



**Office of the
Custodial Inspector**
Tasmania

Annual Report

2022-23

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 functions and operations of the Custodial Inspector for the year ending 30 June 2023.

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

Enquiries about this annual report and/or requests for it in alternative formats should be directed to:

Level 6, 86 Collins Street, Hobart Tasmania 7000
Telephone: 1800 001 170 (free call)
Email: ci@custodialinspector.tas.gov.au

Website: www.custodialinspector.tas.gov.au

ISSN: 2208-682X (Print)
2209-8038 (Online)

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1 From the Custodial Inspector

This had been the seventh year of operation for the Office of the Custodial Inspector. During the reporting year we conducted five inspections. In adult custodial centres these inspections related to inspection standards concerning:

- wellbeing;
- custody; and
- physical healthcare and substance use management.

The two inspections for Ashley Youth Detention Centre (AYDC) related to inspection standards concerning:

- wellbeing; and
- physical healthcare and substance use management.

The reports will be issued in the current reporting year. We continue to catch up on our inspection schedule which had been delayed because of the impacts of COVID-19.

My team also conducted visits to custodial centres throughout the year in addition to the announced inspections. These were generally unannounced visits and included evening visits to the Hobart Reception Prison and the Risdon Prison Complex, and a visit on a Sunday to AYDC. These visits served a number of different purposes including assisting with monitoring activities and follow up visits relating to previous inspections.

Unannounced visits are an important preventive tool to address risks relating to inhumane treatment. They are also a key tool in ensuring compliance with Australia's obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It is likely that the Office of the Custodial Inspector will soon have a key role to play in Tasmania in fulfilling Australia's obligations under OPCAT.

I was appointed as the Tasmanian National Preventive Mechanism (NPM) in February 2022 under the *OPCAT Implementation Act 2021*. A considerable amount of work has been done in the reporting year by my Project Manager to scope the implementation of the Office of the Tasmanian NPM, including the impending publication of the implementation report. This new office will be tasked with visiting places of detention to ensure that people being held there are treated humanely. There is going to be a large degree of overlap with my function as the Custodial Inspector given its functions closely align with the NPM and the soon to be published implementation report will make recommendations to government on a pathway forward.

An influence of OPCAT can already be seen in the work to revise my inspection standards, which I use when conducting mandatory inspections of AYDC and adult custodial centres. I reported last year that I intended to revise these documents, which I published in my first year of operation. I have incorporated this task into the work forming part of the implementation of the NPM. I have been fortunate to engage the expertise of Emeritus Professor Neil Morgan, a former Inspector of Custodial Services in Western Australia, and Megan Mitchell AM, a former National Children's Commissioner, to revise my inspection standards. Part of this work involved a familiarisation tour of Tasmanian places of detention and meetings with various stakeholders in May 2023. A key focus has been to ensure the standards are reflective of current best practice and OPCAT compliant. Consultation with stakeholders on the draft standards will occur in the current financial year before their finalisation and publication.

Another focus for this office in the reporting year has been on staff training and development. My office has increased in the reporting year to three permanent full time staff. My team is relatively new, with my Principal Officer and Administration and Research Officer starting with the office this reporting year and my Senior Inspection Officer commencing halfway through the previous reporting year. The work of inspecting custodial centres is quite specialised and I have outlined in detail below some of the opportunities my staff have pursued to increase their expertise in this regard.

I also detail below a number of issues relating to the conditions of people in places of detention. Lockdowns, where people cannot leave their cells or accommodation units, continue to be one of the most significant issues. They have far reaching ramifications for the welfare of people in detention with significant impacts on mental and physical health, rehabilitation, and engagement with family and friends. Sadly, lockdowns became an issue this reporting year in AYDC and continue to be an ongoing problem in adult custodial centres.

Richard Connock
Custodial Inspector
17 October 2023

2 Overview

2.1 Background

The *Custodial Inspector Act 2016*, which established the office of the Custodial Inspector, commenced on 16 November 2016.

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

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

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

2.2 Staffing and resources

2.2.1 Staff

As well as being Custodial Inspector I hold a number of other statutory appointments including that of Ombudsman, Health Complaints Commissioner, Principal Mental Health Official Visitor, Coordinator of the Prison Official Visitors Scheme and the Tasmanian NPM. I am also responsible for external reviews of assessed disclosure applications under the *Right to Information Act 2009*. As a result, I can only dedicate a portion of my time to the Custodial Inspector role and I have delegated all of my functions and powers under sections 6 and 8 of the *Custodial Inspector Act 2016* to my staff.

The permanent staffing establishment of the office is the Inspector and three full time staff:

- Principal Inspection Officer
- Senior Inspection Officer; and
- Administration and Research Officer.

On 6 September 2022 the Premier, the Hon Mr Jeremy Rockliff MP, said in respect of AYDC:

The centre has strong independent oversight mechanisms including through the Custodial Inspector and the Commissioner for Children and Young People. Discussions have commenced with the Custodial Inspector regarding additional support to enable robust oversight and real-time feedback.

During initial discussions the Tasmanian Government sought for my team to increase its presence at AYDC to at least multiple visits each month. I am not, however, resourced to provide this level of monitoring of AYDC. Currently, I have the capacity to conduct up to a maximum of four inspections a year and ad hoc visits when resourcing permits.

My office subsequently had a number of discussions with the Department for Education, Children and Young People (DECYP) over the reporting year regarding additional support. Unfortunately, no outcome was reached and so in 2023-24 discussion will be ongoing with the Department of Justice and the Department of Treasury and Finance about additional funding.

2.2.2 Budget

Budget reporting is contained in the Ombudsman Tasmania Annual report. The financial reports are audited by the Tasmanian Audit Office.

2.2.3 Consultants

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

The use of consultants is vital to provide independent expert advice and opinion to assist with and support inspections. To enhance the capacity of the office to inspect specialised areas in custodial services, an expert consultant was engaged for our physical healthcare and substance use management inspection. As indicated above, we also engaged consultants to assist with the review of our inspection standards.

Fees associated with consultancies are a major but necessary expense for the Office of the Custodial Inspector given the broad range of expertise required to inspect against all standards. It is not always possible to locate local consultants with relevant expertise and the Office of the Custodial Inspector has engaged consultants from interstate. Doing so incurs extra costs for travel and accommodation.

2.3 Functions and powers

2.3.1 Jurisdiction of the Inspector

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

The adult custodial centres included in the Custodial Inspector's jurisdiction are:

- Risdon Prison Complex (RPC), which includes:
 - maximum units
 - medium units
 - the new Southern Remand Centre;
- Mary Hutchinson Women's Prison (MHWP);
- Hobart Reception Prison (HRP); and
- Launceston Reception Prison (LRP).

The Tasmania Prison Service (TPS) operates these centres.

AYDC is Tasmania's only youth custodial centre. DECYP operates AYDC.

All prisoner and detainee transport vehicles are also within the jurisdiction of the Custodial Inspector.

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

2.3.2 Functions of the Inspector

The functions of the Custodial Inspector are set out in section 6 of the *Custodial Inspector Act 2016* as follows:

6. Functions

(1) The inspector has the following functions:

- (a) to carry out a mandatory inspection of each custodial centre at least once every 3 years;
- (b) to carry out an occasional inspection and review of any custodial centre at any time, of his or her own accord or as requested by the responsible Minister;

(c) to prepare and publish guidelines and standards in relation to the conduct of inspections;

(d) to report to the responsible Minister or Parliament on the various inspections carried out by the Inspector;

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

(f) to report to Parliament on any particular issue or general matter relating to the functions of the Inspector is requested to do so by either House of Parliament or a Committee of either House of Parliament;

(g) to provide an annual report to Parliament;

(h) to include in any report such advice or recommendations as the Inspector thinks appropriate including, but not limited to –

(i) advice or recommendations relating to the safety, custody, care, wellbeing and rehabilitation of prisoners and detainees; and

(ii) information relating to education and programs to assist in the rehabilitation of prisoners and detainees;

(i) such other functions as may be conferred or imposed on the Inspector under this or any other Act.

(2) The Inspector may from time to time amend the guidelines and standards prepared and published under subsection (1).

2.3.3 Powers of the Inspector

The functions of the Custodial Inspector are set out in section 8 of the *Custodial Inspector Act 2016* as follows:

8. Powers

The Inspector has the following powers:

(a) to visit and examine any custodial centre, and any vehicle, equipment, container or other thing in a custodial centre, at any time the Inspector thinks fit;

(b) to obtain full access to all documents, including health records, that –

(i) are in the possession of a Department, public authority or any other body or person prescribed by the regulations; and

(ii) relate to any custodial centre or persons in custody or detained, or residing, at a custodial centre –

and to make copies of, or take extracts from, those documents or records and to remove and retain those copies or extracts;

(c) to require, in any reasonable manner that the Inspector considers appropriate, a person whose work is concerned with the operation of a custodial centre to provide any information that is relevant to the performance or exercise of the Inspector's functions or powers under this Act;

(d) to enter and examine any equipment or container outside a custodial centre which is used in connection with the custodial centre, and any vehicle used to transport prisoners or detainees, at any time the Inspector thinks fit and with any assistance or equipment that the Inspector thinks is reasonably necessary;

(e) to require any member of the staff of the custodial centre or other person who provides services to prisoners or detainees to –

(i) supply information or produce documents or other things relating to any matter, or class of matters, concerning the custodial centre's operations; and

(ii) attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations;

(f) to refer matters relating to a custodial centre to an appropriate agency for consideration or action;

(g) to obtain access to, and communicate with, persons in custody or detained or residing at a custodial centre;

(h) to do all things necessary or convenient to be done in connection with the performance and exercise of his or her functions and powers under this Act.

2.4 Relationships

2.4.1 Primary stakeholders

The Office of the Custodial Inspector maintains regular communication with the TPS, Correctional Primary Health Services, and DECYP. Office of the Custodial

Inspector staff also liaise closely with appropriate officers in these agencies when planning and undertaking inspections.

Regular meetings to support the functions of the office are held with:

- the Assistant Director of Prisons – Engagement, Communications and Policy; and
- the Executive Director - Youth Justice Reform.

Office of the Custodial Inspector staff also meet with young people, prisoners and custodial centre staff, as individuals and groups, as and when required. This occurs during and outside of the inspection process.

2.4.2 Other stakeholders

The Office of the Custodial Inspector staff meet, as and when needed, with the following stakeholders:

- the Secretary of the Department of Justice;
- the Commissioner for Children and Young People;
- Equal Opportunities Tasmania;
- the manager of the Prison Official Visitors Program;
- The Tasmanian Audit Office;
- Ombudsman Tasmania;
- the Office of the Health Complaints Commissioner;
- the Integrity Commission; and
- Inter-jurisdictional counterparts.

