



Inspector of  
Custodial Services

# Inspector of Custodial Services

Review of the response to  
COVID-19 in NSW custody



## Inspector of Custodial Services

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# Contents

<b>Inspector's overview</b>	<b>4</b>
<b>Glossary of terms and acronyms</b>	<b>6</b>
<b>Executive summary</b>	<b>7</b>
Emergency legislation	7
Governance and policy	9
Preventing and managing COVID-19 illness in custody	10
Reducing the risk of transmission of COVID-19 in custody	11
Impact on custodial services	12
Innovations to address the impact of COVID-19	12
<b>Recommendations</b>	<b>14</b>
<b>Review process</b>	<b>16</b>
<b>1 International and domestic context</b>	<b>18</b>
1.1 The emergence of COVID-19	18
1.2 COVID-19 in Australia	18
1.3 COVID-19 in custodial environments	19
<b>2 Governance frameworks within the agencies</b>	<b>21</b>
2.1 COVID-19 response framework	21
2.2 Compliance management	23
2.3 Pandemic planning	24
<b>3 Reducing the risk of transmission in custodial facilities</b>	<b>26</b>
3.1 Restrictions on access to custodial centres	26
3.2 Screening and quarantine of people entering custody	31
3.3 Screening and testing processes for staff and visitors	39
3.4 Personal protective equipment	40
3.5 Vaccination	45
3.6 Emergency release	51
<b>4 Managing COVID-19 illness in custody</b>	<b>55</b>
4.1 COVID-19 outbreaks in custodial facilities	56
4.2 Isolation regimes	58
4.3 Field hospital	72
4.4 Releasing people with COVID-19 from custody	73
<b>5 Continuity of services during the pandemic</b>	<b>75</b>
5.1 Access to justice in custody	75
5.2 Clinical health services	83
5.3 Support for people in custody	84
<b>Appendix 1: ICS COVID-19 monitoring visits</b>	<b>93</b>
<b>Appendix 2: Inspections undertaken from March 2020 to June 2023</b>	<b>95</b>
<b>Appendix 3: Announcement of the ICS review of the response to COVID-19 in NSW custodial centres</b>	<b>97</b>

# Inspector's overview

The prisoner population in NSW has a significant number of people at higher risk of developing serious illness due to COVID-19. Reducing the opportunities for COVID-19 to enter the custodial environment and responding to outbreaks quickly and effectively were therefore essential to minimising serious illness and death, among both people in custody and custodial centre staff.

The restrictions imposed to mitigate the severe risks posed by COVID-19 to people in custody caused enormous upheaval across most, if not all, areas of the NSW custodial system. I acknowledge the hard work of Corrective Services NSW (CSNSW), Youth Justice NSW (YJNSW), the Justice Health and Forensic Mental Health Network (JH&FMHN), private operators (Serco, MTC and GEO) and frontline staff. Their efforts helped avert widespread serious illness and death among people in custody and staff, and consequent outbreaks in local communities.

There was much that was done right in response to COVID-19 in NSW custody. However, there are lessons that need to be learned. These lessons are relevant moving forward, not just to inform planning for future pandemics but also for 'business as usual' operations.

The aspects of the response to COVID-19 that were less successful often exposed existing weaknesses in the NSW custodial system. In the adult system, these included the continuing reliance on old 1800s/early 1900s era infrastructure that is no longer fit for purpose, barriers to inmates accessing essential services, and the challenges of monitoring the implementation of policy and procedures across a large network of 36 correctional centres.

This review was announced in September 2021. A review of the response to COVID-19 in NSW custody was always going to be necessary due to the extent to which it impacted the custodial system. A report of this nature is inevitably retrospective. However, we have now reached the point in the pandemic where there is time and capacity to reflect, rather than react, and consider how best to move forward given the disruption of the past three-and-a-half years. For this reason, I encourage the relevant agencies to act on the recommendation that they conduct a collaborative, internal review of the response and its impact.

In accordance with my role and functions, this report is focused on the conditions and treatment experienced by people in custody. While most aspects of the response likely impacted custodial conditions and treatment to some extent, some were more prominent than others and these are the areas considered in this report.

As part of this review, we received submissions from stakeholders detailing their concerns with the response to COVID-19 in NSW custody. They raised concerns about the length of time people were spending in quarantine, isolation or lockdown, poor physical conditions, restricted or no access to legal representatives, family contact and essential services including health care and mental health support, and CSNSW's refusal to use the early release to parole power. We were provided with multiple case studies detailing the consequences of the response to COVID-19 for people in custody and their families. I am grateful to these stakeholders for their written submissions.

CSNSW, YJNSW and JH&FMHN have a duty of care to people in custody that includes, but is broader than, protecting people in custody from COVID-19. While restrictions were clearly needed to preserve life, they resulted in many people in custody experiencing poor conditions. In 2020 we wrote that preventing and containing the spread of COVID-19 in custody was of the 'utmost importance'. However, this needed to be 'done in a way that respects the human rights, needs and dignity of prisoners'.<sup>1</sup> To be sustainable and

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1 Fiona Rafter, Emily Collett and Anna McGilvery, 'A Delicate Balance: Monitoring Medical Isolation and Quarantine in New South Wales Custodial Centres' (October 2020) *ICPA External Prison Oversight and Human Rights Network Newsletter: Adapting to COVID-19 – Medical Isolation and Quarantine in Prison during a Pandemic* 19, 25.

humane, COVID-19 restrictions needed to be considered alongside their impact on the wellbeing of people in custody. While I acknowledge the efforts to balance these competing goods, this report details some of the ways this was and was not achieved.

In particular, many adults in custody were confined to their cells for long periods in some of the oldest and most dilapidated facilities in NSW. This was driven by lockdowns to contain outbreaks or manage staffing constraints. Placements in restrictive quarantine and isolation regimes also extended beyond mandated periods due to delays in health clearances or alternative placement decisions and transfers. Cumulative or multiple periods of quarantine, isolation or lockdown was another contributing factor. During these periods, people had little or no access to legal representatives, phone calls with family and friends, exercise and fresh air, clean linen and clothing, and, in some cases, regular showers.

It should never be the case that there is no systemic approach to monitoring and documenting the length and reasons a person has been subject to restrictive conditions. This is what happened in relation to people who spent longer in quarantine and isolation regimes than the periods stipulated. The extraordinary circumstances of the pandemic are not sufficient to explain why this persisted without a solution. It seems to me that confining people in custody in substandard and inhumane conditions has become normalised in NSW. To be clear, it is a breach of fundamental human rights and it needs to be addressed.

## **Our response to COVID-19**

We postponed scheduled visits to and inspections of custodial centres during periods of heightened restrictions in NSW, specifically from March to May 2020 and from June to October 2021. The decisions to postpone onsite work were not taken lightly. However, I believed it was necessary to ensure the safety of my staff, custodial centre staff, and people in custody. During these periods, we undertook monitoring activities remotely. These activities included reviewing the initial COVID-19 policies and procedures implemented by the agencies, examining updated policies and procedures and hard copy situational reports, and observing situational report meetings attended by representatives from the agencies and private operators.

Official visitors have attended custodial centres throughout the pandemic.<sup>2</sup> During periods of reduced visitation, a PO Box address and dedicated phone line were established to ensure people in custody could report their concerns and complaints. A COVID-19 monitoring checklist was created for official visitors to complete during their visits, which we reviewed.

The response to COVID-19 in NSW custodial centres was a particular focus of the visits and inspections conducted throughout the pandemic. In the second half of 2020, we undertook visits to custodial centres to examine the implementation of the response to COVID-19. Feedback from these visits was communicated to the relevant agencies. Additional COVID-19-related visits took place in early 2022 to further inform this report. A list of our 46 COVID-19 monitoring visits is included in this report at Appendix 1. The 44 inspections undertaken during the pandemic (up to June 2023) is at Appendix 2.

I take this opportunity to express my gratitude to the health consultants who have worked with us during this period. Rory Maguire and Maureen Hanly have provided their expertise to many of our inspections during the pandemic, including valuable input to this report. Craig Gear OAM has also participated in several inspections, most notably that of the Metropolitan Remand and Reception Centre which, at the time, was operating as an isolation hub for inmates with COVID-19.

**Fiona Rafter**  
**Inspector of Custodial Services**  
**November 2023**

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<sup>2</sup> The *Crimes (Administration of Sentences) Act 1999* s 228(5)(a) requires official visitors to attend adult custodial centres at least once per month.

## Glossary of terms and acronyms

<b>ACRU</b>	Aged Care Rehabilitation Unit, a unit within Long Bay Hospital that holds aged and frail inmates with medium-to-high needs.
<b>AVL</b>	Audio visual link
<b>Beijing Rules</b>	<i>United Nations Standard Minimum Rules for the Administration of Juvenile Justice</i>
<b>CAS Act</b>	<i>Crimes (Administration of Sentences) Act 1999</i>
<b>CAS Regulation</b>	<i>Crimes (Administration of Sentences) Regulation 2014</i>
<b>CC</b>	Correctional Centre
<b>CDTCC</b>	Compulsory Drug Treatment Correctional Centre
<b>CI</b>	Commissioner's Instruction
<b>Custodial centre</b>	As defined in section 3 of the ICS Act. The definition includes correctional centres, residential facilities, transitional centres, and youth justice centres.
<b>COPP</b>	Custodial Operations Policy and Procedures
<b>COVID-19</b>	Coronavirus disease 2019, the disease caused by the SARS-CoV-2 virus.
<b>CSNSW</b>	Corrective Services NSW
<b>ICS</b>	Inspector of Custodial Services
<b>ICS Act</b>	<i>Inspector of Custodial Services Act 2012</i>
<b>Isolation</b>	Where people with COVID-19 or the close contacts of people with COVID-19 are separated to prevent further transmission.
<b>JH&amp;FMHN</b>	Justice Health and Forensic Mental Health Network
<b>KWU</b>	Kevin Waller Unit, a unit within the Metropolitan Special Programs Centre (Long Bay Correctional Complex) that holds aged and frail men in custody with low-to-medium needs.
<b>Mandela Rules</b>	<i>United Nations Standard Minimum Rules for the Treatment of Prisoners</i>
<b>MRRC</b>	Metropolitan Remand and Reception Centre
<b>NUM</b>	Nursing unit manager
<b>PCR test</b>	Polymerase chain reaction test, used to detect COVID-19.
<b>Quarantine</b>	Where young people and adults are separated for a period after entering custody to ensure they do not have COVID-19.
<b>SARS-CoV-2</b>	Severe acute respiratory syndrome coronavirus 2, the virus that causes the disease COVID-19.
<b>SWCC</b>	Silverwater Women's Correctional Centre
<b>WHO</b>	World Health Organization
<b>YJC</b>	Youth Justice Centre
<b>YJNSW</b>	Youth Justice NSW

# Executive summary

Experts have described COVID-19 as the most significant pandemic we have experienced since the influenza pandemic of 1918.<sup>3</sup> When the World Health Organization (WHO) declared the spread of COVID-19 to be a pandemic in March 2020, it was impossible to predict its duration, evolution, and impact.

It quickly became clear that the spread of COVID-19 in custodial environments had the potential to be disastrous, resulting in widespread serious illness and death for people in custody and frontline staff, and outbreaks that would inevitably overflow into the community. Gratefully, this was not the experience of COVID-19 in the NSW custodial system. However, the custodial systems of some international jurisdictions were not as fortunate, suffering rates of infection and death that exceeded those in the community. The threat of similar outcomes influenced responsible agencies in NSW to take strong preventative action. The low levels of COVID-19 transmission in the NSW community and the precautionary measures imposed by custodial agencies together helped prevent the introduction and spread of COVID-19 in NSW custodial centres until 2022, ensuring that the most frightening projections did not eventuate.

We acknowledge the dedication and hard work of health and other custodial centre staff throughout the pandemic. The scope and scale of the response of custodial agencies and private operators to COVID-19 was unprecedented, involving most staff and impacting most areas of the custodial system's operation. At times, particularly during outbreaks of COVID-19, staff have been required to work long hours under arduous conditions for prolonged periods. We found that the management of COVID-19 by custodial and health authorities in NSW achieved its primary purpose of minimising death and serious illness among people in custody and staff. We commend their efforts.

We also acknowledge the experiences of people in custody during the pandemic. For many, long periods of restrictive conditions have undoubtedly been distressing and frustrating. However, we have heard that the majority of people in custody have cooperated with efforts to prevent the spread of COVID-19, and this should also be commended.

Notwithstanding this, there are aspects of the response to COVID-19 that resulted in poor conditions for people in custody. In this respect, there are opportunities for reflection and learning.

## Emergency legislation

The NSW Government was quick to enact emergency legislation at the beginning of the pandemic allowing the Commissioner of Corrective Services NSW (CSNSW) to grant the early release of certain sentenced inmates<sup>4</sup> and to refuse entry to visitors on health grounds (except the Inspector of Custodial Services and the Ombudsman).<sup>5</sup> Legislation was also passed providing Youth Justice NSW (YJNSW) with an identical power to refuse entry to visitors.<sup>6</sup> Other legislative changes permitted greater use of audio visual link (AVL) facilities for court appearances to minimise movement between courts and correctional centres,<sup>7</sup> and changes to the management of prisoner mail to reduce the risk of contraband entering facilities.<sup>8</sup> Although we believe these measures were necessary, we found the increased reliance on AVL for court appearances and changes to prisoner mail were poorly implemented.

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3 CSIRO, *Strengthening Australia's Pandemic Preparedness: Science and Technology Enabled Solutions* (Report, 2022) i.

4 *Crimes (Administration of Sentences) Act 1999* s 276, as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.15 item 2.

5 *Crimes (Administration of Sentences) Act 1999* s 275, as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.15 item 2.

6 *Children (Detention Centres) Act 1987* s 110, as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.8.

7 *Evidence (Audio and Audio Visual Links) Act 1998* s 22C, as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.27.

8 *Crimes (Administration of Sentences) Regulation 2014* cl 112(4).

## Early release to parole

The NSW Parliament enacted this power to ensure that the Commissioner had the necessary flexibility and capacity ‘to protect the health of inmates and correctional services staff and ensure the good order and security of correctional premises through the emergency’.<sup>9</sup> Despite calls from stakeholders, the early release provisions were not used.

The provisions did not apply to unconvicted inmates remanded in custody, who generally comprise around a third of the NSW inmate population. Remand inmates are mostly held in large correctional centres that proved to be among the highest risk locations for COVID-19 outbreaks. The ineligibility of remand inmates for release pursuant to this power underscores the importance of this group having reliable access to legal representatives and court hearings for bail applications. However, the pandemic and its impact on custodial centre operations resulted in persistent disruptions to legal proceedings for people in custody, particularly adults.

The legislation also excluded a wide range of sentenced inmates from eligibility for early release to parole.<sup>10</sup> The figures provided by CSNSW to us suggest that between these exclusions and the number of remand inmates, around 80% of the NSW prison population was ineligible for early release.

Eligibility was further narrowed by CSNSW policy, which created a complex implementation process. This further reduced the number of eligible inmates from around 2,500 to 200. The complexity and timeframes of the implementation process created by CSNSW likely acted as a constraint on the flexibility the Parliament intended to provide, potentially frustrating the purpose of this power.

Fortunately, the prison population in NSW decreased during the pandemic due to other factors. However, it is important to note that despite an overall reduction in numbers, both the remand population and number and percentage of Aboriginal people in custody increased during this period and has remained high.<sup>11</sup>

## Increased use of AVL

COVID-19 impacted the operation of courts and the ability of inmates to attend court. Court appearances by AVL increased but this did not entirely mitigate the impact of COVID-19 on accessing courts. During the period 1 March 2021 to 1 March 2022, approximately 2,103 court appearances by AVL booked during this period were not attended by inmates for reasons related to COVID-19. Staffing shortages also impacted the operation of AVL at custodial centres.<sup>12</sup> The greatest impact was seen at custodial centres that experienced significant COVID-19 outbreaks and those managing people on remand and quarantine regimes.

Although court appearances are generally deemed essential, resulting in these being prioritised, we found contact with legal representatives is not. This is despite access to legal representatives being a fundamental human right, required under NSW law<sup>13</sup> and by CSNSW policy.<sup>14</sup> It is especially crucial for those people held on remand and applying for bail or preparing for trial as a lack of access can result in court delays, and people spending longer in custody than necessary.

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9 New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 2020, 2231 (Mark Speakman, Attorney General, and Minister for the Prevention of Domestic Violence).

10 *Crimes (Administration of Sentences) Act 1999* s 276(3); *Crimes (Administration of Sentences) Regulation 2014* cl 330(1).

11 In June 2023, of the 12,279 adult inmates in NSW, 39.3% were on remand and 29.6% were Aboriginal people: ‘Custody Statistics’, *Bureau of Crime Statistics and Research* (Web Page, 8 August 2023) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_custody\\_stats/bocsar\\_custody\\_stats.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx)>.

12 Information provided by Corrective Services NSW, 3 June 2022.

13 *Crimes (Administration of Sentences) Regulation 2014* cl 82.

14 Corrective Services NSW, *Custodial Operations Policy and Procedures: 10.5 Visits from Legal Practitioners and their Employees or Agents* (version 1.4, 31 July 2023).

Technological solutions were implemented to try and facilitate access to court and legal representatives for people in custody, however the effectiveness of these measures was hampered by connectivity issues. For adults in custody, barriers to access also included operational pressures caused by short staffing, the constraints of quarantine and isolation, and the increased demand for phone and AVL resources. This resulted in phone calls between legal representatives and their clients being cancelled, interrupted, or undertaken in conditions lacking privacy, such as in a shared cell.

Moving forward, there is a need to consider how best to ensure lawyer-client access is facilitated. We recommended CSNSW and YJNSW develop state-wide and local documented protocols for facilitating communication between people in isolation and their legal representatives. We also recommend CSNSW and YJNSW ensure people in custody in isolation can access fit for purpose AVL or other facilities for legal communications.

### **In-person social visits**

In-person social visits ceased at the beginning of the pandemic. These restrictions were among the first to be imposed and are among the last to be completely removed. At the time of writing, the availability of in-person visits for adults in custody had not returned to pre-pandemic levels.

We are concerned that the restriction of in-person social visits in both youth and adult custodial centres at times may not have complied with relevant legislation. The provisions enacted to allow CSNSW and YJNSW to restrict in-person social visits on health grounds<sup>15</sup> had a prescribed period that ended on 26 March 2022,<sup>16</sup> after which restrictions persisted. Therefore, we recommend that CSNSW and YJNSW ensure social visit arrangements comply with the respective legislative obligations for both agencies. We also recommend that CSNSW prioritises returning in-person social visits to pre-pandemic conditions and ensures this is consistent across all similar locations.

### **Inmate mail**

Contact between adults in custody with their families and friends was further impacted by the decision to photocopy all inmate mail and destroy original mail. The rationale for this approach was to prevent drugs concealed in mail from entering correctional centres. While we take no issue with CSNSW taking steps to prevent drugs from entering correctional centres, incomplete or poor copies and missing mail have been a source of ongoing frustration for inmates. We are concerned that the destruction of original inmate mail is not authorised by the legislation, and in any event consider that the process of destroying original mail should cease. Where there is no evidence of drugs, original mail should instead be placed in an inmate's property.

### **Governance and policy**

CSNSW, YJNSW and the Justice Health and Forensic Mental Health Network (JH&FMHN) have worked well together to implement governance arrangements and share information. CSNSW and YJNSW set up operational command posts responsible for issuing directives to custodial facilities. JH&FMHN provided health advice to custodial agencies to inform their operational directives and the three agencies held regular meetings to share critical information.

Our review has analysed directives across key operational areas such as quarantine and isolation, use of

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15 *Crimes (Administration of Sentences) Act 1999* s 275; *Children (Detention Centres) Act 1987* s 110.

16 *Crimes (Administration of Sentences) Act 1999* s 274 and *Crimes (Administration of Sentences) Regulation 2014* cl 329A; *Children (Detention Centres) Act 1987* s 110(5) and *Children (Detention Centres) Regulation 2015* cl 157.

personal protective equipment (PPE) and in-person social visits. We found that due to the large number of directives, frontline staff were often confused, and at times this impacted compliance. There was also a lack of oversight of the implementation of directives at a central level. We found this meant that systemic implementation issues were not quickly identified and remedied and better assurance was required.

The COVID-19 pandemic may not be an aberration, with the CSIRO highlighting that ‘viral disease outbreaks are increasing in frequency and severity’.<sup>17</sup> This pandemic therefore provides a unique experience with which to inform planning for future pandemics. Capturing what custodial agencies and private operators have learnt from this experience will ensure these lessons inform the implementation of a similar response in the future. That is why we recommended that custodial agencies and private operators collaborate to undertake an internal review of the management of COVID-19 in custodial centres.

## **Preventing and managing COVID-19 illness in custody**

### **Quarantine and isolation regimes**

Preventing and containing the spread of COVID-19 has necessitated adults and young people in custody with COVID-19 and their close contacts to be confined to cells or rooms, and for people entering custody from the community to be separated from others. However, we have too often observed people being subject to restrictive quarantine and isolation conditions, with little or no time out-of-cell, for prolonged periods, including beyond the mandated periods for quarantine and isolation. This has been exacerbated by custodial staff shortages, in part related to COVID-19, resulting in the partial or full lockdown of custodial centres and the confinement of people in custody to their cells or rooms.

The negative consequences of lengthy periods of seclusion for people within custodial environments are well known. It is disappointing that people in custody, particularly in the adult system, experienced these conditions for longer than was strictly necessary and that minimising this was not given greater priority in the pandemic response. We found that this was due to poor governance and the failure to use existing legislative provisions to authorise and monitor the separation of people in custody subject to quarantine or isolation.

All adults and young people separated from the rest of a custodial centre’s population due to illness, or to prevent the spread of a contagious disease, should be subject to existing formal separation processes. This will ensure there is accountability and monitoring of the length and conditions of their separation. YJNSW have been doing this. Consequently, we recommend CSNSW use existing legislative provisions to authorise the separation of inmates to monitor the length of time people spend in isolation.

### **Conditions of quarantine and isolation**

The negative impact of quarantine and isolation on people in custody was worsened by the conditions they experienced. In the adult system, the 1800s-era infrastructure of some correctional centres is entirely ill-equipped for managing people in quarantine or isolation. Cells in these locations do not have showers, are cramped and susceptible to extreme temperatures, have little ventilation or natural light, and often contain ligature points. The standard of some of the newer infrastructure used for quarantine and isolation is also poor and requires maintenance work. At different times, inmates in quarantine and isolation have also lacked access to phone calls, clean clothing and linen, and other services and amenities.

The decision to transfer all adult inmates with COVID-19 to the Metropolitan Remand and Reception Centre (MRRC) (for men) or Silverwater Women’s Correctional Centre (SWCC) (for women) also exacerbated the negative impacts of the pandemic on inmates. This decision was made to ensure all adults in custody with

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<sup>17</sup> CSIRO, *Strengthening Australia’s Pandemic Preparedness: Science and Technology Enabled Solutions* (Report, 2022) ii.

COVID-19 were close to tertiary hospitals and health services in metropolitan Sydney for the duration of their illness. However, this approach resulted in several issues, including delays in transporting inmates to MRRC and inmates with COVID-19 being transported over long distances without a comfort stop.

Adults and young people in custody have described quarantine to us as a particularly difficult period as they adjusted to the shock and uncertainty of entering custody while having minimal contact with others. Initially, the quarantine period for adults and young people entering custody was 14 days. It was reduced to 10 days and later seven days. In March 2023, the quarantining of new reception inmates ceased entirely.<sup>18</sup> Although, we found that quarantine was effective in preventing the entry of COVID-19 into custodial centres, the difficulty of this period for people in custody needs to be acknowledged, particularly as for many it was longer than the mandated period.

The length and conditions of quarantine and isolation were a less prominent issue in youth justice centres compared with adult correctional centres. However, we emphasise the importance of vigilance in ensuring that the confinement to rooms of unwell young people is decent and for the least time necessary.

As people in custody with COVID-19 are now managed in-situ, ensuring that people in isolation are held in reasonable and humane conditions needs to be a priority. We recommend that CSNSW and private operators ensure that isolating inmates have access to exercise, time out-of-cell, and are provided with clean clothing and linen, hygiene items, and access to a television and telephone calls. A review of the accommodation used to isolate inmates with COVID-19 to ensure it is adequate for this purpose is needed.

As the requirement for people entering custody to undertake quarantine has now been removed, there is a real risk that custodial centres will experience more frequent and widespread outbreaks, particularly when there are high COVID-19 numbers in the community. This makes the adequacy of local outbreak plans even more important to ensure proper conditions and treatment are maintained. This is something we will continue to monitor.

## **Reducing the risk of transmission of COVID-19 in custody**

In addition to quarantine and isolation regimes, infection prevention and control measures have included the roll-out of COVID-19 vaccinations and the use of PPE.

### **COVID-19 vaccination**

From October 2021 to October 2022, COVID-19 vaccination requirements applied to employees of CSNSW, YJNSW, JH&FMHN and privately operated correctional centres. Consequently, most staff members have received at least two doses of a COVID-19 vaccine. Overall, there has been a high take up of vaccination within the adult prisoner population. The number of adults in custody who have declined vaccination against COVID-19 has remained steady at around 7% to 8%. A much higher proportion of young people in custody have declined vaccination against COVID-19, fluctuating between 15% and 20%. The proportion of Aboriginal young people who have declined vaccination is around 20% to 25%. Similar to the community, there appears to be a degree of vaccine fatigue among people in custody, impacting the uptake of booster shots.

The proportion of people in custody vaccinated against COVID-19 and the proportion who have declined vaccination vary across locations. For some locations, particularly those with significant remand populations this may reflect the frequency of people entering or exiting custody or being transferred to different custodial centres. For others, it perhaps reflects the age profile and health status of the cohort at a location. For

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<sup>18</sup> Commissioner's Instruction 2023/07.

some it may also indicate the proliferation of misinformation about COVID-19 and vaccination among the population, requiring the ongoing vigilance of local health staff.

## **Personal protective equipment**

PPE was, and remains, an important infection prevention and control measure, particularly in relation to vulnerable populations. During our inspections and visits in 2021 and 2022, we regularly observed poor compliance with PPE requirements, although it should be noted that this varied across locations. As the pandemic entered its third year, large proportions of staff have been vaccinated and/or infected with COVID-19, leading some to feel that they no longer need to wear PPE. Compliance fatigue seems to also be a consequence of the frequency with which PPE requirements have changed over the course of the pandemic.

We have observed, and ourselves experienced, the significant challenges staff face when wearing full PPE in older correctional centres where there is no climate control. Despite the variety of infrastructure, located in a range of climates, a one-size-fits-all approach was taken in relation to PPE across the NSW custodial system. We believe that this contributed to a sense among staff that decision makers do not understand the realities of their work or work environments. An approach that considered the unique circumstances of different custodial centres, while offering the best protection achievable in a situation, may have improved PPE compliance, although JH&FMHN have expressed concerns with such an approach (see section 3.4).

## **Impact on custodial services**

COVID-19 restrictions within custodial centres had an unavoidable impact on the continuity of services to adults and young people in custody. The long term impact of the pandemic on health services, psychology services, rehabilitation programs, education, and cultural supports for Aboriginal inmates will be a feature of our inspection and monitoring work moving forward.

We recommend that JH&FMHN, in collaboration with CSNSW and private operators and YJNSW, review the impact of COVID-19 on the provision of health care in adult and youth custodial centres. We also recommend that CSNSW develop a prioritisation strategy for inmates waiting for placements in intensive programs and monitor its use in practice. We acknowledge the work already undertaken by JH&FMHN in this area and that CSNSW have developed guidance for priority participants for programs.

## **Innovations to address the impact of COVID-19**

During the pandemic, innovations have been implemented in custodial centres that will improve the level of contact between young people and adults in custody and their support networks in the community. When in-person visits were suspended in March 2020, tablets and existing AVL suites were utilised to facilitate face-to-face contact. This will have continued benefit for those who would not otherwise receive visits. In addition, in-cell tablets have been made available in adult correctional centres across NSW, enabling inmates to have greater access to phone calls with their approved contacts. We commend CSNSW for these initiatives.

However, these innovations supplement, but cannot replace, in-person social visits. It is unfortunate that after years of disrupted access to in-person social visits, adult correctional centres have been slow to return to the level of availability for in-person social visits that existed prior to the pandemic.

In the absence of in-cell tablets, or in-cell charging facilities, access to phones during quarantine, isolation, and lockdowns was a challenge for adults in custody. For much of the time quarantine was in place, those in quarantine could only access phones during their time out-of-cell, and this could be unpredictable. For

those in isolation, wireless telephones were installed but these were hindered by connectivity issues and were not immediately available during the initial COVID-19 outbreaks in custody. Barriers to accessing phone calls with family and friends persist where in-cell tablets, or in-cell charging facilities for these tablets, are not yet available.

COVID-19 is still a risk in the custodial system and custodial agencies must continue to manage outbreaks in facilities that accommodate many aged and vulnerable inmates. There is no doubt the management of COVID-19 by custodial and health authorities in NSW achieved its primary objective of minimising death and serious illness among people in custody and staff. In many ways, COVID-19 has highlighted and exacerbated existing limitations and issues within the NSW custodial system, resulting in negative consequences for people in custody. Therefore, we consider that the recommendations in this report can be of benefit for both the ongoing management of COVID-19, and beyond this pandemic.

# Recommendations

## The Inspector recommends:

1. Justice Health and Forensic Mental Health Network, Youth Justice NSW, Corrective Services NSW and private operators undertake an internal review of the management of COVID-19 in custodial centres to inform future pandemic planning. This review should include input from people in custody and staff.
2. Corrective Services NSW and Youth Justice NSW ensure they have lawful authority to restrict in-person social visits to custodial centres for health reasons.
3. Corrective Services NSW ensures that in-person and virtual visits comply with the requirements of the *Crimes (Administration of Sentences) Act 1999* and *Crimes (Administration of Sentences) Regulation 2014* across all locations.
4. Corrective Services NSW prioritises returning in-person social visits to pre-pandemic conditions and ensures consistency across similar NSW correctional centres.
5. Corrective Services NSW and private operators review the accommodation used for new reception inmates and aim to place inmates in the safest locations available.
6. Corrective Services NSW and private operators monitor the efficiency of COVID-19 screening processes for visitors.
7. Corrective Services NSW ensures that inmates with COVID-19 being transported for three hours or more have access to toilet breaks.
8. Corrective Services NSW and private operators review the accommodation allocated by each correctional centre for the in-situ management of inmates with COVID-19 and ensure it is adequate for this purpose.
9. Corrective Services NSW and private operators ensure that inmates in isolation are provided with clean clothing and linen, hygiene items, and access to a television and telephone calls.
10. Corrective Services NSW and private operators ensure that inmates with COVID-19 have time out-of-cell and can mix with other inmates with COVID-19, subject to an assessment of their risk to and from other inmates.
11. Youth Justice NSW ensures young people in custody with COVID-19 have time out-of-room and can mix with other young people with COVID-19, subject to an assessment of their risk to and from other young people.
12. Corrective Services NSW ensures that formal separation processes are followed when people in custody are separated from others due to illness or to prevent the spread of disease.
13. Corrective Services NSW develops state-wide and local documented protocols for facilitating communication between people in isolation and their legal representatives.
14. Corrective Services NSW ensures people in isolation can access fit-for-purpose AVL facilities or alternative means of technology for legal communication.

15. Youth Justice NSW develops state-wide and local documented protocols for facilitating communication between young people in isolation and their legal representatives.
16. Youth Justice NSW ensures young people in isolation can access fit-for-purpose AVL facilities or alternative means of technology for legal communication.
17. Corrective Services NSW ensures that COVID-19 protocols include provisions for people held on remand to regularly access legal resources and materials.
18. Justice Health and Forensic Mental Health Network undertakes a review with Corrective Services NSW and private operators, and Youth Justice NSW of the impact of COVID-19 on the provision of health care in adult and youth custodial centres.
19. Corrective Services NSW immediately ceases the destruction of original mail to inmates.
20. Corrective Services NSW obtains legal advice regarding the lawfulness of Commissioner's Instruction 2020/86 and relevant parts of the Custodial Operations Policy and Procedures regarding the destruction of original mail to inmates.
21. Corrective Services NSW develops a prioritisation and monitoring strategy for inmates waiting for placements in intensive programs.
22. The Inspector recommends that this report is made public immediately upon being tabled in NSW Parliament, in accordance with section 16(2) of the *Inspector of Custodial Services Act 2012*.

# Review process

The office of the Inspector of Custodial Services (ICS) was established by the *Inspector of Custodial Services Act 2012* (the ICS Act) in October 2013. The mandate of the office is to provide independent scrutiny of the conditions, treatment, and outcomes for people in custody, and to promote excellence in staff professional practice.

The Inspector can examine and review any custodial service at any time and report to Parliament with advice and recommendations following such a review.<sup>19</sup> We announced and issued terms of reference for this review on 15 September 2021 (see Appendix 3).

This review was informed by inspections and visits undertaken by ICS since the onset of the pandemic in NSW in March 2020. Inspections and visits included structured and semi-structured interviews with people in custody and staff. Visits undertaken specifically for the purpose of this review, or to monitor the response of the NSW custodial system to COVID-19, are included in Appendix 1. A full list of inspections conducted from March 2020 to June 2023 are included in Appendix 2. These inspections considered all aspects of the inspected correctional centres, including their management of COVID-19. The management of COVID-19 was a particular focus during the inspections of MRRC and SWCC, as both were operating as isolation hubs for inmates with COVID-19 at the time of the inspections.

We acknowledge that visits and inspections capture a snapshot in time, with understanding and observations limited by the time spent onsite. In addition to onsite work, this review was informed by meetings with and written submissions from stakeholders. On 29 October 2021 we invited stakeholders to make submissions in relation to this review. We received submissions from the following organisations:

- Human Rights Watch
- Public Interest Advocacy Centre
- Legal Aid NSW
- Aboriginal Legal Service (NSW/ACT).

Data and documents were also obtained from CSNSW, YJNSW, and JH&FMHN. Regular reports from official visitors to the ICS regarding custodial centres, including a monitoring checklist concerning COVID-19, were also considered. Conclusions were therefore drawn from periods of direct observation and this additional information.

This review does not consider the clinical health care provided to people in custody with COVID-19. Assessments regarding the adequacy of the clinical health care provided to people in custody do not fall within the jurisdiction of the ICS.

The inspection considered sensitive information and methodologies. In accordance with section 15 of the ICS Act, information that could prejudice the security, discipline or good order of any custodial centre, identify or allow the identification of a person who is or was detained at a youth justice centre or in custody in a juvenile correctional centre, or identify or allow the identification of a custodial centre staff member, has been removed in the public interest.

