Office of the Custodial Inspector Tasmania

Inhumane treatment in dry cells - review report 2024

Acknowledgement of Country

The Office of the Custodial Inspector acknowledges Tasmanian Aboriginal people as the Traditional Custodians of lutruwita/Tasmania. We recognise their continuing connection to Land, Sea, Waterways, Sky, and Culture and pay our respects to Elders, past and present.

About this report

This report describes the findings and recommendations from the Custodial Inspector's review of the use of, and conditions in, Tasmania Prison Service dry cells.

The report is available in printed or electronic format for ease of accessibility. We can also provide the report in alternative formats to meet specific accessibility requirements.

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Office address: Office of the Custodial Inspector Tasmania
Level 6, 86 Collins Street, Hobart, Tasmania, 7000

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Thank you

We thank the people in custody who shared their experiences with us on this issue. At times this was difficult for some; they shared their experiences knowing it would not change what happened to them but may improve the future treatment of others. We greatly value their contributions.

We thank the staff for their engagement with the inspection team and the assistance they provided. We particularly thank the staff who brought this issue to our attention due to their concern about the treatment of people in their custody.

Content warning

This report includes descriptions of people's treatment and their reactions while being held in a dry cell. Some people may find this content distressing.

From the Custodial Inspector

We initiated this review of dry cells due to concerns about the treatment of people who were held in them. As will be seen from this report, the conditions in these cells in Tasmanian prisons are troubling.

Dry cells are traditionally cells with no water. Their purpose is to retrieve contraband from people in custody who are suspected of having concealed it internally. Dry cells are often used when a person in custody is suspected of concealing drugs, which are a scourge on the good order and security of prisons. However, the measures put in place to stop drugs entering a prison must not erode a person's fundamental human rights, particularly the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[1] Notably, contraband was very seldom found in the dry cell placements we reviewed.

A Tasmania Prison Service (TPS) staff member brought the issue of people's treatment in these cells to the attention of the Office of the Custodial Inspector (this office) during an inspection in 2022. The staff member was concerned that the treatment of people in prison while on dry cell regimes was inhumane. They specifically referred to people being held in dry cells that had lighting switched on all day and night. This office has actively monitored the matter since we were notified in 2022 and have been raising our concerns with TPS as they were brought to our attention. This report is the culmination of that work. We validated the staff member's concerns and, the more we investigated the issue, the more concerns arose.

These concerns included the duration for which people were held in dry cells. We saw instances of people being held in dry cells for up to ten days, with no access to any entertainment, no window to the outside world and only an hour of exercise outside. These conditions are harsher than those imposed on people who are segregated for disciplinary reasons. The most troubling concern was the lack of an intercom in some dry cells so people in custody had no means to call for help in the event of an emergency. If someone has concealed drugs internally, this poses a significant risk to their health. Whilst camera monitoring and in-person checks occur of people in dry cells, we identified that these were not always reliable. The general principle that the Royal Commission into Aboriginal Deaths in Custody set out 33 years ago has not changed, no person in custody should be placed in a position of being unable to raise an alarm in the case of an emergency. We also found that the TPS breached the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[2]

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1 See, for example, rule 1 of the United Nations Standard Minimum rules for the Treatment of Prisoners (the Nelson Mandela rules), articles 11, 12, 13 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 7 of the United Nations International Covenant on Civil and Political Rights.

2 UN General Assembly United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules): resolution/adopted by the General Assembly, A/RES/70/175, 8 January 2016, pp. 2 and 13.

The concerns were not limited to people in custody as we heard and observed concerning impacts on staff. Correctional officers, for example, are tasked with processing faeces in potentially unsanitary conditions to attempt to find contraband. We also spoke with correctional officers who were aware of the risks associated with people in dry cells not having intercoms. They shared their fears for the wellbeing of those in their care.

In response to matters raised during our monitoring activities, TPS advised in February 2024 that the procedure for dry cells is under review and directions had been issued to change some practices. This included ensuring the hallway light directly outside the dry cell in the reception area is turned off, changing inappropriate practices around the use of canvas gowns[3] and finger food-only diets for people not at risk of self-harm, and ensuring people had a mattress in their cell during the day as well as at night.

However, from direct observations in May 2024 it was clear the changes TPS had advised had occurred had not yet been implemented. Mattresses continued to be removed during the day and the dry cell was still brightly lit from the hallway light at night. In fact, we observed that new concerns had arisen, including one person in custody having their shoes removed despite being at no risk of self-harm. We did hear that steps were being taken to investigate the installation of intercoms in the dry cells, but people were still being placed in cells without intercoms in the interim despite the risks we have highlighted.

Actions need to be taken to make the dry cell regime humane and safe. In this report, we have flagged areas that need development to improve conditions and ensure the human rights of people in custody are respected. This list should not be considered exhaustive.

We provided a draft copy of this report to the Departments of Justice and Health for comment. The responses are pleasing and can be found at Appendices 1 and 2. The Department of Justice must be specifically commended for its response. It has acknowledged that the balance between treating people with dignity and respect, and ensuring security, has not always been maintained as required. The Department indicated that it expects that the commencement of the use of body scanners will provide a strong opportunity to consider how dry cell management is used, or if indeed dry cell management is required at all into the future. The Department supported all of our recommendations in full and will extend the scope of Recommendation 2 to ensure all managerial staff receive human rights training.

We will continue to monitor this issue closely to ensure our recommendations are implemented on the ground, including through random spot checks on people being held in dry cells. As can be seen from what we were told in February 2024 and what we continued to observe in May 2024, practices may not always reflect what should be happening, or what we are told will change.

One of the main ways in which we hear about issues within custodial centres is when people directly tell us about it. Whist people in custody and those working in custodial

[3] Anti-rip protective clothing used primarily to reduce the risk of suicide or self-harm.

centres can contact us anonymously, it must be stated that unfortunately there are no protections against reprisal in the *Custodial Inspector 2016* (the Act). The only protection is for the provision of information to us under section 34 of the Act. Although we strive to protect the identity of people who provide us with information, sometimes assumptions and conclusions can be drawn from circumstances and some people may be subjected to reprisal action for speaking to us. We highlighted this issue in our 2022-23 Annual Report[4] as the Custodial Inspector is required to make recommendations for legislative change that they consider should be made as a result of the performance of their functions. We have not yet received any indication from the Minister for Corrections and Rehabilitation that this legislative defect will be addressed. Nor has there been any indication that the Tasmanian Parliament is taking steps to remedy it. We encourage the Minister and the Parliament to address this issue in the interests of improving the welfare of people in custody.

The concerns that our team observed and heard about came to light due to our presence in places of detention. It is timely, therefore, to reflect on the value society attributes to monitoring bodies. Australia, as a nation state, has not yet implemented the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), despite ratifying it in 2017 and having an extended deadline of January 2023 to implement it. Tasmania has nonetheless been a leader within Australia in steps to implement OPCAT. However, funding commitments – state and federal – in response to my 2023 OPCAT implementation report, *Preventing torture and ill-treatment in Tasmania*,[5] remain unclear.

It is treatment such as we have outlined in this report that OPCAT seeks to prevent. It is our hope that this report and the implementation of the recommendations it contains will ensure people in custody who are suspected of concealing contraband are treated in a humane and safe way.

In closing, I want to extend my thanks to my inspection team. Their dedication to working with TPS to uphold human rights in Tasmanian custodial centres and their tireless work on this issue has resulted in progress towards significant change.

Richard Connock

Custodial Inspector

July 2024

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4 Office of the Custodial Inspector Tasmania (2023), Annual Report 2022-2023, Custodial Inspector Tasmania, p 5.

5 Tasmanian National Preventive Mechanism (2023), Preventing torture and ill-treatment in Tasmania – Report to the Tasmanian Government on the implementation of the Tasmanian National Preventive Mechanism under the OPCAT Implementation Act 2021, Tasmanian NPM.

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Dry cells present a serious risk to human rights in custodial environments. Our review has confirmed this risk has manifested into inhumane treatment in dry cells here in Tasmania. Changes to dry cell regimes are required to improve the treatment of people in custody or, preferably, the use of dry cells needs to cease. Fundamental human rights principles, such as the prohibition on torture and other cruel, inhuman or degrading treatment or punishment, need to be brought to the fore of decision-making processes when it comes to the use of dry cells.

Based on the findings in this review, we make the following recommendations.

Recommendation 1

Director's Standing Order (DSO) 1.40 *Managing Prisoners Suspected of Internally Concealing Items* be reviewed to determine if it is necessary, considering the introduction of body scanners.

If the DSO and dry cells remain necessary, the DSO is revised to prioritise the care and wellbeing of people in custody before security considerations. Any revisions should respect and protect the therapeutic relationship between Correctional Primary Health Services (CPHS) staff and people in custody.

The following specific focus areas should be addressed:

Specific focus areas for improvement

1. Lighting should not be left switched on throughout the night in any cell. People in custody should have control over the light in their cell.
2. Provide reasonable entertainment, such as access to a television, radio, books and writing material.
3. Provide appropriate privacy, such as block-out curtains, in the reception area dry cell of Risdon Prison Complex.
4. Install an intercom in the reception area dry cell of Risdon Prison Complex so people in custody can call for help in an emergency.
5. If a video camera is required in the reception area dry cell of Risdon Prison Complex to monitor activities at night, install a night vision video camera.
6. Improve record-keeping for the use of dry cells, such as through the creation of a dry cell register.
7. Ensure people in custody have clean prison issue clothing or their own clothing (if on remand) and normal bedding unless there are explicit documented health reasons why they should not, such as self-harm concerns.

8. Ensure people in custody receive standard meals unless there are explicit documented health reasons why they should not, such as self-harm concerns.
9. Ensure the contraband register, or the new dry cell register, specifies whether contraband was found or surrendered during a person's placement in the dry cell so the effectiveness of the dry cell process can be better monitored.
10. Ensure that Correctional Primary Health Services staff have access to the relevant Director's Standing Orders if they are expected to assist with dry cell operations.
11. Ensure Correctional Primary Health Services Advice/Instructions and 'On Watch' levels are documented on dry cell management plans.
12. Ensure all dry cell management plans are placed on a person's Custodial Information System file as they are created so they can be accessed by Tasmania Prison Service staff with a duty of care for the person, including correctional officers in the control room.
13. Tasmania Prison Service ensure people in custody always receive a copy of their separation order and are informed of their rights to request a review of this order. It should also provide writing materials to people in custody to allow them to make a written review request and explore allowing them to verbally request a review.
14. Exclude women from placement in dry cells.
15. Limit the initial standard period someone can be held in a dry cell to 72 hours. Any extensions should be limited to two 24-hour periods with a total maximum of five days in a dry cell. Any application for an extension, like any approval of a dry cell plan, should be supported with documented reasons setting out why there is a reasonable suspicion that the person in custody has contraband, such as information from a body scanner.

Recommendation 2

Training for TPS supervisors should include a dedicated unit on human rights standards for people deprived of their liberty.

Recommendation 3

TPS undertake a review of the environmental health conditions for staff involved in monitoring dry cells, including:

- testing for any pathogens on the external surfaces of the machine used to process faeces;
- assessing any risks to staff and people in custody from potential airborne pathogens; and
- ensuring appropriate maintenance is undertaken on the machine and relevant staff have access to training material on its appropriate use.

Processes used to conduct this review

This report is the culmination of monitoring the use of dry cells in TPS. The office commenced this monitoring in June 2022, when concerns about people's treatment in these cells were brought to our attention.

The review process involved the inspection team conducting the following activities:

- multiple on-site visits and inspections to Tasmanian adult custodial centres, including an evening visit to Risdon Prison Complex (RPC);
- meetings with senior management in TPS;
- written inquiries to, and responses from, TPS;
- individual interviews with TPS staff;
- conversations with people in custody;
- review of TPS documentation;
- monitoring of TPS case management systems;
- discussions with Dr Alice Edwards, United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in the context of a meeting regarding Tasmania's implementation of OPCAT; and
- facilitating a meeting for fellow members of the Australian National Preventive Mechanism with the Canadian Office of the Correctional Investigator, to discuss that office's observations regarding the use of dry cells in Canada.

An initial draft of the content of this report was included in the office's Adult Health Care Inspection Report 2024. However, in response to feedback from the Department of Justice and given the seriousness of the concerns discussed, this office decided to publish a standalone review report on the topic.

A draft of this review report was provided to the Department of Justice and the Department of Health for comment and fact-checking. Their responses are included as *Appendix 1 - Department of Justice response* and *Appendix 2 - Department of Health response.*

The office's inspection team consisted of:

- Sam Christensen, Principal Inspection Officer;
- Belinda Chamley, Senior Inspection Officer; and
- Jess van der Molen, Administration and Research Officer.

General information about dry cell use in Tasmania

Circumstances where a dry cell may be used

> A **dry cell** is a prison room without running water that is under video surveillance.

A dry cell may be used for people in prison who are suspected of internally concealing contraband. People can conceal contraband (usually drugs) either by swallowing them or inserting them into their anus, vagina or under their foreskin.

Before a person is placed in a dry cell, they will first be asked to hand over any concealed items. If they do not hand over items at this point – or if they do hand over items, but the TPS suspects that they still have other concealed items – the person may be placed in a dry cell.

Essentially, a dry cell is a waiting game or, as one correctional officer described it, “a game of cat and mouse”. The person held in the cell will eventually defecate. Correctional officers then check the faeces for the suspected contraband, which may otherwise be flushed down the toilet or hidden. If the person is suspected of hiding the contraband under their foreskin or in their vagina, the dry cell simply removes a means for disposal of any suspected contraband. Often no contraband is retrieved, either because there was no contraband in the first place, or because correctional officers did not find it. If no contraband is found, the person is returned to their unit.