During the reporting year my Project Manager - OPCAT Implementation Project, Principal Inspection Officer and I joined other nominated NPM bodies from around the country to meet with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). These meetings occurred before the SPT visit to Australia commenced and after it suspended the visit, which it subsequently terminated. These sessions provided valuable insights into the SPT's views and expectations regarding the role of the NPM. The SPT conducted visits to AYDC and various prisons at Risdon Vale before it suspended its visit to Australia.

We also met with Dr Alice Edwards, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment during the reporting year. We were fortunate to learn from Dr Edwards' significant experience and discuss the steps being taken in Tasmania to implement OPCAT.

2.5 Training and professional development

My inspection team are all relatively new, with two of my three staff commencing this reporting year and the third staff member starting on 24 December 2021. My staff have taken up a number of opportunities to increase their skills throughout the reporting year.

During the reporting year my staff attended a number of training and awareness courses, including autism awareness, cultural safety and awareness, and investigation workshops. During the reporting year we also engaged Megan Mitchell AM, former National Children's Commissioner and architect of the National Principles for Child Safe Organisations (and related training material), to conduct a child safeguarding review of the office and organised bespoke training from the Australian Childhood Foundation on trauma informed engagement with young people in detention to occur in 2023-2024. All of my staff are required to complete the Australian Childhood Foundation's Safeguarding Children training.

I am grateful to the Inspector of Custodial Services in Western Australia, Eamon Ryan, for allowing two of my staff to assist his office in the inspection in September 2022 of a maximum security men's prison in Perth. This was an excellent opportunity for my staff to learn from the longest established prison inspectorate in Australia, which is leading the way in its application of best practice to the oversight of custodial centres. A visit was also facilitated to the Banksia Hill Detention Centre, a youth detention centre.

During our trip to Canberra to attend the first meeting with the SPT, my Principal Inspection Officer visited the Alexander Maconochie Centre. The Australian Capital Territory (ACT) Deputy Inspector for Custodial Services, now Inspector, and the Assistant Inspector kindly facilitated the visit. Seeing a prison in a jurisdiction with the most comparable population to Tasmania and exploring how inspections are conducted in the ACT was a useful learning opportunity. The Tasmanian Prison Service kindly enabled the ACT Inspector staff and three representatives from the New Zealand Office of the Inspectorate to visit some Tasmanian prisons later in the reporting year.

Nearing the end of the reporting year, my Senior Inspection Officer and Project Manager of the OCPAT Implementation Project assisted the New Zealand Ombudsman with a NPM visit to Mount Eden Correctional Facility, a male remand prison. A leader in our region, learning from the New Zealand Ombudsman's Office was a practical and worthwhile exercise and I am grateful for that office's continuing assistance as we establish the Tasmanian NPM.

My Principal Inspection Officer, during their vacation, also organised visits to a number of prisons in Scotland and a youth prison and detention centre in London.

The Association for Prevention of Torture kindly provided introductions to the head of the United Kingdom (UK) NPM, who generously facilitated the visits over three days along with the Chief Inspector of His Majesty's Inspectorate of Prisons for Scotland and the Independent Monitoring Board of His Majesty's Prison/Youth Offender Institute Feltham.

Like New Zealand, the UK has a multi-body NPM model, a pathway Australia is following. It was valuable for my staff to see on the ground how institutions conducting oversight in custodial settings in the UK and New Zealand fulfilled their NPM functions, especially given my comments above that the Office of the Custodial Inspector may have a role in fulfilling the NPM's functions in Tasmania in custodial settings.

Seeing how other custodial centres operate is an important aspect of improving practice. Observing differences between facilities and discussing practices with young people, prisoners, custodial staff and management, and other oversight bodies in other places helps to build a better understanding of the complexities of closed environments and ways to ensure treatment and care is the best it can be.

3 Inspections, reviews, and reports

All inspections of Tasmanian custodial centres are conducted against the Custodial Inspector's published inspection standards. Standards facilitate the assessment of performance against objective criteria to ensure facilities have a focus on positive outcomes and human rights and are operating safely and efficiently.

When it was first established, the Office of the Custodial Inspector developed two sets of inspection standards for Tasmania; one relating to adult custodial services and the other for custodial services for young people in detention. These are based on international human rights instruments and cover matters considered essential to the safe, respectful, and purposeful treatment of detainees and prisoners.

During an inspection a number of sources of evidence are used to evaluate the custodial centre against the standards. These include:

- onsite visits;
- meetings with senior management;
- individual interviews and group discussions with staff, prisoners and detainees;
- survey results;
- examination of documentation, policies and procedures; and
- observation by inspectors.

As noted, where relevant, and particularly when inspections cover specialised areas, the office engages external consultants to supplement internal expertise.

Tasmania is a small jurisdiction and many services at adult custodial centres, such as education and training courses, healthcare, catering, and information management, are centralised.

To respond to legislative obligations using its limited resources, the Office of the Custodial Inspector has undertaken themed inspections of custodial centres, focussing on particular inspection standards. At the end of a three year cycle, all facets of custodial centres will have been inspected against the full set of inspection standards. This has enabled the Office of the Custodial Inspector to make best use of consultancies across all custodial centres, when required, and to meet its legislative mandate with limited staff resources.

In the 2022-2023 period, three thematic inspections were undertaken of adult custodial settings and two thematic inspections were conducted at AYDC. These were:

- Wellbeing – Adult Custodial Centres;
- Wellbeing – Youth Custodial Centres;
- Custody: Reception to Release – Adult Custodial Centres;
- Physical Healthcare and Substance Use Management – Adult Custodial Centres; and
- Physical Healthcare and Substance Use Management – Youth Custodial Centres.

The outcomes of the Mental Healthcare inspections and the Physical Healthcare and Substance Use Management inspections for both adult and youth custodial centres will be combined into single healthcare reports for adult and youth. The inspections contained a number of similarities in findings, the most obvious being the impact of lockdowns. The reports for the wellbeing and custody inspections will follow before any further inspections are conducted.

In my last annual report I flagged my intention to review my inspection standards, first published in 2017. The review of our standards commenced in the reporting year and the consultation on the revised documents will commence in 2023-24. As I mentioned above, the review involved a week-long visit to various places of detention with our consultants. Work was also being undertaken during this time to create expectations for the NPM for other places of detention including police and court cells and secure mental health facilities. In future, our inspection standards will be known as expectations to align with the NPM. It is likely any future inspections will be conducted in accordance with our new expectations.

4 Evaluation of responses to Inspector's recommendations

Section 26(2)(a) of the *Custodial Inspector Act 2016* provides that the Inspector's annual report must include an evaluation of the response of relevant authorities to the Inspector's recommendations.

As we are now inspecting standards for the second time, as part of our inspections we are evaluating the responses to past recommendations and future reports will contain an evaluation of past recommendations.

The Department of Justice has also indicated to the Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters that it would look into providing annual updates on progress regarding Custodial Inspector recommendations. We will use this as an additional measure to evaluate the Department's response in future reports. As far as I'm aware, the Department for Education, Children and Young People and the Department of Health has not made any similar statements.

5 Recommendations for changes

Section 26(1)(c) of the *Custodial Inspector Act 2016* provides that the Inspector must include in their annual report any recommendations for changes in the laws of the State, or for administrative action, that the Inspector considers should be made as a result of the performance of the Inspector's functions.

No legislative changes have been made to the *Custodial Inspector Act 2016* since it commenced. In my 2020-21 and 2021-22 annual reports, I highlighted areas for change – these have not been actioned. I attach the relevant excerpts from the annual reports as Appendix 1. There are also several new matters which I raise below. The implementation of recommendations from the Commission of Inquiry into Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings report is likely to result in significant legislative change in the future, so some of the changes below may not be necessary.

5.1 Protection from reprisal

I regularly hear about matters of concern in custodial centres from people working or housed there. Unfortunately, some people who have raised their concerns with my office have also reported that their actions in speaking with my office were sometimes not well received. Whilst I always strive to protect the identity of people who provide me with information, sometimes assumptions and conclusions can be drawn from circumstances.

There are no protections for people who do come forward to report issues to my office. There should be.

Section 36 of the *OPCAT Implementation Act 2021* provides for protection from reprisal:

36. Protection from reprisal

A person must not –

(a) prejudice, or threaten to prejudice, the safety or career of; or

(b) intimidate or harass, or threaten to intimidate or harass; or

(c) do any act that is, or is likely to be, to the detriment of; or

(d) incite or permit another person to take any of the actions specified in [paragraph \(a\)](#) , [\(b\)](#) or [\(c\)](#) in relation to –

another person because the other person has provided, is providing or may in the future provide information, whether true or false, to a Tasmanian

national preventive mechanism or the Subcommittee for the purposes of this Act.

Penalty: Fine not exceeding 240 penalty units or imprisonment for a term not exceeding 2 years, or both.

As can be seen, the penalty for reprisal can be severe. This can be a significant deterrent to reprisal action. People should be protected under the *Custodial Inspector Act 2016* in similar terms to the *OPCAT Implementation Act 2021* when they report matters of concern to my office. I would encourage parliament to consider bolstering protections for people who bring matters of concern to my office's attention.

5.2 Information sharing with other oversight agencies

The information sharing provisions in the *Custodial Inspector Act 2016* are limited and should be reviewed. Currently, there are provisions to share information to a limited extent with the Ombudsman, Integrity Commission and the Audit Office. There are no similar provisions in relation to the Health Complaints Commissioner, despite health complaints being a key source of information relating to the performance of youth and adult custodial centre health services. Similarly, there are no information sharing provisions with the Anti-Discrimination Commissioner and Commissioner for Children and Young People despite there being standards relating to discrimination and young people. Whilst I can require information from these bodies under s31 of the *Custodial Inspector Act 2016* and the Commissioner can share some matters, information sharing provisions would enable my office to build more collaborative relationships with oversight bodies and may better allow them to raise issues of concern with me as they occur.

Again, the *OPCAT Implementation Act 2021* provides an excellent template that would improve the ability to share information with oversight bodies, referencing 'relevant authority' when addressing who information can be shared with, which is broadly defined. The protections for provision of information to the NPM are also quite comprehensive. Section 35 of the Act gives other oversight agencies considerable discretion in being able to share information that would assist in the work to improve conditions of people in places of detention.

5.3 Engagement of consultants and gatepasses

We engage consultants with specialist skills for some inspections, such as doctors and dieticians. We need to obtain a gatepass from the TPS for our consultants to enter prisons. AYDC does not require a gate pass.