A draft report or relevant parts thereof was provided to CSNSW, YJNSW and JH&FMHN in accordance with section 14(2) of the ICS Act. Submissions were received from CSNSW, YJNSW and JH&FMHN. In accordance with section 14(1) of the ICS Act, the Inspector provided the Hon. Anoulack Chanthivong,

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<sup>19</sup> *Inspector of Custodial Services Act 2012* s 6.

Minister of Corrections, and the Hon. Jihad Dib, Minister for Youth Justice, with the opportunity to make submissions in relation to the draft report. In accordance with section 14(3)(b) of the ICS Act, each submission and Minister's response was considered before the finalisation of the report for tabling.

# 1 International and domestic context

## 1.1 The emergence of COVID-19

The coronavirus disease 2019 (COVID-19) is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2 virus). COVID-19 was first detected following an outbreak in Wuhan, China in December 2019. On 30 January 2020, the World Health Organization (WHO) declared the outbreak to be ‘a public health emergency of international concern’.<sup>20</sup> On 11 March 2020, the WHO declared the outbreak to be a pandemic. At the time of writing in early 2023, the pandemic declaration was still active.<sup>21</sup> On 5 May 2023, the WHO declared COVID-19 to be an ‘established and ongoing health issue’, no longer constituting a public health emergency of concern.<sup>22</sup>

In the period since COVID-19 was first detected, its genetic structure has changed. Changes to COVID-19 that make it easier to spread or make people more unwell are known as ‘variants of concern’. The Delta and Omicron variants were declared by WHO as ‘variants of concern’ on 11 May 2021 and 26 November 2021 respectively.<sup>23</sup> Vaccinations and treatments have also been developed, reducing the risk of serious illness or death due to COVID-19.<sup>24</sup>

The most common symptoms of COVID-19 are fever, fatigue, and dry cough. People may also experience other symptoms including loss of taste or smell, nasal congestion, sore throat, and headache. People aged 60 years and over, and those with underlying medical problems are at higher risk of developing serious illness due to COVID-19.<sup>25</sup>

## 1.2 COVID-19 in Australia

On 25 January 2020, the first case of COVID-19 was reported in Victoria and a further three cases were reported in NSW.<sup>26</sup> In response to growing concerns about the spread of COVID-19 internationally, on 15 March 2020, the Australian Government announced that all international arrivals in Australia would be required to quarantine for 14 days. On 19 March 2020, the Australian Government announced that Australia would close its borders to all non-citizens and non-residents from the following day.<sup>27</sup>

Consequently, Australia initially experienced fewer cases of COVID-19 than many other countries. Up to the end of 2020 there were around 28,500 cases of COVID-19 in Australia and around 900 deaths. The majority

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20 ‘Coronavirus Disease (COVID-19) Pandemic: Overview’, *World Health Organization: Europe* (Web Page, undated) <<https://www.who.int/europe/emergencies/situations/covid-19>>.

21 Australian Government, ‘About the COVID-19 Pandemic’, *Department of Health and Aged Care* (Web Page, 12 July 2023) <<https://www.health.gov.au/health-alerts/covid-19/about>>.

22 ‘Statement on the Fifteenth Meeting of the IHR (2005) Emergency Committee on the COVID-19 Pandemic’, *World Health Organization* (Web Page, 5 May 2023) <[https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic)>.

23 ‘Coronavirus Disease (COVID-19): Variants of SARS-CoV-2’, *World Health Organization* (Web Page, 4 December 2021) <[https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(covid-19\)-variants-of-sars-cov-2](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-variants-of-sars-cov-2)>.

24 Australian Government, ‘COVID-19 Vaccines’, *Department of Health and Aged Care* (Web Page, 28 February 2023) <<https://www.health.gov.au/our-work/covid-19-vaccines>>; Australian Government, ‘COVID-19 Treatments’, *Department of Health and Aged Care* (Web Page, 16 January 2023) <<https://www.health.gov.au/health-alerts/covid-19/treatments/about>>.

25 ‘Coronavirus Disease (COVID-19): Q&A’, *World Health Organization* (Web Page, 28 March 2023) <<https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19>>.

26 Rebecca Storen and Nikki Corrigan, *COVID-19: A Chronology of State and Territory Government Announcements (up until 30 June 2020)* (Parliamentary Library Research Paper Series 2020–21, 22 October 2020) 2.

27 Kelsey Campbell and Emma Vines, *COVID-19: A Chronology of Australian Government Announcements (up until 30 June 2020)* (Parliamentary Library Research Paper Series 2020–21, 23 June 2021) 21.

of cases and deaths occurred due to an outbreak in Victoria.<sup>28</sup>

In NSW, during 2020 and early 2021, although there were outbreaks of COVID-19, these were suppressed by public health measures and there was no prolonged community transmission. Up to 30 June 2021, 5,637 cases of COVID-19 were reported in NSW, including 56 deaths.<sup>29</sup> At this time, the Delta variant of COVID-19 began circulating in Greater Sydney, resulting in the imposition of public health measures from June to October 2021. This was followed by widespread transmission as a result of the Omicron variant from mid December 2021.<sup>30</sup> By 29 December 2021, 154,191 cases of COVID-19 had been reported in NSW, including 656 deaths.<sup>31</sup>

### 1.3 COVID-19 in custodial environments

Low levels of COVID-19 transmission in the NSW community and the precautionary measures imposed by custodial agencies helped prevent the introduction and spread of COVID-19 in NSW custodial centres. As a result, there were very few cases of COVID-19 reported in NSW prisons until August 2021 (see section 4.1).

Sadly, the custodial systems of many international jurisdictions experienced large numbers of COVID-19 infections, resulting in the deaths of people in custody and staff. At the onset of the pandemic, there was heightened concern about the risk of COVID-19 to prison populations due to crowded physical environments and the health profile of prisoners. The consequences of COVID-19 for prisoners and prison staff in some countries demonstrated that these concerns were not misplaced. For example:

- In 2020, the national case rate of COVID-19 in US prisons was estimated to be about 3,251 per 100,000 prisoners, around 5.5 times the rate of the general US population. As of 8 September 2020, the COVID-19 Prison Project reported that 119,858 prisoners and 23,695 staff had tested positive for COVID-19 and 947 prisoners and 67 staff had died. The death rate in US prisons was estimated to be around 39 deaths per 100,000 prisoners, around three times higher than the general US population.<sup>32</sup>
- In prisons in England and Wales, during the first wave of COVID-19 there were 7.6 COVID-19 cases per 1,000 prisoners, compared to 4.9 per 1,000 people in the general population. There were 121 deaths related to COVID-19 between March 2020 and February 2021, around 3.3 times the death rate of people of the same sex and age in the general population.<sup>33</sup>
- As of 7 September 2020, there were over 6,620 cases of COVID-19 in prisons in Chile, Argentina, Colombia, and Mexico. This indicates a rate of 1,470 cases of COVID-19 per 100,000 prisoners, around two times higher than the national case rate of 810 cases per 100,000 people across all four countries. At this time, Mexico had the highest number of COVID-19 cases and deaths, with 3,055 infections (87% inmates, 13% staff) and 285 deaths (79% inmates and 21% staff).<sup>34</sup>

28 Australian Institute of Health and Welfare, *The First Year of COVID-19 in Australia: Direct and Indirect Health Effects* (Report, 10 September 2021) 24, 27–8, 33.

29 Audit Office of NSW, *COVID-19: Response, Recovery and Impact* (Report, 20 May 2022) 2.

30 Audit Office of NSW, *COVID-19: Response, Recovery and Impact* (Report, 20 May 2022) 3.

31 Australian Government, 'Coronavirus (COVID-19) at a Glance – 29 December 2021', *Department of Health and Aged Care* (Web Page, 30 December 2021) <<https://www.health.gov.au/resources/publications/coronavirus-covid-19-at-a-glance-29-december-2021>>.

32 Meghan A Novisky, Chelsey S Narvey and Daniel C Semenza, 'Institutional Responses to the COVID-19 Pandemic in American Prisons' (2020) 15(7-8) *Victims & Offenders* 1244, 1246.

33 Isobel Braithwaite et al, 'High COVID-19 Death Rates in Prisons in England and Wales, and the Need for Early Vaccination' (2021) 9(6) *The Lancet Respiratory Medicine* 569, 569.

34 Lina Marmolejo et al, 'Responding to COVID-19 in Latin American Prisons: The Cases of Argentina, Chile, Colombia, and Mexico' (2020) 15(7-8) *Victims & Offenders* 1062, 1065.

Although this was not the experience of COVID-19 in Australian prisons, these examples provide the broader context that shaped pandemic planning for custodial agencies in NSW. It is important that the potential seriousness of an outbreak of COVID-19 in custodial settings is considered in assessing how NSW custodial agencies responded to COVID-19, particularly prior to the availability of vaccination and treatments.

## 2 Governance frameworks within the agencies

### 2.1 COVID-19 response framework

From the outset we observed that relevant stakeholders took the threat of COVID-19 to people in custody seriously and heeded the experiences of prisons in some international jurisdictions. At the onset of the pandemic, the agencies and private operators responsible for the management of adult and youth custodial centres and the provision of health services established processes and groups aimed at creating a coordinated response to COVID-19 across the NSW custodial system. These initiatives included:

- The establishment of the Corrective Services NSW (CSNSW) COVID-19 Command Post, operating seven days per week to provide centralised support for the implementation of CSNSW's pandemic response. The responsibilities of the Command Post include providing updates to CSNSW's Executive and conducting meetings with private operators.
- The establishment of COVID-19 officer posts within CSNSW and privately operated adult custodial centres.
- The establishment of the Youth Justice NSW (YJNSW) Command Post, which transitioned to the YJNSW COVID-19 Working Group in August 2020. The YJNSW COVID-19 Working Group provides support and guidance on the management of COVID-19 in relation to youth justice centres.
- The establishment of the Justice Health and Forensic Mental Health Network (JH&FMHN) Senior Interagency Oversight Group (SIOG) to support collaboration and joint management across agencies regarding COVID-19 outbreaks. It is co-chaired by the JH&FMHN Chief Executive and the Commissioner of CSNSW and reports to the Secretaries of NSW Health and the Department of Communities and Justice.
- Situational report and operational meetings coordinated by JH&FMHN, bringing together representatives from JH&FMHN, the Command Post, YJNSW, private operators, and the Inspector of Custodial Services (ICS).<sup>35</sup> These have been held at regular intervals (at some points daily or several times per week), depending on need.
- Hard copy situational reports prepared by JH&FMHN, circulated to JH&FMHN partner agencies (including the Ministry of Health, CSNSW Command Post and YJ COVID-19 Working Group) and ICS. These include a point-in-time snapshot of COVID-19 cases and vaccination statistics across the custodial system.
- A JH&FMHN Executive huddle was convened every afternoon during periods of heightened risk. Otherwise, the JH&FMHN Executive met fortnightly to consider JH&FMHN's management of COVID-19. Further ad hoc meetings were arranged with partner agencies as required, for example, to support the containment of an outbreak of COVID-19 within a custodial centre.<sup>36</sup>

Most of these structures have continued to operate throughout the pandemic and into 2023. The overall result has been a pandemic response that, at the level of relevant policies and procedures, has been collaborative and broadly consistent across the different agencies and private operators.

JH&FMHN has been largely responsible for developing the health advice regarding the management of COVID-19 in custodial centres. It developed framework documents, such as a risk matrix to aid contact tracing, and the advice these contained was updated and circulated as required to relevant stakeholders via

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<sup>35</sup> An Inspector of Custodial Services staff member observed these meetings.

<sup>36</sup> Information provided by Youth Justice NSW, 31 May 2022; Information provided by Corrective Services NSW, 3 June 2022; Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

the JH&FMHN communications team. JH&FMHN is also responsible for developing COVID-19 policies and procedures applicable to its staff and health settings.

CSNSW and YJNSW have each used their own processes for operationalising the health advice for their staff and custodial centres. Ultimately, decisions regarding the management of COVID-19 within youth and adult custodial centres are the responsibility of the YJNSW and CSNSW executive teams, in consultation with JH&FMHN. YJNSW distributed COVID-19 directives through Executive Director (ED) Instructions, addressed to all staff or the managers of each youth justice centre. CSNSW issued Commissioner's Instructions pursuant to section 235B of the *Crimes (Administration of Sentences) Act 1999* (CAS Act). The CAS Act provides that Commissioner's Instructions cannot be inconsistent with relevant legislation.<sup>37</sup> Staff employed by a private operator are subject to any directions given by the Commissioner, therefore these directives have also applied within privately operated correctional centres.<sup>38</sup>

At times of heightened risk, the measures for managing COVID-19 changed frequently to ensure the response was proportionate to the risk. These changes occurred across a wide range of areas including the quarantine of people entering custody, the isolation of inmates with COVID-19, personal protective equipment (PPE), staffing, testing and screening processes for people entering custodial centres, and in-person social visits. Due to the frequency and scope of updates, staff from JH&FMHN, YJNSW, CSNSW and private operators were required to stay across a significant volume of information, encapsulated in JH&FMHN documents and ED or Commissioner's Instructions.

The CSNSW Command Post and the YJNSW COVID-19 Working Group offered support to custodial centres for understanding and implementing these changes. This was no easy task. According to CSNSW, this support included the development of key messaging documents, updates to staff advising of changes to policy and procedures, and Command Post staff attending locations to assess and assist with operational challenges and providing updates during online governor's forums.<sup>39</sup>

The nature of the pandemic has, at times, demanded rapid decision making by agencies and immediate implementation by frontline staff, something that is innately challenging across a large custodial system that relies on well-established routines and practices to operate effectively. However, in our view, some of the processes and documents used to do this did not support frontline staff as well as they could have.

In particular, the Commissioner's Instructions issued by CSNSW have at times been a source of confusion for staff. Many of the Commissioner's Instructions concerning COVID-19 are long and complex. Newly issued Commissioner's Instructions would overlap with rescinded versions on the same topic, containing much of the same information and requiring close reading to identify relevant changes. In some cases, the change was simply the deletion of a requirement that had existed in previous versions.

As CSNSW recognises, '[s]taff do not have time to go to multiple source documents for instruction'.<sup>40</sup> We have observed instances where key changes have been overlooked and not actioned locally due to the need for frontline staff to read multiple directives to ascertain a change in practice. The potential for the Commissioner's Instructions to provide staff with clear and consistent source of advice was often not realised. Generally, we found JH&FMHN directives to its staff to be simpler and easier to follow, particularly as changes were highlighted.

By the beginning of 2023, over 180 Commissioner's Instructions had been issued regarding COVID-19 management. In contrast, Commissioner's Instructions regarding other matters have been, and continue

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37 *Crimes (Administration of Sentences) Act 1999* s 235B.

38 *Crimes (Administration of Sentences) Act 1999* s 241(2)(b).

39 Information provided by Corrective Services NSW, 4 July 2023.

40 Information provided by Corrective Services NSW, 4 July 2023.

to be, issued infrequently, with typically only several published per year. While this may have been the best mechanism to direct important changes under rapidly changing circumstances, it was one that staff were generally unfamiliar with. If Commissioner's Instructions are going to be an integral tool for crisis management in adult custodial centres, work needs to be done to ensure these documents are drafted in an accessible manner and disseminated efficiently.

## 2.2 Compliance management

CSNSW established several COVID-19 posts in adult correctional centres, including the COVID-19 Liaison Officer. The responsibilities of the COVID-19 Liaison Officer included liaising with the Command Post, monitoring governance and compliance with health guidelines, maintaining local pandemic plans, and monitoring PPE stock and ordering. Although the relevant Commissioner's Instruction recommended this role be filled by a member of the correctional centre's health and safety committee, it could be filled by 'any responsible officer'.<sup>41</sup> No guidance was provided regarding seniority or other relevant experience required for this position.

We in no way want to diminish the role of the COVID-19 Liaison Officers. They performed an important function in the pandemic response. We have found many COVID-19 Liaison Officers to be knowledgeable and dedicated, understanding the importance of their responsibilities and function. However, this role appears to be the only routine measure put in place to ensure that COVID-19 directives were implemented and complied with at the correctional centre level, apart from the existing oversight provided by senior officers at each correctional centre including the governors and managers of security.

We consider that a more systematic approach was required to monitor and guide the local implementation of COVID-19 management strategies. COVID-19 Liaison Officers were effectively given a dual role of reporting local issues to the Command Post and enforcing COVID-19 directives among their peers, including those of equal or higher rank. Greater direct observation and supervision of local operations by the CSNSW and JH&FMHN executive staff responsible for assurance and compliance would have been beneficial. This is particularly so in relation to those correctional centres managing a quarantine population, managing an outbreak, or the isolation hubs for inmates with COVID-19.

JH&FMHN informed us that managers, population health clinicians, and NSW Health Clinical Excellence Commission staff conducted numerous onsite visits to custodial health centres to monitor the implementation of pandemic procedures. They also checked-in with and received feedback from health staff. This process aimed to address any issues that were observed and reported. JH&FMHN Executive Team members conducted a 'walkaround' of all sites, which included consultation on COVID-19 procedures and concerns.<sup>42</sup>

The interconnected nature of the NSW custodial system demanded a consistent and coordinated response to COVID-19. However, the wide range of custodial infrastructure in NSW meant implementation was extremely challenging in some locations. A more tailored approach that considered their physical and operational limitations in implementing COVID-19 directives would have allowed practice to be adapted with the oversight of CSNSW and JH&FMHN, ensuring it was practical, sustainable, and well understood. Problematic or high risk practices could have been corrected. In addition, onsite visits and direct observation of COVID-19 practices (during periods when it was safe to do so) might have assisted decision makers with the early identification and resolution of issues and gaps. This is explored further in sections 3.2 and 3.4.

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41 Commissioner's Instruction 2020/79.

42 Information provided by Justice Health and Forensic Mental Health Network, 29 June 2023.

## 2.3 Pandemic planning

Experts have described COVID-19 as the most significant pandemic we have experienced since the influenza pandemic of 1918.<sup>43</sup> By March 2020, YJNSW, CSNSW and each custodial centre (including those managed by private operators) had developed a COVID-19 pandemic plan. At this time, it was impossible to predict the duration of the pandemic and how it would evolve over time. The scope and scale of the response of custodial agencies and private operators to COVID-19 was unprecedented, involving most staff and impacting most areas of the custodial system's operation. The threat of COVID-19 to staff and those held in custodial centres demanded this response be a dominant priority for custodial agencies and private operators over an extended period.

However, COVID-19 may not be an aberration, with the CSIRO highlighting that 'viral disease outbreaks are increasing in frequency and severity'.<sup>44</sup> This pandemic therefore provides a unique experience with which to inform planning for future pandemics.

The response to COVID-19 worked well in achieving the primary objective of minimising death and severe illness among people in custody and staff. CSNSW has advised that the death rate for people in CSNSW custody was 0.04% compared with 0.17% in the community.<sup>45</sup> As at 3 July 2023, of the 9,738 inmates with COVID-19 (infected in both the community and in custody), 110 were hospitalised.<sup>46</sup> Custodial agencies and private operators deserve to feel proud that their efforts have contributed to this outcome.

However, the response has also been lacking in some respects, which will be outlined in this report. A common theme across these shortcomings was incomplete planning for outbreaks within custodial centres and the limitations of the adult and youth custodial systems to manage large numbers of people in custody and staff with COVID-19. This resulted in a significant proportion of people in custody experiencing long periods of seclusion under poor conditions and, consequently, high levels of distress.

Much has been learnt since March 2020. It's important for custodial agencies and private operators to undertake an internal review to capture the lessons from their experience of managing COVID-19 in custody. In late 2022 and early 2023, CSNSW and JH&FMHN conducted a 'road show', visiting every correctional centre and outlining to local staff the COVID-19 response, outcomes and plans moving forward. In addition, JH&FMHN conducted a COVID-19 Intra-Action Review (finalised in February 2023), which examined its response to the COVID-19 pandemic, in consultation with partner agencies and providers. This outlined what aspects of the JH&FMHN response did and did not work well and areas for improvement. Two broader health system reviews have been completed by NSW Health.

We commend the efforts of JH&FMHN to reflect on the COVID-19 response and capture the lessons learned. These opportunities for reflection and information sharing are important. However, we are concerned that these reviews may not fully capture lessons regarding collaboration across the agencies and private operators and how the entire custodial system could have worked better as a whole.

An internal review must involve input from both frontline staff and people in custody with direct experience of COVID-19 restrictions, and the stakeholders and service providers impacted by the response. These perspectives are essential to understanding the strengths, shortcomings, and unintended consequences of the response and what can be learned from these. Consideration should be given to the role of staff training in maintaining knowledge about infection prevention and control strategies.

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43 CSIRO, *Strengthening Australia's Pandemic Preparedness: Science and Technology Enabled Solutions* (Report, 2022) i.

44 CSIRO, *Strengthening Australia's Pandemic Preparedness: Science and Technology Enabled Solutions* (Report, 2022) ii.

45 Information provided by Corrective Services NSW, 4 July 2023.

46 Information provided by Corrective Services NSW, 4 July 2023.

It must also examine enhancing state-wide collaboration and monitoring, particularly in relation to restrictive quarantine and isolation regimes. The adult custodial system in NSW involves complex relationships between three private operators (Serco, MTC and GEO), private health services providers (St Vincent's Correctional Health,<sup>47</sup> Serco and GEO), and two government agencies with different responsible departments and Ministers (CSNSW, part of the Department of Communities and Justice, and JH&FMHN, part of NSW Health). Encapsulating the ways in which these stakeholders did or did not work well together will help underpin future collaboration, especially when/if the staff directly involved leave their positions.

This will also support improved internal monitoring and data collection across NSW custodial centres. We consider that greater state-wide monitoring and data collection of the periods people spent in quarantine and isolation would have enabled a greater understanding of the underlying causes of the issues raised in this report and the development of more timely solutions (see sections 3.2. and 4.2).

Finally, an internal review should also address the transparency of the response and information sharing with stakeholders and the public, including regarding conditions within custodial centres. JH&FMHN publish weekly COVID-19 statistics for the NSW custodial population on its website, along with other information about their COVID-19 response.<sup>48</sup> Stakeholders raised concerns that information about the response in publicly available sources was lacking. The information on the YJNSW and CSNSW websites was largely generic and directed to people seeking to visit family or friends held in custodial centres. In response to stakeholder feedback, CSNSW established a telephone line for COVID-19-related inquiries, accessible to all members of the community. This was advertised on the CSNSW website.

CSNSW has advised it is committed to reviewing practices in response to COVID-19 and using the lessons learned in planning for any future pandemic. This includes by continuing to partner with health and other experts, consideration of the recommendations of reports and modelling commissioned to date, and learning from the experiences of other jurisdictions.<sup>49</sup>

**Recommendation: JH&FMHN, YJNSW, CSNSW and private operators undertake an internal review of the management of COVID-19 in custodial centres to inform future pandemic planning. This review should include input from people in custody and staff.**

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47 St Vincent's Correctional Health provides health services at Parklea Correctional Centre.

48 'COVID-19 (Novel Coronavirus)', *Justice Health and Forensic Mental Health Network* (Web Page, 23 February 2023) <<https://www.justicehealth.nsw.gov.au/novel-coronavirus>>.

49 Information provided by Corrective Services NSW, 4 July 2023.

## 3 Reducing the risk of transmission in custodial facilities

Preventing and reducing the risk of transmission in custodial facilities has been a cornerstone of agency responses to COVID-19. Modelling commissioned by CSNSW in 2020 and 2021 provided an early indication of the importance of infection prevention and control measures for managing COVID-19 in custodial environments.

The COVID-19 Incarceration Model was developed to provide an accessible format for analysing COVID-19 outbreaks in prisons and the impact of preventative measures. Researchers applied this model to an example prison with 1,200 inmates, 100 correctional staff and 20 health staff. This indicated that no response to an outbreak of COVID-19 would likely result in the infection of most of the inmate and staff populations over 120 days and a large group of inmates requiring a hospital or intensive care unit bed. Modelling also highlighted the impact on CSNSW's ability to maintain a workforce to ensure the safety and security of correctional centres. However, the widespread use of PPE, isolation, quarantine, and reducing the size of the prison population together could prevent an outbreak from escalating and significantly reduce rates of hospitalisation and death.<sup>50</sup>

Subsequent modelling based on the Delta variant of the SARS-CoV-2 virus indicated that, with no public health controls, its introduction to the NSW prison system would result in a 'major epidemic affecting essentially all inmates'. PPE, quarantine and isolation, and vaccination were each associated with reducing the size of the epidemic, while rapid antigen testing of staff reduced the size and probability of an outbreak where the virus was introduced by a staff member (although had limited impact when the virus was introduced by an inmate).<sup>51</sup>

### 3.1 Restrictions on access to custodial centres

#### 3.1.1 In-person social visits

Throughout the pandemic, in-person social visits by the families and friends of people in custody in NSW have either been suspended entirely or subject to significant restrictions, including on the number of visitors and the duration of the visit. These restrictions were among the first to be imposed and the last to be removed.

The legislation provides specific powers enabling staff to refuse visits in youth and adult custodial centres. These provisions appear to concern individual visitors, rather than all visitors. The *Crimes (Administration of Sentences) Regulation 2014* (CAS Regulation) allows a governor or officer of a specified rank to refuse to allow a person to visit an adult correctional centre or an inmate on the basis that it would 'prejudice the good order and security' of the correctional centre.<sup>52</sup> The Commissioner of CSNSW may direct that a particular person be prevented from entering or visiting an inmate at a correctional centre where this would 'prejudice the good order and security' of the correctional centre or where the visitor has 'acted in a threatening, offensive, indecent, obscene, abusive or improper way'.<sup>53</sup> The *Children (Detention Centres) Regulation 2015* permits a centre manager to refuse to permit a visit where it would adversely affect

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50 Jinsoo A Kwon et al, 'The COVID-19 Incarceration Model: A Tool for Corrections Staff to Analyze Outbreaks of COVID-19' *medRxiv* (Web Page, 8 March 2021) <<https://www.medrxiv.org/content/10.1101/2021.02.18.21252032v3.full>>.

51 Information provided by Corrective Services NSW, 14 September 2022.

52 *Crimes (Administration of Sentences) Regulation 2014* cl 106.

53 *Crimes (Administration of Sentences) Regulation 2014* cl 108(1).

the 'security, safety and good order' of the youth justice centre or the health or well-being of the young person.<sup>54</sup>

In response to the risk of COVID-19 being introduced to custodial facilities, section 275 was inserted into the CAS Act to enable the Commissioner of CSNSW to 'prohibit or otherwise restrict any person, or any class of persons' from entering or visiting a correctional premises.<sup>55</sup> The Commissioner was permitted to take action under this provision 'only if satisfied that it is reasonably necessary to protect the health of an inmate, any other person or the public' from COVID-19. An almost identical provision was inserted into the *Children (Detention Centres) Act 1987* to enable the Secretary of the Department of Communities and Justice to prohibit or restrict visitors to youth justice centres.<sup>56</sup> These provisions did not apply to prevent the ICS or the Ombudsman entering custodial facilities.<sup>57</sup>

A prescribed period applied to both provisions and this ended on 26 March 2022.<sup>58</sup> However, despite the expiration of this power, significant restrictions on in-person visits continued after this date in both adult and youth custodial centres.<sup>59</sup> With respect to adult custodial centres, the CAS Act provides that Commissioner's Instructions cannot be inconsistent with the CAS Act or the CAS Regulation.<sup>60</sup> YJNSW maintain that they have received legal advice confirming lawful authority for the restriction of visitors for health reasons. As previously discussed in this section, the existing provisions do not appear to provide powers to restrict visits entirely and require an individual risk assessment.<sup>61</sup> It is unclear what legislative power enabled the Commissioner or the Secretary to impose a regime for in-person visits different to those specified in the legislation.<sup>62</sup>

**Recommendation: CSNSW and YJNSW ensure they have lawful authority to restrict in-person social visits to custodial centres for health reasons.**

The CAS Regulation provides that unconvicted inmates should be able to access visits at least twice per week.<sup>63</sup> We have not observed this occurring anywhere in the adult custodial system. Most locations have only allowed inmates to have one visit per week, with no distinction made between convicted and unconvicted inmates. The CAS Regulation also provides that inmates can have up to four visitors at a time<sup>64</sup> and that visits should last for 30 minutes.<sup>65</sup> We note four visitors is greater than the number permitted by the Commissioner's Instructions between 26 March 2022 (the end of the prescribed period for section 275) and 1 June 2022. Virtual visits may not last for a full 30 minutes, depending on the routine of each location.

**Recommendation: CSNSW ensures that in-person and virtual visits comply with the requirements of the *Crimes (Administration of Sentences) Act 1999* and *Crimes (Administration of Sentences) Regulation 2014* across all locations.**

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54 *Children (Detention Centres) Regulation 2015* cl 33(2).

55 *Crimes (Administration of Sentences) Act 1999* s 275 as inserted by the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1*. Repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.15 item 2.

56 *Children (Detention Centres) Act 1987* s 110 as inserted by the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020 No 1*. Repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.8.

57 *Crimes (Administration of Sentences) Act 1999* s 275(3); *Children (Detention Centres) Act 1987* s 110(3).

58 *Crimes (Administration of Sentences) Act 1999* s 274 and *Crimes (Administration of Sentences) Regulation 2014* cl 329A; *Children (Detention Centres) Act 1987* s 110(5) and *Children (Detention Centres) Regulation 2015* cl 157.

59 Commissioner's Instruction 2022/15; Youth Justice NSW, *Executive Director Instruction: COVID-19 Face-to-Face Visits to Reviewed Youth Justice Centres* (22 April 2022).

60 *Crimes (Administration of Sentences) Act 1999* s 235B.

61 *Crimes (Administration of Sentences) Regulation 2014* cls 106, 108; *Children (Detention Centres) Regulation 2015* cl 33(2).

62 *Crimes (Administration of Sentences) Regulation 2014* pt 5 div 1; *Children (Detention Centres) Regulation 2015* pt 4 div 1.

63 *Crimes (Administration of Sentences) Regulation 2014* cl 76(1).

64 *Crimes (Administration of Sentences) Regulation 2014* cl 77(1).

65 *Crimes (Administration of Sentences) Regulation 2014* cl 75(4).

In the adult custodial system, social visits were first suspended by the Commissioner of CSNSW for a period of eight months from 17 March 2020.<sup>66</sup> As demonstrated in Table 1, in-person social visits were suspended for extended periods in 2020 and 2021 and, when permitted, the length of visits and the number of visitors were limited. Fluctuations in these limitations were largely in response to the number of COVID-19 cases in the community and the associated risk of visitors spreading COVID-19 to people in custody.

**Table 1: Restrictions on in-person social visits in adult correctional centres<sup>67</sup>**

Date of CI	Restrictions in place
<b>17 March 2020</b>	Suspension of social visits.
<b>20 November 2020</b>	Resumption of social visits: maximum two visitors per inmate (two adults or one adult and one child) and each visit limited to 30 minutes.
<b>8 December 2020</b>	The number of children permitted to visit an inmate increased from one to three (with one adult).
<b>20 December 2020</b>	Suspension of social visits.
<b>13 January 2021</b>	Resumption of social visits: maximum of two adults or one adult and three children per inmate and each visit limited to 30 minutes.
<b>4 February 2021</b>	The number of visitors per inmate increased to two adults and three children or three adults. The duration of visits increased to 50 minutes.
<b>26 March 2021</b>	Removal of conditions and rules regarding the number of visitors, visit duration, physical contact, and use of face masks.
<b>6 May 2021</b>	Reintroduction of restrictions on social visits. Up to two visitors per inmate (two adults or one adult and one child) and masks required.
<b>18 May 2021</b>	Removal of conditions and rules regarding the number of visitors and use of face masks.
<b>18 June 2021</b>	Reintroduction of the requirement for visitors to wear face mask when a 1.5 metre distance could not be maintained.
<b>24 June 2021</b>	Suspension of social visits.
<b>25 November 2021</b>	Resumption of social visits: maximum of two visitors per inmate (two adults or one adult and one child), each visit limited to 30 minutes, and all visitors (including children) and inmates required to be double vaccinated against COVID-19 at least two weeks before the visit.
<b>11 January 2022</b>	Suspension of social visits.
<b>3 March 2022</b>	Resumption of social visits (phase 1): <ul style="list-style-type: none"> <li>• maximum of two visitors per inmate (two adults or one adult and one child aged over 16 years)</li> <li>• each visit limited to 30 minutes</li> <li>• visitors required to be triple vaccinated against COVID-19 at least three days prior to the visit</li> <li>• inmates must be at least double vaccinated against COVID-19 at least two weeks prior to the visit</li> <li>• inmates and visitors must wear surgical masks.</li> </ul>

<sup>66</sup> Commissioner's Instructions 2020/02, 2020/06, 2020/82.

<sup>67</sup> Commissioner's Instructions 2020/02, 2020/06, 2020/82, 2020/88, 2020/89, 2020/91, 2021/03, 2021/05, 2021/09, 2021/11, 2021/14, 2021/15, 2021/16, 2021/18, 2021/24, 2021/58, 2022/03, 2022/10, 2022/15, 2022/26, 2022/28, 2022/40, 2023/04, 2023/12, 2023/14.

<b>29 March 2022</b>	Resumption of social visits (phase 2): <ul style="list-style-type: none"> <li>• maximum of three visitors per inmate (three adults or one adult and two children or two adults and one child)</li> <li>• no age restriction on child visitors</li> <li>• each visit can be up to 60 minutes duration</li> <li>• visitors aged over 16 years must be triple vaccinated against COVID-19</li> <li>• children aged 12 to 15 years must have received two doses of a COVID-19 vaccine and children aged five to 11 years must have received one dose</li> <li>• inmates and all visitors aged over five years must wear surgical masks.</li> </ul>
<b>1 June 2022</b>	Resumption of social visits (phase 3): <ul style="list-style-type: none"> <li>• maximum of six visitors per inmate (up to four adult visitors)</li> <li>• no age restriction on child visitors</li> <li>• each visit can be up to 60 minutes duration</li> <li>• visitors aged over 16 years must be triple vaccinated against COVID-19</li> <li>• children aged 12 to 15 years must have received two doses of a COVID-19 vaccine and children aged five to 11 years must have received one dose</li> <li>• from 4 July 2022, inmates must be triple vaccinated against COVID-19 to receive in-person social visits</li> <li>• inmates and all visitors aged over five years must wear surgical masks.</li> </ul>
<b>3 October 2022</b>	Resumption of social visits (phase 4): <ul style="list-style-type: none"> <li>• restrictions removed on the consumption of food and drink, physical contact and use of children’s play areas during visits</li> <li>• no vaccination requirements for visitors</li> <li>• inmates must still be triple vaccinated to receive in-person social visits.</li> </ul>
<b>3 February 2023</b>	Resumption of family visits (phase 5): no vaccination requirements for visitors or inmates.
<b>27 March 2023</b>	Resumption of family visits (phase 5) - updated: visitors no longer required to undertake a rapid antigen test before a visit commences.
<b>3 September 2023</b>	Resumption of family visits (phase 5) - updated: visitors and inmates no longer required to wear masks during in-person visits.