Rules governing the use of dry cells

> ‘Director’s Standing Orders (DSOs) are rules that govern the management and security of prisons and for the welfare, protection and discipline of prisoners and remandees.’
>
> - Department of Justice

The use of dry cells is governed by DSO 1.40 – *Managing Prisoners Suspected of Internally Concealing Items.* It defines a dry cell as ‘a cell that does not have amenities (i.e. toilet or basin) with running water or privacy screens/walls’.

The DSO Statement of Purpose is to ‘safely and securely manage prisoners suspected of internally secreting items, specifically contraband or other unauthorised items.’ It lists its desired outcome as follows:

> 'Ensure the safety and security of the prison is maintained through intercepting attempts by prisoners to introduce contraband into the prison.
>
> Prisoners suspected of internally concealing items are treated humanely in a safe and secure environment.'

DSO 1.40 was created due to an Ombudsman complaint. It was implemented on 28 October 2016 and was due for review on 29 October 2019. It does not appear to have been reviewed in 2019. However, this office was advised in 2024 that it was being reviewed. Various practices we observed were either contrary to, or not documented in, the DSO. Figure 1 (next page) outlines the process for placing and keeping a person in a dry cell.

Dry cell management plans

Dry cell management plans describe the medical and supervision requirements for the person being held in the cell.

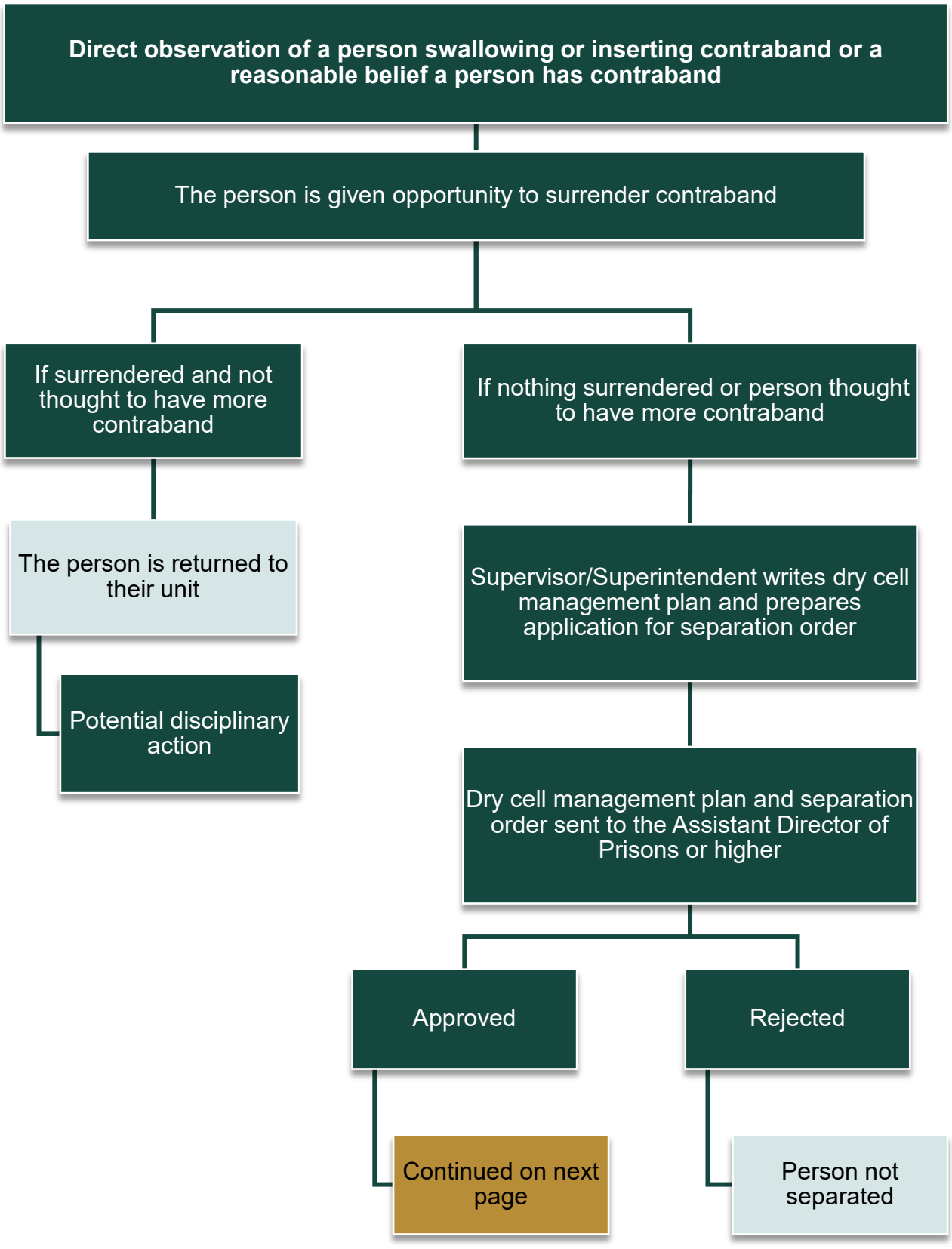
During their time in the dry cell, people are placed on a dry cell management plan. This is a plan that describes medical and correctional supervision requirements and other steps to be taken relating to their management. The plan must be completed by a supervisor and approved by the relevant superintendent.

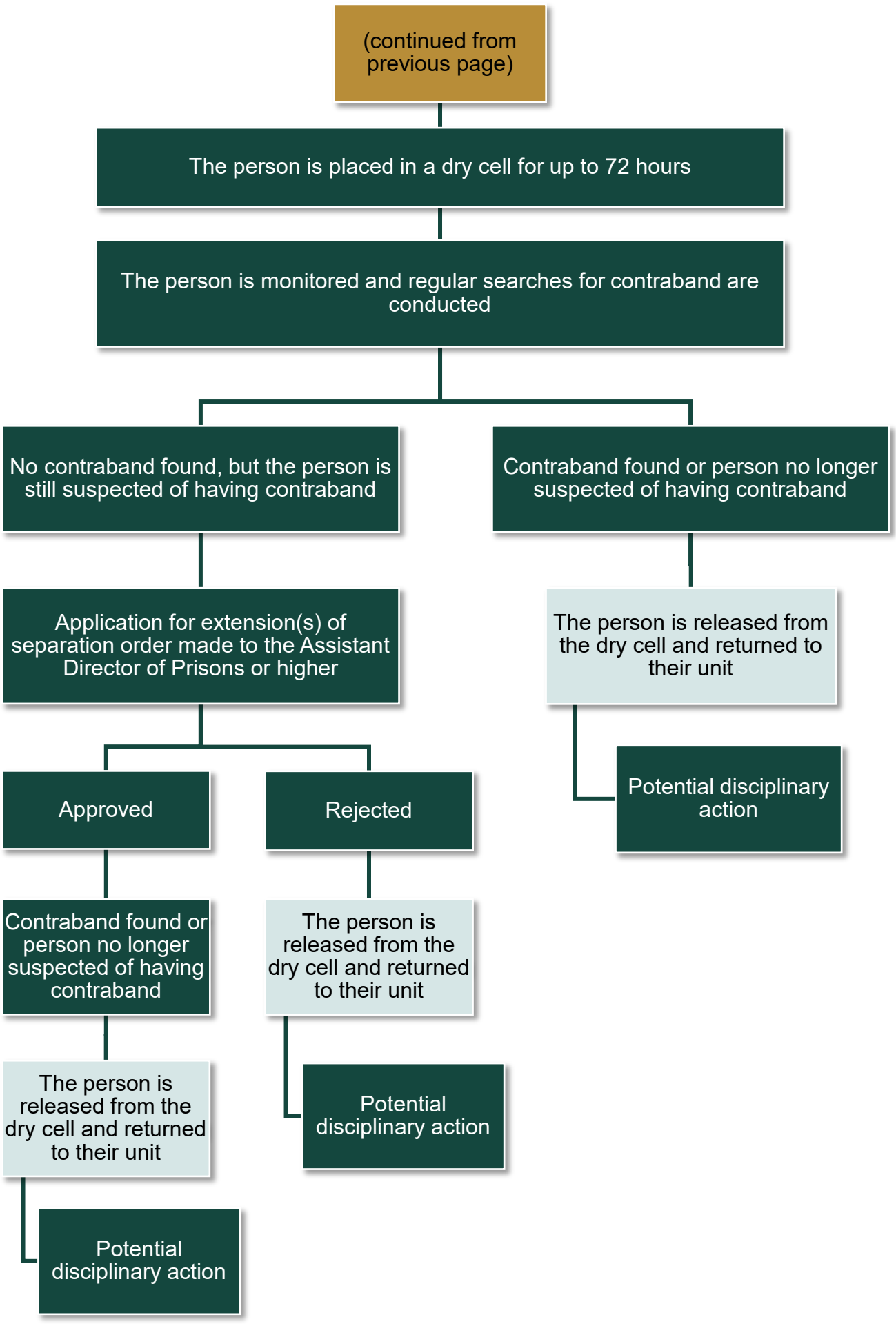
DSO 1.40, Paragraph 5.2.5 defines the basic rights for people in prison on a dry cell management plan. However, the plan may have other conditions beyond those listed:

> 5.2.5 Whilst confined to a dry cell, the prisoner:
> - Will be afforded an hour of supervised physical exercise in open air in accordance with section 29 of the Corrections Act 1997.
> - Visited at least once a day by a registered health professional from Correctional Primary Health Services (CPHS).
> - Will be permitted professional visits with Official Visitors and Office of the Ombudsman in accordance with section 29 of the Corrections Act 1997.
> - Will be permitted personal non-contact visits in accordance with section 29 of the Corrections Act 1997.
> - Will be permitted calls and receive visits from the Office of the Ombudsman and legal representatives. The prisoner must be directly supervised during visits and must remain in the direct line of sight of an officer when making phone calls, but their calls must not be monitored.
> - Will be provided with appropriate clothing, food and health care in accordance with section 29 of the Corrections Act 1997.
> - Will be permitted to use the toilet and wash their hands when requested under the direct supervision of correctional officers (an officer of the same gender only). Must be permitted to shower (daily) under the direct supervision of a correctional officer (an officer of the same gender only) at times

convenient with the operational requirements of the unit/area. Any items provided to the prisoner for the purpose of showering must be removed immediately on completion of the showering.

Figure 1. Flow chart showing the process for placement of a person in a dry cell.




(continued from previous page)
The person is placed in a dry cell for up to 72 hours
The person is monitored and regular searches for contraband are conducted
No contraband found, but the person is still suspected of having contraband
Contraband found or person no longer suspected of having contraband
Application for extension(s) of separation order made to the Assistant Director of Prisons or higher
The person is released from the dry cell and returned to their unit
Potential disciplinary action
Approved
Rejected
Contraband found or person no longer suspected of having contraband
The person is released from the dry cell and returned to their unit
The person is released from the dry cell and returned to their unit
Potential disciplinary action
Potential disciplinary action

Separation orders

> **Separation order:** an order to isolate the person from other people in prison, for disciplinary, administrative, medical, or other reasons.

A separation order must also be completed to authorise a person's separate confinement. This is in accordance with Regulation 8(1)(a) of the *Corrections Regulations 2018* and DSO 1.24 – *Separate Confinement of Prisoners*. The separation ensures any alleged contraband cannot be trafficked to other people in custody.

The category of separation order TPS uses is 'administrative segregation – isolation for medical reasons'. This category of separation must be approved by the Assistant Director of Prisons or a higher-level executive, after consideration of the circumstances and documented advice from a medical practitioner or the Senior Psychologist, a position within the Therapeutic Services Unit in TPS. DSO 1.24 states a person in custody can be placed in medical isolation on this advice to:

- prevent the spread of a contagious disease; or
- for the management of another physical or mental health condition.

DSO 1.24 specifies that the duration of separate confinement for medical reasons is to be determined on advice of a medical officer but must not exceed three months.

We have reviewed multiple separation orders pertaining to dry cells and have never seen any medical advice attached, despite this being a requirement under the DSO.

From what we can ascertain, TPS staff determine the length of separation in a dry cell, and this may or may not be based on verbal advice from CPHS staff. We spoke with some CPHS staff who did not consider that they were being consulted for the purpose of determining the duration of dry cell placements.

It appears that the standard duration of an initial dry cell management plan is up to 72 hours, but no limit is set. DSO 1.40 states that:

> The Dry Cell Management Plan must be reviewed by the Deputy Chief Superintendent[6] if it is proposed to remain in place post 72 hours from the date of admission on working days, or the next business day and ensuring a subsequent separation order is completed by the nominated Superintendent.

Extensions are usually approved in increments of up to 72 hours. While monitoring dry cell usage, we observed extensions resulting in placements of up to 10 days.

[6] This title is no longer used, and the responsible position now appears to be the Assistant Director of Prisons.

DSO 1.24 states:

> A prisoner is only to be transferred to a designated segregation unit to complete their medical isolation where they cannot be safely and securely accommodated in the Inpatients Unit.

We have not seen anyone placed in the Inpatients Unit whilst on a dry cell plan.

Chronology of reported concerns related to dry cell use

Concerns about the use of dry cells in Tasmanian prisons were first documented in a case summary in the Ombudsman Tasmania 2015-16 Annual Report. Further concerns were brought to the attention of this office in June 2022 during a Mental Health inspection. In 2024, clinicians involved in this inspection and a Physical Health Care and Substance Use Management inspection in 2023 identified problems with the use of dry cells and made recommendations for improving their use in our Adult Health Care Inspection Report. These reported concerns contributed to this review and are detailed below.

2015-16: Complaint to Ombudsman Tasmania

Ombudsman Tasmania reported a complaint in its 2015-16 Annual Report[7] that raised significant concerns regarding the treatment of a man in custody suspected of internally concealing contraband. He was placed in a Crisis Support Unit (CSU) cell in RPC with no access to the attached bathroom. These cells are usually used for people at risk of self-harm or suicide.

