

COMPLIANCE WITH SECTION 46A OF THE PRISONS ACT 1981

NOVEMBER 2026

Independent oversight that contributes to a more accountable public sector

GOVERNMENT OF WESTERN AUSTRALIA

OFFICE OF THE INSPECTOR OF CUSTODIAL SERVICES

The Inspector of Custodial Services and staff acknowledge Aboriginal and Torres Strait Islander people as the Traditional Custodians of this country, and their continuing connection to land, waters, and community throughout Australia. We pay our respects to them and their cultures, and to Elders, be they past or present.

Artwork Acknowledgement

Marcia McGuire – Kolbang 'Going Forward' (2025)
Format: Digital illustration (cover uses elements)

The artwork ***Kolbang*** – meaning 'going forward' – depicts the positive impacts the Office of the Inspector of Custodial Services has on the custodial estate in Western Australia.

The artwork embodies traditional knowledge passed on from Marcia McGuire's families of the Whadjuk, Ballardong, Yued Noongar and Badimia Yamatji Aboriginal People.



Compliance with Section 46A of the Prisons Act 1981

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Inspector's Overview

There are gaps between policy and practice in the use of Section 46A

Section 46A of the *Prisons Act 1981* was introduced to protect prison officers who may be exposed to an infectious disease through contact with a prisoner's bodily fluids. It also places safeguards around the use of these powers and the handling of prisoners' medical information. Five years after the provision commenced, this Office was required to review how it was working in practice.

This is an important area of custodial practice. Prison officers work in challenging environments and can face a genuine risk of exposure to bodily fluids. Department of Justice data shows that recorded assaults against officers involving bodily fluids have increased considerably since the legislation was introduced.

Our review found the Department has suitable policies and procedures in place to support Section 46A. Access to prisoners' medical records was generally properly authorised, and most blood samples appeared to have been collected in an ethical and appropriate way.

However, practice was not always consistent. Staff had not received specific training in the use of Section 46A powers, incidents were not always categorised correctly, and important decisions and notifications were not always recorded. In some cases, the Department could not provide enough information to show that the requirements of the legislation had been followed.

It is important for staff to understand policy, apply it consistently and keep clear records of what has occurred. It is particularly important when the powers involved affect the health and wellbeing of staff, as well as the rights and medical privacy of people in custody.

The legislation also raises practical issues that needs further consideration. Health and custodial staff spoke about the tension between the power to use reasonable force to obtain a bodily fluid sample and the professional and ethical duties of medical practitioners around consent. While we found no cases where force had been used to obtain a sample, the Department should consider this issue further with relevant stakeholders.

The report makes five practical recommendations covering staff training, accurate incident reporting, record-keeping, making sure prisoners receive and understand test authorisation notices before a sample is taken, and recording when test results are shared and who is notified.

The Department has supported all five recommendations and, in their response, they outline several steps to improve practice, including a Deputy Commissioner Broadcast to reinforce the requirements of Section 46A, an updated test authorisation form, stronger recording requirements through critical incident briefings, a review of refresher training, and possible changes to the Total Offender Management Solution system to improve incident reporting and data quality. These are sensible steps that, if put into practice consistently, should address the main gaps identified in this review.

Overall, the foundations for the effective operation of Section 46A are in place. The focus must now be on putting these commitments into practice and making sure they are applied consistently across custodial facilities. This will better support prison officers following potential exposure, protect prisoners'

rights and medical information, and allow the Department to clearly show that it is complying with the legislation.

ACKNOWLEDGEMENTS

I would like to thank Dan Franks for conducting this review and drafting the report. I also thank the Department for its cooperation and for openly sharing its policies and practices with us throughout the review.

Jane Higgins

A/Inspector of Custodial Services

3 November 2026

Summary of Findings

This review assessed how the Department of Justice (the Department) has implemented and operated the Section 46A powers introduced into the *Prisons Act 1981* in December 2020. The findings show that, while policies and procedures generally provide a sound framework for responding to suspected infectious disease exposure, gaps in staff training, record-keeping, authorisation processes and disclosure practices limit the Department's ability to demonstrate consistent compliance with the Act and Regulations.

Three key areas evidence the need for stronger assurance, clearer practice, and improved oversight.

Prison officers had not been trained in the policies and procedures which support Section 46A powers

Following the amendments to the *Prisons Act 1981*, the Department updated a key policy document to provide guidance for the mandatory testing of prisoners for infectious diseases. This updated policy contained specific and descriptive instructions for custodial staff to follow when exercising Section 46A powers, which if followed, would ensure compliance with the legislation.

However, the Department had not taken sufficient steps to make custodial staff aware of the change in legislation, policy, or provided appropriate training to exercise Section 46A powers. Without sufficient awareness or training, there is a risk that custodial staff will not be compliant with the Act or the Regulations.

Management of suspected infectious disease transmission is partially effective

The Regulations specify the process to be followed when managing a suspected infectious disease transmission involving bodily fluid. This includes requirements for authorising the use of Section 46A powers, notifying the respective prisoner of all relevant actions and decisions, and how to appropriately manage disclosure of results following a blood sample test. A review of available evidence showed that overall, blood samples were collected from people in custody in a lawful and appropriate manner, and prisoner medical records were only accessed under the appropriate circumstances.

Prisoners' medical information is appropriately accessed and disclosed in line with legislation

The legislation provides processes for reviewing prisoner medical records when managing suspected exposure to infectious diseases. Our review found access to, and review of, prisoner medical records were limited to appropriately authorised personnel and were completed in accordance with legislation.

The legislation describes in detail how test results are to be disclosed and identifies the individuals responsible for providing notification. The Superintendent is required to inform the affected prison officer of the test results, and a medical officer is responsible for informing the prisoner from whom the sample was taken.

We were unable to provide reasonable assurance these requirements were consistently met. The Department could not provide sufficient records demonstrating that test result notifications had occurred or evidence showing how the results were disclosed to the relevant individuals.

Recommendations

Recommendation	Page	DOJ Response
Recommendation 1 Train staff in the use of, and compliance with, Section 46A powers and associated procedures.	2	Supported
Recommendation 2 Provide staff refresher training on accurate incident reporting, to improve data quality and maintain high record-keeping standards.	4	Supported
Recommendation 3 Improve record-keeping practices to ensure all documentation relating to Section 46A decisions are recorded, readily accessible, and easily retrievable to support transparency, accountability, and auditability.	4	Supported
Recommendation 4 In accordance with Regulation 29F(3) of the *Prisons Regulations 1982*, ensure prisoners receive and understand test authorisation notices before any blood sample is taken.	5	Supported
Recommendation 5 In accordance with Regulation 29K(1) of the *Prisons Regulations 1982*, the Department should document when test results are shared and who is notified.	8	Supported

Background

Custodial staff work rotating shifts to provide continuous care and security in Western Australia's custodial facilities 24 hours a day, 365 days a year. Their work can be emotionally and physically demanding; requiring them to maintain good order and security, while responding to incidents and emergencies, routinely within challenging environments. Understandably, custodial staff can be placed at risk of infectious disease transmission.

People in custody experience higher rates of communicable diseases than the general community, particularly hepatitis B, hepatitis C, HIV, and tuberculosis. Combined with increased risk factors such as higher levels of intravenous drug use, overcrowding and gaps in access to healthcare, prisons increase the risk of infectious disease and bloodborne virus transmission (Santo Thomas Jr, 2026).

In December 2020, the *Prisons Act 1981* (the Act) was amended with the insertion of Section 46A, which added provisions for the 'inspection of medical records and mandatory taking of blood or other bodily sample where [a] prison officer may have been exposed to infectious disease'. The provisions were intended to identify whether an adult person in custody carried an infectious disease, enabling timely advice and treatment for the affected prison officer and reducing uncertainty following a potential exposure. These provisions are not applicable in a youth detention setting.

Risk of bodily fluid transmission has increased

Since the amendment to the Act was introduced, departmental data suggests the risk of bodily fluid transmission between prisoners and prison officers has increased. Assaults against officers involving bodily fluid transmission from prisoners increased from 31 in 2021 to 72 in 2025 (132%). This increase substantially outpaced the 36% growth in the adult prison population over the same period.

