



Submission

Revised Code of Inspection Standards for Adult Custodial Services September 2020 (the Standards)

Office of the Inspector of Custodial Services

People with Disabilities (WA) Inc. (PWdWA) would like to thank the Office of the Inspector of Custodial Services (OICS) for the opportunity to provide comment on their draft Revised Code of Inspection Standards for Adult Custodial Services.

PWdWA is the peak disability consumer organisation representing the rights, needs and equity of all Western Australians with disabilities via individual and systemic advocacy.

PWdWA is run BY and FOR people with disabilities and, as such, strives to be the voice for all people with disabilities in Western Australia (WA).

President: Lisa Burnette

Executive Director: Brendan Cullinan

Report Author: Brianna Lee

People with Disabilities (WA) Inc.

City West Lotteries House, 23/2 Delhi Street West Perth WA 6005

Email: brendan@pwdwa.org

Tel: (08) 9420 7279

Country Callers: 1800 193 331

Website: <http://www.pwdwa.org>

People with disabilities WA (PWdWA)

Since 1981 PWdWA has been the peak disability consumer organisation representing the rights, needs, and equity of all Western Australians with a physical, intellectual, neurological, psychosocial, or sensory disability via individual and systemic advocacy. We provide access to information, and independent individual and systemic advocacy with a focus on those who are most vulnerable.

PWdWA is run by and for people with disabilities and aims to empower the voices of all people with disabilities in WA.

Introduction

PWdWA welcomes the opportunity to provide comment to the OICS on the new draft inspection standards as they relate to assessing the treatment and conditions for prisoners with a disability in WA. PWdWA receives both state and federal funding to provide advocacy around issues experienced by people with a disability.

As the peak consumer voice for people with disability in WA, our submission is compiled on the experiences of people with disability, their families, and carers. Our responses are also informed through PWdWA collaboration with other advocacy and disability organisations.

The difficulties and discrimination faced by people with a disability are often magnified in custodial settings. This includes difficulties accessing appropriate care and support, complying with rules, and being able to participate in recreation, education and employment activities that do not consider the adjustments they may need.

We welcome the recognition from OICS that specific efforts need to be made in custodial settings to ensure prisoners with a disability receive human and equitable treatment and conditions. We also applaud the move towards a plain English approach to the Standards which simplifies language. However, based on a review of the draft Standards, PWdWA strongly urges the OICS to consider a number of recommendations outlined below. These recommendations have been developed as

a result of issues brought to our attention through our individual advocacy and systemic work.

Recommendation 1: Fully incorporate the additional standards for prisoners with a disability into the Standards

The new draft Standards fully incorporates the Inspection Standards for Aboriginal Prisoners 2008. Communication from the OAIC stated the rationale for this was to 'elevate their prominence'. We applaud the integration of the Inspection Standards for Aboriginal Prisoners into the Standards but cannot understand the rationale for not doing so with the Standards developed for other vulnerable populations including prisoners with a disability who account for 20% or more of the prison population.

For the ease of understanding the recommendations below, do refer to Section 6, however we note as per this recommendation that any changes be integrated fully into the Standards.

Recommendation 2: Update section 2.1(5) to specify disability

The Basic Principles provides a comprehensive list of the grounds on which a person cannot be discriminated against however it does not specify disability. We know that people with a disability experience discrimination at high rates so it should be specifically named under principle 5 to highlight its importance.

Recommendation 3: Amend section 2.2 (Orientation) to state that information and orientation will be provided in the format best suited to the person including but not limited to Auslan, brail, interpreters, assistive technology, or Easy English.

It is important to ensure that information is accessible and, in a format best suited to the person. This will ensure that all prisoners (not only those with a disability) understand their rights and obligations and allow for a smooth transition into prison life.

Recommendation 4: Amend Section 6.1 (Disability Screening) to state that prisoners who are identified as having a disability are assessed to identify their support needs within the custodial setting and processes are initiated to address these needs.

The general Standards specifically state that health needs will be assessed and actioned appropriately. Simply identifying that a person has a disability is not enough. There must be access to assessments to identify any support needs and adjustments that are required, and action must be taken to ensure that any process for accessing supports or adjustments are initiated promptly e.g. accessing aids and equipment.

Recommendation 5: Amend Section 6.2 to include facilitating access to disability advocacy support, including support for complaints.

People with a disability, including those with cognitive and intellectual disability, may require the support of an advocate to ensure that they understand their rights and that their voice is heard. Access to disability advocacy can improve outcomes for people with a disability.

Recommendation 6: Amend section 6.3 to:

- State that disciplinary procedures and punishment will not be used as a form of behaviour management for people with a disability.
- Require prisons to engage in behaviour management procedures consistent with positive behaviour support for people with a disability
- Require that restrictive practices (as defined by the Disability Royal Commission into Violence, Abuse Neglect and Exploitation of people with disabilities) are only implemented in line with a

behaviour support plan, for a limited time, and under the guidance of clinician with appropriate qualifications

We know that people with disabilities are subjected to restrictive practices, in some case daily, under the guise of behaviour management. Restrictive practices include more than physical or mechanical restraint or seclusion. Restrictive practices must be approved and monitored in disability service settings, however there is currently no requirement in custodial settings. This is problematic as restrictive practices are often used due to organisational or staff convenience, to overcome a lack of staff, inadequate staff training or knowledge, and lack of staff support and/or supervision. Often behaviours are a way for the person with a disability to communicate. They could be experiencing unmet needs or challenges to their wellbeing, sensory changes, responding to their environment or it could be a perfectly normal reaction to a set of circumstances. A human rights-based approach would ensure that a positive behaviour approach, requiring authorisation and monitoring of restrictive practices, be implemented.

Recommendation 6: Amend Section 6.4 to state that the built environment must be appropriate and accessible, including reasonable adjustments for prisoners with a disability.

Ensuring the built environment is accessible will support not only people with a disability but also older Australians in custodial settings who may have mobility issues.

Recommendation 7: Amend section 6.5 to specifically state that prisoners with a disability will have access to reasonable adjustments, aids, technology and support to engage in daily activities of living, recreation, education and employment.

Recommendation 8: Specify a requirement for prisons to display the Basic Principles and provide information about the Standards to all prisoners in a format that best suits their needs.

It is essential that all prisoners be aware of, and have access to, information about their rights and obligations in custodial settings. If the Standards are to be the benchmark for custodial settings in the treatment and conditions for prisoners, they must have access to the information in a form they can understand. Given that 20% or more of adults incarcerated have a cognitive or intellectual disability, we recommend that Easy English material be developed.

Recommendation 9: Develop guidance material around the Standards

We acknowledge that the OICS has made specific effort to simplify the Standards. However, we know from experience with many of the disability standards that it is crucial for guidance to be provided around what it looks like when standards are embedded in everyday practice. This will help custodial settings to review their own policy and practices to ensure they meet the standards. It will also provide prisoners with a better understanding of what they can expect and have the tools necessary to make a complaint if the Standards are not being followed.

This submission is supported by the following organisation:

