

Six teenagers hooded and transferred to Darwin adult prison, report reveals

Two of them were not involved in the initial disturbance and one was younger than the age legally allowed to be held in an adult jail



The report found corrections staff had used inadequate de-escalation techniques.

By Helen Davidson **in Darwin**

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Six teenage boys were hooded and transferred to an adult prison after a disturbance at a Darwin juvenile detention facility, despite two of them not being involved in the disturbance and one being younger than the age legally allowed to be held in an adult jail, a report has revealed.

The final report of an investigation initiated by the former children's commissioner, Dr Howard Bath, found corrections staff had used inadequate de-escalation techniques and had inappropriately used restraints and instruments such as spit hoods during the incident, and that solitary confinement did not comply with the youth justice act.

However, the commissioner for corrections, Ken Middlebrook, disputed much of the report, accusing it of containing inaccuracies and not appreciating the seriousness of the incident.

When one detainee attempted to climb through a window into a storeroom he was “poked” back through by a youth officer. Handicam footage recorded an exchange between staff in the room:

“No, let the fucker come through because when he comes through he will be off balance, I’ll pulverize, I’ll pulverize the little fucker,” the transcript read. “Oh shit, we’re recording hey (laughs).”

An earlier plan to use a police dog had been cancelled due to concerns of the dog handler. Staff decided to use the tear gas on the basis all other options had been exhausted, but handicam footage recorded a conversation between a youth officer and his colleague about a detainee requesting to talk.

“He said he wanted to talk to you but I said you had your chance, so ... Yeah, don’t talk to him, he’s finished now.”

The report, tabled in Northern Territory parliament late on Thursday, examined the events surrounding an incident on 22 August last year, in which boys aged between 14 and 17 armed and barricaded themselves during an attempt to escape.

Attempts by youth justice officers to de-escalate the incident failed, and a decision was made by management to bring in prison officers equipped with riot shields, gas masks, body protection, batons and CS (tear) gas, the report described. One of the three officers had no training in immediate response or emergency cell extraction.

In the aftermath a magistrate gave permission for five boys to be transferred to the adult prison, but staff transferred six, including a 14-year-old detainee. Under the law transferees must be 15 or older.

Spit hoods were placed on all boys on arrival at the adult jail, despite only one being known to spit. “The use of a spit hood/mask is a particular concern which has the potential to be inhumane and cause harm to young persons,” the report said.

The 14-year-old was returned to Don Dale youth detention centre handcuffed and hooded in the back of a vehicle and placed in an admissions

cell still restrained and wearing the hood, as youth officers were not aware of correct procedure.

The general manager told the report's investigators he did not know the boy was only 14, and was unable to explain why six detainees were transferred when the magistrate clearly only authorised five.

Of the other five transferred, two boys were not involved in the incident and had complied with all directions given by youth officers at the time.

Youth officers said they informed prison officers the two had not been involved in the incident and they were scared of how they would be treated in the adult prison.

"The acting general manager confirmed at interview that he was fully aware they didn't participate in the incident, were compliant throughout and appeared genuinely scared," read the report. "Despite this, he did not consider it relevant to whether they should or should not be transferred to the adult prison."

Footage also captured an exchange between the corrections commissioner, Ken Middlebrook, and the dog handler who the report noted appeared to be concerned about the detainees who were not involved in the disturbance.

"The dog handler can be heard to ask: 'You going to gas the lot of them?' The Commissioner is then heard to say to someone: '...Mate, I don't mind how much chemical you use, we gotta get him out...'"

Tear gas was used, with the six boys being exposed for between three and eight minutes each, and the incident ended.

The general manager told investigators he did not believe the use of gas was prohibited by the youth justice act, and the acting general manager "was of the opinion that regardless of whether his interpretation of the legislation was right or wrong, the fact that no young persons were hurt should be the issue".

Prior to the tear gassing Bath had received a complaint from a professional stakeholder about the "inhumane" solitary confinement of five detainees in

the “cramped and darkened” cells of the behavioural management unit (BMU) for 23 hours a day.

The complainant had raised the issue with the corrections commissioner, but the response “did nothing to reassure the complainant of the young persons’ wellbeing”.

Five of the boys had been involved in an earlier escape from the medium security section of Don Dale in early August, and were held in the the BMU for periods of between six and 17 days. Legislation dictates a maximum 72 hours.

They were placed on near identical management plans with no provisions for individual behavioural triggers, and Bath found no mention of medical requirements, “despite two of them having specific medical needs”.

A sixth youth, not involved in the escape, was held in the BMU for five days.

The solitary confinement of the youths immediately preceded the events of 22 August, which a youth justice officer said was a result of the “build up of being kept in the BMU so long”.

Juvenile corrections in the Northern Territory was the subject of a damning review in February by Michael Vita, which found youth justice to be in a “climate of daily crisis”. Juvenile detainees have been moved twice since the 2014 incident, and are now held in the old adult maximum security prison at Berrimah. Since the move there have been a spate of incidents, including another damaging disturbance by detainees and several escapes.

The report recommended improved employment and training of youth justice officers and the establishment of best practise for the use of restraints and hoods.

It also recommended “substantial improvement in the availability of suitable programs that address the young people’s physical and mental wellbeing”.

“We need to make sure that young people in youth detention are treated in accordance with the Youth Justice Act and our international obligations under the United Nation’s Convention on the Rights of the Child,” said the

current children's commissioner, Colleen Gwynne. "I look forward to working with the government so that we can improve the services provided to these young people."

Commissioner Middlebrook told Guardian Australia there were "a lot of inaccuracies" in the report.

He said the boys were kept in BMU but it was not solitary confinement.

They were allowed recreation, he said, but "my staff have not kept very good records of that and it's hard to defend some of those things."

He said the report was "silent on the circumstances that led up to the incident."

"Three weeks before this particular incident these young men threatened staff with makeshift weapons and escaped from the centre," Middlebrook said.

While he acknowledged that did not justify the way things were handled, Don Dale at the time was "not really a fit and proper place and [the BMU] was the only secure location we had to restrict these young people - who made it clear they were going to go again."

Middlebrook also accused the report of misrepresenting the Vita report and the conversation between himself and the dog handler.

"It's all good in hindsight to right a report but on the night it was a very serious incident," he said.

Middlebrook said major changes had occurred since the incident, including increased training of 11 weeks for youth justice workers, who are then mentored by an experienced officer for 12 months.

New regimes for detainees meant "they now know where they stand" in regards to behaviour, he added.

The opposition spokeswoman for corrections, Natasha Fyles, said the report's findings were concerning and unacceptable, and showed that basic human rights had been ignored.

“Yes, these young people have done the wrong thing and they are serving the time the magistrate has given them, but it is the responsibility of government to make sure that the minimum standards of the law are upheld,” she said on Friday afternoon.

Fyles accused Elferink, who is the attorney general, the minister for corrections and for justice, of staying silent on a report the government has had for several weeks.

The community and public sector union blamed Elferink and Middlebrook for placing their members in “extremely difficult circumstances” with only three days training.

“If the underlying problems at the Don Dale centre are dealt with, staff and the children they oversee would both be in a far more satisfactory environment,” said NT secretary Kay Densley.

The corrections department accepted the recommendations made in the report, but commissioner Middlebrook also noted the department was working towards recommendations from the Vita review.

The office of John Elferink, who is the minister for corrections, attorney general and minister for justice, has been contacted for comment.