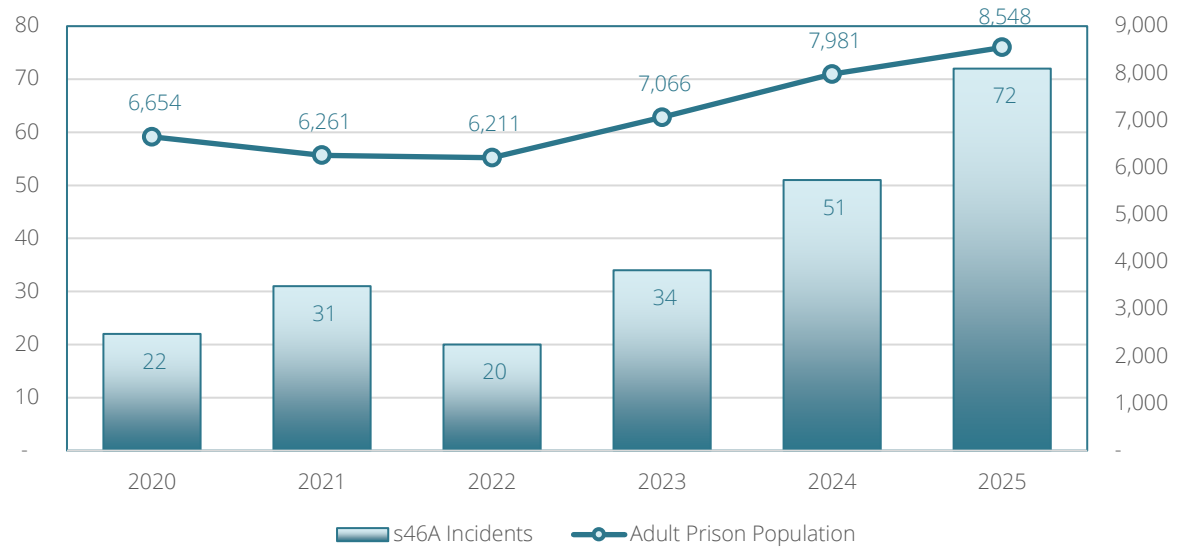


Figure 1: Rate of prisoner assaults involving bodily fluid against custodial staff

Further, this risk is concentrated at particular facilities. By the end of 2025, 80% of recorded assaults involving bodily fluids occurred at just three of Western Australia's 17 adult custodial facilities, namely Hakea, Bandyup and Melaleuca. These facilities comprise 21% of the custodial population, collectively.

Hakea Prison recorded the highest proportion of incidents (38%), followed by Bandyup Women's Prison (24%) and Melaleuca Women's Prison (18%).

Notably, female prisoners represented 43% of all recorded assaults involving bodily fluid, which largely included spitting at officers.

Statistically, prison officers working in maximum-security environments faced the greatest risk of infectious disease exposure from a prisoner (89%). Incidents involving minimum-security prisoners were rare, accounting for less than 2% of all recorded assaults involving bodily fluids.

Table 1: Total recorded prisoner assaults involving bodily fluid against custodial staff

Security level	Incidents recorded	Proportion (%)
Minimum	6	1.7%
Medium	35	9.6%
Maximum	322	88.7%

Why are we reviewing compliance with Section 46A of the Act?

In accordance with Section 46B of the Act, the Inspector of Custodial Services must review and report on the 'compliance with, and the operation and effectiveness of, Section 46A after the fifth anniversary of the Amendment to the Act', being at the end of 2025. This report assesses how effectively these granted powers have been used and regulated while ensuring personal health information is protected, ethical standards are maintained, and practices remain safe, appropriate, and compliant.

This is a statutory review, legislated in 2020. This Office provided the Department of Justice five years notice of this review and provided guidance on what could reasonably be expected. The Department and its facilities had sufficient notice to ensure documentation and practices were well established and compliant with legislation by the end of the five-year review period.

As part of this review, all adult custodial facilities in Western Australia were requested to provide documentation that would evidence their policies, procedures, and practices complied with the Act and the *Prison Regulations 1982* (the Regulations).

1 Prison officers are not trained to use Section 46A powers

The Department has established appropriate policies and procedures to support staff in responding to incidents involving exposure to infectious disease and ensure compliance with legislative requirements.

However, the Department has not provided specific training on exercising Section 46A powers. While staff receive mandatory training on infectious and communicable diseases and infection prevention, this training does not address the responsibilities or legislative requirements associated with Section 46A.

As a result, there is a risk that staff may not be able to effectively implement the relevant legislative provisions. This may limit the Department's ability to provide assurance that the legislative processes intended to support prison officers following suspected exposure to infectious diseases are being effectively implemented.

1.1 Clear and appropriate policies and procedures support the use of Section 46A powers

The Act and Regulations provide a detailed process that must be followed for managing incidents in which a prison officer may have been exposed to an infectious disease. Appropriate Departmental policies and procedures are necessary to guide staff in responding to incidents and ensure compliance with legislation. The full process is outlined in Appendix E and summarised version shown below in Figure 2.

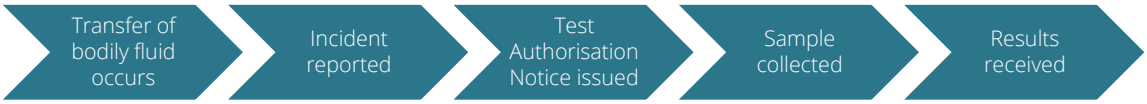


Figure 2: A summarised process flow of Section 46A powers.