The man was given a garbage bag to defecate into and initially an old bleach bottle, and then cardboard urine bottles, to urinate into. He had no means to wash or sanitise his hands and was only permitted to shower once during his four days in the dry cell. He was not seen by any medical staff, despite the significant risk to health that can arise if someone has swallowed or has internally concealed drugs.[8]

TPS introduced a number of changes following the Ombudsman reporting the complaint, including creating DSO 1.40 – *Managing Prisoners Suspected of Internally Concealing Items* (described previously). DSO 1.40 appeared to shift the focus from solely trying to retrieve the contraband to also ensuring the wellbeing of the person being held in the dry cell. Our recent observations indicate that DSO 1.40 is not meeting its intended purpose.

2022: Custodial Inspector Mental Health inspection

In June 2022 this office was conducting a Mental Health inspection of TPS facilities. During the inspection a TPS staff member raised concerns about the treatment of people in custody while being held in a dry cell at RPC. They said a person could be held in the

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7 Ombudsman Tasmania (2016), Annual Report 2015–16, Ombudsman, p31.

8 Jalbert B, Tran NT, von During S, et. al. (2018), Apple, Condom, and cocaine – body stuffing in prison: a case report, *Journal of Medical Case Reports*, 12(35) doi: 10.1186/s13256-018-1572-8, and

Havis S, Best D, Carter C (2005), Concealment of drugs by police detainees: Lessons learned from adverse incidents and from 'routine' clinical practice, Journal of Clinical Forensic Medicine 12(5):237–41, doi: 10.1016/j.jcfm.2005.01.010.

cell, which was constantly lit, for up to 72 hours or more. Since this notification, we have actively monitored this issue and have identified multiple problems, which are outlined in this report.

2024: Adult Health Care Inspection Report

Professor Kimberly Norris, Clinical Psychologist, and Dr Edward Petch, Forensic Psychiatrist, were consultants for our Adult Health Care Inspection Report 2023, published in 2024.[9] This report is the result of our Mental Health inspection in 2022 and our Physical Health Care and Substance Use Management inspection in 2023. These clinicians raised concerns regarding dry cells and made the following comments and recommendations:

- Professor Norris highlighted that constant exposure to artificial light and minimal privacy does not align with strategies designed to optimise mental health and wellbeing.[10] She recommended that health staff liaise with correctional staff to ensure that mental health screening and monitoring is considered as part of the dry cell management procedure.
- Dr Petch briefly discussed the dry cell in RPC reception in the context of contraband management.[11] He noted the lack of a call button and questioned the two-hourly observation practices. Dr Petch recommended that TPS improve conditions within the dry cell, including installation of a call button and increasing frequency of observation. Dr Petch made a number of other recommendations more broadly relating to substance use management, which can be found at Appendix 3.

Our review of the use of dry cells raised further issues of concern, which are detailed in this report.

9 Office of the Custodial Inspector Tasmania (2024), Adult health care inspection report 2023: inspection of adult custodial services in Tasmania, Custodial Inspector Tasmania.

10 As above, pp102-104 (Appendix 2).

11 As above, pp257-258 (Appendix 3).

The Risdon Prison Complex reception and administration dry cells

Since the Ombudsman complaint (2015-16), TPS has built a number of cells, including one that is primarily used as a dry cell, in the reception and admission area of RPC. This is the main dry cell within the prison estate and is pictured in Figure 2. The reception and admission area is a high-traffic area during the day, with people regularly walking past this cell. At night there are no staff stationed there and usually no other people nearby.

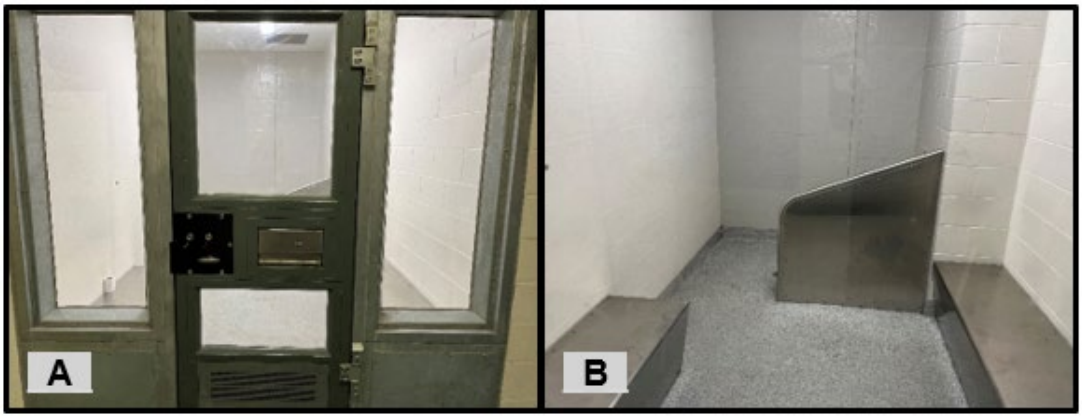

Figure 2. The main dry cell located in the reception area of RPC.
A) View of the front of the dry cell from the RPC reception corridor. B) The inside of the RPC reception and administration dry cell.

This dry cell has a flushable toilet with a water basin above the toilet cistern, pictured in Figure 3. TPS can monitor items flushed down this particular toilet, which is why it is not a dry cell in the literal sense. The cell also has a small stainless steel privacy screen beside the toilet, stainless steel benches along each side of the cell, and a cell door flanked by large windows, both of which look out to a corridor. There are no windows to the outside and there is no natural light. A mattress is provided to the person in custody in the evening and taken away in the morning. The shower is on the other side of the corridor to the dry cell and can only be used under direct supervision.

Figure 3. Inside the main dry cell located in the reception area of RPC.
A) Toilet located in the RPC reception and admission dry cell. B) View from the back of the dry cell looking toward the RPC reception corridor.

We were advised that another cell in the reception and admission area is the usual alternative if the main dry cell in that area is occupied. Unlike the main dry cell, the water is turned off to this cell so there is no access to drinking water on tap or water to wash your hands and no flushable toilet. If a person needs to use the toilet they need to ask a correctional officer to attend so the contents of the toilet can be viewed, potentially inspected, and flushed either with a bucket of water or the water being temporarily turned back on. We were advised by a correctional officer that how long this takes is dependent on staffing availability. This means a person could be sitting in the cell with unflushed faeces until someone is able to attend. This cell is right next to an officer station that is staffed during the day but there is nobody stationed nearby at night and there is no intercom.

Figure 4. Photos of the cell in reception used as a dry cell when the main dry cell is occupied. A) Front view. B) View from back of cell. C) Toilet and hand basin in cell.

Please note, these images have been digitally altered to remove graffiti scratched into the glass doors that may lead to the identification of people in custody.

Other dry cells in the prison estate

Other cells within the prison estate may also be used as dry cells, including in Hobart and Launceston Reception Prisons and the Crisis Support Unit in RPC. These are traditional dry cells with no running water, which presents the same issues discussed directly above.

During a visit to Launceston Reception Prison (LRP) we were advised that water is turned off to either of the observation cells, usually used for people at risk of self-harm, to create a dry cell. Difficulties with the plumbing, however, mean that turning the water back on is laborious. We were advised that even slight adjustments to the water pressure to turn water back on in the cell, after it had been used as a dry cell, can result in water from the drinking fountain hitting the ceiling. During a visit we observed it simply dribbling out, meaning people in the cell would have to suck on the water source. This is unhygienic as multiple people may use this cell. TPS should take steps to make adjusting the plumbing easier for staff so fixing the water pressure is straightforward.

Review of the use of dry cells in Tasmanian prisons

Reported experiences are troubling and flag multiple areas that require improvement

Experiences in dry cells varied based on the location of the dry cell and who was involved, including people in custody or staff, or both. People in custody raised issues such as:

- constantly lit cells either directly in the cell or in the hallway;
- no intercom;
- screaming for assistance at night and only eventually being noticed;
- no privacy;
- nothing to do – no television, radio, books;
- no way of lodging an appeal as no pen and paper provided;
- not being able to speak or write to friends and family;
- no window to the outside
- stark white walls;
- cold stainless-steel benches and no mattress during the day;
- cold cell temperature;
- limited access to toiletries for basic personal hygiene – one person was denied access to soap in his cell; and
- only one hour out of cell permitted and sometimes that was not provided.

Operational concerns identified by this review

We identified the following operational concerns:

1. Senior TPS staff were aware the light in the RPC reception area dry cell can be on for 24 hours a day.
2. People in dry cells are apparently in medical isolation but there is often nothing to do and limited privacy.
3. We raised initial concerns about dry cell use with TPS directors in 2022, but issues persist.
4. There is no intercom in the reception area dry cell of RPC.
5. A night visit confirmed lights were turned off in the dry cell, but hallway lights remained on.
6. Record-keeping issues created barriers to the oversight of the use of dry cells.
7. Some people in custody had to wear canvas gowns and were given finger food, despite there being no risk of self-harm.
8. No evidence of approval for separation on a person's file.
9. TPS breached the Nelson Mandela Rules.

10. The use of the dry cells is punitive in nature.
11. Dry cells are not effective at retrieving contraband despite this essentially being their purpose.
12. CPHS staff need access to DSOs if they are expected to exercise responsibilities under them.
13. No documented health advice justifying or specifying the period of separation.
14. No documented health advice on the dry cell management plans.
15. The role of CPHS staff needs to be clearer to protect therapeutic relationships.
16. Right of review difficult to exercise when it needs to be in writing and you have nothing to write with.
17. Women should be excluded from dry cells.
18. Limits must be placed on the duration of dry cell management plans.

Supporting information for each concern follows, including proposed actions to address the concern.

Senior TPS staff were aware the light in the RPC reception area dry cell can be on for 24 hours a day

During the Mental Health inspection in 2022, we spoke with a superintendent who confirmed that the light can be left on at all times in the dry cell. The justification was that this ensured any small movements from the person in the cell could be seen while they were completely covered by a blanket. We were told these movements could indicate that contraband had been retrieved, reinserted or swallowed. A reasonable alternative explanation is that people are likely to put blankets over their face to try and sleep in their brightly lit cell and may be moving during the night while asleep.

We asked if alternative security video cameras could be used, such as infrared or night-vision cameras. We were advised that these cameras do not pick up the same level of detail. In contrast, people in the Crisis Support Unit (CSU), housed there due to concerns about self-harm or suicide risk, may be observed with night-vision cameras.

> During an inspection, a person in custody approached us to tell us of his experience while being held in the dry cell. He said that to keep himself occupied he was given only a piece of paper and pencil for the entire 72 hours. He had no access to a television or radio.
>
> The person in custody denied having any contraband and said no contraband was found. He talked about the negative impact this situation and the isolation had on his mental health. He said he had to scream for correctional officers to turn off the lights at night and he said they were eventually turned off. We have no reason to doubt the person's recollection, given a superintendent confirmed that it is the practice to keep the lights on for the entire night.

There are no correctional officers stationed physically near the dry cell within the reception and admission area at night, so it may be that staff did not hear the person's screams until the standard two-hourly physical check occurred. The cell shares a wall with the bulk stores area and the consulting rooms of the inpatient area, which are both empty at night. The closest areas that have staff during the night shift are the nursing station in inpatients and the staff room area on the other side of the bulk store area.

Focus Area 1. Lighting should not be left switched on throughout the night in any cell. People in custody should have control over the light in their cell.

Figure 5. During a visit on 24 July 2024 we observed that TPS has now installed hook and loop strips for privacy curtains around the door and windows of the main dry cell in RPC, in line with our recommendation. Note: this photo was taken during the day. The shadows on the corridor floor show the strength of the fluorescent lighting used in this cell.

People in dry cells are apparently in medical isolation but there is often nothing to do and limited privacy

We spoke with another person in custody on a different occasion.

> The person in custody said he had been held in the dry cell for approximately 60 hours. He said that he had nothing to do for the entire time and that the lights were never turned off. He said prison staff did not find any contraband. This person talked about the impact on his mental health and not wanting to be 'put on show' in the reception area.

The RPC reception area dry cell has no privacy, with multiple large viewing panes in the wall and door, and only a modest toilet screen. Whilst it is deserted at night, this area has a lot of foot traffic during the day as everyone coming and going from RPC, including the Southern Remand Centre, pass this area. Also, roughly opposite the cell is a video conference room that is regularly used for court hearings.

Restrictions are placed on phone calls. If you are in a dry cell, you do not have access to a phone except during your hour out of cell for exercise. Calls are restricted to legal representatives and the Ombudsman. Personal visits are restricted to non-contact visits.

The RPC dry cell has no television and no radio, although some cells used as dry cells in other locations such as CSU in RPC and LRP do. A separation order to place someone in the dry cell is meant to be based on the need for medical isolation, so it is unclear why it is also necessary that people be held in conditions with nothing to do, in some cases for up to 10 days.

Focus Area 2. Provide reasonable entertainment, such as access to a television, radio, books and writing material.

Focus Area 3. Provide appropriate privacy, such as block-out curtains, in the reception area dry cell of Risdon Prison Complex.

We raised initial concerns about dry cell use with TPS directors in 2022, but issues persist

We looked at issues regarding the use of dry cells in 2022 during our Mental Health and Wellbeing inspections and in 2023 during our Physical Health Care and Substance Use Management inspection. At the debrief of the Wellbeing inspection, we specifically brought the issues with lighting of the dry cell in the RPC reception area to the attention of the Director of Corrective Services and the Director of Prisons.

In subsequent conversations with the Director of Prisons, we were advised that steps were being taken to eliminate the need for dry cells. The Director informed us that new biometric scanners were being purchased and were expected to be installed in the first half of 2023 in Reception Prisons. The Director indicated that if a person in custody was suspected of internally concealing contraband, a biometric scanner would be used to check the person, potentially removing the need to use a dry cell.

At the time of publication, the biometric scanners are not operational, although their installation is in progress. Dry cells are still being used. It is unclear how the introduction of body scanners will remove the need to use a dry cell. There is the potential that the body scanners will identify more people who are attempting to smuggle internally concealed drugs than were being identified previously. There would still need to be a process, it

would seem, to monitor people in custody if any identified contraband is not surrendered following the scan.

There is no intercom in the reception area dry cell of RPC

There is no intercom in the RPC reception area dry cell. People cannot call to request the lights be turned off or call for help in an emergency. This is an extreme risk if someone has ingested or internally concealed drugs. TPS is aware of the risks to people in custody if they are suspected of internally concealing contraband. A form for people in dry cells, referenced in DSO 1.40, states:

> Internally concealing any unauthorised item could seriously endanger your health and cause you serious internal injuries. If you are concealing illicit substances (drugs) inside your body, there is a possibility that these substances could absorb into your bloodstream and cause you to overdose or suffer a serious illness and possibly death.

Most cells in RPC that are used to house people overnight, including the Inpatients Unit, have intercoms. We assumed that there was an intercom in the dry cell in the RPC reception area but only realised in January 2023 that this was not the case.

We raised the intercom issue with TPS as a safety concern, particularly at night when no correctional officers are physically stationed near the dry cell.

We were advised that the control room has the dry cell video visible during the night shift and in-person checks are undertaken every two hours. A night visit, discussed below, demonstrated that the TPS reliance on observations of video footage is unreliable as human error may result in observations not occurring. In this case the person in custody has limited means, without an intercom, to attract attention to obtain assistance. Reliance on in-person checks also has risks. For example, we requested records of in-person checks conducted for a person held in a dry cell in 2024 but TPS advised that no records could be found so it is unclear if they happened. Documenting welfare checks is a practice that should happen, and records should be available. We have previously directly observed a night shift worker making a record of a two hourly check. We assume no checks were conducted in this instance if there were no records.

An intercom is required as these two strategies are not sufficient controls to address the risks to the health and wellbeing of the person being held in the dry cell. Not having an intercom also removes a significant amount of agency from a person in distress to seek help. Dr Petch recommended an intercom be installed in our Adult Health Care Inspection Report 2023 and the frequency of checks be increased. The TPS has supported that recommendation.[12] It is, however, worth reiterating here.

[12] Office of the Custodial Inspector Tasmania (2024), Adult health care inspection report 2023: inspection of adult custodial services in Tasmania, Custodial Inspector Tasmania.

The final report of the Royal Commission into Aboriginal Deaths in Custody (the Royal Commission), signed on 15 April 1991, made the following recommendation in the context of police cells:

> 140. That as soon as practicable, all cells should be equipped with an alarm or intercom system which gives direct communication to custodians. This should be pursued as a matter of urgency at those police watch-houses where surveillance resources are limited.[13]

The Royal Commission relevantly stated at 24.3.75:

> It was noted by Commissioners that, in a number of police lockups across the country, particularly those outside the metropolitan areas, the means by which prisoners could communicate with their custodians was inadequate. In very few lockups (apart from the more recently constructed facilities) were prisoners provided with a reliable mechanism, such as intercom or alarm facilities, to promptly raise the alarm in medical emergencies and for routine needs. In many instances, it was noted that the only means of prisoners communicating with their custodians in such circumstances was by calling out loudly in the hope that they would attract attention to themselves. Communication in this way was invariably hampered by the remoteness of lockups from the general administration area, thus making it difficult for prisoners to be heard and by the fact that, in many locations, the station is left unattended for many hours during the night.
>
> ...
>
> As a general principal [sic], no prisoner should be placed in a position of being unable to raise the alarm in the case of an emergency.[14]

It is deeply concerning that we are having to highlight this issue 33 years after the Royal Commission made a recommendation about intercoms and the need of people in custody to be able to communicate in the case of an emergency. It is a significant risk placing people in the dry cell in the reception area of RPC, where there is no intercom to call for help, whilst also being aware of their risk of death or harm from overdose. TPS has also confirmed that people who have deliberately swallowed razor blades are also placed for observation in cells in the reception and admission area with CCTV coverage but no intercoms.

Focus Area 4. Install an intercom in the reception area dry cell of Risdon Prison Complex so people in custody can call for help in an emergency.

We also observed some dry cell management plans where access to toilet paper is restricted. We were advised that this is because toilet paper can be soaked and then thrown at the camera to cover it. People on these plans would need to request toilet paper

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13 Royal Commission into Aboriginal Deaths in Custody (1998), National Report, Indigenous Law Resources, Vol. 3, p190.

14 Royal Commission into Aboriginal Deaths in Custody (1998), National Report, Indigenous Law Resources, Vol. 3, p168.

or, at night, catch the attention of a correctional officer in the control room monitoring the camera or wait for one of the physical checks to occur to make a request. If a person cannot call on an intercom to request toilet paper, there is the potential for an undignified situation to arise where somebody may not have access to toilet paper after using the toilet.

A night visit confirmed lights were turned off in the dry cell, but hallway lights remained on

We conducted a night visit in January 2023, a few months after the debrief with the Director of Prisons and the Director of Corrective Services, and observed a person in the dry cell just before 11pm. The lights in the hallway were on (as pictured in Figure 6) but the light in the cell was off. The person in the cell had their jumper covering the top half of the door, presumably in an attempt to block out some of the light from the fluorescent hallway light directly outside the cell.

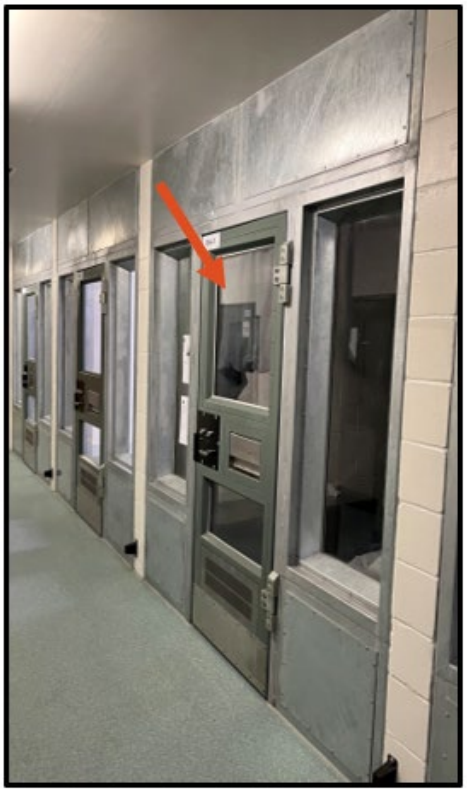

Figure 6. View of a dry cell from the RPC reception corridor at night. Note the jumper covering the top half of the door (orange arrow)

We spoke to multiple correctional officers during this visit, including one who had completed a night-time check on the person in custody. They advised that some dry cell plans are attached to the wall outside the cell and specify that the lights are to be kept on. We have not seen a dry cell management plan that explicitly stated the lights were to remain on. The officer said the hallway lights are not turned off and we were told the only way to turn the cell light off is via the switch in the reception staff area. The control room

has no control over the light switches.

As part of the night visit, we visited the control room and noted that the dry cell was not visible on the screens, and it was only opened on the screen on our request. We understand TPS has since issued a direction that the footage from a video camera in a dry cell be left open on a control room monitor when the cell is occupied during the night. The video camera has no audio, so if a person in custody is screaming or seeking help, this has to be seen rather than heard.

The person in the cell could be seen clearly on the screen, presumably in part due to the light from the hallway. If a justification for leaving the hallway lights on is to provide some light to ensure the person in the dry cell can be monitored on camera, a better quality camera should be obtained. Notably, in LRP the hallway lights outside the observation cells, which are also used as dry cells, are dimmed at night to reduce the impact on people but also ensure correctional officers can safely see.

Focus Area 5. If a video camera is required in the reception area dry cell of Risdon Prison Complex to monitor activities at night, install a night vision video camera.

We also spoke to the nurses on night duty. They were not aware that there was a person in a dry cell, who was placed there because he was suspected of internally concealing contraband. We raised this with the TPS who advised us that this was a matter we needed to raise with CPHS. However, we understand that steps have since been taken to ensure that handover information between CPHS and TPS is improved.

Record-keeping issues created barriers to the oversight of the use of dry cells

In January 2023 we requested access to the last six months' worth of dry cell management plans. After multiple follow-up requests, we received the plans in October 2023. We were advised that record-keeping issues and staff illness contributed to this delay. We received 11 plans for the period August 2022 to January 2023.

Improvements need to be made to ensure easier access to management plans, given the human rights concerns we have identified. A register needs to be created to better track their usage and effectiveness if they continue to be used. This will ensure more effective oversight.

Focus Area 6. Improve record-keeping for the use of dry cells, such as through the creation of a dry cell register.

Some people in custody had to wear canvas gowns and were given finger food, despite there being no risk of self-harm

Canvas gowns and finger food are two strategies used to ensure the safety of people at risk of self-harm. While undertaking monitoring, we learned of a person who was placed on a dry cell management plan in a crisis support cell in LRP. The person was required to wear a canvas gown, like the one pictured in Figure 6 below, and was only permitted finger food, although he was not identified as having self-harm or suicide risk.

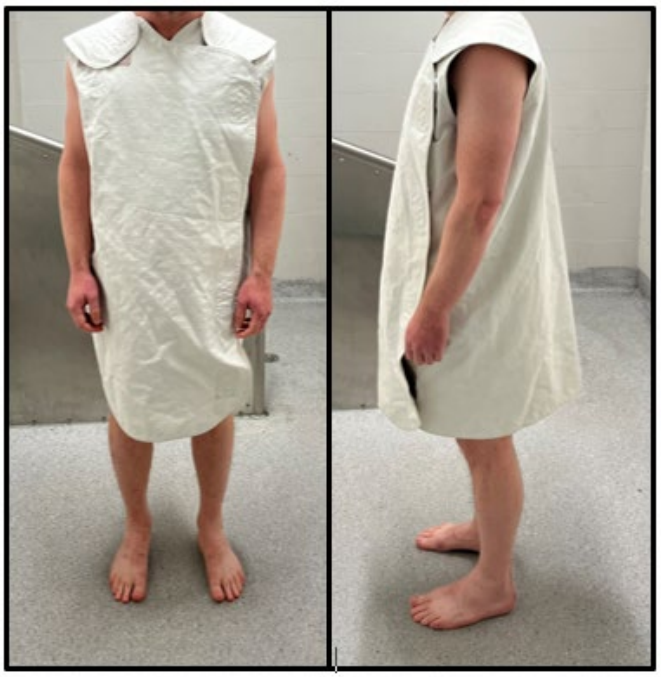

Figure 7. Front and side views of a Custodial Inspector inspection officer wearing a canvas gown.

We asked the TPS the following questions by email. The responses are in italics.

Q: The dry cell management plan refers to [the person in custody] being provided with a canvas gown and restricted access to his shoes. Why is that? Does he have access also to his own clothing?

A: Because clothing can be altered to secrete items in so that the dry cell plan becomes ineffective.

Q: The plan refers to [the person] only being given finger food meals. … couldn't see any indication on CIS[15] that he is at risk of self-harm. ... Could you please advise why he is only receiving finger food?

A: Finger food is provided on dry cell plans as prisoners/detainees can use normal food containers and residue within to hide items and render the dry cell plan ineffective.

[15] Custodial Information System, a software program used in the TPS.

We found these responses to be less than convincing as a justification for the treatment this person received. For example, food can be given on a plate and the plate removed. In fact, the DSO provides that 'whilst supervising a prisoner in a dry cell containment, staff must provide the prisoner with adequate food, liquid and cutlery (unless a Suicide and Self-Harm (SASH) plan is in place which prohibits the use of cutlery)'. This was a clear example of practice differing from policy.

Many drugs are water soluble and so clothing can be washed if a person's clothing is suspected of containing contraband. If drugs are hidden inside waterproof material, they should be found in a basic search of clothing. Steps such as this should help to address concerns about drugs being hidden in clothes and remove the need for people's clothing be replaced with canvas gowns.

We reviewed other examples of people in dry cells being placed in canvas gowns, but in those cases, there appeared to be a risk of self-harm. To justify their position on the treatment of the person discussed above, the TPS provided us with another example of a person made to wear a canvas gown in 2022. However, this only raised further concerns.

We reviewed the dry cell management plan of this person in custody. It seemed that the only reference to canvas was a specification that the person was to be given a canvas blanket, often used for people who are at risk of self-harm or suicide. It is unclear why the person could not be provided with normal bedding as there did not appear to be any risk of self-harm. Based on the paperwork, it appeared the person was to have their normal issue clothing.

Focus Area 7. Ensure people in custody have clean prison issue clothing or their own clothing (if on remand) and normal bedding unless there are explicit documented health reasons why they should not, such as self-harm concerns.

Focus Area 8. Ensure people in custody receive standard meals unless there are explicit documented health reasons why they should not, such as self-harm concerns.

No evidence of approval for separation on a person's file

On further inspection of the person documented above's file, who was placed in a dry cell in 2022, it was apparent that there was no recorded separation order to permit their separation on a dry cell management plan. This is contrary to the *Corrections Regulations 2018*. The only relevant separation order on file was one where the Assistant Director of Prisons clearly documented that separation was not approved.

It seems the main ground for suspicion that the person had contraband internally concealed was a refusal to participate in a urine test, so it was reasonable that the separation order was refused. The person was separated despite the lack of approval.

Unfortunately, neither the TPS nor the Ombudsman seem to have identified this issue when addressing complaints from the person in custody, which he first made in April 2022.

The person's complaints from April 2022 raised a number of serious concerns about the conditions in the dry cell in the RPC reception area. They included:

- the lack of an intercom in the dry cell and the dangers this posed if someone needs medical assistance (for example, if a drug package rips open and the person accidentally overdoses);
- the dry cell being fully lit at night;
- bedding being removed during the day meaning he had no choice but to sit on a cold bench for eight to nine hours following little sleep on account of the light;
- no toothbrush or soap were provided; and
- unhygienic conditions in the cell.