In addition to these limitations, the conduct of in-person social visits has been subject to a range of precautionary measures.<sup>68</sup> These included no food or drinks permitted in visit areas,<sup>69</sup> the closure of children’s play areas<sup>70</sup> and restrictions on physical contact between inmates and visitors. At times, the only physical contact permitted between inmates and visitors was a ‘fist bump/elbow bump’<sup>71</sup> or a ‘short embrace/hug’<sup>72</sup> at the beginning and end of the visit.

68 CSNSW removed all restrictions on visits from 5 April to 6 May 2021, when some restrictions concerning mask wearing and visitor numbers were reimposed (Commissioner’s Instructions 2021/09 and 2021/11). Restrictions were removed again from 21 May to 23 June 2021. On 23 June 2021, visits were suspended due to the outbreak of the Delta variant of COVID-19 in NSW (Commissioner’s Instructions 2021/14 and 2021/16).

69 Commissioner’s Instructions 2020/82, 2020/88, 2021/03, 2021/05, 2021/58, 2022/10, 2022/15, 2022/26, 2022/28.

70 Commissioner’s Instructions 2021/03, 2021/05, 2021/58, 2022/10, 2022/15, 2022/26, 2022/28.

71 From 23 November 2020 to 28 November 2021: Commissioner’s Instructions 2020/82, 2020/88, 2021/03, 2021/05.

72 From 29 November 2021 to 9 October 2022: Commissioner’s Instructions 2021/58, 2022/10, 2022/15, 2022/26, 2022/28.

From 10 October 2022, correctional centres were no longer required to implement these measures. However, decisions regarding matters such as reopening children's play areas or permitting food and drink to be consumed during visits are at the discretion of local management.<sup>73</sup> We have observed that some correctional centres have been slow to return to business as usual and some staff have expressed resistance to facilitating in-person visits.

We consider that the conditions in place for in-person visits should not be at the discretion of the local management team of each correctional centre. This has the potential to create inconsistencies in how in-person visits are conducted across correctional centres with similar security profiles, for no apparent reason other than the preferences of different staff members. This is confusing for people in custody and their visitors. It may also discourage in-person visits from families with young children who would find it difficult to tolerate a 60-minute visit without play, food, or drink. Each correctional centre should be working to return to pre-pandemic conditions for in-person visits.

**Recommendation: CSNSW prioritises returning in-person social visits to pre-pandemic conditions and ensures consistency across similar NSW correctional centres.**

For most of the pandemic, restrictions for in-person social visits in youth justice centres have largely mirrored those in place in adult correctional centres. From 10 December 2022, all youth justice centres were directed to return to the pre-pandemic guidelines for in-person social visits, although precautionary screening and hygiene measures were to remain in place.<sup>74</sup>

In response to limited access to in-person social visits, CSNSW and YJNSW introduced tablets and expanded the use of AVL facilities to enable people in custody to maintain contact with their family and friends (see section 5.3.1). CSNSW are also rolling out in-cell tablets, which enable inmates to make phone calls to approved contacts, across the adult custodial system. The use of tablets to enhance contact between people in custody and their support network in the community is an exciting development, particularly for those who do not receive in-person visitors due to factors such as distance.

However, virtual visits and increased access to phone calls are enhancements to, not replacements for, in-person visits. Consequently, it is unclear to us why in-person social visits have remained subject to significant restrictions, particularly following widespread vaccination and the introduction of COVID-19 screening processes for visitors.<sup>75</sup> These restrictions included vaccination requirements that went beyond those applicable in other settings (discussed further in section 3.5).

In-person visits are an important way for people in custody to maintain relationships with their partners, children, other family members, and friends. These are the people who will support their reintegration into the community. It is our view that some of the restrictions that have and continue to apply to in-person visits have not found the right balance between the wellbeing of people in custody and preventing outbreaks of COVID-19.

It is unsurprising that the number of in-person social visits occurring has not returned to pre-pandemic levels. Many inmates are located in regional prisons and in-person visits are often expensive and impractical for families. The number of available in-person visit sessions is significantly less than pre-COVID-19. We acknowledge that this is partly to enable the facilitation of virtual visits. However, demand for in-person visits is greater than availability.

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73 Commissioner's Instruction 2022/40, 2023/04, 2023/12, 2023/14.

74 Youth Justice NSW, *Executive Director Instruction: COVID-19 Face-to-Face Visits to Reviewed Youth Justice Centres* (5 December 2022).

75 A rapid antigen testing requirement was in place for visitors aged five years and above from 3 March 2022 to 27 March 2023. See Commissioner's Instructions 2022/10, 2022/15, 2022/26, 2022/28, 2022/40, 2023/04, 2023/12.

### 3.1.2 Staff, contractors, and third-party service providers

Like visitors, restrictions have applied to staff, contractors and third-party service providers to try to limit opportunities for COVID-19 to be introduced to custodial centres. These restrictions reflected relevant public health orders and were scaled up or down in response to COVID-19 outbreaks in the community.

For certain periods, contractors were only permitted to enter correctional centres for specified reasons, largely relating to critical or emergency work.<sup>76</sup> Similarly, third-party service providers were not permitted entry and the services they facilitated were suspended.<sup>77</sup> Staff not normally located in correctional centres were not permitted to attend correctional centres and some staff were not permitted to work across multiple locations or were required to meet certain conditions to do so.<sup>78</sup> In addition, the public health orders implemented during the 2021 COVID-19 outbreak in Sydney included restrictions on travel from Greater Sydney to regional NSW and the designation of local government areas of concern with related travel restrictions and risk mitigation measures. This resulted in a complex framework of rules for essential staff, depending on their work and home locations.<sup>79</sup>

Official visitors managed by ICS continued to visit custodial centres throughout the pandemic. These visits occurred at a reduced capacity and were subject to additional precautionary measures during periods of heightened COVID-19 restrictions in the community. A free phone line was established to facilitate access to the Official Visitor Program during periods of reduced visits.

While these restrictions were necessary and attempted to find a balance between the operational requirements of correctional centres and the risks posed by COVID-19, they have inevitably impacted the delivery of education, programs and other activities that support inmate wellbeing and rehabilitation. This is explored further in section 5.3.2 of this report.

## 3.2 Screening and quarantine of people entering custody

From the onset of the pandemic in 2020, adults and young people entering custody have been required to undertake a period of quarantine where they are held separately from people already in custody. This is to try and ensure that any person with COVID-19 is identified before they have contact with others in custody, preventing the introduction and spread of COVID-19 in custodial centres. The quarantining of people entering custody was implemented in other jurisdictions in Australia and internationally.<sup>80</sup>

When an adult or young person enters custody, health staff perform a health screening which included the completion of a COVID-19 patient screening form.<sup>81</sup> If a person presents with COVID-19 symptoms or provides information indicating they are at risk of developing COVID-19 they will be isolated and tested (see section 4.2). All other adults and young people newly received into custody (until March 2023) were placed in quarantine.

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76 Commissioner's Instructions 2020/13, 2020/28, 2020/53, 2021/21, 2021/29, 2021/33, 2021/53, 2022/02, 2022/08, 2022/11, 2022/24.

77 Commissioner's Instructions 2020/03, 2020/13, 2020/28, 2020/49, 2021/21, 2021/26, 2021/29, 2021/33, 2021/53, 2022/02, 2022/08, 2022/11, 2022/24.

78 Commissioner's Instructions 2021/52, 2021/53, 2022/02, 2022/08, 2022/11, 2022/24.

79 Commissioner's Instructions 2021/28, 2021/30, 2021/40, 2021/44.

80 See World Health Organization, *Good Practices in Managing Infectious Diseases in Prison Settings: A Snapshot of Responses to COVID-19 Implemented Around the Globe between May and September 2020* (Report, 2022); Victorian Government, 'Our Response to COVID-19', *Corrections, Prisons & Parole* (Web Page, 17 April 2023) <<https://www.corrections.vic.gov.au/covid19>>.

81 Screening forms were also completed where a person was transferred to a different custodial centre, returned to a custodial centre after a temporary absence (for example for a medical appointment or court appearance), had COVID-19 symptoms or an epidemiological risk for COVID-19. Justice Health and Forensic Mental Health Network, *COVID-19 Patient Screening and Escalation Process* (version 12, 24 November 2021) and Justice Health and Forensic Mental Health Network, *COVID-19 Patient Screening Form* (version 42, 18 August 2021).

### 3.2.1 Adult custody

For adults in custody, this health screening may not occur until they have been transferred to a correctional centre. There are some court cell locations with no onsite JH&FMHN staffing. We understand that in those locations with a JH&FMHN presence, a nurse conducted a rapid antigen test for each new inmate before their transfer to a correctional centre. In those locations with no JH&FMHN presence, inmates did not undergo rapid antigen testing until their arrival at a correctional centre, providing an opportunity for COVID-19 to spread among inmates on inmate transport vehicles and in holding cells during the transit and reception process. In our 2022 report on 24-hour court cells, we recommended that rapid antigen testing occur at each 24-hour court cell location when inmates are admitted into custody.<sup>82</sup> We reiterate the importance of testing at the earliest available opportunity where testing is required.

From the implementation of the quarantine regime in early 2020 until early 2022, the quarantine period was 14 days, with COVID-19 testing on the first and 12<sup>th</sup> days of quarantine.<sup>83</sup> This was reduced to 10 days from January to August 2022, with rapid antigen testing on the first and final days of quarantine.<sup>84</sup> From August 2022, the quarantine period for adults and young people entering custody was seven days and rapid antigen testing was undertaken on the first and final days.<sup>85</sup> In February 2023, inmates ceased undertaking a rapid antigen test on the final day of quarantine.<sup>86</sup> In March 2023, the quarantining of new reception inmates ceased entirely.<sup>87</sup>

From 1 March 2021 to 1 March 2022, 291 adult inmates tested positive for COVID-19 during their first 14 days in custody.<sup>88</sup> As of 1 March 2022, 56 young people had tested positive for COVID-19 during their quarantine period. Of these young people, 48 tested positive within their first three days in custody (34 on the first day, 12 on the second day and two on third day).<sup>89</sup> This suggests that the quarantining of people entering custody was an effective strategy for preventing the introduction and spread of COVID-19 within custodial centres.

However, adults and young people in custody have described quarantine to us as a particularly difficult period as they adjusted to the shock and uncertainty of entering custody and had limited interactions with others. Therefore, any quarantine period imposed in the future, in relation to COVID-19 or any other contagious disease, needs to be continually reassessed to ensure it is for the shortest period necessary to realise its purpose.

The experiences of people in custody during quarantine were also influenced by the standard of accommodation in some locations. Designated areas within the correctional centres listed in Table 2 were used for quarantining new reception inmates.

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82 Inspector of Custodial Services, *Inspection of 24-Hour Court Cell Complexes, Amber Laurel Correctional Centre, and Kariong Intake and Transit Centre* (Report, December 2022) recommendation 9.

83 Commissioner's Instructions 2020/21, 2020/48, 2020/51, 2020/59, 2021/31, 2021/34, 2021/64; Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 4; Justice Health and Forensic Mental Health Network, *COVID-19 Guidelines for Assessment and Care of Custodial Patients in Quarantine* (version 2, 29 April 2020) 3.

84 Commissioner's Instructions 2022/04 and 2022/23; Youth Justice NSW, *Response to COVID-19: Update – Group Quarantine and Medical Isolation of Detainees* (28 February 2022) 2; Justice Health and Forensic Mental Health Network, *COVID-19 Emergency Public Health Response, Advice, and Risk Matrix* (version 1, 11 January 2022).

85 Commissioner's Instruction 2022/30; Youth Justice NSW, *Group Quarantine and Medical Isolation of Detainees* (3 August 2022); Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 8, 2 August 2022).

86 Commissioner's Instruction 2023/06.

87 Commissioner's Instruction 2023/07.

88 Information provided by Corrective Services NSW, 3 June 2022.

89 Information provided by Youth Justice NSW, 31 May 2022.

**Table 2: Quarantine locations for adults entering custody<sup>90</sup>**

Correctional centre	Quarantine capacity	
	Male	Female
Broken Hill	20	0
Bathurst	55	10
Clarence	116	10
Junee	59	10
Mid North Coast	55	10
MRRC	402	N/A
Parklea	251	N/A
Shortland	25	N/A
Silverwater Women's	N/A	95
South Coast	40	N/A
Tamworth	38	N/A
Wellington	60	13
<b>Total</b>	<b>1,121</b>	<b>148</b>
		<b>1,269</b>

Establishing locations and processes for new reception quarantine has not been without challenges. There are five 1800s-era prisons in the adult custodial system,<sup>91</sup> four of which were receiving new reception inmates at the onset of the pandemic – Tamworth, Broken Hill, Bathurst, and Goulburn correctional centres. Goulburn Correctional Centre ceased receiving new inmates into custody when quarantine was established. Initially, Bathurst Correctional Centre quarantined new reception inmates in a wing of the oldest part of the prison, however we understand quarantine and isolation were later undertaken in a new maximum security area once this was commissioned in September 2020. Due to their locations and a lack of alternative reception options, Broken Hill and Tamworth correctional centres continued to receive new inmates into custody, quarantining inmates in some of the oldest custodial infrastructure operating in Australia.

In these and other locations, we have observed the standard of the cells designated for new reception quarantine to be poor. Much of this accommodation is dilapidated, cramped, has little natural light and is susceptible to extreme temperatures. Cells at Tamworth and Broken Hill correctional centres, and the old part of Bathurst Correctional Centre, are ill-equipped for quarantine and isolation as they do not have showers in cells, requiring quarantining inmates to be moved to communal shower blocks.

We have also observed that the accommodation used for quarantining inmates across a number of locations contains ligature points. We were informed by CSNSW that from the introduction of quarantine and isolation regimes in March 2020 until June 2022, 11 inmates died in custody while in either quarantine or isolation. For five of these inmates, the apparent or suspected cause of death is listed as suicide, with the

<sup>90</sup> Information provided by Corrective Services NSW, 3 June 2022.

<sup>91</sup> Tamworth, Broken Hill, Goulburn, Cooma and Bathurst correctional centres. Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 24 October 2022, 11 (Leon Taylor, Assistant Commissioner, Corrections Industry & Capacity, Corrective Services NSW).

apparent or suspected manner by strangulation or hanging.<sup>92</sup> At the time of writing, the coronial inquests concerning all but one of these deaths in custody had not been finalised.

On 5 March 2021, Kelly-Ellen (Nikki) Knight died by self-inflicted hanging while in quarantine at Silverwater Women's Correctional Centre (SWCC). The accommodation used for quarantine at SWCC is identical to that used for isolation, described in more detail in section 4.2.2. The coroner made several recommendations including that CSNSW remove the hanging points from or decommission the wing of SWCC where Ms Knight died and consider initiatives to alleviate the boredom and isolation experienced by inmates in quarantine, such as immediate access to telephone calls, and increased time out-of-cells and recreational activities.<sup>93</sup> We support these recommendations and consider that they remain applicable so long as inmates are confined while unwell.

We have previously highlighted the heightened risk of self-harm or suicide in the period immediately after people enter custody and the importance that accommodation for this group reflects this risk.<sup>94</sup> Quarantine periods involved limited time out-of-cell, resulting in minimal interaction with others and challenges accessing phone calls with family and legal representatives. For some, these factors increased their distress, amplifying their risk to themselves. In our view, the standard of some of the accommodation used for new reception inmates was inadequate. New reception inmates should be held in the safest locations where cells do not contain ligature points. We also address this issue in relation to isolation in section 4.2.2.

**Recommendation: CSNSW and private operators review the accommodation used for new reception inmates and aim to place inmates in the safest locations available.**

Initially, quarantine locations established systems where cohorts of inmates received into custody together were able to spend time out-of-cell as a group. This was facilitated by a reduction of people entering custody in the early months of the pandemic. In August 2021, this approach was abandoned and only quarantining inmates sharing a cell were able to interact.<sup>95</sup> This increased the number of groups that need to be rotated for time out-of-cell, reducing this time to around 20 minutes per group of cellmates. It also significantly reduced the level and variety of contact quarantining inmates had with other people.

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92 Information provided by Corrective Services NSW, 3 June 2022. The apparent or suspected causes of death for the remaining six inmates are listed as: natural causes for two inmates; not known for two inmates; suspicious for one inmate, with the apparent or suspected manner listed as unknown; and drug overdose for one inmate.

93 *Inquest into the Death of Kerry-Ellen (Nikki) Knight* (Coroners Court of New South Wales, Deputy State Coroner Harriet Grahame, 28 September 2022).

94 Inspector of Custodial Services, *Women on Remand* (Report, February 2020) 52; Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022) 42.

95 Commissioner's Instructions 2021/31, 2021/34, 2021/64, 2022/04.

**Metropolitan Remand and Reception Centre quarantine cell**



**Tamworth Correctional Centre quarantine cell**



During quarantine, health staff undertook daily symptom checks. Where symptom onset was identified, people were isolated and PCR tested. If they did not develop symptoms and tested negative on any routine rapid antigen tests, they were cleared to exit quarantine on the final day.<sup>96</sup>

However, the process for exiting quarantine was more complicated in practice. Throughout this review we heard of, and observed, multiple instances where quarantining inmates in the adult system remained subject to restrictive conditions beyond the mandated period, in some cases for significant periods of time.

We were provided with several explanations for why this might occur. Some custodial staff claimed these delays were caused by the time taken for health staff to clear people to leave quarantine. Health staff highlighted that once this clearance was provided, it was the responsibility of custodial staff to move inmates to a different location and regime.<sup>97</sup> We also observed that the process of moving people out of quarantine and to either a different unit within a correctional centre or to a different correctional centre was challenging to facilitate, particularly when the system was under pressure due to rising cases of COVID-19 in custody.

From December 2021, where quarantining inmates shared a cell and one was released within 72 hours of commencing quarantine, another new reception inmate could be placed in this cell. This restarted the quarantine period for the inmate who was not released, resulting in an overall quarantine period longer than initially required for that person.<sup>98</sup> This measure was 'designed to relieve extreme front-end pressure', in other words to ensure that remand and reception correctional centres had space to receive people from court cell complexes. If this cannot happen, people may spend multiple nights in court cell complexes, something for which court cell complexes are ill-equipped and that limits their capacity to receive people from police custody.<sup>99</sup>

In some instances, extended periods in quarantine were caused by an inmate being identified as a close contact of a COVID-19 case or developing COVID-19, resulting in their placement in isolation. While technically this was not quarantine, the restrictive nature of these regimes was essentially the same and the distinction understandably meant little to a person subject to them.

Centralised data was not maintained on the length of time inmates spent in quarantine conditions, although we are aware of some local monitoring initiatives. The lack of a coordinated state-wide approach to recording and monitoring quarantine periods makes it difficult to verify the length of time people spent subject to a quarantine regime, the cause of delays, and whether this issue was confined to some locations or existed across the system.

We have not been able to identify a team within CSNSW that was responsible for monitoring the operation and length of quarantine. Responsibility seemed to be dispersed across different teams and only extended so far as time in quarantine related to their primary functions, resulting in a piecemeal approach that was not centrally coordinated or monitored.

We are not suggesting that inmates should have been released from quarantine without health clearance. However, managing quarantining inmates pursuant to section 78A separation orders<sup>100</sup> would have engaged CSNSW's internal accountability mechanisms. This would have ensured CSNSW were monitoring the length of time people in custody were held in restrictive quarantine conditions. All adults separated from others in custody for a health reason should be placed on a separation order. This is addressed further in section 4.2.3.

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96 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 6, 13 July 2022).

97 From February 2023, clearance by health staff was no longer required for people to exit quarantine: Commissioner's Instruction 2023/06.

98 Commissioner's Instructions 2021/64, 2022/04, 2022/23, 2022/30, 2022/34.

99 Commissioner's Instructions 2021/64, 2022/04, 2022/23, 2022/30, 2022/34.

100 Section 78A of the *Crimes (Administration of Sentences) Act 1999* permits an inmate or a group of inmates to be held separately from other inmates 'for the purposes of the care, control or management of the inmate or group of inmates'.

### 3.2.2 Youth justice centres

When a young person entered NSW Police custody, a COVID-19 screening questionnaire was completed, and NSW Police contacted the receiving youth justice centre where a young person was identified as being at greater risk of having COVID-19 due to travel, contact or symptoms.<sup>101</sup> Further COVID-19 screening took place during the admission process for youth justice centres, including COVID-19 screening questions, temperature testing and a COVID-19 test.<sup>102</sup> Each youth justice centre had at least one designated quarantine unit.<sup>103</sup>

YJNSW maintained a system of group quarantine for young people entering custody. Groups consisted of young people admitted to a youth justice centre on the same date and young people were not added to a group once it had been established. Young people in quarantine were accommodated in a single room and only mixed with other young people in their group. They also had access to telephone calls, ongoing psychological and casework support, and recreation.<sup>104</sup>

The quarantine of young people entering custody did not experience some of the challenges described previously in relation to the adult system. In every youth justice centre in NSW, young people have showers in their rooms. Smaller numbers of young people entering custody and quarantine provided more scope for staff to consistently facilitate recreation, time out-of-room and access to phone calls and other services. However, it must also be noted that the time out-of-room for young people in quarantine was limited, sometimes only 30 minutes per day, and connectivity issues impacted the implementation of tablets in youth justice centres.

Despite experiencing fewer challenging conditions, we heard that restrictive quarantine regimes were often difficult for young people (and the staff trying to support them), particularly when they were quarantined for 10 or 14 days.

The quarantine experience was particularly lonely for young women. Of the six youth justice centres, only Reiby Youth Justice Centre (Reiby YJC) is designated to hold young women. However, all young people, including young women, were quarantined at the youth justice centre where they were received into custody. This meant that some young women quarantined totally alone and in environments that may be less attune to their needs and vulnerabilities because they usually only accommodate young men.

It appears this distress did not result in increased rates of self-harm among young people in custody. Rather, in 2021 YJNSW and JH&FMHN reported a reduction in the number and rate of self-harm incidents among young people in custody in the first three months of pandemic restrictions, including quarantine.<sup>105</sup> Possible reasons for this included the use of a 'trauma-informed approach that ensured consistent and reassuring messaging from all staff, with young people at the centre of service planning', interagency cooperation, the provision of sensory diversion packs, wellbeing checks, and the introduction of tablets to facilitate contact with support networks.<sup>106</sup>

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101 Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 3.

102 Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 3–4.

103 Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 4.

104 Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 4.

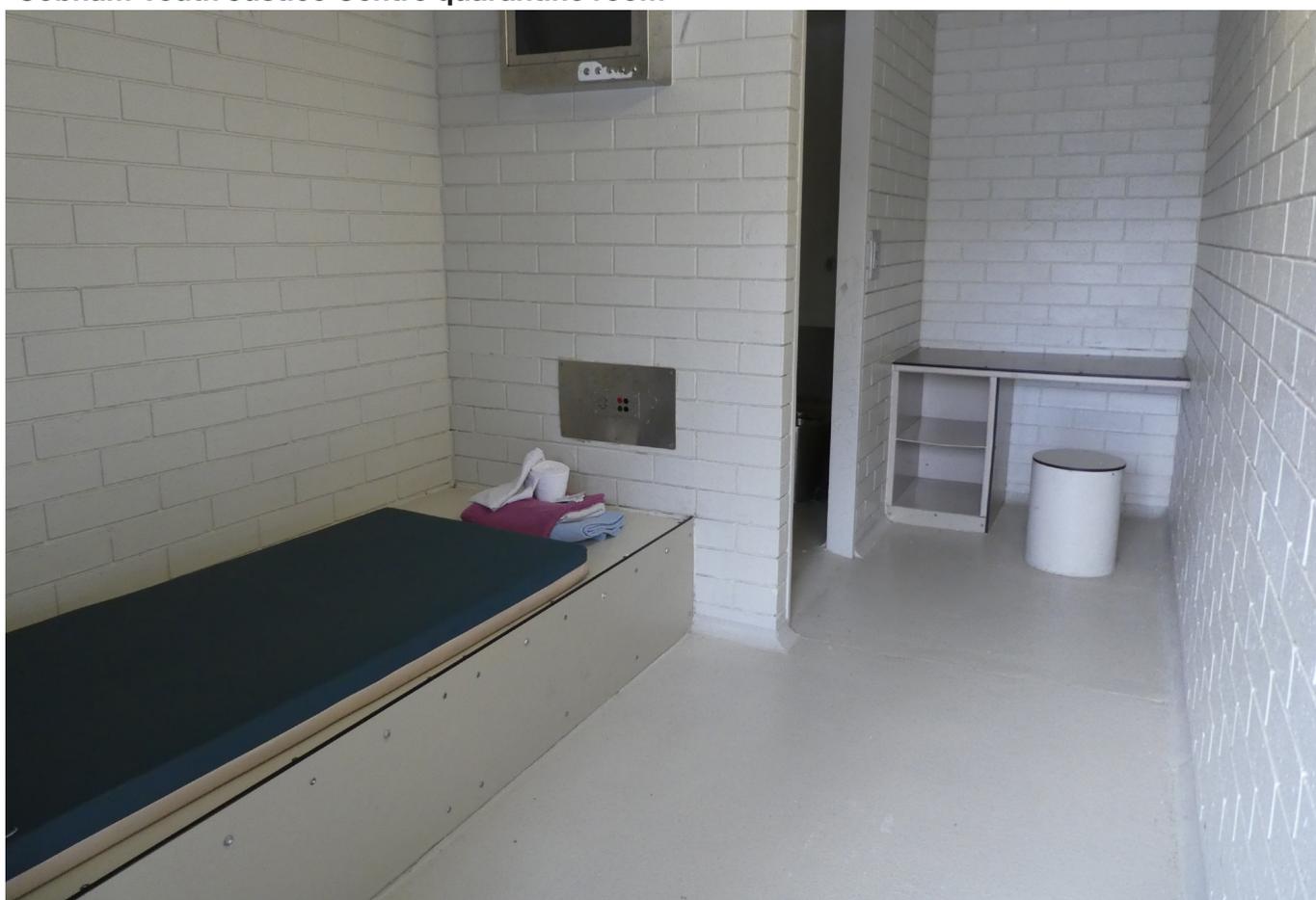
105 Data maintained by YJNSW indicated there were 189 self-harm incidents by young people in custody in the period March to May 2019, a rate of 21.7 per 100 admissions. During March to May 2020, there were 49 self-harm incidents by young people in custody, a rate of 5.6 per 100 admissions. The average daily number of young people in custody was similar across both periods (255 in 2019 and 256 in 2020). See John Kasinathan et al, 'Keeping COVID Out: A Collaborative Approach to COVID-19 is Associated with a Significant Reduction in Self-Harm in Young People in Custody' (2021) 29(4) *Australasian Psychology* 412, 415.

106 John Kasinathan et al, 'Keeping COVID Out: A Collaborative Approach to COVID-19 is Associated with a Significant Reduction in Self-Harm in Young People in Custody' (2021) 29(4) *Australasian Psychology* 412, 415.

In 2022, we inspected the six youth justice centres in NSW and spent time in the quarantine units at each location. Overall, we observed that the units were well managed despite the challenges of using custodial facilities for health-related purposes and managing different cohorts on different regimes. However, we also observed a lack of privacy for young people in quarantine during health assessments as most of the quarantine units did not have separate clinical or interview spaces where young people could speak with health professionals about their health concerns. Given part of the daily screening process included questions about mental health issues, providing as much privacy as reasonably practicable in the circumstances should have been paramount.

YJNSW placed young people in quarantine on separation orders. YJNSW also notifies the NSW Ombudsman when a young person in a youth justice centre is separated<sup>107</sup> for more than 24 hours. This enables the NSW Ombudsman to exercise oversight over the management of young people held separately from others. This included where young people were separated for the purposes of quarantine. The introduction of quarantine for young people entering custody resulted in a significant increase in the number of notifications received by the NSW Ombudsman, from an average of 37 per month in 2019 to an average of 110 per month in 2020 and 149 per month in 2021.<sup>108</sup> The NSW Ombudsman reported that YJNSW actively supported young people to meet bail conditions, facilitating their release during quarantine, and took steps to ensure young people in quarantine had time out-of-room and activities with which to occupy their time.<sup>109</sup> This is consistent with our observations in some youth justice centres but not all.

### **Cobham Youth Justice Centre quarantine room**



107 Section 16 of the *Children (Detention Centres) Act 1987* provides that the Secretary may direct that different detainees or groups of detainees be detained separately from other detainees for the purpose of ensuring the security, safety and good order of a detention centre.

108 NSW Ombudsman, *The COVID-19 Pandemic: Second Report* (Report, September 2022) 48.

109 NSW Ombudsman, *The COVID-19 Pandemic: Second Report* (Report, September 2022) 48.

### 3.3 Screening and testing processes for staff and visitors

Processes for screening visitors and staff for COVID-19 before they enter custodial centres were implemented from the outset of the pandemic. These processes have changed over time but have included temperature checks, rapid antigen testing, screening questions and providing proof of vaccination.

Earlier in the pandemic, people were not permitted to enter a custodial centre where, in the previous 14 days, they had tested positive for COVID-19, been identified as a close contact of a person with COVID-19, returned from overseas or had been in a high risk location where COVID-19 transmission has occurred.<sup>110</sup>

Over time, these limitations were removed or reduced in scope. At the time of writing, a person could not enter a correctional centre if they:

- were infected with COVID-19
- were experiencing any COVID-19 symptoms, unless medically cleared
- had been advised by their manager or the CSNSW Command Post not to return to work
- refused to undertake a rapid antigen test where required by local management.<sup>111</sup>

From March 2023, staff working in custodial centres who tested positive for COVID-19 were permitted to return to work after six full days had passed from the date of their first positive test if they were no longer symptomatic. Staff working in office locations who tested positive for COVID-19 were permitted to return to work after five full days had passed from the date of their first positive test. Staff continuing to experience persistent COVID-19 symptoms required medical clearance before returning to work.<sup>112</sup>

Until August 2022, staff identified as high risk close contacts of a person with COVID-19, per the JH&FMHN risk matrix, were not permitted to attend the workplace for seven days and were required to undertake a COVID-19 test immediately and on the sixth day after this contact.<sup>113</sup> Staff identified as a high risk close contact are no longer excluded from the workplace provided they are asymptomatic and follow specified risk mitigation procedures.<sup>114</sup>

During the onset of the pandemic, thermal cameras were installed at the gate areas of all youth and adult custodial centres to take the temperature of arriving staff and visitors. People with a temperature of more than 37.5°C were not permitted to enter a custodial centre. Where a person recorded a temperature of more than 37.5°C, they were required to wait for 15 minutes and retest using a handheld, non-contact thermometer. They had to leave the workplace if their temperature was at or more than 37.5°C.<sup>115</sup> The temperature testing requirement was removed in October 2022.<sup>116</sup>

From October 2021 to March 2023, a negative rapid antigen test was a requirement for all staff and visitors attending a youth or adult custodial centre.<sup>117</sup> Although a negative rapid antigen test is no longer a routine requirement for entry into all custodial centres, it is a measure that may be imposed locally in response to a

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110 Commissioner's Instructions 2020/52, 2020/54, 2020/55, 2020/85, 2021/39, 2021/53.

111 Commissioner's Instructions 2023/11 and 2023/15.

112 Commissioner's Instruction 2023/15.

113 Commissioner's Instructions 2022/16 and 2022/35; Justice Health and Forensic Mental Health Network, *Staff COVID-19 Public Health Management and Risk Matrix* (version 13, 20 July 2022).

114 Commissioner's Instructions 2022/35, 2022/42, 2023/11, 2023/15. Risk mitigation measures include mask wearing and rapid antigen testing.

115 Commissioner's Instructions 2020/42, 2020/85, 2021/39, 2021/53, 2022/24, 2022/27.

116 Commissioner's Instruction 2022/39.

117 Commissioner's Instructions 2021/52, 2021/53, 2022/24, 2022/27, 2022/39, 2022/42, 2023/11. Exceptions applied where a person had recently recovered from COVID-19.

COVID-19 outbreak within a custodial centre.<sup>118</sup> Data provided to us showed that rapid antigen testing had identified 40 YJNSW staff (up to 1 March 2022)<sup>119</sup> and 1,280 CSNSW staff with COVID-19.<sup>120</sup>

Together, COVID-19 screening and routine security processes can be time consuming. For staff, the introduction of at-home rapid antigen testing, the results of which were recorded via an online portal and verified prior to staff entering a facility, appeared to help with this. However, for social visitors to adult facilities we observed that the time taken to complete these requirements resulted in the length of visits being reduced. Families and friends often travel considerable distances to visit people in custody. On some occasions this may have been a result of staff being inexperienced with new processes. When COVID-19 screening processes are in place, CSNSW needs to consider strategies for ensuring they are as efficient as possible.

**Recommendation: CSNSW and private operators monitor the efficiency of COVID-19 screening processes for visitors.**

### 3.4 Personal protective equipment

The PPE requirements that have applied to adult and youth custodial settings have fluctuated considerably throughout the pandemic. These fluctuations have largely accorded with the spread of COVID-19 in the community, the risk of transmission in different settings and the vulnerability of some groups of people in custody. To their credit, throughout the pandemic, CSNSW and private operators, JH&FMHN, and YJNSW all seem to have ensured adequate supplies of PPE for staff and people in custody.

From March 2020, staff in adult custodial centres were required to wear PPE when coming into contact with inmates suspected of having COVID-19.<sup>121</sup> This requirement was expanded to contact with all inmates in July 2020 and has been adjusted at various points since to apply only in specified locations or where a 1.5 metre distance cannot be maintained, as outlined in Table 3 in relation to adult custodial centres.<sup>122</sup>

From August 2021, a system of zones with associated PPE requirements was implemented across NSW custodial centres. The highest risk areas were designated 'red zones'. Red zones included court and police cells, and the reception, quarantine, and isolation areas of custodial centres. Staff in red zone areas were required to wear full PPE of a long-sleeved gown, P2/N95 mask, protective eyewear/face shield and disposable gloves.<sup>123</sup>

All other areas where staff came into contact with inmates or young people were designated 'orange zones'. Staff in orange zone areas were required to wear N95/P2/KN95 masks and eye protection (goggles or face shields). Staff not coming into contact with inmates or young people were required to wear a surgical mask at all times.<sup>124</sup>

Red and orange zones and associated PPE requirements have been altered within custodial centres in response to outbreaks of COVID-19, resulting in those parts of a custodial centre affected by an outbreak, or in some cases an entire custodial centre, being designated a red zone.<sup>125</sup>

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118 Commissioner's Instruction 2023/11.