The requirement for a gatepass means that it is difficult for us to conduct unannounced inspections or visits with consultants without TPS being aware of it.

Section 10 of the *Custodial Inspector Act 2016* provides that the Inspector may delegate any of their functions or powers to a person, or class or persons, prescribed by the regulations. There are currently no regulations and I recommend that changes be made so I can delegate to consultants, which would include enabling them to enter custodial centres at any time. A staff member from my office accompanies any consultant we engage for our inspections.

5.4 Correspondence with the Custodial Inspector and their officers

Inspecting the conditions in places of detention by necessity requires the ability to engage confidentially with people who have had their liberty taken from them. Section 17 of the *Custodial Inspector Act 2016* provides:

17. Inspector's access to prisoners and detainees

- (1) The Inspector is entitled to access to a prisoner or detainee at all reasonable times.
- (2) The person in charge of a custodial centre, each member of the staff of the custodial centre and any person providing services in a custodial centre –
 - (a) must allow the Inspector to conduct an interview with a prisoner or detainee, out of the hearing of any other person; and
 - (b) must not, without the approval of the prisoner or detainee, copy, remove or read any correspondence –
 - (i) from the prisoner or detainee to the Inspector; or
 - (ii) from the Inspector to the prisoner or detainee.

The above provision refers to only the Custodial Inspector but my staff also speak with and write to prisoners and detainees. It would be preferable, for the avoidance of doubt, if s17 was amended to also include references to my officers.

5.5 Inconsistencies with the Youth Justice Act 1997 and the Custodial Inspector Act 2016

Under the *Youth Justice Regulations 2019* the Custodial Inspector is listed as a prescribed officer under s135A of the *Youth Justice Act 1997*. That section states:

135A. Access to detainee by prescribed officer

- (1) In this section –

prescribed officer means a person, or a person of a class of persons, prescribed by the regulations to be a prescribed officer for the purposes of this section.

(2) Except as provided by this section, a prescribed officer is entitled to be allowed access, at any reasonable time, to –

(a) any detention centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the centre; and

(b) any detention centre and any detainee at the centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the detainee.

(3) A detention centre manager and each member of the staff at a detention centre –

(a) must allow a prescribed officer to conduct an interview with a detainee out of the hearing of any other person; and

(b) must not without the approval of the detainee open, copy, remove or read any correspondence –

(i) from the detainee to a prescribed officer; or

(ii) from a prescribed officer to the detainee.

(4) A detention centre manager, and a member of staff at a detention centre, must not read any document brought to the centre by a prescribed officer without the permission of the prescribed officer.

(5) A detention centre manager may –

(a) refuse to allow a prescribed officer to enter the detention centre, or require a prescribed officer to leave the detention centre immediately, if the prescribed officer fails to produce his or her identification and evidence that he or she is a prescribed officer when requested to do so by the detention centre manager; and

(b) direct a prescribed officer to leave the detention centre immediately if, in the manager's opinion, it is necessary for the security of the prescribed officer or the detention centre.

(6) If a detention centre manager considers it necessary for the security of a prescribed officer or the detention centre, the manager or member of staff may give directions to the prescribed officer.

(7) A prescribed officer is to comply with a direction given under this section.

Under the *Custodial Inspector Act 2016* I can enter a youth custodial centre at any time, whereas the above section refers to prescribed officers entering at any reasonable time. Custodial centres are 24 hour operations and it is important that my officers and I can access a custodial centre at all times. During the reporting year, for example, my staff conducted night visits to Risdon Prison Complex and the Hobart Reception Prison to monitor prisoner welfare.

In the early years of my office, my staff experienced some issues entering AYDC on occasion due to a detention centre manager denying access. This situation was resolved, when escalated, and has not been an issue since. Despite this, potential legislative barriers to my staff and me entering or staying in places of detention should be addressed. Relevantly, the Tasmanian Prison Service does not have the ability to direct my staff or me to leave a detention centre. If there was a security incident, for example, observing from a safe distance can be a useful means to provide proactive oversight.

Appropriately, there are restrictions concerning access to detainees being at “reasonable” times both in the *Youth Justice Act 1997* and the *Custodial Inspector Act 2016*. There should be no reason, however, why my staff and I cannot enter a youth detention centre at any time to consider other aspects of its operations.

The above section does, however, improve in two ways on the *Custodial Inspector Act 2016*. Section 135A(3)(b) provides that staff must not open any correspondence to and from the Custodial Inspector or read any document I bring into a detention centre. The *Custodial Inspector Act 2016* only provides that correspondence to and from a detainee cannot be copied, removed or read without approval. For prisoners, the protection for correspondence from both the Custodial Inspector and officers of the Custodial Inspector not being opened is found in section s29(1)(l) of the *Corrections Act 1997*.

5.6 Oversight of the Custodial Inspector

The Custodial Inspector has a significant range of powers and it is important that my office and I are subject to effective oversight. During the reporting year my office contacted the Secretary of the Joint Standing Committee on Integrity as there was no evidence that it had previously considered any of my Custodial Inspector reports. Under the *Integrity Commission Act 2009*, the Committee is to monitor and review the performance of the functions of an integrity entity, which

includes the Custodial Inspector, Ombudsman, and Integrity Commission. It is also obliged to examine my annual report and other reports and report to both Houses of Parliament on any matters arising.

The Secretary of the Committee advised that unfortunately the Committee has not in the past considered the Custodial Inspector's reports in detail. They indicated that the office has only been viewed as an extension of the Ombudsman's office and subsequently only considered in that context. My office was advised that as a result there has not been: any guidance or advice provided relating to the functions of the Custodial Inspector; no identification of any performance issues; or the reporting of any relevant matters – all functions of the Joint Standing Committee under s24 of the *Integrity Commission Act 2009*.

Positively, as a consequence of my office raising the matter, the Committee has now begun to scrutinise my annual reports. I would encourage the Committee to consider this report and whether it should take any action in response to matters raised in it, including making the case to their colleagues for legislative change.

6 Key observations

6.1 Lockdowns

Tasmania is not alone in being impacted by lockdowns in prisons but unfortunately, for adult prisoners, it has the worst total average time out of cell in Australia. Tasmania has had the worst total average time out of cell since 2018-2019. The Report on Government Services (RoGS) indicates in 2021-2022 Tasmanian prisoners only had an average of 7.7 hours per day of their cell.¹ In 2021-2022 the Tasmanian average hours out of cell per day for secure prisons was 7.4 and for open prisons it was 15.5.²

These figures are unlikely to improve by the time the next RoGS is released at the beginning of 2024, based on my observations of current trends. The Department of Justice has indicated in the past that Tasmania performs poorly against this indicator because of its significantly lower number of prisoners in 'open prisons', dragging its average out of cell hours down compared to interstate jurisdictions.³ The Australian Capital Territory has a smaller overall prison population than Tasmania, however, and performs better.

Appendix 2 sets out the out of cell hours average for a range of individual units across the Tasmanian prison estate. It demonstrates that some prisoners are significantly worse off than others, especially people in maximum rated facilities including remandees in the recently completed Southern Remand Centre.

Unfortunately, there are not yet equivalent reports on time out of cell/room for youth custodial centres in RoGS. I intend to raise this with the Productivity Commission and Department for Education, Children and Young People (DECYP) this reporting year as it is important for transparency and accountability. My office has collated data received from the DECYP which demonstrates that the situation was not stable over the reporting year.

I have not previously observed lockdowns on a systemic level in youth detention in Tasmania and it is a disturbing precedent. It was the subject of negative comment by the United Nations Committee against Torture in its Concluding Observations on the sixth periodic report of Australia with respect to the Convention against

¹ *Report on Government Services, Part C, Section 8 Corrective Services* (31 January 2023) Table 8A.13, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice/corrective-services>

² Ibid.

Open prison is defined by RoGS as a custodial facility where the regime for managing prisoners does not require them to be confined by a secure perimeter physical barrier, irrespective of whether a physical barrier exists. O'Hara Cottages, which has capacity for approximately 31 prisoners, is Tasmania's only 'open prison'. All of Tasmania's remaining prisoners are in secure prisons.

³ Custodial Inspector, *Lockdowns Review 2021* (2021), p29.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It said on 5 December 2022:

The Committee is seriously concerned about:

...

(d) the practice of keeping children in solitary confinement, in particular at ... Ashley youth detention centre [sic] in Tasmania, which contravenes the Convention and the Nelson Mandela Rules;⁴

Appendix 3 contains a number of graphs outlining lockdowns that occurred in AYDC over the reporting year. Under my inspection standards, young people should have a minimum ten hours out of bedroom each day⁵ but this was rarely achieved.

Staffing shortages seem to be a major reason for the majority of lockdowns in both adult and youth custodial centres. Whilst there have been reports referring to the number of new staff being recruited by the TPS and AYDC, the problems appear to have persisted throughout the reporting year. Perhaps a more critical measure would be the ongoing retention rate, as well as the recruitment rate.

Lockdowns have far reaching consequences for the wellbeing of young people in detention and adult prisoners. The community, perhaps now more than ever, has some insight into the impact of being confined to one place as a consequence of COVID-19 lockdowns. However, the reality in custodial centres, unsurprisingly, is worse. Time spent locked in cells is time that prisoners and young people have no or limited contact with family and friends, no access to rehabilitative services and limited access to health services. This confinement has detrimental impacts on people's mental and physical wellbeing. Our healthcare report will be looking at the impact of lockdowns and staff shortages on health in greater detail.

I reported last year on the high rates of assaults in adult custody and this continues. It is reasonable to assume that there is some connection between this and the rates of lockdowns. According to RoGS, the rate of prisoner on officer assaults⁶ in 2021-22 was 4.52 per 100 prisoners in Tasmania.⁷ The next highest

⁴ Committee against Torture, *Concluding Observations on the sixth periodic report of Australia* (5 December 2022) p11 - <https://digitallibrary.un.org/record/3996411?ln=en>.

⁵ Custodial Inspector, *Inspection Standards for Youth Custodial Centres in Tasmania* (July 2018), Standard 9.8, p51.

⁶ RoGS defines 'Assaults' as acts of physical violence resulting in a physical injury but not requiring overnight hospitalisation or ongoing medical treatment.

⁷ *Report on Government Services, Part C, Section 8 Corrective Services* (31 January 2023) Table 8A.18, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice/corrective-services>

rate, in New South Wales (NSW), was 1.76.⁸ The rate of serious assaults⁹ was 0.31 per 100 prisoners, which was also the highest rate in Australia¹⁰. Prisoner on prisoner assaults and serious assaults were second only to NSW and Queensland.

