year cycle, all facets of custodial centres will have been inspected against the full set of inspection standards. This has enabled the inspectorate to make best use of consultancies across all custodial centres, when required.

In the 2020-21 financial year, all custodial centres, adult and youth, were inspected against the entire suite of Food and Nutrition and Environmental Health and Hygiene inspection standards. Inspection reports are currently being drafted.



All inspection reports are published on the Custodial Inspector's website following tabling in Parliament.

3.1 Food and Nutrition Inspection

In the period between 31 August 2020 and 29 October 2020, unannounced inspections against the Food and Nutrition standards were undertaken at all TPS sites and AYDC.

Consultancy services for this inspection were provided by accredited dietitian Ngaire Hobbins.

The inspection involved onsite observations, interviewing key stakeholders and review of documentation to assess custodial centres against the relevant standards which, generally, seek to ensure that:

- food should be hygienically prepared and of sufficient quality, quantity and variety to meet prisoners' nutritional needs;
- all prisoners should have continuous access to clean drinking water;
- special dietary food should be provided where it is established such food is necessary for medical reasons, on account of a prisoner's religious beliefs, because the prisoner is a vegetarian, or where the prisoner has other reasonable, special need;
- prisoner accommodation that involves self-catering must be monitored to ensure appropriate standards of hygiene and nutrition;
- specific services should be available for pregnant young women and new mothers in addition to youth health services – this may include appropriate food and nutrition, maternal health services, and flexible visiting arrangements;
- healthy lifestyles should be supported through the provision of extensive health promotion and education, nutritious food and drink, and encouragement of exercise and personal hygiene;
- meal and other daily routines must be conducted at times consistent with community standards; and
- healthy food items are available and actively promoted in support of a healthy lifestyle.

3.2 Environmental Health and Hygiene Inspection

In February 2021, unannounced inspections against the Environmental Health and Hygiene standards were undertaken at all TPS sites and AYDC.

Consultancy services for this inspection were provided by Environmental Health Officers on secondment from the Tasmanian Department of Health. I am very grateful for the expert assistance provided by Senior Inspection Officer, Helena Bobbi, and Environmental Health Officers Hollie Zimmerman and Durga Gopala-Krishnan.



The inspection assessed compliance with standards 73 and 74 of the *Inspection Standards for Adult Custodial Centres in Tasmania* and standards 6.3 and 9.6 of the *Inspection Standards for Youth Custodial Centres in Tasmania* which relate to hygiene and environmental health issues including:

- custodial centre environments must comply with good public health practices and be compliant with all relevant environmental health regulations;
- service equipment for refrigeration, cooking and laundry must be properly maintained and regularly cleaned;
- custodial centres must ensure good drinking water quality and food safety, and protect prisoners and young people in detention from any environmental hazards that may pose a risk to health;
- appropriate precautions should be in place to minimise hazards to health such as mosquitoes, bed bugs, flies, head lice and bacteria such as legionella, E coli and listeria among many, and vermin and pests should be controlled; and
- custodial centres must provide the facilities, services and items necessary for the maintenance of environmental health and general hygiene.

3.3 Whole of Prison Surveys

In 2020 the inspectorate undertook two surveys relevant to Tasmanian adult custodial centres:

- a survey of prisoners in TPS correctional facilities; and
- a survey of TPS staff, both correctional and non-correctional.

The 2020 Prisoner Survey is the first ever survey of prisoners in TPS facilities undertaken by the inspectorate. The survey was disseminated to prisoners who agreed to complete it across all TPS facilities in Tasmania. It was distributed in paper form during visits to individual prison accommodation areas on 27 and 29 October 2020, and 2, 3 and 5 November 2020

The 2020 TPS Staff Survey was the second survey of correctional and non-correctional staff. The first survey was initially undertaken in preparation for my inspection against the Resources and Systems themed standards in *Inspection Standards for Adult Custodial Centres in Tasmania* in 2019.