The Department provides sufficient guidance for staff in the event of an incident involving potential exposure to infectious disease. The Department maintains a series of policy documents known as the Commissioner's Operating Policies and Procedures (COPPs). Following the 2020 amendment to the Regulations, *COPP 13.1 Incidents Notifications, Reporting and Communications* was updated to provide guidance on exercising Section 46A powers. COPP 13.1 generally reflects the legislation, providing sufficient information and direction on the roles and responsibilities of staff involved in the process. The policy also describes exactly how relevant parties are to be notified of test results.

We found the policies and procedures provided sufficient guidance for staff to follow when there is an incident involving the suspected transfer of bodily fluid. They also help ensure compliance with the legislation.

1.2 Staff are not trained in the use of Section 46A powers

Having appropriate documentation and processes in place is only one part of achieving compliance. Relevant staff must also be aware of, and adequately trained, in legislation, policies, and procedures to ensure they are applied consistently in practice. Discussions with staff from various facilities showed there was limited awareness of Section 46A, its requirements or their roles and responsibilities under the Act and Regulations.

The review found the Department has not developed or delivered specific training for exercising Section 46A powers. However, staff receive some general guidance and training relating to infectious and communicable diseases during their foundational training at the Corrective Services Academy. This includes:

- infectious disease fundamentals, key concepts, and the nature of common viruses,
- transmission pathways and risk behaviours relevant to custodial settings, and
- prevention and harm reduction strategies aimed at reducing the risk of exposure and transmission.

The Department's Communicable Diseases Procedure also outlines mandatory training requirements for all staff, including completion of a Workplace Health and Safety Awareness Course on induction and every three years thereafter. Staff are also required to adhere to the Standard Precautions contained within the procedure that refer to the basic level of infection prevention and control. These precautions include maintaining recommended vaccines and reporting all exposure incidents.

While this training helps prepare staff for working in environments with infectious disease risks, it does not sufficiently address the legislative requirements associated with Section 46A, or provide guidance on the correct procedures, roles and responsibilities in the event of exercising Section 46A powers.

Without appropriate notification or training, staff may be unaware of the legislation, policies, and procedures relating to the use of Section 46A powers. As a result, prison officers who are exposed to bodily fluids may not receive the support that the Act and Regulations were intended to provide.

Recommendation 1
Train staff in the use of, and compliance with, Section 46A powers and associated procedures.

2 Management of suspected infectious disease transmission is partially effective

Incidents involving the suspected transfer of bodily fluid from prisoner to prison officer are recorded in the Department's offender database (TOMS) as an incident report. Information relating to incident details, involved prisoners, actions taken, and whether blood testing was recommended, are generally captured in these reports.

However, our review found incident categorisation was inconsistent, reducing data accuracy and limiting the Department's ability to monitor the prevalence, trends, and outcomes of incidents involving transfer of bodily fluid.

Poor record-keeping practices also meant decisions by Superintendents to use Section 46A powers was not always documented and some test authorisation notices were incomplete.

2.1 Incidents are recorded, but not categorised consistently

The Regulations provide guidance on the actions to be taken when there are reasonable grounds to suspect that a transfer of bodily fluid has occurred from a prisoner to a prison officer. In these circumstances, the affected prison officer, or any witnessing staff members, must notify the Superintendent. The affected officer is expected to complete an incident report prior to ceasing duty. These actions trigger the process for the Superintendent to review the incident and determine if there are reasonable grounds of suspicion to authorise the use of Section 46A powers.

We found incidents involving bodily fluid transfer were recorded in the Department's offender database. Incident records generally contained adequate details, including:

- incident offence
- incident summary
- prisoner identification details
- staff members involved
- facility location
- whether a blood test was recommended, and
- actions taken and the response by custodial staff.

Although incidents were recorded in the offender database, many were not categorised correctly to reflect the incidents possibly involved bodily fluid transfer. A review of incident reports relating to bodily fluid contact provided by the Department found 40% did not include the category 'bodily fluid contact'. As a result, these incidents would not appear when queries about these types of recorded assaults are run.

Inconsistent categorisation of incidents reduces the accuracy and reliability of departmental data. This limited the ability to accurately identify and respond to incidents involving suspected bodily fluid

transfer and increases the risk that strategic and operational decisions were based on incomplete information.

Recommendation 2
Provide staff refresher training on accurate incident reporting, to improve data quality and maintain high record-keeping standards.

2.2 Tests were not always appropriately authorised

When a Superintendent is notified of a relevant incident, they must establish reasonable suspicion bodily fluid has been transferred from a prisoner to a prison officer. This is a core requirement of the Act and the basis for approving a test authorisation notice and exercising Section 46A powers.