Whilst this data ought to be comparable, it needs to be interpreted with some care given the significant difference in prison populations and different reporting practices.

6.2 Prison Population

The prison population has grown significantly during the reporting year. According to reports we receive from TPS, on 30 June 2023 there were 736 prisoners in Tasmania compared to 609 at the same time in 2022. This is an increase of 21%. In 2021-22 the average daily number of prisoners in Tasmania, according to RoGS, was 642¹¹ and it will no doubt be higher in 2022-23.

An increasing prison population places further burdens on already stretched services. Dr Sonny Atherton, Statewide Specialty Director, Forensic Mental Health Service (FMHS), made a submission to the Legislative Council Government Administration Committee 'B' Inquiry into Tasmanian Adult Imprisonment and Youth Detention Matters on 31 March 2023.¹² He highlighted the impact, stating:

Despite a significant increase in the prison population in the recent decade, there has been no commensurate increase to already inadequate prison resources.

No doubt there are a myriad of reasons for this significant increase in population but it has not taken long for the prison population to rise along with the recent increase in prisoner accommodation in Tasmania.

In the beginning of the reporting year the Southern Remand Centre was commissioned, and gradually an additional 156 beds became available. It is a maximum rated facility, specifically for male remandees, and is now operating very

⁸ Ibid.

⁹ RoGS defines 'Serious assaults' as acts of physical violence resulting in injuries that require treatment involving overnight hospitalisation in a medical facility or ongoing medical treatment, as well as all sexual assaults.

¹⁰ *Report on Government Services, Part C, Section 8 Corrective Services* (31 January 2023) Table 8A.18, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice/corrective-services>

¹¹ *Report on Government Services, Part C, Section 8 Corrective Services* (31 January 2023) Table 8A.4, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/justice/corrective-services>

¹² A copy of the submission can be found at the Committee's website - https://www.parliament.tas.gov.au/data/assets/pdf_file/0035/69848/46.-Tasmanian-Health-Service.pdf

close to full capacity. Additional male remandees are housed elsewhere in the prison estate, including a recently refurbished division in Ron Barwick Prison. There are no remandee only facilities for women.

The number of prisoners' eligible for parole but still in custody is one area, amongst many, that may be a contributing factor to the increase in the number of prisoners. Anecdotally, I have heard that prisoners are facing barriers to accessing parole as they are not able to obtain suitable accommodation or experience delays finding accommodation. This may mean a prisoner's parole hearing needs to be adjourned and there can then be further delays obtaining a new hearing given the recent significant increase in the number of parole applications.

There will always be a range of reasons why someone who is eligible for parole is still in custody, including a number of prisoners who may not wish to apply for parole, who have breached parole and returned to custody, or who are waiting on reports for the Parole Board. Reviewing the Parole Board of Tasmania's past annual reports it is apparent, however, that the number of prisoners who are eligible for parole but not released due to not having suitable accommodation is increasing. In 2018-2019, 32 parole board hearings were adjourned due to applicants not having access to suitable housing, this increased to 73 in both 2020-2021 and 2021-2022. This is in the context, however, of a 35% increase in the number of parole applications in 2021-2022 from the last financial year.¹³

6.3 Escapes

During the reporting year a number of escapes from custody occurred in both adult and youth custodial centres.

A male prisoner escaped from TPS custody whilst being treated at Royal Hobart Hospital. Sadly, he was later killed whilst at large in the community. This escape and earlier escapes will be considered when we conduct an inspection, likely to take place in 2024, relating to a number of security inspection standards.

A number of changes have already become apparent since this most recent escape. The Tasmania Prison Service introduced a number of new interim security requirements as a result of the escape, including new handcuff arrangements for medium and maximum rated prisoners when being transported. These new requirements have not always been applied correctly or reasonably, resulting in at least one claim of an elderly minimum rated prisoner, who requires a walker, being handcuffed whilst on an external medical escort and bruised as a result. This will be touched on in our upcoming healthcare report.

¹³ Parole Board of Tasmania, Annual Report 2021-2022, p6.

During the reporting year there were reports of a young person escaping from custody during transport to AYDC. We are also planning to conduct an inspection in relation to custody standards in the upcoming reporting year at AYDC so will consider this issue in closer detail at that time.

RoGS reports on the number of escapes from custody in both adult and youth custodial centres. Whilst the number of all escapes from TPS are reported, Tasmania does not publish data on escapes of young people if the number of escapes is less than five. Reviewing past years, there were notations of 'np' (not published) in 2020-21 for the number of escapes from Tasmanian youth detention.¹⁴ In 2019-20 there were notations of 'np' for the number of escapes from Tasmanian escorted movements.¹⁵ There were media reports in both financial years relating to at least one escape in each.¹⁶ Due to np indicating the escapes that occurred were less than five, however, it is unclear to the public whether they represented all of the escapes that occurred.

In contrast, the Australian Capital Territory, which has an equivalent number of young people in detention, has reported on the number of escapes in a previous year. Specifically, one escape from escorted movement in 2019-20.

Whilst the public can make applications for assessed disclosure under the *Right to Information Act 2009* for data on the number of escapes, it would be preferable from a transparency and accountability perspective if this data was proactively provided. I will be reviewing the RoGS when it is released in early 2024 to see whether Tasmania is continuing to not publish the number of escapes from AYDC when they are under five. I will consider publishing the number of escapes in my next annual report or custody inspection if the practice of not reporting the number of escapes from youth custody continues.

6.4 Commission of Inquiry and the Disability Royal Commission

I participated in, and observed the hearings of, the Commission of Inquiry into Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (CoI) as they related to AYDC during the reporting year. The CoI's report

¹⁴ *Report on Government Services, Part F, Section 17 Youth Justice Services* (24 January 2023) Table 17A.23, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

¹⁵ Ibid.

¹⁶ Mercury, *Teenager who escaped while being transported to Ashley Youth Detention Centre has been recaptured* (24 October 2019) - <https://www.themercury.com.au/news/scales-of-justice/teenager-who-escaped-while-being-transported-to-ashley-detention-centre-has-been-recaptured/news-story/e66727481dee1bfe821eca0cd1f664a5>

The Examiner, *Youth caught after escaping from Ashley Youth Detention Centre* (23 February 2021) - <https://www.examiner.com.au/story/7140110/male-escapes-from-ashley-youth-detention-centre/>

was released on 26 September 2023; my office will be reviewing the report closely to inform our work.

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability final report was released on 29 September 2023. Again, my office will be reviewing the report closely to inform our work. Conditions in detention in the criminal justice system for people with disabilities was the subject of public hearings during the reporting year and earlier. There will, without doubt, be recommendations and learnings applicable to Tasmanian youth and adult custodial centres.

6.5 Fire safety

During the reporting year there was a serious fire at AYDC that resulted in injuries. Relevant authorities are conducting investigations, but my office will continue to monitor the issue as fire safety is particularly critical in circumstances where people are deprived of their liberty and confined in cells.

6.6 Minimum age of detention and the minimum age of criminal responsibility

There has been ongoing debate throughout the reporting year about the age of criminal responsibility in Tasmania.

The Tasmanian Government announced at the end of the previous reporting year that it will increase the minimum age of detention from 10 to 14. My mandate is to provide independent, proactive, preventative and systemic oversight of custodial centres. In the context of providing preventative oversight, I share the view of the Committee on the Rights of the Child that children under the age of 16¹⁷ should not be in custodial centres and in line with my mandate, I welcome the announcement that the Tasmanian Government is progressing towards this by raising the minimum age of detention to 14.

It seems it is only a matter of time until the age of criminal responsibility will also rise from the current age of 10. The reasons for doing so are sound but the actions and supports required to implement it are many. The United Nations Committee on the Rights of the Child General comment No. 24 (2019) on children's rights in the child justice system also articulates why change is necessary:

¹⁷ Committee on the Rights of the Child, *General Common No. 24 (2019) on children's rights in the child justice system* (18 September 2019) p14 - https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en

Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.¹⁸

In 2019 that Committee noted that over 50 State parties had raised the minimum age following ratification of the Convention of the Rights of the Child and the most common minimum age of criminal responsibility internationally is 14. There are sound reasons as to why Tasmania should follow suit to at least 14 years, without exceptions for more serious crimes.

6.7 Transfers of young people from AYDC to TPS custody

During the reporting year a number of transfers from AYDC to TPS custody occurred or were being contemplated. During our monitoring activities we raised a number of issues relating to some of these transfers and the processes involved, including ensuring young people are informed before a transfer occurs so they can consider if they want to make a complaint or seek a review. Previously, a young person would often find out about the transfer when the transfer was actually in the process of happening.

Positively, my ability to proactively monitor transfers has increased after recently obtaining access to relatively contemporaneous minutes of transfer discussions. AYDC has also advised that reviewing the Memorandum of Understanding (MoU) with TPS is a priority focus area. The MoU is very old and no longer fit for

¹⁸ Ibid, p6.

purpose. Arguably the process of sending a young person in detention to prison should be a matter that is determined by a court rather than AYDC and TPS.

6.8 Privileged communication

Legislation was introduced in November 2022 to facilitate a Tasmania Police review of all surveillance device warrants issued under the *Police Powers (Surveillance Devices) Act 2006* over the last decade that authorised the use of devices in prisons, with a particular focus on the adequacy of the information provided in the application for those warrants.

The review, to be conducted at the request of the then Commissioner of Police by former Solicitor-General, Michael O'Farrell SC, was prompted by revelations that a surveillance device was left recording continuously in a meeting room in a Tasmanian prison that was used by lawyers and their clients.

My office has been monitoring the developments regarding this matter and the issue of privileged communication and will continue to do so in the coming reporting year.

6.9 Telephone access

Evidence was provided at the Col regarding young people having direct access to a telephone to call the Commissioner for Children and Young People. These telephones had numbers for various services pre-programmed, including the Commissioner. It did not include the Ombudsman, Health Complaints Commissioner or the Custodial Inspector and I requested that these be added. During subsequent visits to AYDC my team observed, however, that these phones had all been taken away from units. I understand many had been damaged.

AYDC was doing work during the reporting year to introduce restricted mobile phones. These would allow young people to make calls throughout the centre, including from the privacy of their room, to pre-programmed numbers such as family and oversight bodies. It seems unlikely, however, that this proposal will be rolled out at AYDC in the foreseeable future given a number of technical issues. At the moment, if a young person wants to call the Ombudsman, they have to ask a youth worker rather than being able to call of their own volition. This has been the long established practice.