The 2020 TPS Staff Engagement Survey consisted of questions identical to those in the survey undertaken in 2019, with both being undertaken using Survey Monkey. The survey was open from 28 September 2020 to 16 October 2020, with correctional officers and non-correctional staff at TPS being invited to participate.

My office engaged the University of Tasmania (UTAS) School of Social Sciences to analyse the results of both surveys, and the report of that analysis was finalised in July 2021.

3.4 Lockdowns Review

I identified the high number of lockdowns in TPS facilities as an issue requiring review several years ago, but resourcing constraints had prevented me from undertaking the review. I was able to do so in 2020-21 because I was provided with temporary additional staff resources.

The review was undertaken to provide an understanding as to:

- how lockdowns are recorded and reported across TPS facilities;
- how lockdowns are distributed across different TPS facilities and units;
- the reasons behind lockdowns; and
- the ranging impact of lockdowns.

The review acknowledged that lockdowns are sometimes necessary and unavoidable in the correctional environment, particularly when they result from staff shortages or security concerns.

The data analysed for the review showed that lockdowns occurred more frequently in Risdon Prison Complex (RPC) maximum security units, with the majority of lockdown reasons being noted as 'Operational Requirements' and 'Staff Shortages'.

Primarily, lockdowns affect the time prisoners are able to spend out of cell but, as I have previously highlighted in inspection reports and annual reports, the effects are far more wide ranging. For prisoners, the effects include social isolation both from other prisoners and staff, reduced ability to attend activities including personal visits, and loss of autonomy and control over almost all aspects of daily life. For correctional staff, lockdowns increase their workloads, and they must also deal with frustrated prisoners who would naturally prefer to be unlocked and following their usual regime. For non-correctional staff, the inability to deliver their programs to prisoners and undertake their core work impacts on staff morale and causes a high degree of frustration for these staff too.

In its response to the review, DoJ noted that TPS always aims to deliver prisoners a minimum of one hour in the open air, and this is only not delivered where all possible options have been exhausted. I do not dispute this, but the finding of the review was that too often all possible options have been exhausted and the minimum one hour is not delivered in contravention of the *Corrections Act 1997*, basic human rights and inspection standards.

I noted that I have held concerns regarding lockdowns for my entire tenure as Inspector and outlined seven recommendations for TPS, which were all supported.



4 Evaluation of Responses to Inspector's Recommendations

As Tasmania is a small jurisdiction, my approach as the Custodial Inspector has been to undertake themed inspections of custodial centres focussing on particular inspection standards.

Having now completed a 3-year cycle, all facets of custodial centres have been inspected against the full set of inspection standards, and I have published the following reports detailing the findings from those inspections:

- Inspection of Youth Custodial Services in Tasmania, 2019: Resources and Systems Inspection Report;
- Inspection of Adult Custodial Services in Tasmania, 2019: Resources and Systems Inspection Report;
- Inspection of Youth Custodial Services in Tasmania, 2018: Education and Programs Inspection Report;
- Inspection of Adult Custodial Services in Tasmania, 2018: Rehabilitation and Reintegration Inspection Report;
- Inspection of Adult Custodial Services in Tasmania, 2017: Care and Wellbeing Inspection Report;
- Inspection of Youth Custodial Services in Tasmania, 2017: Health and Wellbeing Inspection Report;
- Inspection of Adult Custodial Services in Tasmania, 2018: Custody Inspection Report;
- Inspection of Youth Custodial Services in Tasmania, 2018: Custody Inspection Report;
- Inspection of Youth Custodial Services in Tasmania, 2019: Equal Opportunity Inspection Report; and
- Inspection of Youth Custodial Services in Tasmania, 2019: Families, Community and Partnerships Inspection Report.

It is pleasing to note that the vast majority of my recommendations have been accepted by the responsible Departments, though there is still some work to be done in progressing these.