119 Information provided by Youth Justice NSW, 31 May 2022.

120 Information provided by Corrective Services NSW, 3 June 2022.

121 Commissioner's Instruction 2020/16.

122 Commissioner's Instructions 2020/62, 2020/74, 2020/90.

123 Justice Health and Forensic Mental Health Network, *COVID-19 Red Zone Advice* (version 2, 6 August 2021); Commissioner's Instruction 2021/46.

124 Justice Health and Forensic Mental Health Network, *COVID-19 Red Zone Advice* (version 8, 28 September 2021); Commissioner's Instruction 2021/46.

125 Justice Health and Forensic Mental Health Network, *COVID-19 Red Zone Advice* (version 12, 11 May 2022).

Over time the PPE requirements for red and orange zones have been reduced. At the time of writing, staff in red zones were required to wear full PPE when coming into direct contact with an inmate or young person with COVID-19. Otherwise, staff in red zones (and orange zones) were required, at a minimum, to always wear a surgical mask.<sup>126</sup> The concept of green zones was also introduced, being those areas where masks were not required as staff were not in direct contact with inmates or young people or people were in large, open, outdoor spaces, such as ovals or exercise yards.<sup>127</sup> PPE requirements no longer include orange zones and green zones or any area where there are no confirmed or suspected COVID-19 cases.<sup>128</sup>

**Table 3: Staff PPE requirements in CSNSW workplaces<sup>129</sup>**

Date of CI	Staff PPE requirement
<b>28 March 2020</b>	Full PPE (mask, eye protection, gown, gloves) must be worn when in contact with an inmate confirmed or suspected of having COVID-19.
<b>20 July 2020</b>	All staff, contractors or visitors working in or visiting the Kevin Waller Unit (KWU) or Aged Care Rehabilitation Unit (ACRU) (on the Long Bay Correctional Complex) must wear a surgical mask when entering accommodation areas and/or interacting with inmates.
<b>31 July 2020</b>	Face masks required when in contact with inmates.
<b>29 September 2020</b>	Face masks required when within 1.5 metres of inmates.
<b>20 December 2020</b>	Face masks required when in contact with inmates.
<b>5 February 2021</b>	Face masks required: <ul style="list-style-type: none"> <li>• in KWU and ACRU</li> <li>• when working with inmates confirmed or suspected of having COVID-19 (KN95)</li> <li>• in the field hospital (N95/P2)</li> <li>• when working with new reception inmates or in visits</li> <li>• when interacting with an inmate within 1.5 metres.</li> </ul>
<b>11 March 2021</b>	Reduction in circumstances where face masks were required: when working with new reception inmates, working in visits, and working with an inmate confirmed or suspected of having COVID-19 (KN95).
<b>12 April 2021</b>	Removal of requirement to wear face masks during visits.
<b>18 June 2021</b>	Reintroduction of requirement to wear face masks during visits when within 1.5 metres (Metropolitan Sydney only).
<b>23 June 2021</b>	Requirement for staff to wear face masks when working in all correctional, transitional, and residential centres; court cells complexes; transport vehicles across NSW; and other CSNSW workplaces in the Greater Sydney area.
<b>15 July 2021</b>	All CSNSW staff across NSW required to wear a surgical face mask while in the workplace. KN95 or P2 face masks required when working with an inmate confirmed or suspected of having COVID-19.

126 Commissioner's Instruction 2022/45.

127 Commissioner's Instructions 2022/21, 2022/29, 2022/45.

128 Commissioner's Instruction 2023/17.

129 Commissioner's Instructions 2020/16, 2020/56, 2020/62, 2020/74, 2020/90, 2021/06, 2021/08, 2021/10, 2021/13, 2021/15, 2021/16, 2021/18, 2021/25, 2021/31, 2021/34, 2021/43, 2021/46, 2021/57, 2021/60, 2021/61, 2021/62, 2021/63, 2022/01, 2022/09, 2022/21, 2022/29, 2022/33, 2022/45, 2023/17.

<b>2 August 2021</b>	All CSNSW staff required to wear full PPE (KN95 mask, eye protection, gown, gloves) when working with new reception inmates in Greater Sydney.
<b>10 August 2021</b>	All CSNSW staff required to wear full PPE (KN95 mask, eye protection, gown, gloves) when working with new reception inmates (NSW-wide).
<b>5 September 2021</b>	<p>From 5 September 2021: all CSNSW staff in Greater Sydney working in locations with inmate/offender contact required to wear a KN95/N95/P2 face mask at all times and eye protection when in contact with inmates/offenders.</p> <p>From 13 September 2021: all CSNSW staff NSW-wide working in locations with inmate/offender contact required to wear a KN95/N95/P2 face mask at all times and eye protection when in contact with inmates/offenders.</p>
<b>30 September 2021</b>	<ul style="list-style-type: none"> <li>• <b>Red zones:</b> high risk areas where staff come into contact with inmates/offenders and full PPE is required, including court and police cells; reception areas; quarantine, isolation, and staging areas; escorts where the inmate is from a red zone; areas on high alert (as directed by the CSNSW Command Post); and residential and transitional centres where direct inmate contact occurs.</li> <li>• <b>Orange zones:</b> all other areas where contact between staff and inmates/offenders occurs and a face mask and eye protection are required.</li> </ul> <p>Staff not working in these areas required to wear a surgical mask.</p>
<b>8 December 2021</b>	<p>Reduced PPE requirements:</p> <ul style="list-style-type: none"> <li>• staff in orange zones no longer required to wear eye protection</li> <li>• staff working in office-based settings no longer required to wear a mask.</li> </ul>
<b>17 December 2021</b>	<ul style="list-style-type: none"> <li>• Staff working in the orange zones of correctional centres receiving inmates into custody required to wear eye protection.</li> <li>• Reintroduction of requirement that staff working in office-based settings wear a mask.</li> </ul>
<b>20 December 2021</b>	<ul style="list-style-type: none"> <li>• Staff working in orange zones across all correctional centres required to wear eye protection.</li> <li>• Staff in office-based settings within correctional centre required to wear surgical masks.</li> </ul>
<b>24 December 2021</b>	Staff in all office-based settings required to wear surgical masks.
<b>2 January 2022</b>	<p>Red zone PPE required in all areas of a correctional centre:</p> <ul style="list-style-type: none"> <li>• P2/N95 face mask and eye protection required at all times</li> <li>• gown and gloves required when working with new reception inmates, in quarantine and isolation areas, court cells, and with COVID-19 positive inmates.</li> </ul>

<p><b>25 February 2022</b></p>	<p>Red zone PPE no longer applicable to all areas of a correctional centre:</p> <ul style="list-style-type: none"> <li>• P2/N95 face mask and eye protection to be worn at all times in court and police cells; reception areas; quarantine, isolation, and staging areas; escorts where the inmate is from a red zone; areas on high alert or experiencing a COVID-19 outbreak (as directed by the CSNSW Command Post)</li> <li>• gown and gloves required when coming into direct contact with an inmate or in a COVID-19 isolation area</li> <li>• staff in orange zones no longer required to wear eye protection and must wear a surgical mask (minimum) at all times</li> <li>• staff working in office-based settings within correctional centres required to wear surgical masks (minimum).</li> </ul>
<p><b>23 May 2022</b></p>	<ul style="list-style-type: none"> <li>• Direct inmate contact defined as being within 1.5 metres or in the same enclosed area or an aerosol generating event (coughing, spitting, yelling, uses of force).</li> <li>• Full PPE only required in red zones where there is direct physical contact with an inmate. P2/N95 mask and eye protection required when in direct contact with an inmate or in a COVID-19 isolation area.</li> <li>• Introduction of a <b>green zone</b> being where there is no direct inmate contact or large, open outdoor spaces. Masks optional.</li> </ul>
<p><b>18 July 2022</b></p>	<ul style="list-style-type: none"> <li>• Full PPE is only required in red zones when in direct contact with an inmate or when in a COVID-19 isolation area. Otherwise, staff in red zones must wear a surgical mask (minimum) at all times.</li> <li>• Staff in orange zones must wear a surgical mask (minimum) at all times.</li> <li>• The wearing of masks in green zones is 'strongly recommended'.</li> </ul>
<p><b>22 August 2022</b></p>	<ul style="list-style-type: none"> <li>• Removes staging areas<sup>130</sup> from the definition of a red zone.</li> </ul>
<p><b>15 December 2022</b></p>	<ul style="list-style-type: none"> <li>• Red zones include any area where an inmate with COVID-19 or an inmate in quarantine is located.</li> <li>• Staff in red zones must wear a P2/N95 mask and eye protection (minimum).</li> <li>• Disposable gloves and long sleeve gowns are only required in red zones when staff are in direct contact with an inmate with COVID-19 and there is a 'risk of exposure to blood or other bodily fluids'.</li> </ul>
<p><b>3 September 2023</b></p>	<ul style="list-style-type: none"> <li>• Orange zones no longer exist.</li> <li>• Green zones defined as any area of a correctional centre where there are no confirmed or suspected cases of COVID-19. Masks are no longer 'strongly recommended'.</li> </ul>

During our inspections and visits in 2021 and 2022, we regularly observed poor compliance with PPE requirements, although it should be noted that this varied across locations. In contrast we have observed health staff to be vigilant, a consequence of health staff being familiar with and trained in PPE use prior to the pandemic. We observed non-health staff not wearing full PPE in circumstances where they were required to do so, not wearing masks at all or not wearing them properly, for example by altering the elastic straps, not fitting the mask securely over the nose and mouth or removing masks while speaking. In some

<sup>130</sup> At this time, inmates moved to the dormitory-style prisons, Hunter Correctional Centre and Macquarie Correctional Centre, were required to be held separately from other inmates for five days. This was known as a staging period. Staging was ceased in February 2023: Commissioner's Instructions 2022/06, 2022/36, 2022/46, 2023/06.

locations we have also observed a lack of suitable areas for donning and doffing PPE and a lack of medical waste bins for disposing used PPE.

We believe there may be a number of reasons for this. As the pandemic has progressed, staff have become increasingly fatigued. Large numbers of staff have been infected with COVID-19, leading some to feel that they no longer need to wear PPE. Further, it is difficult to describe the extent to which the pandemic has impacted the work of custodial centre staff, whose priorities included managing COVID-19 alongside their core functions. At the time of our observations there was a strong desire to return to business as usual.

However, while these attitudes may be understandable, PPE remains an important infection prevention and control measure, particularly in relation to vulnerable populations at risk of serious COVID-19, and a lack of compliance due to carelessness among some staff has been disappointing to witness. Moreover, better PPE compliance would have reduced the transmission of COVID-19 between staff in the workplace and reduced the risk of staff becoming infected by inmates.

We acknowledge that the use of PPE was foreign for non-health staff in custodial settings. An internal review of the COVID-19 response should consider what educational approaches might have assisted in improving PPE compliance among non-health staff.

Compliance fatigue also seems to be a consequence of the frequency with which PPE requirements have changed over the course of the pandemic. As can be seen in Table 3, from the onset of the pandemic to the end of 2022, there were 25 CSNSW Commissioner's Instructions relating to PPE. While it was important to ensure PPE settings were proportionate to the risk of COVID-19, some directives were confusing and difficult to apply in practice.

For example, during our inspection of Tamworth Correctional Centre in November 2021, the inmate population consisted of quarantine and non-quarantine inmates. To ensure inmates had access to phones and showers, different cohorts would be rotated to different yards throughout the day. Whether a yard was a red or an orange zone at a particular time depended on whether it contained quarantine or non-quarantine inmates. The zones and the PPE requirements could change with each yard rotation, making compliance challenging. This was plainly not the intention behind the creation of PPE zones, which appeared to assume the classification of an area would remain static.

As described elsewhere in this report, there is a wide range of custodial centre infrastructure in NSW, particularly in the adult system, and inmates were quarantined across different locations. We have observed, and ourselves experienced, the significant challenges staff face when wearing full PPE in older correctional centres where there is no climate control. In the summer months, wearing full PPE in poorly ventilated correctional centres with no air conditioning or outdoors, is suffocatingly hot. Clothing, gowns, and masks are soon soaked through with sweat. The fogging of eye protection (and glasses) can make it almost impossible to see. This was clearly a considerable constraint for staff undertaking their duties.

Despite the variety of infrastructure, located in a range of climates, a one-size-fits-all approach was taken in relation to PPE across the NSW custodial system. We believe that this has contributed to a sense among staff that decision makers do not understand the realities of their work or work environments. It also resulted in people attempting to do everything to an unsatisfactory standard, such as not wearing PPE or changing PPE in the manner required for it to be effective.

JH&FMHN and CSNSW advise that PPE requirements were based on state, national, and international scientific evidence. Assigning PPE zones to different locations, depending on its risk and function, reflected efforts to balance different considerations such as safety, staff wellbeing, and compliance. JH&FMHN further note that variations to recommended PPE practices were not supported by best practice evidence

and may have compromised infection prevention and control measures, individual health and safety, and led to inconsistent or poorer rates of compliance.<sup>131</sup>

We do not dispute the evidence-base or the importance of PPE. However, as this section outlines, variations to PPE use were occurring and the imposition of PPE zones worked poorly in some locations. An approach that considered the unique circumstances of different custodial centres, while offering the best protection achievable in a situation, may have improved PPE compliance. This would have focused people's attention on the practices that would be the most effective for preventing transmission (see section 2.2).

## 3.5 Vaccination

### 3.5.1 Vaccination of people in custody

JH&FMHN began its COVID-19 vaccination program on 15 March 2021 at the Long Bay Correctional Complex with the AstraZeneca vaccine.<sup>132</sup> The roll-out was expanded to the Silverwater Correctional Complex on 22 March 2021<sup>133</sup> and the Francis Greenway Complex in Windsor on 6 April 2021.<sup>134</sup> The Pfizer (Cominarty) vaccination program commenced on 30 June 2021.<sup>135</sup>

In April 2021, the Australian Technical Advisory Group on Immunisation (ATAGI) recommended that the Pfizer (Cominarty) vaccine was preferred over the AstraZeneca vaccine for people aged under 50 years.<sup>136</sup> In June 2021, ATAGI recommended that the Pfizer (Cominarty) vaccine was preferred over the AstraZeneca vaccine for people aged under 60 years.<sup>137</sup> This was an early constraint on the JH&FMHN vaccination program.

As can be seen in Figure 1 in relation to adults in custody and Figure 2 in relation to young people in custody, the proportion of people in custody vaccinated against COVID-19 climbed steadily throughout the second half of 2021. The proportion of adults in custody fully vaccinated with two doses of a COVID-19 vaccine remained at around 80% for most of 2022. On reviewing this data, it has been pleasing to note that, despite an initial disparity, the first and second dose vaccination rates of Aboriginal adults have largely kept pace with that of all adults in custody. However, as can be seen in Figure 3, the same cannot be said for third doses. The proportion of Aboriginal adults who have received a third dose has been consistently below that of all adults and young people in custody.

The proportion of fully vaccinated young people in custody has fluctuated between around 65% and 75%. It has been highlighted previously that the vaccination figures for young people in custody change daily due to the frequency with which young people enter and leave custody and their vaccination status.<sup>138</sup> Although the proportion of young people who have received a third dose looks low, third doses were only available for young people aged 16 and 17 years and medically vulnerable young people aged 12 to 15 years. Additional doses are not recommended for young people under the age of 18 years.<sup>139</sup>

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131 Information provided by Justice Health and Forensic Mental Health Network, 29 June 2023.

132 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (16 March 2021).

133 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (23 March 2021).

134 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (6 April 2021).

135 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (1 July 2021).

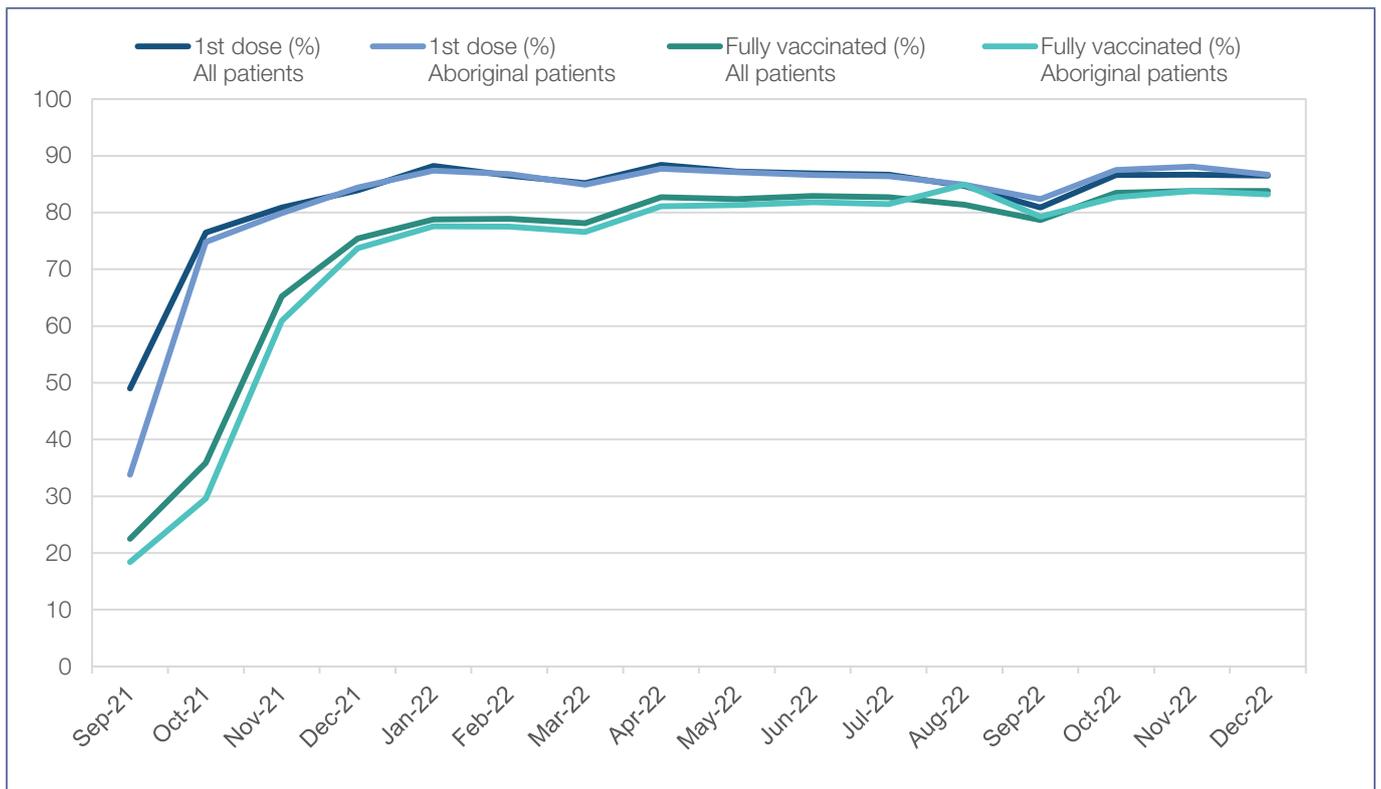
136 Brendan Murphy and Paul Kelly, 'Joint Statement on COVID-19 AstraZeneca vaccine advice from ATAGI (Media Release, Department of Health and Aged Care, 8 April 2021) <<https://www.health.gov.au/news/joint-statement-on-covid-19-astrazeneca-vaccine-advice-from-atagi>>.

137 Australian Technical Advisory Group on Immunisation, 'ATAGI Statement on Revised Recommendations on the Use of COVID-19 Vaccine AstraZeneca, 17 June 2021' (Media Release, Department of Health and Aged Care, 17 June 2021) <<https://www.health.gov.au/news/atagi-statement-on-revised-recommendations-on-the-use-of-covid-19-vaccine-astrazeneca-17-june-2021>>.

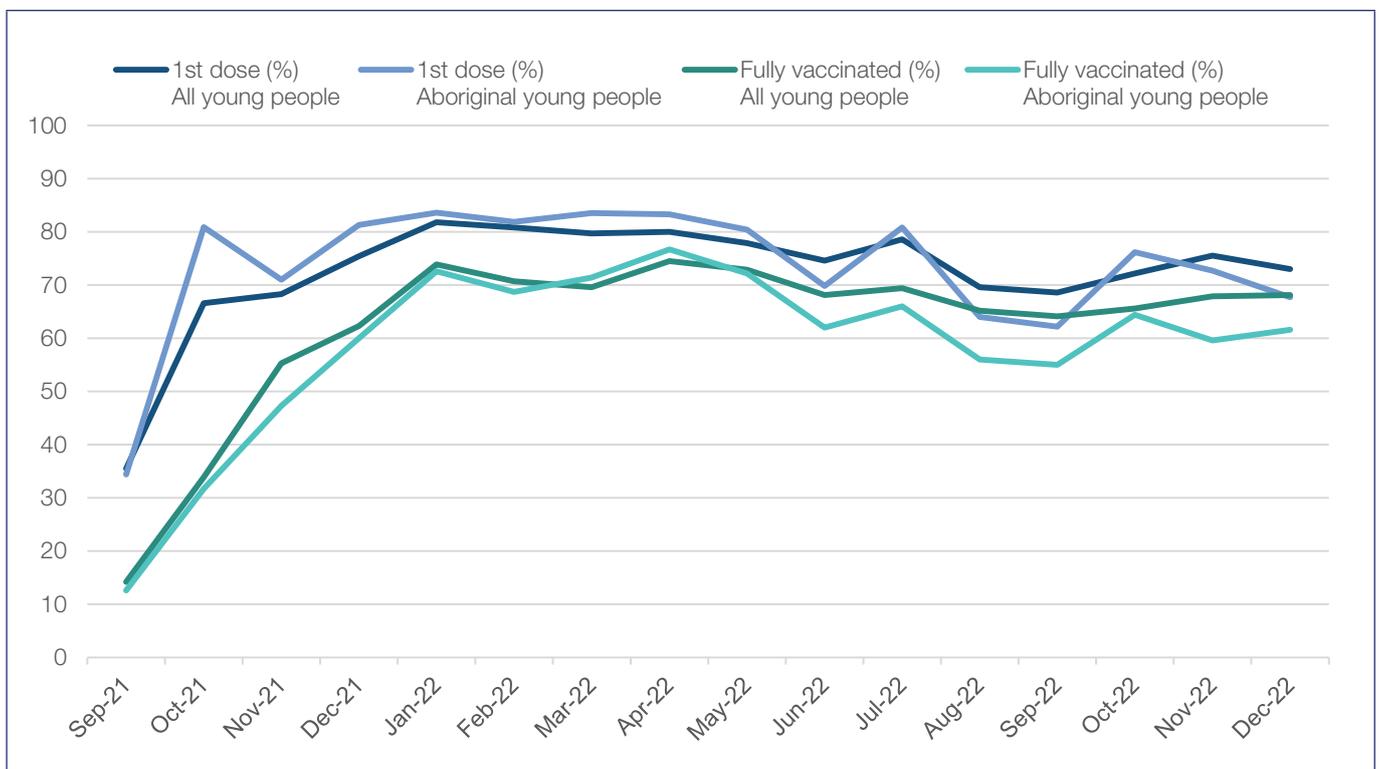
138 Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 2 March 2022, 13–14 (Paul O'Reilly, Executive Director of Youth Justice NSW).

139 See 'Who Can Get Vaccinated', *Department of Health and Aged Care (Web Page, 31 May 2023)* <<https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/who-can-get-vaccinated>>.

**Figure 1: COVID-19 vaccination of adults in custody, September 2021 to December 2022<sup>140</sup>**



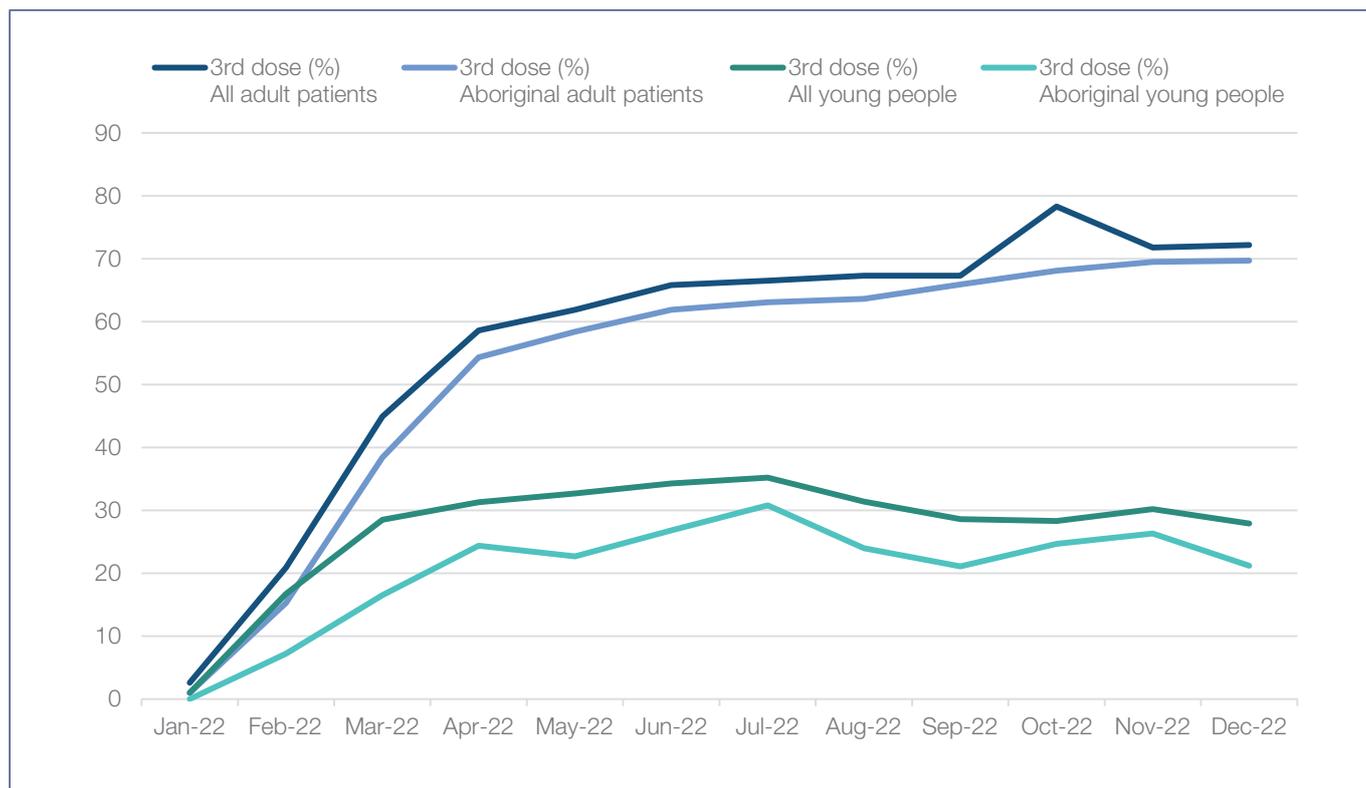
**Figure 2: COVID-19 vaccination of young people in custody, September 2021 to December 2022<sup>141</sup>**



140 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (September 2021 to December 2022).

141 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (September 2021 to December 2022).

**Figure 3: COVID-19 vaccination 3<sup>rd</sup> doses for people in custody, January to December 2022<sup>142</sup>**



The biggest challenges that have emerged for the vaccination of people in custody are the proportion of people who have declined vaccination and the proportion of people who have not received a third dose. From April 2022, the proportion of adults in custody who have declined vaccination against COVID-19 remained steady at around 7% to 8%. JH&FMHN advised that their staff collaborated with Aboriginal staff and people in adult custodial centres to inform resources about preventing COVID-19 transmission and getting vaccinated, including through engagement with inmate development committees.<sup>143</sup> Similar to the community, there appears to be a degree of vaccine fatigue among people in custody.

A much higher proportion of young people in custody have declined vaccination against COVID-19, fluctuating between 15% and 20%. The proportion of Aboriginal young people who have declined vaccination is around 20% to 25%. JH&FMHN advised that its staff in a number of youth justice centres collaborated with local Elders and Aboriginal caseworkers to promote COVID-19 vaccination uptake among Aboriginal young people in custody. Staff also engaged leaders from the Sudanese and wider African community to work with and encourage uptake by African/Sudanese young people in custody who had higher rates of declining COVID-19, and other, vaccinations.<sup>144</sup>

As can be seen in Table 4, Table 5 and Table 6, both the proportion of people in custody vaccinated against COVID-19 and the proportion who have declined vaccination vary across locations. For example, on 23 May 2022, almost all inmates at Hunter Correctional Centre had received three doses of a COVID-19 vaccine, whereas at the High Risk Management Correctional Centre, 19.5% of inmates had declined vaccination.

<sup>142</sup> Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (September 2021 to December 2022).

<sup>143</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

<sup>144</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

For some locations, particularly those with significant remand populations this may reflect the frequency of people entering or exiting custody or being transferred to different custodial centres. For others, it perhaps reflects the age profile and health status of the cohort at a location. For some it may also indicate a suspicion of, or negative experiences with, health services and the proliferation of misinformation about COVID-19 and vaccination among the custodial centre population. There is potential for misinformation to have broader impacts for population health initiatives and vaccination uptake. It is important for health services to be conscious of the spread of misinformation and to consider localised and targeted strategies for countering its circulation. It is also important to target those considered vulnerable within custodial environments, such as those who are older and/or immunocompromised and Aboriginal people, in booster vaccination campaigns.

Until February 2023, adults in custody were required to be triple vaccinated in order to receive in-person social visits and participate in external leave programs.<sup>145</sup> This continued to be the case after all vaccination requirements applicable to people visiting or working in custodial centres were removed in October 2022 (see section 3.5.2). Triple vaccination against COVID-19 is a higher threshold than the double dose requirement that formerly applied to employees, contractors, third party providers, and professional visitors. It is not clear to us what decision makers hoped to achieve by maintaining this restriction for such a long period. However, we consider that it was unfair, disproportionate to the risk of COVID-19 in the context of in-person visits, and failed to strike a balance between protecting inmate health and the other factors influencing their wellbeing.

**Table 4: Vaccination rates of adults in public correctional centres and John Morony Correctional Centre on 23 May 2022<sup>146</sup>**

Correctional centre	1 <sup>st</sup> dose (%)		2 <sup>nd</sup> dose (%)		3 <sup>rd</sup> dose (%)		Declined – no 1 <sup>st</sup> dose (%)	
	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults
<b>Amber Laurel*</b>	38.1	66.7	38.1	66.7	19.0	50.0	0.0	0.0
<b>Bathurst</b>	84.2	84.1	78.2	77.6	54.5	53.3	11.8	9.3
<b>Broken Hill</b>	86.5	84.0	83.8	84.0	54.1	64.0	8.1	12.0
<b>Cessnock</b>	90.4	93.2	86.4	88.1	72.6	74.6	9.1	6.8
<b>CDTCC<sup>147</sup></b>	100	100	100	100	66.7	54.5	0.0	0.0
<b>Cooma</b>	89.6	93.5	88.0	87.1	69.6	74.2	8.8	3.2
<b>Dawn de Loas</b>	87.0	86.7	85.2	86.7	61.7	66.7	13.0	13.3
<b>Dillwynia</b>	86.9	91.7	82.7	86.8	61.4	64.5	11.4	8.3
<b>Emu Plains</b>	86.7	88.9	86.7	88.9	73.3	77.8	13.3	11.1
<b>Geoffrey Pearce</b>	92.9	90.4	89.8	90.4	74.7	78.8	6.5	7.7
<b>Glen Innes</b>	91.7	83.3	89.3	83.3	79.8	83.3	6.0	16.7
<b>Goulburn</b>	91.9	91.4	89.6	90.5	71.5	68.6	7.5	7.6

145 Commissioner's Instructions 2022/40 and 2022/41. These vaccination requirements were removed by Commissioner's Instructions 2023/04 and 2023/05.

146 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022. The Justice Health and Forensic Mental Health Network provides health services, including vaccination, at the correctional centres listed in this table.

147 CDTCC refers to the Compulsory Drug Treatment Correctional Centre.

Correctional centre	1 <sup>st</sup> dose (%)		2 <sup>nd</sup> dose (%)		3 <sup>rd</sup> dose (%)		Declined – no 1 <sup>st</sup> dose (%)	
	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults
<b>HRMCC</b> <sup>148</sup>	77.9	85.7	77.9	85.7	59.7	76.2	19.5	14.3
<b>Hunter</b>	100	100	100	100	97.7	100	0.0	0.0
<b>John Morony</b>	86.5	91.5	80.8	86.8	53.9	58.5	11.2	7.5
<b>Kariong*</b>	90.5	60.0	76.2	40.0	61.9	40.0	9.5	0.0
<b>Kirkconnell</b>	96.7	92.0	96.7	92.0	91.8	88.0	3.3	8.0
<b>Lithgow</b>	91.9	89.3	91.2	88.1	80.4	76.2	7.8	10.7
<b>LBH 1</b> <sup>149</sup>	87.0	73.3	79.7	60.0	62.3	46.7	8.7	26.7
<b>LBH 2</b>	92.4	88.9	87.4	81.5	75.6	81.5	7.6	7.4
<b>Macquarie</b>	95.4	96.4	94.2	92.9	78.0	83.9	4.3	3.6
<b>Mannus</b>	90.7	100	90.7	100	85.2	100	9.3	0.0
<b>Mary Wade</b>	98.3	100	98.3	100	96.6	100	1.7	0.0
<b>MRRC</b>	80.5	83.1	73.8	75.8	48.0	47.2	12.2	10.5
<b>MSPC 1</b> <sup>150</sup>	94.5	92.0	93.1	90.7	75.2	80.0	5.5	8.0
<b>MSPC 2</b>	98.1	100	95.7	93.3	84.5	86.7	1.9	0.0
<b>MSPC 3</b>	94.2	96.7	93.9	96.7	86.4	83.3	5.8	3.3
<b>Mid North Coast</b>	84.8	88.8	78.6	80.9	54.9	54.3	11.0	7.9
<b>Oberon</b>	96.5	90.9	97.6	90.9	84.7	90.9	2.4	9.1
<b>Shortland</b>	90.0	92.0	87.8	89.4	63.5	67.3	7.9	7.0
<b>SWCC</b>	82.4	85.5	74.5	76.3	45.6	51.3	16.7	14.5
<b>South Coast</b>	91.1	85.4	88.7	83.0	72.3	68.4	8.0	6.9
<b>SPC</b> <sup>151</sup>	85.3	-	82.4	-	73.5	-	2.9	-
<b>St Heliers</b>	93.8	100	92.9	100	84.1	94.4	6.2	0.0
<b>Tamworth</b>	83.3	78.8	77.1	72.7	47.9	51.5	8.3	9.1
<b>Wellington</b>	82.7	78.8	77.2	72.4	55.1	44.9	10.6	12.2
<b>All locations</b>	<b>88.6</b>	<b>88.1</b>	<b>84.9</b>	<b>83.4</b>	<b>66.0</b>	<b>63.3</b>	<b>8.8</b>	<b>8.4</b>

\* JH&FMHN do not provide a COVID-19 vaccination program at Amber Laurel Correctional Centre and Kariong Intake and Transit Centre.