An appropriate alternative should be implemented so young people have direct and unhindered telephone access to oversight bodies including the Commissioner for Children and Young People, Ombudsman, Health Complaints Commissioner, the Integrity Commission, the Anti-Discrimination Commissioner and the Custodial Inspector.

We also observed during the year that the options for prisoners to call various essential services were limited, especially when compared to interstate prisons. The prison phone system allows for approved pre-programmed numbers to be added to a prisoner's account, including friends, family and lawyers. There is also a standard set of numbers that all prisoners can use, the CADL (Common Auto Dial List). The Ombudsman is included on that list and prisoners can call for free, without asking correctional officers, to speak directly to Ombudsman or Health Complaints Commissioner investigation officers. The numbers for other services were also included, such as Quitline and various commissions, like the Col. Other oversight bodies, such as the Integrity Commission and the Anti-Discrimination Commissioner, are not included. Instead, prisoners need to write to these oversight bodies and the service may then choose to book a professional call. This is not good practice, especially given many prisoners may not be able to write.

Calls to legal services, such as the Tasmanian Aboriginal Legal Service, can only occur if a prisoner has gone through the process of having the number added to their account, which is not immediate, or the organisation has booked a professional call. In contrast, my staff observed at interstate custodial facilities that Aboriginal legal services and legal aid commissions were available on CADL equivalents. This would alleviate a significant stressor, especially for those on remand, by enabling prisoners to speak to legal services more easily. It would also be a positive preventive measure to reduce ill treatment.

The TPS CADL needs to be reviewed to ensure prisoners have access to all appropriate oversight bodies and relevant legal services. Oversight bodies and other services should also be made aware that they can request to have their phone number added to the CADL.

6.10 Support for Aboriginal prisoners and detainees

In 2022, 22.7% of Tasmania's prison population was Aboriginal.¹⁹ In 2021-22, the average daily number of young people who were Aboriginal in detention was four, which represented just under half of AYDC's total average population.²⁰ In the 2021 Australian Census, however, 5.4% of the Tasmanian population identified as Aboriginal or Torres Strait Islander.

There is one Aboriginal identified or targeted position within the TPS, which is the Indigenous Officer position based in the Planning and Integration team. This position is currently vacant and has been for some time. There are no Aboriginal identified or targeted positions at AYDC or within CPHS. More needs to be done to

¹⁹ Australian Bureau of Statistics, *Prisoners in Australia (2022)*

- <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia>

²⁰ *Report on Government Services, Part F, Section 17 Youth Justice Services* (24 January 2023) Table 17A.5, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

ensure Aboriginal prisoners and young people are receiving appropriate support and this was highlighted in the reporting year during our Healthcare and Substance Use Management Inspections and our Wellbeing Inspections.

6.11 Dry Cell

Prisoners suspected of swallowing or secreting contraband can be placed in a 'dry cell'. Usually this is a cell that has no access to running water but can also include cells where this access can be controlled. Staff raised concerns with us regarding the conditions in one particular cell used for dry cell management plans.

Specifically, that the cell was lit 24 hours a day and that prisoners could be held there for up to 72 hours or longer. The cell had no window to outside. We confirmed that prisoners had been held knowingly in these conditions. This is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), specifically rule 43.1, which provides:

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]
- (d) Corporal punishment or the reduction of a prisoner's diet or drinking water;
- (e) Collective punishment.

We raised the issue during the reporting year with TPS and a subsequent night visit at 11pm confirmed that the fluorescent light in the cell was turned off but the fluorescent light directly outside the cell, which has multiple viewing panes, was still on. We will be reporting on this issue in more detail in our Healthcare report as there were a number of issues of concern arising.

6.12 Voting in the referendum

During our Wellbeing inspection local council elections were occurring. This was the first time in Tasmania that voting in local council elections was mandatory. My inspection team did not see any material within the prison promoting prisoners' ability to vote although prisoners do have access to various news sources.

In Tasmania all remandees and prisoners sentenced to less than three years are eligible to vote. My team was recently advised that there are almost 600 prisoners eligible to vote.

Following the inspection, the issue was discussed with TPS and we asked what supports would be provided for remandees and prisoners to participate in the upcoming referendum. Ensuring that prisoners, of whom a disproportionate number are Aboriginal, can easily participate in the referendum is important. Whilst postal ballots are possible from prison, a large proportion of prisoners are illiterate and postal ballots can be more difficult to complete than visiting a polling place.

Positively, the Tasmania Prison Service has proactively engaged with the issue and coordinated with the Australian Electoral Commission to facilitate mobile polling booths across all of its prison sites and provide information to prisoners about how to enrol to vote. I understand this will be the first time mobile polling booths have been in Tasmanian prisons since 2010 following nationwide changes. I look forward to them again becoming an established feature in Tasmanian prisons for future elections.

Appendix 1

Excerpts from the Annual Report 2020-21

Recommendations for Legislative Amendment

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

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

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

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

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

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

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

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

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

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

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

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

(i) to appear before him or her; or

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

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

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

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

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

My preferred option would be the third dot point above.

Excerpts from the Annual Report 2021-22

Recommendations for Legislative Amendment

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

Having now been operating for more than five years, two issues have become evident which I consider could potentially compromise the Inspector's independence.

The first issue relates to the process for tabling inspection reports, which I highlighted in last year's Annual Report:

- That inspection reports are tabled by responsible Ministers and not the Inspector directly in their capacity as an independent statutory office holder. It has been suggested that tabling by the Minister creates negative perceptions about the true independence of the Inspector.
- The combination of the period for consultation with the responsible Department once an inspection report is finalised by me, and the 30 day embargo period before the responsible Minister can table the inspection report contained in section 15(5) of the *Custodial Inspector Act* in effect means that it is at least two months before an inspection report is tabled, once it is finalised by my office.

I indicated that ideally the Department should be liaising with the Minister about the draft report throughout the consultation period, and consideration should be given to:

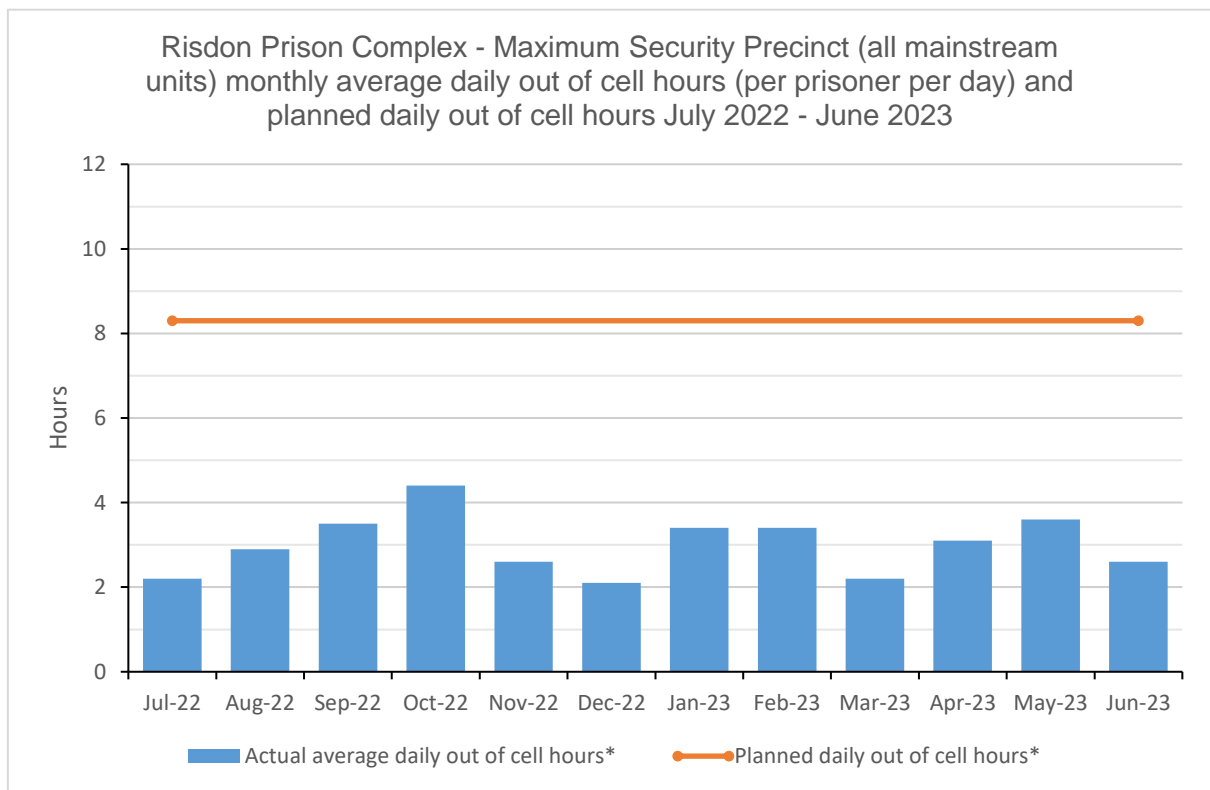
- a shorter embargo period being contained in section 15(5); and
- legislative amendment to allow the Inspector to directly table their inspection reports.

The second issue relates to the inspectorate staff being Department of Justice employees, and the perceptions of custodial staff and prisoners that these employment arrangements bring into question their independence. Ideally, the independence of the office could be strengthened if inspectorate staff were employed by a different department and service level agreements relating to human resources and information technology services were held with a department that has no direct responsibility for Prison Services or Youth Justice.

Appendix 2

Tasmania Prison Service - time out of cell graphs

The average time out of cell (per prisoner per day) is captured by Tasmania Prison Service in accordance with the national counting rules for the Report on Government Services. The following graphs show planned hours out of cell (per prisoner per day) according to Tasmania Prison Service Director’s Standing Order 1.19 (DSO 1.19) Core Day (Appendix C – Unlock/Lockup Hours) and the actual monthly average hours out of cell (per prisoner per day). The low averages are reflective of multiple days of full day lockdowns in addition to part day lockdowns.