Appendices 1 to 6 of my 2019-20 Annual Report provided details of stakeholder responses to recommendations contained in all the inspection reports at that time. The appendices detailed actions taken by the relevant departments to address my concerns. I advised that commencing the 2020-21 reporting year, progress reports will not be included in my annual reports. Rather, there will be a dedicated section on the Custodial Inspector website for these progress reports. This body of work is underway.



With respect to recommendations for youth custodial services, progress has been consistent with improvements made across a range of services. The Department has been positive and proactive in addressing any concerns raised despite having been challenged by significant factors outside of the inspection process.

For adult custodial services, however, there are prolonged and persistent inadequacies in the system that have not been addressed despite continued affirmation by the Department of Justice that recommendations are being acted on. I identified in my 2019-20 Annual Report that there were issues with the accuracy of reporting progress against recommendations. This resulted in my staff auditing the corrective action taken, as reported by the Department, and finding that that many of the recommendations had not been progressed despite advice to the contrary. This situation appears to have continued in the reporting period. Positively, the advent of COVID-19 resulted in improvements to prisoner access to virtual visits and emails, both measures having been recommendations in my *Care and Wellbeing Inspection Report 2017*.

The recommendations relating to health services have also been slow to progress, with many yet to be actioned by the responsible Departments. Correctional Primary Health Services staff 'on the ground' continue to be dedicated to providing health services for their clients in a challenging environment.



5 Recommendations for Legislative Amendment

Section 26(1)(c) of the *Custodial Inspector Act* provides that the Inspector must include in an Annual Report any recommendations for changes in the laws of the State, or for administrative action, that the Inspector considers should be made as a result of the performance of the Inspector's functions.

Having now been through the process of having a number of reports tabled by the responsible Minister in both Houses of Parliament, it has become evident that the legislative provisions for inspection reports result in a cumbersome and drawn out process which potentially risks compromising the Inspector's independence.

There are two aspects to the process that should be reviewed. Firstly, that inspection reports are tabled by responsible Ministers and not the Inspector directly in their capacity as an independent statutory office holder. It has been suggested that tabling by the Minister creates negative perceptions about the true independence of the Inspector.

In New South Wales, the Inspector's reports are submitted directly to Parliament. The *Inspector of Custodial Services Act 2012 (NSW)* provides:

(1A) Any report to Parliament made by the Inspector under this Act is to be made by furnishing the report to the Presiding Officer of each House of Parliament.

(1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.

(2) The Inspector may include in a report a recommendation that the report be made public immediately.

Similarly, in Western Australia, the *Inspector of Custodial Services Act 2003* requires the Inspector to deliver a copy of the inspection report to the Speaker of the Legislative Assembly and the President of the Legislative Council. These members of Parliament then lay each document before their respective Houses of Parliament.

In the Australian Capital Territory, under the *Inspector of Correctional Services Act 2017*, the Inspector is required to give a report on each examination and review conducted by the inspector to the Legislative Assembly. The Speaker of the Legislative Assembly must present the report to the Legislative Assembly within five sitting days after receiving the report.

This brings me to the second aspect of the tabling process which I believe requires review, and this relates to the 30 day embargo period contained in section 15(5) of the *Custodial Inspector Act*. The consultation process for inspection reports takes into account section 20(2) of the Act which provides:

(2) The Inspector is not to make a report on a mandatory inspection or an occasional inspection and review that contains adverse or derogatory comments in respect of the department responsible for the relevant custodial centre or the services provided in the custodial centre, unless –

(a) the Inspector has given the responsible Secretary, and any relevant officer or employee of the responsible department, a reasonable opportunity –

(i) to appear before him or her; or

(ii) to make representations, either orally or in writing; and

(b) the Inspector has provided a draft of the report to the responsible Secretary.

The agreed consultation process with relevant Departments is that 28 days is provided for a response to be prepared. I have been flexible in allowing extensions to this time period on a number of occasions.

The combination of the department consultation period and the 30 day embargo period means that, after an inspection report is finalised (for consultation), it is at least two months before it is tabled. This arrangement effectively doubles the embargo time. Ideally, the Department should be liaising with the minister about the draft report throughout the consultation period, with either:

- a shorter embargo period contained in section 15(5); or
- legislative amendment to allow the Inspector to directly table his or her inspection reports; or
- a combination of both.