Note: Vaccination rates based on correctional centre occupancy at the time of reporting.

148 HRMCC refers to the High Risk Management Correctional Centre, located on the Goulburn Correctional Complex.

149 LBH 1 and LBH 2 refer to the two different areas of the Long Bay Hospital, located on the Long Bay Correctional Complex.

150 MSPC 1, MSPC 2 and MSPC 3 refer to the three different areas of the Metropolitan Special Programs Centre, located on the Long Bay Correctional Complex.

151 SPC refers to the Special Purpose Centre, located on the Long Bay Correctional Complex.

**Table 5: Vaccination rates of adults in managed correctional centres on 23 May 2022<sup>152</sup>**

Correctional centre	1 <sup>st</sup> dose (%)		2 <sup>nd</sup> dose (%)		3 <sup>rd</sup> dose (%)		Declined – no 1 <sup>st</sup> dose (%)	
	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults	All adults	Aboriginal adults
Clarence	82.1	81.1	70.5	69.2	60.9	7.7	3.3	3.3
Junee	83.9	77.3	82.2	76.6	62.0	5.1	3.1	3.1
Parklea	77.2	86.8	71.1	77.8	39.8	7.8	3.2	1.6
<b>All locations</b>	<b>80.8</b>	<b>81.5</b>	<b>74.2</b>	<b>74.2</b>	<b>53.4</b>	<b>6.9</b>	<b>3.2</b>	<b>2.7</b>

Note: Vaccination rates based on correctional centre occupancy at the time of reporting.

**Table 6: Vaccination rates of young people aged 12 years and over in youth justice centres on 23 May 2022<sup>153</sup>**

Youth justice centre	1 <sup>st</sup> dose (%)		2 <sup>nd</sup> dose (%)		3 <sup>rd</sup> dose (%)		Declined – no 1 <sup>st</sup> dose (%)	
	All YP <sup>154</sup>	Aboriginal YP	All YP	Aboriginal YP	All YP	Aboriginal YP	All YP	Aboriginal YP
Acmena	64.0	55.0	64.0	55.0	20.0	25.0	28.0	35.0
Cobham	81.7	73.9	76.7	69.6	31.7	34.8	16.7	21.7
Frank Baxter	78.4	83.3	68.6	66.7	41.2	20.8	15.7	8.3
Orana	58.8	64.3	47.1	50.0	17.6	14.3	23.5	28.6
Reiby	65.4	56.3	61.5	50.0	3.8	6.3	34.6	43.8
Riverina	95.0	100	90.0	88.9	70.0	66.7	5.0	0.0
<b>All locations</b>	<b>75.9</b>	<b>70.8</b>	<b>69.8</b>	<b>62.3</b>	<b>31.7</b>	<b>25.5</b>	<b>19.6</b>	<b>23.6</b>

Note: Vaccination rates based on youth justice centre occupancy at the time of reporting.

### 3.5.2 Vaccination of staff and visitors

From October 2021 to October 2022, COVID-19 vaccination requirements applied to employees of CSNSW, YJNSW, JH&FMHN and privately operated correctional centres. Consequently, most staff members have received at least two doses of a COVID-19 vaccine.

JH&FMHN advised that at 8 May 2022, 99.9% of JH&FMHN staff had received two doses of a COVID-19 vaccine and 34.6% had reported receiving a third dose,<sup>155</sup> similar to the community. JH&FMHN believed this

<sup>152</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022. Privately operated health service providers provide health services, including vaccination, at Clarence Correctional Centre (Serco), Junee Correctional Centre (GEO), and Parklea Correctional Centre (St Vincent's Correctional Health).

<sup>153</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022. The Justice Health and Forensic Mental Health Network provides health services, including vaccination, at youth justice centres in NSW.

<sup>154</sup> YP refers to young people.

<sup>155</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

to be an underestimate as it was largely self-reported.<sup>156</sup> CSNSW advised that 9,367 staff members had received two doses of a COVID-19 vaccine.<sup>157</sup> YJNSW advised that at 1 March 2022 all staff were double vaccinated except for four staff members with a medical contraindication.<sup>158</sup>

Vaccination requirements also applied to others entering custodial centres in an employment capacity or for social visits. These also ceased to apply from October 2022.<sup>159</sup>

When the vaccination requirements were in place, employees, contractors, third party providers and professional visitors were required to be fully vaccinated with two doses of a COVID-19 vaccine. As noted in section 3.1.1, social visitors eligible for three doses of a COVID-19 vaccine were required to be triple vaccinated to participate in in-person social visits.

### 3.6 Emergency release

In 2020 an emergency provision was enacted to allow for the early release of sentenced inmates who met certain eligibility criteria. The emergency release power did not apply to unconvicted inmates remanded in custody.

Section 276 of the CAS Act provided that the Commissioner of CSNSW may release an inmate on parole when satisfied doing so was 'reasonably necessary' due to the threat of COVID-19.<sup>160</sup> No equivalent power was enacted in relation to young people held in youth justice centres.

Under section 276, a parole order could not be made in relation to any inmate:

- sentenced to imprisonment for murder, a serious sex offence or offence of a sexual nature,<sup>161</sup> or a terrorism offence<sup>162</sup>
- sentenced to imprisonment for life
- who was a serious offender<sup>163</sup>
- who committed an offence against a law of the Commonwealth
- who was a NSW post sentence or a Commonwealth post sentence terrorism inmate.<sup>164</sup>

Any inmate released on parole under this provision also needed to belong to a class of inmates prescribed by the CAS Regulation, which required that any inmates released:

- have an existing medical condition or vulnerability, other than an excluded inmate, or
- have an earliest possible release date within 12 months, other than an excluded inmate.<sup>165</sup>

The process for identifying potential candidates for release involved creating an unfiltered list of potential

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156 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

157 Information provided by Corrective Services NSW, 3 June 2022.

158 Information provided by Youth Justice NSW, 31 May 2022.

159 Commissioner's Instruction 2022/39.

160 *Crimes (Administration of Sentences) Act 1999* s 276 as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.15 item 2.

161 As defined in the *Crimes (High Risk Offenders) Act 2006*.

162 As defined in the *Crimes (Administration of Sentences) Act 1999* pt 6 div 3A.

163 The term 'serious offender' is defined in the *Crimes (Administration of Sentences) Act 1999* s 3. The definition includes offenders serving a sentence of life imprisonment or who will not be eligible for release from custody for at least 12 years.

164 *Crimes (Administration of Sentences) Act 1999* s 276(3).

165 *Crimes (Administration of Sentences) Regulation 2014* cl 330. Excluded inmates were those with a national security designation (*Crimes (Administration of Sentences) Regulation 2014* cl 15(3A)) or a maximum security classification (AA, A1, A2 or E1 for men and Categories 5 or 4 or E1 for women: *Crimes (Administration of Sentences) Regulation 2014* cls 12–14).

candidates by combining the list of prisoners with earliest release dates within 12 months with a list generated by JH&FMHN of vulnerable prisoners. All who were subject to exclusion under the legislation were removed. The list generated through this process identified around 2,500 people.<sup>166</sup>

The Commissioner was also required to consider any risk to community safety of releasing an inmate, the impact of release on any victim of the inmate,<sup>167</sup> the protection of the victim where the inmate had previously been convicted of a domestic violence offence,<sup>168</sup> and the availability of suitable accommodation for the inmate if they were released.<sup>169</sup>

In addition to the legislative provisions outlining the Commissioner's power to release inmates to parole, CSNSW developed procedures for implementation, should the power be invoked. These procedures included additional limitations regarding which inmates were considered eligible for early release, excluding those:

- identified as high risk, based on specified actuarial risk assessment tools
- due for parole consideration by SPA within the next four weeks
- serving the balance of their parole period in custody
- who may be deported.

There were calls for CSNSW to use this power to reduce the NSW prison population and consequently the risk of COVID-19 spreading among inmates, particularly those at high risk of serious illness from COVID-19.<sup>170</sup> The legislation permitted the Commissioner to use this release power during a period prescribed in the legislation, which expired on 26 March 2022.<sup>171</sup> This power was not used during the time it was in force.

We commend the NSW Government, at the recommendation of CSNSW and the Department of Communities and Justice, for making an early release to parole power available to the Commissioner. This was consistent with international guidance from the WHO,<sup>172</sup> UN Subcommittee on Prevention of Torture<sup>173</sup> and the European Committee for the Prevention of Torture<sup>174</sup> regarding the need to consider non-custodial alternatives to imprisonment and address overcrowding by reducing prison populations. Releasing prisoners was also among the measures used in some international jurisdictions to reduce prison populations and the risk of large outbreaks of COVID-19 among prisoners.<sup>175</sup> For example, France

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166 Information provided by Corrective Service NSW, 4 July 2023.

167 Where the name of the victim is recorded in the Victim's Register in relation to the inmate.

168 As defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

169 *Crimes (Administration of Sentences) Act 1999* s 276(4).

170 See Evidence to Public Accountability Committee, Parliament of NSW, Sydney, 17 September 2021, 40 (Brett Collins, Coordinator of Justice Action); Evidence to Public Accountability Committee, Parliament of NSW, Sydney, 17 September 2021, 41, 45 (Thalia Anthony, Professor, Faculty of Law at the University of Technology); Fergus Hunter, 'NSW Prisons Considering Emergency Release of Some Inmates if Outbreak Worsens', *Sydney Morning Herald* (online, 31 August 2021) <<https://www.smh.com.au/national/nsw/nsw-prisons-prepared-to-release-up-to-1000-inmates-if-outbreak-worsens-20210831-p58ngm.html>>; Tamsin Rose, 'NSW Prisons Urged to Use Emergency Release Powers as Covid Cases Surge', *The Guardian* (online, 25 January 2022) <<https://www.theguardian.com/australia-news/2022/jan/25/nsw-prisons-urged-to-use-emergency-release-powers-as-covid-cases-surge>>.

171 *Crimes (Administration of Sentences) Act 1999* s 274 and *Crimes (Administration of Sentences) Regulation 2014* cl 329A.

172 World Health Organization, *Preparedness, Prevention and Control of COVID-19 in Prisons and other Places of Detention: Interim Guidance* (15 March 2020) 4; World Health Organization, *Preparedness, Prevention and Control of COVID-19 in Prisons and other Places of Detention: Interim Guidance* (8 February 2021) 5; World Health Organization, *Good Practices in Managing Infectious Diseases in Prison Settings: A Snapshot of Responses to COVID-19 Implemented Around the Globe between May and September 2020* (Report, 2022) ix-x.

173 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Advice of the Subcommittee to State Parties and National Preventive Mechanisms Relating to the Coronavirus Disease (COVID-19) Pandemic* (7 April 2020).

174 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Statement of Principles Relating to the Treatment of Persons Deprived of their Liberty in the Context of the Coronavirus Disease (COVID-19) Pandemic* (20 March 2020).

175 See World Health Organization, *Good Practices in Managing Infectious Diseases in Prison Settings: A Snapshot of Responses to COVID-19 Implemented Around the Globe between May and September 2020* (Report, 2022).

reduced its prison population by 18.6% (around 13,500 prisoners) between March and May 2020 through a combination of early release programs for prisoners approaching the end of their sentence and reduced judicial activity.<sup>176</sup>

In NSW, the prison population fell during the initial months of the pandemic without the Commissioner exercising the early release to parole power. From 15 March to 10 May 2020, the NSW prison population fell by 10.7% (1,508 people)<sup>177</sup> due to factors including an increase in the number of people granted bail and a reduction in court finalisations.<sup>178</sup> In June 2022, there were 12,336 adults in custody, approximately 1,000 fewer people than there were three years prior in June 2019 (13,403).<sup>179</sup>

However, it must be highlighted that the number of Aboriginal people in custody increased during the pandemic. There were 3,581 Aboriginal adults in custody in June 2022 compared with 3,474 in June 2019, an increase of 2.9% (91) for Aboriginal men and 5.2% (16) for Aboriginal women.<sup>180</sup> The overrepresentation of Aboriginal people in custody also increased. In December 2022, almost one in three adults in custody were Aboriginal people (29.1%, compared with 26.1% in December 2019).<sup>181</sup>

In August 2021, the Commissioner publicly stated that using the early release to parole power would likely reduce the NSW prison population by around 200 inmates and this would not greatly assist with reducing transmission of COVID-19 in a system of around 13,000 prisoners.<sup>182</sup> At this time, Parklea Correctional Centre (Parklea CC) was dealing with an outbreak of COVID-19, the first in a NSW correctional centre. Parklea CC largely holds inmates on remand.<sup>183</sup> As only sentenced inmates were eligible for early release on parole, it seems unlikely the use of this power would have reduced the size of the inmate population, and the spread of COVID-19, in Parklea CC or similar correctional centres.

Generally, around a third of NSW inmates are unsentenced and held in custody on remand and therefore cannot be released on parole (only bail). During the two years the early release to parole power was in force<sup>184</sup> the proportion of remand inmates in NSW ranged from a low of 31.3% in April 2020 (3,947 of 12,602 inmates) to a high of 38.8% in February 2022 (4,751 of 12,232 inmates).<sup>185</sup> Maximum security correctional centres with high numbers of unsentenced inmates arguably have a greater risk of COVID-19 transmission due to large numbers of inmates and staff, and people entering custody from the

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176 World Health Organization, *Good Practices in Managing Infectious Diseases in Prison Settings: A Snapshot of Responses to COVID-19 Implemented Around the Globe between May and September 2020* (Report, 2022) 14–15.

177 The total adult prison population in NSW dropped from 14,157 people on 15 March 2020 to 12,649 people on 10 May 2020: Nicholas Chan, 'The Impact of COVID-19 Measures on the Size of the NSW Adult Prison Population' (Bureau Brief No 149, NSW Bureau of Crime Statistics and Research, July 2020) 3.

178 See Nicholas Chan, 'The Impact of COVID-19 Measures on the Size of the NSW Adult Prison Population' (Bureau Brief No 149, NSW Bureau of Crime Statistics and Research, July 2020).

179 Jackie Fitzgerald, 'Aboriginal Prison Population Now Above Pre-Pandemic Levels' (Media Release, NSW Bureau of Crime Statistics and Research, 4 August 2022).

180 Jackie Fitzgerald, 'Aboriginal Prison Population Now Above Pre-Pandemic Levels' (Media Release, NSW Bureau of Crime Statistics and Research, 4 August 2022).

181 'Custody Statistics', *Bureau of Crime Statistics and Research* (Web Page, 22 February 2023) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_custody\\_stats/bocsar\\_custody\\_stats.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx)>. See data for 31 December 2019 and 31 December 2022.

182 Fergus Hunter, 'NSW Prisons Considering Emergency Release of Some Inmates if Outbreak Worsens', *Sydney Morning Herald* (online, 31 August 2021) <<https://www.smh.com.au/national/nsw/nsw-prisons-prepared-to-release-up-to-1000-inmates-if-outbreak-worsens-20210831-p58ngm.html>>.

183 See Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022) 21.

184 Section 276 was inserted into the *Crimes (Administration of Sentences) Act 1999* by the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* on 25 March 2020 for a prescribed period that ended on 26 March 2022 per *Crimes (Administration of Sentences) Act 1999* s 274 and *Crimes (Administration of Sentences) Regulation 2014* cl 329A.

185 See custody data tables (Table 1) at 'Custody Statistics', *Bureau of Crime Statistics and Research* (Web Page, 22 February 2023) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_custody\\_stats/bocsar\\_custody\\_stats.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_custody_stats/bocsar_custody_stats.aspx)>.

community.<sup>186</sup> These locations would have held few, if any, inmates eligible for release under this power.

Eligible inmates were most likely held in minimum security correctional centres which have fewer inmates and staff, a number of which are in regional NSW. Regional NSW and the correctional centres located in these areas were not as impacted by the spread of COVID-19 in late 2021.

The ineligibility of remand inmates for release pursuant to this power further underscores the importance of this group having reliable access to legal representatives and court hearings for bail applications. However, the pandemic and its impact on custodial centre operations resulted in persistent disruptions to access to legal representatives for people in custody, particularly adults. This issue is considered in more detail in section 5.1.

Had the Commissioner opted to use this power, a list of eligible inmates would have been created. An assessment process for determining the suitability of eligible inmates for early release would have been undertaken. This would have been considered by a panel that would make a recommendation to be approved or declined by the Commissioner. The timeframes provided for the assessment process were within one week or within two weeks (depending on the category). Nominated release dates for inmates deemed eligible and suitable were to be seven days from the date of the panel's decision, unless a specific earlier or later date was more appropriate.

We acknowledge that CSNSW needed to consider the practicalities and risks of releasing inmates early to parole. However, the process created by CSNSW for early release to parole was cumbersome. As the power was not used, we can only speculate on the question of efficient implementation.

As noted previously, at the time of the first COVID-19 outbreak in custody at Parklea CC, CSNSW estimated 200 of approximately 13,000 inmates were eligible for early release to parole, due to the application of the most conservative parameters. CSNSW have noted that those criteria within the discretion of the Commissioner could have been broadened if necessary. CSNSW have since advised the actual number of eligible inmates was around 2,500.<sup>187</sup>

The NSW Parliament enacted this power to ensure that the Commissioner had the necessary flexibility and capacity 'to protect the health of inmates and correctional services staff and ensure the good order and security of correctional premises through the emergency'.<sup>188</sup> The complexity and timeframes of the implementation process created by CSNSW likely acted as a constraint on the flexibility the Parliament intended to provide, potentially frustrating the purpose of this power.

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186 These locations include the Metropolitan Remand and Reception Centre and Parklea Correctional Centre. On 21 March 2021, 65.6% of inmates held at MRRC were on remand: Information provided by Corrective Services NSW, 31 March 2021. Parklea Correctional Centre has around 70% to 80% remand inmates in its maximum-security section: See Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022).

187 Information provided by Corrective Services NSW, 4 July 2023.

188 New South Wales, *Parliamentary Debates*, Legislative Assembly, 24 March 2020, 2231 (Mark Speakman, Attorney General, and Minister for the Prevention of Domestic Violence).

## 4 Managing COVID-19 illness in custody

On 30 July 2020, the first adult in custody in NSW tested positive for COVID-19.<sup>189</sup> On 5 August 2021, the first young person held in a youth justice centre tested positive for COVID-19.<sup>190</sup> By early March 2022, 3,052 adults<sup>191</sup> and 85 young people<sup>192</sup> in custody had tested positive for COVID-19. By 12 May 2022, 4,418 adults and young people in custody had tested positive for COVID-19.<sup>193</sup>

The number of people in custody with COVID-19 fluctuated considerably from the end of 2021 and throughout 2022. As can be seen in Figure 4, during most of November and December 2021, custodial centres were managing very few, if any, people with COVID-19. This changed dramatically in January and February 2022, with cases increasing at a rapid rate and both the youth and adult custodial systems managing outbreaks among people in custody. From the data we have, the largest number of young people in custody with COVID-19 at any one time was 16 in early February 2022.<sup>194</sup> The largest number of adults in custody with COVID-19 at any one time was 857, also in early February 2022.<sup>195</sup>

From March 2020 to 16 May 2022, 30 people held in publicly operated correctional centres<sup>196</sup> had been transferred to hospital due to COVID-19-related illness. Over the same period, two young people in custody required hospitalisation due to COVID-19.<sup>197</sup> Hospitalisation figures for privately operated correctional centres were not available.

On 12 May 2022, there was one confirmed death in custody attributed to COVID-19 in NSW. The cause of death of two people who, at the time of their deaths, had or recently had COVID-19 had not been determined by the NSW Coroner. Coronial investigations in relation to all three deaths had not been completed at the time of writing.<sup>198</sup>

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189 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

190 Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 2 March 2022, 14 (Paul O'Reilly, Executive Director of Youth Justice NSW).

191 Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 7 March 2022, 14 (Kevin Corcoran, Commissioner of Corrective Services NSW).

192 Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 2 March 2022, 14 (Paul O'Reilly, Executive Director of Youth Justice NSW).

193 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

194 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (2 February 2022).

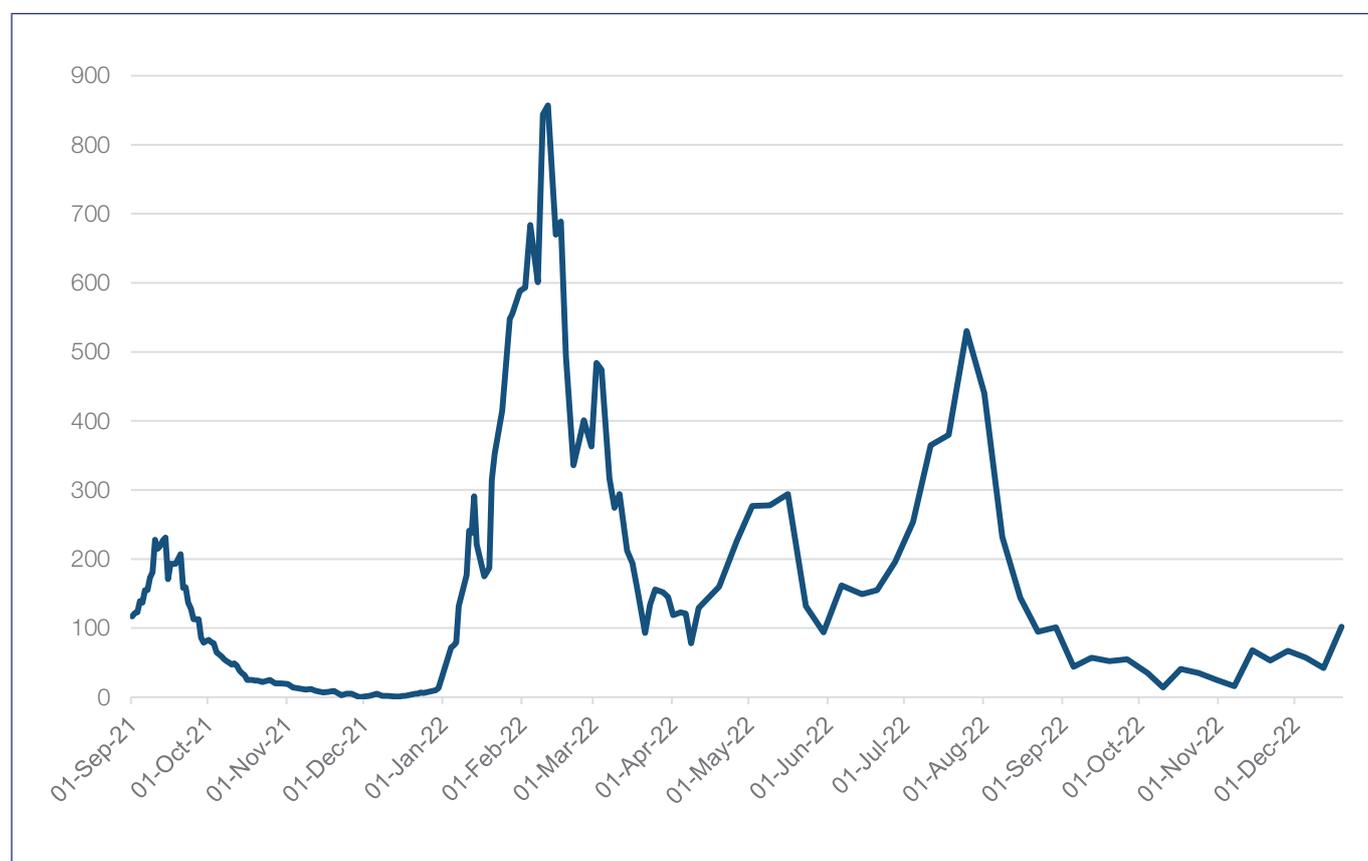
195 Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (11 February 2022).

196 This excludes Parklea, Junee and Clarence correctional centres.

197 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

198 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

**Figure 4: Number of adults in NSW custody with COVID-19 from September 2021 to December 2022<sup>199</sup>**



## 4.1 COVID-19 outbreaks in custodial facilities

Most of the COVID-19 cases in NSW custodial centres have occurred due to transmission of SARS-CoV-2 within these settings. From the start of the pandemic to 12 May 2022, 3,607 (81.6%) of the 4,418 of COVID-19 cases among people in custody were attributed to spread of the virus in custody, whereas 602 (13.6%) of COVID-19 cases were a result of transmission in the community.<sup>200</sup>

In August 2021, Parklea CC became the first site of a COVID-19 outbreak in the NSW custodial system. From August to October 2021, 181 people (169 inmates and 12 staff) from Parklea CC were diagnosed with COVID-19.<sup>201</sup> The Metropolitan Remand and Reception Centre (MRRC) was the site of the second outbreak, also in August 2021.

Until this time, the focus of the pandemic response had been preventing the virus from entering, and having an opportunity to spread within, custodial centres. While this strategy was largely successful, aided by periods of reduced transmission in the community, its success diminished as the pandemic continued and new variants emerged. By the end of 2022, every operational NSW correctional centre had experienced at least one outbreak (if not several) requiring a containment plan.

<sup>199</sup> Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (September 2021 to December 2022).

<sup>200</sup> Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022. The transmission source was either unknown or not listed for the remaining 209 people in custody with COVID-19.

<sup>201</sup> Information provided by St Vincent's Health Network Sydney, 30 September 2022.

Reviews have been undertaken of outbreaks occurring at Parklea CC, MRRC, and Junee Correctional Centre (Junee CC).

The St Vincent's Health Network Sydney<sup>202</sup> commissioned the Kirby Institute to undertake an epidemiological review of the August 2021 Parklea CC outbreak. The review found evidence of COVID-19 transmission between inmates, between staff, and from inmates to staff. The placement of inmates who had not tested positive to COVID-19 with COVID-19 positive cellmates was found to be a key driver of transmission. Of the 169 inmates diagnosed with COVID-19, 28% were housed with a cellmate with COVID-19 in the 14 days prior to infection.<sup>203</sup>

In October 2021, the Department of Communities and Justice, at the direction of the Minister for Corrections, commissioned Peter Dein to undertake a broader review of the Parklea CC outbreak.<sup>204</sup> This review highlighted the capacity issues that made it difficult for Parklea CC to separate COVID-19 positive and uninfected inmates. This was in part due to CSNSW's decision to cease receiving COVID-19 positive inmates from Parklea CC into the MRRC isolation hub, around 10 days after the outbreak was identified. Consequently, Parklea CC had to manage all COVID-19 cases in-situ, a circumstance for which it was not prepared.<sup>205</sup>

CSNSW commissioned the Kirby Institute to undertake an epidemiological review of the August 2021 MRRC outbreak. The Kirby Institute's review of the MRRC outbreak found that most inmates diagnosed with COVID-19 acquired the virus in the community (201 of 338 inmates) and those who acquired the virus in prison were highly connected. The Kirby Institute concluded that these findings suggested quarantine and isolation policies were implemented well in MRRC and were effective in controlling transmission within the prison in relation to this outbreak.<sup>206</sup>

A multidisciplinary team from the Ministry of Health, Murrumbidgee Local Health District, JH&FMHN and the Clinical Excellence Commission conducted an infection control review in relation to an outbreak at Junee CC in early 2022.<sup>207</sup> That review found that inmates appeared to be appropriately isolated and quarantined, according to their risk of infection and exposure to COVID-19. However, it recommended improvements including following JH&FMHN guidance for monitoring COVID-19 patients and enhanced PPE training for staff.

These reports made a wide range of recommendations regarding infection prevention and control and improving quarantine and isolation. We support these recommendations and consider that some encapsulate important lessons learned that are relevant to the whole NSW custodial system and in the context of another pandemic.

JH&FMHN's Population Health team have trained outbreak case managers who have overseen responses to COVID-19 outbreaks within custodial centres. Local JH&FMHN staff and custodial centre management are involved in developing and implementing this response, which in essence involves applying the JH&FMHN Patient COVID-19 Risk Matrix (see Figure 6). We understand that privately operated correctional centres have also sought input on containing outbreaks from other sources, with St Vincent's Correctional

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202 Health services at Parklea CC are provided by St Vincent's Correctional Health, a business unit of St Vincent's Hospital Sydney Limited, the affiliated health organisation of the St Vincent's Health Network Sydney. See Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022) ch 5.

203 Information provided by St Vincent's Health Network Sydney, 30 September 2022.

204 Peter Dein, *Parklea Correctional Centre: Review of the Application of COVID-related Policies and Procedures, and Associated Matters, during the COVID-19 (Delta Outbreak) August to October 2021* (Report, December 2021) 2.

205 Peter Dein, *Parklea Correctional Centre: Review of the Application of COVID-related Policies and Procedures, and Associated Matters, during the COVID-19 (Delta Outbreak) August to October 2021* (Report, December 2021) 10–13.

206 Information provided by Corrective Services NSW, 24 February 2023.

207 Evidence to Portfolio Committee No. 2 – Health, Parliament of NSW, Sydney, 6 April 2022, 72–85 (Answer to Questions on Notice 22/123 Tab C).

Health drawing on expertise within the St Vincent's Health Network Sydney and Junee CC and Clarence Correctional Centre (Clarence CC) working with their respective local health districts.

In August 2022, JH&FMHN issued a COVID-19 Outbreak Management Protocol. It provides guidance for locations on outbreak preparation and management. In preparation for an outbreak, locations should have plans in place for the surveillance of acute respiratory infection symptoms and to manage people with COVID-19 and those most vulnerable to serious disease (including the identification of vulnerable people). The outbreak management guidance in the protocol offers both less restrictive and more conservative approaches, which aim to ensure that contacts vulnerable to serious disease are monitored. The more conservative approach is designed for locations with particularly vulnerable populations, such as the Medical Sub-acute Unit and ACRU in Long Bay Hospital and the KWU in the Metropolitan Special Programs Centre, all of which hold inmates who are aged and frail and/or have chronic illness.<sup>208</sup>

## 4.2 Isolation regimes

CSNSW originally envisaged a system of isolation hubs for isolating inmates with COVID-19. These hubs were to be located at Dillwynia, Junee, Mid North Coast, Shortland, South Coast and Wellington<sup>209</sup> correctional centres, the Long Bay Correctional Complex, SWCC and MRRC.<sup>210</sup>

However, this changed and from August 2021 to August 2022, all inmates with COVID-19 were supposed to be transferred to MRRC (for men) or SWCC (for women) for the duration of their isolation period.<sup>211</sup> In June 2022, CSNSW estimated around 3,500 inmates had been transferred from other correctional centres to MRRC and around 70 inmates to SWCC to isolate after testing positive for COVID-19.<sup>212</sup>

From August 2022, inmates with COVID-19 began to be managed in-situ, that is at the correctional centre they are held in when they test positive for COVID-19, rather than being moved to MRRC or SWCC to isolate.<sup>213</sup>

### 4.2.1 Movement of people in custody to isolation hubs

The rationale for moving inmates with COVID-19 to isolation hubs at MRRC and SWCC was to ensure they were at a location with 24-hour medical coverage and proximity to hospitals due to the risk of deterioration. When this approach was implemented in mid 2021, the Delta variant of COVID-19 was spreading in NSW and significant proportions of both the general community<sup>214</sup> and the inmate population<sup>215</sup> were not fully vaccinated. However, in our view, limitations with this approach soon became evident and took too long to address.

According to JH&FMHN, people in custody with COVID-19 must have medical clearance to travel before being transferred to a different location. Nursing staff could grant travel clearance only if the person was asymptomatic or presenting with minimal or mild symptoms, such as a runny nose, sore throat, or mild

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208 Justice Health and Forensic Mental Health Network, *COVID-19 Outbreak Management Protocol* (version 2, 29 August 2022).

209 Wellington Correctional Centre temporarily closed in June 2021 to repair damage caused by the Western NSW mouse plague. It reopened in March 2022.

210 Commissioner's Instruction 2020/77.

211 Commissioner's Instructions 2021/31, 2022/04, 2022/23, 2022/30, 2022/34.

212 Information provided by Corrective Services NSW, 3 June 2022.

213 Commissioner's Instruction 2022/34.

214 On 30 August 2021, 37.1% of the eligible population in NSW were fully vaccinated and 68.2% had received the first dose of a COVID-19 vaccination: Australian Government, *COVID-19 Vaccination Roll-out* (31 August 2021) 3.

215 On 30 August 2021, 21% of inmates in NSW were fully vaccinated and 42% had received the first dose of a COVID-19 vaccination: Justice Health and Forensic Mental Health Network, *COVID-19 Situational Report* (30 August 2021).

cough.<sup>216</sup> JH&FMHN created a risk matrix for identifying those vulnerable to or experiencing serious illness due to COVID-19 and providing for the appropriate level of monitoring and care, depending on their risk category (see Table 7). The requirements for a person to be cleared for transport would likely only be met by those in the lowest risk category, that is those with few other health concerns and/or with asymptomatic/mild COVID-19. Consequently, it seems many people moved to MRRC or SWCC were at low risk of serious illness. Conversely, we understand that some people in custody with COVID-19 at the highest risk of serious disease were managed in-situ by default as they could not be transported to MRRC or SWCC.

The transportation of inmates with COVID-19 from regional locations to MRRC and SWCC was problematic. Typically for journeys of three hours or longer, stops are scheduled to provide inmates with toilet and exercise breaks.<sup>217</sup> We heard that this did not occur during trips transporting inmates with COVID-19 to MRRC or SWCC, meaning inmates were undertaking journeys of well over three hours from locations such as Junee and Grafton without a break. Many inmates we have spoken with have described this trip as difficult and uncomfortable, often occurring in the early stages of their illness when they felt most unwell. We heard that where transport vehicles did stop for staff breaks, inmates were not able to leave the vehicle. In some instances, inmates remained in vehicles after arriving at their destination while cells were cleaned. These reports were not isolated, arising during our engagement with inmates at different times and across different locations.