This person questioned whether there was any actual suspicion that he had contraband on him given he was not searched at any stage while in the dry cell, which he described as a 'torture cell'.

These human rights concerns, which go to the treatment of people in custody, were not addressed despite this complaint, given we observed many were still ongoing over a year later.

TPS breached the Nelson Mandela Rules

We are of the view that the practice of intentionally leaving people in custody in a cell that is fully lit for up to, and sometimes exceeding, 72 hours is inhumane. It is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Specifically rule 43,[16] which provides,

> Rule 43 1.
>
> In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.
>
> The following practices, in particular, shall be prohibited:
>
> (a) Indefinite solitary confinement;
>
> (b) Prolonged solitary confinement;
>
> (c) Placement of a prisoner in a dark or **constantly lit cell**;
>
> … [emphasis added for the purposes of this report]

[16] UN General Assembly United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules): resolution/adopted by the General Assembly, A/RES/70/175, 8 January 2016, p13.

People in custody who are in critical crisis and on observation due to self-harm risks do not need their cells to be lit 24 hours a day to ascertain if they are safe. Therefore, it is inexplicable that people under monitoring for suspicion of internally concealing contraband need this far more disruptive approach.

Positively, we observed that the practice of leaving the cell light on all night was no longer occurring after we had raised our concerns with the Director of Prisons and the Director of Corrective Services. However, arguably the cell is still essentially constantly lit if the hallway fluorescent light directly outside the multiple large windows of the cell is still on.

Figure 8 shows the corridor was well lit at 11pm at night. A case note, completed by a correctional officer, outlined a person's experience of a sleepless night:

> [Person in custody] was annoyed this morning when his bedding was removed as he stated that the hallway lights were left on all night and he was unable to sleep. Inmate has politely requested that the hallway light is turned off this evening.

The practice of turning off the cell light and hallway light needs to be applied to all people held in the dry cell in the reception area of RPC, or appropriate block-out curtains need to be provided. Even providing people with the option of eye masks would alleviate the conditions for some, although it is obviously preferable to remove the light source.

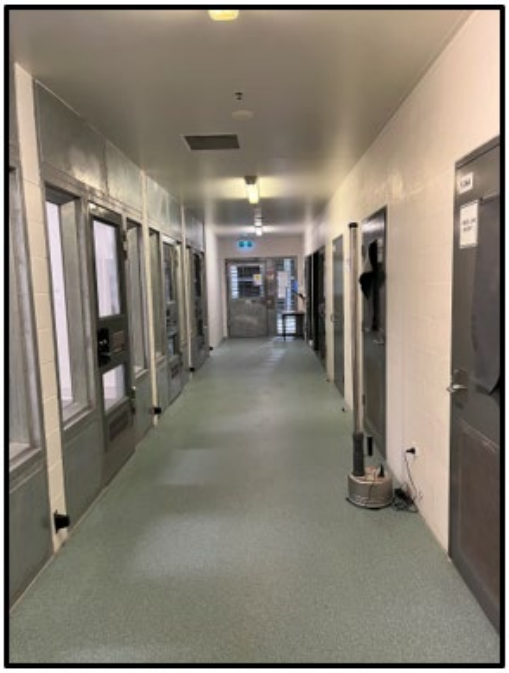

Figure 8. The reception corridor remains brightly lit at night.

The use of the dry cells is punitive in nature

The conditions in the dry cells, in our view, are contrary to the first rule of the Nelson Mandela Rules that 'all prisoners shall be treated with the respect due to their inherent dignity and value as human beings'.

The conditions we have outlined above, including the use of harm prevention measures for people not at risk of SASH on dry cell management plans and the almost complete lack of mental stimulation, do not meet that rule. The conditions are inhumane. They constitute an unacceptably extreme form of solitary confinement, especially given it is for the purpose of 'medical isolation' and not a disciplinary sanction.

In the case of the canvas gown and finger food example, there are simple and effective alternative solutions to address the security problems that TPS was seeking to address in this instance. TPS did not need to feed someone only finger food (which is rarely nutritious) and make them wear gowns that are almost exclusively used for people at risk of suicide or self-harm.

People in custody are placed in dry cells in circumstances where they are suspected of concealing contraband but have often not yet been subject to any disciplinary action. Rarely is any evidence of contraband found to substantiate the suspicions. Their separation, as noted above, is classed by TPS as administrative segregation for medical isolation. It is, however, inescapably punitive in nature.

People in the RPC Tamar and Franklin maximum rated units – there for disciplinary segregation or other forms of administrative segregation – experience the most difficult conditions in Tasmanian prisons. However, even in these units people have access to core basics to pass the time such as a television, a radio and reading material. They also have an intercom to seek assistance in an emergency.

The practices identified through inspection and monitoring demonstrate that the focus of the TPS is primarily on obtaining suspected contraband rather than prioritising human rights and ensuring the wellbeing of people in their custody.

Safeguarding the security of a prison and seeking to restrict the trafficking of contraband is important and plays a role in ensuring wellbeing. However, this must be balanced by ensuring people are treated with dignity and respect and they are held in appropriate conditions. If the TPS is breaching the Nelson Mandela Rules, it has not got the balance correct.

Dry cells are not effective at retrieving contraband despite this essentially being their purpose

Our monitoring showed that, even though the priority seemed to be obtaining contraband, this was seldom the outcome. We reviewed the 11 plans supplied for the six-month period from August 2022 to January 2023 and contraband was obtained in two cases, a recovery rate of 18.2%. No disciplinary action appears to have been taken against the two people who surrendered or were found with contraband.

In one of these cases, the dry cell management plan started on a Wednesday and the person in custody voluntarily surrendered contraband the next day. However, it was

suspected he had not surrendered it all and so he was kept in the dry cell in the CSU until Tuesday. No further contraband was found, despite his faeces being 'visualised and flushed' by officers on Friday, the day after he had surrendered contraband.

Prior to reviewing the above plans we asked the TPS for evidence of the effectiveness of dry cells, including evidence of contraband that has been confiscated as a result of the use of dry cells. No evidence could be provided. We were advised that the contraband register does not provide that level of detail.

Work needs to be done to better track contraband that is confiscated. This data can then be used to objectively assess the usefulness of dry cells, with the view to eliminating their use if their effectiveness is not evidence-based.

Focus Area 9. Ensure the contraband register, or the new dry cell register, specifies whether contraband was found or surrendered during a person's placement in the dry cell so the effectiveness of the dry cell process can be better monitored.

CPHS staff need access to DSOs if they are expected to exercise responsibilities under them

TPS lists the responsibilities of CPHS staff on dry cell management in DSO 1.24 – *Separate Confinement of Prisoners*, and DSO 1.40 – *Managing Prisoners Suspected of Internally Concealing Items*. Neither of these DSOs are readily available to CPHS staff. However, they should have access to them to enable them to challenge or question TPS and its staff's perception of their role on the separation and isolation of people on dry cell management plans.

Focus Area 10. Ensure that Correctional Primary Health Services staff have access to the relevant Director's Standing Orders if they are expected to assist with dry cell operations.

No documented health advice justifying or specifying the period of separation

'Administrative segregation – isolation for medical reasons' is the basis used for the separation of people on dry cell management plans. As outlined above, if TPS issues a person a separation order due to the need for medical isolation, it must be done on the advice of a medical practitioner or the TPS's Senior Psychologist. The duration of the separation order is 'to be determined on advice of suitably qualified medical officer but must not exceed 3 months.' However, DSO 1.40 limits the duration of an initial dry cell

management plan to 72 hours.

We reviewed multiple separation orders for dry cell placements, and none had any documented advice from a medical practitioner attached or included. This included the 11 plans TPS provided to us.

It is unclear why the 'medical reasons' category of separation order is being used but, regardless, it is clear the requirements for this type of separation are being ignored or not followed. TPS appears to base the time a person is held in a dry cell on the suspicion of whether there is contraband or not. The involvement of CPHS staff seems to be limited to ensuring people are physically well.

No documented health advice on the dry cell management plans

DSO 1.40 provides that:

> CPHS are responsible for ensuring a registered health professional attend and assesses a prisoner's physical wellbeing on receiving notification from the TPS of that prisoner's initial placement in a dry cell and the following:
>
> - visiting the prisoner at least once a day for the duration of their time in dry cell containment
> - providing advice to the TPS in regard to whether:
> - the prisoner should be admitted to hospital for further assessment/observation or treatment
> - the item may cause harm to the prisoner and if so the 'On Watch' Level which the prisoner should be placed on (in accordance with the 'On Watch' observation levels contained in DSO 2.01 – Suicide and Self-harm Prevention).

The dry cell management plan template, which is attached to DSO 1.40, has a section where CPHS Advice/Instructions can be documented and for a registered health professional's name and signature to be included. Notably, the DSO only refers to physical wellbeing. Professor Kimberley Norris recommended in our Adult Health Care Inspection Report 2023 that mental wellbeing also needs to be assessed.[17]

Of the 11 dry cell management plans from August 2022 to January 2023 that we reviewed, none had CPHS advice or instructions documented. Nine (81.8%) simply had the CPHS Advice/Instructions section signed by CPHS nursing staff (as a registered health professional).

It is unclear whether this CPHS Advice/Instructions section relates to the CPHS responsibilities outlined in DSO 1.40 alone, or also the separation order issued under DSO

[17] Office of the Custodial Inspector Tasmania (2024), Adult health care inspection report 2023: inspection of adult custodial services in Tasmania, Custodial Inspector Tasmania.

1.24. If the Advice/Instructions also relates to DSO 1.24, then TPS is not following its own DSO, as nursing staff are not medical practitioners.

The section of the dry cell management plan relating to CPHS involvement needs to be completed to make CPHS input more explicit and easily differentiated from conditions set by TPS. For example, it is not clear if CPHS provided advice on the 'On Watch' observation levels for any of the plans reviewed (see Table 1). Of the 11 dry cell management plans, only six (54.5%) contained details of the 'On Watch' level the person was placed on, and it was not clear if this was as a result of CPHS advice. Two others had 'On Watch' level details recorded on the Custodial Information System (CIS), while the remaining three had no 'On Watch' level details at all.

Table 1: Tasmanian Prison Service 'On Watch' observation levels, descriptions and monitoring requirements

Alert	Alert description	Monitoring requirements
On Watch – Level 1	Immediate high risk of suicide or self-harm identified or significant risk of attempt.	To be observed continuously.
On Watch – Level 2	Immediate risk of suicide or self-harm identified or significant risk of attempt or step down from more intensive level of watch.	To be observed at an interval no greater than 15 minutes.
On Watch – Level 3	Risk of suicide or self-harm identified requiring formal observation or step-down from more intensive level of management.	To be observed at an interval no greater 30 minutes.
On Watch – Level 4	Potential risk identified but no evidence of immediate risk identified or step down from higher level of observation.	To be observed at an interval no greater than two-hourly.
On Watch – Level 5	Potential risk identified but no evidence of immediate risk or step down from higher level of observation.	Minimum of three contacts (documented) with staff per day – contact to be spread across the day.
On Alert	Potential risk identified but no evidence of immediate risk or step down from higher level of observation.	Person at risk continues to be reviewed by the Risk Intervention Team.

This lack of consistency is concerning as it creates a risk that a person in custody may not receive the level of monitoring that has been recommended for their individual situation. There needs to be a section on the dry cell management form that clearly indicates the person's 'On Watch' level.

Focus Area 11. Ensure Correctional Primary Health Services Advice/Instructions and 'On Watch' levels are documented on dry cell management plans.

Dry cell management plans are attached near the cell door housing the person and, more recently, are eventually uploaded onto CIS so TPS staff can access it. Uploading of dry cell management plans to the CIS needs to be timely so staff in the control room can easily access the plan. The plan should serve as a reliable means for staff to know what level of monitoring is needed.

Focus Area 12. Ensure all dry cell management plans are placed on a person's *Custodial Information System* file as they are created so they can be accessed by Tasmania Prison Service staff with a duty of care for the person, including correctional officers in the control room.

There is a risk of death or medical complications resulting from swallowing drugs or otherwise concealing them internally. From an accountability and a transparency perspective, it should be clear on what basis decisions have been made and on what advice. In the cases we reviewed, this was not clearly documented in the paperwork.

The role of CPHS staff needs to be clearer to protect therapeutic relationships

The role and involvement CPHS staff have in the dry cell management process should be clear to a person in custody. A person might legitimately think, for example, that it was CPHS that required some of the restrictive and punitive conditions, such as 24-hour lighting, if the purpose is for medical isolation. Misunderstandings about CPHS staff roles in the dry cell process have the potential to damage therapeutic relationships.

We noted one case whilst monitoring where a CPHS nurse refused to sign the TPS dry cell management plan. This was in the case discussed above where a person in custody was only given finger food and required to wear a canvas gown despite not being at risk of self-harm. This refusal, given all of the above, was entirely reasonable and the staff member should be commended. Despite the nurse's refusal to sign, TPS continued with the dry cell placement. CPHS still regularly checked on the person's wellbeing.

A person in custody should be given a copy of their separation order. This means if they are separated on medical grounds, they should also be receiving the medical advice justifying their separation. We saw no evidence of this throughout our review, given we saw no evidence of medical advice at all. However, people should have the right to know what the medical advice was that justified their isolation, especially if they wish to have the separation order reviewed or question CPHS involvement.