My preferred option would be the third dot point above.



6 Key Observations

The majority of the inspectorate's work over the reporting period has been focused on adult custodial centres in Tasmania. In respect of youth custodial centres, I undertook the two inspections outlined in section 3. In addition, my staff undertake monitoring functions such as reviewing reports received from AYDC covering the behavioural development scheme, incidents, isolation, searching and contraband, and regular review of information relating to juvenile searches maintained by the adult reception prisons and transfers of young people. As noted in section 2, I also meet regularly with the Commissioner for Children and Young People to discuss any emerging issues or matters of interest. For the most part, I hold few concerns about the operations at AYDC and if I do have any queries these are resolved promptly through liaison between my office and the Director, Youth and Family Violence Services or the Centre Manager.

In relation to adult custodial centres, major issues raised in my inspection reports to date have for the most part not been addressed. I acknowledge that there are good intentions from both the Department of Justice and TPS to implement some recommendations, but these attempts have so far not achieved real change.

In my 2019-20 Annual Report, I identified a range of significant issues in respect of key observations. I noted that reviews are undertaken when significant issues are identified, either during an inspection or through monitoring, that are so concerning that they should not be left to be addressed through the inspection cycle. The issues that were noted in my last annual report and remaining unaddressed by TPS have again been reported below. Due to resourcing, the inspectorate has been unable to progress reviews considering these issues in detail.

One of the issues I raised related to the use of canvas bedding in the Franklin unit, rather than the standard bed pack issued to mainstream prisoners. This was the case, even if the prisoner was not at risk of SASH. The inspectorate's view is that unless prisoners are at risk of SASH, they should be provided with regular bedding and the requirement of canvas bedding for prisoners in solitary confinement could be viewed as further punishment when, for most prisoners, moving to solitary confinement and being subject to its restricted regime is punishment enough. It is pleasing to see that TPS has acted on my concerns and Franklin prisoners are now provided with the mainstream bed pack.

6.1 Emerging Issues

The following new issues were identified by the inspectorate in the 2020-21 financial year:

- **Major Offender Alert**

In June 2020, the inspectorate noted a new 'Major Offender Alert' on the Custodial Information System (CIS) and requested information from TPS about the alert.

A draft DSO was provided to the inspectorate which outlined the purpose of the Major Offender Alert as follows:



- *There is a small number of individuals within the prison population that require increased oversight and more intensive decision-making due to the level of risk associated with decisions regarding their management. These prisoners pose a significant level of risk to themselves, others and / or the community, and / or require increased oversight due to significant public interest with regard to their offences or management.*
- *The Tasmania Prison Service (TPS) through the Major Offenders Unit (MOU) identifies and provides a greater level of management, oversight and support to prisoners identified as Major Offenders.*

The reality for prisoners was that the alert was impacting other process decisions relating to prisoner management, such as classification reviews and accommodation placement. Some prisoners who had the alert were reporting extensive delays in classification review decisions, and the flow on effects were that without moving through the system to lower classifications, they could not access some rehabilitation programs and were denied privileges with respect to canteen, employment opportunities and the freedoms associated with lower security classification accommodation.

This was noted especially with respect to prisoners who were reclassified following the escape in late 2019 but had previously been:

- minimum rated;
- participated extensively in rehabilitation and reintegration activities; and
- employed in responsible positions within the prison and in the community, some for many years.

The inspectorate undertook discussions with TPS management, staff and prisoners about the alert and the following issues were identified:

- TPS management indicated the genesis of the alert was community safety, but the objectives of the alert are unclear;
- TPS staff do not know what the alert means but are expected to advise prisoners that the alert has been added to their CIS record. It follows that questions arising from this advice cannot be answered by staff;
- Some prisoners were not aware that the alert had been added to their CIS record, nor were they advised of what it meant for them and the administration of their sentence, or how they could have the alert removed; and
- there was little consideration for procedural fairness, with (initially) no review mechanism with respect to the alert.