For some inmates, the difficulty of this experience was exacerbated by several factors. Some were unable to contact their families regarding their health and location, resulting in distress for all concerned. Some appeared to be unaware of their positive test result or the reason for their transfer to MRRC or SWCC. JH&FMHN advised that when people in custody undertake a PCR or rapid antigen test, they should receive verbal advice from onsite health staff of the result and what it may mean for their placement.<sup>218</sup> We understand that this confusion led to the development of a letter explaining the process to inmates, although this would have been of limited assistance for those with literacy difficulties. The inevitable challenges of transporting large numbers of inmates across the state meant some were transferred in the later stages of their infection, making the upheaval seem largely pointless. To their credit, we have heard of instances where correctional centres advocated to continue managing such inmates locally to prevent these movements.

Now that CSNSW and private operators have transitioned to the in-situ management of inmates with COVID-19, MRRC and SWCC no longer have a role as isolation hubs. However, should the transportation of inmates with COVID-19 between custodial centres be necessary, CSNSW must ensure that trips of three hours or more include toilet breaks for inmates, mitigating the risk of transmission with infection prevention and control measures.

**Recommendation: CSNSW ensures that inmates with COVID-19 being transported for three hours or more have access to toilet breaks.**

YJNSW designated Cobham Youth Justice Centre (Cobham YJC) as the centralised location for managing young people in custody with COVID-19. As of 1 March 2022, 69 young people in custody with COVID-19 were transferred to Cobham YJC. Cobham YJC is located in Werrington, in the western suburbs of Sydney and the decision to isolate young people in custody at this location was due to its proximity to health care.

YJNSW advised that when the isolation hub at Cobham YJC was operating, all those in Metropolitan Sydney

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216 Justice Health and Forensic Mental Health Network, *Process for the Transfer of COVID-19 Positive Patients in Custody* (version 1, 11 January 2022).

217 Corrective Services NSW, *Custodial Operations Policy and Procedures: 19.1 General Escort Procedures* (version 1.7, 20 November 2020) 19–20.

218 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

identified by NSW Police as having COVID-19 were transported to Cobham YJC. Those with COVID-19 who were outside Metropolitan Sydney were taken to the closest regional youth justice centre and then transferred to Cobham YJC as soon as possible.<sup>219</sup> YJNSW have confirmed that young people transported over long distances from regional areas to Cobham YJC received breaks during these journeys.<sup>220</sup> We have not received any reports from young people or other stakeholders suggesting that these stops did not occur.

## 4.2.2 Conditions for people in isolation

### Isolation hubs at MRRC and SWCC

In the period where inmates with COVID-19 were moved to MRRC, large outbreaks within correctional centres resulted in a queue of COVID-19 positive inmates waiting to be transferred. No system was created for prioritising the movement of inmates from locations without the infrastructure to properly isolate inmates in cell. Consequently, inmates were required to isolate in-situ irrespective of the correctional centre's infrastructure or preparedness to manage inmates with COVID-19. We are concerned that inmates have isolated in unsuitable conditions and that this will continue with the transition to in-situ management.

As noted previously in this report, and in several other reports,<sup>221</sup> a number of correctional centres in NSW have cells that do not contain showers. Some of these are in very old correctional centres constructed in the 1800s/early 1900s, the cells of which lack natural light and ventilation and are susceptible to extreme temperatures, making them inappropriate for a period of isolation. Some more modern correctional centres have residential style accommodation with a bathroom in the unit and no showers or toilets in cells. This design aims to provide inmates with greater independence and living conditions more typical of what they would experience in the community, allowing inmates to be locked into the unit overnight, rather than in a cell. However, due to the lack of in-cell showers and toilets, inmates will need to isolate elsewhere if they contract COVID-19.

Initially, inmates with COVID-19 transferred to MRRC were held in the older section of MRRC pictured in section 3.2. They were later housed in new accommodation that opened in May 2020. The cells in these blocks are modern and each has a shower, toilet, TV, and a cell-door hatch. Each block has two sides with a capacity for 55 inmates, but this can be increased to 81 inmates when necessary. This is known as surge capacity, which is created when all cells are used to hold two inmates, rather than providing a mix of single and double occupancy cells. When surge capacity is being used, up to 486 inmates with COVID-19 could be held in isolation at MRRC.

During our inspection of MRRC in March 2022 we heard that isolating inmates were not provided with a change of clothing or linen during their isolation period. This was reportedly to minimise the risk of cross-contamination, although potentially contaminated laundry is placed in red bags that dissolve during the wash cycle and is not directly handled. Inmates with COVID-19 isolating in the new area of MRRC were not processed through the reception area where clothing and linen packs are stored. Some staff reported that inmates could request additional clothing if they needed it or wash their clothing in the sinks in their cells. The onus should not be placed on isolating inmates, with no control over their circumstances, to ensure they have adequate clean clothing.

Isolating inmates did not have access to purchases from the buy-up system, resulting in the introduction of

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219 Youth Justice NSW, *Custodial Management of Young People at Risk of COVID-19* (6 September 2021) 3.

220 Information provided by Youth Justice NSW, 12 September 2022.

221 Inspector of Custodial Services, *Inspection of Goulburn Correctional Centre and the High Risk Management Correctional Centre 2021* (Report, June 2022); Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW* (Report, April 2015).

a buy-up pack containing packaged food like noodles and rice crackers. However, we heard that inmates often finished their isolation period without receiving this pack, which was attributed to short staffing. Meals and hot water (for tea and coffee) were provided by an inmate hygiene worker who was also responsible for passing a wireless telephone between cells for inmates to make personal phone calls. It was not clear to us how staff were ensuring that all inmates had equitable access to the telephone.

Wireless telephones were not available to inmates with COVID-19 for a period when COVID-19 first began to spread in custody, leaving people with no way of contacting their families. This was a significant oversight given the first outbreaks in NSW custody did not occur until around one-and-a-half years into the pandemic.

Inmates were not permitted to take personal items into isolation. Inmates with COVID-19 moved from other correctional centres were able to take a bag onto the inmate transport vehicle but this was then stored in reception when they arrived at MRRC. Their other property, including valuables, stayed at their original correctional centre. This approach became problematic when inmate property went missing or inmates were released from MRRC without their valuables.

People released from MRRC after being moved there due to COVID-19 were released from custody without identification, their phone or money. Any valuable items in their possession when they entered custody were stored at the correctional centre they were at before MRRC. Prior to the pandemic, a similar situation arose when a person was transferred (without their property) to MRRC for a court date that resulted in their release. These people were transferred back to their former location for discharge from custody.

However, this did not occur for COVID-19-related transfers. We heard that these people were instead provided with an Opal card to make their way by public transport to Sydney's Central station (a trip of around one hour, involving a bus and a train, undoubtedly confusing for a person unfamiliar with Sydney's public transport system). Arrangements were made with State Rail for their travel back to the location nearest the correctional centre with their property. There was no suggestion these people had COVID-19 at the time of their release. Unsurprisingly, we are aware of one instance where a person returned to custody soon after their release in a highly agitated state.

Given the level of transport occurring at this time, it was not realistic for inmates to travel with all their property. However, the approach of prohibiting inmates having any belongings while in isolation does not appear to have been based on any health advice that we are aware of. We understand that there were concerns about the risk of surface transmission, but we cannot understand why this could not be mitigated by either cleaning or disposing of high risk items. People with COVID-19, or any other illness, who are required to isolate in-cell, should be provided with conditions that make their experience of isolation tolerable. This should include, at a minimum, access to a television and telephone calls and the provision of clean clothing, linen, and hygiene items.

At SWCC, women with COVID-19 were held in an area of the correctional centre that is physically separated from the rest of the site, known as Area 2. Area 2 could hold up to 120 women across three accommodation buildings, two of which were split into two separate wings. At the time of our inspection of SWCC in May 2022, one wing was used for women with COVID-19 (A-wing), two wings were used for quarantining new reception inmates (C- and D-wings), one wing was used for quarantine overflow (E-wing), and one was used for isolating or women identified as close contacts of a person with COVID-19 (F-wing).

There were no cells with cameras in Area 2 for women at risk or requiring observation. We understand that women at risk of self-harm or suicide with COVID-19 would be held in A-wing, with regular observations. Women undertaking quarantine believed to require observation would be held in camera cells in the Mental Health Screening Unit, health centre, or the induction unit of SWCC.

Prior to the pandemic, a decision had been taken to repurpose Area 2 as part of the adjoining Dawn de Loas Correctional Centre. However, these plans were suspended with the onset of the pandemic, and at the time of writing it was unclear how Area 2 would be utilised, if at all, when it was no longer required for managing COVID-19. Consequently, it seemed to us that a short term approach had been taken to the maintenance of Area 2, negatively impacting the conditions experienced by women held there.

The state of the cells in Area 2 was poor and it appeared that no refurbishment or maintenance work had taken place for some years. The cells contained a shower and toilet, and each connected to a small veranda. The cell doors in Area 2 did not have hatches, as was initially required by the Commissioner's Instructions for cells holding isolating inmates.<sup>222</sup> Subsequent versions of these instructions provided for either a cell door hatch or a veranda.<sup>223</sup>

We have heard accounts of inmates becoming increasingly reluctant to present to health staff with symptoms of COVID-19. In some instances, people have reported being bullied and intimidated into not coming forward for COVID-19 testing in case this results in a lockdown or period of isolation. This may have had the unfortunate result of an outbreak spreading further and becoming harder to control when it could have been identified and suppressed earlier. We consider that the conditions people in custody have experienced in isolation after contracting COVID-19 or being identified as a close contact contributed to this trend. Reluctance to be moved to an isolation hub also appears to have been a contributing factor.

As people in custody with COVID-19 are managed in-situ, ensuring that people are held in reasonable and humane conditions needs to be a priority. As the requirement for people entering custody to undertake quarantine has now been removed there is a risk that custodial centres will experience more frequent and widespread outbreaks, particularly when there are high COVID-19 numbers in the community. This makes the adequacy of local outbreak plans even more important to ensure proper conditions and treatment are maintained. This is something we will continue to monitor.

**Recommendation: CSNSW and private operators review the accommodation allocated by each correctional centre for the in-situ management of inmates with COVID-19 and ensure it is adequate for this purpose.**

**Recommendation: CSNSW and private operators ensure that inmates in isolation are provided with clean clothing and linen, hygiene items, and access to a television and telephone calls.**

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<sup>222</sup> Commissioner's Instructions 2020/29, 2020/77, 2021/31, 2021/34, 2021/64, 2022/04.

<sup>223</sup> Commissioner's Instructions 2022/23, 2022/30, 2022/34.

**Silverwater Women's Correctional Centre  
isolation cell for women with COVID-19**



**Cobham Youth Justice Centre isolation room  
for young people with COVID-19**



### **Isolation hub at Cobham YJC**

Some of the concerns that have arisen in the context of the isolation arrangements for adults in custody with COVID-19 have not emerged in relation to the youth justice system. This perhaps reflects the smaller number of young people in custody and the different infrastructure of youth justice centres. In its time as an isolation hub, Cobham YJC designated the Uralba unit for the isolation of young people with COVID-19. Uralba is one of the older units at Cobham YJC and we observed its rooms to be clean and freshly painted. Each room contains a bed, desk, television, and a private bathroom. Young people in quarantine and isolation were provided with activity packs containing puzzles and reading materials.

Cobham YJC is a reception and remand youth justice centre in outer western Sydney and typically holds young men aged 15 years and over. When Cobham YJC does receive young women into custody, they are typically transferred to Reiby YJC. However, while Cobham YJC was operating as a COVID-19 isolation hub, young women in custody with COVID-19 were transferred to the Uralba unit. We were concerned that if the Uralba unit was at capacity, any isolating young women may not have sufficient privacy from isolating young men. We have raised similar concerns in relation to the reception of young women into custody at Cobham YJC, rather than Reiby YJC.<sup>224</sup>

YJNSW has confirmed that young women were isolated at Cobham YJC but that they were few in number. We were informed that the Uralba unit has never reached capacity and plans had been created to create additional capacity for isolating young people at Cobham YJC, but these had not been activated.

<sup>224</sup> Inspector of Custodial Services, *Inspection of Six Youth Justice Centres in NSW* (Report, December 2020) 45.

## Time out-of-cell/room

Across both the adult and youth custodial systems, people with COVID-19 were isolating alone in their cells or rooms. We were informed that staff aimed to ensure young people with COVID-19 at Cobham YJC were having one hour of time out-of-room per day, although we understood that they were not having this time out-of-room together. Adults in isolation at MRRC or SWCC had no time out-of-cell and cell doors were generally only opened when absolutely necessary to facilitate health care or other essential services. MRRC's system of having an inmate hygiene worker pass a telephone between cells and provide isolating inmates with hot water and meals meant that cell door hatches were left open. Rather than opening the cell door, staff and inmates instead communicated through cell door hatches.

It makes little sense to us that inmates and young people with COVID-19, held in units together, have not been permitted to interact with each other. We have not been provided with an explanation for this approach. Enabling people in custody who have tested positive for COVID-19 – who are at no risk of contracting COVID-19 from another person because they already have COVID-19 – to spend time out of their cell or room *together* would mitigate the negative consequences of isolation. This would have been consistent with the isolation requirements that applied to households in the community. We are not suggesting that people in custody *with* COVID-19 should mix with the general population of a custodial centre who *do not* have COVID-19.

Interactions between people in custody with COVID-19 would require staff awareness of any association concerns or protection needs, accommodation in an area where there is no risk of transmission to other people in custody, and infection prevention and control strategies to minimise the risk of transmission to staff. Each of these things should already occur as part of either standard custodial operations or the management of people in custody with COVID-19.

**Recommendation: CSNSW and private operators ensure that inmates with COVID-19 have time out-of-cell and can mix with other inmates with COVID-19, subject to an assessment of their risk to and from other inmates.**

**Recommendation: YJNSW ensures young people in custody with COVID-19 have time out-of-room and can mix with other young people with COVID-19, subject to an assessment of their risk to and from other young people.**

## Isolation of high risk contacts

In addition to the quarantine of new reception inmates and the isolation of people who have tested positive to COVID-19, people have also been isolated after being in close contact with a person with COVID-19. People with cold/flu like symptoms have also been required to isolate until testing confirms they do not have COVID-19.

During an outbreak within a custodial centre, the isolation of high risk contacts created an additional cohort of people who needed to be managed separately from both each other and other cohorts. Due to the number of adults in custody, outbreaks could result in large numbers of people having to isolate as close contacts. These isolation periods could be extended by each new confirmed case of COVID-19. This was a significant operational challenge.

Isolation periods for people in contact with a person with COVID-19 are determined by health providers, in conjunction with NSW Health.<sup>225</sup> From early 2022, this was done in accordance with the JH&FMHN Patient COVID-19 Public Health Management and Risk Matrix. Essentially this document defines different types

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225 Commissioner's Instructions 2021/31, 2021/34, 2021/64, 2022/04, 2022/23, 2022/30, 2022/34, 2023/06.

of contact between people as low, medium, or high risk, based on the circumstances, and how these risk levels should be managed within custodial environments. Numerous versions of this document have been created to align with public health advice and it applies to adult and youth custodial centres.

As shown in Figure 5, in February 2022, the risk levels of different types of contact were:

- **High risk contact:** prolonged face-to-face contact with a person with COVID-19 within 1.5 metres for more than 15 minutes or ‘aerosol generating behaviours or procedures’, such as a use of force or yelling.
- **Medium risk contact:** any face-to face contact within 1.5 metres for less than 15 minutes or greater than 30 minutes in an enclosed space.
- **Low risk contact:** transient, limited contact that does not meet the definition of face-to-face contact or less than 30 minutes in an enclosed space.<sup>226</sup>

At this time, people would be designated high, moderate, or low risk contacts depending on the level and type of PPE worn at the time their contact with a COVID-19 infected person occurred. The highest risk occurred where one or both people were wearing no PPE or one or both people were only wearing a surgical mask. High risk contacts were required to isolate for 10 days and moderate risk contacts for six days, subject to returning negative COVID-19 test results.<sup>227</sup>

During 2022, the definitions of high, medium, and low risk contact were progressively eased. From July 2022, the time period for high risk face-to-face contact was lengthened from more than 15 minutes to more than four hours. The time period for medium risk face-to-face contact was also lengthened from less than 15 minutes to up to four hours.<sup>228</sup> Being housed in the same unit or wing as a person with COVID-19 was included in the definition of high risk contact, but this had been removed by August 2022.<sup>229</sup> The level of PPE required was also reduced over this period.

As shown in Figure 6, by January 2023, the risk levels of different types of contact were:

- **High risk contact:** prolonged face-to-face contact within 1.5 metres or in an enclosed space for more than four hours cumulative, or ‘aerosol generating procedures or behaviours’, such as yelling, spitting, and coughing, regardless of the length of that contact, or based on a risk assessment.
- **Medium risk contact:** any face-to-face contact within 1.5 metres or in an enclosed space for up to four hours or based on a risk assessment.
- **Low risk contact:** transient, limited contact that does not meet the definition of face-to-face contact.<sup>230</sup>

People were still designated high, moderate, or low risk contacts depending on the level and type of PPE worn at the time the contact occurred, but the highest risk was where neither person was wearing PPE or only one person was wearing a surgical mask. High and moderate risk contacts were still required to isolate, both for seven days. However, a much smaller group of people will meet the newer definitions of a high or moderate risk contact (see Figure 6), reducing the burden of isolation on people in custody and staff.

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226 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 1, 18 February 2022).

227 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 1, 18 February 2022).

228 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 6, 13 July 2022).

229 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 10, 28 August 2022).

230 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 14, 17 January 2023).

This approach does not appear to have resulted in a significant increase in the number and scale of outbreaks within custodial centres in the second half of 2022. We are hopeful that this change will continue to reduce the level of isolation experienced by people in custody.

### Health care provided to people in isolation

At the start of January 2022, when people in custody tested positive for COVID-19, they were classed as a category 1, 2, or 3 patient. This determination was based on the initial nursing assessment undertaken following their admission to a COVID-19 isolation hub, which included a full set of observations, and was informed by their symptoms and medical history. This categorisation regulated the level of monitoring people received from health staff during their illness and enabled health staff to tailor the level of care a person required to their individual risk. If a person deteriorated, they could be re-categorised into a higher risk group.<sup>231</sup>

A daily checklist for COVID-19 patients was also created, consisting of a clinical assessment screen, which noted the presence or absence of COVID-19 symptoms, observations such as temperature, and a mental health screen to monitor the person's feelings and level of distress, any thoughts of suicide or self-harm, and any risk they may present to their own safety or the safety of others.<sup>232</sup>

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231 Justice Health and Forensic Mental Health Network, *COVID-19 Business Rules: Monitoring COVID-19 Positive Patients – Including Patient-Partnered Monitoring* (version 4, 22 January 2022).

232 Justice Health and Forensic Mental Health Network, *COVID-19 Isolation Patients Daily Checklist* (undated).

**Table 7: JH&FMHN COVID-19 Clinical Risk Matrix<sup>233</sup>**

Clinical risk category	Symptoms and risk factors	Risk protocol
<p><b>Category 1</b></p>	<p>Patients with <b>high risk social factors</b>:</p> <ul style="list-style-type: none"> <li>• low health literacy</li> <li>• risk of violence or self-harm</li> <li>• current illicit substance use</li> <li>• social isolation due to poor interpersonal skills or disability or culturally and linguistically diverse background.</li> </ul> <p><b>AND/OR</b></p> <p>Patients with <b>high risk medical factors</b>:</p> <ul style="list-style-type: none"> <li>• over 65 years of age</li> <li>• organ transplant or immunosuppression</li> <li>• chronic lung or kidney disease</li> <li>• cardiovascular or liver disease</li> <li>• active cancer</li> <li>• diabetes (Type 1 and 2)</li> <li>• significant frailty or disability</li> <li>• major mental illness</li> <li>• pregnancy</li> <li>• obesity.</li> </ul>	<p><b>High risk protocol:</b> Individualised monitoring plan.</p>
<p><b>Category 2</b></p>	<p>Patients with <b>moderate symptoms</b>:</p> <ul style="list-style-type: none"> <li>• fever greater than 38°C</li> <li>• marked cough/sputum</li> <li>• mild breathlessness</li> <li>• diarrhoea more than four times per day</li> <li>• dizziness on standing up</li> <li>• has required emergency department of hospital admission during illness.</li> </ul>	<p><b>Medium risk protocol:</b></p> <ul style="list-style-type: none"> <li>• Nursing wellbeing check twice a day. Patients must be asked about their symptoms (fever, cough, shortness of breath, gastrointestinal symptoms, and mental health screening).</li> <li>• Twice daily observations of the patient's heart rate, oxygen saturations and temperature.</li> </ul>
<p><b>Category 3</b></p>	<p>Patients with <b>mild symptoms</b>:</p> <ul style="list-style-type: none"> <li>• low grade fever of less than 38°C</li> <li>• mild cough/upper respiratory symptoms</li> <li>• no breathlessness</li> <li>• mild gastrointestinal symptoms.</li> </ul>	<p><b>Low risk protocol:</b> Nursing wellbeing check <i>once</i> a day. Patients must be asked about their symptoms (as above).</p>

233 Justice Health and Forensic Mental Health Network, COVID-19 Business Rules: Monitoring COVID-19 Positive Patients – Including Patient-Partnered Monitoring (version 4, 22 January 2022).

Figure 5: JH&FMHN Patient COVID-19 Risk Matrix as of 18 February 2022<sup>234</sup>

Risk Matrix		CONTACT TYPE				
<b>Case:</b> any confirmed positive case of COVID-19  <b>Contact:</b> any person type		LOW RISK	MEDIUM RISK		HIGH RISK	
		Transient, limited contact that does not meet the definition of face-to-face contact  <b>OR</b> in general, less than 30 minutes in an enclosed space	Any face-to-face contact within 1.5 metres and less than 15 minutes  <b>OR</b> in general, greater than 30 mins in an enclosed closed space		Prolonged face-to-face contact within 1.5 metres and greater than 15 minutes  <b>OR</b> Aerosol generating behaviours or 'procedures'	
CONTROLS	<b>Contact:</b> No PPE  <b>Case:</b> No PPE	MODERATE	MODERATE	HIGH	HIGH	
	<b>Contact:</b> Surgical mask  <b>Case:</b> No PPE (or vice versa)	LOW	MODERATE		HIGH	
	<b>Contact:</b> Surgical mask  <b>Case:</b> Surgical mask	LOW	LOW	MODERATE*	MODERATE	HIGH*
	<b>Contact:</b> Surgical mask and eye protection  <b>Case:</b> No PPE	LOW	LOW	MODERATE*	MODERATE	HIGH*
	<b>Contact:</b> Surgical mask and eye protection  <b>Case:</b> Surgical mask	LOW	LOW	LOW	MODERATE	
	<b>Contact:</b> P2/ N95 mask and eye protection  <b>Case:</b> With or without PPE	LOW	LOW	LOW		

\*Depending on aerosol generating procedure or behaviours (e.g. use of force, yelling, singing, spitting)

234 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 1, 18 February 2022).

**Figure 6: JH&FMHN Patient COVID-19 Risk Matrix as of 17 January 2023<sup>235</sup>**

Risk Matrix		CONTACT TYPE			
		LOW RISK	MEDIUM RISK		HIGH RISK
<p><b>Case:</b> any confirmed positive case of COVID-19</p> <p><b>Contact:</b> any person type</p>		<p>Transient, limited contact that does not meet the definition of face-to-face contact</p>	<p>Any face-to-face contact within 1.5 metres or in an enclosed space up to 4 hours</p> <p><b>OR</b> based on risk assessment</p>		<p>Prolonged face-to-face contact within 1.5 metres or in an enclosed space for more than 4 hours cumulative</p> <p><b>OR</b> Aerosol generating procedures or behaviours (e.g. use of force, yelling, singing, spitting, coughing) regardless of length of contact</p> <p><b>OR</b> Based on risk assessment</p>
CONTROLS*	<p><b>Contact:</b> No PPE</p> <p><b>Case:</b> No PPE</p>	LOW	MODERATE		HIGH
	<p><b>Contact:</b> Surgical mask</p> <p><b>Case:</b> No PPE (or vice versa)</p>	LOW	LOW	MODERATE	MODERATE
	<p><b>Contact:</b> Surgical mask</p> <p><b>Case:</b> Surgical mask</p>	LOW	LOW		LOW
	<p><b>Contact:</b> Surgical mask and eye protection</p> <p><b>Case:</b> No PPE</p>	LOW	LOW		LOW
	<p><b>Contact:</b> P2/ N95 mask and eye protection</p> <p><b>Case:</b> With or without PPE</p>	LOW	LOW		LOW
	<p><b>Contact:</b> With or without PPE</p> <p><b>Case:</b> P2/N95 mask +/- eye protection</p>	LOW	LOW		LOW

\*CONTROLS NOTE: PPE with no concerns or breaches. Use of gowns/gloves should be risk assessed based on individual incident and exposure to body substance and chances of environmental contamination.

235 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 14, 17 January 2023).

### 4.2.3 Clearance from isolation

The isolation periods required for adults and young people in custody have reduced over the course of the pandemic. From the onset of the pandemic until December 2021, the isolation period for a person in custody with COVID-19 was 14 days. In December 2021, this was reduced to 10 days.<sup>236</sup> From May 2022 until the time of writing, the isolation period was seven days.<sup>237</sup>

People in custody with COVID-19 must be cleared by health staff in order to leave isolation when their isolation period is complete. From January 2023, people could de-isolate after seven full days had passed since they tested positive for COVID-19, providing they were asymptomatic, or any acute respiratory symptoms had resolved for 24 hours. People with acute respiratory symptoms persisting after seven days could leave isolation once those symptoms had resolved for 24 hours. People who had recovered from COVID-19 were exempt from testing for COVID-19 and isolating as a close contact for the four weeks after their recovery (increased to five weeks from April 2023).<sup>238</sup>

The data in Table 8 was provided by JH&FMHN and indicates average and maximum periods people in custody have spent in isolation, from the day they tested positive for COVID-19 to the day they were cleared by health staff to leave isolation.

**Table 8: Isolation length for people in custody from September 2021 to April 2022**<sup>239</sup>

Month of onset	Young people			Adults		
	Confirmed COVID-19 cases in isolation	Avg. days in isolation <sup>^</sup>	Max. days in isolation	Confirmed COVID-19 cases in isolation	Avg. days in isolation <sup>^</sup>	Max. days patient spent in isolation
<b>Sept 2021</b>	6	13.0	21	373	14	26
<b>Oct 2021</b>	5	11.0	14	64	13.7	20
<b>Nov 2021</b>	0	N/A	N/A	16	11.3	15
<b>Dec 2021</b>	5	19.2	46	70	13.2	19
<b>Jan 2022</b>	25	10.2	11	1,111	11.0	43
<b>Feb 2022</b>	5	7.6	11	1,245	10.9	32
<b>Mar 2022</b>	14	10.0	11	556	10.3	18
<b>Apr 2022</b>	5	10.4	11	14	10.3	13
<b>Total</b>	<b>65</b>	<b>11.0</b>	<b>46</b>	<b>3,449</b>	<b>11.2</b>	<b>43</b>

\* Data includes all public and managed correctional centres and includes confirmed cases with all or part of their isolation occurring in the reporting period of 2 September 2021 to 2 April 2022.

<sup>^</sup> Per NSW Health advice, the required isolation period changed from 14 to 10 days in December 2021. The isolation period was 10 days until May 2022.

236 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

237 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 5, 24 May 2022); Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 17, 3 April 2023).

238 Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 14, 17 January 2023); Justice Health and Forensic Mental Health Network, *Patient COVID-19 Public Health Management and Risk Matrix* (version 17, 3 April 2023).

239 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

Similar to inmates in quarantine (see section 3.2), we have heard reports of both adults and young people in custody placed in isolation with COVID-19 experiencing restrictive conditions beyond the required isolation period. Again, we have heard different accounts for why this occurred, with the cause attributed to the time taken by health staff to clear patients or by custodial/youth justice centre staff to move those cleared out of isolation areas.

When the isolation hubs at MRRC and SWCC were operating we were told that while additional transports were undertaken to move inmates with COVID-19 to these locations, they were not provided to move them out, resulting in people being stuck. This was compounded by correctional centres not accepting inmates as part of their containment plans, even though the people concerned were returning to the correctional centre they were at previously and, as they had just recovered from COVID-19, were not at risk of catching or transmitting the virus. MRRC and SWCC also did not always have the capacity to move people internally, out of isolation units to a different unit within the correctional centre.

We are concerned that this has continued to be an issue with the shift to the in-situ management of people in custody with COVID-19. Clearance from isolation is now the responsibility of local health staff rather than that of particular teams at isolation hubs. This makes monitoring clearance times and actioning issues quickly a more challenging task, although we are aware that JH&FMHN regularly review their clearance records. However, we are not aware of any centralised monitoring undertaken by CSNSW (that also includes privately operated correctional centres) or YJNSW to ensure people in custody are returned to their normal routine at the first available opportunity and this needs to be addressed.

As highlighted in section 3.2, in the adult custodial system, a section 78A separation order provides regular review of the period a person is separated. Section 78A of the CAS Act permits an inmate or a group of inmates to be held separately from other inmates 'for the purposes of the care, control or management of the inmate or group of inmates'.<sup>240</sup> The CAS Regulation provides that inmates may be separated from other inmates for reasons including where they have or are suspected to have an 'infectious or verminous condition'.<sup>241</sup> This is reflected in the COPP which states that section 78A orders may be used to separate individual or groups of inmates for health reasons 'where there is a risk to the general population from infectious or contagious disease'.<sup>242</sup>

An inmate may be separated with the approval of the correctional centre's governor for up to 14 days. This period may be extended with approval of the General Manager, State-wide Operations. Requests to extend a period of separation beyond 14 days should be sent before the expiry of the initial 14-day period. The correctional centre governor should ensure a process is in place to review the separation of inmates under section 78A before the expiry period.<sup>243</sup>

In 2020, Commissioner's Instructions concerning isolation hubs provided that inmates who test positive for COVID-19 should be managed under section 78A.<sup>244</sup> However, this was not included in subsequent Commissioner's Instructions related to isolation. It was also not included in any of the Commissioner's Instructions relating to the quarantine of new reception inmates.

We consider that a section 78A separation order should be created where an inmate or group of inmates is separated from others due to COVID-19 (or when deemed necessary for containing other infectious diseases such as influenza). This applies where an inmate is in isolation with COVID-19 or as a close contact of a person with COVID-19, or if the quarantining of new reception inmates resumes. The review processes

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240 *Crimes (Administration of Sentences) Act 1999* s 78A(2).

241 *Crimes (Administration of Sentences) Regulation 2014* cl 35.

242 Corrective Services NSW, *Custodial Operations Policy and Procedures: 3.1 Separation of Inmates* (version 1.4, 15 August 2023) 4.

243 Corrective Services NSW, *Custodial Operations Policy and Procedures: 3.1 Separation of Inmates* (version 1.4, 15 August 2023) 5.

244 Commissioner's Instructions 2020/29 and 2020/77.

built into this order help ensure that inmates are not subject to restrictive conditions for any longer than necessary.

Using section 78A orders for inmates in quarantine and isolation would have ensured that the length of time they were subject to restrictive conditions was monitored, perhaps creating greater awareness of the prevalence of the issue, and incentive to resolve it. Moving forward, the time a person is subject to restrictive custodial conditions should be actively scrutinised to ensure that it is for the minimum period necessary.

As noted in section 3.2.2, section 16 of the *Children (Detention Centres) Act 1987* permits individual or groups of young people in custody to be separated from the general population of a youth justice centre to ensure its 'security, safety and good order'. The NSW Ombudsman is notified when a young person is separated for more than 24 hours. In April 2020, YJNSW issued a direction to staff to create a separation record for young people in both quarantine and isolation. We are satisfied that this has occurred in practice. We commend YJNSW for adhering to the requirements for recording and monitoring the separation of young people.

Formal processes should have been followed in adult custody where people were placed in quarantine or isolation. CSNSW should ensure a separation order is in place where adults in custody are separated from the general population for a health reason, as required by the CAS Regulation and the COPP.

**Recommendation: CSNSW ensures that formal separation processes are followed when people in custody are separated from others due to illness or to prevent the spread of disease.**

### 4.3 Field hospital

In 2020, CSNSW constructed a 'field hospital' located at MRRC for adults in custody with COVID-19. We visited the hospital on 10 June 2020, soon after its construction. During that visit we were informed that the field hospital was built within three weeks using a combination of Corrective Services Industries overseer, inmate and external contractor labour at a cost of around \$700,000. It was built as a precaution if hospitals were unable to accept people in custody requiring treatment for COVID-19.

Up to 33 people can be accommodated in the field hospital. Each bed is located in its own inflatable isolation pod with an individual air vent and filtration to reduce the risk of COVID-19 transmission. Each pod has an oxygen tank. The field hospital is also equipped with showers and toilets, PPE donning and doffing areas, clinical waste bins, handwashing areas, equipment for monitoring patients including telehealth facilities, and mobility aids.

At the time of writing, the field hospital had been used to provide a small number of adult inmates with intravenous (IV) infusions to treat COVID-19. Throughout the pandemic, hospitals in NSW have been able to accept people in custody with COVID-19 requiring care and treatment, which was the preferred option to using the field hospital.

**Field hospital pod**



**Field hospital corridor**



#### **4.4 Releasing people with COVID-19 from custody**

After the first outbreak of COVID-19 in a custodial centre at Parklea CC in mid 2021, managing the release of people with COVID-19 from custody to the community became a significant challenge. Locations receiving people on remand into custody experienced difficulty as people in this cohort can be released on bail with little opportunity to prepare. This became evident in August 2021 when a routine COVID-19 test administered when a man was received into custody at Bathurst Correctional Centre returned a positive result after he had already been released on bail.<sup>245</sup>

During the second half of 2021 in particular, families were (understandably) reluctant to receive people with COVID-19 being released from custody into their homes. This created a risk of infection to others and would have resulted in household members being ordered to isolate as close contacts, impacting their ability to work and access childcare and other services. These concerns have subsided over time, and subsequently so has the challenge of safely releasing people with COVID-19 from custody.

However, this was an area where there had been insufficient planning in anticipation of an outbreak in a custodial setting. It appears no single, clear process was in place to manage the isolation of people with COVID-19 released from custody prior to the August 2021 COVID-19 outbreak at Parklea CC. Until this outbreak, the focus of the pandemic response had largely been preventing COVID-19 from entering and spreading in custodial environments.

There were very few options for housing where people with COVID-19 released from custody could complete their isolation period. It would have been unlawful to continue to hold people in custody against their will without a relevant legal order permitting their continued incarceration. However, we have heard that several people released while infected with COVID-19 elected to stay in custody until the end of their isolation period, for lack of anywhere else to go.