The Department has a test authorisation notice form available on its intranet, in line with the requirements under the relevant legislation. The form requires the Superintendent, or delegate, to confirm they:

a) are satisfied there are reasonable grounds to test for infectious diseases, and
b) have or have not decided to issue the test authorisation notice.

Despite the availability of the form, we found many prisons do not consistently maintain records showing how reasonable suspicion had been established before a test was authorised. Some Superintendents described conducting appropriate enquiries, including reviewing incident reports, speaking with relevant custodial and health staff, and reviewing CCTV footage. However, these enquiries were not always documented.

Departmental data showed 91 relevant incidents involving the suspected transfer of bodily fluid since the amendment to the Act. However, only 31 test authorisation notices, or 34%, were provided by the Department. Without records showing that reasonable suspicion had been appropriately established, there was limited justification that tests had been appropriately authorised. This affects the Departments ability to demonstrate compliance with a core requirement of the Act.

Further, under Regulation 29D, a Superintendent may direct a medical officer to review the relevant prisoner's medical records and report on the known presence of an infectious disease. We reviewed nine requests for medical record review and found that all had been made to appropriate health staff and complied with the Act.

Recommendation 3
Improve record-keeping practices to ensure all documentation relating to Section 46A decisions are recorded, readily accessible, and easily retrievable to support transparency, accountability, and auditability.

2.3 Prisoner test samples were not always collected in a manner compliant with legislation

Once a Superintendent approves a test authorisation notice, a prison officer executing the notice holds responsibility for ensuring the notice is provided to the prisoner before the sample is taken. The prison officer must also explain the requirements and conditions of the notice in a manner the prisoner understands. The prisoner must indicate they understand the requirements and conditions of the notice, and whether they agree or refuse to provide a blood sample. The test authorisation notice includes a section for the prison officer executing the notice to confirm:

- the notice had been delivered to the prisoner
- the conditions of the notice had been explained to the prisoner
- the prisoner understood the conditions of the notice, and
- the prisoner's decision to agree or refuse to provide a blood sample had been recorded.

Completing this section of the notice helps ensure bodily fluid samples are only taken after the required information has been provided, explained, and understood by prisoners. We found around one in five (19%) notices did not have this section completed or signed. This indicates many notices may not have been delivered appropriately and were not compliant with the legislation.

> Recommendation 4
> In accordance with Regulation 29F(3) of the *Prisons Regulations 1982,* ensure prisoners receive and understand test authorisation notices before any blood sample is taken.

We also found some bodily fluid samples were not technically labelled in accordance with Regulation 29I. Labels require the inclusion of the prisoner's name, identification number, and date of birth. In practice, blood sample containers are sealed with standard specimen labels that includes the prisoner's name, identification number, and date of birth. While these labels did not contain all information required by Regulation 29I, the missing information is autogenerated and captured by the medical record management system (EcHO).

Regulation 29I(2) allows the CEO to authorise an approved organisation to test samples. Currently, PathWest is the preferred service provider for testing bodily fluid samples under Section 46A. Using an authorised organisation is important to maintain responsibility and accountability during the chain of custody of samples. Overall, most blood samples taken from people in custody appeared to have been collected in an ethical and appropriate manner.

There is tension between Section 46A powers and the medical code of ethics

Under the Act, prisoners are required to provide a blood or other bodily sample when directed. If a prisoner refuses to provide a sample, they can be charged with an aggravated prison offence. The legislation also allows for any use of force that is reasonably necessary in the circumstances to take a

sample. Although some prisoners refused to provide a blood sample, we found no cases where force had been used to take a sample.

Senior custodial and health staff across several facilities advised that, even if custodial staff used force to restrain a prisoner, medical staff would be unwilling to take blood without a prisoner's consent. Both health and custodial staff said the use of force provisions created a clear ethical tension with a medical practitioner's professional obligations to obtain consent before undertaking any test, treatment, or procedure.

Health staff expressed ethical concerns about being asked to take blood from a prisoner without their consent. They questioned the potential professional consequences if they acted contrary to ethical obligations including the risk of losing their professional memberships. This meant that, while Section 46A provided the legal power to use force on a prisoner for the purpose of taking a sample of bodily fluid for testing, the practical use was restricted by ethical and professional concerns raised by health staff. We encourage the Department to consider this issue and engage with relevant stakeholders to find a path forward.

3 Prisoners' medical information is appropriately accessed but test results are not disclosed in line with legislation

The Act allows prisoner medical records to be reviewed for the known presence of infectious diseases. We found that requests for medical information were initiated by authorised personnel, including facility Superintendents, and directed to appropriate health staff.

However, we found gaps in the recording and management of bodily fluid test result notifications. The Act and Regulations prescribe who may receive test results and how information may be disclosed. The Department was unable to provide sufficient records that test results were consistently provided to the appropriate recipients.

As a result, the Department is unable to demonstrate compliance with the legislative requirements governing the disclosure of test information or provide reasonable assurance that confidential information is only disclosed to authorised people.

3.1 Prisoner medical records are appropriately accessed

Regulation 29D allows the CEO to direct a medical officer to review a prisoner's medical records and provide a report on the presence of an infectious disease. In practice, these powers appeared to be exercised by the facility Superintendent as the CEO's delegate.

The Department provided records of requests for medical information and the corresponding responses. We found that all requests to review medical records were initiated by an appropriate person, either the CEO or Superintendent, and were directed to appropriate senior health personnel, including the Director of Health Services, or senior medical officers.

However, we found one request was sent to the relevant facility's health service group email address. Sending sensitive or identifying medical information to a group mailbox does not provide assurance that access is limited to all appropriate staff. There are ethical reasons and legal protections in place to ensure a person's identifiable health information is kept confidential. Requests for medical information should therefore be directed only to individuals authorised to receive, review, and respond to that information.

3.2 No records were provided to show test result disclosures were compliant

We found the Department does not sufficiently or appropriately record bodily fluid test result notifications. The Act and Regulations prescribe who may receive test results and how that information may be disclosed.

Under Section 46A(4) and Regulation 29K, test results must only be disclosed to authorised people. The CEO or delegate may disclose results to the affected prison officer and to a medical officer responsible for the prisoner's medical care and treatment. The affected prison officer must not disclose any information in a way that identifies or could identify the prisoner.

Across all adult custodial facilities in Western Australia, including work camps, departmental records showed that 12 facilities requested a total of 54 blood tests in response to incidents involving bodily fluid contact. However, only Albany Regional Prison and Eastern Goldfields Regional Prison were able to provide records showing that the Superintendent had been notified of medical record reviews and bodily fluid test results, and that any relevant results had been disclosed to the affected officer.

The Department advised it had no records of a prison officer acquiring an infectious disease following a transmission of bodily fluid from a prisoner. However, the absence of records showing that test results were provided to authorised recipients limited confirmation that disclosure requirements were being consistently met. Consequently, it was not possible to provide assurance that prison officers who had been exposed to bodily fluids were always being informed of relevant test results and any associated health risks.

The lack of documentation also meant the Department could not demonstrate that test results were disclosed only to authorised recipients, as required by Regulation 29K(1). As a result, the Department was unable to provide evidence of compliance with key requirements of the Act and Regulations.

Recommendation 5

In accordance with Regulation 29K(1) of the *Prisons Regulations 1982,* the Department should document when test results are shared and who is notified.

Appendix A Bibliography

Santo Thomas Jr, M. H. (2026). Global coverage of interventions for reduction of injecting drug use-related harm, HIV, viral hepatitis and tuberculosis in prisons and other carceral settings: A systematic review. *International Journal of Drug Policy*, 1-17.

Appendix B Glossary of Terms

Term	Expansion of Abbreviation
COPP	Commissioner's Operating Policy and Procedure
Department	Department of Justice
TOMS	Total Offender Management System

Appendix C Department of Justice's Response

GOVERNMENT OF WESTERN AUSTRALIA
Department of Justice
Corrective Services

Response to the OICS Report:

Review into Compliance with Section 46A of the Prisons Act 1981

October 2026

Response Overview

On 5 February 2026, OICS announced the commencement of the review into Compliance with Section 46A of the *Prisons Act 1981* (the Act). The review assessed compliance with, and the operational effectiveness of s46A, as mandated by s46B of the Act.

On 15 September 2026, OICS provided the Department of Justice (the Department) with the draft report which contains five recommendations.

Of the five recommendations, all are supported.

Detailed responses to the recommendations can be found below.

Response to Recommendations

1 Train staff in the use of, and compliance with, Section 46A powers and associated procedures.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Operational Support

Response:

Training reminders for existing officers surrounding s46A testing requirements, communicable diseases, and use of force report writing, will be included in the Deputy Commissioner Broadcast issued in response to recommendation 3.

For new officers, these training components are undertaken during week four of the Entry Level Training Program.

2 Provide staff refresher training on accurate incident reporting, to improve data quality and maintain high record-keeping standards.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Operational Support

Response:

The Corrective Services Academy supports the intent of the recommendation and will review the existing suite of refresher training modules to identify where incident report writing inclusive of provisions surrounding the legislative powers of prison officers and report quality requirements can be incorporated into.