CPHS health staff should be mindful when being asked to provide advice on dry cell management plans of Rule 32 (1)(d) of the Nelson Mandela Rules. That rule relevantly states:

> The relationship between the physician or other health-care professionals and the prisoners shall be governed by the same ethical and professional standards as those applicable to patients in the community, in particular:
> …
> (d) An absolute prohibition on engaging, actively or passively, in acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment
> …

Signing off on some of these dry cell management plans could easily be construed as a passive endorsement of inhumane conditions. At the very least, the involvement of CPHS staff in the process may jeopardise their position as caregivers as it may be seen that they are involved in what are essentially discipline and security matters.[18]

Right of review difficult to exercise when it needs to be in writing and you have nothing to write with

We found one case where the person was not given a copy of their separation order, nor were they given paper or a pen or pencil. The separation order set out the person's review rights, which required them to write to the Director of Prisons. This is an impossible task without anything to write on or with, or having the ability to look at the instrument justifying their separation and how it can be reviewed. Ideally, people in custody should be able to request a review verbally in any event, given poor literacy rates within prisons.

Focus Area 13. Tasmania Prison Service ensure people in custody always receive a copy of their separation order and are informed of their rights to request a review of this order. It should also provide writing materials to people in custody to allow them to make a written review request and explore allowing them to verbally request a review.

Women should be excluded from dry cells

DSO 1.40 applies to all people in custody, including women. We had not come across any dry cell management plans for women in custody from when we began monitoring this concern in June 2022 up until June 2024. TPS has indicated that they would not place a woman in a dry cell. In June 2024, when finalising this report, we saw evidence to the

[18] Pont J, Stover, H, Wolff H (2012) Dual loyalty in prison health care, *American Journal of Public Health*, 102(3): 475–80, doi: 10.2105/AJPH.2011.300374.

contrary as a woman was placed in a dry cell in Mary Hutchinson Women's Prison (MHWP).

We explore some of the concerns about dry cells and women below. Our research highlighted the particular risks women can face when subjected to dry cells, including potential prolonged detention in these punitive conditions.

Canadian case highlights the particular risks for women

The treatment of people in dry cells in custodial environments has been an issue of public concern in Canada for years. It was brought to greater prominence in a court case in 2021. In the Canadian Supreme Court of Nova Scotia case of *Adams v Nova Institution* [2021] NSSC 311 Ms Adams was found to be held unlawfully in a dry cell for more than 15 days. Ms Adams was suspected of internally secreting contraband in her vagina but a medical examination two days before she was discharged identified there was no contraband. The impact on Ms Adams of her solitary confinement was harrowing and had a significant toll on her mental health.[19]

Justice Keith observed at paragraph 142:

> Female inmates reasonably suspected of carrying contraband in their vagina are forced to take on additional burdens in terms of both the risk of dry cell detention and the length of dry cell detention. Including "vagina" within the definition of "body cavity" for the purposes of dry cell detention, means that the differential, negative harm facing women is distinct and significant because:
>
> 1. The predominantly involuntary menstrual process by which bodily fluids or waste (including contraband) might be expelled through the vagina is not as frequent as through the digestive tract. As such, women may become subjected to longer periods of dry cell detention where reasonably suspected of carrying contraband in a vagina – as was the case with Ms. Adams. The records show that Ms. Adams experienced a number of bowel movements but was not released from dry cell because, again, she was being detained under suspicion of carrying contraband in her vagina; and
> 2. With menopause, the risk of prolonged detention in dry cell is significantly higher and potentially indeterminate.

As a consequence of this decision, the Canadian Government amended the relevant legislation to specifically exclude someone's placement in a dry cell if contraband is suspected to have been concealed in their vagina.[20] Nova Scotia subsequently banned the use of dry cells altogether.[21]

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19 Adams v. Nova Institution, 2021 NSSC 311, paragraph 44.

20 See Division 19 of Part 5 of the Canadian Budget Implementation Act, 2022, No. 1.

21 Luck S (2021), Nova Scotia to eliminate practice of 'dry celling' in jails, (7 January 2021), CBC News, Canada.

This Canadian case demonstrates the discriminatory nature of placing a woman in a dry cell. Contraband inserted into a vagina can stay there for a long time, whereas contraband that is swallowed or inserted in the rectum, the main option for men, would be expelled with a bowel movement. However, in response to an initial draft of this report TPS noted that men can also put items under their foreskin. This could include items such as buprenorphine strips. This is a fair observation given DSO 1.40 does not refer specifically to body cavity but rather an 'item concealed internally'. Any large quantities, however, could potentially be visible during a strip search.

Women should be specifically excluded from the DSO. Although it seems unlikely a similar event, such as Ms Adams experienced, would occur in the MHWP given the conscious effort in that facility to move to a trauma informed model of care. However, as we observed in June 2024, women are placed in dry cells in Tasmania.

We note that staff are mindful of the practical realties. As one female correctional officer put it:

> "Women can carry a baby for 9 months, so dry cell management is not worth doing for females. They don't put it up their bottom (like male prisoners), they use their 'marsupial pouch'."

Focus Area 14. Exclude women from placement in dry cells.

Limits must be placed on the duration of dry cell management plans

The standard duration of dry cell management plans that we observed was 72 hours. We also observed examples of people being held for longer.

We discussed the example above of a person who was placed in a dry cell on a Wednesday and surrendered contraband on the Thursday. However, he was held until the following Tuesday due to a suspicion he had more contraband. It was not clear from the records we could access whether the suspicion was reasonable or not, just that there was a suspicion. There should have been sufficient documented reasons to understand why it was extended. Arguably, if there was no reliable information or evidence to suggest contraband was under his foreskin, he should have been released after his bowel movement on Friday showed no signs of contraband.

As outlined above, there has been a significant amount of discussion in Canada regarding the human rights concerns that have arisen about the use of dry cells.[22,23] The Office of the Correctional Investigator made a recommendation in 2011-12 to limit the time a person can be held in a dry cell to 72 hours given the impact of the often austere conditions in Canadian dry cells on people's wellbeing.[24] These conditions included 24-hour lighting and monitoring and non-standard clothing, including canvas gowns; the same conditions we observed here in Tasmania.

At the time, the Correctional Service of Canada supported the recommendation in part, indicating that some people may swallow or reinsert contraband within the 72 hours and so contraband may not be recovered unless time in the cell was extended.[25] In response to repeated recommendations in subsequent years regarding the 72-hour maximum, the Correctional Service of Canada noted that not everyone has a bowel movement in that time period, which is why it did not support a time limit.[26,27] However, movement on the issue occurred following the Nova Scotia Supreme Court case mentioned above.

Changes to the Canadian regulations governing the use of dry cells are now in progress with the proposal that any extensions to an initial 72-hour period in a dry cell be capped at 24 hours at a time, with a total maximum extension of 48 hours.[28]

We observed two occasions in Tasmania where a person was held in a dry cell for 10 days. These were the longest periods we observed. Even shorter periods can have a negative impact on a person given the conditions in the dry cells.

> During a visit we were speaking with a person in custody who was being held in a dry cell and had been there for three days. While we were present, the person was advised that he was being released from the dry cell. We observed him crying in relief. This display of emotion in a prison environment was extraordinary and upsetting to observe.

Tasmania should follow Canada's example and set a maximum duration of five days in a dry cell. Technically, administrative segregation for medical isolation can be extended up

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22 A Government of Canada regulatory impact analysis statement from 6 May 2023 relating to regulations amending the Corrections and Conditional Release Regulations sets out informative background and context to the dry cell situation in the Correctional Service of Canada. The Office of the Correctional Investigator's submission in response, dated '2023–06–01', also highlights ongoing issues.

23 Department of Public Safety and Emergency Preparedness (2023), Regulatory impact analysis statement, Government of Canada, Ottawa.

24 The Correctional Investigator Canada (2012), Annual Report of the Office of the Correctional Investigator 2011–12 Annual Report, Ottawa, p28.

25 Correctional Service Canada (2012), Response of the Correctional Service of Canada to the 39th Annual Report of the Correctional Investigator 2011–2012, Government of Canada, Ottawa.

26 Office of the Correctional Investigator (2022), Annual Report 2021–22, Ottawa, p2.

27 Correctional Service Canada (2020), Response of the Correctional Service of Canada to the 47th Annual Report of the Correctional Investigator 2019–2020, Government of Canada, Ottawa.

28 Department of Public Safety and Emergency Preparedness (2023), Regulatory impact analysis statement, Government of Canada, Ottawa.

to three months. The current standard of an initial 72 hours on a dry cell management plan should only be extended by up to two increments of 24 hours rather than the current extensions that can be for up to another 72 hours.

Any 24-hour extension should require documented evidence of why a reasonable suspicion still remains that a person has internally concealed contraband. For example, information from a body scanner and confirmation of there being no bowel movement or, in response to feedback above from TPS, the body scanner confirms an item is hidden under a person's foreskin. It should also require consultation with a medical officer as to the physical and mental health impacts of any continued placement in the dry cell.

This maximum cap should be reviewed when further evidence is obtained about the effectiveness of the dry cells to see if it can be further reduced.

Focus Area 15. Limit the initial standard period someone can be held in a dry cell to 72 hours. Any extensions should be limited to two 24-hour periods with a total maximum of five days in a dry cell. Any application for an extension, like any approval of a dry cell plan, should be supported with documented reasons setting out why there is a reasonable suspicion that the person in custody has contraband, such as information from a body scanner.

If TPS intends to continue to use dry cells, changes must be made. Recommendation 1 expands on recommendations made by Dr Petch and Professor Norris in our Adult Health Care Inspection Report 2023.

Recommendation 1

Director's Standing Order (DSO) 1.40 Managing Prisoners Suspected of Internally Concealing Items be reviewed to determine if it is necessary considering the introduction of body scanners.

If the DSO and dry cells remain necessary, the DSO is revised to prioritise the care and wellbeing of people in custody before security considerations. Any revisions should respect and protect the therapeutic relationship between Correctional Primary Health Services (CPHS) staff and people in custody.

The following specific focus areas should be addressed:

Specific focus areas for improvement

1. Lighting should not be left switched on throughout the night in any cell. People in custody should have control over the light in their cell.
2. Provide reasonable entertainment, such as access to a television, radio, books and writing material.

3. Provide appropriate privacy, such as block-out curtains, in the reception area dry cell of Risdon Prison Complex.
4. Install an intercom in the reception area dry cell of Risdon Prison Complex so people in custody can call for help in an emergency.
5. If a video camera is required in the reception area dry cell of Risdon Prison Complex to monitor activities at night, install a night vision video camera.
6. Improve record-keeping for the use of dry cells, such as through the creation of a dry cell register.
7. Ensure people in custody have clean prison issue clothing or their own clothing (if on remand) and normal bedding unless there are explicit documented health reasons why they should not, such as self-harm concerns.
8. Ensure people in custody receive standard meals unless there are explicit documented health reasons why they should not, such as self-harm concerns.
9. Ensure the contraband register, or the new dry cell register, specifies whether contraband was found or surrendered during a person's placement in the dry cell so the effectiveness of the dry cell process can be better monitored.
10. Ensure that Correctional Primary Health Services staff have access to the relevant Director's Standing Orders if they are expected to assist with dry cell operations.
11. Ensure Correctional Primary Health Services Advice/Instructions and 'On Watch' levels are documented on dry cell management plans.
12. Ensure all dry cell management plans are placed on a person's Custodial Information System file as they are created so they can be accessed by Tasmania Prison Service staff with a duty of care for the person, including correctional officers in the control room.
13. Tasmania Prison Service ensure people in custody always receive a copy of their separation order and are informed of their rights to request a review of this order. It should also provide writing materials to people in custody to allow them to make a written review request and explore allowing them to verbally request a review.
14. Exclude women from placement in dry cells.
15. Limit the initial standard period someone can be held in a dry cell to 72 hours. Any extensions should be limited to two 24-hour periods with a total maximum of five days in a dry cell. Any application for an extension, like any approval of a dry cell plan, should be supported with documented reasons setting out why there is a reasonable suspicion that the person in custody has contraband, such as information from a body scanner.

The Department of Justice supported this recommendation in full. It has outlined in its response that some of the focus areas listed above have already been actioned and steps are being taken to implement others. Full details can be found at *Appendix 1 - Department of Justice response.*

The Department of Health noted that all of our recommendations fall within the jurisdiction of the Department of Justice. However, the Acting Secretary stated that the Department of Health fully supports all of the recommendations in this report. The Department of Health committed to working constructively with the Department of Justice to ensure that the rights of people in custody in the care of the TPS are upheld. The Acting Secretary specifically noted that focus areas 10 and 11 are fully supported. Full details can be found at *Appendix 2 - Department of Health response*.

Human rights training

It was a credit to the TPS staff who brought the dry cell issue to our attention but concerning that some of the practices we identified were allowed to occur in the first place. Human rights training needs to be provided to supervisors to help prevent inhumane treatment. Such training is an important part of building a positive human rights culture.

During hearings for the Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters, union representatives gave evidence about the lack of training for new supervisors and reasons why they think training should occur.[29] It seems sensible that new supervisors should be receiving appropriate training for their new role. The concerns highlighted above regarding dry cells would suggest that any such training should go into detail about the minimum human rights standards for people in custody.

Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that education and information regarding the prohibition against torture are fully included in the training of people involved in the custody or treatment of any individual subjected to detention or imprisonment. We obtained information about training for new correctional officer recruits on international human rights standards for people in custody. It was relatively basic in nature and there is room for it to be expanded for new correctional officer recruits. New supervisors certainly need more advanced training on human rights.

Leaders in the prison should have a comprehensive understanding of basic human rights standards so they can lead by example. They should ensure breaches, such as placing people in constantly lit cells, do not occur.

Recommendation 2

Training for TPS supervisors should include a dedicated unit on human rights standards for people deprived of their liberty.

The Department of Justice fully supported this recommendation and went further, stating it would provide human rights training to all managerial staff. Full details can be found at *Appendix 1 - Department of Justice response*.

The Department should consider, as part of the creation of its training package, how best it can ensure staff are aware of Tasmania's whistleblowing legislation. Educating staff about the *Public Interest Disclosures Act 2002* (the PID Act) and how to make a protected disclosure is important in the event they have concerns about human rights obligations being breached. Public officers in TPS can make disclosures under the PID Act to the

[29] Legislative Council Government Administration B (2023), Inquiry into Tasmanian adult imprisonment and youth detention matters – transcript of evidence, Parliament of Tasmania, Hobart, pp 3–5.

Department, the Ombudsman or the Integrity Commission about improper conduct. As indicated above, under the heading *From the Custodial Inspector,* people can also raise issues with the Custodial Inspector but unfortunately there are currently no protections from reprisal for doing so. Improving accountability and transparency are critical elements of building a positive human rights culture and research has shown that internal reporting is seen as the single most important method through which wrongdoing is brought to light.[30]

The PID Act is a relatively underutilised means to report improper conduct in Tasmania. We note that the Woolcott Review, arising from the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings, is currently underway and its terms of reference include examination and analysis of the policy and legislative framework relevant to matters of misconduct in the Tasmanian State Service. This will hopefully mean the effectiveness of the PID Act is reviewed as part of that process.[31]

[30] Brown AJ, et al (2017) Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government. Key Findings and actions of Whistling While They Work 2, Griffith University, August 2019, p 8.

[31] The terms of reference for the Woolcott Review, which include the examination and analysis of the policy and legislative framework relevant to matters of misconduct in the Tasmanian State Service, can be found at https://keepingchildrensafe.tas.gov.au/reviews.

The use of dry cells has impacts on staff

We heard from staff about the impact of the dry cell process on them during our various visits and inspections.

Processing faeces

During a visit we observed a correctional officer processing faeces in a specially designed machine. The machine is used to determine if faeces contains any contraband. Staff wear gloves and do not need to come into contact with faeces to operate the machine. Water, combined with sanitising liquid, is sprayed onto the faeces and toilet paper and the waste can be agitated to break it down, with the concept that any contraband remains and can then be removed through a drawer in the machine.

The machine is not completely airtight due to the drawer. The brochure for the machine claims there are no foul odours. However, our experience was to the contrary. The smell in the room was overpowering and it was difficult to suppress gag reflexes. The maintenance of the machine ought to be reviewed. The staff member who showed us the machinery indicated that this was not an issue for them as they did not have a sense of smell. Not all staff are in that position. For most it is an unpleasant job, which also does not seem to have the benefit of delivering results. This is assuming the poor contraband retrieval rate we observed over a six-month period, as documented above, is an effective indicator.

The brochure for the machine, which is made overseas, states that an anti-microbial concentrate ensures that items retrieved from the system are sterilised and protects and prevents the spread of diseases and bacteria such as hepatitis, 'AIDS'[32], 'STD's' [sic] and 'coronavirus'. Putting aside some of the questionable claims of the brochure, the fact that the machine is not a completely closed system poses potential risks. Staff processing the faeces could potentially be exposed to airborne pathogens. In addition, this machine is stored in a small room and on the other side of the door is where food is temporarily stored each day for people in custody. Staff and people in custody also regularly go past this room when transporting the food, although the door is usually closed so any risk is likely lessened.

Not all Tasmanian prisons have access to this machine. During the course of this review we heard anecdotal reports of correctional officers at some interstate prisons having to process faeces with the use of a bucket and gloves to identify if there was any contraband, so this machine is obviously preferable to that. We spoke with one senior TPS staff member who indicated they do not require their staff to sort through faeces to identify if it

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[32] The brochure is incorrect, AIDS is a syndrome not a disease and it cannot be spread from one person to another. HIV, the virus that may lead to disease, can be spread through contact with bodily fluids - such as blood, semen, and vaginal and anal fluids - of people with a detectable HIV viral load.[#*]

[*]National Health Service (2021). *Overview: HIV and AIDS*, National Health Service website.
[#]HIV.gov (2023), *What are HIV and AIDS?*, HIV.gov website

contains any contraband. This raises questions about why it is necessary to restrict running water for people in custody on dry cell management plans.

Recommendation 3

TPS undertake a review of the environmental health conditions for staff involved in monitoring dry cells, including:

- testing for any pathogens on the external surfaces of the machine used to process faeces;
- assessing any risks to staff and people in custody from potential airborne pathogens; and
- ensuring appropriate maintenance on the machine is undertaken and relevant staff have access to training material on its use.

The Department of Justice supported this recommendation in full. It stated that the review would be conducted as a matter of urgency. The Department undertook to have this recommendation completed by October 2024. Full details can be found at *Appendix 1 - Department of Justice response*.

Some staff are concerned about the lack of an intercom

We spoke with correctional officers who raised concerns with us about the lack of an intercom in the reception area dry cell. They were very aware of the inherent risks involved for people who have internally concealed drugs and were concerned that people in the reception area of RPC could not call for emergency assistance. They spoke about not wanting to come in to work in the morning to discover a dead body. The staff spoke of the steps they undertake to remind control room staff and others on duty of people's placement in the dry cell so they would not be accidentally overlooked overnight.

The correctional officers highlighted the need for an intercom as they questioned whether the two-hourly checks in the evening and overnight always happen. They noted a recent occasion when the night shift was significantly short-staffed and queried if checks might be missed in those circumstances. At a similar period of time and as previously noted above, we asked TPS for records of the welfare checks conducted for a person in the dry cell in 2024 and we were advised there were none. We have previously directly observed a night shift worker making a record of a two-hourly check. Documenting welfare checks is a practice that should happen and records should be available.

Reports of some staff being instructed not to engage with people in dry cells

Correctional staff also spoke to us about being instructed to not engage with people in the reception area dry cell. They said they have been advised that only the Direct Response Team (DRT) staff are to engage with people in a dry cell. DRT are specially trained correctional officers in advanced use of force and wear tactical gear.

The correctional staff we spoke with were concerned about this unnecessary social isolation of people in the dry cells. We found no documented evidence requiring non-DRT staff to avoid engagement with people in dry cells, but we have no reason to doubt the information provided to us. We have seen multiple case notes from DRT staff and directly observed DRT staff dealing with people in dry cells, including providing food, conducting searches and escorting people to exercise yards.

We have highlighted elements of dry cells that lead to inhumane treatment of people in custody. The conditions in the cells, and subsequent duties and obligations, also have an impact on the staff supervising people in them.

Drugs in prison

Dry cells are used in prisons, as discussed above, to capture contraband or stop it entering prisons. The contraband is most commonly drugs. Drugs in prison present a danger to people in custody through negative health impacts, standover behaviour, and violence from people who are drug affected. Staff are also at risk responding to these issues.

Considering the issue of the use of dry cells from a preventive perspective, it is important to examine what broader steps are being taken to address the issue of drugs in prison, including addressing drug addiction. If there are fewer drivers for people to try to bring drugs into prison, there would be less need to use dry cells.

Dr Petch explored substance use management in our Adult Health Care Inspection Report 2023 from page 255 to 271.[33] Dr Petch identified that the prison is not being as effective as it could be in relation to making a positive contribution to the drug and alcohol problem in Tasmania.

Implementing recommendations 78 through to 90 from Dr Petch's report will arguably help better address the underlying issue of drugs in Tasmanian prisons and the treatment of substance misuse. Dr Petch's recommendations ranged from reviewing policy and protocols regarding management of alcohol and other drug management withdrawal to ensure adequacy of care through to developing a business case for establishing an adequate number of alcohol and other drug counsellors. For ease of reference, the Department of Justice and Department of Health responses to all of these recommendations from the Adult Health Care Inspection Report 2023 have been included at *Appendix 3 - Department of Justice and Department of Health responses to Substance use management recommendations made in the Adult Health Care Inspection Report 2023*. The responses from both departments are clear - many of the recommendations require additional funding to be implemented.

As Dr Petch has outlined in his report, trying to stop or reduce the amount of drugs coming into prison is only part of the puzzle, and as we have discussed above, dry cells are not resulting in many drugs being found. We have highlighted in this report Dr Petch's discussion in relation to substance use management to reiterate the importance of those recommendations in ultimately helping to prevent ill treatment of people in custody. If people are not driven to bring drugs into prison then the need for dry cells, and the dangers they present in terms of ill treatment, is also reduced.

[33] Office of the Custodial Inspector Tasmania (2024), Adult health care inspection report 2023: inspection of adult custodial services in Tasmania, Custodial Inspector Tasmania.

Conclusion

The use of dry cells has not been a topic of much analysis or review in Australia. However, international experience in Canada has highlighted that dry cells present a serious risk to human rights in custodial environments. Our review has confirmed it is a serious issue here in Tasmania.

The way people in custody are treated, given the limited power they hold, is a reflection on those with power. In Tasmania, when it comes to dry cells, this reflection leaves much to be desired. TPS needs to change dry cell regimes to improve the treatment of people in custody. Preferably, the use of dry cells needs to cease.

Fundamental human rights principles which prevent torture or other degrading treatment must be at the front end of the decision-making process, rather than being subservient to matters such as security. They must be the touchstone for all decisions to ensure similar ill treatment we have observed in dry cells does not occur in the future.

Appendix 1 - Department of Justice response

Department of Justice
OFFICE OF THE SECRETARY

Level 1, 85 Collins St, Hobart TAS 7000
GPO Box 825 Hobart TAS 7001
Phone 03 6165 4943
Email secretary@justice.tas.gov.au Web www.justice.tas.gov.au

Tasmanian Government

Mr Richard Connock
Custodial Inspector
Office of the Custodial Inspector

Email: ci@custodialinspector.tas.gov.au

Dear Mr Connock

Departmental response to the "Inhumane Treatment in Dry Cells 2024 Review"

Thank you for the opportunity to provide a response to the Inhumane Treatment in Dry Cells 2024 Review.

The Department of Justice response is attached to this correspondence.

If you require any clarification or any further information, please do not hesitate to contact Tristan Bell, Assistant Director, Tasmania Prison Service at Tristan.Bell@justice.tas.gov.au or [redacted]

Yours sincerely

Rod Wise
Deputy Secretary, Corrective Services

25 July 2024

CM: DOC/24/91197

Department of Justice comments

The Department of Justice (the Department) acknowledges the work undertaken by the Custodial Inspector and his staff in relation to this report.

The Department accepts the comments made in relation to dry cell management and the various findings and recommendations that flow from them. The Department accepts the recommendations made by the Custodial Inspector in full and has commenced working towards fulfilling these recommendations.

The Department further acknowledges the comments made throughout this report and accepts that the standards expected in placing someone on a dry cell management plan have not always been met. Further, the Department agrees with the comments of the Custodial Inspector that, “Safeguarding the security of a prison and seeking to restrict the trafficking of contraband is important and plays a role in ensuring wellbeing. However, this must be balanced by ensuring people are treated with dignity and respect and they are held in appropriate conditions.” The TPS has always sought to balance these objectives but acknowledges that in attempting to ensure safe and secure facilities, the balance has not always been maintained as required. The TPS supports the view that any system which is unable to balance both objectives is not acceptable.

One of the greatest risks to the operation of safe and secure facilities is the introduction and movement of contraband. Ingesting, inserting or otherwise concealing items on or in the body, is an established method of bringing contraband into a prison. To ensure the safety of staff, visitors and prisoners/remandees, safe systems that detect contraband must be in place. Concealed items such as drugs and weapons have the potential to cause serious injury or death in a prison environment, and it is incumbent upon the TPS to ensure that strong mechanisms are in place to recover concealed items from prisoners. Where there is a reasonable suspicion that a prisoner is in possession of contraband, particularly contraband that may cause harm, it must act to ensure safety for everyone who may be impacted.

Whilst acknowledging that requirement, the TPS also understands that any decision that has the potential to impact on the human rights of an individual must be made carefully and that maintaining fundamental human rights must be given priority.

Actions are already underway to address many of the concerns that have been raised. For example, the practice of cells being constantly lit in the evenings has ceased, the TPS is exploring methods of remotely dimming or turning off cell and hallway lights, quotes have been sought to install a call button in the Reception cell, block out curtains have been made and are awaiting installation, canvas gowns and finger food are no longer used (other than as required for SASH prevention), and the Director’s Standing Order (DSO) governing dry cell management is under active review.

A growing development for corrections in Australia is the utilisation of X-ray body scanners for security screening of people in custody. To maintain advancements in contemporary corrections the TPS is well advanced with the installation of body scanner technology

across TPS facilities, with scanners now having been installed across all Southern facilities where they will be used. Staff have been trained in radiation safety, policy has been developed and user training will shortly commence. The TPS anticipates commencing the use of body scanning technology in the coming months.

Body scanners will be able to detect objects on or inside a person's body and clothing without the need to physically remove items of clothing or make any physical contact with the person being searched. As well as the benefits to those being searched, the scanners will have a positive impact in our correctional facilities through increased safety for staff, reduction in the time required by correctional officers to conduct searches and the likely deterrent effect the scanners will have in people attempting to bring contraband into a correctional facility. The TPS looks forward to this technology becoming operational during 2024.

The TPS expects that the commencement of the use of body scanners will provide a strong opportunity to consider how dry cell management is used, or if indeed dry cell management is required at all into the future.

The Department thanks the Custodial Inspector for the opportunity to provide comment on the draft report and responses to the recommendations, noting that there have already been a number of matters that have been reviewed since the inspection was undertaken.

Department of Justice response to recommendations

1 Director's Standing Order (DSO) 1.40 Managing Prisoners Suspected of Internally Concealing Items be reviewed to determine if it is necessary, considering the introduction of body scanners.

If the DSO and dry cells remain necessary, the DSO is revised to prioritise the care and wellbeing of people in custody before security considerations. Any revisions should respect and protect the therapeutic relationship between Correctional Primary Health Services (CPHS) staff and people in custody.