Section 62 of the *Public Health Act 2010* provides that an authorised medical practitioner may make a public health order regarding a person where they are satisfied that the person has or has been exposed

<sup>245</sup> Xanthe Gregory et al, 'Walgett COVID-19 Case Triggers Widespread Western New South Wales Lockdowns', *ABC News* (online, 11 August 2021) <<https://www.abc.net.au/news/2021-08-11/covid-case-walgett-dubbo-bathurst-jail-lockdown/100369258>>.

to and is at risk of developing a specified condition (this included COVID-19 until 1 September 2023)<sup>246</sup> and their behaviour indicates they may be a risk to public health. A section 62 public health order may impose measures including detention, specified treatment, or supervision by a specified person.<sup>247</sup> As of 4 May 2022, six adults and three young people with COVID-19 had been subject to a 14-day public health order following their release from custody.<sup>248</sup>

Special health accommodation administered by NSW Health was an option for some people with COVID-19 released from custody. However, we have heard that special health accommodation options were, in some instances, reluctant to accept people released from custody. We understand that all special health accommodation closed in NSW as of mid 2022.

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246 COVID-19 was a category 4 condition under the *Public Health Act 2010* sch 1 and a contact order condition under the *Public Health Act 2010* sch 1A. As of 1 September 2023, COVID-19 is no longer a category 4 condition or a contact order condition: *Public Health Act 2010* schs 1 and 1A, as amended by *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2023*.

247 *Public Health Act 2010* ss 62(3)–(4).

248 Information provided by the Justice Health and Forensic Mental Health Network, 8 June 2022.

## 5 Continuity of services during the pandemic

The need to mitigate the risks of COVID-19 transmission in custodial centres, and the consequential impact of COVID-19 restrictions, resulted in the development of alternative delivery models for essential services. This included the use of technology for virtual visits or workbooks for programs where these could not be undertaken in person.

However, despite these efforts some reduction in access to services was an inevitable consequence of several years of pandemic-related measures. And, unfortunately, it has become apparent to us that resolving these issues will require more than simply removing COVID-19 restrictions. Returning to the level of service provision that existed prior to the onset of COVID-19 is an ongoing challenge due to staffing issues and the normalisation of altered operations.

Throughout 2022, many custodial centres experienced short staffing. This resulted in internal and external service providers having reduced access to inmates and the prioritisation of urgent matters and essential operations. This was particularly acute during periods where COVID-19 and other upper respiratory illnesses were very prevalent in the community, resulting in staff being unable to attend work due to either their own illness or that of a dependent.

In addition to new modes of delivery, we have observed the development of informal workarounds to try and overcome access challenges, particularly in adult custodial centres. These include the practice of classification and placement on the papers, without the involvement of the inmate, and interviewing inmates through cell-door hatches and yard fences.

Barriers to providing face-to-face services to people in custody did not arise with the onset of the pandemic. This was an existing problem that worsened markedly due to the pandemic.<sup>249</sup> Restoring service provision to the level that existed prior to COVID-19 and continuing to address endemic accessibility challenges needs to be a priority of CSNSW, JH&FMHN, YJNSW and the private operators and it will remain a feature of our inspection and monitoring work.

### 5.1 Access to justice in custody

Access to justice is a fundamental right enshrined in article 14 of the *International Covenant on Civil and Political Rights*.<sup>250</sup> This access encompasses the right to participate in a fair judicial process, access to legal advice and representation, and access to legal resources such as evidence briefs, court transcripts, sentencing information, and case materials. This right remains fundamental for those people who are being held in custody.<sup>251</sup> For children and young people this right is further enshrined in the *Convention on the Rights of the Child*. Article 37 prescribes the right of children in custody to 'prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of [their] liberty before a court [...]'.<sup>252</sup>

Even without the pandemic, there are inherent challenges to accessing justice in custody. Restrictions on

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249 Inspector of Custodial Services, *Programs, Employment and Education Inspection* (Report, February 2020); Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022); Inspector of Custodial Services, *Women on Remand* (Report, February 2020).

250 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14.

251 *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted on 17 December 2015); *United National Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (10 December 1985, adopted on 29 November 1985).

252 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990).

access to a custodial setting, and restrictions on prisoner movement, contact and communication, can all operate as barriers to accessing justice. Reducing the impact of these barriers and ensuring access to justice for people in custody is a fundamental responsibility of adult and youth custodial authorities.

### 5.1.1 Access to courts

NSW courts modified their operations at various stages to reflect the broader public health advice and associated restrictions. This included designated periods of time in which matters were vacated or continued to progress, with participants connected by way of virtual technology. For people in custody, some delays in court matters were attributable to these modifications.

The availability of AVL to enable people in custody to participate remotely in NSW court processes predates the pandemic. In NSW, courts have increasingly incorporated this technology into their operations since 1998.<sup>253</sup> JUST Connect is the web-based software system used in all custodial centres for scheduling AVL legal appointments and real time court participation.

Most custodial centres have AVL suites that are designated for court matters, where an inmate or young person joins the court session remotely. Ideally these purpose-built suites are soundproof private spaces. Before the pandemic AVL was used mostly for less complex court matters, such as adjournments and mentions. Young people and adults were transported to courts to attend more complex matters, including bail hearings, trials, and sentencing hearings in-person.

The use of AVL expanded during the pandemic to include matters ordinarily reserved for in-person participation. Legislative amendments were made in March 2020 embedding this expansion in the NSW courts. For a prescribed period, which ended on 26 March 2022, the appearance of an accused person in bail-related proceedings was to occur by AVL unless a court directed otherwise. For this prescribed period AVL was also made available for an expanded range of matters at the court's discretion.<sup>254</sup>

For people in custody, this further reduced the need for their movement outside of custodial centres. It also exponentially increased the pressures on existing AVL resources (both technology infrastructure and staffing) in custodial settings.

The ability to facilitate court appearances by AVL did not entirely mitigate the impact of COVID-19 on accessing courts. Preliminary and approximate data from CSNSW indicated that during the period 1 March 2021 to 1 March 2022, 2,103 court appearances by AVL booked during this period were not attended by inmates for reasons related to COVID-19. These included inmates being subject to quarantine, isolation, or an unscheduled lockdown in response to a potential outbreak. Staffing shortages also impacted the movement of inmates to AVL and the operation of AVL at custodial centres.<sup>255</sup> The greatest impact was seen at custodial centres that experienced significant COVID-19 outbreaks and those managing people on remand and quarantine regimes.

It is hard to quantify and understand this impact because prior to October 2021 there was no requirement that custodial centres record non-attendance and associated reasoning. By Commissioner's Instruction in October 2021, custodial centres were directed to advise State-wide Administration of Sentences and Orders of the cancellation, the reason, and contact for the court prior to the court hearing.<sup>256</sup> This instruction also directed that a partial lockdown of a custodial centre in response to an outbreak was not a sufficient reason to cancel AVL court appearances for the whole custodial centre.

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253 *Evidence (Audio and Audio Visual Links) Act 1998*.

254 *Evidence (Audio and Audio Visual Links) Act 1998* s 22C, as repealed by *Statute Law (Miscellaneous Provisions) Act 2023* sch 2.27.

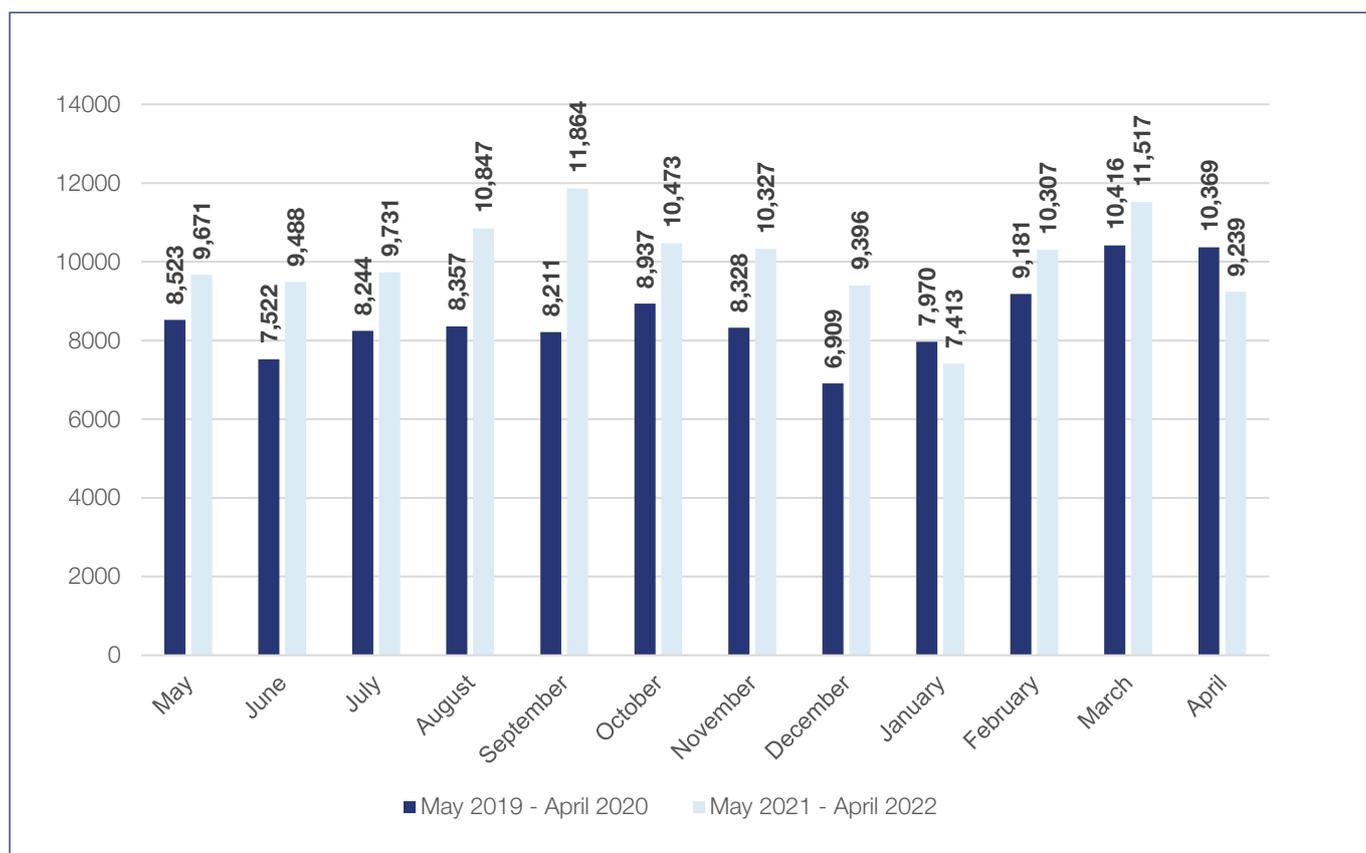
255 Information provided by Corrective Services NSW, 3 June 2022.

256 Commissioner's Instruction 2021/49.

Figure 7 and Figure 8 reflect the comparative demand between the 2019 to 2020 period and the 2021 to 2022 period for AVL to facilitate court proceedings for adults and young people in custody.

For young people in custody, precise data indicating the rate of non-attendance at court was not available. During the period 1 March 2021 to 1 March 2022 both Reiby YJC and Cobham YJC managed transmission events where young people were subject to lock downs.<sup>257</sup> Young people in isolation were not let out of their units to attend court from the AVL suites but we were informed that urgent appearances were facilitated via telephone from within accommodation units. Cobham YJC has since installed an AVL suite in the accommodation unit designated to hold young people in isolation.

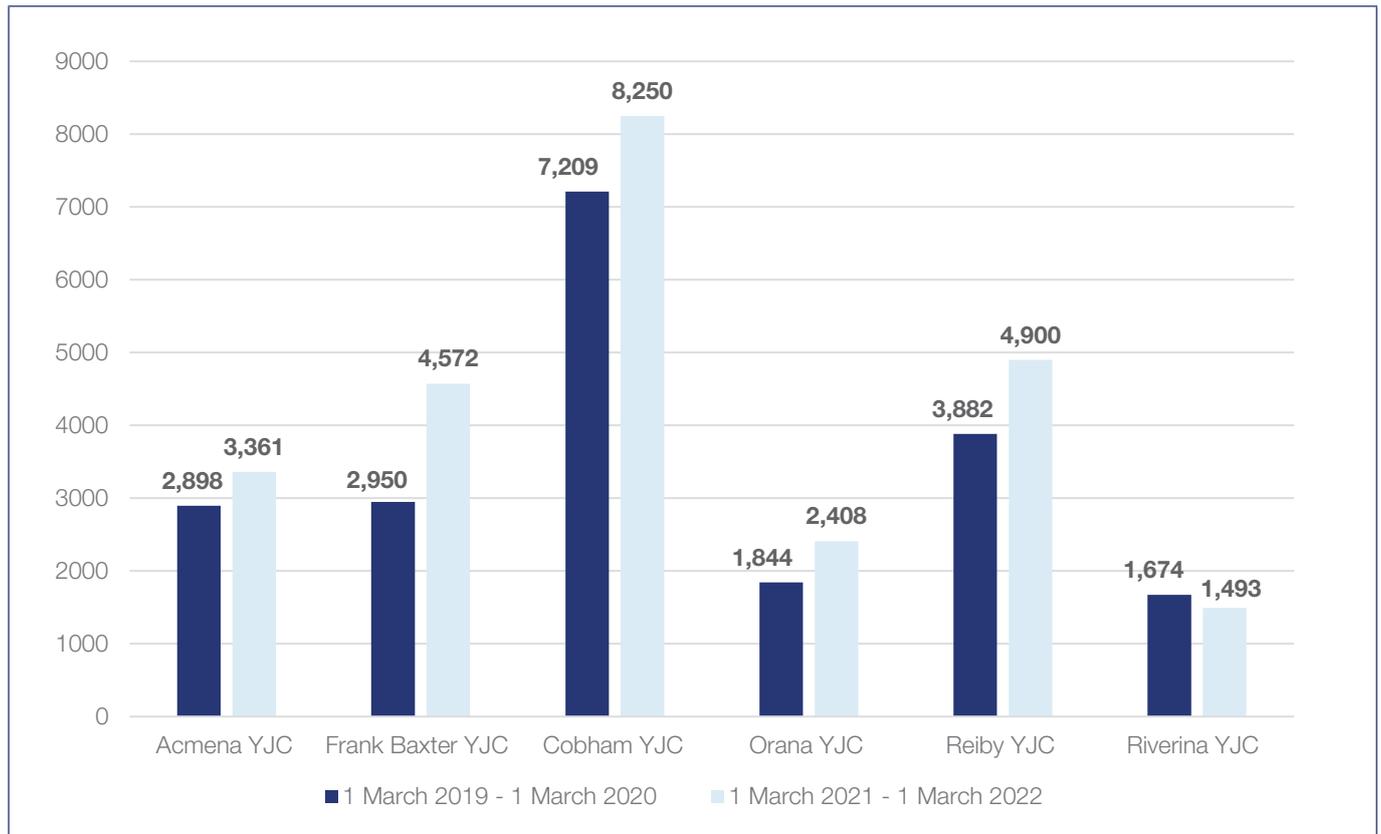
**Figure 7: Court appearances by AVL in adult custodial centres<sup>258</sup>**



257 Reiby YJC managed transmission in September 2021 and February 2022. Cobham YJC managed transmission in September 2021, December 2021 and January 2022: Information provided by Youth Justice NSW, 31 May 2022.

258 Information provided by Corrective Services NSW, 19 April 2023.

**Figure 8: Court appearances by AVL in youth custodial centres<sup>259</sup>**



### 5.1.2 Access to legal representatives

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Mandela Rules) provide that a prisoner should be ‘provided with adequate opportunity, time and facilities’ to communicate freely with their legal representative.<sup>260</sup> This is especially crucial for those people who are being held on remand and applying for bail or preparing for trial.

The right to have contact with a lawyer is required under NSW law<sup>261</sup> and by CSNSW policy.<sup>262</sup> This was reflected in the Commissioner’s Instructions concerning COVID-19 which state ‘[i]nmates must be given access to their legal representatives [...]. This should be facilitated using technology (phones, tablets) if in-person appointments cannot be facilitated’.<sup>263</sup>

The right of children and young people to a legal representative, and of regular, private, and confidential communication with this representative/s is also prescribed for children and young people in the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules).<sup>264</sup> This is further

<sup>259</sup> Information provided by Youth Justice NSW, 4 October 2022.

<sup>260</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted on 17 December 2015) rule 61.

<sup>261</sup> *Crimes (Administration of Sentences) Regulation 2014* cl 82.

<sup>262</sup> Corrective Services NSW, *Custodial Operations Policy and Procedures: 10.5 Visits from Legal Practitioners and their Employees or Agents* (version 1.4, 31 July 2023).

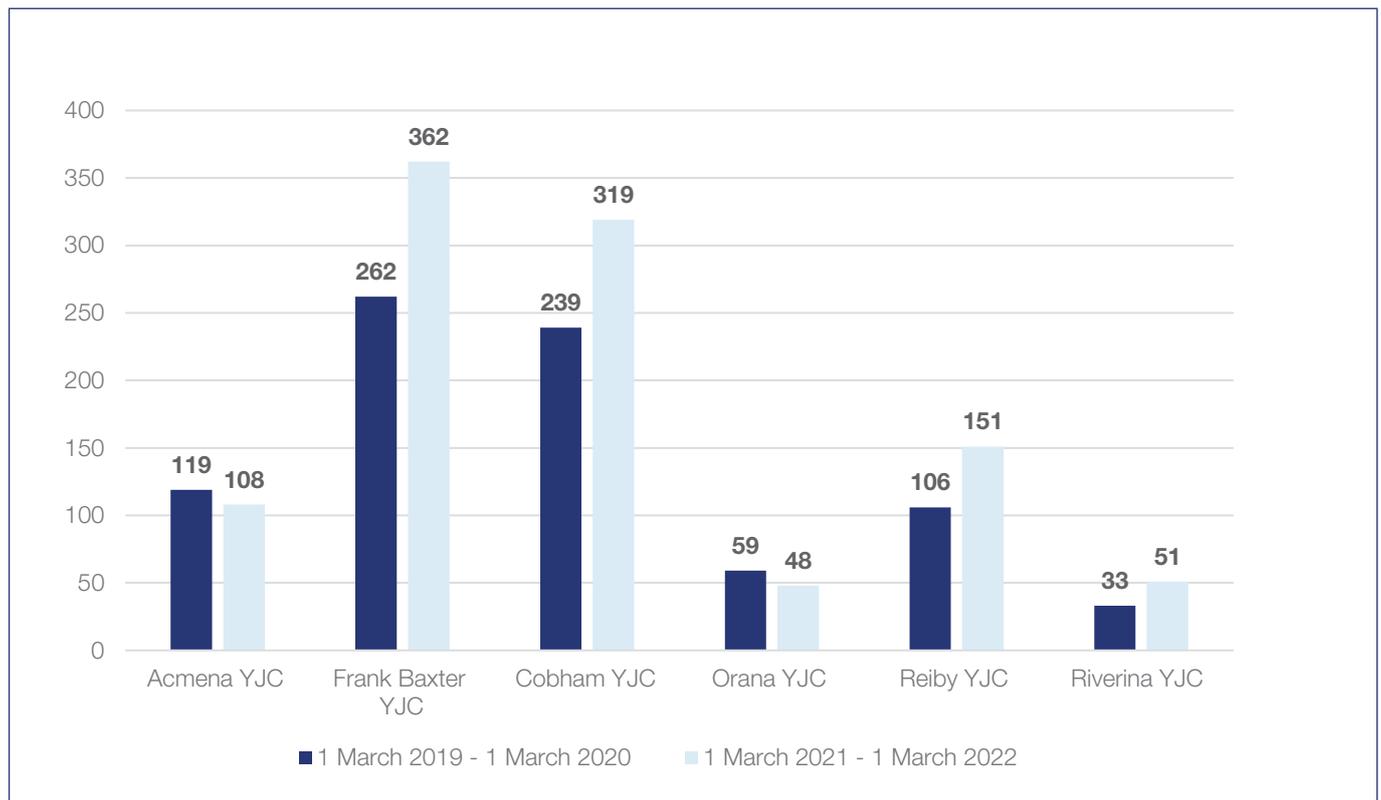
<sup>263</sup> Commissioner’s Instruction 2022/04, 2022/23, 2022/30, 2022/34, 2023/06.

<sup>264</sup> *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN Doc A/RES/40/33 (10 December 1985, adopted on 29 November 1985) rules 7.1, 15.1.

enshrined in NSW legislation<sup>265</sup> and reflected in YJNSW policy, which stipulates that the ‘[t]he duration and number of visits by a legal representative must not be restricted’ unless there is a safety or operational concern.<sup>266</sup>

Under ordinary conditions, legal representatives can visit young people and adults in custody during business hours and by prior arrangement with the custodial centre. However, during the pandemic, legal representatives have relied on phone and AVL to communicate with their clients. Figure 9 and Figure 10 illustrate the surge in demand for professional visits by AVL across youth and adult custody during the pandemic despite the reduction in the number of people held in custody.

**Figure 9: Legal consultations booked and confirmed by AVL in youth custodial settings<sup>267</sup>**

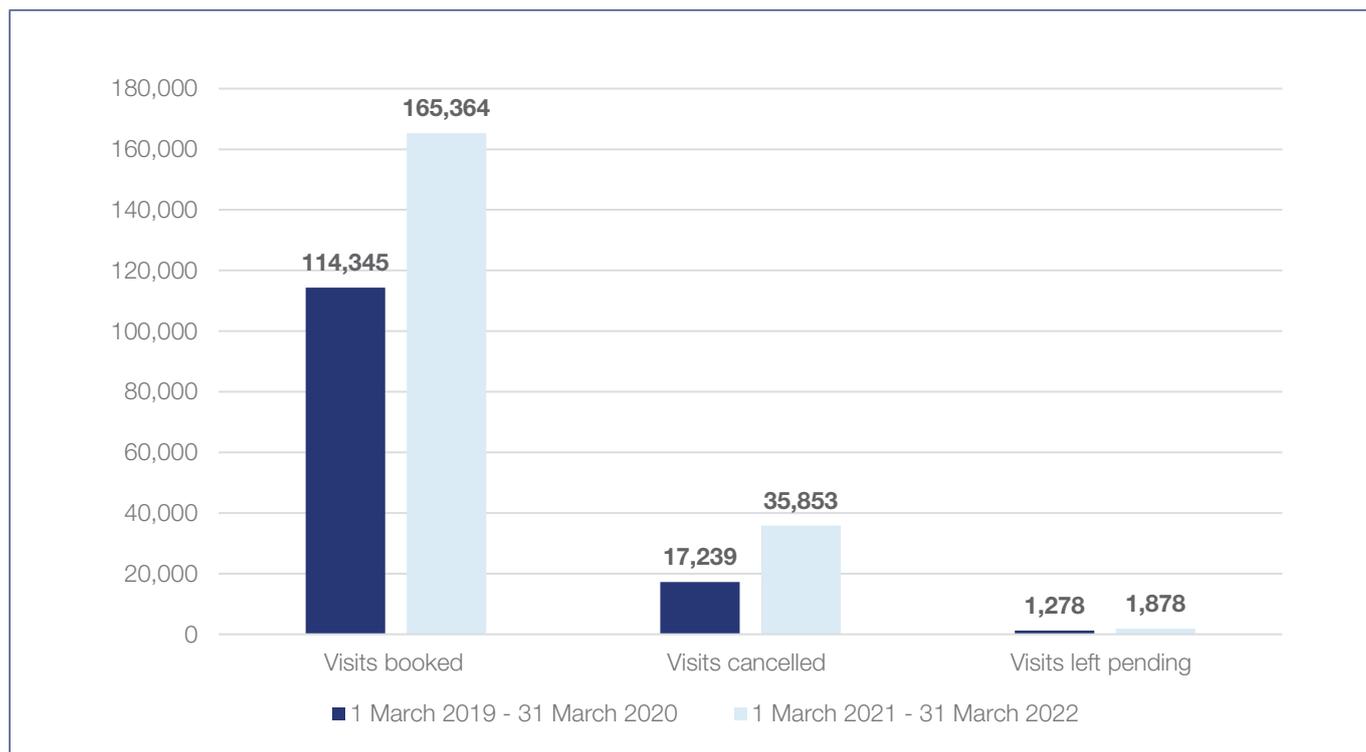


<sup>265</sup> *Children (Detention Centres) Regulation 2015* cl 26.

<sup>266</sup> Youth Justice NSW, *Professional Visits Policy* (December 2019) 8.

<sup>267</sup> Information provided by Youth Justice NSW, 2 September 2022.

**Figure 10: Professional visits booked by AVL in adult custodial settings<sup>268</sup>**



During our inspections and visits we observed several barriers to lawyer-client communications in adult custody, which are consistent with the range of concerns identified by legal stakeholders who made submissions to this review.

When a person in custody is subject to quarantine, isolation, or a more general lockdown at a custodial centre, consistent, reliable, and prompt information about their location, health status and availability has not been readily accessible to legal representatives. For legal representatives, their access to clients seems to have varied considerably across custodial settings. Local approaches to facilitating access have been reliant on infrastructure, technological capabilities and staffing of the custodial centre. They were also necessary due to a lack of clear CSNSW-wide instruction and protocols detailing the requirements and expectations for the facilitation of lawyer-client access. The first Commissioner’s Instruction addressing legal visits and communication for people in quarantine was not issued until August 2021.<sup>269</sup>

Although court appearances are generally deemed essential, resulting in these being prioritised, contact with legal representatives are not. Consequently, when a custodial centre is managing an outbreak of COVID-19, experiencing staff shortages, or accommodating larger numbers of people under quarantine and isolation regimes, communication between legal representatives and their clients has been severely hampered.

Professional legal visits booked by legal representatives through the JUST Connect platform have been cancelled with little or no notice. In some cases, reasons for cancellation are available via the JUST Connect portal but other times a client has simply not attended the AVL appointment as scheduled. Legal representatives reported a lack of information about why their client was not available and when they could access them. Legal representatives reported being unable to contact custodial centre staff to arrange communication with their clients and without recourse through the JUST Connect portal.

<sup>268</sup> Information provided by Corrective Services NSW, 3 June 2022.

<sup>269</sup> Commissioner’s Instruction 2021/31.

CSNSW advised in relation to the JUST Connect system, that due to the additional pressures on staff 'some administrative tasks were not prioritised to be high level' at times and this 'may account for some bookings being left in a pending state or some records not being continuously update[d].'<sup>270</sup> See Figure 10 for further detail on the number of visits left pending.

We acknowledge CSNSW's efforts to improve lawyer-client access through the installation of Bluetooth headsets, telephones, and electronic tablets in several custodial centres. However, their utility was constrained by poor connectivity. These were often used to facilitate client-lawyer communication when inmates were confined to a cell for quarantine, isolation, or due to a lockdown. This meant that they had no privacy from their cellmate to discuss sensitive legal matters or to review briefs of evidence. In some cases where in-cell phones and tablets were not available, legal representatives reported that it wasn't until they heard a custodial officer interject on speaker phone that they realised their client had been brought into a staff area to receive a phone call about their legal matter.

We observed that these barriers were exacerbated where a custodial centre was managing larger numbers of inmates subject to restrictive quarantine or isolation regimes, or where a custodial centre was managing an outbreak and had imposed a partial or full lockdown. This meant that larger custodial centres responsible for managing unconvicted and unsentenced people, who need access to their legal representatives, were disproportionately impacted by these barriers. This was particularly the case while MRRC and SWCC operated as isolation hubs and the needs of unconvicted people were managed alongside quarantine and isolation. Staffing shortages have also compounded the allocation of resources to facilitate communication between legal representatives and their clients, requiring court appearances to be prioritised over legal contact.

Not only do these barriers reduce access to legal representatives, but they also have flow-on effects of reducing broader access to justice and the timely resolution of court matters. Where lawyers have been unable to obtain instructions from their clients, matters have been adjourned. This means unconvicted inmates applying for bail or charged with an offence that may not result in a custodial sentence were at risk of spending unnecessary time in custody.

CSNSW took some action to address these concerns. However, by early 2022, legal stakeholders were raising serious concerns about access to their clients in custody, with CSNSW and more broadly. We received several submissions from legal stakeholders outlining access issues and the impact of these issues on their clients. CSNSW took the following measures to try and address these concerns:

- using the existing Legal Practitioners Consultative Group to brief stakeholders and as a forum for legal practitioners to raise their concerns
- the establishment of a centralised email address for the judiciary, legal practitioners, and court staff to escalate access issues
- the creation of a dedicated judicial hotline
- the creation of a prioritised booking system for legal practitioners to schedule meetings with their clients, where there was an imminent legal matter
- the creation of a reporting system for AVL disruptions.<sup>271</sup>

While these measures provided forums to report ongoing issues, they did not address the underlying issues and fundamental right of unconvicted inmates to access their legal representatives. CSNSW has acknowledged that despite these efforts, and the efforts of frontline staff, the access of legal practitioners to

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<sup>270</sup> Information provided by Corrective Services NSW, 3 June 2022.

<sup>271</sup> Information provided by Corrective Services NSW, 4 July 2023.

their clients was disrupted.<sup>272</sup>

With the in-situ management of people with COVID-19, there is a need to consider how best to ensure lawyer-client access is facilitated. This will involve understanding of the capabilities and constraints of different locations, further technological initiatives, and clearer policy guidance across the state to ensure consistency. Moreover, it requires the education of custodial staff that legal visits are essential and not discretionary.

**Recommendation: CSNSW develops state-wide and local documented protocols for facilitating communication between people in isolation and their legal representatives.**

**Recommendation: CSNSW ensures people in isolation can access fit-for-purpose AVL facilities or alternative means of technology for legal communication.**

Similar challenges have been observed in youth custodial settings, where connectivity problems limited the effectiveness of tablets to supplement the capacity of AVL suites in providing young people with access to courts and legal representatives. Despite these challenges, we have also received consistent accounts from stakeholders that YJNSW remained responsive to feedback and that barriers to legal access were mitigated quickly. Legal stakeholders reported more accessible communication channels within YJNSW.

We acknowledge the responsiveness of YJNSW on this issue and the introduction of measures to facilitate communication between young people in quarantine and isolation and their legal representatives. To provide a consistent and sustainable approach across *all* youth justice centres, planning is needed to ensure that technology enabled devices are available and have ongoing capability to meet the demand for access to legal representatives. There must also be clear guidance to staff about how access should be provided to young people who are subject to any temporary restrictive regimes. We note the significant progress YJNSW have made towards achieving the following recommendations.

**Recommendation: YJNSW develops state-wide and local documented protocols for facilitating communication between young people in isolation and their legal representatives.**

**Recommendation: YJNSW ensures young people in isolation can access fit-for-purpose AVL facilities or alternative means of technology for legal communication.**

### 5.1.3 Access to legal materials

Under CSNSW policy, people in custody must be provided with access to current legal resources and materials including:

- Australian legislation (via the secure CSNSW Legal Info Portal available on networked 'green' computers)
- CSNSW policies and procedures concerning custodial management
- legal reference books
- legal information guides and pamphlets
- writing materials (remand only).<sup>273</sup>

Legal materials and computers are generally available to inmates in custodial centre libraries. Inmate access

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<sup>272</sup> Information provided by Corrective Services NSW, 4 July 2023.

<sup>273</sup> Corrective Services NSW, *Custodial Operations Policy and Procedures: 20.8 Inmate Access to Legal Resources* (version 1.2, 4 November 2021).

to libraries is variable, and contingent upon the freedom of movement of inmates. Factors such as the security rating of a custodial centre, the classification and placement needs of inmates, and the availability of escorting and supervising staff all impact an inmate's access to a library.

During the pandemic, access to activities and physical spaces outside of cells and accommodation units has been severely reduced. Inmates subject to quarantine and isolation cannot access legal materials for the period in which they are held under these regimes because they are rarely, if at all, permitted outside of their cells. Following the emergence of the Omicron variant, staffing shortages impacted both adult and youth custodial centres, which has reduced the time that people are able to access programs, services, and activities outside of their cells and units. When a deficiency in staffing triggers a full or partial lockdown, access to these resources is heavily reduced. In locations where people are held on remand, this is disruptive to their legal preparations and consideration needs to be given to ensuring that they remain able to access legal resources and materials, even where they are subject to restrictive regimes.

The access of young people in custody to legal materials has not been raised with us as an issue during the pandemic. This may be because there is less demand for young people in custody to access legal materials due to other supports in place. These include YJNSW's responsibility to directly support young people to participate in youth justice conferencing and to assist them in bail matters.<sup>274</sup> Legal aid is also available for children and young people for all criminal matters in the Children's Court.<sup>275</sup>

**Recommendation: CSNSW ensures that COVID-19 protocols include provisions for people held on remand to regularly access legal resources and materials.**

## 5.2 Clinical health services

COVID-19 had a significant impact on the capacity of health services to provide routine health care to people in custody. The response to the pandemic, such as testing and screening, monitoring people in quarantine and isolation and COVID-19 vaccination clinics created substantial additional work for health staff. Health centres have also experienced periods where their staff have been unable to attend work due to COVID-19 infection or isolation/exclusion from the workplace as a close contact. Access to people in custody has been impacted by full or partial lockdowns of custodial centres due to factors including COVID-19 outbreaks and/or a lack of custodial staff.

The impacts of these factors have varied across different locations and times, influenced by rates of COVID-19 transmission in the community. In our inspections of adult correctional centres undertaken in 2022, we observed some health services, including metabolic monitoring, pathology collection and chronic disease screening and plan reviews, were not performed with the same frequency as they were before the pandemic. In addition, people appeared to be experiencing longer wait times for priority 3 (non-urgent) and 4 (routine) appointments. Where visiting health professionals, such as dentists and optometrists, had been unable to attend a custodial centre, wait lists and wait times for appointments have grown. This is similar to communities in rural areas that rely on visiting health professionals.

We are concerned about the long term effect the pandemic and agency responses to it may have on the provision of health care across NSW custodial centres, and consequent impacts on the health of people in custody. This is something that we will be monitoring in our work moving forward.

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274 See for example, 'Bail and Accommodation Support Service', *Youth Justice NSW* (Web Page, undated) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/bail-and-accommodation-support-service>>; 'Youth Justice Conferences', *Youth Justice NSW* (Web Page, undated) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/conferencing>>.

275 'Children's Court Assistance Scheme', *Legal Aid NSW* (Web Page, undated) <<https://www.legalaid.nsw.gov.au/for-lawyers/schemes/childrens-court-assistance-scheme>>.