All facilities will be advised of the updated training requirements once these have been determined.

In addition, potential system changes will be investigated to further support data quality and record keeping, including consideration of an additional 'bodily fluids' incident type in the Department's Total Offender Management Solutions (TOMS) system, and refining TOMS training and system prompts to provide further guidance to officers when completing incident reporting.

3 Improve record-keeping practice to ensure all documentation relating to Section 46A decision are recorded, readily accessible, and easily retrievable to support transparency, accountability, and auditability.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons

Response:

The Department will issue a comprehensive Deputy Commissioner Broadcast to all adult custodial facilities reinforcing the requirement to comply with legislative provisions surrounding the pathology testing of prisoners in accordance with Section 46A of the *Prisons Act 1981*.

Information within the broadcast will include:

- Advice and guidance to assist facilities in establishing or updating their processes surrounding s46A testing to ensure they are appropriate and consistent.
- Training information in relation to communicable diseases.
- Provision of an amended test notice authorisation form inclusive of new fields for recording incident numbers and descriptions for incidents that are formally recorded within TOMS and which result in s46A testing.
- Record keeping requirements, including a directive for Superintendent's to commence recording s46A testing details within Critical Incident Briefings Part 2, including the justification for why s46A testing was required, and whether impacted officer/s have been notified of test outcomes (while maintaining their confidentiality).

4 In accordance with Regulation 29F (3) of the Prisons Regulations 1982, ensure prisoners receive and understand test authorisation notices before any blood sample is taken.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons

Response:

Procedures surrounding the issuing of test notice authorisation forms and ensuring prisoners understand the purposes of testing will be included in the Deputy Commissioner Broadcast issued in response to recommendation 3.

The test notice authorisation form has also been updated to include additional fields for recording incident numbers if formally recorded as an incident in TOMS, and to provide a brief description of the incident that has necessitated s46A testing to occur.

Superintendents will be required to verify compliance with these procedures when completing the critical incident briefing part 2.

5 In accordance with Regulation 29K (1) of the Prisons Regulations 1982, the Department should document when test results are shared and who is notified.

Level of Acceptance: Supported
Responsible Division: Corrective Services
Responsible Directorate: Adult Male Prisons

Response:

Procedures surrounding the documenting and sharing of test results will be included in the Deputy Commissioner Broadcast issued in response to recommendation 3, specifically, the directive for Superintendents to ensure s46A testing information is adequately recorded in the critical incident briefing part 2.

Under the directive, Superintendents must ensure they document the reasoning for why s46A testing is occurring and ensure both the prisoner/s being tested and affected officer/s are informed of the test results.

Prisoners will be notified via health services staff, while staff will be notified directly by the Superintendent, who must also ensure that affected staff are not identified by name within the critical incident briefing part 2 to ensure confidentiality provisions within the legislation is not breached.

Appendix D Methodology

This report was a legislated review of Section 46A of the *Prisons Act 1981* as directed by Section 46B of the same legislation.

The review examined departmental documentation including policies, procedures, forms and registers. Anecdotal information was collected by interviewing prison management, custodial and non-custodial staff, and people in custody.