**The actual average daily out of cell hours is the average across all mainstream units. The planned out of cell times for the different units may differ based on the function/purpose of the unit.*

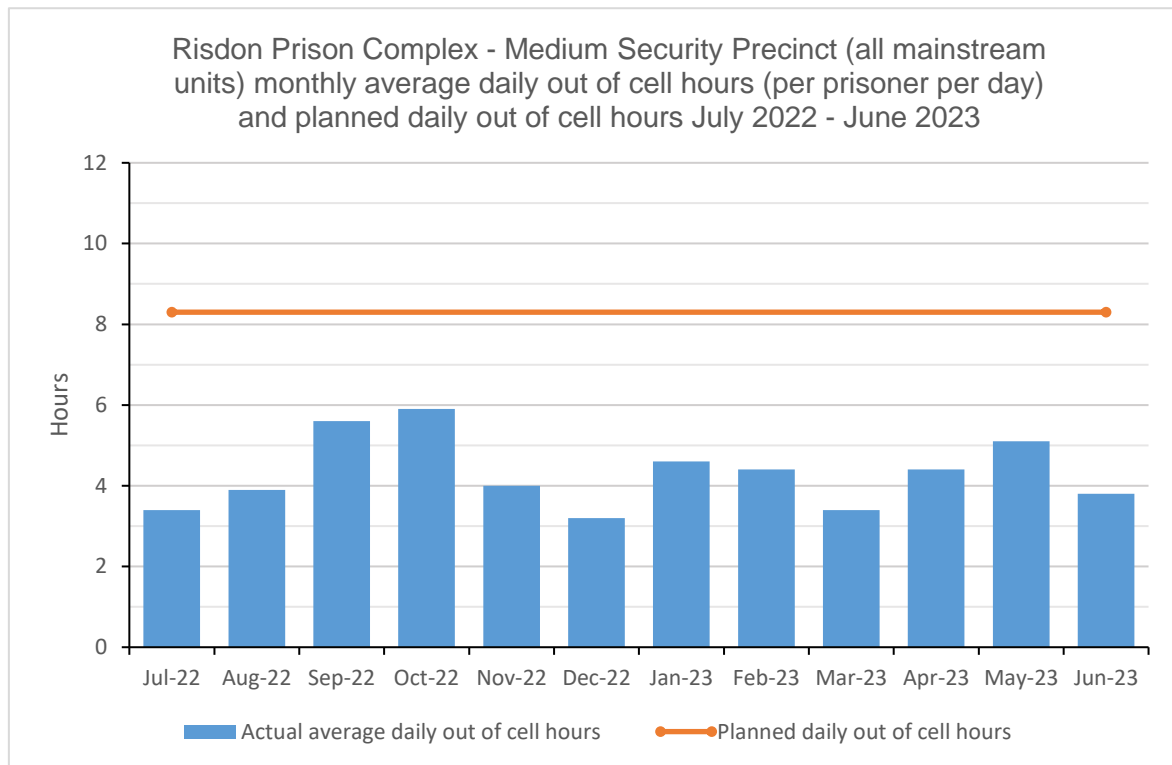
**The planned daily out of cell hours for all mainstream units (Apsley, Derwent alpha, Derwent beta, and Mersey) is 8.25 hours. However, according to DSO 1.19:*

- planned out of cell hours in Mersey may vary on Wednesday and Sunday if required, to facilitate phone calls in the crisis support unit.*

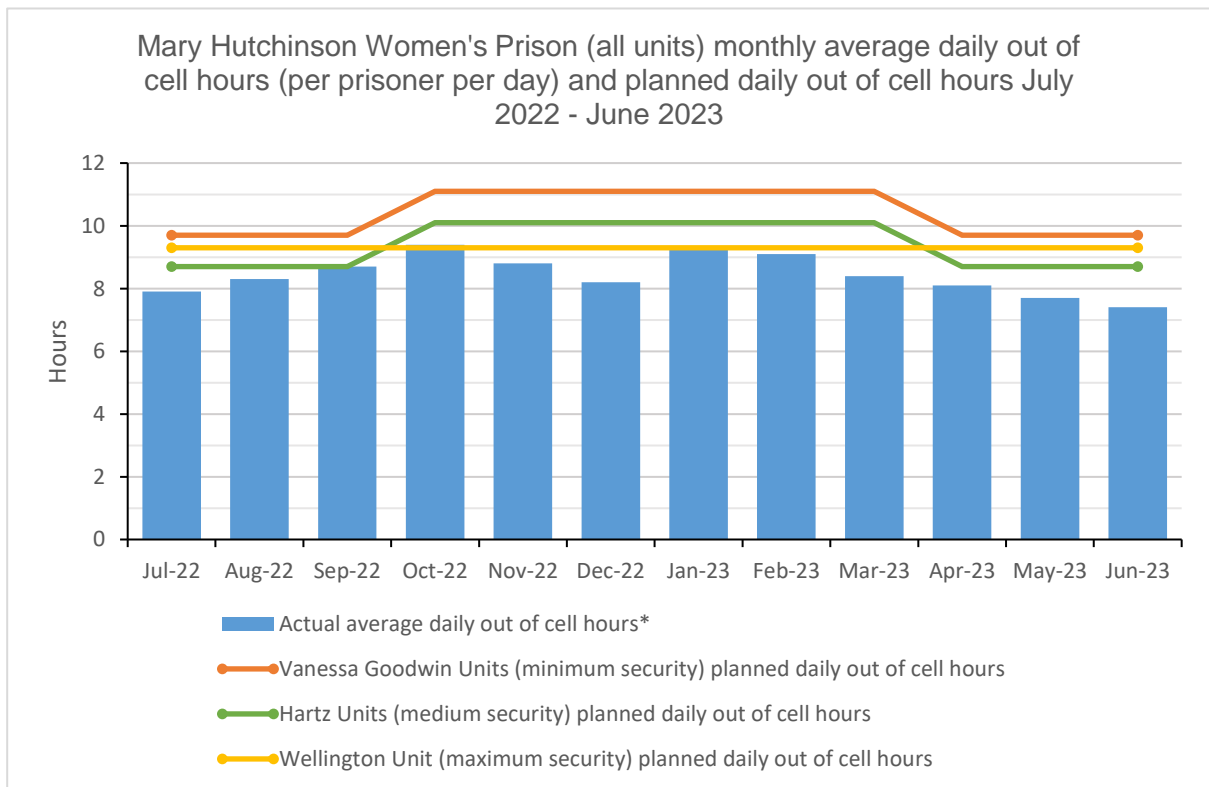
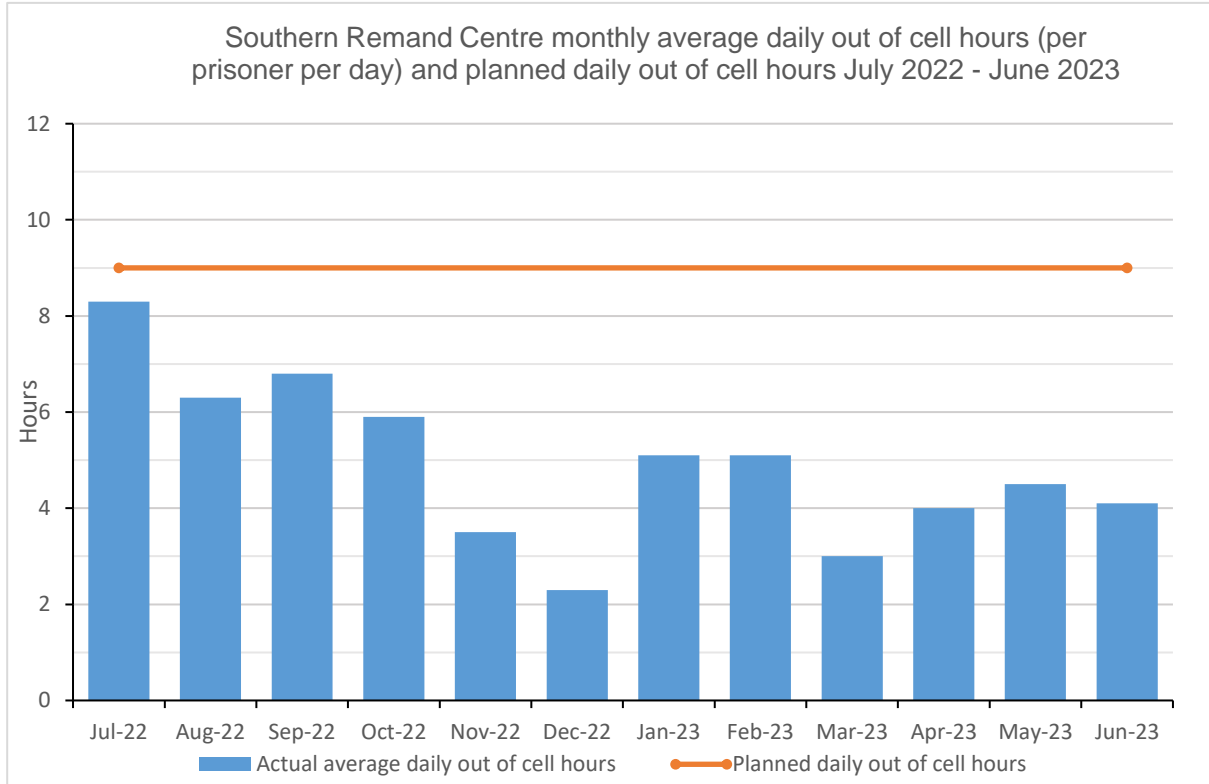
The above graph shows the monthly average daily out of cell hours for prisoners accommodated in mainstream maximum security units in Risdon Prison Complex. The mainstream units do not include behavioural management (Tamar, Franklin and Huon Units), inpatients, or crisis support units. Behavioural management units may receive 1-3 hours out of cell but these units are regularly locked down for an

entire day. Operation of Inpatients is dependent on Outpatients being manned and staff are regularly called from Outpatients to address staffing shortfalls elsewhere in the prisons.