The following specific focus areas should be addressed:

Specific focus areas for improvement

1. Lighting should not be left switched on throughout the night in any cell. People in custody should have control over the light in their cell.
2. People in custody should have control over the light in their cell.
3. Provide reasonable entertainment, such as access to a television, radio, books and writing material.
4. Provide appropriate privacy, such as block-out curtains, in the reception area dry cell of Risdon Prison Complex.
5. Install an intercom in the reception area dry cell of Risdon Prison Complex so people in custody can call for help in an emergency.
6. If a video camera is required in the reception area dry cell of Risdon Prison Complex to monitor activities at night, install a night vision video camera.
7. Improve record-keeping for the use of dry cells, such as through the creation of a dry cell register.
8. Ensure people in custody have clean prison issue clothing or their own clothing (if on remand) and normal bedding unless there are explicit documented health reasons why they should not, such as self-harm concerns.
9. Ensure people in custody receive standard meals unless there are explicit documented health reasons why they should not, such as self-harm concerns.
10. Ensure the contraband register, or the new dry cell register, specifies whether contraband was found or surrendered during a person's placement in the dry cell so the effectiveness of the dry cell process can be better monitored.
11. Ensure that Correctional Primary Health Services staff have access to the relevant Director's Standing Orders if they are expected to assist with dry cell operations.
12. Ensure Correctional Primary Health Services Advice/Instructions and 'On Watch' levels are documented on dry cell management plans.
13. Ensure all dry cell management plans are placed on a person's Custodial Information System file as they are created so they can be accessed by Tasmania Prison Service staff with a duty of care for the person, including correctional officers in the control room.
14. Tasmania Prison Service ensure people in custody always receive a copy of their separation order and are informed of their right to request a review of this order. It should also provide writing materials to people in custody to allow them to make a written review request and explore allowing them to verbally request a review.
15. Exclude women from placement in dry cells.
16. Limit the initial standard period someone can be held in a dry cell to 72 hours. Any extensions should be limited to two 24-hour periods with a total maximum of five days in a dry cell. Any application for an extension, like any approval of a dry cell plan, should be supported with

documented reasons setting out why there is a reasonable suspicion that the person in custody has contraband, such as information from a body scanner.

Response

DSO 1.40 is currently under active review as part of the delivery of body scanning technology and the Astria digital solution. The TPS continues to balance the care and wellbeing of people in custody with security considerations. Body scanning technology will replace personal searches as the routine method of detecting contraband, offering a more trauma informed approach that minimises harm and improves detection rates.

As per the recommendation, the TPS will consider whether dry cell management will remain a necessary approach as part of the review of the DSO and implementation of body scanning technology. Subject to the outcome of that review, the exclusion of women from the DSO's operation will also be considered.

Several parts of this recommendation have already been addressed or are in the process of being addressed, including:

- the practice of cells being constantly lit in the evenings has ceased; the TPS is exploring methods of remotely dimming or turning off cell and hallway lights;
- curtains have been custom-made for the dry cell at RPC Reception and the TPS is awaiting components to complete installation;
- the TPS has sought a quotation for the installation of an intercom in the RPC Reception dry cell;
- the TPS is obtaining a quotation for the installation of infrared cameras to reduce the need for cells to be lit at night while maintaining visibility;
- the TPS is exploring the viability of installing a television in the RPC dry cell;
- the routine practice of removing mattresses in the morning has ceased, unless SASH risk requires this;
- finger food and canvas gowns will not form part of dry cell management unless required to mitigate SASH risk;
- the separation of prisoners will be managed within Astria, with work underway to ensure that staff have access to relevant information;
- on 3 January 2024 the TPS implemented a central separation register. This includes identification of dry cell management; and
- on 3 July 2024 the TPS gave all CPHS staff access to the Director's Standing Orders via SharePoint, extending the existing access beyond key CPHS personnel. A process has been established to ensure CPHS staff arrivals and departures are communicated to TPS Policy for the ongoing management of access for CPHS staff.

Level of acceptance	Supported
Responsible agency(ies)	Department of Justice
Responsible business area	Various
Proposed completion date	Various

2 Training for TPS supervisors should include a dedicated unit on human rights standards for people deprived of their liberty.

Response

TPS strongly supports this recommendation and will ensure that a relevant unit is sourced or developed. In addition, the TPS is supportive of providing this training to all staff in managerial positions.

Level of acceptance	Supported
Responsible agency(ies)	Department of Justice
Responsible business area	TPS Training
Proposed completion date	Developed in time to be incorporated in the next Supervisors training course (none currently scheduled).

3 TPS undertake a review of the environmental health conditions for staff involved in monitoring dry cells, including:

- testing for any pathogens on the external surfaces of the machine used to process faeces;
- assessing any risks to staff and people in custody from potential airborne pathogens; and
- ensuring appropriate maintenance is undertaken on the machine and relevant staff have access to training material on its appropriate use.

Response

The environmental health conditions for staff involved in monitoring dry cells will be reviewed as a matter of urgency to ensure that the risks of airborne pathogens and other concerns are mitigated, standard precautions for staff who risk encountering bodily fluids are adhered to, and a clear process for the use and maintenance of the machine is documented.

Level of acceptance	Supported
Responsible agency(ies)	Department of Justice
Responsible business area	RPC
Proposed completion date	October 2024

Appendix 2 - Department of Health response

Department of Health

GPO Box 125, HOBART TAS 7001, Australia
Web: www.health.tas.gov.au

Tasmanian Government

Contact: James Ellingworth
Phone: (03) 6166 0823
E-mail: james.ellingworth@health.tas.gov.au
File: SEC24/1310

Richard Connock
Custodial Inspector
Office of the Custodial Inspector Tasmania
ci@custodialinspector.tas.gov.au

Dear Richard

Subject: Draft inhumane treatment in dry cells report

Thank you for the opportunity to make representations in response to the Draft inhumane treatment in dry cells report and its recommendations.

I commend you on this important and informative work, and your compassionate and constructive approach to presenting your findings.

The Letter of Intent between the Department of Health and the Department of Justice indicates that the Department of Justice (who has legal custody of a shared client) is both responsible and accountable for the care and welfare of that person. In line with your report and this Letter of Intent, the recommendations fall within the jurisdiction of the Department of Justice.

However, the Department of Health fully supports the recommendations and commits to working constructively with the Department of Justice to ensure that the rights of the prisoners within custody of the Tasmanian Prison Service are upheld. In relation to Recommendations 10 and 11, the Department of Health fully support these, noting that the involvement from Correctional Primary Health Service for prisoners within dry cells are to take initial health observations of the prisoners as they enter the dry cells and are available should the Tasmanian Prison Service request further assistance to fulfil their duty of care.

I reaffirm that my agency is genuinely committed to contributing to improved health service responses and better outcomes, for people involved in the Justice system.

This is demonstrated, for example, in the implementation of the Prisoner Mental Health Service currently being progressed and due to be fully operationalised in the latter half of 2024 and the continued collaboration with the Department of Justice to improve health outcomes for prisoners based on the Adult Health Care Inspection Report.

If you require further follow-up, please contact Forensic Mental Health and Correctional Primary Health Services on 6166 0824 or email fhs.eso@ths.tas.gov.au.

I look forward to seeing the final report.

Yours sincerely

Dale Webster
Acting Secretary

26 July 2024

Appendix 3 - Department of Justice and Department of Health responses to Substance use management recommendations made in the Adult Health Care Inspection Report 2023

78 **Improve conditions within the dry cell, which is used to house prisoners suspected of internally concealing contraband, including installation of a call button and increasing frequency of levels of observation.**

Level of acceptance

Department of Justice	Supported
Department of Health	Responsibility of another agency

Responses

Department of Justice

The TPS is obtaining a quotation for the installation of an intercom in the RPC Reception dry cell and other improvements will be undertaken.

Department of Health

[No further comments provided]

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79 **Increase screening of staff, contractors and visitors on entry and at random (including drug testing).**

Level of acceptance

Department of Justice	Supported in principle
Department of Health	Responsibility of another agency

Responses

Department of Justice

Broader legislative and policy amendments would be required for drug testing staff. Staff and their property are routinely searched on arrival to all higher security prisons, including random searches by drug detector dogs.

Consideration will be given to increasing screening of staff, contractors and visitors.

Department of Health

[No further comments provided]

80 Base AOD waiting lists on all those who require the service, not on legal status. Use this waiting list to assist making the case for development of AOD services.

Level of acceptance

Department of Justice	Supported in principle
Department of Health	Supported - Responsibility shared with another agency

Responses

Department of Justice

The TPS is supportive of expanding the services provided, however funding is required.

Department of Health

[No further comments provided]

81 Deliver AOD treatment to people who require it rather than limiting treatments to those for whom community services are being allocated.

Level of acceptance

Department of Justice	Supported in principle - Responsibility shared with another agency
Department of Health	Responsibility of another agency

Responses

Department of Justice

The TPS has little control over the availability of community delivered services. However, the TPS is supportive of expanding the services provided but funding is required.

Department of Health

CPHS and ADS have expanded treatment for prisoners requiring AOD treatment.

82 Review policy and protocols regarding management of alcohol and drug withdrawal to ensure adequacy of care.

Level of acceptance

Department of Justice	Supported in principle - Responsibility shared with another agency
Department of Health	Supported - Responsibility shared with another agency

Responses

Department of Justice

The TPS will work with CPHS to review policy and protocols.

Department of Health

CPHS & ADS

83 Include therapy as part of the opiate replacement program as per treatment guidelines.

Level of acceptance

Department of Justice	Responsibility of another agency
Department of Health	Supported - Responsibility shared with another agency

Responses

Department of Justice

[No further comments provided]

Department of Health

Additional resources required to enable achievement of the recommendation.

84 Review criteria for placement on Opioid Replacement Therapy (ORT).

Level of acceptance

Department of Justice	Responsibility of another agency
Department of Health	Supported

Responses

Department of Justice

[No further comments provided]

Department of Health

Additional resources required to enable achievement of the recommendation

85 The leadership and structure of the delivery of AOD services is reviewed to ensure it is fit for purpose, contemporary and meets the needs of the prison population.

Level of acceptance

Department of Justice	Supported
Department of Health	Supported - Responsibility shared with another agency

Responses

Department of Justice

The TPS will undertake a review.

Department of Health

Additional resources required to enable achievement of the recommendation

86 **Parameters of eligibility for all AOD treatments and programs need to be created which reflect patient need. Criteria based purely on legal parameters (e.g. remand status) should be abolished. Waiting lists should be then used where necessary to demonstrate service insufficiency. Adequate support and clinical supervision for AOD staff, including off site support where required, should be structured into the program and fully funded to enable all treating staff to have sufficient access as part of the role.**

a. **A space be identified for the delivery of a residential AOD therapeutic program pending the outcome of the business case for development of Division 8 in Ron Barwick Prison (RBP). Suitable prisoners should be identified for the program, moved to this area and the program initiated without delay. Whilst the program could be structured around the principles of Pathways, it needs multidisciplinary input and close integration with community AOD services, and with community services. Any carefully generated culture needs maintenance, or it can erode over time and this reduces program effectiveness.**
b. **Custodial and therapeutic staff for this unit should be carefully selected.**
c. **The effectiveness of the program should be evaluated.**

Level of acceptance

Department of Justice	Supported in principle
Department of Health	Supported - Responsibility shared with another agency

Responses

Department of Justice

The TPS will undertake a review to consider each of these factors.

Department of Health

[No further comments provided]

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87 **Develop a business case for the establishment of an adequate number of AOD counsellor positions**

Level of acceptance

Department of Justice	Supported in principle
Department of Health	Supported

Responses

Department of Justice

The TPS supports adequate resourcing being available to deliver AOD services. In the 2023-24 Budget, funding of $375k p.a. was provided to facilitate increased drug and alcohol interventions to prisoners. Any business cases for funding need to be considered in the broader context of funding requests.

Department of Health

Additional resources required to enable achievement of the recommendation

88 Introduce bleach needle-washing facilities and/or introduce needle exchange facilities.

Level of acceptance

Department of Justice	Supported - Responsibility shared with another agency
Department of Health	Supported in principle - Responsibility shared with another agency

Responses

Department of Justice

CPHS is currently reviewing options for re-introducing bleach needle washing facilities with the in principle support of TPS.

Department of Health

Senior Management Team, the TPS leadership committee have approved this recommendation but work is still underway to implement this

89 AOD services deliver a range of education programs to CPHS staff and TPS staff regarding drug use in prison and treatment approaches.

Level of acceptance

Department of Justice	Supported in principle - Responsibility shared with another agency
Department of Health	Supported in principle - Responsibility shared with another agency

Responses

Department of Justice

The TPS will work with CPHS to explore options to deliver education and training to all staff.

Department of Health

Additional resources may be required to enable achievement of the recommendation

90 Develop a multi-agency interdisciplinary model of care for AOD service provision which extends into the community and uses the services of community providers who have contracts or Service Level Agreements (SLAs) to deliver coordinated services.

Level of acceptance

Department of Justice	Supported - Responsibility shared with another agency
Department of Health	Supported in principle - Responsibility shared with another agency

Responses

Department of Justice

Existing Initiative.

In 2022, Statewide Mental Health Services commenced a multi-agency project titled 'Review of Alcohol and Drug Treatment for Tasmanian Prisoners'. This comprehensive review has enabled the development of a related Action Plan and the establishment of the Continuing Care: Alcohol, Tobacco, and Other Drug (ATOD) Treatment for People In, Entering and Exiting Secure Facilities in Tasmania Project (Continuing Care Project) Steering Committee.

The Continuing Care Project Steering Committee consists of representatives from multiple government agencies, non-government organisations, people with a lived or living experience of ATOD use, and people with a lived or living experience as a family member, friend, or support person of a person who uses ATOD.

The Action Plan was developed collaboratively with key stakeholders from relevant government departments (Department of Justice, Department for Children, Education and Young People), non-government organisations, and people with lived experience.

Relevant SLAs will be put in place to support the work arising from the Action Plan.

Department of Health

Additional resources required to enable achievement of the recommendation

Office of the
Custodial
Inspector
Tasmania

Telephone: 1800 001 170
Email: ci@custodialinspector.tas.gov.au
Website: www.custodialinspector.tas.gov.au