The majority of prisoners that were identified as Major Offenders initially were those convicted of murder. All prisoners with a murder conviction that were accommodated in the then Ron Barwick Minimum Security Prison were removed to medium and maximum security facilities despite their good behaviour and positive progression through the prison system. Given the indication by TPS that the genesis of the alert was community



safety, and to assist the inspectorate with its understanding of recidivism and the risks relevant to their offending behaviour, I engaged Dr Vicky Nagy, a Lecturer in Criminology from the School of Social Sciences at the University of Tasmania to undertake some research into adult homicide recidivism. Dr Nagy's paper titled *Homicide Offender Recidivism: A Rapid Evidence Assessment* is available on my [website](https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0004/624127/Rapid-Evidence-Assessment-Homicide-Offender-Recidivism.pdf)³.

The situation remains the same with the DSO still in draft format, but the alert continuing to be used and impacting decisions with respect to prisoner management. Noting this, and Dr Nagy's report, the Major Offender Alert is an area of priority that will be reviewed as soon as resourcing in my team allows.

- **Recruit training**

A new issue that arose in the reporting year related to the training of TPS recruits. This issue occupied a significant portion of the inspectorate's time and resources due to the reluctance of both the Department and TPS to acknowledge the concerns that were being raised firstly by TPS staff, and then by the inspectorate.

In my *Resources and Systems Inspection Report* I had noted that TPS was delivering training that is compliant with the national training package as required by Inspection Standard 135.2. Towards the end of 2020, however, it became apparent that this was not the case with two of the recruit schools facilitated in that year. This is because there was no Memorandum of Understanding (MOU) between TasTAFE (the registered training organisation) and TPS for the delivery of the Certificate III in Correctional Practice. This situation created uncertainty for staff, and brought into question the quality of training and the safety of placing the recruits on post in the prison.

I am advised that a new MOU is now in place, and that arrangements have been put in place for these recruits to complete their Certificate III course in Correctional Practice. While I acknowledge that recruiting new staff is quite rightly a priority for TPS, it was concerning that the decision was made to continue running additional recruit schools despite there being no MOU in place, and TasTAFE clearly directing that no further schools be run until the MOU was progressed. The expensive cost incurred in taking the unqualified recruits off the floor (requiring overtime from qualified correctional staff to fill shift vacancies, and paying recruits shift allowances while undertaking the remedial training) is a direct consequence of the decision to proceed with the schools against TasTAFE's advice.

³ https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0004/624127/Rapid-Evidence-Assessment-Homicide-Offender-Recidivism.pdf



- **Apsley unit concerns**

A number of concerns were raised with the inspectorate relating to the Apsley unit. These concerns were also noted in Work Health and Safety reports, which are regularly received by the inspectorate. Given the serious nature of the matters raised, I sought assurances from TPS management that the concerns were being addressed and remedial action taken where required. The inspectorate first contacted TPS in relation to the Apsley concerns in November 2020, and regularly thereafter. As no satisfactory responses were provided in relation to the inspectorate's correspondence, the matters were escalated to the Director of Prisons in early May 2021. After further follow up in early June, a response was received from the Director in mid-June outlining actions taken, and planned to be taken, to address staff concerns.

I acknowledge that there has been a lot of consultation and risk assessment undertaken, and work is being done to establish operating processes across the RPC, with changes to Apsley forming part of this. It remains a concern, however, that given the seriousness of the safety concerns raised in November 2020, remedial actions remain outstanding.

- **Tamar unit**

I am increasingly concerned that the conditions in the Tamar unit have reverted to an inhumane environment with prisoners being held under unduly restrictive conditions, with too much time in solitary confinement, and insufficient access to exercise, sunlight and fresh air.