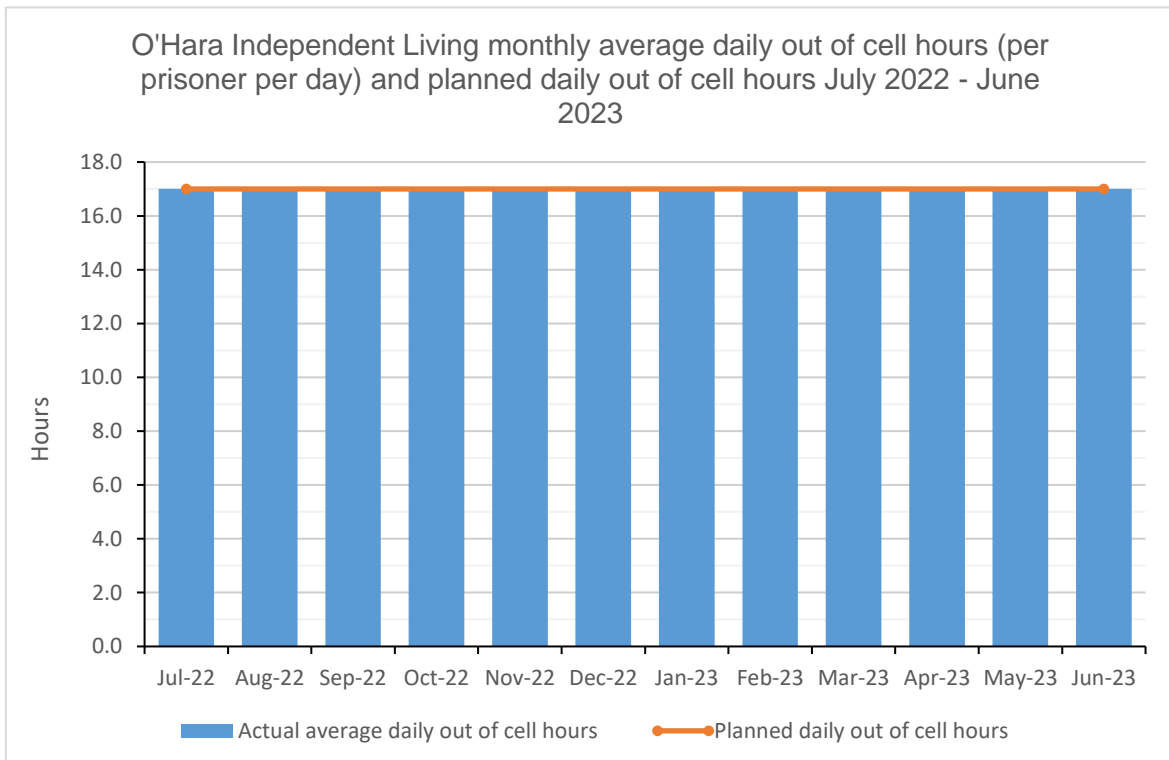
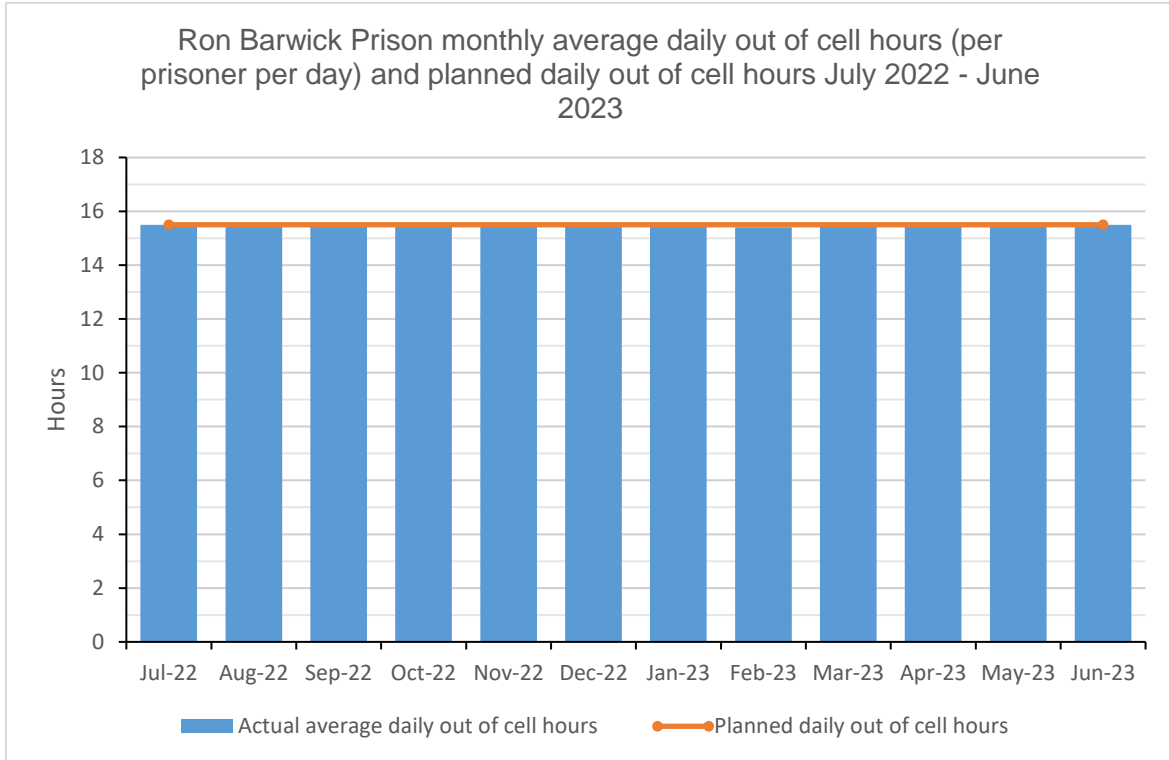
The above graph shows the monthly average daily out of cell hours for prisoners

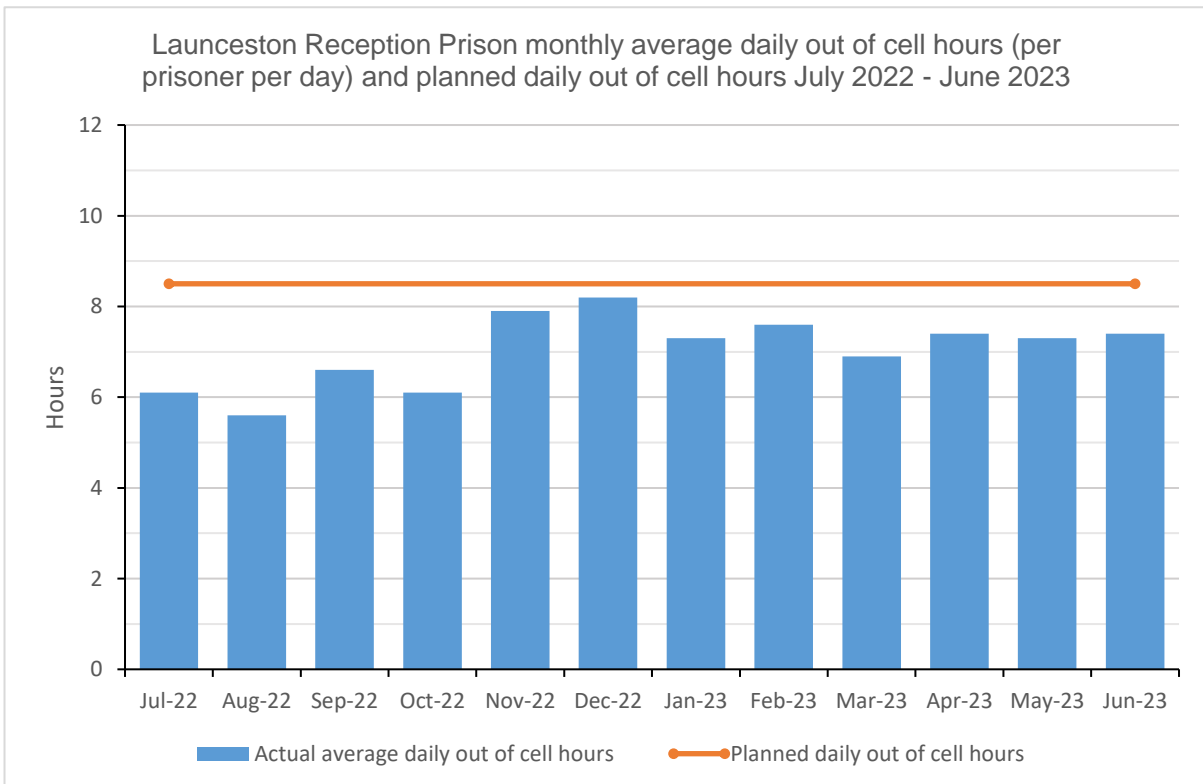
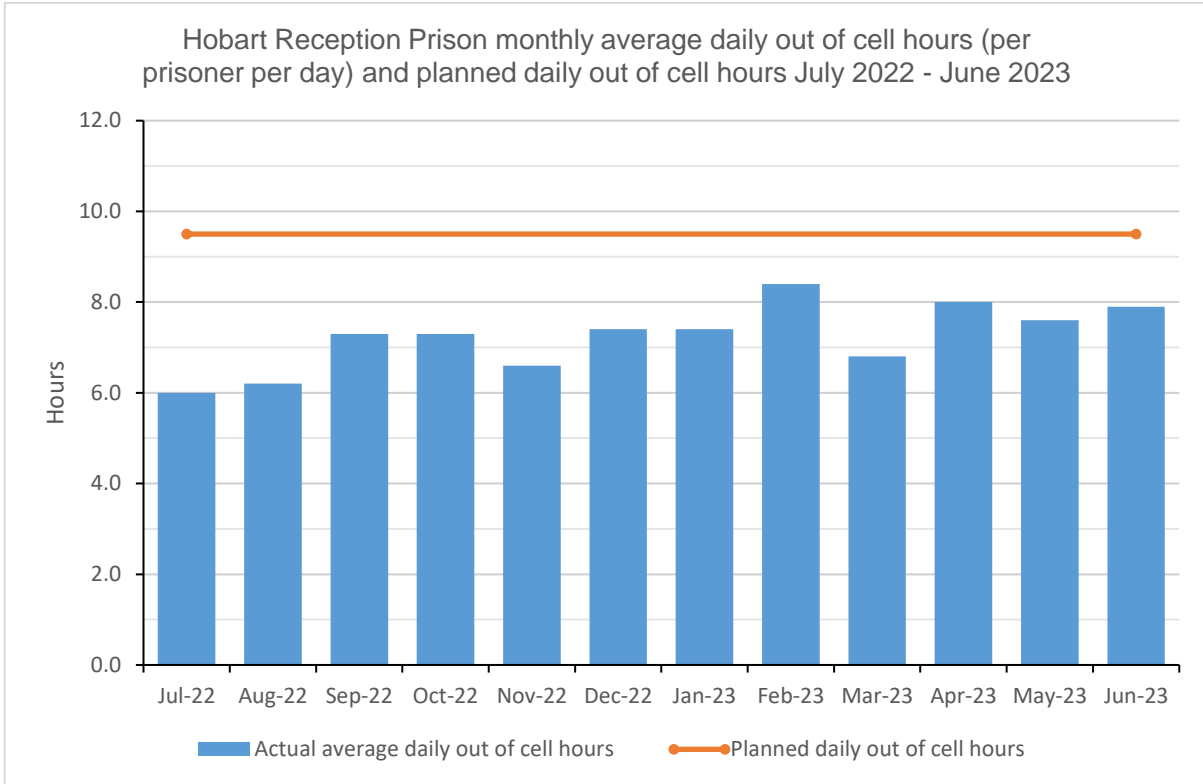


accommodated in mainstream medium security units in Risdon Prison Complex. The mainstream units do not include prisoners on a basic regime for behaviour management. The basic regime for Burbury Units C and D includes a minimum of 1 hour out of the unit but these units can also be regularly locked down for an entire day.