We note that there are existing governance and reporting processes and JH&FMHN has undertaken a clinical redesign project to improve care access, in collaboration with staff, patients, and CSNSW.<sup>276</sup> JH&FMHN advised that in May 2022 it conducted an internal analysis of deaths in custody during the pandemic to assess the impact of COVID-19 and inform service delivery. All deaths and serious clinical incidents undergo a Serious Adverse Event Review to identify systems issues and recommended actions.<sup>277</sup>

However, in addition to this, we consider that JH&FMHN and CSNSW should undertake a joint review on the provision of health care in adult correctional centres. This must be conducted in partnership with private operators to ensure its findings are comprehensive. A similar joint review should also be undertaken by JH&FMHN and YJNSW. These reviews would help provide an understanding of health care needs across the adult and youth custodial systems, inform routine health care provision into the future, including priorities and resource allocation, and help develop strategies to overcome access barriers.

**Recommendation: JH&FMHN undertakes a review with CSNSW and private operators, and YJNSW of the impact of COVID-19 on the provision of health care in adult and youth custodial centres.**

## 5.3 Support for people in custody

Many people in custody have told us how challenging they found the COVID-19 pandemic and related restrictions. During these conversations, it is evident some people have experienced significant levels of distress and anxiety during periods of extended confinement to cells due to quarantine, isolation, outbreak containment plans or lockdowns. This has been exacerbated by the increased difficulty of maintaining contact with family and friends and face-to-face access to the support services provided by non-custodial staff including services and programs officers, case management officers, and psychologists.

### 5.3.1 Contact with family and friends

#### Virtual visits

At the onset of the pandemic, CSNSW and YJNSW introduced measures to try and mitigate the seclusion of inmates in quarantine and isolation regimes and the suspension of in-person visits. This included introducing tablets and expanding the use of AVL facilities for social visits. This enables face-to-face conversations, generally for a period of 20 to 30 minutes.

We consider that YJNSW and CSNSW have done well to implement new technology and expand the use of existing resources to facilitate contact between people in custody and their family and friends. This has allowed people who did not receive in-person social visits before the pandemic, due to distance or other limitations, to have a greater level of contact with their families and friends. The adults and young people in custody we have engaged with during the pandemic have provided overwhelmingly positive feedback about this option. This is consistent with a survey undertaken by CSNSW, with 85% of 2,153 participants indicating that they would like virtual visits to continue and around a third preferring virtual visits to in-person visits.<sup>278</sup>

The use of tablets for social visits in custodial centres is a significant innovation and we support the efforts of CSNSW, YJNSW and private operators to ensure people in custody can maintain their relationships with family and friends. Support in the community is integral to people's reintegration when they are released

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<sup>276</sup> Information provided by Justice Health and Forensic Mental Health Network, 29 June 2023.

<sup>277</sup> Information provided by Justice Health and Forensic Mental Health Network, 29 June 2023.

<sup>278</sup> Information provided by Corrective Services NSW, 4 July 2023.

from custody. However, as highlighted in section 3.1.1, tablets for social visits should supplement, not replace, in-person social visits. Custodial centres at a minimum need to restore the level of access to in-person social visits that existed prior to the pandemic.

## Phone calls

In addition to the introduction of tablets for social visits, CSNSW also continued to roll-out in-cell tablets across its custodial centres. In-cell tablets cannot be used for video visits but can be used by inmates to call their approved telephone contacts, in addition to other functions such as watching television or films or playing games.

Inmates should be issued tablets before they are locked in overnight, and they are returned to staff during let go the following day.<sup>279</sup> The tablets may be used for phone calls while inmates are locked in cells. Without in-cell tablets, in most locations inmates would only be able to make phone calls during out-of-cell hours, and limited telephone availability can result in tension and fights between inmates.

As of 5 April 2022, in-cell tablets had been rolled-out at 11 CSNSW-operated correctional centres<sup>280</sup> and there were plans for the roll-out to continue at a further 16 locations,<sup>281</sup> as well as the privately operated Parklea CC and Junee CC.<sup>282</sup> Clarence CC, which is also privately operated, was equipped with in-cell tablets from the time it opened.

The implementation of in-cell tablets is an important achievement and should provide inmates with significantly greater access to phone calls, resources for recreation and education, and general information.

However, tablets have limited utility where inmates are confined to their cells due to quarantine, isolation, or lockdowns. Charging facilities are generally not located within cells so tablets will be unavailable for in-cell use while they are charging. This is less of a problem when inmates are attending work or programs or have access to the outdoors during the day. We understand that some locations are trialling in-cell charging for tablets. This would enable 24-hour access to tablets, which would likely enhance inmate wellbeing during periods when they are confined to a cell due to illness.

For those locations where in-cell tablets have been, or continue to be, unavailable, access to phones during COVID-19 isolation and quarantine or lockdowns caused by COVID-19 outbreaks or short staffing has been challenging. For those in quarantine, phones could only be accessed during their time out-of-cell. As highlighted in section 3.2, time out-of-cell for quarantining inmates was unpredictable, inconsistent, and for a small window of time, during which the person an inmate needs to speak to may be unavailable.

For the units holding inmates with COVID-19 in the isolation hubs at MRRC and SWCC, wireless telephones were installed, enabling the telephone to be taken between cells, rather than letting inmates out of their cells to use landline phones. These phones had been secured to only allow inmates to call their approved contacts and were different to those used to facilitate calls with legal representatives. At MRRC, moving the telephone between cells was the responsibility of the inmate hygiene worker in each COVID-19 isolation unit and there was no discernible system in place for staff to ensure equitable phone access. The usefulness of

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279 Corrective Services NSW, *Custodial Operations Policy and Procedures: 8.16 Inmate Tablets* (version 1.2, 18 August 2023) 5.

280 John Morony, Dillwynia, Lithgow, Mannus, Mid North Coast, Shortland, Mary Wade, Dawn De Loas, Geoffrey Pearce, South Coast, Wellington correctional centres had been equipped with in-cell tablets: Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 1 April 2022, 29 (Answers to Questions on Notice, Geoff Lee, Minister for Corrections).

281 Long Bay Hospital, Metropolitan Remand and Reception Centre, Metropolitan Special Purpose Centre (Areas 1 to 3), Bathurst, Cooma, Cessnock, Glenn Innes, Emu Plains, Kirkconnell, Broken Hill, Goulburn, High Risk Management, Compulsory Drug Treatment, Silverwater Women's, St Heliers and Tamworth correctional centres.

282 Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 1 April 2022, 29 (Answers to Questions on Notice, Geoff Lee, Minister for Corrections).

these phones was also hampered by connectivity issues.

The wireless telephones took time to implement, leaving isolating inmates without phone access in the interim. Lack of phone access was a foreseeable limitation of isolating inmates, and it was deeply unfortunate that this was not addressed prior to COVID-19 outbreaks occurring in custody.

The COPP provides that CSNSW will meet the cost of:

- all phone calls to those numbers listed on the Common Auto Dial List (CADL)<sup>283</sup>
- three personal local calls per week, and all legal telephone calls for an unsentenced inmate
- one personal local call per week for a sentenced inmate
- all legal phone calls for sentenced inmates facing further charges.<sup>284</sup>

Soon after the first suspension of social visits, CSNSW provided inmates with three free phone calls per week from 27 March 2020<sup>285</sup> until 8 January 2021.<sup>286</sup> Provision was then made for one free phone call per week until 19 February 2021.<sup>287</sup>

## Mail

In mid 2020, the CAS Regulation was amended in relation to the handling of inmate mail.<sup>288</sup> The reason for the introduction of this amendment is not explicitly stated in the legislation, however at the time there were concerns that, in the absence of in-person social visits, contraband was being concealed in inmate mail.<sup>289</sup> CSNSW has since confirmed that the purpose of these amendments was to prevent contraband from entering correctional centres via mail.<sup>290</sup>

The CAS Act provides that regulations may be made in respect of 'the sending and receiving of letters and parcels by inmates, including the circumstances in which letters and parcels may be opened for inspection or confiscated'.<sup>291</sup> Clause 112(4) of the CAS Regulation provides that a governor of a correctional centre or nominated officer may:

- (a) copy any written or pictorial matter contained in a letter or parcel sent to an inmate that has been opened, inspected or read under this clause, and
- (b) deal with the original written or pictorial matter in accordance with the directions of the Commissioner, and
- (c) deliver a copy of the written or pictorial matter to the inmate instead of the original matter.

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283 This consists of phone lines to a number of service providers and integrity agencies including the Corrective Services Support Line, the Justice Health Patient Health Inquiry Line, Legal Aid NSW, Aboriginal Legal Service NSW, NSW Ombudsman and Revenue NSW.

284 Corrective Services NSW, *Custodial Operations Policy and Procedures: 8.2 Inmate Telephones* (version 1.11, 11 August 2023) 8.

285 Commissioner's Instructions 2020/14, 2020/26, 2020/36, 2020/45, 2020/61, 2020/69, 2020/75, 2020/83.

286 Commissioner's Instruction 2020/83.

287 Commissioner's Instruction 2021/01.

288 *Crimes (Administration of Sentences) Regulation 2014* cl 112, as amended by *Crimes (Administration of Sentences) Amendment (Inmate Mail) Regulation 2020* sch 1 item 1.

289 Evidence to Portfolio Committee No. 5 – Legal Affairs, Parliament of NSW, Sydney, 9 March 2021, 32–3 (Anthony Roberts, Minister for Counter Terrorism and Corrections); Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 7 March 2022, 41 (Kevin Corcoran, Commissioner of Corrective Services NSW); Evidence to Portfolio Committee No. 5 – Regional NSW and Stronger Communities, Parliament of NSW, Sydney, 24 October 2022, 2, 4 (Geoff Lee, Minister for Corrections).

290 Information provided by Corrective Services NSW, 4 July 2023.

291 *Crimes (Administration of Sentences) Act 1999* s 79(1)(k).

This clause does not apply to letters or parcels received from an exempt body or exempt person.<sup>292</sup>

Following this amendment, in October 2020 a Commissioner's Instruction was issued concerning the photocopying of inmate mail, followed by an amended version in November 2020.<sup>293</sup> The COPP has also been amended accordingly and provides that:

For all mail that is non-privileged and does not contain prohibited goods:

- Colour photocopy the mail including letter, front and back of envelope and attachments;
- Deliver the colour photocopy to the inmate;
- Place the original mail in a secure bin or shred the mail if it is not suitable to be placed in a secure bin.

The above applies to all mail items including children's drawings and any cards received unless an exemption applies (see below in this section).

Photographs may be issued to an inmate if they have been identified as not having been tampered with subject to:

- the photographs not being prohibited goods (e.g. obscene or offensive etc); or
- otherwise not being appropriate to issue to the inmate (e.g. an unauthorised photograph of a child sent to an inmate who is a child sex offender).<sup>294</sup>

We take no issue with CSNSW taking steps to prevent the introduction of illicit drugs to correctional centres. However, we are concerned that CSNSW's policy and procedure for the secure destruction of original mail after photocopying is not authorised by the CAS Act.

The CAS Act contemplates regulations relating to the inspection and confiscation of inmate mail, not its destruction. The CAS Regulation provides that original mail may be dealt with according to the directions of the Commissioner. However, the CAS Regulation cannot be used as a legal basis for practices that go beyond the regulation-making authority provided in the CAS Act.

The implementation of the policy and procedure to copy and destroy original inmate mail has been poor. Since this change, stakeholders have raised concerns about this practice and issues regarding the quality of photocopying and mistaken distribution have been raised consistently by inmates during our inspections.<sup>295</sup> Inmate mail has also gone from an almost non-existent subject of complaints to official visitors to one of the most frequently raised complaints by inmates. In 2019–20, complaints about mail did not appear in our annual report statistics.<sup>296</sup> In 2020–21, inmate mail was the third most recorded complaint to official visitors.<sup>297</sup> In 2021–22, it was the second most recorded complaint to official visitors.<sup>298</sup>

It has been disappointing to observe correctional centre staff and management take so little care with inmate mail given the significant additional obstacles inmates have faced to maintain contact with family and friends during the pandemic. This has created further distress during a difficult period that could have easily been avoided with some attention to detail and internal oversight.

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292 *Crimes (Administration of Sentences) Regulation 2014* cl 112(5)(a).

293 Commissioner's Instructions 2020/80 and 2020/86.

294 Corrective Services NSW, *Custodial Operations Policy and Procedures: 8.1 Inmate Mail* (version 1.10, 25 November 2021) 5.

295 Inspector of Custodial Services NSW, *Inspection of Lithgow Correctional Centre 2021* (Report, April 2022) 10, 41; Inspector of Custodial Services NSW, *Inspection of Goulburn Correctional Centre and the High Risk Management Correctional Centre 2021* (Report, June 2022) 40–1; Inspector of Custodial Services, *Inspection of Parklea Correctional Centre* (Report, June 2022) 94.

296 Inspector of Custodial Services, *Annual Report 2019–2020* (Annual Report, October 2020) 17.

297 Inspector of Custodial Services, *Annual Report 2020–2021* (Annual Report, October 2021) 21.

298 Inspector of Custodial Services, *Annual Report 2021–22* (Annual Report, October 2022) 19.

We consider that the destruction of inmate mail should cease entirely. The persistent implementation issues mean we cannot support the continuation of this practice, even if it should be found to be lawful. In the absence of evidence that correspondence is imprinted with an illicit substance, original mail should be either provided to the inmate or stored in their property.

**Recommendation: CSNSW immediately ceases the destruction of original mail to inmates.**

**Recommendation: CSNSW obtains legal advice regarding the lawfulness of Commissioner’s Instruction 2020/86 and relevant parts of the Custodial Operations Policy and Procedures regarding the destruction of original mail to inmates.**

### 5.3.2 Services, programs and education

As summarised in Table 9, the provision of education and criminogenic programs in adult custodial centres were impacted by restrictions at different stages of the pandemic. These measures were largely designed to minimise opportunities for inmates to come into contact with a person with COVID-19, resulting in transmission within custodial environments.

**Table 9: Restrictions on program and education delivery in adult correctional centres<sup>299</sup>**

Date of CI	Commissioner’s Instruction
26 March 2020	<p>Suspension of external activities and programs* including:</p> <ul style="list-style-type: none"> <li>any community work</li> <li>community-based education and training</li> <li>employment undertaken outside the correctional complex</li> <li>all day and weekend leave</li> <li>relevant activities undertaken by stage 2 inmates at the Compulsory Drug Treatment Correctional Centre (CDTCC) under section 106D(3) of the CAS Act.</li> </ul> <p>Includes inmates at the Parramatta and Bolwara transitional centres.</p>
27 March 2020	<ul style="list-style-type: none"> <li>Suspension of group-based education and program activities delivered by external organisations, except BSI Learning, LSC Psychology, chaplaincy services and approved service providers in privately operated correctional centres.</li> <li>Specified risk mitigation measures to apply to all group-based activities within correctional centres.</li> </ul>
27 April 2020	TAFE NSW added to the group of external organisations allowed to deliver group-based education and program activities.
26 June 2020	Recommencement of group-based education and program activities delivered by external organisations, subject to specified risk mitigation measures.
26 November 2020	Recommencement of external activities and programs* from 30 November 2020, except day and weekend leave.
3 February 2021	Recommencement of day and weekend leave from 8 February 2021, subject to specified risk mitigation measures.

<sup>299</sup> Commissioner’s Instructions 2020/10, 2020/13, 2020/28, 2020/49, 2020/87, 2021/04, 2021/17, 2021/21, 2021/29, 2021/32, 2021/33, 2021/38, 2022/02, 2022/08, 2022/11, 2022/12, 2022/18, 2022/25, 2022/37, 2022/41, 2023/05.

<p><b>24 June 2021</b></p>	<p>Suspension of external activities and programs* including:</p> <ul style="list-style-type: none"> <li>• any community work</li> <li>• community-based education and training</li> <li>• employment undertaken outside the correctional complex</li> <li>• all day and weekend leave</li> <li>• relevant activities undertaken by stage 2 inmates at the CDTCC under section 106D(3) of the CAS Act.</li> </ul> <p>Includes inmates at the Parramatta and Bolwara transitional centres.</p>
<p><b>9 July 2021</b></p>	<ul style="list-style-type: none"> <li>• Suspension of group-based education and program activities delivered by external organisations in correctional centres located in Greater Sydney, except TAFE NSW, LSC Psychology, chaplaincy services, BSI Learning, VET providers and equivalent providers in privately operated correctional centres.</li> <li>• Personnel from external organisations were not permitted to enter correctional centres located in regional areas if they had been in Greater Sydney within the previous 14 days.</li> </ul>
<p><b>18 July 2021</b></p>	<ul style="list-style-type: none"> <li>• Suspension of all group-based face-to-face programs and education activities delivered by offender management and programs staff and/or external third-party providers in correctional centres located in Greater Sydney.</li> <li>• Personnel from external organisations residing in Greater Sydney not permitted to enter correctional centres located in regional areas.</li> </ul>
<p><b>9 August 2021</b></p>	<ul style="list-style-type: none"> <li>• For correctional centres located in regions subject to NSW Government lockdown orders: suspension of education programs conducted by third party external providers.</li> <li>• For correctional centres not located in regions subject to NSW Government lockdown orders: exclusion from correctional centres of third-party external providers residing in regions subject to lockdown orders.</li> </ul>
<p><b>18 August 2021</b></p>	<p>Chaplains working in other high risk settings, such as aged care or hospitals, may not enter correctional centres. Chaplains may not enter more than one correctional centre.</p>
<p><b>6 January 2022</b></p>	<ul style="list-style-type: none"> <li>• Suspension of all group-based face-to-face programs and education activities delivered in correctional centres by third-party external providers, except LSC Psychology.</li> <li>• Chaplains may only enter one correctional centre per day and may not conduct group programs. Chaplains working in other high risk settings, such as aged care or hospitals, may not enter correctional centres.</li> </ul>
<p><b>14 February 2022</b></p>	<p>TAFE NSW, BSI Learning, and registered training organisations with pre-existing contracts added to the list of external organisations allowed to deliver group-based education and program activities.</p>
<p><b>9 March 2022</b></p>	<ul style="list-style-type: none"> <li>• Third-party external providers permitted to enter correctional centres to deliver individual and group-based face-to-face activities.</li> <li>• Removal of restrictions on chaplains working in other high risk settings.</li> <li>• Chaplains may still enter only one correctional centre per day.</li> </ul>

<b>16 March 2022</b>	<ul style="list-style-type: none"> <li>• Resumption of work release and off-complex work under section 6(2) of the CAS Act, subject to specified risk mitigation measures.</li> <li>• Day and weekend leave, off-complex education and training, and CDTCC stage 2 activities remain suspended.</li> </ul>
<b>5 May 2022</b>	<ul style="list-style-type: none"> <li>• Resumption of off-complex education and training and CDTCC stage 2 activities, subject to specified risk mitigation measures.</li> <li>• Day and weekend leave remain suspended.</li> </ul>
<b>1 June 2022</b>	<ul style="list-style-type: none"> <li>• Resumption of day and weekend leave.</li> <li>• All inmates participating in external leave programs required to be triple vaccinated against COVID-19 by 4 July 2022.</li> <li>• All external leave programs remain subject to specified risk mitigation measures.</li> </ul>
<b>6 September 2022</b>	Amendments to the specified risk mitigation measures for external leave program participants, including reduced frequency of rapid antigen testing.
<b>3 October 2022</b>	Amendments to the specified risk mitigation measures for external leave programs including: <ul style="list-style-type: none"> <li>• inmates with medical contraindications for COVID-19 vaccination now permitted to participate in external leave programs</li> <li>• external leave program sponsors no longer required to be vaccinated against COVID-19</li> <li>• inmates participating in external leave programs must still be triple vaccinated against COVID-19.</li> </ul>
<b>6 February 2023</b>	Removal of COVID-19 vaccination requirement for external leave program participants.

\* Refers to all external activities and programs facilitated under sections 6(2) and 26 of the CAS Act.

External leave programs are work, education, programs, and other reintegration activities where inmates are permitted to leave the correctional complex. They include day and weekend leave and work release.<sup>300</sup> External leave programs were suspended for lengthy periods during the pandemic. The first suspension commenced on 26 March 2020, lasting until the end of November 2020 for some specified activities, and until early February 2021 for day and weekend leave. External leave programs only operated for around four months when they were suspended again in late June 2021. Phased recommencement started in March 2022 and all external leave programs had resumed by the beginning of June 2022, subject to risk mitigation measures.

Programs and education delivery for in-person group settings by external third-party providers were also impacted, particularly for custodial centres within the Greater Sydney region due to the Delta outbreak in mid to late 2021. These restrictions also impacted those custodial centres outside the Greater Sydney region relying on service providers located in Greater Sydney who were no longer permitted to travel to regional NSW or enter custodial centres. In addition to the restrictions on external third-party providers, programs and education delivered by custodial centre staff were impacted by suspensions, reduced participation numbers to enable social distancing, and reduced access to inmates due to full or partial day lockdowns or containment plans.

Staff have developed written resources to facilitate the delivery of content during disrupted periods or when inmates are confined to their cells. While this may be worthwhile where there is no other option, staff have acknowledged to us that these resources are of little benefit to people who are unmotivated, have an intellectual disability or cognitive impairment, or who struggle with reading and writing, all of whom require the guidance and structure of a face-to-face setting. This cannot become the accepted norm for delivering programs and education.

We are concerned about the impact of COVID-19 restrictions on inmate participation in programs and education. Inmate participation in external leave programs and completion of behaviour change programs can be influential factors for the State Parole Authority in parole decision making. Program completion can also be used to demonstrate that inmates have addressed the behaviour that led to their offending and could support submissions to the Family Court or housing agencies.

Our report on programs, education and employment in NSW custodial centres, published before the onset of COVID-19 in Australia, highlighted some of the barriers to engagement in programs and education, particularly intensive programs for sex and violent offenders which require lengthier times to complete than other programs.<sup>301</sup> Accessing programs and education in custody was a challenge that existed prior to the pandemic but has been made worse by extended periods of disruption.

CSNSW acknowledge that pandemic-related restrictions had a significant impact on the availability of programs to inmates and the need for a prioritisation strategy. Offender Services and Programs have issued guidance around priority participants for programs. Priority participants may receive one-on-one interventions.<sup>302</sup> These include people:

- who have almost completed a discrete program

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300 Corrective Services NSW, *Inmate Classification and Placement: Progression to C3/Category 1 and External Leave Programs (ELP)* (version 2.0, 2 February 2021).

301 Inspector of Custodial Services, *Programs, Education and Employment Inspection* (Report, February 2020).

302 One-on-one interventions consist of individual treatment sessions from the person's primary therapist/facilitator or individual assistance to complete self-management plans and relapse intervention plans. These interventions may be delivered in-person or by AVL. Information provided by Corrective Services NSW, 4 July 2023.

- who are past their earliest possible release date and special category offenders<sup>303</sup>
- whose release to parole is managed by the State Parole Authority with sufficient time to serve to complete a program
- with a high risk rating or current problematic behaviours, such as drug use.<sup>304</sup>

While it is positive that guidance has been developed to prioritise inmates for programs, there needs to also be regular monitoring of waitlists and the implementation of this guidance in practice.

**Recommendation: CSNSW develops a prioritisation and monitoring strategy for inmates waiting for placements in intensive programs.**

Other services and supports impacted by COVID-19 restrictions are also summarised in Table 9. The frequency and nature of chaplaincy services was modified to reduce the risk of transmission. Cultural supports for Aboriginal people in custody have been disrupted with travel and access restrictions impacting the work of Regional Aboriginal Programs Officers for CSNSW operated correctional centres, as well as the cancellation of NAIDOC Day events and reduced access to yarning circles, external service providers and visiting Elders (although this access was not uniformly available before the pandemic).

Other staff not directly affected by access restrictions still had trouble providing services and supports due to COVID-19. Psychology, classification and placement and case management, experienced reduced and inconsistent access to inmates due to staff shortages, lockdowns and quarantine and isolation regimes. While state-wide travel restrictions were in place in NSW from June to October 2021, CSNSW's mobile psychology unit was prevented from travelling to regional correctional centres and instead relied on AVL to deliver psychology services.<sup>305</sup> In locations where there were onsite psychologists, we have heard that COVID-19 prevented the delivery of face-to-face psychology services. Similarly, a lack of access to inmates prevented face-to-face case management interventions and classification and placement interviews and decisions. We are aware of classification and placement decisions being made on the papers. In many instances, staff providing services have been required to engage with inmates through yard fences or cell-door hatches. These workarounds lack privacy and dignity.

During our inspections, we will continue to monitor the impact of COVID-19 on inmate access to the supports they need and efforts to return to more routine service provision. It is vitally important that there is a return to in-person delivery of programs, education, psychology, case management, classification and placement, and other services and supports. AVL and other virtual platforms have the potential to improve access to services. However, these should be used to supplement onsite service delivery, not to replace it. Face-to-face engagement remains important for supporting inmates and building rapport. Further, engaging with inmates about their needs through fences and locked gates and doors cannot become embedded as acceptable practice and efforts need to be made by custodial and non-custodial staff to ensure this does not occur.

303 This includes high risk offenders per the *Crimes (High Risk Offenders) Act 2006* ss 4–5A and serious offenders per the *Crimes (Administration of Sentences) Act 1999* s 3: Information provided by Corrective Services NSW, 4 July 2023.

304 Information provided by Corrective Services NSW, 4 July 2023.

305 Inspector of Custodial Services, *Inspection of St Heliers Correctional Centre 2021* (Report, November 2022) 26–7.

## Appendix 1: ICS COVID-19 monitoring visits

	Date	Custodial centre
1.	May 2020	Acmena Youth Justice Centre
2.	June 2020	Metropolitan Remand and Reception Centre, including the field hospital
3.	June 2020	Hunter Correctional Centre
4.	June 2020	Silverwater Women's Correctional Centre
5.	June 2020	Bathurst Correctional Centre
6.	June 2020	Cobham Youth Justice Centre
7.	June 2020	Parklea Correctional Centre
8.	July 2020	Mary Wade Correctional Centre
9.	July 2020	Macquarie Correctional Centre
10.	July 2020	South Coast Correctional Centre
11.	July 2020	Shortland Correctional Centre
12.	July 2020	Lithgow Correctional Centre
13.	July 2020	Wellington Correctional Centre
14.	August 2020	Long Bay Hospital
15.	August 2020	Metropolitan Special Purpose Centre
16.	August 2020	Frank Baxter Youth Justice Centre
17.	August 2020	Goulburn Correctional Centre
18.	August 2020	Dillwynia Correctional Centre
19.	August 2020	Mid North Coast Correctional Centre
20.	August 2020	Reiby Youth Justice Centre
21.	August 2020	Surry Hill Court Cell Complex
22.	August 2020	Glen Innes Correctional Centre
23.	September 2020	Broken Hill Correctional Centre
24.	September 2020	St Heliers Correctional Centre
25.	September 2020	Mannus Correctional Centre
26.	September 2020	Amber Laurel Correctional Centre
27.	September 2020	Dawn de Loas Correctional Centre
28.	September 2020	Kariong Intake and Transit Centre
29.	October 2020	Geoffrey Pearce Correctional Centre
30.	October 2020	Parramatta Transitional Centre
31.	October 2020	Junee Correctional Centre
32.	October 2020	Riverina Youth Justice Centre
33.	October 2020	Wagga Wagga Court Cell Complex

<b>34.</b>	October 2020	Bolwara Transitional Centre
<b>35.</b>	October 2020	Special Purpose Centre
<b>36.</b>	November 2020	John Morony Correctional Centre
<b>37.</b>	November 2020	Clarence Correctional Centre
<b>38.</b>	November 2020	Tamworth Correctional Centre
<b>39.</b>	November 2020	Balund-a
<b>40.</b>	February 2022	Surry Hills Court Cells Complex
<b>41.</b>	February 2022	Kariong Intake and Transit Centre
<b>42.</b>	February 2022	Junee Correctional Centre
<b>43.</b>	March 2022	Cobham Youth Justice Centre
<b>44.</b>	April 2022	Bathurst Correctional Centre
<b>45.</b>	August 2022	Clarence Correctional Centre
<b>46.</b>	August 2022	Parklea Correctional Centre

## Appendix 2: Inspections undertaken from March 2020 to June 2023

	Date	Custodial centre or service
1.	March and June 2020	Oberon Correctional Centre (remotely in March 2020)
2.	May 2020 to February 2021	Inmate transport*
3.	November to December 2020	Parklea Correctional Centre
4.	February 2021	Lithgow Correctional Centre
5.	March 2021	Goulburn Correctional Centre
6.	March 2021	High Risk Management Correctional Centre
7.	April 2021	Emu Plains Correctional Centre
8.	November 2021	Tamworth Correctional Centre
9.	December 2021	St Heliers Correctional Centre
10.	February 2022	Broken Hill Correctional Centre
11.	March 2022	Metropolitan Remand and Reception Centre
12.	March 2022	Frank Baxter Youth Justice Centre
13.	April 2022	Acmena Youth Justice Centre
14.	May 2022	Silverwater Women's Correctional Centre
15.	May 2022	Cobham Youth Justice Centre
16.	June 2022	Dillwynia Correctional Centre
17.	June 2022	Surry Hills Court Cell Complex
18.	June 2022	Amber Laurel Correctional Centre
19.	June 2022	Wagga Wagga Court Cell Complex
20.	June 2022	Albury Court Cell Complex
21.	June 2022	Queanbeyan Court Cell Complex
22.	June 2022	Batemans Bay Court Cell Complex
23.	June 2022	Wollongong Court Cell Complex
24.	July 2022	Penrith Court Cell Complex
25.	July 2022	Kariong Intake and Transit Centre
26.	July 2022	Newcastle Court Cell Complex
27.	July 2022	Port Macquarie Court Cell Complex
28.	July 2022	Lismore Court Cell Complex
29.	July 2022	Dubbo Court Cell Complex
30.	July 2022	Moree Court Cell Complex
31.	July 2022	Orana Youth Justice Centre
32.	August 2022	Glen Innes Correctional Centre

33.	September 2022	Reiby Youth Justice Centre
34.	October 2022	Riverina Youth Justice Centre
35.	October 2022	Mannus Correctional Centre
36.	November 2022	Wellington Correctional Centre
37.	December 2022	Geoffrey Pearce Correctional Centre
38.	February 2023	South Coast Correctional Centre
39.	March 2023	Shortland Correctional Centre
40.	March 2023	Cessnock Correctional Centre
41.	May 2023	Mid North Coast Correctional Centre
42.	May 2023	Bathurst Correctional Centre (commenced)
43.	May 2023	Junee Correctional Centre (commenced)
44.	June 2023	John Morony Correctional Centre

**\*Locations inspected for the inmate transport inspection:**

	Date	Custodial centre
1.	May 2020	Far Northern Court Escort Security Unit (CESU) (Grafton)
2.	May 2020	Metropolitan CESU (Silverwater)
3.	June 2020	Western CESU (Bathurst)
4.	July 2020	Batemans Bay CESU
5.	August 2020	Goulburn CESU
6.	August 2020	Port Macquarie CESU
7.	September 2020	Dubbo CESU
8.	September 2020	Long haul transport between Dubbo and Broken Hill
9.	September 2020	Broken Hill Correctional Centre (transport only)
10.	September 2020	Kariong Intake and Transit Centre (transport only)
11.	October 2020	Lismore CESU
12.	October 2020	Wagga Wagga CESU
13.	November 2020	Moree CESU
14.	November 2020	Tamworth Correctional Centre (transport only)
15.	February 2021	Wollongong CESU
16.	February 2021	Newcastle CESU
17.	February 2021	Silverwater Transport Hub
18.	February 2021	Metropolitan Remand and Reception Centre (transport only)

# Appendix 3: Announcement of the ICS review of the response to COVID-19 in NSW custodial centres

## Background to announcement

The coronavirus disease 2019 (COVID 19) is caused by the severe acute respiratory syndrome coronavirus 2 (SARS CoV 2 virus). COVID 19 was first detected following an outbreak in Wuhan, China in December 2019 and on 11 March 2020, the World Health Organisation declared the outbreak to be a pandemic.

Custodial environments are vulnerable settings to outbreaks of respiratory disease. Due to environmental conditions (including porosity, shared facilities, and limited capacity for physical distancing) the risk of transmission in a correctional centre or a youth justice centre is high. Additionally, adults in custody are more likely to have existing health needs that place them at a higher risk of developing serious COVID 19 illness.

In the period since COVID 19 was first detected, the genetic structure of the virus has changed. When these changes produce a virus variant that is easier to spread or that makes people more unwell it is known as a 'variant of concern'. The Delta variant of concern was first identified in October 2020 and since June 2021, it has been the predominant variant of the virus causing COVID-19 in NSW. Emerging data collated by the World Health Organisation suggests that the Delta variant is more infectious and causes more severe illness producing higher rates of hospitalisation relative to other variants.

Until recently, outbreaks of COVID 19 disease in NSW custodial settings had been avoided. In accordance with our legislative functions, we are required to monitor the planning and response to COVID 19 undertaken by the agencies we oversight. Such responses require nuanced approaches that balance the need to protect people in detention and staff from COVID 19, with the need to ensure that rights and freedoms already curtailed in custody are not disproportionately limited. We also need to respond to any serious issues or concerns about the treatment and conditions of inmates during the COVID 19 pandemic.

Our work to date has included, preventive advisory work, COVID 19 focused monitoring visits, inspections of individual custodial centres where appropriate and maintaining the Official Visitor Program consistent with public health advice and international best practice.

Presently high rates of locally acquired COVID 19 in Greater Sydney and the associated seeding in several regional NSW locations has significantly increased the risk of transmission and illness in custodial settings. Following an outbreak in the NSW community in June 2021, COVID 19 disease was detected in young people and adults in custody, as well as staff, who acquired the virus in the community. In July 2021, the first known instances of transmission occurred within NSW custodial centres. Given the increasing number of confirmed cases of COVID 19 in the custodial system, we are concerned about the potential for amplification of transmission and the challenges in providing health care to people for associated illness.

## Objective of review

This review will consider the response to COVID 19 in youth and adult custodial centres in NSW. Measures will be scrutinised for their effectiveness in preventing transmission and reducing disease, and their impact on conditions for people in custody. This review will also provide recommendations to assist in the planning around future responses to COVID 19 that reduce risk of transmission and illness without compromising the treatment of, and conditions for, people in custody in NSW.

## Terms of reference

The ICS will examine several key areas in this review:

- a. legislation and policy informing the response to COVID 19 in NSW custodial centres and services
- b. governance structures within the key agencies
- c. minimising the risk of COVID 19 entering a custodial centre
- d. reducing the risk of transmission to staff, inmates and detainees in custodial centres and services
- e. managing COVID-19 illness in custody
- f. continuity of services for young people and adults in custody during the pandemic
- g. managing safe release from custody.

As we commence this review we will continue to have regard to the 'do no harm' principle that has guided our monitoring during the COVID 19 pandemic. We will avoid placing any burden on relevant authorities and staff that reduces their capacity to respond to COVID 19.





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