With this in mind, I have again reviewed both the *Risdon Prison Complex Inquiry* report that was prepared by Mick Palmer AO APM, and the Tasmanian Ombudsman's report *Risdon Prison Complex Tamar Unit and Behaviour Management Program June 2010*. Both of these reports were highly critical of the management of prisoners within the Tamar unit, which is described as a behavioural management unit, but is effectively utilised as a solitary confinement punishment unit.

Upon re-reading these reports, it appears that very little has changed in over 10 years. I acknowledge that there were some positive changes made after the Palmer report was released, but current conditions have relapsed.

In my *Custody Inspection Report 2018* I outlined these concerns and made a number of recommendations about the Tamar unit (see recommendations 49 to 51 and 56 to 61) for the TPS to address them. Despite these recommendations being supported it is disappointing that the situation in the Tamar unit is such that TPS is failing to meet a number of basic human rights and the inspection standards relevant to special high security management regimes (see standards 43 to 47).



6.2 Ongoing Issues of Concern

The following areas continue to be of concern:

- increasing prisoner numbers continue to challenge TPS;
- double and triple bunking continues in cells intended for one or two person occupancy;
- prisoners being accommodated in facilities that do not accord with their security classification due to system pressures, for example minimum security rated prisoners are accommodated at the medium and maximum security prisons;
- insufficient and inadequate assistance is provided to prisoners pre and post release;
- there is a high demand on all prison services, including health care;
- ageing infrastructure at RBP and LRP in particular, combined with an apparent lack of funding for maintenance and equipment replacement, remains a concern;
- facilities at MHWP do not provide for a crisis support unit where women prisoners with severe mental health issues and those at risk of suicide and/or self harm (SASH) can be safely accommodated for their needs to be addressed;
- women prisoners cannot access drug and alcohol treatment programs;
- the discontinuation of the male prisoners alcohol and drug treatment program which previously operated in the Aspley unit; and
- many prisoner requests to attend funerals for significant family members or relationships are refused and there appears to be an over-reliance on external service providers to facilitate funeral attendance by means of video facilities rather than escorting prisoners to funerals.

6.3 Identified Issues for Review

As indicated in my 2019-20 Annual Report, the inspectorate has identified several issues at TPS which, when it has the resources available, it intends to review. These include the following which my staff have been unable to progress:

- **Use of force continuum**

Prior to this financial year, the inspectorate was regularly reviewing use of force incidents due to concerns that de-escalation measures are not always employed before force is used on prisoners. Due to resourcing constraints, my staff have been unable to review footage but note that the reports of use of force incidents continue to rise including incidents resulting in injuries to prisoners and staff alike. TPS staff continue to raise concerns about the use of force continuum and when resources allow, the inspectorate will be reviewing this area as a priority.



- **Disciplinary processes and contract levels**

As reported in 2020, the inspectorate is not satisfied that TPS staff always follow proper process in accordance with the provisions of Director's Standing Orders relating to disciplinary processes and contract levels. In my last annual report I indicated that my staff had identified a number of case studies. I also reported that the inspectorate will continue to monitor prison disciplinary processes and raise issues with TPS as and when required. Unfortunately, this is another task that my staff were unable to undertake due to resourcing and no work has been progressed in this area. There are information sharing provisions in both the *Custodial Inspector Act* and the *Ombudsman Act 1978*, and by virtue of these I have been made aware that individual complaints from prisoners indicate that systemic issues in relation to disciplinary processes and contract levels continue.

- **Section 42 leave**

TPS temporarily cancelled all section 42 leave following an escape from the Ron Barwick Minimum Security Prison in late 2019. Since that time TPS has resumed section 42 leave for prisoners to undertake external employment, and activities associated with reintegration and resocialisation with their families. The Director's Standing Order relating to section 42 leave was implemented in May 2011 and has not been updated since that time. It provides that, *inter alia*, a leave permit will not be granted unless a comprehensive risk and needs assessment is completed and the Director is satisfied that due consideration has been given to the security risks, community safety and the potential impact on any victim.