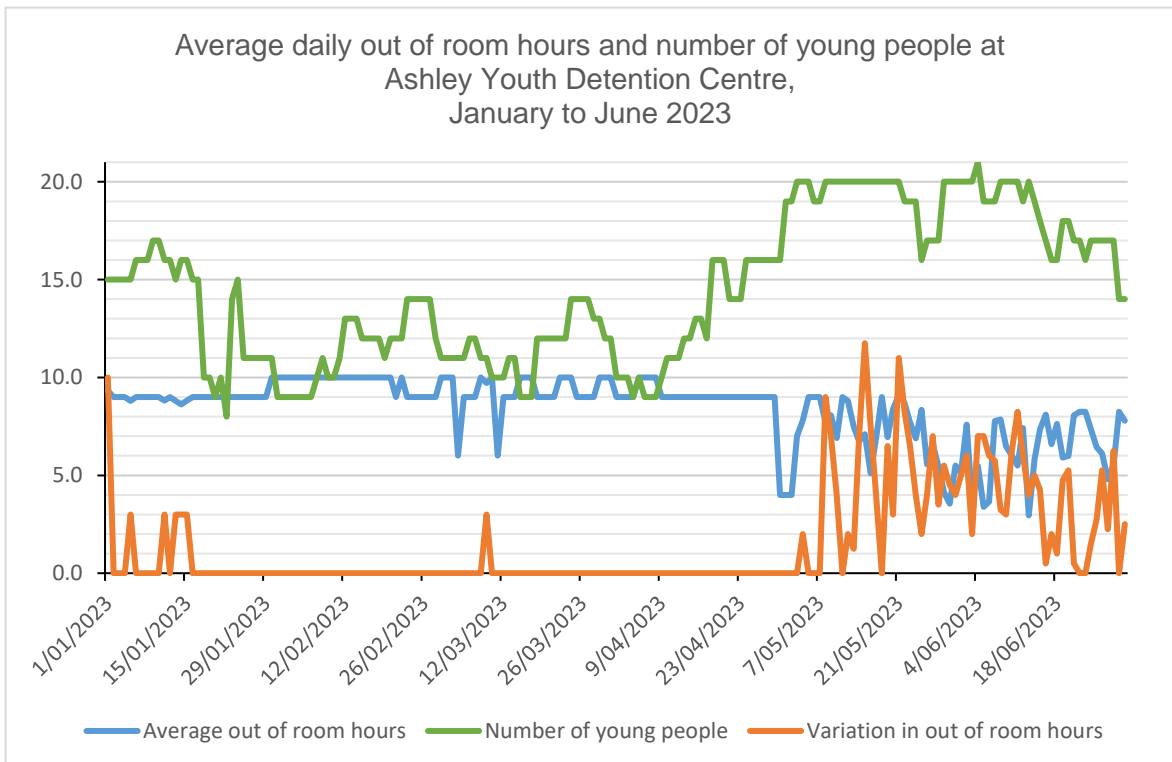
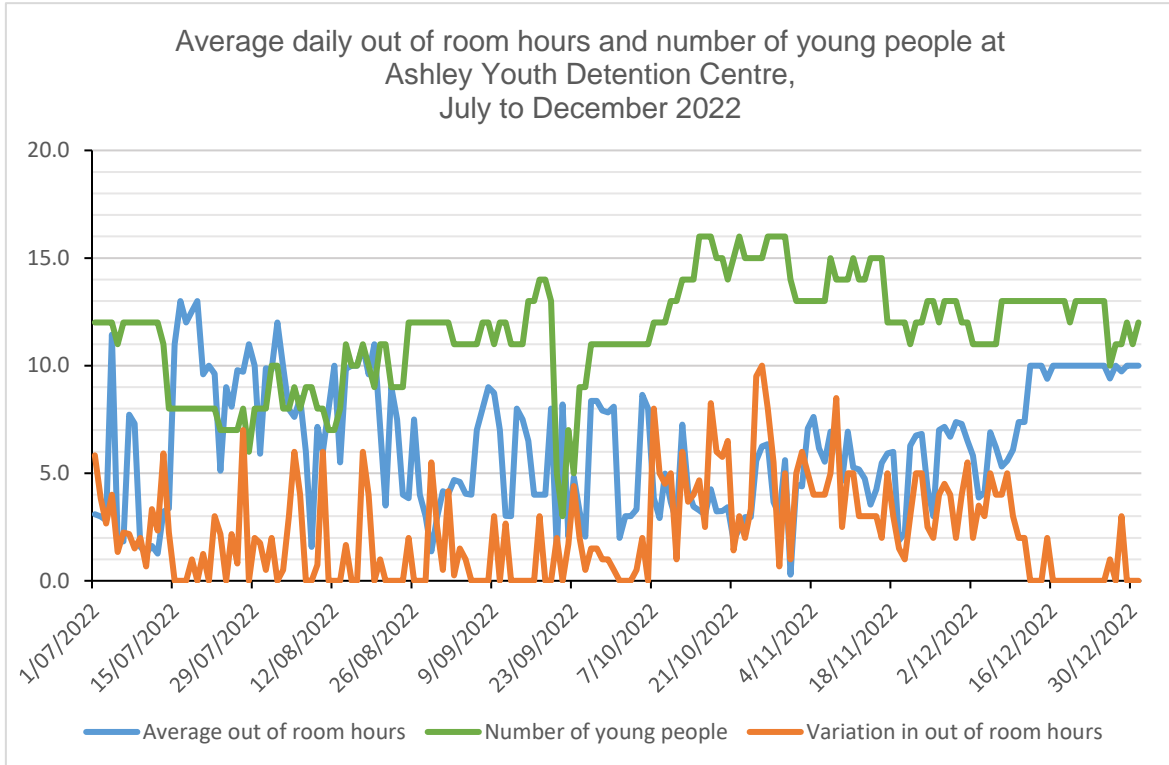
**The actual average daily out of cell hours is the average across all classifications/units of Mary Hutchinson Women's Prison. The planned out of cell times for the different units may differ based on the function/purpose of the unit and during daylight saving hours.*

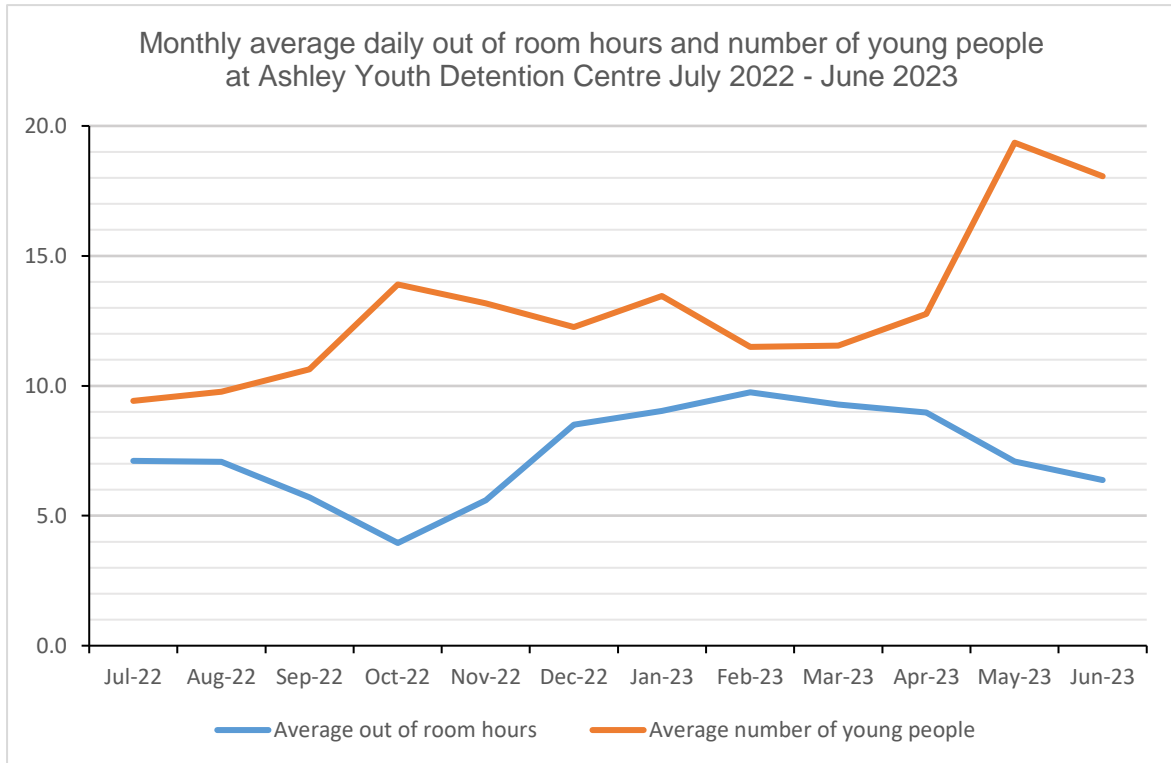




Appendix 3

Ashley Youth Detention Centre – time out of room graphs





Note on the calculation of variation in out of room hours

The variation in out of room hours is the difference between the most hours a young person (YP) spent out of their room and the least hours a young person spent out of their room. For example: If YP # 1 spent 10 hours out of their room, YP # 2 spent 9 hours out, and YP # 3 spent 2 hours out, then the variation in out of room hours = the most hours out (10) – the least hours out (2) = 8. Therefore, the larger the range, the less equitable the distribution of out of room hours between young people.

Note on the accuracy of the data

The data obtained from DECYP was manually entered by DECYP staff into Excel spreadsheets. Accuracy of data entry may have been affected by manual data entry methods, insufficient staffing resources and high staffing pressures. The Office of the Custodial Inspector manually manipulated the data further and cleaned it for the purposes of creating this graph. This involved merging weekly data tables into a single table. Data was then transposed and converted so that all out of room time was reported in the same units. Daily out of room time averages, variation in out of room time and number of young people present at the centre were then calculated. Although due care was taken during this process, the accuracy of this data may have been impacted.



**Office of the
Custodial Inspector**
Tasmania

Level 6, 86 Collins Street, Hobart Tasmania 7000
Telephone: 1800 001 180 (free call)
Email: ci@custodialinspector.tas.gov.au
Website: www.custodialinspector.tas.gov.au