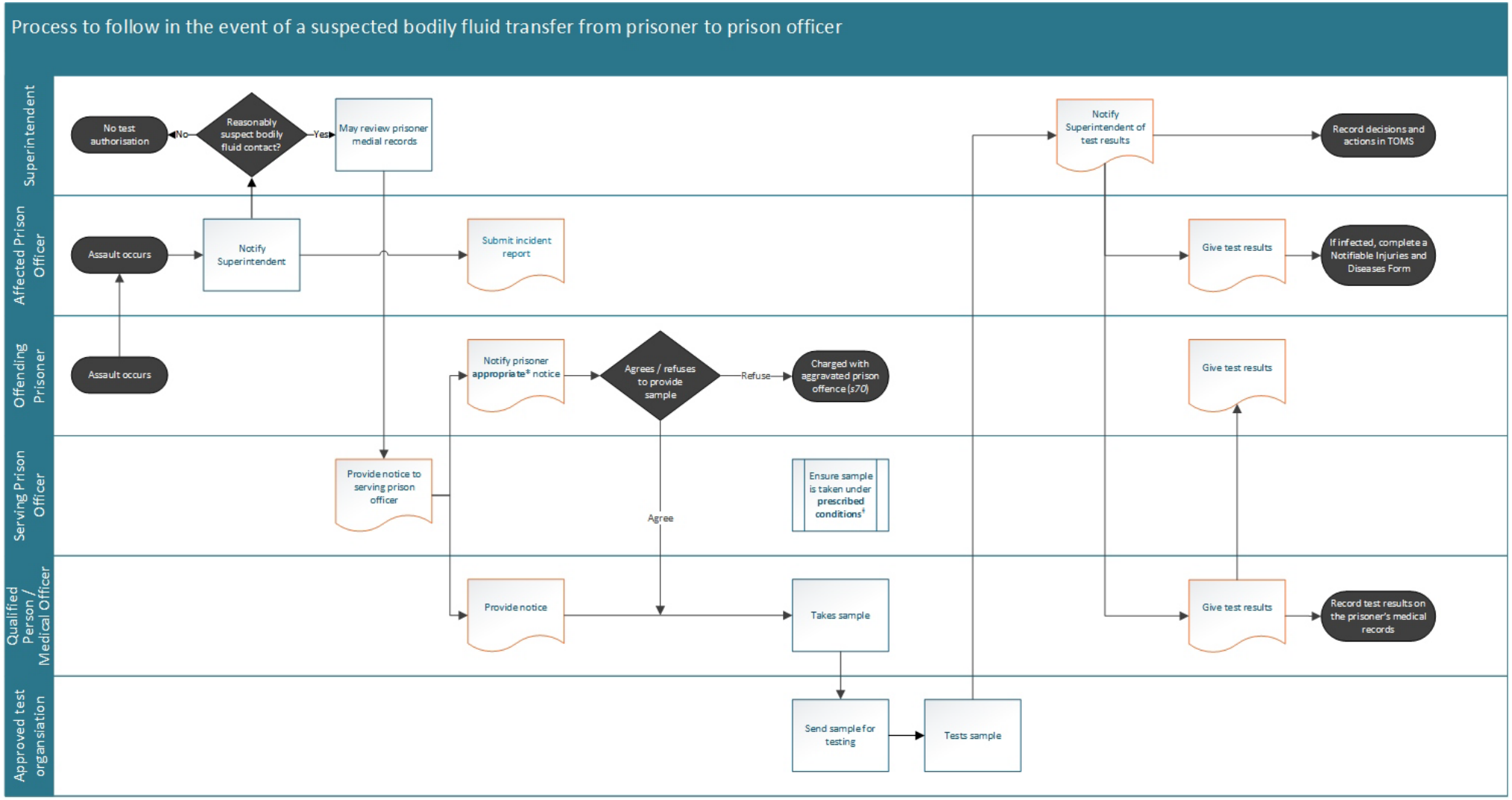
Data sets for this review were obtained from the Department of Justice as part of a document request. Pre-constructed reports from the Department's Reporting Framework and from the offender database (TOMS) were also utilised.

A draft version of this report was sent to the Department in September 2026 for comment and to respond to recommendations. A formal response was received from the Department on 3 November 2026, as shown in Appendix C.

A final copy of the report was provided to the Minister for Corrective Services on 6 November 2026 for lodgement with Parliament, in accordance with the process outlined in the *Prisons Act 1981*.

Key dates	
Review announced	5 January 2026
Field work	February – July 2026
Draft report sent to Department of Justice	15 September 2026
Draft response received from Department of Justice	2 November 2026
Declaration of prepared report	3 November 2026
Report provided to Minister for Corrective Services	6 November 2026

Appendix E Process to follow in the event of a suspected bodily fluid transfer



* *r29F(2)*: An appropriate test authorisation notice must contain:

a) the name of the prisoner; and
b) the type of sample to be taken; and
c) the infectious disease for which the sample is to be tested; and
d) a statement including the following:
   i. the CEO suspects on reasonable grounds that there has been a transfer of bodily fluid from the prisoner to a prison officer;
   ii. that a prison officer may take the prisoner to a place (including a place within a prison) that the CEO considers has appropriate facilities for the taking of the sample;
   iii. that a qualified person at the place may take the sample;
   iv. that such force as is reasonably necessary in the circumstances may be used to take the sample;
   v. that the prisoner must submit themselves for the purpose of having the sample taken;
   vi. that the prisoner commits an aggravated prison offence if the prisoner fails to submit themselves for the purpose of having the sample taken.

‡ *r29I*: The sample must be sealed and labelled in the presence of the offending prisoner and the serving prison officer. The label must contain the following information:

a) the name of the prisoner; and
b) the type of sample taken; and
c) the infectious disease for which the sample is to be tested; and
d) the name of the qualified person who took the sample; and
e) the time and date when the sample was taken.



Inspection of prisons, court custody centres, prescribed lock-ups, youth detention centres, and review of custodial services in Western Australia

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