It is the current informal policy that section 42 leave is granted on the condition that the prisoners who undertake this leave are isolated from the general prison population and are accommodated in the O'Hara cottages at Ron Barwick Prison. There have been a very small number of exceptions made to this policy and I am told that these are very rare. I am concerned that this requirement is severely restrictive, particularly given that the total capacity of the ten O'Hara Cottages is 36 prisoners. That aside, the current reality is that the security classifications, together with the risk assessment criteria, mean that the number of prisoners approved to live in the cottages is well below that number. It is not unusual for a cottage to remain vacant and there are usually vacant bedrooms in most cottages. For a prisoner population of around 650 prisoners, the limited accessibility of the section 42 program renders it largely worthless in terms of rehabilitative and reintegrative value. The vast majority of prisoners exiting prison and re-entering society do so without having spent any time in the community preparing for release. This is despite the stated aim of the section 42 program outlined in the DSO being to:

- *promote the development of pro-social behaviours, enable prisoners / detainees to contribute to the community through the principles of restorative justice and reduce re-offending rates; and*
- *provide an avenue for prisoners / detainees to maintain or re-establish links with their family, friends and the community, and to prepare for a successful release from prison.*



- **Medical examinations**

Custodial staff remain in the room when prisoners undergo medical examinations, including internal examinations, contrary to international human rights standards and provisions in relevant TPS Standard Operating Procedures. A review of this area would include gathering experiences from the perspective of both prisoners and custodial staff, and a consideration of current international standards, and the arrangements in place for prisoner medical examinations in other jurisdictions.

- **Prison capacity**

There are significant capacity pressures particularly in the maximum security units at RPC. A number of issues relating to capacity were set out in the 2019-20 Annual Report and I noted that the inspectorate's review would seek to determine the reasons for these accommodation pressures and clarify how prison capacity is reported by TPS. I also highlighted concerns that TPS reporting relating to prison capacity does not reflect the reality of the accommodation pressures it faces. This is because temporary beds are added to units as and when required to increase operational capacity, and these temporary beds, which are generally only mattresses, are included in capacity figures as design capacity beds. A draft report into prison capacity has been progressed and is nearing completion.

- **Protection prisoners**

Whilst TPS has in place processes and assessments which might identify some, though not all, prisoners who require protection, the inspectorate remains concerned that their associated risks cannot be managed when those prisoners are placed in accommodation units. There is no accommodation set aside for protection prisoners at TPS facilities and TPS does not specifically categorise prisoners who require protection so that their risks can be managed. A number of protection issues presented during the 2020-21 year including failure to list association alerts on prisoner's CIS records and the inability of Launceston Reception Prison to safely accommodate male and female prisoners that have a conflict at the same time. As I noted in my last annual report, the inspectorate's review would consider policies and procedures for protection prisoners in other jurisdictions.

- **Security classifications and reviews**

The inspectorate has over a period of time raised with TPS a number of concerns relating to prisoner security classifications including:

- the reclassification of many prisoners who had previously been rated minimum security for many years and displaying good behaviour;
- the classification of prisoners generally failing to take into account prisoners participation in rehabilitative activities such as courses and employment, their positive behaviour and the guiding principle in the *Corrections Act 1997* that 'individuals are capable of change', rather focussing on criminal offences, offending record and past behaviours; and



- recommendations by custodial officers for prisoners to be reviewed and reclassified at lower security levels being declined.

Higher classifications impact prison capacity, and appear to be contributing to the accommodation pressures in the maximum security units at RPC and MHWP.

It appears that there is still a significant wait time, sometimes several months, for the Sentence Management Review Panel to consider recommendations for prisoner' security classifications be lowered. This links in with prison capacity, as these delays contribute to bedding pressures in maximum security areas.

There is a clear need for the inspectorate to undertake a review in this area, but considerable resources will be required as it would be a very large body of work. The review would consider TPS's classification and review processes and seek to determine the reasons for these delays. Additionally, the review would incorporate consideration of the TPS policy relating to 'major offenders', which is outlined above.





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